

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 2128/Mum/2024
(Assessment Year: 2017-18)

LUMIS BIOTECH PRIVATE LIMITED, 501, ARUN CHAMBERS, TARDEO, MUMBAI-400 034 PAN:AAACL1066G	vs	DCIT CIRCLE 7(1)(2), MUMBAI ROOM NO.130,1 ST FLOOR, AAYAKAR BHAVAN, M.K. ROAD, MUMBAI-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Hitesh Shah
Respondent by : ShriManoj Kumar Sinha (SR.DR.)

Date of hearing : 04/07/2024
Date of pronouncement : 09/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the Learned National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, passed on dated 23.02.2024. The impugned order was emanated from the order of the Ld. Deputy Commissioner of Income-tax, Circle 7(1)(2), Mumbai (in short, 'the A.O.'), passed under section 143(3) of the Act, date of order 19/02/2019.

2. The assessee has taken the following grounds:-

"1. The Hon. CIT(A) ought to have appreciated the fact that appellant could not represented its case due to circumstances beyond its control.

2. The Hon. CIT(A) was not justified in summarily rejecting the prayer for admission of additional evidence under Rule 46A.

3. The Hon. CIT(A) and the Ld. AO were not justified in N.A. disregarding the genuine mistake of the accountant in claiming deduction U/S.35(2AA) instead of S.35(2AB) of the Income Tax Act.

4. The Hon. CIT(A) erred in continuing the disallowance of Rs. 1,08,52,645/- U/s. 35(2AB) made by the Ld. AO.

5. The Hon. CIT(A) and the Ld. AO failed to appreciate the fact that the prescribed authority had already granted its approval, which was valid up to 31/03/2018.

The Appellant craves leave to add, alter or amend the above Grounds of Appeal, as the occasion may demand or circumstances may require."

3. The brief facts of the case are that the assessee had filed the Original Return of Income for the Assessment Year 2017-18 on dated 31/10/2017 declaring total income of Rs.3,65,52,386/- under normal provisions of the Income Tax Act. During the assessment proceedings, the Ld. A.O. disallowed the Weighted deduction of Rs.1,08,52,645/-, claimed by the assessee U/s. 35(2AB) of the Act, without giving proper and reasonable opportunity to the assessee to represent their case. The Ld. A.O. ought to have appreciated the fact that the DSIR had always accorded its approval as per the certificates of Renewal of Recognition of In-house R & D units and Certificate of Registration issued to the appellant, which were never revoked since 2001. The assessee has grievance that Ld. A.O. without giving proper opportunity has disallowed the said weighted deduction and has done grave injustice to appellant. Being aggrieved the assessee filed an appeal before the Id.

CIT(A). But the Id. CIT(A) dismissed the appeal of the assessee. Being aggrieved the assessee filed an appeal before us.

3. The Ld.AR argued and placed that the assessee was unable to comply with the notice of the Ld.CIT(A). Further, the assessee filed the additional evidence under Rule 46A of the Income-tax Rules, 1962 (in short, the 'Rule') but the Ld. CIT(A) without any detailed discussion and without any reason, entirely rejected the additional evidence duly filed U/R 46A of the Rules. Ld. AR prayed for further opportunity for hearing before the Ld.CIT(A) and also prayed for acceptance of additional evidence.

4. The Ld.DR vehemently argued and relied on the order of Ld.CIT(A). The relevant paragraph on page 6 of the appeal order is duly reproduced as below:-

“iii) As to whether the appellant has satisfied the Rule 46A for furnishing of fresh evidence before the appellate authority.

As provided under Rule 46A the appellant is not entitled to produce additional evidence as a matter of right. It can only do so after fulfilling the relevant procedure and satisfying the conditions given therein. The appellant has failed to make out its case with valid reasons as to why the same was not filed before the AO during the course of assessment proceedings. After analyzing the submissions made, in the instant case, it is found that the appellant has not satisfied the conditions provided in sub rules under Rule 46A.

In this connection, it must be stated here that the appellant has failed to substantiate claim with valid reasons for the non-production of evidences before the AO, in spite the fact that the AO had given five opportunities vide notices dated 21/08/2018, 07/09/2018, 11/10/2018, 30/01/2019 and 01/03/2019, but has given vague reasons. On an examination of the sub-clause (a), (b), (c) and (d),

of Rule 46A; it is found that the appellant does not fulfil the said clauses and the circumstances mentioned therein.

It necessary to mention here the decision given by the Hon'ble Kerala High Court in the case of C. Unnikrishnan Vs CIT (1998) reported in 233 ITR 485 that Rule 46A provides certain conditions and situations under which an additional evidence can be filed before the CIT(A). Where the material on record makes it clear that no attempt was made before the AO or shows no regard to follow the requirement of Rule 46A, the additional evidence could not be administered.

It may not be out of place to mention here that the Hon'ble ITAT Delhi in the case of Mrs. Jyotsna Suri Vs DCIT (1997) reported in 61 ITD 139 has held that an assessee cannot adduce additional evidence before Appellate Authority as a matter of right. The CIT (A) is justified in refusing to entertain additional evidence sought to be produced by an assessee which they failed to produce before the AO.”

5. We have reviewed the opposing submission and considered the documents available in the record. The appeal order was issued ex parte without taking into account additional evidence submitted by the assessee. Section 250(4) grants the Ld. CIT(A) the authority to verify documents and evidence, providing an opportunity to the Ld. AO. Rule 46A permits the assessee to submit additional evidence along with reasons for not doing so before the Ld. AO. However, the impugned appeal order does not provide a specific explanation for rejecting the additional evidence filed by the assessee under Rule 46A.

In our considered opinion, the Ld. CIT(A) exceeded jurisdiction, which is unwarranted. The assessee was denied a reasonable opportunity before the Ld. CIT(A). Therefore, we hereby set aside the impugned appeal order and remand the matter back to the file of the Ld. CIT(A). We direct the Ld. CIT(A) to verify the

additional evidence and accept the documents as per Rule 46A of the Rules. Concurrently, the assessee is directed to be diligent and comply with notices before the Id. CIT(A) during the remand proceedings.

It is noted that we refrain from expressing any opinion on the merits of the case, as this could affect the appeal proceedings before Ld. CIT(A).

8. In the result, the appeal of the assessee in **ITA No.58/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 09th day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 09/07/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**