

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 1033/MUM/2024
(A.Y.2018-19)

Lumis Biotech Pvt Ltd, 501, Arun Chambers, Tardeo, Mumbai-400034.	Vs.	DCIT, Circle -7(1)(1), Room No.130, 1 st Floor, Ayakar Bhavan, M.K.Road, Mumbai -400020.
PAN/GIR No. AAACL1066G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Hitesh P. Shah.AR
Respondent by	Shri Manoj Kumar Sinha, Sr. DR

सुनवाई की तारीख/Date of Hearing	31.07.2024
घोषणा की तारीख/Date of Pronouncement	01.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC) Delhi/CIT(A), passed u/sec 143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Hon. CIT(A) ought to have appreciated the fact that the appellant could not represent its case due to circumstances beyond its control.*
- 2 The Hon. CIT(A) was not justified in disregarding the fact that the accountant had made inadvertent mistake in claiming deduction U/S.35(2AA).*

3. The Hon. CIT(A) erred in confirming the disallowance of the weighted deduction of expenditure on research and development of Rs. 1,36,40,254/-.

4 The Hon. CIT(A) erred in confirming the addition Rs.6,03,970/- on account of non-deduction of tax without appreciating the facts and circumstances of the case.

2. The brief facts of the case are that, the assessee company is engaged in the business and has filed the return of income for the A.Y 2018-19 disclosing a total income of Rs. 14,02,381/- and the assessee has filed the revised return of income on 31.10.2018 disclosing the same total income. Subsequently, the case was selected for complete scrutiny assessment under the E-assessment Scheme, 2019 on the following issues.

- 1. Default in TDS*
- 2. Default in TDS & Disallowance of such default*
- 3. Duty Drawback*
- 4. Deduction on Account of Donation for Scientific Research*

3. The Assessing Officer (A.O) has issued notice u/sec 143(2) & u/sec 142(1) of the Act along with questionnaire. In compliance to the notice, the assessee has filed the information supporting the claims made in return of income. The AO on perusal of the financial statements found that the assessee has claimed weighted deduction u/s 35(2AA) of the Act of Rs.1,36,40,254/- and find that the assessee has not filed the relevant documents i.e Form. No 3CG & Form.no.3CL and requisite documents in support of claim of weighted deduction. And a show cause

notice was issued and there was no compliance by the assessee on the disputed issue and the A.O made disallowance of Rs.1,36,40,254/- and similarly made disallowance @ 30% of the expenditure of Rs.20,13,234/-, which works out to Rs.6,03,970/- for non deduction TDS on the expenditure. Finally the A.O has assessed the total income of Rs. 1,56,46,605/- and passed order u/sec 143(3) of the Act dated 01.03.2021.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, findings of the AO and the assessee has also filed additional evidence under Rule 46A of I T Rules and was rejected by the CIT(A) and further sustained the disallowances made by the A.O and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the submissions, information and has rejected additional evidence filed by the assessee supporting the claim of weighted deduction u/sec35(2AB) of the Act and the Ld. AR contentions are that the books of accounts are audited and due to Covid 19 pandemic lock down period the information could not be filed before the assessing officer and prayed for admission of the additional evidence. Further the Ld.AR emphasized that

the assessee has good case on merits and pleaded for an opportunity to substantiate the case with evidences and information before the lower authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in ignoring the reply filed by the assessee and rejecting the additional evidence filed. The Ld.AR emphasized that the assessee has submitted the details as called for by the appellate authorities. The assessee is filling the application for admission of additional evidences to substantiate the claim of weighted deduction u/sec 35(2AB) of the act which could not be furnished in the course of proceedings before the assessing officer supported with the affidavit of the director and accountant of the company. Further the evidences play a important role in decision making in the adjudicating proceedings. Therefore considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences played vital role in decision making and we admit the additional evidence. Accordingly, to meet the ends of justice, we set aside the order of the CIT(A) on this disputed issue, and restore the issues along with the additional evidence to the file of the assessing officer to examine and verify the evidences and decide afresh on merits and the assessee should be provided adequate

opportunity of hearing and shall cooperate in submitting the information. And we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 01.08.2024.

Sd/
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 01/08/2024
KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai