<u>आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई', मुंबई ।</u>

IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./**ITA No.6429&6428/Mum/2012**

(**निर्धारण वर्ष /** Assessment Years :2010-2011 & 2011-2012)

Syncom Formulations (I) Ltd.,7, Niraj Industrial Estate, Off. Mahakali Caves road, Andheri(East), Mumbai-400093	Vs.	DCIT-8(3), Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAFCS 6794 R**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.11/Mum/2012**

(**निर्धारण वर्ष /** Assessment Year :2010-2011)

DCIT-8(3), Mumbai-20	Vs.	Syncom Formulations (I) Ltd.,7, Niraj Industrial Estate, Off. Mahakali Caves road, Andheri(East), Mumbai-400093
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAFCS 6794 R**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by : Shri R.C.Jain & Sh. Ashok Bansal

राजस्व **की ओर से** /Revenue by : Shri Ranjeesh K. Arvind

सुनवाई की तारीख **/ Date of Hearing : 27/10/2015**

घोषणा की तारीख**/Date of Pronouncement 23/12/2015**

<u>आदेश / O R D E R</u>

***<u>PER R.C.SHARMA (A.M)</u>*:**

These are the cross appeals filed by the assessee and revenue against the order of CIT(A), Mumbai for the assessment years 2010-2011 & 2011-2012, in the matter of order passed u/s.143(3) of the I.T Act.

2. Common grounds have been taken by the assessee in its appeal for assessment years 2010-2011 & 2011-2012 with regard to confirming the disallowance of sales promotion expenses.

ITA No.6429/Mum/2013(AY : 2010-2011)

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in manufacturing of various pharmaceuticals products and having sales within and outside India. During the year under consideration, the assessee had debited an amount of Rs.4,32,11,406/- under the head 'sales promotion expenses'. Accordingly the details were called for and noticed that an amount of Rs.22,45,000/- was relating to freebies given to medical practitioners. The AO disallowed Rs.22,45,000/- by invoking Explanation to Section 37(1) and CBDT Circular dated 1-8-2012.

4. By the impugned order the CIT(A) confirmed the disallowance.

5. We have considered rival contentions and found that receiving of gifts by doctors was prohibited by MCI guidelines, giving of the same by manufacturer is not prohibited under any law for the time being in force. Giving small gifts bearing company logo to doctors does not tantamount to giving gifts to doctors but it is regarded as advertising expenses. As regards sponsoring doctors for conferences and extending hospitality, pharmaceuticals companies have been sponsoring practicing doctors to attend prestigious conferences so that they gather contemporary knowledge about management of certain illness/disease and learn about newer therapies. We found that the disallowance was made by the AO by

relying on the CBDT Circular dated 01.08.2012 onwards. However, the Circular was not applicable because it was introduced w.e.f.01.08.2012. i.e. assessment year 2013-2014, whereas the relevant assessment year under consideration is 2010-2011 and 2011-2012. Accordingly, we do not find any merit in the disallowance so made by the AO in both the assessment years under consideration

ITA No.11/Mum/2014(AY : 2010-2011)

6. The revenue in its appeal is aggrieved for deleting the addition of Rs.14,95,000/- made on account of forfeiture of warrant application money.

7. Rival contentions have been heard and record perused. The assessee had in March, 2008 issued 325,000 convertible warrants of Rs.46/- each convertible into equity shares of Rs.10 each at a premium of Rs.36 pr share to promoter family. Assessee received 10% of warrant price on allotment, that is, Rs.4.60 per warrant aggregating to Rs.14,95,000/-. Balance amount was to be received within 18 months as per SEBI guidelines. However, due to fall in share price of company, warrant holders did not avail the option for conversion of the warrants into equity shares within the stipulated time as per SEBI(DIP) guidelines and as per the terms of the issue within a period of 18 months from the date of allotment i.e. 28th Sept., 2009 resulting in violation of terms of the issue and accordingly the upfront amount of Rs.4.60 per warrant paid by the warrant holder was forfeited by the company. The forfeited amount was

credited to capital reserve in its audited accounts for the year under appeal. The AO added this amount as income of the assessee.

8. By the impugned order the CIT(A) deleted the addition after observing as under :-

> *"1.3. I have considered the submissions of the appellant, order of the AO and facts of the case carefully, it is noticed that during the year under consideration, the assessee has raised capital through issue of convertible warrants which were to be converted into equity shares. During the year under consideration, these warrants were converted into equities. However, many of the contributors did not opt for conversion. As a result, their contribution of warrants was forfeited. Thus, it has resulted into forfeiture of liabilities on account of warrants to the extent of Rs.14,95,000/-. Accordingly, the A.O. has asked the assessee why this amount may not be taxed as per the decision of Hon'ble Supreme Court in case of CIT Vs. T.V.Sundaram Iyengar & Sons Ltd. and the decision of Hon'ble Bombay High Court in case of Solid Containers Ltd. VS. DCIT (supra). The AR of the appellant has submitted its reply which was considered by the A.O. and rejected, thus, the amount of Rs.14,95,000/- was added back to the taxable income.*
>
> *On the other hand, the AR of the appellant has submitted that the decisions of Hon'ble Supreme Court in case of T.V.Sundaram Iyengar & Sons Ltd. was related to write off of credit balances in deposit account in the course of trading transactions and that write back thereof was taken to profit & loss account. In the case of Solid Containers Ltd., it was a case of write back of loan taken for business purposes. Thus, both the cases deal with the amounts credited to profits and loss account which amounts were initially received in the course of trading and business activities, therefore, not relevant to the facts of the present case. In the present case, the amount was received for increase in share capital i.e. capital account and that the forfeited amount was disclosed as capital reserve and not credited to the profit & loss account. The AR has also relied on a number of decisions cited above and also the decision of hon'ble Supreme Court in case of Travancore Rubber & Tea Company Ltd. Vs. CIT 243 ITR 158. Thus, it was argued that since it was a capital receipt, therefore, the addition made by the A.O. is not called for.*
>
> *From the perusal of the submissions and facts of the case, it is clear that the assessee has raised capital through issue of convertible warrants which were to be converted into equity shares is an undisputed fact. During the year under consideration, the warrants were converted into shares, but many contributors did not convert these warrants into shares. As a result, their contribution to*

> *warrants was forfeited. Thus, this forfeited liabilities amounting to Rs. 14,95,000/- on account of warrants was treated by the appellant as capital receipt. The A.O. has relied on the decision of hon'ble Supreme Court in case of CIT Vs. T.V.Sundaram Iyengar & Sons Ltd. and the decision of hon'ble Bombay High Court in case of Solid Containers Ltd. (supra) which are not related to the facts of the present case as submitted by the appellant. Both these cases are relating to write off of credit balances and write back of loan taken for business purposes respectively. But in the present case, it is a case of forfeiture of liability on account of warrants which were to be converted into equity shares. The case of the appellant is squarely covered by the decision of hon'ble Supreme Court in case of Travencore Rubber & Tea Company Ltd. (supra) where it is held that if the agreed sums of money under the arrangement had been received by assessee, they would have been credited in its account as capital receipt, that being so the forfeited amounts must also be treated as capital receipts. Since the facts of the present case are squarely covered by the decision of hon'ble Supreme Court, therefore, the addition made by the AO. is not sustainable, hence deleted. Ground of appeal is allowed."*

Against the above order of CIT(A), the revenue is in further appeal before us.

9. We found that warrants were converted into shares, however, money contributions did not contribute these warrants into shares, therefore, their contributions were forfeited which was treated by assessee as capital receipts. The issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Travencore Rubber & Tea Company Ltd. (supra). The case laws relied on by the AO are not applicable to the facts of the instant case, which has elaborately dealt by the CIT(A) in his order. Furthermore, tax effect in the appeal filed by the revenue, as per Circular No.21/2015, dated 10th December, 2015, is less than Rs.10.00 lacs, therefore, the appeal of the revenue is not maintainable. Accordingly, we do not find any reason to interfere in the order of CIT(A) for deleting the addition.

ITA No.6428/Mum/2013(AY : 2011-2012)

10. The assessee in its appeal for assessment year 2011-2012, raised a ground with regard to disallowance of Rs.3,71,699/- u/s.14A r.w.rule 8D.

11. We have considered rival contentions and found that during the year under consideration the assessee was not in receipt of any income on account of dividend. The issue is squarely covered by the decision of Hon'ble Gujarat High Court in the case of Corrtech Energy (P) Ltd., 223 Taxmann 130 (Guj.) and the Allahabad High Court in the case of Shivam Motors (P) Ltd., (decision dated 56th May 2014 in ITA No.88/2014), wherein it was held that when an assessee had not earned any taxable income in the relevant assessment year in question "corresponding expenditure could not be worked out for disallowance". The Hon'ble Delhi High Court in the case of Cheminvest Limited , ITA No.479/2014, order dated 2-9-2015, after considering the above decisions, held as under :-

> *"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression does not form part of the total income' in Section 14A of the Act envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."*

Respectfully following the decision of the Hon'ble Delhi High Court and other High Courts, as discussed above, we do not find any merit for the disallowance so made u/s.14A, when there is no exempt income during the year under consideration.

12. In the result, appeals of the assessee for assessment years 2010-2011 & 2011-2012 are allowed, whereas appeal of the revenue is dismissed.

Order pronounced in the open court on this 23/12//2015.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(R.C.SHARMA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 23/12/2015

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai