IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.4311/Mum./2023
(Assessment Year : 2020–21)

Kaisha Lifesciences Pvt. Ltd
72/73, 7th Floor Plot, 215 Free Press
House, Free Press Journal Marg,
Mumbai, Nariman Point, S. O, ……. Appellant
Mumbai-400021
PAN- AAOCS5727M

v/s

Deputy Commissioner of Income Tax
Circle-3(2)(1)
Aayakar Bhavan, ... Respondent
Mumbai-400020

Assessee by :Shri Rahul Sarda
Revenue by :Shri Manoj Kumar Sinha, Sr. AR

Date of Hearing –02/08/2024	Date of Order – 24/10/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 18/10/2023, passed u/s 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2020–21.

2. In its appeal, the assessee has raised the following grounds: –

> *"Addition of Rs. 2,30,00,000/- under section 68 of the Act*
>
> *1. The National Faceless Appeal Centre (NFAC) failed to appreciate that the Appellant had proved the identity of the lender Mr. KairusDadachanji, his creditworthiness and the genuineness of the loan of Rs. 2,30,00,000/- availed by the Appellant from him. Hence, the NFAC erred in upholding the addition of Rs. 2,30,00,000/- under section 68 of the Act.*
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> *Disallowance of Rs. 33,74,518/- under section 35(2AB) of the Act*
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> *2. The NFAC failed to appreciate that deduction under section 35(2AB) could not be denied for expenditure incurred prior to 25.10.2019 merely because the approval u/s 35(2AB) was granted w.e.f 25.10.2019. Hence, the disallowance of Rs. 33,74,518/- is bad in law.*
>
> *3. The NFAC failed to appreciate that the amount of Rs. 5,70,811/- did not pertain to cost of land or building, and hence, the same could not be disallowed on the ground that the same was in the nature of capital expenditure.*
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> *4. Without prejudice to the above, the NFAC failed to appreciate that the disallowance of Rs. 5,70,811/- was already included in the disallowance of Rs. 28,03,707/- and hence the same could not be disallowed again leading to double taxation."*

3. The issue arising in ground no.2, raised in assessee's appeal, pertains to the addition on account of the unsecured loan under section 68 of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of developing high-quality medication through in-house research of medicine. For the year under consideration, the assessee filed its return of income on 30/01/2021 declaring a total income of Rs.NIL. The return filed by the assessee was selected for complete scrutiny and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. While perusing the ledger account of the assessee, it was found that during the relevant financial year, the assessee took an unsecured loan of

Rs.2,30,00,000 from Mr.Karius Dadachanji. It was further found that out of the total unsecured loan outstanding from Mr. KariusDadachanji of Rs.3,06,80,000, the assessee has received an unsecured loan of Rs.2,30,00,000 from the said party during the year and has also repaid a sum of Rs.3,55,00,000 to him. During the assessment proceedings, the assessee was asked to produce ITR, bank statement and confirmation of the lender from whom a fresh unsecured loan has been received during the year under consideration. In the absence of any confirmation, ITR and bank statement of Mr.Karius Dadachanji, from whom unsecured loan of Rs.2,30,00,000 was taken during the year under consideration, the Assessing Officer ("*AO*") vide order dated 02/09/2022 passed under section 143(3) read with section 144B of the Act concluded that all the limbs, viz. identity, creditworthiness and genuineness of the transaction of the said party has not been established. Thus, the AO held that the assessee has failed to explain the nature and source of credit of Rs.2,30,00,000 reflected in its books of account and accordingly added the same to the total income of the assessee under section 68 of the Act.

5. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition made by the AO under section 68 of the Act. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the fact that during the year under consideration, the assessee received an unsecured loan of Rs.2,30,00,000 from Mr. Karius Dadachanji.

It is further undisputed that as on 01/04/2019 opening balance of the loan from Mr.Karius Dadachanji was Rs.3,06,80,000 and during the year, the assessee repaid a sum of Rs.3,55,00,000 to Mr.KariusDadachanji.Thus, it is an undeniable fact that the loan was taken under a running account. From the perusal of the written submission dated 14/12/2021 filed before the AO, forming part of the paper book on pages 8-10, we find that the assessee submitted the aforesaid details along with providing the PAN and address of the loan lender, i.e. Mr.Karius Dadachanji. The ledger of the unsecured loans for the year under consideration was also furnished to the AO along with the aforementioned written submission. In the paper book filed before us, the assessee has also placed on record the bank statement of the assessee to show the receipt of the unsecured loan of Rs.2,30,00,000 during the year under consideration. From the perusal of the aforesaid bank statement, which forms part of the record from pages 11-20, we find that an amount of Rs.75 lakh was received by the assessee on 09/05/2019, another amount of Rs.75 lakh was received by the assessee and 05/08/2019 and an amount of Rs. 80 lakh was received by the assessee on 11/10/2019 from Mr.Karius Dadachanji. We further find that the company repaid an amount of Rs.3,55,00,000 on 20/01/2020 to Mr.Karius Dadachanji. From the return of income of Mr.KariusDadachanji for the assessment year 2020-21, forming part of the paper on page 66, we find that Mr.Karius Dadachanji declared a total income of Rs. 10,12,84,780. Further from the income tax return of the assessee, forming part of the paper book from pages 1-3, we find that Mr.Karius Dadachanji is a 50% shareholder of the assessee company. During the hearing, the assessee also placed on record the loan confirmation

from Mr.Karius Dadachanji, whereby an amount of Rs. 1,81,80,000 is outstanding as on 31/03/2020.As per the assessee, it has availed the long-term unsecured loans and advances from its shareholders and related parties in the routine course of business to meet business-related expenditures.

7. In view of the facts and circumstances as noted above, we are of the considered opinion that the assessee sufficiently proved the identity and creditworthiness of the loan lender, who is nothing but a 50% shareholder in the assessee company. Such being the facts even the genuineness of the transaction cannot also be doubted, as the loan was taken not from any stranger but a 50% shareholder for the routine course of business to meet business-related expenditure under a running account. Therefore, we find that the assessee has explained the nature and source of the sum credited to its account as an unsecured loan during the year under consideration. Accordingly, we find no basis in the addition made under section 68 of the Act and the same is deleted. As a result, ground no.2 raised in assessee's appeal is allowed.

8. The issue arising in ground no.3, raised in assessee's appeal, pertains to restricting the deduction claimed under section 35(2AB) of the Act for the period mentioned in Form 3CM.

9. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings while perusing the income tax return filed by the assessee, it was observed that the assessee

claimed expenditure of Rs.2,16,49,662 under section 35(2AB) of the Act and as a qualified expenditure it has claimed the deduction of Rs.3,24,74,493 under the said head which is 150% of the actual expenditure incurred of Rs.2,16,49,662 undersection 35(2AB) of the Act. During the assessment proceedings, it was further found that the competent authority, i.e. Secretary,Department of Scientific and Industrial Research ("*DSIR*"), granted approval under section 35(2AB) of the Act on 23/10/2020 for the period 25/10/2019 to 31/03/2020. However, from the submission of the assessee, it was found that the assessee has claimed the capital and revenue expenditure incurred prior to the approval, i.e. 25/10/2019 as the well and on the said expenditure qualifying deduction @150% has also been claimed not only on the capital expenditure but also on the revenue expenditure. Thus, it was found that out of the revenue expenditure of Rs.2,16,49,662 claimed by the assessee, Rs.56,07,415 claimed to be incurred pertains to the period prior to 25/10/2019 whereupon deduction @150% worked out at Rs.84,11,122 has been claimed which should be claimed only of Rs.56,07,415. Therefore, the AO concluded that the extra claim of revenue expenditure of Rs.28,03,707 (Rs.84,11,122 – Rs.56,07,415) is liable to be disallowed as being an excess claim undersection 35(2AB) of the Act. Further, the excess capital expenditure claimed under section 35(2AB) of the Act of Rs.5,70,811 was also held not liable to be allowed under the business head being in the nature of capital expenditure incurred prior to sanction under section 35(2AB) of the Act. Thus, a sum of Rs.33,74,518 was disallowed under section 35(2AB) of the

Act being not found eligible for deduction claimed under the said head and was added to the total income of the assessee.

10. During the appellate proceedings before the learned CIT(A), the assessee contended that even if the approval is granted late the same is applicable from the 1st April of the year in which the application is made. However, the learned CIT(A) dismissed the ground on the basis that the assessee has not been able to substantiate the correctness of the claim by any documentary evidence. Being aggrieved, the assessee is in appeal before us.

11. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the fact that the assessee is a manufacturer of pharmaceutical dosage forms and in pursuance of its objective has undertaken scientific research to develop new pharmaceutical dosage forms with quality and to improve the process of existing products. It is evident from the record that in order to seek the approval from the DSIR, the assessee filed application in Form 3CK on 26/12/2019, which forms part of the paper book from pages 319-323. Vide Form 3CM dated 23/10/2020, the DSIR granted approval to the assessee for the purpose of section 35(2AB) of the Act from 25/10/2019 to 31/03/2020 in respect of the R&D facility of the assessee at Daman and Diu. Since the approval was granted in Form 3CM from 25/10/2019, the AO restricted the deduction claimed under section 35(2AB) of the Act only in respect of the revenue and capital expenditure incurred after 25/10/2019 and disallowed the weighted deduction in respect of revenue expenditure

incurred prior to 25/10/2019 and capital expenditure incurred prior to 25/10/2019. Accordingly, the AO made a disallowance of 33,74,518 under section 35(2AB) of the Act.

12. In support of its submission that even though the approval is granted subsequently but the same is applicable from the 1st April of the year in which the application is made, the learned AR placed reliance upon the Guidelines for Approval in Form 3CM of In-House R&D Centres issued by the DSIR, which forms part of the paper book from pages 67-101. From perusal of the afore-noted guidelines, we find that in clause 5 it has been provided that the approval to the in-house R&D centres having valid recognition by DSIR are considered from 1st April of the year in which the application is made in Form 3CK. In the present case, as noted above the said application in Form 3CK was made by the assessee to the DSIR on 26/12/2019.

13. We find that in Maruti Suzuki India Ltd v/s Union of India, reported in (2017) 397 ITR 728 (Del.), the Hon'ble Delhi High Court held that for availing the benefit under section 35(2AB) of the Act what is relevant is not the date of recognition or the cut-off date mentioned in the certificate or the DSIR or even the date of approval but the existence of the recognition. It was further held that if a R&D Centre is not recognised it is not entitled to a deduction but if it is recognised, it is entitled to the benefit.

14. Similarly, the Hon'ble Gujarat High Court in CIT v/s Claris Lifesciences Ltd, reported in [2010] 326 ITR 251 (Guj.) held that since the approval is granted during the previous year relevant to the assessment year in

question, the assessee is entitled to claim weighted deduction in respect of the entire expenditure incurred under section 35(2AB) of the Act by the assessee. The relevant findings of the Hon'ble Gujarat High Court, in the aforementioned decision, are reproduced as follows: –

> *"7. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of (i) development of facility; (ii) incurring of expenditure by the assessee for development of such facility; (iii) approval of the facility by the prescribed authority, which is "DSIR"; and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee. The provisions nowhere suggest or imply that "R & D" facility is to be approved from a particular date and in other words, it is nowhere suggested that date of approval only will be cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly manifests that the assessee has to develop facility, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on plain reading of section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of "R & D" facility has to be allowed for weighted deduction as provided by section 35(2AB). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up R & D facility in India, the Legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, intention of the Legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.*
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> *8. We are in full agreement with the reasoning given by the Tribunal and we are of the view that there is no scope for any other interpretation and since the approval is granted during the previous year relevant to the assessment year in question, we are of the view that the assessee is entitled to claim weighted deduction in respect of the entire expenditure incurred under section 35(2AB) of the Act by the assessee."*

15. Therefore, respectfully following the aforesaid decisions and having considered the guidelines issued by the DSIR, since in the present case the R&D facility of the assessee has already been approved by the DSIR, we are of the considered view that the assessee is entitled to claim deduction under section 35(2AB) of the Act even in respect of the expenditure incurred prior to 25/10/2019, i.e. from 01/04/2019, for the year under consideration.

16. During the hearing, the learned AR by referring to pages 4-5 of the assessment order submitted that an amount of Rs.5,70,811 has been disallowed twice as the said amount is included in Rs.28,03,707 disallowed as an excess claim of revenue expenditure. Therefore, we deem it appropriate to restore this issue to the file of the Jurisdictional AO with a direction to allow the claim of deduction under section 35(2AB) of the Act, as per law, in respect of the expenditure incurred from 01/04/2019 after necessary verification of the details of such expenditure. Needless to mention, no order shall be passed without affording reasonable opportunity of hearing to the assessee. With the above directions, the impugned order on this issue is set aside and ground no.3 raised in assessee's appeal is allowed for statistical purposes.

17. Ground no.4 raised in assessee's appeal pertains to the levy of interest under section 234A and section 234B of the Act, which is consequential in nature. Therefore, ground no.4 needs no separate adjudication.

18. In view of our aforesaid findings, ground no.1 raised in assessee's appeal has been rendered academic and therefore is left open.

19. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 24/10/2024

Sd/-	Sd/-
AMARJIT SINGH	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 24/10/2024

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai