

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.1450/Mum/2021
(Assessment Year :2011-12)**

M/s. Strides Pharma Science Limited 201, Devavrata Sector-17, Vashi Navi Mumbai – 400 703	Vs.	The Deputy Commissioner of Income-Tax- 15(1)(2) Mumbai Aayakar Bhavan, MK Road Mumbai – 400 020
PAN/GIR No.AADCS8104P		
(Appellant)	..	(Respondent)

Assessee by	Shri Nishit Gandhi
Revenue by	Ms. Vatsalaa Jha
Date of Hearing	31/03/2022
Date of Pronouncement	29/04/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1450/Mum/2014 for A.Y.2011-12 preferred by the order against the final assessment order passed by the Assessing Officer dated 30/06/2021 u/s.147 r.w.s. 144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions of the Id. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 22/03/2021 for the A.Y.2011-12.

2. We find that assessee has challenged the validity of reassessment proceedings vide ground Nos. 1.1 to 1.3 before us.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is engaged into the business of manufacturing, marketing and supply of pharmaceutical products. It exports pharmaceutical products through its export oriented unit. We find that assessee electronically filed its return of income for A.Y.2011-12 on 30/11/2011 declaring total income of Rs.'Nil'. and assessment was completed u/s.143(3) r.w.s.144C(13) on 30/01/2016 determining total income at Rs.58,99,67,000/-. Subsequently, the case of the assessee was sought to be reopened u/s.147 of the Act and notice u/s.148 was issued and served on the assessee on 31/03/2018. The reasons recorded for reopening the assessment are as under:-

Reasons for re-opening : On going through the case records, it is found that the TPO made an adjustment of Rs.17,69,36,772 in the TP Order. Out of such adjustment proposed by the TPO, Rs.17,36,13,067 pertained to adjustment on interest on share application money. It was seen that the assessee had advanced share application money to Starsmore Ltd. and Strides Arcolab International Ltd. and had charged interest of Rs.31,29,70,000 on such advances made. However, the Department recomputed the interest receivable at the rate of 8 percent per annum. It was noticed that the assessee represented vide letter dated January 13, 2015 that "As per FEMA Notification, an Indian is required to receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of RBI within six months or such further period as RBI may permit, from the date of effecting remittance or the date on which the amount to be capitalized became due to the Indian Party or the date on which the amount due was allowed to be capitalized". The assessee demanded that interest computation may not be carried for the period of six months from the date of remittance of the share application money to the subsidiaries of the company. The Department accepted the contention of the assessee and allowed the benefit of not charging any interest on amounts for less than six months. However, the stand taken by the Department was erroneous on the following grounds: -

1. This was a new stand taken by the Department as in the case of other assesses, the Department did not exempt the standard deduction of period of six months. In the case of assessee himself, it was seen (from the unsigned order of previous AY kept in the file) that no such benefit was extended.
2. The RBI guideline is only a requirement under the FEMA to keep tab over the remittances and they do not come in the way of Transfer Pricing adjustment. It also does not talk about the requirement of allotment of shares within a time frame but talks of mechanism to avoid the remittances being made getting transformed into some other form.
3. If the contention of the assessee is accepted then the Department should not have made any adjustment, whatsoever, as the RBI permission for the extension of time period for allotment of shares could well have served as adequate compliance. It is presumed that the assessee has been allowed extended time limit as no FEMA violation action was reported.
4. If the stance of the assessee is accepted then the assessee would be able to extend the loans to the AEs in garb of share application money and would get it back within six months and resend the same thereby avoiding any adjustment on such amounts.
5. The stance of the assessee seems to be an afterthought at the time of TP proceedings itself as the assessee himself had levied interest at the rate of 8 percent from its AEs and still the amount came to Rs.29,06,15,000 against the computation made by Department of Rs.26,98,05,280 levied at 8 percent. Since, the rate of interest was fixed, the variation was either due to change in principal or change in period.

The computation was reworked and it was seen that an amount of short adjustment of Rs.8,45,88,326 was required to be levied as given in the Annexure.²

3. On the basis of above findings of the Audit/TPO and due diligence thereof from the records, it is seen that by mistake the assessee company was allowed short TP adjustment of Rs. 8,45,88,326 on interest.

This office has also examined the evidence and fact of the case independently and it is found that, there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment.

3.1. From the aforesaid reasons, it could be seen that the issue for which assessment was reopened is for imputing interest on share application money for the first six months. For the last six months, the same interest imputation was made. Now, the short point that arises for our consideration is, is there any failure on the part of the assessee to disclose primary and material facts relevant for the purpose of assessment in the original proceedings. The entire facts relevant to the issue in dispute was already placed on record by the assessee. This fact is even more evident from the reasons recorded by the Id. AO as reproduced supra, which starts with the expression "on going through the case records it is found.....". Hence, this conclusively goes to prove the following:-

- a. There is absolutely no tangible material available with the Id. AO which would enable him to form a belief that income of the assessee had escaped assessment warranting reopening.
- b. There is no failure on the part of the assessee in the original assessment proceedings to disclose primary and material facts that are relevant for the purpose of assessment.
- c. The Id. AO is only trying to change his opinion on the very same set of facts which are already available before him.

3.2. In fact, in the reasons recorded, nowhere the Id. AO had brought on record or even whispered as to how there was a failure on the part of the assessee in not furnishing the relevant details in the original assessment proceedings. Moreover, from the perusal of the order of the Id. TPO in the first round of proceedings u/s.92CA(3) of the Act dated 16/01/2015 enclosed in page 435 of the paper book, we find that assessee had made detailed submission vide letter dated 13/01/2015 regarding the issue in dispute before us on the aspect of imputation of interest on share

application money. This fact is also recorded in page 437 of the paper book, being the old TPO's order. Hence, the Id. TPO after considering the submissions of the assessee had taken a reasoned and considered view by concluding that interest is to be imputed for last six months alone. Hence, when a possible view had been taken by the Id. TPO, the same cannot be disturbed by way of reopening of the assessment proceedings. Reliance in this regard is rightly placed on the decision of Hon'ble Jurisdictional High Court in the case of Western Outdoor Interactive P Ltd., vs. ITO reported in 286 ITR 620.

3.3. The law is also very well settled by the Hon'ble Supreme Court in the case of CIT vs Kelvinator of India Ltd., reported in 320 ITR 561 wherein it was held that reassessment cannot be made on mere change of opinion and the Id. AO cannot be given a second innings to review the same set of facts in the guise of reopening. In view of the above, we have no hesitation in quashing the re-assessment proceedings as void ab initio. Since the reassessment is quashed, the other grounds raised by the assessee on merits need not be gone into and they are left open.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 29/04/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 29/ 04/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai