

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.607/Hyd/2023**
(निर्धारण वर्ष / Assessment Year:2020-21)

M/s. Acrete Pharmaceuticals P. Ltd., Hyderabad. PAN AAFCA2804G	Vs.	Income Tax Officer, Ward-1(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Ravindra Chenji, Advocate	
राजस्व द्वारा / Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख / Date of hearing:	04/06/2024	
घोषणा की तारीख / Pronouncement:	10/06/2024	

आदेश/ORDER

PER LALIET KUMAR, J.M:

This appeal is filed by M/s. Acrete Pharmaceuticals Pvt. Ltd. ("the assessee"), feeling aggrieved by the order passed by the learned ADDL/JCIT (A)-2 Mumbai ("ld. CIT(A)"), dated 10.10.2023 for the AY 2020-21.

2. The assessee has raised the following grounds :

1.	The Addl. Commissioner of Income Tax (Appeals) (herein after Addl. CIT) erred in dismissing the appeal on wrong conception that the provisions of section 115BA of the I T Act are applicable, despite the appellant's contention that the said provisions does not apply.
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2.	The Appellant contends that Addl. CIT misdirected / misconceived ;himself on the applicability of section 115BA, when it is not the point of issue before him at all.
3.	The Appellant contended that the tax ought to have been charged at the rate specified in Paragraph E to Part 1 of the First Schedule to Finance Act, 2020.
4.	The appellant craves leave to add, amend or alter any of the aforesaid grounds a the occasion may require.

3. The facts of the case in brief are that, the assessee engaged in the manufacture of pharmaceutical, medicinal, chemicals and botanical products, filed its return of income on 13.10.2020 u/s 139(1) r.w.s. 115BA of the Income Tax Act, 1961 ("the Act") declaring total income of Rs.89,06,710/-. The assessee opted the option of section 115BA and was required to file Form no. 10-IB before the due date of filing the return of income u/s 139(1) of the Act. However the assessee did not filed the said Form no. 10-IB. Therefore the return of income was processed by Central Processing Centre, Bangalore ("CPC") u/s. 143(1) the Income Tax Act, 1961 ("the Act") on 18.12.2021, denying the tax rate provided u/s 115BA of the Act and levying the tax at the rate of 30% on the total income and thereby raising a demand of Rs.5,17,090/-.

4. Feeling aggrieved by the order passed by the CPC, the assessee filed appeal before the Ld.CIT(A). The assessee submitted before the Ld. CIT(A) that if tax rate mentioned under section 115BA of the Act are denied due to

non filing of Form no. 10-IB, as the turnover of the assessee for the F.Y.2017-18 is below Rs.400 crores, the assessee is liable for tax at the rate of 25% under the normal provisions of the Act. However the CPC has levied tax at the rate of 30%. Ld. CIT(A) without considering the submission of the assessee, dismiss the appeal making the following observation(para no. 6.3 and 6.4 of the order of Ld.CIT(A) :

“ 6.3 The income tax return for AY 2020-21 filed on 13/10/2021 within the time limit for the filing of the income tax return under section 139(1.) The assessee has not filed form 10-1B in terms of the requirements of section 115BA (4) before the due date of filing return as per provisions of 139(1).

6.4 Section 115BA(4), clearly states that Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

Further Rule 21AD, prescribing the manner in which this option is to be exercised by the filing of Form 10-1B. The appellant has not brought on record the Form 10-1B filed by the appellant. On verification of the e-filing portal also, it is seen that no Form 10-1B has been uploaded by the appellant. The appellant having not fulfilled the mandatory provisions of 115BA(4), the appellant is not allowed to exercise the option of lower tax rate as prescribed in 115BA.

The appeal is dismissed.”

5. Feeling aggrieved with the order of Ld.CIT(A), now the assessee is in appeal before us, contending that the revenue authorities erred in not levying the correct rate of tax. The Ld. AR submitted that the assessee filed its return of income on 13.10.2020 u/s 139(1) r.w.s. 115BA of the Act declaring total income of Rs.89,06,710/-. The company who opted the

option of section 115BA is required to file Form no. 10-IB before the due date of filing the return of income u/s 139(1) of the Act. However the assessee did not file the said Form no. 10-IB. Therefore the return of income was processed by Central Processing Centre, Bangalore ("CPC") u/s. 143(1) the Act on 18.12.2021, denying the tax rate provided u/s 115BA of the Act and levying the tax at the rate of 30% on the total income and thereby raising a demand of Rs.5,17,090/-. The Ld.AR further submitted that even if tax rate mentioned under section 115BA of the Act are denied due to non-filing of Form no. 10-IB, as the turnover of the assessee for the F.Y.2017-18 is below Rs.400 crores, the assessee is liable for tax at the rate of 25% under the normal provisions of the Act. Hence the Ld. AR requested before the bench to allow the appeal and issue necessary direction to the Revenue authority for levying tax on the total income at the rate of 25%.

6. Per contra, the Ld. DR placed heavy reliance on the order of the authorities below and agitate to uphold the order of lower authorities.

7. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. In ;the present case, it is alleged that the assessee is having turnover below Rs.400 Crores and therefore the assessee was required to be taxed @ 25%. However, the assessee, despite that filed return u/s.115BA of the Act. As the assessee

had filed the return u/s. 115BA, without filing the requisite Form 10-IB, the CPC had denied the tax benefit. In our view, the action on the part of CPC and CIT(A) are in conformity with the law as held by the Hon'ble Supreme Court in the case of Wipro wherein the Hon'ble Supreme Court in 446 ITR 001 had held that filing of requisite Form for claiming deduction is mandatory. The law laid down by the Hon'ble Supreme Court in the case of Wipro(supra) is squarely applicable to the facts of the case. Hence, on this count, there is no error on the part of the Revenue Authority in denying the tax rate prescribed u/s 115BA of the Act. Having held that the provisions of section 115 BA are not applicable to the facts of the case, then it is required to be examined under which provision of law the assessee was required to be taxed and at what rate.

8. It is mandatory for the revenue authority to examine the turnover of the assessee and find out the correct applicable provision and applicable rate thereon. The turnover of the assessee for the F.Y.2017-18, as noted by the Ld. CIT(A) was found to be below Rs.400 crores; therefore, in our opinion, the assessee was required to be taxed in accordance with law as per the applicable provision. Considering the totality and circumstances and in the interest of principle of natural justice, we remand back the matter to the file of Ld. CIT(A) with a direction to examine whether the turnover of the assessee during the relevant assessment year was below

Rs.400 Crores or not. Further, we direct the Ld.CIT(A) at what rate i.e 25% or any other rate income of the assessee is required to be taxed in the Act . Needless to say, the Ld. CIT(A) shall grant a reasonable opportunity to be heard to the assessee before passing his order. The assessee is also directed to file the documents/information before the Ld. CIT(A) so as to enable him to decide the matter in accordance with law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 10th June, 2024,

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Mumbai;

Dated: 10.06.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. M/s. Acrete Pharmaceuticals P. Ltd., 5-70, 1st Floor, St-8, Habsiguda, Hyderabad-500 007
2. The ITO, Ward 1(1), Hyderabad.
3. Pr. CIT, Hyderabad.
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, Hyderabad.