

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 351/Bang/2023
Assessment Year : 2014-15

M/s. Manjushree Technopack Ltd., MBH Tech Park, 2 nd Floor, Survey No. 46[P] and 47[P], Begur Hobli, Electronic City Phase II, Electronic City, S.O., Konappana Agrahara, Bengaluru -560 100. PAN: AAACM9418K	Vs.	The Assistant Commissioner of Income Tax, Circle 1, LTU, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Arvind .S, CA
Revenue by	:	Smt. Supriya Rao .O.N, Addl. CIT (DR)

Date of Hearing	:	19-06-2023
Date of Pronouncement	:	21-06-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 28.02.2023 passed by NFAC, Delhi for A.Y. 2014-15 on following grounds of appeal:

- “1. The order of the LAO & the LAA is bad in law, to the extent prejudicial to the Appellant.*
- 2. The order of the LAO and the LAA ought to be quashed on the basis that neither did the LAA provide the Appellant with a sufficient opportunity of being heard nor did the*

LAA consider the written submissions filed by the Appellant physically before the LAA.

3. The LAO and LAA erred in disallowing the claim made by your Appellant under section 35(2AB) amounting to Rs. 5,94,22,522 on the basis that Form 3CL from the prescribed authority has not been filed by the Appellant.

4. The LAA erred in confirming the disallowance of the claim under section 35(2AB) of Rs. 5,94,22,522 despite the Appellant filing the Form 3CL evidencing the claim for relief under section 35(2AB) of the Act.

5. Without prejudice to the preceding grounds,

a) The LAO and LAA did not appreciate that the Appellant had received form 3CM 'Order of the approval of In-house R & D Facility under section 35(2AB) of the Act' dated 05.02.2016 passed by the Secretary, DSIR and hence was eligible for relief under section 35(2AB) of the Act.

b) The LAO and LAA failed to consider that section 35(2AB) nowhere states that as long as the Appellant's facility is approved in Form 3CM relief under the said section ought to be granted whether or not the prescribed authority has issued the Form 3CL to the Income-tax Department.

c) The LAO and LAA erred in not granting relief under section 35(2AB) of the Act on the basis of the application filed by the Appellant before Secretary, DSIR for grant of Form 3CL without considering that issue of the said Form to the Income-tax Department is beyond the control of the Appellant.

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal."

2. Brief facts of the case are as under:

2.1 The assessee filed the return of income on 28.11.2014 declaring total income of Rs.38,29,72,040/-. A notice under section 143(2) of the Income Tax Act, 1961 (the Act) was issued on 01.09.2015. Thereafter notice under section 142(1) was issued. in response to which the Assessee appeared from time to time and furnished the details called for.

2.2 During the course of assessment proceedings, the LAO concentrated on the deduction claimed under section 35(2AB) of the Act. Further, the LAO sought for Form 3CL issued by

Department of Scientific and Industrial Research (DSIR), Government of India the R&D expenditure incurred during the AY 2014-15. In this regard, the Assessee provided the Copy of application submitted before Secretary, DSIR for obtaining certificate approving I & Development expenditure in Form 3CL. The Assessee also submitted form 3CM - Order of the approval of In-house R & D Facility under section 35(2AB) of the Act. The DSIR had not furnished Form 3CL to the Assessee. However, the LAO did not consider the submissions made by the Assessee and disallowed the claim made under section 35(2AB) of the Act on the ground that the requisite Form 3CL from the prescribed authority has not been filed by the assessee.

2.3 The Assessee paid Dividend Distribution Tax (DDT) of Rs.2302432/- vide challan dated 12.08.2013. However, inadvertently the assessee has mentioned in the challan the assessment year as 2013-14 instead of AY 2014-15. The LAO ignored this inadvertent error and raised a demand of Rs. 2302432/- against the Dividend Distribution tax. The LAO never gave an opportunity to the assessee to place these facts. The LAO before concluding the assessment should have provided an opportunity to the Assessee to provide the challan for having remitted the DDT of Rs. 2302432/-. Further, the LAO did not grant credit of DDT amounting to Rs. 2302432/-.

2.4 The LAO concluded the assessment on a total income of Rs.442394562/- by disallowing the claim under section 35(2AB) amounting to Rs. 59422522/-.

2.5 Further, the LAO did not give credit of Dividend Distribution Tax amounting to Rs. 2302432/-.

2.6 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) while passing the impugned order has recorded that notice of hearing were sent to assessee on two occasions being 13.02.2023 and 21.02.2023.

2.7 The Ld.CIT(A) records that on one of the occasions, adjournment application was filed by the assessee however on the second occasion, no adjournment application was filed and hence the appeal was heard disallowing the claim of assessee by considering the documents available on record.

2.8 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The only issue that is alleged by the assessee is in respect of disallowance of deduction claimed u/s. 35(2AB) of the act for non-filing of Form 3CL issued by the Department of Scientific and Industrial Research (DSIR), Government of India in respect of the R&D expenditure incurred by the assessee for the relevant Assessment Year under consideration. All the grounds raised by the assessee are in respect of the same.

4. The Ld.AR at the outset submitted that, during the pendency of assessee before the Ld.CIT(A), assessee received the Form 3CL from DSIR. The assessee along with written submission had filed the form physically on 21.05.2019. The Ld.AR submitted that, subsequently the case was transferred to NFAC in about August 2020 and the notice was issued by the NFAC on 13.02.2023. The Ld.AR submitted that the authorized representative of assessee filed an application for adjournment on 13.02.2023. It is the submission of the Ld.AR that the assessee has not received the subsequent notice issued on 21.02.2023 and the authorized

representative observed that on 01.03.2023 that the impugned order has been passed by the NFAC. It is the submission of the Ld.AR that all the relevant details in respect of the deduction claimed u/s. 35(2AB) has been filed by assessee on 21.05.2019, however the said details has not been transferred to the NFAC. He prayed for the issue to be remanded to the Ld.CIT(A) for necessary verification of the documents.

The Ld.DR though vehemently objected, however could not controvert the submissions of the Ld.AR.

We have perused the submissions advanced by both sides in the light of records placed before us.

5. After considering the documents/written submissions placed on record, in the interest of justice, having regards to the submissions of the parties, we remand this issue back to the Ld.CIT(A). The Ld.CIT(A) shall consider the claim of assessee in the light of the documents filed and Form 3CL issued by DSIR.

Accordingly, the grounds raised by assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st June, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore