

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.26/Del/2017
Assessment Year: 2012-13

Indo Japan Agro Tech Ltd., 100-A, Cycle Market, Jhandewalan Extension, New Delhi.	Vs.	ITO, Ward-12(2), New Delhi.
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PAN: AAACI8493G

(Appellant)

(Respondent)

Assessee by	:	Shri K. Sampath, Advocate & Shri V. Rajkumar, Advocate
Revenue by	:	Shri R.K. Gupta, Sr.DR
Date of Hearing	:	03.08.2021
Date of Pronouncement	:	03.08.2021

ORDER

This appeal by the assessee is directed against the order dated 26th October, 2016 of the CIT(A)-18, New Delhi, relating to Assessment Year 2012-13.

2. The only ground raised by the assessee reads as under:-

“On the facts and in the circumstances of the case and in law the Id.CIT(A) erred in confirming the action of the Assessing Officer in not allowing deduction for Rs.21,00,000/- being the amount of expenditure incurred on Research & Development. The action being arbitrary, erroneous and unlawful must be quashed with directions for relief.”

3. This appeal was earlier, dismissed by the Tribunal for want of prosecution. Subsequently, the Tribunal, vide MA No.604/Del/2019, order dated 5th March, 2021, recalled its earlier order. Hence, this is a recalled matter.

4. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of bio-organic manure or Jevik Khad by mixing biodegradable waste, poultry, human waste (sulge), bone powder, sewage waste, etc. It filed its return of income on 01.10.2012 declaring the total income at Rs.2,37,770/-. During the course of assessment proceedings, the AO noted that the assessee company has debited an amount of Rs.21 lakhs on account of research and development expenditure. On being questioned by the AO to explain the research and development expenditure of Rs.21 lakhs, it was submitted that the same has been claimed under the head 'Research and development expenditure' as this was invested by the company for the purpose of experiment and on creative work undertaken systematically to increase the knowledge and skill of the personnel and for tentative development. Subsequently, it was submitted that the expenditure of Rs.21 lakhs has been incurred for various assignments and the details were also filed before the AO. It was submitted that the expenditure was incurred in the experiments of various types of farming along with discovery of variety of seeds in different places and for different kinds of suitable done to the crops.

5. However, the AO was not satisfied with the arguments advanced by the assessee and made addition of Rs.21 lakhs by observing as under:-

õI have gone through the submissions of the assesses and do not agree to the view that the claimed expenses are of revenue in nature. The assesses in its reply has itself stated that these expenses were made to increase the knowledge and skill of the personnel and for tentative development. This proves that the expense had the nature of creating enduring benefit. Hence, the expense squarely falls under capital in nature. Further, the assessee has not justified its claim that the expense qualifies as revenue in nature. On such facts, the expense for Rs.21,00,000/- are on account of Research and Development, is treated as capital in nature and disallowed. As the assessee has filed inaccurate facts with a view to conceal its income I hold that it is a fit case for initiation of penalty proceedings u/s 271(1)(c) of the I.T. Act. 1961.ö

6. In appeal, the ld.CIT(A) sustained the addition made by the AO.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

8. The ld. Counsel for the assessee strongly challenged the order of the CIT(A). Referring to para 4.8 and 4.9 of the order of the CIT(A), he submitted that the ld.CIT(A) without going through the various details filed by the assessee before the AO, made certain remarks that the assessee has not filed the details. He submitted that the AO, in the assessment order has mentioned that the expenses are of enduring benefit. However, every enduring benefit cannot be treated as capital in nature and in certain cases, it has to be treated as revenue in nature. He submitted that the ld.CIT(A), without going through the details filed before him, passed the order dismissing the appeal of the assessee wherein he has mentioned that the assessee has not filed supportive details. He accordingly submitted that the matter may be restored to the file of the CIT(A) for fresh adjudication on the basis of material already available on record.

9. The ld. DR, on the other hand, while supporting the order of the CIT(A), drew the attention of the Bench to certain paragraphs of Essential Commodities Act, the report of the Parliamentary Standing Committee on Fertilizers and Chemicals, sections 56 and 57 of the Evidence Act and submitted that the amount spent by the assessee has to be capitalized. He submitted that the manufacturing of fertilizers comes under the purview of Essential Commodities Act. Therefore, the AO is fully justified in treating the entire expenditure as capital in nature.

10. I have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I find, the AO, in the instant case, treated the amount of Rs.21 lakhs claimed by the assessee under the head 'Research & Development expenditure' as capital in nature by holding that it gives an enduring benefit to the assessee. I find, the ld.CIT(A) upheld the action of the AO holding that the assessee did not file any supportive details to verify the claim of expenditure and, therefore, the disallowance was sustained by him. It is the submission of the ld. Counsel that the ld.CIT(A), without going through the details already filed before the AO, made a remark that the assessee has not filed the supportive details. It is his submission that every expenditure which gives enduring benefit cannot be treated as a capital expenditure. Further, the ld.CIT(A) has not gone through the details and, therefore, the matter should be remanded to his file. I find some force in the above argument of the ld. Counsel for the assessee. Although full details were available before the AO, however, the AO was of the view that the

expenses have the nature of creating enduring benefit and, therefore, it squarely falls under capital in nature. I find, the Id.CIT(A), without going through the various details filed before the AO had dismissed the appeal filed by the assessee on the ground that the assessee failed to file the supportive details to verify the claim of expenditure. In other words, he has not gone through the details filed before him. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a direction to verify the details already on record and decide the issue as per fact and law by passing a speaking order on the issue of capital or Revenue nature of the expenses. While doing so, he shall give due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court at the time of hearing itself, i.e., on 03.08.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 3rd August, 2021.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi