

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 819/Kol/2023**  
**Assessment Year : 2016-17**

Shree Magnets P Ltd.	vs	ITO, Ward-14(1), Kolkata
PAN: AAGCS 8120 C		
Appellant		Respondent

Date of Hearing	08.02.2024
Date of Pronouncement	08.02.2024
For the Assessee	Shri Sunil Surana, CA
For the Revenue	Shri Arun Kumar Meena, JCIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2016-17 is directed against the order dated 28.07.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. For that the Id. CIT(A) erred in dismissing the appeal as ex-parte when the assessee duly complied with the notices made by submissions along with evidences.*

*2. For that the Id. CIT(A) erred in confirming the disallowance made by AO of deduction u/s 35(2AB) of Rs. 76,99,716/- when the assessee maintained separate books of accounts for R&D Centre which was audited and certified by CA in Form 3CLA as well as approved by the prescribed authority in Form 3CL.*

*3. For that the Id. CIT(A) should have allowed the deduction claimed in view of the principles of consistency such deduction having been allowed in all the years prior and later.*

4. For that even otherwise, the disallowance was not called for when the similar deduction was allowed in all the preceding and succeeding years.

5. For that the order of the ld. CIT(A) be modified and relief be provided to the assessee.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2016-17 declaring income of Rs. 26,47,548/-. The return of the assessee was duly processed u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny through CASS followed by notices issued u/s 143(2) and 142(1) of the Act which were duly served on the assessee. However, in compliance to the notices no one turned up before the ld. AO. Therefore, the ld. AO has no other option but to decide the appeal on the availability of the documents available with him. On going through the copy of the return, ld. AO noticed that the assessee has claimed deduction of Rs. 76,99,716/- u/s 35 or 35CCC or 35CCD in excess of amount debited to profit and loss account. Since the assessee has failed to appear before the AO has no other alternative but to add excess amount debited in the profit and loss account added back to the total income of the assessee.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A). However, even before ld. CIT(A) assessee has failed to appear on the various dates fixed by the appellate authority. Accordingly, ld. CIT(A) passed an ex-parte order against the assessee.

4. Feeling aggrieved by the order of ld. CIT(A) assessee is in appeal before this Tribunal. At the time of hearing, ld. AR of the

assessee appeared before the Tribunal and stated that the disallowance made by the AO in respect of claim of assessee deduction u/s 35(2AB) of the Act of Rs. 76,99,716/- was not proper as and when the assessee maintained separate books of accounts for R&D Centre which was audited and certified by CA in Form 3CLA and same was approved by the prescribed authority in form 3CL. Therefore, there is no question for disallowance of such claim made by assessee in his return of income by the authorities below. In support of his contention, the ld. AR furnished before us the copy of the audit report and Form 3CL which are also placed before this Tribunal in order to substantiate its claim.

5. We after hearing the rival submission of the parties and perused the material available on record find that the claim of the assessee for deduction u/s 35(2AB) of Rs. 79,99,716/- was duly approved by prescribed authority in Form 3CL. However, the assessee did not produce the same before the authorities below. Even otherwise in the case of assessee such deduction having been allowed in all previous year and subsequent years. Therefore, such disallowance is not justified in the case of assessee. Since the department has accepted the claim of assessee during the preceding and subsequent assessment year. Therefore, we viewed that the claim of the assessee being incurred in accordance with provisions of Act as the assessee has incurred such expenditure for the purpose of business only. Accordingly, we set aside the order of ld. CIT(A) and direct the AO to allow the claim of deduction of Rs.

77,99,716/- in the hands of assessee. In terms of the above, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08.02.2024.

Sd/-

Sd/-

(Dr. Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 08.02.2024  
*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant – Shree Magnets P Ltd., 81, Sodepur Barasat Road, Murahacha Post Jugberia, Kolkata-700110.
2. Respondent – ITO, Ward-14(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata