**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"J" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

IT(TP)A no.3046/Mum./2017
(Assessment Year : 2012–13)

Piramal Glass Ltd.
4th Floor, Nicholas Piramal Tower
Ganpatrao Kadam Marg
Lower Parel, Mumbai 400 013
PAN – AABCG0093R

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle–7(3)(2), Mumbai

..... Respondent

Assessee by : Shri Ronak Doshi a/w
Shri Akta Shah
Revenue by Ms. Amrita Ranjan

| Date of Hearing – 19.03.2019 | Date of Order – 07.06.2019 |
|---|---|



**O R D E R**

**PER SAKTIJIT DEY. J.M.**

Aforesaid appeal has been filed by the assessee challenging the final assessment order dated 27th February 2017, passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 (for short *"the Act"*) for the assessment year 2012–13, pursuant to the directions of the Dispute Resolution Panel–2 (DRP), Mumbai.

2. Grounds no.(i), (ii) and (iii), are without prejudice to each other. However, they are on the issue of deduction / depreciation claimed on non−compete fee.

3. Brief facts are, the assessee company is engaged in the business of manufacturing and sale of glass containers and vials for pharma and non−pharma markets. The assessee is also engaged in generation of power and investment activity. In the assessment year under dispute, the assessee had acquired Glass Division from Nicholas Piramal India Ltd. In connection with the said acquisition, assessee had paid an amount of ₹ 18 crore towards non−compete fee. The assessee allocated the non−compete fee to various fixed assets and claimed depreciation at the rate applicable to those assets. While framing the draft assessment order the Assessing Officer, however, disallowed assessee's claim of depreciation following his decision in earlier assessment years. Challenging the disallowance of depreciation, assessee raised objections before learned DRP.

4. Learned DRP also sustained the disallowance made by the Assessing Officer relying upon the decision of the Tribunal in assessment year 1999−2000. Further, learned DRP also disallowed alternative claim of depreciation on non−compete fee @ 25% by treating it as an intangible asset. It is further relevant to observe, learned DRP also rejected assessee's claim of deduction on account of

write–off of non–compete fee to the extent of 1/18th spread over a period of 18 years.

5. The learned Counsels appearing for both the parties have agreed before us that the issues raised in these grounds are covered by the decisions of the Tribunal in assessee's own case for preceding assessment years.

6. We have considered rival submissions and perused the material on record. As could be seen, the dispute relating to assessee's claim of depreciation on non–compete fee is a recurring issue between the parties from the assessment year 1999–2000 onwards. While deciding the issue in Assessment Year 1999–2000 the Tribunal altogether disallowed assessee's claim of depreciation on both the count i.e., depreciation on allocation of non–compete fee to various fixed assets as well as claim of depreciation by treating non–compete fee as an intangible asset. However, while deciding assessee's appeal in subsequent years, the Tribunal allowed assessee's claim of depreciation @ 25% by treating non–compete fee as an intangible asset. In the latest order passed by the Tribunal in assessee's own case for the assessment year 2005–06 in ITA no.4777/Mum./2016, dated 30th April 2019, the Tribunal following its earlier order has decided the issue as under:–

*"8. We have considered rival submissions and perused material on record. The issue before us is, whether assessee's claim of depreciation on non–compete fee @ 25% by treating it as an intangible asset is acceptable or not. As could be seen, this is a recurring dispute between the parties since the assessment year 1999–2000. Though, while deciding the issue in the assessment year 1999–2000, vide ITA no.4842/Mum./2004, dated 5th April 2013, the Tribunal has disallowed assessee's claim of depreciation on non–compete fee by treating it as an intangible asset, however, while deciding assessee's appeal in assessment year 2001–02 in ITA no. 9645/Mum./2004, dated 2nd March 2016, the Tribunal though was conscious of its own contrary decision in assessment year 1999–2000, however, taking note of the decisions of Hon'ble Madras High Court and Hon'ble Karnataka High Court, referred to above, allowed assessee's claim of depreciation by treating the non–compete fee as an intangible asset. The same view was reiterated by the Tribunal while deciding assessee's appeal for the assessment year 2006–07 in ITA no.5360/ Mum./2010, dated 16th December 2016, and in assessment year 2011–12 in ITA no.157/Mum./2011, dated 4th January 2007. Therefore, facts being identical, following the consistent view of the Tribunal in the orders referred to above, as well as the decision of different High Courts cited supra, we uphold the decision of the learned Commissioner (Appeals) on the issue. Ground is dismissed."*



7. The facts being identical, respectfully following the consistent view of the Tribunal, we direct the A.O. to allow deprecation on non–compete fee @ 25% by treating it as an intangible asset.

8. Thus, ground no.(i) is dismissed and ground no.(ii) is allowed.

9. In view of our decision in ground no.(ii), ground no.(iii) becomes infructuous, hence, dismissed.

10. In ground no.(iv), the assessee has challenged the disallowance of depreciation on various fixed assets on the basis of wrong actual cost.

11. Brief facts are, in the course of assessment proceedings, the Assessing Officer noticed that the assessee has allocated the lamp sum consideration paid for acquisition of business of Nicholas Piramal on the basis of fair value of the depreciable assets acquired on transfer of business and accordingly claimed depreciation with reference to those assets. The Assessing Officer, however, did not allow assessee's claim of depreciation and held that the acquisition of business is by way of amalgamation, therefore, he took the written down value of the transferred assets in the books of the transferor company as the actual cost of the assessee and allowed depreciation accordingly. The assessee challenged the aforesaid decision of the Assessing Officer before learned DRP. Learned DRP observed that in assessment year 1999–2000, while deciding identical issue, the Tribunal has restored it to learned Commissioner (Appeals) for de novo adjudication, which is still pending. Further, learned DRP observed, while deciding identical issue in assessee's own case in assessment year 2006–07, the DRP has disallowed assessee's claim. Similar view was taken by the DRP in the assessment year 2011–12 as well. Thus, following their earlier orders, learned DRP disallowed assessee's claim.

12. The learned Authorised Representative submitted, while deciding identical issue in assessment year 1999–2000 in ITA no. 4842/Mum./2004, dated 16th December 2008, the Tribunal has restored the issue to learned Commissioner (Appeals) for fresh adjudication. He submitted, while deciding similar issue in assessment years 2001–02, 2006–07 and 2011–12, the Tribunal has restored the issue to the Assessing Officer for fresh adjudication. Thus he submitted, the issue may be restored back to the Assessing Officer.

13. The learned Departmental Representative fairly agreed with the aforesaid submissions of learned Authorised Representative.

14. Having considered rival submissions and perused material on record we find, while deciding identical issue in the preceding assessment years in assessee's own case, the Tribunal has restored the issue to the Assessing Officer for fresh adjudication. In this context, we may refer to the latest order passed by the Tribunal for the assessment year 2006–07 in ITA no.8360/Mum./2010, dated 16th December 2016. Facts being identical, respectfully following the consistent view expressed by the Tribunal in the preceding assessment years, we restore the issue to the Assessing Officer for de novo adjudication in terms with the directions of the Tribunal in preceding assessment years. This ground is allowed for statistical purposes.

15. In ground no.(v), the assessee has challenged the disallowance of interest expenditure under section 36(1)(iii) of the Act.

16. Brief facts are, in the course of assessment proceedings, the Assessing Officer noticed that the assessee has made investment in subsidiary companies viz. Ceylone Glass Co. Ltd., Sri Lanka, and G.G. USA Inc., USA. Further, he found that borrowed funds were utilized for making such investment. Being of the view that the investments made in the subsidiary companies is not for the purpose of assessee's business, the Assessing Officer disallowed interest expenditure of ₹ 3,98,75,785 under section 36(1)(iii) of the Act.

17. The learned Authorised Representative submitted, while deciding identical issue in assessee's own case for preceding assessment years, the Tribunal has allowed assessee's claim of interest expenditure having found that the investment made in subsidiary companies is for the purpose of assessee's business. In this context, he drew our attention to the orders passed by the Tribunal in assessment years 2001–02, 2006–07 and 2011–12.

18. The learned Departmental Representative agreed that the issue has been decided in favour of the assessee in the preceding assessment years.

19. We have considered rival submissions and perused the material on record. As could be seen from the facts available on record, this is a recurring issue between the assessee and the Department from the assessment year 2001–02 onwards. While deciding identical issue in the latest order passed by the Tribunal in assessee's own case for the assessment year 2005–06 in appeal filed by the Department being ITA no.4777/Mum./2016, dated 30th April 2019, the Tribunal has upheld the decision of the learned Commissioner (Appeals) allowing assessee's claim with the following observations:–

> *"14. We have considered rival submissions and perused material on record. As could be seen, the Assessing Officer has disallowed a part of interest expenditure on the reasoning that investments made by the assessee in sister concerns are not for the purpose of business. However, it is noticed that while deciding dispute arising out of similar disallowance made by the Assessing Officer in the assessment year 2001–02, the Tribunal in ITA no.9645 and 9498/Mum./2004, dated 2nd March 2016, has decided the issue in favour of the assessee by holding that the investment of funds in sister concerns are for the purpose of business. The same view was reiterated by the Tribunal while deciding the issue in assessment year 2006–07, vide ITA no.8360/Mum./2010, dated 16th December 2016, and for the assessment year 2011–12 in ITA no.157/Mum./2016, dated 4th January 2017. Facts being identical, following the consistent view of the Tribunal in assessee's own case as referred to above, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed."*

20. Facts being identical, respectfully following the decision of the Co–ordinate Bench in the preceding assessment years, we delete the disallowance made by the Assessing Officer.

21. In view of our decision in ground no.(v), ground no.(vi) has become infructuous, hence, dismissed.

22. In ground no.(vii), the assessee has challenged the disallowance of interest on account of interest free loans to the subsidiary.

23. Brief facts are, in the course of assessment proceedings, the Assessing Officer noticed that the assessee had advanced interest free loans to its sister concern. Whereas, it has paid interest on borrowed funds amounting to ₹ 51 crore. From the details furnished, he found that the assessee had advanced interest free loan of ₹ 10,40,55,054, to Ceylone Glass Ltd. Whereas, it has advanced loan to another subsidiary in USA charging interest @ 11% to 13%. Thus, ultimately, the Assessing Officer concluded, since, the assessee has utilised borrowed funds for interest free advance to the subsidiary, interest expenditure to that extent should be disallowed. Accordingly, he computed interest @ 6.74% which worked out to Rs. 70,13,311. The aforesaid amount was disallowed from the interest cost claimed by the assessee. While deciding the objections raised by the assessee, learned DRP confirmed the disallowance made by the Assessing Officer.

24. The learned Authorised Representative submitted, while deciding identical issue in the preceding assessment years, the Tribunal has

deleted the disallowance made by the Assessing Officer. In this context, he drew our attention to the orders passed by the Tribunal in the assessment years 2001−02, 2006−07 and 2011−12.

25. The learned Departmental Representative agreed that the Tribunal has decided the issue in favour of the assessee in the preceding assessment years.

26. We have considered rival submissions and perused the material on record. As could be seen, this is a recurring issue between the assessee and the Department from the preceding years. In the latest order passed by the Tribunal in assessee's own case for the assessment year 2006−07, vide ITA no.8360/Mum./2010, dated 16th December 2016, the Tribunal has dealt with the issue as under:−

> *"25. We have considered the submissions of the parties and perused the material available on record. The only issue which needs examination is whether the interest free loans advanced to sister concern and directors are for promoting the business of the assessee. We have noted, while considering similar issue of disallowance of interest on the amount given to sister concern and directors, the Tribunal, in assessee's own case for assessment year 2001−02 deleted the disallowance having found that such advances were made for commercial expediency. It is also worth mentioning the contention of the assessee that in respect of Piramal Glass, U.K., the Transfer Pricing Officer has already made disallowance while determining the arm's length price prima−facie appears to be correct. In view of the aforesaid, we delete the disallowance of ₹ 13,87,213. Ground no.5, is allowed."*

27. Facts being identical, respectfully following the aforesaid decision of the Co−ordinate Bench, we delete the disallowance made by the Assessing Officer.

28. In ground no.(viii), the assessee has challenged the addition made by the Assessing Officer on account of unutilized credit of Central Value Added Tax (CENVAT) under section 145A of the Act.

29. Brief facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee has not included unutilized CENVAT credit in the value of closing stock of raw material on 31st March 2012. Therefore, he called upon the assessee to explain why an amount of ₹ 5,48,13,766, should not be added to the income in terms of section 145A of the Act. Though, the assessee objected to the proposed addition, however, the Assessing Officer rejecting the objections of the assessee added the unutilized CENVAT credit amounting to ₹ 1,19,24,979 under section 145A of the Act. While deciding the objections raised by the assessee, learned DRP following its decision in the assessment year 2006−07, rejected the objections of the assessee.

30. The learned Authorised Representative submitted, while deciding identical issue in assessee's own case, the Tribunal had restored the issue to the Assessing Officer. Thus, he sought similar direction in the impugned assessment year as well.

31. The learned Departmental Representative submitted, the issue may be restored back to the Assessing Officer.

32. We have considered rival submissions and perused the material on record. Identical issue arose in assessee's own case in the assessment year 2006−07. The Tribunal while deciding the issue in ITA no.8360/Mum./2010, dated 16th December 2016, has held as under:−

> *"43. We have considered the submissions of the parties and perused the material available on record in the light of the decisions relied upon. On a reading of section 145A of the Act, it is to be noted that as per the said provision, while valuing the opening stock and closing stock further adjustment has to be made to include amount of any tax, duty, cess or fee actually paid / incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. It is further relevant to observe, the Hon'ble Delhi High Court in CIT v/s Mahavir Aluminium Ltd., 168 taxmann.com 27, interpreting the provisions of section 145A has observed that adjustment of closing stock by including tax, cess, or fee cannot be made without making corresponding adjustment to the opening stock. This view has been reiterated in a number of decisions of the Tribunal which the learned Authorised Representative relied upon. We, therefore, direct the Assessing Officer to value the closing stock strictly in terms of section 145A, keeping in view the principle laid down in judicial precedents referred to above and only after providing due opportunity of being heard to the assessee. Ground no.8 is allowed for statistical purposes."*

33. Facts being identical, respectfully following the aforesaid decision of the Tribunal, we restore the issue to the Assessing Officer for deciding afresh in terms with the directions of the Tribunal in assessment year 2006−07.

34. In ground no.(ix), the assessee has challenged the additions made on account of adjustment to the arm's length price of interest fee loan advanced to Piramal Glass, U.K. and corporate guarantee provided to the Associated Enterprise (AE).

35. Brief facts are, the Transfer Pricing Officer while examining the arm's length price of international transaction between the assessee and the overseas AE found that the assessee had given interest free loan to Piramal Glass U.K. and corporate guarantee to Piramal Glass, USA and Piramal Glass, Europe. Therefore he proceeded to determine the arm's length interest on the interest free loan by applying the rate of 7.63% as per Bloomberg database resulting in an adjustment of ₹ 44,98,521. Insofar as the arm's length price of corporate guarantee commission is concerned, the Transfer Pricing Officer computed such guarantee commission at the average rate of 2.25% resulting in an addition of ₹ 5,58,15,625.

36. The assessee raised objections before learned DRP in respect of the aforesaid additions.

37. As regards adjustment of interest on interest free loan to the AE, learned DRP directed the Assessing Officer to compute the interest by applying LIBOR plus 3%. Insofar as corporate guarantee commission is

concerned, learned DRP refused to interfere with the adjustment made by the Transfer Pricing Officer.

38. The learned Authorised Representative submitted, while deciding identical issue relating to adjustment made to interest on interest free loan to the AE, the Tribunal in assessment year 2011−12 has restored the issue to the Assessing Officer for benchmarking it by applying LIBOR plus basis point. He submitted, insofar as the issue relating to corporate guarantee commission is concerned, the Tribunal while deciding the issue in the assessment year 2011−12 has directed the Assessing Officer to charge guarantee commission @ 0.5%. Thus, he submitted, similar direction may be given in the impugned assessment year.

39. The learned Departmental Representative relied upon the observations of learned DRP.



40. We have considered rival submissions and perused the material on record. As regards the rate at which interest on interest free loan is to be computed, we find that learned DRP has directed the Assessing Officer to compute interest at LIBOR plus 3%. We find that while deciding identical issue in assessee's own case in assessment year 2007−08 in ITA no.4778/Mum./2016, dated 30th April 2019, the Tribunal has directed to compute interest on interest free loan

advanced to the AE at LIBOR plus 200 basis points. Insofar as adjustment on account of corporate guarantee commission is concerned, the Tribunal has directed the Assessing Officer to compute the corporate guarantee fee @ 0.5%. Similar view was expressed by the Tribunal while deciding assessee's appeal in assessment year 2011–12. Respectfully following the aforesaid decisions of the Co–ordinate Bench, we direct the Assessing Officer to compute interest on interest free loan to AE at LIBOR plus 200 basis points and corporate guarantee commission @ 0.5%.

41. In ground no.(x), the assessee has challenged the addition on account of foreign exchange gain arising out of loan given to the subsidiary companies.

42. Brief facts are, during the assessment proceedings, the Assessing Officer on perusing the audit report noticed that the assessee has earned foreign exchange gain of ₹ 1,41,65,716, on loans given to the subsidiary companies. However, the assessee did not offer it to tax by claiming it to be a capital receipt. Rejecting the claim of the assessee, the Assessing Officer added back the aforesaid amount to the income of the assessee by treating it as revenue receipt while proposing the draft assessment order. Against the aforesaid decision of the Assessing Officer, assessee raised objection before learned DRP.

43. After considering the submissions of the assessee, learned DRP followed the decision of the Hon'ble Supreme Court in Sutlej Cotton Mills v/s CIT, ITA no.116 of 2001, and directed the Assessing Officer to delete the addition.

44. The learned Authorised Representative submitted, while computing the income in the final assessment order, the Assessing Officer has not implemented the aforesaid direction of learned DRP. Therefore, he sought a direction to the Assessing Officer to implement the directions of learned DRP.

45. The learned Departmental Representative submitted, necessary directions may be issued to the Assessing Officer.

46. We have considered rival submissions and perused the material on record. It is observed, while deciding the aforesaid issue, learned DRP has specifically directed the Assessing Officer to delete the addition of ₹ 1,41,65,716. In fact, in the final assessment order, the Assessing Officer in Para−12.1, has referred to the aforesaid direction of learned DRP. As per section 144C(13) of the Act, the Assessing Officer is duty bound to implement the directions of learned DRP. In view of the aforesaid, we direct the Assessing Officer to comply with the statutory mandate by implementing the directions of learned DRP on the issue and delete the addition.

47. Ground no.(xi) is on short grant of TDS.

48. After considering the submissions of the parties, we direct the Assessing Officer to verify the facts relating to assessee's claim and grant credit for TDS as per law.

49. Ground no.(xii) is on the issue of levy of interest u/s 234C.

50. Levy of interest being consequential, does not require adjudication at this stage.

51. In the result, appeal is partly allowed.

Order pronounced in the open Court on 07.06.2019

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **RAJESH KUMAR** | **SAKTIJIT DEY** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

**MUMBAI, DATED: 07.06.2019**

*Copy of the order forwarded to:*

*(1) The Assessee;*
*(2) The Revenue;*
*(3) The CIT(A);*
*(4) The CIT, Mumbai City concerned;*
*(5) The DR, ITAT, Mumbai;*
*(6) Guard file.*

True Copy
By Order

*Pradeep J. Chowdhury*
*Sr. Private Secretary*

Assistant Registrar
ITAT, Mumbai