IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1628 & 1629/PUN/2018
निर्धारण वर्ष / Assessment Years : 2014-15 & 2015-16

ACIT, Circle-1, Aurangabad.	Vs.	M/s. Ajeet Seeds Ltd., Tapadia Terraces, 2nd Floor, Adalat Road, Aurangabad- 431001. PAN : AACCA3455G
Appellant		Respondent

आयकर अपील सं. / ITA Nos.1353 to 1356/PUN/2019
निर्धारण वर्ष / Assessment Years : 2010-11 to 2013-14

DCIT, Central Circle-1, Aurangabad.	Vs.	M/s. Ajeet Seeds Pvt. Ltd., Tapadia Terraces, 2nd Floor, Adalat Road, Aurangabad- 431001. PAN : AACCA3455G
Appellant		Respondent

Revenue by	:	Shri Abhinay Kumbhar
Assessee by	:	Shri Nikhil S. Pathak
Date of hearing	:	03.01.2023
Date of pronouncement	:	19.01.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the Revenue directed against the separate orders of the ld. Commissioner of Income Tax (Appeals)-1, Aurangabad ['the CIT(A)'] dated 02.07.2018 for the assessment

years 2014-15 & 2015-16 and dated 10.07.2019 for the assessment years 2010-11 to 2012-13 respectively.

2. Since the identical facts and common issues are involved in all the above captioned six appeals of the Revenue, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the Revenue in ITA No.1353/PUN/2019 for the assessment year 2010-11 are stated herein.

ITA No.1353/PUN/2019, A.Y. 2010-11 :

4. Briefly, the facts of the case are that the respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of research, production, processing and marketing of seeds to farmers. The original Return of Income for the assessment year 2010-11 was filed on 27.09.2010 declaring total income of Rs.2,00,81,225/-. Against the said return of income, the assessment was originally completed by the Assessing Officer vide order dated 24.04.2012 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.2,24,40,208/- before set-off of brought forward losses. On appeal before the ld. CIT(A), the appeal was partly allowed and the Assessing Officer passed an order giving effect to the order of the ld. CIT(A), wherein, the income was assessed at Rs.2,00,30,230/-

before set-off of brought forward losses. Subsequently, the assessment was reopened based on the information furnished by the Ministry of Science and Technology, Department of Scientific and Industrial Research, Technology Bhavan, New Delhi, wherein, it was stated that no approval u/s 35(2AB) was granted to the respondent-assessee company from the period of 01.04.2005 to 31.03.20009 vide letter dated 20.01.2017.

5. Based on this information, the Assessing Officer formed an opinion that the income had escaped assessment to tax and, accordingly, issued notice u/s 148 on 26.03.2017. In reply, the respondent-assessee vide letter dated 21.04.2017 submitted that the original return of income may be treated as return of income in response to notice u/s 148 of the Act. The respondent-assessee also sought the reasons for reopening the assessment. On receipt of the same, the respondent-assessee filed the objections against the reopening of the assessment, which were disposed of by the Assessing Officer vide letter dated 12.07.2017. The respondent-assessee also informed that the Writ Petition filed before the Hon'ble Bombay High Court challenging the reassessment proceedings u/s 147 came to be dismissed vide order dated 26.04.2018. Subsequently, the assessment was completed by the Jt. Commissioner of Income Tax (OSD), Circle-1, Aurangabad ('the

Assessing Officer') vide order dated 22.06.2018 denying the claim for weighted deduction u/s 35(2AB) at Rs.8,57,32,775/- for want of requisite approval u/s 35(2AB) of the Act. However, the Assessing Officer had allowed the expenditure incurred on Research and Development (R&D) as "revenue expenditure".

6. Being aggrieved by the above order of assessment, an appeal was filed before the ld. CIT(A) who vide impugned order allowed the claim of weighted deduction u/s 35(2AB) on the ground that the recognition obtained by the respondent-assessee is good enough for allowing the weighted deduction u/s 35(2AB) of the Act. The ld. CIT(A) also placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Minilec India (P.) Ltd. vs. ACIT in ITA No.690/PUN/2015 order dated 09.04.2018 and Nath Bio Genes (India) Ltd. vs. ACIT in ITA No.367/PUN/2012 order dated 27.01.2014. The ld. CIT(A) while allowing the appeal had followed his own orders for the assessment year 2014-15 in appeal no.ABD/CIT(A)-1/363/2016-17, wherein, the following findings were recorded by the ld. CIT(A) :-

> *"With regard to the scientific research, the appellant company had set up in-house facility at Aurangabad. The Research Facility had been approved by the Department of Scientific & Industrial Research and Development ("DSIR"). The in-house R & D unit was recognized by DSIR by its letter No.TU/IV-RD/2116/99-2000 dated May 30th, 2000 which was valid till March 31, 2003 and had been renewed time and again. The Secretary, DSIR also approved the facility of the appellant company by Form 3CM No.TU.IV-15(236)/35(2AB)/3CM/2/7/2007 dated April 2, 2007. Thereafter renewal of recognition was accorded*

by the DSIR to the facility by its letter No.TU/IV-RD/2116/2009 dated January 12, 2010 for Renewal of the Recognition. Such renewal was up to the year March 31, 2012. Thereafter, the renewal of recognition had been granted vide letter dated July 18, 2012 up to March 31, 2016. In support of the same, the letters issued by the DSIR were also submitted during the appellate proceedings for AY 2014-15. Further the Secretary, DSIR vide order No.TU/IV-15(1485)/ 35(2AB)/3CM/1226/2017 also accorded the approval to the R & D facility of the appellant company from 01.04.2016 to 31.03.2019. The fact that Form 3CK and 3CM was not available for the current year is totally immaterial."

7. Being aggrieved by the decision of the ld. CIT(A), the Revenue is in appeal before us in the present appeal.

8. The ld. CIT-DR submits that in the absence of requisite approval u/s 35(2AB), the ld. CIT(A) ought not to have granted the weighted deduction u/s 35(2AB) of the Act. He further submits that the recognition of R&D facilities is different from the requisite approval as envisaged u/s 35(2AB) of the Act. Thus, he submits that the ld. CIT(A) had grossly erred in granting the benefit of weighted deduction u/s 35(2AB) without satisfying himself that the conditions precedent for allowing the benefit of weighted deduction u/s 35(2B) of the Act.

9. On the other hand, ld. AR submits that the respondent-assessee is entitled to claim for deduction u/s 35(2AB), as facility had been recognized by the Department of Scientific and Industrial Research ('DSIR') and the requisite approval for availing the benefit of section 35(2AB) granted by the DSIR for the period from

01.04.2005 to 31.03.2009 and the respondent-assessee company filed application before the DSIR for extension of such approval. Non-issuance of Form No.3CM by DSIR was merely procedural, which would not disentitle the assessee to claim of deduction u/s 35(2AB) of the Act. In this regard, he placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sandan Vikas (India) Ltd., 22 taxmann.com 19 (Delhi) and Maruti Suzuki India Ltd. vs. Union of India, 84 taxmann.com 45 (Delhi). Without prejudice to the above, it is submitted that once the approval is granted by DSIR for the purpose of claiming deduction u/s 35(2AB), there was no requirement under the law to seek extension of such approval and Form No.3CM does not prescribe any period of validity, once approval is given, it is valid for ever. Finally, it is submitted that the exemption provision should be interpreted liberally placing reliance on the decision of the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. vs. CIT, 62 Taxman 480 (SC).

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to whether the respondent-assessee is entitled for deduction u/s 35(2AB) of the Act in respect of expenditure incurred on R&D under the provisions of

section 35(2AB) of the Act or not?. For better appreciation, the provisions of section 35(2AB) read as under :-

> *"35. ………*
>
> *(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[43], then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred:*
>
> ***Provided** that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred.*
>
> *Explanation.—For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).*
>
> *(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.*
>
> *(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.*
>
> *(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.*
>
> *(5) [***]*
>
> *(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2008."*

11. On mere perusal of the above provisions of the Act, it would be clear that the respondent-assessee would be entitled for weighted

deduction u/s 35(2AB) on account of (i) expenditure incurred on R&D, (ii) subject to the requisite approval of such facilities by prescribed authorities i.e. DSIR and (iii) the respondent-assessee would be entitled for weighted deduction on the expenditure so incurred. In the present case, no doubt, expenditure had been incurred on R&D, but the requisite approval u/s 35(2AB) was not obtained from the prescribed authorities, as evident from the assessment order. The approval originally granted was valid upto 31.03.2009 only. No doubt, the respondent-assessee company had filed an application for seeking the extension of such approval. Such extension was denied by the prescribed authorities on account of fact that the respondent-assessee company had not adhered to the prescribed conditions. This denial of extension was communicated to the Assessing Officer by the prescribed authorities vide his letter dated 20.01.2017. If the respondent-assessee is aggrieved by the denial of extension of approval u/s 35(2AB), the only course of action available to the respondent-assessee is to invoke writ jurisdiction of the Hon'ble High Court. Thus, the material on record clearly indicates that there was no requisite approval as envisaged u/s 35(2AB), which is condition precedent for availing the benefit of deduction u/s 35(2AB) of the Act. It is also settled principle of construction while construing the provisions of

exemption, the provisions should be construed strictly as laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & Company & Others in Civil Appeal No.3327 of 2007 decided on 30.07.2018.

12. Reliance placed by the ld. AR on the decision of the Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd. (supra) has no application to the facts of the present case, inasmuch as, the ratio laid down in the said case is that once the requisite approval is granted to an assessee u/s 35(2AB) by prescribed authorities, there is nothing in the provisions of law u/s 35(2AB) that only the approval is relevant not the date of approval of facility availing the benefit u/s 35(2AB), as it amounts to reading more than in law which is not expressly provided in the present case. Admittedly, in the present case, no approval as envisaged u/s 35(2AB) was granted by the prescribed authorities. Therefore, the ratio of the said decision of the Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd. (supra) has no application to the facts of the present case.

13. Similarly, the ratio of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sandan Vikas (India) Ltd., 335 ITR 117 (Delhi) also laid down that for the purpose of availing of weighted

deduction u/s 35(2AB), the cut off date issued by the DSIR would be of no relevance. The facts of the said case are that the DSIR granted recognition on 23.06.2006 and also granted approval for expenditure incurred on R&D by letter dated 18.09.2006. The Assessing Officer had denied the claim for deduction u/s 35(2AB) for the assessment year 2005-06 on the ground that the recognition was given by the DSIR in February, 2006, the assessee entitled for deduction only from the next assessment year onwards. The Hon'ble High Court reversing the findings of the Assessing Officer held that the cut off date mentioned by the DSIR has no relevance, but whereas in the present case, the approval as envisaged was specifically denied for the failure of the assessee to adhere the prescribed conditions. Similarly, the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Claris Lifesciences Ltd., 174 Taxman 130 (Gujarat) only laid down that section 35(2AB) nowhere suggests that the date of approval of R&D facilities would be cut off date of eligibility of weighted deduction in respect of expenses incurred from that date onwards. Whereas the entire expenditure incurred on R&D has to be allowed as weighted deduction. The ratio of the said decision of the Hon'ble Gujarat High Court (supra) has no application to the facts of the present case. As admittedly, there was no requisite approval u/s 35(2AB),

the decision of the Co-ordinate Bench of the Bombay Tribunal in the case of ACIT vs. Meco Instruments (P.) Ltd., 7 taxmann.com 24 (Mumbai – Trib.) and in the case of Advance Enzyme Technologies (P.) Ltd. vs. ACIT, 116 taxmann.com 498 (Mumbai - Trib.) have no application to the facts of the present case. In those cases, admittedly, the requisite approval in Form No.3CM was obtained by the assessee for the relevant assessment year. The ld. CIT(A) had fell in serious error in allowing the deduction u/s 35(2AB) in the absence of requisite approval u/s 35(2AB) of the Act. The ld. CIT(A) lost sight of the fact that the recognition of R&D facilities is separate and distinct from approval of R&D facilities for the purpose of deduction u/s 35(2AB) of the Act. Therefore, the order of the ld. CIT(A) is perverse and passed in perfunctory manner. In the circumstances, we set-aside the order of the ld. CIT(A) and restore the order of the Assessing Officer. Thus, the ground of appeal filed by the Revenue stands allowed.

14. In the result, the appeal filed by the Revenue in ITA No.1353/PUN/2019 for A.Y. 2010-11 stands allowed.

ITA Nos.1628 & 1629/PUN/2018, A.Y. 2014-15 & 2015-16 :
ITA Nos1354 to 1356/PUN/2019, A.Y. 2011-12 to 2013-14 :

15. Since the facts and issues involved in all the above captioned six appeals of the Revenue are identical, therefore, our decision in

ITA No.1353/PUN/2019 for A.Y. 2010-11 shall apply *mutatis mutandis* to the remaining five appeals of the Revenue in ITA Nos.1628 & 1629/PUN/2018 for A.Y. 2014-15 & 2015-16 and ITA Nos1354 to 1356/PUN/2019 for A.Y. 2011-12 to 2013-14 respectively. Accordingly, the remaining five appeals of the Revenue in ITA Nos.1628 & 1629/PUN/2018 for A.Y. 2014-15 & 2015-16 and ITA Nos1354 to 1356/PUN/2019 for A.Y. 2011-12 to 2013-14 stands allowed.

16. To sum up, all the above captioned six appeals of the Revenue stands allowed.

Order pronounced on this 19th day of January, 2023.

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 19th January, 2023.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad.
4. The Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**A**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.