

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

**BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.1900/Chny/2017

निर्धारण वर्ष /Assessment Year: 2013-14

The Asst. Commissioner of Income- Tax,
Corporate Circle-2,
Madurai.
(अपीलार्थी/Appellant)

Vs. M/s.Sri Kaliswari Fireworks-
(P) Ltd.,
5A, Chairman Shanmuga
Nadar Road,
Sivakasi-626 123.
[PAN: AABCS 5353 A]
(प्रत्यर्थी/Respondent)

Department by : Mrs.S.Vijayaprabha, JCIT
Assessee by : Mr.V.Srikrishnan, CA
सुनवाई की तारीख/Date of Hearing : 01.03.2018
घोषणा की तारीख /Date of Pronouncement : 01.03.2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.1900/Chny/2017 is an appeal filed by the Revenue against the Order of the Commissioner of Income Tax (Appeals)-1, Madurai, in ITA No.006/2016-17 dated 09.05.2017 for the AY 2013-14.

2. Mrs.S.Vijayaprabha, JCIT, represented on behalf of the Revenue and Mr.V.Srikrishnan, CA, represented on behalf of the assessee.

3. It was submitted by the Ld.AR that in the return filed by the assessee, the assessee had made a claim of deduction u/s.35(2AB). It

was a submission that as the necessary certificate required for the claim of deduction u/s.35(2AB) was not provided, the claim of deduction was not allowed. The assessee by way of a written note before the AO, made an alternate claim u/s.35(1)(iv) r.w.s.35(2). It was a submission that as the claim was not made in the return, the fresh claim made u/s.35(1)(iv) was also not entertained. It was a submission that on appeal, the Ld.CIT(A) allowed the claim u/s.35(1)(iv) r.w.s.35(2). It was a submission that as the claim had not been made in the return, the Ld.CIT(A) ought not to have considered, the benefit of deduction. It was a prayer that the order of the Ld.CIT(A) was liable to be reversed.

4. In reply, the Ld.AR vehemently supported the order of the Ld.CIT(A).

5. It was a submission that there was no provision to make both the claims u/s.35(2AB) and u/s.35(1)(iv) r.w.s.35(2). It was a prayer that the alternate claim was made u/s.35(1)(iv) r.w.s.35(2) as the main claim of the assessee u/s.35(2AB) had been denied by the AO.

6. We have considered the rival submissions.

7. Admittedly, the assessee has made a claim u/s.35(2AB) in the return of income filed. The claim has been denied on account of the non-production of the necessary certificate/approval from DSIR.

Consequently, the assessee has raised an alternate claim u/s.35(1)(iv) r.w.s.35(2). This claim has been made in the course of the assessment. A perusal of the order of the Ld.CIT(A) shows that all the facts required for making the alternate claim and verification thereof was available before the AO. This being so and this fact being undisputed, in view of the decision of the Hon'ble Supreme Court in the case of M/s.Goetze India Ltd. Vs. CIT reported in 284 ITR 323, the issue of the claim of deduction u/s.35(1)(iv) r.w.s.35(2) is restored to the file of the AO for adjudication after granting the assessee adequate opportunity to substantiate its claim.

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

Order pronounced in the Open Court on March 01, 2018, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P.GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: March 01, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF