

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND**

SMT.BEENA PILLAI, JUDICIAL MEMBER

**ITA Nos.1218 & 1219(Bang)/2015
(Assessment years : 2011-12 & 2012-13)**

M/s SLN Technologies Pvt.Ltd.,
No.1,3rd Floor, Horizon Pai Layout,
Old Madras Road,
Bangalore-560 016
PAN No.AADCS1906P

Appellant

Vs

The Asst. Commissioner of Income Tax,
Circle-6(1)(1),
Bangalore

Respondent

**Appellant by : Shri Padamchand Khincha, CA
Revenue by : Dr.Palani Kumar, Addl. CIT**

**Date of hearing : 17-09-2019
Date of pronouncement : 18-10-2019**

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER :

Present appeals has been filed by assessee against consolidated order dated 14/05/15 by Ld. CIT(A)-6 for assessment years 2011-12 and 2012-13 on following grounds of appeal:

ITA No.1218/Bang/2015(assessment year :2011-12)

Disallowance of 50% of deduction claimed under section 35(2AB)

1.The ld.CIT(A)-6, Bangalore has erred in not allowing 50% of claim of deduction u/s 35(2AB) amounting to Rs.1,18,83,550/. On facts and in the circumstances of the case and law applicable, deduction under section 35(2A |B) is to be allowed as claimed by the appellant.

Disallowance of prior expenditure

2.The CIT(A)-6, Bangalore has erred in disallowing prior period expenditure amounting to Rs.7,67,521/-. On facts and in the circumstances of the case and law applicable, deduction of prior period expenditure is to be allowed as claimed by the appellant.

Disallowance of expenditure of Rs.1,36,699/-

3. The ld.CIT(A)-6, Bangalore has erred in disallowing expenditure amounting to Rs.1,36,699/-. On facts and in the circumstances of the case and law applicable, deduction of expenditure amounting to Rs.1,36,699/- is to be allowed as claimed by the appellant.

Prayer

4.In view of the above and other grounds to be adduced at the time of hearing, the order of the

ld.CIT(A)-6, Bangalore to the extent prejudicial to the appellant be quashed or in the alternative

i) deduction u/s35(2AB) be fully allowed claimed

ii) deduction of prior period expenditure be fully allowed as claimed

iii) deduction of expenditure amounting to Rs.1,36,699/-be fully as allowed”

ITA No.1219/Bang/2015 (Assessment year 2012-13)

Disallowance of 50% of deduction claimed under section 35(2AB)

1.The ld. CIT(A)-6, Bangalore has erred in not allowing 50% of claim of deduction u/s 35(2AB) amounting to Rs.73,96,208/-. On facts and in the circumstances of the case and law applicable, deduction under section 35(2AB) is to be allowed as claimed by the appellant.

Prayer

2.In view of the above and other grounds to be adduced at the time of hearing, the order of the ld.CIT(A)-6, Bangalore to the extent prejudicial to the appellant be quashed or in the alternative, deduction u/s 35(2AB) be fully allowed as claimed”.

2. It has been submitted by both sides that issues involved in both assessment years are common. For sake of convenience, we are therefore, disposing of both years by way of common order. We shall take up facts in assessment year 2011-12 for purposes of deciding the issue.

2.1 Brief facts of the case are as under:

Assessee filed its return of income for assessment year 2011-12 on 22/09/11 declaring 'nil' income and book profit under section 115 JB of the IT Act, at Rs.18,94,612/-. Case was selected for scrutiny and notice under section 143(2) and 142(1) along with questionnaire was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld. AO and produced details called for by Ld.AO.

3. Ld.AO observed that assessee claimed sum of Rs.2,37,67,100/- under section 35 (2AB) of the Act. On verification by Ld.AO, it was noticed that assessee has not furnished certificate/letter of approval issued by Secretary, Department of Scientific and Research, Government of India. Assessee was accordingly asked to furnish the same. In response to LD.AO's query, assessee submitted that it has in-house R&D unit approved by Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India as Research and Development Organization which is valid till 31/03/13 vide letter dated F.No.TU/IV-R&D/2514/2010 issued 29/09/10. It was submitted that the said letter was signed by 'Scientist-G', instead of 'Secretary', who was authorized representative of the 'Secretary'. Ld.AO however, rejected

contentions of assessee and disallowed exemption of Rs.2,37,67,100/- claimed by assessee for failure to furnish Certificate/Letter of approval by the 'Secretary', Department of Scientific and Industrial Research, Government of India, being the appropriate authority as per the Act, for expenditure incurred.

3.1 Ld.AO further observed that assessee debited a sum of Rs.7,67,521/- as prior period expenses. Assessee was accordingly issue cost to file details in respect of the same. Assessee vide letter dated 14-02-2014 filed various details however, Ld. AO did not accept and made addition of the said sum.

3.2 Ld.AO observed that assessee has made payment of Rs.1,36,699/- which was submitted to be gifts given to employees on various occasions. As assessee could not file any details, it disallowed and added back to income of assessee.

4. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT(A) who granted relief to assessee only in respect of section 35(2AB) relating to regular expenses which was allowed as business/revenue expenditure.

5. Aggrieved by order of Ld.CIT (A) assessee is in appeal before us now.

6. **Ground No. 1** is in respect of 50% of deduction disallowed under section 35 (2AB).

6.1 At the outset, Ld.AR filed application for admission of additional evidence under Rule 29 of the Act, wherein he has annexed various documents which has not been filed before authorities below. It has been submitted that these are communications subsequent to

assessment proceedings, with Ministry of Science and Technology Department of Scientific and Industrial Research and Technology, Government of India. It has been submitted that these documents needs to be verified in order to appreciate contentions of assessee.

6.2. It is also submitted that these documents have direct bearing to the issue for consideration, as assessee subsequently obtained certificate of approval for succeeding period of 01/04/13 to 31/03/16 which is placed at page 226 of application for additional evidence. He submitted that this letter of approval dated 19/02/14 has been signed by "Scientist-G" for and on behalf of "Secretary" Department of Scientific & Industrial Research. It has been submitted that it is the same person who affirmed certificate of registration dated 29/09/10 placed at page 115 of paper book.

6.3 Ld.DR, though vehemently opposed admission of additional evidence, however could not controvert that these documents could be useful for deciding issue under consideration by Ld.AO and to carry out further verification.

7. We have considered the submissions advanced by both sides in the light of the records placed before us.

Undoubtedly, assessee placed before us communications with Department of Scientific and Industrial Research & Technology post assessment proceedings. Assessee was therefore, was sufficiently precluded from placing these documents before authorities below. However, these documents are quite crucial in order to determine approval for relevant period under consideration. We accordingly, admit additional evidence filed by assessee today.

7.1 Ld.AR submitted that assessee has in-house research and development facility recognized by DSIR, Government of India, since 27/06/05 and recognition was renewed from time to time. It has been submitted that for years under consideration, in-house R&D facility was recognized by 'Scientist-G' vide letter dated 29/09/10, F No. TU/IV-R&D/2514/2010, which is annexed at page 115 of paper book, and has been held to be valid up to 31/03/13. He submitted that only dispute with revenue is regarding certificate being approved by 'Scientist-G' and not by appropriate authority being 'Secretary' of DSIR, placed at page 114-115 of paper book. He submitted that this certificate has been signed by 'Scientists-G' who was authorized signatory on behalf of 'Secretary', during relevant period. He also placed reliance upon extract from website of DSIR.gov.in, wherein as per section 4 (1) (b) (ii) being powers and duties of employees could be delegated. Placing reliance upon the same, he submitted that is 'Scientists B to G' are authorised to exercise powers of head of the department duly delegated by the 'Secretary'.

He thus submitted that approval granted vide letter dated 29/09/10 is valid and assessee is eligible for deduction under Section 35 (2AB) of the IT Act, as claimed.

8. On the contrary. Ld. DR submitted that documents relied upon by Ld.AR needs to be verified by Ld.AO, without which the claim cannot be approved.

9. We have perused submissions advanced by both sides in the light of the records placed before us.

9.1 On perusal of letter dated 29/09/10 relied upon by Ld.AR placed at page 115 of paper book, it is observed that this certificate of registration is issued for purpose of availing customs duty exemption in terms of Government notification No.24/2007-Customs dated 01/03/07 and Central Excise Duty Exemption in terms of government notification No. 16/2007-Central Excise dated 01/03/07, as amended from time to time. In our considered opinion, this cannot be considered to be certificate issued for purposes of deduction under section 35(2AB). Apparently, any approval of deduction under section 35(2AB) will be annexed with Form 3CL which has not been mentioned in letter dated 29/09/10 placed at page 115 of paper book. The deduction claimed u/s 35(2AB) is as per expenditure quantified by appropriate authority in Form 3CL or in the certificate of approval. We also note that Form 3CL was not mandatory prior to 2014. But quantification of expenditure by appropriate authority of DSIR is mandatory. In a compilation for additional evidences, this categorical difference is very clear from page 228 wherein Form 3CL has been annexed showing exemption that is available to assessee under section 35(2AB) for relevant period.

9.2 However, be that as it may, authorities below have time and again called for various details for purposes of considering approval which assessee has not filed, as it is seen from records placed before us. Under such circumstances, considering the fact that assessee has been granted approval since 27/06/15 and that subsequent period approval has also been granted vide letter dated

15/02/16 pertaining to assessment year 2014-15 and 2015-16, we deem it proper to set aside this issue back to Ld.AO for verification. Assessee at this juncture also brings to our notice that it has filed Writ Petition before *Hon'ble Karnataka High Court* against refusal of certification by DSIR which is pending final year.

9.3 Ld.AO is directed to verify all details filed by assessee as additional evidences and to consider claim having regard to decision of *Hon'ble Karnataka High Court* in Writ Petition filed by assessee.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

10. **Ground No. 2** is in respect of disallowance of prior period expenses.

It has been submitted that assessee has accounted for Rs.7,67,521/- as prior period expenses as per AS-5. Ld.AR submitted that these expenses being short provision made in earlier year have been accounted for during the year and shown as prior period adjustment in profit and loss account separately to comply with provisions of accounting standard. He submitted that these are not provisional expenses but expenses that are in excess of provision made in the earlier year.

10.1 On the contrary Ld. DR placed reliance upon orders of authorities below.

10.2 We have perused submissions advanced by both sides in light of records placed before us. It is observed that assessee has not given breakup before authorities below and no evidences available

regarding same being excess of provision that was made in the earlier year.

As no details have been filed in support of its contentions, we are unable to appreciate the argument advanced by Ld.AR. We therefore, do not find any reason to interfere with order of Ld. CIT (A) and the same is upheld.

Accordingly this ground raised by assessee stands dismissed.

11. **Ground No. 3** is in respect of gifts ex amounting to Rs.1,36,699/-claimed as business expenditure.

It has been submitted by Ld.AR that Director through credit card has purchased gifts for marriages, birthday events of employees. He submitted that these are gifts made to special occasions and has been expended for purposes of business.

11.1 On the contrary, Ld. DR placed reliance upon orders passed by authorities below.

12. We have perused submissions advanced by both sides in light of the records placed before us.

At the time of hearing, this Bench raised one simple query to Ld.AR regarding any evidences that could be furnished regarding gifts made to employees, for which Ld.AR replied that there could be no details available. Under such circumstances, it is highly improbable to appreciate submissions advanced by Ld.AR.

We therefore do not find any infirmity in the order of Ld. CIT (A) and the same is upheld.

Accordingly this ground raised by assessee stands dismissed.

In the result appeal filed by assessee stands partly allowed for statistical purposes.

13. ITA No. 1219/B/2015. (Assessment year 2012-13)

The only ground raised by assessee in the present appeal is regarding disallowance of deduction claimed under section 35 (2AB) amounting to Rs.73,96,208/-.

It has been submitted by both sides that facts for year under consideration are identical with that of assessment year 2011-12.

We have already considered identical issue being ground No.1 in ITA No. 1218/B/2015 relevant to assessment year 2011-12.

As there is no difference in factual metrics that has brought out on record, the view taken by us for assessment year 2011-12 on this issue shall apply *mutatis mutandis*. We are thus setting aside this issue back to Ld. AO for due verification of details filed by assessee having regard to decision of *Hon'ble Karnataka High Court* in Writ Petition filed.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

In the result present appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 18-10-2019

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated:

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asst.Registrar