

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2848/Bang/2018
Assessment Year: 2014-15

M/s. Tejas Networks Limited Plot No.25, Survey No.13, 14,17, 18, JP Software Park Konnappa Agrahara Village Begur Hobli Electronic City Phase 1 Bengaluru Karnataka 560 100 PAN NO :AABCT1670M	Vs.	Deputy Commissioner of Income-tax Central Circle-2(1) Bengaluru
APPELLANT		RESPONDENT

ITA No.3191/Bang/2018
Assessment Year: 2014-15

Deputy Commissioner of Income-tax Central Circle-2(1) Bengaluru	Vs.	M/s. Tejas Networks Limited Bengaluru Karnataka 560 100
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Annamalai, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	06.10.2021
Date of Pronouncement	:	08.10.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the order passed by Ld. CIT(A)-10, Bengaluru and they relate to the assessment year 2014-15.

2. The assessee is in appeal in respect of the following issues:-
 - a) Non-granting of deduction u/s 35(1)(i) & 35(1)(iv) of the Income-tax Act, 1961 [the Act' for short].
 - b) Disallowance of provision for commission.
 - c) Non-setting off of brought forward losses and unabsorbed depreciation.
 - d) Non-granting of refund.
3. The revenue is in appeal on the following issues:-
 - a) Disallowance u/s 35(2AB) of the Act.
 - b) Disallowance u/s 14A read with Rule 8D(ii)
4. The assessee is engaged in the design, development and manufacture of telecommunication equipments.
5. We shall take up the appeal filed by the assessee first. The first issue urged by the assessee relates to non-granting of deduction u/s 35(1)(i) & 35(1)(iv) of the Act. The Ld. A.R. submitted that the assessee did not claim the above said deductions in the return of income filed by it. However, during the course of assessment proceedings, the assessee filed a revised computation of income, a copy of which is placed at page No.26 of the paper book, wherein the assessee claimed deduction of Rs.86,61,509/- u/s

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35(1)(i) of the Act and a sum of Rs.2,11,84,968/- u/s 35(1)(iv) of the Act. However, the A.O. did not consider the above said revised computation of income and accordingly did not allow the deductions cited above. Before Ld. CIT(A), the assessee raised specific grounds namely Ground No.1.3 & ground No.1.4 with regard to the above said claims. However, the Ld. CIT(A) also did not adjudicate them. Accordingly, the Ld. A.R. prayed that these issues may be restored to the file of A.O. for examining the claims of the assessee.

6. The Ld. D.R. submitted that the assessee has not claimed these deductions in its original return of income. As per the decision rendered by Hon'ble Supreme Court in the case of Goetz India Ltd. 284 ITR 323 it is necessary for an assessee to file revised return of income for raising a new claim, which is not raised in the original return of income. Accordingly, the Ld. D.R. submitted that the claim of the assessee was not rightly considered by the tax authorities, since the assessee has not filed any revised return of income.

7. In the rejoinder, the Ld. A.R. placed his reliance on the decision rendered by Hon'ble Karnataka High Court in the case of Principal CIT Vs. Karnataka State Co-operative Federation Ltd. (2021) 128 Taxmann.com 1, wherein it was held that the assessee can make fresh claim before appellate authorities even he has not filed revised return of income to make such a claim.

8. We heard the parties on this issue and perused the record. Before us, the Ld D.R contended that the assessee could make fresh claims only by filing revised return of income by placing reliance on the decision of Goetz India Ltd.(284 ITR 323). However, the Hon'ble

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Supreme Court, in the above said case, has specifically held that its decision will not impinge upon the powers of the Tribunal to admit additional claims. The Hon'ble Karnataka High Court has held in the case of Karnataka State Co-operative Federation Ltd (supra) that the assessee could raised fresh claim before appellate authorities. In the instant case, we notice that the assessee has raised claim for deduction of above said amounts before the A.O. by filing a revised computation of income and also before Ld. CIT(A) by raising specific grounds. As noticed earlier, both the tax authorities did not consider them. Accordingly, we are of the view that the claim of the assessee deserves admission. Accordingly, we admit both the claims of the assessee and restore the same to the file of the A.O. for examining them in accordance with law.

9. The next issue urged by the assessee relates to disallowance of provision for commission expenses. The A.O. noticed that the assessee has claimed a sum of Rs.56,97,530/- as commission amount payable to Mr. Md. Ziaul Hassan Khan. The A.O. has observed that the assessee has not furnished the details of computation of commission amount and also purpose of payment. Accordingly, the A.O. disallowed provision for commission expenses of Rs.56,97,530/-.

10. Before Ld. CIT(A), the assessee furnished copy of agreement entered by it with Md. Ziaul Hassan Khan with regard to payment of commission. It was submitted that the provision for commission relates to commission payable to the above said agent for procuring sales orders in this year. The Ld. CIT(A) examined the agreement more particularly paragraph 3.3 of the agreement, which reads as under:

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*3.3 Subject to this Article 3, TEJAS shall pay Service fee to the Service Provider after the sales made pursuant to this Agreement are closed. **Service fee shall become due to the Service Provider within thirty (30) days after TEJAS receives for immediate value from or on behalf of the Customer the Price where the relevant PO provides for payment of the Price by shall become due to the Service Provider as soon as such instalments are received for immediate value by TEJAS, that proportion being, equivalent to the proportion which such instalments bear to the total Price.***

The Ld. CIT(A), on a reading of highlighted portion of paragraph 3.3 of the agreement, took the view that service fee (commission) shall become due to the agent within 30 days after the assessee receives payment from its customers. The Ld CIT(A) noticed that, during the year under consideration, the assessee has not received payment from the customers. Accordingly, the Ld. CIT(A) took the view that the commission amount has not become payable in this year. Accordingly, he confirmed the disallowance made by the A.O.

11. The Ld. A.R. submitted that the assessee is following mercantile system of account and hence the assessee is required to provide for all known expenses. Since the above said agent has procured the orders, the commission expenses has accrued in this year itself. He submitted that, as per the agreement entered by the assessee with the above said agent, the payment of commission is postponed, i.e., it shall become payable only after receipt of payments against sales, i.e., only payment of commission amount is postponed. Accordingly, the Ld A.R submitted that the Ld CIT(A) was not correct in interpreting that the commission amount itself will accrue only when the payment is received by the assessee. The Ld. A.R. placed his reliance on the decision rendered by Hon'ble A.P. High Court in the case of CIT(A) Vs. KCP Ltd. (2018) 94 Taxman.com 46, wherein it was held that the mere postponement of the payment of commission will not disentitle the assessee from

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claiming the deduction when it accrued. It was further held that the liability to pay commission accrued when orders were secured by agents and not when supplies were effected by the assessee.

12. The Ld. D.R., on the contrary, submitted that the terms of agreement entered by the assessee with Md. Ziaul Hassan Khan clearly shows that the commission shall become due only after receipt of money from the customers. Accordingly, she submitted that the Ld. CIT(A) was justified in confirming the disallowance of commission payments.

13. We heard the parties on this issue and perused the record. A careful perusal of first line of clause No.3.3 of the agreement entered by the assessee with Md. Ziaul Hassan Khan, which is extracted above, would show that *“the assessee shall pay service fee (commission) to the agent after the sales made pursuant to this agreement are closed”*, i.e., the commission shall accrue after the sales is finalized. However, the same shall become due for payment only after receipt of money from the customer. On a reading of whole of clause 3.3 of the agreement, we are of the view that the commission expenditure shall accrue as and when the sales is finalized. Hence, we are of the view that the Ld. CIT(A) was not justified in taking the view that the commission expenditure shall become due only when the payment is received from the customers. In the case of KCP Ltd. (supra), the Hon’ble A.P. High Court has upheld the view of the Tribunal in holding that the liability to pay commission accrues when orders were secured by agents and not when supplies were effected by the assessee.

14. There is one more angle with regard to the claim of the assessee. Under “revenue cost matching principle”, all expenses

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incurred in generating the revenue should be provided for in the books of account and also under the "Principle Prudence", all known liabilities have to be provided for in the books of account. In the instant case, the assessee is aware that it would be liable to pay commission amount to Md. Ziaul Hassan Khan when the sales is finalized and this commission expenditure is related to the revenue generated during the year under consider. Hence it is also a known liability for this year. Hence, as per accounting principles discussed above, the said commission expenditure should be provided for in the books of accounts when the relevant sales are accounted. On this count also, the claim of the assessee is admissible. Accordingly, we are of the view that the commission expenditure claimed by the assessee is allowable in the year under consideration. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to allow the commission expenditure claimed by the assessee.

15. The assessee has raised an alternative ground that if the commission expenditure is not allowed in this year, then A.O. should be directed to allow it in the year of payment. In view of the decision rendered by us in the preceding paragraph, this additional ground shall become infructuous.

16. The other issues urged by the assessee related to non setting off of brought forward losses and unabsorbed depreciation and also non-granting of refund. Both the issues require verification at the end of the A.O. Accordingly, we restore this issue to his file for examining the claim of the assessee.

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17. We shall now take up the appeal filed by the revenue. The first issue relates to disallowance of deduction claimed u/s 35(2AB) of the Act.

18. The assessee claimed a sum of Rs.103,88,54,734/- as deduction u/s 35(2AB) of the Act @ 200% of the expenditure of Rs.51,94,27,366/- incurred on Research and development. The A.O. noticed that the R & D expenditure is related to “product development expenditure”. He further noticed that the Form No.3CL issued by DSIR mentioned a sum of Rs.102,15,31,716/-. Accordingly, the excess amount of Rs.1,73,23,016/- was disallowed by the A.O.

19. In addition to the above, the A.O. took the view that the “product development expenditure” would not fall under the category of research & development expenses eligible for weighted deduction u/s 35(2AB) of the Act, even though the expenditure has been certified by DSIR in Form 3CL a R & D expenditure. Accordingly he took the view that the weighted deduction amount in respect of “Product development Expenditure” is not allowable. It is pertinent to note that the AO had made identical disallowance in an earlier year and when the matter reached Hon’ble Karnataka High Court, it has expressed the view that the A.O. has no jurisdiction to sit in the judgement over the report submitted by DSIR in form No.3CL. The appeal filed by the revenue before Hon’ble Supreme Court against the decision rendered by Hon’ble High Court has also been dismissed. In the instant year, the AO has noted the judicial ruling referred above. However, the A.O. chose to disallow weighted deduction amount of Rs.51,94,27,366/-(50% of Rs.103,88,54,734/) in order to maintain consistency.

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20. The Ld. CIT(A), deleted the disallowance of Rs.51,94,27,366/- by following the decision rendered by Hon'ble High Court of Karnataka in the assessee's own case in writ petition No.7004/2014. The revenue is aggrieved by the decision of Ld. CIT(A).

21. We heard the parties on this issue and perused the record. The decision rendered by Hon'ble jurisdictional High Court is binding on all authorities below it. Since the Ld. CIT(A) has followed the decision rendered by jurisdictional High Court, we do not find any reason to interfere with the decision rendered by Ld. CIT(A) on this issue. Accordingly, we confirm his order passed on this issue.

22. The next issue urged by the revenue relates to disallowance made u/s 14A of the Act. The assessee had disallowed a sum of Rs.3,96,417/- by applying Rule 8D(2)(iii) of the I.T. Rules. The A.O. took the view that the assessee should have disallowed part of interest expenditure by applying Rule 8D(2)(ii). Accordingly, disallowed a sum of Rs.34,798/- out of interest expenses under Rule 8D((2)(ii). The Ld. CIT(A) deleted the same by observing that the A.O. has not given suitable reason for making this addition.

23. We heard the parties and perused the record. A perusal of balance sheet furnished by the assessee would show that the assessee is having own funds of Rs.334.12 crores while the investments made by the assessee stand at Rs.4.58 crores only. Admittedly, the own funds available with the assessee is in far excess of the investments made by the assessee. Accordingly, as per decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. 383 ITR 490, no disallowance out of interest

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expenditure is called for. Accordingly, we confirm the decision rendered by Ld. CIT(A) in deleting this disallowance for the reasons stated above.

24. In the result, the appeal filed by the assessee is treated as allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 8th Oct, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 8th Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.