

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

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

ITA No. 738 and 739/PUN/2018

A.Y. 2012-13 and 2013-14

Jaya Hind Industries Pvt. Ltd.
Mumbai Pune Road, Akurdi,
PUNE – 411 035
PAN; AAACJ 4268 Q

Appellant

Vs.

The Asstt. CIT Cir. 9, Pune

Respondent

Appellant by : Shri Mukesh M. Patel

Respondent : Shri S.P. Walimbe

Date of Hearing : 30-06-2022

Date of Pronouncement : ____-06-2022

ORDER

PER S.S. GODARA, JM :

These assessee's twin appeals for A.Y. 2012-13 and 2013-14 arise against CIT(A)-6 Pune's separate orders both dated 29-01-2018 passed in case No.PN/CIT(A)-V/ACIT Cir. 9/129/2016-17 and PN/CIT(A)-V/ACIT Cir. 9/47/2015-16, respectively involving proceedings u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961, in short "the Act".

Both the parties heard. Case files perused.

3. We proceed assessment year-wise for the sake of convenience and brevity.

ITA No. 739/PUN/2018 for A.Y. 2012-13

The Assessee's sole substantive grievance raised in the instant appeal challenges correctness of both the lower authorities' action disallowance u/s 80B deduction of Rs. 50,00,000/- on the ground that the recipient M/s. Ashwini Rural Cancer Research and Relief Society (done) did not enjoy the corresponding registration. We note during the course of hearing that the instant issue is no more res integra as the Tribunal learned co-ordinate bench

order in revenue's appeal in ITA No. 2419/PUN/2016 (A.Y. 2010-11) has already adjudicated the same against the department as follows:

8. *The second and third grounds in the present appeal is directed against the action of the Ld. CIT(Appeals) in allowing assessee's claim u/s.80G of the Act in respect of donation of Rs.1,50,00,000/- given to Ashwini Rural Cancer Research and Relief Society. The Ld. CIT(Appeals) granted relief to the assessee on the basis of reasons as contended in Para 6.3 of his order after appreciating the facts of the case, written submissions filed by the assessee and assessment order. The Ld. CIT(Appeals) while granting relief to the assessee followed the ratio laid down by the Hon'ble High Court of Allahabad in the case of Society for promotion of Education which was approved by the Hon'ble Apex Court in its decision reported in 382 ITR 6 (SC). As per the said decision if an application for exemption in the case of a Charitable Trust is not entertained within a period of 6 months, the Trust is deemed to have been granted approval or registration.*

9. *During the course of hearing before the Tribunal on 19.12.2018, the Bench asked the AR for the assessee to submit a brief note in regard to the status of the application u/s.80G in case of Ashwani Rural Cancer Research & Relief Society.*

10. *Ashwini Rural Cancer Research & Relief Society had received its earlier recognitions u/s.80G from time to time and the last recognition granted was for the period 01.04.2006 to 31.03.2009. The said Trust had applied for renewal as per its application filed on 20.05.2009 and the same was also duly acknowledged on 17.06.2009 and further responded to by the Trust on 01.07.2009 which is placed in the paper book filed before us at page 32 to 38.*

Since there was no response received by the Trust for renewal of its recognition u/s. 80G, the Trust filed a reminder in the matter before the CITIV, Pune on 30-6-2010. While no formal response was received in writing by the Trust, it was given to understand informally that as per Rule 11AA(6) , the time limit for approval had expired, after the period of 6 months of the application submitted in May, 2009. Moreover, as per the new provisions of Section 80G(5) as applicable w.e.f. 1-10-2009, any Trust which had been granted approval earlier was not required to apply for renewal and such approval would be deemed to continue, until it was specifically withdrawn. Thereupon, no further efforts were made for pursuing the renewal application by the said Trust.

11. *In the paper book filed before us on page 41 to 43 wherein a Copy of the I.T. Assessment Order dated 3-3-2014 passed u/s. 143(3) in the case of the Trust for A.Y. 2011-12 as furnished by the Trust has been duly compiled. Para 3 of the said assessment order clearly notes the fact that the said Trust enjoyed valid approvals both for purposes of Sec. 12A and Sec. 80G and based thereon, the Returned Income as declared by the Trust at Rs. Nil was treated as exempt.*

12. *We have perused the case record and analyzed the facts and circumstances of the instant case. We find that in the assessment order dated 03.03.2014 passed u/s.143(3) of the Act in the case of the Trust i.e. Ashwani Rural Cancer Research & Relief Society, it is clearly stated that the trust is registered u/s.12A of the Act and also have obtained its exemption u/s.80G of the Act. In view of the aforesaid facts and circumstances, relief granted to the assessee by the Ld. CIT(Appeals) is sustained. Accordingly, grounds of appeal No. 2 and 3 raised by Revenue are dismissed.*

4. The Revenue could hardly pin-point any distinction of facts or law in its favour. We thus adopt judicial consistency and accept the assessee's foremost substantive ground as well as the main appeal in ITA No. 739/PUN/201 in very terms.

5. **I.T.A. No. 738/PUN/2018 for A.Y. 2013-14**

The assessee's first and foremost substantive ground seeks to revive both learned lower authorities' action disallowing sec. 35(2AB) deduction claim of Rs. 1,99,33,256/- during the course of assessment as upheld in the CIT(A)'s detailed discussion as follows:

"5. Ground No. 1: This ground relates to claim for weighted deduction of expenditure on scientific research of sec. 32(2AB) of the I.T. Act.

5.1 *The appellant did not claim the weighted deduction u/s 35(2AB) in its return of income. During the course of assessment proceedings, the appellant made the addition claim of Rs. 1,99,33,256/- on the ground that the form No. 3CL dt. 21-5-2015 was received subsequent to the last date for filing of the revised return. The AO rejected the claim relying on the judgment of supreme Court in the case of Goetz Indi Ltd. Vs. CIT reported in 284 ITR 323 (SC) (2006).*

5.2 *The appellant during the course of appeal proceedings submitted that CT(A) is empowered to entertain the claim of assessee by relying on the lay High Court decision in the case of CIT Vs. Prithvi Brokers and Shareholders reported in 349 ITR 336 (2012) (Bom). The appellant also filed copies of the Form No.3CM dtd.24/5/2013 approving the appellant's in-house R & D facility for period 1/4/2012 to 31/3/2015. The appellant also filed copy of Form No.3CL in which the amount eligible for deduction u/s 35(2AB) for the year has been specified .36 crores comprising of Rs.5.52 lakhs towards capital expenditure and 189.84 lakhs towards revenue expenditure*

5.3 *It is seen from the documentation filed, the assessee's in-house D Unit R & has been renewed upto 31/3/2015 vide letter dtd.2/5/2012 and the same has been received by the appellant on 21/5/2015. The order of approval in Form 3CM is dtd.24/5/2013, approving the facility for the period 1/4/2012 to 31/3/2015 for the purpose of sec.35(2AB). This document is dated which is prior to the date of filing of the return for the AY. 13-14. The auditor M/s P.G.Bhagwat has certified has the expenditure as required under the law at Rs.2,04,50,732/- vide his report dd. 30/12/2013. This is also prior to the date of filing the revised return. In view In these documents, the appellant could have filed the claim either in the returns filed or by filing a revised return. It is not mandatory for the appellant to wait for 3CL Form for making the claim. The claim could have been revised based on the final approval made in the Form No.3CL. Therefore, I am of the considered opinion that the appellant was not prevented by any reasonable cause for making this claim in the return filed or alternatively by revising the return. The discretion so provided to the appellate authorities to admit the additional claims as held by the High Court in the case of Prithvi Brokers and Shareholders Pvt Ltd cited above, is to be exercised judicially and in genuine cases. There is no such case made out in the appellant's case. Therefore, I am not inclined to exercise that discretionary power to right the negligence or the casualness of the appellant in approaching the tax matters Therefore, this ground is not admitted and treated as dismissed."*

6. Both the learned representatives reiterated their respective stands during the course of hearing. Mr. Walimbe more particularly argued that both the learned lower authorities have rightly held that the assessee is not entitled for the impugned deduction since the document concerned dt. 24-05-2013 (supra) happens to be much earlier than the date of filing of the

it's return for A.Y. 2013-14 (supra). These Revenue's technical arguments fail to evoke any concurrence once it has come on record that the assessee had very well proceeded as per the prescribed authority DSIR's approval. And also that neither the Assessing Officer nor the CIT(A) have been able to find any fault therein. Faced with this situation and taking note of hon'ble apex court in the case of Goetz India Ltd. (supra) and Pruthvi Brokers and Shareholders (supra), we exercise our statutory second appellate jurisdiction to accept the assessee's impugned claim in principle and direct the learned Assessing Officer to carry out all necessary factual verification in consequential proceedings. We order accordingly.

7. Next comes the second issue of amortization of lease charge disallowance of Rs. 4,717/- which is not pressed during the course of hearing. Rejected accordingly.

8. Lastly comes the assessee's third substantive ground that both the learned lower authorities have erred in law and on facts in making an adhoc disallowance of Rs. 2,00,000/- of vehicle expenses thereby quoting personal use. It emerges that the assessee has already succeeded on this issue in A.Y. 2004-05 before the Tribunal (pages 114 to 117 of the paper book) in ITA No. 1309/PN/2017 dated 22-11-2007. We therefore adopt judicial consistency to hold that the learned lower authorities have erred in law and on facts in making the impugned disallowance in case of assessee company. Accepted accordingly.

9. No other ground or argument has been pressed before us.

10. To sum up, assessee's former appeal ITA No. 739/PUN/2018 for A.Y. 2012-13 is allowed and latter case ITA No. 738/PUN/2018 for A.Y. 2012-13 is partly allowed in above terms. A copy of this order be placed in the respective file. Ordered accordingly.

Order pronounced in the open Court on this ____ day of July 2022

(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this ____ day of July 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A)-6, Pune.
4. The Pr. CIT – 5, Pune
5. The D.R. ITAT 'A' Bench, Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	30-06-2022	Sr.PS
2	Draft placed before author	08-07-2022	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		Sr.PS
7	Date of uploading of order		Sr.PS
8	File sent to Bench Clerk		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		