

2. Shri Ajay Vohra, appearing on behalf of the assessee submitted that the Transfer Pricing Officer (TPO) made adjustment of Rs. 279 crores on account of alleged promotion of Marlboro Brand owned by the Associated Enterprises (AE). He submitted that the assessee has good case on merits and the issue raised in appeal is squarely covered by the decision rendered in the case of *Glaxo Smithkline Consumer Healthcare P. Ltd. in ITA No. 1148/CHD/2011*. In the light of aforesaid decision, AMP adjustment made by the TPO has no legs to stand. He further pointed that the Assessing Officer (AO) while computing taxability has wrongly applied rate of tax at 30% as against 20%. The assessee has filed an application u/s. 154 of the Act. Once the mistake is rectified, the total tax liability would come down to 127.21 crores.

3. Shri Kanv Bali, representing the department strongly opposed the Stay Application and prayed for dismissing the same. The Id. DR submitted that if at all the benefit of stay is to be allowed to the assessee, the assessee may be directed to deposit 20% of total outstanding demand.

4. We have heard the submissions made by rival sides and have examined the records. The TPO has made adjustment in respect of AMP. The contention of the assessee is that the AO has erred in computing tax liability by applying tax rate of 30%, whereas the rate of tax as applicable in the case of assessee is 20%. The assessee has filed an application before the AO for rectification of mistake. Taking into consideration entire facts, outstanding demand for AY 2020-21 is stayed subject to the following conditions:-

- (i) As per the present demand notice the total outstanding demand including interest is Rs. 184,64,15,020/-. According, to the assessee after rectification the

outstanding demand would be Rs. 127,21,50,279/-. The assessee shall deposit 20% of Rs. 127.21 crores within two weeks from the date of receipt of this order.

(ii) The assessee shall furnish security of an amount equal to 20% of difference between Rs. 184.64 crores and 127.21 crores within two weeks from the date of receipt of this order.

(iii) The assessee shall furnish proof of deposit of payment/furnishing security to the Registry and to the AO within one week from the date of deposit/furnishing security.

5. The Assessing Officer shall dispose of the application of assessee seeking rectification u/s. 154 of the Act by 30.09.2024. In case the assessee succeeds in the said application and accordingly, there is modification in the demand, the AO shall release the excess security forthwith. The recovery of outstanding demand is stayed for a period of 180 days from the date of this order or till the disposal of appeal, whichever is earlier.

6. The Registry is directed to fix appeal for hearing on 28.11.2024. Since, the date of hearing of appeal has been announced in the open court in the presence of both sides, issuance of notice for hearing is dispensed with.

7. In the result, stay applications of the assessee are allowed in the aforesaid terms.

Order pronounced in the open court on August the 23rd day of July, 2024.

Sd/-

(M.BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 23/08/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI