

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.364/Bang/2014
(Assessment Year : 2007-08)

Dy. Director of Income Tax (Exemptions),
Circle 17(1), Bangalore.

.... Appellant.

Vs.

M/s. Central Power Research Institute,
P B No.8066, Prof. Sir C.V. Raman Road,
Sadashivanagar, Bangalore.
PAN AAAAC 0268P

..... Respondent.

Cross Objection No.82/Bang/2014
(Assessment Year : 2007-08)
(By Assessee)

Appellant By : Shri Sunil Kumar Agarwala, JCIT (D.R)
Respondent/C.O. By : Smt. Vani, Advocate.

Date of Hearing : 28.04.2016.

Date of Pronouncement : 06.05.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the Revenue and Cross Objection by the assessee are directed against the order dt.12.9.2013 of Commissioner of Income Tax (Appeals), Mysore for the Assessment Year 2007-08.

2. The assessee is a scientific research association / institution. The assessee filed its return of income on 25.9.2008 declaring NIL income after claiming exemption under Section 10(21) of the Income Tax Act, 1961 (in short 'the Act'). The original assessment was passed under Section 143(3) on 21.12.2009 accepting the taxable income at NIL. Subsequently, the Director of Income Tax (Exemptions) proposed to revise the assessment order under Section 263 by issuing a show cause notice dt.14.2.2011 on the issue of eligibility of the provisions of section 10(21) of the Act of Rs.3,00,50,000. Revision order under Section 263 was passed on 28.2.2011 thereby the Assessing Officer was directed to frame a fresh assessment in accordance with law after affording an opportunity of being heard to the assessee. The Assessing Officer passed an assessment order in pursuant under Section 143(3) r.w.s. 263 on 13.9.2011 whereby denied the exemption under Section 10(21) of the Act.

3. The assessee challenged the action of the Assessing Officer before the CIT (Appeals). The CIT (Appeals) confirmed the action of the Assessing Officer in denying the exemption under Section 10(21) of the Act in view of the CBDT clarification in file No.203/38/2006/ITA-II

dt.28.8.2006 and has held that the benefit of section 10(21) is available only to a “scientific research association” categorized as such under Section 35(1)(ii) of the Act. However, the CIT (Appeals) allowed the claim under Section 35(1)(ii) of the Act. Thus both the revenue as well as the assessee are aggrieved by the impugned order of the CIT (Appeals). The revenue has challenged the impugned order to the extent of allowing the deduction under Section 35(1) whereas the assessee has challenged the impugned order to the extent of denial of the exemption under Section 10(21) of the Act. The grounds raised in the appeal as well as C.O. are as under :

Revenue's Grounds of Appeal

- “ 1. The learned CIT (Appeals) has dismissed the appeal of the assessee on the grounds of validity of the order passed under Section 143(3) r.w.s. 263. Hence, the order of learned CIT (Appeals), on this issue is acceptable.*
- 2. The learned CIT (Appeals) has allowed the appeal of the assessee regarding benefit under Section 35(1)(iv) in spite of assessee not claiming it in the return of income.*
- 3. The decision of the learned CIT (Appeals) is not acceptable as the assessee can be eligible only for those benefits as claimed in the return of income filed within the due date of filing for relevant assessment year.*
- 4. Also, the assessee was previously knowing the fact that its eligibility under Section 10(21) has been revoked by the Board and CIT (Appeals) had also held it as such in order passed for A.Y. 2006-07, hence it is not the fact, that assessee knew of its ineligibility under Section 10(21) only during assessments.*

5. *The extending of benefits to assessee cannot be extrapolated to mean that, the assessee would keep changing its claim of exemptions and deductions under different section, as per its need."*

C.O. Grounds of Appeal.

1. The learned CIT(A) erred in not appreciating that the fresh assessment made pursuant to the directions of revisional authority under Section 263 is not a regular assessment and therefore issues which were not the subject matter of the revision cannot be adjudicated by the learned Assessing Authority.
2. The learned CIT(A) erred in not appreciating that the directions issued by the revisional authority were to disallow the provision for MRO Fund and to consider the claim of expenditure debited against the provision.
3. The learned CIT(A) erred in not appreciating the settled position of law that the Assessing Officer is restrained from travelling beyond the directions issued by the revisional authority and therefore the order of assessment dated 13.09.2011 is illegal.
4. The learned CIT(A) erred in ignoring the law laid down by various courts which were relied upon by the cross objector in support of the aforesaid claim.
5. The learned CIT(A) erred in not allowing the exemption claimed under Section 10(21) of the Act, for the Ays 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06 the CIT(A) has allowed the claim of the Respondent.
6. The learned CIT(A) erred in relying upon the instruction F.No.203/38/2006/ITA-II dated 28.08.2006 issued by the CBDT for denying the exemption under Section 10(21) to the cross objector.

7. For these and other ground that may be urged at the time of hearing, the cross objections filed by the respondent be allowed.
8. An opportunity of personal hearing be granted to the cross objector before disposal of the cross objection to meet the ends of justice.ö
4. First we take up the Cross Objections of the assessee. The learned Authorised Representative of the assessee has submitted that the authorities below have denied the claim of exemption under Section 10(21) of the Act in view of the CBDT letter F. No.203/38/2006/ITA-II dt.28.8.2006. She has pointed out that the assessee challenged the Notification of the CBDT before the Hon'ble High Court in **Writ Petition No.50838 & /56636 - 56637 / 2013(T-IT)**. The Hon'ble High Court vide decision dt.26.11.2014 set aside Notification Dt.30.1.2004 dt.28.8.2006 and 24.5.2007. Accordingly, the assessee was directed to appear before the CBDT and explained the nature of activity being carried out by it which shall be taken into consideration by the authorities while considering the case of the assessee for exemption. In pursuant to the said decision of the Hon'ble High Court, the CBDT has now issued the Notification Dt.7.4.2016 whereby the assessee has been notified as scientific research association subject to the condition enumerated there

under. Thus the learned Authorised Representative has submitted that since the CBDT has already issued a Notification dt.7.4.2016 notifying the assessee as scientific research association, therefore, the orders of the authorities below in denying the exemption under Section 10(21) are not sustainable and liable to be set aside.

5. On the other hand, the learned Departmental Representative has submitted that though the CBDT has issued the Notification in question however exemption under Section 10(21) however, the same can be allowed only on satisfaction of various conditions as listed in the said notification.

6. We have heard the rival submissions as well as considered the relevant material on record. We find that the Assessing Officer as well as CIT (Appeals) has denied the claim of exemption under Section 10(21) of the Act only on a limited ground of the Notification of the CBDT dt.28.8.2006. Relevant finding of the CIT (Appeals) are in para 4.5 as under :

“ The matter was referred to CBDT and the CBDT in the clarification given in F.No.203/38/2006/ITA-II dated 28.08.2006 has held that the benefit of section 10(21) is available only to a “scientific research association” categorized as such under Section 35(1)(ii) and not an ‘institution’ and hence the appellant is, not eligible for the benefit of exemption

u/s.10(21). CBDT directed A.O. to take remedial measure in this regard according to law.”

Neither the Assessing Officer nor the CIT (Appeals) has pointed out that the assessee has controverted the condition required for allowing the exemption under Section 10(21) of the Act. Even otherwise when the CIT (Appeals) has found that the assessee is eligible for deduction under Section 35(1)(ii) of the Act then the conditions as enumerated in the said notification are found to be satisfied for the purpose of Section 35(1)(ii) of the Act. Thus once the assessee is found to be eligible for deduction under Section 35(1)(ii) then the claim of exemption under Section 10(21) cannot be denied in view of the fact the CBDT has already notified the assessee in the category of ‘Scientific Research Association’ from Assessment Year 2003-04 onwards vide Notification dt.7.4.2016. In view of the above facts and circumstances of the case and the Notification dt.7.4.2016 issued by the CBDT, we allow the claim of the assessee under Section 10(21) of the Act.

7. In view of our finding on the issue of the eligibility of the assessee to claim the exemption under Section 10(21) of the Act, the Revenue’s appeal becomes infructuous and accordingly dismissed.

8. In the result, the appeal of the Revenue is dismissed and C.O. of assessee is allowed.

Order pronounced in the open court on the 8th day of May, 2016.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore