

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 224/PUN/2018  
निर्धारण वर्ष / Assessment Year : 2012-13

HUF India Pvt. Ltd.  
Gat No.304, Nanekarwadi,  
Chakan, Tal- Khed,  
Pune-410 501  
PAN : AABCH9173K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,  
Circle-9, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Aaditya Dastane  
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 21.06.2021  
घोषणा की तारीख / Date of Pronouncement : 21.06.2021

**आदेश / ORDER**

**PER BENCH :**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeals)-8, Pune dated 28.11.2017 for the assessment year 2012-13  
as per the following grounds of appeal on record :

*"1. The learned CIT(A) erred in law and on facts in confirming addition of Rs.9,00,000/- disallowing claim u/s.35D of the Act by disregarding that the same is applicable to all pre-operative expenditure.*

*2. The appellant craves to add, alter, modify or substitute any grounds of appeal at the time of hearing.”*

2. The only grievance of the assessee is with regard to confirmation of addition of Rs.9,00,000/- by the Ld. CIT(Appeals) disallowing claim u/s.35D of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) as made by the Assessing Officer.

3. The brief facts in this case are that the assessee is engaged in the business of manufacturing of Automobiles & Auto Parts. The assessee has filed its return of income 30.11.2012 declaring total income at Rs. Nil. The case of the assessee was selected for scrutiny under CASS and statutory notices were issued accordingly. During the course of assessment proceedings, the Assessing Officer observed that the assessee had deposited the employee’s contribution to Provident fund of Rs.5,82,110/- beyond the dates specified in the Act. Accordingly, the Assessing Officer disallowed the same u/s.36(1)(va) r.w.s.2(24)(x) of the Act. The Assessing Officer further observed that the assessee had claimed a sum of Rs.9,00,000/- on account of preliminary expenses u/s.35D of the Act. On verification, the Assessing Officer found that the assessee had claimed total expenditure of Rs.98,11,558/- as pre-operative expenses during the year under consideration, out of which, it considered Rs.45,00,000/- as the qualifying amount u/s.35D and the same was amortized and claimed as 1/5<sup>th</sup> expenses over a period of 5 years starting with A.Y.2009-10. Accordingly, the assessee claimed Rs.9,00,000/- in the year under consideration. However, on verification of the nature of expenses claimed, the Assessing Officer found that they did not fall in the category of the expenses allowable u/s.35D(2) of the Act and accordingly, the Assessing Officer disallowed the same.

4. At the time of hearing, the Ld. Counsel for the assessee submitted that the matter is covered by the decision of the Pune Bench of the Tribunal in assessee's own case in ITA No.2674/PUN/2017 for the assessment year 2011-12 dated 15.11.2019.

5. The Ld. DR fairly conceded to the submissions put forth by the Ld. Counsel for the assessee.

6. We find, the Pune Bench of the Tribunal in assessee's own case in ITA No.2674/PUN/2017 for the assessment year 2011-12 has held and observed as follows:

*"4. I have heard both the sides and gone through the relevant material on record. In the course of an earlier hearing of this appeal, the ld. DR was required to submit a report on the granting or otherwise of deduction of such expenses of Rs.9.00 lakh in the earlier years. A copy of the report from the AO has been placed on record by the ld. DR. As per this report, a deduction of Rs.9.00 lakh was claimed for the first time in the return for the A.Y. 2009-10 which was not granted, but the ld. CIT(A) accepted the assessee's claim and the Revenue's appeal has been dismissed, albeit on low tax effect. No assessment was taken up u/s. 143(3) of the Act for the A.Y.2010-11, meaning thereby that the deduction got allowed. From the above report of the AO, it is ostensible that the assessee has been consistently allowed deduction of Rs.9.00 lakh in the assessments for the A.Ys 2009-10 and 2010-11. The assessment year 2011-12, under consideration, is a consecutive 3rd year in line. In view of the fact that the deduction for similar amounts has been allowed in the immediately two preceding assessment years, following the principle of consistency, I hold the assessee to be entitled to deduction of Rs.9.00 lakh in the year under consideration as well. The impugned order is overturned on this score and the deduction of Rs.9.00 lakh is granted.*

*5. In the result, the appeal is allowed."*

We, therefore, respectfully following the decision of the Pune Bench of the Tribunal in assessee's own case (supra.) with the same parity of reasoning, allow the grounds raised by the assessee.

7. In the result, **appeal of the assessee is allowed.**

Order pronounced on 21<sup>st</sup> day of June, 2021.

Sd/-  
**INTURI RAMA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> June, 2021  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-8, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	21.06.2021	Sr.PS/PS
2	Draft placed before author	21.06.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		