

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SHRI P. MADHAVI DEVI, JUDICIAL MEMBER AND
D.S. SUNDER SINGH, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)**

**ITA No. 1751/Hyd/2018
Assessment Year: 2015-16**

Dy. Commissioner of Income- vs. Ocimum Bio Solutions India
tax, Circle – 16(2), Hyderabad. Ltd., Hyderabad.

PAN – AAAC04095L

(Appellant)

(Respondent)

**ITA No. 2091/Hyd/2018
Assessment Year: 2015-16**

Ocimum Bio Solutions India Ltd.,
Hyderabad.

Dy. Commissioner of Income
tax, Circle – 16(2), Hyderabad.

PAN – AAAC04095L
(Appellant)

(Respondent)

Revenue by : Smt. Nivedita Biswas
Assessee by : Shri P. Murali Mohan Rao

Date of hearing : 17-11-2020
Date of pronouncement : 18-12-2020

ORDER

PER D.S. SUNDER SINGH, A.M.

Both these cross appeals filed by the assessee as well as revenue are directed against the order of Id. CIT(A) – 4 Hyderabad, dated 18/06/2018 for the Assessment Year (AY) 2015-16.

2. Ground Nos. 1 to 12 of assessee's appeal are related to setting aside the issue of addition of Rs. 8,15,12,877/- made by the AO towards depreciation.

2.1. The grounds raised by the revenue are against the order of CIT(A) giving direction to the Assessing Officer (AO) to verify the bills and evidences and allow the claim of depreciation on intangibles instead of confirming the addition.

3. The assessee claimed the depreciation of Rs.8,15,12,877/- in respect of intangible assets for the year ending 31/03/2015 as observed by the AO from the notes on accounts. The AO called for explanation of the assessee as to why the depreciation should not be disallowed and in response to which the assessee submitted the explanation stating that during the FY 2012-13 it had acquired the intangible assets of its subsidiary company M/s Ocimum Biosolutions Inc., which were used for the business of the assessee company. Thus, the assessee explained the AO that the claim of deprecation was in order and as per the Income Tax Act. Not being convinced with the explanation of the assessee, the AO was of the view that the asset was neither owned nor used by the assessee for the purpose of business, thus, held that the assessee is not entitled for depreciation. Accordingly, disallowed the depreciation and made the addition to the returned income to the extent of Rs. 8,15,12,877/-.

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and submitted that it had acquired the intangible assets in FY 2012-13, such as, patents, trademarks business know-how and customers from M/s Ocimum Bio Solutions Inc., and put to use for the purpose of business. The assessee also submitted before the CIT(A) that the subsidiary company had the clientele and used its trademarks during the impugned year and hence argued that the observation of the AO with regard to neither owning the assets nor using for the business purpose is incorrect. The assessee further submitted that asset in question was taken into block of assets in FY 2012-13 and the same was continued till date and claimed the depreciation from the block of assets, hence the AO cannot take out a particular asset from the block. The assessee was claiming the depreciation from AY 2013-14 onwards and thus, argued that the AO is not permitted to withdraw the asset from the Block and disallow the depreciation, since, there were no fresh additions to assets in the block. Hence, it was argued that the assessee has rightly claimed depreciation and requested to delete the addition made by the AO. In support of his arguments, the Ld.AR relied on the following case laws:

1. Brembo Brake India (P) Ltd. Vs. DCIT, 56 taxmann.com 217
2. Weizmann Forex Ltd., Vs. DCIT, 21 Taxmann.com 99
3. Natco Exports Vs. Dy CIT [2003] 856 ITD 445 (Hyd.)
4. DCIT Vs. Coromandal Bio Tech Industries (I) Ltd. [2003] 20 taxmann.com 520 (Hyd.)

5. Marwar Hotel Ltd. Vs. ACIT, Ahmedabad (ITA No. 890/Ahd/2011).

5. The Id. CIT(A) considered the submissions of the assessee and directed the AO to verify the bills and evidences and allow the depreciation.

6. Against the order of the Ld.CIT(A), the assessee filed appeal before the Tribunal challenging the validity of the order of the Ld.CIT(A) setting aside the assessment. While, the Department has filed the appeal challenging the order of CIT(A) with a direction to allow the depreciation after verifying the bills and evidences.

7. During the appeal hearing, the Id. AR of the assessee submitted that the initial year, in which, the depreciation claimed was AY 2013-14, but not the impugned Assessment Year. He has drawn our attention to paper book at page no. 74 relating to Schedule of Depreciation for AY 2013-14. In Depreciation Schedule as at the end of 31/03/2013 the intangible assets - USA were taken at Rs. 50,26,55,503/- and depreciation of Rs.4,01,98,131/- was claimed. The assessment for AY 2013-14 was completed u/s 143(3) of the Act and the said assessment order was placed in the paper book at pages 59 to 62. As per the assessment order, the AO did not make any addition relating to the claim of depreciation. The AR also invited our attention to page No.112 of the paper book relating computation of total

income for AY 2014-15. In page No. 112, the assessee furnished the depreciation statement, as per which, the assessee had brought forward the opening balance of Rs.46.62 crores as on 01/04/2014 and claimed the depreciation of Rs.11.60 crores, which was allowed by the AO as per the assessment order passed u/s 143(3) of the Act, annexed to paper book in pages 63 to 67. He, therefore, argued that this was not the first year of claim and in the initial year the AO had verified the genuineness and the allowability of depreciation in respect of intangible assets and the depreciation claimed in the impugned year was only on brought forward balances, therefore, submitted that once the assessee has taken the asset into block of assets, the AO cannot disturb the block of assets and disallow the depreciation under the pretext of not owned and used for the purpose of business. The Id. AR further argued that the CIT(A) has erroneously misdirected herself and directed the AO to allow the depreciation after verifying the bills and vouchers, which is not permitted as per law. He, therefore, argued that the assessee has rightly claimed the depreciation on the assets, hence, requested to set aside the orders of lower authorities and delete the addition made by the AO. The assessee relied on the decision of Natco Exports Vs DCIT of ITAT, Hyderabad reported in (2003) 86 ITD 445 and Coramandal Bio Tech Industries Ltd(2012) 20 Taxmann.com 520 Hyderabad bench.

8. Per contra, the Id. DR vehemently supported the orders of the Ld.CIT(A) and argued that the Id. CIT(A) directed the AO to allow the depreciation after verifying the details and vouchers, since, the assessee failed to produce the evidences establishing the acquiring of assets and put to use the same. Since the assessee failed to produce the same before the Ld.CIT(A) also, the Id. DR argued that the AO has rightly made the addition and hence, requested to set aside the order of CIT(A) and confirm the addition made by the AO.

9. We have heard both the parties and perused the material placed on record. In the instant case, the AO made the addition of Rs.8,15,12,877/- representing the disallowance of depreciation. The Ld.CIT(A) has directed the AO to allow the depreciation after verification of the bills and vouchers. The order of the Ld.CIT(A) appears to be setting aside the issue to the file of AO which is not permitted as per law. As per section 251 of the IT Act, the Ld.CIT(A) has no powers to set aside the issue back to the file of AO and the Ld.CIT(A) is empowered to confirm, reduce and enhance or annul the assessment. In the instant case, the CIT(A) has directed the AO to allow depreciation after verifying the bills and vouchers, which is not permissible as per law. In this case, initial year of claim of depreciation was AY 2013-14. As discussed earlier in this order, the AO has allowed the depreciation in the order passed u/s 143(3) of the Act dated 30/03/2016, which is

annexed as pages 59 to 62 of paper book. Similarly, for FY 2014-15 also, the assessee claimed depreciation on intangible assets to the extent of Rs.11.60 crores, which was allowed in the assessment made u/s 143(3) of the Act, dated 26/12/2016. Though, in the earlier years the assessee has claimed depreciation, no disallowance was made on account of depreciation by the AO. However, on perusal of the assessment orders for the AY 2013-14 and 2014-15 there were no indications of having verified the genuineness of claim with regard to acquiring the assets and putting the same for business purposes. In the paper book also the assessee neither filed the evidence with regard to acquisition of assets nor furnished the information called for by the AO for the AYs 2013-14 and 2014-15 for acquiring the assets and the terms and conditions of the acquisition of assets, the details of assets acquired, valuation of assets and mode of valuation etc. to verify the correctness of claim. Though AO is not permitted to remove any of assets from the block of assets he is not barred from verifying the claim of the assessee with relevant evidences with regard to claims made in the return of income. It is also obligation of the assessee to furnish the details. From the perusal of the order of the Ld.CIT(A) there was no information with regard to the evidences placed before the Ld.CIT supporting the claim of acquiring the assets. Before us also the assessee did not furnish any information with supporting evidences such as details of assets, agreement with

the subsidiary company, valuation of assets, mode of valuation, bills and vouchers etc. The assessee relied on the decision in the case of Natco Exports Vs. DCIT, [2003] 86 ITD 445 (Hyd.). In cited case, the coordinate bench of this Tribunal has held as under:

“16. From the above, it is clear that as long as an asset forms part of the block of assets and the block continues to exist, provisions of section 50 do not come into play and depreciation has to be allowed on that portion of the W.D.V. of the assets which have been scrapped, after reducing the scrap value from the block of assets. This view is fortified by the judgments of Jabalpur Bench of the ITAT in the case of Packwell Printers, the judgment of the Ahmedabad Bench of the ITAT in the case of Inductotherm (India) Ltd (supra) and the judgment of the Patna Bench of the ITAT in the case of Parikh Engg. & Body Bldg. Co. Ltd. (supra). Therefore, in view of the decisions and interpretation of the concept of "block of assets" depreciation on ponds which is forming part of the block of assets has to be allowed as deduction even though these ponds were discarded and not used and not owned by it during the assessment years in question, as the assessee was not entitled to any scrap value whatsoever, consequent to discarding.”

The issue involved in the above case is with regard to application of section 50 of the IT Act. The ITAT did not place any restriction to examine the correctness of the claim made in the return of income.

9.1. In the case of DCIT Vs. Coromandal Bio Tech Industries (I) Ltd., [2012] 20 Taxmann.com 520 (Hyd) also the issue with regard to usage of asset subsequent to initial assessment years. Both the cases relied on by the assessee are related to fish/prawn ponds which were once used but later on discarded / discontinued and the ponds were handed over to the owners. In both the cases, the assets were physical assets which are capable for verification and

located in India. In the case on hand issue is related to acquiring the intangible assets and not provided any information with regard to acquisition and put to use. Apart from the above, the issue involved in the assessee's case is acquired from foreign company. The nature of assets acquired by the assessee were intangible assets, but not physical assets as in the case laws relied upon by the assessee. In the absence of details of value of assets, nature of assets acquired by the assessee, valuation, mode of acquisition etc., the same are not capable of verification, thus, the case laws relied upon by the assessee are distinguishable and not applicable to the assessee's case.

9.2. In the impugned assessment year, the assessee in response to the questionnaire issued by the AO filed the explanation which is general in nature, but no details or evidences were placed before the AO or the Ld.CIT(A). Before us also the assessee has not furnished the evidences with regard to acquisition of assets. Therefore we, set aside the issue back to the file of the AO to examine the issue in detail and decide the claim of depreciation afresh on merits. Needless to say that AO should give an opportunity to the assessee. The assessee is also directed to cooperate with AO and furnish the necessary information. Thus, the assessee's appeal as well as revenue's appeal on this issue is allowed for statistical purpose.

10. Ground Nos. 13 to 16 of assessee's appeal relate to disallowance of expenses towards advertisement, sales promotion, travelling & conveyance and other expenses.

11. During the course of assessment proceedings, the AO found that the assessee has debited the sum of Rs.1,41,222/- towards advertisement and sales promotion, an amount of Rs.34,44,324/- towards travelling and conveyance and an amount of Rs.11,77,292/- towards other expenses, under the head administrative expenses, besides, various other expenses debited to P&L Account. During the assessment proceedings, the AO called for the bills and vouchers and on verification of the same, the AO noticed that the expenses are not supported by proper bills in respect of advertisement and sales promotion of Rs.1,41,222/-, travelling and conveyance expenses to the extent of Rs.4,74,000/- and other expenses to the tune of Rs.4,85,000/-. He, therefore, made the addition of Rs.11,00,222/- (Rs. 1,41,222 + Rs. 4,74,000 + Rs. 4,85,000) in respect of the advertisement, conveyance and other expenses.

12. When the assessee went on appeal before the CIT(A), the CIT(A) restricted the disallowance to the extent of 5% of the total expenses, against which, the assessee is in appeal before the Tribunal.

13. We have heard both the parties and perused the material on record. The AO disallowed the sum of Rs.1,41,222/- in respect of advertisement and sales promotion, Rs.4,74,000/- in respect of travelling and conveyance expenses and Rs.4,85,000/- in respect of other expenses, for which the assessee failed to produce the vouchers except the self-made vouchers which are not capable of verification. Therefore, the Ld.CIT(A) restricted the disallowance to the extent of 5% of total expenditure.

14. During the appeal hearing, the Id. AR could not support his case with proper explanation with regard to disallowance confirmed by the Ld.CIT(A). Therefore, we do not find any reason to interfere with the order of Ld.CIT(A) and the same is upheld. The grounds raised by the assessee on this issue are dismissed.

15. In the result, appeal of the assessee is partly allowed for statistical purposes and the appeal of the revenue is also allowed for statistical purposes..

Pronounced in the open court on 18th December, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMEBR

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 18th December, 2020.

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Copy to :

- 1) DCIT, Circle – 16(2), 2nd Floor, “B” Block, IT towers, AC Guards, Masab Tank, Hyderabad. IT Towers, AC Guards, Hyderabad.
- 2) M/s Ocimum BioSolutions India Ltd., Reliance Classic, 6th Floor, Road No. 1, Banjara Hills, Hyderabad – 500 034.
- 3) CIT(A) - 4, Hyderabad
- 4) Pr. CIT - 4 Hyderabad.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File.

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