

**IN THE INCOME TAX APPELLATE TRIBUNAL
“ SMC ” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER And
MS. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 431/Ahd/2016

(निर्धारण वर्ष/Assessment Year : 2012-13)

The DCIT Circle-1(1)(2) Ahmedabad	बनाम/ Vs.	M/s.Deversons Industries Pvt.Ltd. 441, GIDC Industrial Estate, Odhav Ahmedbad – 382 415
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACD 9671 M		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Vinod Tanwani, Sr.DR
प्रत्यर्थी की ओर से/Respondent by:	Shri B.T. Thakkar, AR

सुनवाई की तारीख/ Date of Hearing	17/12/2018
घोषणा की तारीख/Date of Pronouncement	01 /01/2019

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)–1, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-1/DCIT Cir-1(1)(2)/606/2014-15 dated 18/12/2015 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 29/12/2014 relevant to Assessment Year (AY) 2011-12.

2. The Revenue has raised the following grounds of appeal:-

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- (1) The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.1,02,04,568/- made in respect of weighted deduction u/s.32(2AB) of the Act.*
- (2) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.9,06,593/- made u/s.14A r.w. Rule 8D of the I.T. Act.*
- (3) The ld. CIT(A) has erred in law and on facts in deleting the disallowance of depreciation of Rs.8,80,932/- and Rs.4,09,830/- out of vehicle expenses made by the Assessing Officer.*

3. The first issue raised by the Revenue is that the Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for Rs. 1,02,04,568/- for the weighted deduction claimed u/s 35(2AB) of the Act.

4. Briefly stated facts are that the assessee is a Private Limited Company engaged in the business of manufacturing, trading, and export of dyes and dyes intermediates. The assessee in the year under consideration has debited an amount of Rs. 51,02,284/- under the head "R & D Division Expenses." The assessee was eligible for deduction u/s. 35(2AB) in respect of such expenses @ 200% of the actual expenses. Accordingly, the assessee claimed the deduction in its statement of income amounting to Rs. 1,02,04,568/- as R&D division expenses. However, the Assessing Officer found that the assessee failed to furnish the certificate issued by the Department of Scientific and Industrial Research (for short DSIR) which was mandatory for claiming such deduction. Therefore, the same was disallowed and added to the total income of the assessee.

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5. The aggrieved assessee preferred an appeal to Ld. CIT(A) who has deleted the addition made by the Assessing Officer after having the reliance on the order of his predecessor in the own case of the assessee.

6. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

7. Both the parties before us relied on the orders of the authorities below as favorable to them.

8. We have heard the rival parties and perused the materials available on record. At the outset, we find that the issue is covered in favor of the assessee by the order of this Tribunal in assessee's case in ITA No.1130/Ahd/2015 pertaining to AY 2011-12 vide order dated 28/03/2018. The relevant extract of the order is reproduced as under:

"9. We have gone through the relevant record and impugned order. So far as ground no.1 related to disallowance of Rs.76,43,540/- made u/s.35(2AB) of the Act is concerned. Assessee would be entitled to deduction u/s.35(2AB) in the year under consideration, even though the registration/recognition is accorded by the DSIR in the subsequent assessment year. Hon'ble Delhi High Court has held in the matter of CIT Vs. Sandan Vikas (India) Ltd. in ITA No.348/2011, it has been held as follows:

"10. We are in full agreement with the reasoning given by the Tribunal and we are of the view that there is no scope for any other interpretation and since the approval is granted during the previous year relevant to the assessment year in question, we are of the view that the assessee is entitled to claim weighted deduction in respect of the entire expenditure incurred under Section 35(2AB) of the Act by the assessee."

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3. We are in full agreement with the aforesaid approach of the Gujarat High Court. No substantial question of law, therefore, arises. The appeal is dismissed.”

*9.1 Respectfully following the order of the Delhi High, in which judgment of Jurisdictional High court in the matter of **CIT vs. Claris Lifesciences Ltd., 326 ITR 251** has also been discussed, we dismiss this ground of appeal of the department.”*

9. Since the identical issue is involved in this year also, therefore, taking a consistent view and respectfully following the order of the Coordinate Bench, we are not inclined to interfere with the order of the Ld.CIT(A) and ground raised by the Revenue is at this moment dismissed.

10. The second issue raised by the assessee is that the Ld.CIT(A) erred in deleting the addition made by the Assessing Officer for Rs. 9,06,593/- u/s. 14A r.w. Rule 8 D of the Income Tax, Rules, 1962.

11. The assessee during the year has earned dividend income amounting to Rs. 60,06,779/- which was claimed as exempt u/s 10(34) of the Act. However, the assessee has not made any disallowance of expenses as required under the provisions of section 14A of the Act. Therefore, the Assessing Officer because of the provisions of section 14A r.w. Rule 8D of the IT Rules, 1962 has made the disallowance as under:

Sr.No.	Particulars	Amount (Rs.)
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1.	Interest (Rs.3780/- x Rs.190417141/-) + Rs.580612817/-	1240
2.	Administrative expense 0.50% of average value of investment Rs.190417141/- x 0.50%	952086
3.	Expenditure directly relating to income which does not form part of total income	0
	Total	953326

11.1. Accordingly, the Assessing Officer disallowed the sum of Rs. 9,53,326/- and added to the total income of the assessee.

12. The aggrieved assessee preferred an appeal to the Ld. CIT(A) who has partly confirmed the order of the Assessing Officer after having reliance in the order of his predecessor pertaining to the AY 2011-12. Accordingly, the Ld. CIT(A) deleted the addition made by the Assessing Officer in part.

13. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

14. Both the parties before us relied on the orders of the authorities below as favorable to them.

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15. We have heard both the parties and perused the materials available on record. At the outset, we find that the issue is covered in favor of the assessee by the order of this Tribunal in assessee's case in ITA No.1130/Ahd/2015 pertaining to AY 2011-12 vide order dated 28/03/2018. The relevant extract of the order is reproduced as under:

“10. So far as ground related to deleting the addition to the extent of Rs.10,50,282/- is concerned. This issue has been discussed by the AO at Para No.3 of the assessment order and ld. CIT(A) has discussed this issue at Para No.4.2.

10.1 In our considered opinion, interest paid by the assessee was subsequently and assessee was having sufficient interest free fund to cover up the investment earning exempt income. Therefore, we are of the considered opinion that provisions of Section 14A are not attracted. However, as decided by the ld. CIT(A) that salary paid to C.S. Christian, which works out to Rs.40,713/- is upheld. Therefore, we upheld the decision of the ld. CIT(A) and we are not incline to interfere in the order passed by the ld.CIT(A). Thus, this ground of revenue is dismissed.

16. Respectfully following the decision above of the Co-ordinate Bench, we dismiss the ground of appeal raised by the Revenue.

17. The last issue raised by the Revenue is that the Ld. CIT(A) erred in deleting the disallowance of depreciation expenses and vehicle expenses amounting to Rs. 8,80,932/- and Rs. 4,09,830/- respectively.

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18. The Assessing Officer during the assessment proceedings found that the vehicles were registered in the individual name of the Directors. But the assessee claimed the depreciation and the vehicle expenses in its income-tax return. However, the Assessing Officer was of the view that the assessee cannot claim depreciation in respect of such vehicles registered in the name(s) of the directors.

19. The Assessing Officer also observed that the personal use of the vehicle could not be ruled out. Therefore he made the disallowance of vehicle expenses to the tune of 50% of Rs.8,74,703/- which works out to Rs.4,37,351/- only.

20. The Assessing Officer on the same reasoning was also of the view that the insurance expenses cannot be allowed as deduction as the vehicle was registered in the name of individual directors. Accordingly, the Assessing Officer disallowed the vehicle insurance expenses amounting to Rs. 1,22,479/- and added to the total income of the assessee.

20.1 In view of the above the AO made the disallowance of the depreciation, vehicle expenses, and insurance expenses as discussed above and added to the total income of the assessee.

The assessee carried the matter to the file of Id. CIT-A who deleted the addition made by the Assessing Officer on account of depreciation on the vehicles after, having a reliance on the order of his predecessor for the AY 2011-12. However, the Ld. CIT(A) in respect of vehicle expenses

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and insurance expenses deleted the addition in part by observing as under:

“Regarding the expenses of Rs.4,37,351/- and Rs.insurance expenses Rs.1,22,479/- claimed on the running of the vehicle, the appellant has submitted that as the cars were used wholly and exclusively for the purpose of business, no part of expenses was required to be disallowed. The company is artificial person and there cannot be any personal expenses or non business expenses in the hands of the company. The appellant was not able to demonstrate that the whole expenses on running of the vehicle were made for the purpose of business. The partial use of cars by the directors for personal purpose cannot be ruled out. In view of the above, out of expenses of Rs.4,37,351/- and insurance expenses of Rs.1,22,479/- claimed on the running of the vehicle, a sum of Rs.1,50,000/- disallowed by the A.O. is being confirmed. The ground of appeal is partly allowed.”

21. Being aggrieved by the order of the Ld. CIT(A), now the Revenue is in appeal before us.

22. Both the parties before us relied on the orders of the authorities below as favorable to them.

23. We have heard the rival contentions and perused the materials available on record. At the outset, we note that the ITAT in the assessee’s case involving the identical facts deleted the addition made by the Assessing Officer on account of depreciation in ITA No.1130/Ahd/2015 for AY 2011-12. The relevant extract is as under:

“12. So far deleting the disallowance of Motor Car depreciation of Rs.8,38,246/- is concerned. Ld. AO has discussed the matter at Para No.6 of his order and ld. CIT(A) has discussed this matter at Para No.7.3. We are of

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*the considered opinion that such depreciation are allowed as it has been held by the co-ordinate bench, in the case of **Ambuja Synthetics Mills Pvt. Ltd. vs. The DCIT, Range-1, Ahmedabad**, that “it is not disputed that funds for purchases of the car were provided by the assessee company which is also reflected in the accounts of the assessee company. In our opinion, when the car is actually used for the purpose of business of the company depreciation thereon cannot be denied.”*

13. Respectfully following the aforesaid orders and in our considered opinion, ld. CIT(A) has passed detailed and reasoned order. Therefore, we are not incline to interfere in the order passed by the ld. CIT(A).”

23.1. Regarding the vehicle expenses and insurance expenses, we find that the cars were used by the body corporate and these were also shown as fixed assets in the balance sheet in the year under consideration. As we have allowed the depreciation in respect of such vehicles, we are inclined to allow the amount of vehicle and insurance expenses to the extent deleted by the Ld. CIT(A).

We also note that the assessee was a limited company and, hence, it could act through its directors only. Thus, if cars were used by the directors for their personal use also, the same could be added to the income of the directors as perquisite but insofar as, the assessee-company was concerned the entire expenditure was for its business as the directors were appointed to look after the business of the assessee-company. Hence, no disallowance could be made in the hands of the assessee-company on account of personal use of directors. Accordingly, there cannot be any element of personal use. Hence, we do not find any

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infirmary in the order of the Ld. CIT(A). Thus, the ground of appeal raised by the Revenue is dismissed.

24. In the result, Revenue's appeal stands dismissed.

This Order pronounced in Open Court on	01 /01/2019
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Sd/-
(MS.MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 01/01/2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-1, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad