

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “ C ” BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1297/Ahd/2014 &  
ITA No. 1298/Ahd/2014  
Assessment Year(s): 2004-05**

The Dy.CIT Central Circle-2(1) Ahmedabad	Vs	M/s. Dolphin Laboratories Ltd. (Now known as M/s. Intas Pharmaceuticals Ltd.) 203, Chinubhai Centre Ashram Road Ahmedabad  <b>PAN: AABCD 0197 M</b>
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**Revenue Represented: Shri S.N. Soparkar, Sr.Advocate  
Assessee Represented: Shri Ashok Kumar Suthar, Sr.DR**

Date of hearing : 16-01-2024  
Date of pronouncement : 14-02-2024

**आदेश/ORDER**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

The above appeals are filed by the Revenue as against separate appellate orders both dated 27/12/2013 passed by the Commissioner of Income Tax (Appeals)-XII, Kolkata arising out of separate assessment orders passed under section 143(3) and order giving effect to order u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) relating to the same Assessment Year 2004-05. Since common issues are involved in both the appeals and the same are disposed of by this common order.

**2. ITA No. 1298/Ahd/2014 (for AY 2004-05)** is taken the lead case and the Grounds of Appeal filed by the Revenue in are as follows:-

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"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition made on account of delayed payment of contribution to PF amounting to Rs. 8,96,190/- despite such deduction being contrary to the provisions of section 36(1)(va) of the Act.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.7,44,598/- out of Misc. expenses, on the basis of unsubstantiated claim of assessee.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of expenditure on commission of Rs.55,62,090/-, on the basis of unsubstantiated claim of assessee and against the reasons given by AO.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of expenditure as legal and professional charges of Rs.2,79,418/- despite reasons on record on support of the disallowance made by AO.

5. On the facts and in the circumstance of the case, the Ld. CITA) has erred in law and on facts in deleting the disallowance of bad & doubtful debts of Rs.64,04,221/-, on the basis of unsubstantiated claim of assessee and in the absence of necessary details required to verify the satisfaction of conditions for such deduction.

6. On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in law and on facts in directing the Assessing Office to adopt on the basis of unsubstantiated claim of assessee, the cost of acquisition of land at Rs.1,17,40,000/-instead of Rs.25,00,000/-."

**3. Ground No.1:- Late payment of contribution to PF amounting to Rs.8,96,190/-.** The Ld. Sr.DR Shri Ashok Kumar Suthar appearing for the Revenue submitted that this issue is squarely covered in favour of Revenue by the decision of Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. vs. CIT reported in (2022) 143 taxmann.com 178 (SC). Therefore, the disallowance made by the Assessing Officer is liable to be sustained.

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4. Per contra, Ld. Sr. Counsel Shri S.N. Soparkar appearing for the assessee drawn our attention to the assessment order where the Assessing Officer categorically mentioned that “it is seen that employees’ contribution as well as employer’s contribution towards PF amounting to Rs.8,96,190/- has not been paid within the due date”. Thus, the Ld.Sr.Counsel submitted that the Hon’ble Supreme Court judgement deals with the case of employees’ contribution paid belatedly and not about the employer’s contribution. However, the Ld.Sr. Counsel fairly admitted that the assessee also does not have the break-up of employer’s contribution and employees’ contribution. But submitted that equal amount of contributions were made by the employer with that of the employee, therefore, the entire disallowance is not correct in law, however, an adhoc disallowance of 50% is justifiable.

5. We have considered the submissions of rival parties and it can be seen from the assessment order, there is a delay in payment of both the employer’s and employees’ contributions to the PF authorities. Therefore, the entire belated amount of Rs.8,96,190/- cannot be disallowed even as per the Hon’ble Apex Court judgement in the case of Checkmate Services (P) Ltd. (cited supra). In the interest of justice, we direct the Assessing Officer to make 50% disallowance of the late payment of Rs.8,96,190/-. Thus, this ground of appeal raised by the Revenue is partly allowed.

6. **Ground No.2:- Deletion of miscellaneous expenses of Rs.7,44,598/-.** Since the assessee company was a sick company during that period, it could not produce the details of miscellaneous expenses. Therefore, the Assessing Officer made disallowance of 1/4<sup>th</sup> of the expenses for want of verification. Whereas, the Ld.CIT(A)

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appreciated the circumstances of the assessee case and held that the adhoc disallowance made by the Ld AO without pointing out specific items which were not verifiable is unjustified and therefore, deleted the addition.

7. Before us, the Ld.CIT-DR could not justify the deletion made by the Ld.CIT(A) and therefore, this ground raised by the Revenue is devoid of merit and, therefore, the same is dismissed.

**8. Ground No.3: Disallowance of commission expenses of Rs.55,62,090/-.** The Assessing Officer disallowed the commission on sales amounting to Rs.55,62,090/- from total commission amount of Rs.80,13,975/- stating that the assessee-company did not provide any information on what basis commission was paid and also questioned whether TDS was deducted and also the commission expenses increased during this assessment year comparing with the earlier assessment years. The assessee submitted before the Ld.CIT(A) that sale commission of Rs.74,94,819/- was paid in US\$ outside India and rest was paid to parties in India and appropriate TDS was deducted wherever applicable. Thus, the AO is not correct in making the disallowance of Rs.55,62,090/-. The Ld.CIT(A) held that the disallowance made by the Assessing Officer without making any enquiries and without bringing any material on record is unjustified. Further, there is ample material to show that the sales were effected through selling agents and further the assessee also submitted proof of TDS to the commission agents, where major portion in US\$ and exports of goods. Therefore, the disallowance of Rs.55,62,090/- made by the Assessing Officer was deleted. Before us Ld.CIT-DR could not place before us any contra views or documents against the finding of the Ld.CIT(A). Therefore, this ground raised by

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the Revenue is devoid of merit and, therefore, the same is hereby dismissed.

**9. Ground No.4: Disallowance of legal and professional charges of Rs.2,79,418/-.** The Assessing Officer disallowed the legal and professional charges of Rs.2,79,418/- which is relating to sale of an immovable property and valuation of shares, which are capital in nature. The assessee claimed before the Ld.CIT(A) that the expenditure of Rs.2,20,150/- is relating to sale of the immovable property, therefore this expense is to be allowed while calculating the capital gains. The Ld.CIT(A) directed the Assessing Officer to allow this expense of Rs.2,20,150/- while calculating the capital gains as an allowable expense.

9.1. We do not find any legal infirmity in the order passed by the Ld.CIT(A), the expenditure of Rs.2,20,150/- incurred relating to sale of the immovable property and to be allowed as expense while calculating the Capital Gain, therefore, this ground raised by the Revenue is dismissed.

**10. Ground No.5: Disallowance of bad and doubtful debts of Rs.64,04,221/-.** The assessee-company in its books of accounts written off bad debts of Rs.64,04,221/- as the assessee-company had shifted its plant to Gujarat from Kolkata. The Assessing Officer asked the assessee to file the details of the bad debts and assessee failed to furnish any details thereof. Therefore, the AO made the disallowance of Rs.64,04,221/-. The Ld.CIT(A) had taken note of the shifting of assessee's operations from Kolkata to Ahmedabad and closure of old plant, which was sustaining losses and the circumstances where there is no likelihood of cost effective recovery

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of debts and following the judgement of Hon'ble Apex Court in the case of M/s. TRF Ltd. vs. CIT reported at 190 Taxman 391 (SC).

10.1. We do not find any infirmity in the order passed by the Ld.CIT(A), since Hon'ble Supreme Court in the case of TRF Ltd. held that it is not necessary for the assessee to establish that debt, in fact, has become irrecoverable, it is never if bad debt is written off as irrecoverable in accounts of the assessee. Respectfully following the ratio laid down by the Hon'ble Apex Court, the above ground raised by the Revenue is devoid of merit and the same is hereby dismissed.

**11. Ground No. 6: Cost of acquisition of land at Rs.1,17,40,000/- instead of Rs.25 lakhs.** The Assessing Officer while calculating the capital gain has not accepted the fair market value of the land as on 01/04/1981 as Rs.1.25crores as claimed by the assessee, on the ground that no valuation report from Govt. Approved Valuer was submitted by the assessee. However, the Ld AO determined the cost of the land as on 01/04/1981 at Rs.25 lakhs and computed the capital gain. During the appellate proceedings, the assessee submitted Government Approved Valuation Report wherein the cost of land as on 01/04/1981 was determined at Rs.1,17,40,000/-. The Ld.CIT(A) held that the AO has neither made any reference to the Departmental Valuation Officer u/s.55A of the Income Tax Act, 1961 for determining the cost of acquisition/fair market value as on 01/04/1981 nor did bring on record any comparative instances in estimating the cost at Rs.25lakhs. Therefore, Ld CIT[A] accepted the assessee's submission of the Government Approved Valuer's Report, and directed the AO to adopt the fair market value of the land as on 01/04/1981 at

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Rs.1,17,40,000/- for the purpose of computing the capital gain and thereby allowed the assessee's appeal.

11.1. We do not find any infirmity in the order passed by the Ld.CIT(A). The Assessing Officer without making any reference u/s.55A of the Act, *suo moto* estimated the cost of the land as on 01/04/1981 at Rs.25 lakhs, which is legally not permissible under the Act. Whereas the assessee has submitted Government Approved Valuer's Report valuing the land as on 01/04/1981 at Rs.1,17,40,000/- for computing the capital gains. Thus, ground raised by the Revenue is devoid of merit and the same is hereby dismissed.

12. In the result, appeal filed by the Revenue in **ITA No.1298/Ahd/2014 for AY 2004-05 is partly allowed.**

13. **ITA No. 1297/Ahd/2014 (for AY 2004-05)** the Grounds of Appeal filed by the Revenue are as follows:-

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the Assessing Officer to adopt on the basis of unsubstantiated claim of assessee, the cost of acquisition of land at Rs.1,17,40,000/- instead of Rs.25,00,000/-.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the Assessing Officer to recalculate the capital gain on sale of land taking total value of property of Rs.6,05,00,000/- and deducting there from the value of building and machinery of Rs.1,75,00,000/-."*

14. **Ground No.1:** The cost of acquisition of land at Rs.1,17,40,000/- instead of Rs.25,00,000/-. This ground is already dealt by us in Paragraphs 11 & 11.1 of this order which is identical

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in nature. Therefore, following the same ratio, this ground raised by the Revenue is hereby dismissed.

15. **Ground No.2:** The CIT(A) erred in directing the AO to recalculate the capital gain on sale of land taking total value of property of Rs.6.05 Crs. after deducting value of Rs.1.75 Crs. towards Building, Plant & Machinery. Originally, the assessee sold the property for Rs.5 crores, wherein the value of the building, plant & machinery claimed by the assessee as Rs.1.75 crores. This bifurcation pertains to land, building, plant & machinery was accepted by the AO while passing the assessment order u/s.143(3) dated 29-12-2006. Pursuant to the Revision order passed by the Ld.CIT u/s.263 of the Act, directed the AO to value the property as per section 50C of the Act. In compliance, the AO determined the valuation of the land at Rs.6,05,00,000/-. Though the assessee has not disputed the application of section 50C valuation, but claimed the value of building, plant & machinery of Rs.1.75 crores is to be deducted while computing on the value of Rs.6.05 crores.

15.1. The Ld.CIT(A) accepted the contention of the assessee and held that the subject matter of sale consideration for the purpose of capital gain u/s. 50C of the Act is on the land portion, due to appreciation in value on account of stamp duty and cannot be applied to the old super-structure and plant & machinery.

16. We have perused the materials on record and also provisions of section 50C of the Act. Section 50C provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being **land or building or both**, is less than the value adopted or assessed by any authority of State

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Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted shall be deemed to be the full value of the consideration received or accruing as a result of such transfer, for the purpose of section 48 of the Act. Plain reading of the section makes it clear that the valuation is not only for **land or building or both**. In this case, there is no reference about the under valuation of the building and therefore land alone is valued at Rs.6.05 crores by the State Government Authority, therefore the LdCIT [A] is not correct in holding that 50C valuation is not applicable to building. The assessee has not produced the copy of the Valuation Report to ascertain the value determined towards land alone or also building, plant & machinery. Therefore, the direction given by Ld CIT[A] is against the provision of law and liable to be reversed and the order of the Ld AO is to be restored, but the cost of acquisition as on 1-4-1981 as Rs.1,17,40,000/- to be adopted. Thus, the Grounds of Appeal raised by the Revenue is allowed.

17. In the result, the appeal filed by the Revenue in ITA No.1297/Ahd/2014 for AY 2004-05 is partly allowed.

18. In the combined result, Revenue's appeal in ITA No.1298/Ahd/2014 and ITA No.1297/Ahd/2014 are partly allowed.

**Order pronounced in the open court on**

**14-02-2024**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 14/02/2024**

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-XII, Kolkata
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT,  
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