

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.2292/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Thejo Engineering Ltd., No.41, Aysha Building Whites Road, Royapettah, Chennai – 600 004.	Vs	The ACIT, Corporate Circle 3(4), Chennai – 34.
PAN: AACT1261F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Smt. S. Vijayaprabha, JCIT
सुनवाई की तारीख/Date of hearing	:	12.06.2018
घोषणा की तारीख /Date of Pronouncement	:	03.08.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax(Appeals)-11, Chennai, dated 28.06.2017 in ITA No.343/2016-17/CIT(A)-11 for the assessment year 2014-15 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The appeal was filed by the assessee with a delay of one day. The assessee has submitted an affidavit before us stating that the

Senior Manager Accounts who is dealing with the matter went on official tour without intimating the concerned officer by oversight, due to which the delay had occurred. Hence it was pleaded that the delay of one day in filing the appeal may be condoned. The Ld. DR strongly objected to the submission of the Ld. AR. However, after hearing both sides, though we do not appreciate the lapse on the part of the assessee, in the interest of justice, we hereby condone the delay in filing the appeal and proceed to hear the matter on merits.

3. The assessee has raised three grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in disallowing the claim of deduction U/s.35(1)(iv) of the Act with respect to the amount that is not approved by DSIR for claiming weighted deduction U/s.35(2AB) of the Act.

4. The brief facts of the case are that the assessee is a limited company engaged in the business of providing engineering solutions, filed its return of income for the assessment year 2014-15 on 29.11.2014 admitting total income of Rs.11,22,49,820/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS. Notice U/s.143(2) of the

Act was served on 18.09.2015. Finally assessment order was passed U/s.143(3) of the Act on 30.12.2016 wherein the Ld.AO had made addition of Rs.64,780/- towards disallowance U/s. 36(1)(va) r.w.s. 2(24)(x) of the Act and Rs.70,71,556/- towards disallowance of deduction claimed U/s.35(2AB) of the Act.

5. During the course of scrutiny assessment proceedings it was observed by the Ld.AO that the assessee company had claimed weighted deduction @ 200% in respect of expenditure incurred towards scientific research and development U/s.35(2AB) of the Act as detailed below:-

	<i>Expenditure</i>	<i>Eligible Deduction</i>	<i>Amount Debited to P & L a/c</i>
<i>Revenue expenditure</i>	56,54,658	1,13,09,316	56,54,658
<i>Capital expenditure</i>	7,08,449	14,16,898	0
<i>Total</i>	63,63,107	1,27,26,214	56,54,658
<i>Balance amount deductible u/s 35</i>			70,71,556

Since the assessee did not produce Form 3CL and 3CM as per the provisions of the Act, the Ld.AO disallowed the claim of deduction U/s.35(2AB) of the Act amounting to Rs.70,71,556/-. On appeal, the Ld.CIT(A) allowed the claim of weighted deduction @ 200% amounting to Rs.96.42 lakhs because the DSIR had allowed the expenditure of Rs.48.21 lakhs. Thus the remaining claim of weighted

deduction U/s.35(2AB) of the Act amounting to Rs.57.84 lakhs was denied. Thereafter as an alternate plea the assessee claimed the aggregate expenditure of Rs.28.92 lakhs (57.84/2) as deduction U/s.35(1) of the Act, which was denied by the Ld.CIT(A) because the appellant has obtained the benefit of weighted deduction under a specific provision and it was opined that further deduction for the amount unapproved by the prescribed authority cannot be allowed as deduction U/s.35(1) of the Act. Against the denial of deduction U/s.35(1) of the Act, the assessee is now in appeal before us.

6. Before us, the Ld.AR relied in the decision of the case ACIT vs. Bhagiradha Chemicals & Industries Ltd., ITA No.906/Hyd/2009 wherein it was held that merely because part of the expenditure was rejected by the prescribed authority for claiming deduction U/s.35(2AB) of the Act, it would not render the same to be ineligible for deduction U/s.35(1)(iv) of the Act. On perusing the order of the Ld.AO and the Ld.CIT(A), we find that the decision of the Tribunal cited supra has not been considered by the Ld.Revenue Authorities while deciding the case of the assessee. Therefore in the interest of justice, we hereby remit back the matter to the file of Ld.AO to consider the alternate claim made by the assessee before the

Ld.CIT(A) in the light of the decision of the Tribunal cited *supra* and thereafter pass appropriate order in accordance with merit and law.

7. In the result appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced on the 03rd August, 2018 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 03rd August, 2018

RSR

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 |