IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 124 OF 2016

The Pr. Commissioner of Income Tax-II .. Appellant.
v/s.
M/s. Watson Pharma Pvt. Ltd., .. Respondent.

Mr. Arvind Pinto, for the Appellant.
Mr. Arijit Chakrawarty with Ms. Shraddha Swarup i/b. Abhishek Tilak, for the Respondent.

CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.
DATE : 20th JUNE, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 9th January, 2015, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 9th January, 2015 is in respect of Assessment Year 2009-10.

2 Revenue urges only the following re-framed questions of law, for our consideration:

"*(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in directing to include the entity M/s. Dolphin Medical Services Ltd., as valid comparable even though the functioning comparable of the assessee and the entity M/s. Dolphin Medical Services Ltd., are squarely different?*

(b) Whether in law and on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to get the benefit of section 10B of the Act, on the interest income derived?

(c) Whether in law and on the facts of the instant case, was the Tribunal right in holding that an adjustment ought to be

made for risk adjustment when the DRP has found that the Respondent Company has not provided any facts or any material to specify as to how this risk is to be calculated?
(d) Whether in law and on the facts of the given case, was the Tribunal justified in concluding that an adjustment of the price based on location advantages is not permissible in law and in the Rules therein?"

3 **Re Question (a):-**

(i) The Respondent-Assessee is wholly owned subsidiary of an USA based company. The Respondent provides contract manufacture, contract research and development of drugs to its parent Associated Enterprises (AE). The impugned order of the Tribunal has directed the inclusion of M/s. Dolphin Medical Services Ltd., as a comparable to determine the Arms Length Price (ALP) of the transaction entered into by the Respondent-Assessee with its parent AE.

(ii) The Appellant's-Revenue's grievance with the impugned order of the Tribunal is the inclusion of M/s. Dolphin Medical Services Ltd., This on ground that it not functionally comparable with the assessee and that the Respondent having accepted the exclusion of M/s. Alphageo Ltd., as comparable by the Dispute Resolution Panel (DRP), M/s. Dolphin Medical Services Ltd., could not be included as comparable.

(iii) We find that the impugned order of the Tribunal find as a fact that M/s. Dolphin Medical Services Ltd., is functionally rendering similar activities to that performed by Respondent-Assessee inasmuch as it is in the business of clinical trial services i.e. functionally broadly similar. We also note that the impugned order of the Tribunal records the fact that this similarity is not disputed by the Revenue before it. We find that the DRP had excluded both Alphageo (India) Ltd., and M/s. Dolphin Medical Ltd. from the list of comparables. This,particularly, in view of the fact that M/s. Alphageo (India) Ltd., is providing seismic survey services to the oil exploration industry. Thus, the Appellant accepted the exclusion of M/s. Alphageo (India) Ltd., from the list of comparables and only appealed against exclusion of M/s. Dolphin Medical Ltd. from the list of comparables.

(iv) In the above view, we note that the Tribunal's finding that M/s. Dolphin Medical Services Pvt. Ltd., is to be included as a comparable to determine the ALP of the Respondent-Assessee, is a finding of fact. This finding of fact is not shown to be perverse in any manner.

(v) Accordingly, question (a) as proposed, does not give rise to any substantial question of law. Thus, not entertained.

4 **Re Question (c):-**

(i) The grievance of the Revenue is that no details were provided by the Respondent to the DRP on account of risk adjustment as claimed by it. Thus, it is submitted that the Tribunal could not have allowed the claim. We find that the impugned order of the Tribunal itself records the fact that the necessary material in support of its claim was given by the Respondent to the DRP on 17th September, 2013 while the order of the DRP was passed on 31st December, 2013. This finding of fact by the Tribunal has not been shown to be incorrect.

(ii) In the above view, the question as proposed, does not give rise to any substantial question of law. Thus, not entertained.

5 **Re Question (d):-**

(i) The TPO and DRP had enhanced the ALP by taking into account the locational advantage of the Respondent while determining the ALP on non-related transactions by comparable entities operating in India. The Tribunal's finding is that the comparable selected to determine the ALP were entities operating in India just as the Respondent-Assessee .

(ii) Thus, the Tribunal by the impugned order has held that no adjustment of ALP on account of locational advantage is called for. This, as both the comparables as well as and the Respondent, are situated in India. Thus, no locational difference. Consequently, no locational advantage.

(iii) In the above view, the proposed question does not give rise to any substantial question of law. Thus, not entertained.

6 **<u>Re. Question (b):-</u>**

Appeal admitted on the substantial question of law at (b).

7 Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.

Mr. Chakrawarty, learned Counsel waives service for the Respondent.

(SANDEEP K. SHINDE,J.) **(M.S.SANKLECHA,J.)**