IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.117 of 2014 (O&M)
RESERVED ON: 21.05.2015
DATE OF DECISION: 27.05.2015

The Commissioner of Income Tax-I, Chandigarh

…..Appellant

versus

M/s DSM Anti Infectives India Ltd.

.....Respondent

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Urvashi Dhugga, Advocate for the appellant

Ms. Shashi M. Kapila, Mr. Deepak Suri,
Mr. Pravesh Sharma and Mr. Sanjay Kumar,
Advocates for the respondent

..

S.J.VAZIFDAR, ACTING CHIEF JUSTICE:

This is an appeal against the order of the Income Tax Appellate Tribunal dated 08.08.2013 in so far as it directs the Transfer Pricing Officer (TPO) to consider Torrent Gujarat Biotech Limited and Standard Pharmaceuticals Limited as comparables for the purpose of determining the arms length price (ALP) in respect of the international transaction entered into by the respondent in respect of the assessment year 2005-06.

2. The appellant contends that the following substantial questions of law arise in the present appeal:

> "i) Whether the facts and in the circumstances of the case, the Tribunal was right in relying upon

section 36(1)(iii) in isolation without considering the fact that the assessee has not only borrowed money but also has advance money from which the assessee was liable to receive interest income.

ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the advance made to Hindustan Max G.B. were actually for commercial expediency particularly since the advance pertained to the earlier years and whether the commercial expediency can be said to have existed over a prolonged period of a number of years when no such transaction has taken pace in the succeeding years."

iii) In the facts and circumstances of the case whether the ITAT was correct in directing the AO/TPO to include M/s Torrent Gujarat Biotech Limited and M/s Standard Pharmaceuticals Limited as comparables considering the fact that they were using only a very small %age of Penicillin-G as raw material as compared to taxpayer."

3. The questions No.(i) and (ii) are admittedly covered against the appellant in view of the judgment of a Division Bench of this court in *The Commissioner of Income Tax-I, Chandigarh vs. M/s DSM Anti Infectives India Limited, ITA No.257 of 2009, decided on 28.10.2013.* These questions are, therefore, answered against the appellant and in favour of the assessee/respondent.

4. Question No.(iii) is answered against the appellant and in favour of the assessee/respondent in view of our judgment and order passed today in the connected appeal being ITA No.116 of 2014.

5. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

27.05.2015 **(G.S. SANDHAWALIA)**
parkash* **JUDGE**