

IN THE HIGH COURT OF BOMBAY

Income Tax Appeal No.466 of 2007

COMMISSIONER OF INCOME TAX, CENTRAL-1

Vs

M/s SARABAI PIRAMAL PHARMACEUTICALS LTD

J P Devadhar and K K Tated, JJ

Dated: September 14, 2011

Appellant Rep by: Mr Suresh Kumar

Respondent Rep by: Mr J D Mistri, Sr. Adv. i/b A K Jasani

JUDGEMENT

1. Basically three questions of law are raised by the revenue in this appeal, they are: -

(1) Whether the ITAT was justified in holding that the assessee was entitled to deduction under Section 35AB of the Income Tax Act, 1961 on the expenditure on technical knowhow even though the assessee got its products manufactured from a third party under its direct control and supervision ?

(2) Whether the ITAT was justified in holding that the expenditure incurred by the assessee on acquisition of trade-mark was allowable under Section 35A of the Income Tax Act, 1961 even though the said Section deals with the expenditure on acquisition of patent rights or copyrights ?

(3) Whether in the facts and circumstances of the case, the ITAT was justified in holding that even if the borrowed funds were utilized for acquisition of capital assets during the course of year, interest paid on borrowed funds is allowable as revenue expenditure under Section 36(1) (iii) of the Income Tax Act, 1961 ?

2. The assessment year involved herein is AY 1998-99.

3. The assessee is a joint venture company formed under an arrangement between M/s. Ambalal Sarabai Enterprises and Piramal Enterprises Ltd. In the assessment year in question, the assessee purchased / acquired technical knowhow and trade-mark for the purpose and use of manufacture and marketing of drugs, for Rs.17 crores and Rs.34 crores respectively.

4. The expenditure on technical knowhow was claimed by the assessee eligible for deduction under Section 35AB of the Income Tax Act, 1961 ('the Act' for short). The assessing officer disallowed the claim of the assessee mainly on the ground that the assessee itself was not involved in the manufacturing activities. On appeal, the CIT(A) set aside the order of the assessing officer. On further appeal, the ITAT confirmed the order of the CIT(A) on the ground that the deduction under Section

35AB of the Act is allowable subject to fulfillment of two conditions, namely, the assessee should have acquired the knowhow against the lumpsum consideration and such technical knowhow must be any industrial information or technique likely to assist in the manufacture or processing of goods. In the present case, it is not in dispute that the technical knowhow acquired by the assessee has been used by the assessee in the manufacture of goods which the assessee got manufactured from a third party under its direct control and supervision with a particular specification as required by the assessee. Section 35AB of the Act does not mandate that the deduction thereunder is allowable only if the assessee owns the plant and machinery for manufacture or processing of goods. In other words, deduction under Section 35AB of the Act would be allowable, where the assessee uses the technical knowhow to get the goods manufactured through a third party under its direct supervision and control. In this view of the matter, no fault can be found with the decision of the ITAT. Accordingly, the first question cannot be entertained.

5. As regards the second question is concerned, the assessing officer disallowed the expenditure incurred on acquisition of trade-mark under Section 35A of the Act on the ground that the said Section is restricted to the expenditure on acquisition of Patents and Copyrights Act and not to the expenditure on acquisition of trademark. The ITAT has allowed the claim of the assessee by holding that the trade-mark is not alien to the patent right as there is a direct link between the patent right and trade-mark. It is held that the patent right cannot be identified in a pharmaceutical field without its own name trademark, meaning thereby the trademark and patent right move together and if trademark is purchased, the patent right with respect to that particular trademark is also passed on to the buyer in the transactions in the pharmaceutical fields. The Tribunal has also considered the alternate argument of the assessee and held that even if the relief under Section 35A of the Act is not allowable to the assessee, then the relief would be allowable under Section 37 of the Act in the light of the judgment of the Apex court in the case of *Alembic Chemical Works Co. Ltd. V/s. CIT reported in 177 ITR 377*. Thus, by allowing the claim of the assessee under Section 35A, the assessee would get the relief in the assessment year to the extent of Rs.2,42,85,714/- out of the total expenditure of Rs.34 crores on acquisition of trademark and if the alternate argument of the assessee is accepted, then the assessee would be entitled to deduction of Rs.34 crores incurred on acquisition of trademark in the assessment year in question. Since the decision of the ITAT on the alternative claim of the assessee has not been challenged in the appeal, counsel for the revenue on instructions from the Officers Mr. Arun C. Bharat, CIT 7(1) and Mr. Ashish Pophare, DCIT 7(1) present in Court states that he is not pressing the second question, because in the facts of the present case, the revenue stands to loose if the decision of the ITAT on the applicability of Section 35A is set aside and the decision of the ITAT on the alternate claim is sustained. Accordingly, the second question cannot be entertained. However, it is made clear that the question as to whether deduction under Section 35A is allowable on the expenditure on acquisition of trademark is kept open to be decided in an appropriate case.

6. As regards the third question is concerned, counsel for the parties state that the said question stands answered against the revenue by the decision of the Apex Court in the case of *DCIT V/s. Core Health Care Ltd. reported in [2008] 298 ITR 194 (SC) = (2008-TIOL-17-SC-IT)* . Hence the question No. 3 cannot be entertained.

7. Accordingly, the appeal is disposed off with no order as to costs.

