आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई', मुंबई ।

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

सर्वश्री आर.सी.शर्मा, लेखा सदस्य **एवं** श्री संजय गर्ग, न्यायिक सदस्य

BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANJAY GARG, JM

आयकर अपील सं./**ITA No.6763/Mum/2010**

(**निर्धारण वर्ष /** Assessment Year :2007-08)

Transasia Bio Medicals Limited, Transasia House, 8 Chandivali Studio road, Andheri (E), Mumbai-400072	Vs.	DCIT, Range-8(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 2038 C**		
(अपीलार्थी **/Appellant**)	··	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.6753/Mum/2011**

(**निर्धारण वर्ष /** Assessment Year :2008-09)

ADCIT, Range-8(3), Mumbai	Vs.	Transasia Bio Medicals Limited, Transasia House, 8 Chandivali Studio road, Andheri (E), Mumbai-400072
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 2038 C**		
(अपीलार्थी **/Appellant**)	··	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.7807/Mum/2012**

(**निर्धारण वर्ष /** Assessment Year :2009-10)

DCIT, Range-8(3), Mumbai	Vs.	Transasia Bio Medicals Limited, Transasia House, 8 Chandivali Studio road, Andheri (E), Mumbai-400072
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 2038 C**		
(अपीलार्थी **/Appellant**)	··	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.5998/Mum/2011**

(**निर्धारण वर्ष /** Assessment Year :2008-09)

Transasia Bio Medicals Limited, Transasia House, 8 Chandivali Studio road, Andheri (E), Mumbai-400072	Vs.	DCIT, Range-8(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACT 2038 C**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by : Shri Ashok Suthar

राजस्व **की ओर से** /Revenue by : Shri Neil Philip

सुनवाई की तारीख **/ Date of Hearing : 18/03/2015**

घोषणा की तारीख**/Date of Pronouncement 15/05/2015**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

These are the cross appeals filed by the assessee and revenue against the order of CIT(A) for the assessment years 2007-08 to 2009-10.

2. Common grounds have been taken in all the years, therefore, all the appeals were heard together and now decided by this consolidated order.

3. In the assessment year 2007-08, the assessee is aggrieved for disallowance on interest of Rs.7,37,624/-. The AO has disallowed interest on the plea that assessee has given loans for non-business purpose. The contention of ld. AR was that these advances were given in earlier years and on similar facts, disallowance on interest was made in assessment year 2002-03 to 2004-05 has been decided in favour of the assessee by the Tribunal vide its consolidated order dated 30.12.2009 in ITA Nos

75911M/05, 176/M/06 for Asst. Year 2002-03, ITA Nos 1683/M/07, 11741M107 for Asst. Year 2003-04, ITA No 5784/M/07 for Asst. Year 04-05, has restored the issue back to the AO, relying on the decision in case of H P Shah Ltd in ITA No 3694/M/06 dated 15.01.2009. In the said decision, it was held as under-

> *'Assessee claimed interest expenditure u/s. 36(l)(iii) on amount invested in Mutual Funds - AO disallowed expenditure holding that borrowed funds were not for the purpose of assessee's business - CIT(A) allowed assessee's appeal - Held, where borrowed as well as own funds are used for both business and other than business purposes, there is no presumption that moneys used for other purposes came out of borrowed funds - Held, if an assessee having sufficient interest free funds, in the form of capital reserves and other funds without interest bearing from relatives and friends not related to business, to cover funds given interest free or utilized other than for business purposes, no disallowance is warranted, however, if the own funds are not sufficient to cover interest free advances, a proportionate disallowance is warranted - Revenue's appeal allowed and proportionate disallowance was made".*

4. The ld. AR also placed on record the order of the AO to give effect the order of the Tribunal, wherein the AO has deleted disallowance of interest by observing that the assessee is having own substantial interest free funds.

5. We have considered rival contentions and gone through the orders of the authorities below and found that the facts and circumstances during the year under consideration are same. Therefore, respectfully following the order of the Tribunal in assessee's own case, we restore the matter back to the file of the AO for deciding the disallowance of interest after verifying the interest free funds available with assessee, in terms of

decision of jurisdictional High Court in the case of Reliance Utilities, 221 CTR 435. We direct accordingly.

6. The next grievance of the assessee relates to disallowance of prior period of expenses. Ld. AR also furnished the copy of consolidated order of ITAT in ITA No.176/M/06 date 30.12.2009 (Page 12 of paper book compilation) wherein in para 9.2, the ITAT has held as under-

> *"After hearing the learned representatives of the parties and perusing the record, we find that the CIT(A) after examining the details found that the expenditure were genuine expenditure and the same were allowable in the year under consideration. However, certain expenses which were not allowable, the CIT(A) sustained and the expenditure of Rs 3,74,738 is allowable u/s 43B subject to verification by the AO. The revenue did not point out any contrary material to the finding of the CIT(A). We therefore, do not find any infirmity in the order of CIT(A)".*

We have considered rival contentions and found that full details of expenditure was furnished before the lower authorities. Expenses were pertaining to earlier years but were crystallized during the year under consideration only. As the facts and circumstances during the year are same, respectfully following the order of the Tribunal in assessee's own case, we direct the AO to delete the disallowance of expenses insofar as the expenses have been crystalised during the year only.

7. Ground No.3 is with regard to claim of deduction u/s.80IB/80IC which was not pressed by ld. AR, the same is therefore, dismissed as not pressed.

8. In the A.Y.2008-09 (i.e. ITA No.5998/M/2010) assessee is aggrieved by disallowance of expenses u/s.14A. The AO has recorded its finding at para 3.1 to 3.5 at page 2 to 5 and the CIT(A) has confirmed the action of the AO as per para 4 to 4.2 on page 1 to 3 of the appellate order.

9. From the record, we found that the AO has made disallowance of Rs.3,95,201/- being proportionate interest expenditure computed in accordance with the formula given in Rule8D(2)(ii). Thereafter the amount equal to one-half percent of the average value of investment which works out at Rs.28,49,106/- was disallowed. It was contended by ld. AR that the AO has not recorded his satisfaction prior to invoking the provisions of Rule 8D, whereas the assessee at its own has worked out its disallowance at Rs.3,49,600/- being the administrative expenses related to exempt income. For this purpose, reliance was placed on the decision of ITAT Ë" Bench Mumbai in the case of Shriyam Broking Intermediary ltd., ITA No.4380&4391/Mum/2012, order dated 17-10-2014. Further reliance was placed on the decision in the case of Reliance Share and Stock Brokers (P) Ltd., ITA No.274/Mum/2013, order dated 22-10-2014.

10. Ld AR also drew our attention to the fact that part of the investment was in debt fund on which interest is taxable. He further placed on record order of the assessment year 2007-08, wherein the AO has not made any disallowance of interest while invoking provisions of Section 14A. As per ld. AR, the net interest income was more than the interest expenditure claimed in the profit and loss account, therefore, no disallowance of interest is warranted.

11. We have considered rival contentions, carefully gone through the orders of the authorities below. As per the decision of the ITAT Kolkata Bench cited by ld. AR in the case of interest more than the interest expenditure, no disallowance of interest is to be made u/s.14A. In the instant case before us, the assessee has interest income of RS.37.56 lakhs, whereas it has paid interest of RS.14.60 lakhs. Since the interest income is much more than the interest expenditure, no disallowance of interest is warranted.

12. With regard to the disallowance of 1/2 % of average value of investment, we restore the matter to the file of the AO for deciding afresh. We direct accordingly.

13. In the result, both appeals of the assessee are allowed in part in terms indicated herein above.

14. In Revenue's appeal for assessment year 2008-09, the only ground is regarding allowability of claim u/s 8OIC in view of decision of Apex Court in case of Goetze (India) Vs CIT (2006) @ 2B4 ITR 323 wherein it has been held that a fresh claim before the Assessing Officer can be made only by filing a revised return.

15. However, the CIT(A) allowed assessee's claim for deduction u/s.80IC with respect to profession fees. In its appeal the revenue has raised the ground only with respect to accepting the claim by CIT(A) without filing revised return. We found that after giving detailed fining the CIT(A) has allowed assessee's claim. Similar claim was allowed by the CIT(A) for the assessment year 2007 - OB. However, the revenue has not filed any appeal against the decision of the CIT(A).

16. The jurisdictional High Court in the case of Balmukund Acharya, 310 ITR 310, held that the assessee is entitled to file claim at appellate stage. Similar view has been taken by the Hon'ble Bombay High Court in the case of Nirmala L. Mehta, 269 ITR 1. In view of the above discussion, we do not find any infirmity in the order of CIT(A) for accepting the assessee's claim and allowing the same after recording the finding at para 6.4&6.5, which has not been controverted by the revenue.

17. In the assessment year 2009-2010, the revenue is aggrieved for deleting the disallowance made by the AO u/s.14A r.w.Rule8D.

18. As the facts and circumstances during the year under consideration are same, following the reasoning given in the assessment year 2007-08, we restore this ground to the file of AO for deciding afresh.

19. In the result, appeals of the assessee and appeals of the revenue are allowed in part.

Order pronounced in the open court on this 15/05/2015.

Sd/-	**Sd/-**
(संजय गर्ग)	**(आर.सी.शर्मा)**
(SANJAY GARG)	**(R.C.SHARMA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 15/05/2015

प्र.कु.मि/pkm, नि.स/ PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**