

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.888/KOL/2023

Assessment Year: 2018-19

**Assistant Commissioner of Income-tax,
Circle-7(1), Kolkata.**

Appellant

Vs.

**Britannia Industries Ltd.
(PAN: AABCB2066P)**

..... Respondent

Appearances by:

Shri Abhijit Kundu, CIT (DR) appeared for Appellant

Shri Akkal Dudhewala, FCA appeared for Respondent

Date of concluding the hearing : 19.12.2023

Date of pronouncing the order : 26.02.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the revenue pertaining to the Assessment Year (in short “AY”) 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Id. Commissioner of Income-tax, NFAC, Delhi [in short Id. “CIT(A)”] dated 24.03.2023 arising out of the assessment order framed u/s 143(3) read with sections 143(3A) & 143(3B) of the Act by AO, Income Tax Department, National e-Assessment Centre, Delhi dated 22.03.2021.

2. There is a delay of 93 days in filing the instant appeal. An application for condonation of delay has been filed by the revenue which is placed on record. After perusal of the same, we notice that

though the impugned order was passed on 24.03.2023 but the same was received in the office of the Ld. CIT(A), Kolkata on 04.08.2023 to this effect a certificate is filed by the revenue authorities. Considering this to be reasonable cause and in the larger interest of justice, we condone the delay and admit the appeal for adjudication.

3. Revenue has raised following two grounds of appeal:

“1. Disallowance u/s. 35(2AB) amounting to Rs.26,72,16,908/-.

2. disallowance of deduction for amortization land amounting Rs.33,63,395/-.”

4. At the outset, Ld. Counsel for the assessee submitted that the issues referred in the two grounds of appeal are squarely covered in favour of assessee by the decision of this Hon'ble Tribunal in assessee's own case. On the other hand, Ld. DR vehemently supported the order of AO.

5. We have carefully heard the rival contentions and perused the record placed before us. We observe that the assessee is a Limited Company engaged in the manufacturing business and complete scrutiny assessment proceedings carried out and/or framed on 22.03.2021. Two of the issues which are in dispute before us relate to disallowance of weighted deduction given u/s. 35(2AB) of the Act amounting to Rs.26,72,16,908/- and disallowance of deduction for amortization of lease premium at Rs.33,30,395/-. Assessee partly succeeded before the Ld. CIT(A). Before us reliance has been placed on the decision of this Tribunal in assessee's own case for AY 2014-15 in ITA No. 2644/Kol/2018 & CO No. 9/Kol/2020 dated 27.10.2023 and that for AY 2018-19 in ITA No. 461/Kol/2023 dated 14.12.2023.

6. So far as the first ground of appeal is concerned regarding disallowance in respect of weighted deduction claimed u/s. 35(2AB) of the Act in respect of expenditure incurred towards scientific research

having been deleted by the ld. CIT(A), we note that the Ld. AO originally disallowed Rs.26,72,16,908/- claimed by the assessee u/s. 35(2AB) of the Act for the reason that assessee company had not furnished Form 3CL obtained from DSIR. Even before the first appellate authority assessee failed to file Form 3CL, however, ld. CIT(A) allowed the alternate plea seeking normal deduction i.e. 100% of the scientific research expenditure. We have noticed that the assessee's appeal for the very same assessment i.e. AY 2018-19 came up before this Tribunal and the relief denied by ld. CIT(A) was challenged before this tribunal. Though the cross appeals should have been fixed for hearing together but the appeal of revenue was filed at a later date and at the point of time when assessee's appeal for AY 2018-19 came up for adjudication, revenue's appeal was not filed and, therefore, the assessee's appeal for AY 2018-19 was heard. We also note that assessee was finally able to procure Form 3CL issued by DSIR on 31.08.2023 and when this fact was brought to the notice of this Tribunal, and correct calculation of weighted deduction u/s. 35(2AB) was calculated only sum of Rs.27,50,303/- was disallowed and remaining claim was allowed. Relevant finding of this Tribunal on this issue dealt with for AY 2018-19 in assessee's appeal in ITA No. 461/Kol/2023 reads as follows:

"7. Now we take up Ground Nos. 3 to 5 which relate to the disallowance of the deduction claimed u/s 35(2AB) of the Act. The facts as discernible from the records are that the appellant had incurred scientific research expenditure, both revenue and capital, at their approved in-house R&D facility at Bengaluru, aggregating to Rs.17,81,44,605/ -. The appellant is noted to have claimed weighted deduction @ 150% of the aforesaid expenditure being Rs.26,72,16,908/- (Rs.17,81,44,605 x 150%) u/s 35(2AB) of the Act. In the course of the assessment, the AO had required the appellant to furnish copy of Form 3CL, issued by the DSIR in terms of Rule 6(7A) of the Income Tax Rules, 1962, in support of the weighted deduction claimed u/s 35 of the Act. Although the appellant submitted the initial approval issued by the DSIR in Form 3CM and the audit report in Form 3CLA filed before DSIR seeking weighted deduction in relation to the expenditure of Rs.17,81,44,605/ -, but it expressed its inability to furnish Form 3CL as the same was pending to be

issued by the DSIR. The AO, in the absence of Form 3CL, disallowed the deduction claimed u/s 35(2AB) with the following rider:

"However, this claim is disallowed with a rider that in due course of time even after the passing of this Assessment Order when assessee received Form No.3CL from DSIR for AY 2018-19, assessee can move in a request for Rectification under Section 154 of the Income Tax Act, 1961 and due consideration should be given to the Rectification plea of the assessee. Allowance of expenditure under Section 35(2AB) for AY 2018-19 should be allowed to the assessee based on Form 3CL once the assessee is in receipt of the same."

8. Aggrieved by the above order, the appellant preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) is noted to have upheld the finding of the AO that in the absence of Form 3CL, the claim for weighted deduction u/s 35(2AB) of the Act cannot be allowed. The Ld. CIT(A), however, acceded to the appellant's alternate plea that the normal deduction for the aggregate expenditure of Rs.17,81,44,605/- has to be allowed. With these observations, the Ld. CIT(A) is noted to have restricted the disallowance to the extent of Rs.8,90,72,303/- (Rs.26,72,16,908 - Rs.17,81,44,605). Being aggrieved by the order of the Ld. CIT(A), the appellant is now in appeal before us.

9. At the time of hearing, the Ld. AR for the appellant placed before us the copy of Form 3CL dated 31.08.2023 which has been issued by the DSIR, in which out of the total expenditure of Rs.17,81,44,605/-, expenses to the tune of Rs.17,26,44,000/- has been approved for weighted deduction u/s 35(2AB) of the Act. The Ld. AR thus pleaded that, in line with the above rider given by the AO, the consequent weighted deduction claimed u/s 35(2AB) of the Act ought to be allowed. To this, the Ld. DR appearing for the Revenue, did not oppose the plea of the assessee.

10. Heard both the parties. It is noted that the DSIR has issued Form 3CL dated 31.08.2023, in terms of which, the appellant is entitled to weighted deduction of Rs.25,89,66,000/- [17,26,44,000 X 150%] u/s 35(2AB) of the Act. The balance sum of Rs.55,00,605/- [17,81,44,605 - 17,26,44,000] however is only eligible for normal deduction, as rightly held by the Ld. CIT(A). Accordingly, the total deduction allowable u/s 35 (2AB) and 35(I)(i)/(iv) of the Act works out to Rs.26,44,66,605/- [25,89,66,000 + 55,00,605] as opposed to the deduction of Rs.26,72,16,908/- claimed by the appellant in the return of income. Accordingly, the disallowance of Rs.8,90,72,303/- confirmed by the Ld. CIT(A) stands restricted to Rs.27,50,303/- [26,72,16,908 - 26,44,66,605]. These grounds are therefore partly allowed."

7. Going through the above finding of this Tribunal wherein the facts have been examined in detail we find that against the actual claim of the assessee u/s. 35(2AB) at Rs.26,72,16,908/-, the claim to the tune of Rs.26,44,66,605/- is allowable. Respectfully following the same, we sustain the disallowance at Rs.27,50,303/-. Accordingly, the ground of appeal raised by the revenue is partly allowed.

8. So far as the second ground of appeal regarding disallowance of amortization of lease premium expenses amounting to Rs.33,63,395/- is concerned, we find that similar issue came up for consideration in assessee's own case for AY 2014-15, while adjudicating the cross objection No. 9/Kol/2020 (order pronounced on 27.10.2023) wherein the Tribunal held as follows:

"26. Ground No.3 relates to claim of deduction for amortization of payment. Both the lower authorities have denied the said claim. We, however, find that the Hon'ble Jurisdictional High Court in the case of Balmer Lawrie & Co. Ltd Vs CIT, Kol.-II reported in (2019) 111 taxmann.com 316 (Calcutta) has held that upfront lease premium on lease-hold land is nothing but advance payment of rent and the same is not a capital expenditure and as such the deduction should be allowed u/s 37(1) of the Act. Considering the said judgment which is squarely applicable on the fact of this case, we are inclined to hold in favour of the assessee and direct the Assessing Officer to allow the claim of deduction for lease premium of Rs.33,00,000/- for Assessment Year 2014-15. Accordingly, ground no. 3 of the cross objection is allowed."

9. Taking consistent view and respectfully following the ratio laid down by Hon'ble jurisdictional High Court in the case of *Balmer Lawrie & Co. Ltd. Vs. CIT reported in (2019) 111 taxmann.com 316 (Cal)*, we confirm the finding of the Ld. CIT(A) deleting the disallowance of deduction for amortization of lease premium expenses of Rs.33,63,395/-. Therefore, ground no. 2 of the revenue is dismissed.

10. In the result, the appeal of the revenue is partly allowed.

Order is pronounced in the open court on 26th February, 2024.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

(Dr. Manish Borad]
Accountant Member

Dated:
26th February,2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – ACIT, circle-7(1), Kolkata**
- 2. Respondent - Britannia Industries Ltd., Prestige, Shantiniketan tower C, The Business Precinet, 16th & 17th Floor, Whitefield Main road, Mahadevapura Post, Bangalore-560048.**
3. CIT(A), NFAC, Delhi.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata