IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA Nos.133 & 8739/DEL/2019
[Assessment Years: 2013-14 & 2014-15]

Eicher Motors Limited, 3rd Floor, Select City Walk A-3 District Centre, Saket, New Delhi-	Vs	The Joint Commissioner of Income Tax, Special Range-3, Central Revenue Building New Delhi-110002
PAN-AAACE3882D		
Assessee		Revenue

Assessee by	Sh. Ajay Vohra, Sr. Adv. And Ms. Manisha Sharma, Adv.
Revenue by	Sh. R.S. Yadav, Sr. DR

Date of Hearing	**22.08.2022**
Date of Pronouncement	**.08.2022**

ORDER

PER SHAMIM YAHYA, AM,

These appeals by the assessee are directed against respective orders of the Ld. CIT(A), New Delhi, for the Assessment Years 2013-14 and 2014-15 respectively. Since, the issues are common, therefore, these are disposed off by this common order.

2. The grounds are identical except for the change in figure. For the sake of reference, we are referring to grounds of appeal and orders of revenue authorities for Assessment Year 2013-14. The grounds of appeal reads as under:-

"1. That the Commissioner of Income Tax (Appeals) ('CIT(A)')

erred on facts and in law in sustaining disallowance of deduction of research and development expenditure of Rs. 52,69,000 claimed by the appellant under section 35(2AB) of the Income Tax Act, 1961 ('the Act').

2. That the CIT(A) erred on facts and in law in holding that Department of Scientific and Industrial Research ('DSIR') is the competent authority to approve expenses for the purposes of claiming weighted deduction under section 35(2AB) of the Act

3. That the CIT(A) erred on facts and in law in not appreciating that there is no provision under the Act empowering DSIR to approve the quantum of expenditure for the purposes of claiming deduction under section 35(2AB) of the Act.

4. That the CIT(A) erred on facts and in law in not appreciating that the only requirement for claiming deduction under section 35(2AB) is that the in-house Research and Development facility is to be approved by DSIR and not for approval of expenses."

3. In this case, the Assessing Officer restricted the assessee's claim of weighted deduction u/s 35(2AB) of the Act to the amount of Rs.14.03 Crores certified by DSIR and rejected the other amount of Rs.52,69,000/- as against the claim of the assessee for an amount of Rs.14.55 Crores.

4. Upon assessee's appeal Ld. CIT(A) confirmed the same by concluding as under:-

"5.10 In the case of Electronic Corporation India Ltd. Vs ACIT (ITA No.1106/Hyd./2011, Hon'ble ITAT held that "the expenditure approved by DSIR in the certificate given by them in Form 3CL alone was to be granted as a weighted deduction. Therefore neither the tax officer nor the appellate authority can decide on the expenditure which will be entitled to weighted deduction u/s 35(2AB) of the Act."

5.11 In the case of Coromandel International Ltd vs. ADIT: ITA No.101/Hyd/2012, wherein the ITAT held that

unapproved expenses could not be allowed for weighted deduction u/s 35(2AB) and further held as under:

> *"7. We have considered the arguments of the parties and perused the materials on record as well as the orders of the Revenue authorities. We have also carefully applied our mind to the decisions relied upon by the parties. It is a fact on record that out of the total deduction of Rs. 4,73,31,953/- claimed by the assess.ee towards R&D expenditure on capital field, DSIR in its approval in form No. 3CL allowed the claim to the extent of Rs. 4,71,08,743 and in the process disallowing the amount of Rs. 2,23,215/-. Whereas the entire revenue expenditure of Rs. 1,31,87,576/- was not approved by DSIR. It is the contention of the learned AR that approval of DSIR as envisaged u/s 35(2AB) is only confined to deduction claimed under that section. Such approval is neither necessary to decide whether expenditure is in the nature of revenue or capital nor it is relevant for considering assessee's claim under any other provisions of the Act. We find force in the contention of the learned AR. On a reading of the provision contained u/s 35 as a whole and section 35(2AB) in particular and on perusal of form No. 3CL, we are of the view that approval of DSIR as contemplated is only in respect of weighted deduction to be claimed u/s 35(2AB) of the Act. It has no relevance for determining whether the expenditure claimed is allowable under any other provisions of the Act. The only condition prescribed u/s 35I2AB) is. if the claim of the assessee is allowed u/s 35(2AB) it will not be allowable under any another provision. In the present case, no material has been brought on record by the department to controvert assessee's claim that it has incurred towards salary and wages of employees engaged in revenue expenditure of Rs. 1,31,87,576/-, R&D and capital expenditure of Rs. 4,73,31,953/- on R&D activities. That being the case unapproved revenue expenditure of Rs. 1,31,87,576/-, if not allowable u/s 35(2AB) of the Act, in the absence of approval from DSIR certainly can be allowed as deduction u/s 35(l)(i) and 37(1) of the Act.*

5.12 Considering the above facts, appellant is eligible for weighted deduction u/s 35(2AB) on the amount certified by DSIR as revenue expenditure. DSIR is the competent authority which has confirmed the cost incurred by the appellant during the year under consideration after examining the detail of the expenses furnished by the appellant. No rectification was done by DSIR till date, it infers that there is no mistake on the part of DSIR on account of approving revenue expenses in Form 3CL. Hence, difference of Rs. 52.69 lacs (Rs.14.55 Crore - Rs. 14.03 Crore) is not allowable to appellant for weighted deduction u/s 35(2AB) and AO is justified in disallowing the excess claim. The addition made by the Assessing Officer is hereby confirmed."

5. Against the above order, the assessee is in appeal before us.

6. We have heard both the parties and perused the records. Ld. Sr. Counsel for the assessee submitted that issues covered in favour of the assessee via series of Hon'ble High Court's order including that of jurisdictional High Court. The list of orders submitted by the Ld. Counsel reads as under:-

a) Scientific research expenses incurred at approved in-house R & D facility are eligible for weighted deduction under section 35(2AB) of the Act, whether incurred prior to or post the date of such approval by DSIR mentioned in Form 3CM

i. CIT vs Claris Lifesciences Ltd. 326 ITR 251 (Guj.)

ii. CIT vs Sandan Vikas India Ltd. 335 ITR 117 (Del.)

iii. Maruti Suzuki India Ltd. vs Union of India & Anr. 397 ITR 728 (Del.)

b) Deduction under section 35(2AB) cannot be denied in respect of recognized in-house R & D centre even though approval in Form 3CM for the relevant years was under consideration or awaited.

iv. CIT vs TVS Electronics Ltd. 419 ITR 187 (Madras)

v. Minilec India (P.) Ltd. vs ACIT 171 ITD 124 (Pune Trib.)

c) Expenditure eligible for deduction under section 35(2AB) of the Act cannot be restricted to the amount of expenditure certified by Department of Scientific and Industrial Research ('DSIR') in Form 3CL

vi. ACIT vs Torrent Pharmaceuticals (ITA No569/Ahd/2004 (Ahd. Trib.)

vii. Coromandel International Ltd. vs ADIT ITA No.101/Hyd/2012 (Hyd. Trib.)

viii. Cummins India Ltd. vs DCIT [2018] 96 taxmann.com 576 (Pune Trib.)

d) Deduction under section 35(2AB) cannot be denied merely on the ground that prescribed authority has not submitted report in Form 3CL

ix. Sun Pharmaceutical Industries Ltd. vs PCIT 162 ITD 484 (Ahd. Trib.)

x. Sri Biotech Laboratories India Ltd. vs ACIT 36 ITR (T) 88 (Hyd.)

xi. DCIT vs STP Ltd. [2021] 187 ITD 538 (Kolkata Trib.)

e) Amendment in Rule 6(7A) of IT Rules, 1962 regarding quantification of weighted deduction under section 35(2AB) in Form 3CL applies prospectively w.e.f. 01.07.2016.

xii. Provimi Animal Nutrition India Pvt. Ltd.[2021] 124 taxmann.com 73 (Bangalore Trib.)

xiii. ACIT vs Crompton Greaves Ltd. [2020] 181 ITD 40 (Mumbai Trib.)

xiv. DCIT vs Force Motors [2021] 91 ITR (T) 8 (Pune-Trib.)

Re: Allowability of ESOP expenses (Additional Ground of appeal)

xv. CIT vs M/s PVP Ventures Ltd. 211 Taxman 554 (Mad.)

xvi. CIT vs Lemon Tree Hotels Ltd. ITA No.107/2015 (Del HC)

xvii. Biocon Limited vs DCIT 155 TTJ 649 (Bang.)(SB)

7. In this regard, we may gainfully refer to the order of the Hon'ble Gujarat High Court in the case of CIT vs Claris Lifescience Ltd. (supra) as under:-

> *"6. The Tribunal has discussed this issue at length in its order. It was contended by the assessee before the Tribunal that nowhere the provisions provide that expenditure from the date of approval only has to be allowed. In the absence of those words, such conditions cannot be imputed in the statute by the lower authorities. Doing so amounts to reading more in the law which is not expressly provided. The words used are any expenditure incurred by the assessee on scientific research on the in-house "R & D" facility approved by the prescribed authorities has to be allowed by deduction of expenditure so incurred. Meaning of these words is plain and clear that the facility is to be established first and on approval of the facility all the expenditure so incurred by the assessee for development of in-house facility is to be held as eligible for weighted deduction. Form No. 3CM, which is order of approval as provided by the rules in this behalf also does not have any mention of date of approval rather it speaks of only approval. The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the "R & D" facility, expenditure so incurred is eligible for weighted deduction.*
>
> *7. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of (i) development of facility; (ii) incurring of expenditure by the assessee for development of such facility; (iii) approval of the facility by the prescribed authority, which is "DSIR"; and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee. The provisions nowhere suggest or imply that "R & D" facility is to be approved from a particular*

date and in other words, it is nowhere suggested that date of approval only will be cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly manifests that the assessee has to develop facility,, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on plain reading of section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of "R & D" facility has to be allowed for weighted deduction as provided by section 35(2AB). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up R & D facility in India, the Legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, intention of the Legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.

8. 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.

9. We are, therefore, of the view that no substantial question of law arises out of the order of the Tribunal."

8. Hon'ble Delhi High Court in the case of CIT vs Sandan Vikas India Ltd.(Supra) held as under:-

1. The assessee claims that it is engaged in the business of manufacturing of automotive air conditioning and is also undertaking research and development activity in this behalf. In the assessment year, i.e., assessment year 2005-2006, the assessee claimed a deduction of Rs.3,83,62,003/- under

Section 35 (2AB) of the Income Tax Act (hereinafter referred to as "the Act"). The business expenses incurred are naturally allowed as deductions, however, the aforesaid provisions gives weighted deduction to the assessees, who are engaged into research and development activity. The objective is to encourage research and development by the business enterprises in India.

2. The provision further states that in order to claim this weighted deduction, it is to be certified by the Competent Authority that the assessee had undertaken research and development activity. The competent authority in this behalf is Department of Scientific & Industrial Research (DSIR). The assessee had approached DSIR vide application dated 10th January, 2005. The DSIR vide its letter dated 23rd February, 2006 granted recognition of the in-house R&D facilities of the assessee company and also granted approval for the expenses incurred by the company on in-house R&D facility in prescribed form 3CM by letter dated 18th September, 2006. The Assessing Officer, however, refused to accord the benefit of the aforesaid provisions of weighted deduction to the assessee on the ground that recognition and approval was given by the DSIR in February/September 2006, i.e., in the next assessment year and, therefore, the assessee was not entitled to the benefit. The CIT(Appeal) accepted this view of the Assessing Officer and dismissed the appeal, however, the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") has come to the conclusion that the assessee would be entitled to weighted deductions of the aforesaid expenditure incurred by the assessee in terms of the Section 35(2AB) of the Act and in coming to this conclusion, the Tribunal has relied upon the judgment of Gujarat High Court in Commissioner of Income Tax v. Claris Lifesciences Ltd., 326 ITR 251/[2008] 174 Taxman 113. We have gone through the aforesaid judgment of the Gujarat High Court and find that Gujarat High Court detailed in no-uncertain terms that the cut-off date mentioned in the certificate issued by the DSIR would be of no relevance. What is to be seen is that the assessee was in indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by DSIR is issued, that would be sufficient to hold that the assessee fulfills the conditions laid down in the aforesaid provisions. The discussions, which is undertaken by the Gujarat High Court while interpreting the aforesaid provisions, is extracted below:

> *"7. .....The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the research and*

development facility, expenditure so incurred is eligible for weighted deduction.

8. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of:

> *(i) Development of facility;*
>
> *(ii) Incurring of expenditure by the assessee for development of such facility;*
>
> *(iii) approval of the facility by the prescribed authority, which is DSIR; and*
>
> *(iv) allowance of weighted deduction on the expenditure so incurred by the assessee.*

9. The provisions nowhere suggest or imply that research and development facility is to be approved from a particular date and, in other words, it is nowhere suggested that date of approval only will be cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly manifests that the assessee has to develop facility, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on plain reading of section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered Rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of Rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of R&D facility has to be allowed for weighted deduction as provided by Section 35(2AB). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up research and development facility in India, the legislature has provided this provision to encourage the development of the facility by providing deduction of weighted

expenditure. Since what is stated to be promoted was development of facility, intention of the legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.

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. Learned Departmental Representative could not controvert that the issue stands covered in favour of the assessee by aforesaid decision of the Hon'ble High Courts. It is settled law that decisions of High Court prevails over lower courts and Tribunals. Hence, we hold that as per extant provision, the claim is allowable. Accordingly, we set-aside the orders of authorities below and decide the issue in favour of the assessee.

10. The assessee has also filed additional ground which reads as under:-

"1. That on the facts and circumstances of the case and in law, the Assessing Officer ought to have allowed, in pursuance to law clarified by the Hon'ble Rajasthan High Court in the case of Chambal Fertilisers and Chemicals ltd. vs JCIT: D.B. ITA No.52/2018 and Hon'ble Bombay High Court in the case of Sesa Goa Ltd. vs JCIT: 117 taxmann.com 96(Bom. HC), deduction of Rs.1,23,32,762, being education cess on income tax and dividend distribution tax, paid by the Appellant before the due date of filing return of income for the subject assessment year."

11. The Ld. Counsel for the assessee submitted, he shall not be pressing this ground. Hence, this ground is dismissed as not pressed.

12. The assessee has also filed another addition ground, which reads as under:-

> *"That on the facts and circumstances of the case and in law, the ESOP expenditure of Rs.1,29,68,750/- being the difference between fair market value on the date of exercise and the exercise price, ought to be allowed as deduction under section 37(1) of the Act."*

13. For the admission of this, he prayed as under:-

> *"The aforesaid additional ground of appeal calls for being admitted and adjudicated on merits in view of the discretion vested in your Honour under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963, the decision of the Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT: 229 ITR 383 and Jute Corporation of India vs CIT: 187 ITR 688 (SC)."*

14. Upon careful consideration, we admit this additional ground. In this, the Ld. Counsel for the assessee submitted that he shall be relying on ITAT Special Bench decisions in case of Biocon Limited vs DCIT 155 TTJ 649 (Bang.)(SB) which was affirmed by the Hon'ble Karnataka High Court in 430 ITR 151 (Karn.). However, he fairly agreed that these decisions were not there when the matter was considered by revenue authorities. Hence, he prayed that this issue may be remitted to the file of the AO to decide as per the ratio arising in these case laws.

15. Ld. Sr. DR did not have any objection in this regard.

16. Hence, this issue is remitted to the file of the AO.

17. Accordingly, this appeal of the assessee is partly allowed for statistical purposes.

18. Our above order applies mutatis mutandis to the appeal for Assessment Year 2014-15 also.

19. In the result, both appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 29th August, 2022.

Sd/-	**Sd/-**
[YOGESH KUMAR US] **JUDICIAL MEMBER**	**[SHAMIM YAHYA]** **ACCOUNTANT MEMBER**

Delhi; 29.08.2022.
Shekhar,
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi