

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1475/Del/2017
(Assessment Year: 2012-13)

ACIT, Circle-12(1), O/o. Pr. CIT(4), New Delhi	Vs.	Indiabulls Ventures Ltd, (formerly known as M/s. Indiabulls Securities Ltd), M-62 & 63, First Floor, Connaught Place, New Delhi PAN: AAACO0870B
(Appellant)		(Respondent)

Revenue by :	Shri Jagdish Singh Dahiya, Sr. DR
Assessee by:	Shri Gautam Jain, Adv
Date of Hearing	08/06/2020
Date of pronouncement	02/07/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Id CIT (A)-18, New Delhi dated 20.12.2016 for the Assessment Year 2012-13.
2. The revenue has raised the following grounds of appeal:-
 - “1. Whether on the facts and circumstances of the case & in law, the Id CIT(A) erred in deleting the provision of excess depreciation of Rs. 68,71,008/- ignoring the facts that the disallowance of excess depreciation was not crystallized during the year under consideration.
 2. Whether on the facts and circumstances of the case and in law the Id CIT(A) erred in directing the AO to consider the additional claim of deduction on account of employee compensation expenses amounting to Rs. 1.79 crores, rejected by the AO.”
3. The brief fact of the case is that the assessee is a company engaged in the business of stock and shares broker of NSE and BSE. It filed its return of income on 29.09.2012 at Rs. 29227870/-. The assessment u/s 143(3) of the Act was passed on 25.03.2015 determining total income of the assessee at Rs. 3,60,98,880/- wherein, the Id AO disallowed the excess depreciation claim on software of Rs. 6871008/-.
4. During the course of assessment proceedings, another issue arose. The assessee submitted a letter dated 16.02.2015 for claiming additional claim of deduction on account of employee compensation expenses of Rs. 1.79 crores which was not claimed in the return of income.

The assessee claimed that the same should be allowed to the assessee. The Id AO disallowed the same holding that

- a. these are the not revenue expenses,
- b. not actual expenses but a notional loss.
- c. such expenses do not relate to previous year.

In the end, he applied the decision of the Hon'ble Supreme Court in case of Goetze (India) Ltd Vs. CIT 284 ITR 323 holding that the claim raised by the assessee is not by filing a revised return. Thus, he rejected the claim of Rs. 1.79 crores on account of ESOP expenses. As the above claim was not made in the return of income and no separate adjustment of addition was subtraction to the return of income was made.

5. The assessee aggrieved with the order of the Id AO preferred an appeal before the Id CIT (A). On the issue of excess depreciation claim the Id CIT (A) held that the assessee has purchased software on which the depreciation is allowable @60% and not @25% has allowed by the Id AO. Therefore, referring to the sub-clause 5 of clause III of part A appendix 1 to Rule 5(1) he held that on computers and computer software assessee is eligible for deduction @60%.

The connected dispute with respect to the same deduction was the amount of cost of the asset on which depreciation is to be allowed. As mentioned by the Id CIT (A) according to the Id AO the software purchased was of Rs. 21 laks and not Rs. 20681452/-. Thus the Id CIT (A) on Principle held that software depreciation has to be allowed @60% however, he directed the Id AO to verify the amount of actual cost of the asset on which depreciation is to be allowed.

6. On the second issue of ESOP expenses the Id CIT(A) allowed the claim of the assessee following the order in case of Biocon Ltd 2013] 35 taxmann.com 335 (Bangalore - Trib.) (SB)/[2013] 25 ITR(T) 602 (Bangalore - Trib.) (SB)/[2014] 144 ITD 21 (Bangalore - Trib.) (SB)/[2013] 155 TTJ 649 (Bangalore - Trib.) (SB). He also referred to several other judicial precedents including the judicial precedent in case of sister concern, which was decided by Id CIT (A). Based on this he directed the Id CIT (A) to consider the claim of the assessee on merit as per para 4.3.5.11. He further held that claim of the assessee is also not in tune with ratio of the decision of the special bench in case of Biocon Ltd wherein the claim is allowable on straight-line basis but the assessee has claimed it on cumulative basis.i.e. Claim of earlier years' expenses was also made n this year. In assessment order 2012-12, the cost of the assessee on ESOP expenses as stated in para 4.3.3 of the order of only Rs. 1045671/- whereas the claim of the assessee is Rs. 17919730/-. The Id CIT (A) directed the Id AO to follow the decision of Biocon Ltd. he further directed the Id AO to consider the case

of the assessee for earlier years also on the merits. The Id AO aggrieved with this direction is in appeal before us.

7. The Id DR on both these issues relied upon the grounds of appeal. He submitted that the depreciation is not crystallized during the year whereas the Id CIT (A) with respect to ground No. 2 has incorrectly directed the Id AO to consider the additional claim of deduction of employee compensation and for earlier years.
8. The Id AR submitted that the Id CIT (A) has directed the Id AO to consider the issue on the merits of the case of ESOP expenses following the decision of the special bench and therefore the revenue cannot be aggrieved. With respect to the depreciation, he submitted that the Id CIT (A) has in principle held that the assessee is eligible for deduction of depreciation @60% on software. However, for the purpose of computation of actual cost he directed the Id AO to verify the same. He therefore submitted that there is no grievance to the revenue.
9. We have carefully considered the rival contentions and orders of the lower authorities. As far as ground No. 1 is concerned, we find no infirmity in the order of the Id CIT (A) in upholding that depreciation on software is allowable @60%. However, for working out actual block of asset on which depreciation is to be allowed, he directed the Id AO to verify the same. We find no infirmity in the decision the Id CIT (A), therefore, ground No. 1 of the appeal is dismissed.
10. Coming to ground No. 2 where the assessee raised an additional claim before the Id AO by way of letter and did not made a claim by filing revised return, was rejected by the Id AO on the merits as well as on the ground that no revised return is filed by the assessee claiming the above deduction. The Id AO followed the decision of the Hon'ble Supreme Court 284 ITR 323. The grievance of the revenue is with respect to the direction of the Id CIT (A) to consider the additional claim of deduction on account of employee compensation expenses amounting to Rs. 1.79 crores, which is rejected by the Id AO. The direction of the Id CIT(A) is mainly contained in paragraph No. 4.3.5.11 and 12 of the order which is as under:-

4.3.5.11 Here, since there is a prima facie case in favour of the appellant, therefore, respectfully following these decisions, I would be inclined to direct that the Assessing Officer considers the claim on merits and in any case, after due verification and provide necessary relief as per law and as directed in para 4.3.5.8 above.

4.3.5.12 Coming to the quantum of claim made, I observed that from the table reproduced at para 4.3.3 above, the appellant has claimed Rs.179,19,730/- as EOSP cost allowable for the year under consideration. However, I find that this claim has been made on cumulative EOSP cost basis. The claim is apparently not in tune with the ratio of Biocon case relied on, where the claim is allowable on straight line basis. The AO has to restrict the claim of deduction on the same basis and as regards the disallowance that may follow, the AO may consider the claim in other years (including earlier years) and as per law, when such a claim is made by the appellant.”

11. On careful analysis of the order of the Id CIT (A), we find no infirmity in his direction as far as in principle, he allowed the claim of the assessee and directed the Id AO to compute the deduction of ESOP expenses by following the decision of the special bench of ITAT in case of Biocon Ltd 35 Taxmann.com 335. However, carefully looking to the claim of the assessee it was found that the assessee has claimed deduction at Rs. 1,79,19,730/- whereas the amount of expenditure pertaining to the FY 2011-12 was only Rs. 10,45,671/-. Balance claim was of earlier years. The Id CIT(A) directed the Id AO to restrict the claim of deduction of Rs. 10,45,671/- only against the claim of the assessee at Rs. 1,79,19,730/-. Further, surprisingly he also directed the Id AO to consider the claim of other earlier years when such claim is made by the appellant. We find that above further direction are not warranted pertaining to earlier years for the reason that Id CIT (A) does not have any power to direct Id AO for allowability of such claim for earlier years. If assessee wishes to claim, there is no fetter on the right of the assessee, but the claim should be in accordance with the law. If assessee makes a claim for deduction of balance expenditure in earlier years, whenever such a claim is made, the Id AO may examine the same and decide the issue on merits in accordance with law. To that extent, the direction of the Id CIT (A) to the Id AO is required to be modified. Other than what is indicated above, we do not find any infirmity in the order of the Id CIT (A).

12. In the result, the appeal of the revenue is dismissed with above direction.

Order pronounced in the open court on 02/07/2020.

-Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 02/07/2020

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi