

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

M.A. No.85/Hyd/2023 in ITA No.1860/Hyd/2019		
Assessment Year: 2015-16		
M/s. Aurobindo Pharma Limited, Hyderabad [PAN No. AABCA7366H]	Vs.	Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad
(Applicant / Appellant)		(Respondent / Respondent)
Assessee by:	Sri P.V.S.S. Prasad, C.A.	
Revenue by:	Sri Shakeer Ahamed, Sr. A.R.	
Date of hearing:	02.02.2024	
Date of pronouncement:	02.02.2024	

आदेश / O R D E R

PER LALIET KUMAR, J.M. :

The present Miscellaneous Application has been filed with a request to modify the order passed by the co-ordinate Bench of the Tribunal dt.21.06.2023 in ITA No.1860/Hyd/2019 for A.Y. 2015-16 as per section u/s 254(2) of the Act.

2. Before us, it was submitted by the ld.AR that ground nos. 8 to 11 with respect to trade receivables in the captioned appeal was partly allowed by the Tribunal following the assessee's own case in ITA No.485/Hyd/2022 for A.Y. 2018-19. Ld. AR for the assessee relying upon the decision of hon'ble Supreme Court in

the case of MCorp Global Pvt. Ltd. Vs. CIT reported in (2009) 309 ITR 434/178 Taxmann 347 (SC), pleaded that the said grounds may be dismissed instead of granting part relief. The relevant submissions made by the assessee in the Miscellaneous Application are to the following effect :

"3.1 From the above grounds of appeal and the final assessment order, it is obvious that the quantum of addition towards interest on receivables after giving effect to the directions of DRP is only Rs. 12,42,15,444/- which was contested before the ITAT. By placing reliance on Hon'ble ITAT order in Assessee's own case for AY 2018-19 (ITA NO. 485/Hyd/2022), the Ld. ITAT after hearing. both the parties, partly allowed the grounds of appeal with the following observations reproduced below:

"8. As there is no change in the facts, circumstances and law, after passing of the order in ITA No.485/Hydi2022, therefore, following our own decision in the case of the assessee for A.Y. 2018-19, we hereby issue similar directions for the-present assessment year also, which are as follows :

(ii) Ground Nos.8 to 11 - Trade Receivables - We hereby direct the computation of interest on trade receivables adding notional interest of Mon trade receivables beyond a period of 60 days. Thus, these grounds are partly allowed"

3.2 Thus, the ground was partly allowed Hon'ble Tribunal in the order dated 21.06.2023 by following the decision of Tribunal's order in Assessee's own case for AY 201849 (ITA No. 485/Hyd/2022) and with the direction to Ld. AO to determine ALP and compute the same by adding notional interest at the rate 6%on the trade receivables beyond a credit period of 60 days.

4. Since the ground of the assessee was partly allowed and as no revenue appeal lies against the directions of DRP, our understanding of the directions of the Hon'ble Tribunal is that credit period of 60 days considered by Hon'ble Tribunal is in addition to credit period already allowed at 90 days by Ld. TPO and as allowed by DRP. But in the case of Apache footwear (ITA No. 568/Hyd/2022), followed by Hon'ble ITAT in Assessee's own case of AY 2018-19 (supra), it would appear from order of ITAT that the credit period of only 60 days from the invoice date was allowed for realization from AEs. If the credit period of only 60 days is considered in the present case, it would tantamount to setting aside the directions of DRP as the credit period of 90 days allowed by DRP is already more than 60 days. This leads to a situation where TP

adjustment/ income on this ground being enhanced instead of being partly allowed.

5. *Since DRP has considered, credit, period at 90 days as worked out by Ld. TPO, which is more than 60 days, Hon'ble Tribunal may kindly consider issuing appropriate directions / clarifications regarding credit period of 60 days mentioned in the order of ITAT is in addition to the credit period of 90 days already allowed by Ld. DRP and Ld.*

6, *We respectfully submit in this regard that under the provisions of the law, the worst determinant which the Hon'ble Tribunal may visit on an appellant is to dismiss the appeal, but in no case it can take away the benefit which appellant has received at the lower appellate forum (in the present case, DRP) the benefit of which was not challenged by Revenue in appeal. In this context, we may refer to the following observations of Hon'ble Supreme Court in the case of MCorp Global (P.) Ltd. Vs CIT (2009) 309 ITR 434/178 Taxmann 347 (SC):*

"6. In the case of Hukunichand Mills Ltd. Vs CIT (1967) 63 ITR 232, this Court has held that under section 33(4) of the Income Tax Act, 1922 (equivalent to Section 254(1) of the 1961 Act), the Tribunal was not authorised to take back the benefit granted to the assessee by the AO. The Tribunal has no power to enhance the assessment. Applying the ratio of the said judgement to the present case, we are of the view that in this case, the AO had granted depreciation in respect of 42000 bottles out of the total number of bottles (5,46,000), by reason of the impugned judgement. That benefit is sought to be taken away by the department, which is not permissible in law. This is the infirmity in the impugned judgement of the High Court and the Tribunal"

7. *In the view of the above observations of the Apex Court, as an alternative to our submission that credit period of 60 days mentioned in the order of Hon'ble ITAT is in addition to credit period already considered by DRP, Hon'ble ITAT may consider dismissing the ground of appeal of the Assessee instead of 'partly allowed' and in such an event, directions of DRP allowing credit period allowed at 90 days remain unaltered.*

3. On the other hand, the ld. DR has objected and submitted that the order passed by the Tribunal is in accordance with law.

4. We have heard the rival submissions and perused the material on record. The submissions now made by the assessee were not made during the course of argument at the time of

hearing of the main appeal. At the time of hearing of the main appeal, the solitary submission of the ld.AR was that the case of the assessee is covered by the decision of Tribunal in assessee's own case for A.Y. 2018-19 (ITA No.485/Hyd/2022). Further, we found on enquiry that the reliance on invoice-wise details were neither filed by the assessee before the Tribunal, as annexure to TPO order nor it was referred to at the time of argument. Therefore, the question of reference to these documents and consideration by the Tribunal in terms thereof does not arise.

5. Considering the totality of the facts, the M.A. filed by the assessee is required to be dismissed for the above reasons and also on account of decision of the hon'ble Supreme Court in the case of Reliance Telecom Ltd., (2021) 133 taxmann.com 41 (SC), wherein the Hon'ble Supreme Court at Paras 3.2 and 4 has categorically held as under :

"3.2 Having gone through both the orders passed by the ITAT, we are of the opinion that the order passed by the ITAT dated 18.11.2016 recalling its earlier order dated 06.09.2013 is beyond the scope and ambit of the powers under Section 254(2) of the Act. While allowing the application under Section 254(2) of the Act and recalling its earlier order dated 06.09.2013, it appears that the ITAT has re-heard the entire appeal on merits as if the ITAT was deciding the appeal against the order passed by the C.I.T. In exercise of powers under Section 254(2) of the Act, the Appellate Tribunal may amend any order passed by it under sub-section (1) of Section 254 of the Act with a view to rectifying any mistake apparent from the record only. Therefore, the powers under Section 254(2) of the Act are akin to Order XLVII Rule 1 CPC. While considering the application under Section 254(2) of the Act, the Appellate Tribunal is not required to re-visit its earlier order and to go into detail on merits. The powers under Section 254(2) of the Act are only to rectify/correct any mistake apparent from the record.

4. In the present case, a detailed order was passed by the ITAT when it passed an order on 06.09.2013, by which the ITAT held in favour of the Revenue. Therefore, the said order could not have been recalled by the Appellate Tribunal in exercise of powers under Section 254(2) of the Act. If the Assessee was of the opinion that the order passed by the ITAT was erroneous, either on facts or in law, in that case, the only remedy available to the Assessee was to prefer the appeal before the High Court, which as such was already filed by the Assessee before the High Court, which the Assessee withdrew after the order passed by the ITAT dated 18.11.2016 recalling its earlier order dated 06.09.2013. Therefore, as such, the order passed by the ITAT recalling its earlier order dated 06.09.2013 which has been passed in exercise of powers under Section 254(2) of the Act is beyond the scope and ambit of the powers of the Appellate Tribunal conferred under Section 254 (2) of the Act. Therefore, the order passed by the ITAT dated 18.11.2016 recalling its earlier order dated 06.09.2013 is unsustainable, which ought to have been set aside by the High Court.”

5.1 Accordingly, the Miscellaneous Application filed by the assessee is dismissed.

6. In the result, Miscellaneous Application filed by the assessee is dismissed.

Pronounced in the open Court on this the 02nd day of February, 2024.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 2nd February, 2024.
TYNM / SPS

Copy to:

S.No	Addresses
1	Aurobindo Pharma Limited, Hyderabad, C/o. Prasad and Prasad, C.As, Flat No.301, M.J. Towers, Banjara Hills, Hyderabad – 500 034.
2	Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad.
3	The Director of Income Tax (IT & TP), Hyderabad.
4	ACIT (Transfer Pricing), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order