

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3500/CHNY/2018
निर्धारण वर्ष /Assessment year : 2012-2013.

M/s. I.P. Rings Limited,
No.D11/D12,
Industrial Estate,
Maraimalai Nagar,
Kancheepuram 603 209.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 2(2)
Chennai.

आयकर अपील सं./I.T.A. No. 3538/CHNY/2018
निर्धारण वर्ष /Assessment year : 2012-2013.

The Deputy Commissioner of
Income Tax,
Corporate Circle 2(2)
Chennai.

Vs. M/s. I.P. Rings Limited,
No.D11/D12,
Industrial Estate,
Maraimalai Nagar,
Kancheepuram 603 209.

(अपीलार्थी/Appellant)

[PAN AAACI 0908C]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R.Vijayaraghavan, Adv
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 27-11-2019
घोषणा की तारीख /Date of Pronouncement : 28-11-2019

आदेश / ORDER**PER INTURI RAMA RAO, ACCOUNTANT MEMBER:**

These are cross appeals filed by the assessee as well as Revenue directed against the order of the learned Commissioner of Income Tax (Appeals)-6, Chennai (hereinafter called as 'CIT(A)') dated 28.09.2018 for the assessment years (AY) 2012-13.

2. The brief facts of the case are as under:

The assessee namely M/s. I.P. Ring Ltd is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of internal combustion engines and piston rings. The return of income for the AY 2012-13 was filed on 27.11.2012 disclosing total loss of Rs. 6,77,66,213/- and book profit of ₹24,59,492/- u/s. 115JB of the Income Tax Act, 1961 (in short 'the Act'). Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Corporate Circle 2(2), Chennai vide order dated 30.03.2015 passed u/s.143(3) of the Act at total loss of ₹2,29,48,020/-. While doing so, the Assessing Officer made the following additions/ disallowances.

01.	<i>Disallowance on Royalty</i>	₹71,43,082/-
02	<i>Disallowance of service fees</i>	₹2,14,11,991/-

03	<i>Belated remittance of PF/ESI</i>	₹5,01,200/-
04	<i>Additional Depreciation</i>	₹12,98,174/-
05	<i>Excess claim of deduction u/s.35(2AB)</i>	₹11,31,458/-
06	<i>Disallowance of pre-operative expenses</i>	₹1,12,69,187/-
07	<i>Disallowance on depreciation</i>	₹20,63,101/-

3. Being aggrieved by the above additions, the assessee-company preferred an appeal before Id. CIT(A) who vide impugned order granted relief in respect of addition on belated remittance of PF/ESI following the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Industrial Security and Intelligence India Pvt. Ltd, in Tax Case (Appeal) Nos.585 and 586 and M.P.No.1 of 2015 dated 24.07.2015*. As regards, to the royalty expenditure, the Id. CIT(A) held that 25% of Royalty payment should be treated as capital expenditure and balance of 75% was held to be revenue expenditure following the decision of Hon'ble Supreme Court in the case of *Southern Switch Gear vs. CIT, 232 ITR 359*. As regards to the disallowance of service fees paid to India Pistons Ltd, the issue was remitted back to the file of the Assessing Officer to examine the evidences of services rendered on technical services. Regarding additional depreciation, Id. CIT(A) directed the Assessing Officer to allow additional depreciation, following the decision of Jurisdictional High Court in the cases of

Brakes India Ltd vs. DCIT in T.C.A No.551/2013, dated 14.03.2017 and CIT vs. T.P. Textiles P. Ltd in T.C.A. No.157/2017, dated 06.03.2017. The Id. CIT(A) however confirmed the additions made in respect of weighed deduction u/s.35(2AB) and pre-operative expenses. As regards to the issue of disallowance of depreciation, the Id. CIT(A) confirmed the addition as no bills were produced in support of acquisition of assets.

4. Aggrieved by that part of the Id. CIT(A) order, which is against assessee-company, the assessee company is in appeal before us in ITA No.3500/CHNY/2018, whereas the Revenue is in appeal in ITA No.3538/CHNY/2018 on the grounds which are decided in favour of the assessee company.

5. First we take up appeal of the assessee in ITA No.3500/CHNY/2018 for adjudication.

6. The Assessee raised the following grounds of appeal:

'1. The order of The Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The Commissioner of Income tax (Appeals) erred in confirming 25% of the royalty expenditure as capital expenditure and the remaining 75% as revenue expenditure.

2.1. The Commissioner of Income tax (Appeals) ought to have appreciated that the payment of royalty was towards only use of technical information provided by the foreign company and has not resulted in acquisition of any assets of enduring and exclusive advantage to the appellant's business.

2.2. The Commissioner of Income tax (Appeals) ought to have appreciated that the appellant has not acquired any ownership right in the technology and license but only right to use. The payment for mere right to use is only revenue in nature. Hence the entire royalty expenditure claimed by the appellant should be allowed as revenue expenditure.

2.3 The Commissioner of Income tax (Appeals) ought to have appreciated that the decision of the Apex Court in the case of CIT Vs IAEC (Pumps) Ltd reported in 232 ITR 316 (SC) is applicable to the facts of appellant's case.

3. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of deduction under Section 35(2AB) of Rs 11,31,458/-.

4. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of pre-operative expenditure as not an allowable deduction.

4.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the pre-operative expenditure capitalized with the plant and machinery pertains to expenditure on the PVD Furnace purchased in 2009-10 for the purpose of manufacture of rings in compliance with Euro VI/Bharat Stage VI norms.

4.2 The Commissioner of Income tax (Appeals) ought to have appreciated that by the time the machinery was ordered to make rings complaint to the Euro norms, the Government of India postponed the implementation except metro cities due to this there was no utilization and hence all the cost pertaining to it was capitalized up to 2011-12.

4.3 The Commissioner of Income tax (Appeals) ought to have appreciated that the expenditure capitalized consists of interest, travel and operating expenses.

5. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of depreciation of Rs.20,63,101 I- on the ground of non-production of invoices which is not relevant to the year under consideration.

6. The Appellant craves leave to file additional grounds at the time of hearing".

7. Ground 1 & 6 are general in nature therefore, does not require any specific adjudication.

8. Grounds 2 to 2.3 challenges the decision of Id. CIT(A) in allowing only 75% of the royalty expenditure holding it to be revenue expenditure. The issue was decided against the assessee by the Co-ordinate Bench of the Tribunal in assessee's own case in ITA Nos. 1716 to 1719/Mds/2000 for assessment years 1999-2000, 2003-04 to 2005-06, dated 25.02.2011 and ITA Nos. 2583 and 2584/2016, dated 28.07.2017 for assessment years 2010-11 and 2011-2012, dated 28.07.2017. The relevant para No.8.4 in ITA Nos. 1716 to 1719/Mds/2000 are abstracted hereunder:-

"8.4 We have heard both the sides, considered the material on record as well as relevant portion of the orders of authorities below It is not in dispute that the assessee has claimed a sum of ₹56,58,538/- as sales promotion expenses in addition to the technical consultancy fee payable at 5% of the turnover to the IPL. It is also not in dispute as per agreement with IPL that there is no stipulation in the agreement between the assessee and IPL about payment of such amount and it is also not in dispute that such type of claim was ever made in the immediate previous year when such a huge payment is stated to have been made on the basis of so called oral commitment without placing any material or evidence to prove the expediency of such expenditure with the business of the assessee or any nexus of the expenditure with business in this regard. The plea of the assessee is that it is a tie up with MIs. IPL for using their sales depot and sales network throughout the country and PL by virtue of there presence in the market for more than 60 years guide the assessee in introducing the new product and acquiring order for the assessee etc. Whereas, the IP Rings Ltd. does not have any market set up in its own and when

specifically pointed out that there is already clause in the agreement for payment technical consultancy fee payable at 5%, the assessee's counsel asserted further that there was a dire need for such expenditure and it has been used for launching of the new product without which the assessee could not appropriately market the new product. But when asked to supply certain data in details about judgment and other details, the assessee was unable to do so. Considering the entirety of facts, circumstances, material on record, we are inclined to concur with the conclusion as drawn by the Id. CIT(A), who is found to have considered each and every aspect of the issue before arriving at the conclusion drawn by him when no contrary material has been provided by the assessee in this regard and dismiss this ground of appeal of 1999-2000”.

In the light of the above decision, we dismiss the grounds of appeal No.2. to 2.3 raised by the assessee.

9. Ground No.3 challenges the decision of Id. CIT(A) in confirming the addition made u/s.35(2AB) of the Act of ₹11,31,458/-.

10. The decision of Id. CIT(A) is as under:-

'The submissions are duly considered. Section 35(2AB) of the Act provides for weighted tax deduction of expenditure incurred by a specified company, on scientific research (not being expenditure in the nature of cost of any land or building) in the inhouse R&D centres as approved by the prescribed authority to the extent of expenditure certified by the prescribed authority, (i.e.) DSIR, as having been laid out or expended on such scientific research. In the instant case, DSIR had, inter-alia, approved expenses as eligible for weighted deduction only to the tune of Rs.1,12,55,424/-. The said position of law has also been upheld by the Hon'ble ITAT Hyderabad in the case of Electronics Corporation of India Ltd. vs. ACIT (ITA NO.1106/Hyd/2011) by the Hon'ble Gujarat High Court in the case of DCIT vs. Mastek Ltd. (2013) 263 CTR 671 and by the Hon'ble Karnataka High Court in the case of Tejas Networks Ltd. vs. DCIT (2015)60 taxmann.co 309 wherein it has been held that the quantum of expenditure approved by DSIR in the certificate given by them in Form No.3CL alone was entitled to the benefit of Section 35(2AB). In view of the above, the action of the

assessing officer in denying the deduction u/s 35(2AB) with respect to the expenses not approved by DSIR to the tune of Rs.11,31,458/- is held to be legally valid and thus upheld".

The order of the Id. CIT(A) is well reasoned, we do not find any reason to interfere with orders of the lower authorities. Ground No.3 raised by the assessee stands dismissed.

11. In grounds of appeal No.4 to 4.3, assessee challenges the decision of Id. CIT(A) in disallowing pre-operative expenses of ₹1,12,69,187/-.

12. Ld. Authorised Representative contested before us that during the course of assessment proceedings, the Assessing Officer noticed that assessee company incurred an expenditure of ₹3,21,97,676/- on PVD project. The Installation of plant and machinery was not completed and the expenditure incurred in connection with acquisition of plant and machinery was capitalized in the books of accounts but claimed as revenue while computing taxable income. The Assessing Officer disallowed the same holding it to be capital. Even before the Id. CIT(A), the Id. CIT(A) disallowed the claim of pre operative expenses on the ground that assessee had failed to substantiate that the expenditure was incurred in connection with the acquisition of fixed assets and the machinery were put to use

during the year under consideration. The Id. Authorised Representative had filed before us additional evidence in the form of certificate from Statutory Auditor saying that these expenditure were capitalized in the books of accounts in connection with PVD projects. Considering the additional evidence filed before us, we remit the issue back to the file of Assessing Officer for the purpose of carrying out verification whether these expenditure was incurred in connection with the acquisition of PVD project and the PVD machines were put to use during the year under consideration, if so, allow the claim of depreciation on pre-operative expenses capitalize. Thus, grounds of appeal No. 4 to 4.3 filed by the assessee are partly allowed for statistical purpose.

13. In ground No.5, assessee challenges the decision of Id. CIT(A) in confirming disallowance of depreciation of ₹20,63,101/-. The Id. CIT(A) confirmed the disallowance for want of invoices. It is submitted before us that assessee had produced invoices during the course of assessment proceedings. Hence, we remit this issue back to the file of the Assessing Officer for due verification of invoices and allow depreciation. Thus ground of appeal No.5 filed by the assessee is partly allowed for statistical purpose.

14. In the result, the appeal of the assessee in ITA No.3500/CHNY/2018 for assessment year 2012-2013 is partly allowed for statistical purpose.

15. Now, we take up appeal of the Revenue in ITA No.3538/CHNY/2018 for adjudication.

16. It is stated before us that the tax effect in this case is less than Rs.50 lakhs and therefore, the Circular No. 17/2019 dated 08.08.2019 issued by the Central Board of Direct Taxes (CBDT) in exercise of its power vested under Sec. 268A(1) of the IT Act comes into play wherein, the monetary limit for filing the appeal by the Revenue before the ITAT and various High Courts as well as Apex Court are revised with an object of the reducing the tax litigation. Vide para 3 of the said circular (supra) it is stated that in cases where the tax effect in the appeals to be filed before the Appellate Tribunal does not exceed ₹50 lakhs appeals should not be filed. Thus taking a note of CBDT Circular No. 17/2019, dated 08.08.2019 and considering the fact that the tax effect in the instant appeal is less than Rs.50 lakhs, the present appeal deserves to be dismissed as not pressed / not maintainable. However, we make it clear that the issues raised in the instant appeal is left open to be examined in the appropriate proceedings, if arises, in future. At the same time, we also make it clear that if the appeal fall in any of the exceptions referred to in the

above said CBDT Circular, the Revenue is at liberty to move an application for recalling the order if so advised. Accordingly, in the light of CBDT circular No.17/2019 dated 08/08/2019, the appeal filed by the Revenue stands dismissed.

17. In the result, the appeal of the Revenue in ITA No.3538/CHNY/2018 for assessment year 2012-2013 stands dismissed.

18. To summarize the result, the appeal of the assessee in ITA No.3500/CHNY/2018 for assessment year 2012-2013 is partly allowed for statistical purpose whereas the appeal of the Revenue in ITA No.3538/CHNY/2018 for assessment year 2012-2013 stands dismissed.

Order pronounced on 28th day of November, 2019, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:28th November, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF