IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'G' MUMBAI

ITA No.4155/Mum/2007
Assessment Year: 2004-2005

DCIT
CENTRAL CIRCLE 33, MUMBAI

Vs

M/s GLENMARK LABORATORIES LTD
MUMBAI-400091
PAN: AABCG3289R

D Manmohan, VP and S V Mehrotra, AM

Dated: November 9, 2009

Appellant Rep by: Mr Mohd. Usman
Respondent Rep by: Mr Vijay Mehta

ORDER

Per: D Manmohan:

1. This appeal, preferred by the Revenue, is directed against the Order dated 21-3-2007 passed by the CIT(A), Central-VIII, Mumbai and it pertains to the assessment year 2004-2005. The following grounds were urged by the Revenue.

1. "On the facts and in the circumstances of the case and in law, the learned CIT(A) was not correct in directing to exclude the assessee's claim u/s. 80HHC of I.T Act, amounting to Rs.4,99,794/- to work out the book profit as per the provisions of Section 115JB of I.T. Act.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) was not correct in directing to allow deduction u/s 43B r.w.s 36(1) (va) of I.T Act in respect of payments of the employee's contribution to the Provident Fund and to the State Insurance Corporation amounting to Rs. 14,48,531/- if the same is paid within the grace period of five years.

3. On the facts and in the circumstances of the case and in law, the learned CIT (A) was not correct in directing to delete interest charged u/s 234B of I.T. Act on minimum alternative tax determined u/s 115B of I.T. Act"

2. We shall first take up ground Nos. 2 and 3. Vide ground No.2 the Revenue contends that even if contribution to P.F. and State Insurance Corporation is within the grace period of 5 days it would be hit by the provisions of section 43B read with section 36(1)(va) of the Act. Learned CIT (A) followed the decisions of the ITAT to hold that payments made within the grace period are not hit by the provisions of section 43B.

3. Learned Departmental Representative was not able to place any contrary decision on record. We therefore hold that the Order passed by the learned CIT (A) does not call for interference.

4. As regards ground No.3, the case of the Revenue is that interest is chargeable to tax under section 234B of the Act on the minimum alternative

tax determined under section 115JB of the I.T. Act, 1961. Learned CIT (A) was however, of the opinion that interest is not chargeable on deemed income and tax thereon, in the light of the decision of Hon'ble Karnataka High Court in the case of Quality Biscuits Ltd. in Civil Appeal No 1284 and 1285 of 2001 = (**2003-TIOL-157-HC-KAR-IT**). At the time of hearing learned counsel placed before us a copy of the Order of the Hon'ble Bombay High Court in the case of *Snowcem India Ltd. vs. DCIT 178 Taxman 478* = **(2009-TIOL-39-HC-MUM-IT)** to submit that interest is not leviable in the case of computation of income under the provisions of section 115JA of the Act.

5. Learned Departmental Representative has not pointed out any contrary decision on this aspect. By respectfully following the jurisdictional High Court judgment cited (supra) we uphold the Order of the learned CIT (A) and reject ground No.3 of the Revenue.

6. Facts concerning ground No. 1 are stated in brief. Under the normal provisions of the Income Tax Act there was no taxable income and hence the Assessing Officer determined the book profit under section 115JB of the Act. The case of the assessee was that deduction under section 80HHC of the Act is allowable even while computing the book profit under section 115JB of the Act. The Assessing Officer having rejected the contention of the assessee, an appeal was preferred before the CIT (A) contending, *inter alia,* that the provisions of section 115JB used the expression the amount of profit' and on a similar expression used in section 115J and 115JA of the Act, the ITAT as well as the Hon'ble Kerala High Court had taken a view that deduction under section 80HHC has to be computed after taking 'book profit' as total income of the assessee. In the light of following decisions, the learned CIT (A) accepted the claim of the assessee.

i. DCIT v. Govind Rubber P. Ltd. 89 ITD 457 (Mum)

ii. CIT v. GTN Textiles Ltd. 248 ITR 372 (Ker)

iii. Starchik Specialities Ltd. v. DCIT 90 ITD 34 (Hyd)

7. Aggrieved, Revenue is in appeal before us. Learned Departmental Representative submitted that the decisions relied upon by the assessee are distinguishable on facts inasmuch as they were dealing with the provisions of section 115J / 115JA of the Act whereas, provisions of section 115JB are differently worded and hence the aforementioned case law have no application to this case. In particular, he has referred to sub-clause iv to Explanation therein, in contrast to the sub-clause VIII to Explanation below section 115JA of the Act to submit that the computation of deduction under section 80HHC has to be restricted to the profits of the business as computed under the normal provisions of the I.T. Act and not on the 'book profit'.

8. On the other hand, the learned counsel appearing on behalf of the assessee relied upon the decision of the ITAT, Mumbai Special Bench in the case of *Dy. CIT vs. Syncome Formulations (I) Ltd. (2007) 106 ITD 193 (Mum.) (SB)* **= (*2007-TIOL-96-ITAT-MUM-SB*)** wherein this very issue was decided in favour of the assessee and against the Revenue by following the decision of the Hon'ble Kerala High Court (supra). It was also submitted that the ITAT Special Bench has specifically referred to the difference in phraseology between 115JA and 115JB of the Act to take a conscious decision that despite the minor difference in the language employed therein, deduction under section 80HHC deserves to be computed by taking into consideration 'book profit'. Learned counsel was fair enough to submit that in the case of Ajanta Pharma Limited, the ITAT, 'E' Bench, Mumbai followed the decision of Syncome Formulations Limited (supra). On an appeal filed by the Revenue, the Hon'ble Bombay High Court categorically held that the view taken by the ITAT, Special Bench, Mumbai (supra) is overruled (see para *28 in 223 CTR 441*). He then clarified that the ITAT, Special bench was called-upon to answer two questions i.e., (a) method of computation of deduction under

section 80HHC and (b) percentage of deduction allowable in each year. As regards the percentage of deduction allowable, the ITAT took a view that assessee would be entitled to 100% deduction and the view taken by the ITAT, Special Bench was followed in the case of Ajanta Pharma Ltd. On an appeal filed by the Revenue, while answering a specific question raised before the High Court, the Court observed that an assessee would not be entitled to 100% deduction since sub-section 1 to section 80HHC introduced by the Finance Act w.e.f. 1st April, 2001 was specifically meant to phase out the deduction completely by assessment year 2005-2006 in which event, on an application of the said sub-section, only a portion of the amount computed under section 80HHC is allowable in a particular year. While answering the said question the Hon'ble Bombay High Court opined that a contrary view taken by the ITAT, Special Bench in the case of Syncome Formulations Ltd. (supra) stand overruled. He has also adverted our attention to para 19 of the Order of the jurisdictional High Court to submit that on the first issue the Hon'ble Bombay High Court has not rendered its opinion since that issue was not placed before their Lordships for their kind consideration. He has also relied upon the decision of the Apex Court in the case of *Sun Engineering Works 198 ITR 297 = (**2002-TIOL-242-SC-IT**)* to submit that any observation of a Court has to be understood in the light of question placed before them and interpretation of an expression should not be diversed from its context. He thus submitted that so far as the present issue is concerned i.e., the method of computation of deduction under section 80HHC, the issue stands covered by the decision of the ITAT, Special Bench in the case of Syncome Formulations (supra).

9. On the other hand learned Departmental Representative strongly relied upon the Order of the Assessing Officer.

10. Having carefully considered the rival submissions we are of the view that the view taken by the learned CIT (A) is in conformity with the decision of the ITAT Special Bench cited (supra) and hence, we affirm the Order of the learned CIT (A) and reject ground No. 1 of the Revenue.

11. In the result, appeal filed by the Revenue is dismissed.

(Pronounced in the open Court, on this the 9.11.2009)