आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 305/PUN/2021
निर्धारण वर्ष / Assessment Year : 2014-15

The Deputy Commissioner of Income Tax,
Circle-8, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Force Motors Limited
Mumbai Pune Road, Akurdi,
Pune-411 035
PAN : AAACB7066L

.....प्रत्यर्थी / Respondent

Revenue by : Shri A M Mahadevan Krishnan
Assessee by : Shri Kishor B Phadke

सुनवाई की तारीख / Date of Hearing : 02.09.2021
घोषणा की तारीख / Date of Pronouncement : 03.09.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeal), Pune-13 dated 25.03.2021 for the assessment year 2014-15 as per the following grounds of appeal on record:

"1.The Ld. CIT(A) erred both on facts and in law in passing the order.

2. The Ld. CIT(A) erred in deleting the disallowance made by the AO on account of excess deduction claimed by the assessee over and above the amount approved by the DSIR by holding that before Tenth Amendment

Rule, 2010, the DSIR having no such power to quantify the expenditure incurred on in-house R & D facility and therefore no requirement of approval in form No.3CL.

3. For these and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.

4. The appellant craves, leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."

2. In this case, there is a delay of 21 days in filing of the appeal before the Tribunal. The Ld. DR for the Revenue has filed a letter dated 16.06.2021 for condonation of the delay of 21 days stating that the Hon'ble Supreme Court of India, in **Civil Original Jurisdiction, Suo Moto Writ Petition (Civil) No.3 of 2020 dated 27.04.2021 extended period of limitation till further order.** The Ld. Counsel for the assessee did not raise any objection. After hearing the parties herein, we condone the delay and proceed to hear this appeal on merits. We further take note of the present pandemic situation where the movement of people are restricted and because of such practical situation, it is always not possible to follow the time of limitation regarding filing of appeal before various Forums. This fact was also observed and taken cognizance of by the Hon'ble Supreme Court of India, in **Civil Original Jurisdiction, Suo Moto Writ Petition (Civil) No.3 of 2020 (supra.)**

3. The sole grievance of the Revenue in this appeal is with regard to deletion of the disallowance made by the Assessing Officer on account of excess deduction claimed by the assessee over and above the amount approved by the DSIR by holding that before Tenth Amendment Rule, 2010, the DSIR having no such power to quantify the expenditure incurred on in-house R & D facility and therefore no requirement of approval in form No.3CL.

4. The brief facts in this case are that the assessee company is engaged in manufacturing business of manufacturing light commercial vehicles, utility vehicles, tractors and three wheelers. The assessee filed the return of income on 29.11.2014 declaring total income of Rs. Nil claiming current year loss amounting to Rs.135,16,65,527/-. Subsequently the assesse company revised its return of income on 31.03.2016 declaring total income of Rs. Nil and claiming current year loss amounting to Rs.135,29,85,317/-. The assessee has shown book profit of Rs.62,96,19,121/- u/s.115JB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The case of the assessee was selected for scrutiny under CASS. Assessment u/s.143(3) of the Act was completed on 20.12.2017 determining total loss at Rs.131,29,58,520/- after making various additions/disallowances. The Assessing Officer held that as prescribed Authority i.e. DSIR is the final authority for approving the claim u/s.35(2AB), the deduction cannot exceed the claims approved by DSIR and accordingly, the excess deduction claimed by the assessee amounting to Rs.2,22,90,095/- was disallowed and added back to the total income of the assessee.

5. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(Appeals). The Ld. CIT(Appeals) deleted the disallowance made by the Assessing Officer on account of excess deduction claimed by the assessee amounting to Rs.2,22,90,095/- u/s.35(2AB) of the Act. While deciding the appeal, the Ld. CIT(Appeal) relied upon the decision of the Pune Bench of the Tribunal in the case of Cummins India Ltd. in ITA No.309/PUN/2014 for the assessment year 2009-10 dated 15.05.2018. The Ld. CIT(Appeal) Vide Para 10.3 of his order has held as follows:

> *"10.3 I have considered the facts and arguments of the appellant. The appellant in its electronic submission dtd.22.03.2021 has enclosed the*

honourable Pune ITAT decision in the case of Cummins India Limited (ITA No.309/PUN/2014, AY 2009-10) dated 15.05.2018. The honourable ITAT Pune has allowed this ground in favour of the appellant in the Assessment years prior to amendment of IT Rules w.e.f. 1.07.2016. Respectfully following the same, this ground of appeal is allowed."

6. The Ld. Counsel for the assessee submitted that the issue raised in the present appeal is squarely covered by the decision of the Pune Bench of the Tribunal in the case of **Cummins India Limited Vs. DCIT, ITA No.309/PUN/2014 for the assessment year 2009-10** dated 15.05.2018 wherein the Tribunal has decided this issue in favour of the assessee.

7. The Ld. DR fairly conceded to these facts that the decision of the Tribunal referred hereinabove will cover the issue in favour of the assessee in this case.

8. We have heard the rival submissions and perused the materials available on record. We have also considered the order of the Tribunal dated 15.05.2018 (supra.). We observe the Pune Bench of the Tribunal in the case of Cummins India Limited Vs. DCIT (supra.) had an occasion to deal with the same issue under similar set of facts and circumstances vide Para 35 to 37 of its order wherein the issue has been discussed as follows:

"35. The grievance of assessee is against the order of Assessing Officer in allowing the deduction only to the extent the expenditure is approved in form No.3CL issued by DSIR. The assessee claims that under the provisions of said sub-section, the DSIR is empowered to approve only R&D facility and not the expenditure and it is further contended by the assessee that once R&D facility was approved by the prescribed authority i.e. DSIR in form No.3CM, then the expenses incurred by the assessee have to be allowed under section 35(2AB) of the Act. The learned Authorized Representative for the assessee drew our attention to different clauses of section 35 of the Act to demonstrate that various types of approvals were to be taken under different sub-sections and what was envisaged under each of the section, then the same has to be read and applied for. Where the law wanted the expenditure to be approved by prescribed authority, then the same was expressly provided as in section 35(1)(i) of the Act and in section 35(2B) of the Act. However, for the purpose of section 35(2AB) of the Act, it is provided that facility is to be approved and not the expenditure. Our attention was also drawn to the Memorandum explaining the Finance Bill, 1997 and

Notes on clauses when section 35(2AB) of the Act was inserted, where it was stated that deduction was available to companies having in-house R&D facility, approved for the purpose of section by the prescribed authority. The learned Authorized Representative for the assessee thereafter, took us to provisions of IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016 with special reference to Rule 6 (7A) of the Income Tax Rules (in short 'the Rules'), wherein under clause (b), specific provision stipulating the prescribed authority to submit its report in relation to approval of in-house R&D facility in form No.3CL to the DG, Income Tax (Exemption) within sixty days of granting approval, was provided. In other words, it was merely an intimation to be sent by the prescribed authority to the Department, nowhere under the Act, it was stipulated that the deduction under section 35(2AB) of the Act was allowable year after year after approval by DSIR in form No.3CL. The learned Authorized Representative for the assessee further referred to the amended form No.3CL by the IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016, wherein column for certified amounts of expenditure had been inserted in the said form No.3CL. The learned Authorized Representative for the assessee further placed reliance on the ratio laid down by the Ahmedabad Bench of Tribunal in Sun Pharmaceutical Industries Ltd. Vs. Pr.CIT (2017) 162 ITD 484 (Ahmedabad - Trib.), wherein it has been held by the Tribunal that form No.3CL is merely a report in the form of intimation regarding approval of in-house R&D facility to be sent from prescribed authority's end to the Department and once the facility is approved in form No.3CM, the expenses incurred within the notified period have to be allowed under section 35(2AB) of the Act. He further pointed out that the said decision has been affirmed by the Hon'ble High Court of Gujarat in CIT Vs. Sun Pharmaceutical Industries Ltd. (2017) 250 Taxman 270 (Guj). In respect of decision of the Hon'ble High Court of Karnataka in Tejas Networks Ltd. Vs. DCIT (2015) 233 Taxman 426 (Kar), the learned Authorized Representative for the assessee pointed out that the said decision was clearly distinguishable on facts. The issue under consideration in the said decision was whether the activity carried on by the assessee and the expenditure incurred in relation to scientific research, is allowable in terms of section 35(3) r.w.s. 43(4) of the Act. The Hon'ble High Court further held that where the DSIR has certified the expenditure in form No.3CL and if the Assessing Officer had any dispute in respect thereof with respect to expenditure or the approval of the facility, such question will have to be referred by the Board to the prescribed authority. He thus, stressed that for claiming weighted deduction under section 35(2AB) of the Act, it is the facility and not the expenditure in form No.3CL which has to be approved by the prescribed authority. The facility in the case of assessee has been approved by the DSIR in form No.3CM and hence, the assessee was eligible to claim the deduction under section 35(2AB) of the Act.

36. The learned Departmental Representative for the Revenue relying on the orders of authorities below, placed reliance on the ratio laid down by the Hon'ble High Court of Karnataka in Tejas Networks Ltd. Vs. DCIT (supra). He further pointed out that the decision in Sun Pharmaceutical Industries Ltd. Vs. Pr.CIT (supra) was vis-à-vis power of the Commissioner under section 263 of the Act and hence, was not applicable. He stressed that under Rule 6 of the Rules, the prescribed authority had to look into expenditure on scientific research. He further pointed out that though improvement in rules has come later but earlier when it was prescribed to submit the details to prescribed authority, then it was incumbent upon the prescribed authority to go through it. The Assessing Officer cannot sit in judgment over form No.3CL, even if sent through CBDT, it has to go back to the prescribed authority.

37. The learned Authorized Representative for the assessee in rejoinder referring to the decision of the Hon'ble Supreme Court in the case of K.P. Varghese v. ITO (1981) 131 ITR 597 (SC) pointed out that marginal notes of section cannot be read to understand the intent of section. He further referred to old form placed at page 21 of Paper Book and the new form which is placed at page 22 of Paper Book and pointed out that differences between the two and stressed that the requirement to go into the expenditure incurred by the facility, by the prescribed authority only arises after the form has been amended and not before that."

9. That the Tribunal on this issue has held and observed as follows :

"38. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against the claim of deduction under section 35(2AB) of the Act i.e. expenditure incurred on Research & Development activity. For computation of business income under section 35 of the Act, expenditure on scientific research is to be allowed on fulfillment of certain conditions which are enlisted in the said section. Under various sub- sections of section 35 of the Act, the conditions and the allowability of expenditure vary. Sub-section (1) to section 35 of the Act deals with expenditure on scientific research, not being in the nature of capital expenditure, is to be allowed to research association, university, college or other institution; for which an application in the prescribed form and manner is to be made to the Central Government for the purpose of grant of approval or continuation thereto. Before granting the approval, the prescribed authority has to satisfy itself about the genuineness of activities and make enquiries in this regard. Under sub-section (2B) to section 35 of the Act, a company engaged in the specified business as laid there on, if it incurs expenditure on scientific research or in-house Research & Development facility also needs to be approved by the prescribed authority, is entitled to deduction, provided the same is approved by the prescribed authority.

39. Now, coming to sub-section (2AA) to section 35 of the Act, it talks about granting of approval by the prescribed authority but the approval to the expenditure being incurred is missing under the said section. Similar is the position in sub-section (2A). Further in sub-section (2AB), it is provided that facility has to be approved by the prescribed authority, then there shall be allowed deduction of expenditure incurred whether 100%, 150% or 200% as prescribed from time to time. Clause (2) to section 35 of the Act provides that no deduction shall be allowed in respect of expenditure mentioned in clause (1) under any provisions of the Act. Clause (3) further lays down that no company shall be entitled for deduction under clause (1) unless it enters into agreement with prescribed authority for co-operation in such R & D facility. The Finance Act, 2015 w.e.f. 01.04.2016 has substituted and provided that facility has to fulfill such condition with regard to maintenance of accounts and audit thereof and for audit of accounts maintained for that facility.

40. Under Rule 6 of Income Tax Rules, 1962 (in short 'the Rules), the prescribed authority for expenditure on scientific research under various sub- clauses has been identified. As per Rule 6(1B) of the Rules for the purpose of sub-section 2AB of section 35 of the Act, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research i.e. DSIR. Under sub-rule (4), application for obtaining approval under section 35(2AB) of the Act is to be made in form No.3CK. Under

sub-rule (5A) of rule 6 of the Rules, the prescribed authority shall, if satisfied that the conditions provided in the rule and in sub-section (2AB) being fulfilled, pass an order in writing in form No.3CM. The proviso however lays down that reasonable opportunity of being heard is to be granted to the company before rejecting an application. So, the application has to be made under sub-rule (4) in form No.3CK and the prescribed authority has to pass an order in writing in form No.3CM. Sub-rule (7A) provides that the approval of expenditure under sub-section (2AB) of section 35 of the Act, shall be subject to the conditions that the facilities do not relate purely to market research, sales promotion, etc. Clause (b) to sub-rule (7A) at the relevant time provided that the prescribed authority shall submit its report in relation to the approval of in-house R & D facility in form No.3CL to the DG (Income-tax Exemption) within sixty days of its granting approval. Under clause (c), the company at the relevant time had to maintain separate accounts for each approved facility, which had to be audited annually. Clause (b) to sub-rule (7A) has been substituted by IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016, under which the prescribed authority has to furnish electronically its report (i) in relation to approval of in-house R & D facility in part A of form No.3CL and (ii) quantifying the expenditure incurred on in-house R & D facility by the company during the previous year and eligible for weighted deduction under sub-section 2AB of section 35 of the Act in part B of form No.3CL. ***In other words the quantification of expenditure has been prescribed vide IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016. Prior to this amendment, no such power was with DSIR i.e. after approval of facility.***

41. ***Under the amended provisions, beside maintaining separate accounts of R & D facility, copy of audited accounts have to be submitted to the prescribed authority. These amendments to rules 6 and 7a are w.e.f. 01.07.2016 i.e. under the amended rules, the prescribed authority as in part A give approval of the facility and in part B quantify the expenditure eligible for deduction under section 35(2AB) of the Act.***

42. The issue which is raised before us relates to pre-amended provisions and question is where the facility has been approved by the prescribed authority, can the deduction be denied to the assessee under section 35(2AB) of the Act for non issue of form No.3CL by the said prescribed authority or the power is with the Assessing Officer to look into the nature of expenditure to be allowed as weighted deduction under section 35(2AB) of the Act. The first issue which arises is the recognition of facility by the prescribed authority as provided in section 35(2AB) of the Act.

43. The Hon'ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (2010) 326 ITR 251 (Guj) have held that weighted deduction is to be allowed under section 35(2AB) of the Act after the establishment of facility. However, section does not mention any cutoff date or particular date for eligibility to claim deduction. The Hon'ble High Court held as under:-

> *"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 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 r. 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 s. 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.

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 s. 35(2AB) of the Act by the assessee."

44. The Hon'ble High Court of Delhi in CIT Vs. Sandan Vikas (India) Ltd. (2011) 335 ITR 117 (Del) on similar issue of weighted deduction under section 35(2AB) of the Act held that the condition precedent was the certificate from DSIR, but the date of certificate was not important, where the objective was to encourage research and development by the business enterprises in India. In the facts before the Hon'ble High Court of Delhi, the assessee had approached DSIR vide application dated 10.01.2015. The DSIR vide letter dated 23.02.2006 granted recognition to in-house research and development facility of assessee. Further, vide letter dated 18.09.2006, DSIR granted approval for the expenses incurred by the company on in-house research and development facility in the prescribed form No.3CM. The Assessing Officer in that case refused to accord the benefit of aforesaid provision on the ground that recognition and approval was given by DSIR in the next assessment year. The Tribunal allowed the claim of assessee relying on the decision of the Hon'ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (supra). The Hon'ble High Court of Delhi taking note of the decision of the Hon'ble High Court of Gujarat observed that it has been held that cutoff date mentioned in the certificate issued by DSIR would be of no

relevance where once the certificate was issued by DSIR, then that would be sufficient to hold that the assessee had fulfilled the conditions laid down in the aforesaid provisions.

45. The issue which is raised in the present appeal is that whether where the facility has been recognized and necessary certification is issued by the prescribed authority, the assessee can avail the deduction in respect of expenditure incurred on in-house R&D facility, for which the adjudicating authority is the Assessing Officer and whether the prescribed authority is to approve expenditure in form No.3CL from year to year. Looking into the provisions of rules, it stipulates the filing of audit report before the prescribed authority by the persons availing the deduction under section 35(2AB) of the Act but the provisions of the Act do not prescribe any methodology of approval to be granted by the prescribed authority vis-à-vis expenditure from year to year. ***The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below."***

10. Therefore, there is categorical finding given by the Tribunal that the amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure/methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act. The case before us pertains to FY 2013-14 relevant to AY 2014-15 and therefore, facts and circumstances are absolutely identical in assessee's case also. Therefore, respectfully, following the order of the Tribunal (supra.) on the same parity of reasoning and under same set of facts and circumstances, we find no reason to interfere

with the findings of the Ld. CIT(Appeal) and relief provided to the assessee is hereby sustained. Thus, **grounds raised by the Revenue are dismissed.**

11. In the result, **appeal of the Revenue is dismissed.**

Order pronounced on 03rd day of September, 2021.

Sd/-	Sd/-
INTURI RAMA RAO	**PARTHA SARATHI CHAUDHURY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 03rd September, 2021
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Pune-13
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **"सी"** बेंच, पुणे / DR, ITAT, "**C**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	02.09.2021	Sr.PS/PS
2	Draft placed before author	03.09.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		