

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4413/Mum/2023
(Assessment Year: 2018-19)**

Nilsan Nishotech Systems Pvt. Ltd. W 199E, MIDC Khirane, TTC Industrial Area, Navi Mumbai-400705. PAN : AAACN2768D	Vs.	DCIT-10(3) Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Viraj Mehta, CA
Revenue/Respondent by : Shri Laxmi Kant , Sr. DR

Date of Hearing : 08.05.2024
Date of Pronouncement : 09.05.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] both dated 14.11.2023 for the AY 2018-19. The assessee raised the following grounds of appeal:

“1) Ground No. 1: Violation of Natural Justice

On facts and circumstances, Ld. CIT(A) has erred in passing the order without providing proper opportunity of hearing to the appellant. Such disallowance u/s 35 is bad in law and liable to be deleted as order is passed without opportunity of being heard and violating the principles of natural justice.

2) Ground No. 2: Disallowance u/s 35(2AB) of Rs. 76,09,458/-

On facts and circumstances, Ld. CIT(A) has erred in confirming action of the Ld. Assessing Officer in disallowing appellants claim u/s 35(2AB) of Rs. 76,09,458/- without considering the submissions made by the appellant. Such disallowance is bad in law and liable to be deleted.”

2. The assessee is a domestic company engaged in the business of manufacturing of equipment and services for pharmaceutical, biotechnology and food & beverage industry. The assessee filed the return of income for AY 2018-19 on 27.09.2018 declaring the income of Rs. 62,71,750/- under the normal provisions of the Income Tax Act, 1961 (for short 'the Act') and income of Rs. 1,16,96,119/- under section 115JB of the Act. The Assessing Officer (AO) noticed that the assessee has claimed a sum of Rs.76,09,458 as a weighted deduction under section 35(2AB) of the Act and called on the assessee to substantiate the claim in terms of the nature of expenses etc. The AO also called on the assessee to furnish Form 3CM and Form 3CL in this regard. The AO after perusing the details furnished by the assessee regarding the expenses, both capital and revenue held that the expenses are not entitled for deduction under section 35(2AB). Further the AO held that the assessee has only furnished the letter of approval from Department of Scientific & Industrial Research (DSIR) and not the required Forms. The AO also held that the assessee has claimed 200% of the expenses whereas the assessee if at all is eligible for only 150% of the weighted deduction. For these reasons the AO disallowed the entire deduction claimed by the assessee under section 35(2AB) of the Act. Aggrieved the assessee filed further appeal before the CIT(A). However, before the CIT(A) the assessee did not appear and therefore the CIT(A) dismissed the appeal in-limine. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The Id. Authorized Representative (AR) submitted that the CIT(A) has dismissed the appeal ex-parte without going into the merits of the case based on materials available on record. The Id. AR therefore prayed that one more opportunity be given to the assessee to represent the case properly before the CIT(A).

4. The Id. Departmental Representative (DR) on the other hand vehemently argued that the assessee has not furnished the relevant details during the assessment proceedings and failed to represent the case properly before the appellate proceedings. The Id. DR therefore prayed that the disallowances made by the AO be upheld.

5. We have heard the parties and perused the material available on record. We noticed that the assessee neither appeared before the AO nor before the CIT(A). The AO disallowed the entire amount claimed by the assessee under section 35(2AB) of the Act for the reason that the expenses are not eligible and that the assessee has not furnished the relevant forms in support of claim of weighted deduction. The CIT(A) dismissed the appeal in limine for the reason that the assessee has not responded to the various notices issued by the CIT(A) and kept asking for adjournments. In the given case, the issue under consideration being the allowability of weighted deduction under section 35(2AB) needs factual verification based on documentary evidences. Considering the facts that the CIT(A) did not examine the issue on merits due to lack of representation by the assessee, in the interest of natural justice and fair play, we are of the view that the assessee be given one more final opportunity to represent the case before the CIT(A). Accordingly the issue is restored back to the CIT(A) for fresh consideration. The assessee is directed to file the necessary documents as may be

called on by the CIT(A) with regard to the claim of deduction under section 35(2AB) of the Act and co-operate with the appellate proceedings without seeking adjournments. It is ordered accordingly.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09-05-2024.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai