

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1494/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2016-17

**Tractors and Farm Equipment
Limited,**
No.77, Potti Patti Limited,
Nungambakkam,
Chennai – 600 034.

**The Assistant Commissioner
of Income Tax,**
Vs. Corporate Circle 3(1),
Chennai.

PAN: AA ACT 2761Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 25.04.2024
घोषणा की तारीख/Date of Pronouncement : 30.04.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057292079 (1) dated 23.10.2023. The assessment was framed by the Assistant Commissioner of Income Tax, Corporate Circle 3(1),

Chennai for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2019. The impugned penalty u/s.271(1)(c) of the Act was levied by the Addl/Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi for the assessment year 2016-18 vide order dated 31.10.2021.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the levy of penalty u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income on account of disallowance made u/s.35(2AB) of the Act by DSIR and adopted by AO though the claim was made by assessee by the assessee by filing of return prior to receipt of certificate from DSIR. For this, assessee has raised various grounds, which are argumentative, factual and case laws and hence, need not be reproduced.

3. Brief facts of the case are that the assessee company is engaged in the business of manufacture of automobile and autoparts. The assessee company filed its return of income for the relevant assessment year 2016-17 on 30.11.2016 and assessee's case was selected for scrutiny assessment under CASS. The AO noticed during the course of assessment proceedings from the

accounts of the assessee that the assessee has claimed deduction u/s.35(2AB) of the Act under capital head at Rs.102,66,43,451/- towards capital expenditure and also claimed a sum of Rs.46,18,50,669/- as revenue expenditure and claimed weighted deduction on both. The weighted deduction u/s.35(2AB) of the Act on capital expenditure was claimed by excess amount of Rs.1,07,98,057/- in term of Form No.3CL issued by Ministry of Science and Technology i.e., the R & D expenditure eligible for claim of deduction u/s.35(2AB) of the Act. According to Form No.3CL issued by the Ministry of Science and Technology, the assessee was entitled for claim of R&D deduction u/s.35(2AB) of the Act at Rs.4,06,73,000/- whereas assessee has claimed weighted deduction at Rs.5,14,71,057/-. Hence according to AO, on account of capital expenditure the assessee has claimed excess deduction of Rs.1,07,98,057/- which was disallowed. Similarly, the assessee has claimed weighted deduction on revenue expenditure at Rs.46,18,50,669/- whereas as per Form No.3CL, the DSIR has allowed only a sum of Rs.45,96,40,000/- u/s.35(2AB) of the Act. Hence, the AO disallowed the differential amount of Rs.22,10,000/- and added to the returned income of the assessee. Accordingly, the following deductions were disallowed and added to the returned income of the assessee:-

<i>Heads of Income</i>	<i>Rs.</i>
<i>B. Addition : weighted portion u/s.35(2AB) – under capital</i>	<i>1,07,98,057</i>
<i>C. Addition : weighted portion u/s.35(2AB) – under revenue</i>	<i>22,10,000</i>

Against this quantum addition or disallowance u/s.35(2AB) of the Act, on capital expenditure and revenue expenditure, no appeal was filed by the assessee and addition was accepted.

3.1 Consequent to the above assessment, the AO initiated penalty proceedings u/s.271(1)(c) of the Act and levied penalty by holding that there cannot be more than one view or opinion on the above disallowance and deduction restricted by DSIR is to be allowed only and not beyond that. For this, the AO observed that the assessee has furnished inaccurate particulars of income and hence, levied penalty by observing in para 3.3 & 4 as under:-

“3.3 Also, the assessee’s contention that the addition is on account of different views taken by the department is not tenable. As mentioned above, the legislation is very clear as to what quantum of expenditure is eligible for weighted deduction u/s 35(2AB). There cannot be more than one view/opinion on the same. What is prescribed for by the Income Tax Act, 1961 has to be followed strictly in letter and spirit. Thus, it was the legal obligation of the assessee to have claimed the weighted deduction in line with what was determined by the DSIR. Any deviation from the same is tantamount to furnishing of inaccurate particulars of income by the assessee.

4. Thus, in view of the above discussion, I deem it as a fit case for imposition of penalty u/s.271(1)(c) for furnishing of inaccurate particulars of income. The assessee has furnished inaccurate particulars of its income to the tune of Rs.1,30,08,057/-.

Aggrieved against the levy of penalty by AO, assessee preferred appeal before CIT(A).

4. The CIT(A) confirmed the penalty by observing in para 5.3 & 5.5 as under:-

“5.3 I have considered the submission of the appellant in view of the facts described by the ld.AO in the penalty order. The appellant has contended that the appellant company did not file any inaccurate particular of income as DSIR, subject to certain terms and conditions, did not allow the entire amount of the deduction claimed by the appellant company. In my considered opinion the plea of the appellant does not have much strength. From the facts of the case, it transpires that the appellant company had inflated its claim of weighted deduction u/s 35(2AB) of the Income Tax Act, 1961. Had not the assessee’s case been selected for scrutiny assessment, the inflated part of the deduction claimed in the Return of income would have gone untaxed.

5.4

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5.5 In view of the facts of the case and the above mentioned judgements, I am of the considered opinion that the appellant had suppressed its taxable income by filing inaccurate particulars of income for the assessment year under reference. Therefore, the penalty order u/s 271(1)(c) passed by the ld.AO deserves to be sustained and upheld. Accordingly, the appeal of the appellant on this issue is dismissed and not allowed.”

Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee argued that the CIT(A) and the AO erred in confirming the levy of penalty and levying the penalty on the disallowance made u/s.35(2AB) of the Act by DSIR and adopted by the AO though the claim was made by the assessee as per DSIR guidelines and duly certified by a Chartered Accountant. He argued that the DSIR does not communicate the grounds or items on which, it has restricted the claim of weighted deduction towards capital expenditure and revenue expenditure. The Id.counsel stated that the certificate issued by the DSIR cannot be appealed against. He further argued that the final authority to certify the amount lies with the DSIR and hence, the assessee cannot include the same in its appeal before CIT(A) but there is no furnishing of inaccurate particulars of income as the returned income filed by the assessee with the Department for the relevant assessment year was much before the receipt of certificate from DSIR. For this, the Id.counsel relied on the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd., reported in (2010) 322 ITR 158.

6. On the other hand, the Id.senior DR stated that this is a fit case for imposition of penalty u/s.271(1)(c) of the Act for furnishing of inaccurate particulars of income because the DSIR is the authority

who certify the claim of weighted deduction for capital and revenue expenditure u/s.35(2AB) of the Act. The Id.senior DR argued that the Act has provided for obtaining the DSIR certificate and assessee have to claim the weighted deduction in line with what was determined by DSIR.

7. We have heard rival contentions and gone through facts and circumstances of the case. The facts are admitted that the assessee while filing return of income has claimed excess weighted deduction u/s.35(2AB) of the Act in regard to capital expenditure of Rs.1,07,98,057/- and on revenue expenditure of Rs.22,10,000/-. It is also a fact, which is not denied by Revenue that the approval issued by DSIR or certificate issued by DSIR are much after filing of return of income and the assessee has no knowledge of the details of disallowance even though the application for issue of Form No.3CL was filed by the assessee as per DSIR guidelines. The assessee before us now contended that the assessee company did not file any inaccurate particulars of income as the DSIR approval or certificate was made available after filing of return of income and it was not aware about outcome of the approval by DSIR which is subject to certain terms and conditions and did not allow the entire amount of deduction claimed by assessee. Whether the DSIR approval or

certificate restricting the claim of deduction u/s.35(2AB) of the Act and particularly, when certificate comes after filing of return of income, restricting the deduction by the AO based on DSIR approval can amount to concealment of particulars of income or not, this has been answered by the Hon'ble Madras High Court in the case of CIT vs. Balaji Distilleries Ltd., (2013) 1 ITR-OL 339 (Mad), wherein it is held that in the absence of due care, it did not mean that the assessee was guilty of either furnishing inaccurate particulars or attempting to conceal its income and hence, the imposition of penalty for furnishing of inaccurate particulars of income on assessee's held not justified. The Hon'ble Madras High Court applied the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd., vs. CIT, (2012) 348 ITR 306 (SC). Further, as contended by the Id.counsel for the assessee and relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Ltd., *supra*, wherein Hon'ble Supreme Court has propounded "*the meaning of the term 'particulars' used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate 'particulars'. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty*

provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate 'particulars'.

7.1 In term of the above factual decision that at the time of filing of return of income, the DSIR approval was not available with the assessee restricting the claim of deduction will not tantamount to furnishing of inaccurate particulars of income in the return of income filed by the assessee. Hence, we delete the penalty and allow the appeal of assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30th April, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 30th April, 2024

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.