IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.704/Bang/2020 : Asst.Year 2016-2017

M/s.Natural Remedies Pvt.Ltd. Plot No.5B, Veerasandra Industrial Area, 19th KM Stone, Hosur Road, Electronic City Post Bengaluru – 560 100. **PAN : AAACN6990M.**	v.	The Asst.Commissioner of Income-tax, Circle 5(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.S.Ramasubramanian, CA
Respondent by : Sri.Kannan Narayan, JCIT-DR

Date of Hearing : 30.12.2020		**Date of Pronouncement : 01.01.2021**

O R D E R

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.03.2019. The relevant assessment year is 2016-2017.

2. There is a delay of 539 days in filing this appeal. The assessee has filed petition for condonation of delay accompanied by two affidavits. One affidavit is filed by Sri.Mahesh B.S., who was the Finance Manager of the assessee, and the other is of Sri.Ramachandra Nayak Bengre, who is presently the Senior Finance Manager of the assessee. The reasons stated for delayed filing of the appeal is that Sri.B.S.Mahesh, who was the then Finance Manager had informed about the appeal being dismissed by the CIT(A) to the Management and sought for approval for further course of

action. However, the appeal was not filed within the above said date for the reason that the matter was not followed up by the Finance Manager with the management and the consultant. Later, the Finance Manager put in his resignation and the proceedings were left unattended. On further analysis of pending legal proceedings during March 2020 for the purpose of statutory audit for the financial year 2019-2020, management found out that the appeal has not been filed within the time and approached the Chartered Accountant for filing the appeal. Due to Covid-19 Pandemic, the process of filing the appeal took some more time. Therefore, it was prayed that the Tribunal may be pleased to condone the delay.

2.1 The learned Departmental Representative present was duly heard.

2.3 We have heard the rival submissions and perused the reasons stated for the belated filing of this appeal. The delay in filing of this appeal was on account of the then Finance Manager not following the issue with the Consultant. Later, the Finance Manager had resigned and the matter was left unattended. There are affidavits to the effect from both the earlier Manager and the present Manager of the assessee. The management came to know about the appeal not being filed on time when statutory audit for the financial year 2019-2020 was being prepared. Due to Covid-19 Pandemic, the process of filing the appeal took some more time from the end of the Chartered Accountant. Therefore, in the given facts and circumstances of the case, we are of the view that there is reasonable and

sufficient cause in filing the appeal belatedly. In this context we rely on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. ISRO Satellite Centre in ITA No.532/2008 (judgment dated 28.10.2011), wherein it was held that in Income Tax matters delay in filing of the appeal should be condoned irrespective of the length of delay if there is a reasonable cause. The Hon'ble Apex Court in the case of Collector, Land Acquisition v. Mst.Katiji & Others, reported in 167 ITR 471 had held that there should be a liberal and practical approach in exercising discretionary powers in condonation of delay. It was held by the Hon'ble Apex Court that the appellant does not get any benefit from filing belated appeal. Therefore, it concluded by the Hon'ble Apex Court even if the delay is condoned, at best what can happen on condonation of delay is that the appeal will be decided on merits. Keeping the above principles laid down in the judicial pronouncements referred to above and considering the facts and circumstances of the present case, we are of the view that the delay in filing the appeal was occasioned by reasonable and sufficient cause. Hence, the delay in filing this appeal before the Tribunal is condoned and we proceed to dispose of the matter on merits.

3. The solitary issue that is raised in this appeal whether the CIT(A) is justified in confirming the disallowance of Rs.43,12,042 being claim of deduction u/s 35(2AB) of the I.T.Act.

4. The brief facts of the case are as follow:

The assessee is a private limited company. It is engaged in the business of herbal veterinary medicines and export of herbal extracts. For the assessment year 2016-2017, the return of income was filed on 17.10.2016 declaring total income of RS.23,15,69,790. Subsequently, the income was revised by filing a revised return of income on 29.03.2018 declaring total income of Rs.22,85,89,280. In the return of income, the assessee-company had claimed research and development expenses of Rs.3,17,63,251, however, DSIR allowed expenses to the extent of Rs.2,74,51,209 in Form No.3CL. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act and the scrutiny assessment was completed vide order dated 20.12.2018 u/s 143(3) of the I.T.Act, wherein the Assessing Officer based on Form No.3CL, added back a sum of Rs.43,12,042 to the income of the assessee. The relevant finding of the Assessing Officer reads as follow:-

> *"5. On verification of the revised financial statements furnished by assessee, it was found that during the financial year under consideration i.e.2015-16, the assessee has claimed Research and Development Expenses which are revenue in nature of Rs.317.63 lakhs and Capital Expenditure on Scientific Research and Development of Rs.27.33 lakh. However on going through Form 3CL it is seen that DSIR has allowed an amount of Rs.275.51 lakhs w.r.t revenue expenditure and Rs.27.34 lakhs w.r.t. Capital Expenditure respectively. Accordingly, an amount of Rs.275.51 lakhs and Rs.27.34 lakhs is considered for deduction u/s 35(2AB). Hence, the deduction claimed is restricted to the above sums as reflected in the Form 3CL.*

Details	*Amount claimed in computation*		*Amount allowed in Form 3CL*	*Excess claimed*
Revenue expenditure	*3,17,63,251*		*2,74,51,209*	*43,12,042*
Capital expenditure	*27,33,582*		*27,33,582*	*Nil*
	3,44,96,833		*3,01,84,791*	*43,12,042*

Hence, the excess amount claimed by the assessee of Rs.43,12,042 (Revenue expenditure) is disallowed an added back to the total income of the assessee."

5. Aggrieved by the order of the Assessing Officer in disallowing the claim of deduction u/s 35(2AB) of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

"5.3. The AO's observations / findings and the assessee's submissions have been perused. The judicial position on the issue in the factual matrix of the present case has been duly appraised. In the given facts & circumstances, I am not in agreement with the assessee's plea for the reasons summarized as under, in light of the facts emerging from the proceedings.

(i) The AO has made a categoric finding that the assessee's claim of deduction u/s 35(2AB) is in excess by the figure of Rs.43,12,0421- in view of the fact that, the competent authority i.e. the DSIR in the Form-3CL has allowed an amount of Rs. 275.51 lakhs instead of Rs. 317.63 lakhs claimed by the appellant u/s 35(2AB), as revenue-expenditure. The AO has therefore proceeded to make the impugned disallowance being the difference thereof.

(ii) The assessee has not refuted the AO's findings but, its argument is that once the DSIR has approved any R&D facility, all expenditures in connection with the same were to be allowed. This would therefore imply that certain expenditures beyond that certified by the DSIR could be claimed and accordingly. be allowed by the assessing authority, without the intervention of the DSIR.

(iii) I do not find myself in agreement with the assessee's line of argument, the Assessee's. plea during the current appeal-proceedings is primarily based on the ground that, the appellant was entitled to claim weighted deduction not only towards R&D expenses - in house but also for those research-activities which were carried in the facility as such. The Assessee has also placed reliance in this regard on certain judicial pronouncements. The Assessee's apparent argument is that, it was entitled to deduction of claim u/s 35(2AB) in respect of entire expenditures debited to the R&D account, whether carried out in-house or outside the premises. This stand of the appellant is not tenable. If this plea of the appellant was to be accepted there would be no need in the first place, to involve the DSIR in the process of approval. The certification required from DSIR, forms a crucial conditionality for staking a genuine claim u/s 35(2AB). This essential condition u/s 35(2AB), is only based on the premise that, DSIR is the only 'Technically-equipped Body' which can ascertain and certify the authenticity of a R&D claim; a domain which cannot be entered by a financial entity as the ·I.T. Authority. The requirement of Form-3CL therefore is the cornerstone for making the requisite claim of R&D expenditure - before the Income Tax Authority. By extension of the same logic, it cannot be the Assessee's case, that, the assessing authority could independently and freely examine and certify the genuine-ness of R&D claim made in respect of the research-activity carried on, outside the in-house R&D facility. In this view of the matter, I do not find substance in the Assessee's stand that, for the purpose of in-house R&D certification, the DSIR would be the appropriate certifying authority whereas in respect of the R&D facility as such, It was the assessing authority which could assume the role of a Technical I scientific expert.

In background of the above discussion, it is clear from the provisions of section 35(2AB) and the prescribed conditionalities laid-out therein, that, the DSIR certification, forms the basis for the allowability and extent-thereof in respect of the quantum of claim-as scientific R&D expenditures ·eligible for 200% weighted deduction. The Assessee's argument on this front, therefore is not found to be acceptable.

The judicial precedents quoted by the appellant are not squarely on the issues at hand in the present case. The said judgments have reasoned that R&D facilities could extend beyond the in-house facility. There can be no dispute against this observation. However, there is no finding in the said judgments that the DSIR certification was not an essential requirement. The said cases also do not involve the situation as

in the present case, where there is an acute difference between the R&D claim made by the appellant as opposed to the claim allowed by DSIR in the Form-3CL. In these facts & circumstances the judgments quoted by the appellant do not squarely apply to the present factual matrix."

(iv) It is evident that, the legislative intent behind the allowability and specificity of the claim is supported by the amendment to Rule 6(7A) of I.T. Rules, 1962 by the Finance Act, 2016, w.e.f. 01.07.2016, by providing for expenditure on basis of Form-3CL. The amended rule states that the prescribed authority has to furnish electronically its report (i) in relation to approval of in-house R & D facility in part A of form No.3CL and (ii) quantifying the expenditure incurred on in-house R & D facility by the company during the previous year and eligible for weighted deduction under sub-section 2AB of section 35 of the Act in part B of form No 3CL.In other words the quantification of expenditure has been prescribed vide IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016.

In background of the above discussion and facts & circumstances of the case, the AO's action is upheld. The assessee's grounds of appeal are therefore disallowed."

6. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee has filed a paper book enclosing therein synopsis of submissions, statement of total income and financial statements for the year ended 31st March, 2016, Renewal of recognition of in-house R & D Unit dated 1st April, 2011, Form No.3CL dated 14.05.2018 and the judicial pronouncements relied on. The brief of the written submission is essentially the reiteration of the contentions made before the Income Tax Authorities. Further it was submitted that the issue in question is squarely covered by the orders of the Tribunal in the case of M/s.Mahindra Electric Mobility Ltd. v. ACIT [ITA No.641/Bang/2017 – order dated 14.09.2018] and M/s.Indfrg Limited. V. ACIT [ITA No.98/Bang/2015 – order dated 30.07.2020].

7. The learned Departmental Representative, apart from relying on the order of the Income Tax Authorities, submitted that the amendment to Rule 6(7A) of the I.T.Rules by Finance Act, 2016 with effect from 01.07.2016 is only procedural and the same is applicable to the relevant assessment year.

8. We have heard the rival submissions and perused the material on record. Admittedly, the assessee has in-house Research and Development facilities which is approved by the Department of Scientific and Industrial Research (DSIR) and was entitled to deduction u/s 35(2AB) of the I.T.Act. The Assessing Officer disallowed the deduction to the extent of Rs.43,12,042 on the ground that DSIR has not approved the expenditure in Form 3CL. The CIT(A) confirmed the above disallowance. Further, the CIT(A) in para 5.3(iii) of the impugned order had stated that deduction u/s 35(2AB) of the I.T.Act. is not allowable to the extent of Research & Development activity carried outside the in-house R&D facility of the assessee. We noticed that there is no finding given in the assessment order that expenditure related to Research & Development activity carried out outside in-house R&D facility of the assessee is claimed as deduction u/s 35(2AB) of the I.T.Act. Therefore, these findings of the CIT(A) are not tenable.

8.1 As per section 35(2AB) of the I.T.Act, the DSIR is empowered to approve only R&D facility and not the expenditure. In other words, once the R & D facility is approved by the prescribed authority, i.e., DSIR by issuing Form

No.3CM, the expenses incurred by the assessee have to be allowed u/s 35(2AB) of the I.T.Act. Section 35(2AB)(1) reads as follow:-

> *"(2AB)(1) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and two times of the expenditure so incurred."*

8.2 A reading of the above provision, it is clear that once R & D facility was approved by the DSIR, the expenses incurred by the assessee have to be allowed u/s 35(2AB) of the I.T.Act. If the law wanted the expenditure to be approved by the prescribed authority, same would have been expressly provided. In other words, for the purpose of section 35(2AB) of the I.T.Act, it is provided that facility is to be approved and not the expenditure. Nowhere under the Act, it was stipulated that the deduction u/s 35(2AB) of the I.T.Act was allowable year after year only after approval by DSIR in Form 3CL. The Rule 6(7A) of the I.T.Rules, 1962 was amended by the Finance Act, 2016 with effect from 01.07.2016, wherein it provided that prescribed authority has to furnish electronically its report (i) in relation to approval of in-house R & D facility in Part A of Form No.3CL, and (ii) quantifying the expenditure incurred in in-house R & D facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the I.T.Act in Part B of Form No.3CL. In

other words, the quantification of expenditure has been prescribed vide IT (Tenth Amendment) Rules, 2016 with effect from 01.07.2016 only. Prior to this amendment, no such power was with DSIR. The Bangalore Bench of the Tribunal in the case of M/s.Mahindra Electric Mobility Ltd. v. ACIT [ITA No.641/Bang/2017 – order dated 14.09.2018] had held that prior to 01.07.2016 Form No.3CL has no legal sanctity and it is only w.e.f. 01.07.2016 with the amendment to Rule 6(7A)(b) of the I.T.Rules that the quantification of the weighted deduction u/s 35(2AB) of the I.T.Act has significance. The relevant finding of the Bangalore Bench of the Tribunal reads as follow:-

> *"20. From the above discussion it is clear that prior to 1.7.2016 Form 3CL had no legal sanctity and it is only w.e.f 1.7.2016 with the amendment to Rule 6(7A)(b) of the Rules, that the quantification of the weighted deduction u/s.35(2AB) of the Act has significance. In the present case there is no difficulty about the quantum of deduction u/s.35(2AB) of the Act, because the AO allowed 100% of the expenditure as deduction u/s.35(2AB)(1)(i) of the Act, as expenditure on scientific research. Deduction u/s.35(1)(i) and Sec.35(2AB) of the Act are similar except that the deduction u/s.35(2AB) is allowed as weighted deduction at 200% of the expenditure while deduction u/s.35(1)(i) is allowed only at 100%. The conditions for allowing deduction u/s.35(1)(i) of the Act and under Sec.35(2AB) of the Act are identical with the only difference being that the Assessee claiming deduction u/s.35(2AB) of the Act should be engaged in manufacture of certain articles or things. It is not in dispute that the Assessee is engaged in business to which Sec.35(2AB) of the Act applied. The other condition required to be fulfilled for claiming deduction u/s.35(2AB) of the Act is that the research and development facility should be approved by the prescribed authority. The prescribed authority is the Secretary, Department of Scientific Industrial Research, Govt. Of India (DSIR). It is not in dispute that the Assessee in the present case obtained approval in Form No.3CM as required by Rule 6 (5A) of the Rules. In these facts and circumstances and in the light of the judicial precedents on the issue, we are of the view that the deduction u/s.35(2AB) of the Act ought to have been allowed as weighted deduction at 200% of the expenditure as claimed by the Assessee and ought not to have been restricted to 100% of the expenditure incurred on scientific research. We hold and direct accordingly and allow the appeal of the Assessee."*

8.3 The Bangalore Bench of the Tribunal in the case of M/s.Indfrag Limited v. ACIT [ITA No.98/Bang/2018 – order dated 30.07.2020] had an identical fact by following the order of the Tribunal in the case of M/s.Mahindra Electric Mobility Ltd. v. ACIT (supra) had allowed the appeal of the assessee. On perusal of the order of the Bangalore Bench of the Tribunal in the case of M/s.Indfrag Limited v. ACIT (supra), we noticed that Form No.3CL was issued only on 25.01.2017 (refer para 7 of the order).

8.4 The Ahmedabad Bench of the Tribunal in the case of M/s.Sun Pharmaceutical Industries Ltd. v. Pri.CIT, reported in (2017) 162 ITD 484 (Ahmedabad Trib.) had held that Form No.3CL is merely a report in the form of an intimation regarding approval of in-house R & D facility to be sent from prescribed authority to the Department and once the facility is approved in Form No.3CL, the expenses incurred within the notified period have to be allowed u/s 35(2AB) of the I.T.Act. The said order of the Tribunal was affirmed by the Hon'ble Gujarat High Court in the case of CIT v. Sun Pharmaceutical Industries Ltd. reported in 250 Taxman 270 (Guj.). The Pune Bench of the Tribunal in the case of Cummins India Limited v. DCIT [ITA No.309/Pun/2014 – order dated 15.05.2018] had held that the action of the Assessing Officer curtailing the expenditure and consequent weighted deduction claim u/s 35(2AB) of the I.T.Act on the surmise that prescribed authority has only approved part of expenditure in Form No.3CL is not tenable in law. The relevant finding of the Pune Bench of the Tribunal reads as follow:-

> *"45. The issue which is raised in the present appeal is that whether where the facility has been recognized and necessary certification is issued by the prescribed authority, the assessee can avail the deduction in respect of expenditure incurred on in-house R&D facility, for which the adjudicating authority is the Assessing Officer and whether the prescribed authority is to approve expenditure in form No.3CL from year to year. Looking into the provisions of rules, it stipulates the filing of audit report before the prescribed authority by the persons availing the deduction under section 35(2AB) of the Act but the provisions of the Act do not prescribe any methodology of approval to be granted by the prescribed authority vis-à-vis expenditure from year to year. The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below."*

8.5 In view of the aforesaid reasoning and in the light of judicial pronouncements, cited supra, we hold that in the present case since the deduction is with reference to assessment year 2016-2017 (where the law applicable is the 1st day of April, 2016), which is prior to the Income Tax (Tenth Amendment) Rules, 2016, with effect from 01.07.2016 of Rule 6(7A) of the I.T.Rules, deduction u/s 35(2AB) of the I.T.Act has to be allowed on the basis of the expenditure as recorded by the assessee in the books of account. Admittedly, the Assessing Officer has not disputed the correctness of the claim of expenditure incurred on Scientific Research. The contention of the DR that the amendment to Rule 6(7A) is procedural cannot be accepted, since the amended rule stipulates a condition that apart from approval of in-house R & D facility of assessee, the expenditure also has to be quantified by the prescribed

authority for weighted deduction u/s 35(2AB) of the I.T.Act. Therefore, the amended Rule 6(7A) effect the substantive right of the assessee and cannot be termed merely as procedural. Moreover, the co-ordinate Bench of Bangalore Tribunal in case of M/s.Mahindra Electric Mobility Ltd. v. ACIT (supra) and M/s.Indfrag Limited v. ACIT (supra) have clearly held that prior to 01.07.2016 Form 3CL has no legal sanctity and it is only w.e.f. 01.07.2016 with the amendment to Rule 6(7A) of the I.T.Rules, that the quantification of weighted deduction u/s 35(2AB) of the I.T.Act has significance. Therefore, we hold that the deduction u/s 35(2AB) of the I.T.Act be granted as claimed by the assessee instead of restricting it to the quantum of claim as mentioned in .Form No.3CL by the prescribed authority. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 01st day of January, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 01st January, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-5, Bengaluru.
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore