

IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 7992/Mum./2019
(Assessment Year : 2015-16)

Strides Pharma Science Ltd.
201, Devavrata, Sector-17
Vashi, Navi Mumbai 400 703
PAN – AADCS8104P

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-5(3)(2), Mumbai

..... Respondent

Assessee by : Shri Nishit Gandhi
a/w Ms. Akshita Bhandari
Revenue by : Ms. Vatsalaa Jha (CIT)

Date of Hearing – 09.02.2022	Date of Order – 06.04.2022
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ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the final assessment order dated 31.10.2019, passed by the Assessing Officer under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 ("*the Act*"), for the assessment year 2015-16.

2. The assessee is engaged in the business of manufacturing and marketing of pharmaceutical products. The assessee filed its return of

income electronically on 27.11.2015, declaring total income at Rs. 663,51,10,460.

3. The issue arising in ground no.2, in assessee's appeal is with regard to imputation of interest on share application money paid to the Associated Enterprises ("A.Es").

4. The brief facts of the case pertaining to this issue as emanating from the record are: During the relevant assessment year, the assessee had invested as share application money in two A.Es namely Strides Pharma Asia Pte. Ltd., Singapore, and Strides Pharma International Ltd., Cyprus. The share application money was remitted to its A.Es from time-to-time during the relevant assessment year. In addition to this, during the earlier years, the assessee had invested the share application money in following A.Es which was outstanding as on 31.03.2014.

<i>Sr. no.</i>	<i>Name of A.E.</i>	<i>Amount outstanding as on 31st March 2014</i>
1.	<i>Strides Pharma Asia Pte. Ltd., Singapore</i>	<i>Rs.144,48,94,320</i>
2.	<i>Aglia Specialties Ltd., Cyprus</i>	<i>Rs.141,35,85,582</i>
3.	<i>Strides Arolab International Ltd. U.K.</i>	<i>Rs.14,55,61,515</i>

5. The Assessing Officer made a reference to the Transfer Pricing Officer ("TPO") for determination of arm's length price of international transactions entered into by the assessee. During the proceedings before the TPO, the assessee was asked to show cause as to why there should not be any interest imputation on the share application money. In reply, the assessee

submitted that the funds remitted to A.Es for share application money was for the sole purpose of obtaining the shares and it was never intended to be a loan. The assessee further submitted that the A.Es have refunded/set-off the share application money during the relevant assessment year and there is no outstanding / share application money. The money has been returned by the A.Es since the process for which the funds were received no longer exists or the A.Es have received alternative source of funds. Thus, the repayment of part of share application money by the A.Es is part of the process relating to share allotment. The assessee on without prejudice basis further submitted that if at all any interest is to be imputed the interest rate to be calculated with reference to LIBOR rate. The TPO vide order dated 25.10.2018, passed under section 92CA(3) of the Act at the outset noted that interest adjustment on similar issue was made in earlier years i.e., in assessment years 2011-12, 2012-13, 2013-14 and 2014-15 and the same was upheld by the Dispute Resolution Panel ("DRP"). Following the approach adopted in the earlier years, the TPO rejected the contention of the assessee and held that imputation of interest on share application money is justified as there has been a delay of more than six months between the payment of share application money and the issue of shares by the foreign A.Es for which no interest was charged by the assessee from its A.Es. The TPO further noted that in respect of share application money invested by the assessee during the relevant assessment year interest imputation is not required as either the investment was itself made in March 2015, or the amount was refunded

during the same year. However, in respect of share application money investment which was outstanding as on 31.03.2014, the TPO by applying Boomborg rate for the respective country made an adjustment of Rs.3,11,09,890, towards notional interest on share application money remitted by the assessee to its A.Es for which shares were allotted after more than six months. The Assessing Officer passed draft assessment order dated 20.12.2018, under section 143(3) r/w section 144C(1) of the Act, inter-alia, on the basis of adjustment proposed by the TPO.

6. The DRP, vide its directions dated 30.09.2019, issued under section 144C(5) of the Act, inter-alia, upheld the order passed by the TPO following its directions issued in preceding assessment years and accordingly rejected the objections filed by the assessee. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, Shri Nishit Gandhi, learned Authorised Representative for the assessee ("*learned A.R.*") submitted that similar issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case.

8. On the other hand, Ms. Vatsalaa Jha, learned Departmental Representative ("*learned D.R.*") vehemently relied on the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in

assessee's own case in Strides Pharma Science Ltd. v/s DCIT, in ITA no.7370/Mum./2018, for the assessment year 2014-15, vide order dated 07.02.2020, has decided the issue in favour of the assessee by observing as under:-

"14. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below along with case laws cited by the Id. AR for the assessee. At the outset, it needs mention that it has been held by the Hon'ble Bombay High Court in the case of DIT v/s Besix Kier Dabhol - (2012) 210 Taxman 151 (Bombay) that the Revenue has no power to re-characterize a transaction entered into by the Assessee. Therefore admittedly, the AO or the TPO are not empowered to convert and re-characterize a transaction of share application into a loan transaction. This aspect of the matter and this judgment has been overlooked by the DRP in its order for earlier year. As such, it could not be followed. Secondly, the remittance of the said share application money was approved and supervised by the RBI and the purpose of remittance as approved was investment in share capital. As such, there is no dispute to the fact that the amounts paid were on account of investment in share capital of the associates or subsidiaries. We further note that even otherwise the transaction of issue of shares is a capital account transaction and not a revenue account transaction and therefore could not be said to result in any income per se. We further notice that the co-ordinate benches of the Tribunal have also taken a view that no imputation of interest could be made on a transaction of share application money paid to subsidiaries. The coordinate bench of Mumbai Tribunal in the case of Aries Agro Ltd. v/s DCIT - ITA No. 1452 / Mum / 17(supra) has been held as follows:

"18. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee has advanced money as share application money to Golden Harvest a foreign AE to set up a plant in free trade zone in Sharjah. It is also undisputed that the AE could not convert the share application money into share capital by issuing shares to the assessee as the permission from the free trade zone authorities with whom the AE was registered was pending and this was the only sole reason for not issuing the shares in favour of the assessee. Now the issue before us is whether the share application money could be treated as loan and could be subjected to the transfer pricing provisions. After perusing the facts on record and going through the decision relied on by the Id. A.R., we find that no income has accrued from the share application money to the assessee and therefore such transactions could not be subjected to transfer pricing provisions. The Hon'ble Jurisdictional Bombay High Court in the case of Shell India Markets Pvt. Ltd. vs. ACIT and others has also held that the provisions of chapter 10 of the Act would apply only when income arises from the international

transactions. The relevant portion of the said order is reproduced as under:

"9. We shall now consider the above submissions on behalf of the Revenue. So far as the availability of alternative remedy is concerned, the petitioner has at the beginning of today's hearing itself undertaken to withdraw its objection on the issue of jurisdiction before the Dispute Resolution Panel. This was accepted by us before considering the issue on the merits. Moreover, this petition was filed on April 24, 2013, challenging the impugned orders dated January 30, 2013, of the Transfer Pricing Officer and the draft assessment order dated March 28, 2014, of the Assessing Officer, on the issue of jurisdiction. This issue has been decided in Vodafone IV and would be binding on all authorities within the State till the apex court takes a different view on it. Therefore, in view of the fact that the Revenue does not dispute that the issue on the merits stands covered by the decision of Vodafone IV it would serve no useful purpose by directing the petitioner to prosecute its objections before the Dispute Resolution Panel and the Dispute Resolution Panel disposing of the same in accordance with Vodafone IV. Thus, in the present facts the distinction sought to be made on the ground of alternative remedy is not such as to warrant not entertaining the petition.

10. The second distinguishing feature from that of Vodafone IV, as canvassed by the Revenue, is that Form 3CEB in respect of the transaction of issue of shares to its associated enterprises, is not disclosed as an international transaction. This the petitioner was obliged to do as the transaction is an international transaction. This was in fact done by the petitioners in Vodafone IV. This stand by the Revenue is a little curious as in Vodafone IV the Revenue contended that as the petitioners therein had filed Form 3CEB in respect of issue of shares to its associated enterprise, they had submitted to the jurisdiction of Chapter X of the Act and cannot now contend that the proceeding to tax such shortfall on capital account is without jurisdiction. In this case, an exactly opposite stand is being taken by the State. The State is expected to be consistent and not change its stand from case to case. Be that as it may, the petitioner herein had not disclosed the transaction in Form 3CEB as, according to the petitioner, it was not an international transaction for the reason that it did not give rise to any income. The fact that the petitioner chose not to declare issue of shares to its non-resident associated enterprises in Form 3CEB as in its understanding it fell outside the scope of Chapter X of the Act now stands vindicated by the decision of this court in Vodafone IV. If the petitioner did not file a particular transaction in Form 3CEB when so required to be filed, the consequences of the same as provided in the Act would follow. However, the mere not filing of Form 3CEB on the part of the petitioner would not give jurisdiction to the Revenue to tax an amount which it does not have jurisdiction to tax. Therefore, we do not find any substance in this objection also.

11. The last objection taken by the Revenue was that in view of the variation in the shareholding pattern amongst different shareholders of the petitioner during the year clearly brought the issue of shares within clause (e) of the Explanation to section 92B of the Act. In terms of the above provision an international transaction would include a transaction of restructuring entered into by an enterprise with an associated enterprise. Mr. Pardiwala, learned counsel appearing for the petitioner, points out that there has been no restructuring of the organization but there has been a mere change in the shareholding of different shareholders of the petitioner. However, in the present facts we need not examine this for the reason that even if it is assumed that it is an international transaction, the jurisdictional requirement for Chapter X of the Act to be applicable is that income must arise. In this case, admittedly following Vodafone IV no income has arisen. Thus, the jurisdictional requirement for application of Chapter X of the Act is not satisfied.

12. As held in Vodafone IV, the jurisdiction to apply Chapter X of the Act would occasion only when income arises out of international transaction and such income is chargeable to tax under the Act. The issues raised in the present petition are identical to the issues which arose for consideration before this court in Vodafone IV. Therefore, following the aforesaid decision we set aside the order dated January 30, 2013, of the Transfer Pricing Officer to the extent it holds that the arm's length price of issue of equity shares is Rs. 183.44 per share as against Rs. 10 per share as declared by the petitioner and consequent deemed interest brought to tax on the amount not received when benchmarked to the arm's length price. Accordingly, we set aside the draft assessment order dated March 30, 2013, to the extent it seeks to bring to tax the arm's length price of the share issued by the petitioner to its non-resident associated enterprises and also deemed interest which is sought to be brought to tax on the ground of non-receipt of the consideration equivalent to the arm's length price by the petitioner on issue of equity shares. It is further clarified that the petitioner's objection before the Dispute Resolution Panel filed on April 25, 2013, on all issues save and except the issue covered by this order would be considered by the Dispute Resolution Panel on its own merits."

19. The Hon'ble Bombay High Court further in the case of Equinox Business Parks (P.) Ltd. vs. Union of India has held as under:

"This has been accepted by the Revenue and is evident from the order of DRP dated 30 October 2014 in Petitioner's case for A.Y. 2010-11. In the A.Y.2010-11 also the Petitioner had issued CCDs and equity-shares and the basis was identical to the present Petition. The Revenue sought to tax the Petitioner in terms of Chapter X of the Act. However, the Petitioner objected to the Draft Assessment order before DRP. On 30 October 2014, DRP issued directions under Section 144C(5) of the Act to the Assessing Officer for the A.Y. 2010-11 and on identical facts qua equity shares and CCDs holding as under:

"3.4 We find that the issue under consideration of applying Transfer Pricing Provisions on 'issue of shares' has been decided in favour of the assessee by the Hon'ble Bombay High Court in the case of M/s Vodafone India Services Private Limited in Writ Petition number 871 of 2014 dated 10th October 2014. The honorable High Court has held that the amounts received on issue of shares is a capital account transaction not separately brought within the definition of 'income' as per the provisions of section 2(24) as well as sections 4 & 5 of the Act. Therefore, such capital account transaction not falling within a statutory exception cannot be brought to tax. Even income arising from international Transaction between AE must satisfy the test of income under the Act and must find its home in one of the above heads i.e. charging provisions. There is no charging section in chapter X of the act. Only if there is income which is chargeable to tax under the normal provisions of the act, then alone Chapter X of the act could be invoked. Further, since there is no income arising from the transaction of issue of shares, the provisions of chapter X would not apply. The Hon'ble Bombay High Court in the said case has quashed and set aside as Being without jurisdiction, null and void, the reference made by the TPO, and the order of the TPO making a transfer pricing adjustment on issue of shares. Respectfully following the decision of the jurisdictional Bombay High Court, the adjustment proposed by the TPO on account of issue of shares is deleted. Accordingly, ground of objection number 16 of the assessee is allowed."

20. We, therefore, respectfully following the ratio laid down by the Hon'ble Bombay High Court, reverse the direction of DRP and direct the AO to delete the addition on account of notional interest of Rs.2,44,20,173/-.

15. Similar view is also taken in other judgments relied on by the Ld. AR. Since, no contrary judgments have been brought to our notice, relying on the above stated judgments, we direct the AO to delete the impugned adjustment made by the TPO as affirmed by the DRP towards notional interest on share application money for belated allotment of equity shares."

10. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law were alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co-ordinate Bench of the Tribunal in assessee's own case cited supra, we direct the Assessing Officer / TPO to delete the adjustment towards notional interest on share application money for delayed allotment of shares. Accordingly, ground no.2, raised in assessee's appeal is allowed.

11. The issue arising in ground no.3, raised in assessee's appeal is with regard to imputation of interest on advance recoverable.

12. The brief facts of the case pertaining to this issue as emanating from the record are: During the course of proceedings before the TPO, it was observed that the assessee has advances recoverable from the foreign A.Es amounting to Rs.14,06,59,329. It was further noted that the assessee has not charged any interest on any of these advances outstanding as on 31.03.2015. Accordingly, the assessee was asked to explain the same. In reply, the assessee submitted that the payment of advances was only incidental to normal course of business and thus not a separate transaction by itself. The assessee further submitted that the advances were neither loan nor in the nature of loan and, therefore, no interest was charged from the A.Es. Similarly, no interest was also charged from the non-A.Es on advances. The TPO vide order dated 25.10.2018, noted that the adjustment on account of delayed realization of advance recoverable was also made in assessment year 2014-15, wherein the delayed receipt of advances were treated as loan and interest was imputed thereon. The TPO further noted that the DRP in earlier year has held that the adjustment in respect of advances recoverable should be calculated after allowing the credit period of 180 days as per the agreement. Following the approach, which was followed in earlier years (as per the directions issued by the DRP), the TPO made an adjustment of Rs.31,26,172, towards interest on advances recoverable from its A.Es. The Assessing Officer passed the draft

assessment order dated 20.12.2018, inter-alia, on the basis of adjustment proposed by the TPO.

13. The DRP vide directions dated 30.09.2019, following the directions issued in the assessment year 2014-15 rejected the objections filed by the assessee. Being aggrieved, the assessee is in appeal before us.

14. During the course of hearing, the learned A.R. submitted that similar issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case for the earlier assessment year.

15. The learned D.R. vehemently relied on the orders passed by the lower authorities.

16. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in Strides Pharma Science Ltd. v/s DCIT, in ITA no.7370/Mum./2018, for the assessment year 2014-15, vide order dated 07.02.2020, has decided the issue by holding that the interest on advances recoverable from the A.Es to be calculated by applying LIBOR plus 300 basis points by observing as under:-

"19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. On consideration of the facts of the case, we notice that similar issue has been decided by the ITAT in the earlier years in ITA 8540/Mum/2010 and 8614 / Mum / 11, where it was held that in order to compute interest on receivable from AE,s LIBOR + 300 Basis points is appropriate rate for benchmarking TP adjustment. The relevant part of the order is reproduced below:

"46. The learned Counsel for the assessee stated that this issue is covered in regard to adjustment of such notional interest and according to him the same cannot exceed the LIBOR plus 300 in view of assessee's own case of ITAT's for AY 2004-05 in ITA No. 4063/Mum/2010 and CO. No. 61/Mum/2010 order dated 29.04.2016, wherein Tribunal at page 29 para 39 and 40 has directed the AO to apply LIBOR rate of 1.698% + 300 basis point on interest relating to advancement of interest free loans / extended credit facility to the overseas AE. The relevant Para 39 and 40 of the Tribunals order in assessee's own case reads as under: -

"39. We have considered the submissions of the parties and perused the material available on record. As far as the contention of the learned Authorised Representative that the interest free advances to the overseas subsidiary on account of reimbursement of expenditure is not an international transactions and the transfer pricing provisions are not applicable, we are not convinced with the same. On a reference to section 92B of the Act, it is observed that after amendment effected vide Finance Act, 2012, with retrospective effect from 1st April 2002, the definition of international transactions IT A No.8614/Mum/2011 as provided under the Explanation (i) to section 92B, has been expanded to include the following transactions.

—Explanation.--For the removal of doubts, it is hereby clarified that-- (i) the expression —international transaction\ shall include-

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licenses, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, ITA No.8614/Mum/2011 marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganization, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

40. On a plain reading of clause (c) of Explanation-(i) to section 92B, it is evident that any type of advance payment or deferred payment or receivable or any other debt arising during the course of business including capital financing would come within the scope of —International Transaction. Thus, the assessee having incurred expenditure on behalf of its overseas A.Es which are receivables from the A.Es comes within the meaning of —International Transactions. Therefore, contention of the learned Authorised Representative that receivables on account of expenditure incurred on behalf of A.E. are not international transaction or no computation can be made is not acceptable in view of specific statutory provisions. The next contention of the learned Authorised Representative is, the assessee has long standing business relation with the subsidiary and as a result of investment / advances made, assessee has derived benefit as substantial sales have been recorded from the geographical locations where the subsidiaries are IT A No . 8 6 14 / Mu m/2 0 11 situated. In our view, plea of business / commercial expediency are not applicable to such type of transactions. Under the transfer pricing provisions, it has to be seen whether a particular transaction between the related parties is at arm's length. Therefore, it has to be seen whether under similar circumstances, assessee would have entered into such transaction with unrelated parties. If the facts on record suggest that the assessee would not have entered into such type of transactions with unrelated parties, then the transaction between the related parties cannot be considered to be at arm's length. There is no dispute to the fact that while the assessee has incurred cost by availing credit facility it has advanced interest free funds by not charging interest on the expenditure incurred on behalf of the subsidiaries. Therefore, certainly, a benefit has accrued to the subsidiary on account of the assessee whereas a part of the profit base of the assessee on account of cost incurred on credit facility has been shifted to the subsidiary which otherwise could have been avoided if the surplus funds were available with it. In these circumstances, the principle of commercial expediency would not come into play. Therefore, in our view, as the assessee has not charged interest on outstanding receivables from the overseas subsidiaries, arm's length price of the same has to be determined. Having held so, it is necessary to quantify the rate of interest of such transaction. It is observed, the Transfer Pricing Officer has applied the average interest rate of domestic credit facility availed by the assessee. However, it is seen from the material on IT A No . 8 6 14 / Mu m/2 0 11 record, the entire expenditure incurred by the assessee on behalf of the overseas subsidiary are on foreign currency (dollar), therefore, domestic PLR rate in terms of Indian rupee cannot be applied. It has been brought to our notice through the working submitted before the Departmental Authorities that the average cost of borrowings to the assessee is 4.84%. The learned Authorised Representative has also submitted a working showing the average LIBOR rate of financial year 2002-03 at 1.698%. In a number of decisions, different benches of the Tribunal have consistently held that in such type of international transaction, domestic PLR rate cannot be applied and the rate of interest has to be quantified either with reference to LIBOR or EURIBOR depending upon the country and currency in which the

transaction has taken place. Considering the facts of the present case, we are of the considered opinion that LIBOR rate of 1.698% plus 300 basis point would be the appropriate interest rate applicable to the international transactions relating to advancement of interest free loan / extended credit facility to the overseas A.E. Accordingly, we direct the Assessing Officer / Transfer Pricing Officer to compute the interest on the interest free advances paid to the A.E. Ground no.5, is partly allowed."

47. The learned Departmental Representative has also stated that the issue is also been dealt with in earlier and exactly on the same lines, the directions can be given.

48. We find that the issue is squarely covered and respectfully following and taking a consistent view, we direct the AO to compute the IT A No.8614/Mum/2011 disallowance by taking LIBOR rate plus 300 basis point. We direct the AO accordingly.

20. In this view of the matter and consistent with view taken by the coordinate bench, we direct the AO/TPO to consider LIBOR +300 basis point to benchmark interest on receivables from Associated Enterprises. Further, while computing credit period, the credit period allowed by AE's to be considered and only on net credit period interest needs to be charges."

17. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law were alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co-ordinate Bench of the Tribunal in assessee's own case cited supra, we direct the Assessing Officer / TPO to consider LIBOR plus 300 basis point to compute the interest on advances recoverable from the A.Es. We further direct that while computing the interest, the credit period allowed by the A.Es to be considered and only on net credit period interest needs to be charged. Accordingly, ground no.3, raised in assessee's appeal is allowed for statistical purpose.

18. In view of our findings given in respect of grounds no.2 and 3, no separate adjudication is required in respect of ground no.1, and the same is decided accordingly.

19. The issue arising in ground no.4, raised in assessee's appeal is with regard to disallowance under section 14A of the Act r/w rule 8D of the I.T. Rules., 1962 ("*Rules*").

20. During the relevant assessment year, the assessee has made suo-motu disallowance of expenditure under section 14A of the Act to an extent of Rs.46,77,100, while computing its income. During the course of assessment proceedings, the assessee was asked to explain as to why expenditure attributable to earning of exempt income should not be disallowed under section 14A of the Act r/w rule 8D of the Rules. In reply, the assessee submitted that it has made investment in domestic companies and mutual funds out of the cash generated from its business operations and not from loan funds. The assessee further submitted that it has not incurred any interest or any other expenditure for making the aforesaid investment. The assessee also submitted that it has not earned any exempt income from its equity investments during the year. The assessee further submitted that the disallowance under section 14A of the Act should not exceed the actual expenditure incurred by the assessee (and debited to Profit & Loss Account) for earning the exempt income. The assessee on without prejudice basis has suo-motu disallowed an amount of Rs.46,77,100, which was computed on a rational basis and was offered as

disallowance under section 14A of the Act. The Assessing Officer vide draft assessment order dated 20.12.2018, rejected the contentions of the assessee and made disallowance of Rs.2,94,18,763, under section 14A of the Act r/w rule 8D of the Rules.

21. The DRP vide directions dated 30.09.2019, inter-alia, rejected the objections filed by the assessee. The DRP, however, directed the Assessing Officer to allow suo-motu disallowance of Rs.46,77,100, made by the assessee under section 14A of the Act. Being aggrieved, the assessee is in appeal before us.

22. During the course of hearing, the learned A.R. submitted that Co-ordinate Bench of the Tribunal in assessee's own case for preceding years has restored the issue to the file of the Assessing Officer.

23. On the other hand, the learned D.R. vehemently relied on the orders of the authorities below.

24. We have considered the rival submissions and perused the material available on record. We find that the assessee during the course of assessment proceedings, has raised the following submissions:-

- i) The assessee has made investment in domestic companies and mutual funds out of the cash generated from its business operations and not from loan funds;
- ii) The assessee has not incurred any interest or any other expenditure for making the aforesaid investment;

- iii) The assessee has not earned any exempt income from its equity investments during the year; and
- iv) The disallowance under section 14A of the Act should not exceed the actual expenditure incurred by the assessee (and debited to Profit & Loss Account) for earning the exempt income.

25. We find that while making a further disallowance under section 14A of the Act, over and above suo-motu disallowance offered by the assessee, the Assessing Officer has not considered any of the submissions made by the assessee which have bearing on the issue. We also noticed that the Co-ordinate Bench in assessee's own case in Strides Pharma Science Ltd. v/s DCIT, in ITA no.7370/Mum./2018, for the assessment year 2014-15, vide order dated 07.02.2020, has restored the issue to the file of the Assessing Officer by observing as under:-

"30. The sum and substance of ratio laid down by above judgments is that only those investments which yield exempt income needs to be considered for computation of average value of investments. In this case, we notice that the Assessee has himself disallowed an amount of Rs.21,27,797/- which has not been found to be accepted by the AO or the DRP. Further, the facts with regard to total investments and investments which yield exempt income is not readily available before us. We, therefore, are of the considered view that ends of justice would be met if the disallowance is made after re-computing average value of investment by considering only those investments which yield exempt income. Hence, the matter is restored to the AO to re-work the disallowance in line of our discussions given hereinabove."

26. In view of the above, we deem it appropriate to restore this issue to the file of the Assessing Officer for denovo adjudication in accordance with

the directions of the Co-ordinate Bench of the Tribunal in the order cited supra and the law applicable after consideration of the submissions of the assessee. Needless to mention that before passing the order on this issue, adequate opportunity of hearing shall be provided to the assessee. Accordingly, ground no.4, raised in assessee's appeal is allowed for statistical purpose.

27. The issue arising in ground no.5, raised in assessee's appeal is with regard to disallowance under section 40(a)(ia) of the Act.

28. During the course of hearing, the learned A.R. did intend to press this ground. Consequently, ground no.5, raised by the assessee is dismissed as not pressed.

29. The issue arising in ground no.6, raised in assessee's appeal is with regard to re-computation of book profit under section 115JB of the Act by making addition of an amount of Rs.2,47,41,663, towards expenditure incurred for earning exempt income under section 14A of the Act.

30. The brief facts of the case pertaining to this issue as emanating from the record are: The Assessing Officer vide draft assessment order dated 20.12.2018, added the disallowance made under section 14A of the Act while computing the book profit under section 115JB of the Act.

31. The DRP vide its directions dated 30.09.2019, rejected the objections raised by the assessee on this issue by following its directions for earlier

years. The DRP further directed the Assessing Officer to delete the suo-motu disallowance made by the assessee of Rs.46,77,100, under section 14A of the Act. Being aggrieved, the assessee is in appeal before us.

32. During the course of hearing, the learned A.R. submitted that identical issue was decided in favour of the assessee by the Co-ordinate Bench of the Tribunal in assessee's own case for the preceding assessment year.

33. The learned D.R. vehemently relied on the orders passed by the lower authorities.

34. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in Strides Pharma Science Ltd. v/s DCIT, in ITA no.7370/Mum./2018, for the assessment year 2014-15, vide order dated 07.02.2020, deleted the addition made to book profit computed under section 115JB of the Act by observing as under:-

"34. We have heard both the parties, perused materials available on record and gone through orders of the authorities below along with case laws cited by the Id. AR for the assessee. After considering the facts of the case and the various judgements cited supra, we are of the opinion that no addition to book profits u/s 115JB could be made on the basis of disallowance u/s 14A read with Rule 8D of the Income Tax Rules, 1962. This legal proposition is supported by the decision of Hon;ble Bombay High Court in case of CIT v/s Bengal Finance and Investments - (ITXA No. 337 of 2013 Bombay High Court), where it was held that computation contemplated under clause (f) of explanation (1) to section 115JB is to be made without resorting to computation as contemplated u/s 14A r.w.r 8D of the Income Tax Rules, 1962. A similar ratio is laid down by special Bench of ITAT, Delhi in the case of DCIT vs. Vireet Investments Pvt Ltd(Supra). We, therefore, respectfully following the ratio laid down by High Courts and

Tribunal, direct the AO to delete addition made to book profit computed u/s 115JB, towards disallowances computed u/s 14A of the Income Tax Act, 1961."

35. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law were alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co-ordinate Bench of the Tribunal in assessee's own case cited supra, we direct the Assessing Officer to delete the addition of disallowance under section 14A while computing book profit under section 115JB of the Act. Accordingly, ground no.6, raised in assessee's appeal is allowed.

36. The issue arising in ground no.7, raised in assessee's appeal with regard to non-grant of foreign tax credited amounting to Rs.23,96,97,476, with respect to the dividend income earned.

37. The brief facts of the case pertaining to this issue as emanating from the record are: During the course of assessment proceedings, the assessee claimed additional foreign tax credited amounting to Rs.23,96,97,476, under Article 25(4) of the Indo-Cyprus Double Taxation Avoidance Agreement ("DTAA"). Article-25(4) of Indo-Cyprus reads as under:-

"(4) That tax payable in a Contracting State mentioned in paragraph 2 and paragraph 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which was designed to promote economic development. For the purpose of paragraph 2 of Article 10 the amount of tax shall be deemed to be 10 per cent or 15 per cent, as the case may be, of the gross amount of dividend, for the purpose of paragraph 2 of Article 11, the amount of tax shall be deemed to be 10 per cent of the gross amount of interest and for the purpose of paragraph 2 of Article 12, the amount of tax shall be deemed to be 15 per cent of the gross amount of royalties and fees

for included services and for the purpose of paragraph 2 of Article 13, the amount of tax shall be deemed to be 10 per cent of the gross amount of technical fees.”

38. According to the assessee, the income from dividend received from its two wholly owned subsidiary located in Cyprus would fall under Article-25(4) of the said DTAA. The Assessing Officer vide draft assessment order dated 20.12.2018, held that the assessee has failed to satisfy the conditions laid down in Article-25(4) of the DTAA. The Assessing Officer further held that the assessee made false claim categorizing the income in a particular category which is eligible for the benefit under Article 25(4) of the Indo-Cyprus DTAA. Accordingly, the Assessing Officer rejected the additional claim of foreign tax credit made by the assessee.

39. The DRP vide its directions dated 30.09.2019, inter-alia, rejected the objections filed by the assessee following its directions issued in assessment year 2014-15. Being aggrieved, the assessee is in appeal before us.

40. During the course of hearing, the learned A.R. submitted that on identical issue, the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2014-15 has decided the issue in favour of the assessee.

41. The learned D.R. vehemently relied on the order of the authorities below.

42. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in Strides Pharma Science Ltd. v/s DCIT, in ITA no.7370/Mum./2018, for the assessment year 2014-15, vide order dated 07.02.2020, directed the Assessing Officer to allow foreign tax credit in respect of dividend income received from Cyprus subsidiary in terms of Article-25(4) of the Indo-Cyprus DTAA by observing as under:-

"56. In the present case, facts are more or less similar to the case laws cited by the Id. DR. The assessee has received dividend income from Cyprus subsidiary and such dividend income was exempt from tax under Cypriot Tax Laws. The assessee has claimed deemed tax credit in respect of dividend income from Cyprus subsidiary @ 10% as per Article 25(4) of the India -Cyprus tax treaty. Since, dividend is taxable in Cyprus tax laws, but exemption has been provided to non-residents, the assessee case falls under Article 25(4) of treaty and as per which tax payable in a contracting state mentioned in paragraph 2 and 3 of this article shall be deemed to include tax which would have been payable but for the tax incentive granted under the laws of the contracting states and which are designed to promote economic development. We, therefore, are of the view that the assessee is entitled for deemed tax credit @10% as per Article 25(4) of the India - Cyprus treaty in respect of dividend income received by it from its Cyprus subsidiary.

57. In view of the above and since no other contrary judgements are brought on record, it is evident that the Assessee is entitled to claim a tax sparing credit in respect of dividends earned from Cypriot Subsidiaries in terms of article 25(4) of India and Cyprus tax treaty. Therefore, we direct the AO to allow deemed tax credit towards dividend income received from its Cyprus subsidiary."

43. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law were alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co-ordinate Bench of the Tribunal in assessee's own case cited supra, we direct the Assessing Officer to allow the foreign tax credit amounting to Rs.

23,96,97,476, with respect to dividend income earned in terms of Article-25(4) of the Indo-Cyprus DTAA. Accordingly, ground no.7, raised in assessee's appeal is allowed.

44. Ground no.8, relates to non-grant of foreign tax credit amounting to Rs.6,77,61,054, on royalty income and Rs.2,13,99,088, on interest income offered to tax in the return of income.

45. During the course of hearing, the learned A.R. did not intend to press ground no.8. Consequently, this ground is dismissed as not pressed.

46. The issue arising in ground no.9, raised in assessee's appeal is with regard to levy of interest under section 234A of the Act.

47. As per the assessee, the return of income was filed on 27.11.2015, i.e., before the statutory due date for filing the return of income and thus interest under section 234A of the Act has been erroneously levied by the Revenue. In view of the above, we deem it appropriate to direct the Assessing Officer to verify the date of filing of return of income and in case it is found that the return of income has been filed belatedly, the interest may be charged as per law. Accordingly, ground no.9, raised in assessee's appeal is allowed for statistical purpose.

48. Ground no.10, raised in assessee's appeal relates to levy of interest under section 234B of the Act.

49. During the course of hearing, the learned A.R. submitted that the ground is consequential in nature. Thus, the Assessing Officer is directed to compute the interest under section 234B of the Act, if leviable, in accordance with law. Accordingly, ground no.10, raised by the assessee is allowed for statistical purpose.

50. The issue arising in ground no.11, raised in assessee's appeal is with regard to levy of interest under section 234C of the Act.

51. The brief facts of the case pertaining to this issue as emanating from the record are: The Assessing Officer vide final assessment order dated 31.10.2019, levied interest amounting to Rs. 10,03,50,402, under section 234C of the Act.

52. During the course of hearing, the learned A.R. submitted that the interest under section 234C of the Act only be charged on the basis of tax due on the "*returned income*". However, the Assessing Officer has charged interest under section 234C of the Act on the basis of tax computed on the "*assessed income*" instead of "*returned income*".

53. On the other hand, the learned D.R. vehemently opposed such submissions.

54. We have considered the rival submissions and perused the material available on record. As per the provisions of section 234C of the Act, interest is levied either on failure to pay advance tax by the assessee or on

short fall in payment of advance tax as compared to tax due on returned income. In the present case, the dispute is whether the interest under section 234C of the Act would be calculated on "*returned income*" or on "*assessed income*". It is pertinent to note that provisions of section 234C of the Act refers to the term "*returned income*" in comparison to the provisions of section 234B of the Act which refers to the term "*assessed income*" for imposing interest. The Assessing Officer is directed to re-compute the interest under section 234C of the Act on the basis of "*returned income*" in case there is default / short fall in payment of advance tax as compared to tax due on returned income. Accordingly, ground no.11, is allowed for statistical purpose.

55. Ground no.12, raised in assessee's appeal with regard to initiation of penalty under section 271(1)(c) of the Act is pre-mature in nature and is accordingly dismissed.

56. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 06/04/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/04/2022

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai