IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

I.T.A. NO.101 OF 2010

BETWEEN:

M/S. MICROLABS LIMITED
No.27, RACE COURSE ROAD
BANGALORE-560001
REP. BY ITS MANAGING DIRECTOR
SRI. DILIP SURANA
AGED ABOUT 43 YEARS
S/O SRI. GHEWARCHAND SURANA.

... APPELLANT

(By Sri. S. PARTHASARATHI, ADV.)

AND:

THE ASST. COMMISSIONER OF INCOME-TAX
CIRCLE 12(1), 14/3
RASTROTHANA BHAVAN
4TH FLOOR, NRUPATHUNGA ROAD
OPP RBI, BANGALORE.

... RESPONDENT

(By Sri. K.V. ARAVIND, ADV.)

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THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 30-10-2009 PASSED IN ITA No.704/BNG/2008, FOR THE ASSESSMENT YEAR 2001-02 PRAYING TO FORMULATE THE SUBSTANTIAL

QUESTIONS OF LAW STATED THEREIN. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA No.704/BNG/2008, DATED 30-10-2009, IN THE INTEREST OF JUSTICE AND EQUITY & ETC.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.,** DELIVERED THE FOLLOWING:

JUDGMENT

Mr.S.Parthasarathi, learned counsel for the appellant.

Mr.K.V.Aravind, learned counsel for the respondent.

2. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the assessee which was admitted by a Bench of this Court on the following substantial questions of law:

i) Whether in law the tribunal was justified in allocating the R & D expenditure to the Pondy unit when no such products were manufactured by the Pondy unit during the relevant year for which research was carried out by R & D unit.

ii) Even when the answer to the first question is in the affirmative, whether in law, the tribunal is justified in not excluding the capital expenditure to the tune of Rs.99 lakhs from the total R & D expenditure of Rs.1.99 crores while allowing the expenditure on R & D between the other units.

iii) Whether the tribunal was right in holding that the computation of deduction under Section 80HHC has to be done by reducing the deduction under Section 80-IB for the purpose of ascertaining eligible profit.

iv) Whether the tribunal was right in not following the principle laid down by the Hon'ble Supreme Court in the case of JCIT Vs. Mandideep Engineering & Packaging Industry Pvt. Ltd. 292 ITR 1 while quantifying the deduction under Section 80HHC of the Act.

3. Facts giving rise to the filing of the appeal briefly stated are that appellant is a company carrying on the business of manufacture and export of

pharmaceuticals. The appellant filed its return of income declaring the income of ₹8,62,79,470/- and claimed deduction under Section 80-IB and under Section 80HHC of the Act. The Assessing Officer by an order dated 23.12.2003 allowed the claim of the appellant. Being aggrieved, an appeal was preferred. The Commissioner of Income Tax (Appeals) by an order dated 10.03.2006 remitted the matter to the Assessing Officer with a direction to carry out the assessment afresh. The Assessing Officer by an order dated 11.02.2008 reduced the profit on which the relief under Section 80-IB was given and only net balance of profit was considered for allowing the relief under Section 80HHC.

4. Being aggrieved by the order of Assessing Officer, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), which was partly allowed by an order dated 11.02.2008. An appeal was preferred before the Income Tax Appellate Tribunal.

The Tribunal by an order dated 30.10.2009 dismissed the appeal preferred by the appellant. In the aforesaid factual background, the appellant has preferred this appeal.

5. Learned counsel for the appellant, at the outset, submitted that sofar as substantial questions of law Nos.3 and 4 are concerned, the same have already been answered in favour of the appellant by an order dated 11.07.2011 passed in ITA No.471/2008. However, it was fairly submitted that the issues pertaining to question Nos.3 and 4 are pending consideration before the Supreme Court. It is further submitted that the Tribunal was not justified in allocating research and development expenditure to the Pondicherry unit of the appellant when no such products were manufactured in the aforesaid unit in the relevant year. It is also urged that even if it is assumed to be so, the Tribunal ought to have excluded capital expenditure to the tune of ₹9 lakhs from the total research and development

expenditure of ₹1.99 crores while allowing the expenditure of research and development expenditure between other units. It is further submitted that the question of apportionment of expenses in research and development unit will arise only to the extent of utility of research and development unit by the other units that is, Pondicherry unit.

6. On the other hand, learned counsel for the revenue fairly submitted that the question Nos.3 and 4 be answered in favour of assessee subject to the outcome of the special leave petition pending before the Supreme Court. It was further submitted that it has been conceded by the appellant that in the Pondicherry unit infact two products were produced by research and development unit in the subsequent year, though they were developed in the preceding year.

7. We have considered the submissions made by the learned counsel for the parties and have perused the record. From the perusal of the record, it is evident that

two products namely DIANOUM/RETARD tablets and NOVOLID tablets were manufactured by the Pondicherry unit not in the relevant year, for which research was done by research and development unit during the relevant year and expenditure, if any, was incurred in the preceding year. Therefore, there could not have been apportionment of the current year's expenditure to the Pondicherry unit. It ought to have been appreciated that when research was helpful for other units, the question of apportionment of the expenditure to the Pondicherry unit would not arise. This fact can also be ascertained from the books of accounts of the Pondicherry unit. Thus, if the product is manufactured by other unit of the appellant, then only allocation of research and development expenses to the other unit is justified. Therefore, the first substantial question of law framed is answered in favour of the assessee and against the revenue.

8. Section 35(1) of the Act provides that in respect of expenditure on scientific research, the deductions made therein namely expenditure laid down or expended on the scientific research related to the business and an amount equal to one and one and a half times of any sum paid to a research association which has its object, the undertaking of scientific research or to a university, college or other institution to be used for scientific research. Since the amount of ₹99 lakhs was expended towards research and development, therefore, in view of Section 30(1) of the Act, the same ought to have been excluded from the total capital expenditure of ₹1.99 crores while allowing the expenditure on Research and development units. Accordingly, the second substantial question of law is answered in favour of the assessee and against the revenue.

9. Sofar as third and fourth substantial questions of law are concerned, the same are answered in favour of the assessee subject to the decision of the issue

involved in the aforesaid substantial questions of law which is pending adjudication before the Supreme Court. Needless to state that depending on the view taken by the Supreme Court, the revenue shall be at liberty to take an action against the appellant, if so advised in accordance with law.

10. In view of preceding analysis, the impugned order dated 30.10.2009 passed by the Income Tax Appellate Tribunal is hereby quashed.

Accordingly, the appeal is disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

RV

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