

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1240/Bang/2013
Assessment Year : 2002-03

The Dy. Commissioner of Income-tax, Circle-1(1)(1), Bengaluru.	Vs.	M/s Avasarla Technologies Ltd., No.89B, 90A, Electronic City, Hosur Road, Bengaluru-560 029. PAN – AABCA 2381 E
APPELLANT		RESPONDENT

Appellant by	:	Shri Priyadarshi Mishra, JCIT (DR)
Respondent by	:	None

Date of hearing	:	28.10.2020
Date of Pronouncement	:	02.11.2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 10/06/2013 passed by Ld. CIT (A)-1, Bangalore for assessment year 2002-03 on following grounds of appeal:

- “1. The order of the Learned CIT(A), in so far as it is prejudicial to the interest of revenue, is opposed to law and facts and circumstances of the case.*
- 2. The CIT(A) has erred in allowing the appeal of the assessee on the issue of disallowance of R & D expenditure amounting to Rs.*

4,94,90,503/- for the AY 2002-03 respectively by relying on the decision of Hon'ble Supreme Court in the case of CIT v. Reliance Petro Products Pvt. Ltd. without appreciating that the facts are totally different from the case of the assessee company, in as much as the addition in the relied upon case was on account of disallowance under section 14A and there was no finding that any information furnished by the assessee were found to be incorrect or erroneous or false while in the instant case the addition is made on account of a false claim in the written off income which the AO has held to be "inaccurate particulars of furnishing of income".

3. 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) be reversed and that of the AO be restored.

4. The appellant craves leave to add, to alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal."

Brief facts of the case are as under

2. Assessee filed its return of income for year under consideration on 30/10/2000 declaring loss of Rs.4,50,79,764/-. The return was processed under section 143(1) of the Act and was selected for scrutiny. Subsequently, notice under section 143(2) was issued and served on assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details as called for. Ld.AO observed that assessee was in the business of manufacturing and trading of electron gun for black-and-white and colour picture tubes.

3. Ld.AO noted that, assessee claimed deduction of Rs.4,94,90,503/- under section 35 (1) (iv) of the Act, on the ground that it related to research and development capital expenditure. Ld.AO rejected the claim of deduction by observing that assessee was involved in the manufacturing and testing of auxiliary groomed aluminum ammonia heat pipes used in spacecrafts by using the technology provided by Indian Space Research Organization (ISRO), and not out of its own research and development. Ld.AO opined

that assessee did not fulfill the conditions contemplated under section 35(1)(iv) of the Act. Ld.AO therefore initiated penalty proceedings.

Assessee preferred appeal before Ld.CIT(A) against the disallowance, which was dismissed by order dated 30/05/2008.

4. Be that as it may, subsequently, Ld.AO issued notice calling upon assessee to furnish any written submission if assessee wishes to rebut the levy of penalty under section 271(1)(c) vide letter dated 12/06/2008. In the penalty order so passed by Ld.AO dated 30/12/2008 it has been recorded that there was no response to the intimations issued to assessee and Ld.AO levied penalty for furnishing inaccurate particulars of income under section 271(1)(c) of the Act.

5. Aggrieved by the penalty order passed by Ld.AO, assessee filed appeal before Ld.CIT(A) with a delay of 2 years and 5 months which was not condoned. Assessee thereafter preferred appeal before this *Tribunal*. This *Tribunal* condoned the delay on the part of assessee in filing the appeal and remanded the issue to Ld.CIT(A) for deciding it on merits.

6. Ld.CIT(A) thereafter considered the issues on merits. In the impugned order before us, it is noted that Ld.CIT(A) considered letter dated 12/04/2013, filed by assessee being fresh statement of facts and grounds of appeal. Before Ld.CIT(A) assessee filed recognition received from R&D Unit, Ministry of Department of Science and Technology, Government of India in January 2012.

7. Ld. CIT (A) while deciding the issue, noted that Ld. AO should have referred the matter to the board through proper channel, as to whether assessee's activity involve scientific research and development. He deleted the penalty levied on this basis.

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

9. Ld. senior DR submitted that, on one hand Ld.CIT(A) records that Ld.AO should have referred to the Board through proper channel as to whether assessee's activity involve scientific research and development or not, whereas on the other hand he himself does not take such necessary actions and decides the issue himself. He submitted that Ld.CIT(A) in the impugned order deleted the penalty on the basis that merely a disallowance of claim towards research cannot lead to furnishing of inaccurate particulars or concealment by assessee which is without any basis. He thus submitted that the issue may be remanded to Ld.CIT(A), as necessary actions in respect of verification with the board regarding activity by assessee constituting scientific research and development during the relevant period was not taken.

10. None appeared on behalf of assessee today though the date of hearing has been informed to assessee by the revenue which is substantiated by letter dated 21/10/2020 intimating service of notice. The acknowledgment of service proves that assessee was intimated regarding date of hearing on 21/10/2020.

11. We are therefore inclined to decide the issue based on the details available on record and the submissions advanced by Ld.Sr DR.

12. We note that Ld.AO passed penalty order without considering the submissions of assessee. It is noted that none appeared before Ld.AO during penalty receding.

13. Before Ld.CIT(A) assessee filed recognition received by assessee from Ministry of Department of Science and Technology, Government of India in the year January 2012. It is submitted by assessee in written submission filed before Ld.CIT(A) dated 12/04/2013 (reproduced by Ld.CIT(A) in part para 3.4) that, though said intimation may not be relevant for the year under consideration, however the fact that this recognition has come after continued and sustained activities carried on in the field of research over several years as observed by Government of India cannot be ignored.

14. We note that under such circumstances it is relevant that necessary steps may be taken to ascertain if assessee could be considered to be carrying out research and development activities during the relevant period. Ld.CIT(A) having observed the same has not taken necessary steps. The issue considered by Ld.CIT(A) needs to be ascertained based upon the facts in present case. We therefore find it proper to remand the issue back to Ld.CIT(A) to take necessary actions/steps to ascertain, whether assessee could be considered to be carrying out with research and development activity during the relevant period under consideration, based on

the recognition issued by Ministry of Department of Science and Technology Government of India in January 2012.

15. In the light of above discussion we remand the issue Ld.CIT(A) for necessary steps.

Accordingly, issues 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 2nd Nov, 2020.

Sd/-

(A.K GARODIA)
Accountant Member

Bangalore,

Dated, the 2nd Nov, 2020.

/Vms/

Copy to:

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

Sd/-

(BEENA PILLAI)
Judicial Member

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-11-2020		Sr.PS
3.	Draft proposed & placed before the second member	-11-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-11-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-11-2020		Sr.PS/PS
6.	Kept for pronouncement on	-11-2020		Sr.PS
7.	Date of uploading the order on Website	-11-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-11-2020		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