IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER & SHRI RAMLAL NEGI, JUDICIAL MEMBER

Sl. No.	ITA / CO No.	A.Y	Appellant	Respondent
1	3026/Mum/2015	2010-11	Advance Enzyme Technologies Pvt., Ltd., A Wing, 5th Floor, Sun Magnetic, LIC Service Road, Louis Wadi, Thane West – 400604	ACIT, Circle – 1, 6th Floor, B Wing R.No. 22, Ashar IT Park, Wagle INDL Estate, Road No. 16Z, Wagle INDL Estate, Thane – 400604.
2	3353/Mum/2017	2010-11	ACIT, Circle – 1, 6th Floor, B Wing R.No. 22, Ashar IT Park, Wagle INDL Estate, Road No. 16Z, Wagle INDL Estate, Thane – 400604.	Advance Enzyme Technologies Pvt. Ltd., A Wing, 5th Floor, Sun Magnetic, LIC Service Road, Louis Wadi, Thane West – 400604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA4555E				

अपीलार्थी ओर से / **Appellant by** :	Shri Vipul Joshi, AR Ms. Dinkle hariya, AR
प्रत्यर्थी की ओर से/**Respondent by** :	Shri Anadi Verma, CIT, DR Ms. Kavita P Koushik

सुनवाई की तारीख / **Date of Hearing**	10/01/2020
घोषणा की तारीख /**Date of Pronouncement**	07/02/2020

आदेश / O R D E R

PER SHRI G. MANJUNATHA- AM:

This appeal filed by the assessee is directed against order of the Ld. CIT(A) -1, Thane dated

31.03.2015, which in turn arised out of assessment order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (herein after referred to as 'the Act') dated 28.03.2013, for A.Y 2010-11. The Revenue has filed appeal against order of the CIT(A)-1, Thane dated 31.03.2015, which intern raised out of penalty order passed by the A.O u/s 271(1)(c) of the Act, for the A.Y 2010-11. Since, facts are identical and issues are interrelated, for the sake convenience, these appeals are heard together and were disposed of by this consolidated order.

3026/Mum/2015, A.Y 2010-11:

2. The assessee has raised the following grounds of appeal:

> *"1.1 The Ld. CIT(A)-1, Thane, erred in confirming the action of the ACIT, Circle-1, Mumbai (AO) in denying the exemption of Rs. 10,22,18,588/- claimed by the appellant u/s 35(2AB) of the Act.*
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> *1.2 it is submitted that in the facts and the circumstances of the case, and in law, no such denial of exemption was called for.*
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> *2. The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time hearing".*

3. The brief facts of the case are that, the assessee is engaged in the business of manufacturing enzymes (biotechnology products). The company has set up in house Research & Development (R & D) labs, in Thane, Sinnar for R& D activity, which is also integrated part of business activities. During the year under consideration, the assessee has incurred R&D expenditure of Rs. 6,81,45,725/-, (including capital expenditure of Rs. 43,12,032/-) and claimed weighted deduction of Rs. 10,22,18,588/- u/s 35(2AB) of the income Tax Act, 1961. The R&D facility set up by the Assessee has been recognized by the Department of Scientific and Industrial Research (DSIR), Ministry of Science and Technology, Govt. of India, New Delhi, vide letter No. DU/IV-RD/2159/2000 dated 18.01.2002. The assessee has obtained further renewal from DSIR for a period of three years on 11.03.2003, which was valid up to 31.03.2012. The assessee has started one more R&D unit at Wagle Industrial Estate, Thane, which was started functioning from 01.03.2011. The assessee has filed an application for approval of R&D facility to the DSIR, Ministry of Science and Technology, Govt. of

India on 11.03.2011 and dispatched on 24.03.2011 and same was delivered to DSIR on 25.03.2011. The R&D facility at Dhanalaxmi Industrial Estate, Thane (TRC) and MIDC Sinnar (SRC) were renewed up to 31.03.2016. However, in respect of Wagle research centre necessary approval from DSIR was not received for the impugned assessment year. The assessee has filed a writ petition before the Hon'ble Delhi High Court against department of Scientific Industrial Research (DSIR) for not approving the R&D facility at Wagle Research Centre, Thane.

4. For the year under consideration, the assessee has filed return of income on 24.09.2010, declaring total income at Rs. 9,44,65,631/-. The assessee has claimed weighted deduction for R&D expenditure u/s 35(2AB) of the Act, in respect of amount incurred for R&D. The A.O has denied deduction claimed u/s 35(2AB) of the Act, on the ground that, although, the R&D facilities were recognized by the DSIR, but for the purpose of tax exemption it has to be approved by the competent authority i.e The Secretary, Department of Scientific and Industrial Research,

Ministry of Science and Technology, Govt. of India. Since, the R&D facility has not been approved from the competent authority and necessary approval form 3CM is not available for the impugned assessment year, he opined that weighted deduction claimed u/s 35(2AB) of the Act, is not available and accordingly, denied deduction claimed u/s 35(2AB) of the Act, by the assessee towards R&D expenditure.

5. Aggrieved by the assessment order, the assessee has preferred an appeal before the Ld. CIT(A). Before the CIT(A), the assessee has filed elaborate written submissions on this issue, which has been reproduced at para 5.1 on pages 5 to 8 of Ld. CIT(A) order. The sum and substance argument of the assessee before the CIT(A) are that, R&D facility set up by the assessee at various centers are recognized by the DSIR from A.Y 2001-02 onwards and the assessee has continuously claimed deduction from A.Y 2002-03 to 2008-09 and the department has accepted the claim. Therefore, for this year without there being any change in facts and circumstances, deduction claimed u/s 35(2AB) of the Act, cannot be

rejected, merely for the reason that approval was not granted in form 3CM by the Secretary, DSIR, Ministry of Science and Technology, Govt. of India. The assessee further contended that, the A.O never disputed the fact that the assessee has setup R&D facility at various centers and genuineness of expenditure has not been doubted. The only reason for denial of weighted deduction is that, in absence of approval by the competent authority in form 3CM. It was further claimed that, when the facility has been recognized right from A.Y 2001-02 and the claim of the assessee has been accepted in earlier years, there is no reason for the A.O to reject the claim for the year under consideration, when all conditions prescribed u/s 35(2AB) of the Act, for claim of weighted deduction are fulfilled.

6. The CIT(A) after consider the submissions of the assessee and also taken note of provisions of Sec. 35(2AB) of the Act, and Rule 6 and 7A of Income Tax Rules, 1962, held that as per the provisions of Sec. 35(2AB) of the Act, it is mandatory to obtain/sanction of the Secretary, DSIR, Ministry of Science and

Technology, Govt. of India, for availing weighted deduction for R&D expenditure. No doubt, the assessee R&D facility has been approved by the Scientist –G, but such approval is not sufficient to claim weighted deduction, because as per the provisions of said section and Rule 6 and 7A of Income Tax Rules, 1962, it is necessary to obtain approval from Secretary, DSIR, Govt. of India. The Ld. CIT(A) further observed that, if you go through the provisions of Sec. 35(2AB) of the Act and related Rule 6 and 7A of the Income Tax Rules, 1962, the assessee shall file an application in form No. 3CK along with an agreement and if the prescribed authority is satisfied that the conditions provided therein are fulfilled, then it shall pass an order in writing in form 3CM approving the facility for claiming the benefit of weighted deduction. Since, the R&D facility of the assessee are not approved by the competent authority and relevant form 3CM is not on record to establish that the approval has been accorded for the purpose of Sec. 35(2AB) of the Act, for the year under consideration, claim of the assessee that initial recognition granted by the DSIR is sufficient enough

to claim for weighted deduction cannot be accepted. The Ld. CIT(A) has discussed the issue in light of certificate furnished by the assessee for recognizing the facility by Scientist –G, DSIR in light of provisions of Sec. 35(2AB) of the Act, and Rule 6 and 7A of the Income Tax Rules, 1962, and came to the conclusion that the initial recognition granted to the assessee is not for the purpose of availing the benefit of deduction u/s 35(2AB) of the Act, and what is necessary is approval of expenditure incurred for the purpose by the competent authority for the relevant period and necessary approval certificate in from 3CM. Since, the assessee has failed to produce the approval required for claiming the benefit of weighted deduction, he opined that there is no error in the findings recorded by the A.O for denying the benefit of deduction u/s 35(2AB) of the Act, and accordingly upheld disallowance of expenditure. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The Ld. AR for the assessee submitted that the Ld. CIT(A) has erred in not appreciating the facts in light of provisions of Sec. 35(2AB) of the Act and Rule

6 and 7A of Rules, 1962, before coming to the conclusion that the assessee R&D facility has not been approved by the competent authority, ignoring the fact that the assessee R&D facility at three places are initially recognized by the DSIR, Ministry of Science and Technology, Govt of India, right from A.Y 2001- 2002 and assessee continuously claimed weighted deduction up to A.Y 2008-09 and such claim has been accepted by the Department. The Ld. AR for the assessee referring to initial recognition issued by the DSIR submitted that, it is settled position of law that once R&D facility has been recognized by the competent authority, then subsequent renewal on periodic basis is not necessary for the purposes of claiming benefit of weighted deduction, but what is necessary is compliance of prescribed procedures. The assessee has filed an application in form 3CK along with necessary agreements well within time allowed under the Act, but the approval if any from the competent authority is not in the hands of the assessee. Therefore, merely for the reason that the competent authority has not approved the facility for the impugned period by issue of form 3CM, the

genuine expenditure incurred for R&D purposes and relevant weighted deduction u/s 32(2AB) of the Act cannot be denied. The Ld. AR for the assessee has extensively argued the issue in light of certain judicial precedents and submitted that, it is clear from the provisions of Sec. 35(2AB) and relevant Rules that, once R&D facility has been recognized by the competent authority, then neither Sec. 35(2AB) of the Act, nor Rule 6 nor even form 3CK or 3CM provides for any necessity to have renewal / periodic approval or recognition much less for every three years period. He further submitted, if we go through the prescribed form, there is no reference about fresh or initial application vis-a-vis renewal application. He further submitted that neither Sec. 35(2AB) of the Act nor Rule 6 of Income Tax Rules, 1962, prescribed for year wise approval nor do they seek to restrict the period the amount of the benefit which the assessee otherwise is entitled to. He further submitted, as for as form 3CM is concerned Sec. 35(2AB) of the Act, does not provide for issuance of form 3CM by the prescribed authority. In other words, the right of the assessee to claim deduction u/s 35(2AB) of the Act, is

not at all dependent upon issuance of form 3CM by the prescribed authority.

8. The Ld. AR, furhter submitted that, what the assessee required to do is to apply for recognition or approval in prescribed form 3CK along with necessary documents and details of expenditure and it is the obligation of the prescribed authority to issue form 3CM, if the condition as provided in Rule 6 are fulfilled. In this case, the assessee has filed necessary application in form 3CK on 23.03.2011, but the competent authority neither rejected the application filed by the assessee nor granted approval for the facility for the impugned financial year. The AR further submitted that the assessee has challenged the action of the competent authority before the Hon'bel Delhi High Court by way of writ petition, but writ petition filed by the assessee is pending for adjudication. He further submitted that, nevertheless the fact remains that the facility of the assessee has been initially recognized by the competent authority right from A.Y 2001-02 and the assessee has continuously claimed weighted

deduction up to A.Y 2008-09 which has been accepted by the department. Further, even subsequent period right from A.Y 2014-15 onwards there is no dispute, the competent authority has approved the facility and issued necessary approval in form 3CM and the department has accepted the claim of the assessee. Therefore, he submitted that during this period the claim of the assessee cannot be denied merely for the reason that necessary from 3CM was not on recorded, even though, the assessee has fulfilled rest of the conditions prescribed u/s 35(2AB) of the Act and Rule 6 and 7A of the Income Tax Rules, 1962. In this regard, he relied upon the following judicial precedents:

1. Indian Planetary Society Vs. CBDT & Ors. [2009] 318 ITR 102 (BOM).

2. CIT Vs. Claris Lifesciences ltd., [2010] 326 ITR 251 (Guj).

3. CIT Vs. Wheels India Ltd., [2011] 336 ITR 513 (Mad)

4. CIT vs. Sandan Vikas (India) Ltd., [2011] 335 ITR 117 (Del).

5. Maruti Suzuki India Ltd., Vs. Union of India (2017) taxmann.com 45 (Del).

6. Banco Products (India) Ltd., Vs. DCIT (2018) 405 ITR 318 (Guj).

7. CIT Vs. Sun Pharmaceutical Industries Ltd., [2017] 250 Taxman 270 (Guj).

8. DCIT Vs. Famy Care Ltd., [2014] 52 taxman.com 461 (Mum-Trib).

9. CIT Vs. TVS Electronics Ltd., [2019] 105 taxmann.com 36 (Mad).

10. ACIT Vs. Meco Instruments (P) Ltd., [2010] taxmann.com 24 (Mum).

11. ACIT Vs. Nath Bio Genes (India) Ltd., ITA No. 417/PN/2012

12. Minilec India (P) Ltd., Vs. ACIT, [2018] 171 ITD 124 (Pune Trip).

9. The Ld. DR, on the other hand, strongly supporting the order of the CIT(A) submitted that the A.O as well as the Ld. CIT(A) has rightly denied the benefit of weighted deduction claimed u/s 35(2AB) of the Act, because necessary approval from the competent authority i.e the Secretary, DSIR, Ministry of Science and Technology, Govt., of India, is not accorded in prescribed form No. 3CM for the relevant period. The DR further submitted that the provisions of Sec. 35(2AB) of the Act, and relevant Rule 6 and 7A

of Income Tax Rules, 1962, are very clear as per which in order to claim the benefit of weighted deduction, the assessee R&D facility must be recognized from competent authority and the expenditure incurred by the assessee for such purpose should be approved by the competent authority in prescribed form No. 3CM by an application by the assessee in form No. 3CK along with necessary agreement and details of expenditure. The DR further submitted that, no doubt, the assessee facilities have been granted initial recognition by the competent authority, but such initial recognition is not sufficient to claim benefit of deduction u/s 35(2AB) of the Act, and what is relevant is approval from the competent authority in from No. 3CM. In absence of prescribed from No. 3CM, the benefit of weighted deduction u/s 35(2AB) of the Act, cannot be granted to the assessee.

10. The assessee has taken an alternate plea in A.Y 2011-12 before the first appellate authority and such claim has been accepted and expenditure incurred for R&D purpose has been allowed u/s 35(1) of the Act.

The assessee having taken advantage of Sec. 35(1) of the Act, cannot take advantage of Sec. 35(2AB) of the Act, simultaneously. The Ld. DR has argued the issue at length in light of various judicial precedents, including the decision of ITAT Mumbai in the case of PCP Chemicals Pvt Ltd., VS. ITO (2017) 168 ITD 26 and M/s Nivo Controls Pvt Ltd., Vs. CIT (2018) 169 ITD 139, and submitted that the Tribunal has categorically held that, in order to get the benefit of weighted deduction the approval of R&D facility from the competent authority and necessary approval form in form 3CM is mandatory. In absence of approval, the benefit of deduction u/s 35(2AB) of the Act, cannot be granted. The Ld. DR further submitted that although the assessee has relied upon the decision of Hon'ble Gujarat High Court in the case of CIT VS. Claris Lifesciences Ltd., (2010) 326 ITR 251 (Guj) and Hon'ble Delghi High court in the case of Maruthi Suzuki India Ltd. Vs. Uniion of India (2017) 84 taxman.com 45, but fact remains that the Tribunal after considering those two judgments has come to the conclusion that for the purpose of claiming weighted deduction u/s 35(2AB) of the Act, approval

from competent authority in prescribed form 3CM is must. Therefore, there is merit in the arguments of the assessee that when initial recognition was granted, subsequent renewal/approval on periodic basis in not required.

11. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assessee is in the business of manufacturing industrial enzymes. The assessee has setup three R&D facilities at various places and such R&D facilities has been approved and recognized by the competent authority, DSIR, Ministry of Science and Technology, Govt. of India vide letter dated 18.01.2012. The assessee has obtained another approval from DSIR for a period of three years which was valid up to 31.03.2012. The undisputed position emerges from the fact before us is that the assessee has obtained initial recognition from competent authority DSIR, and such recognition was valid up to 31.07.2012 in respect of R&D facilities at Thane. In so far as, R&D facility at Wagle Industrial Estate, Thane, it has commenced activities from 01.02.2011

and application for registration has been filed on 11.03.2011. In case of another R&D Unit at 135/A Wagle Industrial Estate, Thane (NTRC) the assessee has commenced its activities from 01.08.2012. Thereafter, the assessee has filed an application for recognition of NTRC vide letter dated 12.10.2012. The DSIR neither rejected the claim of application filed by the assessee nor communicated the position of application filed by the assessee at any time during the relevant period. The assessee has filed a writ petition before the Hon'ble Delhi High Court and challenged the action of the competent authority i.e the Secretary, DSIR, Ministry of Science and Technology, Govt of India and the writ application filed by the assessee pending for adjudication. Be that as it may, but the undisputed facts are that the DSIR has issued recognition for all units vide its communication dated 15.01.2014 and such recognition was valid up to 31.03.2016, Subsequently, the renewal of recognition was also granted up to 31.03.2019. Further, the assessee has claimed deduction u/s 35(2AB) of the Act, from A.Y 2002-03 to 2008-09 and such claim has been

accepted by the department for those years. In fact, there is no dispute with regard to claim for A.Y 2014-15 onwards. The only dispute is with regard to the intervening period of A.Y 2009-10 to A.Y 2013-14, where the department has denied weighted deduction claimed u/s 35(2AB) of the Act, for the reason that necessary approval from the competent authority in form 3CM was not produced before the A.O.

12. In light of above factual background, if you examine the claim of the assessee in light of provisions of Sec. 35(2AB) of the Act, one has to see whether periodical approval / renewal from the competent authority is required to claim the benefit of weighted deduction u/s 35(2AB) of the Act, when the initial recognition from the competent authority was valid for the period under cover. The provisions of Sec. 35(2AB) of the Act, deals with a cases where a company engaged in the business of manufacture or production of any article or thing incurs any expenditure on scientific research on in-house research and development facility as approved by the prescribed authority, then there shall be allowed a

deduction of some equal to 150% of such expenses incurred by the assessee for in-house research and development facilities. For this purpose, prescribed authority is Secretary, DSIR, Ministry of Science and Technology, Govt of India. Further, Rule 6 and 7A of Income Tax Rules, 1962 provides for procedure of approval of R&D facility. As per Rule 6 of the Income Tax Rules, 1962,the prescribed authority for expenditure on scientific research and development for the purpose of 35(2AB) of the Act, shall be the Secretary, DSIR. Sub Rule (4) requires the assessee to furnish the application in form 3CK. As per Sub Rule 5A, if the prescribed authority is satisfied the conditions provided in this Rule and in Sub Sec. 2AB of Sec. 35 of the Act, are fulfilled, then the prescribed authority shall pass an order in writing in from No. 3CM. In this case, there is no dispute with regard to fact that the R&D facility set up by the assessee at three places are initially recognized by the competent authority. In fact, the R&D facility of the assessee has been initially recognized by the competent authority from A.Y 2001-02 onwards. The only dispute is with regard to approval of prescribed

authority in form No. 3CM. The A.O as well as the Ld. CIT(A) was on the opinion that although the initial recognition was granted to the assessee by the competent authority, but the approval of the facility for the impugned period in form 3CM, was not on record. Therefore, they opined that in absence of approval in prescribed form 3CM the assessee is not entitled for weighted deduction u/s 35(2AB) of the IT act. Except this, existence of R&D facility at three places and consequent expenditure incurred for relevant purpose are not disputed by the authorities. In fact, the A.O as well as Ld. CIT(A) have categorically accepted that the assessee has set up R&D centres and incurred various expenditure for in house research and development purpose.

13. In this legal and factual background, if you go through the claim of the assessee towards dedication claimed u/s 35(2AB) of the Act, we need to examine such claim made by the assessee is in accordance with provisions of Sec. 35(2AB) of the Act, and relevant Rule 6 and 7A of the IT rules, 1962. In order to claim the benefit of weighted deduction u/s

35(2AB) of the Act, the assessee should fulfil two conditions. First condition is there should be an in-house research and development facility and such facility should be recognized / approved by the competent authority. The competent authority for this purpose has been defined as the secretary, DSIR, Ministry of Science and Technology, Govt. of India, there is a prescribed procedure for approval of R&D facility. Rules 6 and 7A of the Income Tax Rules, 1962, provides for mechanism of filing an application and related approval by the competent authority. At the cost of repetition, we note that the assessee has filed its application in form 3CK for the relevant period which is pending before the competent authority. The competent authority neither rejected the application filed by the assessee nor sent any communication in this regard. The assessee has challenged the action of the competent authority by way of writ petition before the Hon'ble Delhi High Court and such writ petition filed by the assessee is pending for adjudication. Be that as it may, fact remains that its facility has been initially recognized from the A.Y 2001-02 onwards, and the assessee has

continuously claimed deduction u/s 35(2AB) of the Act, up to A.Y 2008-09 and such claim has been accepted by the department. It is also not in dispute that from A.Y 2014-15 the assessee has been allowed the benefit of weighted deduction u/s 35(2AB) of the Act.

14. Having said so, let us see law laid down by various Courts on this issue. The Hon'ble Gujarat High Court in the case of CIT Vs. Claris Lifesciences Ltd., (supra) has considered an identical issue in light of provisions of Sec. 35(2AB) of the Act, and held that the provisions nowhere suggest simply that R& D facility is approved from particular date and in other words, it is no where suggested that date of approval only will be cut off date for eligibility. The court further held that once facility is approved, the entire expenditure so incurred on development of R&D facility has to be allowed for weighted denudation. The Hon'ble Delhi High Court in the case of Maruthi Suzuki India Pvt Ldt., (supra) Vs Union of India, had considered an identical issue and held that for availing the benefit u/s 35(2AB) of the Act, what is

relevant is not the date of recognition or the cut off date mentioned in the certificate of the DSIR or even the date of approval, but the existence of recognition. The Hon'bel Gujarat High Court in the case of Banko Product India Ltd., Vs. DCIT (supra) had once again reiterated its earlier position in the case of claris lifescience ltd. (supra) and held that 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. The Hon'ble court further held that period during which the approval is granted is not relevant as long as such approval is granted and expenditure has been incurred for this specified purpose. The Hon'ble Gujarat High court in the Case of CIT Vs. Sun Phara India Ltd., (supra) had once again considered on identical issue and held that once R&D facility set up by the assessee has been approved by the prescribed authority and necessary approval was granted in the prescribed format, then the communication in form 3CM was thereafter between the prescribed authority and the department. If the same was not so, surely the assessee cannot be make the suffer. The Hon'ble

Madras High Court in the case of CIT Vs. TVS Electronics Ltd., (supra) had held that the assessee cannot be punished for the bureaucratic delay in giving such approval for the year in question, which was in the hands of the department concerned of the Central Govt itself. On the very fact that for the period anterior and posterior to the year in question such approval was very well on the record of the Revenue, weighted deduction for the expenditure incurred on the scientific research could not have been disallowed by authorities below. The sum and substance of ratios laid down by the Hon'ble High Courts are that once the facility set up by the assessee has been approved / recognized by the competent authority, then subsequent renewal / communication of such approval in prescribed form is not relevant and what is relevant to decide the entitlement of deduction is existence of such facility.

15. In this case, on perusal of facts available on record, we find that the assessee facility was approved from assessment year 2001-02 and such recognition was continued up to 31.07.2012. Thereafter, the

assessee has filed an application for recognition on 09.06.2012 and such recognition has been granted by the competent authority vide its communication dated 15.01.2014, which is valid up to 31.03.2016, subsequently, the renewal has been granted up to 31.03.2019. Further, the A.O neither disputed existence of R&D facility nor genuineness of expenditure incurred by the assessee. Once existence of R&D facility was not disputed and expenditure for that purpose is genuine in nature and also the recognition was granted way back in 2001-02, which is valid even now, then merely for the reason of non issue of approval for certain period in prescribed form 3CM by the competent authority, even though, the assessee has made an application for approval in prescribed form 3CK and also filed necessary evidence including details of expenditure then, the assessee cannot be furnished non issue of such approval by the competent authority and weighted deduction claimed u/s 35(2AB) cannot be denied.

16. Coming back to the case laws relied upon by Ld. DR for the Revenue. The Ld. DR has vehemently

argued the case in light of the decision of ITAT Mumbai, in the case of PCP Chemicals Pvt Ltd., Vs. ITO (supra) and submitted that facts of the present case are entirely similar to facts considered by the Tribunal and hence the assessee case is covered squarely by the decision of ITAT Mumbai, in the case of PCP Chemicals Pvt Ltd., Vs. ITO. We find that although the Tribunal has distinguished the decision of Hon'ble Gujarat High Court in the case of Claris LifeScience Ltd., Vs. CIT and Hon'ble Delhi High Court in the case of Maruthi Suzuki India Ltd. vs. Union of India, but fact remains that in the case of PCP Chemical Pvt Ltd., Vs. ITO (supra) the assessee has filed an application for recognition / approval on 12.08.2011 and in form No. 3CK and the competent authority has approved the facility for the period from 01.04.2011 to 31.03.2013. The assessee has claimed deduction for the A.Y 2011-12 for which neither recognition nor approval from the competent authority was received by the assessee. Under those facts, the Tribunal came to the conclusion that when the initial approval / recognition was granted with effect from 01.04.2011 on the basis of application filed by the

assessee on 12.08.2011 then the deduction for expenditure incurred for the previous period i.e before the facility was approved by the competent authority cannot be claimed u/s 35(2AB) of the Act. We further, noted that in the case before the Tribunal in PCP Chemicals Pvt Ltd., (supra) the facts were entirely different because the unit was first approved from 01.04.2011 and for the assessment year prior to 01.04.2011 there was no recognition / approval from the competent authority. The assessee has filed an application on 12.08.2011 on that basis the competent authority has given approval with retrospective effect from 01.04.2011. From the above, it is clear that although the Tribunal has taken a different view in the matter, but it has followed the ratio laid down by the Hon'ble Gujarat High Court in the case of Claris lifescience Ltd vs CIT (supra) and the Hon'ble Delhi High Court in the case of Maruthi Suzuki India Ltd., vs. Union of India (supra), which is evident from the fact that approval cannot be taken back from the financial year form which date the assessee has filed its application in form No. 3CK. In fact, the case law relied upon by the DR in PCP

Chemicals Pvt Ltd., (supra) supports the case of the assessee in as such the Tribunal has accepted the decision Gujarat High Court to the effect that the approval should be granted from the first day of the financial year in which the application is filed, irrespective of the date of the order granting such approval. Coming back to another case relied upon by the Ld. DR in the case of Nivo Controls Ltd. Vs. CIT. We find that the Tribunal has rejected the claim of the assessee on entirely different facts which is evident from the fact that in 263 proceedings it has upheld the findings of the Ld. CIT for rejection of deduction u/s 35(2AB) of the Act, on the ground that the assessee has failed to maintain separate books of account for its R&D facility on the basis of admission of authorized representative of the assessee that no such separate books of accounts were maintained.

17. In this case, it is undisputed fact that the recognition was valid from 01.04.2001, and which was available during this period. The application for approval in form 3CK was filed as back as in 09.01.2002. The assessee has claimed deduction u/s

35(2AB) of the Act, right from A.Y 2001-02 to A.Y 2008-09 and such claim was accepted by the department. Further, the facility was approved / recognized up to 31.032016, vide communication dated 15.01.2014, and such approval was once again renewed up to 31.03.2019. From the above, it is very clear that the assessee facility was approved by the competent authority i.e the Secretary DSIR, but there was no approval in form No. 3CM for the impugned Assessment year. Therefore, we are of the considered view that from the settled legal position of the law by the various cases of High Courts as discussed here in above in preceding paragraphs what is relevant to decide eligibility for weighted deduction u/s 35(2AB) of the Act, is existence of R&D facility and recognition of such facility by the competent authority. Once the facility has been approved by the competent authority, then there is no cut off date is prescribed for approval of such facility and the benefit of deduction u/s 35(2AB) of the Act, should be given to the assessee as long as the recognition is in force. Hence, we are of the considered view that the A.O as well as Ld. CIT(A) were in correct in denied the benefit

of weighted deduction claimed u/s 35(2AB) of the. Hence, we direct the A.O to allow weighted deduction claimed u/s 35(2AB) of the Act.

18. In the result, appeal filed by the assessee is allowed.

3353/Mum/2017, A.Y 2010-11:

19. The Revenue has filed this appeal, against order of the Ld. CIT(A)-2, Nasik, for the A.Y 2010-11. The Revenue has raised the following grounds of appeal:

> *1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the A.O. U/s 271(1)(c) of the Act on addition of Rs. 10,22,18,588/- on account of disallowance of weighted deduction claimed u/s 35(2AB) of the Act.*
>
> *1.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the above penalty levied by the A.O u/s 271(1)(c) by treating disallowance of weighted deduction claimed u/s 35(2AB) of hte Act, debatable issue without appreciating the finding of the CIT(A), Thane Para 6.3 of his order dated 31.03.2015 in the quantum appeal that the assessee company has failed to furnish prescribed form 3CM as well as signed by the prescribed authority for claiming the said deduction.*

1.2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating disallowance of weighted deduction claimed u/s 35(2AB) debatable issue without appreciating the finding of the CIT(A), Thane Para 6.3 of his order dated 31.03.2015 in the quantum appeal that it was specifically mentioned in the para 9 of the form submitted by the assessee company that the accorded approval is not meant for the tax exemption.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the A.O u/s 271(1)(c) on addition of Rs. 15,58,815/- on account of provisions for doubtful debts.

3. The order of the CIT(A) may be vacated and that of the AO may be restored.

4. The assessee craves leave to add, amend, alter or delete any ground of appeal.

20. We find that the A.O has levied penalty u/s 271(1)(c) of the Act, in respect of additions made towards disallowance of weighted deduction claimed u/s 35(2AB) of the Act. We find that the Tribunal has decided the issue of deduction claimed u/s 35(2AB) of the Act, in favour of the assessee in ITA No. 3026/Mum/2015. Therefore, we are of the considered view that once addition on which penalty levied u/s 271(1)(c) of the Act, has been finally deleted by the appellate authorities, then there is nothing survives

to levy penalty u/s 271(1)(c) of the Act. Hence, we are of the considered view that the penalty levied by the A.O u/s 271(1)(c) of the Act, cannot survive in the eyes of law. The Ld. CIT(A) although confirmed additions made by the A.O towards disallowance of weighted deduction claimed u/s 35(2AB) of the Act, but deleted the penalty levied u/s 271(1)(c) of the Act, on the ground that mere making a claim which was not accepted by the A.O cannot leads to a conclusion that the assessee has furnished inaccurate particulars of income which warrants levy of penalty U/s 271(1)(c) of the Act. Hence, we are inclined to uphold the findings of Ld. CIT(A) and dismissed appeal filed by the Revenue.

21. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

This Order pronounced in Open Court on	**07/02/2012**

Sd/-	Sd/-
(RAMLAL NEGI)	(G. MANJUNATHA)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 07/02/2020

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, / ITAT, Mumbai