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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 01.08.2023

+ **ITA 276/2017**

PR. COMMISSIONER OF INCOME
TAX-6, NEW DELHI

..... Appellant

Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Shivansh B. Pandya,
Jr. Standing Counsel and Mr Utkarsh
Tiwari.

versus

MINDA STONERIDGE INSTRUMENTS LTD. Respondent

Through: Dr.Rakesh Gupta, Mr.Somil Agarwal
and Mr.Anshul Mittal, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral)

1. This appeal concerns Assessment Year (AY) 2010-11.
2. *Via* this appeal, the appellant/revenue seeks to assail the order dated 05.09.2016 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that the only issue which arises for consideration is: whether the respondent/assessee had claimed, in point of fact, deduction for capital expenditure incurred on the scientific equipment, during the relevant period?



3.1 This aspect is set out, in the form of proposed questions, in paragraphs 2.1 to 2.3 of the appeal. For the sake of convenience, the same are extracted hereafter:

“2.1 Whether Ld. ITAT erred in law in failing to appreciate that once the Assessee had omitted to claim deduction of Rs.3,46,32,282/- under Section 35 of the Act, in the return of income, the deduction could only be claimed by filing revised return before the Ld. AO?”

2.2 Whether the Ld. ITAT erred in law, qua disallowance of Rs. 3,46,32,282/- under Section 35 of the Act, by holding that the Assessee even after omitting to claim deduction in the return of income, can claim such deduction before the Ld. AO even without filing revised return?”

2.3 Whether the Ld. ITAT erred in law in holding that the claim of the Assessee under Section 35 of the Act was allowable in law, as no argument was raised by the Revenue qua non fulfillment of the conditions contained under sub-section (2) thereof [sic] when as a matter of fact no deduction was claimed by the Assessee under Section 35 of the Act in the return of income?”

4. The Assessing Officer (AO), *via* assessment order dated 25.02.2013, has disallowed the claim made by the petitioner under Section 35 of the Income Tax Act, 1961 [in short, “Act”], as according to him, this was not part of the Return of Income [in short, “ROI”] filed by the petitioner.

5. The deduction claimed by the petitioner on this account, under Section 35 of the Act, was Rs. 3,46,32,280/-.

6. The record shows that the Commissioner of Income Tax (Appeals), [in short, “CIT(A)”] *via* order dated 14.08.2013, reversed the view of the AO and allowed the deduction under Section 35 of the Act.

7. This view has been sustained by the Tribunal.

8. Mr Agarwal has drawn our attention to the order dated 09.10.2018



issued by the Coordinate Bench of this Court, wherein the following had been recorded:

“Learned counsel for Revenue submits that Annexure-II is the original Income-Tax Return filed by Minda Stoneridge Instruments Ltd. ('respondent-assessee' for short). A perusal/reading of Annexure-II shows that the total income declared was Rs.7,97,34,064/-. This was the exact amount mentioned in order dated 07.07.2011 under Section 143 (1) of the Income Tax Act, 1961 (for short 'Act'). As per this order under Section 143(1) of the Act, the respondent-assessee was a tax defaulter as it had not paid the entire self assessment tax and interest. Counsel for respondent-assessee has filed before us a copy of the Income-Tax Return for the Assessment Year 2010-11, copy of which has been furnished to the counsel for Revenue. As per this return the total income declared was Rs. 4,18,70,038/- on which entire tax was paid. In this return deduction of Rs. 3,46,32,280/- was claimed under Section 35 of the Act. The dispute and issue whether Annexure-II is the true and correct Return of Income is factual. Normally, the Income-Tax Returns do not get uploaded to the official website unless the entire amount of tax and interest has been paid. Prima facie, it appears that Annexure-II relied upon by the Revenue is a computation made by the Central Processing Centre at Bengaluru. We are not aware whether Annexure-II filed with this appeal was filed by the Revenue before the Income-Tax Appellate Tribunal. Principal Commissioner of Income Tax will personally examine the matter, if required, ascertain full facts from Central Processing Centre at Bengaluru and file his affidavit within 21 days on different issues highlighted above. Dasti under signature of Court Master. Relist on 2nd November, 2018”.

9. Pursuant to this order, an affidavit was filed by the concerned Principal Commissioner of Income Tax (PCIT). This affidavit is dated 31.10.2018.

10. Via this affidavit, the affiant has placed on record what he claims was the ROI filed by the petitioner. This document is marked as Annexure-A.

11. Interestingly, in this affidavit, the affiant clearly admits that the Annexure-II appended to the appeal, which was claimed to be the ROI filed by the petitioner, was not lodged with the appeal preferred by the



appellant/revenue with the Tribunal.

12. Annexure-II appended to the appeal, is the same as Annexure-A which is attached to the PCIT's affidavit dated 31.10.2018.

13. Therefore, the moot question which arises for our consideration is whether Annexure-II/Annexure-A, which is appended to the PCIT's affidavit, was the ROI said to have been filed by the respondent/assessee.

14. We may note that the respondent/assessee has also filed a affidavit-in-reply dated 14.0.2019.

15. This affidavit has been filed by one Mr Sanjeev Saxena. The affidavit is accompanied by a document, which the affiant claims is the copy of the ROI (i.e., ITR-6) downloaded from the designated website.

16. The stand of the respondent/assessee is, thus, that the document which is appended to the affidavit-in-reply dated 14.01.2019 is the copy of the original ROI.

17. The appellant/revenue, however, contends to the contrary.

18. A careful perusal of Annexure-II which is appended to the appeal, and Annexure-A which is appended on the affidavit of the PCIT dated 21.10.2018, shows that the documents are titled "Computation of Income and Tax Thereon (ITR-6)".

19. Clearly, this is not the ROI filed by the petitioner.

20. As noticed both by the Tribunal and CIT(A), this a computation of income concerning the respondent/assessee which was carried out by the Central Processing Centre (CPC), Bangaluru.

21. The weight of the evidence is also in favour of the respondent/assessee, which is also evident from, what is noted by the AO in



paragraph 1 and 2 of the assessment order dated 25.02.2013. For the sake of convenience the said paragraph is extracted hereafter:

“Return of income declaring taxable income of Rs. 4,18,70,038/- was filed on 06.10.2010 by the assessee company. The return was processed u/s 143(1) of the Income Tax Act. The assessed income as per order u/s 143(1) dated 07.7.2011 was Rs. 7,65,02,320/-. The case was later on selected for scrutiny. In response to the notices under section 143(2)/142(1), Shri R.N. Saraf OA/AR attended the proceedings from time to time and furnished requisite details. The assessee company is engaged in the business of Manufacture of Auto Panel instruments including Speedometer, Temperature Gauge, Fuel Gauge, Tank Units, etc. The Auto Panel Instruments comprise of Electrical and Mechanical Movements.

2. The assessee has claimed deduction u/s 35 of the Income Tax Act, 1961 on account of capital expenditure on scientific research amounting to Rs. 3,46,32,280/-. In this connection, it was pointed out to the assessee during the course of assessment proceedings vide letter dated 1.01.2013 that the assessee company had not claimed deduction u/s 35 of the Act in the return of income. It was also pointed out vide this letter that the assessee company had shown total income at Rs. 7,65,02,320/- which has been accepted u/s 43(1) of the Income Tax Act vide order dated 07.07.2011. The assessee was also asked to explain as to why the income from business & profession be not considered at Rs.7,65,02,320/-. In response to this, the assessee had filed return of income for the A.Y. 2010-11 declaring an income of Rs.4,18,70,038/-. However, a request has been made to the CPC, to provide a copy of intimation u/s 143(). As per the assessee, the assessee has intimated that it would move rectification for the CPC Bangalore. A copy of the return generated from the ITD Systems reveals that the total income has been returned shown at Rs.7,65,02,320/- and order u/s 143(1) was passed on 07.07.2011 at the same income. Thus, it is seen that the assessee had not claimed deduction u/s 35 of the Income Tax Act in the return of income. Hence, deduction u/s 35 is not allowed and the income of the assessee from business & profession is considered at Rs. 7,65,02,320/- as intimated to the assessee vide this officer letter dated 1.01.2013 refer to above”.

[Emphasis is ours]

22. Clearly, after making the observations in the second paragraph that the respondent/assessee had claimed a deduction under Section 35 of the



Act, the AO went on deny the deduction because of what was perhaps noted by the CPC while forwarding an intimation under Section 143(1) of the Act.

23. This, however, was corrected by the CIT(A) via order dated 14.08.2013.

24. For the sake of convenience paragraph 4 of the said order is extracted hereafter:

“4. In ground no. 1 the appellant raised the issue of higher income taken in the intimation u/s 143(1). The appellant submitted that "it appears that a some of Rs.346,32,282/- being deduction u/s 35 of the Act is not allowed and hence the taxable income assessed u/s 143(1) is higher in the actual return income: The appellant submitted further that without any speaking order, the deduction claimed u/s 35 cannot be disallowed. The appellant also filed application u/s 154 to CPC on 11.03.2013 claiming the deduction u/s 35 with transaction ID no 1038209206 . There is no further intimation from CPC on the rectification application filed by the appellant. Considering the submission given by appellant and non speaking nature of the intimation u/s 143(1) issued by CPC, it can be concluded that the disallowance of - claim u/s 35 of the Act cannot be an issue to be examined u/s 143(1). This is a debatable issue hence cannot be a part of assessment u/s 143(1). Ground no 1 of appeal is allowed.

[Emphasis is ours]

25. As noted above, the Tribunal sustained this view of the CIT(A). In this regard, the observations made by the Tribunal in paragraph 6 being material, is also extracted hereafter:

We have carefully considered the rival contentions and also perused the material produced before us. The assessee has filed its return of income showing gross total income of Rs. 41870038/-, copy of acknowledgement of ROI is made available at page no. 178 of the Paper Book. To support the return of income the assessee has also given the computation of total income at page No. 175 to 177 of the paper book whereas at Item No. 7 capital expenditure on scientific research amounting to Rs. 34632280/- was claimed. This is further supported by the tax audit report wherein in para no. 15(b) the claim is also shown. In the ITR-6 downloaded from the website of Income Tax Dept also shows that in schedule BP total income shown as profit



and gain from business is Rs. 41870038/-. The assessee has also submitted the intimation u/s 143(1) of the Income Tax Act dated 15.03.2011 shows business income as computed u/s 143(1) at Rs. 76502318/-. Therefore, the view of the Assessing Officer that assessee has not claimed in return of income is devoid of any merit. On the issue of the merit of this deduction, the assessee is granted recognition for the relevant year by the Ministry of Science and Technology vide letter dated 17.09.2009 for in house research and development unit at Pune. According to the provisions of section 35(l)(iv) the assessee is eligible for deduction of capital expenditure on research and development related to the business, carried on by the assessee if it satisfies the condition laid down in sub-section 2 of section 35 of the Act. No argument is raised by revenue that assessee has not fulfilled those conditions. In the result we find no infirmity in the order of, the Id CIT(A) in granting deduction of Rs.34632282/- to the assessee on account of capital expenditure on research and development. In the result ground No. 1 of the appeal is dismissed.

[Emphasis is ours]

26. Thus, having regard to the record, and the affidavit of the PCIT dated 31.10.2018, we are of the opinion, as noted above, that the weight of the evidence which was placed before the CIT(A) and the Tribunal is clearly in favour of the respondent/assessee. We find no reason to interfere with the impugned order.

27. The appeal is accordingly closed, with regard to the aforementioned issues.

28. Although Mr Aggarwal's submissions started with this aspect of the matter, at this stage, he seeks to press other proposed questions of law as well, which are contained in paragraphs 2.4 to 2.7 of the appeal.

28.1 For the sake of convenience, the other proposed questions of law, raised in the appeal, are extracted below:

“2.4 Whether the Ld. ITAT erred in law by upholding the deletion of disallowance of ₹1,35,03,868/- under Section 40(a)(i) of the Act by ignoring Explanation 2 to Section 9(1)(vii) read with Explanation to



Section 9(2) and Section 5(2) of the Act?

2.5 Whether the Ld. ITAT erred in law by upholding the deletion of disallowance of ₹2,68,222/- on the ground that the Ld. AO has not made desirable enquiry even when, the Assessee has not discharged its initial onus under Section 37 of the Income-tax Act, 1961?

2.6 Whether in fact and circumstances of the case the ITAT is legally justified in holding that electrical fittings which were the part of block of furniture and fittings as per New Appendix I of Income-tax Rules, 1962 as plant by ignoring amended sub-section (3) of Section 43 of the Income-tax Act, 1961?

2.7 Whether in fact and circumstances of the case Ld. ITAT was legally justified in allowing higher rate of depreciation on electrical fittings by holding the same as the plant even when the assessee had not discharged its initial onus to prove that such electrical fittings were actually plant even under amended sub section (3) of the Section 43 of the Act?"

29. In our view, the issues in the aforementioned paragraphs have been addressed adequately by the Tribunal.

30. As regards the question proposed in para 2.3 is concerned, the Tribunal has returned the finding of fact that no material was brought on record by the appellant/revenue, which could have established that the commission paid to a non-resident foreign agent had accrued or deemed to have accrued in India.

30.1 Therefore, since no income chargeable to tax arose in the hands of the non-resident, as per the provisions of the Act, there was no obligation to deduct tax at source under Section 195 of the Act.

30.2 Given this position, in our view, the Tribunal rightly sustained the deletion of disallowance of Rs. 1,35,03,868/- under Section 40(a)(i) of the Act. The relevant observations made by the Tribunal in this behalf are extracted hereafter:

"10. Furthermore the ld AR has placed reliance on decision of the Rajkot Bench of ITAT in case of ACIT Vs. Rentax Industries ITA No.



315/Rjt/2013, AY 2010-11 dated 08.10.2015 wherein, the impact of the withdrawal of the circular was considered and disallowance u/s 40a(i) on account of commission expenditure to foreign agent was deleted relying upon the decision of Hon'ble Madras High Court in case of CIT Vs. Orient Express 230 Taxmann 602. The another decision cited before us of coordinate bench in ITA No. 636/Lkw/2013 AY 2010-11 dated 18.06.2015 is also on deletion of disallowance of commission expenditure for non deduction of tax at source to foreign agent after withdrawal of the above circular. We are also of the view that withdrawal of the circular cannot bring any change in the provision of section 5, 9 and 195 of the income tax act which determined the chargeability of any income in the hands of a non resident. No material has been brought on record by revenue to show that income of the nonresident has accrued, or deemed to have accrued in India and therefore that income is chargeable to tax in the hands of Nonresident as per the Income tax Act.- In absence of this finding, provision of section 195 of the act are not triggered. Therefore, in view of the above decision of the coordinate benches, we do not find any infirmity in the order of the Id CIT(A) in deleting the disallowance made by Id AO u/s 40a (i) on foreign commission payments. Further regarding the agreement, merely because date has not been put by one of the parties on it while putting signature cannot debar the assessee from claiming deduction of expenditure when parties have acted on that agreement and services rendered have not been disputed. We confirm the decision of Id CIT (A) on that count also. In the result ground No. 2 and 3 of the appeal are dismissed.

[Emphasis is ours]

31. As regards the proposed question engrafted in paragraph 2.5 of the appeal is concerned, the Tribunal sustained the deletion of disallowance of Rs. 2,68,222/-, as it was made by the AO solely based on the information available in the Annual Information Return [AIR]. According to the Tribunal, since there was a mismatch between the books of accounts of the assessee and the information available in AIR, the AO should have conducted an enquiry before deleting the expenditure claimed by the assessee.

31.1 We find nothing wrong in the approach adopted by the Tribunal. The



relevant observations made by the Tribunal in this behalf are extracted hereafter:

12. We have carefully considered the rival contentions. The Id CIT(A) has deleted above addition as same was made entirely on the basis of the information received from Annual Information Return and without making further verification the AO. Further, no enquiry has been made with the Mr. SN Shiv Prasad. Therefore, there was nothing to prove that the assessee has incurred any such expenditure to the credit card of Mr. SN Shiv Prasad. Information received from AIR is first hand information and attitude of the AO that each and every information of AIR if not reflected in the books of the assessee must result in to an addition in the hands of assessee. In fact if the information is received from AIR the first responsibility lies on the assessee to show that how this expenditure has been reflected in his books of accounts. When the books of accounts and AIR information shows some mismatch then AO must verify about the correctness of AIR information first. After ascertaining such correctness and affording assessee an opportunity to explain his view point on such mismatch, then AO should verify that there is some income which is chargeable to tax in hands of assessee on this mismatch, then only it can result in to any addition. In the present case Id AO believed the AIR information as sacrosanct and made, the addition which is correctly deleted by Id CIT (A). In view of this we do not find any infirmity in the order of the Id CIT (A) in deleting the above addition. Therefore ground No. 4 of the appeal of the revenue is dismissed.

[Emphasis is ours]

32. Likewise, insofar as the questions proposed in paragraphs 2.6 and 2.7 of the appeal are concerned, the Tribunal, in our opinion for good reason, has concluded that electric fittings were amenable to higher rate of depreciation, as they were part of plant and machinery, and not furniture and fixtures. This view was backed by a decision of the coordinate bench of this court in ITA 1266/2010, titled BSES Rajdhani Powers Ltd.

13. Ground No. 5 and 6 of the appeal are against the disallowance of depreciation of Rs. 262756/- on account of electrical fittings and of Rs. 154711/- claim on account of computer peripherals.



X

X

X

15. We have carefully considered the rival contentions. The Id CIT(A) has dealt with above issue as under:-

"7. Ground No, 4 This ground is against the action of A.O in restricting depreciation on Electrical Fitting at 10% as against claimed by the appellant at 15% on the ground that such electrical fittings are part of furniture and fixtures and appropriate rate of depreciation on furniture and fixture is 10%. Also, for this reason, AO has denied the benefit of Additional Depreciation. The AO restricted the rate of depreciation as per Section 32 of the Act vide new appendix 1 u/s 5 of the IT Rule. Thus AO treated electrical fittings as a tangible asset for furniture and fixtures.

7.1 AO has allowed depreciation on computer printers, UPS, Projectors & Batteries at 15% as against the depreciation claimed at 60% on the ground that these are plant and machineries and not computers.

Thus, total disallowance was made of Rs.4,17,467/- (2,62,756+1,54,711).

7.2 With respect to the amount of Rs. 17775/- on account of fans' being part of furniture and fitting used for less than 180 days, assessee has no objection if normal depreciation is restricted to 5% as against 7.5% claimed in return and additional depreciation being disallowed. The amount of disallowance thus would work out to

Amount(Rs.)

- Depreciation at the rate of 2.5 percent on	Rs.17775/-	444
- Additional depreciation @ 10percent on	Rs. 17775/-	<u>1778</u>
		2222

7.3 The appellant submitted "Facts of the case are that depreciation on the additions to the tune of Rs.4,03,830/- made, in computers has been restricted to 15% instead of 60% on items mentioned on page 5 of the impugned order being printers, UPS, projectors, batteries, scanners, toners, etc (Addition of Rs.2,83,776/- used for more than 180 days and Rs.1,20,054/- used for less than 180 days) by treating the same as part of block of Plant and Machinery, resulting in addition of Rs. 1,54,711/-. The amount of addition to Computers



relating to printers, toner, projector, UPS scanner is as under:-

	Amount(Rs.)
- Used for more than 180 days	283776
- Used for less than 180 days	<u>120054</u>
	403830

It is respectfully submitted that Computer and its accessories i.e. UPS, scanner, printer, projectors, toner, batteries, etc are integral part of computer and eligible for deduction of depreciation allowance at the rate of 60 percent as held in the following judicial decisions:-

1. BSES Rajdhani Powers Ltd. in ITA 1266/2010 (DHC)

"It is respectfully submitted that impugned Electrical Fittings are in fact electrical Installations for plant and machinery. This was so explained in letter placed at PB 6, to Ld. AO submitting that the impugned installations are in the nature of control panel, diesel tank, DG set and cost of its fitting, light fitting, water and compressed air pipes, M. V. Switch board, L. T. cables and terminations, compressor, etc. used for Plant and Machinery. This explanation of the appellant has not been denied or rebutted by Ld. AO as can be seen from the plain reading of the assessment order. Thus, when the facts say that these are plant and machinery, the appropriate rate of depreciation is 15% and not 10%."

In view of the judicial pronouncements relied by the appellant the addition of Rs. 2,62,7567/- for electrical fittings and Rs.1,54,711/- for projectors, batteries, printers and UPS is deleted. "

16. Ld CIT(A) has correctly deleted the disallowance on account of depreciation on electrical fittings holding them part of the plant and machinery and not furniture and fixture as claimed by the Id AO. Further, depreciation on the computer peripherals was also allowed @60 %relying upon the decision of Honble Delhi High court in case of BSEC Rajdhani Power Ltd. ITA No. 1266/2010. In view of this we do not find any infirmity in the order of the Id CIT(A) in deleting the above disallowance except to the extent of depreciation on fans amounting to Rs. 2222/-. Therefore, we reverse the order of Id CIT (A) to that extent. We also confirm the finding of Id CIT (A) on deletion of disallowance on balance amount. In the result ground No. 5 and 6 of



the appeal of the revenue is partly allowed.

33. According to us, even in relation to the questions proposed in paragraphs 2.4 to 2.7, no substantial question of law arises for our consideration.

34. Thus for the foregoing reasons, we find no reason to interfere with impugned order passed by Tribunal. The appeal is, accordingly, closed.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

AUGUST 1, 2023/RV

Click here to check corrigendum, if any