

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

BEFORE SHRI AMIT SHUKLA, JM  
AND  
SHRI PRASHANT MAHARISHI, AM

ITA Nos. 1068 & 1069/MUM/2022  
(Assessment Year 2011-12, 2012-13)

Centaur Pharmaceutical Pvt Ltd  
Centaur House, Vakola  
Shantinagar,  
Santacruz(East), Mumbai 400 055  
(Appellant)

Vs.

PCIT(A)-22  
M.K.Road, New Marine Lines,  
Churchgate, Mumbai-4  
(Respondent)

PAN No. AAACC0444K

Assessee by : Mr. Vishwas Mehendale, Adv.  
Revenue by : Mr. Shambhu Yadav, Sr. AR

Date of hearing: 11.08.2022  
Date of pronouncement : 09.11.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals filed by the assessee for two assessment years on single issue resulting into disallowance of professional fees held by lower authorities as capital in nature.
02. ITA No 1068/M2022 is filed by assessee/appellant for A.Y. 2011-12 against the Appellate order passed by the National Faceless Appeal Centre, Delhi [The Ld. CIT(A)] dated 14<sup>th</sup> March, 2022 wherein the disallowance of professional fees of ₹18,26,842/- made by the learned AO in assessment order under section 143(3) read with section 254 on 05.12.2019 was confirmed. The assessee has raised following grounds of appeal:

ITA No. 1068/MUM/2022  
(Assessment Year 2011-12)

*"1. The learned CIT(A) was not justified in confirming disallowance of ₹18,70,718 made by the AO in his order passed u/s. 143(3) read with section 254."*

03. Similar Ground was raised in ITA no 1069/M/2022 for AY 2012-13 as under

ITA No. 1069/MUM/2022  
(Assessment Year 2012-13)

*“1. The learned CIT(A) was not justified in confirming disallowance of ₹19,92,075 made by the AO in his order passed u/s. 143(3) read with Section 254”*

04. The brief facts shows that, assessee is aggrieved with the disallowance of ₹18,70,718/- for A.Y. 2011-12 and on similar issue also for A.Y. 2012-13 on disallowance of ₹19,92,075/-. To state the fact of A.Y. 2011-12, assessee is a company engaged in the business of manufacturing and trading in chemicals. It filed its return of income on 30.09.2011 at loss of ₹ 11,81,19,595/- which was assessed under section 143(3) of the Act on 31.03.2014 at a total loss of ₹08,60,33,982/-. Subsequently, on reopening of the assessment, assessee was assessed at loss of ₹ 5,86,69,983/- as per order dated 31.10.2018. The re-assessment proceedings travelled up to level of coordinate bench which set aside the issue to the file of the learned AO on disallowance of legal and professional fees in respect of payment made to Dr. May Pharma amounting to ₹18,26,842/-. The coordinate bench set aside the issued for the reason that for assessment 2008-09 and 2009-10 issue was also restored back to the file of the learned AO for verification. Pursuant to that the learned AO passed his order under section 143(3) read with section 254 of the Act dated 05.12.2019 wherein learned AO disallowed the same expenses once again. The assessee preferred appeal before the learned CIT(A) wherein the disallowance was confirmed. Therefore, assessee is in appeal before us.
05. The learned AR referred to the paper book containing 71 pages filed before us wherein the technical consultancy services agreement along with the copy of the bill was produced. It was also stated that, this issue has been decided in favour of the assessee by the learned AO himself for A.Y. 2008-09 and 2009-10 in set aside proceedings.



Similarly, the claim was allowed by the AO himself in A.Y. 2015-16. It was therefore stated that, disallowance deserves to be deleted.

06. Ld DR supported the orders of lower authorities.
07. We have carefully considered the rival contentions. We find that assessee has availed the services of Dr. May Pharma Consultancy, Europe for rendering the services of consultation on product development and registration issues. The agreement was entered originally into on 01.02.2003 and same continued up to 31/01/2013. The assessee has produced the relevant copies of the bills. It was further stated that, when the issue was remanded by ITAT from A.Y. 2008-09 and 2009-10, the AO himself allowed the above deduction. For A.Y. 2010-11 and 2013-14 the learned CIT(A) allowed the deduction which is accepted by the revenue. For A.Y. 2015-16 the AO himself in the regular assessment proceedings allowed the claim. In view of this, we do not find any reason to sustain the disallowance confirmed by the lower authorities. Even otherwise, the expenditure is incurred by the assessee in its regular business in existing line of activities. Therefore, same cannot be said to be capital expenditure. Accordingly, we reversed the orders of the lower authorities and allow the assessee deduction of ₹ 18,70,718/- of the professional fees.
08. The Similar is the issue for A.Y. 2012-13 where the disallowance sustained is of ₹ 19,92,075/-. There is no change in the facts and circumstances of the case. Therefore, for the reasons given by us for A.Y. 2011-12 the disallowance of expenditure is not sustainable.
09. Accordingly, we allowed both the appeals of the assessee.

Order pronounced in the open court on 09.11.2022.

Sd/-  
(AMIT SHUKLA)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.11.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai