IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 580/Del/2016 : Asstt. Year : 2009-10
ITA No. 581/Del/2016 : Asstt. Year : 2010-11

DCIT, Circle-26(1), New Delhi	Vs	M/s VE Commercial Vehicles Ltd., 3rd Floor, Select City Walk, A-3, District Centre, New Delhi-110017
(APPELLANT)		**(RESPONDENT)**
PAN No. AABCE9378F		

ITA No. 5734/Del/2016 : Asstt. Year : 2011-12

Addl. CIT, Special Range-9 New Delhi	Vs	M/s VE Commercial Vehicles Ltd., 3rd Floor, Select City Walk, A-3, District Centre, New Delhi-110017
(APPELLANT)		**(RESPONDENT)**
PAN No. AABCE9378F		

Assessee by : Sh. Gaurav Jain, Adv.
Revenue by : Sh. N. K. Choudhary, CIT DR &
Sh. Saras Kumar, Sr. DR

Date of Hearing: 09.01.2020		**Date of Pronouncement: 30.04.2020**

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeals have been filed by the revenue against the orders of ld. CIT (A)-14, New Delhi dated 20.11.2015 for the assessment year 2009-10 and 2010-11 and the order of ld. CIT (A)-33, New Delhi dated 03.08.2016 for the assessment year 2011-12.

2. In ITA No. 580/Del/2016, following grounds have been raised by the revenue:

> *"1 "On the facts and in the circumstances of the case and in law the order passed by learned CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.89,56,61,072/- made by AO on account of disallowance of deduction of capital expenditure on Research & Development and additional deduction of 50% on all the R & D expenditure u/s 35(2AB) and the Ld.CIT(A) failed to consider the decision in the case of M/s Advik Hi Tech Pvt. Ltd. (2014) 51 taxman.com 245 (Pune Tribunal) which is in favour of revenue and was given after considering the Hon'ble High Court orders relied upon the Ld. CIT(A).*
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> *2. On the facts and in the circumstances of the case and in law the order passed by learned CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.2,34,335/- made by AO u/s 14A.*
>
> *3. On the facts and in the circumstances of the case and in lawthe order passed by learned CIT(A) is erroneous and the learned CIT(A) has erred in deleting the disallowance of Rs.7,32,00,000/- made by AO on account of disallowance of expenses claimed on payment basis out of outstanding provisions standing in the books of accounts.*
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> *4. On the facts and in the circumstances of the case and in law the order passed by learned CIT(A) is erroneous and the learned CIT(A) has erred in deleting the addition of Rs.5,59,00,000/- made by AO on account of disallowance of bad debts."*

3. In ITA No. 581/Del/2016, following grounds have been raised by the revenue:

> *"1 On the facts and in the circumstances of the case and in law the order passed by learned CIT(A) is erroneous and the learned CIT(A) has erred in deleting the disallowance of Rs.3,00,00,000/- made by AO on account of disallowance of Warranty*

expenses claimed on payment basis out of outstanding provisions standing in the books of accounts.

2. On the facts and in the circumstances of the case and in law the order passed by CIT(A) is erroneous and the ld. CIT (A) has erred in deleting addition of Rs.5,96,20,438/- made by the AO on account of disallowance of bad debts."

4. In ITA No. 5734/Del/2016, following grounds have been raised by the revenue:

"1 On the facts and in the circumstances of the case and in law the order passed by learned CIT(A) is erroneous and the learned CIT(A) has erred in deleting the disallowance of Rs.71,93,752/- made by AO on account of disallowance of bad debts.

2. That the ld. CIT (A) has erred in law and on facts of the case in deleting the disallowance on account of training expenses of Rs.2,30,44,980/- made by the AO by treating the training expenses as deferred revenue expenses."

Deduction of Capital Expenditure on R&D:

5. The undisputed facts taken from the record are as under:

The assessee public company had filed return on income on 29.09.2009 declaring a loss of Rs. 71,64,99,409/- which was incorporated as a joint venture between AB Volvo ('Volvo') and Eicher Motors Limited ('EML') and is engaged, inter alia, in the business of manufacture and sale of commercial vehicles and components, including gears and engineering solutions. The relevant previous year is the first year of business of the assessee.

During the relevant previous year, the assessee acquired from EML, commercial vehicles undertaking, by way of demerger, w.e.f. 1.7.2008.

The said commercial vehicles undertaking acquired from EML, included, inter alia, research and development centre at Pithampur ('R&D facility'). The aforesaid R&D facility at Pithampur, earlier belonging to EML, was approved by DSIR under section 35(2AB) of the Act upto 31.03.2007, vide approval dated 10th August 2005 in Form 3CM. Prior to divesting of commercial vehicle undertaking comprising of R&D facility, by way of slump sale, EML had applied for renewal and extension of approval of the aforesaid R&D facility under section 35(2AB) of the Act upto 31.03.2012, vide application dated 03.09.2007 filed before DSIR.EML was granted general recognition by the Department of Scientific and Industrial Research, Ministry of Science and Technology ('DSIR') upto 31.03.2011, vide approval dated 05.06.2008.

However, pending receipt of approval from DSIR for the purpose of section 35(2AB),EML divested the commercial vehicle undertaking, including the aforesaid R&D facility at Pithampur, to the assessee by way of demerger, w.e.f. 01.07.2008.

Pursuant to the aforesaid transfer, EML filed letter dated 13th October, 2008 before DSIR to consider following amendments in the earlier approvals granted by DSIR and also for renewal/ extension of recognition pending before DSIR:

i) To grant approval under section 35(2AB) in respect of R&D facility at Pithampur for the period 1.4.2007 to 30.6.2008 in the name of EML;

ii) To change the recognition letter dated 5.6.2008 for the in house R&D facility at Pithampur in the name of the assessee instead of EML w.e.f. 1.7.2008, and

iii) To treat application dated 3.9.2007, requesting for renewal of approval under section 35(2AB) of the Act in respect of R&D facility at Pithampur, in the name of the assessee, for the period commencing from 1.7.2008 and grant approval from that date upto 31.3.2012 in the name of the assessee only.

Pursuant to the aforesaid application dated 13th October, 2008, DSIR renewed the general recognition already granted to the aforesaid R&D facility at Pithampur in the name of the assessee (earlier granted in the name of EML) for the period upto 31.3.2012, vide approval dated 9.3.2009.

In addition to the aforesaid general recognition, DSIR also granted approval to the aforesaid in-house R&D facility at Pithampur under section 35(2AB) of the Act in the name of the assessee, vide approval dated 17/18th February 2010 in Form No.3CM. The aforesaid approval was granted from 09.03.2009 (i.e., the date of letter issued by DSIR for granting general recognition approval to in-house R&D unit in the name of the assessee) to 31.3.2012. The DSIR also granted approval under section 35(2AB) in the name of EML upto 30-06-2008.

In the return of income filed for the relevant previous year, the assessee claimed weighted deduction under section 35(2AB) of the Act @ 150% oil the scientific research expenses incurred at the in-house R&D facility, in the following manner:

(i)	Capital expenditure on building, plant and machinery, etc.	Rs.55,10,84,569
ii)	Additional deduction at 50 percent in respect of above capital expenditure (excluding cost of	Rs.25,44,90,785

	building) under section 35(2AB) of the Act	
iii)	Additional deduction at 50 percent in respect of revenue expenditure	Rs.9,00,85,719
	Total	Rs.89,56,61,072

In the assessment order, the assessing officer disallowed deduction under section 35(2AB) of the Act claimed by the assessee on the ground that during the relevant previous year, the assessee was not eligible for weighted deduction since approval under that section was granted to the in-house R&D facility from 09.03.2009 only.

6. This leaves us with the issue to adjudicate whether the deduction is allowable only from 09.03.2009, the date on which the assessee received letter from DSIR or not.

7. The ld. DR relied on the order of the Assessing Officer and also argued based on the written submissions which are as under:

> *"In this case, the AO disallowed deduction u/s 35(2AB) on the ground that during the relevant at the assessee was not eligible for weighted deduction since approval u/s 35(2AB) was granted to the in-house R & D facility from 09.03.2009 only. The AO held that deduction u/s 35(2AB) cannot be allowed for expenses incurred prior to 09.03.2009.*
>
> *2. The case of the AO is that since DSIR, the approving authority, has mentioned the specific date 09.03.2009 while granting approval to the assessee company, the benefit u/s 35(2AB) cannot be given prior to that date. The plea of the assessee is that the date of recognition/appeal of the in-house R & D facility, being not a condition precedent for claiming deduction u/s 35(2AB), scientific research expenses incurred at an approved R & D facility notwithstanding the date of such recognition shall be eligible for weighted deduction. It is the plea of the assessee that the cutoff date mentioned by DSIR in the approval granting recognition to the R & D facility of the*

assessee company is extraneous and irrelevant for claiming weighted deduction u/s 35(2AB) of the Act.

3. The CIT(A) has allowed the deduction relying on the decision of Gujarat High Court in the case of the CIT Vs. Claris Life Sciences Ltd. 326 ITR 251. The CIT(A) has discussed the issue on Page no. 7-11 of his order.

4. In the present case, in-house R & D facility which was earlier owned by EML, prior to slump sale of business to the assessee company, was approved by DSIR. The EML vide application 03.09.2007 applied for renewal of the earlier approval given to EML. The EML divested the commercial vehicle undertaking, including R & D facility at Pithampur, to the assessee company by way of slump sale on 01.07.2008. Subsequently, DSIR granted recognition to the R & D centre of the assessee vide order dated 09.03.2009. The CIT(A) has held that the prior approval was given to EML in respect of R & D facility, which was subsequently taken over by the assessee and therefore, the assessee company was also eligible for deduction u/s 35(2AB) in respect of R & D unit.

5. The R & D unit of the assessee company was approved in the name of the assessee for the first time by DSIR w.e.f. 09.03.2009 and upto 31.03.2012. The CIT(A) has wrongly held that since the R & D unit of EML was taken over by the assessee company, it will be assumed that the R & D unit was already recognized. The fact is that the R & D unit of the assessee was recognised for the first time by DSIR w.e.f. 09.03.2009 and upto 31.03.2012. Therefore, the finding of the CIT(A) that the R & D facility already stood approved by DSIR and it was only a change in the name on account of transfer of ownership from EML to assessee company and hence the assessee was eligible for deduction is based on incorrect appreciation of facts and law. The fact is the R & D unit of EML was approved by DSIR and not the R & D facility of the assessee company.

6. As per provisions of Part-B of Form 3CK , an agreement has to be entered into between the assessee and DSIR. Form 3CM provides for name, address and PAN of the assessee. Form 3CL is issued by DSIR giving details of expenditure incurred by the assessee in terms of section 35(2AB). In this case, the R & D facility of the assessee has been approved for the first time

w.e.f. 09.03.2009. Hence, 35(2AB) deduction can be allowed only w.e.f. 09.03.2009.

7. The facts in the case of Claris Life Sciences Ltd. (supra) and SANDAN Vikas India Ltd. 335 ITR 117 (Del.) are distinguishable. In the above cases, R & D units were already existing as approved in the name of the respective assessee. In the instant case, R & D facility was approved by DSIR in the case of the assessee for the first time.

8. The facts in the case of Maruti Suzuki India Ltd. Vs. UOI [2017] 84 taxmann.com 45 (Delhi) are distinguishable from the facts of the instant case. In the case of Maruti Suzuki, these was some prima facie mistake in issuing the certificate by DSIR. The writ petition was filed against DSIR. Further, the R & D centre of Maruti was already recognised, while in the instant case R & D centre of the assessee is recognised by DSIR for the first time w.e.f. 09.03.2009.

9. In this connection, reliance is placed on the decision in the case of Advik Hi Tech Pvt. Ltd. Vs. Addl. CIT 920140 51 taxmann.com 245 (Pune-Trib.). In the above case, the Hon'ble ITAT has considered the decisions in the case of CIT Vs. Sandan Vikas (India) Ltd. 335 ITR 117 (Del.) and CIT Vs. Claris Life Sciences Ltd. (Guj.). In para 13.3 of the said order, the Hon'ble ITAT has held that in the above mentioned decision simply it was held that once R & D facility is approved by DSIR, the assessee is entitled to weighted deduction u/s 35 (2AB). The Hon'ble ITAT has relied upon the decision of Delhi High Court in the case of Apollo Tyres Ltd. Vs. UOI [2010-279-HC-Del-IT] in W.P No. 13338 of 2009. In the said case, approval dated 10.10.2011 in Form 3CM was granted for period from 01.04.2009 to 31.03.2012. The Hon'ble ITAT held that the deduction was allowable w.e.f. 01.04.2009 only.

10. Reliance is also placed on the decision of the ITAT, Mumbai in the case of PCP Chemicals Pvt. Ltd. Vs, ITO [2017] 88 taxmann.com 5 (Murnbai-Trib.)

In this case, the period for which approval was given in Form 3CM was held to be correct and claim for the period, prior to the approved period in Form 3CM, was not allowed. In the above case, decision of Maruti Suzuki Ltd. (supra) has also been considered.

11. Without prejudice to the above, it is to bring to kind notice that u/s 35(5), the Act has provided for continuation of benefit in respect of any asset representing expenditure of a capital nature on scientific resources in the hands of amalgamated company. The said benefit has not been extended in the case of Revenue expenditure. The Act has clearly made provision in respect of amalgamation of companies. There is no such provision in the case of slump sale. Since the assessee company is an entity different from EML having separate PAN, it cannot claim extension/continuation of benefit of deduction u/s 35 (2AB) in respect of R & D unit owned by the previous owner. Once the R & D unit of assessee is approved by DSIR, unit can be held to be existing approved R & D unit for claiming deduction in future. Therefore, unless the R & D unit is allowed by DSIR as eligible unit under 35(2AB), it cannot claim deduction prior to approved in Form 3M.

12. To some up, R & D unit of the assessee company was not an adjusting approved unit before 09.03.2009 and therefore, the assessee can claim deduction u/s 35(2AB) with effect from 09.03.2009 onwards."

8. The ld. DR has also relied on the judgment of the Hon'ble Delhi High Court in the case of Apollo Tyres Vs Union of India WP(C) 13338/2009 order dated 20.04.2010 wherein the issue of deduction u/s 35(2AB) has been discussed. we have perused the same . It was held that the deduction is eligible only from the date of approval in which the form 3CK has been filed and the agreement entered. In that case the approval has been granted from 21.08.2008. The Hon'ble High Court has held that approval would normally have been granted only in the year in which the application in Form 3CK is made. If that were to be the case, then the assessee could have got approval only w.e.f. 01.04.2008. It was also held that it is only because of the beneficial provisions indicated in the guidelines that the benefits have been extended to the earlier year subject to the condition that such benefit would be limited only to the capital expenditure. However, in the instant case, the approval has already been in force for the predecessor company. Thus, differentiated.

9. To determine the issue, the sequence of events that followed the recognition granted to EML from the year 2005 needs to be examined. The events are as under:

Date	*Event*
22.03.2005	*Order for renewal of general recognition granted to Eicher Motors Ltd. ('EML') for R & D Centre at Pithampur by Department of Scientific and Industrial Research, Ministry of Science and Technology ('DSIR') upto 31.03.2008.*
10.08.2005	*Approval granted by DSIR to EML in Form 3CM under section 35(2AB) of the Act from 21.09.2004 to 31.03.2007.*
03.09.2007	*Application in Form 3CK filed by EML before DSIR for renewal of approval under section 35(2AB) from 01.04.2007 to 31.3.2012.*
05.06.2008	*EML was granted general recognition for R & D Centre a Pithampur by DSIR upto 31.03.2011.*
01.07.2008	*EML divested the commercial vehicle undertaking including the R&D facility at Pithampur, to the assessee (VECV) by way of slump sale.*
13.10.2008	*Letter filed by EML before DSIR, to consider the following amendments:* *i) To grant approval under section 35(2AB) in respect of R&D facility at Pithampur for the period 1.4.2007 to 30.6.2008 in the name of EML;* *ii) To change the recognition letter dated 5.6.2008 for the in house R&D facility at Pithampur in the name of the assessee (VECV) instead of EML w.e.f. 1.7.2008, and* *iii) To treat the application dated 3.9.2007 requesting for renewal of approval under section 35(2AB) of the Act in respect of R&D facility at Pithampur in the name of the assessee (VECV), for the period*

	commencing from 1.7.2008 and grant approval from that date upto 31.3.2012 in the name of the assessee only.
18.11.2008	*Application filed by assessee before the DSIR seeking general recognition of the in-house R&D~ facility at Pithampur under section 35 of the Act in name of the assessee (VECV) for the period beginning from 01.07.2008.*
25.11.2008	*Application filed by the assessee before the DSIR in Form 3CK requesting for approval under section 35(2AB) of the Act in respect of R&D facility at Pithampur in the name of the assessee.*
18.12.2008	*Approval under section 35(2AB) of the Act granted to EML in respect of R&D facility at Pithampur upto 30.6.2008 in Form 3CM.*
09.03.2009	*DSIR renewed the General recognition already granted to the R&D centre at Pithampura upto 31.03.2012 in name of the assessee.*
18.02.2010	*Approval granted by DSIR to assessee under section 35(2AB) of the Act in Form 3CM from 9.3.2009 to 31.3.2012*

10. The relevant portion of Section 35(2AB) reads as under:

"Section 35…….

[(2AB)(1) Where a company engaged in the business of [bio-technology or in [any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule]] incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of [a sum equal to 81-[one and one-half] times of the expenditure] so incurred:

[Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction

under this clause shall be equal to the expenditure so incurred.]

[Explanation.—For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).]

(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and [fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed].

(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the 86[Principal Chief Commissioner or Chief Commissioner or] [Principal Director General or] Director General in such form and within such time as may be prescribed.]

(5) [***]

[(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2008.]"

11. The important dates are examined in detail. EML was granted general recognition for R&D Centre at Pithampura by DSIR upto 31.03.2011 vide letter dated 05.06.2008. EML divested the CV undertaking including R&D facility to the assessee, VECV on 01.07.2008. Letters have been filed to DSIR by EML to grant approval in respect of R&D facility in the name of EML for the period from 01.04.2007 to

30.06.2008 i.e. till the date of slump sale and coming into existence of VECV. The letter written to DSIR is reproduced hereunder:

"Eicher Motors Limited
Eicher House, 12 Commercial Complex
Greater Kailash-II (Masjid Moth)
New Delhi-110048, India
Telephone: 011-41437600 Fax: 011-41437700
Web http://www.eicherworld.com

Department of Scientific & Industrial Research
Ministry of Science & Technology
Technology Bhawan
New Mehrauli Road,
New Delhi-110016
Kind Attn: Mr. Indu Bhaskar, Scientist 'E'

Dear Sir,

Sub: In the matter of Eicher Motors Limited
Regarding our application dated 03.09.2007 for renewal of in-house R&D facilities at Pithampur (MP) and Chennai (Tamil Nadu) u/s 35(2AB) of the Income Tax Act, 1961

This has reference to our application dated 3rd September 2007 (filed on 07.09.2007 — copy enclosed), for renewal of approval u/s 35(2AB) of the Income Tax Act, 1961 in respect of R&D facilities situated at following addresses:

1. *Eicher Motors (Commercial vehicle division of Eicher Motors Limited) 102 & 102A, Industrial Area No. 1*
   Pithampur 454 775
   Distt. Dhar (MP)

2. *Royal Enfield (Motorcycle division of Eicher Motors Limited)*
   Thiruvottiyur High Road, Thiruvottiyur
   Chennai 600 019, Tamil Nadu

It is submitted that R&D facility situated at Pithampur as mentioned at Sl.No.1 has been recognized upto 31.03.2011 vide your letter dated 05.06.2008 (copy enclosed). The R&D facility situated at Chennai as mentioned at Sl.No.2 has been recognized upto 31.03.2010 vide your letter dated 25.06.2007 (copy enclosed).

It is submitted that both the aforesaid R&D facilities have been approved u/s 35(2AB) of the Income Tax Act, 1961 upto 31.03.2007 vide your approval order in Form No.3CM dated 10th August 2005 (copy enclosed).

In our application dated 03.09.2007, we have applied for renewal of approval u/s 35(2AB) of both the R&D facilities till 31.03.2012 in view of extension of deduction u/s 35(2AB) till 31.03.2012 by the Finance Act, 2007. The aforesaid application is under consideration in your office.

It is submitted that R&D facility at Pithampur, is a part of commercial vehicle business of the applicant company (Eicher Motors Limited). It is submitted that commercial vehicle business including R&D facilities situated at Pithampur has been divested w.e.f. 01.07.2008 to the subsidiary company — VE Commercial Vehicles Limited, to jointly develop commercial vehicle business with M/s AB Volvo, Sweden by way of "slump sale" as defined u/s 2(42C) of the Income Tax Act, 1961 on a going concern basis.

It is submitted that as per provisions of section 192A of the Companies Act, 1956 read with the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001, the approval of the shareholders for this disinvestment has been received on 15,03.2008 (a copy of the resolution is enclosed).

Copy of resolution passed in the meeting of the Board of Directors of Eichcr Motors Limited held on 26.07.2008 authorizing Managing Director of tire.company to execute transferring the commercial vehicle business w.e.f. 01.07.2008 is enclosed.

In view of the above following is requested:

1. *To grant approval u/s 35(2AB) in -respect of R&D facility situated at Pithampur for the period from 01.04.2007 to 30.06.2008 in the name of Eicher Motors Limited.*
2. *To grant approval u/s 35(2AR) in respect of R&D facility situated at Chennai in the name of Eicher Motors Limited for the period from 01.04.2007 to 31.03.2012.*
3. *To change the name of the company in the recognition letter dated 05.06.2008 of in-house R&D unit situated at Pithampur, Distt Dhar (MP) from Eicher Motors Limited to VE Commercial Vehicles Limited w.e.f. 01.07.2008.*
4. *To treat our application dated 03.09.2007 requesting for renewal of application u/s 35(2AB) in respect of R&D facility situated at Pithampur in the name of VE Commercial Vehicles Limited, for the period commencing from 01.07.2008 and to giant the approval from 01.07.2008 to 31.03.2012 in the name of VE Commercial Vehicles Limited.*

In case any other information is required, we shall be pleased to submit the same."

12. From the reading of the above letter point 3 and point 4, it is clear that the EML sought to change the name of the company from EML to VECV w.e.f. 01.07.2008. In pursuance to the letter dated 13.10.2008 of

EML, DSIR vide letter dated 09.03.2009 accorded approval upto 31.03.2012.

13. Having gone through the complete correspondence between EML and DSIR, we come to the conclusion that the letter dated 09.03.2009 granting recognition for in house R&D unit is not from 09.03.2009 but it only denotes that the extension upto 31.03.2012 against the period given upto 31.03.2011 to the EML vide letter dated 05.06.2008 of the DSIR. This proves that the assessee is eligible to be recognized from 01.07.2008 to 31.03.2012 but not from 09.03.2009 to 31.03.2012 as opined by the Assessing Officer. Hence, the deduction has been rightly allowed to the assessee by the ld. CIT (A).

14. Further, the ld. DR objected to the granting of deduction u/s 35(2AB) on the grounds that the passing of the CV unit along with R&D unit has been transferred to the assessee by the way of slump sale but not by the process of demerger/amalgamation. Hence, the benefit of weighted deduction cannot be allowed to the assessee.

15. Provisions of Section 35(5) reads as under:

> *"Section 35…….*
> *[(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing expenditure of a capital nature on scientific research,—*
>
> *(i) the amalgamating company shall not be allowed the deduction under clause (ii) or clause (iii) of sub-section (2); and*
>
> *(ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the asset.]"*

16. Further, the Clause (ii) and Clause (iii) of Sub-Section 2 of Section 35 reads as under:

> *"Section 35(2)……..*
> *(i)……..*
>
> *(ii) notwithstanding anything contained in clause (i), where an asset representing expenditure of a capital nature [incurred before the 1st day of April, 1967,] ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deductions already allowed under clause (i) falls short of the said expenditure, then—*
>
> *(a) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and*
>
> *(b) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year ;*
>
> *(iii) if the asset mentioned in clause (ii) is sold, without having been used for other purposes, in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation ; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place;"*

17. A going concern basis basically means that an entity will remain in business in the near future. We find that the above provisions cannot be applied to the facts of the instant case as the approval u/s 35(2AB) in respect of the R&D unit has been granted by the DSIR w.e.f. 01.07.2008 as consequence to the approval granted to EML.

18. In conclusion, having gone through the entire facts of the instant case, we hold that the assessee is eligible for deduction u/s 35(2AB) from 01.07.2008, the date on which the EML divested the CV unit and the R&D facility. Having said so, we also find that the ld. CIT (A) has given a

categorical finding that the AO has disallowed total R&D expenses incurred by the assessee during the year including expenses that have incurred after the date of DSIR approval letter i.e. 09.03.2009. Further, we also find that the AO has observed that deduction u/s 35 has been claimed under the head "intangible assets". We also find that the core issue of examination of the expenditure has not been resorted as the revenue held that the assessee was not eligible for the deduction u/s 35(2AB) for expenses incurred prior to that date. Hence, in order to meet the ends of justice, a fair opportunity has to be allowed to both the parties, it is hereby directed to submit the details of capital expenditure and revenue expenditure for the entire period from 01.07.2008 to 31.03.2009 so as to avail the correct deduction as per the principle laid down in this order.

Addition u/s 14A: (ITA No. 580/Del/2016 A.Y. 2009-10)

19. The Assessing Officer having observed that the assessee has earned exempt dividend income of Rs.12 lacs disallowed an amount of Rs.2,34,335/- u/s 14A r.w.r. 8D(iii). The Rule 8D(2) as applicable to the assessment year 2009-10 reads as under:

> **"[***(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—*
>
> *(i) the amount of expenditure directly relating to income which does not form part of total income;*
>
> *(ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:-*
>
> Provided *that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee*.**]"**

20. During the arguments, it was submitted by the ld. DR that the provisions of Rule 8D (2) was squarely applicable to the case owing to receipt of the exempt income by the assessee. The ld. AR argued that the dividend has been received on the units of debts mutual funds purchased and sold during the previous year and the dividend has been received after deduction of dividend distribution tax. It was submitted that the investment in the mutual funds was made out of surplus balances available with the company and no interest bearing funds have been utilized for investment in the mutual funds. It was argued that no expenses have been incurred in respect of earning dividend on mutual funds as the only activity required for investment is filing of application and the dividend is directly credited to the bank account of the assessee.

21. Since no interest bearing funds have been utilized in investment and the revenue could not prove any expenses incurred, the addition made by the AO is hereby directed to be deleted.

Disallowance of Expenses: (Ground No. 3 of ITA No. 580/Del/2016 A.Y. 2009-10 and Ground No. 1 of ITA No. 581/Del/2016 A.Y. 2010-11)

22. During the relevant previous year, the assessee had acquired business undertaking from Volvo India Pvt. Ltd. ('VIPL') through scheme of demerger, duly approved by the High Court of Karnataka and Delhi, w.e.f 01.07.2008. As a consequence of the aforesaid business of VIPL devolving on the assessee, through demerger, the assessee took over the provisions on account of inventory obsolescence of Rs.2.56 crores, on account of service charges of Rs.3.70 crores and on account of warranty of Rs.7.65 crores totaling Rs.13.90 crores. Out of these provisions, the assessee has utilized an amount of Rs.7.3 crores on all the three accounts and claimed deduction in the P&L account. The AO disallowed the deduction claimed by the assessee on the grounds that the assessee

did not furnish the copies of ITR of VIPL to prove that these expenses which were booked provisionally have not been claimed and also on the reason that the proof of payment against the aforesaid provision by the assessee during the year have not been submitted. The Assessing Officer has also not accepted the certificate given by the Chartered Accountant as it was undated. During the proceedings before the ld. CIT (A), the assessee has filed documents in the form of ITRs of VIPL the earlier company and also certificate from Chartered Accountant regarding expenditure incurred on account of the provisions. The ld. CIT (A) after going through the ITRs gave a categorical finding that the deduction on account of the provisions has not been claimed by the assessee and also held that the assessee had discharged the liabilities against the provisions received from VIPL. The ld. CIT (A) has given this categorical finding after due verification of ledger and books of accounts.

23. Since, the facts are not disputed by both the parties and the issue is purely based on the facts which have been verified by the ld. CIT (A) and since no legal issue is involved , after going through the entirety of the issue, we hereby decline to interfere with the well reasoned order of the Ld.CIT(A).

Disallowance of Bad Debts: (Ground No. 4 of ITA 580/2016, Ground No. 2 of 581/2016 and Ground No. 1 of 5734/2016)

24. The assessee has claimed in the P&L account, the bad debts pertaining to CV business acquired from EML (the predecessor company). The AO disallowed the amount on the ground that the said amount has not been offered to tax by the assessee. The ld. CIT (A) gave a categorical finding that the corresponding amount of the debts was offered as income by the predecessor assessee. The assessee has received the business from its predecessor EML by way of demerger

wherein the EML sold the vehicles on credit and the said amounts were offered to tax in the earlier years. The question here is not about the debt becoming bad but whether the amounts offered by the earlier company and duly offered to tax turned bad at a later date be allowed as per the provisions of Section 36(1)(vii) r.w.s. 36(2) of the Income Tax Act, 1961. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of CIT Vs T. V. Rao 155 ITR 152. Owing to the judgment of the Hon'ble Supreme Court, we hereby hold that the bad debts written off as irrecoverable in the books of accounts of the assessee in relation to the debts acquired on purchase of business which has been offered as income by the predecessor company is allowable u/s 36(2). The relevant portion of the judgment is reproduced herewith for ready reference:

> *"The Income-tax Department appealed to the Tribunal against the order of the AAC and urged that clause (i) of sub-section (2) of section 36 of the Act did not permit such an allowance because it did not satisfy the requirement mentioned in sub-clause (a) and sub-clause (b) of that provision, and, therefore, it was not open to the assessee to claim a deduction of Rs. 15,100 as a bad debt nor the legal expenses of Rs. 6,880. The Tribunal dismissed the appeal, holding that where a business was succeeded to by an assessee, it was entitled to write off the bad debts of the business taken over. The Tribunal observed that whenever a business was succeeded to as a whole and as a running enterprise, the assets and liabilities so taken over became the assets and liabilities of the successor and, therefore, the assessee was entitled to write off the bad debts. It noted that the assessee had not only treated the amount as a debt owed to it but had allowed the interest accrued thereon to be assessed in its hand as the interest constituted part of the debt. At the instance of the Commissioner, a reference was made to the Andhra Pradesh High Court for its opinion on the question set forth earlier. The High Court answered the question in the affirmative and against the department.*
>
> ***6.** It is not disputed that the assessee succeeded to the business of the predecessor-firm and took over all its assets and liabilities, including the debt due from Laxmi Trading Co.*

The business carried on by the predecessor-firm was now carried on by the assessee. The facts also show that the assessee paid income-tax on the interest income accruing on the debt for the assessment year 1963-64. It is also not disputed that the parties effected a settlement on 31-3-1965 whereby a sum of Rs. 25,000 was accepted by the assessee in satisfaction of the debt and that the balance of Rs. 15,100 was written off by the assessee as as irrecoverable. The question is whether money owed by a debtor under a transaction with a predecessor-firm can be written off as irrecoverable in the accounts of its successor, the assessee, in a subsequent year and could be claimed as a bad debt under clause (vii) of sub-section (1) of section 36. Clause (vii) of sub-section (1) of section 36 provides:

"(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

*(i) to (vi)*** **

(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year :"

Sub-section (2) of section 36 declares :

"(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

(i) no such deduction shall be allowed unless such debt or part thereof—

(a) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and

(b) has been written off as irrecoverable in the accounts of the assessee for that previous year ;

(ii) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made ;

(iii) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year, but the Income-tax Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year ;

(iv) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year and the Income-tax Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply."

7. *Section 28 of the Act, referred to in sub-section (1) of section 36, provides that income under the head 'Profits and gains of business or profession', shall be chargeable to income-tax. The profits and gains of a business are charged to income-tax. To compute the profits and gains so chargeable, section 36 provides for allowing a number of deductions. Each of the deductions must relate to the business. If the same assessee was carrying on a business and he wrote off a debt relating to the business as irrecoverable, he would without doubt be entitled to a corresponding deduction under clause (vii) of sub-section (1) of section 36 subject to the fulfilment of the conditions set forth in sub-section (2) of section 36. If a business, along with its assets and liabilities, is transferred by one owner to another, we see no reason why a debt so transferred should not be entitled to the same treatment in the hands of the successor. The recovery of the debt is a right transferred along with the numerous other rights comprising the subject of the transfer. If the law permits the transferor to treat the whole or part of the debt as irrecoverable and to claim a deduction on that account, it seems difficult to accept*

that the same right should not be recognised in the transferee. It is merely an incident flowing from the transfer of the business, together with its assets and liabilities, from the previous owner to the transferee. It is a right which should, on a proper appreciation of all that is implied in the transfer of a business, be regarded as belonging to the new owner. Unless the language of the statute plainly and clearly compels a construction to the contrary, the normal rule of the law should be given its proper play. It is true that clause (i) of sub-section (2) of section 36 declares that a deduction can be allowed only if the debt, or part thereof, has been taken into account in computing the income of the assessee of that previous year or an earlier previous year and that it has also been written off as irrecoverable in the accounts of the assessee for that previous year. In the present case, the debt was taken into account in the income of the assessee for the assessment year 1963-64 when the interest income accruing thereon was taxed in the hands of the assessee. The interest was taxed as income because it represented an accretion accruing during the earlier year on money owed to the assessee by the debtor. The item constituted income because it represented interest on a loan. The nature of the income indicated the transaction from which it emerged. The transaction was the debt and that debt was taken into account in computing the income of the assessee of the relevant previous year. It is the same assessee who has subsequently, pursuant to a settlement, accepted part payment of the debt in full satisfaction and has written off the balance of the debt as irrecoverable in his accounts. It appears, therefore, that the conditions in both sub-clauses (a) and (b) of clause (i) of sub-section (2) of section 36 are satisfied in the present case and the High Court as well as the Tribunal and the AAC are right in the view which they took.

8. *It seems to us that even if the debt had been taken into account in computing the income of the predecessor-firm only and had subsequently been written off as irrecoverable in the accounts of the assessee, the asses-see would still have been entitled to a deduction of the amount written off as a bad debt. It is not imperative that the assessee referred to in sub-clause (a) must necessarily mean the identical assessee referred to in sub-clause (b). A successor to the pertinent interest of a previous assessee would be covered within the terms of sub-clause (b). The successor assessee, in effect, steps into the shoes of his predecessor.*

> ***9.*** *Accordingly, we hold that the assessee in the instant case was entitled to the deduction as a bad debt of the sum of Rs. 15,100 written off by it in its accounts of the previous year as irrecoverable."*

Hence, we decline to interfere with the reasoned order of the ld. CIT (A).

Disallowance of Training Expenses: (Ground No. 2 of ITA No. 5734/2016)

25. The assessee has claimed expenses on account of "service training school" under the head "selling and distribution expenses". It was submitted that these expenses pertain to training of the employees to equip themselves with the latest technological development. The AO held that the training is akin to skill development of the technicians and is enduring in nature and related to brand image of the company and hence capital in nature. The AO disallowed 1/3rd of the expenses holding that they are not allowable in one single year. During the arguments, it was submitted that the assessee is in the business of commercial vehicles which needs continuous innovation and development. The expenses were incurred for imparting the training to the drivers of the dealers so that they will become adept in handling and driving the vehicles. It was submitted that the assessee recruits new employees from time to time who needs to be trained for requisite skills and is an ongoing process.

26. Heard the arguments of both the parties and perused the material available on record.

27. We find that the assessee is in the business of selling commercial vehicles wherein training of the drivers and other technicians is a business expediency. Owing to the new recruitment as well as job rotation, offboarding and attrition of employees, the training is taken to be an ongoing process for any industry. The Assessing Officer

observation that it goes to improve the brand building, if at all, is collateral benefit. There is no provision in the Income Tax Act for apportioning this expenditure over a period of three years as invoked by the Assessing Officer. Section 37(1) mandates that any expenditure has to be allowed in entirety if it is spent in connection with business of the assessee. There cannot be any formula basis, criteria adopted by the AO while disallowing 2/3rd of such expenditure. At the same time, this expenditure cannot be treated as capital expenditure too. Reliance is being placed on the judgment of Hon'ble Apex Court in the case of Taparia Tools Ltd. Vs JCIT 372 ITR 605 on the issue of deferred revenue expenditure. Hence, we hereby hold that the disallowance made by the AO is legally not tenable. Appeal of the revenue on this ground is dismissed.

28. In the result, the appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 30/04/2020.

Sd/-	Sd/-
(Sushma Chowla)	**(Dr. B.R.R. Kumar)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 30/04/2020
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR