| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4210/Mum/2024
Assessment Year: 2020-21

Rallis India Limited, Mumbai C/o Kalyaniwalla & Mistry LLP Esplanade House 2nd Floor 29, Hazarimal Somani Marg Fort Mumbai - 400001 **[PAN: AABCR2657N]**	Vs	**The Asst. Commissioner of Income tax, Circle-8(1)(1), Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri M.M. Golwala, A/R
Revenue by :	Shri Pankaj Kumar, CIT, D/R

सुनवाई की तारीख/**Date of Hearing : 21/11/2024**
घोषणा की तारीख /**Date of Pronouncement: 13/12/2024**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 09/07/2024 framed u/s 143(3) r.w.s. 144C(13) of the Act, pertaining to AY 2020-21.

2. The grievance of the assessee reads as under:-

"1. Both lower authorities erred in making a Transfer Pricing adjustment amounting to Rs.5,66,00,731/-.

2. Both lower authorities erred in rejecting the Transfer Pricing study carried out by the Applicant Company for determining the arm's length price of the transaction.

3. Both lower authorities erred in holding that Tata Chemicals International Pte Ltd had very little/ no role to play in the transaction under question, without understanding the facts and the business purpose behind the transaction.

4. Both lower authorities erred in ignoring the Appellant company's submissions as regards application of "other method" through savings in interest costs, due to prompt and timely payments by TCIPL, which has ultimately resulted in a higher profit on the transaction.

5. Both lower authorities erred in disallowing a further amount of Rs. 1,83,46,780/- u/s.14A read with Rule 8D(2).

6. The Appellant submits that the Assessing Officer recorded no "objective satisfaction" while making an addition to the disallowance u/s 14A already made by the Appellant in its Return of Income.

7. Without prejudice to ground nos. 5 & 6, the Appellant submits that disallowance of expenditure u/s. 14A be restricted to 2% of the dividend income earned by the Appellant, following appellate orders in the assessee's own case in earlier years.

8. Without prejudice to ground nos. 5 & 6, the Applicant submits that the disallowance is highly excessive and arbitrary.

9. Without prejudice to ground nos. 5, 6, 7 & 8, the appellant submits that no disallowance is called for u/s.14A read with Rule 8D in respect of those investments on which no dividend income has been received during the year.

10. Both lower authorities erred in including, in Book-Profit (u/s 115JB), the amount of disallowance made u/s 14A. The Applicant submits that the Assessing Officer be directed to delete the addition to Book-Profit in respect of disallowance u/s 14A.

11. Both lower authorities erred in disallowing the weighted deduction for revenue scientific expenditure by way of expenditure incurred for scientific research on approved in-house research and development facility u/s 35(2AB) of the Act, aggregating to Rs.21,58,10,103/-.

12. Both lower authorities erred in disallowing the weighted deduction u/s 35(2AB) of the Act, aggregating to Rs.48,00,835/-.

13. Both lower authorities erred in misreading and misinterpreting the provisions of section 35(2AB) of the Act.

14. The Assessing Officer erred in disallowing the Applicant's claim u/s 35(2AB) by holding that the non-submission of report in Form 3CL by the Department of Scientific Research, would disentitle the Applicant from its claim u/s 35(2AB).

15. Both lower authorities erred in disregarding the decision of the jurisdictional High Court in the case of Astec Lifesciences Ltd v. CIT (WP No 1790 of 2022).

16. The Assessing Officer erred in restricting the claim of MAT credit to Rs.19.97 crores as against Rs.27.14 crores, claimed by the Appellant company.

17. The Appellant company denies any liability of interest under sections 234A, 234B & 234C, which has been erroneously levied by the Assessing Officer.

18. The Assessing Officer erred in not granting credit for tax deducted at source to the tune of Rs.67,900/-.

19. The Assessing Officer erred in not granting credit for advance tax paid to the tune of Rs.3,77,21,258/-

The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the grounds of appeal before or at the time of hearing, as they may be advised from time to time."

3. Ground Nos. 1 to 4 relates to the Transfer Pricing (TP) adjustments.

4. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidence brought on record, duly considered in light of Rule 18(6) of the ITAT Rules, 1963.

5. Briefly stated the facts of the case are that the assessee is engaged in the business of manufacturing and selling of agrochemicals including pesticides and is a registered company under the India Companies Act. The assessee is a group entity of Tata Enterprise and is in the agriculture inputs industry. It has four production facilities of which two are located in Gujarat and two in Maharashtra.

6. A reference u/s 92CA(1) of the Act was made to DC/ACIT, TP 3(3)(1), Mumbai, for computation of ALP in relation to the international transactions. During the year the assessee has sold goods to its AE, Tata Chemicals International Pte Ltd. Singapore (TCIPL). These goods are sold on "Bill To Ship To Model" basis i.e., the billing is done to TCIPL and the goods are sold directly to third party i.e., Adama Agan Ltd. The international transactions relating to sale of goods was to the tune of Rs.1,77,65,21,572/- and the assessee adopted other method as the most appropriate method.

7. The peculiar facts are that from April to 29th August, the assessee sold directly to Adama Agan Ltd. (AAL), but post 29th August, the assessee sold goods through its AE i.e., TCIPL. When the goods were sold directly by the assessee, the credit period allowed to AAL was 150-180 days for the pesticides Metribuzin (Metri) and Pendimenthalin (Pendi) whereas the credit period allowed to TCIPL is immediately on receipt of invoice or after 7-10 days of receipt of invoice. It was explained that due to the differed in credit period, Rallis India had to discount the bills from the banks and for which Rallis India had to pay the bill discounting charges. Justifying its sales through TCIPL, it was explained that considering the bill discounting charges, the cost of working capital etc., there is net benefit on sales to TCIPL. The assessee also furnished the entire party-wise calculation on the benefit of sales through TCIPL thereby justifying the transactions with respect to the sale of goods to AE. Consistent with the arm's length standard from the Indian transfer pricing perspective.

7.1. The contentions and submissions of the assessee did not find any favour with the TPO who was of the firm belief that if the assessee had sold the goods directly to AAL, it would have sold it at a value of Rs.1,83,13,86,163/- whereas, the assessee has sold the goods through its AE, TCIPL worth Rs.1,77,65,21,572/-. Thus, the difference of Rs.5,48,64,591/- is revenue of AE, TCIPL and, therefore, the assessee has incurred a loss of Rs.5.48 Crores. The AO was of the opinion that the prices at which the AE, TCIPL had sold the goods to AAL, should be considered as ALP. This is the rate at which the assessee would have

sold to third party under an uncontrolled scenario. The TPO, on the strength of this belief proposed adjustments as under:-

		AE-TCIPL	TCIPL-Adama Agan (ALP)		Difference in Prices-Adjustment Proposed		
Product	**Qty**	**Export Value (USD)**	**Export Value (USD)**	**value**	**Value (USD)**	**Exchange Rate as on 31.03.2020**	**Value (In INR)**
Pendimethalin Powder – 550KG	13,55,200	85,21,040	13,55,200	88,14,432	293,392	75.38	22,115,889
Metribuzin Tech – 500 KG (Jumbo Bag)	560,000	15,830,720	560,000	16,288,200	457,480	75.38	34,484,842
Total Adjustment							**5,66,00,731**

7.1.1. And, accordingly proposed upward adjustment of Rs.5,66,00,731/-.

7.2. The objections raised by the assessee were dismissed by the DRP and the final assessment order was framed accordingly.

8. Before us, the ld. Counsel for the assessee drew our attention to the working capital cost, explaining the savings done by the assessee in entering the impugned transactions through its AE, TCIPL. It is the say of the ld. Counsel that both the lower authorities have completely misread the statement furnished by the assessee. The ld. Counsel for the assessee, vehemently stated that both the TPO & DRP have completely ignored the risk factor as explained by the assessee. The ld. Counsel, reiterated that earlier when it was selling directly to AAL, the credit period ranged from 150 to 180 days thereby permitting the assessee to discount the bills at a cost. When the goods were sold through AE, TCIPL, the assessee received payments within 8 to 10 days as explained

in the chart thereby showing that there was substantial savings in the interest minimizing the credit risk arising from non-payment of dues by customers. The TPO and the DRP also ignored the market risk as now the AE is responsible for carrying out all the sales and marketing related activities for the products. Thus, the assessee does not bear the market risks. The ld. Counsel for the assessee concluded by saying that the TP adjustment made by the AO is unwarranted and uncalled for in the peculiar facts and circumstances of the case.

8.1. Per contra, the ld. D/R strongly supported the findings of the TPO.

9. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee was selling goods directly to AAL. The credit period was between 150-180 days and the assessee was bearing the cost of bill discounting, credit risk arising from non-payment of dues by customers and also market risk where the prices keep on fluctuating in the international market. Post 29th August, when the assessee started selling its goods through its AE, TCIPL, the actual days of credit were between 5-21 days with no credit risk and no market risk as both have been shifted to the AE, TCIPL.

9.1. We have given a thoughtful consideration to the working capital cost chart exhibited at page 136 of the paper book and undisputedly we find that the benefit in working capital cost is at Rs. 6,17,74,577/- whereas the difference in selling price is Rs.5,48,64,591/-. Net benefit being Rs.69,09,987/-.

9.2. The following observations of the DRP are misplaced against the facts of the case:-

> *"But the same has to be demonstrated based on actual savings accruing to the assessee by juxtaposing the alleged loss due to direct sale (when the arrangement was not in place) and the so called profit accruing as a result of the arrangement. This requires the following details:-*
>
> - *Actual duration taken for payment by AE in case of arrangement*
> - *Interest loss in the case od direct billing with actual cash flow*
> - *Interest bearing and non interest bearing funds available with the assessee*
> - *Advances, loans advanced to the AE by assessee, if any*
>
> *6.3.5. These details have not been submitted by the assessee and hence the notional interest gain derived by the assessee cannot be taken as an acceptable adjustment as mandated by the Rule 10B(10(a)…"*

9.2.1. As mentioned hereinabove, as per the chart exhibited at page 136, the assessee has clearly demonstrated the benefit in saving of interest. From the chart, it can be seen that the actual difference of credit when the sales are made by AE to AAL, is much less than the credit period when sales were made by the assessee directly to AAL. Since all the apprehensions of the DRP has been explained in the chart exhibited at page 136, the impugned TP adjustment was uncalled for on the facts mentioned hereinabove. Therefore, we direct the AO/TPO to delete the impugned TP adjustment. Ground Nos. 1 to 4 are allowed.

10. Ground Nos. 5 to 9 relate to the addition on account of disallowance made u/s 14A r.w.r. 8D.

10.1. The assessee has challenged the impugned disallowance on the ground that the AO has nowhere recorded any satisfaction for making the impugned disallowance nor the AO has discussed anywhere the *suo moto* disallowance made by the assessee. It was explained that the only tax-free receipt is the dividend income for which no amount of expenditure has been incurred by the assessee towards earning of dividend income. It was explained that the dividend are directly credited to the assessee's bank account through ECS. It was further

explained that by way of abundant caution, the assessee has *suo moto* disallowed Rs.18,61,000/- which represents 1/10th salary of the CFO, Treasury head and Manager Treasure.

11. Before us, the ld. Counsel for the assessee placed strong reliance on the decision of the Hon'ble Bombay High Court in the case of *PCIT vs. Godrej & Boyce Mfg Co. Ltd.* reported in *(1029 of 2018) (Bom HC)* and *PCIT vs. Tata Capital Ltd. (1081 of 2018) (Bom HC).* Both these decisions are by the Hon'ble Jurisdictional High Court of Bombay and further relied upon the decision of the Hon'ble Supreme Court in the case of *South Indian bank vs. CIT (438 ITR 1)(SC).*

12. Per contra, the ld. D/R supported the findings of the AO.

13. We have carefully considered the orders of the authorities below. The undisputed fact is that the assessee has own interest free funds to the tune of Rs. 1409 Crores and has earned cash profits during the year under consideration to the tune of Rs.239.27 Crores. The interest free own funds are far more in excess of the investments and the cash flow statement already on record suggest that no borrowings have been invested in purchasing of investments. We further find that nowhere the AO has recorded his dis-satisfaction insofar as the *suo moto* disallowance of Rs. 18.61 Lakhs is concerned. The AO has simply stated that some expenses need to be disallowed for earning exempt income without pointing out why the *suo moto* disallowance made by the assessee is not sufficient for earning the exempt income. On identical set of facts, the Hon'ble High Court of Bombay in the case of *Godrej & Boyce Mfg Co. Ltd. (supra),* has held as under:-

> *"11. In the present case, the assessee had earned an exempt income of Rs. 84,30,37,423/- from shares and mutual funds and submitted a computation of*

> *inadmissible expenditure u/s 14A amounting to Rs. 13,66,635/-. The assessee claimed that the disallowance made u/s14A was as per the books of account attributable to earning of exempt income! On a perusal of the assessment order we find that there is no discussion by the AO with regard to the computation of inadmissible expenditure made by the assessee forming part of the return of income. Further, the AO has not recorded any satisfaction that the working of inadmissible expenditure u/s14A is incorrect with regard to the books of account of the assessee. The provision u/s 14(2) does not empower the AO to apply Rule 8D straightaway without considering the correctness of the assessee's claim in respect of expenditure incurred in relation to the exempt income. We agree with the view of the ITAT that in the present case the AO has neither examined the claim in respect of expenditure incurred in relation to exempt income of the assessee nor has recorded any satisfaction with regard to the correctness of assessee's claim with reference to the books of account. Consequently, the disallowance made by applying the Rule 8D is not only against the statutory mandate but contrary to the legal principles laid down. In our view too, the CIT (A) has rightly deleted the addition made on account of interest expenditure as the assessee had sufficient interest free surplus fund to make the investment and the ITAT has rightly deleted the disallowance made by the AO us 14A r.w Rule 8D. Consequently we hold that, the interest expenditure cannot be disallowed u/s14A r.w. Rule 8D(2)(ii) under any circumstances."*

13.1. Similar view was taken by the Hon'ble High Court of Bombay in the case of *Tata Capital Ltd. (supra)*. The relevant findings read as under:-

> *"7. We agree with the finding of the CIT(A) and the ITAT that though the AO has stated that Assessee's explanation is not acceptable, he has not given reasons why it was not acceptable to him. Subsection (2) of Section 14A and Rule 8D provides that if the Assessing Officer is not satisfied with the correctness of the claim in respect of expenditure made by Assessee in relation to income which does not form part of the total income under the Act, he shall determine the amount of expenditure in relation to such income in accordance with the provisions prescribed. The most fundamental requirement, therefore, is the Assessing Officer should record his dissatisfaction with the correctness of the claim of Assessee in respect of the expenditure and to arrive at such dissatisfaction, he should give cogent reasons."*

14. Considering the facts in light of the judicial decisions discussed hereinabove, we do not find any merit in the impugned disallowance made u/s 14A of the Act. The same is directed to be deleted. Accordingly, Ground Nos. 5 to 9 are allowed.

15. Ground No. 10 becomes otiose.

16. Ground Nos. 11 to 15, relate to the denial of deduction u/s 35(2)(ab) of the Act. While scrutinising the return of income, the AO

found that the assessee has claimed Rs. 71,76,25,402/- towards expenditure on scientific research u/s 35(1)(i), 35(1)(ii), 36(2AB) of the Act.

16.1. The AO noticed that the assessee has not filed certificate from DSIR in Form 3CL for claiming the above expenditure. Accordingly, showcause notice was issued to the assessee. It was explained that under Rule 6 of the Income Tax Rules, 1962, the Department of Scientific & Industrial Research (DSIR), is required to submit its report to the Income Tax Authorities in Form 3CL and there is no requirement of the assessee to file the said Form but From No. 3CL is required to be submitted by the DSIR, therefore, failure to file the same cannot be attributed to the assessee. This contention of the assessee did not find any favour with the AO who was of the firm belief that as the assessee failed to furnish the certified copy of the Form 3CL issued by the Secretary, DSIR, claim of the assessee lacks any merit. The AO accordingly denied the claim of deduction by making addition of Rs. 22,06,10,038/-. The denial was affirmed by the DRP.

17. Before us, the ld. Counsel straightaway drew our attention to the decision of the Hon'ble Bombay High Court in the case of *Astec Lifesciences Ltd. vs. ACIT (WP 1790 of 2022) (Bom. HC)* and pointed out that on identical set of facts, the Hon'ble High Court held as under:-

> *"13. As regards the deduction under Section 35(2AB) of the Act, admittedly Form 3CL duly filled in and certified by the Secretary of Department of Scientific and Industrial Research to Director General (Income Tax Exemptions) under Section 35(2AB) of the Act has to be submitted by the Department of Scientific and Industrial Research directly to the Income Tax Authorities. The allegation of failure to file the said Form cannot be attributed to petitioner."*

18. Similar view was taken by the Hon'ble High Court of Gujarat in the case of *CIT vs. Sun Pharmaceutical Industries Ltd. (250 Taxman 270) (Guj. HC)*. The relevant findings read as under:-

> *"….One of the main grounds which appealed to the Commissioner was that the prescribed authority had not sent the intimation in Form 3CL to the Revenue, in absence of which, according to the Commissioner, claim could not have been accepted.*
> ***4.** The assessee approached the Tribunal. The Tribunal by the impugned judgment allowed the appeal inter-alia holding that the prescribed authority shall submit its report in relation to the approval of the in-house research and development in Form 3CL to the Director General of Income Tax (Exemption) within 60 days of its granting approval. In the opinion of the Tribunal, same was merely in form of intimation to be sent by the prescribed authority to the department. In case of the assessee, the research and development activity having already been approved in Form 3CM, the assessee thereafter, had no further role to play in the inter-departmental correspondence. The Tribunal therefore, held that the assessee was entitled to deduction on the capital and revenue expenses incurred on in-house research and development amounting to Rs.237,77,05,310/-.*
> ***5.** Having heard learned counsel for the parties and having perused the orders on record, we are broadly in agreement with the view of the Tribunal. Undisputedly, the research and development facility set up by the assessee was approved by the prescribed authority and necessary approval was granted in the prescribed format. The communication in Form 3CM was thereafter, between the prescribed authority and the department. If the same was not so, surely, the assessee cannot be made to suffer. To this extent, the Tribunal was perfectly correct and the Commissioner was not, in observing that in absence of such certification, claim of deduction under section 35(2AB) was not allowable. However, neither the prescribed authority nor the Assessing Officer has applied the mind as to the expenditure, be it revenue or capital in nature, actually incurred in developing the in-house research and development facility. To the limited extent, the Commissioner desired the Assessing Officer to verify such figures, we would allow the Assessing Officer to do so. In other words, in principle, we accept the Tribunal's reasons and conclusions. Merely because the prescribed authority failed to send intimation in Form 3CL, would not be reason enough to deprive the assessee's claim of deduction under section 35(2AB) of the Act. However, in facts of the present case, it would be open for the Assessing Officer to verify the actual expenditure incurred by the assessee."*

19. Considering the facts of the case in light of the judicial decisions discussed hereinabove and taking a leaf out of the decision of the Hon'ble High Court in the case of *Sun Pharmaceuticals Industries Ltd. (supra),* in principle we accept the contention that, communication is between the prescribed authority and the Department and for the

default in same, the assessee cannot be made to suffer. However, it would be open for the AO to verify the actual expenditure incurred by the assessee. With these directions, Ground Nos. 11 to 15 are allowed.

20. Ground Nos. 16 & 18 are not pressed and, therefore, the same are dismissed as not pressed.

21. Ground No. 17 is allowability of interest. The AO is directed to levy interest as per the provisions of law and Ground No. 19 is in respect of non-granting of advance tax paid. The AO is directed to verify the same from the *challan* and also from the income-tax portal and allow the same after verification.

22. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 13th December, 2024 at Mumbai.

Sd/-	*Sd/-*
(RAJ KUMAR CHAUHAN)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 13/12/2024
SC Sr.Ps

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , **आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai