IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.4.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case No.2444 of 2008

Commissioner of Income Tax
Madurai. Appellant/Respondents

Vs.

M/s.Rajapalayam Mills Ltd.,
PAC Ramaswamy Raja Salai,
Rajapalayam,
PAN: AACR8897F Respondent/Appellant

Tax Case filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 31. 7.2008 made in ITA NO.261/Mds/2007 as against the order dated 31.10.2006 of the commissioner of Income Tax Act order is ITA.NO.154/2006-07, for the asst. year 2003-04, and as against the order dated 02/03/2006 of the Asst. Commissioner of Income Tax, circle-I, Virudhunagar, in PAN NO.AAA.CR8897F/R-127, for the Assessment year 2003-04.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.Premalatha
For Respondent : No appearance.

JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

Heard Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the Appellant-Revenue. Despite service of notice, none appears for the Respondent-Assessee.

2. The present Appeal has been filed by the Revenue under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal dated 31.7.2008, by which the learned Tribunal upheld the order of the learned Commissioner of Income Tax (Appeals) and held that the

expenditure incurred by the Assessee on Scientific Research was not entitled to weighted deduction of 1.5 times under Section 35(2AB) of the Act as the Project in question was not duly approved by the Competent Authority, however, the Asssessee, was entitled to normal deduction of 100% of expenditure incurred only under Section 35(1)(i) of the Act.

3. The learned Commissioner of Income Tax (Appeals) had discussed the above aspect in his order dated 31.10.2006 as hereunder: -

"3. Deduction u/s 35(2AB) - RS.95,06,516/-:
The appellant claimed deduction of RS.96,06,516/- u/s. 35(2AB) in respect of Sri.Ramco Bio-tech unit. The
break up details are as below:

R&D Expenditure - revenue	Rs. 55, 12,558/-
R&D Expenditure - capital	Rs. 8,91,785/-
Total	RS.64,04,344/-
Deduction @ 150%	Rs.96,06,516/-

The assessing officer found that the appellant did not fulfil the conditions laid down in sub-section (4) of section 35(2AB). The appellant admitted before the assessing officer that the relevant papers were pending before the Secretary, Department of Scientific and Industrial Research, Govt. of India and no approval has been granted by the prescribed authority u/s. 35(2AB). In the above circumstances, the assessing officer disallowed the claim of the appellant.

3.1 At the time of hearing, the representative admitted on facts that the approval u/s. 35(2AB) by the prescribed authority is still pending. However he argued that the assessing officer ought to have considered the deduction u/s.35(1)(i) and 35(1)(iv) for Rs.55,12,558/- and Rs.46,387/- respectfully.

3.2 After considering the submissions I find that the assessing officer has rightly rejected the claim of the appellant u/s. 32(2AB) as there was no approval from the prescribed authority as on the date of completion of assessment. Having regard to alternative claim, I find that the assessing officer had no occasion to consider the claim of the appellant. In the circumstances, the assessing officer is directed to consider the claim of deduction u/s. 35(1)(i) for Rs.55,12,558/- representing R&D Revenue Expenditure and deduction u/s. 35(1)(iv) for Rs.46,387/- representing expenditure incurred for the purchase of Camera used in R&D unit."

4. However, the Revenue took up the matter before the Tribunal which held against the Revenue on the said aspect of the matter in the following manner:-

"4. After considering the rival submission carefully, we agree that Sec.35(1) as well as Sec.35 (2AB) deal with the same expenditure i.e., scientific expenditure consisting of revenue and capital expenditure and only difference is that Sect.35(1) provides for allowance at normal rate i.e., actual expenditure whereas Sec.35(2AB) allows deduction to be claimed at weighted rate of 150% subject to fulfilment of certain conditions. Therefore, we find nothing wrong with the directions of the CIT(Appeals) to the Assessing Officer to allow normal deduction under Sec.35(1) particularly in view of the fact that the Assessing Officer himself has allowed deduction for the Asst. Year 2005-06."

5. Though there was no issue about the claim of weighted deduction, the Revenue has still preferred the present Appeal under Section 260A of the Act which was admitted by a coordinate Bench of this Court by order dated 9.1.2009, by framing the following substantial questions of law:-

"i) Whether, on the facts and circumstances of the case, the Tribunal was right in law in entertaining a change of claim of deduction by the assessee from 35(2AB) to 35(1) of the Income Tax Act?

ii) Whether, on the facts and circumstances of the case, the Tribunal was right in granting relief under Section 35(1) when the Assessee has not produced the relevant approval from the prescribed authorities for the claim of deduction?"

6. Having heard the learned Senior Standing Counsel for the Revenue, we are satisfied that there is no substance in the present Appeal, since the claim of weighted deduction at 1.5 times of the expenditure incurred by the Assessee on Scientific Research was not even decided against the Revenue by the Appellate Authorities, viz., the Commissioner of Income Tax (Appeals) and the Tribunal and therefore, there was no occasion for the Revenue to prefer any further appeal, as the expenditure was allowed only under Section 35(l)(i) of the Act which does not require any approval by the Competent Authority.

7. Since the spending of the amount on Scientific Research itself was not even disputed by the Revenue, in our opinion, the Appellate Authorities have rightly allowed the claim under Section 35(1)(i) of the Act. The Assessee has not preferred any Appeal against that finding and therefore, the question of approval by the Competent Authority for making such claim becomes irrelevant. Therefore, we do not find any substantial question of law to be arising in the present Appeal.

8. We do not find any merit in the present Appeal filed by the Revenue and the same is liable to be dismissed and accordingly, it is dismissed. No order as to costs. A copy of this judgment may be sent to the Assessee forthwith.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To
1. Commissioner of Income Tax
Madurai.

2. Income Tax Appellate Tribunal,
Madras 'B' Bench, Chennai

3. The Deputy Commissioner of
Income Tax, Circle-I,
Virudhunagar.

4.MR. V. RAJAPALAYAM MILLS LTD.,
PAC RAMASWAMY RAJA SALAI,
RAJAPALAYAM
PAN.AACR8897F.

+1 CC to Mr. M.SWAMINATHAN, Advocate SR.NO.38524

TC No.2444 of 2008

CO(SVI)
VC (12/06/2019)