

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.1072/Hyd/2017
(Assessment Year: 2012-13)

Dy. Commissioner of Income Tax, Circle 2(2) Hyderabad <i>(Appellant)</i>	Vs	M/s. GVK Biosciences Private Limited Hyderabad PAN: AABCG3208J <i>(Respondent)</i>
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For Revenue :	Shri Y.V.S.T. Sai, CIT-DR
For Assessee:	Shri V. Siva Kumar

Date of Hearing:	05.02.2019
Date of Pronouncement:	20.02.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is Revenue's appeal for the A.Y 2012-13 against the order of the CIT (A)-1, Guntur, dated 24.03.2017.

2. Brief facts of the case are that the assessee company, engaged in the business of service activity in the field of Bio-Informatics, Contract Research Services etc., filed its return of income for the A.Y 2012-13 on 30.10.2012 admitting total income of Rs.25,85,65,930 after claiming deduction of Rs.56,58,05,407/- u/s 80IB of the Act. Subsequently, the assessee company filed its revised return of income on 28.03.2014 declaring an income of Rs.23,61,93,160/-. The case was selected for scrutiny under

CASS and accordingly notices were issued and served on the assessee.

3. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee computed the total deduction u/s 80IB(8A) at Rs.62,13,03,837/-. The AO observed that the assessee during the A.Ys 2005-06 and 2006-07, claimed deductions u/s 10B on Clinical Pharmacology and Medicinal Chemistry Divisions and for the reasons mentioned in the assessment order, the deduction claimed u/s 10B was disallowed. He observed that during the appellate proceedings, the assessee company did not press the grounds against the said disallowance, but instead had taken alternate ground that the deduction should have been allowed u/s 80IB(8A) of the Act and that the learned CIT (A) called for a remand report from the AO. After taking into consideration, the remand report of the AO, the CIT (A) dismissed the grounds raised by the assessee. Following the same, the AO disallowed the deduction u/s 80IB(8A) on the ground that the assessee is not independently carrying on scientific research but is a contract researcher. Aggrieved, the assessee preferred an appeal before the CIT (A) who allowed the same by following the decision of the ITAT in the assessee's own case for the earlier A.Ys i.e. 2008-09 and 2010-11. Aggrieved by the relief granted by the CIT (A), the Revenue is in appeal before us by raising the following grounds of appeal:

"1. In the facts and circumstances of the case, whether the CIT (A) is correct in law in allowing the assessee's claim of deduction u/s 80IB only on the pretext that the assessee has got approval from the prescribed authority even though the assessee has not fulfilled the other conditions laid down u/s 80IB like the assessee

company has to independently carry on scientific research & development activities and the company should have formulated its own Research and Development programme etc., to claim such deduction.

2. Any other grounds that may be urged at the time of hearing”.

4. The learned DR supported the order of the AO and further submitted that the assessee possesses only software and no intangible assets and therefore, it cannot be said to be carrying on independent research. The learned Counsel for the assessee, on the other hand, submitted that this issue had arisen in the earlier A.Ys and after considering the issue on merits, the Tribunal has allowed the deduction of the assessee.

5. Upon hearing both the parties, we find that this issue had arisen for the first time during the A.Ys 2005-06 and 2006-07 and the Tribunal after considering the issue at length directed the AO to allow the claim of deduction u/s 80IB(8A) of the Act. The relevant paras are reproduced hereunder for ready reference:

“37. We have considered the submissions of the parties and perused the materials on record including the documents submitted in the paper book. We have also applied our mind to the decisions relied upon by the parties. It is not disputed that the assessee has obtained approval from the prescribed authority as a research and development company for availing of deduction under section 80-IB(8A) of the Act. However, such claim of deduction is subject to fulfilment of other conditions as prescribed under section 80-IB(8A) and rule 18DA of the Income-tax Rules. While the assessee has claimed that it had fulfilled all the conditions and the prescribed authority could not have renewed the approval granted had there been any material to indicate that the assessee has not carried out research and development work, the statutory authorities were not justified in over-riding the approval granted by the prescribed authority and denying the claim of deduction under section 80-IB(8A). Whereas it is the conclusion of the Commissioner of Income-tax (Appeals)

that the assessee has not fulfilled the conditions for claiming deduction under section 80-IB(8A) of the Act. The reason for coming to such conclusion, as can be seen from his finding extracted hereinabove, is on the basis of the fact that the assessee has not produced any supporting evidence to substantiate its claim. As can be seen from the fact on record, the claim of deduction under section 80-IB(8A) was denied by the Commissioner of Income-tax (Appeals) mainly on the basis of the fact that the assessee has not furnished evidence to show that it has fulfilled all the conditions as laid down under rule 18DA of the Income-tax Rules.

*38. However, fact remains that the prescribed authority under the Act has not only approved the assessee as a research and development company eligible for deduction under section 80-IB(8A) but has also renewed such approval from time to time. The approval granted and subsequent renewal of the approval does reveal the fact that the prescribed authority has granted such approval and subsequent renewal being satisfied with the fact that the assessee is eligible for availing of deduction under section 80-IB(8A) of the Act. The fact on record also reveal that before the first appellate authority, the assessee had produced all the details to demonstrate the fact that the conditions enshrined for availing of the benefit under section 80-IB(8A) of the Act has been fulfilled. In the aforesaid view of the matter, the Commissioner of Income-tax (Appeals) cannot over-ride the approval/ renewal granted by the prescribed authority and deny the benefit to the assessee by merely stating that the assessee has not been able to furnish evidence. The Commissioner of Income-tax (Appeals) has not mentioned what more clinching evidence was required to establish the claim of the assessee. That apart when the prescribed authority has granted approval/ renewal to the assessee as a research and development organisation it is eligible for deduction under section 80-IB(8A) of the Act. The statutory authority cannot deny such benefit to the assessee during subsistence of such approval granted by the prescribed authority. The co-ordinate Bench of this Tribunal while considering a similar issue in the case of *Asstt. CIT v. Small is Beautiful* [2013] 60 SOT 153 (URO)/38 taxmann.com 310 (Hyd.) after following the decision of the Ahmedabad Bench in the case of *ITO v. Gujarat Information Technology Fund* [2011] 45 SOT 529 (URO)/11 taxmann.com 206 has held that the assessee is entitled to avail exemption under section 10(23FB) till the certificate granted by the SEBI is not specifically withdrawn. In the appeal before us, admittedly there is no material on record before us to show that the approval granted by the assessee has been withdrawn by the prescribed authority. In the aforesaid circumstances, therefore the deduction claimed under section 80-*

IB(8A) cannot be denied to the assessee till such time the assessee is approved as research and development organisation by the prescribed authority. In the aforesaid view of the matter, we set aside the order of the Commissioner of Income-tax (Appeals) on this issue and direct the Assessing Officer to allow the claim of deduction under section 80-IB(8A) of the Act. We may further make it clear that this decision of ours, allowing assessee's claim of deduction under section 80-IB(8A) is on considering the facts involved in the present appeal and is confined to the assessment year under consideration before us and it cannot be construed to uniformly apply to the subsequent assessment years also. The claim of deduction under section 80-IB(8A) of the Act for the subsequent assessment years will have to be decided on the basis of the facts as may be involved in those assessment years”.

However, it is observed that the decision is restricted to the A.Ys under consideration i.e. 2005-06 & 2006-07. Subsequently, the Tribunal for the A.Ys 2008-09 allowed the deduction by following the above order. Further, in the appeal for the A.Ys 2009-10, 2010-11 and 2011-12, taking into consideration the certificates issued by the prescribed authority which were renewed from time to time and taking note of the observation of the Tribunal in the A.Ys 2005-06 & 2006-07, the ITAT observed that it is not a blanket approval for all the years and observed as under:

“8. We have considered the rival contentions and perused the orders placed on record. In the light of the decision of the ITAT in assessee's own case for earlier years, which the Ld.CIT(A) has followed, we do not see any reason to differ from the order of the CIT(A). It is true that ITAT has stated that the claim has to be examined in each of the years and left a note of caution that the view taken therein may not apply to subsequent years, if there are change of facts. However, as seen from the approval granted, there are no change of facts and assessee is found to be eligible for deduction u/s. 80IB. In view of that, as the issue is squarely covered by the earlier decision, we uphold the order of CIT(A) and dismiss the Revenue grounds on this in all the years.

We find the authorities were renewing the certificates after verifying whether the assessee is fulfilling the requisite conditions.

The CIT (A), therefore, verified that the prescribed authority has renewed the certificate for the A.Y 2012-13 and thereafter considered the ITAT orders to grant relief to the assessee.

6. We find that the facts and circumstances of the case in this A.Y are also the same as in the earlier A.Ys before the ITAT, and the learned DR has not been able to rebut the findings of the CIT (A). In view of the same, the appeal of the Revenue is dismissed.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the Open Court on 20th February, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 20th February, 2019.

Vinodan/sps

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- 3 CIT (A)-1, Guntur
- 4 Pr. CIT – II Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order