INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRIANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER
(Through Video Conferencing)

ITA No. 7323/Del/2018
(Assessment Year: 2011-12)

Addl. CIT, Special Range-7, New Delhi	Vs.	RRB Energy Ltd, GA, 1/B-1, Extension, Mohan Coop. Ind Estate, Mathura Road, New Delhi PAN: **AAACV0109N**
(Appellant)		(Respondent)
Revenue by :		Shri. S. Krishanan, Ld. Adv Shri V. Rajakumar, Ld. Adv
Assessee by:		ShriVipulKashyap, Ld. Sr. DR
Date of Hearing		10/03/2022
Date of pronouncement		21/03/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The Revenue Department has preferred this appeal against the order dated21.08.2018 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-38, New Delhi [for short, "ld. Commissioner"], u/s 250(6) of the Act, 1961 (hereinafter called as the 'Act') for the A.Y. 2011-12.

2. Brief facts of the case are that the Assessee is a company engaged in the business of manufacturing and installing of wind electric generators (WEGs) for harnessing power and wind at different locations in India. The Assessee had filed its return of income at Rs. Nil on 30.09.2011.

2.1 During the course of assessment proceedings, the Assessee company was asked to file Form 3CL to justify its claim u/s 35(2AB)(1) qua weighted deduction of 200% of expenses claimed to have been incurred in respect of in-house research and development. In response, the ld. AR submitted that company has already received certificate in Form No. 3CM but form 3CL has not been issued yet by the Secretary, Deptt. of Scientific & Industrial Research, Govt. of India (in short "DSIR).

2.2 It was observed by the AO that for the eligibility for weighted deduction, AssesseeCompany is required to have registration and recognition which is to be granted by DSIR to the in house R&D Centre of the Assessee and as the Assessee does not any certification in Form 3CL and hence it is not known as to what amount is expended by it on the in house research facility, which is entitled to weighted deduction u/s 35(2AB). It was further observed by the AO that the form 3CL is a prerequisite to arrive at the quantum of weighted deduction and since the same is not available in the instant case therefore only the deduction claimed as expenses in the P/L Account is allowed to the Assessee. Accordingly, the weighted deduction claimed by the Assessee is disallowed and an addition on this account is being made at Rs. 10,35,85,561/-.

2.3 Further, the AO also noted that the Assessee has paid and debited bank guarantee commission of Rs. 31,98,246/-. The Assessee has not deducted TDS while crediting these payments. The Assessee was asked to show cause as to why the same should not be disallowed due to non-deduction of TDS as prescribed in Notification No. 56/2012 dated 31.12.2012, which the Assessee failed to prove the creditworthiness and genuineness of its claim. Accordingly, the AO disallowed the claim of the Assessee at Rs. 31,98,246/- and added back to the income of the Assessee.

2.4 The Assessing officer finally assessed the total income of the Assessee at Rs. (-) 97,08,812/- and also initiated penalty proceedings u/s 271(1)(c) of the Act .

2.5 On appeal, the ld.Commissioner vide order dated 25.07.2016 partly allowed appeal of the Assessee by deleting the disallowance of Rs. 31,98,246/- made by the AO within the meaning of section 40(a)(ia) of the Act on account of bank guarantee commission and also partly allowed the weighted deduction u/s 35(2AB) to the extent of Rs. 6,33,53,000/- only as against Rs. 10,35,85,000/- as claimed by the Assessee. Consequently the disallowance of Rs. 4,02,32000/- was sustained. Relevant part of the order is reproduced herein below:

> *The AO is directed to allow weighted deduction with reference to Rs.633.53 lacs only as against expenditure of Rs. 1035.85 lacs claimed by the appellant company. This ground of appeal is partly ruled in favour of the appellant. ”*

2.6 Subsequently, notice dated 07.03.2018 was issued u/s 274 read with section 271(1)(c) of the Act by the AO qua disallowance

of Rs. 4,02,32000/-. In response to said notice the Assessee by filling its reply claimed that no concealment of income has been made and the disallowance has been made only on account of difference in opinion. Moreover it is also evident from the records that 3CL was issued by the DSIR only after the assessment was made and the Assessee had no option but to believe auditor's certificate and its own audited record at the time of filing of return. The Assessee also reiterated that he AO has not initiated the penalty proceedings for this particular disallowancemade by him and therefore the Assessee is not liable to be penalized u/s 271(1)(c) of the Act and therefore requested to drop the penal proceedings.

2.7 The AO after considering the submission of the Assessee observed in its order that the Assessee has consciously furnished inaccurate particulars of its income with a view to avoid imposition of tax by claiming inadmissible deduction under the provisions of the Act andacted in collusion and predetermined planned manner to evade tax. Ultimately the AOimposed the penalty u/s 271(1)(c) of the Act to the tune of Rs. 1,24,31,688/- being 100% of taxliability on the disallowance of Rs. 4,02,32000/-, sought to be evaded.

3. The Assessee being aggrieved by the penalty order dated 30.03.2018 passed by the AO, preferred first appeal before the Ld.

Commissioner. The Ld. Commissioner while thoroughly considering the peculiar facts and circumstances of the case, deleted the penalty by observing as under:-

> *"2.2 Ground of appeal 1 challenges initiation and imposition of penalty u/s 271(l)(c) of Rs. 1,24,31,688/- which is 100% of tax sought to be evaded on disallowance of Rs. 4,02,32,000/- of R&D expenditure u/s 35(2AB). I have gone through the submissions of the appellant, the facts on records, perused the penalty order and considered the decisions relied upon both by the appellant and the AO as well as the order of CIT(Appeals) for AY 2011-12 in the case of appellant dated 25.07.2016. From perusal of the submission furnished by the AR of the appellant and the order of CIT(Appeals) for AY 2011-12 it is seen that weighted deduction u/s 35i(2AB) was allowed to the extent of Rs.*

6,33,53,000/- only as against Rs. 10,35,85,000/- claimed by assessee in the return of income.

2.3 The findings of Ld. CIT(Appeals) for AY 2011-12 are as under:-

> *"4.4 ……..*
>
> *4.5. In view of the Rule as above, expenditure as approved by DSIR (Prescribed) Authority) in the certificate issued in Form 3CL alone is the basis for grant of weighted deduction as per provisions of Section 35(2AB). Since the Prescribed Authority has certified expenditure eligible for weighted deduction at Rs.633.53 lacs, the weighted deduction as per Section 35(2AB) is allowable with reference to this expenditure only. Reliance placed by the Ld. AR on judgement of the Hon'ble Gujarat High Court in the case of CIT vs. Claris Life Sciences Ltd. 1 74 Taxman 113 and the Hon'ble Delhi*

High Court, in the case of CIT vs. SandanVikas Ltd. (2011} 335 ITR 117 (Del) does not help as the said judgements are on different facts. i.e. allowability of expenditure with reference to the date of approval accorded by the Prescribed Authority. In the case on hand Form No. 3CL has clearly quantified and certified the R&D expenditure eligible for weighted deduction u/s 35(2AB).

The AO is directed to allow weighted deduction with reference to Rs.633.53 lacs only as against expenditure of Rs. 1035.85 lacs claimed by the appellant company. This ground of appeal is partly ruled in favour of the appellant. ”

2.4 ……

2.5 ……

2.6……

2.7……

2.8……

2.9……

2.10 In the appellant's case it was only during the assessment proceedings when the AO confronted the appellant that they have clarified that the amount of weighted deduction claimed in the return of income was Rs. 10,35,85,000/- while the amount allowed in Form - 3CL was Rs. 6,33,53,000/- which was the figure eventually allowed by the assessing officer and the difference of Rs. 4,02,32,0.00/- which was not found to be eligible for deduction u/s 35(2AB), was disallowed by assessing officer. Had the appellant's case not been selected for scrutiny, the appellant would have got away with the excess claim which was patently wrong.

2.11 The appellant in its submission has stated that since they have disclosed all the facts in their return of income hence, in view of the ruling of Reliance Petro product (supra), penalty under 27(1)j(i)(c) is not attracted. This view of the appellant is admissible in this case because the report is Form 3CL was received from the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India only on 06.06.2014, certifying the Research and Development expenditure eligible for deduction u/s 35(2AB) at Rs. 633.53 lacs for AY 2011-12, after the return of income was filed before AO on 30.09.2011. It is apparent that the appellant had not intentionally concealed the figure of eligible R&D expenditure u/s 35(2AB). Therefore in such a case no penalty is

leviablein view of the decision of Supreme Court in the case of Reliance Petro Products Ltd. (supra).

2.12 Thus, in view of the above discussion and observation of judgments of Supreme Court in the case of Reliance Petro product {supra), the penalty levied by the A.O. is deleted."

4. Aggrieved by the impugned order passed by the Ld. Commissioner, the revenue department has preferred the instant appeal and by raising grounds of appeal emphasized that the Ld. Commissioner is erred in law in deleting the penalty levied by the AO on account of disallowance of weighted deduction as per the provisions of Section 35(2AB) of the Act, ignoring the facts that the claimed deduction was beyond the limit approved by the prescribed authority (DSIR), meaning thereby the Assessee furnished inaccurate particulars to that extent.

5. On the contrary the ld. AR supported the order impugned by the Ld. Commissioner.

6. Heard the parties and perused the material available on record. In this case the Assessee had claimed a sum of Rs. 10,35,85,000/- on account of weighted deduction u/s 35(2AB) by filing its return of income, however, the amount allowed in Form No. 3CL issued by DSIR was Rs. 6,33,53,000/- and therefore, difference of Rs. 4,02,32,000/- was disallowed by the AO, not finding the same to be eligible for deduction u/s 35(2AB) of the Act on the ground that if the appellant case has not been selected for scrutiny then the appellant would have get away with the excess claim which was patently wrong.

6.1 The Assessee in appeal before the Ld. Commissioner submitted that report in form No. 3CL was received from the DSIR, on 06.06.2014 whereby the expenditure of Rs. 633.53 lakhs for Assessment Year 2011-12 was certified to be eligible for deduction u/s 35(2AB) of the Act and eventually the same was received after the filing of the return of income on dated 30.09.2011, however the same was immediately submitted before the AO and therefore there was no intention to conceal the figure of eligible R&D u/s 35(2AB) of the Act. We observe that the revenue department did not controvert the said facts.

6.2 We may add that the Hon'ble Apex Court in the case of **Reliance Petro Products Pvt. Ltd 322 ITR 158** while dealing with the penalty imposed for claiming expenditure which was

declined to be allowed u/s 14A of the Act, held*that mere making of a claim, which is not sustainable in law, would not, ipso facto, amount to furnishing of inaccurate particulars regarding the income of the Assessee and would, therefore, not automatically result in a penalty order against the Assessee.*

Hence, considering the peculiar facts and circumstances of the case in totality as the Assessee did not receive the certificate from the DSIR upto and before filing of return of income by the Assessee on 30.09.2011, which in fact was issued on dated 06.06.2014 only whereas assessment order was passed on 21.03.2014 and hence, we are in agreement with the conclusion drawn by the Ld. Commissioner to the effect that apparently the Assessee had not intentionally concealed the figure of eligible R&D, and therefore the appeal filed by the revenue department is eligible to be dismissed.

6.3 In cumulative effects, we are inclined to uphold the deletions of penalty, hence ordered accordingly.

7. In the result appeal filed by the RevenueDepartment stands dismissed.

Order pronounced in the open court on 21/03/2022.

-Sd/-	-Sd/-
(**ANIL CHATURVEDI**)	(**N.K. CHOUDHRY**)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 21/03/2022

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi