

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI SANJAY GARG (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 7612/MUM/2019
Assessment Year: 2010-11**

Deputy Commissioner of Income Tax
Central Circle-2(4),
Room No. 802, Old CGO Building, 8th
floor, M.K. Road,
Mumbai-400020.

Appellant

M/s Macleods Pharmaceuticals
Limited,
304, Atlanta Arcade, Marol Church
Road, Andheri (West)
Mumbai-400059.
PAN No. AAACM 4100 C
Respondent

**ITA No. 7770/MUM/2019
Assessment Year: 2010-11**

M/s Macleods Pharmaceuticals
Limited,
304, Atlanta Arcade, Marol Church
Road, Andheri (West)
Mumbai-400059.

PAN No. AAACM 4100 C
Appellant

Deputy Commissioner of Income
Tax Central Circle-2(4),
Room No. 802, Old CGO Building, 8th
floor, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Ashok Bansal, AR
Revenue by : Mr. Achal Sharma, CIT-DR

Date of Hearing : 10/05/2022
Date of pronouncement : 10/05/2022

ORDER

PER SANJAY GARG, JUDICIAL MEMBER:

The captioned appeals one by the assessee and other by the Revenue have been filed against the order of the Ld. Commissioner of Income (Appeals)-48, Mumbai [in short 'the Ld. CIT(A)'] for the assessment year 2010-11.

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2. First we take up the appeal of Revenue. The Revenue has raised the following grounds:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the disallowance of Rs.58,70,63,515/- made on account of Freebie paid to doctors, despite the facts that the decision of the Hon'ble ITAT on this issue in assessee's case in respect of AY 2010-11 and AY 2011-12, has not accepted by the Revenue and an appeal is pending before the Hon'ble Bombay High Court.

2. The appellant craves leave to add, to amend and/or to alter any of the grounds of appeal, if need be.

3. The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-48, Mumbai may be set aside and that of the Assessing Officer restored.”

3. The brief facts of the case are that an assessment in the case of the assessee was carried out u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide assessment order dated 23.10.2012. During the assessment proceedings, the Assessing Officer inter alia disallowed the expenditure incurred on account of freebies paid to Doctors, holding that the said expenditure was not related exclusively to earning of business income of the assessee and further that the same was unethical.

4. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A). However, the Ld. CIT(A) confirmed the additions so made by the Assessing Officer. The matter travelled to the Tribunal and the Tribunal vide order dated 21.09.2016 deleted the additions on this issue while relying upon other case laws of similar nature.

5. Being aggrieved by the order of the Tribunal dated 21.09.2016, the Revenue preferred appeal before the Hon'ble High Court. The Hon'ble Bombay High Court *vide* order dated 12.02.2020 in Income Tax Appeal No. 1877 of 2012 has admitted the appeal for adjudication and matter on the issue is subjudice before the Hon'ble High Court.

5.1 In the mean time a search action was carried out at the premises of the assessee pursuant to the said search action, assessment was carried out u/s 153A of the Income Tax Act and certain additions were made. In the assessment order passed u/s 153A of the Income Tax Act, the Assessing Officer re-affirmed the additions so made on this issue relating to the freebies given to the Doctors. However, the Ld. CIT(A) deleted the additions on this issue and thus, the Revenue is in this appeal before us.

6. We have heard rival contentions of both the parties and gone through the record. It has been time and again held by the various

High Courts that if no incriminating material is found during the search action, the addition in the case of already concluded assessment cannot be made while framing assessment u/s 153A of the Act. Reliance in this respect can be placed in the case of 'CIT Vs. Continental Warehousing Corporation' ITA No. 523 of 2013 reported in (2015) 279 CTR 0389 (Bombay) and of the Hon'ble Delhi High Court in the case of 'CIT Vs. Kabul Chawla' 234 Taxman 300 (Delhi). The aforesaid decisions have been further affirmed by the decision of the Delhi High Court in the case of 'Principal CIT Vs. Meeta Gutgutia Prop M/s Ferns 'N' Petals', ITA 306/2017 and others decided vide order dated 25.5.2017.

Therefore, the issues decided in the already completed assessments without any fresh incriminating material related thereof, are not to be re-adjudicated by the AO. In this case also, in the original assessment, the additions were made by the AO on this issue and the appeal on the issue is already pending before the

Hon'ble High Court, as noted above. So in the fresh assessment proceedings carried out u/s 153A of the Act, since there is no reference of any incriminating material relating to the aforesaid issue, therefore, this issue in the light of the settled law cannot be re-adjudicated in the second appeal before this Tribunal, especially when this issue has already been considered and adjudicated in the first appeal and the matter is pending before the Hon'ble High Court. Whatever, the findings will be given by the Hon'ble High Court that will apply to the case of the assessee for the assessment year under consideration. There cannot be allowed two parallel proceedings running, one in the High Court and the other Tribunal on the same issue and relating to the same assessment year. This appeal of the Revenue, in view of this, is hereby dismissed subject to our observation that the finding arrived at in appeal before the High Court on this issue will accordingly apply to the case of the assessee for the assessment year under consideration.

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8. Now coming to the appeal of the assessee. The assessee in this appeal raising following ground:

“1. The authorities below have erred in law as well as facts in apportioning/upholding the apportionment of Research & Development expenses u/s 35(2AB) to various units of the appellant including the units eligible for deduction u/2 80IB and 80IC.”

9. The only grievance of the assessee in this appeal is relating to the allocation of the expenditure relating to the R&D unit to the other units which are exempt u/s 80IC of the Income Tax Act.

9.1 At the outset, the Ld. counsel for the assessee produced on record the copy of the order of the Co-ordinate Bench of the Tribunal dated 16.09.2021 for assessment year 2009-10, in the own case of the assessee, wherein the Tribunal has duly considered this issue and has decided the issue in favour of the assessee, observing as under :

“19. Coming to allocation of R & D expenses, the assessee contended before the lower authorities that its Research and Development activities are not directly related to its manufacturing units as the research and development divisions is working on future products and future innovation and launches and not for the present products manufactured by the assessee in its units. It was contended that Research and development ITA.NO. 7167/MUM/2017 (A.Y: 2009-10) M/s. Macleods Pharmaceuticals Ltd., expenditure had no relevance to the working of qualifying undertakings. Further, R & D expenses are on futuristic research and the result of research is also uncertain. It was also contended that none of the items of the research was forming part of qualifying undertakings and none of the qualifying undertakings thus benefit from the present research. It was also contended that research in the field of biotech or bulk drugs will be wholly unrelated even for theoretical reckoning from impugned qualifying undertakings. Details of products manufactured by the units and products on which R & D is undertaken were on records which shows that they are completely independent from each other. Assessee placed reliance on the Zandu Pharmaceuticals Works Ltd., v. CIT [350 ITR 366] and various other decisions in support of his contention that R & D expenditure incurred in head office cannot be allocated to the units. We observe from the Assessment Order that the Assessing Officer predominantly stating that R & D expenditure incurred by the assessee is inextricably linked with the business of the assessee including the business relating to products which are manufactured in the units for which deduction u/s. 80IB and 80IC were claimed. However, nothing has been brought on record to suggest that the R & D

expenditure incurred by the assessee benefitted the existing units where claims u/s. 80IB and ITA.NO. 7167/MUM/2017 (A.Y: 2009-10) M/s. Macleods Pharmaceuticals Ltd., 80IC were made. We observe that when the details of products manufactured by the units and products on which R & D is undertaking by the assessee were placed on record before the Assessing Officer to show that they are completely independent from each other, the Assessing Officer completely failed to bring on record that R & D expenditure in fact benefitted the existing units and thereby it is necessary to allocate the R & D expenditure among 80IB and 80IC units and non 80IB and 80IC units on the basis of percentage of sales on respective units to the total sales. We further observe that even after allocation of expenses among 80IB eligible and non-eligible units the taxable income from the assessment under consideration remained the same as the tax was assessed under book profits u/s. 115JB of the Act and not under normal provisions of the Act.”

10. The Ld. counsel for the assessee has submitted that the expenses incurred in R&D Unit cannot be attributed to the other manufacturing units and that the activity carried out in other units is only manufacturing activity, which has no relation with the research and development activity carried out at R&D Unit. He, in this respect has relied upon the findings of the Tribunal in the earlier assessment year as reproduced above.

11. The Ld. DR on the other hand has relied upon the findings given by the Ld. CIT(A).

12. We have heard the rival contentions and gone through the orders of the Tribunal in the earlier assessment year as well as the impugned order of the Ld. CIT(A). The issue is clearly covered in favour of the assessee in the own case of the assessee for the earlier assessment year, wherein, the Tribunal, after considering the relevant facts, has held that the expenditure incurred in research and development activity at R&D Unit cannot be allocated to the other manufacturing units. No distinguishing facts have been brought on record. In view of this, respectfully following the order of the Tribunal for earlier assessment year in the own case of the assessee, this issue is accordingly decided in favour of the assessee. No other ground or issue raised or argued. The appeal filed by the assessee is accordingly stands allowed.

13. In the result, the appeal filed by the assessee is allowed whereas the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 10/05/2022.

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Mumbai;

Dated: 10/05/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai