

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5813/Del/2018, A.Y. 2012-13

Dy. Commissioner of Income Tax, Circle-11(1), New Delhi	Vs.	M/s. Hanon Climate Systems India Pvt. Ltd. (Formerly known as M/s. Visteon Climate Systems India Ltd.) Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi- 110070
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Assessee by	Sh. K.M.Gupta, Adv. Sh. Rohit Tiwari, Adv. & Ms. Tanya, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	28.03.2023
Date of Pronouncement:	06.04.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the Revenue against order dated 27.03.2018 passed in appeal no. 476/2016-17 for assessment year 2012-13, by the Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 30.03.2016 u/s 143(3) of I.T. Act,

1961 (hereinafter referred to as 'the Act') passed by DCIT, Circle-26(1), New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. As per the assessment order, the assessee company is engaged in the business of manufacturing of aluminum radiators, Heater Core, fuel delivery module and exhaust gas recirculation for automobile industry. During the relevant assessment year assessee has claimed a 200% deduction u/s 35(2AB) of the Act on account of expense incurred on in-house Research & Development facility amounting to Rs. 2,68,23,495/- relating to Revenue expenditure and Rs. 1,87,94,736/- relating to Capital expenditure in relation to in house scientific research. Thus, the total deduction claimed by the assessee company u/s 35(2AB) during F/Y 11-12 is Rs. 4,56,18,231/-. The assessee company vide notice dated 15th February, 2016 was required to furnish the details of the said expenses incurred on in-house Research & Development facility and was also required to prove that the company is eligible to claim the deduction u/s 35(2AB) of the Income Tax Act. Further, they were asked to furnish the agreement entered by the company with Ministry of Science & Technologies for cooperation in such research and development facility. Further, in the said notice the assessee company was asked to furnish complete documentary evidences relating to revenue expenditure and capital expenditure on R&D and was also required to prove that no depreciation has been claimed on the said capital expenditure u/s 32(1) of the Income Tax Act. A show cause was given that in case of non submission of said details why the deduction claimed may not be allowed under section 35(2AB) of the Income Tax Act, 1961.

2.1 Ld. AO observers in assessment order that the assessee company did not furnish any documents/reply relating to the said issue. A final opportunity was given to the assessee company vide notice dated 17th March, 2016 to furnish the said details.

2.2 The Ld. AO has reproduced the following reply of assessee dated 22nd March, 2016:

“The details of expenses claimed by the assessee under section 35(2AB') of the Act were certified by the Statutory Auditor in Appendix IV of the Tax Audit Report of the company. A copy of Appendix IV is enclosed as Annexure 9 which clearly captures all the computation and details of expenses claimed under section 35(2AB') of the Act bifurcating the same in capital as well as revenue expenditure.

The amount of expenditure on capital assets related to R & D were claimed as deduction (as certified in Auditor's Certificate) and the same has not been capitalized in books and no depreciation has been claimed on the same by the assessee.”

The assessee company also submitted that “the R&D facility of the assessee based at Bhiwadi, Rajasthan is registered and recognized as eligible R&D facility by Department of Scientific and Industrial Research (DSIR). In this regard, a recognition certificate issued by DSIR is enclosed as Annexure 2 for perusal of your goodself. Further a tax certificate issued under section 35(2AB) of the Act is enclosed as Annexure 3 for perusal of your goodself.”

2.4 The Ld AO observed and held;

“The reply of assessee company was examined and from the perusal of Approval letter issued by DSIR and Form 3CM issued by Secretary, DSIR, the following points were observed :

- i. The assessee company applied for approval of in house R&D facility u/s 35(2AB) only on 29th March, 2012.*
- ii. AS per Form 3CM dated 12th March, 2013, the R&D facility is approved for the purpose of section 35(2AB) from 16.03.2012 to 31.03.2014.*
- iii. In the letter of approval from DSIR dated 13th March, 2013. It is specifically and categorically mentioned that “for the year 2011-12*

the R&D expenditure incurred after 16.03.2012 upto 31.03.2012 would be eligible for weighed deduction. You are requested to segregate your accounts accordingly.”

2.5 Thus, from the above it is amply clear that for the F/Y 11-12 the assessee was entitled for deduction u/s 35(2AB) only for the R&D expenditure incurred after 16.03.2012 and not entitled to claim deduction u/s 35(2AB) for the expenditure incurred on in house research facility during the period 01.04.2011 to 15.03.2012. Further, the assessee company has not provided any details/documentary evidences of any revenue & capital expenditure on in house R&D for claiming deduction u/s 35(2AB). In response to our query and show cause notice the assessee company has chosen not furnish any explanation and documentary evidence with regard to same. The assessee in its written submission has only referred to the relevant extract of Tax Audit Report.

2.6 In spite of various opportunities granted to the assessee company, the Assessee has failed to place on record any Documentary evidence with regard to same. The assessee failed to justify its claim on account of above mentioned expenses and failed to produce the copy of any ledger account of the said expense and also failed to produce/ furnish copy of any vouchers, bills, supporting evidence relating to the same for verification. Thus, on the basis of the above facts and legal provisions, the amount of deduction claimed u/s 35(2AB) during the year under reference assessment year for Rs. 4,56,18,231/- is disallowed and added back to the income of the Assessee.

Consequently, I am satisfied that to the extent of Rs. 4,56,18,231/- the assessee has concealed/ furnished inaccurate particulars of its income and penalty proceedings u/s 271(1)(C) have been initiated separately.”

3. Thus, the Id. CIT(A) has deleted the addition on the basis of following relevant findings in para 5.3 to 5.7 as follows :-

“5.3 I have considered the facts of the case and contention of the appellant. It is clear that section 35(2AB) of the Act does not specify a cut-off date from when an assessee may be considered to be eligible to claim weighted deduction. What is stated is that the in-house R&D facility should be approved by the DSIR. On perusal of Form 3CM submitted before me by the Appellant as Annexure 6 to paperbook dated 19 February, 2018, it is noted that the Appellant’s in-house R&D facility is approved by the DSIR with effect from 16 March, 2012. However, whether weighed deduction in accordance with section 35(2AB) shall be allowed having regard to this cut-off date is a separate question.

*5.4 I have perused the facts and submissions made by the Appellant and the available jurisprudence on the subject matter. It is noted that the issue at hand has been dealt with by the jurisdictional Hon’ble Delhi High Court in the cases of **Maruti Suzuki India Ltd. vs. Union of India [2017] 84 taxmann.com 45** and **Sandan Vikas (India) Ltd. [2012] 22 taxmann.com 19**, as also by other Hon’ble High Courts.*

The Jurisdictional Hon’ble Delhi High Court, in its judgment in the case of Maruti Suzuki (supra), has analyzed the question as to whether the weighted deduction u/s 35(2AB) can be allowed even prior to the date of approval being accorded to the assessee. The Hon’ble High Court has observed that the legislative intent behind section 35(2AB) is to encourage innovation, research and development in the country and non-grant of deduction would defeat the legislative intent. It has been further held that the settled position in law is that for availing the benefit u/s 35(2AB), what is relevant is not the date of recognition or the cut-off date mentioned in the certificate of DSIR or even the date of approval, rather the existence thereof shall be sufficient.

The jurisdictional Hon’ble Delhi High Court has recorded similar findings in the case of Sandan Vikas (supra), which further follows the judgment of the Hon’ble Gujarat High Court in the case of Claris Lifesciences (supra).

5.5 Based on the ratio laid down by the jurisdictional Hon’ble Delhi High Court and the Hon’ble Gujarat High Court, it is evident that for the purpose of section 35(2AB) of

the Act, the availability of the tax approval in Form 3CM is sufficient compliance of the conditions prescribed in section 35(2AB), provided other conditions are satisfied, and the cut-off date/ validity period mentioned in such approval shall not be relevant to claim the weighted deduction u/s 35(2AB).

As held by the jurisdictional Hon'ble Delhi High Court, what is relevant is not the date of approval or the cut-off date, but the mere existence of the tax approval.

5.6 *The Ld. AO has not recorded any adverse findings as regards non-satisfaction of the other conditions of section 35(2AB), vis-a-vis the entity status of the Appellant, validity of tax approval, expenditure incurred etc., and the satisfaction thereof is not called into question.*

5.7 *Respectfully following the decisions of the jurisdictional Hon'ble Delhi High Court on this matter, I hold that the Appellant be allowed weighted deduction u/s 35(2AB) in respect of the expenditure incurred on its in-house R&D facility for the previous year 2011-12. Accordingly, grounds 4 and 5 of the Appellant are hereby allowed."*

4. Further, Ld. AO had made disallowance in regard to late deposit of employees contribution to PF beyond the due date which has been deleted by the Ld. CIT(A) on the basis of judgment of Hon'ble Delhi High Court in **CIT vs AIMIL Limited (2010) 321ITR 508 (DEL.)**

5. The assessee is in appeal raising following grounds :-

"1. Whether, on the facts and in the circumstances of the case, the Ld CIT(A) has erred in allowing weighted deduction of Rs. 4,56,18,231/- u/s 35(2AB) of the Income Tax Act, 1961 (The Act') claimed by the assessee in respect of R & D expenses for the F Y 2011-12 relevant to A Y 2012-13, ignoring the fact the Research & Development facility of the assessee is approved by DSIR for the purposes of the section for the period 16.03.2012 to 31.03.2014 and the letter of approval issued by the DSIR categorically specifies that for F Y 2011-12 the R & D Expenditure incurred from 16.03.2012 to 31.03.2012 would only be eligible for deduction.

a) Whether on the facts and in the circumstances of the case, the Ld CIT(A) has erred in relying on the proposition laid down in the cases of CIT vs Claris Life Sciences Ltd. [2010]

326 ITR 251 and Maruti Suzuki India Ltd. vs UOI [2017] 84 taxmann.com 45 in holding that the cut-off date mentioned in the approval by the DSIR is not relevant to claim weighted deduction u/s 35(2AB), not appreciating that the said cases are clearly distinguishable on facts as approval granted in present case clearly mentions that expenditure incurred only during the specified period (i.e. 16.03.2012 to 31.03.2014) would be eligible for deduction.

*b) Without prejudice to the above, whether the Ld CIT(A) has erred in not appreciating that the proposition laid down in the cases of Claris Life Sciences and Maruti Suzuki India Ltd. (Supra) to the effect that the cut-off date mentioned in the approval is not relevant to the claim of deduction us/ 35(2AB) is at best applicable only in cases where both the date of application and the date of approval by the competent authority fell within the same previous year as held by Hon'ble ITAT, Mumbai in the case of **M/s PCP Chemicals Pvt. Ltd. ITO in ITA NO. 4381/Mum/2015**, dated 11.11.2017, whereas in the present case, the assessee applied for approval on 29.03.2012 and the approval was granted on 12.03.2013.*

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,32,588/- made by the Assessing Officer u/s 36(l)(va) of the Act on account of late deposit of employees' contribution towards EPF/ESI

3. The appellant craves leave for reserving the right to amend, modify, add or forgo by ground(s) of appeal at any time before or during the hearing of the appeal.”

6. Heard and perused the record. At the outset it be noted that in regard to ground no. 2 Ld. AR conceded that after the judgment of Hon'ble Supreme Court of India in **Checkmate Services (P.) Ltd. 143 taxmann.com 178 (SC)**, the issue is no more *res integra* and settled against the assessee. Accordingly this ground is decided against the assessee.

7. **In regard to ground no 1**, Ld. DR submitted that there is no error in the findings of Ld. AO who primarily was not convinced on the basis of lack of evidences that the expenses on R&D development were incurred for the whole

of the year. Specially in regard to Ground no. 1 (b) he submitted that Mumbai Bench in **M/s. PCP Chemicals Pvt. Ltd. case (supra)** has dealt the matter and decided the issue in favor of Revenue.

8. Ld. AR however supported the findings of Ld. CIT(A) and on the basis of facts distinguished judgment of Mumbai Bench in *M/s. PCP Chemicals P. Ltd.* He also stressed that all material evidence was produced before Ld. AO which have been taken into consideration by Ld. CIT(A) also.8.

9. Giving thoughtful consideration to the matter on record, at the outset, it will be relevant take into account the judgment of Mumbai Tribunal in the case of *M/s.PCP Chemicals Pvt. Ltd. case (supra)* wherein the facts were that the para 2 of the order mentions that ROI for 2010-11 was filed and same as matter of assessment. The competent authority in Form 3CM approved assessee's R&D facility for the period 01.04.2011 to 31.03.2013 on the basis of application filed by the assessee in prescribed Form 3CK on 12.08.2011. While the assessee n that case was claiming deduction for the AY 2009-10, relevant to assessment year 2010-11 but the approval from 01/04/2011 to 31/3/13 was for relevant AY 2012-13 onwards.

10. However, in the case in hand there is no dispute to the fact that the assessee company has applied for approval of in-house R&D facility u/s 35(2AB) on 29th March, 2012 and the facility was approved in the Form 3CM from 16.03.2012 to 31.03.2014. Thus, before the end of financial year 2011-12 on 31/12/2012, the application was filed. The bench is of considered opinion that the period mentioned in the approval is not relevant and would relate back to the beginning of financial year in which the application is filed. In the case in hand the Form 3CM application once filed on 29/3/12 then for the FY 2011-12 assessee will be entitled to weighted deduction for AY 2012-13. Ld. CIT(A) has rightly relied the judgment of Hon'ble Delhi High Court in *Maruti Suzuki*

India Ltd.(supra) and Gujrat High Court in ***Sandan Vikas (India) Ltd and CIT V. Claris Life Sciences Ld 2008 174 Taxman 113 (Guj).***

11. Further, there is no justification with the Revenue to support the findings of Ld. AO that assessee has failed to justify its claim on account of above mentioned expenses and failed to produce copy of any ledger account of the said expenses etc. while assessee in its submission dated 22.03.2016, as reproduced in the order of Id. CIT at page no. 4, given the submissions along with details / ledger of R& D expenditure on 28.10.2015. Thus, the bench is inclined to accept the findings of Ld. CIT(A) on facts also that before it the assessee had justified the expenses on the basis of ledger accounts etc. There is no error in the findings of Ld. CIT(A) requiring interference.

12. The ground no. 1 is accordingly decided against the Revenue while ground no. 2 is decided in favour of the assessee. **Accordingly, the appeal of revenue is allowed partly.**

Order pronounced in the open court on 6th April, 2023.

**Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-06.04.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI