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T.C.A.No.163 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 12.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**  
and  
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

T.C.A.No.163 of 2024

The Principal Commissioner of Income Tax,  
Central Circle-1(1),  
Chennai – 600 034.

... Appellant / Respondent

Vs.

M/s.The Madras Pharmaceuticals,  
No.15, Sri Gopalakrishna Road,  
T.Nagar, Chennai – 600 017.  
PAN: AAAFT 2536L

... Respondent / Appellant

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, “A” Bench, Chennai dated 8<sup>th</sup> November 2023 in ITA.No.23/Chny/2021.

For Appellant : Mr.R.Karthik

**JUDGMENT**

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

In this appeal, the appellant has raised following questions of law as substantial questions of law:-



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T.C.A.No.163 of 2024

- i. In the facts and circumstances of the case, whether the ITAT has erred in directing to delete the addition of Rs.25,00,000/- towards bogus purchase?
- ii. In the facts and circumstances of the case, whether the finding of the ITAT that the amount of cash payments of Rs.25,00,000/- on account of bill trading is out of cash withdrawn from bank account and hence the source is explained, is contrary to the facts on record, as such cash withdrawn is not recorded in the books of accounts of the assessee?
- iii. In the facts and circumstances of the case, whether the ITAT has erred in law in holding that addition of Rs.50,00,000/- under Section 69C, being unaccounted speed money payments, cannot be made when the assessee has not claimed the expenditure in the books of accounts?
- iv. Whether the ITAT has erred in holding that the source for said payments is withdrawals from bank accounts without appreciating that if it had been so, the payments also would have been accounted in the books of accounts in some form or other?
- v. In the facts and circumstances of the case, whether the ITAT has erred in deleting the addition made towards difference in purchases under Section 69C amounting to Rs.5,67,68,336/-?
- vi. Whether the ITAT has erred in not considering that the assessee has furnished a different purchase figure of Rs.31,09,77,347/- for the period till the date of search as against the figure of Rs.36,77,45,683/- disclosed by the assessee in the Settlement Application furnished by the assessee for the Assessment Years from 2003-2004 to 2008-2009 which is almost matching with the purchase figure for the period of Rs.36,79,45,683/- adopted by the Assessing Officer and that the assessee has not reconciled this discrepancy?



T.C.A.No.163 of 2024

WEB COPY

2. The dispute in the present appeal arises out of the search conducted by the Income Tax Department on 16.10.2008 for the Assessment Year 2009-2010. The assessment was thereafter completed on 31.12.2010 under Section 143(3) of the Income Tax Act, 1961.

3. The Assessing Officer added (or) had made certain additions by including a sum of Rs.5,69,68,520/- towards difference in stock and accordingly, computed a sum of Rs.2,82,98,640/- as the balance payable by the respondent. The computation in the said Assessment Order dated 31.12.2010 is as under:-

“5. The taxable income and the tax liability for the Assessment Year 2009-2010 is computed as under:

Income from business as disclosed 6,44,83,597

Add: Additions

as in Para 2.3 45,00,000

as in Para 3 50,00,000

difference

in stock as in Para 4.2 5,69,68,520

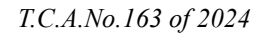
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6,64,68,520

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Total Income assessed 13,09,52,117  
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Tax thereon @ 30% : 3,92,85,636/-

ADD : S.C.@ 10% : 39,28,563/-

E.C.@3% : 12,96,425/-



This should be paid as per demand notice enclosed. Penalty u/s 271AAA initiated separately.”

5. In the course of the proceedings before the Commissioner of Income-Tax (Appeals), a Remand Report was called for from the assessee, pursuant to an order dated 17.02.2012. The Remand Report No.AAAFT2536L/A.Y.2009-2010/ACIT/CC-1(1)/CHENNAI dated 20.11.2020 was also thereafter submitted to the Additional CIT, Central Range 1, Chennai.



WEB COPY



T.C.A.No.163 of 2024

6. As far as the Remand Report No.AAAFT2536L/A.Y.2009-2010/ACIT/CC-1(1)/CHENNAI dated 20.11.2020 is concerned, it reads as under:-

“Issue 3: Unexplained expenditure u/s 69C towards difference in purchases of Rs.5,69,68,520/-:

- i. In respect of the issue of unexplained purchases, the assessee vide para 12 of the written submissions stated that the assessee is not aware of the data set out at page 5 of the assessment order. The date mentioned in page 5 of the assessment order is reproduced as below:

| <i>Description</i>                              |                                               | <i>Amount (Rs.)</i>                                      |
|-------------------------------------------------|-----------------------------------------------|----------------------------------------------------------|
| For the F.Y. Ending 16.10.2008 (date of search) | Raw material<br>Packing material              | 31,87,05,659 +<br>4,92,40,024 =<br>36,79,45,683 .....(a) |
| After search till 31.03.2009                    | As per purchase vouchers produced by assessee | 19,83,98,625 .....(b)                                    |
| Shown in P&L account filed along with R/I       |                                               | 50,93,75,389 .....(c)                                    |
| Difference                                      | (a) + (b) – (c)                               | 5,69,68,520                                              |

- ii. In this connection, it is submitted that the difference in the quantum of purchases as per the Profit & Loss Account filed as per the Return of Income and the quantum of purchases made during the periods “from 01.04.2008 to till the date of search (16.10.2008)” and “from 17.10.2008 to 31.03.2009” was treated as unexplained investment in purchases. (A copy



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T.C.A.No.163 of 2024

of the Profit & Loss Account filed by the assessee along with the ROI for the Assessment Year 2009-2010 is enclosed herewith for ready reference as per Annexure-2).

- iii. Further, it is submitted that during the course of the post search proceedings, value of the closing stock as on 31.03.2008 (i.e., Opening Stock as on 01.04.2008) of M/s.Madras Pharmaceuticals was worked out at Rs.7,58,61,222/- by adopting the actual G.P.% for various firms for previous years for the F.Y. 2007-2008 and actual purchases and sales for the F.Y. 2008-2009 [till the date of search (16.10.2008) i.e., for the period from 01.04.2008 to 15.10.2008]. Closing stock value as on the date of search was arrived at basing on valuation of the stock physically found. The working was made as under:  
For the Financial Period Ending 16.10.2008:

|                       |              |               |              |
|-----------------------|--------------|---------------|--------------|
| Opening Stock         | 7,58,61,222  | Sales         | 42,80,35,104 |
| Raw Material          | 31,87,05,659 | Closing Stock | 8,40,56,426  |
| Packing Material      | 4,92,40,024  |               |              |
| Gross Profit (15.95%) | 6,82,84,625  |               |              |
|                       | 51,20,91,530 |               | 51,20,91,530 |

Purchase figures for “Raw Material” and “Packing Material” shown in the above table are nothing but purchases made by the assessee during the F.Y. 2008-09 till the date of search i.e., during the period from 01.04.2008 to 15.10.2008. In this connection, it is very much pertinent to mention here that the very said value of the opening stock of Rs.7,58,61,222/- so arrived was adopted by the assessee as opening stock in the Profit & Loss Account of the assessee for the purpose of filing of Return of Income for the relevant A.Y. 2009-10 as against the closing stock value of Rs.12,03,61,364/- shown in the P&L Account filed along with the Return of Income for the A.Y.2008-09. In this regard, the assessee vide para 7(ii) of its letter dated 31.08.2010 filed during the course of the



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T.C.A.No.163 of 2024

assessment proceedings, had stated that the opening stock figure as on 01.04.2008 was adopted at Rs.7,58,61,222/- as against the value of the closing stock as on 31.03.2008 of Rs.12.04 Crores disclosed in the ROI filed for the A.Y. 2008-09. Further, the assessee stated that the value of the opening stock as on 01.04.2008 would be revised basing on the seized material and that on the same basis, the value of closing stock as on 31.03.2009 would also be revised. (A copy of the letter dated 31.08.2010 of the assessee is enclosed herewith for ready reference as per the Annexure-3).

- iv. Further, it is submitted that during the course of the assessment proceedings, the assessee vide letter dated 30.12.2010 stated that it is not possible for the assessee to comment on this issue unless source of information is given to the assessee. However, the assessee filed two trading accounts for the periods “from 01.04.2008 to 20.10.2008” and “from 21.10.2008 to 31.03.2009” showing details of purchases, instead of furnishing trading accounts for the required periods “01.04.2008 to 16.10.2008 (Date of search)” and “17.10.2008 to 31.03.2009”. (A copy of the assessee's letter dated 30.12.2010 is enclosed herewith for ready reference as per Annexure-4). As seen from the Trading Account for the period from 21.10.2018 to 31.03.2019 filed by the assessee, the total of purchases works out to Rs.14,13,38,945/- as noted below:

|                  |    |                |
|------------------|----|----------------|
| Raw Material     | :: | Rs.6,84,51,080 |
| Packing Material | :: | Rs.1,80,94,493 |
| Excise Duty      | :: | Rs.2,82,24,430 |
| Direct Expenses  | :: | Rs.2,65,68,942 |

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Rs.14,13,38,945  
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But, as per the list of invoices furnished by the assessee, the value of purchases for the period from 16.10.2020 works out to Rs.19,83,98,625. Thus, there is a difference in these two values by Rs.5,70,59,680 (Rs.19,83,98,625 – Rs.14,13,38,945). This aspect also needs to be cross verified with the purchase invoices for the relevant period/books of



WEB COPY



T.C.A.No.163 of 2024

the assessee. Further, it is submitted that as seen from Clause 28 of form 3CD, quantitative details of the principal items of raw materials, finished products and by-products, details of opening stock, closing stock etc., it was mentioned that details are attached as per Annexure-7. But, the said Annexure is not available on record. The same is also required to be obtained and verified. In the e-filed Return of Income for the A.Y. 2009-10 also, the said details were not furnished by the assessee in the relevant Schedule “Part A-QD”, whereas the said details were duly furnished by the assessee in the Schedule “Part A-QD” of the e-return filed for the previous A.Y. 2008-09.

- v. If the assessee furnishes trading accounts for the specific periods from 01.04.2008 to 16.10.2008 (till the date of search) and 17.10.2008 to 31.03.2009, then it is possible to cross-examine the issue of unexplained expenditure in purchases. Though the assessee was requested vide para 5 of this office letter dated 04.06.2013, the assessee has not furnished required information. (A copy of this office letter dated 04.06.2013) is enclosed herewith for ready reference as per Annexure-5). Vide letter dated 17.06.2013, the assessee stated in this regard that it is not possible to correlate the query to the issues raised in the appeal. (A copy of the assessee's letter dated 17.06.2013 is enclosed herewith for ready reference as per Annexure-6”).

7. The Commissioner of Income-Tax (Appeals) ultimately dismissed the appeal based on the above Remand Report. On further appeal before the Appellate Tribunal by the respondent/assessee, the Appellate Tribunal held that the respondent/assessee has filed a reconciliation explaining total purchases including purchase of capital



*T.C.A.No.163 of 2024*

goods and purchase returns and tallied with purchases recorded in the books of accounts of the assessee, which has been reproduced in reply filed to remand report of the Assessing Officer and same is available at page 64 of the Id. CIT(A) order.

8. The Appellate Tribunal has further held that even the Assessing Officer did not have the benefit of relevant workings of stock difference arrived at during the course of search by the Investigation Wing and that the Assessing Officer has completely erred in making additions towards difference in stock in trade as unexplained expenditure u/s. 69C of the Act.

9. Under these circumstances, the Assessing Officer was directed to delete the additions made towards difference in stock in trade u/s. 69C of the Act. Paragraphs 16 and 17 of the Appellate Tribunal Order reads as follows:-

“16. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The sole basis for the Assessing Officer to make additional towards unexplained expenditure, being difference in stock in trade at Rs.5,69,68,520/- is on the basis of working of stock in trade as on the date of search after taking into account



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T.C.A.No.163 of 2024

purchase of raw material and packing material. The Assessing Officer has worked out difference in stock in trade at Rs.5,69,68,520/-, on the basis of total purchase of raw material and packing material up to the date of search, as per details submitted by the assessee and also purchases after the date of search and up to the end of financial year. The Assessing Officer, has considered total purchases as per list submitted by the assessee and then compared with purchases as per books of accounts of the assessee and worked out difference. The Assessing Officer, has reproduced the chart which contains the workings of difference in stock in trade. **We have gone through the workings reproduced by the Assessing Officer in the assessment order and we find that there is no details as regards what is the basis for taking purchase figures up to 16.10.2008.** Further, the Assessing Officer claims that purchases from 17.10.2008 to 31.03.2009, as per the purchase vouchers produced by the assessee. Further, the Assessing Officer has considered total purchase of raw material and packing material including excise duty and as per audited books of accounts of the assessee and then worked out a difference of Rs.5,69,68,520/-. **The assessee has filed a reconciliation explaining total purchases including purchase of capital goods and purchase returns and tallied with purchases recorded in the books of accounts of the assessee, which has been reproduced in reply filed to remand report of the Assessing Officer and same is available at page 64 of the Id. CIT(A) order.** We have gone through the purchase figures considered by the Assessing Officer in his assessment order at Para 4.1 and purchase figures adopted by the assessee in the table furnished in reply to remand report and reproduced at para 43 of Page 64 of the Id. CIT(A) order and we find that there is no difference in purchases considered by the Assessing Officer and the assessee up to the date of search. Further, the Assessing Officer has considered total purchases after the date of search and up to 31.03.2009 as per vouchers produced by the assessee at



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T.C.A.No.163 of 2024

Rs.19,83,98,625/- and the same is tallying with purchase figures considered by the assessee in reconciliation submitted before the Id. CIT(A). From the above, it appear that there is no difference in purchases considered by the Assessing Officer and the assessee for above periods. But, the Assessing Officer has worked out difference of Rs.5,69,68,520/-, by comparing net purchases declared by the assessee for the period 01.04.2008 to 31.03.2009, amounting to Rs.50,93,75,389/- to the total purchases worked out by the Assessing Officer at Rs.56,63,44,300/- without any details as to what is the opening stock, closing stock, purchase returns and purchase of capital goods, as considered by the assessee in its reconciliation. From the above, it is clear that as alleged by the assessee there is no basis for the working of difference computed by the Assessing Officer towards stock in trade and this fact has been further strengthened by a letter written by ACIT, Central Circle-1(1), to the CIT(A) on 16.04.2015, where the Assessing Officer categorically admitted that there is no details available with regard to stock difference worked out by the Investigation Wing and further he has written a letter to the Investigation Wing to clarify the basis for adopting stock difference of Rs.5,60,68,520/- in appraisal report. From the observations of the Assessing Officer in his letter dated 16.04.2015 submitted to the Id. CIT(A) during appellant proceedings, it is clear that the Assessing Officer has made additions towards difference in stock in trade/purchases as unexplained expenditure u/s. 69C of the Act, only on the basis of observation of the Investigation Wing in the appraisal report without any attempt to verify the quantification of stock difference worked out during the course of search. We further noted that, as explained by the Ld.Counsel for the assessee, the Assessing Officer did not furnish relevant basis for working out stock difference inspite the appellant made a repeated request. Even before us, the Department representative could not explain as to how said difference has been worked out to make additions u/s. 69C of the



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T.C.A.No.163 of 2024

Act. This position is further fortified by the statement of the Ld.Counsel for the assessee, in light of order of the ITSC and order passed by the Assessing Officer u/s.154 of the Act, giving effect to additions made towards difference in stock in trade by enhancing opening stock for the impugned assessment year, which resulted in income determined in final assessment order passed u/s. 143(3) of the Act. From the above facts, it is undoubtedly clear that the Assessing Officer has made additions towards stock in trade difference u/s. 69C of the Act purely on surmises and suspicion manner, without there being any supporting evidence to justify additions. Further, we have also noted in earlier part of this paragraph, **even the Assessing Officer did not have the benefit of relevant workings of stock difference arrived at during the course of search by the Investigation Wing. Therefore, we are of the considered view that, the Assessing Officer has completely erred in making additions towards difference in stock in trade as unexplained expenditure u/s. 69C of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer and thus, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to delete additions made towards difference in stock in trade u/s. 69C of the Act.**

17. In the result, appeal filed by the assessee is allowed.”

10. The Courts are bound by the findings rendered on the facts by the Appellate Tribunal as the Appellate Tribunal is the ultimate fact finding authority. The Appellant Income Tax Department is seeking re-appreciation of evidence in the guise of the present appeal.



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T.C.A.No.163 of 2024

11. As such, there is no substantial question of law that arises for consideration in the present appeal under Section 260A of the Income Tax Act, 1961. Therefore, the present appeal is not maintainable.

12. This Tax Case Appeal is therefore liable to be dismissed and is accordingly dismissed. No costs.

**[R.S.K., J.]**

**[C.S.N., J.]**

**12.08.2024**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation : Yes/No

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To

The Principal Commissioner of Income Tax,  
Central Circle-1(1),  
Chennai – 600 034.



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**R.SURESH KUMAR, J.**  
**and**  
**C.SARAVANAN, J.**

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T.C.A.No.163 of 2024