

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA**

**Coram : Shri R.S. Syal, (Accountant Member)  
and Shri George Mathan (Judicial Member)**

**I.T.A. No.: 770/Kol./ 2012  
Assessment year : 2008-2009**

**Assistant Commissioner of Income Tax,.....Appellant  
Circle-10, Kolkata,  
P-7, Chowringhee Square, 3<sup>rd</sup> floor,  
Kolkata-700 069**

**-Vs.-**

**East India Pharmaceuticals Ltd.,.....Respondent  
6, Little Russel Street,  
Kolkata-700 071  
[PAN : AAACE 5779 P]**

**Appearances by:**

*Shri Ajay Kumar Singh, CIT, Sr. D.R., for the Department  
Shri Sanjay Bhattacharya, F.C.A., for the assessee*

Date of concluding the hearing : November 21, 2013  
Date of pronouncing the order : November 22<sup>nd</sup>, 2013

**O R D E R**

**Per R.S. Syal :**

1. This appeal by the Revenue arises out of the order dated 1<sup>st</sup> February, 2012 passed by Id. Commissioner of Income Tax (Appeals)-XII, Kolkata in relation to the assessment year 2008-09.

2. First ground of the appeal is against deletion of addition on account of foreign tour expenses. Briefly stated facts of this ground are that the assessee incurred certain foreign travelling expenses. On the perusal of the details, it was observed, inter alia, by the Assessing Officer that Shri

Dipankar Dutta Gupta, Director of the assessee-company had gone on foreign tour as President of India Chemical Council. A sum of Rs.8.40 lakhs was incurred on this visit. The Assessing Officer observed that since such expenses have no nexus with the carrying on of the day-to-day activities of the business, the same was liable to be disallowed. This resulted into an addition of Rs.8.40 lakhs, apart from certain other additions out of foreign travelling expenses amounting to Rs.3,00,857/-. The Id. CIT(Appeals) deleted the disallowance for foreign tour expenses of Rs.8.40 lakhs and sustained the addition of Rs.3,00,857/-. The Revenue is in appeal against such deletion of disallowance.

3. After considering the rival submissions and perusing the relevant material on record, it is observed that Shri Dipankar Dutta Gupta, Director of the assessee-company went on foreign tour in the capacity of the President of Indian Chemical Council. The said tour was undertaken on the basis of an invitation from Associquim- Brazillian Association of Chemicals and Petrochemicals Distributors. As the assessee is engaged in the business of pharmaceuticals, the association of the director with the Chemical council cannot be said to be alien to the business. Further, the Id. CIT(Appeals) has recorded a categorical finding that Shri Dipankar Dutta Gupta also explored the prospects of export of the assessee's products abroad. This finding has not been controverted by Id. D.R. with any material worth the name. It is observed that Shri Dipankar Dutta Gupta undertook the foreign tour, *albeit* as President of the Indian

Chemical Council, but was representing the Company in his capacity as director. The further fact that he explored the prospects of export of assessee's products abroad clearly points out that it was a purely commercial and business tour. In our considered opinion, no exception can be found to the view canvassed by the first appellate authority in deleting this addition. This ground fails.

4. The second ground is against deletion of disallowance of expenses relating to Durgapur Unit, which was inoperative during the relevant period. The facts apropos this ground are that the assessee claimed deduction towards certain expenses in connection with Durgapur Unit. These expenses included payment made to Baroda Dye Chem for outsourcing in respect of the assessee's business carried on at Durgapur Unit, which was suspended for complete up-gradation of production and quality control facilities. Apart from that, the assessee also incurred certain expenses, which were apportioned to the Durgapur Unit by the Cost Auditors. The assessee also claimed depreciation and direct expenses incurred in respect of Durgapur Unit. The Assessing Officer disallowed such expenses including depreciation and the amount paid to Baroda Dye Chem totalling Rs.4,05,98,926/- on the premise that the said Unit was not in operation. The Id. CIT(Appeals) deleted the disallowance.

5. Having heard the rival submissions and perused the relevant material on record, it is relevant to observe that the assessee-company at the material time had two Units, viz. Durgapur Unit and Behala Unit. Due

to up-gradation of production and quality control facilities, the production work at Durgapur Unit was temporarily suspended. In order to continue the business, the assessee outsourced the relevant products from M/s. Baroda Dye Chem on payment of certain fees. The fact remains that Durgapur Unit is one of the Units of the assessee-company. We fail to appreciate as to how any expenditure incurred in relation to the temporarily suspended Unit can be disallowed when the other Unit of the assessee-company is working. It is relevant to appreciate the difference between the two situations, viz., one in which the business of the assessee company is permanently or for a fairly longer period is closed and the other in which only one of the units is temporarily closed. One cannot consider the assessee as closed in a later case to deny deduction for expenses. It is but natural that both the Units were of the same company with common management and inter-mingling of the funds. The Hon'ble Supreme Court in the case of *Veecumsees vs. CIT* (1996) 220 ITR 185 (SC) has held that if there is a composite business, there can be no denial of deduction in respect of expenses of one unit which is not operating, when there is unity of control of both the units. Adverting to the facts of the instant case, we find that the Durgapur Unit was very much part and parcel of the assessee-company. In our considered opinion, the expenses in respect of such a temporarily closed business can not be disallowed. In so far as the question of depreciation in respect of the assets of Durgapur unit is concerned, we find that there is a plethora of judgments allowing depreciation on the passive user of assets. Further,

when a particular asset has entered into a block of assets, there can be no question of disallowing depreciation on such asset on isolation basis by holding that such an asset was not used for the time being. Recently, the Hon'ble Delhi High Court in the case of National Thermal Power Corporation Limited -vs.- CIT [2013] 357 ITR 253 (Delhi) has reiterated its opinion earlier given in the case of Capital Bus Service (P) Ltd. -vs.- CIT [1980] 123 ITR 404 (Delhi) that the depreciation is permissible when asset is kept ready for use but is not actual used. In other words, the passive user of the assets has been held to be good enough for entitlement to the claim of depreciation. Similar view has also been expressed by several Hon'ble High Courts including the Hon'ble Punjab & Haryana High Court in the case of CIT -vs.- Pepsu Road Transport Corporation [2002] 253 ITR 303 (P&H) and Hon'ble Kerala High Court in the case of CIT -vs.- Geo Ttech Construction Corporation[2000] 244 ITR 452 (Kerala). In view of the foregoing discussion, we are of the considered opinion that the ld. CIT(Appeals) was justified in allowing deduction for expenses and depreciation in respect of Durgapur Unit. This ground is not allowed.

6. Last ground of the appeal is against allowing deduction on account of expenses on 'Research work' by treating it as revenue in nature and not as capital. Facts of this ground are that the assessee incurred research work expenses amounting to Rs.5,63,972/- which were clubbed with other expenses under the head 'Miscellaneous Expenses'. The

Assessing Officer disallowed miscellaneous expenses of Rs.13,81,414/-, including the research work expenses amounting to Rs.5,63,972/-. This disallowance was made by holding that such expenses were not of the revenue in nature. The Id. CIT(Appeals) deleted the said disallowance.

7. After considering the rival submissions and perusing the relevant material on record, we find that section 35(1)(i) provides deduction in respect of "any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business". Clause (iv) of section 35(1) provides deduction in respect of expenditure of capital nature incurred on scientific research related to the business carried on by the assessee subject to its admissibility under sub-section (2). Sub-section (2), in turn, provides that where such capital expenditure is incurred after 31.03.1967, the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year. Proviso to this clause provides that no deduction shall be admissible under this clause in respect of any expenditure incurred on the acquisition of any land. When we read sub-section (1) in juxtaposition to sub-section (2) to section 35, it becomes manifest that entire revenue expenditure on scientific research is admissible for deduction and the capital expenditure, to the extent it is not incurred on the acquisition of any land, is also deductible in the year of incurring itself.

8. On the perusal of the so-called details filed by the assessee, we find that there are certain shortcomings, inasmuch as, firstly, the total of the

expenditure so claimed does not come up to the amount of deduction at Rs.5.63 lakhs and secondly, it is not borne out as to whether such expenditure includes certain disallowable expenses within the meaning of section 35. In our considered opinion, the ends of justice would be adequately met if the impugned order on this issue is set aside and the matter is restored to the file of the Assessing Officer. We order accordingly and direct him to decide this issue afresh as per law after allowing a reasonable opportunity of being heard to the assessee.

9. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 22<sup>nd</sup> day of November, 2013.

Sd/- <b>George Mathan</b> (Judicial Member)	Sd/- <b>R.S. Syal</b> (Accountant Member)
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**Kolkata, the 22<sup>nd</sup> day of November, 2013**

Copies to : (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) The Departmental Representative  
(6) Guard File

*By order etc*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Kolkata benches, Kolkata*

Laha/Sr. P.S.