

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2132/MUM/2024
(A.Y. 2011-12)**

Lumis Biotech Pvt. Ltd. 501, Arun Chambers, Tardeo, Maharashtra-400034	v/s. बनाम	DCIT Circle 7(1)(2) Room No. 130, 1 st Floor, Aayakar Bhavan, M.K. Road, Maharashtra-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACL1066G		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Hitesh P. Shah
Respondent by :	Shri Dharmveer D. Yadav

Date of Hearing	07.10.2024
Date of Pronouncement	11.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-13/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 23.02.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2011-12.

2. The assessee has raised following grounds of appeal:

“1 The Ld. AO erred in reopening the assessment U/S.148.

2 The Hon. CIT(A) and Ld. AO ought to have appreciated the fact that the appellant could not represent its case due to circumstances beyond its control.

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

4 The Hon. CIT(A) erred in confirming the disallowance of Rs.12,88,242/- U/S.352AB 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 to the appellant.”

3. The only issue relates to disallowance of deduction claimed by the assessee u/s 35(2AB) of the Act. The brief facts of the case are that the assessee filed return declaring income of Rs. 13,12,900/- on 29.09.2011. The assessee company is engaged in manufacturing of drugs and pharmaceuticals during the year under consideration. For AY 2015-16, it was found that the assessee company had been claiming weighted deduction u/s 35(2AB) without satisfying the conditions prescribed for availing the benefit under this section. Accordingly, the case of the assessee was reopened and a notice u/s 148 was issued and served upon the assessee. In response to this notice, the assessee filed its return on 03.11.2018. However, no response to the show cause notice dated 02.12.2018 was received from assessee, and therefore, the AO proceeded to disallow the claim of deduction u/s 35(2AB) of Rs. 12,88,242/- in the assessment order passed on 18.12.2018.

4. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A) wherein besides challenging the reopening as well as the disallowance



of claim u/s 35(2AB) on merits, the assessee also submitted that the AO had fixed hearing on 20.12.2018 but passed the order on 18.12.2018 without considering its submissions filed on 20.12.2018. However, the appeal of the assessee was dismissed by the Ld. CIT(A) vide order dated 23.02.2024.

Aggrieved with the said order, the assessee is before us.

5. We have carefully considered the rival submissions. It is clear that the assessment order was passed without considering the assessee's submissions. It is seen that even though the notice u/s 148 was issued on 29.03.2018, the assessee filed its return in response to the said notice on 03.11.2018. Therefore, the notices u/s 143(2) and 142(1) were issued and finally a show cause notice was issued on 02.12.2018 to the assessee to justify its claim of weighted deduction u/s 35(2AB) of the Act. Thereafter, the AO noted that no reply/explanation had been filed in support of its claim u/s 35(2AB) and therefore the assessment was finalized after making disallowance of the said claim of Rs. 12,88,242/- u/s 35(2AB).

6. From the above factual matrix, it is clear that assessee's submissions dated 20.12.2018 have not been considered on merits. Therefore, we deem it appropriate to restore the matter to the file of Ld. AO for passing a fresh order after considering assessee's submissions by giving it due opportunity of being



heard. Needless to add, the assessee is also directed to furnish requisite documents before the AO to enable him to pass a fresh order on merits.

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

Order pronounced in the open court on 11.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 11.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

