

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2671/M/2017
Assessment Year: 2010-11**

M/s. Solvy Pharma India Ltd. (Now merged with Abbott India Ltd.), 3-4, Corporate park, Sion Trombay Road, Mumbai – 400 071 PAN: AAACB5170B	Vs.	Dy. Commissioner of Income Tax, Range 2(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Madhur Agarwal, A.R.
Revenue by : Shri Rajneesh Yadav, D.R.

Date of Hearing : 28 . 04 . 2022
Date of Pronouncement : 31 . 05 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Solvy Pharma India Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 09.02.2017 passed by Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2010-11 on the grounds inter alia that :-

“1. On the facts and in circumstances of the case and in law, the learned Commissioner of Income-tax, Appeals - 3, Mumbai ('learned CIT(A}') has erred in confirming the disallowance of Rs. 6,64,090/-

u/s 14A of the Income-tax Act ('the Act') read with Rule 8D of the Income Tax Rules, 1962.

The Appellant submits that the learned CIT(A) has failed to appreciate that the Appellant has suo-moto allocated proportionate administrative expenses amounting to Rs.1,09,494/- over and above the employee costs amounting to Rs.1,37,072/- as attributable to earning exempt income in the working submitted before the learned AO, and therefore the disallowance made by the AO was incorrect and erroneous.

2. On the facts and in circumstances of the case and in law, the learned CIT(A) has erred in not increasing the opening stock of the Appellant for the relevant assessment year by the sum of Rs.2,79,53,438 being adjustment under section 145A of the Act made in the earlier year on the closing stock of the Appellant.

The Appellant submits that learned CIT(A) has erred in not appreciating that the closing stock of the Appellant in one year has to be opening stock of the Appellant in the next year. The learned CIT(A) further erred in stating that the appellant had not taken up the issue before the learned AO during the assessment proceedings.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."

2. The assessee by moving an application dated 29.09.2020 sought to raise two additional grounds, on the ground that both the grounds are legal grounds arising on the basis of decision rendered by Hon'ble Bombay High Court and go to the roots of the case, which are as under:

"1. On the facts and in the circumstances of the case and in law, the appellant prays that the Assessing Officer be directed to allow deduction in respect of education cess on income-tax and on dividend distribution tax paid during the year.

2. On the facts and in the circumstances of the case and in law, the appellant prays that the Assessing Officer be directed to grant refund in respect of the dividend distribution tax paid under section 115-0 in excess of the rates prescribed under the relevant tax treaties."

3. Keeping in view the fact that both the additional grounds raised by the assessee are legal one, which can be raised at any

stage of the proceedings, are allowed without prejudice to the merits of the case.

4. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is into the business of manufacturing through third parties online licensee basis and trading in pharmaceutical formulations. During the scrutiny proceedings the Assessing Officer (AO) noticed that the assessee has earned dividend income of Rs.62,75,000/- without attributing any expenses for earning the dividend income. However, assessee filed his profit working vide letter dated 06.03.2014 showing suo-moto disallowance by the assessee to the tune of Rs.2,46,566/- under section 14A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Declining the contentions raised by the assessee the AO proceeded to invoke the provisions contained under section 14A read with rule 8D and computed the disallowance as under:

1)	Expenditure directly related to exempt income				0
2)	Expenditure not directly attributable (A X B/C)				0
3)	¹ /2% of average value of investment				6, 64 ,090
	Amount disallowed u/s.14A				6 ,64 ,090
1	Expenditure directly attributable			0	
2	Expenditure not directly attributable			0	
A	Amount of interest paid			0	

B	Average value of investment			13,28,18,000	
C	Average of total assets			1,28,86,51,500	
	Amount of interest paid			0	
B	Average Value of investment from which exempt income is earned				
		A.Y.10-11	A.Y.09-10		
	Investment	16,07,76,000	10,48,60,000		
	Average Investment			13,28,18,000	
C	Average Total Assets				
		A.Y.10-11	A.Y.09-10		
	Assets	1,40,83,73,000	1,16,89,30,000		
	Average Assets			1,28,86,51,500	
3	½ %of Average Investment			6,64,090	

And thereby framed the assessment at the total income of Rs.64,76,50,206/- under normal provisions and Rs.67,75,83,693/- under section 115JB of the Act.

5. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal.

6. Assessee raised one new ground No.2 before the Ld. CIT(A) which issue Assessee has never taken before the AO seeking adjustment under section 145A of the Act by arguing that the AO has erred in not reducing sum of Rs.2,79,53,438/- being adjustment in terms of section 145A of the Act which the Ld. CIT(A) has also

dismissed. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

8. Undisputedly the assessee has earned dividend income of Rs.62,75,000/- during the year under consideration. It is also not in dispute that the assessee has made suo-moto disallowance of Rs.2,46,566/- under section 14A of the Act. The AO being not satisfied with the claim made by the assessee proceeded to compute the disallowance by invoking provisions contained under section 14A read with rule 8D of the Act.

9. During the assessment proceedings the assessee has provided working of disallowance, vide letter dated 06.03.2014 available at page 28 to 30, under section 14A of the Act available at page 31 of the paper book which is as under:

SOLVAY PHARMA INDIA LIMITED (Now merged with Abbott India Limited)						
AY 2010-11						
Disallowance u/s. 14A of the Income-Tax Act, 1961						
Sl. No.	Name of the person who devotes time in Investment activity	Proportionate time spent per month (In Hrs.)	Time Spent per year	No. of days spent per year (8 hrs. per	Salary Cost	Sec.14A disallowance

		[A]	[B] = [A]*12	day) [C] = [B/8]	[D]	[E]=[D]/365*C
1	G.M. - Finance	4	48	6	1,336,379	21,968
2	Dy. Manager - Finance	8	96	12	617,504	20,302
3	Asstt Manager - Finance	16	192	24	528,408 48	34,745
4	Junior Officer - Finance	32	384	48	456,686	60,057
					(A)	137,072
					(B)	109,494
					(A)+(B)	246,566

10. It is the case of the assessee that the assessee has suo-moto allocated proportionate administration expenses amounting to Rs.1,09,494/- over and above the employee cost amounting to Rs.1,37,072/- attributable to earning exempt income, which fact has not been considered by the AO who has rather mechanically invoked the provisions contained under section 14A read with rule 8D of the Act. The Ld. A.R. for the assessee also contended that the AO has also not established any nexus between the expenditure disallowed and exempt income which ought to be restricted to proportionate expenditure. It is also the case of the assessee that he has not made any investments in equity shares rather made investments in the mutual funds.

11. We have perused the schedule No.4 of investment forming part of the balance sheet available at page 7 of the paper book

which shows that during the year under assessment the assessee has made investment in fixed debt scheme institutional daily dividend of Kotak Mutual Fund and in Reliance Money Manager Fund – institutional option. We are of the considered view that since no investment has been made in equity shares and only made investment in the mutual funds in two schemes only the disallowance of Rs.2,46,566/- under section 14A as per working given in the preceding paras is as per the requirement of section 14A of the Act. In these circumstances, without recording any dissatisfaction qua the working given by the assessee mechanically invoked the provisions contained under section 14A read with rule 8D which is not permissible as held by Hon'ble High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)].

12. Consequently, we are of the considered view that the AO as well as the Ld. CIT(A) have erred in invoking the provisions contained under section 14A read with rule 8D of the Act without looking into the working of disallowance made by the assessee and without considering the fact that investment during the year under consideration has been made only in two mutual fund schemes for which assessee has suo-moto made disallowance of Rs.2,46,566/-. So we direct to delete the disallowance made by the AO of the and confirmed by the Ld. CIT(A) under section 14A of the Act. So ground No.1 is determined in favour of the assessee.

Ground No.2

13. The assessee first time raised the issue before the Ld. CIT(A) that AO has not increased the opening stock of assessee for the

relevant assessment years by an amount of Rs.2,79,53,438/- being the adjustment under section 145A of the Act made in earlier year to be on closing stock of the assessee.

14. Undisputedly, in the last year closing stock was not taken up as opening stock and under such circumstances in the earlier years Tribunal in assessee's own case given a direction to the AO to decide the issue as per decision rendered by Hon'ble Bombay High Court in case of CIT vs. Mahalaxmi Glass Works (P) Ltd. 318 ITR 0116 by returning following findings:

"8. We have carefully gone through the orders of the authorities below. We find force in the contention of the Ld. Counsel. The facts in issues are squarely covered in favour of the assessee and against the Revenue by the decision of the Hon'ble Jurisdictional High Court in the case of Mahalaxmi Glass Works (supra) wherein the Hon'ble High Court has held as under:

"Accounts-Valuation of stock-Adjustment of unutilized Modvat credit to the opening stock to give effect to S. 145A, if there is any change in the closing stock at the end of the year then there must necessarily be a corresponding adjustment made in the opening stock of that year- This would not amount to giving double benefit to the assessee and would be necessary to compute the true and correct profit for the purpose of assessment- Further, before the Tribunal the departmental representative did not object to the assessee's plea that the value of stock of earlier year should be taken as opening stock- This also forfeits assessee's plea."

9. The Hon'ble High Court has followed the decision of the Hon'ble Delhi High Court in the case of CIT Vs Mahavir Aluminium Ltd, 297 ITR 77. A similar decision was taken by the Tribunal Mumbai Bench in the case of Rm Ratn Wires Ltd. in ITA Nos.2180/M/2012 and 8503/M/2011 wherein the Tribunal has followed another decision of the Co-ordinate Bench in the case of R.R, Kabel Ltd 66 DTR (Trib)(Mum), The relevant part of the decision read as under:

We find that in the case of the sister concern of the assessee, R,R. Kabel (supra) of TAT Mumbai has held as under:

In the absence of any distinguishing feature brought on record by the Revenue, we respectfully following the

consistent view of the Tribunal and keeping in view that the assessee is following consistent method of accounting and there is no change in accounting system followed by the assessee in the year under consideration, hold that the Id. CJT(A) was fully justified in deleting the addition of Rs. 11,08,904/- made by the AO u/s.145A of the Act The grounds taken by the Revenue are therefore rejected.”

Respectfully following the decision of the Hon'ble High Court and the Tribunal (supra), we set aside the findings of the Ld. CIT(A) and restore the issue to the files of the AO to decide the issue afresh after giving effect to all the items of Trading Account in the light of the decision of the Hon'ble Bombay High Court. Ground No. 1 is allowed for statistical purpose.”

15. So in view of the matter we are of the considered view that the order passed by the Ld. CIT(A) is not sustainable and as such to decide the issue in entirety, is restored to the file of AO to decide afresh after providing opportunity of being heard to the assessee in the light of the decision rendered by Hon'ble Bombay High Court in case of CIT vs. Mahalaxmi Glass Works (P) Ltd. (supra). So ground No.2 is decided in favour of the assessee for statistical purposes.

Additional Ground No.1

16. This ground has not been pressed by the assessee during the course of adjudication, hence the same is dismissed.

Additional Ground No.2

17. Additional Ground No.2 is qua the claim for refund of excess dividend distribution tax paid under section 115-O in respect of dividend paid to non resident shareholders to the extent such tax paid exceed the tax rate prescribed under the relevant tax treaty. The Ld. A.R. for the assessee in support of his argument contended that on this issue Special Bench has already been constituted by the

Tribunal in “Total Oil” case and it may be sent back to AO to decide as per the decision of Special Bench. So we remit this issue back to the AO to decide as per the decision to be taken by the Special Bench. So additional ground No.2 is decided in favour of the assessee for statistical purposes.

18. In view of what has been discussed above, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 31.05.2022.

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.