

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1047/Bang/2023
Assessment year : 2014-15

Indfrag Limited, No.15, Indfrag House, Service Road, HAL 2 nd Stage, Bangalore – 560 008. PAN : AAACI 0929H	Vs.	The Assistant Commissioner of Income-tax, Circle 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Suhani Maharwal, CA
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.03.2024
Date of Pronouncement	:	14.05.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 11.10.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2014-15 on the following grounds:-

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has grossly erred and exceeded his jurisdiction in deciding the issue related to disallowance of deduction of Rs.5,21,40,716/- under section 35(2B) of the Income Tax Act, 1961, which already stood adjudicated by the Hon'ble Tribunal in favour of the assessee, vide appeal order dated 30/07/2020 in ITA No.98/Bang/2018 and, therefore, the said issue was not pending for adjudication before him.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has grossly erred in not deciding the issue related to disallowance of Rs.9,38,741/- under section 40(a)(i) of the Income Tax Act, 1961 restored to his file for fresh decision after considering the additional evidence by the Hon'ble ITAT, vide its order dated 3 1/07/2019 in ITA No. 97&98/2018, as no discussion on this issue has been in the appellate order.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has grossly erred in deciding the appeal without providing actual and effective opportunity to the assessee due to change of e-mail and address on account of amalgamation of the company with M/s Omniaactive Health Technologies Limited vide order dated 27/07/2017 for Petition No 572 of 2017 Before the National Company Law Tribunal, Mumbai Bench Order intimation of which had already been given to the Income Tax Department by the Registrar of Companies and by the assessee themselves in various communications with department.

4. The appellant craves our indulgence to or add, amend, alter all or any of the grounds of appeal before or at the time of hearing.”

2. This is second round of proceedings before the Tribunal. Briefly stated the facts of the case are that assessment order was passed on 21.12.2016 making addition as under:-

Disallowance u/s. 14A	-	Rs.	35,895
Disallowance u/s. 40(a)(i)	-	Rs.	9,38,741
Disallowance u/s. 35(2AB)	-	Rs.	5,21,40,716

3. On appeal, the CIT(A) partly allowed the appeal of assessee and passed order on 22.11.2017. The assessee filed appeal before the ITAT in ITA No.98/Bang/2024. The Tribunal in regard to ground No.1 & 2 by order dated 31.07.2019 vide para 5 & 6 remitted the issue of disallowance u/s. 40(a)(ia) to the CIT(Appeals) for fresh decision after considering the additional evidence. The assessee filed MP

No.122/Band/2019 stating that ground No.3 & 4 regarding deduction u/s. 35(2AB) were not decided by the Tribunal in order dated 31.07.2019. The Tribunal allowed MP filed by the assessee and recalled the order dated 31.07.2019 for deciding ground Nos.3 & 4 on deduction u/s. 35(2AB) and passed order on 30.07.2020 allowing these grounds.

4. The CIT(Appeals) in pursuance of Tribunal order dated 31.07.2019 the CIT(Appeals), NFAC in the set aside proceedings has passed the order dated 11.10.2023 ex parte and decided the issue raised in ground Nos. 3 & 4 regarding deduction u/s. 35(2AB) of the Act. Against this, the assessee is in appeal before the Tribunal.

5. During the course of hearing, the ld. AR submitted that there was amalgamation of the company with M/s Omniactive Health Technologies Ltd. vide NCLT, Mumbai order dated 27.07.2017 which was intimated to the Income Tax Department by the assessee in various communications with the department. The CIT(A) did not provide actual and effective opportunity to the assessee due to change in e-mail and address and therefore assessee could not appear before the CIT(Appeals) in the second round of proceedings.

6. He further submitted that the ld. CIT(Appeals) has decided the issue on deduction u/s. 35(2AB) which already stood decided by the Tribunal by order dated 30.07.2020, the order is placed at paper book page No. 27 to 36 accordingly not pending for adjudication before him. The issue for adjudication by the ld. CIT(Appeals) was regarding

disallowance u/s. 40(a)(ia) of the Act which was set aside by the Tribunal by order dated 31.07.2019 on which there is no discussion in the impugned order. The Id. AR therefore requested that the matter may be sent back to CIT(Appeals) for fresh consideration of the issue regarding disallowance u/s. 40(a)(ia) of the Act.

7. The Id. DR submitted that the CIT(Appeals) issued various notices and the assessee did not update its email-id and telephone no. and the order of the Tribunal dated 30.07.2020 deciding the issue of deduction u/s. 35(2AB) of the Act was not brought to the notice of Id. CIT(Appeals) by the assessee.

8. Considering the rival submissions, we note that the CIT(Appeals) has passed ex parte order after issue of various notices to the assessee. The CIT(Appeals) has wrongly considered issue of deduction u/s. 35(2AB) which already stood decided by the Tribunal by order dated 31.07.2020 and this issue was not brought to the notice of the Id. CIT(Appeals) in the course of appeal proceedings. During the course of hearing, the Id. DR has produced a letter dated 13.03.2024 according to the annexure from the AO (dated 06.03.2024) that the revenue has not filed further appeal against the order dated 30.07.2020 passed by the Tribunal. Thus the issue of deduction u/s. 35(2AB) for AY 2014-15 has attained finality.

9. In fact, the issue for adjudication before the CIT(Appeals) in the set aside proceedings in pursuance of the order of Tribunal dated 31.07.2019 was on the disallowance u/s. 40(a)(ia) of the Act which has

not been considered by the CIT(Appeals). We therefore quash the impugned order of the Id. CIT(Appeals) and remit this issue to the file of CIT(Appeals) for fresh consideration on the order of Tribunal dated 31.07.2019 and decision as per law. The assessee is directed to update correct email id, communication address and mobile/tel. no. and also intimate the same to all concerned in the department. The assessee is also directed to produce all the required documents before the Id. CIT(Appeals) in support of its case and not seek unnecessary adjournment for early disposal of the case.

10. In the result, the appeal is allowed for partly statistical purposes.

Pronounced in the open court on this 14th day of May, 2024, as per Rule 34 of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Bangalore,
Dated, the 14th May, 2024.

/Desai S Murthy /

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.