

**IN THE INCOME TAX APPELLATE TRIBUNAL "D"**  
**BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. Nos.5679 to 5681/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13 & 2013-14)

The DCIT-4(2)(2) Room No.640, 6 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Mega Fine Pharma Pvt. Ltd. Sethna, 4 <sup>th</sup> Floor, 55, M. K. Road, Marine Lines, Mumbai-400002.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM7472M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Vijay Kumar G. Subramanyam (Sr. AR)	
Assessee by:	Shri C. V. Jain	

सुनवाई की तारीख / Date of Hearing: 03/11/2020

घोषणा की तारीख /Date of Pronouncement: 22/12/2020

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The above mentioned appeals have been filed by the revenue against the different order passed by the Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Ys.2011-12, 2012-13 & 2013-14.

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2. The revenue has filed the present appeal against the order dated 12.06.2017 passed by the Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.



3. The revenue has raised the following grounds: -

- “1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief to the assessee on account of weighted deduction u/s 35(2AB) even though the application for the Form 3CM was submitted to the DSIR on 18.09.2013 and Form 3CM was valid from 01.04.2013 to 31.03.2016.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief to the assessee on account of weighted deduction u/s 35(2AB) without considering the fact that in the case of ACIT vs. MECO instruments, the assessee applied for the Form 3CM and did not receive in that particular F.Y. but in the present case there is no evidence and assessee also failed to prove that they were applied for the Form 3CM in the year under consideration.
3. The appellant craves leave to amend or alter any ground or add new ground which may be necessary.”

4. The brief facts of the case are that the assessee filed its return of income on 23.09.2011 declaring total income to the tune of Rs.5,53,78,331/-. The case was selected for scrutiny and thereafter, the assessment u/s 143(3) of the Act was passed on 11.02.2014 assessing total income to the tune of Rs.6,24,36,150/-. The case of the assessee was further reopened by issuance of notice u/s 148 of the Act on 17.03.2015. The reasons for reopening were supplied by virtue of letter dated 20.07.2015. Thereafter, the notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of manufacturing of the dealing bulk drugs and chemicals. It was observed that the assessee company has claimed deduction u/s 35(2AB) of the I. T. Act, 1961 amounting to Rs.3,56,18,753/- as expenses on in-house R & D (being the 200% of R & D expenditure of Rs.1,78,09,377/-). The notice was given and after the reply of the assessee, the Research and Development Expenses which pertains to in House Development Expenses



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amounting to Rs.1,78,09,376/- was allowed as business expenses u/s 37. The total disallowance worked out of Rs.1,78,09,377/- (Rs.3,56,18,753/- (-) 1,78,09,377/-). Thereafter, the total income of the assessee was assessed in sum of Rs.8,02,45,520/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

5. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -

*“6.2 During the course of appellate proceedings, the Ld. AR of the appellant submitted written submission, relevant portion of the same is reproduced as under.*

*‘I have carefully considered the contentions of the AO as per his assessment order and the arguments of the AR along with his written submissions dated 17.05.2017. The AR of the appellant has filed following documents in support of his submission and claim of weighted deduction u/s 35(2AB).*

- a. Application for recognition of in-house R & D Unit dated 11/03/2010 submitted to DSIR on 15/03/2010 along with Form SCK.
- b. DSJR recognition letter dated 21/09/2010.



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- c. Judgment of honourable ITAT in case of Meco Instruments P. Ltd.
- d. Annual compliance letter for approved R & D unit dated 05/08/2013.
- e. Application letter seeking approval u/s 33(2AB) dated 18/09/2013.
- d. DSIR approval letter dated 11/03/2014 along with Form no. 3CM.
- g. DSIR submission of report in Form 3CL dated 28/12/2015.
- h. Application for renewal and recognition letter dated 30/12/2015.

It is found from the records that though the judgment of honourable of ITAT Mumbai in case of Meco Instruments P. Ltd was brought to the notice of the AO at the time of assessment, he has not dealt with the same in his order and without distinguishing the same he has failed to follow the same.

The AR of the appellant has given a comparative study of appellant's case with Meco Instruments P. Ltd, where the honour able ITAT Mumbai, has categorically held as under:

"it is clear that merely on the ground of technicalities of procedure, the benefit bestowed by legislature cannot be denied. When it comes to follow the prescribed procedure, the exemption provisions have to be liberally construed and if in substance, the assessee has fulfilled the basic requirements then the exemption cannot be denied."

6.3. I have considered the facts of the case as well as assessment order passed by the AG and the submission of the appellant. The AR of the appellant has produced following documents in support of his submissions and claim of weighted deduction u/s. 35(2AB)



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- a. Application for recognition of in-house R & D Unit dated 11/03/2010 submitted to DSJR on 15/03/2010 along with Form 3CC
- b. DSIR recognition letter dated 21/09/2010.
- c. Judgment of Hon'ble ITAT in case of Mecco Instruments P. Ltd.
- d. Annual compliance letter for approved R & D unit dated 05/08/2013.
- e. Application letter seeking approval u/s 35(2AB) dated 18/09/2013.
- g. DSIR submission of report in Form 3CL dated 28/12/2015.
- h. Application for renewal and recognition letter dated 30/12/2015.

It is found from the records that though the judgment of Hon'ble ITAT, Mumbai in the case of Mecco Instruments P. Ltd was brought to the notice of the AO during the course of assessment proceedings, the AO has not dealt with the same in his order and without distinguishing the same he has failed to follow the same.

The AR of the appellant has given a comparative study of appellant's case with Mecco Instruments P. Ltd., which has been narrated in earlier paragraph and for the sake of brevity; the same is not being repeated here. In this case, the Hon'ble ITAT, Mumbai, has categorically held as under:

"it is clear that merely on the ground of technicalities of procedure, the benefit bestowed by legislature cannot be denied. When it comes to follow the prescribed procedure, the exemption provisions have to be liberally construed and if in substance, the assessee has fulfilled the basic requirements then the exemption cannot be denied."



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After considering the submissions and the explanations and factual narration of the case by the Ld.AR, the factual analysis regarding the facts and the similarity of ratio of the present appellant case i.e, Mega Fine Pharma P Ltd. and the Mecco Instruments Pvt. Ltd. can be depicted as under:

Issues	Facts of Mecco	Facts of Mega Fine	Remark
Assessment Year	2005-06	2011-12, 2012-13 & 2013-14	
Deduction u/s 35(2AB)	Weighted Deduction Claimed	Weighted Deduction Claimed	Same Position
Details of R & D activities & Expenditure	Submitted at the time of assessment	Submitted to AO	Same Position
Form 3CM & 3CL	Not obtained	Not obtained	Same Position
Form 3CK	Not submitted	Submitted to DSIR Copy filed with AO	Better compliance by Mega Fine
Approval of Recognition From Ministry of Science & Technology for in house R & D Unit	Obtained & submitted to AO	Obtained & submitted to AO	Same Position
Approval Signed By	Scientist	Scientist	Same Position
Director Remuneration & foreign Travel	Claimed under weighted Deduction	Not claimed as weighted deduction	Better compliance by Mega Fine
Form 3CK filed later	Filed on 28.04.2008	Filed on 15.03.2010	Non-compliance by Mecco Instruments & Full Compliance by Mega Fine
Audited Accounts	Not submitted to DSIR	Submitted to DSIR on 18.09.2013	Subsequent Compliance by mega Fine & No Compliance by Mecco Instruments
Opportunity by DSIR	Not given	Not given	Same Position
Rejection by Competent authority	No order Passed	No order Passed	Same Position



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Findings of ITAT			
	Unit is duly approved & recognized	Same Position	
	Recognition is not meant for tax exemption		
	Recognition Renewed from time to time	Same position	
	AO raised objection for first time in AY 2005-06	Weighted Deduction was initially allowed and later disallowed by reopening on a change of opinion.	
Final Verdict	Merely on the grounds of technicalities of procedure, the benefit bestowed by legislature cannot be denied. When it comes to follow the prescribed procedure, the exemption provisions have to be liberally construed and if in substance, the assessee has fulfilled the basic requirements then the exemption cannot be denied.		

Thus, on careful considerations of the facts of Mecco Instruments (supra) and the case in hand, it may be found that facts of both the cases are identical and therefore, I am inclined to follow the judgment of Mecco Instruments P. Ltd for deciding the allow- ability of weighted deduction claimed by the appellant u/s. 35(2AB).

Further, the Ld.AR has explained that the AO itself has found that most of the R&D expenses pertain to raw material purchases- and salary of the employees which are revenue in nature. The assessee company has already submitted bills and vouchers of the Research



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and Development expenses which pertain to in house R&D unit of the assessee company.

Therefore, the expenses incurred for in house R&D unit of appellant company are supported by bills and vouchers and duly verified by the AO. Hence, duly following the judgment of ITAT Mumbai in case of Meco Instruments P. Ltd, the weighted deduction claimed by the appellant u/s 35(2A5) is allowable and the AO is directed to allow the claim of the appellant. However, this is subject to the fact that if in future the decision of Hon'ble ITAT Mumbai in the case of Nieco Instrument P.Ltd. is modified or reversed at higher judicial forum namely, The Hon'ble High Court and Hon'ble Supreme Court, such claim of the appellant will have to be withdrawn by the AO and the AO will be free to take remedial measures as per Income Tax Law.

In the result, these grounds of appeal No.4 to 6 are to be treated as Allowed."

6. On appraisal of the above mentioned finding, we noticed that the CIT(A) has allowed the claim of the assessee on the basis of decision of Hon'ble ITAT Mumbai in the case of Meco Instruments Pvt. Ltd. In this case also, the expenses incurred on in-house R & D was allowed. The expenses incurred for in-house R&D unit of appellant company are supported by bill and vouchers and duly verified by the AO. The facts are not distinguishable at this stage. The facts in the case of Meco Instruments Pvt. Ltd. (supra) is quite identical to the facts of the present case also. There is nothing on record to which it can be assumed that the law settled in Meco Instruments Pvt. Ltd. (supra) has been changed or varied, therefore, in the said circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be



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interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

In the result, the appeal filed by the revenue is hereby dismissed.

**ITA. NO.5680 & 5681/M/2017:-**

7. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.5679/M/2017, therefore, there is no need to repeat the same. However, the figure is different. The matter of controversy is also the same. The finding given above in ITA. No.5679/M/2017 is quite applicable to the facts of the present case as mutatis mutandis and accordingly we dismiss the appeals of the revenue.

8. In the result, appeals filed by the revenue are hereby dismissed.

Order pronounced in the open court on 22/12/2020

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai दिनांक Dated : 22/12/2020

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**