

+ IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

SHRI S.S. GODARA, JM AND DR. DIPAK P. RIPOTE, AM

ITA No. 04/PUN/2018 : A.Y. 2014-15

East West Seeds India Pvt. Ltd.
Gat No. 66, Village Narayanpur (BK)
PO Waluj, Tal. Gangapur,
Aurangabad 431 133
PAN; AABCE 1237 F

Appellant

Vs.

The Asstt. C.I.T. Cir. 1, Aurangabad

Respondent

Appellant by : Shri Nikhil Pathak
Respondent by : Shri S.P. Walimbe

Date of Hearing : 29-06-2022
Date of Pronouncement : 07-06-2022

ORDER

PER S.S. GODARA, JM :

This assessee's appeal in ITA No. 04/PUN/2018 for A.Y. 2014-15 arises from the CIT(A)-1, Pune's order dated 09-11-2017, passed in case No. ABD/CIT(A)-1/268/2016-17, involving proceedings u/s 143(3) of the Income-tax Act, 1961, in short "the Act".

Heard both the parties. Case file perused.

2. We note at the outset that the assessee's sole substantive ground challenges correctness of both the lower authorities' action denying sec. 35(2AB) weighted deduction of Rs. 1,48,41,786/- during the course of assessment dated 30-12-2016 and upheld in the CIT(A)'s discussion reading as follows:

6. *In the fifth ground of appeal, the appellant has challenged the action of the AO in not allowing the expenses of Rs.74,20,893/- for weighted deduction U/s 35(2AB) of the Act. Before me, the counsel of the appellant has argued that the assessee company had duly submitted the details of expenses of Rs.4,92,85,165/- incurred in AY 2014-15 to DSIR by its approved R & D centers. It was submitted that later it revised its claim for weighted deduction U/s 35(2AB) and submitted details of revised expenses of Rs.5,67,06,058/- to DSIR. However, the assessee inadvertently missed claiming additional claim of Rs.74,20,893/- in the return of income as eligible for weighted deduction U/s 35(2AB) of the Act. The same pertained to the salaries of the employees, leave encashment & gratuity accrued for R & D employees. It was submitted that the said expenses related to the accounting year ended 31'1 March 2014 and thus these were allowable during the year under consideration. The same had been certified by a chartered accountant. During the course of assessment proceedings, it was explained to the AO that the amount had not*

been claimed as weighted deduction U/s 35(2AB) of the Act in the return of income by mistake even though the same was incurred by approved R & D unit of the assessee company. Hence the said additional claim of Rs.74.21' lakhs U/s 35(2AB) of the Act was to be allowed as deduction. The AO however did not allow the weighted deduction of Rs.148.42 Lakhs U/s 35(2AB) as it could be claimed only by filing revised return of income. The assessee company was however not able to claim the expenditure even by filing revised return of income as the time limit for filing the return had expired before the expenses got crystallized. It was argued that the AO had never questioned the genuineness the claim. It had also obtained a certificate from Chartered Accountant that the expenses pertained to the year under consideration and also filed the details of the additional claim with DSIR Further the expenses were incurred exclusively for the purpose of the R & D activities of the assessee company and the same would have been otherwise allowable as per the law. It was argued that the doors of justice could not be closed to the assessee company simply for the reason that no revised return was filed making such a claim for deduction. Reliance in this regard was placed on the decision in case of Pruthvi Brokers & Shareholders Pvt. Ltd. (349 ITR 336), Gujarat High Court in the case of CIT Vs. Arvind Mills Ltd. in ITA No. 1407 of 2011 and Punjab and Haryana High Court in case of CIT Vs. Ramco International (332 ITR 306). On careful consideration of facts & circumstances of the present case, I am not inclined to accept the arguments of the appellant company. The deduction of Rs.74,20,893/- stands allowed to the appellant company as same was claimed in the profit & loss account for the year under reference. If the claim of weighted deduction is allowed U/s 35(2AB) to the appellant company in respect of above expenditure, the assessed income would be less than the returned income of Rs.8,59,04,381/-. Since the assessed income can't be lower than the returned income in view of decision of Honourable Jodhpur IT AT in the case of ITO Vs. New Mitharwal Construction Co. (72 TTJ 533), the request of the appellant company to allow weighted deduction U/s 35(2AB) in respect of expenditure of Rs.74,20,893/- can't be entertained. The fifth ground of appeal is accordingly dismissed."

3. Both the lower representatives reiterated their respective stands against and in support of impugned disallowance. We make it clear that both the learned lower authorities have not adjudicated upon merits of the impugned disallowance. The CIT(A)'s detailed discussion extracted in the preceding paragraph has rather gone by a technical aspect that the assessee's impugned weighted deduction claim arose by way of a revised return before the Assessing Officer which tantamounts to reducing its returned income not permissible in law. We find no merit in the Revenue's instant technical stand in light of Gujarat Gas Ltd. Vs. JCIT (2000) 245 ITR 84 as followed in CIT Vs. Milton Laminates Ltd. (2013) 37 taxmann.com 249 (Gujarat) taking note of the CBDT circular dated 31-3-1989 that the correct computation of income should not be denied to the assessee merely because the same reduces the amount of the declared income in the return. We further wish to emphasize that purpose of a scrutiny

assessment u/s 143(3) of the Act is to determine correct taxable income only. We accordingly accept the assessee's arguments qua its instant sole grievance in principle and leave it open for the learned Assessing Officer to proceed afresh as per law qua its impugned deduction claim on merits. We order accordingly.

4. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on this 07th day of July 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this 07th day of July 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A)-1 Aurangabad
4. The Pr. CIT – 1, Pune
5. The D.R. ITAT A' Bench, Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	29-06-2022	Sr.PS
2	Draft placed before author	04-07-2022	Sr.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		Sr.PS
6	Kept for pronouncement on	07-07-2022	Sr.PS
7	Date of uploading of order	07-07-2022	Sr.PS
8	File sent to Bench Clerk	14-07-2022	Sr.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		