

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD “A” BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT  
AND  
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.1300/Hyd./2024  
Assessment Year 2018-2019

The DCIT, Circle-1(1), Hyderabad. PIN – 500 004.	vs.	Avra Laboratories Pvt. Ltd., Mumbai – 400 093 PAN AABCA7317G
(Appellant)		(Respondent)

For Revenue :	Shri B Bala Krishna, CIT-DR
For Assessee :	CA K C Devdas

Date of Hearing :	17.04.2025
Date of Pronouncement :	24.04.2025

**ORDER**

**PER MANJUNATHA G. :**

This appeal has been filed by the Revenue against the order dated 26.09.2024 of the learned CIT(A)-National Faceless Appeal Centre [in short the “NFAC”] Delhi, relating to the assessment year 2018-2019.

2. At the very outset, there is a delay of 17 days in filing the appeal before the Tribunal, to which, the Revenue has filed an affidavit seeking for condonation of delay of 17

days in filing the appeal before the Tribunal contending inter alia, that the delay has been occurred due to work pressure and administrative reasons. We, therefore, satisfied with the reasons explained by the Revenue for condonation of delay of 17 days in filing the appeal before the Tribunal and thus, condoned the delay and proceed for adjudication of the appeal.

3. The Revenue has raised the following grounds in the instant appeal :

1. *"The Ld.CIT(A) erred both in law and on facts of the case in allowing the claim of weighted deduction u/s. 35(2AA) of the Act.*
2. *The Ld.CIT(A) erred in allowing the claim of weighted deduction of Rs.7,50,00,000/-@ 150% of the payment of Rs.5,00,00,000/- towards donation made to the IISc, Bengaluru merely on the basis of "letter of appreciation" from IISc, Bengaluru submitted by the assessee, without any specific direction when the provision calls for any specific direction by the assessee that the said sum shall be used for Scientific Research undertaken under a programme approved in this behalf by the prescribed authority'.*

3. *The Ld.CIT(A) erred in allowing the claim of weighted deduction of Rs.7,50,00,000/-@ 150% merely on the basis of 'letter of appreciation' from IISc, Bengaluru payment of Rs.5,00,00,000/- towards donation made to the IISc, Bengaluru without verifying the authenticity of the certificate.*
  4. *The Ld.CIT(A) erred in considering that the naming of the said auditorium after the father of the director of the assessee company as ' A. V. Rama Rao Auditorium' did not create any acquisition of rights in or arising out of scientific research, without verifying the facts.*
  5. *The Ld.CIT(A) erred in allowing the claim of deduction in spite of the fact that an inadvertent claim was made by the assessee u/s. 35(1)(ii) of the Act, instead of u/s. 35(2AA) stating that the quantum of deduction to be allowed under the both the sub-section of section 35 of the Act, are same.*
  6. *Any other ground that may be urged at the time of hearing.”*
4. Briefly stated facts of the case are that, the appellant-company was engaged in the business of manufacturing of Pharmaceuticals, medicinal chemicals products during the year under the consideration i.e. A.Y.

2018-2019. The appellant-company was filed its original return of income on 10.10.2018 declaring total income of Rs.86,32,45,870/-. Subsequently, the return of income was revised by the appellant-company on 30.03.2019 by declaring total income of Rs.85,19,62,570/-. The case of the appellant-company was selected for scrutiny through CASS for verification of three issues i.e., (i). Deduction on account of donation of Scientific Research (ii) ICDS compliance and adjustment and (iii) Exports/Imports. During the course of assessment proceedings, the Assessing Officer noted that the appellant-company has claimed deduction u/s 35(2AA) of the Act amounting to Rs.7,50,00,000/- (being 150% of Rs.5,00,00,000/-). The Assessing Officer issued notice u/sec.142(1) of the Act dated 10.12.2020 calling the appellant-company to justify its claim with supporting documentary evidences. In response, the appellant-company had furnished copy of 'Receipt' dated 12.03.2018 and 'Letter of Appreciation' dated 20.03.2018 issued from Indian Institute of Science [in short "IISc], Bangalore to whom the appellant-company had contributed Rs.5.00

crores by way of cheque for construction of state-of-the-art auditorium. However, the Assessing Officer did not satisfy with the explanation of the appellant-company and disallowed the deduction u/sec.35(2AA) of the Act amounting to Rs.7.50 crores and determined the taxable income of the appellant-company at Rs.92,69,62,570/- as against the returned income of Rs.85,19,62,570/- vide order dated 23.03.2021 passed u/sec.143(3) r.w.s.143(3A) and 143(3B) of the Income Tax Act, 1961 [in short “the Act”].

5. On being aggrieved, the appellant-company carried the matter in appeal before the learned CIT(A). The learned CIT(A) after considering the submissions of the appellant-company and the assessment order, allowed the claim of deduction u/sec.35(2AA) of the Act by observing as under :

*“5.8. Accordingly, I am of the considered view that, the donation was made by the appellant for the purpose of creation of auditorium facilities in the scientific institute, which is integral part of the scientific activity of the said institute and also naming of the said auditorium after the father of the director of the*

*appellant company as 'A.V. Rama Rao Auditorium' did not create any acquisition of rights in or arising out of scientific research. Hence, the appellant is eligible for the claim of deduction u/s 35(1)(ii) of the Act. Further, the inadvertent claim made by the appellant on the said donation u/s. 35(2AA) of the Act under the purview of donation to the National Laboratory will not preclude the appellant from the claim of weighted deduction due to the fact that, the quantum of deduction to be allowed under the both the sub-sections of section 35 of the Act are same. Hence, there is no new claim / deduction is sought by the appellant in this regard. Thus, it is only a clerical error by the side of the appellant company to claim the said deduction u/s 35(1)(ii) of the Act.*

5.9. *In view of the above, the appellant is eligible for the claim of weighted deduction of the said payment of Rs.5,00,00,000/- and, accordingly, the appellant is eligible 150% deduction of the payment of said donation for the current year to the tune of Rs.7,50,00,000/-. Therefore, the disallowance made by the Assessing Officer in this regard is not sustainable and accordingly, the AO is directed to allow the weighted deduction on the said payment of Rs.5,00,00,000/- u/s 35(1)(ii) of the Act. Hence, the grounds of appeal filed by the appellant are hereby allowed.”*

6. Aggrieved by the order of the learned CIT(A), the Revenue is now in appeal before the Tribunal.

7. Shri B Bala Krishna, CIT-DR, supporting the order of the Assessing Officer submitted that the appellant-company vide its submission dated 18.02.2021 has requested for claim and allowability of deduction u/s 35(1)(ii) instead of u/s 35(2AA) of the Act. The Assessing Officer considered the said request of the appellant-company, but, not accepted in view of the decision of Hon'ble Supreme Court in the case Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC) wherein the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return. Learned CIT-DR submitted that the appellant-company has contributed the sum for the purpose of

construction of state-of-the-art auditorium which is the expenditure of capital in nature and the contribution made by the appellant-company was not for the purpose of scientific research and, therefore, the Assessing Officer has rightly disallowed the claim of the appellant-company that it is not eligible for claiming deduction either u/sec.35(1)(ii) of the Act or u/sec.35(2AA) of the Act. He accordingly submitted that the learned CIT(A) without properly appreciating the reasons recorded by the Assessing Officer in the assessment order, has simply allowed the claim of the assessee which is not in accordance with law. He, therefore, submitted that the order of the Assessing Officer should be confirmed in the interest of justice.

8. CA K C Devdas, Learned Counsel for the Assessee, while supporting the order of the learned CIT(A), submitted that the appellant-company has donated the impugned sum of Rs.5 crores to the IISc Bangalore for the purpose of construction of state-of-the-art Auditorium which is has been confirmed by the IISc, Bangalore vide it's letter of appreciation dated 20.03.2018 and there is no

dispute with regard to this fact between the parties. He submitted that the Assessing Officer disallowed the claim of the appellant-company on the ground that the said sum is used by the IISc, Bangalore for the purpose of construction of state-of-the-art Auditorium which is 'capital' in nature, without considering the submissions of the appellant-company that the state-of-the-art Auditorium is used for conducting seminars, workshops which is integral part of scientific research work by IISc, Bangalore and therefore, the appellant-company is eligible for deduction u/sec.35(1)(ii) of the Act. The Assessing Officer without appreciating the Receipt and Letter of Appreciation issued by the IISc, Bangalore, has disallowed the claim of the assessee. In First Appeal, the learned CIT(A), after considering the submissions of the appellant-company and the documentary evidences placed on record, has rightly allowed the claim of the assessee that the appellant-company is eligible for deduction u/sec.35(1)(ii) of the Act and directed the Assessing Officer to delete the addition. He accordingly submitted that that the order of the learned

CIT(A) is in accordance with the provisions of the Act and, therefore, the order of the learned CIT(A) be confirmed in the interest of justice.

9. We have heard both the parties, perused the material on record and the orders of the authorities below. There is no dispute with regard to the fact that the appellant-company had paid donation of Rs.5 crores to IISc, Bangalore and claimed deduction u/sec.35(2AA) of the Act. The Assessing Officer disallowed the donation paid to IISc, Bangalore on the ground that, initially the appellant-company has claimed deduction u/sec.35(2AA) of the Act. However, as per the donation receipt issued by the donee viz., IISc, Bangalore, the donation given by the appellant-company is eligible for deduction u/sec.35(1)(ii) of the Act. Since the appellant-company has not made claim of deduction u/sec.35(1)(ii) by filing revised return, in view of decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd., vs., CIT (supra), the Assessing Officer disallowed the fresh claim of deduction made by the appellant-company. We find that the Assessing Officer never

disputed the fact that the appellant-company had given donation of Rs.5 crores to IISc, Bangalore and as per the receipt issued by IISc, Bangalore, the donation is eligible for deduction u/sec.35(1)(ii) of the Act. We further note that the appellant-company has already filed relevant evidences including the relevant Notification issued by the CBDT dated 12.05.1958 for recognizing the IISc, Bangalore as an Approved-Trust/Institution for claiming deductions towards donations u/sec.35(1)(ii) of the Act. Further, the donations to any eligible institutions whether it is u/sec.35(2AA) or u/sec.35(1)(ii) of the Act, are eligible for 150% of actual funds paid during the relevant financial year.

9.1. In the present case, although, the appellant-company claimed deduction u/sec.35(2AA) @ 150% on actual donation paid to IISc, Bangalore, but, subsequently, at the time of assessment proceedings, made a claim that by an inadvertent error deduction has been claimed u/sec.35(2AA) of the Act instead of u/sec.35(1)(ii) of the Act and sought for deduction u/sec.35(1)(ii) of the Act. In our considered view, when donations paid by the appellant-

company to IISc, Bangalore is eligible for deduction u/sec.35(1)(ii) of the Act, merely for the reason of making a wrong claim u/sec.35(2AA) of the Act, the deduction available to the appellant-company cannot be denied only on the ground that the appellant-company has not made the claim by filing a revised return as required under law. In our considered view, the Assessing Officer is completely erred in rejecting the claim of the appellant-company by citing the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd., vs., CIT (supra), because, it is not a fresh claim of any deduction, but, it is only a rectification of mistake in making a claim under appropriate provisions of law. Therefore, in our considered view, the reasons given by the Assessing Officer for disallowing donations paid to IISc, Bangalore by the appellant-company by citing the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd., vs., CIT (supra), is devoid of merit and incorrect.

10. Further, assuming for a moment, the Assessing Officer is right in not accepting the claim of appellant-company without filing a revised return of income, but, the

fact remains that donation for scientific purpose is eligible for deduction u/sec.35(2AA) or u/sec.35(1)(ii) of the Act @ 150% of actual donations. Since the appellant-company has made a claim @ 150% of actual donation paid to IISc, Bangalore, in our considered view, whether it has been allowed u/sec.35(2AA) or u/sec.35(1)(ii) of the Act, there is no loss of revenue to the Department or Government exchequer. Therefore, in our considered view, once the Assessing Officer noticed the fact that, donations paid by the appellant-company is an allowable deduction @ 150% u/sec.35(1)(ii) of the Act, the Assessing Officer ought to have allowed the claim of the appellant-company under appropriate provisions of law. This is because the CBDT has issued circular way back in the year 1955 and directed all the Assessing Officers that even in a case of incorrect claim made by an assessee, but, it is the duty of the Assessing Officer concerned to educate the assessee and allow the claim as per the provisions of Income Tax Act. Therefore, in our considered view, the Assessing Officer is completely erred in disallowing donations paid to IISc, Bangalore.

11. Having said so, let us come back to the arguments of the learned CIT-DR. Learned CIT-DR invited our attention to the provisions of sec.43(4)(ii) of the Act, the meaning of the term “Scientific Research” and submitted that the appellant-company has paid donations to IISc, Bangalore for the purpose of construction of state-of-the-art Auditorium in the name of the father of the Director of the appellant-company and that the said donation does not fall under the meaning of term “Scientific Research”. In our considered view, the arguments of the learned CIT-DR is devoid of merits for the simple reason that, when donation was given for specific purpose i.e., for construction of state-of-the-art Auditorium which is also eligible for deduction u/sec.35(1)(ii) of the Act as per the letter issued by the IISc, Bangalore, in our considered view, the Assessing Officer cannot deny deduction for the said donation only on the ground that it is capital in nature and used for construction of state-of-the-art Auditorium in the name of father of the Director of appellant-company. Moreover, even if the amount is spent for construction of state-of-the-art

Auditorium,, in our considered view, the Auditorium may be used for the purpose of scientific research of conducting seminars, workshops and other activities which means the said purpose is for the prosecution or the provision of facilities for the prosecution of scientific research and, therefore, the appellant-company is entitled for deduction u/sec.35(1)(ii) of the Act. The learned CIT(A) after considering the relevant facts has rightly allowed the donation given by the appellant-company to the IISc, Bangalore u/sec.35(1)(ii) of the Act. Thus, we are inclined to uphold the order of the learned CIT(A) and dismiss the appeal filed by the Revenue.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 24.04.2025

Sd/-  
[VIJAY PAL RAO]  
VICE PRESIDENT

Sd/-  
[MANJUNATHA G]  
ACCOUNTANT MEMBER

Hyderabad, Dated 24<sup>th</sup> April, 2025

VBP

Copy to

1.	The DCIT, Circle-1(1), Room No.724, 7 <sup>th</sup> Floor, B-Block, IT Towers, Masab Tank, Hyderabad-500 004.
2.	Avra Laboratories Pvt. Ltd., 215-Attrium, C-Wing, 8 <sup>th</sup> Floor, 819-821 Andheri-Kurla Road, Andheri East, Chakala MIDC, Chakala MIDC S.O. Mumbai. PIN – 400 093
3.	The Pr. CIT (Central), Hyderabad.
4.	The DR ITAT “A” Bench, Hyderabad.
5.	Guard File.

//By Order//

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