

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

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 7401/MUM/2019 (A.Y: 2013-14)

M/s. Centaur Pharmaceuticals Pvt. Ltd., Centaur House, Shanti Nagar Vakola, Santacruz (East) Mumbai- 400055 PAN: AAACC0444K	v.	Income Tax Officer – 14(1)(3) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Vishwas Mehendale
Department by	:	Shri S.N. Kabra
Date of Hearing	:	03.06.2022
Date of Pronouncement	:	04.08.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income-tax (Appeals)-22, Mumbai [hereinafter for short "Ld. CIT(A)] dated 30.09.2019 for the A.Y.2013-14.

2. Brief facts of the case are, assessee filed its return of income on 28.09.2013 declaring income of ₹.4,20,890/-. The case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for.

3. Assessee is engaged in the business of manufacturing / contract manufacturing pharmaceuticals products and Active Pharmaceutical Ingredients. The company also undertakes Contract Research and Bio-Analytical and Bio equivalence studies. During assessment proceedings, Assessing Officer observing that assessee had claimed R&D expenditure u/s. 35(2AB) of the Act to the extent of ₹.5,03,34,595/-, whereas total R & D expenditure u/s. 35(2AB) of the Act approved by DSIR as per Form 3CL submitted by the assessee for ₹.3,41,02,000/- i.e. 200% of ₹.1,70,50,643/- (capital expenditure of ₹.1,09,62,643 and revenue expenditure of ₹.60,88,000) when the assessee was asked to explain the excess claim by the assessee; assessee vide letter dated 19.02.2016 submitted that this amount is net of income received from R&D work.

4. Assessing Officer rejected the submissions and explanation of the assessee and accordingly, disallowed the excess claim made by the assessee to the extent of ₹.1,62,32,595/ (₹.5,03,34,592 – ₹.3,41,02,000). Further, Assessing Officer observed that assessee had debited to the Profit and Loss Account of ₹.4,21,34,719/- being legal and professional fee paid, when the assessee was asked to give the details of the same, assessee has submitted as under: -

S.No.	Name of the party	Nature	Amount In Rs.
1.	Asian Patent Bureau	Professional fees towards various product registration	3,70,354
2.	John A Mcclerie	Professional fees for liasoning with Govt. Health Authority for filing of our documents and product	5,85,448
3.	Dr Dilip Snavordekar	Technical consultancy service to identify, advise & help in forging license agreement, product registration issue, evaluating offered Technical Dossiers and product etc.	29,37,858
4.	Dr. May Pharma Consult GMBH	Technical consultancy service to identify, advise & help in forging license agreement, product registration issue, evaluating offered Technical Dossiers and product etc.	20,97,025
5.	Venture Corp Consultants Pvt Ltd	Prof Fees for preparation of business plan	7,50,000
		TOTAL	67,40,685

5. The Assessing Officer perused the above details and observed that above expenditure is not capital in nature and assessee was asked why the above amount should not be disallowed. In response assessee vide letter dated 19.02.2016 submitted that except for the disallowance on

account of the payment made to Dr. May Pharma and Ventures Corp Consultants all other disallowances have been deleted by the Ld. CIT(A) so it should 'not be disallowed again. Payment made to Dr. May Pharma which was disallowed by Ld. CIT(A) is allowed by ITAT for A.Y.2008-09 and A.Y. 2009-10 hence it should not be considered for disallowance during this year. Assessing Officer rejected the submissions of the assessee and proceeded to disallow the same and added to the total income by considering the same as capital in nature.

6. Aggrieved assessee preferred an appeal before the CIT(A)-22, Mumbai and filed the following submissions with regard to disallowance on R & D expenditure and professional fee: -

"3.2 Appellant's Submission:

Ground 1: Disallowance of R&D Exp: 162.32.595.

Facts of the case: R & D Expenses incurred during the year are as per the separate sheet enclosed.

As a result the AO has disallowed 162.38 Lacs u/s. 35(2AB).

Submission of Appellant: *Sale realisation cannot be reduced from revenue expenditure, since sale realisation is already accounted for as Income in Profit & Loss account. The appellant relies on the decision of the Karnataka High Court in the case of CIT V/S Micro Lab Ltd. 383 ITR 0490 is exactly applicable to the facts of our case exactly. The appellant also relies on the decision of the Mumbai bench of the ITAT in the case of ACIT VS Wochardt Ltd the full text of which is enclosed for your reference. In this judgement also it has*

been held that sales realisation is not to be deducted while calculating the deduction under section 35(2AB)

In fact the appellant has made an error in claiming the deduction under section 35(2AB) and has claimed a lesser deduction by mistake while filing the return of income. However at the time of scrutiny assessment the proper claim was made by way of a letter the copy of which is also enclosed. Even the Mumbai Tribunal judgement was also enclosed with the submission. We therefore submit that there should be no disallowance at all but we pray for enhancement of the claim for the deduction as we made at the time of assessment. As per the revised calculations the claim should be Rs. 136467313/- which is the difference between arising out of the exclusion of income from sale of products Rs. 86132717 and this claim should be allowed as per the revised computation given by the appellant and there should not be any disallowance at all."

5.2 Appellant's Submission:

Ground 3: Disallowance of Prof. Fees Rs: 67,40,685/-.

Facts of the case: Prof Fees paid to following persons disallowed by A.O.

<i>Asean Patents Bureau</i>	<i>370354</i>
<i>John McCreerie.</i>	<i>585448</i>
<i>Dr.Dilip Snavardekar</i>	<i>2937858</i>
<i>Dr. May Pharma.</i>	<i>2097025</i>
<i>Ventura Corp. Consultants (p) Ltd.</i>	<i>750000</i>

The above Prof. fees have been disallowed by the AO as per last year but except Dr. May Pharma, CIT appeal in appeal for Asst year 12.13 allowed the same and the departments appeal is dismissed by the ITAT for Asst year 2012.13. The ITAT in its order for Asst year 2012.13 even allowed Appellants appeal and allowed the expenses paid to Dr. May Pharma. The ITAT order for Asst year 12.13 is enclosed. Even your honour has given the decision in favour of the appellant in A. Y. 10.11 in the case of disallowance of may Pharma.

Submissions:

Based on the ITAT order for Asst year 12-13 we submit the entire disallowance may please be deleted."

7. After considering the submissions of the assessee Ld.CIT(A) sustained the additions made by the Assessing Officer on R&D expenditure and with regard to professional fee, he partly allowed with regard to Dr. May Pharma and Ventures Corp Consultants, he sustained the addition with the following observations: -

"Next issue in this ground of appeal-3 is the disallowance of expenditure of Rs. 3,70,354/- made to Asian Patent Bureau (APB for short) as fees for product registration. Assessee company is engaged in the business of manufacture and sale of pharmaceuticals and appears to have incurred these expenses for the registration of various products developed by it with patents and registration office under the relevant law.' It means that the reason for the product registration was to make registering authority for the pharma product become aware of the product developed by the company and hence register the same as its owner and become entitled for the patent rights in the product which will endure for the benefit of the company for a period of more than 10/20/30 years as per the provisions of the patent law of the land. Thus, the process of product registration conferred an enduring benefit to the assessee which was to last for more than 10/20/30 years in respect of the product/s. registered. Therefore prima facie the expenditure of Rs3,70,354/- conferred an enduring benefit on the assessee and hence it was capital in nature and was not allowable as a revenue expenditure under section 28 to 44 of the IT Act, 1961. Hence the action of the AO in this regard is upheld and assessee's appeal in respect of the sub ground relating to this item of expenditure of Rs.3,70,354/- is rejected.

Next issue in ground of appeal-3 is the allowance of professional fees paid to JOHN Mccarerrrie for liasoning with Govt Health Authority for filing of documents and products. This expenditure is also similar to the expenditure of Rs.3,70,354/- referred to earlier and relates to the registration of the products and hence the same is treated as capital expenditure for the same reasons and the action of the AO is upheld.

Next issue in ground of appeal-3 is the allowance of professional fees of Rs.29,37,858/- paid to Dr. DILIP SNAVORDEKAR for technical consultancy services relating to identification, advice and assistance relating to product license registration issues and this expenditure is also similar to the product registration referred to earlier and hence primarily capital in nature and hence action of the AO is upheld and assessee's appeal on this sub issue is rejected."

8. Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

"1. The learned CIT (A) 22 was not justified in confirming Addition made by the A.O. of Rs.162,32,595/- under section 35 2AB.

2 The learned CIT(A)22 was not justified in not entertaining a claim of Rs.796,85,000/- Under section 35(2AB) claimed by the appellant during the course of assessment based on the decision of the Mumbai ITAT and Karnataka High court decision.

3. The learned CIT (A) was not justified in confirming disallowance of Rs.3,70,354/- being the amount paid to Asean Patent Bureau as capital expenditure.

4. The learned CIT (A) was not justified in confirming disallowance of Rs.5,85,448/- being the amount paid to John A Macrerie as capital expenditure.

5. the Learned CIT(A) was not justified in confirming disallowance of ₹.29,37,858/- being the amount paid to Dr. Dilip Snavordekar as capital expenditure."

9. At the time of hearing, Ld. AR brought to our notice Page No 4 and 5 of the Paper Book which is the revised claim of the assessee which assessee has claimed before the Ld.CIT(A) relying upon the decision of the Hon'ble Karnataka High Court in the case of CIT v. Micro Lab Ltd. [383 ITR 0490] and he submitted the revised claim as under: -

Asstt.Year- 2013-14						4
Comparative Working of Claim u/s 35(2AB)				(Rupees in Crores)		
		Original Claim	AO & CIT-A Calculation	Auditors Certificate	DSIR-Certificate 3CL	Revised Claim before AO / CIT-A & ITAT
A		A	B	C	D	E
	Capital Expenditure					
i	Capital Expenditure - Note # 1 -	109.63	109.63	109.63	109.63	109.63
B	Revenue Expenditure					
	Total Revenue Expenditure as per Audited Accounts. - Note # 2	1,145.42	1,145.42	1,145.42	1,145.42	1,145.42
	Note #3 (2)	1,145.42	918.63	1,145.42	918.63	918.63
ii	Less : Revenue Income from R&D -. Note #4	861.33	857.75	857.75	857.75	-
	Net Revenue Expenditure -(3)	284.09	60.88	287.67	60.88	918.63
	Total Eligible Expenditure (1) + (3)	393.72	170.51	397.30	170.51	1,028.26
C	CALCULATION OF DEDUCTION					
	200% of the Total Eligible Expenditure		341.02		341.02	
D	Appellants' Calculation - [(A-1) * 2] + (A-2) Note #5	503.35		506.93		1,137.89
	Amount Mentioned in CIT-A Order - Page 3 initial Paragraph.- [(A-1) * 2] + (A-2) - Note #6					1,364.68
E	Disallowance by AO		162.33			
F	Revised / Additional claim - Note # 7					796.87

NOTES :

#1 There is no Dispute regarding the Capital Expenditure of Rs.109.63 lacs.

#2 Appellants' Computation of Income has quantified the Amount of Gross Revenue Expenditure.

#3 DSIR has reduced the eligible revenue expenditure by Rs.226.79 lacs. Therefore, the certified gross expenditure is Rs.918.63 lacs

#4 The Auditors have reduced the Product Sales Turnover of Rs.857.75 Lacs from the Gross Eligible Expenditure. In the Original Computation, appellants had erroneously reduced Rs.861.33 lacs. The said deduction has been accepted by DSIR also.

#5 While calculating the deduction amount, appellants have taken the Capital Expenditure @ 200% and Revenue Expenditure @ 100% as the Revenue Expenditure already forms part of the Profit & Loss Account. Therefore already claimed as deduction for one time. The amount of Rs.1,137.89 is the Correct amount of Deduction as the Expenditure of Rs.226.79 lacs has been disqualified by DSIR. Accordingly, the additional claim should be Rs.796.85 lacs only.

#6 For the reasons stated in Note 5 above, the amount of claim before Hon.CIT-A stands corrected at Rs. 1,137.89 lacs instead of Rs.1,364.68 lacs as mentioned in CIT-A Order.

#7 Appellants seek relief of Rs.796.87 lacs which has been worked out on the basis of the Decision of lion Karnataka HC in case of Microlabs Ltd. 383 ITR 490. and Hon. Bangalore ITAT in case of Bosch I id [2017] 87 taxmann.com 351

10. Ld. AR submitted that, Assessing Officer and Ld.CIT(A) restricted deductions u/s. 35(2AB) of the Act to the extent of DSIR certificate issued in Form 3CL. He brought to our notice the decision of the Hon'ble High Court and accordingly, he submitted that the deduction u/s. 35(2AB) of the Act is relating to expenditure incurred in R & D. Therefore, as per the Hon'ble High Court decision the income from the R & D should not be reduced from the expenditure incurred in R & D while allowing the

deduction u/s. 35(2AB) of the Act. Accordingly, he prayed that the bench may allow the revised claimed made by the assessee.

11. With regard to other grounds raised by the assessee these issues are covered in favour of the assessee in assessee's own case in earlier Assessment Years from A.Y. 2007-08 to A.Y. 2011-12. The relevant orders are placed on record.

12. On the other hand, Ld.DR relied on the findings of the lower authorities and he brought to our notice Para No. 3.3 and Para No. 5.3 of the Ld.CIT(A) order.

13. Considered the rival submissions and material placed on record, with regard to enhanced claim of the assessee on R & D expenses u/s.35(2AB) of the Act, assessee made the excess claim u/s. 35(2AB) of the Act heavily relying on the decision of the Hon'ble Karnataka High Court in the case of CIT *v.* Micro Lab Ltd. (supra) and ongoing through the decision of above said case; the Hon'ble Karnataka High Court held as under: -

"3. On the first question, the observations made by the Tribunal in the impugned order from paragraph Nos. 12 to 17 are as under:

"12. We have heard the submissions of the Id. DR and the Id. counsel for the assessee and also perused the documents filed

in paperbook. As we have already seen, the assessee carries on scientific research. It is in the business of manufacture of drugs and pharmaceuticals. It incurred expenditure on scientific research and the quantum of such expenditure on scientific research, which is a sum of Rs.7,80,52,805, is not in dispute. The weighted deduction u/s. 35(2AB) at 150% was claimed by the assessee at a sum of Rs.12,57,00,920. What is now to be examined is the guidelines of DSIR, which the prescribed authority u/s.35(2AB) (3) & (4) of the Act, has to follow before granting approval of the scientific research carried out by the assessee as eligible for deduction u/s.35 (2AB). A copy of the guidelines of DSIR is at pages 27 to 33 of assessee's paperbook.

Guidelines 5(vii) is relevant for the present case and it reads as follows:

"(vii) Assets acquired and products, if any emanating out of R&D work done in approved facility, shall not be disposed off without approval of the Secretary, DSIR. Sales realization arising out of the assets sold shall be offset against the R&D expenditure of the R&D Centre claimed under section 35(2AB) for the year in which such sales realization accrues under section 35(2AB) of IT Act, 1961. Expenditure claimed for deduction under the subsection shall be reduced to that extent."

13. The CIT(A) in his order passed u/s. 154 of the Act has not quoted the first sentence of the guideline 5(vii) (given above in bold letters), which in our opinion, is very material. The above guideline only means that in the process of carrying out the R&D work, if the assessee acquires any assets or products that should not be disposed of without the approval of Secretary, DSIR. If such assets are sold, the sales realization arising therefrom are to be setoff against the R&D expenditure of the R&D centre which is claimed as deduction u/s. 35(2AB). It is evident from the above guideline that it is only sales realization arising out of the assets sold that should be offset against R&D expenditure. In respect of sale of products acquired emanating out of R&D work done in an approved facility, the sale proceeds need not be reduced from the R&D expenditure. In our view, the reason for not including sales realization arising out of products emanating out of R&D work done and sold is because such sales would be reflected as receipts by the assessee in its books of account and income from business would be computed treating such sale as part of business receipts. The receipts arising out of sale of

products will not go to reduce the expenditure on R&D, whereas the assets acquired in the process of carrying out the R&D if they are sold, such sales realization would go to reduce the expenditure on scientific research and that is why sales realization arising out of assets sold is required to be offset against R&D expenditure. The above explanation will be sufficient to hold that the order passed by the CIT(A) u/s. 154 of the Act is unsustainable. Nevertheless, we will also examine as to what is the exact nature of receipts from sale of products.

14. A copy of license and supply agreement which was filed by the assessee before the AO as well as CIT(A) is at pages 5 to 26 of the assessee's paperbook. The sale of products is nothing but the sale of Dossiers by the assessee to persons not associated with the assessee or its directors. In the course of carrying out the scientific research, the assessee prepares elaborate documents regarding the products that would emanate from carrying out scientific research. This would also include the requirement of health authorities for grant of license to approve the products for human use. The assessee gives the Dossiers so prepared to entities outside India, who are interested in getting the marketing authorization for the product in a particular territory. They pay to the assessee the Dossier charges and apply for license to market the products for human use in their respective territories. On getting the license, they get marketing authorization from the assessee. The person who takes the Dossier (knowhow) takes it for the limited purpose of registration of product in other countries and after registration sale of the products in their country. If they get any order M/s. Micro Labs will manufacture and sell them at agreed price. So the knowhow given to them is only for limited purpose of registering with the drug control authorities for approval for human consumption. The foreign entities who get the dossiers will get rights to market the assessee's products in their territory and the actual manufacture in course of time will be done by M/s. Micro Labs Limited i.e., the Assessee.

15. All intellectual property rights, title and interest of any kind whatsoever in and/or to the Dossier and the Products shall be the exclusive property of MICRO LABS (the Assessee). MICRO LABS i.e., the Assessee may sell the Dossier to any third party, including its clients without the consent of foreign entity buying the dossier. However, MICRO LABS (the Assessee) shall notify the person acquiring the dossier of the transfer or sale of the Dossier to such third party and shall undertake that

such third party respect the terms and conditions of the agreement with the other third party who buys dossier from the Assessee.

16. DSIR guidelines no. vii has specifically provided that assets acquired if any out of R & D work shall be disposed with approval of DSIR. The assessee has been submitting yearly audit reports & accounts of approved R & D sanction to DSIR. The R & D accounts have been separately maintained and separate P & L Account prepared and the dossier sales have been credited to P & L Account of R & D because these sales are part of normal sales.

17. It is clear from the sample copy of the license and supply agreement filed before us that the product development charges received by the assessee will not be covered under clause 5(vii) of the DSIR guidelines. As we have already seen, these receipts are credited to profit & loss account are part of normal sales. They are, therefore, not to be reduced from the expenditure incurred by the assessee on carrying out scientific research on which deduction u/s. 35(2AB) has to be allowed. We are, therefore, of the view that there is no merit in ground No.2 raised by the revenue and that the order passed by the CIT(A) DATED 9.4.2014 U/S. 154 of the Act cannot be sustained and the same is hereby reversed. Thus, ITA No.764/B/14 by the assessee is allowed, while ground No.2 raised by the revenue is dismissed."

The aforesaid paragraphs show that the Tribunal has proceeded on the premise that when the regular work is in the nature of R&D work done and sold, it becomes a business income and chargeable as business income. It is only when the assets acquired in the process of carrying on R&D work, if they are sold, such realization would go to reduce the expenditure of scientific research.

4. In our view, the approach to the issue considered by the Tribunal is appropriate. In any case, no substantial question of law would arise for consideration as canvassed."

14. On a careful reading of the above decision, we observe that Hon'ble Karnataka High Court reviewed the DSIR Guidelines 5(vii) and observing that according to them in the process of carrying out R & D work, if the assessee acquires any assets or products that should not be disposed of

without the approval of Secretary, DSIR. If such assets are sold, the sales realization arising there from are to be set off against the R&D expenditure of the R&D centre which is claimed as deduction u/s. 35(2AB) of the Act. They observe that it is evident from the above guidelines that it is only sales realization arising out of the assets sold that should be added against the R&D expenditure. It is relevant to observe the following observation of the Hon'ble High Court that "in respect of sale of products acquired emanating out of R & D work done in approved facility, the sale proceeds need not be reduced from the R & D expenditure". According to them the reason for not including sales realization arising out of products emanating out of R & D work done and sold is because such sales would be reflected as receipts by the assessee in its books of accounts and income from business would be computed treating such sale as part of business receipts.

15. From the above observation of the Hon'ble Karnataka High Court it is relevant and eminent to notice that the Hon'ble High Court has not disputed the facts that when the assessee acquires any assets or products and those assets and products are sold; the realization arising there from are to be set off against the R & D expenditure which is claimed as deduction u/s. 35(2AB) of the Act. They have categorically opined that

the products emanating out of R & D work done and sold should not be reduced from the expenditure of R & D. Therefore, it is important to note that there is a considerable difference between assets and products of the R & D and the product emanating out of R & D work are totally different. In the same decision Hon'ble Karnataka High Court has observed that in the course of carrying out the scientific research; the assessee prepares elaborate documents regarding the products that would emanate from carrying out scientific research which are similar to the Dossiers (knowhow) prepared by the assessee and gives the same to the assessee so that they can get their licence for marketing the same either within the India or outside India. Therefore, if these products which are emanating out of R & D work similar to the Dossier, process sheet, product development guide etc., which are distinct from the product and assets developed by the R & D centre.

16. Coming to the present case, we observe that Ld. AR brought to our notice that auditor of the assessee company had certified the expenditure incurred by them which include capital as well as revenue expenditure to the extent of ₹.1255.05 lakhs and assessee has credited the R&D services income in its Profit and Loss Account (in Schedule – 22 of the balance sheet notes to financial statements) to the extent of ₹.857.75 lakhs. As

observed from the Hon'ble Karnataka High Court decision as per which assessee can exclude the income earned from the product emanating out of R & D work like dossier etc., in the given case assessee has only submitted the R&D services earned by the assessee and they were not submitted any details of the income earned by the assessee.

17. From the records, we observe that assessee is in R&D work for its business purposes as well as undertaking contract research. The income earned by the assessee may include income earned by the assessee for the mere services on contract research as well as certain products which is considered by the DSIR and excluded the same while approving the project and R & D expenditure for the purpose of claiming deduction u/s. 35(2AB) of the Act. Therefore, in our considered view this may needs detailed verification on the income earned by the assessee and it has to be segregated based on the products made by the assessee and the products emanating out of R & D services like Dossier etc., and accordingly, Assessing Officer is directed to exclude only those incomes which are in the category of dossier etc., not the product/assets and contract income. Accordingly, Ground No. 2 raised by the assessee is allowed for statistical purpose.

18. With regard to Ground No. 3, which is in respect of confirming disallowance of ₹.3,70,354/- being the amount paid to Asean Patent Bureau as capital expenditure, we observe from the record that the ITAT in assessee's own case in particular A.Y. 2011-12 has decided in favour of the assessee and against the revenue, and the relevant findings are given below: -

"6. We have heard both the parties and their contentions have carefully been considered. The relevant portion of the assessment order vide which impugned disallowance has been made are reproduced in the above part of this order. It is seen that order passed by AO is cryptic and no reasons have been given by AO to make disallowance. In respect of professional fees paid to Asian Patent Bureau and Dr. Dilip Snavordekar, Ld. CIT(A) has deleted the addition on the ground that assessee has placed on record evidence according to which the payments made by the assessee were allowable as expenditure. These findings of Ld. CIT(A) have not been assailed by the Revenue by bringing on record any material vide which it could be observed that such findings recorded by Ld. CIT(A) are either incorrect or are without any material. Therefore, keeping in view these facts we are of the opinion that no interference is called for in the deletion made by Ld. CIT(A) in respect of payments made by the assessee to Asian Patent Bureau, Dr. Dilip Snavordekar and also to SwormTechnologies. Therefore, we declines to interfere in the relief granted by Ld.CIT(A).

19. Facts being identical, respectfully following the above said decision, we allow the ground raised by the assessee.

20. With regard to Ground No. 5, which is in respect of confirming disallowance of ₹.29,37,858/- being the amount paid to Dr. Dilip Snavordekar as capital expenditure, we observe from the record that the

ITAT in assessee's own case in particular A.Y. 2007-08 has decided in favour of the assessee and against the revenue and the relevant findings are given below: -

"25. It is not in dispute that the services of Dr. Dilip Sanvordekar have been utilized for the purposes of assessee's business. It is also not in dispute that the payments made by the assessee are genuine. As per the record, it is seen that and which has also been accepted by the A.O. that the services of Dr. Dilip Sanvordekar, Consultant have been utilized for some projects which are part of assessee's running business. Considering all these facts of the case, we do not find any reason to tamper with the findings of the Id. CIT(A) and accordingly we confirm the same. Ground No. 2 of Revenue's appeal is accordingly dismissed."

21. Facts being identical, respectfully following the above said decision, we allow the ground raise by the assessee.

22. With regard to Ground No. 4, which is in respect of confirming disallowance of ₹.5,85,448/- being the amount paid to John A. Macrerie as capital expenditure, we observe that in the earlier assessment year i.e., A.Y. 2012-13 the Coordinate Bench has remitted this issue back to the file of the Assessing Officer to follow the decisions made in A.Y. 2008-09 and 2009-10. Since assessee has made consultancy charges to these consultants for the purpose of business only, we direct the Assessing Officer to verify the genuineness of the claim and if it is within the category of other consultancy charges which this bench as allowed in

Ground No. 3 and 5, we direct him to allow the same. Therefore, this ground is accordingly, allowed for statistical purpose.

23. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 04th August, 2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai / Dated 04/08/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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, Mum