

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 2820/Mum/2018 (A.Y. 2009-2010)

M/s. Aarey Drugs & Pharmaceuticals Ltd. B/1504, Highland Park Lokhandwala, New Link Road, Andheri West Mumbai-400 053. PAN : AAACA5253a (Appellant)	Vs.	DCIT, Central Circle-2(3) Mumbai. (Respondent)
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Assessee by	Shri Amit Jhaveri
Department by	Shri Manoj Sinha
Date of Hearing	19.09.2022
Date of Pronouncement	27.09.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28.3.2018 passed by the learned CIT(A)-48, Mumbai and it relates to A.Y. 2009-10.

2. This appeal was initially disposed off by the Tribunal, vide its order dated 5.5.2020, in a combined order passed in ITA No. 2819/Mum/2018 & 2820/Mum/2018 respectively relating to A.Y. 2008-09 & 2009-10. Subsequently, the assessee filed a Miscellaneous Application submitting that ground No. 3 urged by the assessee in A.Y. 2009-10 was not disposed of by the Tribunal. Accordingly, the Tribunal, vide its order dated 29.7.2022 passed in Miscellaneous Application No. 80/Mum/2021, has recalled the order for the limited purpose of adjudicating ground No. 3 urged by the assessee.

3. Ground No. 3 urged by the assessee read as under :-

The ld learned CIT(A) not justified in disallowing the cost of Plant & Machinery and adding to the extent of peak amount. Again on the said amount 15% depreciation disallowed fully. It means that there is double addition for the same amount in concerned year.

4. We have heard the parties and perused the record. The assessee company is engaged in the business of manufacturing and trading in chemicals, solvents, drugs, intermediaries etc. The Assessing Officer reopened the assessment under section 147 of the I.T. Act after a survey was conducted at the premises of the assessee under section 133A of the Act on 18.1.2013. During the course of survey, it was noticed that the assessee has made bogus purchases from various non-existent concerns. It was noticed that the assessee has booked non-genuine purchases under three heads namely trading material, addition to fixed asset and power and fuel. With regard to the trading transactions, the Assessing Officer asked the assessee to work out the peak credit. For the year relevant to A.Y. 2009-10, the peak credit came to be worked out to Rs. 3.67 crores and the same was added by the Assessing Officer under section 69C of the Act. This addition came to be adjudicated by the Tribunal in its earlier order, wherein the addition was restricted to 12.50% of the value of total alleged bogus purchases.

5. With regard to bogus purchases of fixed assets, the Assessing Officer noticed that the assessee has claimed depreciation on Rs. 6,07,078/- on the purchase value of Rs.40,47,187/-. The Assessing Officer disallowed the claim of above said depreciation and the learned CIT(A) also confirmed the same. The issue that requires to be adjudicated now is related to disallowance of depreciation only.

6. The Learned AR submitted that the Tribunal has worked out the addition on bogus purchases at 12.5% of the value of bogus purchases. He submitted that the value of alleged bogus purchases also included the value of purchase of machinery also. He submitted that, if the AO makes addition

of 12.50% on the value of purchase of machinery amounting to Rs.40,47,187/- also, then the disallowance of depreciation of Rs.6,07,708/- would result in double disallowance.

7. We have heard learned DR on this issue and perused the record. From the assessment order we noticed that the Assessing Officer has made addition on peak credit of trading transactions separately and disallowance of depreciation separately. The Tribunal, vide its order dated 5.5.2020 has directed the Assessing Officer to apply gross profit rate of 12.5% on the total value of alleged bogus purchase. In the submission of the learned AR that the value of alleged bogus also included value of plant and machinery purchased by the assessee.

8. Since the Assessing Officer has worked out the peak credit of trading transaction separately, he should apply the rate of 12.5% only on the value of trading transactions and not to the value of plant and machinery purchased by the assessee. This is for the reason that the value of plant and machinery is not an item claimed as "revenue expenditure" in the Profit and Loss account. Hence the AO should not compute income @ 12.50% of the value of alleged bogus purchase of machinery.

9. If the addition of 12.50% on the value of alleged bogus purchase of machinery is not applied, then the entire value of machinery should be reduced from the block of assets and in that view of the matter, the disallowance of depreciation made by the Assessing Officer would become justified.

10. Before us, the assessee did not furnish copy of order given effect to the earlier order passed by the Tribunal. Hence the above facts discussed above would need verification at the end of the Assessing Officer. Accordingly, we

restore these matters to the file of the AO for examining factual aspects and taking decision in accordance with the discussions made supra.

11. In the result, ground No. 3 urged by the assessee is treated as partly allowed.

Order pronounced in the open court on 27.09.2022.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/09/2022

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,

(Assistant Registrar)
ITAT, Mumbai

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