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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI AMARJIT SINGH, JM

ITA No. 6342/Mum/2009
(Assessment Year 2005-06)

The Asst. Commissioner of income-Tax, Central circle 10(3), 451, Aayakar Bhavan, 4th Floor, M.K. Marg, Mumbai-400 020	Vs.	M/s Bayer Bioscience Pvt. Ltd. (formerly known as Proagro Seed Co. Ltd.,) Bayer House, Central Avenue Hiranandani Gardens, Powai, Mumbai-400 076
(Appellant)		**(Respondent)**
PAN No. AAACP3459M		

CO No. 200/Mum/2011
(Arising in ITA No. 6342/Mum/2009
For AY 2005-06)

M/s Bayer Bioscience Pvt. Ltd. (formerly known as Proagro Seed Co. Ltd.,) Bayer House, Central Avenue Hiranandani Gardens, Powai, Mumbai-400 076	Vs.	The Asst. Commissioner of income-Tax, Central circle 10(3), 451, Aayakar Bhavan, 4th Floor, M.K. Marg, Mumbai-400 020
(Appellant)		**(Respondent)**

Assessee by	:	Shri Rajan Vora & Shri Hemen Chandariya, ARs
Revenue by	:	Shri Dr. Mahesh Akhade, CIT DR

Date of hearing:	18.04.2022
Date of pronouncement :	29.04.2022

O R D E R

PER PRASHANT MAHARISHI, AM:

01. ITA No. 6342/Mum/2009 is filed by the Asst. Commissioner of Income-tax, Circle 10(3), Mumbai (the learned Assessing Officer) for AY 2005-06 against the order passed by the learned Commissioner of Income-tax (Appeals)-V, New Delhi [the learned CIT(A)] dated 29th September, 2009, raising the following grounds of appeal:-

"1. On the facts and circumstances as well as in law, the ld. CIT (A) has erred in deleting the addition on account of provision for special discount of Rs. 92,25,158/- by not appreciating the Assessing Officer's view that the liability was not crystallized during the year.

2. On the facts and circumstances as well as in law, the Id. CIT (A) has erred in giving relief in respect of disallowance on account of provision of sales return amounting to Rs. 27,32,215/ ignoring the fact that this provision is for an uncertain obligation and to that extent it is contingent.

3. On the facts and in the circumstances of the case as well as in law, the ld. CIT (A) has erred in deleting the addition made on account of license fees of Rs.25,00,000/- paid to Mahyo Biotech(1) Ltd. by not appreciating the Assessing Officer's view that the same amount was not posted on 31.03.2004 i.e. FY 03-04 relevant to AY 04-05 and does not pertain to AY 2005-06.

4. On the facts and in the circumstances of the case as well as in law, the ld. CIT (A) has erred in deleting the addition on account of provision for special discount of Rs. 1,13,30,942/- by not appreciating the Assessing Officer's view that the liability was not crystallized during the year and provision of sales return amounting to Rs.22,73,735/- is for an uncertain obligation and to that extent is it contingent.

5. The appellant prays that the order of CIT (A) on the above ground be set aside and that of the Assessing Officer be restored."

02. Brief fact of the case shows that assessee is a company engaged in the business of producing and selling hybrid seeds. It filed its return of income on 28 October 2005 at Rs. 2,49,48,410/-. Assessee asked for deduction of provision for sales return, specific discounts, etc. Therefore, return was revised on 30 March 2007 at ₹1,23,43,733/- for above additional claims. The learned Assessing Officer on selection of case for scrutiny passed assessment order where he

a. disallowed ₹92,26,158/- on account of provision for special discount on sales and

b. ₹27,32,215/- on account of provision for sales return.

c. Assessee also claimed deduction of ₹50 lacs on the basis of license agreement entered into with Monsanto Bio Tech for access of BT technology at the cost of ₹50 lacs. ₹ 25 lacs were paid by the assessee during the year on 29 November 2004, which was allowed by the learned

Assessing Officer as deduction. However, the assessee also paid ₹25 lacs on 31 March 2004 in AY 2004-05 as an advance, which on signing of the agreement was, also claimed as deductible expenditure incurred during the year. The learned Assessing Officer disallowed the above 25 lacs.

03. The assessment order was passed under section 143(3) of the income-tax Act, 1961 on 28th November, 2007 determining the total income of the assessee at ₹4,04,05,780/.

04. The assessee preferred the appeal before the learned CIT (A), who passed an order dated 29th September 2009 allowing all the three deductions in favour of the assessee and therefore, the Revenue is in appeal before us.

05. The assessee has also filed cross objection, which is merely supporting the order of the learned Commissioner of Income tax (Appeals).

06. The learned Departmental Representative supported the order of the learned Assessing Officer on all the four grounds.

07. The learned Authorized Representative submitted that

a. Issue of disallowance of provision for special discount of ₹92,25,158/- as per ground no.1 of the appeal is covered in favour of the assessee by the decision of the co-ordinate Bench in assessee's own case for AY 2004-05 and 2007-08.

b. With respect to the disallowance of provision of sales return of ₹27,32,215/-, he further submitted that this issue has also been considered and allowed by the coordinate Bench in favour of the assessee for AY 2004-05 and 2007-08.

c. With respect to the disallowance of ₹ 25 lacs deleted by the learned CIT (A) challenged as ground no. 3 by the learned Assessing Officer. He submitted that based on accrual system of accounting, the assessee has recognized the entire payment of ₹50 lacs as an expense in AY 2005-06. Merely because advance payment was made to Mahyco Monsanto Biotech, (India) limited in earlier years because certain approvals were not available and could not be disallowed because the approvals have received during the year. He submitted that the total consideration of ₹50 lacs was incurred as expense during the year and therefore, it should have been allowed.

d. Coming to the ground no. 4, he submitted that sum of ₹1,13,30,942/- of special discount and ₹22,73,735/- on account of provision of sales return are already allowed by the decision of the co-ordinate bench in assessment year 2004-05 and therefore ground no. 4 needs to be decided accordingly.

08. We have carefully considered the rival contentions and perused the orders of the lower authorities. According to ground no.1 of the appeal the fact shows that the assessee has created a provision of sales return of ₹92,25,158/- in respect of sales made during the year on mercantile basis. The fact shows that the assessee sales those seeds through its distributors and retailers and various discounts are offered. Such discounts are structured based on sales achieved by them. As the sales have been accounted for during the year, the amount on discount expenses incurred by the assessee is also required to be

accounted by the assessee in the same year. Therefore, assessee made provisions of the same and subsequently such provision is utilized for payment of discount. The assessee claims deduction of discount on accrual basis. The learned Assessing Officer disallowed same stating that it is uncertainable and crystallized during subsequent year. The learned CIT (A) following his own order for AY 2004-05 held that provision is restructured to actual expenditure incurred by the assessee. Accordingly, whatever is the liability paid out in subsequent year he allowed to that extent claim of the assessee. Order of the learned CIT – A for assessment year 2004 – 05 and assessment year 2007 – 08 was confirmed by coordinate bench wide order dated 21/4/2016 and 8/2/2012 respectively. The coordinate bench in sum and substance held that the assessee has finalized the accounts but the quantification was not certain and the provision was made. The liability was certain at the balance sheet date and the assessee discharged its liability before finalization of income tax return. Therefore, it meant that it was of a foreseen liability of the assessee and therefore it is allowable. Therefore, respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2004 – 05 we dismiss ground number 1 of the appeal.

09. The second ground of appeal is with respect to disallowance of provision of sales return amounting to ₹ 2,732,215 allowed by the learned CIT – A. Assessee has created a provision for sales return. Generally, seen business of the assessee is a seasonal business and therefore assessee books the sale anticipating that season would be good however, it creates a provision because of distributors holding on sold stock that would be returned. This is undisputedly and industry practice. The

provision of sales return has been made based on experience and market dynamics. Therefore, the claim of the assessee is that such provision should be allowed as deduction. Facts show that the actual quantification of the same would be made based on the Sts returned after the financial year but before the finalization of the accounts. As on 1 April 2000 fourth there was an opening balance of such provision of ₹ 2,273,735/– and the closing balance as on 31st of March 2005 was ₹ 5,005,950/–. The net amount of ₹ 2,732,215/– has been debited to the profit and loss account and claimed the deduction. The learned assessing officer following the order for assessment year 2004 – 05 disallowed it holding that the provision is for uncertain obligation and therefore contingent in nature. On appeal before the learned CIT appeal, he allowed the claim for the reason that provision has been made based on past practice and therefore experiences and review of sale system and not merely on adhoc basis. He also pressed into service the provisions of accounting standard – 9 of revenue recognition and therefore he allowed the deduction. While allowing the above claim the learned and CIT – A followed his own decision for assessment year 2004 – 05. The above decision of the learned and CIT appeal also travelled before the coordinate bench in assessee's own case for assessment year 2004 – 05 wherein wide order dated 21/4/2016 the order of the learned CIT – A upheld. The similar issue also arose in the case of the assessee for assessment year 2007 – 08 wherein as per order dated 8/2/2012 while paragraph number 16 the claim of the assessee was allowed. On careful perusal of the above orders of the coordinate benches in assessee's own case, we find that this issue is squarely covered by the order of those benches in favour of the assessee. It is also clear-cut that the provisions created by the assessee are not towards an unascertained liability. In fact sales, which are likely to be returned, income therefrom does not accrue to the assessee. It is not the case of the revenue that since return provision has been made by the assessee however there are no returns of those sales from the distributors. It may happen that there may be less or more returns of the sale. However, that may not be the case for disallowance of the provision, which has been consistently made by the assessee based on industry practice. Accordingly we confirm the order of the learned CIT – A and dismiss ground number 2 of the appeal.

010. Ground number three is with respect to the deletion of the addition of license fees of ₹ 25 lakhs paid to Mahyo Monsanto Biotech Ltd. The fact shows that the assessee has claimed a sum of ₹ 50 lakhs as an expenditure incurred in license fees during the year based on mercantile system of accounting. As per the terms of agreement between the assessee and Mahyo Monsanto biotech India Ltd payment of ₹ 25 lakhs was made in the year ended on March 31, 2004 which two days in advance in the books of the assessee and further payment of ₹ 25 lakhs was made during the previous year relevant to assessment year 2005 – 06. The learned assessing Officer restricted the deduction of expenditure incurred in license fee to the extent of only ₹ 25 lakhs, which was paid during assessment year and disallowed ₹ 25 lakhs, which was paid in the earlier years for the reason that it did not pertain to the year under consideration. The learned and CIT – A allowed the claim of the assessee because of the reason that total ₹ 50 lakhs were incurred by the assessee as an expenditure during the year. Out of that ₹ 50 lakhs 25 lakhs was paid as an advance in the earlier year and ₹ 25 lakhs was paid during the year. Merely because in advance paid in earlier year has been adjusted

against the expenditure incurred during the year, it cannot be held to be an expenditure not incurred during the year. In fact, the total expenditure is ₹ 50 lakhs, which has been incurred during the year. The learned assessing officer does not dispute that the liability to pay the license fee arose during the year. If the expenditure has been incurred during the year, which is not, been disputed by the learned AO not allowing the adjustment of advances paid in earlier year against the expenditure for the current year is not justified. In view of this ground number 3 of the appeal of the learned assessing officer is dismissed.

011. Ground number 4 was not pressed and therefore it is dismissed.

012. Accordingly, appeal of the learned assessing officer is dismissed.

013. As cross objections filed by assessee are merely supportive in nature, no arguments were advanced and therefore those are dismissed.

014. Accordingly appeal of the learned assessing officer as well as the cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 29.04.2022.

Sd/-	Sd/-
(AMARJIT SINGH)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.04.2022
Sudip Sarkar, Sr.PS
<u>Copy of the Order forwarded to</u> :

1. The Appellant

2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai