

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R. S. SYAL, VICE PRESIDENT
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.3100/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Minilec India Pvt. Ltd.,
1073/1-2-3, Mulshi Pirangut,
Mutha Road, Mulshi,
Pune-412111.

PAN: AABCM2682E

..... आवेदक/Applicant

बनाम / V/s.

ACIT, Circle-11(2),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 27.04.2021
घोषणा की तारीख / Date of Pronouncement : 06.05.2021

आदेश / ORDER

PER S. S. VISWANETHRA RAVI, JM:

The above-said appeal by the assessee is against the order dated 12.09.2017 passed by the CIT(A)-7, Pune for A.Y. 2011-12.

2. The assessee raised grounds nos.1 to 3 challenging the action of CIT(A) in confirming the order of the Assessing Officer on account of disallowance made u/s 35(2AB) of the Act in the facts and circumstances of the case.

3. We note that the assessee claimed weighted deduction at 200% on Research and Development to an extent of Rs.61,40,117/-. The Assessing Officer asked the assessee to justify the said claim made u/s 35(2AB) with

supporting evidences. It was submitted that the assessee had approached DSIR vide application dated 25.06.2012 for renewal of recognition of its R&D unit. The DSIR granted recognition of the in-house R&D facilities and evidenced to that effect vide Annexure-7. The Assessing Officer held that the facts and circumstances relating to the year under consideration is similar to facts and circumstances for A.Y. 2010-11 also and it is a recurring issue. The Assessing Officer disallowed the claim of the assessee for non-submission of approval in the prescribed Form 3CM from DSIR.

4. The assessee challenged the same before the CIT(A) and it was contended that R&D facilities of the assessee were duly recognized by the DSIR and the entire expenditure is eligible for weighted deduction u/s 35(2AB). The DSIR cannot put fetters on time period for eligibility of deduction and also cannot put restriction on quantum of expenditure eligible for deduction u/s 35(2AB) of the Act. The assessee placed reliance in the case of Maruti Suzuki India Ltd. reported in 84 taxmann.com 45 (Delhi) and requested the CIT(A) to keep the appeal in abeyance as the appeal for A.Y. 2010-11 is pending before the ITAT. But, however, the CIT(A) confirmed the order of the Assessing Officer for non-submission of Form 3CM from DSIR.

5. As matters stood thus the Co-ordinate Bench of this Tribunal in assessee's own case for A.Y. 2010-11 which is earlier year vide its order dated 09.04.2018 held the recognition given by the prescribed authority which is mandate of section 35(2AB) of the Act is maintained and once the recognition is so maintained, the assessee has to be accorded deduction u/s 35(2AB) of the Act. The non-receipt of Form No.3CM for the intervening three years is at best a procedural lapse and is not fatal for denial of claim of deduction u/s 35(2AB)

of the Act and, accordingly, directed the Assessing Officer to allow the deduction claimed u/s 35(2AB) of the Act.

6. Again this Tribunal in assessee's own case for A.Y. 2012-13 which is subsequent year vide its order dated 12.07.2019 followed finding of this Tribunal in assessee's own case for A.Y. 2010-11 and allowed deduction u/s 35(2AB) of the Act. The relevant portion in para no.6 and 7 of A.Y. 2012-13 is reproduced hereinbelow :-

"6. We find that under similar circumstances assessee's claim of deduction u/s. 35(2AB) was denied by the lower authorities in assessment year 2010-11. The assessee carried the matter in appeal before the Tribunal in ITA No. 690/PUN/2015 for assessment year 2010-11. The Coordinate Bench vide order dated 09-04-2018 after examining the facts of the case and considering various decisions on the issue held as under :

"30. The issue which arises is whether the assessee can be denied deduction under section 35(2AB) of the Act for non receipt of form No.3CM. The assessee admittedly, had received recognition in the initial period and thereafter, it is case of renewal of recognition of in-house R&D facility, which was also granted by the prescribed authority for the period ending 31.03.2012 and also for the period ending 31.03.2015. The correspondence between the assessee and DSIR for the third phase reflects a reminder being sent by DSIR to renew the recognition of in-house R&D facility beyond 31.03.2012. In other words, DSIR had not derecognized the facility for the years 2009-12. The recognition to the facility has been granted from start till date and has not been withdrawn. In other words, recognition given by the prescribed authority which is mandate of section 35(2AB) of the Act is maintained and once the recognition is so maintained, the assessee has to be accorded deduction under section 35(2AB) of the Act. The non receipt of form No.3CM for the intervening three years is at best a procedural lapse and is not fatal for denial of claim of deduction under section 35(2AB) of the Act. Accordingly, we hold so. The prescribed authority in any case under the pre-amended provisions had no authority to look into the nature and quantum of expenditure except in the first year to see investment in land and building. After recognition of facility and approval by DSIR, the Assessing Officer is to allow the claim of assessee after verifying the same. Thus, we direct the Assessing Officer to allow deduction claimed under section 35(2AB) of the Act to the facility for the year under appeal. The ground of appeal No.1 raised by the assessee is thus, allowed."

7. In the assessment year under appeal there has been no change in the facts. The assessment year under appeal is prior to amendment of section 35(2AB) and relevant Rules by the Finance Act, 2015. Hence, the amended provisions are not attracted. For the reasons stated in the aforesaid order of Co-ordinate Bench, we hold that the assessee is eligible to claim deduction u/s. 35(2AB) for the impugned assessment year, as well. Accordingly, ground Nos. 1 and 2 of the appeal are allowed."

7. In the light of above, we note that the assessee had received recognition in the initial period and also renewal of recognition period ending 31.03.2012 and also for period ending 31.03.2015. We find that for the intervening period between 31.03.2012 and 31.03.2015 admittedly there was no approval of recognition. The ld. AR submits that the facilities so granted initially by the DSIR has not been withdrawn. Therefore, in our opinion, the recognition given by the prescribed authority initially is the mandate of section 35(2AB) of the Act is to be maintained once the recognition is so granted as held by this Tribunal for A.Y. 2010-11 and A.Y. 2012-13.

8. The ld. DR did not place on record any order contrary to the orders of this Tribunal in assessee's own case for A.Y. 2010-11 and A.Y. 2012-13 and, therefore, we hold the assessee is entitled to claim weighted deduction u/s 35(2AB) of the Act. Thus, grounds no.1 to 3 raised by the assessee are allowed.

9. Ground no.4 raised by the assessee challenging the action of the CIT(A) in confirming the disallowance made u/s 14A of the Act read with Rule 8D of the Rules in the fact and circumstances of the case.

10. We note that the assessee earned exempt income of Rs.36,538/-. The Assessing Officer asked the assessee to furnish working of disallowance required u/s 14A r.w. Rule 8D. According to the Assessing Officer, the assessee furnished working of disallowance and, accordingly, disallowance of Rs.9,28,895/- was disallowed u/s 14A r.w. Rule 8D.

11. Before the CIT(A), the contention was made to raise additional grounds challenging the action of the Assessing Officer for disallowance made u/s 14A of the Act. The CIT(A) held the disallowance made by the Assessing Officer u/s

14A was on the basis of working of disallowance furnished by the assessee itself and held on legal matrix contesting such issue is not maintainable. Accordingly, he confirmed the disallowance made by the Assessing Officer.

12. Before us, the assessee raised additional grounds and the ld. AR submits that this Tribunal on similar set of facts decided the issue in favour of the assessee and directed the Assessing Officer to restrict the disallowance to the extent of exempt income earned. The ld. AR referred to order of this Tribunal in assessee's own case for A.Y. 2012-13 and drew our attention to para 3.1 in page no.46 of the Paper Book. We note that the prayer made by the ld. AR is limited to the computation of disallowance to the extent of exempt income and admittedly, the assessee earned income of Rs.36,538/- as per para 7.1 of the assessment order and the disallowance made was at Rs.9,28,895/-. This Tribunal considering the submissions of the assessee in A.Y. 2012-13 and placing reliance in the case of State Bank of India of Hon'ble Supreme Court reported in 99 taxmann.com 286 directed the Assessing Officer to restrict the disallowance u/s 14A to the exempt income earned. The relevant portion in para 8 in A.Y. 2012-13 is reproduced hereinbelow :-

"8. The assessee in ground Nos. 3 and 4 of the appeal has assailed disallowance of deduction u/s. 14A r.w. Rule 8D. The ld. AR has stated at the Bar that he is not pressing ground Nos. 3 and 4 of the appeal. In alternate, the assessee has raised additional ground with limited prayer to restrict disallowance u/s. 14A r.w. Rule 8D to the extent of exempt income earned during the relevant period. The assessee has earned dividend income of Rs.34,093/- during the period relevant to the assessment year under appeal. The assessee has not made any suo-moto disallowance for earning exempt income. Against the said exempt income the Assessing Officer made disallowance of Rs.7,97,298/-. The Hon'ble Supreme Court of India in the case of Pr. Commissioner of Income Tax Vs. State Bank of India (supra) has held that the disallowance u/s. 14A r.w. Rule 8D cannot exceed exempt income earned by the assessee. Thus, in view of the above decision, we direct the Assessing Officer to restrict the disallowance u/s. 14A to exempt income earned by the assessee during the relevant period i.e. Rs.34,093/-. The ground Nos. 3 and 4 of the appeal are dismissed and the additional ground of appeal is allowed."

13. In the light of above, we direct the Assessing Officer to compute the disallowance and restrict to the extent of exempt income earned. Thus, ground no.4 raised by the assessee is allowed for statistical purposes.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced on this 06th day of May, 2021.

Sd/-
(R. S. SYAL)
VICE PRESIDENT

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th May, 2021

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune.
4. The Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.