

Cadila Pharmaceuticals Ltd., ... vs Assessee on 11 July, 2014

IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER And
SHRI KUL BHARAT, JUDICIAL MEMBER

1. . /I.TA. No.1146/Ahd/2011 - A.Y. 2006-07
2. . /I.TA. No.1518/Ahd/2011 - A.Y. 2006-07

1. Cadila Pharmaceuticals Ltd.
708, Sarkhej Dholka Road
Bhat, Ahmedabad-382 210

1. Addl.CIT
Range-1, Ahmedabad

Vs.

2. Addl.CIT
Range-1, Ahmedabad

2. Cadila Pharmaceuticals Ltd., Ahmedabad

i . /¢ £ . / PAN/GIR No. : AAACC 6251 E
(i/ /Appellants) .. (¥× i/ / Respondents)

Assessee by:

Shri S.N.Soparkar, AR

Revenue by:

Shri P.L.Kureel, Sr.DR

§ ¨ ' / Date of Hearing : 18/06/2014
“«< ¨ ' /Date of Pronouncement : 11/07/2014

> / O R D E R

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

These cross-appeals by the Assessee and the Revenue are directed against the order of the Ld.Commissioner of Income Tax(Appeals)-VI, Ahmedabad ('CIT(A)' in short) dated 23/03/2011 pertaining to Assessment Year (AY) 2006-07. These appeals were heard together and are being disposed of by way of this consolidated order for the sake of convenience.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

2. First, we take up the Assessee's appeal in ITA No.1146/Ahd/2011 for AY 2006-07. The assessee has raised the following grounds of appeal:-

1. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming disallowances to the extent of Rs.1,02,575/- towards the payment of donation under section 80G. The disallowance may be cancelled.
2. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming the disallowances towards late payment of ESI & PF for Rs.47,403/-. The disallowance may be cancelled.
3. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming the unpaid Leave Encashment under section 43B of the IT Act 1961 for Rs.2,04,973/-. The disallowance may be cancelled.
4. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming disallowances of prior period expenses for Rs.23,27,520. The disallowance may be cancelled.
5. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming the disallowances on the expenses for scientific research u/s.35(2AB) for Rs.3,59,500/-. The disallowance may be cancelled.
6. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming disallowances to the extent of Rs.17,06,566/- for interest claimed, as considered to be diverted for non-business purposes. The disallowance may be cancelled.
7. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming disallowances u/s.14A of the Income Tax Act, 1961 to the extent of Rs.64,13,532/-. The disallowance may be cancelled.
8. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming disallowance of Depreciation on building and plant and machinery for Rs.28,77,600/-. The disallowance may be cancelled.
9. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming the Ld.Assessing officer making addition of and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07 Rs.52,59,803/- in calculation of Adjusted Book profit for the purpose of MAT considered as towards provision for doubtful debt and diminution in the value of investment. The additions may be cancelled.
10. Irrespective of the outcome of the ground no.4, the Ld.CIT(A) has erred in law and in facts & circumstances of the case in adding in book profit for the purpose of MAT, the sum of Rs.23,27,520/- considered as prior period expenses. The addition may be cancelled.

11. The Ld.CIT(A) has erred in law and in facts & circumstances of the case in confirming the expenses disallowed u/s.14A of Rs.64,13,532/- in calculation of Adjusted Book profit as per Mat Provisions. The disallowance may be cancelled.

The appellant reserves the right to add, alter, modify, amend or delete, any of the above ground/(s) either before or during the appeal proceedings.

2. Briefly stated facts are that the assessee filed the return of income for AY 2006-07 declaring a total income at RS.7,13,99,473/-. The case of the assessee was picked up for scrutiny assessment and the assessment u/s.143(3) of the Income Tax Act,1961 (hereinafter referred to as "the Act") was framed vide order dated 29/12/2009, thereby the Assessing Officer (AO in short) made disallowance of claim u/s.80G of the Act of Rs.1,02,575/-, disallowance towards ESI & PF u/s.40B of Rs.47,403/-, disallowance of unpaid leave encashment u/s.43B of the Act of Rs.2,04,873/-, disallowance of prior period expenses of Rs.23,27,520/-, disallowance u/s.40(a) of Rs.6,74,282/-, disallowance of Research & Development expenses of Rs.3,59,500/-, disallowance of product registration expenses of Rs.1,43,79,597/-, disallowance of interest expenses of Rs.30,93,151/-, disallowance u/s.14A of Rs.64,13,532/-, addition on account of bad debts of Rs.11,73,87,951/-, and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07 addition on account of depreciation of Rs.28,77,600/- and claim of additional depreciation of Rs.1,10,62,481/-. While computing the book profit, the AO made addition on provision for doubtful debts and provision for diminution in value of investments and prior period expenses disallowed u/s.14A of the Act. Against this, assessee filed an appeal before the Id.CIT(A), who after considering the submissions partly allowed the appeal. Now, both the Assessee and Revenue feeling aggrieved by the order fo the Id.CIT(A) have preferred the present appeals.

3. Ground No.1 is against the disallowance of Rs.1,02,575/- towards the payment of donation u/s.80G of the Act. During the course of hearing, ld.counsel for the assessee fairly conceded that no evidence in support of the donation was filed. In view of the submission made by the ld.counsel for the assessee, ground No.1 is rejected.

4. Ground No.2 is against the disallowances of Rs.47,403/- towards late payment of ESI & PF. The ld.counsel for the assessee submitted that the payment was made within the grace period. He placed reliance on the judgement of the Hon'ble High Court rendered in the case of CIT vs. Amoli Organics (P.) Ltd. reported at (2014) 41 taxmann.com 149 (Guj.).

4.1. On the contrary, Sr.DR supported the orders of the authorities below.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The contention of the ld.counsel for the assessee requires verification whether the amount was paid within the grace period and if the amount was paid within the grace period, then it requires to be deleted in the light of the judgement of Hon'ble High Court

rendered in the case of Amoli Organics (P.)Ltd.(supra). Therefore, this issue is restored back to the file of AO for verification and ground of assessee's appeal is allowed for statistical purposes.

5.1. Ground No.3 is against confirmation of disallowance of the unpaid leave encashment u/s.43B of the Act amounting to Rs.2,04,973/-. The ld.counsel for the assessee submitted that the authorities below were not justified in making the disallowance. On the contrary, ld.Sr.DR supported the orders of the authorities below.

6. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The AO has observed in para-7.1 of his order that as per Annexure-J(ii) of the Auditors' Report, a sum of Rs.2,04,873/- has been shown as an amount incurred towards leave encashment provided for during the year which has remained unpaid at the end of the year. The contention of the assessee before the authorities below was that leave encashment was not covered u/s.43B of the Act. The ld.CIT(A) has decided this issue vide para-5.3 of his order as under:-

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07 "5.3. I have considered the facts of the case, assessment order and appellant's submission. It is not in dispute that appellant did not pay leave encashment to the extent of Rs.2,04,873. By granting leave to employees, leave encashment provision cannot be claimed. This provision is specifically included in section 43B and therefore disallowance can be made if payment is not made by the assessee till due date of filing return. There is no requirement of statutory liability in this section therefore appellant's claim is not justified. Since such claims are allowable only on payment in the year in which payment is made, the same is not allowable since no payment was made during the year of this amount. Addition made by the assessing officer is therefore confirmed."

6.1. Both the authorities have given a finding on fact that the expenditure claimed amounting to Rs.2,04,873/- as leave encashment was not incurred during the year. This fact is not controverted by the ld.counsel for the assessee by placing any contrary material on record.

Therefore, we do not find any infirmity in the orders of the authorities below, same is hereby upheld. This ground of assessee's appeal is rejected.

7. Ground No.4 is against confirmation of disallowance of prior period expenses of Rs.23,27,520/-. The ld.counsel for the assessee submitted that the authorities below were not justified in making the disallowance. He submitted that the cost of recovery and interest is not an expenditure at all. Reversal entry of earlier year booking of income. He placed reliance on the judgment of Hon'ble Delhi High Court rendered in the case of CIT Vs. Jagajit Industries Ltd. (339 ITR 382) and decision of Bombay High Court (221 Taxman 80).

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

8. On the contrary, ld.Sr.DR supported the orders of the authorities below.

9. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The ld.CIT(A) has decided this issue in para-6.3.of his order by observing as under:-

"6.3. I have considered the facts of the case, assessment order and appellant's submission. Appellant claimed prior period expenses on account of interest, sales expenses and reversal of cost recovery. The auditor of the appellant certified these expenses as prior period and not relating to previous year concerned. As per decision of jurisdictional High Court, only those expenses which were crystalised during the year are allowable. However appellant did not submit any material or evidence to prove that these expenses were actually crystallized during the year. In absence of any evidence, the findings of the auditor treating these expenses as prior period cannot be nullified. Accordingly this claim is not allowed."

9.1. Before the Assessing Officer, the contention of the assessee was that out of Rs.23,27,520/-, Rs.35,927/- towards out of pocket expenses of sales representative of the assessee-company and Rs.20,41,593/- was debited in this account is actually interest recorded in the year on 30/04/2005 towards interest debit notes on debts receivable of the company which when the debts became bad. The recovery of related interest also reversed, being not earned. Factually, the entry for recording interest accrual based on debit note recorded in financial books on 30/4/2005 being the extended financial year under company law last year, the reversal of the said amount on 31/3/2006 was treated as prior period. The AO rejected the contention on the basis that the bad debts as and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07 claimed by the assessee have been rejected, therefore the interest component cannot be allowed.

9.2. The ld.CIT(A) confirmed the addition on the basis that the Auditor of the appellant certified these expenses as prior period and not relating to previous year concerned. The appellant did not submit any material or evidence to prove that these expenses were actually crystalised during the year. Therefore, the findings of the auditor treating these expenses as prior period cannot be nullified. The contention of the appellant is that the interest component represents those expenditure which was claimed as interest on debt. Since the debt had become bad, therefore this interest amount was reversed in the books of account. We also find that the assessee's submission before the ld.CIT(A) was that Rs.35,927/- towards out of pocket expenses of sales representative of the assessee-company. This amount represents the advances given to the sales representative who subsequently left the company and did not settle the account. It was contended that amount of Rs.20,41,593/- debited in that account was actually interest which was recorded in the year on 30/04/2005 towards interest debit notes on debts receivable of the company, which when the debts became bad, the recovery of related interest was also reversed, being not earned. Factually, the entry for recording interest accrual based on debit note recorded in financial books on 30/4/2005, being

the extended financial year under company law last year, the reversal of the said on 31/3/2006 was treated as prior period in the 11 months financial accounts under the company law for FY 05-06. However, for the income tax purposes the said represents reversal falling within the year, and not really prior period. Similarly, Rs.2,50,000/- being adjustment of cost and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07 recovery recorded on 30/4/2005 is reversed, not having the character of prior period for the financial year 1/4/2005 to 31/3/2006. The ld.CIT(A) has not given any finding of the submission of the assessee. The ld.counsel for the assessee placed reliance on the judgement of the Hon'ble Bobmay High Court rendered in the case of CIT vs. Mahanagar Gar Ltd. in Appeal No.1978 of 2011:: (2014) 42 taxmann.com 40 (Bombay) and the judgement of Hon'ble Delhi High Court rendered in the case of CIT vs. Jagatjit Industries Ltd. reported at (2011) 339 ITR 382 (Delhi). In both these judgements the issue was with regard to the prior period expenses and the issue was decided on the basis of consistency. In the case in hand, it is not the case where assessee has been following practice in past. However, considering the fact that the submissions of the assessee with regard to the reversal of entry is not decided by the ld.CIT(A). Moreover, the ld.CIT(A) has allowed the claim of bad debt of the assessee. Therefore, the issue is restored back to the file of ld.CIT(A) to decide it afresh after verifying the claim of the assessee that the book entry was reversed. Thus, this ground of assessee's appeal is allowed but for statistical purposes.

10. Ground No.5 is against the disallowance of the expenses for scientific research u/s.35(2AB) of the Act amounting to Rs.3,59,500/-. The ld.counsel for the assessee submitted that the AO disallowed the expenditure on the basis that the clinical trial expenses was not within the In-house Research and Development Facility as approved by the prescribed Authority. The ld.CIT(A) confirmed the disallowance made by the AO on the basis that the condition allowing of weighted and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 10 -

expenditure is that the In-house research should have been made. The ld.counsel for the assessee relied on the judgement of Hon'ble Gujarat High Court rendered in the case of CIT vs. Cadila Healthcare Ltd. reported at (2013) 31 taxmann.com 300 (Guj.). The ld.counsel for the assessee submitted that the issue is squarely covered by the judgement of Hon'ble High Court of Gujarat in the case of CIT vs. Cadila Healthcare Ltd.(supra).

11. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The Hon'ble High Court of Gujarat in the case of CIT vs. Cadila Healthcare Ltd.(supra) has held as under:-

"11. Revenue has also suggested following question :

"D. Whether the Appellate Tribunal has substantially erred in holding that the expenses incurred outside the approved R&D facility would also get weighted deduction based on the word under "on in house" interpreting contradictorily to the finding of coordinate bench in Concept Pharmaceuticals Ltd v. ACIT (ITAT, Mum)

reported at 43 SOT 423?"

12. We may record that question 'E' in the appeal memo is an additional question which has an element of above noted question. We have, therefore, not separately reproduced the same in this order. The issue is whether the assessee who has incurred expenditure for scientific research, which was not in the in-house facility, could be covered for deduction under section 35(2AB) of the Income Tax Act, 1961."

11.1 The Hon'ble High Court of Gujarat after examining the entire issue came to the conclusion that the Tribunal committed no error. Respectfully following the judgement of Jurisdictional High Court in the and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 11 -

case of CIT vs. Cadila Healthcare Ltd.(supra), we hereby direct the AO to allow the claim of the assessee. Thus, this ground of assessee's appeal is allowed.

12. Ground No.6 is against the disallowance of interest amounting to Rs.17,06,566/-. The ld.counsel for the assessee submitted that the AO made disallowance of interest on the basis that the interest free- loans/advances given by the assessee to its sister-concern, namely, M/s.Casil Health Products Ltd. (CHPL). The AO made addition of Rs.30,93,151/- as compared to, in the same average rate of borrowing i.e.7.25% applied on the daily balances outstanding. On appeal, the ld.CIT(A) restricted the disallowance to the extent of 4% of the average cost of fund. The ld.counsel for the assessee submitted that the assessee was having sufficient interest-free funds. The ld.counsel for the assessee placed reliance on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT-I vs. UTI Bank Ltd. reported at (2013) 32 taxmann.com 370 (Gujarat). He also placed reliance on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT vs. Raghuvir Synthetics Ltd. reported at (2013) 354 ITR 222(Guj.) 12.1. On the contrary, ld.Sr.DR supported the order of the AO and submitted that the advances were given to sister-concern for commercial purposes, therefore, there is no applicability of section 36(1)(iii) of the Act.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 12 -

13. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the judgements relied upon by the ld.counsel for the assessee. The AO has made addition on the basis that the outstanding balances in respect of the sister-concern, namely, M/s.Casil Health Products Ltd.(CHPL in short) has been continuing over years. The AO observed that the assessee has been getting the job-work done from CHPL and also making purchases form CHPL, but the amount remained perpetually outstanding during the year and rejected the contention of the assessee that the advances made for the purpose of business. On

appeal, the Id.CIT(A) restricted the addition to the extent of 4% of the average cost of fund on the basis that the appellant had borrowed funds on which interest was paid, therefore it cannot be said that the appellant had sufficient own funds. The Id.CIT(A) observed that the amount outstanding against associate-company is in the nature of advance since appellant has not recovered the same. It this was business advance, the same could have been recovered or adjusted by now but the fact that it remain outstanding for many years clearly shows that this is interest-free advances given out of overall business fund which included borrowed funds also. The contention of the assessee before the authorities below was two folds; firstly, advances were given for business purposes, therefore provisions of section 36(1)(iii) cannot be applied and secondly, the assessee was having sufficient interest-free funds to make advances. The judgement relied upon by the Id.counsel for the assessee in the case of CIT vs. Raghuvir Synthetics Ltd.(supra), wherein the Hon'ble High Court of Gujarat relying on the judgement of the Hon'ble Apex Court in and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 13 -

the case of S.A.Builders Ltd. vs. CIT reported in (2007) 288 ITR 01 (SC) answered the question in favour of assessee. In the present case, both the authorities have made addition on the basis that the advances given have been continuing for a long period of time. Both the authorities have not given any finding with regard to availability of funds with the assessee for making such advances. However, the contention of the assessee is that the fact is not controverted by the authorities below that the advances have been given for business purposes since the assessee has been making purchases and getting job-work from the associate-concern. This goes to prove that advances were given for business purpose. The Hon'ble Jurisdictional High Court has decided the issue in favour of the assessee by following the judgement of the Hon'ble Apex Court rendered in the case of S.A.Builders Ltd. vs. CIT (supra), wherein it has been held that if the advances have been made for business purpose, then disallowance is not called for. The Hon'ble Supreme Court in that case has approved the judgement of Hon'ble Delhi High Court rendered in the case of CIT vs. Dalmia Cement (B.) Ltd. reported at (2002) 254 ITR 377 (Delhi), wherein the Hon'ble Delhi High Court has held that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income-tax authorities must put themselves in the shoes of the assessee and see how a prudent and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 14 -

businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.

13.1. Therefore, respectfully following the ratio laid in the judgement of the Hon'ble Jurisdictional High Court in the case of CIT vs. Raghuvir Synthetics Ltd.(supra), we cannot uphold the action of the authorities below. Therefore, this ground of the assessee's appeal is allowed.

14. Ground No.7 is against confirmation of disallowance made u/s.14A of the Act amounting to Rs.64,13,532/-. The ld.counsel for the assessee submitted that the investments were strategic, interest-free funds were available and Rule 8D would not apply in the present year. The ld.counsel for the assessee placed reliance on the decision of Hon'ble Coordinate Bench (ITAT "J" Bench Mumbai) rendered in the case of M/s.JM Financial Limited vs. Addl.CIT in ITa No.4521/Mum/2012 for AY 2009-10, dated 26/03/2014. The ld.counsel for the assessee also placed reliance on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT-I vs. UTI Bank Ltd.(supra) and of CIT-II vs. Hitachi Home and Life Solutions(I) Ltd. reported at (2014) 41 taxmann.com 540 (Guj.).

14.1. On the contrary, ld.Sr.DR has supported the orders of the authorities below.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 15 -

15. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the judgements relied upon by the ld.counsel for the assessee. The AO observed that primarily the investments by the assessee are on account of shares in Casil Industries Ltd. However, there are a few other investments also. The assessee had submitted before the AO that the shares have come by way of amalgamation, hence there is no direct cost involved. The AO placed reliance on the decision of the Special Bench of the Tribunal (ITAT Delhi-SB) rendered in the case of Cheminvest Ltd. vs. ITO in ITA No.87/Del/2008 and applied Rule 8D and made disallowance of Rs.64,13,532/-. The ld.CIT(A) recorded the submissions of the assessee in para-11.2 of his order and decided the issue in para- 11.3 of his order as under:-

"11.3 I have considered the facts of the case, assessment order and appellant's submission. It is not in dispute that appellant earned exempt income in the form of dividend on investment of more than Rs.1522 lakhs. It is also not in dispute that appellant borrowed funds on which interest to the extent of Rs.1527 lakhs were paid. Apart from this, substantial administrative expenses were incurred, part of which may relate to investment resulting in exempt income. Considering these facts it is clear that there are expenses in the form of interest and other administrative expenses relatable to earning of exempt income which are to be disallowed under section 14A. Therefore disallowance under section 14A is necessary.

Coming to the method of computing disallowance under section 14A, assessing officer disallowed expenses relatable to exempt income as per rule 8D. Up to 2007-08 the method to arrive at disallowable expense was estimation. Thereafter

rule 8D was framed which gives formula for disallowance of expenses relating to exempt income. For interest, proportionate expense is disallowable whereas for other expenses .5% of investment value is disallowable. Considering the fact that appellant claimed huge administrative and other expenses, the disallowance of and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 16 -

administrative expenses made by the assessing officer rupees 647007 is quite reasonable and therefore the same is confirmed.

As regards interest, appellant submitted that it was having interest free funds and profit therefore no interest is relatable to investment resulting in exempt income. However it is seen that appellant borrowed substantially which was used in business purpose as well as investment. Since Common funds are maintained and appellant could not identify the immediate source of investment. In view of this, the decisions relied upon by the appellant are not applicable. Considering the fact that expenses relating to exempt income are to be estimated and rule 8D gives basis for computing such disallowance, therefore the disallowance under section 14A made by the assessing officer as per rule 8D is confirmed."

15.1. We have given our thoughtful consideration to the reasoning given by the authorities below. Since the year involved in AY 2006-07 and the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg.Co.Ltd. Mumbai vs. Dy.CIT reported at 328 ITR 81(Bom.) has held that the Rule 8D is applicable w.e.f. AY 2008-09, therefore the authorities below were not justified in applying the Rule 8D for making the disallowance. In this case, the assessee has shown exempt income of Rs.1,704/- from dividend. The investment of Casil Health Products Ltd. is vested into the assessee-company under the amalgamation and arrangement as approved by the Hon'ble Gujarat High Court, whereby the four erstwhile companies of Cadila Laboratories Ltd. belonging to Modi Group and Patel Group were merged into two companies. During the current year, the incremental Preference Shares Rs.4.75 crores are vested by the Hon'ble Gujarat High Court order for Casil Health Products Ltd. This fact is completely ignored by the authorities below. No finding is given by ld.CIT(A) on this aspect. Therefore, it requires fresh decision. In and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 17 -

respect of disallowance towards administrative expenses reliance has been placed on the decision of Coordinate Bench (ITA "B" Bench Ahmedabad) of this Tribunal in the case of Torrent Power Ltd. vs. DCIT [(2013) 33 taxmann.com 287] in ITA Nos.504 & 773 (Ahd.) of 2008 for AY 2004-05, dated 12/10/2012, wherein the Coordinate Bench has held as under:-

"10. We have heard the rival contentions and perused the material on record. We find that the Assessing Officer has disallowed the administrative expenses pertaining to salary of staff, rent, etc., on ad hoc basis. He has not given a finding as to the amount incurred by the assessee for earning exempt income. In the case of Maxopp Investment Ltd. vs. CIT (2012) 347 ITR 272[2011] 203 Taxman 364/15 taxmann.com 390(Delhi), the Hon'ble High Court has held the expression "expenditure incurred" refers to actual expenditure and not to some imagined expenditure but the "actual" expenditure that is in contemplation under section 14A(1) is the "actual" expenditure in relation to or in connection with or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to exempt income, no disallowance can be made under section 14A.

11. We find that the Assessing Officer has estimated the expenses at 1.5 per cent of the exempted income. He has not given any finding with respect to the expenditure incurred on administrative- head by the assessee. The assessee has submitted that it has incurred no expenditure. In view of the totality of facts and relying on the decision of the Hon'ble Delhi High Court we are of the view that no disallowance with respect to administrative expenses can be made in the present case. We thus delete the disallowance."

15.2. We do not find any reason to take a different view, therefore respectfully following the decision of Coordinate Bench rendered in the case of Torrent Power Ltd. vs. DCIT in ITA Nos.504 & 773 (Ahd.) of and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 18 -

2008, we direct the AO delete the addition made on account of disallowance of administrative expenses. However, the issue of disallowance of interest expenses is being restored back to the file of Id.CIT(A) to give a clear finding as to how the provisions of section 14A of the Act would be applicable under the facts when the investments are vested unto the assessee-company by way of amalgamation and arrangement approved by the Hon'ble Gujarat High Court. The assessee is directed to furnish the relevant material before the Id.CIT(A). Needless to say that the Id.CIT(A) would afford reasonable opportunity of hearing to the concerned parties.

16. Ground No.8 is against confirmation of disallowance of depreciation of Rs.28,776,600/- on building and Plant & Machinery. The Id.counsel for the assessee submitted that the authorities below were not justified in disallowing the claim. He placed reliance on the judgement of Hon'ble Gujarat High Court rendered in the case of ACIT vs. Ashima Syntex Ltd. reported at 251 ITR 133. He submitted that the details were given with regard to installation of the machinery as well as the commencement of the production by producing electricity power consumption bill, registration of excise, etc. He submitted that the authorities below failed to appreciate the fact that it was not necessary that the production so made should be sold, in fact the assessee had furnished evidence of commencement of the production. He submitted that the issue is squarely covered by the judgement

of Hon'ble Gujarat High Court rendered in the case of ACIT vs. Ashima Syntex Ltd.(supra). On the contrary, ld.Sr.DR supported the orders of the authorities below.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 19 -

He submitted that the assessee should have given the cogent evidence regarding usage of the plant purchased from Pfizer Ltd. and also production so made.

17. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the judgement relied upon by the ld.counsel for the assessee. The authorities below have not disputed the fact that the assessee has purchased the plant & machinery and installed the same. The authorities below have also not disputed the fact that the assessee has furnished the electricity bill, etc. and also the salary paid to the staff. The Hon'ble Gujarat High Court in the case of ACIT vs. Ashima Syntex Ltd.(supra) has held as under:-

"39. We are, therefore, of the opinion that when there is commencement of business by way of production of the articles, it can be said that the assessee is entitled to depreciation.

40. It is required to be noted that when an entrepreneur undertakes to invest huge amount for the manufacture of the product, he has to plan it properly. Installation of machinery or plant and machinery in the building itself is not sufficient to attract provisions contained in s. 32 of the Act. There must be use of plant and machinery for the purpose of business as contemplated in s. 32 of the Act. There is thus a thin line between the trial run and actual production, or many a times, the word used as "commercial production". If the machines are installed properly and it gives good result, then one need not wait for any rectification in the system. There may be some cases wherein after commencement of the production, the machine may not give proper result-- may be on account of failure of certain parts, may be on account of requirement of certain additional machinery, etc. In such case, the production obtained at the initial stage would be considered as trial part or machinery with a view to run the entire unit. It is not the case similar to that case where before the Bombay High Court there was no production and only tools were tested. The present case is not similar to that of Speciality Paper (supra) where wet press was required to be installed and even thereafter additional and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 20 -

machinery was required to be installed. In the instant case, plant and machinery were installed and it worked smoothly. There may be certain machines, which in view of

the latest technology, that require no trial run. If separate parts are fitted and the machine is brought in existence, it may require trial run, but if machinery is imported and merely it is fixed here, it does not mean that the machine would not work. Ultimately, on evidence, the Tribunal has found that 2,68,412 mtrs. of grey cloth was manufactured. Law does not require that there must be optimum production for granting the benefit. Law only required that there must be use of plant and machinery for the purpose of business. Use of such words that plant and machinery was run more extensively or was required to be used for larger production, is not to be found in the Act or Rules. Whether the plant and machinery were upto the extent of its efficiency is irrelevant for the purpose of deciding depreciation. The test is that building, plant and machinery are used for the purpose of business. It is not even necessary that in a year it must have been used for a particular number of days. If the intention of the legislature was that if the plant and machinery is used for a particular number of days, only then one is entitled to get the benefit of depreciation, legislature would have made that provision. Earlier, rules were to the aforesaid extent. Even recently, with regard to depreciation of vehicles, law is made clear. Therefore, it is for the legislature to make a provision in that regard. Unless and until that provision is made, plant, machinery and building used for the purpose of business in a particular year irrespective of number of days for which it worked, and if worked for the purpose of business, would attract the provisions of s. 32 of the Act."

17.1. In the present case, the assessee has produced the evidence of electricity power consumption that goes to show that the Plant was running and this fact is not rebutted by placing any contrary evidence on record by the Revenue that the electricity so consumed for any other purpose. Therefore, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court in the case of ACIT vs. Ashima Syntex Ltd.(supra), we hereby delete the disallowance and direct the AO to allow the depreciation amounting to Rs.28,77,600/- as claimed by the assessee.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 21 -

18. Ground No.9 is against the addition of Rs.52,59,803/- in calculation of adjusted book profit for the purpose of MAT. The ld.counsel for the assessee submitted that the AO made addition of Rs.52,59,402/- on account of provision for diminution in value of investments. The ld.counsel for the assessee relied on the decision of Coordinate Bench (ITAT "A" Bench Ahmedabad) in ITA No.1999/Ahd/2008 for AY 2003-04 rendered in the case of ACIT vs. Vodafone Essar Gujarat Ltd., dated 11/05/2012 and also the judgement of Hon'ble Karnataka High Court rendered in the case of CIT vs. Yokogawa India Ltd. reported at (2012) 204 Taxman 305 (Karnataka). On the contrary, ld.Sr.DR supported the orders of the authorities below.

19. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the decisions relied upon by the assessee. We find that

the Coordinate Bench in the case of ACIT vs. Vodafone Essar Gujarat Ltd.(supra) relying on the judgement of Hon'ble Karnataka High Court in the case of CIT vs. Yokogawa India Ltd.(supra) has decided the issue by observing as under:-

"11. We have considered the rival contentions, the case laws cited and perused the documents on record. It is a fact that the assessee had made provision for bad and doubtful debts and the same has been charged to the profit and loss account for the year ended 31st March 2003. In the Balance sheet as on 31st March 2003 of the assessee, it can be seen that the provision of bad and doubtful debts has been reduced from the gross debtors and the net sundry debtors are shown as asset in the balance sheet. Thus the provision for bad and doubtful debts cannot be termed as a provision for liability but is in the nature of diminution in the value and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 22 -

of asset. In view of the aforesaid facts, we are of the view that the facts in the present case are identical to that of the case of Yokogawa India Ltd (supra). We therefore, respectfully following the decision of Hon'ble High Court in the case of CIT vs. Yokogawa India Ltd., (supra) we do not find any infirmity in the order of CIT(A). Accordingly the appeal of the Revenue is dismissed."

19.1 Respectfully following the aforesaid decision of the Hon'ble Coordinate Bench, we delete the addition of Rs.52,59,803/- and allow the ground of assessee's appeal.

20. Ground No.10 is against the addition of Rs.23,27,520/- for prior period expenses. The ld.counsel for the assessee submitted that the action of the authorities below is not justified. He placed reliance on the judgement of Hon'ble Gujarat High Court rendered in the case of CIT vs. Meghmani Organics Ltd. in Tax Appeal No.109 of 2010. He drew our attention towards page Nos.53-58 of the paper-book. On the contrary, ld.Sr.DR supported the orders of the authorities below and submitted that there is no illegality in the order of the ld.CIT(A).

21. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Meghmani Organics Ltd.(supra), the question No.1(C) before the Hon'ble Court was as under:-

"(c) Whether on the facts and in the circumstances of the case and in law the Appellate Tribunal erred in directing to reduce the prior and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 23 -

period expenses of Rs.71,16,879/- for the computation of taxable income u/s.115JA of the Act, 1961?"

21.1. The Hon'ble Gujarat High Court answered the question in favour of assessee by observing as under:-

"10. In that view of the matter, as rightly pointed out by the counsel for the assessee, in view of the decisions of the Apex Court in the case of Apollo Tyres Ltd. vs. Commissioner of Income-Tax reported in (2002) 255 ITR 273 and in the case of Commissioner of Income-Tax vs. HCL Comnet Systems and Services Ltd. reported in (2008) 305 ITR 405(SC), the Assessing Officer, could not have varied the Profit and Loss Account of the company duly audited and prepared in terms of the provisions contained in the Companies Act."

"12. We have, however, proceeded on the basis of the facts recorded by the Tribunal. Material aspect of the Tribunal's recording the fact is that the amount of Rs.71 lakhs was reduced by the assessee passed on after approval of the company in its AGM, which was also accepted by the auditors. If that be so, the Assessing Officer thereafter could not have made any further adjustment dehors the provisions of Section 115JA of the Act. However, if these facts are for some reason to correctly recorded by the Tribunal, surely, it would be open for the Revenue to approach the Tribunal seeking rectification of its order. Only for this purpose, we do not find any reason to entertain the present Tax Appeal."

21.2. We, respectfully following the aforesaid judgement of the Hon'ble Gujarat High Court in the case of CIT vs. Meghmani Organics Ltd.(supra) and allow this ground of assessee's appeal.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 24 -

22. Ground No.11 is against the confirmation of disallowance made u/s.14A of the Act of Rs.64,13,532/-. The ld.counsel for the assessee submitted that the AO made addition in calculation of adjusted book profit and disallowed u/s.14A of the Act while relying on Explanation(i)(f) of section 115JB of the Act. The ld.counsel for the assessee placed reliance on the judgement of the Hon'ble Gujarat High Court rendered in the case of Commissioner of Income Tax vs. Gujarat State Fertilizers & Chemicals Ltd. reported at (2013)358 ITR 323(Guj.). On the contrary,ld.Sr.DR supported the orders of the authorities below.

23. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax vs. Gujarat State Fertilizers & Chemicals Ltd. held as under:

"6.4 As rightly held by both, the CIT (Appeals) and the Tribunal, this issue has a direct correlation with the first question. It was argued by the Revenue that while computing the book profit under Section 115JB of the Act, the disallowance of interest expenditure on exempt income was wrongly negated by both the authorities on the ground that it was not the liability for expenses, but a liability relating to assets.

6.5 We find no fault in the approach adopted by both the authorities. The addition under Section 115JB of the Act of a sum of Rs.1,14,43,040/- when was made as an expenditure estimated on earning of dividend income under Section 14A of the Act, without reiterating the rationale of confirming deletion of such amount as has been elaborately done at the time of deciding question No.1, this deletion requires to be confirmed."

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 25 -

23.1. Since the ld.DR could not controvert anything by placing material on record, we, respectfully following the aforesaid judgement of the Hon'ble Gujarat High Court, allow this ground of assessee's appeal.

24. In the result, the appeal of the assessee is partly allowed for statistical purposes.

25. Now, we take up the Revenue's appeal in ITA No.518/Ahd/2011 for AY 2006-07. In this appeal, the Revenue has raised the following grounds:-

1. The Ld.CIT(A) erred in law and on facts in deleting the addition of Rs.6,74,282/- on account of disallowance u/s.40(a) due to short deduction of TDS.
2. The Ld.CIT(A) erred in law and on facts in deleting the disallowance of Rs.1,43,79,597/- being product registration expenses treated as capital expenditure, with a direction to withdraw the depreciation already allowed.
3. The Ld.CIT(A) erred in law and on facts in restricting the disallowance of interest to average cost of fund during the year (4%) instead of average rate of borrowing (7.25%) adopted by the AO thereby reducing the disallowance by Rs.13,86,585/-.

25.1. First ground is against the deletion of addition of Rs.6,74,282/-

u/s.40(a) of the Act due to shortfall in deduction of TDS. The ld.Sr.DR supported the order of the AO and submitted that the action of the ld.CIT(A) is not justified in deleting the addition. On the contrary, ld.counsel for the assessee submitted that the issue is squarely by the judgement of

Hon'ble Calcutta High Court rendered in the case of CIT vs. M/s.S.K.Tekriwal in GA No.2069 of 2012 dated 03/12/2012. He submitted that the disallowance made on the basis of show deduction of tax.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 26 -

26. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the judgement relied upon by the ld.counsel for the assessee. We find that the ld.CIT(A) deleted the addition in para-7.3 of his order by observing as under:-

"7.3. I have considered the facts of the case, assessment order and appellant's submission. It is not in dispute that appellant deducted TDS and also deposited the same in government account in time. The only difference is in respect of deducting surcharge. The rate of surcharge was changed by finance bill 2005 which became act in May 2005. Till such time it became act, appellant deducted TDS by charging surcharge at the rate applicable prior to the passing of finance act 2005. After May 2005, appellant started deducting TDS at the correct rate of surcharge. Therefore there was no serious default on the part of appellant. The shortfall in deduction of surcharge is there with valid reason and therefore entire expense cannot be disallowed on account of such nominal shortfall. Accordingly I delete the addition made by the assessing officer."

26.1. We have gone through the judgement of Hon'ble Calcutta High Court in the case of CIT vs. M/s.S.K.Tekriwal(supra), wherein the Hon'ble High Court held that provision of section 40(a)(ia) of the Act has two limbs one is where, inter alia, assessee has to deduct tax and the second where after deducting tax, inter alia, the assessee has to pay into Government Account. There is nothing in the said section to treat, inter alia, the assessee as defaulter where there is a shortfall in deduction. With regard to the shortfall, it cannot be assumed that there is a default as the deduction is not as required by or under the Act, but the facts is that this expression, 'on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction has not been paid on or before the due date specified in sub-section (1) of section and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 27 -

139'. This section 40(a)(ia) of the Act refers only to the duty to deduct tax and pay to government account. If there is any shortfall due to any difference of opinion as to the taxability of any item or the nature o payments falling under various TDS provisions, the assessee can be declared to be an assessee in default u/s.201 of the Act and no disallowance can be made by invoking the provisions of section 40(a)(ia) of the Act. In the present case also, it is not the case of non-deduction of tax or

after deduction of the tax the same is not deposited in the Government Account, but it is a case where there is a shortfall in deduction of tax. Therefore, respectfully following the judgement of Hon'ble Calcutta High Court in the case of CIT vs. S.K.Tekriwal, we do not find any infirmity in the order of the ld.CIT(A), same is hereby upheld. Thus, this ground of Revenue's appeal is rejected.

27. Ground No.2 is against the deletion of Rs.1,43,79,597/- being product registration expenses treated as capital expenditure with a direction to withdraw depreciation already allowed. The ld.Sr.DR supported the order of the AO. On the contrary, the ld.counsel for the assessee submitted that there is no illegality in the order of the ld.CIT(). He submitted that the issue is squarely covered by the judgement of Hon'ble Gujarat High Court rendered in the case of Commissioner of Income Tax vs. Torrent Pharmaceuticals Ltd. reported at (2013) 263 CTR 683(Guj.): (2013) 29 taxmann.com 405(Gujarat).

27.1. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below.

and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 28 -

The ld.counsel for the assessee has drawn our attention to the question No.(B) which reads as under:-

"[B] Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to treat the expenditure of rs.28,14,355/- incurred on foreign registration fees as revenue expenses?"

27.2. The Hon'ble Gujarat High Court answered the question by observing as under:-

"5. The findings of the Tribunal are justified on both the issues. The garden expenditure was for the purpose of maintaining garden to control the pollution. The company had put up an affluent treatment plant and pollution used to generate because of release of pollutants. The maintaining a garden helped in controlling pollution arising from the pollutants. It cannot be gainsaid that the expenses for garden had nexus with business activity. It can well be treated for business purpose and can be claimed as revenue expenditure. Similarly the expenses for foreign country registration was for business purpose only, because the same helped the assessee in marketing its products in the foreign countries and promoting the sales."

27.3. In view of the aforesaid judgement of the Hon'ble Jurisdictional High Court, we do not find any infirmity in the order of the ld.CIT(A), same is hereby upheld. Thus, this ground of Revenue's appeal is rejected.

28. Ground No.3 is against in restricting the disallowance of interest to average cost of fund @ 4% instead of average rate of borrowing @ 7.25%, thereby reducing disallowance of Rs.13,86,585/-. This issue has been decided by us in favour of assessee as per findings contained in and ITA No.1518/Ahd/2011(By Revenue) Cadila Pharmaceuticals Ltd. vs. Addl.CIT Asst.Year - 2006-07

- 29 -

para-13 & 13.1 of this order in assessee's appeal, i.e. ITA No.1146/Ahd/2011(supra), therefore, this ground of Revenue's appeal is dismissed.

29. In the combined result, appeal of the Assessee is partly allowed for statistical purposes, whereas appeal of the Revenue is dismissed.

Order pronounced in Court on the date mentioned hereinabove at caption page Sd/- Sd/-

(. . .)

(N.S. SAINI)
ACCOUNTANT MEMBER

Ahmedabad; Dated 11 / 07 /2014

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< of the Order forwarded to :

1. i/ / The Appellant
2. ¥x i/ / The Respondent.
3. □ / Concerned CIT
4. □() / The CIT(A)-VI, Ahmedabad

(KUL BHAR
JUDICIAL MEM

5. □ - ¥ , , / DR, ITAT, Ahmedabad

6. - †[‡ § / Guard file.

> / BY ORDER, x □ ¥ //True Copy// . / ¢
(Dy./Asstt.Registrar) . / , , / ITAT, Ahmedabad

1. Date of dictation .. 23/24.6.14 & 2.7.14(dictation-pad 54 pages attached at the end of this File)
2. Date on which the typed draft is placed before the Dictating Member ...26.6.14/4.7.14
3. Date on which the approved draft comes to the Sr.P.S./P.S.....
4. Date on which the fair order is placed before the Dictating Member for pronouncement.....
5. Date on which fair order placed before Other Member.....
- 6.

7. Date on which the fair order comes back to the Sr.P.S./P.S.....11.7.14
8. Date on which the file goes to the Bench Clerk.....11.7.14
9. Date on which the file goes to the Head Clerk.....
10. The date on which the file goes to the Assistant Registrar for signature on the order.....