

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.638/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकर अपील सं./ ITA No.3216/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Aban Infrastructure Ltd. No.113, Pantheon Road, Janpriya Crest, Egmore, Chennai – 600 008.	बनाम / Vs.	DCIT Corporate Circle-1(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAFCA-8695-K		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ ITA No.761/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2014-15)

JCIT(OSD) Corporate Circle-1(1), Chennai.	बनाम / Vs.	M/s. Aban Infrastructure Ltd. No.113, Pantheon Road, Janpriya Crest, Egmore, Chennai – 600 008.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAFCA-8695-K		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/Revenue by	:	Shri AR. V Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/Date of Hearing	:	20-10-2022
घोषणा की तारीख /Date of Pronouncement	:	18-11-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The assessee is in further appeal for Assessment Years (AY) 2014-15 & 2015-16 whereas the revenue is in further appeal for AY 2014-15. The first appellate order for AY 2014-15 has been passed by Ld. Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] on 17.02.2020 in the matter of an assessment framed by Ld. Assessing Officer u/s 143(3) on 22.12.2016. The first appellate order for AY 2015-16 has been passed by Ld. Commissioner of Income Tax (Appeals)-4, Chennai [CIT(A)] on 10.10.2019 in the matter of an assessment framed by Ld. Assessing Officer u/s 143(3) on 25.12.2017. The grievance of the assessee in both the years is identical i.e. disallowance of expenses relating to Bio-technology R & D. Another issue that arises for AY 2015-16 is interest disallowance u/s 36(1)(iii).
2. The registry has noted delay of 66 days in assessee's appeal for AY 2014-15. Similar delay of 140 days has been noted in revenue's appeal. Considering the fact that the time available to file the appeal fall within lockdown situation arising out of Covid-19 Pandemic, the delay is condoned in both the appeals and the appeals are admitted for adjudication on merits.
3. The Ld. AR, at the outset, submitted that the issue is recurring in nature and similar issue stood decided by this Tribunal for AY 2013-14, ITA No.82/Chny/2018 order dated 14.09.2022. The aforesaid position could not be controverted by Ld. Sr. DR. After due consideration, our adjudication would be as under.

4. During assessment proceedings of AY 2014-15, it transpired that the assessee incurred expenses of Rs.159.89 Lacs towards 'Project Expenses Bio Technology'. Relying upon assessment order for AY 2013-14, Ld. AO disallowed the expenditure thus claimed for Rs.159.89 Lacs along with depreciation of Rs.3.71 Lacs and added the same to the income of the assessee. The Ld. CIT(A), relying upon first appellate order for AY 2013-14, upheld the disallowance. Similar disallowance was made for AY 2015-16. Aggrieved, the assessee is in further appeal before us for both the years.

5. We find that this issue has been decided by the Tribunal in assessee's favor for AY 2013-14 vide ITA No. 82/Chny/2018 order dated 14.09.2022 as under: -

Our findings and Adjudication

7. From the fact, it emerges that the assessee is engaged in repairs and maintenance activities. The assessee diversified its business line and intended to engaged in the area of bio-technology products. For the same, it carried out research and incurred expenses during the year. For the same, the assessee obtained recognition for in-house R&D and started carrying out R&D activities of bio-tech products. The approval was given by DSIR vide approval letter dated 20.07.2012 (page 8 of paper book dated 25.11.2021). This approval has not been considered by lower authorities. As per this letter, the department has decided to accord recognition to the in-house R&D unit of the assessee up to 31.03.2015. The terms of the approval have also been mentioned in the letter. The assessee has been given another registration on the same date which is for the purpose of availment of custom duty exemption as per government notification (page 9 of the paper book) which Ld. CIT(A) has referred to in the impugned order. On the basis of this letter, it could be concluded that the assessee was ready to undertake research on development of new products and had put in place the requisite machinery to carry out the same.

8. It could also be seen that the company sent samples of aquaculture feed supplement during November, 2013 and sold bio-products worth Rs.0.63 Lacs in the very next year. The research & development is the preliminary step for developing the bio products which are ultimately developed and sold in the market. The details of the expenses incurred by the assessee are extracted in para-12 of the impugned order which would show that majority of the expenditure consist of salary, professional fees, consumables, project fees, travelling expenses, repair & maintenance etc. which are predominantly revenue in nature and otherwise an allowable business deduction u/s 37(1).

9. It is undisputed fact that the assessee carries on an existing business and its business has already commenced. In this year, the assessee has sought to

pursue a new product line and it is not a case that the assessee has not commenced the business. The assessee was registered long back in the year 1996 and its business had already commenced and it is not the case that the business had not commenced.

10. The provisions of Sec.35(1) provide for deduction of expenditure on scientific research which is laid out or expended on scientific research related to business. The explanation provide that where such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary (as defined) to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced. The prescribed authority as defined in Rule 6(1) mean Director General (Income-tax Exemptions) in concurrence with Secretary, Department of Scientific and Industrial Research, Government of India. We have already held in para-9 that the assessee's business had already commenced long back and it was in the process of new product line only.

11. The case law of Hon'ble Delhi High Court in **Jay Engineering Works Ltd. V/s CIT (311 ITR 405)** would support the case of the assessee wherein it was held that the nature of new business is not a decisive test for determining whether or not there is an expansion of an existing business. The nature of the business could be as distinct as a jewellery business and a business of cinematographic films; it could be as different as manufacture of metal alloys and manufacture of rubber products. What is of importance is that the control of both the ventures, the existing venture as well as the new venture, must be in the hands of one establishment or management or administration. The place of business of the existing business and the new business may not be in close proximity - it could be as far apart as Baroda and Bangalore. However, the funds utilized for the management of both the concerns must be common as reflected in the balance sheet of the company. In other words, there may be several permutations and combinations that may arise for determining whether the expenditure is revenue or capital and each case must, of course, be dealt with on the broad principles that have been accepted by the Courts. Finally, Hon'ble Court held that since the control over the two units is in the hands of the same management and administration and there was unity of control leading to an inter-connection, inter-dependence and inter-lacing of the two ventures such that it can be said that the fuel injection equipment project is only an extension of the existing business of the assessee and, therefore, the expenditure incurred by the assessee on this Project is a revenue expenditure. Considering this decision, the matching concept as invoked by Ld. AO would have no application. Further, the earning of income is not a requirement before an expenditure could be claimed by the assessee.

12. The Ld. Sr. DR has relied on the decision of Hyderabad Tribunal in **DCIT V/s Bharat Biotech International Ltd (2014) 42 Taxman.com 204** which held that the development activity in itself could not be considered as the business for the purpose of this section. However, upon perusal of the same, it was the finding of the Tribunal that product development expenses being interest on loan and cost of consumable, had nothing to do with scientific research and accordingly, it was

held that the provisions of Sec.35(1)(i) or (iv) would have no application and the claim for deduction was to be rejected. We further find that this order has subsequently been amended and the appeals have been recalled for the purpose of deciding the issue on the applicability of provisions of Sec. 35(3) of the Act. The same is reported at **(57 Taxmann.com 117; dated 30.05.2014)**. Therefore, this case law, in our considered opinion, provides no assistance to the revenue.

13. Finally, considering entirety of facts and circumstances, the disallowance as made by Ld. AO and as confirmed by Ld. CIT(A) is not sustainable in law and the same is liable to be deleted. We order so. The Ld. AO is directed to re-compute the income of the assessee.

Facts being pari-materia the same, the impugned disallowance stand deleted in both the years. In the result, the assessee's appeal for AY 2014-15 stands allowed. Similar issue raised by the assessee in AY 2015-16 stands allowed.

6. Another grievance of the assessee in AY 2015-16 is disallowance of interest u/s 36(1)(iii). The same stem from the fact that the assessee advanced interest free loan to director / relatives for Rs.635.78 Lacs whereas the assessee borrowed funds and debited interest of Rs.300 Lacs. No commercial expediency of advancing loan could be established by the assessee. Accordingly, Ld. AO computed proportionate interest disallowance u/s 36(1)(iii) for Rs.40.47 Lacs. The Ld. CIT(A) confirmed the same. Aggrieved, the assessee is in further appeal before us. The limited argument of Ld. AR is that own interest free funds far exceed the interest free advances granted by the assessee and therefore, it would be presumed that the loans were advanced out of own funds. Concurring with the same, we remit this matter back to the file of Ld. AO for fresh adjudication in the light of aforesaid argument. The assessee is directed to substantiate its claim. This ground stand allowed for statistical purposes. The appeal of the assessee for AY 2015-16 stands partly allowed.

Revenue's Appeal for AY 2014-15

7. The only grievance of the revenue is deletion of addition made u/s 2(22)(e). The addition stem from the observation of Ld. AO that the assessee received interest free advances from M/s Aban Hotel and Resorts Ltd. and from M/s Aban Investment Private Ltd. These entities had common shareholders and accordingly, the sum of Rs.198.69 Lacs was added to the income of the assessee as deemed dividend u/s 2(22)(e). The Ld. CIT(A) relied on first appellate order for AY 2013-14 wherein similar addition was deleted on the ground that the assessee was not shareholder in these entities and therefore, the decision of Hon'ble Supreme Court in the case of **CIT vs. Madhur Housing & Development Co. (2017-TIOL-398-SC-IT)** would apply. Following the same, this addition was deleted against which the revenue is in further appeal before us.

8. We find that the fact that the assessee is not a shareholder in the two entities, remain undisturbed before us and therefore, no such addition could have been made in the hands of the assessee as per the cited decision of Hon'ble Supreme Court. Therefore, no fault could be found in the impugned order. The appeal stands dismissed.

Conclusion

9. The assessee's appeal for AY 2014-15 stands allowed. The assessee's appeal for AY 2015-16 stands partly allowed. The revenue's appeal for AY 2014-15 stand dismissed.

Order pronounced on 18th November, 2022.

Sd/-
(MAHAVIR SINGH)

उपअध्यक्ष / VICE PRESIDENT

चेन्नई / Chennai; दिनांक / Dated : 18-11-2022

EDN/-

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

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