आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2423/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2015-16

Menarini india P.Ltd. A-101, Shapath IV Nr. Karnavati Club S.G. Highway Ahmedabad 380 015	Vs	DCIT, Cir.1(1)(1) Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Written submissions
Revenue by :	Shri Shaurya S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 01/12/2020
घोषणा की तारीख /Date of Pronouncement : 4/ 12/2020

O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER: Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-1, Ahmedabad dated 17.10.20128 passed for the Asstt.Year 2015-16.

2. The grounds of appeal are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. In brief, the assessee raises two issues viz. (i) the ld.CIT(A) has erred in confirming disallowance of Rs.11,14,726/- by holding that the same was not deposited in the relevant fund on or before the due date, and (ii) the ld.CIT(A) has erred in confirming action

of the AO in invoking section 35DD of the Act and thereby disallowing an amount of Rs.4,26,968/- out of expenditure on consultancy and legal fees.

3. Brief facts of the case in this regard are that the assessee is a private limited company engaged in the business of contract sales and market and trading in pharmaceutical products. It has filed return under section 139(1) of the Act declaring total loss of Rs.(-)20,95,42,163/- which was thereafter taken for scrutiny assessment by issuance of notice under section 143(2) of the Act. During the assessment proceedings, it was noticed by the AO that as per the tax audit report the assessee has not made payment towards the contribution of employee's PF within the due date i.e. provident fund amount which was to be deposited on 15th January, 2015 was actually deposited on 22nd January, 2015 only. To the show cause notice, it was explained by the assessee that though the payment towards employees' contribution of PF was not deposited within the due date, but the same was deposited before the date of filing of the return, and therefore, as per the decision of CIT Vs. Rajasthna state Beverages Corpn.and CIT Vs. Vinay Cement, Company Ltd., (SC) 213 CTR 268, payment of employees' contribution of PF before the due date of filing of the return of income shall not be disallowed and added to the income under section 36(1)(va) of the Act. However, the ld.AO did not accept this submission of the assessee, and relying on the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Gujarat State Road Transport Corporation, held that deduction would be allowable only if the sum of contribution is credited to the assessee's account in the relevant funds on or before the 'due date' as prescribed under the provision section 36(1)(va) of the Act. He accordingly

disallowed the claim of the assessee and added the same to the total income of the assessee. Aggrieved assessee preferred first appeal. The action of the AO was confirmed by the ld.CIT(A). Assessee is in further appeal before the Tribunal.

4. After hearing both the sides on the issue, and going through the written submissions filed by the assessee, we find that this issue has been settled by the Hon'ble jurisdictional High Court on two occasions, viz. in the case of Gujarat State Road Transport Corporation Ltd. (supra) and M/s.Checkmate Facility & Electronics Solutions P.Ltd. Vs. DCIT, wherein it is held that the employees' contribution to the Employees' Provident Fund (EPF)/ Employees' State Insurance Corporation (ESIC) deposited beyond the due date prescribed under section 36(1)(va) of the Income-tax Act, 1961 would not be eligible for deduction under section 43B of the Act, even if deposited before the due date of filing the tax return. In other words, with respect to the employees contribution received by the assessee if the assessee has not credited the said sum to the employees' account in the relevant fund or funds on or before the due date mentioned in explanation to section 36(1) (va), the assessee shall not be entitled to deduction of such amount in computing the income referred to in section 28 of the Act. We are bound to follow the decision of Hon'ble jurisdictional High Court on this issue. Therefore, there is no merit in this ground of appeal assessee. It is rejected.

5. Next issue agitated by the assessee is against disallowance of an amount of Rs.4,26,968/- on account of expenditure on consultancy and legal fees.

6. In the assessment proceedings, it was noticed by the AO that the assessee has claimed expenses of Rs.1,96,630/- and Rs.3,37,080/- against Tax Consultancy with Transaction Tax as "preparation of Amalgamation of MRPL with MIP" and "Layer fees for Merger" respectively as revenue expenses. The ld.AO sought details of such expenses and explanation as to why the same should not be considered under section 35D of the Act and 4/5th of the such expenditure be not disallowed. It was explained by the assessee that the said expenditure was incurred during the routine course of business and should not be treated as capital expenditure. However, the ld.AO did not accept this explanation of the assessee, and noted that since the transaction entered under "Preparation of Amalgamation of MRPL with MIP" and "Lawyers' fees for Merger" which itself explains that the said expenses were incurred wholly and exclusively for the purpose of amalgamation or demerger of an undertaking, and therefore section 35D is applicable. Accordingly, the ld.AO applied provision of section 35DD and allowed an amount of Rs.1,96,630/- being 1/5th of total expenditure, and balance amount of Rs.3,37,080/- was disallowed. Aggrieved by the action of the AO, the assessee carried the matter before ld.CIT(A), who however upheld the order of the AO. Still aggrieved, the assessee is now before the Tribunal.

7. Before us, none appeared on behalf of the assessee. However, the assessee has filed written submissions. The pleadings therein are more or less similar to contentions raised by them before the Revenue authorities. Apart from that it has pleaded that the ld.AO has misconceived and misconstrued the nature of the expenditure as that of amalgamation/merge and in fact there was no amalgamation or merger

of any undertaking during that year, and therefore provision of section 35DD is not applicable to the assessee. It further pleaded that findings of the Revenue authorities are factually incorrect, as the expenditure was incurred in the nature of routine business activities. The ld.AO failed to appreciate the exact purpose and object for which such expenditure were incurred, and that the impugned addition made on the basis of non-appreciation of the nature of the expenditure may be deleted. On the other hand, the ld.DR supported orders of the Revenue authorities.

8. We have heard learned DR and gone through the record and written submissions filed by the assessee. The AO in the order has observed that the assessee has failed to furnish details and it did not state anything nor produced any corroborating evidence in support of its claim of expenses. The concurrent findings of Revenue authorities that purpose for which the expenditure was incurred is specific and the claim of expenditure against Tax Consultancy under the column "Transaction Text" of ledger of Transactions, the term "Preparation of Amalgamation of MRPL with MIP" and "Lawyer fees for Merger" respectively mentioned, were not successfully rebutted by the assessee before us also. This treatment and classification of the said expenditure in the accounting transaction by the assessee clearly shows that the expenditure was incurred wholly and exclusively for the purpose of amalgamation or demerger which would attract provisions of section 35DD. Before us also, the assessee cannot better its case, and rather simply reiterated the submissions as were made before the lower authorities. Therefore, for the reasons discussed in the orders of the Revenue authorities, and the very premise on which the Assessing Officer denied the claim of the Assessee is found to be factually tenable

and hence, invocation of provision under section 35DD of the Act cannot be said to be incorrect and unjustified. This ground accordingly is rejected.

9. In the result, appeal of the assessee is dismissed.

Pronounced in the Open Court on 4th December, 2020.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**