IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH, AHMEDABAD

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.1867/Ahd/2019
Assessment Year: 2011-12

The Deputy Commissioner of Income Tax, Circle – 1(1)(2), Ahmedabad.	Vs.	M/s. Cadila Pharmaceuticals Limited, 708, Corporate Campus, Sarkhej Dholka Road, Bhat, Ahmedabad – 382 210. **[PAN – AAACC 6251 E]**

ITA No.54/Ahd/2020
Assessment Year: 2011-12

Cadila Pharmaceuticals Limited, 708, Corporate Campus, Sarkhej Dholka Road, Bhat, Ahmedabad – 382 210. **[PAN – AAACC 6251 E]**	Vs.	The Assistant Commissioner of Income Tax, Circle – 1(1)(2), Ahmedabad.
(Appellants)		(Respondents)

Assessee by	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by	Shri Surendra Kumar, Sr. DR
Date of Hearing	01.10.2024
Date of Pronouncement	12.11.2024

O R D E R

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

These cross appeals are filed by the Revenue and Assessee against order dated 24.10.2019 passed by the CIT(A)-1, Ahmedabad for the Assessment Year 2011-12.

2. The Revenue has raised the following grounds of appeal :-

"(1) The CIT(A) has erred in law and facts in not upholding the allocation of Rs.3,51,58,278/-, the pro-rata R&D expenditure on the basis of turnover to Jammu Unit.

(2) The CIT(A) has erred in law and facts in allowing the bad debts claim of Rs.1,19,98,368/- (Rs.97,85,068 + Rs.22,13,300) of the assessee.

(3) It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."

The Assessee has raised the following grounds of appeal :-

"1 On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating the ground of appeal filed by the Assessee in relation to invalidity of notice issued beyond four years from the end of relevant assessment year i.e., it is time barred. It is therefore prayed that Hon'ble Income Tax Appelalate Tribunal (ITAT) to adjudicate the matters not adjudicated by the Ld. CIT(A).

Without prejudice to the above, the Ld. CIT(A) has erred in upholding that there is no change of opinion of Ld. AO and hence conditions under Section 147 of the Act are fulfilled.

(Tax Effect – Nil)

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has also erred in confirming disallowance under Section 36(1)(vii) of the Act in respect of sundry balances written off pertaining to old employees.

Without prejudice to the above, the said amount pertaining to sundry balances written off should be allowed as a business expenditure under Section 37(1) of the Act.

(Tax Effect – Rs.17,45,730/-)

Total Tax Effect – Rs.17,45,730/-"

3. The assessee company is a manufacturer of pharmaceuticals, bulk drugs, various hospital products, disposable items. The assessee company filed return of income on 30.11.2011 declaring total income at Rs. Nil. Thereafter the assessee filed revised return of income on 04.05.2012 declaring loss of Rs. (-) 7,06,58,882/-. The assessee claimed deduction of Rs. 53,25,79,553/- u/s 80IB(4) of the Act on its Jammu Unit. The assessment u/s 143(3) r.w.s. 144C(13) of the Act was finalized on 16.02.2016 after making following disallowance/additions"

i.	Transfer Pricing addition	:Rs. 60,83,440/-
ii.	Disallowance u/s 36(1)(iii)	:Rs. 1,68,88,558/-
iii.	Disallowance u/s 35(2AB)	:Rs. 3,82,99,313/-
iv.	Disallowance u/s 14A	:Rs. 55,64,491/-
v.	Disallowance of deduction u/s 80IB	:Rs.16,34,58,692/-
vi.	Disallowance of Foreign Currency Loss	:Rs.25,39,60,000/-
vii.	Inadmissible expense as per Explanation u/s 37(1)	:Rs.10,89,29,928/-

Thereafter, on scrutiny of the assessment record it was noticed by the Revenue that during the year under consideration the assessee in its revised return of income as claimed deduction of Rs. 53,25,79,553/- u/s 80IB(4) on which the assessee as not allocated the R&D Expenses relating to its Jammu Unit. The Assessing Officer observed that the assessee claimed Rs. 6,90,83,575/- on account of Bad and Doubtful Debts written off in Schedule 18 of Profit & Loss A/c. The assessee had furnished details and bifurcation of bad debits in its CPL Formation, CPL Chemical and CPL Agro Division which aggregates to Rs. 6,90,83,575/-. The assessee submitted supporting evidences i.e. ledger copy, reasons for write off etc for Rs. 5,36,39,355/- which pertains to CPL Formation. However, no supporting evidences in respect of the bad debts of CPL Chemical and CPL Agro Division, which amounts to Rs. 1,76,47,978 (97,85,068 + 78,62,910) were furnished. The case of the assessee for the year under consideration was reopened after duly recording reason and taking approval of the competent authority vide letter dated 23.03.2018. Thereafter, notice u/s 148 of the Income Tax Act, 1961 was issued on 29.03.2018 which was served upon the assessee. In response to notice u/s 148 of the Act, the assessee filed its return of income on 02.05.2018. Thereafter, the assessee vide its letter dated 03.05.2018 requested to provide reasons for reopening the assessment proceedings. The reasons for reopening was provided vide letter dated 10.05.2017. The assessee submitted its objection vide letter dated 10.07.2018 and the same was disposed off vide order dated 09.10.2018 by the Assessing Officer. Subsequently, notice u/s 143(2) r.w.s. 129 of the Act dated 09.10.2018 was issued and served upon the assessee. Similarly, notice u/s 142(1) of the Act dated 09.10.2018 was also served upon the assessee. The assessee filed the reply vide letter dated 18.10.2018 relying upon the details/evidences submitted vide its letter dated 10.07.2018. The

Assessing Officer considered the reply relating to allocation of R&D expenses and made disallowance of Rs. 3,51,58,278/-. The Assessing Officer also made disallowance of Rs. 1,76,47,978/- in respect of bad and doubtful debts.

4. Being aggrieved by the Assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. Firstly, coming to the appeal being ITA No. 54/Ahd/2020 filed by the assessee as the assessee is challenging the validity of reopening which is Ground No. 1 in assessee's appeal.

6. The Ld. AR submitted that the CIT(A) erred in not adjudicating the ground of appeal filed by the assessee in relation to invalidity of notice issued beyond four years from the end of relevant assessment year i.e. it is time barred. The Ld. AR submitted that the reopening sought to be done based on the material already on record. There was no fresh tangible material available after the scrutiny is over. Thus, the reopening in such circumstances is impermissible. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in case of Shanti Enterprise (2016) 76 taxmann.com 184. The Ld. AR further submitted that on the face of the reasons recorded, the Assessing Officer states that for both issues, they are framed on perusal of the case records itself. Thus, there is no case of any failure full and true disclosure on part of the assessee. The Ld. AR submits that Proviso to Section 147 applied and the notice is time barred. The Ld. AR relied upon the decisions of various High Courts including the Hon'ble Gujarat High Court and Tribunal in cases of E Infochips 99 taxmann.com 84 (Guj), Lalitha Chem 364 ITR 213 (Bom), Ashok Pesticides 49 SOT 98 (Ahd), Jivraj Tea Ltd. (2016) 386 ITR 298 (Guj), Gujarat Ambuja Exports Ltd. (2021) 129 taxmann.com 258 (Guj). The Ld. AR further submitted that specific questions were raised by the Assessing Officer and answers were given at the time of scrutiny by the assessee. The Assessing Officer has also made certain disallowance and discussion in the assessment order itself. The Assessing Officer cannot further make disallowance on same issue u/s 147 of the Act relating to disallowance u/s 80IB and Bad Debts. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in case of Cliantha Research Ltd. (2013) 35

taxmann.com 61(Guj) and Premium Finance (P.) Ltd. (2016) 73 taxmann.com 369. The Ld. AR further submitted that the assessment has been reopened due to Audit Objection that was not acceptable to the Assessing Officer and this was specifically pointed out by the assessee while filing the objections and the same was not denied by the Assessing Officer while disposing of the objections. The Ld. AR relied upon the decisions of Hon'ble Gujarat High Court in case of Shilp Gravures Ltd. 40 taxmann.com 309 (Guj) and Jagat Jayantilal Parikh 355 ITR 400 (Guj). The Ld. AR further submitted that there is no escapement of income and issues raised in the reasons do not affect the Book Profit which has remained unchanged. The Ld. AR further submitted that Explanation 1 to Section 147 does not apply and relied upon the decisions in case of Oracle India (P) Ltd. 397 ITR 480 (Del) and Vodafone Idea Ltd. (2022) 135 taxmann.com 169 (Bom.)

7. The Ld. DR relied upon the assessment order and submits that the reopening was valid and the Assessing Officer has followed the procedure as per Income Tax Act, 1961.

8. We have heard both the parties and perused all the relevant material available on record. The Hon'ble Jurisdictional High Court held in case of Shanti Enterprise (supra) as under:

"11.The contention of the Revenue that the impugned action is within the period of four years and, therefore, it is always open for the authority to reopen the assessment cannot be accepted. Simply because the action is within the period of four years would not give a leverage to the authority to just go on repeating the exercise of examining the issue which has already been gone into. There appears to be no tangible material distinct from what was made a part of the assessment proceedings and, therefore, reopening of the assessment is not permissible. The proposition of law is aptly clear, as stated above and, therefore, in our opinion, permitting the authority to reopen the assessment would not valid. We cannot shut our eyes over the aforesaid circumstance simply because it is within the period of four years and having regard to the decisions of Apex Court which propounded that the Courts would be failing to perform their duty, if reliefs were refused without adequate reasons, we see that the action on the part of the respondent authority is impermissible in view of aforesaid set of circumstance. The observations made by the Apex Court in case of Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 at page 195 head-note (v) are worth to be reproduced hereafter:-

"That though the writ of prohibition or certiorari would not issue against an executive authority, the High Courts had power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority without jurisdiction subjected, or was likely to subject, a person to lengthy proceedings and unnecessary harassment, the High Courts would issue appropriate orders or directions to prevent such consequences. The existence of such alternative remedies as appeals and reference to the High Court was not, however, always sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. When the constitution conferred on the High Courts the power to give relief it becomes the duty of the Courts to give such relief in fit cases and the courts would be failing to perform their duty if relief were refused without adequate reasons."

12. Considering the aforesaid position prevailing on record, we are of the opinion that the action of reopening of assessment is invalid and not permissible in view of settled position of law and, therefore, relief sought deserves to be granted by quashing and setting the notice for reopening and, therefore, is hereby quashed and set aside."

In case of Lalitha Chem Industries (P) Ltd. vs. DCIT (2014) 365 ITR 213 (BomHC), the Hon'ble Bombay High Court held as under:-

"16.The reliance by the revenue upon the decision of Delhi High Court in Honda Siel Power Products Ltd. (supra) is misplaced. In the above case the revenue sought to reopen an assessment beyond the end of four years from the end of the relevant Assessment year 2000-2001 on the ground of failure to fully and truly disclose all material facts during the original assessment proceedings. In its return of income as originally filed no details with regard to proportionate expenses relatable to tax free and other income were finished and deduction of all expenses from taxable income as claimed. The case of the petitioner therein was that there was no obligation when the return was filed in 2000 to disclose the proportionate expenses relating to tax free income as Section 14-A of the Act was not in the statute. However the court held that Section 14-A of the Act was brought on the statute on 1 April 2001 w.e.f. 1962. Thus during the course of assessment proceedings which culminated with an Assessment order on 30 November 2003, the petitioner therein was required to disclose the facts during the Assessment Proceedings. Thus the court held there was a failure to disclose material facts truly and fully leading to the court not interfering with the notice for reopening under section 148 of the Act even when the same was beyond a period of four years from the end of the relevant assessment year. Besides unlike in the case of Honda Siel Power Products Ltd. (supra) where no disclosure of expenses incurred in respect of tax free income was at all made, in this case the petitioner had

disclosed the allocation of expenditure between the non 80IB unit and 80IB unit in its profit and loss accounts and would obviously been subject of scrutiny while considering the claim for deduction under Section 80IB of the Act.

17. Thus we are of the view that the petitioner had disclosed fully and truly all material facts necessary for assessment. Even if it is assumed that the expenses were not allocated appropriately between the Tarapur Unit (non 80IB unit) and Silvasa unit (80IB unit) as contended by the revenue, yet the same was accepted by him while considering the deduction under Section 80IB of the Act. To permit the present proceedings for reassessment would be to permit the reopening proceedings on account of change of opinion. If re-assessment is allowed, on the basis of said change of opinion, it would amount to review which is not permissible under the law.

18. In view of the above, we are of the view that the notice dated 28 March 2013 under Section 148 of the Act, seeking to re-open the assessment for the Assessment Year 2006-07 as well as the order dated 1 August 2013 rejecting the petitioner's objections to the re-opening of the assessment are bad in law. Therefore, the impugned notice dated 28th March 2013 and order dated 1 August 2013 are quashed and set aside."

From the perusal of these decisions relied by the Ld. AR it categorically held that once the issues have been dealt in the original assessment under Section 143(3) r.w.s. 144C(13) then the reopening on the very same issues cannot be taken once again for reopening u/s 147 of the Income Tax Act ignoring the submissions and the evidence put up by the assessee in the original assessment proceedings. This amounts to the different opinion without pointing out any new fresh material on record and thus, Section 147 cannot be invoked in such circumstances. In fact, the assessee's records in the original assessment proceedings categorically submits the separate accounts for its unit located in Jammu for which the assessee herein has claimed deduction u/s 80IB(4) of the Act as well as deduction u/s 35(2AB) of the Act including R&D Revenue expenses. These aspects were already verified in the original assessment proceedings. Thus, the reopening itself becomes void ab initio and bad in law. Therefore, Ground No. 1 of the assessee's appeal is allowed.

9. As regards to Ground No. 2 of the assessee's appeal, the same is on merit, since we have already held that the reopening is bad in law. The assessment order

dated 30.10.2018 does not sustain and the addition also will not sustain. Thus, Ground no. 2 is not adjudicated at this juncture.

10. Now coming to Revenue's appeal being ITA No.1867/Ahd/2019, the same also does not survive as the reopening itself is bad in law. Hence, Revenue's appeal is dismissed.

11. In the result, appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 12th November, 2024.

Sd/-	*Sd/-*
(MAKARAND VASANT MAHADEOKAR)	**(SUCHITRA KAMBLE)**
Accountant Member	Judicial Member

Ahmedabad, the 12th November, 2024

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Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad