

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.820 & 821/Hyd/2024**
(निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09)

Dr. Reddy's Laboratories Limited, Hyderabad. PAN:AAACD7999Q	Vs.	Dy. Commissioner of Income Tax, Circle-8(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri P S R V V Surya Rao, C.A.	
राजस्व द्वारा / Revenue by:	Ms. M. Narmada, CIT-DR	
सुनवाई की तारीख / Date of hearing:	09/12/2024	
घोषणा की तारीख / Pronouncement:	20/12/2024	

आदेश/ORDER

PER BENCH :

These appeals are filed by Dr. Reddy's Laboratories Limited ("the assessee"), feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), both dated 27.06.2024 for the A.Ys. 2007-08 and 2008-09. Since identical issues are involved in these appeals, they are heard together and consolidated order is being passed for the sake of convenience and brevity.

ITA No.820/Hyd/2024 for A.Y. 2007-08

2. The assessee has raised the following grounds :

“ 1. The learned CIT(A) erred both on facts and in law in confirming the additions made by the assessing officer ignoring the explanations offered and submissions made.

2. The learned CIT(A) erred in not following the directions of ITAT in respect of claim u/s 35D of Income Tax Act on ADS issue expenses whereas the direction is to examine the claim denovo. He erred in considering and allowing only the expenses incurred on KPMG fee paid on proportionate basis ignoring all other expenses.

3. The learned CIT (A) erred in not considering submission made during the hearing and upholding AO's Order on disallowance of travel, stay, participation fee in the pharmaceutical conferences etc without appreciating the fact that the expenditure is incurred in connection with the business.

4. The learned CIT(A) erred in dismissing the ground of appeal pertaining to interest u/s 220(2) by treating the ground as not admissible. The learned CIT(A) failed to appreciate the submissions of assessee to treat the assessee as not in default for the purpose of section 220 of the Act.

5. The learned CIT(A) erred in not adjudicating ground of appeal pertaining to interest u/s 234C.

6. The learned CIT(A) erred in not adjudicating ground of appeal pertaining to interest u/s 234D.

7. Appellant reserves the right to add/modify any grounds during the course of the proceeding before ITAT.”

3. At the outset, the Learned Authorised Representative (“Ld. AR”) submitted that, there are 7 grounds raised in this appeal. He further submitted that, ground nos.1 & 7 are general in nature, ground nos.5 & 6 are consequential in nature. The assessee is not pressing ground no. 3 as the issue is covered by decision of Hon’ble Supreme Court in the case of Apex Laboratories Pvt. Ltd. Vs. DCIT, 135 taxmann.com 286 (2022). Therefore, these grounds do not require any separate adjudication. With regard to ground no.2, the Ld. AR submitted that, this is the second round of appeal of the assessee before this Hyderabad bench of ITAT. Earlier this bench of ITAT vide its order in ITA Nos.2229/Hyd/2011 and 85/Hyd/2013 dated 2.1.2017 had set aside some issues with certain directions to the file of Learned Assessing Officer (“Ld. AO”). The directions of the ITAT corresponding to the present ground of appeal i.e. ground no.2 of the assessee are reproduced as under :

“ **2.** Disallowance Of amortized notional capital cost of ESOPs : *The relevant extracts in the order of the ITAT at Para 22 & 23 of page no. 16 & 17 are reproduced below:*

Para 22 : Having regard to the rival contentions and the material on record, we find that this is covered in favour of the assessee by the decision of the Special Bench of ITAT in the case of Biocon Ltd. vs. DCIT (cited Supra) wherein it was held that the ordinary equity shares. As

seen from Page 107 of the PB filed before us, such capital raised has been utilized by advancing loans to LACO Holding Ltd. and APR LLC of the total amount of Rs. 10,38,984/-, Thus, it can be seen that the entire capital raised by way of ADS has been advanced to the subsidiaries. Therefore, the assessee's contention that the funds raised on ADS issue have been used towards working capital requirement of the subsidiaries is not entirely correct, Further, it is also seen that the ADS issue has increased the share capital of the assessee and therefore, the capital base of the assessee company has increased. We are, therefore, in agreement with the findings of the DRP that where the expenditure has been incurred for increasing the capital base of the company, the said expenditure is capita/ in nature. The Hon 'ble Supreme Court in the case of Punjab State Industrial Dev. Corpn Ltd. (cited Supra) has clearly held that though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the assessee and may also help in the profit making, the expense incurred in that connection still retain the character of the capita/ and hence the expenditure is directly related to the expansion / capital base of the company. Therefore, we see no reason to interfere with the assessment order on this issue. However, as regards alternate contention of the assessee that the same should be allowed u/s 35D of the Act, we find that the AO as well as DRP have disallowed the claim of the assessee on the ground that the assessee has no furnished the details of the said expenditure and also as to how the assessee has satisfied condition of cl. (c) of sub section 2 of 35D of the Act. We find that at page No. 390 of the Paper Book, the assessee has given the details of the ADS issue expenditure and at page 107 of the paper book in Schedule-9 to the notes to the a/c, wherein the explanation as to how the funds have been utilized is given. Therefore, we are of the opinion that the AO and the DRP ought to have verified the said expenditure before making the disallowance. In view of the same, we deem it fit and proper to remand the issue to the file of the AO for denovo consideration in

accordance with the law, more particularly in view of the decision of the Delhi Bench of the Income Tax Appellate Tribunal in the case of Chiantrust Commercial Bank vs ADIT reported in (2007) 13SOT 485 (Del.) and also the decision of the Hon 'ble Supreme Court in the case of India Cements, reported in 60 1TR 52(SC). Therefore, the Ground of appeal No. 5 is partly allowed for statistical purpose. »

The Ld. AR further submitted that, Hyderabad bench of ITAT had made a direction to Ld. AO to verify the American Depository Share (“ADS”) issue expenses and to allow the same in accordance with the provisions of section 35D of the Income Tax Act, 1961 (“the Act”). However, the Ld. AO as well as Ld. CIT(A) without verifying the same dismissed the claim of the assessee. Therefore the Ld. AR prayed before the bench to allow the claim of the assessee.

4. Per contra, the Learned Department Representative (“Ld. DR”) submitted that, the assessee only produced the copy of annual statement of account before the Ld. AO, which was already filed by the assessee during the original assessment proceedings u/s.143(3) of the Act. In spite of opportunity provided to the assessee, no evidence in support of their claim u/s.35D of the Act on account of ADS issue expenses was made available to the Ld. AO. Consequently, the Ld. AO having no

other option left with him, dismissed the claim of the assessee, as per his observation under page nos.8 & 9 of his order passed u/s.143(3) r.w.s. 254 on 29.12.2017. The Ld. DR further submitted that, in spite of specific direction of the Hyderabad bench of ITAT, even in second round of litigation, the assessee decided not to file the necessary evidences in support of his claim u/s.35D of the Act. It means that, the assessee has no case on merits and accordingly this ground of appeal of the assessee is liable to be dismissed.

5. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. We have gone through the relevant portion of the order of Hyderabad bench of ITAT, the Ld. AO and Ld. CIT(A) reproduced herein above. It is abundantly clear that, in spite of specific direction of Hyderabad bench of ITAT, the assessee could not produce any documentary evidences in support of its claim before the revenue authorities. Even during this appellate proceedings also, the assessee did not produce any such documentary evidences in support of its claim. It is decided law that to claim any deduction under the Act, the assessee has to

justify its claim with adequate documentary evidences. In the present case, before us, the assessee failed in its duty to justify its claim with adequate documentary evidences. Accordingly, we dismiss this ground of the assessee. Accordingly, ground no.2 of the assessee is dismissed.

6. Ground no.4 of the assessee is related to charging of interest u/s.220(2) of the Act by the Ld. AO. The Ld. AR submitted that the Ld. CIT(A) dismissed their claim in limine, contending that, the issue is not emanating from the order of Ld. AO, against which the assessee has filed the appeal before Ld. CIT(A). The relevant portion of the order of Ld. CIT(A) in this regard is reproduced as under :

“ 6.3 Ground No. 6 deals with consequential order levying interest u/s 220(2) of the Act by the AO, treating the assessee as assessee in default for the purpose of section 220 of the Act, by completely ignoring the letters of assessee to stay or alternatively adjust demand against the refund due to the assessee.

6.3.1 The current appeal filed by the appellant pertains to addition made in the assessment order dated 29.12.2017. Interest u/s 220(2) is not a part of the said assessment order and hence it cannot be adjudicated upon. Hence this ground of appeal is dismissed.”

Accordingly, the Ld. AR prayed before the bench to delete the interest charged by the Ld. AO u/s. 220(2) of the Act.

7. Per contra, the Ld. DR relied on the order of Ld. CIT(A) and prayed before the bench to dismiss the appeal of the assessee.

8. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. We have gone through the para no.6.3.1 of the Ld. CIT(A) reproduced above, wherein the Ld. CIT(A) dismissed the claim of the assessee on the ground that the issue raised by the assessee is not emanating from the order of Ld. AO against which the appeal has been filed by the assessee. We have also gone through the order of Ld. AO, which is the foundation of the appeal before us. We did not find any issue emanating from the order of Ld. AO with regard to ground no.4 of the assessee. Therefore, we are of the considered opinion that, the assessee can file appeal before the Ld. CIT(A) only on the grounds which are emanating from the order of Ld. AO. In this case, the ground regarding charging of interest u/s.220(2) of the Act is not emanating from the order of Ld. AO. Hence, in our considered opinion the assessee is not eligible to raise this ground before the Ld. CIT(A). Consequently, we do not find any infirmity in the

order of Ld. CIT(A). Accordingly, we dismiss this ground of the assessee.

9. In the result, the appeal of the assessee in ITA No.820/Hyd/2024 is dismissed.

ITA No.821/Hyd/2024 for A.Y. 2008-09.

10. As per the submission made by the Ld. AR, the solitary issue involved in this appeal is regarding the charging of interest u/s. 220(2) of the Act by the Ld. AO. We have already discussed and given our finding on the same issue in ITA No.820/Hyd/2024 at para no.8 above. On the basis of our said finding, we dismiss the appeal of the assessee in ITA No.821/Hyd/2024.

11. To sum up, both the appeals of the assessee are dismissed.

Order pronounced in the open Court on 20th Dec., 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.
Dated: 20.12.2024.

* Reddy gp

Copy of the Order forwarded to :

1. Dr. Reddy's Laboratories Ltd., 8-2-337, Road
No.3, Banjara Hills, Hyderabad-500 034
2. DCIT, Circle 8(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,