

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.2516/Bang/2019
Assessment Year : 2008 - 09

The Dy. Commissioner of Income Tax, Circle-6(1)(2), Bengaluru	Vs.	M/s Sobha Renaissance Information Technology Pvt. Ltd., SRIT House, 113/1B, IPTL Main Road, Kundalahalli Bengaluru-560 037. PAN - AA ECS 6273 N
APPELLANT		RESPONDENT

Appellant by	:	Shri Muzaffar Hussain, CIT (DR)
Respondent by	:	Smt. Ishita Bhaumik, Smt. Ramya S Nayak, C.A

Date of Hearing	:	14-09-2020
Date of Pronouncement	:	29-09-2020

ORDER

Present appeal has been filed by revenue against order dated 30/09/2019 passed by Ld.CIT(A)-6, Bangalore for assessment year 2008-09 on following grounds of appeal:

1	<i>The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.</i>
2	<i>On the facts and circumstances of the case, Whether the Id. CIT(A) is justified in deleting the disallowance made by the AO of the expenditure incurred on the software development process claimed u/s. 35(1)(iv) of the IT Act?</i>
3	<i>For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.</i>
4	<i>The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.</i>

Brief facts of the case are as under:

2. Assessee is a private limited company having undertaking registered under software technology parks in India. During the year under consideration, assessee was engaged in rendering software development and related services. Assessee filed its return of income on 30/09/2008 declaring total loss of Rs.3,57,81,807/-. Assessee's case was selected for scrutiny and notices under section 143(2) of the Act and 143(1) of the Act was issued in response to which representative of assessee appeared before Ld.AO and filed requisite details.

3. Ld. AO noted that assessee incurred expenses of Rs.26,79,33,501/- relating to product development which was capitalised along with opening work in progress amounting to Rs.99,523/-, totalling to Rs.27,78,52,249/-. Ld.AO also noted

that, even though said development expenditure was capitalised in books, the same was claimed as admissible deduction while computation of income. Ld. AO noted that, said expenditure instead of being claimed as revenue expenditure in profit and loss account, to determined net profit, assessee claimed it as deduction to arrive at total income for purposes of tax payable. Before Ld.AO, assessee contended that it incurs product development expenditure based on specific requirement of client and expenditure so incurred has nexes with the revenue on account of sale of product. It was submitted by assessee that, expenditure on product development is revenue expenditure. Alternatively, assessee also contended that, even if the expenditure is otherwise treated as capital in nature, assessee is still eligible to claim in terms of section 35 (1) (iv) of the Act because, these expenditures are incurred by assessee on scientific research and related to business, within the meaning of section 43 (4) of the Act.

4. Ld.AO rejected submissions advanced by assessee. Ld. AO was of the opinion that, assessee could not explain whether, such expenditure is based on specific requirement of client and had nexus with revenue if any on account of sale of product. Ld. AO held that assessee's activity of product development did not fall within the meaning of scientific research as given under section 43 (4) of the Act. Ld.AO accordingly, disallowed the claim of assessee.

5. Aggrieved by order of Ld.AO assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) decided the issue in favour of assessee by observing as under:

Findings

In the case of CIT Vs. Talisma Corporation the assessee was engaged in development and sale of software projects incurred certain product development cost which mainly included salary and other general administrative expenses. The Hon'ble Karnataka High Court has held that in view of fact that said expenditure was in respect of scientific research and was incurred in relation to business carried on by the assessee, it was to be allowed as deduction under section 35(1)(iv) even if expenditure was capital in nature. The SLP filed by the revenue against the above decision has been dismissed by the Supreme Court [Special Leave to Appeal (C) . .CC No.(s) 8116/2014] In the case of Tejsa Networks Ltd. Vs. ACIT, the Karnataka High Court has held that in case product development expenditure is treated as capital in nature, the same should be allowed as a deduction under section 35(i)(iv) of the Act. In the case of DCIT Vs. TCIL Bell South Ltd., the Delhi ITAT held that the software development process consisted of a whole series of processes wherein systems analysis and design constituted the research activity and the programming quality, control, debugging and testing, etc. constituted the development activity. The ITAT held that the software development process constituted scientific research activity and the expenditure incurred was admissible under section 35(1)(iv) of the Act. The facts of the appellants case are similar to those of Talisma Corporation and Tejas Networks. Following the decisions of the jurisdictional High Court as well that of the ITAT, Delhi in the above cited cases, the appellants claim for deduction u/ s 35 is allowed. This ground of appeal is allowed.”

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

7. Ld.CIT DR at the outset submitted that, authorities below has not discharged requirements specified under section 43(4)(ii) regarding ownership of product development. He submitted that, in the event, products developed by assessee is owned by assessee, benefit available under section 35(1)(iv) will not be available to assessee.

8. At this juncture, Ld.AR submitted that, identical issue in earlier assessment year has been remanded by this *Tribunal*. He placed reliance on pages 59-94 of paper book, wherein relevant orders for assessment year 2005-06 and 2009-10 are placed.

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

10. We note that, assessee has been incurring expenses in *assessment year 2005-06* in *ITA No.301/Bang/2014*, against which, deduction was claimed in computation of income. Ld.AO, identically disallowed claim, by holding it to be capital in nature. Assessee also made similar alternate claim before authorities below for assessment year 2005-06, that it should be given deduction under section 35 (1) (iv) of the Act, in respect of expenditure on scientific research related to business carried on by assessee. We note that, this *Tribunal*, while considering the claim remanded the issue to *Ld.CIT(A)* by observing as under.

“It is clear from the finding of the learned CIT (Appeals) that it has not gone into the factual issue whether this expenditure pertains to the R & D activity of the assessee as per the provisions of section 35(1)(iv) r.w.s. 43(4)(ii)(a) of the Act wherein the definition of scientific research has been provided. Since the proper record and other details are not available before us in respect of the actual nature of the expenditure in question therefore we cannot give a conclusive finding regarding the real nature of the expenditure incurred by the assessee whether it is incurred on R&D activity of the assessee or not. Therefore in the facts and circumstances of the case, as well as in the interest of justice, we set aside this issue to the record of CIT (Appeals) for limited purpose of verifying the real nature of the expenditure incurred by the assessee whether it is for the R & D activity of the assessee. The CIT (Appeals) has to decide this issue after verification and examination of the relevant record and in the light of the decision of Hon’ble jurisdictional High Court in the case of Talisma Corporation Pvt. Ltd. (Supra). Needless to say the assessee shall be afforded an opportunity of hearing.”

11. We note that, in appeal before us, the Ld.AR relied on decision of *Hon'ble Karnataka High Court* in case of *Talisma Corporation Pvt.Ltd.*, reported in *(2013) 40 Taxmann.com 400*. We note that facts and issue considered by this *Tribunal* in assessment year 2005-06 are same with the year under consideration. Therefore, respectfully following the view taken by this *Tribunal* in assessment year 2005-06 in assessee's own case, we remand this issue to Ld.CIT(A). Ld.CIT(A) is directed verify whether, assessee acquires any copyright/ownership in respect of products sold developed. Ld.CIT(A) is directed to decide the issue based on documents/evidences filed by assessee in light of decision by *Hon'ble Karnataka High Court* in case of *Talisma Corporation Pvt.Ltd.*, (*supra*).

Accordingly, grounds raised by revenue stands allowed for statistical purposes.

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

Order pronounced in the open court on 29th Sept, 2020

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 29th Sept, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS