

\$~35

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 867/2019**

**THE PR. COMMISSIONER OF INCOME TAX -6** ..... Appellant

Through: Mr. Puneet Rai and Mr. Ruchir  
Bhatia, Advocates.

versus

**MENARINI RAUNAQ PHARMA LTD.** ..... Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

% **27.09.2019**

**C.M. No. 43452/2019 (delay)**

1. By this application, the applicant seeks condonation of delay of 2 days in filing the application. For the reasons stated in the application, the delay is condoned.

2. The application stands disposed of in the aforesaid terms.

**ITA 867/2019**

3. The Revenue has preferred the present appeal to assail a part of the order dated 28.02.2019 passed by the ITAT in ITA No. 2944/DEL/2014 for the assessment year 2005-06. The Assessing Officer has made two additions which were set aside by the CIT (Appeals). Against the said order, the Revenue preferred the aforesaid appeal before the Tribunal. Thereafter, the Revenue has preferred the present appeal on two issues. Firstly, whether the ITAT was justified in law in deleting the addition of Rs. 6,11,59,512/- on

account of the unsubstantiated claim of sales return by accepting the claim of the assessee that 37.3% of the sales return were relating to expired/damaged stocks and not included in the closing stock. A perusal of the impugned order shows that the issue raised by the Appellant is completely factual and no question of law arises for consideration of this Court in the present appeal. The finding of fact return by the CIT (Appeal) as well as Tribunal are concurrent and, in fact, perusal of the impugned order shows that the Assessing Officer did not even grant sufficient opportunity to the Assessee to explain its position since the date of hearing was fixed as 06.12.2007 but the assessment was framed even prior thereto, on 29.11.2007. The CIT (Appeal) while dealing with the assessee's appeal called for a remand report and premised on the said report, returned factual finding in relation to the return sales in favour of the assessee. The relevant extract from the impugned order reads as follows:

**“5. Ground no. 1**

It is the case of the assessee that sales executives in order to earn the incentives have shown fictitious sales which came to the notice of the company when receivables has piled up and the assessee has not received any payment. Alleged fictitious sales were noticed for the period of April, 2004 to July 2004. Then the assessee has recovered goods worth Rs. 6,11,59,512/-lying with the transporters.

6. Undisputedly auditors have not made any comment on the appropriateness of the sales because the return sale was not included in the closing inventory. It is also not in dispute that during the assessment proceedings the assessee had furnished party wise details from which unsold goods were returned back along with copy of sales return invoices on sample basis. The Ld. CIT(A) brought on record the fact that the assessee has not been provided an opportunity to explain the party wise details of returned goods for which he has fix the date of hearing as

06.12.2007 but proceeded to frame the assessment on 29.11.2007. However, during the appellate proceeding the Ld. CIT(A) called the remand report.

7. The Ld. CIT(A) on the basis of remand report and rejoinder filed by the assessee has rightly reached the conclusion that the sale return for a period of 4 months from April, 2004 to July, 2004 has been duly supported with evidence that it occurred due to malpractices carried out by the sales representatives and missing items have been recovered from the transporter. Moreover it was not case of the AO that sales and sale returns are not supported by actual physical stock or there was an unaccounted cash receipt in the hands of the assessee for the unaccounted.

8: Moreover the assessee has submitted party wise details of "sales return" during financial year 2004-05 and details of valuation of sellable goods out of returned goods included in the closing stock as on 31<sup>st</sup> March, 2005 which has been duly examined by Ld. CIT(A). Assessee has duly proved before the CIT(A) that out of total quantity of the sale return during the year under assessment approximately 40.3% quantity of such stock was resold and approximately 22.4% of quantity was included in the closing stock being sellable goods in the subsequent years and remaining quantity of approximately 37.3% was claimed as expired / damaged stock which was not included while computing the value of the closing stock as on 31st March, 2005.

9. So when sale returns has been duly proved with physical stock available with the assessee, the Ld. CIT(A) has rightly decided the issue in favour of the assessee that the same cannot be added as unexplained income. So we find no illegality or perversity on the findings of facts returned by Ld. CIT(A), hence, ground no. 1 is determined against the revenue.”

4. On the second aspect, counsel for the Appellant points out that the assessee has given an affidavit that the assessee shall not be claiming refund of the sales tax paid on return sales. That being the position, the assessee would be entitled to claim deduction of the sales tax paid on the sales returns

for the fictitious sales. Thus, ITAT was justified in upholding the deletion of Rs. 40,88,589/- on account of sales tax paid by the assessee.

5. In view of the aforesaid, in our view, no question of law arises in the present appeal and the same is dismissed.

**VIPIN SANGHI, J**

**SANJEEV NARULA, J**

**SEPTEMBER 27, 2019**

*nk*