

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA (TP)Nos. 51 & 52/Hyd/2023
(निर्धारण वर्ष / Assessment Years: 2016-17 & 2017-18)

Vivimed Labs Ltd
Hyderabad
[PAN : AAACV6060A]

Asst. Commissioner
Vs. of Income Tax,
Central Circle-3(4),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, CA
राजस्व द्वारा/Revenue by: Shri Kumar Pranav, CIT(DR)

सुनवाई की तारीख/Date of hearing: 09/07/2024
घोषणा की तारीख/Pronouncement on: 19/07/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 15/11/2022 & 31/03/2021 passed by the learned Asstt Commissioner of Income Tax (Appeals)-Central Circle 3(4) ("Ld. ACIT"), in the case of Vivimed Labs (the assessee") for the assessment year 2016-17 & 2017-18, the assessee preferred these appeals.

2. At the outset Ld. AR submitted that vide common order dated 12/4/2022 in ITA Nos 186 to 189 /Hyd/ 2021 a coordinate Bench of this Tribunal observed that on the ground of want of incriminating material

during the course of search the assessment for the years 2016-17 and 2017-18 stands quashed. However, there was typographical mistake in the operating portion were ITA No. 188 /Hyd/ 2021 (for the assessment year 2017-18) was allowed conditionally and ITA No. 187 /Hyd/ 2021 (for the assessment year 2016-17 was allowed in part). Learned Assessing Officer however while giving effect to the orders of the Tribunal repeatedly additions in the earlier order for these 2 years. Ld. AR therefore submitted that since the learned Assessing Officer did not follow the directions given by the Tribunal for these 2 years, the assessments are liable to be quashed.

3. Learned DR submitted a report of the learned Assessing Officer wherein the learned Assessing Officer submitted that the assessment for the assessment year 2016-17 and 2017-18 stood quashed, but in the interest of Revenue consequential orders were passed for all the 4 assessment years as per the relief granted by the Tribunal, in accordance with the observations of the Tribunal at paragraph number 31 of the order of the Tribunal.

4. We have gone through the record in the light of the submissions made on either side. For the sake of completeness, we extract hereunder the relevant observations of the Tribunal in the common order, hereunder:-

"29. We further note that the assessee's former three years 2014-15 to 2016-17 also raise an identical legal ground challenging validity of the impugned assessments for want of incriminating material found or seized during the course of search. It prima facie emerges from a perusal of these appeals ITA Nos. 186 to 188/Hyd/2021 that the assessee had inter alia not filed a valid return submitted no return and furnished a valid return before search in former three appeals, respectively. There is no further denial to the fact that the DRP has prepared an annexure of so-called seized documents in A.Y. 2016-17's directions which turn out to be the assessee's regular books of accounts and documents only. That being the case, we find that the tribunal's order in assessee's case ITA Nos.184 and 185/Hyd/2021 for preceding two assessment years 2012-13 and 2013-14 dated 07.04.2022 has quashed the assessment proceedings on the very issue as follows :

"4. We have given our thoughtful consideration to rival pleadings and find no merit in Revenue's stand. We first of all

deem it appropriate to take note of certain basic facts. The assessee had interalia filed its section 139(1) returns dt.29.09.2012 and 30.11.2013 which followed the Transfer Pricing Officer's "TPO" section 92CA(3) orders dt.29.01.2016 and 31.10.2016; respectively. Suffice to say, the impugned search action took place thereafter on 09.11.2016 followed by the DRP's directions dt.20.12.2016 in A.Y. 2012-13. Both these assessments thereafter stood treated as "abated" ones in light of section 153A(1) 2nd proviso and the Assessing Officer initiated section 153A proceedings followed by yet another assessments including reference made to the TPO as well as draft assessment and objections filed before the DRP which duly stand disposed off as per law.

5. We wish to observe in light of the case laws quoted at the assessee's behest as well as after taking into consideration the hon'ble apex court's landmark decision in CIT Vs. Sinhaghad Technical Educational Society (2017) 84 taxmann.com 290 (SC) that no such proceedings initiated u/s 153A of the Act sustainable in law for want of incriminating material found or seized during the course of search. We make it clear that although the Revenue has vehemently argued that there indeed exists sufficient seized material in light of the annexures attached with the DRP's directions (supra), a perusal thereof sufficiently indicates that this so called material parts already formed of the assessee's books which had already been considered in both the corresponding scrutiny assessments pending on the date of search. This tribunal's Special Bench's decision in All Cargo Global Logistics Ltd. Vs. DCIT (2012) 137 ITD 287 (ITAT-Mum) (SB) holds that incriminating material is that material which is found during the course of search and not produced in the course of original assessment and undisclosed income or property disclosed during the course of search, as the case may be. We find from a perusal of the case(s) records and more particularly in light of the DRP's compilation of the alleged seized material it only includes the assessee's expenses / claims or EBIDTA details etc. which could hardly be termed as anything incriminating in the foregoing terms.

6. Mr. Sai referred to Gopal Lal Bhadraka Vs. DCIT 346 ITR 106 (AP) that an assessing authority could also consider any other material during the search assessment. The instant plea hardly carries any substance since the question framed therein was not regarding lack of incriminating material but the Assessing Officer's jurisdiction to take all other material into account in a search assessment which is not the issue

before us. We thus accept the assessee's instant legal ground to quash both these assessments thereby rendering all other pleadings on merits to have been become infructuous. Ordered accordingly."

We therefore decline the assessee's instant legal ground in A.Y.s. 2014-15 and 2015-16 and accept the same in A.Y. 2016-17's appeal i.e. ITA 188/Hyd/2021. The impugned assessment stands quashed in this last assessment year i.e. 2017-18 therefore.

30. The assessee's 12th substantive grievance in A.Y. 2016-17 is that the learned lower authorities have erred in law and on facts in making section 43B disallowance of Rs.19,17,38,828/- despite the fact that the DRP's corresponding directions deciding its objections had granted substantive relief. That being the case, we direct the learned Assessing Officer to verify the necessary factual position and allow the impugned relief as per law in light of DRP's directions which are binding on him u/s 144C(13) of the Act. This 12th substantive grievance is accepted subject to the assessing authority's factual rectification in above terms.

No further ground has been pressed before us.

31. To sum up, the assessee's three appeals ITA Nos.186 to 187 and 189/Hyd/2021 are partly allowed and ITA No.188/Hyd/2021 is allowed in foregoing terms. Its corresponding stay application Nos. 36 to 39/Hyd/2021 stand rendered infructuous in very terms. A copy of this common order be placed in respective case files."

5. As could be seen at paragraph No. 29 of the common order referred to above, the Tribunal observed that for the years 2014-15 to 2016-17 identical legal grounds challenging the validity of the assessments for want of incriminating material found or seized during the course of search were raised, and in the case of assessment for the assessment year 2016-17 the addition made was only basing on assessee's regular books of accounts and documents and therefore the contention of the assessee was accepted in respect of the assessment for the assessment year 2016-17. It goes without saying that while accepting the contention of the assessee that for want of incriminating material found or seized at the time of search, the addition made basing on the assessee's regular books of accounts and documents does not stand and the Tribunal quashed the assessment for the assessment year 2016-17. So also para 29 of the order of the Tribunal further shows that the impugned assessment stands quashed in the last assessment year, namely, 2017-18 therefore. This

clearly shows that the understanding of the learned Assessing Officer in the remand report that as per paragraph 29 of the Tribunal's order the assessments for the assessment years 2016-17 and 2017-18 stood quashed, but due to the discrepancy in the paragraph No. 31, to keep the interest of Revenue alive, consequential orders were passed for all the 4 assessment years.

6. On a perusal of record, it occurs to our mind that as a matter of fact by way of common order referred to above, a coordinate Bench quashed the assessments for the assessment year 2016-17 and 2017-18, but in view of the discrepancy that allocation at paragraph No. 31 of the order, the learned Assessing Officer passed the consequential orders accordingly. In the circumstances we hold that the assessments for the assessment years 2016-17 and 2017-18 stood quashed by a common order dated 12/4/2022 in ITA numbers 186 to 189 /Hyd/ 2021 and that position exists without being disturbed. We therefore, allow these 2 appeals holding that the assessments for the assessment years 2016-17 and 2017-18 already stood quashed.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on this the 19th day of July, 2024.

Sd/-

(MANJUNATHA G.)

ACCOUNTANT MEMBER

Hyderabad,

Dated: 19/07//2024

Pvv/SPS

Sd/-

(K. NARASIMHA CHARY)

JUDICIAL MEMBER

Copy forwarded to:

1. Vivimed Labs Ltd c/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2. Asst. Commissioner of Income Tax, Central Circle-3(4), Hyderabad.
3. Pr.CIT (Central), Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE