

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' MUMBAI**

**BEFORE: SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3496/Mum/2019  
(Assessment Year :2010-11)**

American Spring & Pressing Works Pvt. Ltd., Aspee House, Adarsh Housing Society B J Patel Road Malad (W), Mumbai-400064	Vs.	DCIT 12(1)(1) Room No.223, 2 <sup>nd</sup> Floor Ayakar Bhavan M.K.Road, Mumbai-400 020
<b>PAN/GIR No. AAACA8979P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Lavanya Rajpurohit
Assessee by	Shri Mehul Jain
<b>Date of Hearing</b>	<b>24/01/2022</b>
<b>Date of Pronouncement</b>	<b>28/01/2022</b>

**आदेश / ORDER**

**PER M. BALAGANESH (AM):**

This appeal in ITA No.3496/Mum/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)-20/IT/10326/2016-17 dated 19/09/2006 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/3/2016 by the Id. Dy. Commissioner of Income Tax, Circle – 12(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in sustaining the disallowance of claim of assessee u/s.35(1)(ii) of the Act.

3. We have heard rival submissions and perused the materials available on record. The assessee is a private limited company engaged in the business of manufacturing and sale of agricultural equipments and implements. The original return of income was electronically filed for the A.Y.2010-11 on 30/09/2010 declaring total income of Rs.215,36,770/-. This return was duly processed u/s.143(1) of the Act on 15/04/2011. Subsequently this assessment was sought to be reopened by issuance of notice u/s.148 of the Act on 23/03/2015. In response thereto, the assessee vide letter dated 27/03/2015 stated that the return filed originally on 30/09/2010 may be treated as return in response to notice issued u/s.148 of the Act. The reasons recorded for reopening the assessment was communicated to the assessee vide letter dated 14/05/2015. During the course of re-assessment proceedings, the Id. AO observed that assessee had claimed weighted deduction of Rs. 5 lakhs u/s.35(1)(ii) of the Act @ 125% of contribution of Rs.4 lakhs made to M/s. Aspee Agricultural Research and Development Foundation. The assessee was directed to furnish the approval obtained from the Income Tax department by the recipient of donation in order to justify the claim of deduction u/s.35(1)(ii) of the Act in the hands of the assessee. The assessee submitted that the Donee Institution is recognised by Ministry of Science and Technology, Department of Science and Industrial Research, Technology Bhawan, New Delhi. The assessee submitted that since the Donee Institution was enjoying the recognition up to 2004 and thereafter had sought for renewal of the same by way of preferring the application before the CBDT and that the CBDT had not acted on the said application.

In respect of deduction claimed by the assessee u/s.35(1)(ii) of the Act, the Id. AO observed that the assessee would be entitled for such deduction only when the DIT (Exemption) had issued approval to the said research association subject to fulfilment of conditions regarding application, its income for scientific research purposes, its accumulation and use u/s.11(2)/11(3) of the Act. The Id. AO observed that in the instant case, the assessee has not submitted such approval given by DIT (Exemption) to the Donee Institution. The Id. AO also gathered information from the Jurisdictional DIT (Exemption) of the Donee Institution which revealed the fact that the application for approval u/s.10(21) of the Act has been rejected vide order dated 2/11/2012 by CBDT. Based on these facts, the Id. AO proceeded to disallow the claim of weighted deduction u/s.35(1)(ii) of Rs.5 lakhs while completing the assessment in the hands of the assessee. This was upheld by the Id. CIT(A).

3.1. During the course of hearing, the Id. AR placed reliance on the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for A.Y.2011-12 in CO No.141/Mum/2019 dated 21/05/2019 wherein the very same issue was subject matter of adjudication by the Tribunal and that the Tribunal had remanded the matter to the file of the Id. AO to decide based on the final outcome of the writ petition No.1951 of 2013 filed by the assessee before the Hon'ble Bombay High Court.

3.2. Admittedly, the said Donee Institution had filed writ petition against the order of CBDT rejecting its claim of recognition vide writ petition No.1951 of 2013 before the Hon'ble Bombay High Court which has been duly admitted. We find that no purpose would be served by keeping this appeal pending before us. Instead the proposal was put across to both

the parties at the time of hearing by the Bench wherein the Bench suggested that this appeal be restored to the file of the Id. AO to decide the same based on the final outcome of the writ petition by the Hon'ble Bombay High Court. Both the parties fairly agreed for the same. Accordingly, we deem it fit and appropriate to remand this issue to the file of the Id. AO to decide based on the final outcome of the writ petition of the Hon'ble Bombay High Court as it would have a bearing on the issue in dispute. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

**4. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 28/01/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 28/01/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**