

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA No. 842/Hyd/2015
Assessment Year: 2011-12

Vikkys Agrisciences Pvt. vs. Dy. Commissioner of
Ltd., Hyderabad. Income-tax, Circle – 3(3),
Hyderabad.

PAN – AACCV 1048E

Appellant

Respondent

Assessee by: Shri A.V. Raghuram
Revenue by: Smt. N. Swapna

Date of hearing: 30/01/2019
Date of pronouncement: 15/03/2019

ORDER

PER S. RIFAUH RAHMAN, AM:

This appeal filed by the assessee is directed against the order of CIT(A) – 5, Hyderabad, dated, 12/02/2015 for AY 2011-12.

2. Brief facts of the case are that the assessee company engaged in the business of Research, Production, Trading and marketing of seeds in Cotton, Jowar, Sunflower, Maize and Paddy, etc., filed its return of income on 15.09.2011 admitting total income of Rs.33,81,524/- for the year under reference. While completing the assessment the Assessing Officer disallowed an amount of Rs,44.,00,929/- being deduction claimed u/s 35(2AB) towards R&D expenditure, on the ground that the conditions prescribed for claiming deduction u/s 35(2AB) like recognition by Department of Scientific and Industrial Research (DISR) as in-house R&D Unit for the

assessment year under reference and filing of application and Form in the prescribed format (Form No.3CL) by DISR to DGIT(Exemption), etc., have not been fulfilled by the assessee. The Assessing Officer also disallowed a sum of Rs.3,72,000/- on account of delayed remittances of employees contribution of PF and ESI on the ground that the contributions were remitted beyond the due dates.

2.1 While finalising the assessment proceedings, the Assessing Officer allowed only 100% of the R&D expenditure instead of 200% as claimed by the assessee company, stating that the assessee company has not fulfilled all the conditions prescribed for claiming deduction u/s 35(2AB) of the Act. In this regard, the Assessing Officer observed that the assessee company by application in Form No.3CK, has to take the approval of the Secretary, Department of Scientific & Industrial Research (DISR), who on fulfilment of the prescribed conditions passes an order in Form No.3CM and submits a report to that effect in Form No.3CL to the DG(Exemptions) within 60 days of granting approval. The AO further observed that in addition to fulfilling these requirements the assessee company has .to maintain separate account for each approved facility which has to be audited annually and copy of audit report to be submitted to the Secretary, DSIR by 31st October of each succeeding year. However, the Assessing Officer observed that the assessee company could only produce approval for having in-house research facility, but has not furnished any further proof in respect of approvals in Form 3CM and 3CL and submission of audit report by prescribed date. Thus, the AO disallowed the claim of deduction made by assessee u/s 35(2AB) of the Act, and brought the claim of Rs.44,00,929/-to tax.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) after considering the submissions of the assessee, following the decision of the coordinate bench of this Tribunal in the case of ECIL (in ITA No. 1106 & 895/Hyd/2011), dated 25/09/2012, held that without any approval granted by the authorized authority for the year/period under reference and without any reference to the quantum of eligible deduction, the claim of the assessee for weighted deduction u/s 35(2B) is not allowable and in the instant case, the claim to the extent of Rs. 44,00,929/- is not allowable and held to be rightly disallowed.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal of the appellant.

2. The Id. Commissioner (Appeals) erred in sustaining the disallowance of Rs.44,00,929 being the expenditure claimed under section 35(2AB) towards R&D expenditure on the alleged ground that Appellant has not fulfilled the conditions prescribed under the said section.

3. The Id. Commissioner (Appeals) failed to appreciate that the conditions prescribed for claiming deduction are fulfilled by the Appellant. The Commissioner (Appeals) ought to have appreciated that the Appellant has filed application in the form prescribed by DSIR and that the delay on part of the DISR to issue Form 3CL cannot be put against the Appellant as it is beyond the control of the Appellant.

For these and other grounds that may be urged with the leave of the Hon'ble Bench, it is prayed that the Appeal may be allowed."

5. Considered the rival submissions and perused the material on record. We find that this issue is squarely covered against the assessee in the case of M/s Electronics Corporation of India Ltd. (supra), wherein the coordinate bench has held as under:

"17. As per the provisions of sec 35(2AB) of Act as applicable to the relevant Assessment year, the expenditure incurred by the assessee in any approved in-house research facility, to the extent of approved by the prescribed authority, is entitled to weighted deduction of 150% of such approved expenditure. Therefore, the expenditure as approved by the DSIR in the certificate given by them in Form 3CL alone is to be granted weighted deduction. The DSIR in their certificate has certified expenditure eligible for weighted deduction as Rs.3,126.02 lakhs. Therefore, it is not for either the assessing authority or the appellate authority to decide on the expenditure which will be entitled to weighted deduction u/s.35(2AB). In fact, u/s. 35(2AB)(3) if any question arises u/ s.35 as to whether and if so, what extent any activities constitutes or constituted or any asset was used for scientific research, the matter should be referred to the appropriate authority whose decision will be final, In this case the appropriate Authority is the DSIR. Therefore once the DSIR has certified the quantum of eligible R&D expenditure for the purposes of weighted deduction u/s 35(2AB) the figure cannot be tampered with by ITAT. Even if the assessee is right in that there is a mistake in the certificate issued by the DSIR, which we don't know, the same can only be rectified by DSIR and not the ITAT in appellate proceedings. We, therefore, uphold the decision of lower authorities in restricting the weighted deduction u/s.35(2AB) o Rs,46,89,003 lakhs and disallowing sum of Rs. 1,69,73,987/- out of the claim made by the assessee, that in case DSIR corrects the amount of research and development expenditure on which the assessee is weighted deduction for the assessment year under corresponding weighted deduction u/s.35(2AB) granted on receipt of the clarification from Consequentially if the assessee is able to prove that amount of expenditure in their in-house research and development facilities was omitted to be considered by DSIR for weighted deduction the same may be allowed

as deduction u/s. 35/37 of the Act, With this observation dismiss the appeal of the assessee on this issue.”

Even though, we presume that DSIR has approved the project on presumption that the time for approval elapsed, we cannot quantify the deduction to apply the weighted deduction. Therefore, following the said case, we do not find any infirmity in the order of the CIT(A) as the decision of the CIT(A) is in consonance with the said order of the ITAT and accordingly, we uphold the order of CIT(A) and dismiss the grounds raised by the assessee.

6. In the result, appeal of the assessee is dismissed.
Pronounced in the open court on 15th March, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 15th March, 2019.

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Copy forwarded to:

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3. *CIT(A) - 5, Hyderabad*
4. *CIT – 5, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*