

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI K BENCH, MUMBAI  
[Coram: Pramod Kumar AM and Pawan Singh JM]**

I.T.A. No. 1269/Mum/2015  
Assessment years: 2010-11

**Siro Clinpharm Private Limited** .....**Appellant**  
63, Lady Ratan Tata Medical and Research Centre  
M K Road, Cooperage, Mumbai 400 021 [PAN: AAEC8588A]

**Vs.**

**Dy. Commissioner of Income Tax**  
**Range 3 (3)(1), Mumbai** .....**Respondent**  
I.T.A. Nos. 1493/Mum/2015  
Assessment years: 2010-11

**Dy. Commissioner of Income Tax**  
**Range 3 (3)(1), Mumbai** .....**Appellant**

**Vs.**

**Siro Clinpharm Private Limited** .....**Respondent**  
63, Lady Ratan Tata Medical and Research Centre  
M K Road, Cooperage, Mumbai 400 021 [PAN: AAEC8588A]

**Appearances by:**

**Prakash Shah and Jas Sanghvi** for the assessee  
**N K Chand** for the Assessing Officer

Date of concluding the hearing : January 7, 2016

Date of pronouncing the order : March 31<sup>st</sup>, 2016

**O R D E R**

**Per Pramod Kumar, AM:**

1. These cross appeals are directed against the order dated 28<sup>th</sup> November 2014 passed by the DRP in the matter of directions r.w.s. 144C of the Income Tax Act, 1961, for the assessment year 2010-11. While the assessee is aggrieved of the assessment order, containing and giving effect to the above directions, dated 30<sup>th</sup> January 2015 passed under section 1443(3) r.w.s. 144C(13) of the Act, the Assessing Officer is aggrieved of the certain directions given by the DRP to him.

2. Grievances raised by the assessee are as follows:

**GROUND NO. 1: ADDITION ON ACCOUNT OF TRANSFER PRICING ADJUSTMENT OF Rs.1,13,40,000/- IN RELATION TO CORPORATE GUARANTEES GIVEN ON BEHALF OF OVERSEAS SUBSIDIARIES OF THE APPELLANT:**

1.1 erred in confirming the transfer pricing adjustment of Rs. 1,13,40,000/- on account of corporate guarantees given by the Appellant to the bankers on behalf of its AE, without appreciating the commercial and economic interest of the Appellant in the AE;

1.2 erred in not appreciating that providing corporate guarantee is not an international transaction under Transfer Pricing regulation even after the amendment as held by the Hon'ble ITAT Delhi in the case of Bharti Airtel Limited v Additional Commissioner of Income Tax Range-2, Delhi reported in [2014] 43 taxmann.com 150 (Delhi - Trib.);

1.3 erred in observing that commercial expediency, business motives or business strategy are not included in the factors for judging the comparability of the transaction;

1.4 erred in not appreciating that the Appellant is not engaged in the business of providing corporate guarantees and that the corporate guarantee commission charged by the banks (1.75%) was only reimbursed by the subsidiaries to the Appellant and therefore the additional guarantee commission imputed by the learned AO/TPO should have been deleted;

1.5 erred in rejecting the determination of ALP made by the Appellant without satisfying the provisions of section 92C(3) of the Act;

1.6 erred in confirming addition of 3% of the loan amount as guarantee commission;

1.7 erred in not appreciating the decision of the cases cited by the Appellant.

1.8 erred in relying on the decision of the CIT (A) in the Appellant's own case for the A.Y. 2008-09, without appreciating the fact that the same is already under appeal before this Hon'ble Tribunal.

**GROUND NO. 2: ADDITION ON ACCOUNT OF DISALLOWANCES U/S. 14A OF THE & ACT R/W RULE 8D OF THE INCOME TAX RULES IN**

**RELATION TO ATTRIBUTABLE EXPENSES FOR MAKING LONG-TERM INVESTMENTS:**

2.1 erred in not appreciating that during the assessment year 2010-2011, there was no % exempt income earned on investment by the Assessee.

2.2 erred in calculating the notional expenditure under Rule 8D of the Rules on account of making long term Investments without acknowledging the fact that such investments were made to the foreign subsidiary company.

2.3 erred in not appreciating that no fresh investment was made in the year under consideration and that in the previous years, disallowance under Section 14A on the same Long Term Investment had already been made by the AO.

2.4 erred in placing reliance on the decision of Hon'ble Bombay High Court in the case of M/s. Godrej & Boyce Mfg. Co. Ltd, without appreciating that the facts of the said case are not similar to the case under consideration, since in the present case, there is no exempt income viz. dividend etc. claimed by the Appellant.

2.5 erred in not appreciating the decision of the cases cited by the Appellant.

2.6 erred in relying on the decision in the case of Cheminvest Ltd. v. ITO [121 ITD 318(SB)]

**GROUND NO. 3:**

**NOT GRANTING CREDIT OF ADVANCE TAXES PAID BY THE APPELLANT**

3.1 erred in not granting credit for advance taxes paid by the Appellant of Rs.6,000,000 for AY 2010-11.

3. As far as first ground of appeal, i.e. against ALP adjustment of Rs 1,13,400 in respect of the issuance of corporate guarantees is concerned, learned representatives fairly agree that whatever we decide for the assessment year 2009-10 will apply *mutatis mutandis* for this assessment year as well.

4. Vide our order of even date, which is deemed to be attached and forming part of this order as well, we have deleted similar disallowance for the assessment year 2009-10. We see no reasons to take any other view of the matter for this year. Respectfully following the said order, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned ALP adjustment of Rs 1,13, 40,000 as well.

5. Ground no. 1 is thus allowed.

6. In the second ground of appeal, the assessee is aggrieved of the fact that even though the assessee did not have any exempt income in the relevant previous year, the Assessing Officer has nonetheless made a disallowance of Rs 15,77,141.

7. Having heard the rival contentions, and having perused the material on record, we see merits in the plea of the assessee. When there is no income in the hands of the assessee, which is exempt from tax, there cannot be any occasion to make disallowance under section 14A. This was so held by Hon'ble Delhi High Court in the case of CIT vs. Winsome Textile Industries Ltd 319 ITR 204 (P&H), which has been followed by many other Hon'ble High Courts as well, such as Hon'ble Gujarat High Court in the case of CIT Vs Corrttech Energy Pvt Ltd [(2015) 372 ITR 97 (Guj)] and by Hon'ble Delhi High Court in the case of Cheminvest Ltd Vs CIT [(2015) 378 ITR 33 (Del)]. Respectfully following the views of Hon'ble Courts above, we uphold the grievance of the assessee. The disallowance must stand deleted.

8. Ground no. 2 is thus allowed.

9. In ground no. 3, the assessee is aggrieved of the Assessing Officer not giving credit of Rs 60 lakhs paid as advance tax. Learned counsel, however, accepts that he has moved a petition under section 154 which is pending before the Assessing Officer. As the matter is still pending before the AO, it is not for us to interfere at this stage.

10. Ground no. 3 is thus dismissed as infructuous.

11. In the result, the appeal filed by the assessee is partly allowed in the terms indicated above.

12. Grievances raised by the Assessing Officer are as follows:

**"1. Whether on the facts and circumstances of the case and in law, the Hon'ble DRP was justified in allowing the assessee's claim of deduction of Rs.10,03,42,966/- under section 80IB(8A) of the I.T. Act, without appreciating the fact that the assessee did not disclose the complete facts and has also not fulfilled the conditions stipulated in Rule 18DA for claiming deduction under section 80IB(8A) of the IT Act and accordingly the same was disallowed by the Assessing Officer appropriately as per the provisions of the Act.**

**2. Whether on the facts and circumstances of the case and in law, the Hon'ble DRP erred in allowing the appeal of the assessee on the issue of deduction u/s. 80IB(8A) without appreciating the fact that mere approval from the prescribed authority does not exempt the assessee from fulfilling the statutory conditions u/s. 80IB(8A) r.w.r. 18DA laid down in the Income-Tax Act, 1961, and the Income Tax Rules,1962, for claiming deduction u/s. 80IB(8A)?"**

**3. Whether on the facts and circumstances of the case and in law, the Hon'ble DRP erred in allowing the appeal of the assessee on the issue of software expenditure of Rs.95,15,667/- on acquisition of annual licenses as revenue expenditure without appreciating the fact that the software expenditure was disallowed by the AO and such**

**expenditure was capitalized and depreciation @ 60% was allowed on such capital expenditure.”**

13. As regards the grievances raised by the Assessing Officer in the first and second ground of appeal set out above, learned representatives fairly agree that both the issues raised therein are covered, in favour of the assessee, by decisions of the coordinate benches in assessee's own case for the assessment years 2003-04 to 2008-09. Copies of these decisions were placed before us at pages 275-297 of the paperbook.

14. In view of the above discussions, and respectfully following the coordinate benches, we uphold the order of the CIT(A) on these aspects and decline to interfere in the matter.

15. Ground no. 1 and 2 are thus dismissed.

16. As regards ground no. 3 above, we have noted that while the Assessing Officer has disallowed the expenses as even on MS Office licence, the assessee has claimed depreciation and that software is a depreciable asset, the DRP has held the software to be revenue expenditure on the basis of a categorical finding that these amounts represent annual licence fees. The invoices and the agreements were perused by the DRP and then they came to this conclusion about the expenditure being in the nature of annual licencing fees. The DRP also relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs Amway Enterprises [(2012) 346 ITR 341 (Del)]. The Assessing Officer is not satisfied and is in appeal before us.

17. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

18. We find that once it is not in dispute, as in this case, that the amount paid is only an annual licence fees for use of software, the expenses so incurred is required to be treated as revenue expenditure. No material has been brought on record to demolish, or even dispute, this finding of fact. In view of these discussions, and bearing in mind entirety of the case, we approve the order of the CIT(A) on this point as well.

19. Ground no. 3 is also dismissed.

20. In the result, appeal of the Assessing Officer is dismissed.

21. In the result, the appeal of the assessee is allowed and the appeal of the Assessing Officer is dismissed. Pronounced in the open court today on 31<sup>st</sup> day of March, 2016.

*Sd/-*  
**Pawan Singh**  
(Judicial Member)

*Sd/-*  
**Pramod Kumar**  
(Accountant Member)

**Dated: 31<sup>st</sup> day of March, 2016.**

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

*By order etc*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*