



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA no.3657/Mum./2016  
(Assessment Year : 2011-12)

WIMCO Limited  
Indian Mercantile Chambers  
Kamani Marg, Ballard Estate  
Mumbai 400 028  
PAN – AAACW3082B

..... Appellant

v/s

PCIT of Income Tax  
Circle-2, Mumbai

..... Respondent

Assessee by : Shri Ketan Ved  
Revenue by : Shri B. Jayakumar

Date of Hearing – 16.09.2019

Date of Order – 06.12.2019

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeal has been filed by the assessee assailing the order dated 28<sup>th</sup> March 2016, passed under section 263 of the Income Tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income Tax (PCIT)-2, Mumbai, for the assessment year 2011-12.

2. At the outset, it is relevant to observe, the appeal was initially heard on 26<sup>th</sup> April 2018, and the order was pronounced on 26<sup>th</sup> April 2018, dismissing the appeal. However, subsequently, while deciding the misc. application filed by the assessee, the Tribunal, vide order dated 20<sup>th</sup> May 2019, passed in M.A. no.583/Mum./2018, recalled the order passed earlier and the appeal was restored to its original position. This is how the appeal came up for hearing before this Bench.

3. Brief facts are, the assessee company is engaged in the business of manufacturing, trading and selling of safety matches and packing machines. For the assessment year under dispute, the assessee filed its return of income on 29<sup>th</sup> September 2011, declaring loss of ₹ 43,88,80,066. The assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 22<sup>nd</sup> February 2014, accepting the loss declared by the assessee. After completion of the assessment as aforesaid, learned PCIT in exercise of power conferred under section 263 of the Act called for the assessment records and after examining it found that an amount of ₹ 37,46,43,338, was debited to the Profit & Loss Account towards amount paid under Voluntary Retirement Scheme (VRS). However, in the computation of income, an amount of ₹ 28,76,65,539, was only added back and 1/5<sup>th</sup> of the said amount working out to ₹ 5,75,33,108, was claimed as deduction under section 35DDA of the Act, which was allowed by the

Assessing Officer. He observed, the balance amount of ₹ 8,69,77,799, i.e., the difference between the figure of ₹ 37,46,43,338, and ₹ 28,76,65,539, was claimed as ex-gratia payment and VRS amounts to others, etc., and the entire amount was claimed as deduction. On verification of VRS and memorandum of settlement with the detailed bifurcation of ₹ 8,69,77,799, learned PCIT found that an amount of ₹ 7,75,43,657, was part of the VRS. Whereas, the balance amount of ₹ 94,34,142, was not considered to be part of VRS in absence of any documents regarding payment made to trainees and in view of certificate issued by the Chartered Accountant that three employees were not eligible for VRS, hence, were paid compensation for retrenchment. Learned PCIT observed, since only an amount of ₹ 7,75,43,657, was part of VRS, as per section 35DDA of the Act the assessee would have been eligible to claim deduction for 1/5<sup>th</sup> of the said amount working out to ₹ 1,55,08,731. Whereas, the Assessing Officer has allowed full deduction of ₹ 8,69,77,799 under section 37 of the Act without making any enquiry. Thus, on the aforesaid premises, learned PCIT concluded that the assessment order passed is erroneous and prejudicial to the interests of Revenue, hence, has to be revised. Having held so, he directed the Assessing Officer to disallow the amount of ₹ 8,69,77,799, and thereafter allow deduction under section 35DDA of the Act for an amount of ₹ 1,55,08,731, being 1/5<sup>th</sup> of ₹ 7,75,43,657.

4. The learned Authorised Representative, on the instructions of the assessee submitted, the assessee has no grievance with the direction of learned PCIT to allow deduction under section 35DDA of the Act for an amount of ₹ 1,55,08,731, with regard to VRS payment of ₹ 7,75,43,657. However, he submitted, the direction of learned PCIT to disallow balance amount of ₹ 94,34,142, out of the total deduction allowed of ₹ 8,69,77,799, is improper and unjustified as the said amount also represent payment made to employees, hence, has to be allowed either under section 37(1) or section 35DDA of the Act. He submitted, since all the details relating to such payment were filed before the Assessing Officer as well as learned PCIT, he is not correct in observing that in absence of any details, amount cannot be allowed. Thus, he submitted, the decision/direction of learned PCIT should be modified to that extent and a direction should be issued to the Assessing Officer to verify assessee's claim with regard to the amount of ₹ 94,34,142, and allow deduction either under section 37(1) or section 35DDA of the Act.

5. The learned Departmental Representative, though, relied upon the observations of learned PCIT, however, he submitted that assessee's submissions and claim with regard to the amount of ₹ 94,34,142, can be verified by the Assessing Officer.

6. We have considered rival submissions and perused the material on record. Facts on record reveal that the assessee has debited an amount of ₹ 37,46,43,338, to the Profit & Loss Account towards VRS payment. However, in the computation of income, the assessee claimed deduction under section 35DDA of the Act for an amount of ₹ 5,75,33,108, being 1/5<sup>th</sup> of ₹ 28,76,65,539, towards VRS payment. Thus, it is clear, the Assessing Officer has allowed full deduction to the assessee in respect of balance VRS payment of ₹ 8,69,77,799, without making any enquiry whatsoever. Therefore, to that extent, the assessment order is erroneous and prejudicial to the interests of Revenue. On further verification, the learned PCIT has found that out of the amount of ₹ 8,69,77,799, an amount of ₹ 7,75,43,657, is towards VRS payment. Accordingly, he has allowed deduction under section 35DDA of the Act in respect of such payment. It is submitted before us that the assessee has no grievance against the aforesaid direction of the learned PCIT. The dispute remains only with regard to the balance amount of ₹ 94,43,142. The learned PCIT has recorded a finding that the aforesaid amount of ₹ 94,43,142, is not a part of the VRS payment. Hence, in absence of any details furnished by the assessee, it cannot be allowed as deduction. It is the submission of learned Authorised Representative before us that the aforesaid amount of ₹ 94,43,142, was actually paid to employees towards compensation/payment for VRS, hence, is allowable as deduction

either under section 35DDA or section 37(1) of the Act. The learned Authorised Representative has further submitted before us that all the necessary details including the details of employees to whom such payment was made have been furnished before the Revenue authorities. Considering the aforesaid submissions of learned Authorised Representative, we are of the view that assessee's claim/submissions with regard to the payment of ₹ 94,43,142, requires proper verification at the end of the Assessing Officer. Therefore, the direction of learned PCIT to disallow the aforesaid amount is hereby set aside/modified. The Assessing Officer is directed to verify assessee's claim with regard to the payment of ₹ 94,43,142, and allow deduction, if permissible, under the relevant statutory provisions. The assessee must be provided a reasonable opportunity of being heard before deciding the issue. Ground no.1, is dismissed, whereas, grounds no.2 and 3, are partly allowed for statistical purposes.

7. In the result, appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 06.12.2019

**M. BALAGANESH**  
**ACCOUNTANT MEMBER**

**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06.12.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai