□याय अ□धकरण, "सी" □यायपीठ, चे□नई
PELLATE TRIBUNAL 'C' BENCH, CHENNAI

□ी चं□ पूजारी, लेखा सद□य एवं □ी धु□वु□ आर.एल रे□डी, □याि□यक सद□य के सम□
Before Shri Chandra Poojari, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./**I T.A. No.1123/Mds/2017**
□नधार्रण वष/**Assessment Year:2010-11**

The Deputy Commissioner of Income Tax, Corporate Circle 2(2), Room No. 512, 5th Floor, Wanaparthy Block, 121, M.G. Road, Chennai 600 034.	Vs.	M/s. HSI Automotive Limited, Survey No. 73, óAôBlock, 100, Thandalam (PO), Mevalurkuppam, Sriperumbudur, Kancheepuram, 602 105. **[PAN:AAACH2804E]**
(अपीलाथ□ /Appellant)		**(□□यथ□/Respondent)**

अपीलाथ□ क□ ओर से / Appellant by	:	Shri K. Ravi, JCIT
□□यथ□ क□ ओर से/Respondent by	:	Shri H. Chandrasekaran, C.A.
सुनवाई क□ तार□ख/ Date of hearing	:	27.09.2017
घोषणा क□ तार□ख /Date of Pronouncement	:	27.10.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the ld. Commissioner of Income Tax (Appeals) 6, Chennai dated 27.02.2017 relevant to the assessment year 2010-11. The Revenue has raised three grounds in its appeal viz., (i) the ld. CIT(A) has erred in deleting the disallowance made on account of scientific expenses claimed under section 35(1) of the Income Tax Act, 1961 [ñActò in short], (ii) the ld. CIT(A) has erred in excluding the investments made by the assessee in its subsidiary

ed in allowing the depreciation on software @ 60% instead of 25%.

2. Brief facts of the case are that the assessee is engaged in the manufacture of automotive rubber components and filed its return of income admitting NIL income after setting off of carry forward depreciation loss. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued to the assessee. In response thereto, the assessee filed all details. After considering the submissions of the assessee as well as verifying the details filed by the assessee, the assessment under section 143(3) of the Act was completed by assessing total income of the assessee at ضي2,54,92,381/- after making various additions and also assessed the book profit at ضي5,60,42,854/-.

3. The assessee carried the matter in appeal before the ld. CIT(A) and challenged various additions made by the Assessing Officer. After considering the submissions of the assessee, the ld. CIT(A) partly allowed the appeal filed by the assessee.

4. Aggrieved, the Revenue is in appeal before the Tribunal. With regard to the claim made by the assessee on account of scientific expenses under section 35(1) of the Act, the ld. DR has submitted that the assessee has not

a research association which has as its object to the undertaking of scientific & research or to a university, college or other institutions to be used for scientific research. To admit such claim, it is mandatory to furnish report in Rule 6(1) of the IT Rules. Without considering these facts, the ld. CIT(A) went in wrong to direct the Assessing Officer to allow 1/5th of such expenditure as was allowed in earlier assessment years and pleaded that the order of the ld. CIT(A) should be reversed.

5. On the other hand, the ld. Counsel for the assessee supported the order passed by the ld. CIT(A).

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. From the computation of income, the Assessing Officer noticed that the assessee had claimed research and development expenses under section 35(1) of the Act at ضي4,18,14,096/-. Against specific query, it was the submission of the assessee during the course of scrutiny proceedings that the nature of which expenditure claimed under R & D expenses has been treated as deferred revenue expenses. The treatment of the said expenditure to be in the nature of deferred revenue itself suggests that the expenses shall be allowed spread over a specific time period as per Act. After examining the issue in detail and since for the assessment years 2007-08 and 2008-09, the ld. CIT(A) has confirmed the said treatment by the Department as the said

revenue expenses allowable in five equal installments. Accordingly, for the current assessment year in consideration, the said expenditure was restricted to ضي83,62,819/- and the balance was added back to the total income of the assessee. On appeal, the ld. CIT(A) has observed in para 4.2 as under:

> *"4.2 Per contra, in the written submissions filed, the appellant without prejudice to its contention of allowance of the entire amount, has stated that based on the decision of my predecessor Commissioner of Income Tax (Appeals) in earlier years the appellant is entitled for the allowance of 1/5th of the amount spent during F.Y. 2006-07 being ₹.2,24,86,549/- [i.e., 1/5th of ₹.11,24,32,995/-] and 1/5th of the amount spent during F.Y. 2007-08 being ₹.1,60,23,062/- [i.e. 1/5th of ₹.8,01,15,310/-]"*

6.1 From the above, it is stated that during the financial year 2006-07 relevant to the assessment year 2007-08, the assessee is entitled for the allowance of only ضي2,24,86,549/- [i.e., 1/5th of ضي11,24,32,995/-]. The above observations of the ld. CIT(A) appears to be contrary to that of the appellate order, because, for the assessment year 2007-08, the ld. CIT(A) gave a finding in his order at para 4.5.11, which is reproduced as under:

> *"4.5.11 Therefore, the above "product perfection expenses", which are classified by the assessee as 'scientific expenses' in its books, are essentially revenue expenses incurred by the assessee during the regular course of the existing business of 'automobile component manufacturing'. Hence, these expenses are allowable as normal business expenses, for the purpose of computing the taxable income under the head 'income from business'. The Assessing Officer is directed to allow the above expenditure of ₹.11,24,32,995/- as an allowable revenue expenditure. The assessee succeeds in the appeals in this regard".*

ler any specific provisions of section, the assessee is required to satisfy the terms and conditions as stipulated in the relevant section(s). In this case, the assessee made the claim of expenditure of ضي4,18,14,096/- under section 35(1) of the Act. But, before restricting the claim to the extent of ضي83,62,819/- the Assessing Officer has not given any findings as to whether the assessee has satisfied the conditions laid down under section 35(1) of the Act as contended by the ld. DR as well as the ground No.2.3. Under the above facts and circumstances, we direct the Assessing Officer to verify the claim of the assessee and decide the issue by passing a speaking order in accordance with law after ensuring that the assessee satisfies all the requirements of the relevant provisions of the Act.

7. The next ground raised in the appeal of the Revenue is with regard to disallowance under section 14A r.w. Rule 8D. From the Schedule 6 ï Investments, the Assessing Officer noticed that the assessee had investments of ضي18,51,00,000/- in subsidiary company M/s. Hwaseung Materials India P. Ltd. and not admitted any expenditure towards maintaining the above investments in the profit and loss account. Accordingly, by invoking the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the expenditure component for maintaining the above investments in the subsidiary at ضي58,89,190/- and brought to tax.

ering the submissions of the assessee and by following the decision in the case of Redington (India) Ltd v. Addl. CIT in TCA No. 520 of 2013 dated 23.12.2016, the ld. CIT(A) deleted the disallowance against which, the Revenue is in appeal.

7.2 The only contention advanced by the ld. DR is that the Department has not accepted the decision in the case of Redington (India) Ltd. v. Addl.CIT and preferred further appeal and pleaded that the order of the ld. CIT(A) on this issue should be set aside. On the other hand, the ld. Counsel for the assessee has submitted that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court and prayed that the same should be followed to decide the issue.

7.3 We have heard rival contentions. Admittedly, the assessee has made investment in its subsidiary M/s. Hwaseung Materials India P. Ltd. of ضي18,51,00,000/-. It is also an admitted fact that the assessee has not claimed any exempt income out of the investments made. In the case of Redington (India) Ltd v. Addl. CIT (supra), by following the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. v. CIT 225 ITR 802, the Hon'ble Jurisdictional High Court has observed that where there was no exempt income, there cannot be a disallowance of expenditure in relation to such assumed income and accordingly, the ld. CIT(A) deleted the disallowance made in this case. The

urisdictional High Court was not reversed or modified by the higher Court. Thus, we find no infirmity in the order passed by the ld. CIT(A) on this issue and hence, the ground raised by the Revenue is dismissed.

8. The next ground raised in the appeal of the Revenue is with regard to the claim of depreciation @ 60% in respect of computer software. In the assessment order, the Assessing Officer observed that the assessee has claimed depreciation on computer software amounting to ضي30,06,064/- [wrongly mentioned as 13,06,064/-]. After considering the submissions of the assessee, the Assessing Officer held that the assessee is eligible for depreciation @ 15% as allowable for ôPlant and Machineryôand the balance 45% of ضي30,06,064/- amounting to ضي25,55,154/- was disallowed and brought to tax.

8.1 On appeal, after considering the submissions of the assessee, the ld. CIT(A) was of the opinion that the purchase of software, being a revenue expenditure, the claim of the assessee for the ERP programme at 60% is a valid claim and accordingly, he directed the Assessing Officer to allow the depreciation at 60% as claimed by the assessee.

is in appeal before the Tribunal. The ld. DR has submitted that the assessee is eligible to claim depreciation at the rate of 25% and not 60%.

8.3 We have heard rival contentions. The assessee has claimed depreciation on computer and computer software at 60%. The Assessing Officer allowed depreciation at the rate of 15% and the balance 45% was disallowed. Before the ld. CIT(A), the assessee has submitted that during the year under consideration, the assessee purchased software and the same is very much eligible to claim depreciation at the rate of 60%. Alternatively, it was also submitted that the assessee is eligible to claim the entire amount as revenue expenditure. After considering the submissions of the assessee, the ld. CIT(A) directed the Assessing Officer to allow the depreciation at 60% as claimed by the assessee. On perusal of the Depreciation Schedule, the assessee is eligible to claim depreciation at the rate of 60 per cent on purchase of computer software and moreover, various Courts have also held that the assessee is eligible to claim 60% depreciation on computers including computer software. Therefore, the submission of the ld. DR that the assessee is eligible to claim depreciation @ 25% only is not acceptable. Otherwise also, various Courts have held that the purchase of software has been allowed as revenue expenditure as the assessee has alternatively claimed before the ld. CIT(A). Accordingly, we find no infirmity

. CIT(A) on this issue and thus, the ground raised by the Revenue is dismissed.

9. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on the 27th October, 2017 at Chennai.

Sd/-	Sd/-
(CHANDRA POOJARI)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 27.10.2017

Vm/-

आदेश क□ □□त□ल□प अ□ेषित/Copy to: 1. अपीलाथ□/Appellant, 2.□□यथ□/ Respondent, 3. आयकर आयु□त (अपील)/CIT(A), 4. आयकर आयु□त/CIT, 5. □वभागीय □□त□नध/DR & 6. गाड□फाईल/GF.