**आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में**
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**PUNE BENCH "A", PUNE**

**BEFORE MS. SUSHMA CHOWLA, JM AND**
**SHRI ANIL CHATURVEDI, AM**

**आयकर अपील स / ITA No.470/PUN/2017**

**निर्धारण वर्ष / Assessment year : 2010-11**

The Asst.Commissioner of Income Tax,
Circle – 2, Kolhapur. ..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Konduskar Laboratories Pvt. Ltd.,
F-3, Malati Towers, 223/3, E-Ward,
Tarabai Park, Kolhapur. ..... प्रत्यर्थी /
Respondent

PAN : AACCK8386J.

Assessee by : Shri Pramod Shingte.

Revenue by : Shri N. Ashok Babu.

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| सुनवाई की तारीख / Date of Hearing : 16.05.2019 | | घोषणा की तारीख / Date of Pronouncement: 11.06.2019 |

**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 2, Kolhapur dt.13.12.2016 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of manufacturing and sale of bulk drugs and processing thereof. Assessee electronically filed its return of income for A.Y. 2010-11 on 28.09.2010 declaring loss of Rs.2,57,35,376/-. The case was selected for scrutiny and

thereafter assessment was framed u/s 143(3) of the Act vide order dt.21.03.2013 and the total loss was determined at Rs.1,63,37,676/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.13.12.2016 (in appeal No.KOP/126/2013-14) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

> *"1. On the facts and in the circumstances of the case and in law, the CIT(A)-2, Kolhapur was not justified in allowing deduction u/s 35(1)(vi) of Rs.65,09,777/- without considering the fact that the assessee has failed to furnish the certificate from the prescribed authority, certifying the amount of deduction.*
>
> *2. On the facts and in the circumstances of the case and in law, the CIT(A)-2, Kolhapur was not justified in allowing deduction u/s 35(1)(vi) of Rs.65,09,777/- without considering the fact that the assessee has failed to specify the actual scientific research activities carried out by it.*
>
> *3. On the facts and in the circumstances of the case and in law, the CIT(A)-2, Kolhapur was not justified in allowing deduction u/s 35(1)(iv) of Rs. 65,09,777/- without considering the fact that there is no positive income for the year under consideration form which deduction u /s 35(1)(iv) of the Act .*"

3. All the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, on perusing the computation of income, AO noticed that assessee had claimed deduction of Rs.67,85,623/- @ 100/- on the capital expenditure incurred on Research and Development Equipments u/s 35(1)(iv) of the Act. To which assessee made the submissions which were not found acceptable to the AO. AO noticed that assessee had claimed deduction before adjusting current year's depreciation of Rs.4,31,33,427/-. AO was of the view that had the current year's depreciation been adjusted against the current year's income, there have been remained unabsorbed depreciation of Rs.1.89 crores for carry forward to subsequent years. He was of the view that since there was no positive income for the year under consideration after adjusting the current year's depreciation, assessee was not entitled to deduction u/s 35(1)(iv) of

the Act. He accordingly denied the claim of deduction. AO was also of the view that the deduction u/s 35(1)(iv) of the Act is limited to the amount as certified by the Director General (Income-Tax Exemptions) in concurrence with the Secretary, Department of Scientific and Industrial Research, Government of India. He noted that assessee had failed to file the prescribed certificates from the prescribed authority certifying the amount of deduction and had also failed to establish that it had maintained a separate account for each facility. He accordingly denied the claim of deduction. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who granted partial relief to the assessee by observing as under :

> "5.1 Ground 1 : *This is against the action of the AO in disallowing the deduction u/s 35(1)(iv). The facts have already been discussed by me. It is seen that the appellant incurred Rs.67,85,623 on capital expenditure for scientific research and claimed the same as a deduction u/s 35(1)(iv). The AO disallowed the same primarily for the reasons that the deduction has been claimed before set off depreciation u/s 32. According to the AO, once depreciation is allowed there are no positive profits remaining for claiming this deduction. This reasoning of the AO is legally misconceived. The income u/s 28 has to be computed in accordance with the provisions of sec 30 to 43D which inter alia includes sec 35. It is an admitted fact that capital expenditure has been incurred by the appellant and he is entitled to claim the same as a deduction. There is no legal necessity to first allow depreciation u/s 32 and then only allow deduction u/s 35(1)(iv). In fact the provisions of sec. 35(4) throw ample light on this controversy. Sec 35(4) mandates that the provisions of sec 32(2) shall apply to the deductions u/s 35(1)(iv) also. This means that in a case where there are no positive profits to absorb the deduction u/s 35(1)(iv), the same shall be carried forward pari materia with unabsorbed depreciation u/s 32(2). I therefore am of the opinion that the AO has proceeded on a misconceived understanding of the legal provisions while making this disallowance. I hold that the appellant is entitled for a claim u/s 35(1)(iv) on the capital expenditure incurred for scientific research. Even if for a moment the reasoning of the AO is agreed to, then also as per the provisions of see 35(4), the unabsorbed expenditure u/s 35(1)(iv) is entitled to be carried forward pari materia with unabsorbed depreciation u/s 32(2). Arithmetically this has no effect and there would be no disallowance. The other reason for the AO to make this disallowance is the apparent necessity of submitting accounts before the DSIR which is the competent authority in this matter. I find that there is no such necessity. The R&D facility of the appellant is approved by DSIR a copy of which is on record. The AO has misunderstood the provisions of sec 35(1)(iv) themselves. However on an examination of the claim of capital expenditure I find that the appellant has incurred gross expenditure of Rs 67,85,623 on capital assets, while his NET expenditure is Rs 65,09,777. I specifically called for the list of capital assets claimed as deduction u/s 35(1)(iv). I find that the total of debits in the R&D block*

*is Rs 67,85,623 while the appellant has reduced this with certain credit entries against those very capital assets resulting in net additions to the block of R&D assets of Rs 65,09,777. On facts therefore the appellant is entitled to claim only that expenditure on capital assets which in this case is Rs 65,09,777. The AO is therefore directed to allow a deduction u/s 35(1)(iv) of Rs 65,09,777 against the claim of Rs 67,85,623. Ground 1 is partly allowed."*

Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

5. Before us, Ld.D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and supported the order of Ld.CIT(A).

6. We have heard the rival submissions made before AO and Ld.CIT(A). The issue in the present ground is with respect to allowing the claim of deduction u/s 35(1)(iv) of the Act. We find that Ld.CIT(A) while deciding the issue has noted that there is no legal necessity to first allow depreciation u/s 32 of the Act and then only allow deduction u/s 35(1)(iv) of the Act. He has further noted that Research and development facility of the assessee is approved by the DSIR and there is no necessity for submitting the accounts before DSIR. He has further noted that incurring of capital expenditure for Research and Development facility by the assessee is not in doubt. Before us, Revenue has not pointed out any fallacy in the findings of Ld.CIT(A). In such a situation we find no need to interfere with the order of Ld.CIT(A) and thus the grounds of Revenue are dismissed.

7. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 11th day of June, 2019.

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| **Sd/-** | **Sd/-** |
| (**SUSHMA CHOWLA**) | (**ANIL CHATURVEDI**) |
| **न्यायिक सदस्य / JUDICIAL MEMBER** | **लेखा सदस्य / ACCOUNTANT MEMBER** |

पुणे Pune; दिनांक Dated : 11th June, 2019.
Yamini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Kolhapur.
4. Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार**/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.