

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. Nos.237&238/Kol/2023
Assessment Years: 2014-15 & 2017-18

Ambuja Neotia Healthcare Venture Ltd..... Appellant
86C, Vishwakarma,
Topsia, Kolkata-700046.
[PAN: AACCN4806C]

vs.

DCIT, Circle-11(1), Kolkata..... Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri G. Hukugha Sema, CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : May 18, 2023

Date of pronouncing the order : July 05, 2023

ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders both dated 06.03.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since common issues involved in both the appeals, hence these have been heard together and are being disposed of by this common order. The assessee's appeal ITA No.237/Kol/2023 is taken as the lead case for the purpose of narration of facts.

2. ITA No.237/Kol/2023 – The sole issue raised by the assessee in this appeal is relating to disallowance of Rs.7,73,14 356/- u/s 35AD being capital expenditure incurred for the purpose of specified business.

3. The brief facts of the case are that the assessee company filed its return of income for the assessment year 2014-15 on 29.11.2014 declaring total loss of Rs.24,43,04,021/-. The case was subsequently selected for scrutiny and assessment order under section 143(3) of the Income Tax Act was passed on 28.12.2016 determining the total loss at Rs. 24,42,58,745/-. Subsequently, the said assessment order was subjected to revision u/s 263 of the Act. On the basis of the verification of material available on records, it was found that the assessment order u/s 143(3) dated 28.12.2016 was erroneous so far as it is prejudicial to the interest of the revenue on the following ground:

"it has claimed a deduction of Rs. 7,73,14,356/- u/s 35AD of the Income Tax Act. The above expenditure was actually incurred by the assessee after commencement of the business and claimed in the next previous year in which the business operation was commenced. As per the provisions of section 35AD of the act certain criteria are required to be fulfilled but the assessee fails to produce any such fulfilment and hence, claim of deduction of Rs.7,73,14,356/- under section 35Ad remains unverified."

The Id. PCIT vide his order u/s 263 dated 26.02.2019 has set aside the issue back to the file of Assessing officer and directed to pass a fresh assessment order after providing reasonable opportunity to the assessee. Thereafter, the Assessing Officer passed the assessment order. During the assessment proceedings, the Assessing Officer observed that the assessee had claimed deduction of Rs.7,73,14,356/- u/s 35AD. However, the assessee had incurred the said expenditure relating to deduction u/s 35AD after commencement of the business and claimed in the next previous year in which the operation was commenced. The Assessing Officer observed that in this case, the expenditure was not incurred prior to the commencement of the

business and not claimed in the previous year in which the operation was commenced, therefore, the same cannot be allowed u/s 35AD of the Act.

4. At the outset, the ld. Counsel for the assessee has submitted that the issue is squarely covered by the decision of the Coordinate Bench of the Tribunal in the Haryana State Warehousing Corporation vs. ACIT in ITA No.351/Chd/2019 vide order dated 03.10.2019 (one of us i.e. Judicial Member being part of the Bench in the said case). The relevant part of the order of the Tribunal is reproduced as under:

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that a similar issue having identical fact was a subject matter of the assessee's appeal for the A.Y. 2011-12 to 2014-15 in ITA No. 239/Chd/2016 & others, wherein the issue has been decided in favour of the assessee and the relevant findings have been given in para 10 to 14 which read as under:

10. Now coming to the issue on merits taken by the assessee vide ground Nos. 4 and 5 of the appeal. The brief facts relating to the issue are that the assessee has claimed deduction u/s 35AD of the Act from its profits on account of construction of warehouses in different Districts of Haryana, however, the AO has disallowed the deduction observing that as per the proviso to [Section 35AD](#) of the Act, the expenditure incurred wholly and exclusively for the purpose of any specified business shall be allowed as deduction during the previous year in which the assessee commences operations of his specified business. The AO observed that though the assessee had taken up the construction of warehousing facility during the year which is covered under the specified business, however, in view of the proviso to [Section 35AD](#), the deduction was available to the assessee whose date of commencement of business is on or after 01.04.2009 and since in this case the assessee has existing business of warehousing and hence, it cannot be said that the assessee had commenced the business of warehousing during the year under consideration. He, therefore, disallowed the deduction claimed by the assessee u/s 35AD of the Act. The ld. CIT(A) upheld the above finding of the AO.

11. We have heard the rival contentions. To better understand the case, we deem it fit to first reproduce the provisions of [Section 35AD](#) of the Act :

"Deduction in respect of expenditure on specified business.

[35AD. (1) An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him:

Provided that the expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business, if-

(a) the expenditure is incurred prior to the commencement of its operations; and

(b) the amount is capitalized in the books of account of the assessee on the date of commencement of its operations.

12. A perusal of the above provisions of [Section 35AD](#) of the Act reveals that assessee is eligible to claim deduction in respect of capital expenditure if the same is incurred wholly and exclusively for the purpose of any specified business carried out by him during the previous year in which such expenditure is incurred. However, in cases where such expenditure is incurred prior to the commencement of its operations by the assessee and amount is capitalized in the books of account of the assessee on the date of commencement of operations, then such expenditure is allowable as deduction in the previous year in which the assessee commences operations of his specified business.

13. In our view, the lower authorities have wrongly interpreted the relevant provisions of the Act. There are two parts of the abovesaid provisions. In the first part, it has been mentioned that an assessee is eligible to claim deduction of the capital expenditure if such an expenditure has been incurred wholly and exclusively in a specified business. There is no condition of any date or year of commencement of specified business. However, in the second part, it has been provided that if such an expenditure has been incurred prior to the commencement of business and has been duly capitalized in the books of account, the claim will be allowed in the year in which the assessee commences operations of his specified business. There is neither any

overlapping nor any contradiction in the aforesaid provision. The assessee is covered in the first part i.e. the assessee has incurred the expenditure on the specified business during the year in which operations of his business of warehousing were already going on. In view of this, we do not find any justification on the part of the lower authorities in denying the deduction to the assessee u/s 35AD of the Act. This ground is, accordingly, allowed in favour of the assessee.

14. In view of this, the legal grounds relating to the reassessment are decided against the assessee whereas the grounds taken on merits regarding the allowability of the claim of deduction u/s 35AD are allowed in favour of the assessee.

So respectfully following the aforesaid referred to order dt. 19/03/2019 in assessee's own case for the A.Y. 2012-13 in ITA No. 239/Chd/2016, the present case is remanded back to the file of the A.O. to be decided as per the directions given in the aforesaid referred to order dt. 19/03/2019.

5. We are in agreement with the above decisions of the Chandigarh Bench of the Tribunal. In view of this, the disallowance made by the lower authorities is ordered to be deleted.

6. Since, facts and issues involved in both the appeals are identical, hence, our findings given above will mutatis mutandis apply to ITA No.238/Kol/2023.

7. In the result, both the appeals of the assessee stand allowed.

Kolkata, the 5th July, 2023.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 05.07.2023.

RS

Copy of the order forwarded to:

1. Ambuja Neotia Healthcare Venture Ltd
2. DCIT, Circle-11(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches