IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

IT(TP)A No.339/Bang/2015
(Assessment year: 2010-11)

Deputy Commissioner of Income-tax,
Circle 5(1)(2),
Bengaluru. … Appellant

Vs.

M/s.Quintiles Research (India) Pvt. Ltd.
2nd floor, Etamin Block, Prestige Technology
Park II, Sarjapur-Marathahalli Outer Ring Road,
Bengaluru-560103. … Respondent

Appellant by : Ms.Neera Malhotra, CIT(DR).
Respondent by : Ms. Ramya Nayak, CA.

Date of hearing : 18/12/2017
Date of pronouncement : 28/02/2018

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the revenue directed against the assessment order dated 09/01/2015 passed u/s 143(3) r.w.s. 144C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] for the assessment year 2010-11.

2. Briefly facts of the case are that the respondent-assessee is a company duly incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of rendering services related to clinical research on behalf of pharmaceutical biotechnology, health care companies. The return of income for the assessment year 2010-11 was

filed on 29/09/2010 declaring income of Rs.19,18,480/- after claiming exemption u/s 80-IB(8A) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. The assessee-company also reported certain international transactions. Therefore, the AO referred the matter to the Transfer Pricing Officer (TPO) for the purpose of bench marking the above international transactions. The TPO, vide order dated 30/01/2014 passed u/s 92CA of the Act, suggested TP adjustments in respect of payment of management fees of Rs.2,54,06,517/- and cost alloction expenditure of Rs.3,53,23,450/-. The AO passed draft assessment order incorporating the above TP adjustments and denying deduction claimed u/s 80-IB of the Act.

3. After receipt of the draft assessment order, the assessee-company filed objections before the Hon'ble Dispute Resolution Panel (DRP). The Hon'ble DRP issued directions to the AO to allow deduction u/s 80-IB of the Act and the assessment order was passed allowing the claim made u/s 80-IB of the Act.

4. Being aggrieved by this assessment order, the revenue is in appeal before us. The revenue raised the following ground of appeal:

> i) On the facts and in the circumstances of the case the Dispute Resolution Panel erred in deleting that addition made without appreciating the findings of the Assessing Officer that the fixed assets of the assessee do not show any infrastructure facility for undertaking scientific R & D of its own and the assessee has not fulfilled the conditions laid down by the IT Rules for claim of deduction u/s 80(IB)(8A) and the Assessing Officer is very well within his jurisdiction to reject the same if the same is found to be violated.

5. We heard rival submissions and perused the material on record. The issue in the appeal is no longer *res integra* as it is covered by the decision of the co-ordinate bench of the Tribunal in the assessee's own case for assessment year 2009-10 in IT(TP)A No.308/Bang/2014 dated 10/11/2017 wherein it was held as follows:

> *4. Having carefully examined the orders of the lower authorities and the order of the Tribunal in the assessee's own case for the immediate preceding year, we find that this issue is squarely covered by the order of the Tribunal in favour of the assessee and for the sake of reference, we extract the order of the Tribunal as under:-*

"20. We have given a careful consideration to the rival submissions. The requirement for claiming deduction u/s 80-lB(8A) read with sec.80-IB(1) of the IT Act, 1961 are that the assessee should have derived profit & gains from the business of carrying on scientific R&D. The assessee should be a company. We are not re-producing relevant provisions of the Act and the Rules as the same have been set out in the earlier part of this order. In the present case, there is no dispute by the revenue that the conditions mentioned in sec.80-IB(8A)(i) to (iii) are satisfied. The dispute is only with regard to(iv) which refers to the Rules prescribed. Rule I8DA(1)(a) to (f) prescribes several conditions. In the present case, the revenue disputes that the assessee does not specify the conditions laid down in Rule 18DA(1)(c) and (e) of the Rules, 1962.

27. As far as the requirement of Rule 18DA(1)(c) of the Rules are concerned, it has been the contention of the revenue that the infrastructure facilities such as laboratory facilities, prototype facilities etc., should be owned by the assessee. In this regard, we find that the deduction u/s 80IB(8A) of the IT Act is not dependent on capital investment. In this regard, we have already referred to the memorandum explaining the provisions of sec80-IB(8A) of the Act introduced by the Finance (No.2) Bill 1996. The Memorandum clearly recognizes that deduction is to an undertaking carrying out scientific A & D. in the light of the object of the provision, we are of the view that 'expression of its own' found in Rule 18DA(1)(c qualifies the words scientific A & D and not the earlier part of the Rule which refers to the existence of the infrastructure. We are therefore, of the view that this basis given by the revenue authorities for denying the benefit of deduction u/s 80-lB of the Act cannot be sustained.

28. With regard to the fulfillment of the conditions mentioned in Rule 18DA(1) (e) of the IT Act, we find that Rule talks about transfer of technology developed by themselves. The question is as to whether the aforesaid expression should be construed to mean that the scientific R & D undertaken by the assessee should be on its own or even where such scientific A & D is carried out on behalf of the client under a contract, the assessee should be allowed deduction. In this regard, we have gone through the entire Rule 18DA of the IT Rules, 1962. Sub-rule (5) gives documents that are required to be given to the prescribed authority for getting approval and clause-(c) of the said Rules requires the Assessee to give photocopies of the memorandum of understanding relating to all ongoing and future sponsored research projects or programme. It can thus be seen that the Rules clearly contemplate even sponsored research programmes. The above requirements gives a clear indication that even contract research and profits derived there from are covered under the provisions of sec.80-IB (8A) of the Act, 1961.

29. We also find that the form prescribed by the guidelines for approval R&D company, u/s 80-IB(8A) of the IT Act issued by

the Department of Science and Industrial Research, Ministry of Science & Technology gives an indication that even contract research is covered by provisions of sec. 334(8A) of the IT Act, 1961. The form so prescribed is given as an ***Annexure-A to this order****. In Part-C of the said form in col.5 & 6 the information with regard to R&D projects and programmes have been sought for. The patent, if any have been obtained have also asked for. The technology developed and transferred particulars are also asked for. The assessee in its application for recognition as well as renewal has duly admitted the fact that it was only contract research and therefore, all this requirements do not arise for consideration. The following are the observations made by the assessee in its application for recognition to the prescribed authority.*

5. Patents filed/obtained in India/abroad during the last three years. Sl.No Products/process Name of the Country(s) Year (Attach copies of sealed patents)

As company is doing on behalf of the clients, final results of research are sent to clients for its further process. Patents, if any of the related research is filed by the respective clients at their respective country as per the final outcome of a particular research study.

6. Details of technology developed and transferred to other arties during each of the last three completed accounting years giving names of parties and details of technology transferred (i.Ie amount of royalties/premium/technology/transfer fee received).

Though company is using its owned technology as well as knowledge bank in form of standard operating procedures (SOPs) for conduct of a research project of an International standard, ultimate research results of var!ous research projects undertaken by the company were transferred by the company to the clients".

30. In the present case, it is not disputed that the entire receipts of the assessee are from contract research and not own research. It is also pertinent to mention that in the appendix to the form for approval to the renewal there is a specific column namely col.no.2 & 3 dealing with contract research. The said column seek details of sponsorship fee (if any,) name of the sponsors if, any. It is, thus clear that the forms contemplates a sponsor research (contract research) as also falling within the ambit of sec.80-IB(8A) of the IT Act, 1961.

31. It is also relevant to note that the prescribed authority after being fully conscious of the Act that the assessee is only a CRO has still though it fit to grant 80-lB(8A) of the IT Act, 1961. It thus clear that on a overall reading of the relevant provisions and Rules that the deduction u/s 80IB(8A) of the IT Act, would be allowed to a GAO. The decision of the Hon'ble Delhi ITAT in the case of Fortis Clinical Research Ltd., also supports the aforesaid view. In the aforesaid case, though the issue as to whether the GAO are also covered u/s 80-IB(8A) of the Act was not directly in issue,

yet, it is an authority for the proposition that any violation of the conditions of the Rule 18DA(8A) can be looked into only by the prescribed authorities and not by the AO, while completing the assessment. In that view of the matter, we are of the view that the revenue authorities fell with an error in denying the claim of the assessee. We therefore, hold that the assessee would be entitled to claim for deduction u/s 80-lB(8A) of the IT Act, 1961. The AO is directed to allow the claim for deduction. The relevant ground of appeal raised by the assessee is allowed."

5. Since the Tribunal has taken a particular view in a similar set of facts, we find no fortification to take a contrary view in this appeal. Accordingly, following the same, we decide the issue in favour of the assessee."

Respectfully following the ratio of the decision of the co-ordinate bench, we dismiss the ground of appeal filed by the revenue.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 28th February, 2018

sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bengaluru.
D a t e d : 28/02/2018
srinivasulu, sps

Copy to :

1 Appellant
2 Respondent
3 CIT(A)
4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore