

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 306/CHNY/2020  
निर्धारण वर्ष / Assessment Year: 2015-16

**M/s. Global Pharma  
Healthcare P. Ltd.,**  
No.2A, Ganganagar,  
Kodambakkam,  
Chennai – 600 024.

**The Income Tax Officer,**  
v. Corporate Ward 2(2),  
Chennai.

**PAN: AABCG 8774H**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate  
: Shri Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.04.2021

घोषणा की तारीख/Date of Pronouncement

: 11.06.2021

**आदेश /O R D E R**

**Per G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-6, Chennai, dated 05.02.2020 and pertains to assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:-

1. The order of the Commissioner of Income Tax (Appeals) - 6, Chennai dated 05.02.2020 in I.T.A.No.48/CIT(A)-6/2017-18, for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT(Appeals) erred in sustaining the disallowance of the claim of weighted deduction u/s 35(2AB) of the Act aggregating to Rs.8,16,377 /- in the computation of taxable total income without assigning proper reasons and justification.
3. The CIT(Appeals) failed to appreciate that the reasons given in para 5 of the impugned order to sustain the addition were not correct and ought to have appreciated that there was no proper consideration of the approval obtained from the Ministry of Science & Technology, Government of India.
4. The CIT(Appeals) erred in confirming the addition of Rs.6,91,890/- being the differential turn over on the analysis of the export import summary data and the profit & loss account in the computation of taxable total income without assigning proper reasons and justification.
5. The CIT(Appeals) failed to appreciate that apart from the attempt of the Appellant in reconciling the difference, the assessment of the entire differential turnover was wrong, erroneous, unjustified, incorrect and not sustainable in law.
6. The CIT(Appeals) erred in sustaining the addition of Rs.4 Lakhs being the estimated disallowance of printing & stationary (Rs.20,40,960/-) and sales promotion (Rs.19,80,702/-) at 10% in the computation of taxable total income without assigning proper reasons and justification.
7. The CIT(Appeals) erred in sustaining the disallowance of the claim of deferred revenue expenditure written off aggregating to Rs.43,81,384/- and consequently erred in confirming the addition of such sum in the computation of taxable total income without assigning proper reasons and justification.
8. The CIT(Appeals) went wrong in recording the findings in this regard in Page Nos. 5 & 6 of the impugned order without assigning proper reasons and justification.

9. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

10. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts of the case are that assessee company is engaged in the business of manufacturing of drugs and pharmaceuticals, filed its return of income for the assessment year 2015-16 on 24.10.2015, declaring total income of Rs.13,26,465/-. The case was taken up for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 22.09.2017 determining total income of Rs.78,98,912/- by inter-alia making addition towards disallowance of excess claim of weighted deduction u/s.35(2AB) of the Act, addition towards difference in export turnover of Rs.6,91,890/-, adhoc disallowance of 10% on printing & stationery and sales promotion expenses of Rs. 4,00,000/- and addition of Rs.43,81,384/- towards deferred revenue expenditure written off. The assessee preferred an appeal before the first appellate authority but could not succeed. The Id.CIT(A) for reasons recorded in his appellate order dated 05.02.2020 confirmed additions made by the AO and dismissed appeal filed by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The first issue that came up for our consideration from Ground Nos.2 & 3 of assessee appeal is, disallowance of weighted deduction u/s.35(2AB) of the Act. During the year under consideration, the assessee has claimed weighted deduction of Rs.67,39,377/- u/s.35(2AB) of the Act, towards expenses incurred for In-house Research and Development facilities. The AO has disallowed a sum of Rs.8,16,377/- on the ground that the Ministry of Science and Technology had approved weighted deduction u/s.35(2AB) of the Act for an amount of Rs.59,23,000/- only and hence, excess claim of deduction of Rs.8,16,377/- has been added back to the total income.

4.1 The Id.AR for the assessee submitted that the Id.CIT(A) has erred in sustaining disallowance of weighted deduction u/s.35(2AB) of the Act, without appreciating the fact that even if, the DSIR has not certified expenditure for the purpose of weighted deduction but genuine expenditure incurred wholly and exclusively for the purpose of business cannot be disallowed. The Id.AR further submitted that even assuming for a moment, particular expenditure is not eligible for weighted deduction but the same can be allowed u/s.37(1) of

the Act, because said expenditure was necessarily incurred for the purpose of business of the assessee.

4.2 The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that the assessee has failed to file any evidences to prove how and why deduction can be allowed u/s.35(2AB) of the Act, without any quantification from the Competent Authority, i.e., DSIR, Ministry of Science and Technology, Government of India.

4.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In order to claim deduction u/s.35(2AB) of the Act, it is necessary for the assessee to provide approval from Competent Authority in Form No.3CL. In this case, as per information available on record, the assessee has submitted approval letter from the Competent Authority i.e., Ministry of Science and Technology, Govt. of India, only for an amount of Rs.59,23,000/-, whereas deduction has been claimed for an amount of Rs.67,39,377/-. Therefore, there is no error in the findings of the AO to disallow weighted deduction claimed u/s.35(2AB) of the Act, for excess deduction. But, alternative claim of the assessee that even if, expenditure is not

eligible for weighted deduction u/s.35(2AB) of the Act, but same has been incurred wholly and exclusively for the purpose of business of the assessee, further, there is no bar under the Act to claim deduction towards genuine expenditure incurred for the purpose of business u/s.37(1) of the Act. But, fact remains that there is no information as to what kind of expenditure the assessee has incurred for the purpose of business, whether it is capital expenditure or personal expenditure or revenue expenditure. Therefore, to ascertain facts with regard to nature of expenditure, issue has been set aside to file of the AO and direct him to cause necessary enquiries and take appropriate decision in accordance with law.

5. The next issue that came up for our consideration from Ground Nos. 4 & 5 of assessee appeal is, addition towards difference in export turnover. The AO has made addition of Rs.6,91,890/- towards export turnover on the basis of information available with Income Tax Department and sales declared by the assessee in the P & L account, on the ground that the assessee has failed to file necessary reconciliation explaining difference in turnover. It was the claim of the assessee before the lower authorities that information relied upon by the AO to quantify difference in export

turnover was not furnished to the assessee. The assessee further claimed that it has furnished all possible evidences to prove that there is no difference in turnover as per its record.

5.1 Having heard both sides and considered material on record, we find that the AO has made addition towards difference in export turnover on the basis of information available with the Department, but such information was not furnished to the assessee. It is a well settled principle of law that before taking any adverse view, it is bounded duty of the AO to show-cause to the assessee as to why he is proposing such addition and also furnish information relied upon by the AO to arrive at such conclusion. In this case, it is the claim of the assessee that information relied upon by the AO to make addition towards export turnover was not furnished to the assessee. Therefore, we are of considered view that the issue needs to go back to file of the AO to give one more opportunity to the assessee to explain its case. Needless to say, the AO shall furnish information available with the Department to the assessee, so as to explain difference in export turnover as per books of accounts of the assessee.

6. The next issue that came up for our consideration from Ground No.6 of assessee appeal is, adhoc disallowance of 10% of printing & stationery and sales promotion expenses. The AO has disallowed 10% expenses on the ground that the assessee could not produce necessary bills and vouchers in support of those expenses. It was the claim of the assessee that all expenditure incurred wholly and exclusively for the purpose of business, however, it could not produce certain evidences in respect of printing & stationery and sales promotion but the disallowance made by the AO is excessive and unreasonable and hence, reasonable addition may be made considering nature of expenses.

6.1 Having heard both sides and considered material on record, we find that except stating that disallowance quantified by the AO is excessive and unreasonable, the assessee could not furnish any evidences to support claim of expenditure including bills and vouchers. At the same time, the AO has also failed to give any reason for making adhoc disallowance of 10% of expenses. Therefore, considering facts and circumstances of the case and also plea of the assessee that disallowance computed by the AO is excessive and unreasonable, we deem thought it fit to direct the AO

to restrict adhoc disallowance to 5% of printing & stationery and sales promotion expenses.

7. The next issue that came up for our consideration from Ground No.7 of assessee appeal is disallowance of claim of deferred revenue expenditure written off aggregating to Rs.43,81,384/-. The facts with regard to impugned dispute is that assessee is engaged in the business of manufacture of drugs & pharmaceuticals has paid registration fees for its products in various countries. The assessee company has treated such expenses as deferred revenue expenditure in view of benefit extending to more than one year and had proportionately written off / charged expenses to the P & L account for earlier years. However, for the assessment year under consideration, the assessee had changed its policy of accounting due to the fact that it had discontinued business in relation to various products / parties / countries on which such registration fees were paid and hence, expenditure classified under 'deferred revenue expenditure' has been written off to P & L account. The AO has disallowed deferred revenue expenditure written off on the ground that said expenditure pertains to earlier year and hence takes characteristics of prior period expenses and thus cannot be allowed as deduction.

7.1 The Id.AR for the assessee referring to paper-book filed for this purpose submitted that the assessee has paid registration fees across the globe for various products, however it has discontinued business in relation to various products / parties / countries on which such registration fees were paid and hence, fees paid for registration of products has been charged off to P&L account. The Id.AR further submitted that the assessee has also furnished necessary evidences to prove that it has discontinued its business with certain parties for which, ledger extract of the parties were furnished to prove that it had written off amount received from such parties. Therefore, once the product line or party from whom assessee is dealing has discontinued its business, then obviously expenditure incurred for registration of such products needs to be charged off to the P&L account, because said expenditure is incurred wholly and exclusively for purpose of business of the assessee.

7.2 The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that the assessee has failed to file any evidence to prove that it had incurred expenses for registration of products and hence, the Id.CIT(A) has rightly held that in absence of any

documentary evidence deduction claim towards deferred revenue expenditure cannot be allowed.

7.3 We have heard both the parties, perused materials available on record and gone through orders of authorities below. The facts brought out by the lower authorities clearly indicate that the assessee has not filed any evidence to prove that it had incurred expenditure for the purpose of registration of products and business in relation to such product has been discontinued for the impugned assessment year. But, fact remains that, before us assessee has filed certain details including ledger extract of certain parties to prove that it had discontinued business with certain parties and on certain products. No doubt, any expenditure incurred for the purpose of business of the assessee can be allowed as deduction whether such business is continued or discontinued. But, fact remains that it is necessary for the assessee to prove that it had incurred expenditure for business of the assessee. In this case, no doubt the assessee has not filed any evidences before lower authorities to prove its case. Therefore, considering the fact that the assessee has not filed any details before the AO and also taking into account it had filed certain additional evidences before us to prove its case, the issue has been set aside to the file of the AO and

direct him to reconsider the issue in light of material filed to prove its case. In case, the AO finds that the assessee has placed necessary evidence in support of its claim, then the AO is directed to allow the claim of expenditure.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the court on 11<sup>th</sup> June, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

**(V. Durga Rao)**

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

**(G. Manjunatha)**

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11<sup>th</sup> June, 2021

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |