

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.179/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

The Jt. Commissioner of Income Tax,
(OSD) Circle – 1, Aurangabad

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. East West Seeds Ltd.,
Gat No. 66, Village – Narayanpur (BK),
PO-Waluj, Tq.-Gangapur,
Aurangabad – 431133

PAN : AANCE1237F

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 15-07-2019

घोषणा की तारीख / Date of Pronouncement : 06-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 09-11-2017 for the assessment year 2014-15.

2. The Revenue has raised following grounds in the appeal :

- “1. Whether, On the facts & in the circumstances of the case, the Ld. CIT(A), Aurangabad is justified in deleting the addition made on account of disallowance of deduction u/s 35(2AB) of the Act amounting to Rs.3,60,18,330/-, claimed by the assessee but not allowed by the DSIR.
2. Whether, On the facts & in the circumstances of the case, the Ld. CIT(A), Aurangabad is justified in interpreting the provisions of section 35(2AB) of the Act and Rule 6 of the Income Tax Rules 1962 in view of the decision of Hon'ble ITAT Hyderabad in the case of Electronics Corporation of India Ltd. (ITA No. 1106/Hyd/2011).
3. On the facts and in the circumstances of the case, the order of the AO be restored and that of the CIT(A)-1 be vacated.
4. The appellant craves leave to add, amend or alter all or any of the Grounds of Appeal.”

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the issue in appeal is squarely covered by the decision of Tribunal in the case of Cummins India Ltd. Vs. Deputy Commissioner of Income Tax reported as 96 taxmann.com 576 (Pune-Trib.) and subsequent decision in the case of Bharat Forge Ltd. Vs. Addl. Commissioner of Income Tax in ITA No. 13/PUN/2017 for the assessment year 2011-12 decided on 14-11-2018. The ld. AR submitted that the Commissioner of Income Tax (Appeals) has granted relief to the assessee by following the decision rendered by Ahmedabad Bench of Tribunal in the case of Torrent Pharmaceuticals Ltd. in ITA No. 3569/AHD/2004.

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the assessment order and prayed for reversing the findings of Commissioner of Income Tax (Appeals).

5. Both sides heard. Orders of the authorities below perused. The solitary issue raised by the Revenue in appeal is against deleting the addition made on account of disallowance of deduction u/s. 35(2AB) of the Act. The assessee company is engaged in the business of production and procuring of vegetable, fruits and flower seeds from local as well as overseas market and sells them in Indian as well as export market. The assessee is also engaged in production and processing of hybrid seeds. The assessee has set up Research and Development facility to cater to the requirements of agricultural sector. The assessee claimed deduction u/s. 35(2AB) in respect of R & D facilities. The R & D center of the assessee is approved by DSIR. However, the claim of assessee was disallowed by the Assessing Officer on the ground that as against the assessee's claim of weighted deduction of Rs.9,85,70,330/-, the DSIR has approved Rs.6,25,52,000/-. The contention of the assessee is that during the period relevant to assessment year under appeal DSIR has no power to quantify the deduction claimed by assessee u/s. 35(2AB). The only requirement is the recognition of R & D facility by DSIR. We find that the issue raised in the appeal is squarely covered by the decision rendered in the case of Cummins India Ltd. Vs. Deputy Commissioner of Income Tax (supra). The Tribunal after considering various decisions has held as under :

“45. The issue which is raised in the present appeal is that whether where the facility has been recognized and necessary certification is issued by the prescribed authority, the assessee can avail the deduction in respect of expenditure incurred on in-house R&D facility, for which the adjudicating authority is the Assessing Officer and whether the prescribed authority is to approve expenditure in form No.3CL from year to year. Looking into the provisions of rules, it stipulates the filing of audit report before the prescribed authority by the persons availing the deduction under section 35(2AB) of the Act but the provisions of the Act do not prescribe any methodology of

approval to be granted by the prescribed authority vis-à-vis expenditure from year to year. The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below.

46. The Courts have held that for deduction under section 35(2AB) of the Act, first step was the recognition of facility by the prescribed authority and entering an agreement between the facility and the prescribed authority. Once such an agreement has been executed, under which recognition has been given to the facility, then thereafter the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. Accordingly, we hold so. Thus, we reverse the order of Assessing Officer in curtailing the deduction claimed under section 35(2AB) of the Act by ₹ 6,75,000/-. Thus, grounds of appeal No.10.1, 10.2 and 10.3 are allowed.

47. In the result, appeal of assessee is partly allowed.”

6. We find that similar view was taken by the Co-ordinate Bench of Tribunal in the case of Bharat Forge Ltd. Vs. Addl. Commissioner of Income Tax (supra).

7. The Revenue has not placed on record any material to controvert the findings of Tribunal. Thus, after considering the undisputed facts of the case and the decisions of the Co-ordinate Bench on the issue, we uphold the findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim of weighted deduction u/s. 35(2AB) of the Act.

8. In the result, the impugned order is upheld and the appeal of Revenue is dismissed being devoid of any merit.

Order pronounced on Tuesday, the 06th day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th August, 2019

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Aurangabad
4. The Pr. Commissioner of Income Tax-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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