

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.8999/Del/2019

निर्धारणवर्ष/Assessment Year: 2015-16

Anand NVH Production Pvt. Ltd., F-3/5, Vasant Vihar, New Delhi.	बनाम Vs.	JCIT Special Range-01, New Delhi.
PAN No. AAECA0297J		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Ashwani Kumar, CA & Shri Rahul Chourasia, CA
राजस्वकीओरसे /Revenue by	Shri Zahid Parvez, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	14.06.2022
उद्घोषणाकीतारीख/Pronouncement on	12.09.2022

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-32, New Delhi dated 25.09.2019 for the AY 2015-16. The assessee in its appeal raised the following grounds: -

1. "That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the action of the Assessing Officer in denying claim of weighted deduction of Rs.4,87,55,210/-, under section 35(2AB) of the Income Tax Act, 1961.

- 1.1 *That the CIT(A) erred on facts and in law in holding that the appellant was not entitled to claim deduction under section 35(2AB) of the Act on the alleged ground that: (a) deduction was not claimed in the return of income; and (b) the approval granted by the Department of Scientific and Industrial Research ('DSIR') was not applicable to the relevant assessment year 2015-16.*
- 1.2 *That the CIT(A) failed to appreciate that there was no embargo in considering the claim of deduction under section 35(2AB) of the Act made by the appellant during the course of assessment proceedings, even if the same was not made in the return of income.*
- 1.3 *That the CIT(A) failed to appreciate that the in-house Research and Development facility of the appellant was undisputedly approved by the DSIR and thus the cut-off date mentioned in the approval certificate was of no relevance for the purpose of allowing deduction under section 35(2AB) of the Act.”*

2. Briefly stated the facts of the case are that assessee is engaged in the business of manufacture and sale of Rubber Metal Automobiles Parts, filed its return of income on 27.11.2015 declaring income of Rs.17,93,16,800/-. The assessment was completed u/s 143(3) on 27.12.2017 determining the income of the assessee at Rs.18,44,63,174/-. In the course of assessment proceedings the assessee by letters dated 15.11.2017 and 26.09.2017 made a claim for weighted deduction u/s 35(2AB) of the Act. The assessee contended that while filing the return of income the weighted deduction @200% u/s 35(2AB) of the Act though eligible to claim was inadvertently omitted to claim and, therefore, requested the Assessing Officer to allow weighted deduction u/s 35(2AB) while completing the assessment. However, the Assessing Officer did not consider the said claim of the assessee while completing the assessment

u/s 143(3) of the Act. The assessee carried the matter before the Ld.CIT(A) and the Ld.CIT(Appeals) rejected the claim of the assessee.

3. Ld. Counsel for the assessee submits that though the assessee not claimed the weighted deduction u/s 35(2AB) of the Act in the original return filed, however, in the course of assessment proceedings while giving reply to notice u/s 142(1) of the Act in its letter dated 15.11.2017 made claim for weighted deduction u/s 35(2AB) of the Act. The Ld. Counsel submits that the reply filed in response to notice under section 142(1) of the Act was placed at pages 92 to 116 of the Paper Book. The Ld. Counsel also inviting our attention to pages 82 to 91 submits that the assessee in the course of assessment proceedings by way of letter dated 26.09.2017 also made this claim for weighted deduction u/s 35(2AB) of the Act. The Ld. Counsel submits that the Assessing Officer neither considered the claim of the assessee nor given any finding on the claim made by the assessee while completing the assessment u/s 143(3) of the Act. Referring to para 5.5 of the Ld. CIT(Appeals) order the Ld. Counsel submits that the claim for weighted deduction was denied by the Ld.CIT(A) on the ground that the approval was granted by Department of Scientific and Industrial Research on 12.02.2016 and therefore claim for deduction cannot be considered for the AY 2015-16. The Ld. Counsel for the assessee placing reliance on the decision of the Gujarat High Court in the case of CIT Vs. Claris Life Sciences Ltd. (326 ITR 251) and the decision of Delhi High Court in the case of CIT vs. Maruti Udyog India Ltd.

(397 ITR 728) submits that the assessee is entitled for weighted deduction u/s 35(2AB) of the Act for the AY 2015-16 though the approval was granted on 12.02.2016 by Department of Scientific and Industrial Research.

4. The Ld. DR referring to page 117 of the PB which is the letter dated 09.09.2015 of the assessee requesting Department of Scientific and Industrial Research, Ministry of Science and Technology to recognize the assessee for R&D facility and for grant of approval it is submitted that the assessee requested for such approval w.e.f. 01.04.2015 which falls under AY 2016-17 and, therefore, it is the submission of the Ld. DR that assessee is not entitled for weighted deduction u/s 35(2AB) of the Act.

5. Heard rival submissions, perused the orders of the authorities below. From the Paper Book page 82, we noticed that in the course of assessment proceedings the assessee by way of letter dated 26.09.2017 made its claim for weighted deduction u/s 35(2AB) of the Act as under:

***“Expenses on R&D u/s 35(2AB) Rs.4,87,55,210/-***

*On perusal of the Profit & Loss a/c and audited Balance Sheet it transpires that during the year under consideration, assessee has incurred a sum of Rs.4,87,56,060/- towards R&D revenue expenses which has been duly debited in Profit & Loss a/c. The summary of which has also been stated at Para No.23 of Director’s report forming part of audited Balance Sheet. The details of such revenue expenses duly certified by Chartered Accountant are also attached herewith.*

*It is respectfully submitted that the assessee (though eligible to claim weighted deduction @200% u/s 35(2AB)), inadvertently, had claimed only Rs.4,87,55,210/-. And*

hence the assessee was eligible to claim @200% amounting to Rs.9,75,10,420/- as against claimed by assessee at Rs.4,87,55,210/-. All the relevant books of accounts consisting of vouchers, journal book etc. is verifiable.

The R&D activities of assessee includes innovation and innovation in design, development, manufacture and export of automotive components involving rubber and rubber to metal bonded parts, which help in reduction of Noise, Vibration and harshness.

**It is also respectfully submitted that no Capital expenditure in R&D during the year under consideration is claimed as weighted deduction.**

In short, the detail of R&D expenses incurred during AY 2015-16 is as under:

Revenue expenses	Rs.4,87,55,210/-
Capital expenses	.....NIL.....
Total	Rs. <u>4,87,55,210/-</u>

The date of filing of application for recognition is 11.09.2015 w.e.f. 01.04.2015 (copy attached) and date of grant of recognition and approval on 3CM is 12.02.2016 (copy attached).

It is respectfully submitted that benefit of weighted deduction on in-house Research and Development expenditure is allowed from the year in which the taxpayer incurred expenditure irrespective of the date of Recognition etc. by Govt. of India/DSIR.

**The Hon'ble High Court in the case of Claris Life Sciences Ltd., (2010) 326 ITR 251 (Guj.) 3, held that**

*“the provisions (Sec. 35(2AB) of the Act nowhere suggest or imply that the cutoff date mentioned in the certificate issued by the Govt. of India/Deptt. Will be cut-off date for eligibility of weighted deduction on the expenditure incurred. What is to be seen is that the taxpayer was indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by Govt. of India/Deptt. is issued, that would be sufficient to hold that the taxpayer fulfilled the conditions laid down in the aforesaid provisions. In view of above, the High Court held that the taxpayer was eligible for the weighted deduction of the R&D expenditure incurred for the AY 2005-06”.*

Your Lordships have held as under:

*We have heard rival submissions and perused material available on record. Section 35(2AB) has been reproduced above. It shall be our endeavour first to ascertain import of plain and simple meaning of this Section. All along, section speaks of (i) development of facility and (ii) incurring of expenditure by the assessee for development of such facility (iii) approval of the facility by the prescribed authority which is "DSIR" in the instant case and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee. Provision nowhere suggests or implies that "R&D"; facility is to be approved from a particular date 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 the date onwards. A plain reading clearly manifests that 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 incurred. These words refer back to the facility which is so developed. Consequently, a plain reading clearly indicates that the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility.*

- 1. Name, Address and PAN of the company.*
- 2. Nature of the business of the company -  
Manufacture/production of article or thing.*
- 3. Objectives of the scientific research to be conducted by in-house Research and Development facility.*
- 4. Address at which such Research & Development facility is located.*
- 5. Ref. No. and date of the application.*

*The above Research and Development facility is approved for the purpose of Section 35(2AB), subject to the conditions underlined therein.*

Rule also provide only to the effect that if conditions are fulfilled the prescribed authority shall pass an order in Form No. 3CM. It nowhere refers to any cut-off date for eligibility of weighted deduction. Similarly, Form No. 3CM which is order of approval, does not provide any power to the prescribed authority or any stipulation to set out a cut-off date in this behalf. A plain and harmonious reading of provision, rule and form clearly suggest that once facility is approved, entire expenditure so incurred on development of "R&D"; facility has to be allowed for weighted deduction as provided by **Section 35(2AB)**. In our considered view, a plain and simple reading is enough to give meaning of provision. An interpretation is to be applied when there is an ambiguity in the meaning of provisions. In our view there is no such ambiguity here."

**Similarly, Hon'ble Delhi High Court has also held on the same lines in the latest rulling (2017) in the case of Maruti Udyog Ltd. wherein the Hon'ble Delhi High Court has observed as under:**

"24. Thus, the non-mentioning of the Rohtak R&D; Centre in the cover letter 31<sup>st</sup> October, 2011 could at best be termed as a clerical error. According to Mr. Ganesh, the certification dated 9<sup>th</sup> March, 2015 had certified the entire R&D; expenses for both the Centres and the Petitioner had merely requested for addition of the Rohtak R&D; Centre in the said certification. However, the DSIR, in the most arbitrary manner, instead of adding the name of the Rohtak R&D; Centre, deleted the expense incurred for the said R&D; Centre and issued the Corrigendum dated 7<sup>th</sup> May, 2015. This, according to Mr. Ganesh, has inflicted a huge financial impact to the tune of Rs.250 crores (approx), on the petitioner by reducing the R&D; expenditure under section 35(2AB) of the Act by Rs.124.7 crores. Since the petitioner is entitled to claim twice the said amount as deduction under **Section 35(2AB)** of the Act, the financial impact for the petitioner is to the tune of Rs.250 crores. Mr. Ganesh submits that the DSIR having issued the Form 3CL dated 9<sup>th</sup> March, 2015 for the Rohtak Centre, the Corrigendum dated 7<sup>th</sup> May, 2015 reducing the amount of R&D; expenditure is per se contrary to **Section**

**35(2AB)**. Moreover, according to Mr. Ganesh, the purpose of approval u/s **35(2AB)** of the Act is not merely to provide deduction qua expenditure incurred on R&D; Centres, from a particular date, but only to ensure that the R&D; Centre is duly certified by the relevant authority. Thus, according to Mr. Ganesh, the Corrigendum dated 7<sup>th</sup> May, 2015 is liable to be quashed. He relies on Sandan Vikas (supra) and Claris Life Sciences (supra).

38. It is admitted position on both sides that the R&D; Centre at Rohtak is recognized but the question being raised is as to whether the expenditure incurred on the said Centre since inception i.e., even prior to recognition being accorded is entitled to the benefit under **Section 35(2AB)** of the Act. The legislative intent behind this provision is to encourage innovation, research and development in India and non-grant of the benefit under **Section 35(2AB)** of the Act defeats the legislative intent. The Auditor's certificate on record is categorical that the petitioner is maintaining separate sets of accounts for the Gurgaon and the Rohtak Centres and the necessary details of the expenditure incurred therein have also been submitted as far back as on 31<sup>st</sup> October, 2011 and even thereafter. Even the Form 3CM which was issued by the DSIR under cover letter dated 2<sup>nd</sup> February, 2015, mentions both the Gurgaon and the Rohtak R&D; Centres. Just because the Petitioner sought a correct in the certificate of expenditure which was issued to it, the complete removal of the R&D; expenditure of the Rohtak R&D; Centre in the certification issued by the DSIR is wholly unsustainable.

41. **Section 35(2AB)** clearly provides that any expenditure incurred by a party on its R&D; facility except, insofar as it relates to land and building is liable to be allowed to be claimed as deduction (twice the amount of expenditure). A perusal of the scheme of the Act especially **Section 35(2AB)** and **35AB** reveals in no uncertain terms, that the purpose behind these provisions is to provide impetus for research, development of new technologies, obtaining patent rights, copyrights and know-how.



44. *In the facts and circumstances of the present case, this Court holds that the Petitioner is entitled to deduction under **Section 35(2AB)** of the Act for the expenditure in respect of its Rohtak R&D; Centre as per the provisions of **Section 35(2AB)** for AYs 2011-12, 2012-13 and 2013-14. Accordingly, the Corrigendum dated 7<sup>th</sup> May, 2015 is set aside and the Respondent No.1 DSIR is directed to scientific research on the Rohtak R&D; Centre of the Petitioner for AYs 2011-12, 2012-13 and 2013-14. Since the DSIR has already issued the certification for the Gurgaon R&D; Centres, for AYs 2012-13 and 2013-14, no orders are called for in that respect. The Respondent No.2 is further directed to give consequential deductions as per **Section 35(2AB)** to the Petitioner.”*

*It is therefore, clear that for allowability of weighted deduction u/s 35(2AB), the law does not provide any cut-out date. The main criteria of allowability is that the assessee must have undertaken R&D activities. It is, therefore, requested that kindly allow weighted deduction @200% amounting to Rs.9,75,10,420/- in the present case.*

*The fact that the assessee could not claim in the original return is also not a bar in allowing weighted deduction at any later stage. It will kindly be appreciated that a trite rule of law is not tax can be recovered from an assessee without the authority of law. Any recovery, contrary to the provisions of the Act, which may result unjust enrichment to the exchequer, would be ultra-virus Article 265 of the Constitution.”*

6. Similarly in its reply dated 15.11.2017 on the notice issued u/s 142(1) of the Act by the Assessing Officer the assessee made claim for weighted deduction us 35(2AB) of the Act in the course of assessment proceedings. However, the Assessing Officer neither considered the claim of the assessee nor given any finding as to why he has not considered the claim for deduction made by the assessee in the order

passed u/s 143(3) of the Act. Before the Ld.CIT(Appeals) the assessee by way of additional ground made claim for weighted deduction u/s 35(2AB) of the Act. However, the Ld. CIT(Appeals) denied the claim for weighted deduction u/s 35(2AB) observing as under: -

*“5.5 Ground no.5 pertains to disallowance of weighted deduction u/s 35(2AB) on account of expenditure made on Research & Development as provision of I.T. Act. On careful perusal of the facts of the case, it is seen that appellant has not claimed the weighted deduction u/s 35(2AB) of the Act in its ITR. It is seen that appellant has already claimed the deduction of Rs.4,87,55,210/-. Further, it is seen that grant of recognition and approval has been given on 12.02.2016 i.e. during AY 2017-18. Therefore, the same cannot consider in AY 2015-16. Accordingly, ground no. 5 is dismissed.”*

7. On perusal of the order of the Ld.CIT(A), we see that the order passed by the Ld.CIT(A) is very cryptic and none of the submissions of the assessee were considered by the Ld.CIT(Appeals). We also noticed that in spite of assessee making its claim before the Assessing Officer in the course of assessment proceedings the AO failed to examine the claim of the assessee with reference to the evidences furnished in the course of assessment proceedings. Therefore, in the interest of justice, we are of the view that this matter should go back to the Assessing Officer for examining the claim of the assessee afresh in accordance with law after examining the evidences furnished by the assessee in support of its claim for weighted deduction u/s 35(2AB) of the Act. Thus, we restore this issue to the file of the Assessing Officer with the direction to consider the claim of the assessee and examine the issue *denovo* in accordance

with law after providing adequate opportunity of being heard to the assessee. Grounds raised by the assessee are allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 12/09/2022

Sd/-  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 12/09/2022

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**