

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Narasimha Chary, Judicial Member**

ITA No.1505/Hyd/2018		
Assessment Year: 2015-16		
Vasant Chemicals Pvt.Ltd. 1-11-251/1B, 4 <sup>th</sup> floor Vasatnt towers Begumpet Hyderabad-500 016  PAN : AAACA7249K	Vs.	DCIT,Circle-17(2) Signature towers Kondapur Hyderabad-500 084
(Appellant)		(Respondent)
Assessee by:		Shri A.V.Raghuram, Advocate
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		13.07.2022
Date of pronouncement:		28.07.2022

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 11.05.2018 of Learned Commissioner of Income Tax (Appeals)-5, Hyderabad relating to AY 2015-16.

2. The grounds raised by the assessee are as under:-

*1. The order of the Learned Commissioner (Appeals) IS contrary to the facts of the case and law on the points in dispute.*

*2) The Learned Commissioner (Appeals) erred in not allowing at least 100% of the Revenue, Expenditure for the short fall between the actual expenditure incurred and as approved by DSIR amounting to Rs.12,69,409/-and not considering the fact that R&D Expenditure incurred by the appellant is revenue expenditure incurred in the normal course of business and Form 3CL shall be looked into, only for the purpose of claiming weighted deduction.*

*3) The learned Commissioner (Appeals) erred in treating the one time premium paid for leasehold rights as a non - depreciable asset.*

*4) The Learned Commissioner (Appeals) erred in disallowing the depreciation claimed on Lease Hold Rights amounting to Rs.77, 85,255 on the ground that Lease Hold Premium paid cannot be treated as an Intangible Asset*

*5) The Learned Assessing officer erred in not considering the case laws relied upon by the assessee.*

2.1 Grounds of appeal No. 1 & 5 being general in nature are dismissed. So far as, the ground No.2 is concerned, the same relates to the order of the ld.CIT(A) in upholding the disallowances of Rs.12,69,409/- by the AO.

3. Facts of the case, in brief, are that the assessee is a company and engaged in the business of manufacture and export of performance and specialty chemicals and filed its return of income 29.09.2015 declaring total income of Rs.23,82,550/-. During the course of assessment proceedings, the AO observed from the statement of computation of income filed by the assessee that the assessee has claimed Weighted Deduction of Rs. 2,93,68,763/- (Revenue Expenditure of Rs. 1,42,74,409/- and Capital Expenditure of Rs. 4,09,973/- totaling to Rs.1,46,84,382/-; and deduction @200% of Rs.1,46,84,382/- comes to Rs.2,93,68,763/-), u/s.35(2AB) of the Income Tax Act. But as per the Form 3CL, the total eligible deduction for the AY 2015-16 was mentioned at Rs. 1,34,14,000/-. Therefore; the eligible deduction @ 200% of Rs.1,34,14,000/- comes to Rs. 2,68,28,000/- only.

4. He therefore issued a show-cause notice to the assessee to explain as to why the excess claim of Rs.25,40,763/- should not be disallowed. The assessee submitted that he has no objection to the proposed addition. The AO, therefore restricted the claim of deduction u/s. 35(2AB) to Rs.2,68,28,000 and disallowed an amount of Rs. 25,40,763/-.

5. Before the Id.CIT(A), the assessee challenged the disallowances of Rs.25,40,763/-. It was submitted that out of the total Revenue Expenditure of Rs. 1,42,74,409/- and total Capital Expenditure of Rs. 4,09,973 incurred by the appellant, the DSIR certified an amount of Rs. 1,30,05,000/- as the Revenue expenditure and Rs. 4,09,973 as the Capital Expenditure eligible for weighted deduction. The shortfall amount not certified by DSIR is Rs. 12,69,409/- for Revenue expenditure incurred by the assessee company.

5.1 It was argued that the Assessing Officer has disallowed the entire weighted deduction of uncertified amount by DSIR i.e. 25,38,818 (200% of 12,69,409) without allowing the actual (100%) expenditure incurred Rs.12,69,409/- u/s 37 of Income tax, 1961, as the expenditure was incurred wholly and exclusively for the purpose of business of the assessee and expenditure is in the nature of revenue. Following details were submitted before the Id.CIT(A).

S.No	Particulars	Actual Expenditure incurred	Certified by Incurred	Deduction claimed in Return.	Eligible Deduction u/s. 35AB	Shortfall disallowed by AO	Eligible as Revenue Exp u/s. 37
		a	b	C=200% of a	D=200% of b	E=c-d	F=a-b
1	Revenue Expenditure	1,42,74,409	1,30,05,000	2,85,488,18	2,60,10,000	<b>25,38,818</b>	12,69,409

6. However, the Id.CIT(A) was not impressed by the arguments advanced by the assessee and rejected the claim of the assessee for allowances of Rs. 12,69,409/- by observing as under:-

*“I have carefully examined the contentions of the appellant and the Profit and Loss account. The assessee company debited 1,42,74,409/- under the head Research and Development Charges as a part of manufacturing expenses. The assessee company had also claimed weighted deduction u/s 35(2AB) with respect of such revenue expenditure in addition to*

capital expenditure. However, the designated authority in Form 3CL allowed the revenue expenditure to the extent of 130.05Lakhs.

*But. with respect to revenue expenditure of Rs.12,69,409/-, which is not a part of 3CL statement, I hold that assessee is also not eligible for deduction u/s. 37. One of the essential requirements which must be satisfied before any deduction can be allowed under section 37 is that the expenditure must be expended or laid out wholly and exclusively for the purpose of the business. The words 'wholly and exclusively' both refer to the expenses incurred by the assessee for the purpose of his business. While determining as to whether the deduction claimed has been wholly and exclusively spent on such business, it is permissible to find out whether the amount has really gone for the purpose of business or not [CIT vs. S. Krishna Rao (1970) 76 ITR 664 (AP), CIT vs. Raman & Raman Ltd. (1969) 71 ITR 345 (Mad), Pioneer Spring & Steel Concern P. Ltd. vs. CIT (1982) 135 ITR 522 (Cal), D.N. Sinha Pvt. Ltd. vs. CIT (1976) 102 ITR 491 (Cal); Ramanlal Kamdar vs. CIT (1976) 103 ITR 489 (Mad)]. The AR never explained whether the business carried on by the appellant and the income generated by it has any relation or connection with such expenditure claimed. The Assessing Officer had come to the conclusion that the expenses which are claimed are not related to the business activities of the appellant. My predecessor in case of the appellant for earlier years has also dismissed the issue against the appellant. Hence ground no 2 & 3 are dismissed.”*

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

8. We have heard the rival arguments made by both the sides, perused the orders of the Ld. AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee before the AO as well as the ld.CIT(A) had given the break up of Rs. 12,69,409/- which are as under:-

Particulars	R&D	
	VASANT CHEMICALS PRIVATE LIMITED	
	1 April-2014 to 31 March-2015	
	Closing Balance	
	Debit	Credit
R&D CONSULTANCY CHARGES	851,391	
R&D CONSULTANCY TRAVELLING	175,655	
R&D OTHERS	117,184	
R&D BONUS	114,069	

R&D PRINTING & STATIONERY	9,135	
R&D CONVEYANCE	1,975	

9. It is the settled proposition of law that for claiming any expenditure as an allowable deduction, the onus is always on the assessee to explain to the satisfaction of the AO that such expenditure has been laid out wholly and exclusively for the purpose of business. In the instant case although there is no dispute to the fact regarding the incurring of such expenditure, the only reason of the ld.CIT(A) for disallowing the same is that the assessee never explained whether the business carried on by the assessee and the income generated by it has any relation or connection with such expenditure claimed. A perusal of the assessment order shows that assessee claimed R&D expenditure u/s.35(2AB) at Rs. 2,93,68,763/- as weighted deduction. As per Form 3CL, the R&D expenditure is eligible for deduction at Rs. 2,68,28,000/- and therefore, the AO held that the assessee has claimed excess R&D expenditure of Rs. 25,40,763/- and accordingly disallowed the amount of Rs. 12,69,409/- being 50% of Rs.25,40,763/-. We find the ld.CIT(A) has given a finding that similar issue has been decided against the assessee. However, nothing was brought to our notice about the final outcome of the same. We therefore deem it proper to restore the issue to the file of the AO with the direction to verify the record and decide the issue afresh and as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground of appeal No.2 is accordingly allowed for statistical purposes.

10. Grounds of appeal No 3 & 4 relate to the order of the ld.CIT(A) in confirming the disallowances of depreciation on lease hold rights amounting to Rs. 77,85,255/-.

11. Facts of the case, in brief, are that the AO during the course of assessment proceedings noted that the assessee has claimed an amount of Rs. 77,85,255/- as depreciation on lease hold rights i.e @ 25% of Rs.3,11,41,018/-. Since according to the AO the premium paid by the assessee to acquire the lease hold rights should be amortized over a period of 33 years and depreciation on the same is not allowable, therefore, he issued a show-cause notice to the assessee to explain as to why depreciation of Rs. 77,85,255/- should not be disallowed. Rejecting the various explanations given by the assessee, the AO disallowed an amount of Rs.77,85,255/- by observing as under:-

*"3.1. The above reply of the assessee has been carefully examined and the same is not acceptable as the lease period is 33 years and the benefit is extended to 33 Years. The lease premium paid is a capital expenditure and hence to be capitalized and the assessee is eligible for depreciation. The lease premium paid is nothing but a rent for the premises and it is neither a right nor an intangible asset. It is to be amortized for a period of 33 years. The amortized amount eligible is Rs. 17,73,638 for one year. The assessee can claim this amount for 33 years from the Asst. Year 2011-12."*

12. In appeal, the ld.CIT(A) upheld the action of the AO by observing as under:-

*"The appellant stated that the annual lease rentals are a revenue expenditure, whereas the onetime premium paid is an intangible asset u/s. 32(1)(ii) and depreciation on the same should be allowed as the lease premium paid is a capital expenditure eligible for deprecation and has cited various decisions of the Courts in this regard.*

*None of the judgments cited by the appellant in its submission or in relation to the facts of the case and therefore there is no relevance of the case laws to the situation under consideration.*

*The issue under consideration is that whether leasehold rights par take character of land or intangible asset.*

*Intangible asset has been defined under section 32(1)(ii) of the Act as follows: " Depreciation.*

*32. (1) In respect of depreciation of-*

*(i) buildings, machinery, plant or furniture, being tangible assets;*

*(ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1<sup>st</sup> day of April, 1998,*

*Owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed.”*

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

14. The Id. Counsel for the assessee at the outset filed a copy of the order of the Tribunal in assessee's own case vide ITA No.2182/Hyd/2017 order dated 17.08.2021 for AY 2014-15 wherein identical issue has been decided in favour of the assessee. He accordingly submitted that this being a covered matter the grounds raised by the assessee should be allowed.

15. Th Id. DR on the other hand strongly relied on the order of the Id.CIT(A) and also relied on the various decisions.

16. We have considered the rival arguments made by both the sides and perused the record. We find the issue stands decided in faovur of the assessee by the decision of the Tribunal in assessee's own case in the immediately preceding assessment year, where the Tribunal has thoroughly discussed the issue by observing as under:-

*5. The Revenue's vehement contention in support of the impugned disallowance is that the assessee ought to have amortized the same u/s.35 of the Act. We find no merit in the instant contention per se in view of the fact that neither there is any specific provision in the Act nor is any CBDT circular to this effect. Hon'ble apex court's recent decision in Taparia Tools Ltd. Vs. JCIT (2015) [372 ITR 605] (SC) rather holds that the claim of revenue expenditure is not to be denied merely because the same could also be split over a period of years.*

*Coupled with this, this tribunal's Special Bench in ACIT Vs. Progressive Constructions Ltd., (2018) 92 taxmann.com 104 (Hyd) decides the issue in assessee's favour that a right to operate any asset forms an intangible asset u/s.32(1)(ii) of the Act entitled for depreciation.*

*6. Learned departmental representative at this stage sought to highlight the fact that the assessee in the instant case has taken land on lease to set up an SEZ and therefore, the same ought not to be taken as eligible for depreciation. We find no substance in the instant last plea as well as the assessee has claimed the impugned relief qua lease premium of Rs.5,85,30,062/- than regarding acquisition of the land along with its title. We therefore distinguish the Revenue's arguments based on case law M/s.Mahanadi Coalfields Ltd ITA No.73/CTK/2012, dt.03-01-2018 and M/s.Cyber Park Development & Construction Ltd. Vs. DCIT, ITA No.1549/Bang/2012, dt.30-06-2016 in light of the foregoing Special Bench decision (supra). The assessee's instant second substantive ground is accepted in principle. The Assessing Officer shall frame his consequential computation as per law.*

*7. This assessee's appeal is partly allowed in above terms."*

17. Since the issue has been decided in favour of the assessee by the decision of the Tribunal in assessee's own case in the immediately preceding assessment year and facts being same, therefore, respectfully following the order of the Tribunal, we set aside the order of the ld.CIT(A) and direct the AO to follow the order of the Tribunal in assessee's own case on this issue for AY 2014-15 and frame consequential computation. The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the Open Court on 28<sup>th</sup> July, 2022.

<b>Sd/-</b> <b>(NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 28<sup>th</sup> July, 2022.

**Thirumalesh/sps**

Copy to:

S.No	Addresses
1	Vasant Chemicals Pvt.Ltd. 1-11-251/1B, 4 <sup>th</sup> floor Vasatnt towers Begumpet Hyderabad-500 016
2	DCIT,Circle-17(2) Signature towers Kondapur Hyderabad-500 084
3	CIT(A)-5, Hyderabad
4	PrI.CIT-5, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*