आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।

IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.983/Ahd/2019
Assessment Year :2014-15

Aditya Medisales Ltd. 402, 4th Floor, R.K. Centre Fatehgunj Vadodara 390 002. PAN : AABCA 9317 J	Vs	DCIT, Cir.1(1)(1) Vadodara.

ITA No.1022/Ahd/2019
Assessment Year :2014-15

DCIT, Cir.1(1)(1) Vadodara.	Vs	Aditya Medisales Ltd. 402, 4th Floor, R.K. Centre Fatehgunj Vadodara 390 002. PAN : AABCA 9317 J

(Applicant)		(Responent)

Assessee by	:	Shri S.N. Soparkar, Sr.Advocate
Revenue by	:	Shri A.P. Singh,CIT DR and Shri V.K. Singh, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 09/03/2022**
घोषणा की तारीख /**Date of Pronouncement: 06/05/2022**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

These are two appeals one filed by the assessee and another by the revenue against the order dated 10-04-2019 passed by the

Commissioner of Income Tax [Appeals]- 1, Vadodara relating to the assessment year 2014-15.

2. Brief facts of the case is that the assessee company is engaged in the business of distribution of Pharmaceutical products as well as in the financial services including dealing in shares and securities and leasing activity. The assessee company filed its return of income on 18-11-2014 declaring total income of Rs.7,55,75,440/- after claiming deduction under 80G of Rs.75,500/-. The assessee also returned a long term capital loss of Rs.41,08,131/- and the book profit under section 115JB of the Income Tax Act 1961 was shown at Rs.12,78,45,729/-. The assessee's case was selected for scrutiny assessment and statutory notices under sections 143[2] and 142[1] were issued from time to time and the assessment was completed under section 143[3] on 28-12-2016 determining the total income at Rs. 21,13,60,890/- by making the following disallowances:

a.	Interest expenditure disallowed	Rs.12,11,46,320
b.	Discount paid to doctors	Rs. 21,26,033
c.	disallowance made under section 14 A	Rs. 1,23,64,818
d.	differential income as per 26AS	Rs. 1,48,282

3. Aggrieved against the disallowances, the assessee filed an appeal before Commissioner of Income Tax [Appeals] 1, Vadodara. The learned CIT [A] by this impugned order allowed the interest expenditure following the earlier Appellate order passed for the assessment year 2012-13 in assessee's own case. On the issue of discount paid to doctors, the learned CIT [A] followed the earlier assessment year and confirmed the disallowances made by the assessing officer. On the disallowance made under section 14A, learned CIT [A] directed to delete interest expenses amounting to Rs.1.15 crores, however the disallowance of Rs.8,10,910/- on

account of Administrative expenses is upheld. Further, the AO was directed to recompute the disallowance under section 14A taking into account Rs.45,000 already disallowed by the assessee in its return of income. The AO was further directed not to add the disallowance made under section 14A of the Act to the book profit of the assessee company as computed under section 115JB of the Act. Thus the appeal filed by the assessee was partly allowed by the Ld CIT [A] .

4. Aggrieved against the order passed by the appellate authority, both the assessee and revenue are in appeal before us. The grounds of appeal raised by the assessee in ITA 983/AHD/2019 are as follows:

i) Disallowance of discount offered to doctors of Rs.6,89,791/-
ii) Disallowance under section 14A read with Rule 8D of Rs.2,63,100/-
iii) Deduction of education and secondary & higher education cess under section 37(1) of Rs.2,53,233/-
iv) Wrong levy of interest under section 234A of the Act.

5. **Ground no. 1**: Disallowance of discounts offered to doctors. Ld. Senior counsel, Mr.S.N.Soparkar appearing for the assessee submitted that the ld CIT [Appeals] grossly erred in mechanically confirming the disallowance of discounts given to doctors and without appreciating that the discounts were offered wholly and exclusively for promoting the business of the appellant company and the provisions of Indian Medical Council [Professional Conduct, Etiquette and Ethics] Regulations, 2002 are not applicable to the pharmaceutical companies. The ld. Senior Counsel also stated what was given is a discount on sale price to Doctors, is the same given to dealers and others also and it is not a freebies and therefore it is a legally allowable expenditure u/s.37 of the Act. The ld senior

counsel also taken as to the co-ordinate bench decision in assessee's own case relating to the assessment year 2009-10 in ITA No. 2511/AHD/2015 dated 29-03-2019, more particularly paragraph number 11.9 and 11.10 which states as follows:

> *"11.7 When the matter was called for hearing, the learned AR for the assessee referred to the party-wise details of various small amounts spread all over India aggregate to Rs.7.34Crores and also referred to its submission made before the CIT(A) in this regard. It was contended that the assessee has standard and structured system of allowing discounts. The assessee has appointed various C&F agents who supplies the medicines to stockiests/distributors who, in turn, supply to the retailers/pharmacists. The eligibility of discount is calculated on the basis of quantity lifted by these parties. It was pointed out that such discounts/incentive scheme floated by the assessee are universal and without any discrimination and applicable to all retailors/pharmacists/doctors who have purchased medicines from its designated C&F agents. The learned AR submitted that the payment of discount is duly evidenced by necessary documentation in this regard. In these circumstances, the discount given to the customers of its C&F agents based on quantity lifted is integrally connected to the business activity of the assessee and therefore an allowable business expenditure. The learned AR thereafter referred to the order of the AO for subsequent assessment year concerning AY 2010-11 and submitted that in the next assessment year, the AO himself has admitted the claim of discount made to stockiests/customers etc. aggregating to Rs.10.90 Crores and only the discount of Rs.15.44 Lakhs given to Doctors were rejected. It was thus contended that the order of the CIT(A) is in parity with the action of the AO himself in the subsequent year and therefore cannot be assailed by the Revenue by any means. As regard discount offered to the doctors amounting to Rs.8.956Lakhs, the learned AR pointed out that the supply of medicines have been made to the Doctors also by the C&F agents by way of sale and not on any promotional offer and therefore, no distinction can be drawn for discount bestowed to Doctors qua other stockiests/distributors/dealers etc. The learned AR thus submitted that the appeal of the Revenue thus deserves to be rejected whereas the appeal of the assessee requires to be allowed on this score.*
>
> *11.9 We have carefully considered the rival submissions on the issue. The maintainability of discount on sales is in question. It is the case of the Revenue that the assessee is supplying medicines to its C&F agents for its ultimate sale in the market for consumption. The discounts were given by the assessee company to the distributors, retailers, dealers, Doctors associated to C&F agent and who were not*

directly dealing with assessee and therefore expenses incurred towards discount payment by the assessee has no nexus with the sales made by it to the C&F agents. The AO accordingly is of the view that such indirect discounts to the customers of its agents are not allowable expenditure.

11.10 We do not see any iota of merit in such plea. The discounts given to the customers/ultimate consumer has direct bearing on the potential turnover of the company. It is well settled that the test of the commercial expediency cannot be reduced to the shape of a ritualistic formula nor can it be put in a water tight compartment. It is trite that the Revenue authorities have to place themselves in the position of a business and find out whether expenses incurred can be said to have been laid out for the purposes of businessman. The commercial expediency and prudence are inseparable. If the expenditure is incurred to facilitate carrying on of business of the assessee and is supported by the commercial expediency, it does not matter that the payment is in voluntarily or not necessary or that it also enures to the benefit of a third party. If the object is business promotion, the expenditure can be said to be wholly and exclusively for the purposes of the assessee's business. The assessee in the instant case demonstrated on facts that payment of such discounts are integrally connected to the sales/turn over achieved or has potential to achieve. The discount expenses have thus been incurred with the object of furthering the trade or business interest of the assessee. Therefore, such expense falls within the expression 'wholly and exclusively' referred to in Section 37 of the Act. Therefore, we have no hesitation to concur with the conclusion drawn by the CIT(A) for allowability of discounts given to stockiests/distributors etc. However, we are unable to understand the reasoning of the CIT(A) for discarding the claim of discount expenditure paid to the Doctors. When the test of commercial expediency applied in its natural perspective, there is no reason to exclude Doctors purchasing medicines from C&F agents for the purpose of eligibility of discount payments. We thus set aside the action of the CIT(A) to this extent and direct the AO to allow the trade discount paid to all parties including Doctors as ordinary business expenditure. Thus, Ground No.2 of the Revenue's appeal is dismissed. As a corollary, Ground No.1 of the assessee's appeal in ITA No. 2511/Ahd/2015 stands allowed."

6. In reply thereto the Ld.DR appearing for the Revenue relied upon the orders of the lower authorities and pleaded to confirm the disallowance accordingly.

7. We have given our thoughtful consideration and materials available on record. It is the case of the assessee that the trade

discounts given to the doctors are similar to the discounts given to the distributors and other dealers which is an allowable expenditure under section 37 of the Act. This view is confirmed by the Co-ordinate Bench of the Tribunal in assessee's own case for the Asstt.Year 2009-10. Respectfully following the decision, we set aside the orders of the CIT(A) and AO and direct the AO to allow trade discount paid to the Doctors as ordinary business expenditure. Thus, we allow ground no.1 in favour of the assessee.

8. **Ground no. 2**: Disallowance U/s. 14A read with rule 8D of Rs.8,10,910/-.

9. The learned Senior Counsel submitted that the CIT(A) grossly erred in sustaining the disallowances made under section 14A of the Act read with Rule 8D of the Rule without appreciating that invocation of Rule 8D is not automatic and recording of satisfaction and establishing a direct nexus between the expenditure incurred for the exempt income is a *sina quo non*. However, in alternative, ld. Sr.Counsel submitted that on this issue, the Tribunal has taken a consistent view from the Asst.Year 2008-09 to 2011-12 and A.Y.2013-14 whereby it has directed the AO for recomputation of disallowance under Rule 8D(2)(iii) of the IT Rules with reference to these investments which have actually yielded exempt income instead of gross investments. Copy of order of the Tribunal dated 9.7.2019 is placed on record.

10. After considering the rival submissions and perusing the relevant material on record, we find the ld.CIT(A) while deciding under section 14A of the Act of Rs.1,23,64,818/-, deleted Rs.1,15,98,908/- being interest expenses, while remaining part of the disallowance of Rs.8,10,910/- being administrative expenses

was upheld. We do not find any infirmity in the order of theld.CIT(A) so far as deletion of Rs.1,15,98,908/- representing interest expenses. However, upholding of disallowance to the extent of Rs.8,10,910/- being administrative expenses was not based on logical parameters. We find similar issue came up for hearing before the Tribunal for the Asstt.Year 2013-14 in assessee's own case, wherein Co-ordinate Bench remitted back the issue to the file of AO with direction to re-compute the disallowance under Rule 8D(2)(iii) and consider only the investments which have actually yielded exempt income instead of gross investment. We are of the view that similar direction to the AO to decide the issue afresh in line with the directions of the Tribunal in AY 2013-14 would be just and appropriate in this assessment year also. We hold so and direct the AO accordingly.

11. **So far as ground no.3** regarding allowance of deduction of education and secondary & higher education cess under section 37(1) of the Act is concerned, the same is NOT pressed, and hence no adjudication is required.

12. **Ground No.4** is against levy of interest under section 234A of the Act for delay in filing return of income. As per the assessee, the assessee had furnished the return of income for year under consideration within the due date prescribed under section 139(1) of the Act. Though this interest is consequential in a nature, this issue is remitted back to the file of the AO to decide whether interest of Rs.1,97,584/- was in accordance with law or not.

13. In the result, appeal of the assessee is partly allowed for statistical purpose.

14. Now we take Revenue's appeal.

15. Revenue has raised following two grounds:

> *"1.1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the differential interest of Rs. 12,11,46,320/- by treating it as business expenditure ignoring the fact on record that the transaction between Aditya Medisales Ltd. & M/s Sun Pharmaceutical Industries Ltd. is not a transaction between 2 unrelated parties as the controlling person in both the company is same i.e Mr. Dilip Sanghvi for A.Y. 2014-15, as submitted by the assessee.*
>
> *1.2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs. 12,11,46,320/- made out of the interest claimed u/s 36(l)(iii), which was paid for non-business purposes.*
>
> *2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in partly allowing the appeal on disallowance u/s 14A of the Income tax Act,"*

16. **So far ground no.2 is concerned**, this issue has already dealt with while adjudicating the appeal of the assessee in the foregoing paragraphs of this order. Therefore, this ground cannot sustain, the same is accordingly dismissed.

17. Now we take ground no.1 of the Revenue's appeal : The Revenue is aggrieved by the action of the ld.CIT(A) in allowing the differential interest of Rs.12,11,46,320/- made out of interest claimed under section 36(1)(iii) of the Act by treating it as a business expenditure.

18. During the assessment, it was noticed by the AO that the assessee has paid interest to the companies 'Sun Pharma Group' to the tune of Rs.39,68,36,993/-. The AO has noticed the details of such interest payment at page no.2 and 3 of the assessment order. It is further noticed by the AO that on examination of share pattern of the assessee company, assessee is an associate concern of these

entities. Such details given by the AO are mentioned at page no.4 to 8 of the assessment order. After examining all these details, the AO came to the conclusion the assessee-company is managed and controlled by the Sun Pharma Group, and therefore transaction between assessee-company and Sun Pharma Group of entities to whom huge interest amount has been paid, was not at arm's length transaction. The ld.AO further observed that assessee is sole and exclusive commission agent and seller of Sun Pharma group entities products and controlled by directors of Sun Pharma. The entire profit earned by the assessee company was routed back to Sun Pharma mainly in the form of interest on delayed payments. Sun Pharma also did not pay any tax on this huge interest as it claimed deduction under section 80IC of the Act; the income otherwise to be taxed in the hands of the assessee, was intentionally and in planned manner transferred to a Sun Pharma which gets deduction under section 80IC. The AO also noted, when the assessee-company did not charge any interest on the debtors, but it pay interest on delayed payment to Sun Pharma, which was not justifiable. Therefore, it was an arrangement by the majority stake holders of the Sun Pharma to claim deduction on the income earned by the assessee-company. A show cause notice was accordingly issued to the assessee as to why the interest paid to M/s.Sun Pharma Ltd. should not be disallowed.

19. It was contended by the assessee, the assessee-company is sole distributor of all the products of Sun Pharma, and as per the terms of agreement, the assessee company has to make payment on delivery of the products within the stipulated time, otherwise, interest on overdue bills raised against purchase of the products at the rate of 9% pa was to be paid to the principal. It was also pointed out by the assessee that similar claim for the Asst.Year 2009-10 was

allowed by the CIT(A) by accepting the claim of the assessee. Similar allegations made by the AO in that assessment year was also rebuffed by the CIT(A) as not tenable. Assessee further submitted that even for the subsequent assessment years i.e. 2010-2011 and 2011-12 similar claim was allowed by the ld.CIT(A), therefore, since the facts and circumstances being the same, no disallowance on account of interest expenditure incurred on delayed payment of interest be made in the current year also. Thereafter, the assessee has tried to explain the nature of interest payment made by the assessee, and then he put effort to differentiate between 'interest' *simplicitor* and 'interest expenditure incurred on delayed payment of interest'; in other words, payments not connected with debt vis-à-vis payments having connection with debt with the definition given section 2(28A) of the Act and various authorities judgments in this behalf. What the assessee trying to explain was that payment of interest on account of overdue bills was in the nature of payment of additional purchase price paid in the ordinary course of business activities of the assessee, and allowed as deduction under section 37(1) of the Act. Discussion made by the assessee during the assessment proceedings has been recorded in page no.13 to 45 of the assessment order. On the charge of application of provisions of section 40A(2)(b) of the Act, the assessee submitted that the principal companies i.e. Sun Pharma group did not fall under the purview of the definition of 'specified persons' given in the above provision. Even in the tax audit report, auditors have not reported the same under the relevant clause. The allegation that the said group was related parties to the assessee-company was negatived by the CIT(A) in the assessment year 1997-98, which issue even went upto the Tribunal and confirmed. Thus there is no case of disallowance by invoking the provisions of section 40A(2)A) of the

Act. Even otherwise also payment of interest on overdue interest was very reasonable considering the prevailing market condition, and the rate charged by the group could not be said to be excessive or unreasonable so as to warrant invocation of provisions of section 40A(2)(b) of the Act. The explanation of the assessee did not found favour of the AO. The AO maintained his stand on the issue, and accordingly, worked out disallowance being the difference between the interest paid to the group minus interest earned, net interest of Rs.12,11,46,320/- was added to the total income of the assessee.

20. Assessee went in appeal before the ld.CIT(A), who after considering order of the AO and submissions of the assessee, found that similar claim for the Asst.Year 2012-13 made by the assessee, which though rejected by the AO, the ld.CIT(A) deleted the disallowance and allowed the appeal of the assessee. The short finding given by the assessee in para 5.4.1 of the impugned order reads as under:

> *"5.4.1. Identical issue was involved in appellant's own case for AY.2012-13. The bases of disallowance made in the assessment order for AY.2012-13 was also the same as are involved in the year under consideration. In the appellate order CAB-1/30/2015-16 dated 01/02/2017 passed for AY.2012-13 similar disallowance made by the AO has been directed to be deleted. Following the order of my predecessor, the disallowance made in this year is also directed to be deleted. Accordingly, ground No. 2 is allowed."*

21. Aggrieved by the action of the CIT(A), the Revenue is before the Tribunal. The ld.DR supported order of the AO, whereas the ld. Sr.Counsel for the assessee supported the order of the ld.CIT(A), and also reiterated the submissions as were made before the Revenue authorities. The ld.Sr.Counsel further submitted that similar claims were made by the assessee in earlier assessment years, and though they were disallowed by the AO, but in appeal before the CIT(A) the

claim of the assessee was allowed in these years. Against similar issue raised by the assessee for the Asst.Year 1997-98 was went upto the Hon'ble Gujarat High Court at the instance of the Revenue, and Hon'ble High Court in Tax Appeal No.559 of 2009 order dated 4.5.2010 dismissed the appeal of the Revenue, and therefore, so far as the present issue is concerned, the same is settled, and the claim of the assessee current year is to be allowed on similar line. He placed on record copy of judgment of Hon'ble Gujarat High Court dated 4.5.2010.

22. We have considered submissions of both the parties; perused material available on record and also order of the CIT(A) and the judgment of Hon'ble Gujarat High Court in assesse's own case cited (supra). We find that the issue of payment of interest on overdue bills to the Sun Pharma Ltd. does not require elaborate discussion because, as stated by the ld.Senior Counsel, the issue was being agitated time and again i.e. in the year 1997-98, 2010-2011, 2011-12 and 2012-13 and the assessee has succeeded in all these years either before the CIT(A) or before the ITAT and even before the Hon'ble Gujarat High Court. We quote hereinbelow the relevant part of the judgment of Hon'ble Gujarat High Court dismissing the appeal of the Revenue and upholding the order of the ITAT, wherein the claim of the assessee was allowed.

> *"(5) The Tribunal in its impugned order has recorded that it is not clear from the record as to whether the contention as to the applicability of Section 40A(2)(b) of the Act was raised before the Assessing Officer, and accordingly proceeded in the matter by assuming that the provisions of Section 40A(2) (a) of the Act could be applied in the present case. The Tribunal has recorded that the Assessing Officer has inferred that the rate of 24% p.a. was excessive as the assessee had paid interest at rates varying from 18% to 20% p.a. on its other borrowings, that is, the deposits from public and loans from financial institutions, It was contended on behalf of the assessee that the market rate for capital during the relevant period*

stood at 24% to 30% p.a. The Tribunal was of the view that even though no basis or material to indicate the said market rates had been laid by the assessee, normally if the interest rates from organized sources are in the range of 20% p.a., the interest rates from the general market would only be higher. According to the Tribunal even if the assessee's claim is discounted, the rate of interest at 24% p.a., which is the rate at which interest is paid by the assessee, is not beyond conception. The Tribunal had also found that the onus for the application of Section 40A(2)(a) of the Act is on the revenue, which was not discharged by it.

(6) Thus both, Commissioner (Appeals) as well as the Tribunal have upon appreciation of the evidence on record found that the revenue has not been able to make out any case for applying the provisions of section 40A(2)(a); and that interest on unsecured borrowings is always higher than the rate of interest paid to the banks or financial institutions from where the loans raised are secured loans, and have accordingly accepted interest paid to Sun Pharmaceuticals at the rate of 24% p.a. to be reasonable. In the light of the concurrent findings of fact recorded by Commissioner (Appeals) as well as the Tribunal, and considering the fact that the findings and conclusions arrived at by the Tribunal are based on the evidence on record as well as normal commercial practices, it cannot be stated that the impugned order suffers from any legal infirmity so as to warrant interference."

23. We find that facts and circumstances in the present case are similar to that of earlier years. Therefore, in view of the above settled position of the issue by the ITAT and the Hon'ble Gujarat High Court, respectfully following the same, we dismiss this ground of appeal of the Revenue.

24. In the result, the appeal of the assessee is partly allowed for statistical purpose, and the appeal of the Revenue is dismissed

Order pronounced in the Court on 6th May, 2022 at Ahmedabad.

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad, dated 06/05/2022

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