

**आयकर अपीलीय अधिकरण न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**

**BEFORESHRI PAWAN SINGH, JM &**  
**SHRI ARUN KHODPIA, AM**

**I.T.A. No. 5984/Mum/2025**  
(Assessment Year: 2018-19)

<b>DCIT, Circle-3(3)(1),</b> Room No. 522, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	<b>Zoetis India Limited.,</b> 31, 3 <sup>rd</sup> Floor, Kalpataru Synergy, Opp. Grand Hyatt, Santacruz (E), Mumbai-400055. <b>PAN: AABCE8269K</b>
<b>Revenue -अपीलार्थी / Appellant</b>	:	<b>Assessee -प्रत्यर्थी/ Respondent</b>

**Revenue by** : Shri Swapnil Choudhary, Sr. DR  
**Assessee by** : Shri Hardik Nirmal, AR  
**Date of Hearing** : 05.02.2026  
**Date of Pronouncement** : 06.02.2026

**ORDER**

**Per Arun Khodpia, AM:**

This appeal is preferred by the revenue against the order of Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi (in short “Ld. CIT(A)”), dated 01.07.2025, for the Assessment Year (AY) 2018-19, resulted from the assessment order under section 143(3) of

the Income Tax Act, 1961 (the Act) dated 16.02.2021 passed by National e-assessment Centre, Income Tax Department.

2. The brief facts of the case are that the assessee is a domestic company engaged in the business of sale and distribution of animal healthcare veterinary products. The original return of income was filed by the assessee on 30.11.2018 declaring a total income of Nil. Subsequently, the case was selected for scrutiny, notice under section 143(2) of the Act was issued on 30.11.2019 and thereafter notice under section 142(1). It is observed by the ld. AO that the assessee has declared total income of Rs. 18,742.11 lakhs and the Net Profit after depreciation, tax and interest at Rs. 1903.33 lakhs. Further the taxable income was worked out to be Nil, as per the provisions of section 115JB of the Act. On account of certain information, the explanations sought from the assessee, which were not found satisfactory or no compliance by the assessee, the ld. AO has made some disallowances, (i) addition on account of difference in the amount of export incentive (duty draw back), (ii) rejection of claim under section 35DDA, (iii) expenses of shares based payment to be treated as capital in nature etc. In conclusion the total income of the assessee has been worked out at Rs. 6,11,74,742/-.

3. Being aggrieved with the aforesaid disallowances, assessee preferred an appeal before the ld. CIT(A) wherein the assessee has submitted that due to unprecedented times of Covid-19, the requisite statutory compliances could not

be made by assessee within the stipulated time limits, also the assessee has requested before the Id. AO for additional time to submit the balance details, therefore one more opportunity may be granted to the assessee to furnish the necessary details before the Id. AO. Such contention of the assessee was found justifiable by the Id. CIT(A), he thereafter had considered the submissions of assessee before him and have set-aside the matter to the file of Id. AO for adjudicating the same afresh. The decision of Id. CIT(A) has been reproduced hereunder for the sake of completeness of facts:

**“5. Decision:-**

*5.1 I have considered the facts of the case, assessment order, submission made by the appellant. The facts of the case as perused from the assessment order is that the appellant a subsidiary of M/s. Zoetis Pharmaceutical Research Pvt Ltd, Maharashtra, engaged in trading of animal feeds, health produces and supplements had filed its return of income for the year under appeal in ITR 6 on 30/11/2018 declaring Nil income. The case was selected for complete scrutiny and statutory notices were issued and served to the appellant. During the year under appeal, appellant had shown total income of Rs.18742.11 lakhs and declared profit after depreciation, tax and interest of Rs.1903.33 lakhs. Appellant calculated Nil income as per computation of income and shown book profit at Nil as per Sec. 115JB of the Act. Appellant in its P&L account had credited income of Rs.3,14,569/- as receipt from export incentive (duty drawback) but as per information, appellant was in receipt of Rs.4,78,680/- as duty drawback. Explanation in this regard was called for by the AO. Since the appellant failed to furnish any explanation, the AO worked out the difference amount of Rs.1,64,111/- and added it to the total income. The AO further noticed that as per computation of income uploaded by the appellant, it had claimed deduction u/s 35DDA of Rs.5,30,33,631/-. The AO called for evidences for allowability of such claim. The explanation offered by the appellant was not satisfactory to the AO as no credible evidences were furnished before him and*

*therefore, the amount of Rs.5,30,33,631/- is disallowed and added to the total income. Further, the AO noticed from the P&L account that appellant had debited Rs.79.77 lakhs under Employee benefit expenses and termed as share based payments. In this regard also, the appellant could not furnish any explanation. In absence of explanation, the AO on perusal of the financial notes No.34 of Tax Audit Report it was established that expenses of share-based payment was capital in nature, which was not only charges on capital but derives benefit to the company spread over long period of times and perpetual in nature. The AO therefore disallowed the amount of Rs.79,77,000/- and added it to the total income treating the expenses as capital in nature. The assessment is finalized at Rs.6,11,74,742/- as against Nil income furnished by the appellant.*

*5.2 Aggrieved with the above action of the AO, appellant is in appeal. The appellant has submitted that the vide submission dated 5/1/2021 had submitted partial details and requested for additional time for submission of remaining details called for in the notice. The appellant made the request following the disruption faced by the industry at large and challenging circumstances due to COVID-19. Appellant has also contended that the AO has failed to follow the procedure laid down for the assessment under the Faceless Assessment Scheme, 2019 and has also not followed the principles of natural justice while passing the assessment order without providing opportunity of being heard. The appellant has stated that it had furnished its submissions in respect of each of the addition/disallowance made, which was not considered by the AO while passing the assessment order. The appellant in its contention has relied upon a number of judicial pronouncements, which has also been considered.*

*5.3 In the entirety of facts, on going through the assessment order, the issues has not been discussed by the AO in its entirety. It appears that the assessment order has been finalized without examining the submissions made by the appellant. The additions have been made in a summary manner without hearing the appellant's side of story which is against the principles of natural justice. Therefore, considering the above facts of the case, makes it proper and appropriate to impart justice to the appellant only by way of setting aside the order of AO to make fresh assessment de novo. In view of above facts, the case*

*of appellant is remitted back/set aside to the file of the AO for adjudicating afresh by verifying all documentary evidences to be submitted by the appellant and also by providing due opportunity of hearing to the appellant following the principles of natural justice. The appellant is also directed to submit all documents with respect to various claims made during the appellate proceedings before the AO, in case any non-compliance by the appellant, the AO is free to decide the matter as per the provisions of IT Act. The assessment order is therefore, set-aside.”*

4. Being aggrieved with the aforesaid findings of Id. CIT(A), the revenue had filed the present appeal challenging the justification in setting aside the assessment order passed under section 143(3) and remitting the same back to the file of Id. AO for fresh adjudication, despite the restriction contained in proviso to section 251(1)(a) of the Act which allow to exercise the power of remitting back only in cases where the assessment is made under section 144 (based judgment assessment).

5. The Id. Sr. DR representing the revenue have submitted that the Id. CIT(A) does not have such power to restore the matter back to the file of Id. AO at the most if certain additional evidences are furnished first time before him, a remand report can be called from the Id. AO instead of setting aside the matter back to the file of Id. AO for fresh consideration. Accordingly, the order of Id. CIT(A) is liable to be set-aside and the matter needs to be restored back to the file of Id. CIT(A) to re-visit the same and decide it afresh in accordance with the mandate of law.

6. Per contra, the ld. AR representing the assessee submitted that in the peculiar and justified circumstances of the instant case, wherein the assessee was unable to furnish the necessary information before the ld. AO and the ld. AO has taken a view against the assessee in absence of necessary explanation and evidence, the ld. CIT(A) has very correctly and justifiably set-aside the matter to the file of ld. AO, to afford one more opportunity to the assessee to substantiate its case before the ld. AO with the support of corroborative evidences. The aforesaid action of ld. CIT(A), thus, was very much in pursuance to the principle of natural justice, the same therefore cannot be held as erroneous or anyway prejudicial to the interest of revenue. It was therefore the prayer that the order of ld. CIT(A) deserves to be upheld.

7. We have considered the rival submissions and perused the material available on record. It is evident in the present case that the assessee was not fully compliant before the ld. AO, as the assessee had explained that there were compelling circumstances due to which the assessee was prevented to furnish necessary explanations and evidence before the ld. AO, which the assessee have furnished before the FAA in the form of additional evidence, taken on record by the ld. CIT(A) and considering the request of assessee, had set aside the matter to the file of ld. AO for fresh adjudication.

8. As per mandate of law, it is obligatory upon the ld. CIT(A) to admit and examined any additional evidence by himself or to have such evidences examined through the ld. AO, by way of calling a remand report, so as to decide the matter, in terms of the provisions of section 250 of the Act. The exercise to setting aside the proceedings, which is optionally available to the Ld. CIT(A) shall not be used or perhaps would not be useful in the peculiar circumstances of the present case, as the ld. AO has already gone through the facts of the transaction undertaken by the assessee and that would only need to

re-examine in light of the additional evidence furnished by the assessee. As per the provisions of Rule 46A such evidences can be admitted and to be referred to the ld. AO for examination of the same. The ld. AO in response can furnish his comments on the aforesaid evidences in a remand report. After considering such comments of ld. AO on the additional evidences only, a justified decision has to be taken. In view of aforesaid mandatory provisions of the law, we are of the considered view that the matter needs to be restored back to the file of ld. CIT(A) for fresh adjudication providing, due and reasonable opportunity of being heard to the assessee. It would be pertinent to mention that all the additional evidence which were first time furnished before the ld. CIT(A) must be referred to, for examination and remand report by the ld. AO. The grounds of appeal of revenue, therefore are allowed for statistical purposes.

9. In result, the appeal of revenue is **allowed for statistical purposes.**

*Order pronounced in the open court on 06-02-2026.*

***Sd-***  
**(PAWAN SINGH)**  
**Judicial Member**

Mumbai, Dated : 06-02-2026.

*\*SK, Sr. PS*

***Sd/-***  
**(ARUN KHODPIA)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**