

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'C', MUMBAI**

**BEFORE SHRI D.K. AGARWAL, JUDICIAL MEMBER AND  
SHRI D. KARUNAKARA RAO, ACCOUNTAT MEMBER**

**I.T.A. NO. 5812/M/2011  
ASSESSMENT YEAR: 2004-2005**

|                                                                                         |            |                                                                                                             |
|-----------------------------------------------------------------------------------------|------------|-------------------------------------------------------------------------------------------------------------|
| <b>M/s. CIPLA Limited,<br/>Mumbai Central,<br/>Mumbai – 400 008.<br/>PAN:AAACC1450B</b> | <b>Vs.</b> | <b>The DCIT, Central Circle-2,<br/>CGO Building, 9<sup>th</sup> Floor,<br/>M.K. Marg, Mumbai – 400 020.</b> |
| <b>(Appellant)</b>                                                                      |            | <b>(Respondent)</b>                                                                                         |

|                      |          |                                   |
|----------------------|----------|-----------------------------------|
| <b>Appellant by</b>  | <b>:</b> | <b>Shri S.R. Bhandari</b>         |
| <b>Respondent by</b> | <b>:</b> | <b>Mrs. Sasmita Misra, CIT-DR</b> |

**Date of Hearing: 11.10.2012**

**Date of order: 17.10.2012**

**ORDER**

**Per D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 17.8.2011 is directed against the order of CIT (A)-36, Mumbai dated 24.2.2011 in relation to assessment year 2004-2005.

2. In this appeal, assessee raised the following grounds:

*"1. The Ld CIT (A) has erred in confirming that the receipts on account of insurance claims, sale of scrap, miscellaneous receipts and technology transfer fees are required to be reduced from the profits of business in terms of Explanation (baa) to section 80-HHC of the Income Tax Act.*

*2. Without prejudice to the generality, the Ld CIT (A) has erred in giving the findings beyond the limited ambit of the directions of the Tribunal in the order dated 22.12.2009 in ITA No.4007/Mum/2006."*

3. Briefly stated the relevant facts of the case are that the assessee is engaged in the business of manufacturing of drugs and pharmaceuticals, filed its return of income declaring total income at Rs. 145.66 crores and the same was scrutinized and assessed income was determined at Rs. 255.20 crores. The determination of eligible deduction u/s 80-HHC, with regard to the issues of insurance claims, sale of scrap, technology transfer fees and miscellaneous receipts, is one disputed issue which lead to the reduction of deduction claimed by the assessee. In the first round,

the Tribunal remanded the issue to the files of the AO vide ITA No.4008/Mum/2006 dated 22.12.2009. Ground no.6 of the appeal was adjudicated vide para 15 and the Tribunal restored the matter for deciding the issue afresh in the light of the jurisdictional High Court judgment in the case of CIT vs. Bangalore Clothing Co 269 ITR 371. In remand proceedings, the Assessing Officer examined the above disputed issues i.e. insurance claims, sale of scrap, technology transfer fees and miscellaneous receipts and held that the said receipts would not constitute operational income as held by the said jurisdictional High Court judgment in the case of Bangalore Clothing Co (supra). Further, the AO held that the receipts on account of insurance claims, sale of scrap, technology transfer fees and miscellaneous receipts are to be reduced from the profit of the business in terms of Explanation (baa) to section 80-HHC of the Act. Para 5 and 6 of the assessment order are relevant in this regard. Aggrieved with the above, the assessee filed appeal before the CIT (A).

4. During the first appellate proceedings, CIT (A) discussed these issues in para 7 to 10 of his order and held that the insurance claim being the loss of stock in trade is not allowable in view of the jurisdictional High Court judgment in the case of **CIT vs. M/s. Pfizer Ltd., (330 ITR 62)**. Regarding miscellaneous receipts, sale of scrap and technology transfer fee receipts, the CIT (A) dismissed the grounds of the assessee relying on the judgment of Bombay High Court in the case of **CIT vs. M/s. Dresser Rand India Pvt. Ltd (323 ITR 429) (Bom)**. Aggrieved with the above decision of the CIT (A), assessee filed the present appeal before us.

5. Regarding the applicability of the jurisdictional High Court judgment in the case of CIT vs. M/s. Pfizer Ltd., Shri S.R. Bhandari, Ld Counsel submitted that the CIT (A) has wrongly applied this judgment without properly appreciating the ratio of the same. In this regard, he mentioned that the M/s. Pfizer Ltd (supra) judgment has distinguished the judgment in the case of M/s. Dresser Rand India Pvt. Ltd. (supra). He read out relevant portions and mentioned that the judgment in the case of M/s. Dresser Rand India (supra) was decided in the factual matrix where the Ld

Counsel in that case granted certain concessions which were **deleted** in the judgment of M/s. Pfizer Ltd (supra). Otherwise, the insurance receipts realized by the assessee on loss of stock in trade do not constitute a receipt of similar nature within the meaning of Explanation (baa) and therefore, was not allowable to the extent of 90%. In other words, such receipts constitute **"operational income"** eligible for deduction u/s 80-HHC of the Act. Further, Ld Counsel mentioned that M/s. Dresser Rand India Pvt. Ltd (supra) relied on by the CIT (A) in deciding the issues of insurance receipts, sale of scrap, miscellaneous receipts and technology transfer fee are not valid considering the decision of M/s. Pfizer Ltd (supra) and the judgment of Hon'ble Karnataka High Court in the case of CIT vs. Motor Industries Co. Ltd. (331 ITR 79) (Kar). The judgment of Karnataka High Court is relevant for the proposition that the development work receipts, which are held to be connected with the business of manufacturing, have immediate nexus between the activity of export and developmental work. Therefore, the said receipts are not to attract Explanation (baa) and they are to be held as **'profits of the business'** for the purposes of deduction u/s 80HHC of the Act. It was also argued that all these receipts are intimately connected to the business activities of the assessee and in that sense, they constitute operational income of the assessee. Further, he mentioned that the order of the CIT (A) is not a speaking order as evident from the face of the impugned order.

6. On the other hand, Ld DR relied on the order of the Revenue Authorities and vehemently argued that the impugned order does not call for any modifications.

7. We have heard both the parties, perused the orders of the Revenue Authorities as well as the citations and the paper book filed before us. In connection with the insurance receipts, we find that order of the CIT (A) is erroneous on the very face of it as the judgment in the case of M/s. Pfizer Ltd (supra) clearly held that insurance receipts constitute operational income and there is no need for reducing 90% of the insurance claim while computing the eligible profits u/s 80-HHC of the Act. Relevant portion is extracted as under:

*"For the reasons which we have already indicated, we have come to the conclusion that the claim on account of insurance for the stock in trade did not constitute a receipt of a similar nature within the meaning of Explanation (baa) and was therefore not liable to be reduced to the extent of ninety percent. The first question will therefore not raise any substantial question of law."*

7.1. Therefore, the insurance receipts constitute '**operational income**' of the assessee and hence, this part of the ground is allowed in favour of the assessee.

8. Regarding sale of scrap and miscellaneous receipts, we have considered the assessee's argument that the scrap in question was the combination of both scrap generated as a part of the manufacturing activities as well as scrap of the packing material attached to the imported consignments. Perusal of the order of CIT (A) in this regard revealed that the CIT (A) has not adjudicated the issue properly after considering the judgment of M/s. Pfizer Ltd (supra) which distinguish the another judgment of the same High Court in the case of M/s. Dresser Rand India Pvt. Ltd (surpa). In our opinion, there is a need for the CIT (A) to segregate the receipts and examine them in depth as to indicate it all the said receipts stand covered by the ratio of the judgment in the case of M/s. Pfizer Ltd. For this purpose, the issues need to go to the files of CIT (A) for redeciding the issue afresh. Therefore, this part of the ground is remanded to the CIT (A) for want of determination of issues and passing a speaking order in the spirit of provisions of section 250(6) of the Act.

8.1. Regarding, the issue technology transfer fee receipts, whether it constitutes '**operational income or not**', the Ld Counsel brought analogy of these receipts to the developmental works receipts, which is adjudicated by the Hon'ble Karnataka High Court in the case of M/s. Motor Industries Co. Ltd. (supra). In our opinion, there is need for finding the fact on the comparability of these receipts on account of developmental work vis-à-vis technology transfer fees raised before us. In case, these receipts are comparable, in our opinion, the assessee is entitled for claiming deduction u/s 80-HHC as an operational income in view of the finding of the Karnataka High Court in the case of M/s. Motor Industries Co. Ltd. (supra). Relevant portion of the said judgment reads as under:

*"In the instant case, it is not in dispute that the assessee is in the business of export of goods and merchandise. The assessee is earning foreign exchange out of that export. The disputed income is earned by the assessee for his fees towards developmental work from M/s. Robert Bosch. The developmental work is intimately connected with the business of manufacture and sale of goods by the assessee. There is immediate nexus between the activity of export and the developmental work. Admittedly, for the services rendered by way of these developmental work, the assessee has been given the benefit of deductions under section 80-O of the Act. The receipt of consideration from a foreign enterprise is not in dispute. From the very same business that the assessee is carrying on, he is having an income under two heads and therefore, it is not a case where any independent income unrelated to or unconnected with the business carried on by the assessee is sought to be included in the profits of the business. In these circumstances, the Tribunal was justified in holding that the **said consideration received for developmental work is not liable to be deducted under clause (baa) in computing the profits of the business.** The said order is legal and valid. It does not suffer from any legal infirmity. Therefore, we answer the aforesaid substantial question of law in favour of the assessee and against the Revenue."*

8.2. Therefore, this issue allowed for statistical purposes.

9. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 17<sup>th</sup> day of October, 2012.

Sd/-  
(D.K. AGARWAL)  
JUDICIAL MEMBER

Sd/-  
(D. KARUNAKARA RAO)  
ACCOUNTANT MEMBER

Date : 17.10.2012  
At : Mumbai  
Okk

Copy to :

1. The Appellant.
2. The Reposndent.
3. The CIT (A), Concerned.
4. The CIT concerned.
5. The DR "C", Bench, ITAT, Mumbai.
6. Guard File.

M/s. CIPLA Limited

// True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai