

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1803 & 1804/PUN/2017
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

Cooper Corporation Pvt. Ltd.,
Nariman House, Plot No. M-60-1,
Additional M.I.D.C.,
Satara

PAN : AAACC9687J

.....अपीलार्थी / Appellant

बनाम / V/s.

JCIT, Satara Range,
Satara

.....प्रत्यर्थी / Respondent

Assessee by : Shri Krishna Gujrathi
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 14-08-2020

घोषणा की तारीख / Date of Pronouncement : 18-08-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Both these appeals by the assessee against the separate order dated 24-02-2017 and 16-03-2017 passed by the Commissioner of Income Tax (Appeals)-4, Pune [‘CIT(A)'] for assessment years 2011-12 and 2012-13, respectively.

2. First, we shall take up the appeal in ITA No. 1803/PUN/2017 for A.Y. 2011-12.

3. Shri Krishna Gujrathi, the ld. AR submits that the assessee is not interested to prosecute ground No. 2 and prayed to dismiss the same as not pressed. Accordingly, the ground No. 2 raised by the assessee is dismissed as not pressed.

4. Ground No. 1 is relating to the confirmation of disallowance made u/s. 35(2AB) of the Act to an extent of Rs.64,13,618/- @ 100% in the facts and circumstances of the case.

5. Heard both parties and perused the material available on record. During the course of assessment proceedings, the Assessing Officer requested the assessee to give details regarding the deduction claimed u/s. 35(2AB) of the Act. The assessee vide reply dated 11-03-2014 furnished the details and copy of approval granted by the Department of Science and Industrial Research (DSIR). We find that the assessee incurred capital expenditure at Rs.1,90,62,094/- and revenue expenditure at Rs.4,97,26,668/- totalling to Rs.6,87,88,762/-. According to Assessing Officer, the DSIR has given approval up to an extent of Rs.2,79,81,000/- and assessee is entitled for deduction at the rate of 200% to an extent of Rs.5,59,62,000/- and on remaining amount Rs.1,28,26,762/- (Rs.6,87,88,762/- - Rs.5,59,62,000/-) disallowed @ 100% to an extent of Rs.64,13,344/-. The CIT(A) confirmed the same. The contention of ld. AR is that the Rule 6(7A)(b) came into effect from 01-07-2016 wherein under sub-rule (ii) of (b) of (7A) requires the assessee to quantify the expenditure incurred on in-house research and development facility. He submits that

since the assessment year under consideration is 2011-12 the (ii) of (b)(7A) of Rule 6 is not applicable. He brought to our notice on similar identical facts, this Tribunal allowed the claim in assessee's own case for A.Y. 2010-11 wherein on perusal of the same we note that this Tribunal held that it is not the requirement of law to get any certification/approval of expenditure from the DSIR in for No. 3CL and directed the Assessing Officer to allow the weighted deduction expenditure incurred in the hands of assessee u/s. 35(2AB) of the Act. For ready reference the para No. 18 is reproduced here-in-below :

“18. Applying the aforesaid ratio to the present set of facts, where it is not the requirement of law to get any certification / approval of expenditure from the DSIR in form No.3CL, there is no merit in the orders of authorities below in denying weighted deduction under section 35(2AB) of the Act. It may further be pointed out that the assessee on a later date had received the said form No.3CL from the DSIR on 08.04.2013. Accordingly, we direct the Assessing Officer to allow weighted deduction at 150% of expenditure incurred in the hands of assessee under section 35(2AB) of the Act. Hence, revised ground of appeal No.1 raised by assessee is allowed.”

6. Shri S.P. Walimbe, the ld. DR did not dispute the observation made by the Tribunal in assessee's own case for A.Y. 2010-11. Therefore, in view of the above, we hold that the assessee is entitled to claim deduction @ 200% and therefore, we direct the AO to allow remaining @ 100%. Thus, the addition made to an extent of Rs.64,13,618/- is deleted. Thus, ground No. 1 raised by the assessee is allowed.

7. Ground No. 3 is general in nature, hence, requires no adjudication.

8. In the result, the appeal of assessee in ITA No. 1803/PUN/2017 is partly allowed.

ITA No. 1804/PUN/2017, A.Y. 2012-13

9. The ld. AR submits that the assessee is not interested to prosecute ground No. 3 and prayed to dismiss the same as not pressed. Accordingly, the ground No. 3 raised by the assessee is dismissed as not pressed.

10. Ground No. 1 is relating to disallowance made u/s. 35(2AB) of the Act @ 100% in the facts and circumstances of the case.

11. Heard both parties and perused the material available on record. We note that the assessee claimed weighted deduction @ 200% on Rs.2,69,98,000/- and @ 100% of Rs.2,27,45,463/- u/s. 35(1)(iv) of the Act. The Assessing Officer restricted the deduction u/s. 35(2AB) of the Act @ 200% of the amount quantified by the DSIR to an extent of Rs.4,97,43,463/- and balance amount @ 100% u/s. 35(1)(iv) of the Act to an extent of Rs.2,27,45,463/-. Regarding the disallowance made by the Assessing Officer in terms of quantification made by the DSIR is not valid in view of our decision in the above paragraphs in ITA No. 1803/PUN/2017. Therefore, we hold that the assessee is entitled to claim weighted deduction of Rs.5,39,96,128/- u/s. 35(2AB) of the Act. Accordingly, the Assessing Officer is directed to give effect thereto.

12. Regarding the disallowance made by the Assessing Officer u/s. 35(1)(iv) of the Act, the contention of ld. AR is that the assessee is entitled to claim deduction @ 200% but however, a mistake crept in claiming the said deduction @ 100%. In our opinion, the view taken by us in the above paragraphs in ITA No. 1803/PUN/2017 is applicable in this appeal also wherein we hold that the assessee is entitled to claim deduction @ 200%

u/s. 35(1)(iv) of the Act. Accordingly, the Assessing Officer is directed to give effect thereto. Thus, ground No. 1 raised by the assessee is allowed.

13. Ground No. 2 is relating to challenging the action of CIT(A) in confirming the addition made by the Assessing Officer u/s. 14A of the Act in the facts and circumstances of the case.

14. We note that the assessee made disallowance of Rs.44,997/- under Rule 8D (2)(iii) of Rules on its own. According to Assessing Officer in the revised return of income, the assessee increased said disallowance its shown to an extent of Rs.1,46,262/- and he accepted the same. The CIT(A) confirmed the order of Assessing Officer. Before us, the contention of ld. AR is that the assessee need not disallow any expenditure in earning exempt income under law. By inadvertent mistake the assessee made wrong disallowance in the original return of income as well as revised return of income and prayed to remand the matter to the file of Assessing Officer for its fresh consideration. The ld. DR reported no objection for its fresh verification. We find force in the submissions of ld. AR that the issue raised regarding disallowance of expenditure u/s. 14A is requires fresh verification. Taking into consideration the facts of the case and submissions of ld. AR and ld. DR, we remand the matter to the file of Assessing Officer for fresh verification. The assessee is liberty to file evidences, if any in support of its claim. Thus, ground No. 2 raised by the assessee is allowed for statistical purpose.

15. Ground No. 4 is general in nature, hence, requires no adjudication.

16. In the result, the appeal of assessee in ITA No. 1804/PUN/2017 is partly allowed for statistical purpose.

17. To sum up, the appeal of assessee in ITA No. 1803/PUN/2017 is partly allowed and appeal of assessee in ITA No. 1804/PUN/2017 is partly allowed for statistical purpose.

Order pronounced in the open court on 18th August, 2020.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th August, 2020.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune
4. The Pr. CIT-3, Pune
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