

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA NO. 1795/MUM/2021 : A.Y : 2008-09

Cipla Limited
Cipla House, Peninsula Business
Park, G.K. Marg, Lower Parel,
Mumbai. (Appellant)
PAN : AAACC1450B

Vs. Asstt. Commissioner of
Income Tax,
Central Circle-1(2), Mumbai.
(Respondent)

**Appellant by : Shri Yogesh Thar &
Shri Deep Chauhan
Respondent by : Ms. Madhu Malati Ghosh
Date of Hearing : 19/06/2024
Date of Pronouncement : 16/09/2024**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 27-07-2021 passed by Ld CIT(A)-47, Mumbai and it relates to the assessment year 2008-09. This is second round of proceedings. In the first round, the Tribunal disposed of the appeal relating to on 25.07.2014 in ITA No.6471/M/2010 and 6299/M/2010, wherein certain issues were restored to the file of the assessing officer. Accordingly, the AO passed the order dated 31.3.2016 in order to give effect to the order passed by the ITAT (referred above). The assessee challenged the order so passed by the AO by filing appeal before Ld CIT(A), but the same came to be dismissed by him. Aggrieved, the assessee has filed this appeal.

2. The assessee is a pharmaceutical company engaged in the business of manufacture and sale of bulk drugs and other pharmaceutical products.

3. The first issue relates to the addition of Rs.38,80,657/- pertaining to alleged bogus purchases. In the first round, the Tribunal had restored this issue accepting the plea of the assessee that the AO did not give proper opportunity to the assessee. The assessee had purchased certain material for a sum of Rs.38,80,657/- from a concern named M/s Globe Pharma. The above said M/s Globe Pharma had confessed before Government authorities that it has provided only accommodation bills without supplying materials. Hence the AO made the addition in the first round and the same was confirmed by Ld CIT(A) also in the first round.

3.1 In the set aside proceedings, the assessee submitted that the above purchases were actually made. The assessee submitted that M/s Globe Pharma had imported materials and later sold to the assessee. It furnished the import invoices of M/s Globe Pharma also. However, the tax authorities had noticed certain discrepancies in the invoice number and purchase order. The assessee furnished explanations for the same and offered explanations. It was further submitted that the goods were received at his Godown located in Bhiwandi area. It also furnished certain other documents to prove receipts of goods. However, the AO placed reliance on the decision rendered by Ld CIT(A) in the first round of proceedings and accordingly made the disallowance of Rs.38,80,657/- again. The Ld CIT(A) also confirmed the same.

3.2 We heard the parties and perused the record. We notice that the assessee has furnished all the documents relating to the purchases and also stock records to show that the materials were actually received. On the contrary, the supplier M/s Globe Pharma had confessed before

Government authorities that it has not supplied the materials, but provided only accommodation bills. But before the AO it has changed the stand and stated that the materials were actually supplied. Further, it has also furnished documents to show that those goods were actually imported by him. But the fact would remain that above said supplier M/s Globe Pharma has changed its stand before the AO. When the above said party changes its stand before different authorities, it may not be possible to ascertain which of his statement was right and hence, it would be difficult to rely upon his changed stand. We noticed that the assessing officer had placed reliance on certain investigation report and the tax authorities have also pointed out certain deficiencies in the documents. Since the assessee has submitted stock records to prove the receipt and consumption of materials, one possibility could be that the assessee might have purchased material from one source and could have obtained bill from other source. We are not meaning that the assessee has actually indulged in such kind of practices. Under these set of facts, we are of the view that this issue may be put an end by estimating profit, if any, that could have been made by the assessee in this alleged bogus purchases. Accordingly, we estimate the profit @ 8% of the value of alleged bogus purchases, which work out to Rs.3,10,452/-. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance to Rs.3,10,452/-. We order accordingly.

4. The next issue relates to the disallowance of R&D expenses claimed u/s 35(2AB) of the Act. The assessee had claimed a sum of Rs.95.06 crores as weighted deduction u/s 35(2AB) of the Act towards R & D expenses. The AO, however, had allowed Rs.59.50 crores only in the first round. The disallowance so made was Rs.35.56 crores. When the matter reached the ITAT, the Tribunal restored the matter back to the file of the AO for examining this issue afresh. In the set aside proceedings, the AO confirmed the disallowance again and the same was also upheld by the Ld CIT(A).

4.1 The Ld A.R submitted that the DSIR did not approve following expenses:-

Clinical Trial expenses	-	2134.72 lakhs
Building Repairs	-	109.50 lakhs
Foreign consultancy exp.	-	798.95 lakhs
R & D Exhibit Batches	-	453.35 lakhs
Salary of CMD (30% estimated)		238.45 lakhs

		3734.97 lakhs
		Or 37.35 crores
		=====

We noticed earlier that the AO had disallowed claim of Rs.35.56 crores. The weighted deduction u/s 35(2AB) is allowable at two times/1.5 of the expenditure incurred on R & D. Since the disallowance was Rs.35.56 crores, the corresponding expenditure should be Rs.17.78 crores, if deduction was allowable at 200% or Rs.23.70 crores, if the deduction was allowable at 150%. However, the assessee has given break-up details of expenses that were not certified by DSIR as Rs.37.35 crores. Hence, the above said claim of the assessee requires reconciliation.

4.2 Subject to the verification of the above said difference pointed out by us, we render our decision on each of the above said expenses vis-à-vis their respective eligibility for deduction u/s 35(2AB) of the Act.

4.3 With regard to the Clinical Trial expenses, we notice that the ITAT had set aside the issue to examine the claim in terms of the decision rendered by Hon'ble Gujarat High Court in the case of Cadila Healthcare Limited (31 taxmann.com 300). However, the AO has disallowed the claim on the reasoning that the assessee has failed to substantiate the nature of expenses, genuineness of expenses and purpose of expenses. The above said observations of the AO, in our view, are beyond the scope of order passed by ITAT. We notice that the Hon'ble Gujarat High Court has held in the above said case that the R & D expenses incurred on clinical trials outside approved laboratory facility is eligible for weighted deduction. Accordingly, we hold that the expenses incurred on Clinical Trial expenses are eligible for weighted deduction.

4.4 The next item of expenses is Building repairs of Rs.109.50 lakhs. In the case of USV Ltd vs. DCIT (2012)(24 taxmann.com 218)(Mum), the co-ordinate bench of Tribunal has held that the rent, repairs etc., incurred on the premises relating to R & D activities is eligible for weighted deduction. Accordingly, we hold that the building repairs expenses incurred on the premises relating to R & D activity is eligible for weighted deduction.

4.5 The next item of expenses is Foreign Consultancy expenses of Rs.798.95 lakhs. In the case of USV Ltd (supra), the expenditure incurred on consultancy charges, patent filing charges in foreign countries is held to be eligible for weighted deduction u/s 35(2AB) of the Act. However, the primary requirement is that it is necessary for the assessee to show that those expenses are related to the R & D activity carried on by it. In the instant case, the assessee has paid foreign consultancy charges to the following persons:-

A.A. Thornton & Co.	-	699.85 lakhs
Michael Best & Friedrich LLP	-	99.10 lakhs

		798.95 lakhs
		=====

The assessee has furnished a letter dated March 26, 2007 (Placed at page 43 of paper book) addressed to the ITO in the context of liability of the assessee to deduct tax at source on the above said payments. It is stated therein the payments have been made to A A Thornton & Co in connection with international patent applications and also in Third party infringement cases. Thus, it is not clear as to whether the payments made to A A Thornton & Co is related to R & D activity or not?. We also notice that the nature of payment made to Michael Best & Friedrich LLP is not explained and further, it is not clear as to whether the said payment was related to R & D activity. Hence, we restore this item of expenses to the file of AO for fresh examination. The assessee may furnish necessary

details before the AO to prove that the foreign consultancy charges are related to R & D activity.

4.6 The next item of expenses is R & D Exhibit Batches. According to assessee, this expenditure is incurred in producing final product on trial basis, known as exhibit batches. It is submitted that the expenses incurred on materials alone have been included in the cost of Exhibit Batches. It was stated that other overhead expenses, labour expenses have not been claimed. It is noticed this expenses are in the nature of clinical trial expenses incurred in its manufacturing facility for production of samples for trial purposes. Accordingly, as per the ratio laid down by Hon'ble Gujarat High Court in the case of Cadila Healthcare Limited (supra), this expenses are also eligible for weighted deduction u/s 35(2AB) of the Act.

4.7 The next item of expenses is the salary of CMD & Chairman allocated to R & D activity. The Ld A.R did not advance his argument on this item of expenditure. Accordingly, we reject this claim of the assessee.

4.8 As noticed earlier, there is difference in the quantum of expenses disallowed by the AO and the details furnished by the assessee. It requires reconciliation. Further, the nature and relationship of foreign consultancy charges are also require examination. Accordingly, we restore this issue to the file of the AO for examining it afresh in the light of principles discussed supra.

5. The next issue urged in ground no.5 related to the deduction claimed u/s 80IB/80IC/10B on scrap sales. The Ld A.R did not press this ground and hence the same is dismissed as not pressed.

6. The last issue relates to the disallowance made u/s 14A of the Act. The ITAT had restored this issue to the file of AO for examining it afresh. During the year under consideration, the assessee had earned exempt

income of Rs.10,74,61,024/-. The assessee had disallowed a sum of Rs.10.48 lakhs. In the original assessment proceedings, the AO disallowed interest expenses of Rs.23,26,505/- under Rule 8D(2)(ii) and expenses of Rs.50,48,863/- u/r 8D(2)(iii) of I T Rules, both aggregating to Rs.73,75,369/-. In the set aside proceedings also, the AO sustained disallowance of very same amount of Rs.73,75,369/- u/s 14A of the Act and the Ld CIT(A) also confirmed the same.

6.1 The Ld A.R submitted that the own funds available with the assessee are more than the value of investments and hence no disallowance out of interest expenses is called for u/r 8D(2)(ii) of I T Rules as per the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd (366 ITR 505)(Bom). We notice from the Balance sheet of the assessee as at 31.3.2008 (placed at page 768 of paper book) that the own funds available with the assessee was Rs.3755.82 crores, while the investments stand at Rs.94.75 crores. Hence as per the decision rendered by jurisdictional Hon'ble Bombay High Court in the case of HDFC Bank Ltd (supra), the presumption is that the investments have been made out of own funds and accordingly, no disallowance out of interest expenses is called for. Accordingly, we direct the AO to delete the interest disallowance of Rs.23,26,505/-.

6.2 With regard to expenditure disallowance made u/r 8D(2)(iii) of I T Rules, the Ld A.R submitted that the assessee had worked out the expenditure attributable to exempt dividend income at Rs.10,48,529/-. However, the AO did not examine the same having regard to the books of accounts and hence the AO could not have applied Rule 8D of I T Rules. The present assessment is set aside proceedings and the assessee had only requested before the Tribunal to set aside this issue to the file of the AO, meaning thereby, the assessee's case before the Tribunal was restricted to the computation of disallowance u/s 14A r.w Rule 8D. In the case of Vireet Investments P Ltd (165 ITD 27)(Del SB) has held that , for the purpose of computing average value of investments, only those

investments which have yielded exempt income alone should be considered. Following the same, we direct the AO to compute average value of investments by considering only those investments which have yielded exempt income and accordingly compute the disallowance u/r 8D(2)(iii) of I T Rules.

7. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 16th September, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/09/2024

TNMM/SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai