

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.621/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

The Asst. Commissioner of Income Tax,
Satara Circle, Satara अपीलार्थी/Appellant

Vs.

Cooper Corporation Pvt. Ltd.,
L-5, Additional MIDC,
Satara – 415004 प्रत्यर्थी / Respondent

PAN: AAACC9687J

आयकर अपील सं. / ITA No.652/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

Cooper Corporation Pvt. Ltd.,
L-5, Additional MIDC,
Satara – 415004 अपीलार्थी/Appellant

PAN: AAACC9687J

Vs.

The Jt. Commissioner of Income Tax,
Satara Range, Satara प्रत्यर्थी / Respondent

Assessee by : Shri Krishna Gajrathi
Revenue by : Shri Prashant Gudekar

सुनवाई की तारीख / Date of Hearing : 05.12.2018	घोषणा की तारीख / Date of Pronouncement: 27.02.2019
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

The cross appeals filed by Revenue and assessee are against order of CIT(A)-4, Pune, dated 19.02.2015 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The cross appeals filed by Revenue and assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The Revenue in ITA No.621/PUN/2015 has raised the following grounds of appeal:-

1. *The order of the Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.*
2. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in holding that the assessee is entitled to deduction of Rs.2,22,21,159/- u/s 35(1)(iv) of the Income-tax Act when such claim was not made by the assessee either in the original return of income or in the revised return of income contrary to the decision of Apex Court in the case of Goetze (India) Ltd vs. CIT(2006) 284 ITR 323 (SC).*
3. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in allowing the additional claim of deduction of Rs.23,70,107/- u/s 35(1)(iv) of the Act when such claim was not made by the assessee either in the original return or in the revised return of income or during the course of assessment proceedings contrary to the decision of Apex Court in the case of Goetze (India) Ltd vs. CIT(2006) 284 ITR 323 (SC).*
4. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in allowing the additional claim of deduction of Rs.8,09,016/- u/s 35(1)(iv) of the Act when such claim was not made by the assessee either in the original return or in the revised return of income or during the course of assessment proceedings contrary to the decision of Apex Court in the case of Goetze (India) Ltd vs. CIT(2006) 284 ITR 323 (SC).*

5. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in deleting the disallowance of commission paid to liaison representatives relying on the decision of ITAT, Pune and Gujrat High Court which was applicable in the case of Ltd. Companies whereas the assessee is a Pvt. Ltd. Company and the decisions so relied are not applicable in the case of the assessee.*
6. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in failing to appreciate that the disallowance of commission paid to liaison representatives was made on the basis of evidences gathered during the course of survey conducted in the case of the assessee and the A.O. has given cogent reason for disallowing the same.*
7. *For this and such other reasons as may be urged at the time of the hearing, the order of Id. CIT(A) may be vacated and that of the Assessing Officer be restored.*

4. The assessee initially has raised several grounds of appeal. The learned Authorized Representative for the assessee in its appeal pointed out that original grounds of appeal No.3 and 5 are not pressed. In respect of ground of appeal No.1, the assessee has raised revised ground of appeal which reads as under:-

“On the facts and circumstances of the case and in law, the Honourable CIT (Appeal)-4, Pune erred in confirming disallowance of weighted deduction u/s 35(2AB) on the expenditure incurred on scientific research on in-house research and development facility of Rs.8,56,18,133/- @ 150% of expenditure incurred of Rs.5,70,78,756/-. The appellant requests your honour to kindly allow weighted deduction under section 35(2AB) of the Act.”

5. Briefly, in the facts of the case, the assessee was engaged in manufacturing of automobile and auto ancillary equipment. The assessee during the year under consideration had claimed expenditure on Research & Development facility under section 35(2AB) of the Act at 4,06,35,827/-. The assessee was asked to furnish details of expenditure claimed under section 35(2AB) of the Act. The Assessing Officer from the details submitted, noted that capital expenditure incurred was ₹ 2.22 crores and revenue expenditure incurred was ₹ 3.48 crores, aggregating ₹ 5.70 crores. However, the approval

for expenditure was not received from the Department of Scientific Industrial Research (DSIR) as required under section 35(2AB) of the Act and in the absence of the same, the assessee's claim of deduction at 150% of ₹ 5.70 crores at ₹ 8.56 crores was denied.

6. The CIT(A) denied the said claim in the absence of non fulfillment of conditions prescribed under clauses (iii) and (iv) of section 35(2AB) of the Act. However, the CIT(A) considered the alternate plea of assessee that deduction of capital expenditure @ 100% be allowed under section 35(1)(iv) of the Act. The assessee had raised an additional ground of appeal before the CIT(A) in this regard and after admitting the same, the CIT(A) held that the assessee was entitled to the benefit of aforesaid deduction under section 35(1)(iv) of the Act in respect of capital expenditure incurred on R&D facility. He further held that cost incurred on building during the year amounting to ₹ 23,70,107/- would be allowed in addition to the R&D expenditure of ₹ 2.22 crores, out of total capital expenditure of ₹ 4.76 crores. The assessee also raised an additional ground of appeal for further claim of capital expenditure of ₹ 2.01 crores i.e. expenditure incurred by way of interest on loans capitalized to R&D assets and other items of capital expenditure i.e. purchase of fans, motor vehicles, etc. The CIT(A) held that having claimed the interest cost as revenue expenditure and depreciation on assets, the assessee could not claim scientific research expenditure under section 35(1)(iv) of the Act on the said expenditure of ₹ 2.01 crores. However, expenses incurred on purchase of fans and motor vehicles totaling ₹ 8,09,016/- were held to be allowed under section 35(1)(iv) of the Act. The CIT(A) further directed the revenue expenditure relating to R&D facility be allowed, subject to assessee furnishing the details and the CIT(A) noted that this alternate claim was made for the first time before him. The said claim was

made under section 35(1)(i) of the Act or alternatively under section 37(1) of the Act. The expenditure totaled to ₹ 3.48 crores. The Assessing Officer was thus, directed to verify each item of expenditure in order to see whether the said expenditure related directly to scientific research or to the business of assessee and whether pertaining to instant accounting period. Hence, the CIT(A) allowed capital expenditure to the extent of ₹ 23,70,107/- + ₹ 2.22 crores + ₹ 8,09,016/- totaling ₹ 2.54 crores under section 35(1)(iv) of the Act and also directed the Assessing Officer to quantify the revenue expenditure allowable under section 35(1)(i) / 37(1) of the Act.

7. The next issue which was considered by the CIT(A) was the disallowance made under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') at ₹ 37,418/-. The assessee claimed the exempt income in respect of dividends from mutual funds amounting to ₹ 10,24,273/-. The assessee had *suo motu* made the disallowance under section 14A of the Act to the extent of ₹ 43,947/-. However, the Assessing Officer re-computed interest and finance charges and made total disallowance of ₹ 81,365/- and since the assessee had *suo motu* disallowed ₹ 43,947/-, balance of ₹ 37,418/- was disallowed in the hands of assessee. The assessee explained that there were no new investments made during the year and the previous year investments were also made out of surplus accumulated funds generated by the assessee itself and not from borrowed funds. The CIT(A) upheld the disallowance made by the Assessing Officer. The Assessing Officer and CIT(A) decided various other issues also, which may be taken up at the relevant time.

8. The assessee is in appeal against the order of CIT(A).

9. The assessee has raised the issue of claim of weighted deduction under section 35(2AB) of the Act on the expenditure incurred on scientific research on in-house R&D facility at ₹ 8.56 crores @ 150% of expenditure incurred of ₹ 5.70 crores under modified ground of appeal No.1 and has raised the issue of disallowance made under section 14A of the Act under original ground of appeal No.4.

10. The learned Authorized Representative for the assessee pointed out that recognition of R&D facility to develop own engines was granted on 30.01.2009. An application in form No.3CK and agreement was filed on 23.05.2009. Vide letter dated 24.08.2010, R&D facility was approved w.e.f. 03.06.2009, which was the date of recognition. Thereafter, the agreement was signed on 24.08.2010. The assessee received form No.3CM w.e.f. 03.06.2009. The Assessing Officer had disallowed the claim of weighted deduction under section 35(2AB) of the Act on the ground that there was no approval of expenses from DSIR i.e. form No.3CL. The learned Authorized Representative for the assessee pointed out that though the same was not required for claiming weighted deduction but in any case the assessee received form No.3CL on 08.04.2013. However, the CIT(A) refused to take cognizance of the same as it was received after the date of passing of assessment order. In this regard, the learned Authorized Representative for the assessee placed reliance on the decisions of the Pune Bench of Tribunal in Minilec India Pvt. Ltd. Vs. ACIT in ITA No.690/PUN/2015, relating to assessment year 2010-11, order dated 09.04.2018 and Cummins India Ltd. Vs. DCIT in ITA No.309/PUN/2014, relating to assessment year 2009-10, order dated 15.05.2018. He further

submitted that ground of appeal No.2 raised by assessee on without prejudice would not survive after this.

11. The learned Departmental Representative for the Revenue pointed out that the CIT(A) had denied the claim relying on the ratio laid down by the Hon'ble High Court of Delhi in the case of Apollo Tyres Ltd. Vs. UOI [2010-279-HC-Del-IT] in W.P.(C) No.13338 of 2009.

12. The learned Authorized Representative for the assessee in rejoinder pointed out that facts of the case before the Hon'ble High Court of Delhi were different, wherein vide application filed in 2007, approval was sought for 2004 facility.

13. We have heard the rival contentions and perused the record. The grounds of appeal No.3 and 5 raised by assessee are not pressed and hence, the same are dismissed as not pressed.

14. The issue which arises in the present appeal vide revised ground of appeal No.1 is with regard to claim of weighted deduction under section 35(2AB) of the Act. The assessee was engaged in manufacturing of automobile and auto ancillary equipment with its unit at MIDC, Satara. The assessee had established R&D facility and had incurred expenditure of ₹ 2.22 crores as per DSIR guidelines and revenue expenditure of ₹ 3.48 crores on F&D activities, aggregating to ₹ 5.70 crores. The assessee on the said expenditure, claimed weighted deduction @ 150%. The assessee had made an application for recognition of its in-house R&D facility to the DSIR on 30.01.2009. Further, the assessee submitted form No.3CK for entering into

agreement with DSIR and for audit of accounts maintained with facility on 23.05.2009. The facility was granted recognition and approval by the DSIR on 24.08.2010 w.e.f. 03.06.2009. The assessee on 24.08.2010 received form No.3CM for recognition of facility w.e.f. 03.06.2009, copy of which is placed at page 71 of Paper Book. The Assessing Officer has disallowed weighted deduction to the assessee on the ground that no approval of expenditure has been received from the DSIR in form No.3CL.

15. The first issue is whether such an approval is needed from the DSIR in form No.3CL. The Pune Bench of Tribunal in *Minilec India Pvt. Ltd. Vs. ACIT* (supra) on similar issue of claim of weighted deduction in the absence of any form No.3CL received from the DSIR had held as under:-

“10. 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 continuous 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.

11. 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(AB) 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.

12. *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 he 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.*

13. *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.*

14. *The issue which is raised before us relates to pre-amended provisions and question is where facility has been approved by prescribed authority, but no form No.3CM issued, can the assessee be denied deduction under section 35(2AB) of the Act.*

15. *The Hon'ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (supra) 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."*

16. *The Hon'ble High Court of Gujarat held that the intent of the Legislature was to encourage development of facility by providing deduction of weighted expenditure. It was further held that since what was stated to be promoted was development of facility, then the entire expenditure incurred on development of facility, if facility is approved, had to be allowed for the purpose of weighted deduction.*

17. *The Hon'ble High Court of Delhi in CIT Vs. Sandan Vikas (India) Ltd. (supra) 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.

18. The Hon'ble High Court of Madras in CIT Vs. Wheels India Ltd. (2011) 336 ITR 513 (Mad) had also held that the assessee was entitled to weighted deduction for whole year and not merely from the date of notification. It was held by the Hon'ble High Court that Once the prescribed authority approves the existence of a research and development facility and the expenditure incurred on such scientific research, the assessee would be entitled to the expenditure incurred for the whole of the assessment year and it cannot be granted in a truncated manner.

19. The Pune Bench of Tribunal in Nath Biogenes India Ltd. Vs. ACIT in ITA No.367/PN/2012, relating to assessment year 2008-09, order dated 27.01.2014 held that where the prescribed authority i.e. DSIR had given recognition, then such a facility is recognized for claiming deduction under section 35(2AB) of the Act. The Tribunal further held that if the approval was not in prescribed form No.3CM was not a serious discrepancy, which would result in disallowance of deduction to the assessee under section 35(2AB) of the Act. Where the Competent Authority had granted approval / recognition after verification of all the details, then the claim of assessee for deduction under section 35(2AB) of the Act cannot be ruled out only on the ground that the approval in the prescribed form No.3CM was not received by the assessee.

20. The Pune Bench of Tribunal in the case of same assessee in ITA No.1115/PN/2013, relating to assessment year 2009-10, vide order dated 28.05.2014 had on similar ground allowed the claim of assessee in succeeding year also.

21. The Mumbai Bench of Tribunal in ACIT Vs. Meco Instruments (P.) Ltd. (2010) 7 taxmann.com 24 (Mum) vide order dated 20.08.2010 had also decided the issue of approval of facility and consequent claim of deduction under section 35(2AB) of the Act. In the facts of said case also, the assessee had the approval of prescribed authority but did not have the approval in the prescribed form as the same was never brought to his notice. When the assessment proceedings for assessment year 2005-06 were taken up, an objection was raised and the assessee filed application giving particulars of approval and also expenditure for the financial years 2002-03 to 2004-05. It was pointed out that the prescribed authority vide order dated 28.08.2008 granted approval in form No.3CM w.e.f. 01.04.2007 to 31.03.2011. The plea of assessee in that case was that since no time limit was prescribed for complying with the prescribed procedure for grant of approval, hence the approval which was subsequently granted in the prescribed form should not result in denial of deduction to the assessee for earlier period. The Tribunal after considering provisions of the Act and rules therein held as under:-

"6.2.... A close reading of the section r.w. Rule 6 would reveal that nowhere any time has been prescribed within which the application is

required to be filed by the assessee company. Further, nowhere, any condition has been prescribed regarding cut off date from which the approval could be made effective. Therefore, once the assessee company is granted approval it will apply till it is revoked with reference to all the assessment years, which come within the ambit of that period. Therefore, mere mentioning of 1.4.2007 in the order dated 28.8.2008 was of no consequence and the approval granted in Form 3CM was also applicable for A.Y. 2005-06. In this regard, it is further noticeable that while granting of approval on 28.8.2008, the prescribed authority has, inter alia, observed in para 5 as under:-

*'Ref.No. and Date of the application : Ref NBil dated 16.8.2007
The above Research & Development facility is further approved for the purpose of section 35(2AB) from 1.4.2007 to 31.3.2011 subject to the conditions underlined therein.'*

The term 'further' makes it clear that the approval was not limited to 1.4.2007 to 31.3.2011 but was in addition to periods already approved. It is further noticeable that information obtained under RTI clearly showed that the assessee's applications were processed for earlier years also but no orders have been passed with reference to earlier assessment years. At the same time, the assessee has not been given any opportunity of being heard as required under proviso to Rule 6 (5A) before rejecting the said application. Therefore, impliedly, the application for the entire period, for which it was made, has to be deemed to have been granted. On the basis of above discussion, we are of the opinion that the assessee was entitled for weighted deduction u/s. 35(2AB)."

22. *The Tribunal concluded by holding that at best it was only a procedural defect and merely on the ground of technicalities of the procedure, the benefit bestowed by the Legislature could not be denied. It was also held that When it comes to follow the prescribed procedure, the exemption provisions have to be liberally construed and if in substance, the assessee has fulfilled the basic requirements then the exemption cannot be denied. Reliance was placed on the decision of the Hon'ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (supra).*

23. *The Hon'ble High Court of Delhi in Maruti Suzuki India Ltd. Vs. Union of India in Writ Petition dated 04.08.2017 had analyzed the provisions of section 35(2AB) of the Act and had also applied the ratio laid down by the Hon'ble High Court of Delhi in CIT Vs. Sandan Vikas (India) Ltd. (supra) and the Hon'ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (supra) and held that for availing the benefit under section 35(2AB) of the Act, what was relevant was not the date of recognition or cutoff date mentioned in the certificate of DSIR or even the date of approval, but the existence of recognition. It was further held that if R&D centre is not recognized, it is not entitled to deduction; but if it is recognized, it is entitled to the benefit. It was further observed that the Hon'ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (supra) had rightly observed that the date of approval of R&D centre, not being part of provision, extending benefit only from the date of recognition "amounts to reading more in the law which is not expressly provided". Distinguishing the ratio laid down by the Hon'ble High Court of Delhi itself in Apollo Tyres Ltd. Vs. Union of India (supra), it was observed as under:-*

"42. Insofar as the Apollo Tyres (supra) is concerned, in the said case, the Petitioner had omitted to apply for approval under Form 3CK, though recognition was granted to its R&D Centre. The said Form 3CK

consists of the Agreement to be entered into with the DSIR, in Part B. The omission by the Petitioner was held against it and this Court held that since the Petitioner had omitted to obtain the approval under Form 3CK, it is not entitled to the benefit of Section 35(2AB) since 2004. The facts of the present case are different and there has been no omission by the Petitioner herein to obtain approvals. The stage for approval arises after the recognition is granted by the DSIR, for which the application was filed right at inception by the Petitioner. Upon obtaining recognition, which was granted on 26th March 2014, the Form 3CK was filed on 31st March 2014. There has been no lapse of time, unlike in Apollo Tyres (supra) wherein the recognition was granted on 31st March, 2004 and the Form 3CK application was made only on 21st August, 2008. Thus the present case is clearly distinguishable from the facts in Apollo Tyres (supra)."

24. *The assessee was held to be entitled to the claim of deduction under section 35(2AB) of the Act in the said case by the Hon'ble High Court of Delhi.*

25. *The learned Departmental Representative for the Revenue has placed reliance on the ratio laid down by the Hon'ble High Court of Karnataka in Tejas Networks Ltd. Vs. DCIT (supra), wherein it was first held that under section 35(2AB) of the Act, the prescribed authority was the Secretary, DSIR. Further, under sub-section (3) of section 35(2AB) of the Act provides that no company would be entitled for deduction under clause (1) unless and until it enters into agreement with the prescribed authority. The Hon'ble High Court of Karnataka further goes on to hold that if the prescribed authority is satisfied that the conditions provided under section 35(2AB) of the Act are satisfied, then it would pass an order in writing in form No.3CM. In the facts of the said case, order of approval was granted in form No.3CM. Thereafter, the question was whether the Assessing Officer can look into the allowability of expenditure and as to what expenditure. The Hon'ble High Court held that where he does not accept the contention of assessee made under section 35(2AB) of the Act, he has to refer the matter to the Board, which in turn, would refer the matter to the prescribed authority. The Hon'ble High Court thus, has approved the procedure for recognition of facility. Further, the issue before the Hon'ble High Court was in respect of provisions of section 35 r.w.s. 43 of the Act. The Hon'ble High Court of Karnataka in view of section 43(4) of the Act observed that the said sub-section defines as to what activities would constitute scientific research and it was held that the said issue requires examination by the prescribed authority itself. The Hon'ble High Court categorically held that the Assessing Officer could not sit in judgment over the report submitted by the prescribed authority in form No.3CL. So, the issue before the Hon'ble High Court of Karnataka was whether any expenditure incurred in the acquisition of rights in or arising out of scientific research as indicated in clause (2) of sub-section (4) of section 43 of the Act was allowable or not, which is not the issue before us. The issue before us is in respect of provisions of section 35(2AB) of the Act."*

16. *The Hon'ble High Court of Delhi in Maruti Suzuki India Ltd. Vs. Union of India (supra) had laid down that what was relevant was not the date of recognition or cutoff date mentioned in the certificate of DSIR or even the date of approval, but the existence of recognition. It was further held that if R&D*

centre is not recognized, it is not entitled to deduction; but if it is recognized, it is entitled to the benefit.

17. Further, the Tribunal in Cummins India Ltd. Vs. DCIT (supra) while deciding the issue of allowability of claim of weighted deduction under section 35(2AB) of the Act on the surmise that the prescribed authority had approved part of expenditure in Form No.3CL had held that once the facility has been recognized by the prescribed authority and an agreement has been entered into between the facility and prescribed authority, then the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. The relevant paras are as under:-

“33. The assessee by way of grounds of appeal No.10.1, 10.2 and 10.3 has raised the issue against disallowance of deduction under section 35(2AB) of the Act.

34. Brief facts relating to the issue are that the assessee during the year under consideration had claimed deduction of ₹ 3.89 crores under section 35(2AB) of the Act being 150% of expenditure incurred of ₹ 2.594 crores. The Assessing Officer vide draft assessment order had short granted deduction under section 35(2AB) of the Act by ₹ 6,75,000/- on the ground that the Department of Industrial and Scientific Research i.e. DSIR had approved expenditure only to the extent of ₹ 2.594 crores in form No.3CL. The DRP upheld the draft assessment order and accordingly, the Assessing Officer passed final assessment order granting deduction under section 35(2AB) of the Act short by ₹ 6,75,000/-.

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.

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.

46. The Courts have held that for deduction under section 35(2AB) of the Act, first step was the recognition of facility by the prescribed authority and entering an agreement between the facility and the prescribed authority. Once such an agreement has been executed, under which recognition has been given to the facility, then thereafter the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. Accordingly, we hold so. Thus, we reverse the order of Assessing Officer in curtailing the deduction claimed under section 35(2AB) of the Act by ₹ 6,75,000/-. Thus, grounds of appeal No.10.1, 10.2 and 10.3 are allowed.”

18. Applying the aforesaid ratio to the present set of facts, where it is not the requirement of law to get any certification / approval of expenditure from the DSIR in form No.3CL, there is no merit in the orders of authorities below in denying weighted deduction under section 35(2AB) of the Act. It may further be pointed out that the assessee on a later date had received the said form No.3CL from the DSIR on 08.04.2013. Accordingly, we direct the Assessing Officer to allow weighted deduction at 150% of expenditure incurred in the hands of assessee under section 35(2AB) of the Act. Hence, revised ground of appeal No.1 raised by assessee is allowed.

19. The issue raised in original ground of appeal No.2 on without prejudice to ground of appeal No.1 does not stand and the same is thus, dismissed.

20. Before parting, it may be pointed out that the CIT(A) had allowed alternate plea of assessee of deduction under section 35(1)(iv) / 35(1)(i) of the Act, after dismissing the claim of weighted deduction under section 35(2AB) of

the Act. The CIT(A) had allowed the same both on capital expenditure and on revenue expenditure. The directions were given to the Assessing Officer to verify the claim of revenue expenditure and capital expenditure incurred was allowed. Once the assessee has been held to be entitled to claim the aforesaid weighted deduction under section 35(2AB) of the Act, the alternate claim allowed by the CIT(A) would not survive. Consequently, the ground of appeal raised by Revenue in this regard, stands allowed.

21. Similarly, the claim allowed by CIT(A) on vehicle expenses of ₹ 8,09,016/- under section 35(1)(iv) of the Act would not survive. Hence, grounds of appeal No.2 to 4 raised by Revenue in this regard are allowed. The ground of appeal No.1 raised by Revenue is general in nature and hence, does not need any adjudication.

22. Now, coming to ground of appeal No.4 raised by assessee i.e. disallowance under section 14A of the Act.

23. The learned Authorized Representative for the assessee pointed out that the assessee himself had disallowed 0.5% of expenses under Rule 8D(2)(iii) of the Rules. However, the Assessing Officer has in addition disallowed interest expenditure relatable to the investments made, on which the income was exempt under Rule 8D(2)(ii) of the Rules. The learned Authorized Representative for the assessee in this regard pointed out that the assessee had sufficient own funds to make the investments of ₹ 88 lakhs only. The reserves itself were sufficient to take care of the same. We find merit in the plea of assessee in this regard, where the assessee had sufficient own funds to make the aforesaid investments and applying the ratio laid down by the Hon'ble

Bombay High Court in CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom), we hold that no disallowance is to be made on account of interest expenditure under Rule 8D(2)(ii) of the Rules. Hence, ground of appeal No.4 raised by assessee is allowed.

24. Now, coming to last issue raised by the Revenue i.e. vide grounds of appeal No.5 and 6 against the order of CIT(A) in deleting disallowance of commission paid to liaison representatives.

25. Brief facts relating to the issue are that the assessee had made certain commission payments to liaison representatives, who dealt with various units of Indian Railways. The assessee was one of the major suppliers of cylinder liners and cylinder heads which were required for running of diesel locomotives by the Indian Railways. The assessee was using the services of liaison representatives from the year 1987 onwards. Survey under section 133A of the Act was conducted on the premises of assessee on 11.03.2011, under which certain documents were impounded and statement of the Director of the company was also recorded. Following the Survey, assessment for four assessment years i.e. 2004-05 to 2007-08 were reopened on the issue of excessive and unreasonable payments made to sister concern under section 40A(2) of the Act and commission payments, in the light of the statement recorded during Survey. The Assessing Officer called for similar details for the current year in respect of commission payments. The Assessing Officer noted that commission paid to parties ranged from 3.36% to 5% and her observations were that parties were not really involved in procurement business for the assessee, since Railways were placing orders directly on the assessee. From the details furnished by the assessee regarding nature of services rendered by

the liaison representatives, the Assessing Officer was of the view that 7.5% of total expenditure of ₹ 2.71 crores paid to the parties was towards non business purposes and hence, addition of ₹ 20,35,017/- was made. The CIT(A) on the other hand, allowed the claim of assessee in toto, against which the Revenue is in appeal.

26. In the totality of the facts and circumstances of the present case, where the assessee was doing the business of supplies to the Indian Railways since past so many years and where the Railways were placing direct orders on the assessee company, then the question which has arisen in the present appeal is allowability of commission to the liaison representatives. The total expenditure during the year was ₹ 2.71 crores. During the course of Survey, statement of the Director of the company was recorded in this regard, which in turn, was on the basis of certain documents found and impounded. In the totality of such facts, where from the details furnished by assessee it transpires that liaison representatives were involved in technical issues such as quality control, chemical composition as well as day-to-day issues on sample approval, etc. and especially in view of statement recorded during Survey, we find merit in the plea of the learned Departmental Representative for the Revenue that total expenditure on this behalf cannot be allowed in the hands of assessee. The CIT(A) while allowing the claim in the hands of assessee had in turn, relied on the decision of Tribunal in the case of a Limited Company, whereas the assessee before us was a Private Limited Company and the said ratio cannot be applied. Accordingly, in order to plug loopholes and leakage of revenue, we direct the Assessing Officer to disallow 5% out of commission and liaison expenses. The grounds of appeal No.5 and 6 raised by Revenue are thus,

partly allowed. The grounds of appeal raised by assessee and Revenue are thus, partly allowed.

27. In the result, both the appeals of assessee and Revenue are partly allowed.

Order pronounced on this 27th day of February, 2019.

Sd/-
 (ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
 (SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 27th February, 2019.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-4, Pune;
4. The Pr.CIT-3, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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