IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Smt. P.Madhavi Devi, Judicial Member
& Shri S. Rifaur Rahman, Accountant Member

ITA No.1558/Hyd/2014
(Assessment Year: 2010-11)

M/s.Teck Bond Laboratories Pvt. Ltd. Hyderabad PAN: AABCT 9977 B (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle 2(3) Hyderabad (Respondent)

For Assessee : Shri A.V. Raghuram
For Revenue : Shri A. Sitarama Rao, DR

Date of Hearing : 04.08.2016
Date of Pronouncement : 03.10.2016

O R D E R

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2010-11 against the order of the CIT (A) dated 22.08.2014 confirming the disallowance and the addition made by the AO u/s 143(3) of the Act. The assessee has raised the following 7 grounds of appeal:-

"1. The order of the learned CIT(A) is erroneous both on facts and in law and also perverse in not following the judicial pronouncements.

2. The learned CIT(A) erred in observing that the appellant has not responded to the AO during remand proceedings without giving an opportunity to the assessee to find out the reasons for such failure.

3. The learned CIT(A) deprived the assessee of explaining that the investors when summoned could not

attend the proceedings due to pre occupation with farming activities and filed letters to that effect and the AO without providing another opportunity has concluded that the investors has not responded and thereby arrived at an adverse conclusion.

4. Without prejudice to the above ground, the learned CIT(A) erred in holding that the ratio in the case of Lovely exports of Supreme Court has no application, when the assessee has filed all the details of the investors including their bank accounts thereby demonstration their identity and the mode of investment through banking channel discharging the onus that lies on him and thereby erred in confirming the addition of Rs.53,68,000made u/s.68 being share application money.

5. The learned CIT(A) erred in confirming the disallowance of ESI & P.F. of Rs.3,84,344 following the decision of Gujarat High Court in spite of contrary decision of other High Court which is in favour of assessee and ruling of Supreme Court in Vegetable products that when two views are possible the one in favour of assessee should be followed.

6. The learned CIT (A) erred in confirming disallowance of depreciation inspite of judicial pronouncement by merely stating that the facts are different without even referring to the facts of the case relied upon the facts of the assessee case.
7. Any other ground that may be urged at the time of hearing".

2. Grounds No.1 & 7 are general in nature and need no adjudication.

3. As regards Grounds No.2 & 3, the assessee's contention is that the assessee was not given sufficient opportunity of hearing during the remand proceedings to present his case. However,

while going through the order of the CIT (A), we find that the assessee was given several opportunities to explain his case and also to produce relevant parties to prove the investment made by them in the assessee company. However, the assessee could not produce the same. In view of the same, we do not find any merit in the grounds raised by the assessee and they are accordingly rejected.

4. As regards Ground No.4, brief facts of the case are that the assessee which is engaged in the business of manufacturing of pharmaceutical intermediates, filed its return of income for the A.Y 2010-11 on 10.09.2009, declaring total income of Rs.60,66,939. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee has received investment from various parties to the extent of Rs.1,12,94,418. The assessee also submitted copies of the confirmation letters of the share applicants. AO asked the assessee to furnish copy of the bank a/c statements along with copies of the I.T. returns of the said parties in order to prove their creditworthiness. Assessee submitted the copies of the bank statement along with the copies of the returns of income in respect of some of the share applicants. However, with regard to 6 parties, the total of whose share application money comes to Rs.53,68,000, some of the applicants have stated that their only source of income for the investment towards share application money is 'Agricultural Income' and that they have filed copies of patta pass books as proof of the agricultural land holdings. Holding that the assessee could not provide any substantial evidence to prove the net agricultural income derived by such parties and also the

genuineness of the above share application, the AO treated the same as unexplained credits u/s 68 of the Act and added it to the total income and brought it to tax. Further, he also observed that the assessee company, during the course of assessment proceedings, submitted that it has paid P.F contribution to the employees belatedly for the months of June to September, October, December 2009 and upto February, 2010, amounting to Rs.3,48,344. Since the same was paid well beyond the due date, the AO added it also to the total income of the assessee. On similar ground, an addition of Rs.33,463 being belated ESI payment was also brought to tax. AO also perused the schedules forming part of the balance sheet as on 31.03.2010 and observed that the company has received State Investment Subsidy of Rs.10.00 lakhs. Assessee was asked to furnish the details of the investment subsidy and the assessee explained that the investment subsidy of Rs.10.00 lakhs was received on 12.07.2005 for the building constructed at the factory and is credited to the capital a/c which is part and parcel of the reserves. AO noticed that the assessee has claimed depreciation on factory building @10% without reducing the subsidy received and claimed depreciation on the entire value of the asset. Therefore, he disallowed the excess claim of depreciation by reducing 10% of depreciation on the factory building and added it to the total income of the assessee. Aggrieved by this addition, assessee preferred an appeal before the CIT (A), who confirmed the order of the AO. Further aggrieved, the assessee is in further appeal before us.

5. As regards unexplained share application money, the learned Counsel for the assessee submitted that most of the share application money has been received in the earlier A.Y and forms part of the opening balance as on 31.03.2009. He submitted that both the authorities below have not verified the claim but have made the addition of entire share application money to the extent the AO was not satisfied. The learned DR, however, supported the orders of the authorities below.

6. Having regard to the rival contentions and the material on record as well as the documents filed by the assessee, we find that the assessee had opening balance of share money and the shares were allotted to the respective parties during the relevant A.Y. This is evident from the balance sheet as on 31.03.2010 at page 76 of the paper book wherein the closing balance of share application as on 31.03.2010 was Rs.3,50,005. Further, we also find that the amount mentioned against respective parties did not match the figures taken by the CIT (A). In view of the same, we remand this issue to the file of the AO for re-verification of the facts. If it is found that these share application money was received by the assessee in financial year 2009-10, only then can the same be brought to tax in the relevant A.Y i.e. A.Y 2010-11. With these directions, Ground No.4 is remanded to the file of the AO.

7. As regards disallowance of contributions of the employees towards ESI & PF, we find that this issue is covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation

(223 Taxman 0398 (2014). It is stated by the learned Counsel for the assessee that the payment was made before the date of filing of the return of income by the assessee. Further, we find that this issue is also covered by the judgment of the Hon'ble Supreme Court in the case of Alom Extrusion, reported in (2009) 319 ITR 306 (S.C) wherein it has been held that both the employees as well as employers contribution are allowable as deduction u/s 36(1)(va) provided assessee makes the payment before due date of filing of return. In view of the same, we allow ground No.5 of the appeal.

8. As regards Ground No.6 against disallowance of claim of depreciation on investment subsidy of Rs.10.00 lakhs, we find that the same is covered in favour of the assessee by the decision of the Coordinate Bench of this Tribunal at Visakhapatnam in the case of Sasisri Extractions Ltd. Vs. ACIT (2010) 122 ITD 0428. The learned Counsel for the assessee submitted that the assessee herein is also granted subsidy by virtue of the same G.O Ms. No.117, Ind. & Comm. (FR) Deptt. Dated 17.03.1993 as in the case of Sasisri Extractions Ltd and therefore, the assessee is eligible to claim depreciation on the entire cost of factory and building. On perusal of the copy of the order of the Tribunal in the case of Sasisri Extractions Ltd, we find that the Tribunal at Paras 11 & 12 of its order, has held as under:

> *"11. We have carefully considered the rival submissions and perused the record. In our considered opinion, even after insertion of Expln. 10 to s. 43(1) of the Act, the basic principle underlying in the decision of the apex Court in the case of P.J. Chemicals Ltd. (supra) still*

holds the field. Their Lordships analyzed the expression "met directly or indirectly" to come to the conclusion that only in a case where a subsidy or other grant was given to offset the cost of an asset, such payment/ grant would fall within the expression 'met', whereas the subsidy received merely to accelerate the industrial development of the State cannot be considered as payments made specifically to meet a portion of the cost of the assets.

12. A careful perusal of 'Target 2000' scheme shows that the scheme was intended to accelerate industrial development of the State and the incentive was given for setting up of industries in Andhra Pradesh and for the purpose of determining the amount of subsidy to be given, cost of eligible investment was taken as the basis, though it was not specifically intended to subsidise the cost of the capital. Under the circumstances, we are of the view that the incentive in the form of subsidy cannot be considered as a payment directly or indirectly to meet any portion of the actual cost and thus it falls outside the ken of Expln. 10 to s. 43(1) of the Act. In the light of the above discussion, we are of the view that for the purpose of computing depreciation allowable to the assessee, the subsidy amount cannot be reduced from the cost of the capital asset. The AO is directed accordingly".

9. Respectfully following the same, we allow Ground No.6 of the assessee.

10. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 3rdOctober, 2016.

Sd/-	Sd/-
(S. Rifaur Rahman)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 3rd October, 2016.

Vnodan/sps

Copy to:

1. *K. Vasantkumar, A.V.Raghu Ram, Advocates,610 Babukhan Estate, Basheerbagh, Hyderabad-1*
2. *Dy. CIT, Circle 2(3) IT Towers, Hyderabad*
3. *CIT(A) –III Hyderabad*
4. *CIT –II Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

By Order