

No sec. 35 deduction if separate books of a/c weren't maintained for research & development activities

Summary – The Mumbai ITAT in a recent case of Nivo Controls (P.) Ltd., (the Assessee) held that Assessee's claim for deduction under section 35(1) could not be allowed where it did not maintain separate books of account in respect of its research and development activity

Facts

- The assessee company was engaged in the business of manufacturing and trading of electronic process control equipment. The assessee filed its return claiming deduction under section 35(1). The Assessing Officer completed assessment under section 143(3) accepting assessee's claim.
- The Commissioner noted that assessee's claim of deduction was wrongly allowed as it had not maintained separate books of account for its research and development activity. He thus passed a revisional order setting aside the assessment.
- On appeal:

Held

- According to the Commissioner, the assessee is not eligible for deduction under section 35(1) as it has failed to fulfil conditions prescribed under section 35(1) by maintaining separate books of account in respect of R&D facility. The Assessing Officer, without examining the fact in the light of provisions of section 35(1) mechanically allowed deduction claimed by the assessee which rendered assessment order erroneous insofar as it is prejudicial to the interest of the revenue.
- It is the contention of the assessee that its R&D facility is approved by Competent Authority, *i.e.* Department of Scientific & Industrial Research and it is claiming deduction towards expenditure incurred in its in-house R&D facility right from assessment year 2001-02 onwards and such claim has been accepted by the department. The assessee further contended that without there being any material changes in facts, the Commissioner directed the Assessing Officer to disallow claim under section 35(1). There is no merit in the arguments of the assessee for the reason that though assessee claims to have furnished necessary details before the Assessing Officer in support of deduction claimed under section 35(1) at the time of original assessment under section 143(3), but failed to adduce any evidence to justify its claim.
- The Assessing Officer has allowed deduction claimed under section 35(1) without any discussion as to whether the claim made by the assessee is in accordance with provisions of section 35(1) or not. The assessee itself accepted before the Commissioner that it had not maintained separate books of account in respect of R&D facility even though it was required to maintain separate books of account as per the provisions of the Act. Therefore, the Commissioner was right in setting aside the

assessment order passed by the Assessing Officer under section 143(3) as the assessment order is erroneous insofar as it is prejudicial to the interest of the revenue.

- However, there is merit in the arguments of the assessee that the Commissioner has given specific direction to the Assessing Officer to disallow deduction claimed under section 35(1), without offering an opportunity to furnish necessary details. The Commissioner, in his order, has given specific direction to the Assessing Officer to disallow claim of deduction under section 35(1), in the fresh assessment order passed consequent to order passed under section 263. Therefore, the direction given by the Commissioner needs to be modified to the extent of allowing the Assessing Officer to examine the claim of the assessee in the light of provisions of section 35(1) and explanation of the assessee so as to come to a conclusion that assessee is not eligible for deduction.
- In the result, the appeal filed by the assessee is partly allowed, for statistical purpose.