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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1229/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Bharat Forge Ltd.,
Mundhwa,
Pune – 411036

PAN : AAACB8519L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax,
Circle 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 17-01-2020
घोषणा की तारीख / Date of Pronouncement : 21-01-2020

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(A)-1, Pune, dated 10.03.2017, for the assessment year 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

The assessee is a company stated to be engaged in the business of manufacturing and supplying forged and machined automobile chassis and engine components such as Crankshafts, front axle beams, connecting rods, steering knuckles and other components to several of the world's leading commercial and passenger vehicles manufacturers. The assessee electronically filed its return of income for A.Y. 2014-15 on 30.11.2014 declaring total income at Rs.4,66,50,07,131/-. The case was taken up for scrutiny and thereafter, assessment was framed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 25.12.2016 and the total income was determined at 4,66,86,12,800/- after making certain disallowances. Aggrieved by the order of Assessing Officer, assessee carried the matter before Ld.CIT(A), who vide order dated 10.03.2017 (in appeal No.CIT(A), Pune-1/10634/2016-17) has granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds:-

The following grounds are taken without prejudice to each other -

On facts and in law,

1.1 The learned Commissioner of Income Tax (Appeals) - 1, Pune erred in confirming the disallowance u/s 14A of Rs.27,04,567/-, by applying Rule 8D over and above disallowance of Rs.64,73,000/- already offered by the Appellant in its tax return while computing total income as per regular provisions of the Act and for the purpose of working out book profits u/s 115JB. The learned Commissioner of Income Tax (Appeals) - 1, Pune erred in not appreciating that there was no dominant and immediate connection between me expenditure incurred and exempt income and therefore there could not be any disallowance under section 14A over and above what was already offered by the Appellant Company.

1.2 The learned Commissioner of Income Tax (Appeals) - 1, Pune, failed to appreciate that the appellant had on its own, disallowed expenses on reasonable basis u/s 14A in the return of income and the learned Assessing Officer did not give any reason as to why he was not satisfied with reasonableness of the above disallowance and accordingly, the additional disallowance was not warranted.

1.3 The learned Commissioner of Income Tax (Appeals) - 1, Pune, failed to appreciate that the investment in the shares of the group companies was made long back and there was no expenditure incurred in earning dividend from those companies. The learned Commissioner of Income Tax (Appeals) - 1, Pune, further failed to appreciate that the above investments in the group concerns were strategic investments which did not require regular monitoring and therefore, there was no expenditure incurred to earn any income from these investments.

1.4 Without prejudice to ground nos. 1.1 to 1.3 above, the learned Commissioner of Income Tax (Appeals) - 1, Pune, erred in not directing the Assessing Officer to exclude the investments which had not actually given any tax-free dividend income during the relevant previous year for the purposes of working out disallowance under Rule 8D(iii).

2.1 The learned Commissioner of Income Tax (Appeals) - 1, Pune erred in confirming the disallowance of Rs.4,05,000/- out of weighted deduction of expenditure incurred on in-house research & development activities allowable u/s. 35(2AB) of the Income Tax Act 1961 being expenditure not approved by the DSIR.

2.2 He erred in not appreciating that the DSIR had not provided any details or reasoning for such rejection of the approval and therefore it was incorrect and against the principles of natural justice to rely on the approval of the DSIR for the purposes of granting deduction u/s. 35(2AB).

2.3 The learned Commissioner of Income Tax (Appeals) - 1, Pune erred in not appreciating that the provisions of Section 35(2AB) did not provide for DSIR approval to the claim of R & D expenses by the assessee for the purposes of allowing weighted deduction and there was no provision in the Income Tax Act which enabled the Assessing officer to disallow such weighted deduction based on such DSIR approval.

2.4 The learned Commissioner of Income Tax (Appeals) - 1, Pune erred in not appreciating that the DSIR was a competent authority only to approve the in-house R & D facility u/s. 35(2AB) and to decide whether and to what extent an activity constitutes scientific research u/s. 35(3) of the Income Tax Act 1961. The DSIR had no authority to approve or reject the expenses for the purposes of deduction u/s. 35(2AB) on an annual basis post approval of the in-house R & D Unit.

2.5 The learned Commissioner of Income Tax (Appeals) - 1, Pune erred in not appreciating that the Appellant Company had fulfilled all the prescribed conditions of Section 35(2AB) and therefore there was no reason to disallow any part of R & D expenses and weighted deduction claimed by the Appellant company. He erred in not relying on the ratio of various judgments relied upon by the Appellant Company

2.6 Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) - 1, Pune erred in not directing the assessing officer to make a reference to the DSIR as per the provisions of Section 35(3) before confirming the disallowance of the deduction u/s. 35(2AB) to the extent of Rs.4,05,000/-.

3. Before us at the outset, ld. AR submitted that the ground Nos.1.1 to 1.4 relate to the disallowance u/s 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as 'the Rules') and ground Nos.2.1 to 2.6 are with respect to denial of claim of weighted deduction u/s 35(2AB) of the Act.

4. We first take up the issue of disallowance u/s 14A of the Act.

5. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed exempt dividend income to the tune of Rs.39.35 crores (rounded off) and worked out the disallowance u/s 14A of the Act at Rs.64,73,000/-. The assessee was asked to furnish the basis of calculation of disallowance made. The assessee made various submissions which were not found to be acceptable to the Assessing Officer. The Assessing Officer was of the view that provisions of section 14A of the Act and Rule 8D of the Rules are attracted in assessee's case and hence, by following the methodology prescribed under Rule 8D of the Rules worked out the disallowance u/s 14A at Rs.91,77,567/-. He thereafter, after giving credit of the disallowance *suo motu* worked out by assessee of Rs.64,73,000/- made addition of the balance sum of Rs.27,04,567/- (Rs.91,77,567/- (-) Rs.64,73,000/- already disallowed). Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A), who dismissed the appeal of assessee.

6. Aggrieved by the order of CIT(A), the assessee is now in appeal before us.

7. Before us the ld. AR reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that the issue is squarely covered in assessee's favour by the decision of Co-ordinate Bench of Pune in assessee's own case for A.Y. 2012-13. He placed on record the copy of the decision of ITAT in ITA No.805/PUN/2017, dated 04.09.2019 and pointed to the relevant paras. He thereafter submitted that since the facts of the case of the year under consideration are similar to A.Y. 2012-13, therefore following the order of A.Y. 2012-13 and following the decision of Special Bench in the case of Vireet Invests. P. Ltd. [165 ITD 27 (Del)(SB)], the disallowance u/s 14A be worked out by considering the investments from which the assessee has earned exempt income. He further submitted that if while computing the disallowance u/s 14A in line with the decision of Vireej Invests P. Ltd. (supra), the disallowance goes below the *suo motu* disallowance worked out by assessee, then assessee will not make a claim of adjustment / refund of the excess amount.

8. The ld. DR on the other hand supported the orders of Assessing Officer and CIT(A).

9. We have heard the rival submissions and perused the material on record. The issue in the ground Nos.1.1 to 1.4 is with respect to disallowance made u/s 14A of the Act read with 8D of the Rules. We find that identical issue arose before ITAT in assessee's own case in A.Y. 2012-13 where Pune Tribunal in ITA No.805/PUN/2017, order dated 04.09.2019 has decided the issue in assessee's favour by observing as under:-

"4. Both sides heard. Orders of the authorities below perused. In the appeal the sum and substance of the prayer of assessee with respect to ground No. 1 of the appeal is that disallowance u/s. 14A should be made only in respect of investments on which the assessee has earned dividend income. Undisputedly, the assessee has earned exempt income to the tune of Rs.22 crores in the impugned assessment year. The assessee has made suo-moto disallowance of Rs.51,39,625/-. The Assessing Officer after invoking the provisions of Rule 8D has re-worked disallowance u/s. 14A to Rs.81,41,319/-. The contention of the assessee is that while computing disallowance u/s. 14A, the Assessing Officer has also taken into consideration those investments on which the assessee has not earned any exempt income. The Special Bench of Tribunal in the case of ACIT Vs. Vireet Investments (P) Ltd. (supra) has held that only those investments are to be considered while computing average value of investments, which yielded exempt income during the year. Thus, in the light of decision of Special Bench we concur with the contentions of assessee. The issue is restored back to the file of Assessing Officer for recalculation of disallowance u/s. 14A r.w. Rule 8D after excluding those investments on which the assessee has not earned any exempt income during the period relevant to the assessment year under appeal.

4.1 The ld. AR of assessee has stated at the Bar that if amount of disallowance u/s. 14A after recomputation is reduced below suo-moto disallowance made, the assessee would not claim refund/adjustment of excess suo-moto disallowance already made. Thus, in the light of our above observations and the concession granted by the ld. AR of assessee, the ground No. 1 raised in the appeal by the assessee is allowed for statistical purpose."

10. Before us, the Revenue has not placed any contrary binding decision in its support nor has placed any material on record to demonstrate that the decision of Pune Tribunal in assessee's own case (supra) has been set aside / overruled / stayed by Higher Judicial Forum. The Revenue has also not pointed to any distinguishing facts between the year under appeal and that of A.Y. 2012-13. In view of the aforesaid, we following the order of ITAT for A.Y. 2012-13 in assessee's own case direct the Assessing Officer to work out the disallowance in similar manner as directed by ITAT in assessee's own case for A.Y. 2012-13. Needless to state that Assessing Officer shall grant reasonable opportunity of hearing to the assessee. Thus, the **ground Nos.1.1 to 1.4 raised by the assessee are allowed for statistical purposes.**

11. The second issue in ground Nos.2.1 to 2.6 is with respect to denial of claim of weighted deduction u/s 35(2AB) of the Act.

12. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed weighted deduction of Rs.49,09,03,622/- u/s 35(2AB) of the Act in respect of its in-house R&D facility as approved by the Department of Scientific & Industrial Research (DSIR). The assessee was asked to furnish the details of expenditure incurred and the approval given by the DSIR. The Assessing Officer observed that the DSIR has not approved expenditure of Rs.4.05 lakhs out of total expenditure of Rs.2,454.52 lakhs claimed by the assessee. The assessee was asked to explain why proportionate deduction u/s 35(2AB) of the Act be not disallowed to the extent of the amount disallowed / not considered by the DSIR as a part of eligible expenditure on Research & Development activities of the company. The assessee made the submissions which were not found to be acceptable to the Assessing Officer. Accordingly, the Assessing Officer disallowed proportionate weighted deduction claimed u/s 35(2AB) of the Act of Rs.4.05 lakhs and added the same to the total income of assessee. Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A), who dismissed the appeal of assessee.

13. Aggrieved by the order of CIT(A), the assessee is now in appeal before us.

14. Before us the ld. AR reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that the issue is squarely covered in assessee's favour by the decision of Co-ordinate Bench of Pune in assessee's own case for A.Y. 2012-13. He also placed on record the copy of the order of Tribunal for A.Y. 2012-13 and submitted that the facts are identical to that of A.Y. 2012-13 and therefore following A.Y. 2012-13, the ground be decided in assessee's favour.

15. The ld. DR on the other hand supported the orders of Assessing Officer and CIT(A).

16. We have heard the rival submissions and perused the material on record. The issue in the ground Nos.2.1 to 2.6 is with respect to disallowance of weighted deduction u/s 35(2AB) of the Act. We find that Pune Tribunal in ITA No.805/PUN/2017, order dated 04.09.2019 for A.Y. 2012-13 on identical facts in assessee's own case has decided the issue in assessee's favour by observing as under:-

> *"5. In ground No. 2 of the appeal, the assessee has assailed disallowance of weighted deduction claimed in respect of expenditure on in-house research & development activities u/s. 35(2AB) of the Act. We find that similar disallowance was made by the Assessing Officer in assessment year 2011-12. The Tribunal decided this issue in favour of assessee by observing as under :*
>
> > *"16. We have heard the rival contentions and perused the record. The issue before us is vis-à-vis weighted deduction claimed under section 35(2AB) of the Act. The assessee had recognized R&D facility, for which approval was given by DSIR. The assessee during the year under consideration had incurred expenditure of ₹ 15.05 crores (approx.), on which the assessee had claimed weighted deduction under section 35(2AB) of the Act. However, the said weighted deduction claimed under section 35(2AB) of the Act was curtailed by Assessing Officer by ₹ 18,42,000/- on the ground that DSIR had not approved the expenditure. The issue which arises is whether under the provisions of the Act, DSIR had any authority during the year under appeal to approve or disapprove the expenditure incurred by*

assessee on R&D facility especially once the said R&D facility has been recognized by DSIR. 17. We find that similar issue arose before the Pune Bench of Tribunal in the case of Cummins India Ltd. Vs. DCIT (supra) and the Tribunal noted the provisions of section 35(2AB) of the Act, the approval given by DSIR in Form No.3CL and consequent to the approval given, whether DSIR had any role in approving the expenditure claimed by assessee. The relevant findings of Tribunal are vide paras 38 to 46, which read as under:-

> *"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 subsections 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.*
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> *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 subsection (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 cooperation 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.*
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> *40. Under Rule 6 of Income Tax Rules, 1962 (in short „the Rules), the prescribed authority for expenditure on scientific research under various subclauses 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 subrule (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.*
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> *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.*
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> *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 inhouse 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. The issue arising before us is similar to the issue in Cummins India Ltd. Vs. DCIT (supra) and following the same parity of reasoning, we hold that where facility has been recognized by the prescribed authority and agreement has been entered into between facility and the prescribed authority and 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 find no merit in the orders of authorities below in restricting weighted deduction claimed under section 35(2AB) of the Act by ₹ 18,42,000/- on the ground that DSIR had not approved the said expenditure. It may be pointed out herein itself that reasons for not approving expenditure have also not been made available to the assessee. Consequently, the same cannot be basis for curtailing deduction claimed under section 35(2AB) of the Act. The Assessing Officer is thus, directed to allow weighted deduction under section 35(2AB) of the Act at ₹ 18,42,000/-. The grounds of appeal No.2.1 to 2.5 are thus, allowed. The issue in ground of appeal No.2.6 is without prejudice basis and the same does not stand. The grounds of appeal raised by assessee are thus, partly allowed."*

> *6. The Revenue has not brought before us any material to show any change in the facts in assessment year under appeal. Therefore, respectfully, following the decision of Co-ordinate Bench in assessee's own case in immediately preceding assessment year, the ground No. 2 raised in the appeal by the assessee is allowed in the same terms."*

17. Before us, the Revenue has not placed any contrary binding decision in its support nor has placed any material on record to demonstrate that the decision of Pune Tribunal in assessee's own case (supra) has been set aside / overruled / stayed by Higher Judicial Forum. The Revenue has also not pointed to any distinguishable facts between the issue in the year under consideration and that of A.Y. 2012-13. In view of the aforesaid, following the decision of Co-ordinate Bench for A.Y. 2012-13, the Assessing

Officer is directed to allow the weighted deduction as claimed u/s 35(2AB) of the Act. Thus, the **ground Nos.2.1 to 2.6 raised by the assessee are allowed.**

18. In the combined result, **the appeal of assessee is allowed as aforesaid.**

Order pronounced on 21st day of January, 2020.

Sd/-	**Sd/-**
(**S.S. VISWANETHRA RAVI**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 21st January, 2020
GCVSR

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

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

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

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