

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “A” BENCH: BANGALORE
BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA. No.2138/Bang/2017
Assessment Year: 2014-15

Assistant Commissioner of Income Tax, Circle-5(1)(1), R.No. 233, 2 nd Floor, BMTC Complex, 80 Feet Road, Koramangala, Bangalore – 560 095.	vs.	M/s. Resil Chemicals Pvt Ltd., No. 28 & 30, BCIE, Old Madras Road, Vijanapura, Bangalore – 560 016. PAN: AABCR 2886 H
(Appellant)		(Respondent)

For Assessee:	Shri Susan Mathew
For Revenue :	Sri D.K. Jha, Addl CIT

Date of Hearing :	15.04.2019
Date of Pronouncement :	16.04.2019

ORDER

PER PAVAN KUMAR GADALE, JM.

The Revenue has filed an appeal against the order of the CIT (A)-5, Bengaluru dated 28/07/2017 passed u/s 143(3) and u/s 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

- “1. *The order of the CIT (A)-5, Bangalore is opposed to the law and not on the facts and circumstances of the case.*

2. *Whether on the facts and circumstances of the case, the Ld CIT (A) is justified in granting relief of Rs. 2,18,02,356/- on the deduction claimed u/s 35(2AB) r.w.s 43(4)(1) as it has created acquisition of rights in or arising out of scientific research to the assessee company.*
3. *For these and other grounds that may be urged upon, the order of the CIT (A) may be reversed and that assessment order be restored.”*

2. Brief facts of the case are that the assessee is engaged in the business of Manufacture and Trading in speciality chemicals including silicone based chemicals and filed the Return of income on 25/09/2014 with total income of Rs. 12,47,53,020/-. Subsequently, the case was selected for scrutiny under CASS and the notices u/s 143(2) and 142(1) were issued. In compliance, the Ld AR of the assessee appeared from time to time and furnished the details. The Assessing Officer on verification and examination of the financial statements found that the assessee has claimed the Research and Development Expenses in the nature of Revenue expenditure at Rs. 293.74 lakhs and capital expenditure on Research and Development of Rs. 4.32 lakhs. Further on perusal of Form 3CL, the Department of Science and Industrial Research (DSIR) has allowed the amount of Rs. 269.15 lakhs towards Revenue Expenditure and Rs. 4.31 lakhs towards Capital Expenditure and the total claim be allowed u/s 35(2AB) that is Rs. 293.74 lakhs and, the Assessing Officer has referred to the Chart at page 2 of the Assessment Order and further is of the opinion that the there is an excess claim made

and on perusal of Form 3CD, the total expenditure has been referred as Rs. 2,93,74,008/- and out of the said amount Rs. 1,09,01,178/- was capitalized as intangible asset and the deduction u/s 35(2AB) is at 200% of the Revenue Expenditure claimed. The AO on perusal of Form 3CL and the Financial Statements is of the opinion that the DSIR has considered cost of in-house research facility Rs. 4.31 lakhs towards Capital Expenditure and Rs. 269.15 lakhs towards Revenue Expenditure since the assessee has already claimed the expenditure in the computation of income and the Ld AO made addition of Excess expenditure of Rs. 2,18,02,356/-and assessed the total income of Rs. 14,66,08,423/- and passed order u/s 143(3) on 28/12/2016.

3. Aggrieved by the order, assessee has filed an appeal before the CIT (A). In the appellate proceedings, Ld AR of the assessee reiterated the submissions made before the Lower Authorities and argued that the Appellate Authority considered the findings of the Assessing Officer and the provisions and finally based on the written submissions filed by the assessee CIT(A) has observed as under:-

“In view of the aforesaid decision, I have perused the certificate furnished before me and also considered the submissions made by the appellant. I hereby hold that to the extent of DSIR approval as per Form 3Cl of Rs. 269.15 lakhs the appellant is eligible for weighted deduction of 200% u/s 35(2AB) as against the claim of Rs. 293.74 lakhs. Further, I have already adjudicated this ground in my order passed for the assessment year 2011-12 & 2012-13 respectively following the jurisdictional Tribunal’s decision in appellant’s own case.”

Accordingly, CIT (A) partly allowed the appeal of the assessee. Aggrieved by the order, the Revenue has filed an appeal before the Tribunal.

4. Ld DR submitted that the CIT (A) has not considered the observations of the Assessing Officer properly and there is no specific categorization of the expenditure and the nature of expenditure claimed. Further, no information was filed before the Assessing Officer in this regard and prayed for allowing the Revenue's appeal. Contra, Ld AR relied on the order of the CIT (A) and submitted Paper Book.

5. We have heard the rival submissions and perused the material on record. *Prima facie*, we find that the CIT (A), relied on the order in the assessee's own case for the Assessment Year 2010-11 has allowed the claim which is not disputed but the fact remains that on perusal of the CIT (A) order the nature and basis of allowing the claim is without base when there exists dispute in the Financial Statements and Form 3CL issued by the DSIR. The Ld AR submitted Paper Book and referred to the Financial Statements but when a query was raised for the reasons on transferring of expenditure to intangible assets under the development referred at page 23 of the Annual Report forming part of the Financial Statements. The Ld AR could not give the details and the reasons for transferring the intangible assets. On perusal of Form 3CL there exists difference with statements and there is no finding of the CIT (A) in

respect of details of Rs. 109.46 lakhs. Accordingly, in the interest of substantial justice, we are of the opinion that the CIT (A) should pass a speaking and reasoned order and therefore we remit this disputed issue to the file of the CIT (A) with the direction to verify the details and pass a speaking order. Accordingly the Grounds of Appeal of the Revenue are allowed for statistical purposes.

6. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 16th April, 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Dated: 16th April, 2019.

OKK, Sr.PS

Copy to

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

1.	The appellant
2.	The Respondent
3.	CIT (A)
4.	Pr. CIT
5.	DR, ITAT, Bangalore.
6.	Guard File