

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ B ” BENCH, AHMEDABAD**

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And**  
**SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1130/Ahd/2015  
(निर्धारण वर्ष / Assessment Year : 2011-12)

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

अपीलार्थी ओर से/ Appellant by :	Shri G.C. Daxini, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri B.T. Thakkar, A.R.

सुनवाई की तारीख / Date of Hearing	01/03/2018
घोषणा की तारीख/Date of Pronouncement	28/03/2018

**आदेश / ORDER**

**PER MAHAVIR PRASAD, JUDICIAL MEMBER :**

The captioned appeal has been filed at the instance of the revenue against the appellate order of the Commissioner of Income Tax(Appeals)-6, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-6/Addil.CIT.R.1/110/13-14 dated 27/02/2015 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 30/01/2014 relevant to Assessment Year (AY) 2011-12.

2. Following Grounds have taken by the revenue:

- “(1) The ld.CIT(A) has erred in deleting the disallowance of Rs.76,43,540/- made u/s.35(2AB) of the Act despite the fact that the assessee got approval from DSIR in the F.Y.2011-12 i.e. relevant to A.Y.2012-13 and also the weighted deduction was limited to 150% only.*
- (2) The Ld.CIT(A) wrongly placed reliance on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Claris Life Science Ltd, 326 ITR 251 as same was rendered on different facts.*
- (3) The ld.CIT(A) has erred in law and on facts in deleting the addition to the extent of Rs.10,50,282/- out of disallowance of Rs.10,90,995/- u/s.14A of the Act.*
- (4) The ld.CIT(A) has erred in deleting the disallowance of excess depreciation of Rs.12,634/~ on office equipment without appreciating the fact that the assessee has claimed depreciation @15% on office equipment instead of allowable depreciation of 10%.*
- (5) The ld.CIT(A) has erred in deleting the disallowance of sales promotion expenses of Rs.82,555/- despite the fact that these expenses are not related to business of the assessee and personal in nature.*
- (6) The ld.CIT(A) has erred in law and on facts in deleting the disallowance of motor car depreciation of Rs.8,38,246/- which was not owned by the assessee company. The assessee was unable to establish that the car was used for the purpose of business. The provisions of section 32 and 37(1) were therefore, not satisfied.”*

3. The relevant facts as culled out from the materials on record are as under:-

The assessee company is engaged in the business of Manufacturing and dealer/Exporter in Dyes.

- 3 -

3.1 On verification of statement of income filed alongwith the return of income for A.Y.2011-12, it is observed that the assessee has debited Rs.76,43,540/- as 'R&D Division Expenses'. This amount has been calculated by taking the eligible expenses @200% of the division expenses of Rs.38,21,740/-. In this regard, the assessee was requested to elaborate the claim of this expense and the assessee replied as under:-

*“R&D Division s Expenses Rs.38.21,770/- has been added for treated separately in the statement of income. R&D Division expenses are allowable 200% u/s.35(2AB) - R&D Division of the assessee company has been grant approval by authority.”*

3.2 But ld. AO was not satisfied with the reply given by the assessee company and he made an addition of Rs.76,43,540/-.

4. It is seen that the assessee has earned dividend income to the tune of Rs.51.67,750/- but no disallowance u/s. 14A was made. It is further observed that the assessee has made investment of Rs.18,94,33,151/- as on 31.03.2011. The assessee has claimed interest of Rs.9,440/-. In addition to this, some administrative/other expenses are also admitted to be incurred to earn tax free income. In this regard the assessee vide letter dated 16.12.2013 was show caused to explain as to why disallowance u/s.14A r.w. rule 8D should not be made.

4.1 In reply to the show cause notice, the assessee has submitted in the letter which reads as under:-

*"The assessee company has earned dividend income of Rs.51,68,750/- which is claimed exempt u/s.10(33) of the I.T. Act, 1961. The assessee*

- 4 -

*company submits that no investment is made out of borrowed funds. Share Capital and Reserve Funds as on 31.03.2011 is Rs.53.54 crore whereas total investments as on 31.03.2011 is only Rs.18.92 crore. Further, the assessee company has no interest payment during the year under assessment except interest on borrowed funds on security of motor car amounting to Rs.9,440/- only.*

*Further, the assessee submits that the investments are very old and rare transaction of sale/purchase took place during the period under consideration and no administrative expenses have been incurred therefore provision of section 14A of the Act rear with Rule 8D of the I.T. Rules does not have application.*

*However, the assessee company submits that salary of one person viz. Mr. Clement S. Christian who is occasionally looking after the investments and dividend income, once in week, may be considered for proportionate disallowance u/s.14A, Gross salary plus bonus amounting Rs.81,425/- is paid to the person. Except the above expenses no other expenses have been incurred by the assessee which is to be included in the administrative expenses.”*

4.2 After going through the reply submitted by the assessee company, Id. AO was not satisfied with the contention of the assessee and he made an addition of Rs.10,90,955/-

5. During the year under consideration, it is observed that the assessee has claimed depreciation @ 15% on 'Office Equipment'. Total depreciation of Rs.37,811/- has been claimed on such equipments, which has been categorized under the head 'Others'. These items clearly fall under 'Furniture & Fixtures' instead of 'Plant & Machinery' on which depreciation is available @15%. Accordingly, vide letter dated 16.12.2013, the assessee was requested to let this office know as to why

- 5 -

depreciation should not be, restricted to 10% only, The assessee, vide submission dated 31.12.2013, submitted as under:-

*"Depreciation on Office Equipment is claimed @15% on WDV Rs.1,67,086/-*

*As per I.T. Rules, rate of depreciation on Office Equipment is 15% and not 10% which is prescribed for Office Furniture ".*

5.1 But ld. AO was not satisfied with the reply filed by the assessee and he made an addition of Rs.12,604/-

6. It is further observed from the details of Sales Promotion Expenses that the assessee has shown a total amount of Rs.1,94,505/- under this head. The ledger account of the expenses is submitted vide reply dated 31.12.2013. From the reply, it is observed that there are a number of payments which are purely personal in nature as evident from the description itself.

6.1 But ld. AO was not satisfied with the contention of the assessee and he held sales promotion Expenses personal in nature and further held same are not related to business and made an addition of Rs.82,255/-.

7. So far disallowance of Car Depreciation is concerned. Assessee claimed depreciation @ 50% of Rs.1,52,549/- on Car purchased in F.Y. 2009-10 and also claimed depreciation in respect of another Car, depreciation has been claimed @ 15% of Rs.1,67,610/-. In reply assessee submitted that :

**“31.12.2013:**

*"Depreciation on Motor Vehicles is claimed @ 15% and 50%  
The assessee has claimed depreciation on motor car purchased on 28.02.2009 (A.Y.2010-11) and claimed depreciation @ 50%. During the year, the assessee company has claimed depreciation @ 50%. During the year the assessee company has claimed depreciation on WDV of Motor Car at 50% amounting to Rs.1,52,549/-.  
The assessee submitted that Item (via) in Appendix I has been inserted w.e.f. 01.04.2009 (A.Y.2009-10) and on wards (vide Income Tax Third Amendment) Rules, 2009 has been extended to 01.10.2009 w.e.f. 01.04.2010 (A.Y.2010-11 and onwards) vide Income-tax (Eleventh Amendment) Rules 2009 312 ITR(ST)330."*

7.1 But ld. AO was not satisfied with the contention of the assessee and he made an addition of Rs.8,38,246/-.

8. Against the said order assessee preferred first statutory appeal before the ld.CIT(A) who partly allowed the appeal of the assessee.

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."*

*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.

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 Id. 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 Id. 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 Id. CIT(A) and we are not incline to interfere in the order passed by the Id.CIT(A). Thus, this ground of revenue is dismissed.

11. So far disallowance of excess depreciation of Rs.12,634/- on office equipment is concerned. Ld. AO has discussed the same in his order at Para No.4 and Ld. CIT(A) has discussed in Para No.6.2. In this regard, assessee had purchased gift items and gave as momentous to the customers of the clients; and expenditure incurred was insignificant as the turnover of the appellant is around Rs.31 crores; majority of the payment were made through credit card and export turnover of the assessee had gone up from Rs.10.8 crores in the previous year to Rs.12.54 crores in the current year.

11.1 On account of above said discussion, we are not incline to interfere in the order passed by the ld. CIT(A) hence, this ground of appeal is dismissed.

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 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.”

- 9 -

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

14. In the result, appeal filed by the department is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>28/03/2018</b>
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Sd/-  
एन.के. बिल्लैया  
(लेखा सदस्य)  
( N.K. BILLAIYA )  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/03/2018

*Priti Yadav, 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).
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad