

आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.797/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. India Pistons Limited Huzur Gardens, Sembiam Perambur, Chennai-600 011.	बनाम / Vs.	ITO National Faceless Appeal Centre (NFAC) Delhi/ Corporate Circle-2(1), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACI-1439-E		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R.Vijayaraghavan, Advocate & Shri Saroj Kumar Parida (Advocate) – Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri ARV Sreenivasan – (Addl. CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	26-10-2022
घोषणाकीतारीख / Date of Pronouncement	:	02-11-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 26-07-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 07-04-2021. The grounds taken by the assessee read as under:

1. The Commissioner of Income tax (Appeals), National Faceless Appeal centre is contrary to law, facts and circumstances of the Act.

2. The Commissioner of Income tax (Appeals) erred in confirming the addition made by the Assessing officer towards the claim of weighted deduction u/s.35(2AB) amounting to Rs.3,65,049/-.

2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the appellant has satisfied all the requirements of section 35(2AB) as required by DSIR guidelines. The appellant has submitted to the DSIR application along with all Annexures giving the particulars of expenditure incurred in the approved R&D facilities and hence, the appellant's claim of weighted deduction should be allowed.

2.2 The appellant relies on the following decisions:

CIT Vs Claris Lifesciences Ltd 326 ITR 251 (Guj)

Wheels India Ltd 336 ITR 513 (Mad)

Cadilia Healthcare Ltd Vs Add.CIT 2012-TIOL-366-ITAT-Ahr

3. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of employees' contribution towards PF / Superannuation / ESI amounting to Rs.45,46,142/-

3.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the appellant has remitted the above employees' contribution before the due date of filling the Return u/s 139(1) as under: -

XXXXX

3.2 The Commissioner of Income tax (Appeals) ought to have appreciated that by virtue of the 2003 Amendment, any amount remitted within the due date of filing the Return should be allowed as deduction.

3.3 In a recent decision the Chennai ITAT in the case of Adyar Ananda Bhavan Vs. ACIT in ITA No-402 & 403/2021 for the assessment year 2018-19 & 2019-20 by order dated 08.12.2021 after considering the amendment brought in the statute by finance Act,2021 of section 36(1)(va) r.w.s 43B has held that provision is prospective and not retrospective and will be applicable from the assessment year 2021-22 and subsequent assessment years.

As is evident the grievance of the assessee is two-fold- (i) Disallowance of late payment of employees' contribution to PF / ESI; (ii) Disallowance u/s 35(2AB).

2. The Ld. AR advanced arguments assailing the confirmation of disallowance which has been controverted by Ld. Sr. DR. Having heard rival submissions, the issues are adjudicated as under.

3. Disallowance of Late Payment of Employees's contribution to ESI / PF

3.1 The Centralized Processing Center (CPC) processed return u/s 143(1) and made this disallowance. The Ld. AO repeated the same in

scrutiny assessment u/s 143(3). The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

3.2 We find that this issue has been concluded in revenue's favor by Hon'ble Supreme Court in its recent decision in bunch of appeals titled as **Checkmate Services P. Ltd. Vs CIT (Civil Appeal No.2833 of 2016 dated 12.10.2022)**. Respectfully following the same, we confirm the disallowance and dismiss the ground raised by the assessee.

4. Disallowance u/s 35(2AB)

4.1 The assessee claimed weighted deduction of Research & Development (R & D) expenditure u/s 35(2AB). The assessee incurred revenue expenditure of Rs.85.98 Lacs and claimed deduction @150% for Rs.128.97 Lacs. However, Form 3CL quantified the expenditure at Rs.83.55 Lacs. Accordingly, Ld. AO disallowed 150% of (Rs.85.98 Lacs-Rs.83.55 Lacs) and disallowed an amount of Rs.3.65 Lacs. The Ld. CIT(A) confirmed the same.

4.2 The limited submission of Ld. AR is that the assessee has incurred revenue expenditure of Rs.85.98 Lacs out of which expenditure of Rs.83.55 Lacs has been approved. Accordingly, only additional deduction claimed on differential amount should be disallowed and not the full amount since the amount actually incurred would be allowable u/s 37(1). Concurring with the same, we direct Ld. AO to disallow only the additional deduction of 50% claimed on differential expenditure of Rs.2,43,366/-. We order so. The ground stand partly allowed. No other ground has been urged before us.

5. The appeal stands partly allowed.

Order pronounced on 02nd November, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 02-11-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर
आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF