

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “C” BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

<b>ITA No. 157 /Ahd/2022 Assessment Year 2016-17</b>
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Schaeffler India Ltd. (Amalgamating company M/s. Luk India Pvt. Ltd.), P.O. Maneja, Vadodara-390013 PAN: AAACL6817D (Appellant)	Vs	The Principal Commissioner of Income Tax, Vadodara-1 (Respondent)
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**Assessee by: Shri Bhavin Marfatia, A.R.  
Revenue by: Shri A.P. Singh, CIT-D.R.**

Date of hearing : 23-03-2023  
Date of pronouncement : 27-03-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Principal Commissioner of Income Tax, PCIT, Vadodara-1, in proceeding u/s. 263 vide order dated 31/03/2022 passed for the assessment year 2016-17.

2.     The assessee has taken the following grounds of appeal:-

*“All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.*

1.     *On facts and in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax, Vadodara - 1 ("the PCIT") erred in setting aside the assessment passed under section 143(3) r.w.s 144C of the Income-tax Act, 1961 ("the Act") by invoking provisions of section 263 of the Act.*

2.     *On facts and in the circumstances of the case and in law, the PCIT erred in fact and in law in revising the assessment framed u/s 143(3) by invoking powers u/s 263 despite the fact that the conditions stipulated for invoking such extra ordinary jurisdiction were not satisfied.*

3.     *On facts and in the circumstances of the case and in law, the learned PCIT erred in directing to frame fresh assessment on an issue already considered and verified during the course of assessment u/s. 143(3).*

4.     *On facts and in the circumstances of the case and in law, the learned PCIT erred in fact and in law in holding that order passed by the AO u/s 143(3) is erroneous and prejudicial to the interest of revenue without appreciating the fact that the order passed by the learned AO was after due verification of the issue, was passed after due application of mind and based on one of the possible views.*

5.     *On facts and in the circumstances of the case and in law, the learned PCIT erred in fact and in law in passing the order u/s. 263 without controverting the facts and submissions made by the Appellant during the proceedings u/s. 263 of the Act.*

6.     *On the fact and circumstances of the case and in law, the learned PCIT erred in fact and in law in passing the order u/s. 263 despite the fact that:*

(a)     *the approval of in-house R&D facility in Form No. 3CM was filed with the learned AO during the course of assessment u/s. 143(3) and also before the PCIT during the course of proceedings u/s. 263;*

(b)     *the Form No. 3CL was issued post completion of assessment u/s. 143(3) and was duly filed before the PCIT during the course of proceedings u/s. 263;*

(c)     *the amended provisions of section 35(2AB) of the Act are not applicable to the year under consideration;*

(d) *delegated legislation by way of Income-Tax Rules cannot restrict the benefit granted under the provisions of the Act.*

*Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal?*

3. The brief facts of the case are that the PCIT observed that during the course of assessment proceedings, the assessee has submitted report from an accountant u/s. 35(2AB) dated 24<sup>th</sup> October, 2016 stating the eligible research and development ( R & D) expenditure of Rs. 12,03,89,427/- for assessment year 2016-17. However, the PCIT observed that the assessee did not submit the necessary documentary evidences i.e. Form 3CL issued by the prescribed authority (DSIR, New Delhi). Further, the assessee has also not submitted Form 3CLA which is the prescribed audit report mandatorily to be filed before DSIR on or before due date of filing of return. The PCIT observed that the assessee has submitted only a “Certificate Recognition” on in house R&D unit at Hosur. Further, the PCIT also observed that the assessee has claimed deduction u/s. 35(2AB) of Rs. 20,12,21,103/- for R&D facility. As per the revised return of income filed by the assessee, it claimed that amount of Rs. 8,08,31,676/- was debited to profit and loss account as R&D expenditure and allowable deduction u/s. 35(2AB) of the Act was Rs. 20,12,21,103/- and after deducting expenditure already debited, the net deduction u/s. 35 (2AB) was claimed at Rs. 12,03,89,427/-. The PCIT observed that the assessee claimed that it had debited an amount of Rs. 8,08,31,676/- in the profit and loss account whereas the accountant audit report dated 24-10-2016, the amount debited towards revenue expenditure on R&D under various on expenditure were shown at Rs. 10,81,53,957/- as against 8,08,31,676/- claimed in schedule ESR of the return of income. On

perusal of the case records, the PCIT observed that the Assessing Officer has not made any verification or inquiry on this issue which should have been made during the course of assessment proceedings.

4. In the 263 proceedings, the assessee submitted that detailed inquiries were conducted by the Assessing Officer during the course of assessment proceedings on the allowability of claim u/s. 35(2AB) of the Act. He drew attention of the PCIT to various notices issued by the Assessing Officer and assessee's reply to the same. The assessee further submitted that vide Form 3CM dated 07-10-2015, the DSIR passed order on approval of in house research and development facility u/s. 35(2AB) of the Act. Copy of the said approval was submitted during the course of assessment proceedings vide letter dated 09-12-2019. The assessee further submitted before PCIT that the assessee had duly submitted auditor's report certifying the prescribed details as required under Form 35CLA before the due date of filing of return of income vide letter dated 27-10-2016 before DSIR as well as during the course of assessment proceedings vide letter dated 09-12-2019 before the Assessing Officer. Regarding non-furnishing of Form 3CL by the prescribed authority, the assessee submitted before PCIT that the same could not be submitted during the course of assessment proceedings because the assessee received copy of Form 3CL dated 20-07-2021 sent by DSIR vide speed post on 05-08-2021. The assessee submitted before PCIT that the prescribed authority has approved the research and development expenditure and revenue expenditure of Rs. 395.528 lakhs and Rs. 613.54 lakhs respectively. Further, the counsel for the assessee placed reliance on certain decisions of Tribunal and High Courts on the issue that deduction u/s. 35(2AB) cannot be

denied/disallowed merely for the reason that prescribed authority i.e. DSIR failed to send intimation in Form 3CL and deduction shall be allowed if the research and development facility has been approved by the prescribed authority in Form 3CM. The counsel for the assessee further submitted that in the instant facts, the Assessing Officer on due consideration of the materials placed before him has taken one of the possible views and thus allowed the claim of deduction u/s. 35(2AB) of the Act and therefore the order passed by the Id. Assessing Officer is neither erroneous nor prejudicial to the interest of revenue.

5. However, the PCIT rejected the contention of the assessee and held that the order passed by the Id. Assessing Officer is erroneous and prejudicial to the interest of the revenue. While holding so, the Id. PCIT made the following observations:-

*“7. I have carefully considered the facts of the case, assessment records and written reply furnished by the assessee. The contentions put forth by the assessee in its above referred reply are found to be not acceptable. The assessee has also placed reliance on judicial pronouncements of various Courts and Tribunals. In this regard, it is stated that no differing opinion or position has been taken in respect of the same. However, it is seen that facts of the instant case are different from the facts of the cases relied upon by the assessee. Here in the instant case as stated in detail in the foregoing paragraphs, the assessee has claimed u/s. 35(2AB) of the Act of Rs. 20,12,21,103/- for R & D facility. However, the assessee did not submit the necessary documentary evidences i.e. Form-3CL issued by the prescribed authority [DSIR, New Delhi]. The assessee has also not submitted Form 3CLA which is the prescribed audit report mandatorily to be filed before the DSIR on or before due date of filing of return of income w.e.f 01/04/2010 and accordingly deductions 35(2AB) of IT Act is not allowable. It was noticed that the assessee has submitted only a certificate for recognition of in house R & D Unit at PO Box No. 20, Royakottah Road Hosur during the course of assessment proceedings. As per the amendment in Rule (A) of the Income tax Rules, the deduction under Section 35(2AB) of the IT Act will be subject to the condition that the prescribed authority shall quantify the expenditure incurred during the*

previous year and eligible by weighted deduction in Part B of Form 3CL. Therefore, after the amendment in Rule 6(7A) of the Income tax Rules, there is specific provision that the expenditure and amount eligible to deduction shall be quantified by the prescribed authority. However it was noticed that the expenditure and eligible deduction u/s 35(2AB) of the IT. Act was not quantified by the prescribed authority in Form 3CL in its case for the AY 2016-17. Further, on verification of the terms and conditions mentioned by the Department of Scientific and Industrial Research (DSIR) in the Recognition Certificate in condition No. it was clearly mentioned by the DSIR that recognition by DSIR does not amount to approval under any section of income tax Act Tax concessions, rebates import concessions etc, if any, will be governed by the tax laws in operation from time to time. From the above, it was clear that the DSIR had specifically mentioned that recognition does not amount to approval and recognition to the assessee's unit cannot be treated as approval under any sections of the Income-tax Act. It was noticed that the assessee has claimed deduction of Rs 20,12,21,103 @ 200% of total expenditure of Rs 10,06,10,551/-. Out of Rs 20,12,21,103, the assessee claimed that an amount of Rs 8,03,31,676/- was already debited to Profit & Loss Account and therefore, net additional amount of Rs 12,03,89,427 was claimed as deduction u/s 35(2AB) of the IT Act in the return of income filed for the AY 2016-17. On perusal of the case records, it was found that while finalizing the assessment, the Assessing Officer has allowed the deduction u/s 35(2AB) of the IT Act of Rs. 12,03,89,427/- claimed by the assessed in the return of income for the AY 2018-17, without any verification regarding the allowability of the deduction u/s 35(2AB) of the LT Act claimed by the assessee during the year under consideration which should have been made during the course assessment proceedings.

7.1 Further as stated in the foregoing paragraph the assessee has claimed deduction u/s 35(2AB) of the IT Act of Rs. 20,12,21,103 for R&D facility. As per revised return of income filed by the assessee in Schedule ESR, the assessee claimed that amount of Rs 8,08,31,676 was debited to Profit & Loss Accounts R D expenditure and allowable deduction u/s 35(2AB) of the IT Act was Rs. 20, 12, 21,103 and after deducting expenditure already debited, the net deduction 35(2AB) was claimed at Rs. 12,03,89,427/-. The assessee claimed that it had debited Rs 8,08,31,676 in Profit & Loss Account whereas as per the accountant's audit report dated 24/10/2016 and note No.28 of audited financial statement the amount debited towards revenue expenditure on R & D under various head of expenditure was shown at Rs.10, 89,53,957/- as against Rs. 8, 08,31,676/- claimed in the Schedule ESR of the return of income. However on perusal of the case record it was noticed that the Assessing Officer has not made any verification of inquiry for this issue also which should have been made during the course of assessment proceedings."

6. The assessee is in appeal before us against the aforesaid order passed by PCIT. Before us, the counsel for the assessee drew our attention to notice u/s. 142(1) of the Act issued by the Assessing Officer dated 09-09-2019 and drew our attention to question nos. 2, 5, and 6 in the aforesaid notices by which the Assessing Officer enquired into the eligibility of the assessee's claim of deduction u/s. 35(2AB) of the Act. He further drew our attention to page 40 of the paper book, at question no. 2 that where the Assessing Officer enquired regarding the expenses of Rs. 8,08,31,676/- incurred on account of R& D debited to the profit and loss account and further deduction of Rs. 12.03 crores claimed in computation but amount of Rs. 8.08 cores which is not added back. Further, the counsel for the assessee drew our attention to page 43 of the paper book to the notice issued by the Assessing Officer u/s. 142(1) of the Act dated 04-11-2019 wherein at question no. 3, the Assessing Officer asked the assessee to provide letter from DSIR proving eligibility of R&D expenses of Rs. 4.36 crores. Thereafter, the counsel for the assessee drew our attention to reply filed by the assessee dated 09-12-2019 and submitted that all inquiries put forth by the Id. Assessing Officer regarding the claim of deduction u/s. 35(2AB) were duly responded to to the Assessing Officer vide the aforesaid reply. Further, the assessee also drew our attention to letter dated 25-08-2014 issued by DSIR providing recognition to in house R&D unit of the assessee. He further drew our attention to Form 3CM dated 07-10-2015 issued by DSIR which is the order of approval of the in house R&D facility u/s. 35(2AB) of the Act. The counsel for the assessee submitted that the reason why Form 3CL could not be filed along with the return of income or during the course of assessment proceedings was because the same was issued only in the month of July, 2021 i.e. after the

assessment proceedings had concluded. Accordingly, the same was filed before PCIT during the course of 263 proceedings. Further, the counsel for the assessee drew our attention to several case laws to the effect that issuance of Form 3CL is not mandatory for grant of deduction u/s. 35(2AB) of the Act. Accordingly, the submission of the counsel for the assessee before us is that firstly, detailed inquiry were made by the Assessing Officer during the course of assessment proceedings on the aspect of deduction of claim of the assessee u/s. 35(2AB) of the Act and secondly that the assessee had filed detailed reply in respect of the same, which were duly considered by the Id. Assessing Officer while allowing the claim of deduction u/s. 35(2AB) of the Act to the assessee. Thirdly, the Id. Assessing Officer took a view which was legally a tenable view supported by the various judicial precedents on the subject and hence it cannot be inferred that the order passed by Id. Assessing Officer was erroneous or prejudicial to the interest of the Revenue. In response, the Id. Departmental Representative relied upon the observations made by the PCIT in the 263 order.

7. We have heard the rival contentions and perused the material on record. On going through the records of the case, we observe that in the instant facts, the Assessing Officer had made detailed inquiries into the claim of deduction of the assessee u/s. 35(2AB) of the Act. The assessee had filed replies in relation to the queries raised by the Id. Assessing Officer and after considering replies filed by the assessee, the Assessing Officer allowed the claim of the assessee u/s. 35(2AB) of the Act. Therefore, evidently, it is not a case where there was any lack of inquiry on the part of the Assessing Officer regarding claim of deduction u/s. 35(2AB) of the Act. The next



issue for consideration is whether the view taken by the Id. Assessing Officer was a legally tenable view or could it be inferred that Id. Assessing Officer had taken an incorrect view in the instant facts and therefore the order passed was erroneous and prejudicial to the interest of the Revenue. We observe that the in the case of **Provimi Animal Nutrition India Pvt. Ltd. vs. PCIT Bangalore** 124 taxman.com 73 (Bangalore Trib), the ITAT held that prior 01-07-2016, Form 3CL granting approval by prescribed authority in relation to quantification weighted deduction u/s. 35(2AB) of the Act had no legal sanctity and it was only w.e.f. 01-07-2016 that quantification of weighted deduction u/s. 35(2AB) of the Act is significant. We observe that in the case of **Sun Pharmaceutical vs. PCIT** 77 taxman.com 202 Ahmedabad ITAT held that where assessee had already obtained approval of its in house research and development facility in form 3CM, Commissioner could not revise assessment framed by Assessing Officer allowing deduction u/s. 35(2AB) of the Act merely on the ground of non-submission of report of prescribed authority under form 3CL. Further, we observe that the Mumbai ITAT in the case of **Reliance Industries Ltd. vs. ACIT** 143 taxman.com 194 held that amendment to provisions of Rule 6(7A)(b) w.e.f. 01-07-2016 whereby prescribed authority can quantify expenditure eligible for weighted deduction under sub-section (2AB) of section 35, would apply only for assessment year 2017-18. Further, we observe that the Gujarat High Court in the case of **CIT vs. Sun pharmaceutical Industries Ltd.** 85 taxmann.com 80 (Gujarat H.C.) held that where assessee, engaged in research and development on pharmaceutical products, claimed deduction u/s. 35(2AB), in view of fact that research and development facility had been approved by prescribed

authority in proper format i.e. Form 3CM merely because said authority failed to send intimation to Department in Form 3CL, it would not be enough to deprive assessee's claim of deduction.

7.1 In view of the above, we observe that in the instant case, the assessee had filed copy of recognition of the in house R&D facility dated 25-08-2014 during the course of assessment. The assessee had also filed copy of approval of the in house R&D facility dated 07-10-2015 in Form 3CM during the course of assessment, with regard to computation of deduction u/s. 35(2AB) of the Act, the assessee had filed certificate of the auditor certifying the expenditure during the course of assessment. With respect to Form 3CL, we observe that the Form 3CL was issued by prescribed authority on 20-07-2021 after passing of the assessment order u/s. 143(3) of the Act on 17-01-2020. However, the approval of the R&D facility in Form 3CM was duly filed by the assessee during the course of assessment vide letter dated 09-12-2019. Therefore, looking into the facts of the case and the judicial precedents on the subject, which have held that once the assessee files Form 3CM certifying that the research and development facility has been approved by the prescribed authority in proper Format, merely because the said authority failed to send intimation to the Department in form 3CL, would not be reason enough to deprive assessee's claim of deduction u/s. 35(2AB) of the Act. Accordingly, in the instant facts, we find that the assessment order was passed by the Id. Assessing Officer after making due inquiry regarding the claim of deduction u/s. 35(2AB) of the Act is, not erroneous and prejudicial to the interest of the Revenue. Accordingly, in the

light of the above observations, we are hereby dismissing the order passed by Id. PCIT u/s. 263 of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27-03-2023

**Sd/-**

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 27/03/2023**

**Sd/-**

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

(By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद