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

Reserved on: 26th February, 2026
Pronounced on: 15th September, 2026
Uploaded on: 16th September, 2026

\# **CNR No. DLHC015171612017**

\+ W.P.(C) 10711/2017

TEVA PHARMACEUTICALS USA INC. .....Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 3(1)(1), INTERNATIONAL TAXATION, NEW DELHI .....Respondent

\# **CNR No. DLHC015171802017**

\+ W.P.(C) 10714/2017

TEVA PHARMACEUTICALS USA INC. .....Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 3(1)(1), INTERNATIONAL TAXATION, NEW DELHI .....Respondent

\# **CNR No. DLHC010470482019**

\+ W.P.(C) 12721/2019 & CM APPL. 52016/2019

TEVA PHARMACEUTICALS INDUSTRIES LIMITED & ANR.

.....Petitioners

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 3(1)(1), INTERNATIONAL TAXATION, NEW DELHI .....Respondent

\# **CNR No. DLHC010099512022**

\+ W.P.(C) 4065/2022 & CM APPL. 22365/2024

TEVA PHARMACEUTICAL INDUSTRIES LIMITED

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 3 (1)(1), INTERNATIONAL TAXATION, NEW DELHI
.....Respondent

\# **CNR No. DLHC010029222023**

\+ W.P.(C) 1295/2023 & CM APPL. 4915/2023

TEVA PHARMACEUTICALS USA INC. .....Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 3 (1) (1), INTERNATIONAL TAXATION NEW DELHI & ANR.
.....Respondents

Appearances:

For Petitioners:

Mr. Harish N Salve, Senior Advocate & Mr. Sachit Jolly, Senior Advocate with Ms. Anuradha Dutt, Ms. Sherry Goyal, Ms. Viyushti Rawat, Mr. Devansh Jain, Mr. Raghav Dutt, Mr. Sarthak Abrol & Mr.Abhyudaya Shankar Bajpai, Advs.

For Respondents:

Mr. Himanshu S. Sinha, Special Counsel with Mr. Yash Varmani, Mr.Utkarsh Mittal, Ms. Ishita Sharma, Mr. Kshitiz Saxena, Advocates.

Mr. Sunil Agarwal, Senior Standing Counsel with Ms. Monica Benjamin, Junior Standing Counsel, Mr. Gibran Naushad, Junior Standing Counsel, Mr. Adeeb Ahmad, Ms. Harshita Sharma & Ms.Laiba Arif, Advocates.

Mr. Vipul Agrawal, Senior Standing Counsel with Ms. Sakshi Shairwal, Junior Standing Counsel, Mr. Akshat Singh, Junior Standing Counsel, Ms. Harshita Kotru, Mr. Gaoraang Ranjan & Mr.Sachin Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

REPORTABLE

***Per* DINESH MEHTA, J.**

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Prelude Given by Mr. Sachit Jolly

1. When the matter was called, Mr. Sachit Jolly, learned senior counsel appearing for the petitioners, submitted that Mr. Salve who is to lead him is stuck in some personal work and may take 20-30 minutes and requested the Court to take other matter in the meantime. As it was a time-fixed matter, the Court asked Mr. Jolly to give an overview of the matter, and accordingly, he outlined the broad factual canvas and legal basis behind the present batch of writ petitions.

2. Mr. Jolly, learned senior counsel for the petitioners started by informing the Court that the present batch comprises five writ petitions arising out of a common set of transactions, involving overlapping questions concerning the taxability of payments made by Ranbaxy Laboratories Limited (hereinafter referred to as '*Ranbaxy India*') to Teva Pharmaceutical Industries Ltd., Israel (hereinafter referred to as '*Teva Israel*'), the validity of reassessment proceedings initiated against Teva Pharmaceuticals USA Inc. (hereinafter referred to as '*Teva USA*'), the correctness of the ruling rendered by the Authority for Advance Rulings, NCR Bench (New Delhi) (hereinafter referred to as '*AAR*'), and the consequential claim by Teva Israel for refund of tax deducted at source by Ranbaxy India.

3. Mr. Jolly, learned senior counsel for the petitioners added that the lead matter, W.P.(C) 12721/2019 has been instituted by Teva Israel and Teva USA challenging the order dated 25.10.2019 passed by the AAR, whereby the AAR, while refraining from pronouncing upon the taxability of the subject payment in India, held, *inter alia*, that the income in question belonged to Teva USA and not to Teva Israel. He submitted that the AAR had observed that since the impugned arrangement was *prima-facie*

designed for tax avoidance, it declined to answer Teva Israel-applicant's question on its taxability after holding that Teva Israel was not the correct recipient of the income. The connected writ petitions, being W.P.(C) Nos. 10711/2017, 10714/2017 and 1295/2023, have been preferred by Teva USA challenging the reassessment proceedings initiated under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as '*the Act of 1961*'), for Assessment Years 2012-13 to 2014-15. The remaining petition, W.P.(C) 4065/2022, has been instituted by Teva Israel seeking refund of the tax deducted at source by Ranbaxy from the payments remitted to it, wherein Teva Israel has contended that despite the Revenue itself asserting before the AAR that the income did not belong to Teva Israel, the Revenue has withheld the refund or tax deducted from those remittances.

4. Mr. Jolly submitted that the genesis of the dispute lies in certain agreements executed between entities belonging to the Ranbaxy and Teva groups in connection with the commercial exploitation of 'Atorvastatin' (generic version of the drug Lipitor) in the United States, pursuant to the approval of the regulatory regime governing the Abbreviated New Drug Applications (hereinafter referred to as the *"ANDA"*) under the US law. While Teva Israel approached the AAR seeking a determination that the payments received from Ranbaxy India were not chargeable to tax in India, the Revenue opposed the application principally on the ground that the income did not belong to Teva Israel at all but it pertained to Teva USA. Accepting the Revenue's contention, the AAR declined to determine the taxability of the receipts in the hands of Teva Israel and in the meantime the Revenue continued with reassessment proceedings initiated under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as '*the Act of*

1961') against Teva USA while also framing a protective assessment against Teva Israel.

5. Mr. Jolly asserted that there is no gainsaying the fact that Ranbaxy had made a payment to Teva Israel, out of which tax was deducted at source at around 42% and Teva Israel filed a return in India so also an application before the AAR claiming that this income was not taxable in India. Mr. Jolly submitted that assuming a protective assessment to be permissible in law, there can never be a protective recovery. And therefore, withholding of the amount deducted at source by Ranbaxy is illegal.

6. He explained that under US patent law, Pfizer held a patent and consequential monopoly for fifteen years over Atorvastatin and was exclusively entitled to sell the same. He informed that since the US regulatory regime permits that such patents can be challenged by generic drug manufacturers, Ranbaxy and Teva laid challenge to the patent held by Pfizer. The essence of such a challenge was that the exclusivity enjoyed by the original patent holder comes to an end, and the successful challenger *i.e.* the generic manufacturer becomes entitled to be the ANDA holder allowing market entry prior to the expiration of the pioneer's patent term. Mr. Jolly then explained that a generic manufacturer who succeeds first is granted a 180-day exclusivity period, during which, no other generic manufacturer, anywhere in the world, is permitted to sell the generically manufactured drug in the US market. Mr. Jolly took the Court through the nature of the transactions and informed that Ranbaxy, at the relevant time, was under the control of Daiichi Sankyo, a Japanese pharmaceutical company. Ranbaxy India, through its US subsidiary Ranbaxy Pharmaceuticals Inc., USA (hereinafter referred to as '*Ranbaxy USA*'), had filed an ANDA, an application for US generic drug approval for an existing licenced drug. He

informed that Ranbaxy India had filed an ANDA through its subsidiary, Ranbaxy US, and this was followed by Teva Israel, which filed an ANDA through its US subsidiary – Teva USA.

7. He then submitted that under such exclusivity arrangements, situations may arise where the company that has filed the ANDA faces litigation or regulatory compliance issues and may find itself unable to avail of the 180-day exclusivity period, and such a company may then enter into an arrangement with another company that has also filed an ANDA wherein, if one company were unable to fulfil the conditions for exclusivity, the other pharmaceutical company could take over, sharing a portion of its profits with the company that had originally obtained the exclusivity, which would in turn waive right of exclusivity of the first filer in favour of the subsequent company.

8. While clarifying that this entire mechanism operates under US law and has nothing to do with India, Mr. Jolly informed that Ranbaxy India along with its subsidiary Ranbaxy USA and Teva US entered into an agreement dated 07.12.2010 (Annexure A-4 to W.P.(C) 12721/2019) in the United States, agreeing that, although Ranbaxy USA had applied first and Teva USA second, in the event Ranbaxy did not obtain the approval by US Food & Drug Administration (hereinafter referred to as '*US FDA*'), Teva would manufacture the drug and share 50% of its profit margin with Ranbaxy. During this interregnum period, if Ranbaxy's approval had not come through and Teva, in the meanwhile, obtained what is termed a "tentative approval" Teva USA would be entitled to issue a 'Ready Date Notice', provided it fulfilled the twin conditions as specified under the agreement dated 07.12.2010.

9. Mr. Jolly submitted that the Ready Date Notice would be issued by Teva USA once readiness to sell existed and the tentative approval had been obtained from the US FDA. He submitted that, as a matter of fact, the Ready Date Notice was issued on 23.11.2011, and that Ranbaxy asserted that the twin conditions for issuance of such notice had not been fulfilled and therefore Teva USA was not entitled to the waiver. He reiterated that the entirety of this dispute arose in the United States and the dispute had nothing to do with India, and that proceedings were thereafter initiated in the United States by Teva USA against Ranbaxy for failure to adhere to the contract by way of a complaint filed in the US District Court.

10. He submitted that Ranbaxy and Teva settled their dispute, and the agreement was accordingly flipped on 07.12.2011. He submitted that on 30.11.2011, Ranbaxy obtained its ANDA approval, and the agreement was flipped on that basis, with Ranbaxy now undertaking to manufacture the product and pay Teva 50% of the margin. He informed that the dispute was settled within a day of the suit having been filed in the US District Court. He submitted that the settlement agreement was signed on 07.12.2011 but it was made effective from 30.11.2011.

11. He submitted that under the reinstated agreement, Ranbaxy manufactured the product and paid Teva 50% of the margin and that this payment was made from India in respect of products manufactured in the United States, for a market in the United States, pursuant to a settlement effected in the United States thereby having no nexus to India.

12. Learned Senior Counsel further submitted that the question to be tested was whether the Ready Date Notice had been validly issued, which question was a matter for a US court to decide, a process that, even on the most expeditious estimate, would have taken four to six months, set against

an exclusivity period of only 180 days. He submitted that an Indian court was not required to undertake any such determination.

13. He submitted that, notwithstanding this, the AAR had proceeded to record a finding to the effect that the Ready Date Notice was not in accordance with the agreement, and had thereby questioned why Ranbaxy had settled at all, suggesting that the dispute should instead have been litigated in the United States. He submitted that merely because the matter had been settled, the AAR proceeded to term the entire agreement to be a sham. He submitted that the AAR had, in effect, seated itself in the armchair of a US judge, without reference to the provisions of Indian Income Tax law, proceeding on the assumption that everything connected with the transaction was suspicious, without providing any answer as to how the matter became taxable under Sections 5 and 9 of the Act of 1961.

14. Mr. Jolly then submitted that even assuming the entirety of the Revenue's case to be correct, Sections 5 and 9 of the Act of 1961 could never be triggered on the facts of the present case. He submitted that the parties were not related parties, and there was no allegation that any money having flowed out of India and returned back through some circuitous route. He reiterated that more than fifteen years have passed since the transaction took place, assessments had been completed in both India and Israel, and the parties had remained before the AAR for a period of six years, yet, not even a shred of evidence has been produced to demonstrate that any money had come back.

15. He submitted that for a non-resident foreign company whether resident in Israel or the United States, the income in question should be received/ deemed to be received in India or must either accrue or arise in India, or be deemed to accrue or arise in India so as to be brought within the

ambit of Section 5. He contended that the income was not received in India but was received in the United States and added that accrual or arising would be relevant only if the contract in question contemplated work to be done in India or was enforceable in India, whereas the contract in question here related to US ANDA exclusivity rights and the same contemplated the performance entirely within the United States.

16. He then submitted that the Department's case essentially was that, after the arrangement had concluded, the Office of the Attorney General of the State of New York (hereinafter referred to as '*OAG*') initiated proceedings under US anti-competition and antitrust law and identified one clause in the agreement to be offending as the said clause appeared to be anti-competitive under the US law. While informing and reminding that no formal proceedings were in fact initiated and only a query was raised as to whether the clause would be dropped, he submitted that said clause was, without prejudice, dropped. He highlighted that the settlement agreement itself records that this concession did not amount to any infraction of US law.

17. He submitted that the Department had contended before the AAR that the payment in question constituted an illegal payment, being the consideration having flown from Ranbaxy to Teva for what the OAG had declared to be illegal. He submitted that firstly, no such declaration of illegality had in fact been made and even assuming the payment to be for an illegal consideration, the OAG's opinion on an antitrust petition was not conclusive about the legality or illegality of the payment.

18. He argued that if a similar situation were to arise between two Indian companies, where regulator such as the Competition Commission of India found an agreement to be anti-competitive and directs that a particular

clause be dropped, if such clause is ultimately dropped, the character of any payment made under such clause would not thereby become 'other income' but would remain 'business income'.

19. Mr. Jolly submitted that the Department's case was that, because the payment was illegal, the very character of the income changed and it became "other income." He submitted that without prejudice to petitioner's contention that there was no illegality in the transaction, even if it is assumed that there was some illegality or irregularity in the transaction there are numerous judgments under the Income Tax Act which demonstrate that, even in respect of income from illegal businesses, the character of the income as business income or business expenditure does not change. He submitted that the AAR, however, took the view that the character of the income got changed to "other income" by reason of the alleged illegality.

20. He submitted that a further reasoning given in the AAR's order was that since the payment was illegal, the income could never "accrue" in India, but could only "arise" in India as accrual requires a vested right to receive, and an illegal payment confers no such enforceable right and since the payer was located in India, the income was held to arise in India. Mr. Jolly submitted that even the concept of income "arising" would ordinarily require some vested right to receive, and that the reasoning adopted by the AAR that because the payment was illegal the recipient had no right to demand it, and that accrual could therefore never take place was an unusual and unprecedented application of the concept of accrual.

21. Mr. Jolly submitted that "accrual" and "arising," on the one hand, and "deemed to accrue" and "deemed to arise" under Section 5, on the other, are distinct concepts, and that this distinction has been recognised in numerous

judgments of this Court and of Hon'ble the Supreme Court. He submitted that what was not originally covered under Section 5(2) of the Act of 1961 was subsequently brought within the scope of taxation through deeming provisions under Section 9 of the Act of 1961.

22. Taking the Court through the scheme of Section 9 of the Act of 1961, he argued that Section 9(1)(i) concerns income accruing through a business connection or the transfer of a capital asset situated in India; that salaries for services rendered in India are covered only where the services are actually rendered in India, such that if services are not rendered in India, salaries would not even be deemed to accrue or arise in India; and that dividends, interest, royalty, and fees for technical services are deemed to accrue or arise in India, where the payer is situated in India and the payment is in the nature of those specified categories.

23. He submitted that it was the Department's own case, as recorded in the assessment order passed in respect of Teva Israel, that Section 9 had no application to the present transaction.

24. He clarified that the payment had originally been due to Teva USA and was thereafter assigned to Teva Israel and emphatically argued that this circumstance made no material difference: if there was no accrual under Section 5 of the Act of 1961 in the first instance, the identity of the ultimate recipient, whether the US entity or the Israeli - entity would not alter the character of the income. He underscored that since the payment had been made in settlement of a dispute arising under an agreement concerning an ANDA in the United States, there was not even a semblance of nexus of the payment in India.

Submissions on behalf of the petitioners by Mr. Harish Salve

25. Mr. Harish Salve, learned senior counsel, began by stating that in the United States, pharmaceutical patents are contested with considerable intensity. He submitted 'Lipitor', had generated record revenues running into billions of dollars in the United States. He submitted that an interesting regulatory mechanism exists in the United States designed to encourage challenges to intellectual property rights, where a patent holder seeks to extend the life of its patent through "evergreening" by claiming that a variant of the original molecule constitutes a new invention warranting a further period of protection. Mr. Salve explained "evergreening" as a practice where pharmaceutical companies artificially extend monopoly protection by securing broad, blocking "Markush" patents in early research stages and subsequently obtaining secondary patents on deliverable formulations as they develop into viable drugs. He further explained that other manufacturers awaiting entry into the market upon expiry of the patent often challenges such extensions, and where such a challenge succeeds, the challenger obtains what is termed an ANDA, (Abbreviated New Drug Applications) carrying a 180-day period of exclusivity, during which the drug may be sold without competition from other generic manufacturers.

26. Mr. Salve submitted that both Ranbaxy Laboratories and Teva successfully challenged Pfizer's patent by way of ANDAs but in the meantime certain complaints were made regarding some affairs of Ranbaxy, and the US FDA conducted inspections, finding deficiencies relating to documentation and testing procedures, pursuant to which the FDA imposed a bar on Ranbaxy to import generic drugs from the Indian facilities. And at that stage, Teva USA, being next in line, entered into an agreement with

Ranbaxy under which it would market the drug and make payment to Ranbaxy. The agreement further provided that if Ranbaxy obtained regulatory clearance before Teva issued a Ready Date Notice, the arrangement would be reversed and then Ranbaxy would be the first to sell in the US market.

27. Mr. Salve submitted that as a matter of fact, Teva issued a Ready Date Notice, which notice was challenged by Ranbaxy; that during the relevant period it had obtained the clearance, giving rise to the dispute as to the validity of the Ready Date Notice. Teva's position was that the notice had been issued as the stock had already been prepared in Israel. He submitted that a dispute arose between the parties, and when Ranbaxy was about to launch the drug, Teva filed a suit seeking an injunction. The matter was, however, settled within twenty-four hours. Both the parties having recognised that the 180-day exclusivity period would not be extended merely because litigation was pending, and the time spent in court would cause loss to both sides. Resultantly, a new agreement was entered into on 07.12.2011 under which, Ranbaxy agreed to make payment to Teva. He clarified that the parties involved in this agreement were, US subsidiaries, as the ANDA licence is required to be held by a US entity as per the US laws.

28. Mr. Salve submitted that Teva USA thereafter assigned its rights under this arrangement to Teva Israel, as Teva US was the only marketing company and manufacturing activities/rights were with Teva Israel. He submitted that Ranbaxy India – the parent company to Ranbaxy USA was asked to remit the payment directly to Teva Israel.

29. Mr. Salve then drew the Court's attention to the AAR's order, wherein the AAR had proceeded to examine and find fault with the agreement itself, on the footing that Ranbaxy ought not to have conceded

that Teva's position was correct, and that Teva's Ready Date Notice had been wrongly issued. He submitted that simply because Ranbaxy had agreed to pay a substantial amount, and because the dispute came to be settled within twenty-four hours, the AAR concluded that something was amiss. He argued that the AAR has examined and pronounced upon the commercial wisdom of the parties to the settlement, which it couldn't have done.

30. Mr. Salve submitted that there was, in addition, a subsidiary issue stemming from a non-compete clause contained in the agreement which prompted the OAG to raise an objection. While pointing out that both the parties decided to drop such clause and pay a sum of USD 1,50,000 each, he submitted that in any event, the original agreement had by then already been reversed. Mr. Salve highlighted that the AAR layered its reasoning further, observing that the reversal of the agreement was not in Ranbaxy's commercial interest, and that the payment made by Ranbaxy must therefore have been consideration for the non-compete clause.

31. The Court raised a query as to whether the OAG possessed the power to declare a clause illegal. Mr. Salve responded that the Attorney General could merely raise an objection, and only a court of law could thereafter pronounce upon questions of illegality. He submitted that no statutory text or judicial authority had been placed before the AAR to demonstrate how the OAG's objection rendered the clause illegal in law. He submitted that the OAG could, at the most, initiate a prosecution before a court, and it was only a competent court, that could thereafter declare a clause illegal yet the AAR had proceeded on the footing that, because the OAG had objected and the parties had agreed to delete the clause, the clause was illegal. He argued that the reason for holding the payment in question to be a consideration for an illegal object, is baseless and the order is unsustainable.

32. He further submitted that, even assuming the clause to be violative of US antitrust law, it made no difference to the present controversy, since income remains taxable irrespective of whether it arises from a legal or an illegal source. He submitted that the Department's stand was and still is, that, because the payment was towards illegal clause, the source of the income shifted to India. He contended that the Department's reasoning that the source of income follows the location of the payer is fallacious.

33. Mr. Salve then submitted that in 2008, Ranbaxy's manufacturing facilities in India were subjected to an import ban by the US FDA on account of serious deficiencies in quality control, placing Ranbaxy's pending ANDA in jeopardy. He submitted that had Ranbaxy's ANDA not received approval, subsequent filers, including Teva, would have marched over Ranbaxy and obtained approval. He submitted that on 07.12.2010 Teva and Ranbaxy entered into an agreement, the substance of which was: first, Teva would issue a Ready Date Notice upon obtaining tentative approval of its ANDA from the US FDA, and then Ranbaxy would relinquish or selectively waive its exclusivity rights in Teva's favour, enabling Teva to obtain approval of its own ANDA and enjoy 180 days of exclusivity in respect of generic atorvastatin; second, that Teva would pay Ranbaxy an upfront commitment fee of USD 15 million, which fee was duly paid; and third, that Teva would pay Ranbaxy 50% (or more, upon the occurrence of a defined event) of its contract margin in respect of generic atorvastatin sold during the exclusivity period.

34. Mr. Salve submitted that Teva issued the Ready Date Notice to Ranbaxy on 23.11.2011 on the basis that the import of its generic product had been approved by the FDA, subject to Ranbaxy's pending ANDA their position being that the trigger event entitling it to issue such notice, namely,

on receipt of the requisite FDA approval stood fulfilled. He submitted that Ranbaxy refused to accept the notice, because in the meanwhile, it had managed to resolve its issues with the FDA; Ranbaxy further took a plea that the trigger event entitling Teva to issue the notice had, in fact, not occurred.

35. On 29.11.2011, Teva initiated proceedings in the United States District Court seeking, *inter alia*, an injunction restraining Ranbaxy from launching its product in the US market. He submitted that had the injunction been granted, Ranbaxy would have lost the benefit of 180 days of exclusivity for whatever period the injunction remained in force. He submitted that unsurprisingly, the parties settled the dispute and entered into a fresh agreement on 07.12.2011 i.e. 'the Amended and Restated Agreement', under which with effect from 30.11.2011, Ranbaxy would be entitled to market its products under its ANDA; the proceedings instituted in the US courts would stand settled and be withdrawn by Teva; Ranbaxy would be supported by Teva in the event of any disruption to its market supply; Teva would relinquish its claims under the original agreement and undertake not to compete, directly or indirectly, with Ranbaxy; and Ranbaxy would pay Teva 50% of the contract margin.

36. He underscored that since Teva Israel was to manufacture & supply the drug, it was the true beneficiary of the economic interest under this agreement and thus, Teva USA assigned the agreement to Teva Israel, with the result that all payments under the Amended Agreement were thereafter required and agreed to be made to Teva Israel. In this regard, he read copy of the Letter of Assignment, dated 22.03.2012 (Annexure-15).

37. He also submitted that the funds were, accordingly, remitted by Ranbaxy India directly from India to Teva Israel, with tax deducted at source at the rate of around 42% on such remittances. He further submitted

that Teva Israel had originally moved an application for a certificate under Section 197 of the Income Tax Act, 1961, but withdrew the same and instead approached the AAR on 15.04.2013 with a contention that no part of the income in question was taxable under Section 9 of the Act, and, in the alternative since it was a business income, it would be taxable only in the country of residence under the applicable tax treaty. He added that Teva Israel admittedly having no permanent establishment in India, was/is not liable to pay tax under the Act of 1961.

38. Mr. Salve thereafter outlined key terms from the 07.12.2010 Agreement, including the profit-sharing ratios under "Applicable Percentage" (50% up to USD 500 million, 65% thereafter) in the event of a Selective Waiver, alongside the definitions of "First to File Exclusivity" and "Relinquishment" via formal FDA notification.

39. Mr. Salve then took the Court to the definition of “Ready Date Notice” under Clause 1.45, and pointed out that it was defined as a written notice issued by Teva to Ranbaxy, representing that Teva’s initial launch quantity was ready for sale and that Teva had obtained tentative approval, or written confirmation from the FDA that its ANDA was eligible for final approval.

40. He thereafter read out the operative provision governing the Ready Date Notice, emphasizing that its delivery by Teva within two business days required two conjunctive preconditions: manufacturing the initial launch quantities and satisfying either (A) obtaining Tentative Approval from the US FDA or (B) receiving written FDA confirmation of eligibility for Final Approval. He highlighted that the notice could only be issued within the contractual window between 30.06.2011 and 30.11.2011

41. He submitted that the second sub-condition (B) was of particular importance to the case as it was a broader and lower threshold than the Tentative Approval. This distinction, he submitted, was directly relevant to the Revenue's argument that Teva's Ready Date Notice of 23.11.2011 was invalid on the ground that Tentative Approval had been received only on 01.12.2011. While highlighting that the contractual trigger under limb (B) did not require Tentative Approval at all, he submitted that Teva's position was that the PLAIR approval email received from the FDA on 21.11.2011 constituted precisely such a written confirmation, bringing Teva within limb (B) of the second sub-condition and entitling it to issue the Ready Date Notice on 23.11.2011. Whether that contention was correct or incorrect was a question of US contract law and the same was never judicially determined. He added that this question was not one that an Indian tax authority or the AAR had no subject expertise to resolve this question.

42. Mr. Salve highlighted Clause 2.4 of the Agreement dated 07.12.2010, which mandated that if Teva issued the Ready Date Notice on or before 01.09.2011, at a time when Ranbaxy lacked both Tentative and Final ANDA approvals and its First to File Exclusivity had not been triggered by a final court decision then Ranbaxy would become obligated to effect the Relinquishment within two business days.

43. Mr. Salve referred to the reinstated Agreement dated 07.12.2011, submitting that Teva agreed not to sell or supply products to third parties while Ranbaxy agreed to pay Teva 50% of the contract margin on all sales of Ranbaxy products during the 180-day exclusivity period, effectively reversing the commercial structure of the original arrangement.

44. Mr. Salve submitted that the agreement was signed because litigation had been instituted by Teva against Ranbaxy for breach of contract and

specific performance, and both parties thereafter sensibly settled the matter, which the AAR had found to be surprising because it was settled with such speed. He submitted that the AAR failed to appreciate the commercial urgency involved when Ranbaxy had already obtained its ANDA, and the exclusivity period had a life of only 180 days, and every day of delay resulted in huge financial loss to the parties.

45. Learned senior counsel thereafter invited the Court's attention to the document recording an investigation conducted by the then Office of Attorney General of the State of New York ("OAG") into the agreement between competing pharmaceutical companies not to challenge each other's first-to-file exclusivity rights.

46. Mr. Salve contended that the document reflected nothing more than an investigation culminating in an assurance of discontinuance that the findings of the OAG were not findings of a court, but were, in substance, akin to allegations in a chargesheet, reflecting matters under investigation. He though admitted that, had the parties not furnished such an assurance, further proceedings might have ensued.

47. He submitted that according to the OAG's findings, the commitment extended to an agreement not to challenge each other's shared first-to-file exclusivity rights. He explained that the OAG's essential objection was that, although the commercial arrangement related to one drug, the no-challenge clause had been drafted in unduly broad terms. He added that such clause, in the opinion of the Attorney General, being a generic company's commitment not to challenge a brand manufacturer's patents, had the effect of prohibiting the parties from challenging each other's exclusivity claims across multiple of unrelated drugs.

48. Mr. Salve referred to paragraph 25 of the said document recording that the No Challenge Provision was either "per se unlawful" or presumptively unlawful, and thus illegal regardless of whether any real-world anti-competitive effects could be identified. He explained that Indian competition jurisprudence has historically proceeded on what is termed as "rule of reason," under which anti-competitive conduct must ordinarily be examined and justified by reference to its actual effects, and that even under present Indian competition law, there exist recognised gateways. By contrast, the United States, traditionally recognises the "per se" rule" in respect of certain categories of antitrust violations and that this was precisely what the Attorney General meant in describing the clause as "per se unlawful," namely, that proof of actual anti-competitive effect was not considered necessary.

49. Mr. Salve laid special emphasis on the fact that Ranbaxy and Teva neither admitted nor denied the OAG's findings. He then submitted that the parties agreed that they would neither enforce nor abide by the no-challenge provision, treating it as null and void, and were no longer obligated to refrain from challenging each other's rights. Finally, Mr. Salve contended that the document expressly clarified, on its own terms, that it was not to be construed as any admission of liability.

50. Mr. Salve then argued that the AAR has also recorded a finding that Teva had not manufactured the initial launch quantities as stipulated. He submitted that the AAR examined the second condition, concerning tentative approval, and found that such approval had been received only on 01.12.2011, holding that the second condition stood fulfilled only from that date, and that the Ready Date Notice could validly have been issued only thereafter.

51. Mr. Salve submitted that the AAR had, in effect, proceeded to decide the merits of litigation that had taken place in the United States, adjudicating upon a defence to a suit that had ultimately been withdrawn. He submitted that it was for Ranbaxy to take the defence that the Ready Date Notice was invalid, a defence Ranbaxy had consciously chosen not to pursue. He submitted that there was not even "a tittle of evidence" of US law having been placed before the AAR to demonstrate how a US court would have interpreted the approval process.

52. Mr. Salve submitted that the Indian Income Tax Authorities including AAR could not second-guess such commercial decisions taken in the United States, and that whether Ranbaxy retained 15% under the original arrangement or paid under the revised arrangement, the underlying controversy before this Court remained unaffected.

53. He further submitted that the very characterisation of the arrangement as involving a non-compete obligation was, in any event, misconceived, since once Ranbaxy had secured its ANDA approval, Teva could not realistically have competed. He argued that Ranbaxy having declined to honour the Ready Date Notice and having secured its market position first, the question of competition did not arise. He submitted that Teva could have sought an injunction premised on its contractual rights, but instead chose to withdraw and accept the settlement. The relative strength or weakness of Teva's contractual position, in his submission, was immaterial so far as the question before the AAR was concerned.

54. At this stage, the Court queried why the remittance had been made from India? Mr. Salve responded that the remittance was made because the parent company, Ranbaxy India, rather than routing the money through the

American subsidiary and thereafter to Teva Israel directly sent it to Teva Israel.

55. Mr. Salve then took the Court through paragraph 86 of the order passed by the AAR where it held that the Amended Agreement lacked commercial sense and argued with vehemence that the AAR was not entitled to embark upon any such inquiry into the commercial wisdom of the parties, and that the entirety of the AAR's subsequent reasoning unwound from this flawed premise culminated in the conclusion that the arrangement was in the nature of a collusive arrangement.

56. Mr. Salve submitted that without prejudice to his previous argument, even assuming the reasoning of the AAR regarding there being an anti-competitive arrangement to be correct, and even also assuming the existence of some arrangement between the parties, the receipt would nonetheless remain business income even if the parties would have privately continued the arrangement, the character of the receipt would remain unaffected.

57. Referring to another observation of the AAR in paragraph 87, that the applicant and its affiliate had entered into a "sham and make-believe arrangement with excellent paperwork to camouflage the real and bogus nature of the transaction," learned senior counsel with his usual wit, humour and tinge of satire contended that the finding was intrinsically contradictory and amounted to an oxymoron.

58. The Court at this juncture queried how the amount is sought to be taxed in the hands of the recipient in India. Responding to this query, learned Senior Counsel navigated the Court through the assessment order dated 29.07.2021 for assessment year 2013-14 passed under Section 143(3) of the Act of 1961 (Annexure-10 of W.P.(C) 4065/2022), and highlighted that the Department had given a reasoning that, that income generally arises

where the payer is located; that accrual hinges upon the crystallization of a right to receive; and that since the underlying agreements were declared void and unlawful, no enforceable right accrued to Teva USA. The Department thus concluded that where the right to receive is itself unenforceable, the location of the payer determines where income arises, rendering the Indian remittance taxable in India.

59. Mr. Salve submitted that this formulation suffers from a fundamental flaw. It is a basic principle that where a party receives a payment without possessing any underlying legal right to receive it, the receipt cannot automatically mutate into taxable income merely by reference to the payer's location. Such a payment must either be treated as a gratuitous gift which is non-taxable or, if not intended as a gift, the recipient holds the sum merely in trust for the payer subject to restitution, acquiring no beneficial ownership or taxable character in India.

Submissions on behalf of the respondents by Mr. Himanshu S. Sinha

60. When the Court queried whether such deduction had been disallowed, Mr. Sinha clarified that it had indeed been disallowed in the hands of Ranbaxy and, subsequently, in the hands of Sun Pharmaceutical Industries following the merger. He submitted that taxation law proceeds upon a principle of coherence, whereby an amount claimed as a deduction in one party's hands ordinarily becomes taxable in the hands of the recipient, unless the law specifically provides otherwise. He added that if characterized as business income, the payment in question would fall outside Indian taxation under both the, India-US DTAA and India-Israel DTAA treaties. However, there exists a distinction between the two treaties in

respect of “other income”. Under the India-Israel DTAA, “other income” is not taxable in India and the right to tax rests solely with the country of residence, whereas the India-US DTAA follows the UN Model, under which primacy is accorded to the source country.

61. Mr. Sinha contended that the AAR had stopped short of recording a final adjudication on taxability, and had instead declined to answer the reference on the premise that there existed *prima-facie* evidence of tax avoidance and that the income in question did not belong to the applicant-Teva Israel (but to Teva USA). He further pointed out that proceedings under Section 148 of the Act of 1961 stood already initiated against Teva USA, wherein the issue of taxability would ultimately be decided. While submitting that only a protective assessment has been framed in the hands of Teva Israel, learned counsel submitted that once a substantive assessment reaches finality, the party, if aggrieved, can pursue appellate remedies in the ordinary course.

62. Mr. Sinha, learned special counsel submitted that the Revenue sought to tax the amount in question in the hands of Teva USA, because the money had been diverted from the United States to Israel by way of a mere assignment of income, and not by way of assignment of contract.

63. Learned Special Counsel pointed out that under the original agreement dated 7.12.2010 later revised on 7.12.2011 the petitioners have claimed that the transaction was merely split, whereas the Department’s case is that it was an absolute "flipping" of the transaction with the entirety of the manufacturing and marketing activity had been undertaken by Ranbaxy, with Teva, having done nothing having secured 50% of the profit margin. He further submitted that under both the original and revised agreements, it

was Teva USA alone that contracted with Ranbaxy, while Teva Israel was nowhere in the picture.

64. Mr. Sinha then submitted that the revised 2011 agreement, contained Section 10.2 which permitted assignment of the agreement to any affiliate of either party with the consent of both parties hence an assignment notice was issued some months later, after sale had already commenced and 50% of such profit had become payable. He submitted that by way of the Notice of Assignment, the contract was assigned to Teva Israel, with the result that all payments thereunder, originally intended for Teva USA, were thereafter diverted to Teva Israel. He further submitted that Teva Israel had disclosed this sum as "royalties" in its annual statements filed with the relevant stock exchange and with the US Securities and Exchange Commission.

65. Mr. Sinha further submitted that it is a matter of concern that Teva Israel paid no tax in Israel either, by reason of a special "approved enterprise" status under which it had no taxable income in respect of this royalty receipt. He submitted that Teva USA paid no tax on the footing that it had assigned the contract to Teva Israe; and in India, both Teva Israel and Teva USA have contended that nothing accrued or arose in India. He emphatically argued that income of Teva USA had been diverted to Teva Israel for reasons connected with treaty benefits and the tax-free status enjoyed by Teva Israel under the Israeli and US law.

66. Mr. Sinha submitted that answering the first question put before the AAR, it concluded that this was not a case of assignment of contract but a case of mere application of income. He added that a genuine assignment of contract presupposes assignment of both rights and obligations, whereas in the case on hands, only the money receivable has been assigned.

67. Mr. Sinha submitted that an important piece of evidence relied upon by the AAR was that the assurance agreement was signed by Teva USA and not by Teva Israel with the OAG of New York, under which a fine of USD 150,000 was paid. He submitted that the OAG had characterised the no challenge provision as anti-competitive under US law and the parties, though did not admit the liability, but instead of contesting it before a court, had gleefully paid the fine and executed the assurance agreement in 2014.

68. He submitted that the so-called 'assignment of the contract' had occurred as far back as 2012, whereas the assurance agreement with the OAG was signed in 2014. And, it was signed by Teva USA and not by Teva Israel: had there in fact been an assignment of the contract, it would have been Teva Israel that signed the agreement with the OAG. He submitted that the AAR placed considerable reliance upon this fact that this was not a case of assignment of contract but a mere case of application of income.

69. The Bench at this stage posed a query: even assuming it to be an evasion tactic, how does the Indian government acquire the right to tax such income? Mr. Sinha responded that the standard the Revenue was required to meet at the present stage was that of a *prima-facie* case on taxability, and not a conclusive finding as the Revenue was at the stage of notice issuance. He submitted that the burden upon the Revenue, was to demonstrate that the Assessing Officer, on the basis of the facts and record available, could reasonably infer that money was diverted from the United States to Israel pursuant to a collusive arrangement.

70. He highlighted that the real nature of the transaction in respect of which payment was made ran contrary to the anti-trust laws of the United States and submitted that this constituted income from other sources in the hands of Teva USA, and the same is taxed on the basis of the location and

situs of the payer, where the payer has recorded the payment as income and expenditure in its books of account, which in the present case is in India. While contending that the impugned payment to Teva USA has led to erosion of India's tax base, hence, there is sufficient reason to exercise and assume taxing jurisdiction by the Assessing Officer, he submitted that the location of the payer constitutes the default source rule under Section 5(2)(b) of the Act of 1961.

71. Mr. Sinha then directed the Court to the relevant extract from Daiichi Sankyo Co. Ltd.'s Annual Report, 2012 and informed that in its concluding paragraph the report recorded that exports of atorvastatin to the US market from Ranbaxy's facility at Mohali, India, had commenced in March 2012 marking the first occasion on which exports from Ranbaxy's Indian factories to the United States had resumed since the FDA's 2008 import ban on two of Ranbaxy's Indian plants.

72. The Bench put this directly to Mr. Jolly, who submitted that the Department had itself addressed correspondence dated 24.04.2019 under Section 133(6) of the Act of 1961 to Sun Pharmaceuticals Industries Limited, successor to Ranbaxy following its acquisition from Daiichi Sankyo, and that the reply dated 17.05.2019 furnished by Sun Pharmaceuticals Industries Limited, categorically stated that the entirety of the manufacturing had been carried out at the US plant, and that nothing had been manufactured in India. He submitted that the Department was relying upon a particular extract from an annual report containing a sentence to the effect that manufacturing had commenced in India, and the same has no real significance in the present matter.

73. Mr. Jolly also submitted that, even assuming manufacturing had taken place in India, the income would still not be taxable in India, since the

payment was not for manufacturing at all and was not in the nature of royalty. He submitted that whatever payment had been made by Ranbaxy India to Teva, whether characterised as payment to the US or the Israeli entity, was made pursuant to a contract.

74. Mr. Sinha agreed, that without prejudice to his previous argument in the present case the location of manufacturing was immaterial as the receipt fell within the realm of income from other sources, where the mere location of Ranbaxy in India as payer is sufficient to confer upon the Revenue the right to tax Teva, since the payment received had eroded India's tax base.

75. Mr. Sinha argued that, the impugned notices under Section 148 cannot be quashed since the basic question for the Court's determination was whether the notice was without jurisdiction which question would determine the taxability of the receipt in the hands of Teva USA only on a *prima-facie* basis. He submitted that the relevant question for the Court was: first, whether the Revenue had made out a case that the transaction in question related to a contract or to the assignment of a right to sell; and second, whether any manufacturing had in fact taken place in India, and whether, accordingly, this part of the transaction was exigible to tax.

76. He submitted that Teva Israel had wrongly filed the return in its substantive capacity, whereas Teva USA, being the recipient of the amount, was required to file the return. Since Teva USA had not filed any return, the Revenue was justified in invoking Section 147, particularly in view of Explanation 2(a), applicable to the relevant Assessment Years.

77. The Bench then put a query regarding the refund claimed and there being any route other than filing a return, given that the tax had been deducted in Teva Israel's name and PAN. Mr. Jolly replied that Teva Israel had indeed filed a return and claimed the refund, since the payment from

Ranbaxy had been made directly to Teva Israel and reflected Teva Israel's PAN. He added that no payment had gone to the US entity, so there was no occasion for Teva USA to file a return or claim a refund.

78. Mr. Sinha highlighted that this was precisely the root question: where tax has been deducted in the hands of an agent or representative assessee (Teva-Israel) and that representative assessee files a return claiming a refund in its own right asserting the income to be its own, rather than stating that it has received the amount on behalf of Teva USA. He submitted that the return so filed could not be regarded as proper. The Bench asked Mr. Sinha that when Ranbaxy had deducted tax at around 42% from Teva Israel, why the return filed by Teva Israel not been processed? Mr. Sinha responded that this was because the income, in the Revenue's submission, belonged to Teva USA. And since proceedings against Teva USA had already been triggered on that basis, the Revenue could not simultaneously process Teva Israel's return without pre-empting the very question at issue in those proceedings.

79. Mr. Sinha submitted that the diversion of income amounted to assignment and *qua* which, the Revenue has a favourable finding from the AAR. While explaining that the assignment would mean that the income belonged to Teva USA, he referred to accrual and the statutory source rule. He argued that under Section 5 of the Act of 1961, the basis of taxation is either source or residence. Section 5(1) addresses taxation on the footing of residence, a resident of India being taxed on worldwide income; Section 5(2) contains two limbs — clause (a), deals with income received in India, and Clause (b), dealing with income accruing or arising in India. He argued that Clause (b) confers jurisdiction to tax income accruing or arising in India.

80. Mr. Sinha responded that the 'source rule' can be understood by combined reading of Section 5(2)(b) of the Act of 1961 read with Section 9(1), and the same has been explained by Hon'ble the Supreme Court in the case of ***GVK Industries Ltd. v. ITO,*** reported in **(2015) 371 ITR 453.**

81. Mr. Sinha submitted that the basic source rule resides in Section 5(2)(b) of the Act of 1961, which has been further restated, expanded, modified, and explained in Section 9 and its various sub-clauses, with the consequence that any income accruing to a non-resident not falling within any of those specific categories would fall under the basic source rule, conferring upon India the right to tax such non-resident on the basis that the payer of the income is situated in India.

82. Mr. Sinha referred to the judgment rendered in the case of ***GVK Industries*** **(supra)** and submitted that the case concerned a constitutional challenge to Section 9(1)(vii) — the fee-for-technical-services provision, under which a payment made by an Indian payer to a non-resident for services rendered outside India is rendered taxable in India. He informed that the assessee had challenged the provision as extraterritorial in operation and the matter had been referred to a Constitutional Bench of five Judges.

83. Mr. Sinha read the Court's conclusion that the Parliament is empowered to legislate in respect of extra-territorial aspects or causes having an impact on or nexus with India but not otherwise. He then turned to paragraph, where Hon'ble the Supreme Court, addressing the facts of the case before it, noted that the non-resident company in question had no place of business in India and that the Revenue had not made out a case of actual accrual or receipt of income in India and that the High Court had correctly held the payment in question — termed a "success fee" — not to be taxable under Section 9(1)(i), there being no business connection; the only

remaining question, accordingly, being whether the payment was taxable as fees for technical services under Section 9(1)(vii).

84. The Bench asked a query as to whether it would be justified to extend taxation, on a source basis, to the categories of income falling outside those specifically enumerated categories, in the facts of the present case. Mr. Sinha responded that the categories set out in Section 9 of the Act of 1961 were not exceptions, but were various species of income addressed in a specific manner.

85. The Court pressed the point further, inquiring on what basis these were to be regarded as illustrative, rather than exhaustive or exceptional, categories. Mr. Sinha cited Paragraph 38 of the Memorandum Explaining the Provisions of the Finance Bill, 1976, submitting that the insertion of specific deeming provisions for interest, royalty, and fees for technical services was intended to eliminate ambiguity under the prior, broadly worded regime by codifying a clear-cut 'source rule' to govern the taxability of such cross-border payments in the hands of non-residents.

86. Mr. Sinha submitted that the preceding sentence of the Memorandum was significant, the absence of a clear-cut source rule having, in his submission, created uncertainty and the Parliament thereby sought to bring about clarificatory amendments in relation to fee for technical services, royalty, and interest, these being the categories in respect of which disputes had arisen.

87. At this juncture, Mr. Salve interjected and contended that these amendments, in any event, operated only prospectively and were the Revenue's argument to be accepted in its entirety, the consequence would be that any other species of income or receipt would equally be taxable in India on the basis of source alone, even where such income fell outside the

specifically enumerated categories of interest, royalty, and fees for technical services as enumerated under section 9 of the act of 1961.

88. Mr. Sinha submitted that his submission was, more precisely, that the specific categories of income addressed in the various clauses of Section 9 of the Act of 1961 would obviously be governed by those clauses, but that any revenue receipt in the nature of income not specifically covered by any such clause would be governed by the default source rule articulated by Hon'ble the Supreme Court in ***GVK Industries*** **(supra)** namely, the location of the payer.

89. Mr. Sinha then referred to decision of the ITAT Calcutta Bench 'E' on the source rule, in the case of ***Assam Frontier Tea Co. Ltd. v. Income Tax Officer*** reported in **(1994) 49 ITD 412 (Calcutta)** (internal page no 1071). He submitted that the case concerned a non-resident UK company, carrying on the business of manufacture and sale of tea in India, the profits of which were remitted from India to the United Kingdom and deposited there on fixed deposit, the resulting interest income having been sought to be taxed under Section 9(1)(i) and, in the alternative, Section 9(1)(v). The Income Tax Appellate Tribunal held that the interest could not be taxed under either of these provisions. He submitted that in the said case the Tribunal rejected the argument that the reference in the relevant sub-clause to "such person" was confined to the non-resident recipient of the interest, holding that the reference was, rather to the non-resident liable to pay the interest. This being consistent with the source rule under which income is deemed to arise or accrue in India only if the source from which it is derived itself has business operations in India. The Court held that it is not necessary that the non-resident recipient has any business operations in India, since it

is the source providing the income that is relevant, and not the ultimate destination of such income.

90. At this juncture the Bench put a query regarding the advantage of structuring the transaction, in response to which Mr. Sinha submitted that the arrangement resulted in income escaping tax entirely, as Teva Israel benefited from "approved enterprise" status in Israel, leading to zero tax liability in both the US and Israel. Mr. Salve interjected that Teva Israel was operating under a legitimate "approved enterprise holiday" and noted that when Indian tax authorities inquired with their US counterparts about why Teva was not being taxed in the United States, the US authorities raised no objection.

91. Mr. Sinha responded that the Revenue's concern was that the payer was located in India, and that India's tax base had been eroded. The Revenue is seeking to tax the receipt on this footing, as a second and independent ground. The present case, however, was a case not merely of double, but of triple, non-taxation with no tax having been paid in India, the United States, and no tax in Israel.

92. Mr. Sinha, learned special counsel then submitted that the jurisdiction of the AAR is defined under Section 245R of the Act of 1961, which requires the AAR, upon receipt of an application, to examine whether the application discloses any element of tax avoidance before proceeding further. The AAR, in the present case, had examined this question in considerable detail, and the entirety of its findings on the question of collusion fell within the scope of the proviso to Section 245R(2). He submitted that in examining the application, the AAR is required first to consider the question framed, namely, whether the income was taxable under Section 9, as business profits, under Article 7 of the India-Israel

DTAA, and so forth and to determine, as a threshold matter, whether it possesses jurisdiction at all. The AAR, in the present case, had concluded that it lacked jurisdiction, because the application was *prima-facie* designed for tax avoidance.

93. Mr. Sinha submitted that this required the Court to examine the AAR's detailed findings on probability and commercial substance. The Revenue's case before the AAR having been that the underlying arrangement was a sham, a contention that the AAR had accepted. He submitted that, applying the doctrine of human probabilities recognised by Hon'ble the Supreme Court, it was an appropriate question to ask as to whether it was probable that a party would agree to pay nearly Rs. 1,850 crores to another party that had manufactured nothing and undertaken no genuine activity, on the basis that it would refrain from competing, when, in fact, that other party was, in the first place, legally precluded from competing during the relevant period, and, once free to compete at the conclusion of the exclusivity period, declined to do so at all. He further submitted that the Teva had exported medicines from Israel to the United States, stored them there, obtained the requisite regulatory permission, and was, upon expiry of the six-month exclusivity period, entitled and indeed expected to sell those medicines yet it did not sell them.

94. Mr. Sinha submitted that the entire arrangement, viewed objectively, was commercially improbable and imprudent. One party held a licence and stated, in substance, that if it is unable to exploit that licence, it would transfer it to the other party, which would then manufacture and pay 50% of the resulting profit to the first party. What had in fact occurred was the precise inverse of this arrangement. The petitioners characterised this inversion as a mere mirror image or "flip" of the original transaction,

whereas, in the Revenue's submission, this characterisation concealed an inherently absurd commercial proposition: that one party would manufacture, sell, and remit a substantial portion of its resulting profit to another party that had done nothing whatsoever, purportedly on the strength of ordinary commercial experience. He submitted that it was on this very footing and the application of settled principles governing the conduct of tax authorities and tax courts in examining commercial transactions that the AAR had proceeded.

95. Mr. Sinha read the relevant text of Section 245R(2) of the Act of 1961, providing that the Authority may, after examining the application and the material called for, either allow or reject the same, provided that the Authority shall not allow an application where the question raised therein is already pending before another authority or appellate tribunal, relates to the determination of fair market value, or relates to a transaction or issue designed *prima-facie* for the avoidance of income tax save in the case of a resident applicant, as specified. He submitted that the AAR, having examined the matter in detail, had concluded that its jurisdiction stood ousted on this third ground, and had declined to determine taxability, relegating the petitioners to proceedings before the Assessing Officer, a course of action, he submitted, to which no legal objection could properly be taken.

96. Mr. Sinha read paragraph 81 of the AAR's order, recording the Revenue's submission that the payment received from Ranbaxy was assessable in the hands of Teva USA, and not the applicant; that the assignment by Teva USA to Teva Israel in March 2012 was a mere afterthought, constituting an assignment of income rather than an assignment of contract; and that the source of the income had not, in truth,

been transferred by Teva USA to its parent, Teva Israel. He pointed out AAR's findings on this submission and underscored that it was undisputed that both the original and the amended agreements had been executed by Teva USA and Teva Israel was not a party to either of the agreements and that under the Supply and Distribution Agreement between Teva USA and Teva Israel, Teva Israel had granted Teva USA a non-exclusive right to sell and distribute and to promote, the products in the United States and that agreement further provided that Teva Israel would receive arm's-length consideration for the sale of manufactured generics to Teva USA. He pointed out that Clause 14.6 of that agreement clearly stipulated that the parties would deal on a principal-to-principal basis, and not an agent of one another.

97. Mr. Sinha contended that in light of clear contractual stipulation, it could not be held that Teva USA acted as agent of Teva Israel in respect of either the original or the amended agreement with Ranbaxy whereas that the final approval of Ranbaxy's ANDA described Ranbaxy USA as US agent for Ranbaxy Laboratories Limited. He argued that AAR's finding that even accepting the applicant's submission that Teva USA was required to compensate Teva Israel for losses incurred in manufacturing the pre-launch quantity of tablets, what the applicant was, at the most entitled to receive was, compensation for the actual loss in respect of the quantity manufactured before launch but it did not necessitate assignment of the entire agreement, and receipt of the proceeds from Ranbaxy.

98. Learned counsel for the Revenue agreed that the basis of jurisdiction for taxing the two entities differed. In respect of Teva USA, it could have been taxed under both Sections 5 and 9 of the Act of 1961, whereas, in respect of Teva Israel, only Section 5(2) could be invoked. Teva Israel

having no role and connection with India whatsoever, except for having received the payment.

99. He read out Teva Israel's response (page 947 of W.P.(C) 12721/2019), stating that these queries pertained to dealings between two unrelated parties and were not relevant to the questions posed by the company in its application. Mr. Sinha submitted that this response could not be regarded as unwarranted, given that the company had itself had characterised the receipt as 'royalty' in its public filings, and the question of royalty had been specifically raised before the AAR.

100. The Court observed that the Revenue ought to have specifically inquired from the company as to the nature of the royalty claimed in its SEC filings. The Court also posed a question as to whether a US entity, not otherwise subject to Indian tax law, could be compelled to answer such question? Mr. Sinha responded that, since the company had submitted itself to the jurisdiction of the AAR, the Revenue was entitled to put such questions to it.

101. The Court at this juncture observed that the basic and simple question for consideration was whether the impugned transaction gave rise to any income in India at all, to which Mr. Sinha responded by submitting that the speaking order passed by the Assessing Officer specifically addressed this issue. He stated that the Assessing Officer had invoked Section 9 of the Act of 1961 while proceeding against Teva USA. He submitted further that the petitioners could not claim the benefit of the India-US DTAA, because under Article 24 of the India-US DTAA, where a company seeks to claims residency status under the treaty and the income in question is not derived from active trade or business, and its shareholders are not resident in the United States, such company would not be entitled to treaty benefit.

102. Mr. Sinha relied upon the judgment rendered by the Kerala High Court in the case of ***Malabar Industrial Co. Ltd. v. CIT,*** reported in **(1992) 198 ITR 611 (Kerala)** affirmed by Hon'ble the Supreme Court in ***Malabar Industrial Co. Ltd. v. CIT*** reported in **(2000) 243 ITR 83 (SC)**, for the proposition that compensation received upon modification of a contract constitutes income from other sources and not business income. He submitted that on the facts of the present case, the original 2010 agreement had been modified by the subsequent 2011 amended agreement, the resulting payment accordingly constituted income from other sources. And hence, such income would be deemed to arise in India, as the payer was located in India and the manufacture of the product (Atorvastatin) itself had taken place in India.

103. Mr. Sinha further relied upon ***GVK Industries Ltd. v. ITO (supra)***, for the proposition that, where the payer is located in India, and the activities gives rise to the income accruing in India, the Indian government possesses the right to tax the income subject to the applicable treaty. He then relied upon the decision of this Court in the case of ***Johnson Matthey Public Ltd. Co. v. CIT, reported in (2024)*** **162 taxmann.com 865 (Delhi)** affirmed by Hon'ble the Supreme Court for the proposition that in the case of income from other sources, such income accrues or arises at the place where it is due and is, in fact, paid. He briefly narrated the facts of that case and submitted that guarantee fee was paid by an Indian company to its UK parent, the parent having extended a guarantee to a UK bank that in turn extended credit to the Indian subsidiary, the guarantee fee being paid by the Indian subsidiary to the parent. The question for consideration was, whether the amount had accrued or arisen in India, which question had been answered in

the affirmative, holding that the payment having moved from India to a non-resident, the Indian government acquired jurisdiction to tax.

104. On the question of situs, where 'income from other sources' accrues or arises, Mr. Sinha relied upon the decision of the Rangoon High Court in ***CIT v. Phra Phraison Salarak,*** reported in **(1928) 6 ILR 598** and explained the factual background of that case stating that a non-resident individual from Siam employed by the Government of Siam, had been stationed in British India to monitor timber extracted from Siamese forests and floated into Burmese territory. His salary was paid by the Siamese government in Bangkok. Since the salary income of a foreign government employee is not amenable to Indian tax, the tax authorities had instead sought to tax the receipt under the head "income from other sources," contending that the income was earned in India by reason of his having been stationed and having exercised his employment there. The Rangoon High Court held that the income was not taxable in India, even though the underlying activity giving rise to it had taken place in India. The Court held that the applicable default rule was the place where the income was due and was in fact paid, such place being Bangkok, and not Moulmein.

105. Mr. Sinha read the relevant portion of the judgment, holding that the definitions under consideration did not support the view that income "accrues or arises" in a country merely by reason of being "earned" in that country rather, income accrues and arises in the country where there exists a right to demand payment, or where, in fact, payment is made. He added that in the case under reference, the applicant was a Forest Officer employed by the Siamese Government and there existed nothing to indicate a right on his part to demand payment in Moulmein, the income on the facts, actually having been paid in Bangkok.

106. Mr. Sinha further relied upon ***CIT v. Alpine Solvex Ltd.*, (2005) 144 Taxman 67 (MP)**, for the proposition that indirect business income or incidental profit must be taxed under the head "income from other sources," submitting that a revenue receipt arising in the course of business, without constituting a receipt from the assessee's trading or operating activity, and not falling within any of the specific heads of income under Section 14 of the Act of 1961, would fall to be taxed under the residuary provision of Section 56(1). He submitted that such distinction between 'business income' and 'income from other sources' frequently arises in the context of tax holiday provisions and courts have been consistently holding that receipts arising in the course of business but incidental to its main trading or operating function such as interest on surplus working capital, sale of scrap, government subsidies, or compensation for breach of trading contracts are required to be treated as income from other sources, rather than business income.

107. Mr. Sinha thereafter addressed the validity of the AAR's order, referring to paragraph 25 of the Revenue's written submissions and contended that the present writ petition, W.P.(C) 12721/2019, in substance invited this Court to step into the shoes of the AAR and determine the question of taxability and the same fell outside the scope of writ jurisdiction. He argued that even the AAR itself has not pronounced any ruling on taxability on the ground that the income belonged to Teva USA, which was not the applicant before it, and only observed that the arrangement between Teva USA and Ranbaxy was *prima-facie* designed for the avoidance of tax.

108. Mr. Sinha argued further, that it is well settled that a tax authority or tribunal possesses the power to examine the true nature and substance of a commercial arrangement, in order to ascertain its true character, and to

disregard transactions entered into solely for the purpose of tax avoidance. He submitted that it was not the Revenue's case that the Assessing Officer or the AAR was entitled to sit over the commercial expediency of business decisions as such, but that this was distinct from the recognised power to examine whether a transaction was designed solely for tax avoidance, in which event it was not entitled to be given effect, for tax purposes.

109. Mr. Sinha drew the Court's attention to the recent decision of Hon'ble the Supreme Court in ***Authority for Advance Rulings (Income Tax) & Ors. v. Tiger Global International II Holdings*, (2026) 182 taxmann.com 375 (SC)**, addressing the jurisdiction of the AAR for the proposition that tax authorities, including the AAR, are entitled to examine the underlying intent of a transaction. He read the relevant extract from the judgment, where Hon'ble the Supreme Court held that the commercial motive underlying a transaction often reveals its true character and that a taxpayer cannot simultaneously claim exemption from Indian tax, while contending that the same transaction is also exempt under the law of the country of residence with such a position running contrary to the spirit of the relevant tax treaty. He argued that it may be permissible for an assessee to arrange its affairs so as to avoid the incidence of tax, provided the mechanism employed is permissible and conforms to the parameters contemplated under the Act, the rules, or the notifications issued thereunder; but once a mechanism is found to be illegal or a sham, it ceases to constitute "permissible avoidance" and becomes "evasion," and the Revenue accordingly is entitled to examine the transaction to determine whether the assessee's claim to exemption is lawful.

110. Mr. Sinha thereafter, threw light on the AAR's powers under the proviso to Section 245R(2) and navigated the Court through the impugned

order and submitted that the AAR had recorded a clear finding that the precondition for issuance of the Ready Date Notice required Teva to be in a position to sell approximately 30 crore tablets of the relevant medicine, whereas Teva possessed only 14 crore tablets.

111. Mr. Sinha submitted that the AAR was justified in examining whether the settlement was genuine or whether it was, in substance, contrary to ordinary commercial considerations. He submitted further, that the 180-day exclusivity period commences not from the date of ANDA approval, but from the date of first commercial marketing of the drug, as provided under the relevant FDA regulations and therefore, that the petitioners' contention that Ranbaxy faced a commercial risk of having its exclusivity period curtailed by reason of pending litigation, on a correct reading of the FDA's own regulatory scheme, was misconceived. Because the relevant trigger was, date of first commercial marketing and not the date of ANDA approval.

112. Learned special counsel for the respondents further submitted that under the applicable FDA regulations, exclusivity could be forfeited where the first applicant failed to market the drug within 75 days of the relevant approval becoming effective, or upon the occurrence of certain other specified events relating to patent litigation.

113. Learned counsel for the Revenue submitted that under the 2010 agreement, it had been agreed that if Teva were able to manufacture 30 crore tablets and obtain the tentative approval from the FDA, the licence would be transferred to it. The cut-off date initially specified was 30.11.2011, though an extension to March 2012 had subsequently been provided. He submitted, further, that Ranbaxy could simply have taken the position that the earlier agreement no longer applied, and could have continued to manufacture and sell the medicine itself while paying Teva only 15% under the terms of the

original arrangement, yet Ranbaxy entered into a fresh agreement, agreeing to pay 50% and to undertake the manufacturing itself, which was commercially illogical.

114. Mr. Sinha also relied upon the test of human probabilities laid down by Hon'ble the Supreme Court in the judgment rendered in the case of ***Sumati Dayal v. CIT,*** reported in **[1995] 214 ITR 801 (SC)** and argued that a tax authority is entitled to examine whether a transaction is so improbable on its face that it may properly be disregarded.

115. He submitted that, under Explanation 2 to Section 147 of the Act of 1961, a deeming fiction operates in favour of the Revenue, once it is shown that the income in question was assessable in the hands of Teva USA. He argued that maybe on ultimate analysis it may not be found taxable, but it is sufficient for the purposes of issuing notice.

Rejoinder Arguments

116. In rejoinder, Mr. Salve turned to his challenge to the reopening of assessment read paragraph 87 of the impugned order dated 25.10.2019, recording the AAR's conclusion that the source of the payment to the applicant, under the revised and reinstated agreement, was in the nature of a collusive arrangement, designed *prima-facie* for illegal payments towards an anti-competitive arrangement and contended the same was perverse in law, being a positive finding of collusion without any cogent basis. He submitted that the AAR's further finding that since the 'No Challenge Provision' had been held illegal by the OAG, the arrangement towards such illegal payment was *prima-facie* designed for avoidance of tax was equally perverse.

117. He invited Court's attention towards the question as was set out by the petitioner before the AAR – whether the applicant was justified in

contending that the amount received from Ranbaxy was in the nature of business profits, not chargeable to tax in India under the relevant provisions and argued that the AAR was required to address this question and examine the issue of business connection under Section 9(1)(i) of the Act of 1961. He submitted that the petitioners' case before the AAR had proceeded on the footing that the Revenue sought to tax the receipt on the basis of business connection, and the petitioners had contended that no such business connection existed. He highlighted that such stand had been abandoned by the Revenue during the proceedings before the AAR, as can be seen that in the entire order of the AAR, the expression "business connection" did not appear in any operative finding.

118. On Court's observation that even the AAR's own order did not seemingly make any reference of Section 5(2)(b) of the Act of 1961, Mr. Salve accepted this position and added that one need not look beyond the plain language of Section 5 itself to resolve the question as to where the income accrues or arises, or is received. Having emphasised the statement that it was a common ground that the amount was not received in India, he submitted that so far as expression *'accrual or arising'* is concerned, the same is governed by the place where the right to receive arises, and that right, in the present case, arose out of a contract executed and enforceable in New York. He referred to the judgments rendered in the cases of ***Carborandum Co. v. CIT,*** reported in **(1977) 108 ITR 335 (SC)** and ***Ishikawajima-Harima Heavy Industries v. DIT,*** reported in **(2007) 288 ITR 408 (SC)** submitting that the amendments to Section 9 had themselves been enacted in consequence of Hon'ble the Supreme Court's decision in Ishikawajima (supra), where the Court had held that, where part of a contract was performed outside India, that part could not be taxed in India.

He argued that according to Hon'ble Supreme Court, where the relevant service is not performed in India, and no business connection exists in India, being tests under Section 9, not being applicable, Section 5 cannot independently apply, more particularly when the underlying contract is itself situated outside India.

119. Mr. Salve then navigated the Court through the reason for issuance of notice under Section 148 of the Act of 1961 and argued that the finding recorded in paragraph 9.1, that the agreements relied upon by Teva Israel before the AAR showed that the actual recipient and titleholder was Teva USA, whereas Teva Israel was merely an agent was a non-issue and had no bearing in the present matter.

120. He read the reasons recorded, which essentially proceed on a constructive receipt having arisen to Teva USA and the allegation that the transaction had been deliberately structured to avoid payment of tax both in the United States and in India ; and the Assessing Officer's view that it was an attempt of treaty shopping, since the entire income of the Israeli entity also enjoyed a tax-free status under Israeli law. He argued that mere existence of a right to receive payment from an Indian source, even where the relevant services were rendered outside India, does not constitute a "receipt" for Indian tax purposes and thus the proceedings under Section 147/148 of the Act are void and without jurisdiction.

121. He added that for a receipt of the kind to be taxed under the Act of 1961, no statutory basis existed and therefore, there was no iota of escapement of income. He clarified that the notion of a "constructive receipt" has no legal basis -neither statutory nor precedential.

122. Mr. Salve also submitted that the AAR's findings themselves were vitiated, as its conclusion rested upon the premise that the ready date notice

was invalid. He submitted that the AAR has held the entire transaction to be tainted when, in fact, these were ordinary commercial transactions, uninfluenced and unguided by any fraud or financial impropriety. He added that the parties had no connection with one another except the solitary transaction, wherein an Indian subsidiary had entered into an agreement, in the United States, with the American subsidiary of an Israeli company.

123. While emphasising that there is no allegation let alone finding about any flow-back of funds and that no party had ever suggested anything improper about the original agreement of 2010, he argued that surprisingly the AAR's objection was confined to the revised agreement *qua* which the AAR's view was that Ranbaxy ought not to have agreed to it and as per the AAR, Teva being in the wrong and Ranbaxy having capitulated without justification, ought not to have signed the revised agreement. He argued that this exercise was neither open nor permissible for an Indian tax authority.

124. Mr. Salve, learned senior counsel further submitted that the AAR's order, in substance, rested upon three distinct pillars, each of which disclosed a misdirection in law: first, the commercial wisdom of settling the dispute on the terms agreed was simply not a matter for the AAR to evaluate; second, that the AAR had drawn an adverse inference on the basis of the speed at which the dispute had been settled (within a single day); and third, that the AAR had concluded, by way of pure contractual interpretation, unsupported by any independent evidence, that the entirety of the payment related to the single no-challenge clause. He argued that the AAR reached this conclusion solely by interpreting the contract in light of the OAG's opinion and also that all three limbs of the AAR's reasoning had no ground to rest. He added that AAR's finding that the applicant was the "wrong party" was equally flawed. He argued that the central question,

namely, whether the income was taxable under Section 9(1), has not at all been answered by the AAR.

125. Mr. Salve submitted that the original agreement between Teva USA and Ranbaxy was the source of the parties' respective contractual rights and Ranbaxy, exercising its own commercial wisdom, had entered into the settlement and the second agreement. He argued that commercial wisdom of a party was not for the Department to evaluate and that the recipient of the payment had not avoided tax through any device. The income could not, on a proper application of law, be taxed in India at all and the question of the place where such income might be taxable whether in the United States or in Israel was not in the domain of the Indian Revenue authorities. He submitted that the suggestion that Ranbaxy had made the payment in order to facilitate tax avoidance was, on the face of it, baseless if not absurd.

126. Mr. Salve argued that the contention that the income was not that of Teva Israel on the ground that the underlying obligations had not been assigned to it, was equally misconceived. As a matter of contract law, only rights, and not obligations, can be assigned under a contract, unless the arrangement constitutes a multi-party agreement permitting otherwise.

127. Mr. Salve referred to the decision in **Phra Phraison Salarak** (supra), and submitted that in that case, the right to receive the income, and the actual income as received were both situated in Siam, the relevant contract was entered into in Siam, the individual was employed by the Siamese government, and payment was made in Siam British, India accordingly had no jurisdiction to tax that income. He submitted that, in the present case, the contractual rights in question, the non-compete obligation, and the ANDA itself, were all situated in the United States, the mere circumstance that

payment was remitted from India by Ranbaxy did not mean that the income was paid in India.

128. He then submitted that historically, complaints have been voiced that with the growth of international trade, a pure principle of accrual-based taxation operated to the disadvantage of capital-exporting and less-developed countries, from which money flowed outward without any corresponding share of tax accruing to them and it was against this background that the 1976 amendments to Section 9 had been introduced, addressing royalties, FTS and satellite-related income, among other categories. He submitted that if the Parliament deems it apt to enact a provision under Section 9 deeming any remittance from India to constitute Indian-source income, the Court would then be required to address that legislative scheme on its own terms. But in the absence of any such provision in Section 9, Section 5 could not operate to confer taxing jurisdiction.

129. Mr. Salve submitted that the judgment rendered in the case of ***GVK Industries* (supra)**, upon which the Revenue had placed reliance does not support the Revenue's case at all. He argued that the Court had only observed that there exists an increasing fiscal recognition of source-based taxation. But this, he submitted, could not be pressed into service for the broader proposition that source-based taxation operates independent of, and without the aid of, such specific statutory provisions. The default rule under the Act of 1961 is one of residence. A resident is taxed on global income and the extended rule being one of accrual, both being addressed within Section 5.

130. Mr. Salve submitted that unless the Revenue were able to point to some specific provision of Section 9 under which an inquiry into the matter

could properly be undertaken, there was simply nothing further to investigate. He submitted that, whatever be the true nature of the underlying transaction, a conclusion premised solely upon the fact that India's tax base was being eroded, or that some Indian connection existed and India should accordingly receive some share of the tax on money leaving the country, was erroneous in law.

131. By way of a final submission, Mr. Jolly contended that the writ petition challenging the Section 148 notice for AY 2014-15 was, in any event, barred by limitation under the revised scheme contained in Sections 148A(b) and (d) of the Act of 1961, as introduced following the decision of the Hon'ble Supreme Court in ***Union of India v. Ashish Agarwal*** reported in **(2023) 1 SCC 617.**

132. We are cognisant of the fact that though the hearing continued for days but somehow arguments could not be made though Mr. Jolly had made a submission that the notice for AY 2014-15 is, in any event is time barred as per the judgment rendered in the case of ***Ashish Agarwal (supra)*. **Hence, **r**ather than keeping this issue pending, we propose to decide this issue on the basis of pleadings of the parties and the relevant case laws and statutory position. However, making it clear that the party concerned will be free to move application for review if the adjudication we make suffers from any error apparent or which otherwise could be avoided if such contention could have been considered. Else such issue will always remain undecided.

Consolidated factual narration and statutory regime

133. Heard learned counsel for the parties.

134. Before dilating upon the rival submissions, it would be apt to collate and assimilate the seemingly complex facts at one place, so as to have their proper appreciation and for the purpose of adjudication.

135. The petitioner Teva Pharmaceuticals Industries Limited is a multi-national pharmaceutical group headquartered in Israel with large-scale manufacturing capacity including separate, research & development wing having presence in various countries across the globe, including India.

136. The other petitioner, Teva Pharmaceuticals USA Inc is Teva Israel's wholly owned subsidiary and its distributor arm in the USA. The terms of the distribution and sales arrangement between Teva USA and Teva Israel have been recorded in a 'Supply & Distribution Agreement'. As per this agreement, Teva Israel manufactures and supplies medicines to Teva USA for sale in the US market. The relationship is on a principal-to-principal basis and Teva USA purchases generics at arm's length price from Teva Israel. Teva USA has all the rights arising from the licenses obtained from the USA Govt., in its name (like Abbreviated New Drug Applications for selling generic versions of branded medicines). Teva Israel is entitled to receive arm's length consideration for the sale of manufactured generics to Teva USA. The income of Teva USA arises on sale of generics made to the USA customers and Teva Israel's income arises from sale of generics to Teva USA.

137. Other company known as Ranbaxy India is an erstwhile Indian pharmaceutical company, engaged in production of generic medicines which had its wholly owned subsidiary in the USA, known as Ranbaxy Pharmaceutical Inc., Florida, USA

138. Lipitor is the largest selling pharmaceutical drug meant for lowering

of cholesterol. Both Teva and Ranbaxy claimed to have developed their generic versions of drug Lipitor (generic name '*Atorvastatin*'). On 19.08.2002, Ranbaxy India and Ranbaxy USA filed an Abbreviated New Drug Application No.76477 in relation to Atorvastatin. A few months later (on 21.02.2003), Pfizer filed an infringement suit against Ranbaxy USA alleging that the Atorvastatin violates its patent right qua the Lipitor, which had been launched by Pfizer in the year 1997. The said suit came to be settled on 17.06.2008, as Ranbaxy USA entered into a settlement agreement with Pfizer and Ranbaxy was allowed to market its product Atorvastatin in the USA market after 30.11.2011.

139. It is noteworthy that Teva USA filed its ANDA No.78773 with respect to the same generic drug –Atorvastatin. In June 2007, Pfizer filed an infringement suit against Teva USA as well, which too came to be settled in July 2009. The ANDA of Teva was filed solely by Teva USA and not by Teva Israel and Teva Israel was not specifically made a party to the settlement agreement. As per the law prevailing in the USA, a successful first filer of ANDA is entitled to a Sole First to File Exclusivity (hereinafter referred to as '*SFFE*') for a period of 180 days, during which, no other ANDA filer is eligible to get approval for the same generic product. During this period of 180 days, besides the first ANDA filer, only two other sellers, the original inventor of the drug and the generic version authorised by the inventor drug company can sell their products. Since, Ranbaxy India was the first filer of ANDA, it had a SFFE from 01.12.2011 to 29.05.2012.

140. As pleaded by the petitioner, Ranbaxy which was expected to start selling its generic Atorvastatin in the USA market on 01.12.2011, intended to manufacture in India was visited with imposition of ban by the Food and Drug Administration (hereinafter referred to as '*FDA*') on the allegation of

certain irregularities and violation of guidelines. In view of the said development, there arose clouds of uncertainties and Ranbaxy was not sure as to whether it would be able to manufacture Atorvastatin in time and whether its ANDA would be approved and accordingly, on 07.12.2010 Ranbaxy India, Ranbaxy USA and Teva USA entered into an agreement, whereby Ranbaxy India agreed to transfer its SFFE rights to Teva USA.

141. According to the agreement so arrived at, upon issuance of a valid Ready Date Notice, which would be issued only after Teva USA's having Initial Launch Quantities ready for sale in the USA and Teva USA having obtained tentative approval of its ANDA, Ranbaxy India's SFFE rights would stand transferred to Teva USA.

142. The Ready Date Notice would require Ranbaxy to effectuate a selective waiver or relinquishment in favour of Teva USA. In either case, Teva USA, upon receiving the requisite FDA approval, would have the right to launch the product under its own ANDA and Teva USA would pay Ranbaxy a substantial share of its profits ranging from 50% to 65% including, milestone payments earned during six months' period. Clause 6 of the Original Agreement provides for General Covenants, and Clause 6.10 provides for Confidentiality. However, as per Clause 9.1 read with Clause 6.10.6 of the Original Agreement, it was agreed that neither company would challenge each other's ANDA filed with the US FDA from the date of signing of the Original Agreement till 2 years post the expiry of the exclusivity period. This commitment included, *inter alia*, an agreement not to challenge (No Challenge Provision) each other's sole first-to-file exclusivity (SFFE) for the ANDAs that were filed as of the effective date of the Original Agreement.

143. The Original Agreement mandated a payment of one-time

commitment of USD 15 million by Teva USA to Ranbaxy India which was done on 5.7.2011. On 18.11.2011, Teva USA filed Pre-Launch Activities Importation Requests **(PLAIR)** with the US FDA. On 21.11.2011, it received an email from the US FDA allowing the import of Atorvastatin by Teva USA from Teva Israel. On 23.11.2011, Teva USA served a Ready Date Notice on Ranbaxy USA claiming that the acknowledgement of PLAIR received from FDA amounted to FDA's confirmation that Teva USA was eligible for final approval. Further, Teva USA called upon Ranbaxy India to issue the relinquishment notice in terms of the Original Agreement and selectively waive or relinquish its rights under the ANDA in favour of Teva USA.

144. On 28.11.2011, Ranbaxy USA sent a letter to Teva USA stating that the Ready Date Notice served on it by Teva USA was invalid. Further, it was stated that Ranbaxy USA expected to obtain a final approval to its ANDA on or before 30.11.2011. On 29.11.2011, Teva USA filed a complaint in a USA Court alleging breach of contract by Ranbaxy and sought specific performance by way of a specific waiver in its favour. In the complaint, Teva USA claimed that it had complied with the obligation of Initial Launch Quantities of Atorvastatin ready for sale in the USA. It also claimed that the permission granted by the FDA to import Atorvastatin from Israel under a PLAIR request constituted a written confirmation from the FDA that Teva's ANDA is eligible for final approval within the meaning of clause 1.45 of the Original Agreement. Further, it was claimed that the practice for FDA is to treat grant of a PLAIR as equivalent to a written confirmation of being eligible for final approval but for some technical barrier.

145. On 30.11.2011, Ranbaxy agreed to settle the dispute out of court. A

settlement agreement dated 07.12.2011, that was effective from 30.11.2011, came to be signed and on the same date i.e., 30.11.2011, Ranbaxy USA obtained FDA approval for its ANDA in relation to Atorvastatin.

146. On 01.12.2011, Ranbaxy commenced commercial sale of Atorvastatin in the USA market for a period of 180 days being FFE period and earned around USD 700 million in profits. As per the agreement executed between Ranbaxy USA, Ranbaxy India and Teva USA, 50% of the profits generated by Ranbaxy on sale of Atorvastatin in the USA during six months' exclusivity period, (an amount of Rs.1851.07 crore) was paid to Teva Israel. The aforesaid amount of Rs.1851.07 crore was, however, paid in three different years as under:

AY	**Amount paid to Teva Israel (INR)**	**Amount paid to Teva Israel (USD) (approx.)**	**Amount of tax deducted at source (TDS) by Ranbaxy India in INR**
2012-13	1434.42,95,591	281.84 million	602,80,46,780
2013-14	417.31,69,747	71.27 million	179,97,20,590
2014-15	2,50,91.179	411 thousand	1,05,44,317
All 3 AYs	**Total**	353.52 million	783,83,11,687

147. Tax at Source at around 42% as prescribed under Section 195 of the Income Tax Act, 1961 was deducted by Ranbaxy India. Teva Israel in turn filed its return under the provisions of the Act of 1961 declaring 'Nil' income and claimed refund of the aforesaid amount of tax deducted at source by Ranbaxy India.

148. As a relevant fact, it may be noted that inspite of getting final approval on 29.05.2012 by the FDA in relation to its ANDA, Teva USA did not launch and sell Atorvastatin in the USA market. The Office of Attorney General of the State of New York (hereinafter referred to as '*OAG*') in

proceedings dated 18.02.2014, observed that Ranbaxy and Teva USA were guilty of entering into an Anti-Competition agreement. Ranbaxy and Teva USA, however, decided to settle the issue and paid a fine of USD 150,000 each, *albeit* without admitting their guilt.

149. An application no. 1476/2013 came to be filed by Teva Israel before the Authority for Advance Rulings, New Delhi (hereinafter referred to as *'AAR'*) under Section 245Q of the Act of 1961, seeking a ruling on the taxability of the payment received by Teva Israel from Ranbaxy India. Teva Israel contended that this payment was its business income and not taxable in India in absence of a Permanent Establishment (hereinafter referred to as *'PE'*)**.** Teva Israel also contended that the payment did not fall under any of the categories as specified in clauses (i) to (vi) of the Explanation 2 to Section 9(1) (vi) of the Act of 1961. Further, it was not fee for technical services under Section 9(1)(vii) of the Act of 1961 read with Articles 13(4) of the India-Israel DTAA along with the protocol dated 29.01.1996.

150. The AAR vide order dated 25.10.2019 declined to give ruling on the taxability of these amounts and left it open for the Assessing Officer (hereinafter referred to as *'AO'*) to carry out the assessment proceedings in the hands of Teva USA. Such being the position, the AO protectively assessed the disputed the amount of Rs.1851.07 crores in the hands of Teva Israel and in the meanwhile initiated proceedings under Section 148 of the Act of 1961 by way of notices for Assessment Years 2012-13, 2013-14 and 2014-15, alleging that the amounts received by Teva Israel within these three years were liable to be taxed in the hands of Teva USA.

151. The aforesaid factual background propelled the petitioners to file the captioned writ petitions which can be summarised as under:

(i) Teva USA and Teva Israel have challenged the order of the AAR on 25.10.2019 (Impugned Order) declining to give an advance ruling - by way of the Writ Petition (Civil) No. 12721/2019;

(ii) Teva USA has challenged the notices issued under Section 148 by way of the Writ Petitions (Civil) 10711/2017 (for AY 2012-13) & 10714/2017 (for AY 2013-14); and 1295/2023 (for AY 2014-15).

(iii) Teva Israel has sought refund of taxes withheld by Ranbaxy India for AYs 2012- 13, 2013-14 and 2014-15 on the basis that there cannot be a recovery of demand in protective assessments.

Consideration of Rival Contentions

152. Before dealing with the arguments of rival parties, it will be apt to keep the relevant provisions of the Act of 1961 as amended by the Finance Act, 2013 handy. For the sake of convenience, since the instant writ petitions pertain to Assessment Years 2012–13 to 2014–15, the statutory provisions as they stood amended by Finance Act of 2013 are reproduced hereunder:

> ***"SECTION 5: Scope of total income***
> *(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—*
>
> *(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or*
>
> *(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or*
>
> *(c) accrues or arises to him outside India during such year :*
>
> *Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived*

from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1— Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

SECTION 9: Income deemed to accrue or arise in India

(1) The following incomes shall be deemed to accrue or arise in India:

(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.

Explanation 1.—For the purposes of this clause—

(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India ;

(b) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export ;

(c) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India ;

(d) in the case of a non-resident, being—

(1) an individual who is not a citizen of India ; or

(2) a firm which does not have any partner who is a citizen of India or who is resident in India ; or

(3) a company which does not have any shareholder who is a citizen of India or who is resident in India, no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematograph film in India.

Explanation 2.—For the removal of doubts, it is hereby declared that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

(a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident ; or

(b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident ; or

(c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident

and other non-residents controlling, controlled by, or subject to the same common control as, that non-resident:

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business:

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident) or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

Explanation 3.—Where a business is carried on in India through a person referred to in clause (a) or clause (b) or clause (c) of Explanation 2, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

Explanation 4.—For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

Explanation 5.—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

(ii) income which falls under the head "Salaries", if it is earned in India.

Explanation.—For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

(a) service rendered in India; and

(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment, shall be regarded as income earned in India.

(iii) income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India ;

(iv) a dividend paid by an Indian company outside India ;

(v) income by way of interest payable by—

(a) the Government ; or

(b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India ;

(vi) income by way of royalty payable by—

(a) the Government ; or

(b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government :

Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.

Explanation 1.— For the purposes of the [first] proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date; so, however, that, where the recipient of the income by way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1st *day of April, 1977, or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercises an option by furnishing a declaration in writing to the [Assessing] Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement may be regarded as an agreement made before the 1st day of April, 1976.*

Explanation 2.—For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

> *[(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]*

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to [(iv), (iva) and] (v).

[Explanation 3.—For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data.]

[Explanation 4.—For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Explanation 5.—For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—

(a) the possession or control of such right, property or information is with the payer;

(b) such right, property or information is used directly by the payer;

(c) the location of such right, property or information is in India.

Explanation 6.—For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret;]

(vii) income by way of fees for technical services payable by—

(a) the Government ; or

(b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person14 outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a

business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

[Provided that nothing contained in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976, and approved by the Central Government.]

[Explanation 1.—For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.]

Explanation [2].—For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient16 or consideration which would be income of the recipient chargeable under the head "Salaries".]

(2) Notwithstanding anything contained in sub-section (1), any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th day of August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India.

[Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-

section (1) and shall be included in the total income of the non-resident, whether or not,—

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India.

SECTION 245: Set off of refunds against tax remaining payable

Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Chief Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

CHAPTER XIX-B: ADVANCE RULINGS (Relevant Sections)

SECTION 245N: Definitions

***245N**. In this Chapter, unless the context otherwise requires,—*

[(a) "advance ruling" means—

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(ii) a determination by the Authority in relation to [the tax liability of a non-resident arising out of] a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with [such] non-resident;]

and such determination shall include the determination of any question of law or of fact specified in the application;

(iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of

any question of law or of fact relating to such computation of total income specified in the application;
(iv) [***]
The following sub-clause (iv) shall be inserted after sub-clause (iii) of clause (a) of section 245N by the Finance Act, 2013, w.e.f. 1-4-2015 :
(iv) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not:
[Provided that where an advance ruling has been pronounced, before the date on which the Finance Act, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of this clause as it stood immediately before such date, such ruling shall be binding on the persons specified in section 245S;]
(b) "applicant" means any person who—
(i) is a non-resident referred to in sub-clause (i) of clause (a); or
(ii) is a resident referred to in sub-clause (ii) of clause (a); or
(iii) is a resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf; [[and]]
(iiia) [***]
The following sub-clause (iiia) shall be inserted after sub-clause (iii) of clause (b) of section 245N by the Finance Act, 2013, w.e.f. 1-4-2015 :
(iiia) is referred to in sub-clause (iv) of clause (a); and
(iv) makes an application under sub-section (1) of section 245Q;]
(c) "application" means an application made to the Authority under sub-section (1) of section 245Q;
(d) "Authority" means the Authority for Advance Rulings constituted under section 245-O;
(e) "Chairman" means the Chairman of the Authority;

[(f) "Member" means a Member of the Authority and includes the Chairman;]

Application for advance ruling.

***245Q**. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.*

(2) The application shall be made in quadruplicate and be accompanied by a fee of [ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher].

(3) An applicant may withdraw an application within thirty days from the date of the application.

***Procedure on receipt of application**.*

***245R**. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:*

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application :

[Provided that the Authority shall not allow the application where the question raised in the application,—

(i) is already pending before any income-tax authority or Appellate Tribunal [except in the case of a resident applicant falling in sub-clause (iii) of clause (b) of section 245N] or any court;

(ii) involves determination of fair market value of any property;

(iii) relates to a transaction or issue which is designed prima-facie for the avoidance of income-tax [except in the case of a resident applicant falling in sub-clause (iii) of clause (b) of section 245N [***] [or in the

case of an applicant falling in sub-clause (iiia) of clause (b) of section 245N]]:]

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation.—For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 288, as if the applicant were an assessee.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner51 shall be sent to the applicant and to the 51aCommissioner, as soon as may be, after such pronouncement.

SECTION 245S: Applicability of advance ruling

***245S**. (1) The advance ruling pronounced by the Authority under section 245R shall be binding only—*

(a) on the applicant who had sought it;

(b) in respect of the transaction in relation to which the ruling had been sought; and

> *(c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.*
>
> *(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.*

<u>W.P.(C) 10711/2017 and W.P.(C) 10714/2017</u>

153. By way of these writ petitions, the petitioner Teva USA has challenged the notices under Section 148 of the Act of 1961, issued by the Assessing Officer initiating proceedings under Section 147/148 of the Act of 1961 for Assessment Years 2012-13 and 2013-14. Facts regarding the petitioner and nature of transaction have been set out in detail in earlier part of the judgment and the arguments of rival parties laying challenge to the notices too have been noted.

154. In order to see as to whether the impugned notices dated 29.03.2016 are liable to be quashed or not, the fundamental aspect which is required to be examined is as to whether it can be said that the Assessing Officer did not have the jurisdiction to assess the petitioner and/or there was an absence of jurisdictional fact. The petitioner Teva USA is a company incorporated in USA and is a subsidiary of Teva Israel. The fact, at least to this extent is not in dispute that no transaction between Ranbaxy and Teva USA has taken place in India. The entire dispute or transaction related to marketing rights in USA and in that process, the quarrel between Teva USA as the subsidiary of Teva Israel on one side and Ranbaxy USA being the subsidiary of Ranbaxy India on the other, was in relation to marketing or selling rights which had nothing to do with production. So far as production part is concerned, though there is a dispute whether the medicines were manufactured in India

or Israel, but the sale was indisputably in and from USA. Hence, even if the production is presumed to have taken place in India, it hardly makes a difference.

155. So far as the payment in question is concerned, the amount of Rs.1851 crore was paid by Ranbaxy from India to Teva Israel directly and said amount did not even route through USA. It is not in dispute that Ranbaxy USA and Teva USA had entered into the agreement being the subsidiary companies of Ranbaxy India and Teva Israel respectively, and payment in lieu of the agreement was made by Ranbaxy India to Teva Israel, in pursuance of the assignment agreement dated 22.03.2013 made by Teva USA.

156. The bone of contention is that as per the respondent, the assignment of income by Teva USA to Teva Israel without there being any corresponding assignment of obligation was illegal and was intended only to avoid tax under US and Israel income tax laws. Such stance to our mind, is firstly misconceived, as the assessee had given a plausible explanation that Teva US being a subsidiary company was only a marketing company and manufacturing activities were being carried out by Teva Israel, hence, the amount of Rs.1,851 crore was assigned to Teva Israel- the parent company. That apart, if for whatever motive, the assignment was made by Teva USA to Teva Israel to enjoy tax holiday or tax benefit in Israel, it should not and cannot trouble Indian tax authorities. They cannot assume rather usurp jurisdiction to issue notice and try to drag such amount within the tax-net of India.

157. In order to bring this amount within the ambit of Indian tax laws, the respondent has taken a plea that the amount was paid towards illegal consideration. And curiously, in a bid to brand this amount to be illegal, they

have taken recourse to opinion of the OAG, expressed during an anti-trust proceeding indicating that certain clauses of the agreement between the parties violated the anti-compete laws of US. A perusal of the settlement/ letter written by the companies to the Attorney General clearly demonstrates that the parties had paid the fine of USD 150,000 each without accepting the guilt and that an undertaking was given that they would not adhere to anti-compete clauses of the agreement and allow competition with respect to other generic drugs manufactured by them.

158. We are of the considered opinion that the OAG's observation(s) are only an opinion and the same cannot be taken to be a finding of a Court, so as to brand an agreement illegal and treat the amount paid towards that agreement to be illegal. The respondent-AO has taken this plea before the AAR and Mr. Sinha learned Special Counsel for Revenue has also vociferously argued before the Court that it doesn't stand to logic that why would Ranbaxy settle the case and pay such huge amount of Rs.1851 crore, when it had got ANDA approval and stock and medicines ready with it. We are of the view that such facts and questions are better left to the wisdom of the persons dealing with commerce and business. The Assessing Officer who does not wear the hat of an economist cannot and should not decide the prudence of a businessman, as to why an entrepreneur had entered into a settlement and paid the amount. After all nobody would pay Rs.1851 crore, just to save purported tax liability of 30% - one has to pay Rs. 1851 crore in any case.

159. Admittedly, Ranbaxy India had paid to Teva Israel under permanent account number of Teva Israel, after deducting applicable tax at around 42%. In our opinion, the respondent-Assessing Officer was not justified in issuing a trans-border notice to the petitioner and calling it to show cause as

to why the payment made to Teva Israel be not taxed in its hands in India. Simply because the AAR had observed and AO felt that this income belonged to the assessee, he could not initiate proceedings under Section 148 of the Act of 1961. The exercise or attempt being made by the Assessing Officer is not only without jurisdiction but also extra territorial and the same is impermissible in law.

160. In light of the stand of the respondent and what has been argued by Mr. Sinha, learned counsel for the respondents, the question which needs our consideration is, the applicability and/or interplay of Sections 5 and 9 of the Act of 1961.The moot question being- "whether the situs of the payer in India without anything further, is sufficient to constitute an income of a non-resident as income which "accrues or arises" in India within the meaning of Section 5(2)(b) of the Act of 1961?"

161. True it is, that Section 5(2)(b), has an independent field of operation in the sense that it brings within the fold of total income of a non-resident, the income which accrues or arises in India as well as the income which is deemed under the provisions of the Act of 1961 to have accrued or arisen in India, whereas Section 9 identifies specified circumstances in which income is statutorily deemed to accrue or arise in India. The question that requires our consideration is, whether the residence of the payer, standing alone, constitutes rather satisfies a universal source rule by virtue of which every payment made by an Indian resident to a non-resident must necessarily be regarded as income accruing or arising in India.

162. The Revenue's submission proceeds on amalgamation of the source of the payment with the source of the income. The sole circumstance that Ranbaxy India- an Indian resident, ultimately bore the payment and accounted for it and claimed deduction of the expenditure in India, does not

and cannot singularly determine the situs at which the income accrued or arose to the non-resident recipient, namely, Teva Israel. The statutory scheme neither contains any such provision nor does it contemplate that every payment by a resident to a non-resident shall constitute income arising in India, merely by reason of the payer's residence. Indeed, the enactment of specific source rules and deeming provisions in Section 9 of the Act of 1961 militates against acceptance of such an unqualified proposition. The Revenue was therefore required to establish, independent of mere location of Ranbaxy India, a sufficient nexus between India and the income-producing right or activity so as to constitute actual accrual or arising in India, or alternatively to bring the receipt within one of the statutory deeming provisions.

163. Further, the legislative history of the amendments introduced in 1976 does not, in our opinion, support the breadth of the "default source rule" as canvassed by the learned special counsel for the Revenue. The Memorandum explaining the insertion of Sections 9(1) (v), (vi) and (vii) acknowledged that the existing provisions were couched in general terms and that the absence of a clear-cut source rule had generated uncertainty regarding the chargeability of particular categories of income accruing to non-residents. The Parliament consequently considered it necessary to prescribe the circumstances in which interest, royalty and fees for technical services would be deemed to accrue or arise in India. According to us, the list is exhaustive and deeming fiction can be invoked *qua* only those incomes, which are enumerated under various clauses of Explanation 7 to Section 9 and *qua* such receipts alone, income would be deemed to accrue or arise in India.

164. The reliance placed upon the decision rendered in the case of ***GVK Industries Ltd. v. ITO (supra)*** by the Revenue is misplaced, as the said judgment though recognises source-based taxation as a legitimate basis for the exercise of taxing jurisdiction and affirms Parliament's competence to enact provisions founded upon an adequate territorial nexus with India, but the observations therein arose in the context of the specific statutory regime governing fee for technical services under Section 9(1)(vii). The decision cannot, in our opinion, be read as laying down the much wider proposition that, independent of and in absence of specific statutory provisions and irrespective of the juridical or commercial source of a receipt, every payment by an Indian resident to a non-resident would as a necessary corollary result in arising or accrual of income in India as per Section 5(2)(b) of the Act of 1961.

165. The decision rendered in ***Phra Phraison Salarak (supra)*** too does not establish such proposition. The Court therein, in substance, applied a source-of-income test by locating accrual by reference to where the right to receive the income crystallised and did not expound a free-standing rule that income invariably accrues wherever the payer is located. We would therefore hesitate to extract from that decision either an absolute ‘payer-location rule’ or, conversely, an absolute rule that income must invariably accrue at the place where the underlying contract was executed or made enforceable. The situs of accrual must ultimately be determined having regard to the true juridical and commercial source of the particular income under consideration.

166. When the abovesaid reasoning is applied to the present case, we observe that the underlying contractual rights concerned the marketing/sale of pharmaceutical products in the United States; the ANDA and associated

regulatory rights and the contractual rights asserted by the parties arose out of arrangements between pharmaceutical companies. Against these factors, the principal territorial connection relied upon by the Revenue is, that Ranbaxy was an Indian resident which paid the amount to Teva Israel which in turn should have gone to Teva USA.

167. The decision of this Court in ***Johnson Matthey Public Ltd.(supra)*** is equally distinguishable on its facts and does not establish the universal payer-based rule contended for by the Revenue. In that case, the income-producing obligation itself bore a direct and substantive connection with the Indian businesses concern as the guarantees furnished by the non-resident facilitated credit facilities availed for the benefit of the Indian entities. The situs and source of the income were determined having regard to the apparent nexus between the income-producing arrangement and India, and not merely by identifying the residence of the payer.

168. The present transaction stands on a materially different factual footing. The underlying pharmaceutical rights, the ANDA regime, the disputed Ready Date Notice, the litigation which preceded the settlement, the alleged obligations of forbearance and the market whose exploitation generated the economic return were all substantially situated outside India.

169. The Revenue's reliance on the judgment rendered by the High Court of Madhya Pradesh in the case of ***CIT v. Alpine Solvex Ltd.***, reported in **(2005) 276 ITR 92 (Madhya Pradesh)** is misplaced inasmuch as ***Alpine Solvex (supra)*** was concerned solely with the question of whether liquidated damages received by an assessee from a defaulting supplier and purchaser for breach of a trading contract could be treated as profit "derived from" an industrial undertaking so as to qualify for deduction under Sections 80HH

and 80-I of the Act of 1961. The Court held that the said provisions were incentive-specific and warranted a "narrow" rather than a "flexible or wider" construction of the phrase "derived from." The matters in hand do not involve any claim for the special deduction under Sections 80HH/80-I that was under consideration in ***Alpine Solvex (supra).*** The narrow interpretation adopted in that case was expressly confined to the statutory scheme of those incentive provisions and cannot be extended, without more, to determine the head of income under Section 14 for receipts of an altogether different character arising in an altogether different statutory context. It offers no support for the Respondent's contention that the receipt in question must be taxed under Section 56(1) of the Act of 1961 as 'income from other sources.'

170. Reliance was also placed by learned special counsel for the Revenue on the decision of the Hon'ble the Supreme Court in the case of ***Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings,*** reported in **2026 INSC 60**, in support of the submission that the AAR was entitled to look behind the form of a transaction and decline to answer a reference where the arrangement was found to be designed for avoidance of tax. We are unable to accept such contention as firstly, the question in Tiger Global (supra) was not whether the income in question accrued or arose in India at all, since the capital gains in issue squarely attracted the business-connection/indirect-transfer provisions of Section 9(1)(i) of the Act of 1961 rather the controversy before Hon'ble the Supreme Court was confined to the distinct question being – whether treaty relief under the India-Mauritius DTAA could be denied on grounds of impermissible avoidance under Chapter X-A of the Act where source-based charge had been established,. The issue in present matters is at the anterior

stage where it needs to be determined whether the payment made by Ranbaxy India to Teva Israel constitutes income accruing or arising in India in the first place.

171. Second, the finding in ***Tiger Global (supra)*** that the arrangement was "prima facie designed for the avoidance of income tax" rested on the invocation of the General Anti-Avoidance Rule under Chapter X-A, which by virtue of Section 96(2) statutorily casts the burden upon the taxpayer to displace the presumption of avoidance.

172. In view of the discussion foregoing, we are of the considered opinion that the Revenue has failed to demonstrate any nexus, much less a real and substantive nexus, between the impugned receipt and the territory of India. Mere payment by an Indian resident to a non-resident ipso facto does not constitute an income accruing or arising in India. The transaction neither falls within any of the specific deeming provisions under Section 5(2)(b) of the Act of 1961 nor of Section 9. In the absence of both, the jurisdictional foundation for issuance of notice under section 148 collapses.

173. Further, the respondents' reliance on the opinion of the US Attorney General does not furnish a legally sound basis for treating the receipt as tainted so as to attract Indian tax liability. An opinion expressed in the course of anti-trust proceedings, particularly one not resulting in any admission of guilt, cannot be elevated to a judicial finding of illegality for the purposes of Section 148 proceedings.

174. For all the aforesaid reasons, we are of the view that the impugned notices dated 29.03.2016 issued under Section 148 of the Act of 1961 for the Assessment Years 2012-13 and 2013-14, and all consequential proceedings initiated thereunder, are without jurisdiction and are liable to be quashed.

175. Accordingly, the writ petitions are allowed. The impugned notices dated 29.03.2016 issued under Section 148 of the Income Tax Act, 1961 for Assessment Years 2012-13 and 2013-14, along with all proceedings consequent thereto, are hereby quashed and set aside.

W.P.(C) 12721/2019

176. The instant writ petition has been filed by Teva USA and Teva Israel conjointly calling in question, the order of the AAR dated 25.10.2019, whereby the AAR had declined to give a ruling as claimed by Teva Israel. Said application under Section 245Q(1) of the Act of 1961 was filed in relation to the nature of income and taxability of the amount, it had received from Ranbaxy India, and following questions were proposed:

> *(i). Whether the Applicant is justified in its contention that amount due/received from Ranbaxy Laboratories Limited ("Ranbaxy India") is in the nature of business profits and is not chargeable to tax in India under the provisions of the Act in the absence of Business Connection in India as per section 9(1)(i) of the Act or under the provisions of Article 7 read with Article 5 of the India-Israel Double Taxation Avoidance Agreement ("DTAA") in the absence of Permanent Establishment in India?*
>
> *(ii). Whether the Applicant is justified in its contention that amount due/received from Ranbaxy India is not taxable as 'Royalty' or 'Fees for technical Services' both under the Act or under the relevant provisions of India-Israel DTAA read with the Protocol thereto?*

177. The basic premise for which the AAR had rejected the application was that the payment which Ranbaxy India had paid to Teva Israel was in furtherance of an illegal transaction and the same was actually meant for Teva USA. In support of its finding regarding the consideration being

illegal, the AAR had relied upon the objection raised by the Attorney General of USA and the consequential deletion of the clause by the parties, so also the fact that the parties had paid a sum of USD 1,50,000/- each as fine.

178. The AAR also observed that the entire transaction was a ploy to avoid tax under the Act of 1961 and hence the authority was not supposed to give ruling as per Section 245R, since the transaction fell foul to clause (iii) of proviso to Section 245(R)(2) of the Act of 1961 being designed for avoidance of tax.

179. We are of the considered view, that the impugned order passed by the Authority for Advance Rulings dated 25.10.2019 is unsustainable in the eyes of law, as it has exceeded the jurisdiction conferred upon it on the one hand and failed to exercise the jurisdiction bestowed upon it under Chapter XIX-B of the Act of 1961.

180. It would not be out of place to discuss the object behind the introduction of Chapter XIX-B in the Act of 1961, which provides for advanced ruling. The Authority for Advance Ruling was constituted with effect from 01.06.1993 by the Finance Act, 1993 with object to enable non-resident assessees to ascertain in advance their tax liability in respect of a transaction undertaken or proposed to be undertaken, so as to plan the affairs in advance and avert or avoid protracted and needless litigation and to foster a spirit of better tax-payer relations. Its scope was subsequently widened to cover transactions of resident applicants as well.

181. Hon'ble the Supreme Court, in ***Columbia Sportswear Company v. Director of Income Tax, Bangalore,*** reported in **(2012) 11 SCC 224**, while examining the nature and scope of the advance ruling mechanism under Chapter XIX-B, has emphasised that the scheme was devised as a

alternative, expeditious forum to provide certainty to an assessee regarding the tax consequences of a transaction, without driving him to conventional and time-consuming assessment and appellate proceedings. This object of avoiding multiplicity of litigation and providing certainty of tax treatment continues to inform the working of the Board for Advance Rulings, constituted under Section 245-OB with effect from 1-9-2021, which now discharges the functions earlier performed by the Authority for Advance Rulings. It is in the backdrop of this legislative object i.e. expeditious and binding determination of tax liability that the advance ruling mechanism was brought in.

182. Section 245R(4) specifies that the AAR is empowered to pronounce its ruling upon a question specified in the application filed before it under sub-section (1) of section 245Q, in relation to a transaction entered into or proposed to be entered into by that applicant. Section 245S makes the ruling binding on the applicant and on the income tax authorities in respect of the transaction and the applicant, thus, making the power to be applicant-specific and transaction-specific. It has no inherent jurisdiction, no appellate jurisdiction, and no jurisdiction beyond the question framed before it in the application.

183. Coming back to the case, the applicant before the Authority in AAR No. 1476 of 2013 was Teva Israel; the question raised was, whether the income received by Teva Israel from Ranbaxy India under the Amended and Restated Agreement was chargeable to tax in India? The question was more specific, whether it constituted business profits and thus, taxable in India under the provisions of the Act and the India-Israel DTAA?

184. The Authority did not deem it apt to answer the question brought before it and rather determined a question that was not before it- that the

income belonged to Teva USA, rather than Teva Israel. And, having determined this self-generated question, it declined to decide the basic question, which was posed before it. This approach of the AAR is erroneous on multiple counts.

185. Firstly, the finding that the income belonged to Teva USA was made behind the back of Teva USA and thus Teva USA was not bound by such finding of the Authority in the proceedings taken under Section 245S. An Authority proceeding under a specific statutory mandate to determine the question of an applicant's tax liability has no jurisdiction to determine, in those very proceedings, the tax liability or the entitlement to income of a third party, who has neither approached it nor is such party before it. The finding of the Authority that "income accrued to Teva USA" is therefore a finding recorded without jurisdiction and is, therefore, a nullity.

186. Secondly, the Authority at paragraph 85 of the impugned ruling has recorded: "*The question regarding the nature of income - whether business income or income from other source - and whether that income arises or accrues in India and is taxable in India, is also required to be decided in the hands of Teva USA only and is-not relevant for the present application*." Having thus acknowledged that the very question regarding taxability was required to be decided in the hands of Teva USA and was therefore not within the scope of the present application, the Authority was supposed to dispose of the application by holding that Teva Israel was not liable to pay any tax under the Act of 1961, as no income has arisen or accrued to it in India. What the Authority was not entitled to do was, to record sweeping findings of collusion and avoidance and the subsequent agreement being a sham; that will follow both Teva Israel and Teva USA in every subsequent proceeding as their shadow.

187. Further, the Authority, having admitted the application under Section 245R(2), ultimately invoked clause (iii) of the proviso to that very provision in its final order dated 25.10.2019 and held that the transaction was *prima-facie* designed for avoidance of income-tax. The statutory scheme, however, draws a distinction between the stage of admission under Section 245R(2) and the stage of pronouncement of the advance ruling under Section 245R(4). The proviso to sub-section (2) specifies the circumstances in which the Authority shall not allow an application to proceed. However, once an application has been allowed, sub-section (4) mandates examination of the material and pronouncement of an advance ruling on the question specified in the application. In the present case, the application had admittedly been allowed to proceed in July 2015.

188. It is pertinent to note that, when the Revenue sought reconsideration of its admissibility, the Authority, by order dated 11-09-2019, expressly declined to reconsider the question of admission, albeit while keeping the parties' contentions open for consideration at the final hearing.

189. In the backdrop of this statutory and procedural position, the Authority's ultimate invocation of clause (iii) of the proviso to Section 245R(2), not merely on merit but also its refusal to answer the questions which were sought to be raised, posits and portrays an example of jurisdictional non-interference. The Authority could undoubtedly examine the entire transaction and the material placed before it, while answering the questions referred to it; what is doubtful is whether, having admitted the application and thereafter expressly declined to reopen its admissibility, could the AAR rely upon the statutory bar contained in Section 245R(2) and dispose of the proceeding on that basis. The impugned order does exactly

this, and therefore, conflates the distinct statutory stages contemplated by sub-sections (2) and (4) of Section 245R.

190. The invocation of clause (iii) of the proviso to Section 245R(2) also requires scrutiny from another perspective. The statutory test is whether the application relates to a transaction which is "designed *prima-facie* for the avoidance of income-tax". The expression "*prima-facie*" makes it clear that the Authority is not required, as a condition precedent, to undertake a final assessment or quantify the precise tax liability avoided. At the same time, a finding of tax avoidance cannot rest in the abstract. The Authority must, at the least, identify the Indian tax incidence which, on a *prima-facie* view of the transaction and the applicable law, the arrangement is designed to avoid, reduce or circumvent. Unless there is a finding of applicability of tax under the Indian laws, the apprehension or even finding of avoidance or evasion goes out of question.

191. In the present case, the Authority held that the income did not belong to the Applicant, but to Teva USA. And, yet declined to determine whether such income accrued or arose in India or was chargeable to tax in the hands of Teva Israel/USA. The sole reason for refusal was that Teva USA was not before it.

192. We are of the considered opinion that having declined to examine that question, the Authority was nevertheless required to identify the juridical basis upon which it concluded that the assignment was designed to avoid Indian income-tax. In absence of a nexus being established in the reasoning of the Authority, the conclusion that the transaction was designed *prima-facie* for avoidance of tax rests without any factual fulcrum and jurisdictional foundation. The observations recorded in paragraph 86 of the impugned ruling read thus:

"86. From the factual position and turn of the events as discussed above we are of the considered opinion that the amended agreement lacked commercial sense and was in the nature of collusive arrangement towards No Challenge Provisions, which was held as unlawful by OAG, and was intended for making illegal payments towards anti-competitive arrangements between Teva USA and Ranbaxy. It is imperative that the bulk of the payments in the amended agreement was towards anti-competitive clause of not to sue any of the pending ANDA as on the date of original agreement for a period of two years a after the end of exclusivity period. The OAG had already held this clause as unenforceable and null and void. It is also relevant to consider that Teva USA did not launch atorvastatin in the US market after the end of 180 days exclusivity period of Ranbaxy. The Applicant has stated that this decision was taken on the basis of the prevailing market conditions. As per amended agreement Teva USA was read)' and willing to step into the place of Ranbaxy during the exclusivity period in case of challenge to Ranbaxy's ANDA and any injunction by any court. This event could have taken place
just before the end of exclusivity period in which case Teva would have launched its product in US market. However, when the exclusivity period ended and the field was wide open, Teva USA decided not to launch the product, when it was eligible to do so. The commercial market of atorvastatin in USA was quite lucrative and it is difficult to accept that a player like Teva will not enter the market after making sustained efforts and facing litigation for years to get its ANDA approved. This shows that there might have been a tacit understanding between Ranbaxy and Teva USA that Teva USA will not launch its product in the US market even after the end of Ranbaxy's exclusivity period, for a further period concurrent with the time period of no challenge provision. Only such an understanding can justify the steep hike in sharing of profit from 15% as stipulated in the original agreement to 50% in the amended agreement."

193. It is noteworthy that, the AAR first proceeded on a hypothesis or conjecture that there “might have been a tacit understanding” between Teva USA and Ranbaxy that Teva USA would refrain from entering the market even after expiry of Ranbaxy's exclusivity period, and proceeded to observe that “only such an understanding” could explain the enhancement of Teva's share from 15% to 50%. Then, based on this conjecture, the AAR premised its conclusion that the arrangement was collusive and constituted a “sham and make belief arrangement”, and was *prima-facie* designed for avoidance of tax. It would not be out of place to reproduce paragraph 87 of the order dated 25.10.2019.

> *“87. The source of payment to the applicant was the revised and reinstated agreement, which was in the nature of collusive arrangement and designed prima-facie for illegal payments towards anti competitive arrangements between Teva USA and Ranbaxy. As the no challenge provision has been held to be illegal by OAG, the arrangement towards such illegal payment and assignment of mere receipts under the revised agreement without assigning the corresponding obligations was also prima-facie for avoidance of tax. The applicant and its affiliate had entered into a sham and make belief arrangement with excellent paper work to camouflage the real and bogus nature of the transactions.”*

194. We have no hesitation in observing that the AAR exceeded the contours set under Chapter XIX-B of the Act of 1961. Section 245R(4) of the Act of 1961 merely empowers the AAR to examine the material placed before it and to determine such incidental issues which are necessary for pronouncing on the questions specified in the application. The said power and scope of inquiry could not be enlarged or stretched to a general jurisdiction to adjudicate upon or a roving inquiry into the commercial

wisdom of parties, or to resolve an underlying contractual controversy governed by foreign law, or infer an undisclosed anti-competitive understanding merely from subsequent commercial conduct. We don't find any reason given by AAR justifying why such determination was necessary for answering the question of taxability referred to it. It is all the more surprising given that on the one hand the AAR declined to answer the Indian taxability question itself- the moot question before it and on the other it embarked upon the adventurous journey in the 'no-go zone' of commercial prudence and went on to record findings of sham and collusive transaction with an intent to tax avoidance.

195. We are also of the opinion that having itself held that the question whether the income accrued or arose in India and whether it was taxable in the hands of Teva USA could not be adjudicated in those proceedings, since Teva USA was not before it, the Authority could not simultaneously employ a speculative inference concerning the conduct and alleged understanding of that very entity, as the foundation for definitive findings of collusion, sham and tax avoidance carrying obvious adverse consequences against it (Teva USA).

196. The impugned ruling proceeded to examine whether the contractual conditions underlying the Ready Date Notice had been satisfied, it questioned why Ranbaxy would have agreed to revise the commercial arrangement and the ruling also drew adverse conclusions from the parties' decision to settle their dispute. We don't find adequate foundation or reference of applicable foreign law or regulatory framework from the reasoning of the AAR, basis which it has purportedly resolved the issue before it.

197. In our view, proceeding from its own assessment of the commercial probabilities surrounding the settlement to recording findings of collusion, the Authority travelled beyond what was required for the determination of the question(s) proposed or arising before it. And in any event, the AAR failed to carve out legal limbs and evidentiary edifice for sustainability of the order – the order impugned is thus unsustainable.

198. There is no gainsaying the fact that the application under Section 245Q of the Act of 1961 was filed by Teva Israel seeking answer to a question as to whether the amount received by it from Ranbaxy Laboratory Limited is in the nature of business profit and is not chargeable to tax under the provisions of Act of 1961. For the reasons foregoing, we are of the view that the AAR was not justified in going into the intricacies of the transaction and business wisdom of the contracting parties and going on fishing and roving enquiry to the extent, which it had attempted to.

199. What was expected of the AAR was to examine the transaction before it and record a finding, but AAR's opinion rather apprehension that the transaction in question was conceived to avoid tax under United States' or Israel's laws is too farfetched. Whether or not Teva USA or Teva Israel had paid tax in their respective country or not, should not and cannot be a concern of the AAR and for that matter any tax authority in India. The treaty and mutual trust enjoins upon them to report such transaction (which as a matter of fact the Indian authority had done). But if the country which is entitled to tax, for whatever reason does not levy tax, for that reason alone, the authorities cannot choose to impose tax – it is usurpation of jurisdiction.

200. The AAR is neither equipped with US competition/patent laws nor is it in know of the US litigation and commercial environment. The AAR is not cognizant of the cost and consequences which a litigation may entail in

US. Unlike India, in United States and other western countries, many persons and companies enter into settlement to avoid cost of litigation, to save time and energy.

201. Learned special counsel for the revenue had argued that the authorities in India had brought to the notice of US authorities, the transaction and alleged evasion of tax by Teva US, but no action had been taken by the authorities of US. According to us, if no action had been taken by US authorities, the authorities of India cannot take action, simply because the authorities of US and Israel chose not to impose tax or have chosen not to exercise their right. The right to tax is not a right of exclusion but a right of exaction – a right conferred by statute. Unless the statute and constitution confers such right, the tax authorities cannot impose tax, simply because some income has not suffered tax under any country's Income Tax Laws.

202. It is to be noted that the payment in question was made in furtherance of a settlement or agreement that had taken place in USA between Teva USA and Ranbaxy USA, which agreement had no semblance or nexus with any activity in India and as there was complete absence of business connection in India, tax under the Act of 1961 cannot be imposed. The singular factor that money had gone from India cannot trigger the charging Section of the Act of 1961. The AAR had, therefore, clearly erred in refusing to decide the application, which it was asked to and which it ought to have decided.

203. In view of the discussion foregoing and for the reasons recorded qua applicability of Sections 5 and 9 of the Act of 1961 and the various judgments relied upon by the revenue as dealt with above (para nos. 153-175), we set aside the impugned order of the AAR and allow the application dated 15.04.2013, so filed by the petitioner under Section 245(Q) of the Act

of 1961 and hold that the payment received by the petitioner from Ranbaxy Laboratory Limited does not attract any tax under the Act of 1961

W.P.(C) 1295/2023

204. In the instant writ petition, the original notice under Section 148 of the Act of 1961 for Assessment Year 2014-15 was issued on 30.06.2021. Pursuant to the judgment of ***Union of India v. Ashish Agarwal*** **(supra)**, all notices under Section 148 issued between 01.04.2021 and 30.06.2021 under the old regime were deemed to be show cause notices under Section 148A(b), a notice under Section 148A(b) was issued on 02.06.2022, to which the petitioner filed its reply on 16.06.2022. The order under Section 148A(d) was passed on 28.07.2022 and the impugned notice under Section 148 came to be issued on 29.07.2022.

205. The Assessing Officer passed the impugned order while observing that the assessee (Teva USA), through its assignee, Teva Israel, was in receipt of an income of Rs.2,50,91,180/- from Ranbaxy India, for which, the petitioner-assessee was obligated to file a return of income in India. It is noteworthy that the Assessing Officer had sought to invoke the extended ten-year limitation under Section 149(1)(b) of the Act of 1961 by treating the bank receipt of Teva Israel as an 'asset' representing the escaped income in the petitioner's hands.

206. As per the material placed before this Court, it is not in dispute that the payments from Ranbaxy India were received in the bank account of Teva Israel, parent company of the petitioner-assessee, and not in any bank account of the assessee (Teva USA). The petitioner submitted that it is Revenue's case that the income, as a matter of fact or in substance, belongs to the petitioner, is stretching the scope of the taxability of the receipt. A deposit in a third party's bank account cannot be treated to be an 'asset' of

the petitioner, within the meaning of the Explanation to Section 149 of the Act of 1961.

207. The existence of a qualifying asset is a jurisdictional fact anterior to, and distinct from, the question of whose income the underlying receipt ultimately represents. The Revenue cannot invoke the extended period under clause (b) by assuming, rather presuming, the answer to the very question that is sought to be examined in the proceedings for reassessment itself. To hold otherwise would render the safeguard in Section 149(1)(b) illusory. In order to bring a case within the ambit of clause (b) including explanation, the asset(s), transaction(s) and entry(ies) should belong to the assessee against whom the Assessing Officer has proceeded.

208. Furthermore, the allegation/finding that the alleged escapement in any manner represents an income in the form of an 'asset', was not contained in the show cause notice dated 02.06.2022, and surfaced for the first time in the order dated 28.07.2022 passed under Section 148A(d) of the Act of 1961, obviously, after the petitioner had submitted its reply. The scheme of Section 148A contemplates that the assessee should be confronted with the information and material relied upon by the Assessing Officer, and be afforded a meaningful opportunity to respond to that specific material, before an order under clause (d) is passed. The AO had not put the assessee to the notice, as to why he had invoked extended period of limitation. Introducing a fresh factual basis for invoking the extended period of limitation at the later stage, without issuing the assessee, a prior notice and opportunity to address it, is contrary to the scheme of the Act of 1961.

209. In these circumstances, this Court is of the view that the precondition for invoking the extended period of ten years under Section 149(1)(b) of the Act of 1961 has not been satisfied. The case must accordingly be tested on

the anvil of the provision and principles governing three years' limitation under Section 149(1)(a).

210. So far as the ordinary period of limitation of three years under Section 149(1)(a) is concerned, considering the fact that the original notice was issued on 30.06.2021, which was also the last date up to which the limitation period stood extended under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as '*TOLA*'), the number of days intervening between the date of the original notice and 30.06.2021 was, zero.

211. In terms of the law laid down by Hon'ble the Supreme Court in *Rajeev Bansal* (2024) 469 ITR 46 (SC), the clock would start ticking after receipt of the assessee's response to the show cause notice; however, the Assessing Officer could utilise only the surviving period available under the Act read with TOLA. Since the notice was issued on last day (30.06.2021), no surviving period remained in the present case, the subsequent proceedings could not have been continued beyond such period.

212. In the present case, no surviving period was available to the Assessing Officer once the exclusion period (running from 02.06.2022 to 16.06.2022 – the date of the petitioner's reply), came to an end, any action taken thereafter was, in the eye of law, barred by limitation. The order under Section 148A(d) which was passed only on 28.07.2022, i.e., 42 days after receipt of the petitioner's reply, and the notice under Section 148 followed on 29.07.2022, a further day later and were, therefore, void and illegal.

213. Even if the respondents is granted the benefit of the fourth proviso to Section 149(1) of the Act of 1961, the proceedings still fall hopelessly beyond limitation – the petitioner submitted its reply on 16.06.2022; if the statutory grace period of 7 days, computed from 16.06.2022 is allowed to

the petitioner, the outer limit available to the Assessing Officer expired on 23.06.2022. Consequently, the passing of the order under Section 148A(d) on 28.07.2022 (after a delay of 35 days) and the issuance of the notice under Section 148 on 29.07.2022 remain squarely time-barred.

214. There is yet another important aspect. A perusal of the impugned order dated 28.07.2022 passed under Section 148A(d) of the Act of 1961, particularly para no. 5.3 reveals that the AO has decided to proceed against the petitioner on the basis of AAR's ruling dated 25.10.2019. In this regard, we would like to observe that firstly, the AAR's order dated 25.10.2019 cannot be said to be a ruling because the AAR had, as a matter of fact, declined to answer to question posed before it and while doing so, an observation was made that the income belongs to Teva USA. Such observation or passing remark, that too in an undecided application can neither be construed to be a finding nor can such observation be used as a jurisdictional fact to initiate proceedings against the petitioner, that too the one who has not received the contentious amount.

215. Viewed from any angle, the order under Section 148A(d) of the Act of 1961 dated 28.07.2022 and the consequential notice under Section 148 dated 29.07.2022 are, therefore, clearly time barred and without jurisdiction, viewed from any angle. The writ petition for AY 2014-15 is thus, allowed. The order under Section 148A(d) dated 28.07.2022 and notice under Section 148 dated 29.07.2022 are hereby quashed.

<u>W.P. (C) 4065/2022</u>

216. We would now like to take writ petition filed by Teva Israel being W.P.(C) 4065/2022, whereby Teva Israel has sought direction to refund the tax, which Ranbaxy had deducted at source, during assessment years 2012-13, 2013-14 and 2014-15. Pertinently, even as per the respondents, the

transactions in question are not exigible to tax in the hands of Teva Israel. And that is why, the Assessing Officer has passed a protective assessment order in the hands of Teva Israel. The sanctity of protective assessment has withstood the judicial scrutiny and therefore, there is no cavil, so far as legality of power of passing protective assessment is concerned, but we can't be oblivious of the legal position that protective assessment is made only in cases where there is doubt about the recipient of the income or the assessee in whose hands such income should be assessed. And when the Assessing Officer is of the view that the income should be assessed in the hands of one assessee then, he passes a substantive assessment order in the name of such assessee but alternatively frames order in name of other assessee so that such income does not escape assessment by expiry of the period of limitation.

217. In the instant case, the respondents have taken a specific plea that because of the transaction in question, income has accrued in the hands of Teva USA and therefore, if they have to succeed, they have to succeed in the case of Teva USA. Their case or plea in the case of Teva USA will either succeed or fail. Because it is the very nature of transaction - as to whether the same amounts to income liable to tax under the Act of 1961 or not is the basic question. Though there is a concept of protective assessment, but there is no concept of protective recovery. In the absence of any provision for protective recovery, the respondents' action of sitting over the refund of the petitioners for assessment years 2012-13, 2013-14 and 2014-15 for more than 10-15 years is utterly arbitrary, to the extent of being confiscatory. The respondents cannot withhold the refund of Teva Israel, even in the guise of proceedings having been undertaken against Teva USA, because the

proceedings against Teva USA initiated under Section 148 of the Act of 1961, stood stayed by this Court.

218. Though we have quashed these notices under Section 148 of the Act of 1961 issued to Teva USA also, but ignoring such order, even if our order accepting the writ petitions filed by Teva USA is not taken into account, for the time being, we have no hesitation in holding that the Refund due to Teva Israel cannot be withheld. We are, therefore, of the considered opinion that this writ petition (W.P.(C)4065/2022) deserves to be allowed and is hereby allowed.

219. The respondents are directed to forthwith refund the entire amount of TDS about 783 crore which Ranbaxy had deducted from the payment made to Teva Israel along with applicable interest within a period of two months from today.

220. The aforesaid refund shall be credited to the bank account of the petitioner, Teva Israel, only upon Teva USA furnishing a Corporate Guarantee / Solvent Security to the satisfaction of the Assessing Officer.

221. The said Corporate Guarantee / Solvent Security shall stipulate that in the event it is ultimately held by the Court or authority that Teva USA is liable to pay tax under the provisions of the Income Tax Act, 1961 in relation to the subject transactions, Teva USA shall pay the required tax demand, subject of course to its right to exhaust all legal remedies available to it under the law. Teva Israel shall also file a corporate guarantee/surety that in case, Teva USA is unable to honor its guarantee; Teva Israel shall pay the entire dues on demand by the respondents.

Conclusion

222. W.P.(C) No. 10711/2017 (AY 2012-13) and W.P.(C) No. 10714/2017

(AY 2013-14), filed by Teva USA impugning the notices issued under Section 148 of the Act of 1961, are allowed. The impugned notices under Section 148, and all consequential proceedings/orders passed pursuant thereto, are hereby quashed, for the reasons recorded in paragraphs 153 to 175 above.

223. W.P.(C) No. 12721/2019, filed by Teva Israel and Teva USA impugning the order dated 25.10.2019 passed by the AAR, is allowed. The impugned order of the AAR is hereby set aside, and the application dated 15.04.2013 filed under Section 245Q of the Act of 1961 is allowed.

224. W.P.(C) No. 1295/2023, filed by Teva USA impugning the order dated 28.07.2022 under Section 148A(d) and the consequential notice dated 29.07.2022 under Section 148 for AY 2014-15, is allowed. The impugned order and notice are hereby quashed as being both time-barred and without jurisdiction, for the reasons recorded in paragraphs 204 to 215 above.

225. W.P.(C) No. 4065/2022, filed by Teva Israel seeking refund of tax deducted at source by Ranbaxy India for AYs 2012-13, 2013-14 and 2014-15, is allowed. The respondents are directed to refund the said amount of TDS (approximately Rs. 783 crore) along with applicable interest, within two months, subject to and upon compliance with the conditions of Corporate Guarantee/Solvent Security recorded in paragraph nos.220 & 221.

226. All pending applications, if any, stand disposed of accordingly.

DINESH MEHTA
(JUDGE)

VINOD KUMAR
(JUDGE)

SEPTEMBER 15, 2026/kk/bu

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:16.09.2026
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