IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.3667/Del/2010
Assessment Year : 2007-08

Deputy Commissioner of Income Tax, Circle-11(1), New Delhi.	Vs.	M/s Fortis Clinical Research Ltd., 55, Hanuman Road, Connaught Place, New Delhi – 110 001. PAN : AAACO7343M.
(Appellant)		(Respondent)

Appellant by : Shri J.S.Ahlawat, Sr.DR.
Respondent by : Shri M.S.Syali, Sr.Advocate with Shri Manish Upneja and Shri Tarandeep Singh, CAs.

ORDER

PER G.D.AGRAWAL, VP :

The grounds raised in this appeal by the Revenue read as under:-

"1. The order of ld.CIT(A) is wrong, perverse, illegal and against the provision of law, liable to be set aside.

2. On the facts and circumstances of the case and in law, the ld.CIT(A) has erred in as the assessee has failed to comply with conditions specified U/s 80IB(8A)(iv) of the I.T.Act 1961 read along with Rule 18DA(2)(a) of the I.T.Rules.

3. On the facts and circumstances of the case and in law, the ld.CIT(A) has erred in not considering that the assessee has defaulted in its obligation to take prior

permission of the prescribed authority to sell its services as required under Rule 18DA(2)(a).”

2. At the time of hearing before us, it is stated by the learned DR that the assessee company is engaged in scientific research and development and provide the services of bio-equivalence of international standards to pharmaceutical companies. During the year under consideration, the assessee claimed deduction under Section 80IB(8A) of the Income-tax Act, 1961. That the said deduction is subject to Rule 18DA of the Income-tax Rules, 1962. That as per Rule 18DA(2)(a), the assessee company cannot sell any prototype or output without the prior permission of the prescribed authority. That the assessee company was selling the services to the pharmaceutical companies and receiving the service charges. That sale of those services is the sale of output of its research and since the prior permission of the prescribed authority was not taken, there was violation of Rule 18DA(2)(a). Therefore, the Assessing Officer had rightly rejected the deduction under Section 80IB(8A) claimed by the assessee. The learned CIT(A) allowed the relief to the assessee without properly appreciating the facts of the case and the legal position. Therefore, the order of learned CIT(A) should be reversed and that of the Assessing Officer may be restored.

3. The learned counsel for the assessee, on the other hand, stated that Rule 18DA(2)(a) prohibits the sale of any prototype or output without the prior permission of the prescribed authority. That the assessee has not sold any prototype or output. It was simply rendering services to some of the pharmaceutical companies and receiving service charges. That rendering of services does not amount to sale of prototype or output. That Department of Scientific and Industrial Research Technology, Ministry of Science and Technology, is the prescribed authority under Rule 18DA. That the assessee company is approved by such prescribed authority vide order dated 30th March,

2007 for AY 2007-08, 2008-09 & 2009-10. That such approval is further extended vide order dated 30th June, 2009 for AY 2010-11, 2011-12 & 2012-13. That whether there is a violation of any clause of Rule 18DA is to be looked into by the prescribed authority before extending the approval. Had there been any violation, the approval to the assessee would not have been extended by the prescribed authority. That in AY 2009-10, the Assessing Officer himself, vide order dated 7th December, 2011 passed under Section 143(3), has granted approval under Section 80IB. That such approval is duly granted after considering Rule 18DA of the IT Rules. Thus, the department itself in the subsequent year on identical facts has taken a view that there is no violation of Rule 18DA(2). He, therefore, submitted that the order of learned CIT(A) should be sustained.

4. We have carefully considered the arguments of both the sides and perused the material placed before us. Section 80IB(8A) reads as under:-

> *"**80-IB. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.***
>
> *[(**8A**) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such business for a period of ten consecutive assessment years, beginning from the initial assessment year, if such company –*
>
> *(i) is registered in India;*
> *(ii) has its main object the scientific and industrial research and development;*

(iii) is for the time being approved by the prescribed authority at any time after the 31st day of March, 2000 but before the 1st day of April, 2007;

(iv) fulfils such other conditions as may be prescribed.].”

5. From the above, it is evident that deduction under Section 80IB(8A) is available to a company carrying on scientific research and development work provided the company is registered in India. Its main object is scientific and industrial research, which is approved by the prescribed authority and it fulfils the conditions as may be prescribed. In the case of the assessee, it is not in dispute that it is a company which is registered in India. It has main object of scientific and industrial research and development and it is approved by the prescribed authority. The only dispute by the Revenue is that it has not fulfilled the conditions as prescribed by Rule 18DA of the I.T. Rules. The said Rule 18DA reads as under:-

“**Prescribed conditions for deduction under sub-section (8A) of section 80-IB.**

18DA. (1) Any company carrying on scientific research and development shall be eligible for deduction specified in sub-section (8A) of section 80-IB, if such company—

(*a*) is registered in India;

(*b*) has its main object the scientific and industrial research and development;

(*c*) has adequate infrastructure such as laboratory facilities, qualified manpower, scale-up facilities and prototype development facilities for undertaking scientific research and development of its own;

(*d*) has a well formulated research and development programme comprising of time bound research and development projects with proper mechanism for selection and review of the projects or programme;

(*e*) is engaged exclusively in scientific research and development activities leading to technology development,

improvement of technology and transfer of technology developed by themselves;

(*f*) submits the annual return alongwith statement of accounts and annual report within eight months after the close of each accounting year to the prescribed authority.

(2) Every company which is approved under sub-rule (2) of rule 18D shall—

(*a*) sell any prototype or output, if any, from its laboratories or pilot plants with the prior permission of the prescribed authority;

(*b*) intimate the change, if any, in its memorandum of association and articles of association relating to its main objects and forward the altered copy of its memorandum of association and articles of association to the prescribed authority;

(*c*) apply for extension of the approval at least three months before expiry of the approval already granted by the prescribed authority;

(*d*) have a system of monitoring the cost of research and development projects.

(3) If, at any stage, it is found that—

(*a*) the approval granted to the company referred to in sub-rule (2) of rule 18D is to avoid payment of taxes by its group companies or companies related to its directors or majority of its shareholders;

(*b*) any provisions of the Act or the rules have been violated,

the prescribed authority specified may withdraw the approval so granted.

(4) Every company referred to in sub-rule (1) shall make an application to the prescribed authority for the purposes of obtaining approval.

(5) Every application referred to in sub-rule (4) shall be accompanied by—

(*a*) memorandum of association and articles of association incorporating all amendments duly certified by the company secretary or managing director of the company;

(*b*) annual report of the company for the last three years, if available;

(*c*) photocopies of the memorandum of understanding relating to all on-going and future sponsored research projects or programmes.

(6) The prescribed authority may call for any information or document which may be necessary for consideration of the grant of approval under sub-rule (2) of rule 18D.

(7) The prescribed authority shall grant approval within four months from the date of receipt of the application :

Provided that where the approval is not granted, the decision of the said authority shall be communicated to the applicant within the said period of four months :

Provided further that no approval shall be refused unless the applicant has been given an opportunity of being heard.]."

6. The contention of the Revenue is that the assessee has violated the prohibition provided by Rule 18DA(2)(a), i.e., it has sold the output by way of selling services to the pharmaceutical companies. However, we find that sub-rule (3) of Rule 18DA itself provides the consequence of violation of sub-rule (2). As per sub-rule (3), if at any stage it is found that any provisions of the Act or the rules have been violated, the prescribed authority specified may withdraw the approval so granted. Therefore, if there is a violation of sub-rule (2), the prescribed authority has to take action against the assessee by withdrawing the approval. In the case of the assessee, the prescribed authority has not withdrawn the approval of the assessee for the assessment year under consideration i.e. 2007-08 but has further granted the extension of the approval vide order dated 30th June, 2009 for a further period of three years. Moreover, the Assessing Officer himself in the subsequent year

i.e. 2009-10 in the order passed under Section 143(3) has discussed at length Section 80IB(8A) & Rule 18DA(1) and has finally concluded that the assessee is entitled to deduction under Section 80IB(8A). The relevant finding of the Assessing Officer reads as under:-

> *"8. Reply/submission of the assessee has been considered and on going through the above reply of the assessee, it is found that the assessee company is registered in India and has its main object of being a Scientific and Industrial Research and Development. It also has adequate infrastructure and research programmes for the purpose of carrying out Scientific Research and Development and it has also submitted the annual return along with Statement of Accounts and Annual Report within eight months from the close of the accounting year under reference in accordance with Clause (f) of Rule 18DA(1).*
>
> *9. Further, as regards Rule 18DA(2), the assessee has submitted in his reply dated 25.11.2011 that it is carrying out Scientific Research activities for and on behalf of M/s Ranbaxy Laboratories Ltd. and other sponsor companies to whom it was providing the results of its research activities as contained in the agreements entered into with them. It also stated that while it did not sell any Prototype or Output, it has duly filed all the agreements containing the research activities undertaken by it for its sponsors (M/s Ranbaxy and Other) with the DSIR. The said agreements have been obtained from the company and have been placed on records. The said agreements contain the elaborate process of research and development activities undertaken by it, research activities in progress as well as research activities proposed and planned during the year.*

10. The assessee company has sought approval from the DSIR by furnishing all such agreements and related documents with the DSIR during the year under assessment, based on which, the DSIR has granted approval of extension to the assessee company for a further period of 3 years i.e. for A.Y. 2010-11, 2011-12 and 2012-13 vide its letter dated 30.06.2009, a copy of which has been submitted by the assessee and placed on record.

11. On going through the above documents filed by the assessee with the DSIR during the year under assessment for its approval and subsequent grant of approval by the DSIR for a further period of 3 years.

12. Keeping in view the details filed and above facts of the assessee specifically for the year under assessment, after discussion with the assessee's representative, the deduction u/s 80-IB(8A) is allowed as claimed."

7. In view of the above, we find no infirmity in the order of learned CIT(A) who has directed the Assessing Officer to allow the deduction under Section 80IB(8A). Therefore, his order is upheld and Revenue's appeal is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on 9th August, 2012.

Sd/-	Sd/-
(A.D.JAIN)	**(G.D.AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated : 09.08.2012
VK.

Copy forwarded to: -

1. Appellant : **Deputy Commissioner of Income Tax, Circle-11(1), New Delhi.**
2. Respondent : **M/s Fortis Clinical Research Ltd., 55, Hanuman Road, Connaught Place, New Delhi – 110 001.**

3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar