

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखासदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**&**

**SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपीलसं./I.T.A.Nos.307 & 308/VIZ/2023  
(निर्धारण वर्ष/ Assessment Years: 2012-13 & 2013-14)**

M/s. Arrdy Engineering Innovations (P.) Ltd., BB-8 Area 7 & 8 Civil Township, Rourkela – 769004 Odisha  [PAN: AABCA4800A]	v.	Asst. CIT – Circle – 1(1) Income tax Office Direct Tax Building, MVP Colony Visakhapatnam – 530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	08.10.2024
घोषणा की तारीख/Date of Pronouncement	:	24.10.2024

**आदेश /O R D E R**

**PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. Both these appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] for the A.Y.2012-13 & 2013-14. Since the grounds raised by the assessee for both these appeals are identical in nature, these appeals are being clubbed and a consolidated order

being passed. We now take up the appeal in ITA No. 307/VIZ/2023 for the A.Y.2012-13, as the lead appeal.

**ITA No. 307/VIZ/2023 (A.Y. 2012-13)**

2. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057219641(1) dated 19.01.2023 for the A.Y.2012-13 arising out of order passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short ‘Act’) dated 22.11.2018.

3. Brief facts of the case are that, assessee-company “M/s. Arrdy Engineering Innovations Private Limited formerly known as M/s. ARDEE Technologies Pvt Ltd., is engaged in the business of production and sale of temperature molten metal, quality measurement equipment. Assessee filed its return of income for the A.Y. 2012-13 and the assessment was completed under section 143(3) of the Act on 26.03.2015 determining the total loss of Rs.44,92,050/-. Assessee paid taxes under the provisions of section 115JB of the Act. Subsequently, on verification of records it was found that the assessee-company had entered into an agreement with Department of Scientific & Industrial Research [in short “DSIR”] vide agreement dated 23.11.2010 for R&D of a particular project, whereas assessee has claimed to have spent Rs.1,72,85,369/- and claimed weighted deduction of Rs. 3,45,70,738 under

section 35(2AB) of the Act. Assessing Officer also noticed that assessee has received a grant of Rs.50,00,000/- from DSIR during the year. Therefore, he concluded that assessee is eligible for deduction on the balance expenditure of Rs. 1,22,85,369/- [Rs.1,72,85,369/- - Rs.50,00,000/-] thereby disallowing the excess claim of weighted deduction of Rs. 1,00,00,000/- by reopening the assessment under section 147 of the Act. In response to the notice issued under section 148 of the Act assessee did not file any return of income. Thereafter, Assessing Officer issued notice under section 142(1) along with the questionnaire and served on the assessee on 12.09.2018. Since there was no compliance from the assessee, show-cause notice dated 12.11.2018 was issued through ITBA Portal. Assessee failed to respond to the show-cause notice. Thereafter, the Assessing Officer concluded the assessment by disallowing the additional claim of weighted deduction under section 35(2AB) of the Act for Rs. 1,00,00,000/-.

4. On being aggrieved by the order of the Assessing Officer, assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), assessee filed the written submissions stating that the amount received from DSIR was not a grant or subsidy but unsecured loan which was to be repaid in five equal instalments and hence claim made under section 35(2AB) of the Act shall be allowed. On perusal of the submissions made by the assessee, Ld. CIT(A) dismissed the appeal of the assessee, stating that assessee is giving the shadow of colour of

loan to the amount received from DSIR in order to claim excess deduction under section 35(2AB) of the Act.

5. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

*“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*

*2. The learned Commissioner of Income Tax (Appeals) ought to have quashed the notice issued u/s 148 of the Act as invalid and the consequent reassessment proceedings as void ab initio.*

*3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.1,00,00,000 made by the assessing officer towards alleged excess deduction claimed u/s 35(2AB) of the Act.*

*4. The learned Commissioner of Income Tax (Appeals) ought to have held that the amount of Rs.50,00,000 received from DSIR is not in the nature of grant or subsidy and hence the assessing officer ought not to have reduced this amount while computing the amount eligible for deduction u/s 35(2AB).*

*5. Any other grounds may be urged at the time of hearing.”*

6. Ground Nos. 1 & 5 are general in nature and needs no adjudication.

7. At the time of hearing, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that Ground No.2 is not pressed and hence the same is dismissed as not pressed.

8. Ground Nos. 3 & 4 are with relation to the disallowance of excess deduction claimed under section 35(2AB) of the Act. On this issue, Ld.AR submitted that, assessee has received a soft loan from DSIR vide agreement dated 23.11.2010 for the purpose of Manufacture of Magnesium & Calcium

Metal Powder as per specifications. Ld.AR argued that as per Clause 4(f) of the said agreement, assessee is liable to pay to National Research Development Corporation [in short 'NRDC'] a sum equivalent to 1.3 times of money actually disbursed by DSIR from the start of commercial sale of the product. Ld.AR submitted that similar loan was taken in the year 2005 wherein the Department has allowed the deduction claimed under section 35(2AB) of the Act. Further he also referred to the financial statements wherein amount received from DSIR being categorised as unsecured loans. He therefore pleaded that these are repayable loans and hence eligible for weighted deduction under section 35(2AB) of the Act. Ld.AR further submitted letter from Ministry of Science and Technology for the earlier loan obtained during the year 2005 wherein it is categorically mentioned as soft loan and not a grant-in-aid. The Ld.AR contended that similar to the loan granted in the year 2005, assessee received Rs. 1.93 crores soft loan during the impugned assessment year and hence eligible for the weighted deduction under section 35(2AB) of the Act. He therefore pleaded that addition made by the Revenue Authorities be deleted.

9. Per contra, Ld. DR argued that as per the Tripartite Agreement dated 23.11.2010 the assessee is supposed to pay the royalty / lumpsum payment to NRDC which cannot be considered as a soft loan. Further, Ld. DR also submitted that assessee has not repaid the loan during the impugned assessment year but has sought for a one-time settlement of the loan. She therefore pleaded that the orders of the Ld. CIT(A) be upheld.

10. We have heard both the sides and perused the material available on record including the agreement submitted before us. It is the case of the Assessing Officer that the assessee has taken a grant-in-aid from DSIR which was repayable in the form of royalty aggregating to 1.3 times of the money actually received by the assessee. Assessing Officer therefore considered the amount as royalty and observed that grant-in-aid received by the assessee cannot be considered for the purpose of weighted deduction. However, we find that there is merit in the argument of the Ld.AR that in the earlier assessment year assessee has received sum of Rs.70,00,000/- as soft loan on similar terms and conditions as entered into tripartite agreement during the impugned assessment year. Further the Ministry of Science and Technology has also confirmed that the funds provided by them is in the nature of soft loan and not a grant-in-aid for the earlier loan taken by the assessee. Since the terms and conditions of the tripartite agreement are identical for both the assessment years the argument of the Ld. AR deserves consideration. Further the assessee has categorized the amount received from DSIR as unsecured loans in their financial statements which was not disputed by the revenue. Further, Ld.AR also submitted a copy of invoice dated 17.07.2014 wherein interest on the repayment of the loan has been disclosed and consequently tax has been deducted at source on the interest paid. In the light of the facts and circumstances as discussed above, we are of the considered opinion that the assessee has taken a soft loan which is repayable in five equal instalments

cannot be considered as a grant-in-aid and therefore assessee is eligible for weighted deduction under section 35(2AB) of the Act. We therefore allow grounds raised by the assessee and direct the Assessing Officer to delete the disallowance of weighted deduction under section 35(2AB) of the Act. Accordingly, Ground Nos. 3 & 4 raised by the assessee are allowed.

**11.** In the result, appeal of the assessee is allowed.

**ITA No. 308/VIZ/2023 (A.Y. 2013-14)**

**12.** Since the issues and facts in this case are identical to ITA No. 307/VIZ/2023 for the A.Y. 2012-13 the view taken in the aforesaid paragraphs shall mutatis mutandis, apply for this assessment year also. Accordingly, appeal filed by the assessee is allowed.

**13.** To sum-up, both the appeals filed by the assessee allowed.

Order pronounced in the open court on 24<sup>th</sup> October, 2024.

**Sd/-**  
**(दुव्वूरु आरएल रेड्डी)**  
**(DUVVURU RL REDDY)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

Dated: 24.10.2024  
*Giridhar, Sr.PS*

**Sd/-**  
**(एस बालाकृष्णन)**  
**(S. BALAKRISHNAN)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1. निर्धारिती/ The Assessee : M/s. Arrdy Engineering Innovations (P.) Ltd.,  
BB-8 Area 7 & 8  
Civil Township, Rourkela – 769004  
Odisha
  
2. राजस्व/ The Revenue : Asst. CIT – Circle – 1(1)  
Income tax Office  
Direct Tax Building, MVP Colony  
Visakhapatnam – 530017  
Andhra Pradesh
  
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam