

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1674 OF 2016

Pr. Commissioner of Income Tax-15

.. Appellant

v/s.

M/s. Strides Arcolab Ltd.

.. Respondent

Mr. Sureshs Kumar for the appellant

Mr. Nitish Joshi a/w Mr. Atul Jasani for the respondent

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.**

DATED : 4th FEBRUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in directing the AO to grant the benefit of deduction u/s 35(2AB) when it was evident from the approval letters that the approval for the R&D activities were given in the subsequent Assessment Years and not for the assessment year under consideration ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in directing the AO not to make

disallowance u/s 14A of the I.T. Act when on perusal of the B/S of the Co. it is established that the assessee had no sufficient funds and has borrowed funds for investment in shares. These borrowed funds were utilized for the purpose of investments which cannot be said to be the expenses incurred for the purpose of business?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting disallowance u/s 36(1)(va) being employee's contribution to provident fund and ESI as the same were not deposited within the stipulated time / dates as provided in the respective Act?

(iv) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that deduction under Section 80HHC has to be computed as the profit of the business as reduced by profit allowed as deduction under Section 80IA/80IB?

(v) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that deduction disallowed u/s 36(1)(iii) of the I.T. Act should be allowed u/s 57(iii) of the I.T. Act when the primary motive of the assessee company is not earning income from other source?"

2. Question no. (i) relates to the Revenue's objection to the assessee's claim of deduction under Section 35(2AB) of the Income Tax

Act, 1961 ("the Act" for short) primarily on the ground that the approval for the research facility established by the assessee was granted by the competent authority subsequently. We notice that several High Courts have held that such research and development activity once approved by the competent authority, the approval would relate back to the date of application. Reference in this respect can be made to the decision of the Division Bench of Gujarat High Court in the case of *CIT Vs. Claris Lifesciences Ltd. (2008) 174 Taxman 113* and the decision of the Delhi High Court in case of *CIT New Delhi Vs. Sandan Vikas (India) Ltd. 335 ITR 117*. We are informed that the decision of Delhi High Court in case of Sandan Vikas (India) Ltd. (Supra) was carried in appeal before the Supreme Court and the SLP came to be dismissed by an order dated 09th January, 2012. This question is therefore not entertained.

3. Question no.(ii) relates to the Revenue's dis-allowance of expenditure under Section 14A of the Act. Perusal of the impugned judgment of the Tribunal would show that in addition to relying on the conclusion in case of this very assessee in earlier assessment year, the Tribunal further noted that during the year under consideration, no fresh investments were made by the assessee except for a small

investment of Rs.2.52 lakhs. Such being the fact, we do not see any error in the view of the Tribunal. This question is therefore not entertained.

4. In relation to question nos. (iii) and (iv), we notice that similar questions came up for consideration before this Court in Income Tax Appeal (L) No. 2111 of 2012 in case of this very assessee where by order dated 26th February, 2013 while dismissing the Revenue's Appeal, these questions came up for consideration. These questions in the present appeal, therefore are not entertained.

5. With respect to question no. (v), the assessee had objected to the Revenue's proposal for disallowance of expenditure on the ground that there were sufficient interest free funds available with the assessee from which the investment was made. The assessee had raised an alternative contention that in any case the dividend to be received from such investment, was taxable and, therefore, the expenditure under Section 57(iii) of the Act should be granted. It is this alternative contention which the CIT(A) and the Tribunal finally accepted. The undisputed fact is that the dividend income at the hands of the assessee would be taxed. We, therefore, do not find any error in the view of the

Tribunal except assessee's contention. This question is therefore not entertained.

6. In the result, the tax appeal is dismissed.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)