

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "H", MUMBAI**

**Before Shri Shamim Yahya, Accountant Member and  
Shri Ravish Sood, Judicial Member and**

**ITA No.4736/Mum/2017  
Assessment Year-2013-14**

Kabra Extrusiontechnik Ltd. 31, Shah Indl. Estate, Veera Desai Road, Andheri (West), Mumbai-400053	<b>बनाम/ Vs.</b>	DCIT-10(1)(2), Mumbai
PAN No. <b>AAACK4289L</b>		
(निर्धारिती /Assessee)		(राजस्व /Revenue)

निर्धारिती की ओर से / Assessee by	Shri Nitesh Joshi
राजस्व की ओर से / Revenue by	Shri Manoj Kumar Singh

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>25/04/2019</b>
□ देश की तारीख / <b>Date of Order:</b>	<b>03/05/2019</b>

**□ देश / O R D E R**

**Per Shamim Yahya (Accountant Member)**

This appeal by assessee is directed against order of the Ld. CIT(A)-17 Mumbai, dated 28/09/2017 and pertain to Assessment Year 2013-14. The ground of appeal raised by the assessee is as under:-

*The Appellant appeals against the impugned Order dated 28.04.2017 passed by the Commissioner of Income tax (Appeals)-17, Mumbai [the CIT(A)] under section 253 of the Income-tax Act (the Act), on the following amongst other grounds, each of its is in the alternative and without prejudice to any others:*

*1. The CIT(A) erred in upholding assessment of the Appellant's income at Rs.9,04,79,780 as against income as returned by it of Rs. 5,11,4,252.*

*2. The CIT(A) erred in upholding the application of rule 8D of the Income- tax Rules to the present case for computation of disallowance under section 14A of the Act, erroneously holding that the jurisdictional preconditions under section 14A(2) of the Act had been satisfied by the AO.*

*3. The CIT(A) erred in upholding the disallowance under section 14A of the Act of Rs.2,04,508.*

*4. The CIT(A) ought to have held that the disallowance as made under section 14A of the Act in the regular computation of income cannot be automatically taken into account while computing its book profit under section 11 5JB of the Act.*

*5. The CIT(A) erred in upholding the reduction of depreciation claim by Rs.3,13,547.*

*6. The CIT(A) erred in upholding the disallowance under section 35(2AB) of the Act of Rs.3,87,87,471/-*

3. Ground number one is general. From number 2 to 4 have not been pressed. Hence, these are dismissed as not pressed

4. As regards ground number five learned counsel of the assessee submitted that the issue is covered against the assessee by the decision of honourable Supreme Court in assessee's own case. Accordingly this ground raised by the assessee stands dismissed.

5. Brief facts of the case as regards the remaining ground is that the assessee's claim of Rs.38,700,471/- u/s 35(2AB) of the Act was disallowed by the AO on the basis that the approval granted by the Department of Science and Industrial Research ('DSIR' in short), Government of India is not for this assessment year.

6. Against above order assessee appealed before the learned CIT(A). Learned CIT(A) noted that assessee's contention but rejected the same by holding as under:-

"However, during the appellate proceedings, it has been claimed that the appellant company was eligible for weighted deduction u/s.35 (2AB) during the year in which the application was made. The interpretation of the appellant company is absolutely not as per the provision of the Act. The Provision of section 35(2AB) states.....

"Where a company.....  
..... .On in house  
research development facility as approved by the  
prescribed authority..... so inclined.

From the provision itself it is very clear that weighted deduction has to be allowed as per the approval of the prescribed authority. The prescribed authority in this case is the Secretary, Department of Science and Industrial Research, Government of India. The prescribed Authority has to give a order of approval in the prescribed form No. 3CM as per Income tax Rules. The copy of the said form has been filed in the paper book also, which appears at Sr.No.137. Column No.5 of the said form refers the said approval which states

*"The above Research & Development facility is approved for the purpose of section 35(2AB) from 01.04.2013 to 31.03.2015, subject to the conditions underlined therein."*

Thus, approval given by the DSIR leads no scope to interfere with the findings of the AO. The period of relevant, financial year i.e.1.4.2012 to 31.3.2013 was not the period for which approval was granted by the prescribed Authority. Hence, the disallowance made by the AO is fully justified and upheld. The appeal filed by the appellant company on this issue is therefore dismissed.

7. Against above order assessee is in appeal before us.

8. Learned Counsel for the assessee submitted that the issue is covered in favour of the assessee by the following Hon'ble High Court decisions

1. Banco Products (India) Ltd. vs DCIT 405 ITR 318 (Guj.)

II. CIT vs Sadan Vikas Ltd. 335 ITR 117 (Del.)

9. He submitted that these decisions duly expounded that DSIR has only to give the approval to the assessee's proposal and they were not mandated to provide the date for deduction. He claimed that in the present case the assessee has duly submitted the application on 28/11/2012. He submitted that in the application assessee duly mentioned that it was doing the research and development activities from 1970. The assessee has also duly submitted the details of expenditure incurred in this regard for the previous three years. He submitted that the DSIR had already given the

approval vide letter dated 4/3/13 for the period up to 31/3/15. He submitted that subsequently in form number

3CM, the authority has specified that the assessee's facility is approved for 1/14/13 to 31/3/15. Learned counsel submitted that this was not at all mandated in the form 3CM in this regard. He submitted that the line specifying dates as mentioned by the concerned authority was inserted with effect from 01/07/2016. He submitted that for the present assessment year it has no application. Hence learned counsel submitted that for the current assessment year the assessee scheme was duly proved and the claim was justified for the present assessment year on the touchstone of aforesaid honourable High Court decisions.

10. Per Contra learned departmental representative submitted that he would rely upon the order's of the authorities below. However the learned counsel could not produce any jurisdictional High Court decision contrary to the views expressed by the honourable High Court as above.

11. We have carefully considered the submission perused the records. Up on careful consideration we note that

assessing in this case filed application on 28/11/2012. In the said application assessee has duly stated that it has commenced research and development activities from the year 1970. The assessee has duly given the expenditures incurred in this regard for the preceding three years. Concerned authority vide e order dated 04/03/2013 has duly approved the application and mentioned that approval was valid up to 31/3/15. However the certificate issued in Form 3CM, subsequently, the authority has specified the period as 01/04/2013 to 31/03/2015. On the basis of this certificate authorities below have been denied that assessee the benefit of deduction under section 35(2AB).

12. Now we have honourable High Court's decision for the proposition that concerned authority was only to give approval and not provide the dates. In this regard, we may gainfully refer to the decision of honourable Gujarat High Court in the case of Banco Products (India) Ltd. vs DCIT (2018) 405 ITR 318(Guj.) held that

“Section 35(2AB) of the Income-tax Act, 1961 is aimed at promoting development of in-house research and development facility which necessarily would require substantial expenditure which immediately may not yield desired results or be correlated to generation of additional revenue. By the very nature of things, research and development is a hit and miss exercise. Much of the efforts, capital as well as human

investment may go waste if the research is not successful. The Legislature therefore, having granted special deduction for such expenditure, it should be seen in the light of the purpose for which it has been recognised. Research and development facility can be set up only after incurring substantial expenditure. The application for approval Of such facility can be made only after setting up of the facility. Once an application is filed by the assessee to the prescribed authority, the assessee would have no control over when such application is processed and decided. Even if therefore, the application is complete in all respects and the assessee is otherwise eligible for grant of such approval, approval may take some time to come by. The claim for deduction cannot be defeated on the ground that such approval was granted in the year subsequent to the financial year in which the expenditure was incurred. In order to avail of the deduction under section 35(2AB) what is relevant is not the date of recognition or the cut-off date mentioned in the certificate of the prescribed authority or even the date of approval, but the existence of recognition.

The assessee claimed weighted deduction under section 35(2A B) of the Act on the expenditure incurred for setting up research and development facility. This was supported by the approval granted by the concerned authority with respect to such facility. The Assessing Officer and the Commissioner (Appeals) were of the opinion that such deduction could not be granted for the period prior to the effective date of approval. The Tribunal however, took the view that the facts were somewhat contradictory. It was not clear when the application for approval was made and when actually approval was granted. The Tribunal therefore, remanded the proceedings for fresh consideration by the Assessing Officer. On appeal:

Held, that the Assessing Officer was not right in restricting the deduction to expenditure incurred prior to April 1, 2008. He had to recompute such deduction and give its effect to the assessee for the relevant assessment year.

13. Similarly honourable Delhi High Court in the case of CIT vs Sandan Vikas (India) Ltd. (2011) 335 ITR 117 (Del.) held as under:-

"Section 35(2AB) of the Income-tax Act, 1961, speaks of 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 the Department of Scientific and Industrial Research ; and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee. The provisions nowhere suggest or imply that the research and development facility is to be approved from a particular date. In other words, it is nowhere suggested that the date of approval alone will be the cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. The assessee has to develop the 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 assessee was engaged in the business of manufacture of automotive air-conditioning and also undertook research and development activity in this behalf. In the assessment

year 2005-06, the assessee claimed a deduction under section 35(2AB). The Department of Scientific and Industrial Research by its letter dated February 23, 2006, granted recognition to the in-house research and development facilities of the assessee and also granted approval for the expenses incurred by the assessee on the in-house research and development facility in Form 3CM by letter dated September 18, 2006. The Assessing Officer, however, refused to accord the benefit of the provisions of weighted deduction to the assessee on the ground that recognition and approval was given by the Department of Scientific and Industrial Research in February/September, 2006, i.e., in the next assessment year and, therefore, the assessee was not entitled to the benefit. The Commissioner(Appeals) accepted the view of the Assessing Officer. The Tribunal held that the assessee was entitled to weighted deduction. ON appeal:

Held, dismissing the appeal, that the assessee was entitled to weighted deduction under section 35(2AB) for the assessment year 2005-06.”

14. These decisions are duly corroborated by the form number 3CM, applicable for the extant period which at that time did not provide for date of deduction to be specified. Such a specification was inserted by column 6 of this form with effect from 01/07/2016. In these circumstances the decisions from honourable high courts mentioned above duly supported the case of the assessee. The concerned authority having approved the application given by the assessee has duly conformed the assessee's engagement in the research and development activity. The said application earlier mentioned that assessee was duly engaging into those activities for the concerned assessment year. No dispute has been raised in this regard. Hence as held by the honourable High Courts in those periods concerned authority as per the extant provision did not need to mention any date of

deduction if the application is made during the assessment year, and the same is approved, that would suffice and assessee would be eligible for deduction for the concerned assessment year. Accordingly, we hold that assessee is eligible for deduction under section 32(2AB) of the Act for the concerned assessment year.

15. In the result this appeal by the assessee is allowed.

Order pronounced in the Open Court on 03/05/2019

**Sd/-**  
**(Ravish Sood)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 03/05/2019

*Shekhar, P.S./नि.स.*

**Sd/-**  
**(Shamim Yahya)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

**देश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**देशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**यकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**