

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.17/Bang/2018

Assessment year : 2013-14

M/s Park Control and Communications Pvt. Ltd., No.22, 80 Ft. Road, HAL 2 <sup>nd</sup> Stage, Bengaluru-560 075.	Vs.	The Dy. Commissioner of Income-tax Circle-5(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V Chandrashekhar, Advocate
Respondent by	:	Shri R.N Siddappaji, Addl. CIT (DR)

Date of hearing	:	24.07.2019
Date of Pronouncement	:	.09.2019

**ORDER**

*Per B.R. Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 29/8/2017 passed by Id CIT(A)-5, Bengaluru and it relates to asst. year 2013-14.

2. The assessee is aggrieved by the decision of Id CIT(A) in rejecting the claim of weighted deduction @ 200% made us/ 35(2AB) of the Act.

3. We heard the parties and perused the record. The assessee is engaged in the production& sale of telemetry interface cards and Data Acquisition Cards, design and development of hardware and software and maintenance services. The assessee has set up an

inhouse research and development facility and the same has been approved by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Govt. of India vide its approval dated 21/3/2013 given in Form 3CM for the period from 1/4/2012 to 31/3/2015. The year under consideration falls in between the above said period.

4. In the return of income, the assessee claimed deduction u/s 35(2)AB to the tune of 51.03 lakhs, being 200% of the expenditure incurred on research and development of Rs.25.51 lakhs. The AO noticed that the assessee has furnished Form No.3CL issued by DSIR, New Delhi wherein an amount of Rs.2,63,000/- alone was found to have been approved. Accordingly the AO restricted the deduction u/s 35(2AB) of the Act to the extent of 200% of 2.63 lakhs referred above i.e to the extent of Rs.5,26,000/- Accordingly he disallowed the excess claim of Rs.45.77 lakhs. The Id CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

5. We heard the parties and perused the record. We noticed that the issue as to whether furnishing of Form No.3CL is mandatory for allowing deduction u/s 35(2AB) of the Act came to be considered by the coordinate bench in the case of M/s Mahindra Electric Mobility Ltd., Vs. ACIT (ITA No.641/Bang/2017 dated 14/9/2018) and the Tribunal, by considering the decision rendered in the following cases, held that prior to 1/7/2016, Form No.3CL had no legal sanctity. It was further held that, only w.e.f 1/7/2016, in view of the amendment made to Rule 6(7A)(b) of the

Income-tax Act Rules, the quantification of weighted deduction allowable u/s 35(2AB) of the Act has to be based on Form No.3CL and hence the said form has obtained significance.

- a) Qumine India Ltd. Vs. DCIT, ITA NO.309/Bun/2014 dt.
- b) M/s Shree Biotech Laboratories India Ltd., Vs. ACIT 385/Hyd/2014 dt. 24.9.2014
- c) CIT Vs. SadanVikhas India Ltd., 335 ITR 117 (Del)
- d) CIT Vs. Claris Life Sciences Ltd., 326 ITR 251

6. For the sake of convenience we extract below the operative portion of the order passed in the case of Mahindra Electric Mobility Ltd., (Supra).

*13. We have heard the rival submissions. The learned DR relied on the order of the AO/CIT(A). The learned counsel for the Assessee reiterated submissions as were made before the revenue authorities and placed reliance on some judicial precedents on identical issue rendered by various benches of ITAT and Hon'ble High Courts.*

*14. For AY 2012-13, the previous year is FY 2011-12 i.e., the period from 1.4.2011 to 31.3.2012. The facts on record go to show that the Assessee's in-house R & D facilities was approved by the DSIR, Govt. of India, Ministry of Science and Technology for AY 2012-13 vide their letter dated 20.5.2009, a copy of which is placed at Page-30 of the Assessee's paper book. The approval is for the period 1.4.2009 upto to 31.3.2012. Therefore, the condition for allowing deduction u/s.35(2AB) of the Act has been fulfilled by the Assessee. The claim of the revenue, however, is that the approval by the prescribed authority in form No.3CM is not final and conclusive and the quantum of expenditure on which deduction is to be allowed is to be certified by DSIR in form No.3CL. There is no statutory provision in the Act which lays down such*

*a condition. We shall therefore examine what is Form No.3CL.*

*15. DSIR has framed guidelines for approval u/s.35(2AB) of the Act. The guidelines as on May, 2010 which is relevant for AY 2012-13, in so far as it is relevant for the present appeal, was as given below.*

- (i) As per guideline 5 (iv) of the guidelines so framed, every company which has obtained an approval from the prescribed authority should also submit an undertaking as per Part C of Form No. 3CK to maintain separate accounts for each R&D centre approved under Section 35(2AB) by the Prescribed Authority, and to get the accounts duly audited every year by an Auditor as defined in subsection (2) of section 288 of the IT Act 1961. (The statutory auditors of the Company should audit the R&D accounts. To facilitate this audit separate books of accounts for R&D should be maintained. Also, the statutory auditors should sign the auditors' certificate in the details required to be submitted as per annexure-IV of the guidelines to facilitate submission of Report in Form 3CL).*
  
- (ii) As per guideline 5(vi) of the guidelines, the audited accounts for each year maintained separately for each approved centre shall be furnished to the Secretary, Department of Scientific & Industrial Research by 31st day of October of the succeeding year, along with information as per Annexure-IV of the Guidelines.*
  
- (iii) As per guideline 5(ix) Expenditures, which are directly identifiable with approved R&D facility only, shall be eligible for the weighted tax deduction. However, expenditure in R&D on utilities which are supplied from a common source which also services areas of the plant other than R&D may be admissible, provided they are metered/measured and subject to certification by a Chartered Accountant.*

- (iv) *As per guideline 5 (x) Expenditure on manpower from departments, other than R&D centre, such as manufacturing, quality control, tool room etc. incurred on such functions as attending meetings providing advice / directions, ascertaining customer choice/response to new products under development and other liaison work shall not qualify for deduction under section 35(2AB) of I.T. Act 1961.*
- (v) *As per guideline 10 Documents required to be submitted by 31<sup>st</sup>October of each succeeding year of approved period to facilitate submission of Report in Form 3CL (2 sets) are Complete details as per annexure-IV of DSIR guidelines.*

*16. The Assessee applied for issue of Form No.3CL to the appropriate authority on 24.3.2017, after the order of the CIT(A). The application so made by the Assessee is at page 43 to 65 of the Assessee's paper book. According to the Assessee, it has complied with all the requirements of the guidelines for issue of Form No.3CL, but the DSIR has issued Form No.3CL dated 5.4.2018 for AY 2014 & 15 & 2015-16 but no Form No.3CL was issued for AY 2012-13. Though there has been no communication to the Assessee in this regard, the learned counsel for the Assessee submitted that since the audited accounts were not submitted by 31<sup>st</sup>October of the succeeding AY, as is required under Guideline 5 (vi), the Assessee's application would not have been considered by the DSIR.*

*17. Rule-6(7A)(b) of the Rules specifying the prescribed authority and conditions for claiming deduction u/s.35(2AB) of the Act has been amended by the Income Tax (10<sup>th</sup> Amendment) Rules, 2016 w.e.f. 1.7.2016, whereby it has been laid down that the prescribed authority, i.e., DSIR shall quantify the quantum of deduction to be allowed to an Assessee u/s.35(2AB) of the Act. Prior to such substitution, the above provisions merely 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 DGIT (Exemption) within 60 days of granting approval. Therefore prior to 1.7.2016 there was legal sanctity for Form No.3CL in the context of allowing deduction u/s.35(2AB) of the Act"*

18. *The issue as to whether deduction u/s.35(2AB) of the Act can be denied for absence of Form No.3CL by the DSIR was subject matter of several judicial decisions rendered by various Benches of ITAT.*

*(i) The Pune ITAT in the case of Cummins India Ltd. Vs. DCIT in ITA No.309/Pun/2014 for AY 2009-10 order dated 15.5.2018 had an occasion to consider a case where part of the claim for deduction u/s.35(2AB) of the Act was claimed supported by Form No.3CL but part of it was not supported by Form No.3CL. The Pune ITAT held as follows:-*

*“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.”*

*(ii) The Hyderabad ITAT in the case of M/S. Sri Biotech Laboratories India Ltd. Vs. ACIT ITA No.385/Hyd/2014 for AY 2009-10 order dated 24.9.2014 took the view (vide Paragraph-13 of the order) that when the Assessee’s R & D facility is approved the deduction u/s.35(2AB) of the Act cannot be denied merely on the ground that prescribed authority has not submitted report in Form 3CL.*

19. *The question of allowing deduction u/s.35(2AB) of the Act was considered by the Hon’ble Delhi High Court in the case of CIT vs. Sadan Vikas (India) Ltd. (2011) 335 ITR 117 (Del) where AO refused to accord the benefit of the weighted deduction to the assessee under s. 35(2AB) on the ground that recognition and approval was given by the DSIR in February/September, 2006, i.e., in the next assessment year and, therefore, the weighted deduction cannot be allowed. The CIT(A) confirmed the order of the AO. The Tribunal held that the assessee would be entitled to weighted deductions of the aforesaid expenditure incurred by the assessee in terms of the s. 35(2AB) of the Act and in coming to this conclusion, the Tribunal relied upon the judgment of Gujarat High Court in CIT vs. Claris Lifesciences Ltd. 326 ITR 251 (Guj). In its decision the Hon’ble Gujarat High Court held that the cut-off date mentioned in the certificate issued by the DSIR would be of no relevance. What is to be seen is that the assessee was indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by DSIR is issued, that would be sufficient to hold that the assessee fulfils the conditions laid down in the aforesaid provisions. The Hon’ble Delhi High Court followed the decision of the Hon’ble Gujarat High Court and upheld the decision of the Tribunal. The Hon’ble Delhi High Court quoted the following observations of the Hon’ble Gujarat High Court and agreed with the said view:*

"7. ... The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the research and development facility, expenditure so incurred is eligible for weighted deduction.

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 research and development 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 s. 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 research and development 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.”*

20. *From the above discussion it is clear that prior to 1.7.2016 Form 3CL had no legal sanctity and it is only w.e.f 1.7.2016 with the amendment to Rule 6(7A)(b) of the Rules, that the quantification of the weighted deduction u/s.35(2AB) of the Act has significance. In the present case there is no difficulty about the quantum of deduction u/s.35(2AB) of the Act, because the AO allowed 100% of the expenditure as deduction u/s.35(2AB)(1)(i) of the Act, as expenditure on scientific research. Deduction u/s.35(1)(i) and Sec.35(2AB) of the Act are similar except that the deduction u/s.35(2AB) is allowed as weighted deduction at 200% of the expenditure while deduction u/s.35(1)(i) is allowed only at 100%. The conditions for allowing deduction u/s.35(1)(i) of the Act and under Sec.35(2AB) of the Act are identical with the only difference being that the Assessee claiming deduction u/s.35(2AB) of the Act should be engaged in manufacture of certain articles or things. It is not in dispute that the Assessee is engaged in business to which Sec.35(2AB) of the Act applied. The other condition required to be fulfilled for claiming deduction u/s.35(2AB) of the Act is that the research and development facility should be approved by the prescribed authority. The prescribed authority is the Secretary, Department of Scientific Industrial Research, Govt. Of India (DSIR). It is not in dispute that the Assessee in the present case obtained approval in Form No.3CM as required by Rule 6 (5A) of the Rules. In these facts and circumstances and in the light of the judicial precedents on the issue, we are of the view that the deduction u/s.35(2AB) of the Act ought to have been allowed as weighted deduction at 200% of the expenditure as claimed by the Assessee and ought not to have been restricted to 100% of the expenditure incurred on scientific research. We hold and direct accordingly and allow the appeal of the Assessee.*

7. In the instant case, the year under consideration being asst. year 2014-15, the same would fall prior to 1/4/2016 and hence the tax authorities are not justified for insisting on production of Form NO.3CL for allowing deduction u/s 35(2AB) of the Act. Accordingly, we set aside the order passed by the Id CIT(A) and direct the AO to allow the deduction @ 200% of the expenditure incurred by the assessee, after examining the claim from the books of accounts.

8. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the Open Court on **12<sup>th</sup> September, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 12th September, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
.....  
Dictation note enclosed .....
8. Date on which the file goes to the Bench Clerk  
.....
9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
.....
11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
.....
12. The date on which the file goes to dispatch section for  
dispatch of the Tribunal Order .....