

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO.510 OF 2017

Pr. Commissioner of Income Tax – 10 ... Appellant

Vs

Medley Pharmaceuticals Ltd. ... Respondent

With

INCOME TAX APPEAL NO.511 OF 2017

Pr. Commissioner of Income Tax – 10 ... Appellant

Vs

Medley Pharmaceuticals Ltd. ... Respondent

With

INCOME TAX APPEAL NO.732 OF 2017

Pr. Commissioner of Income Tax – 10 ... Appellant

Vs

Medley Pharmaceuticals Ltd. ... Respondent

With

INCOME TAX APPEAL NO.1226 OF 2017

Pr. Commissioner of Income Tax – 10 ... Appellant

Vs

Medley Pharmaceuticals Ltd. ... Respondent

With
INCOME TAX APPEAL NO.1305 OF 2017

Pr. Commissioner of Income Tax – 10 ... Appellant

Vs

Medley Pharmaceuticals Ltd. ... Respondent

AND
INCOME TAX APPEAL NO.1378 OF 2017

Pr. Commissioner of Income Tax – 10 ... Appellant

Vs

Medley Pharmaceuticals Ltd. ... Respondent

Mr.Akhileshwar Sharma for the Appellant

Ms.Shobha Jagtiani with Mr.Ravi R. i/b D.M. Harish Rao for the
Respondent in all the matters

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 22, 2019

P.C.:

1. These appeals arise in common background involving the same appellant and the assessee and raise common questions and hence, the appeals are being disposed of by a common order.

For convenience, we may refer to Income Tax Appeal No.510 of 2017. This Appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal (for short, 'the Tribunal'). Following questions are presented for our consideration:

i) Whether on the facts and in circumstances of the case and in Law, the Tribunal was justified in deleting the disallowance of claim of deduction under section 80-IA in respect of Unit-1 at Daman without appreciating the fact that Unit-1 at Daman was formed with the transfer of machinery from Aurangabad Unit in excess of 20% of the total value of the plant & machinery at Unit-1, Daman, in violation of the provisions of section 80-IA(2)(ii) of the Income Tax Act, 1961?

ii) Whether on the facts and in circumstances of the case and in Law, the Tribunal was justified in holding that the Unit-2 at Daman was a separate and independent unit without appreciating the fact that the Unit-2 was merely an extension of Unit-1 in view of the fact that both the units have a common excise registration, common electricity and water

connection indicating that Units-1 and 2 are same and an artificial distinction was created for claiming deduction under section 80-IA/80IB of the Income Tax Act, 1961 for a longer period?

2. The respondent-assessee is a private limited company and is engaged in manufacturing pharmaceutical products. The respondent had a manufacturing unit at Aurangabad. Later on, the assessee established another unit at Daman. Yet another unit referred to as Unit-2 at Daman was set up at the same site. The assessee claimed exemption of an income arising out of its manufacturing activities carried out at the Daman units in terms of section 80-IA of the Income Tax Act (for short, 'the Act'). The Revenue rejected the claim on two grounds. Firstly, on the ground that the assessee had utilised old machinery, valuation of which was in excess of 20% of the total installed machinery. Secondly, that the Unit-2 was a mere extension of the existing Unit-1 and was not an independent manufacturing unit.

3. As is well known, section 80-IA / 80-IB of the Act grant certain exemption of income subject to fulfillment of conditions contained therein. The assessee's units at Daman situated in a

backward area was subject to fulfillment of conditions, eligible for such exemption. Sub-section (3) of section 80-IA laid down these conditions in the following manner:

“(3) This section applies to an undertaking referred to in clause (ii) or clause (iv) of sub-section (4) which fulfills all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

Provided that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003 (36 of 2003), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.”

4. Explanation 2 below section 80-IA(3) which is also relevant for our purpose reads as under:

“Explanation 2 – Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the

machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.”

5. The Revenue’s first objection emanates out of the second condition that the industry is not formed by transfer of machinery of plant previously used for any purpose as explained in Explanation 2, which provides that the value of such machinery used in the business previously should not exceed 20% of the total value of the machinery of the plant used in the business. In this context, Revenue had contended before the Tribunal that the petitioner had transferred its machinery previously used at Aurangabad to its units at Daman and thereby breached this condition.

6. The Tribunal, however, in a detailed discussion contained in the impugned judgment, had rejected the contention. The Tribunal had taken into account the valuation of the existing machinery used at Daman and the valuation of the written down value of the machinery transferred from Aurangabad to come to the conclusion that the same did not exceed 20% of the total value of the machinery. The entire issue is thus based on factual consideration and on appreciation of evidence on record. No question of law arises.

7. The Revenue's second objection flows from the first condition contained in sub-section (3) of section 80-IA of the Act. This objection is confined to the Unit 2 at Daman. The Revenue argues that the said Unit is nothing but an extension of the existing unit and the assessee desired to extend the benefits of section 80-IA beyond the prescribed statutory period of 10 years.

8. The Tribunal, however, noted that the operations of Unit-1 at Daman started in A.Y. 1995-1996 and the operations of the Unit-2 at Daman started during the period relevant to the Assessment Year 1999-2000. It was further noted that the products manufactured at both the Units were different, though some of the pharmaceutical formulations may be common. The Tribunal noted that in Unit-1, the assessee was manufacturing oral liquids only, whereas at the Unit-2, the assessee had started manufacturing tablets, capsules as well as certain orally administered liquids. The assessee had also commenced for the first time manufacturing activity of certain antibiotics. The Tribunal, therefore, came to the conclusion that the formation of Unit-2 at Daman cannot be seen as a mere extension of the assessee's existing unit-1. The Tribunal has discarded the Revenue's contention that both the

Units shared common amenities and common central excise registration and, therefore, cannot be seen as a separate industry, was rejected by the Tribunal. The assessee had presented full details of purchase of new plot, efforts made for obtaining separate excise registration for the new industry as well as for obtaining of a separate electric connection. Again, the Tribunal has examined the relevant factors and come to the conclusion which does not given rise to any substantial question of law.

9. All the appeals involve similar issues. Under the circumstances, the appeals are dismissed.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)