

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'A': NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.2458/Del/2017  
Assessment Year : 2012-13**

**Botil Oil Tools (I) Pvt. Ltd.  
Wahi & Co. LLP,  
Chartered Accountant, K-1,  
Kailash Colony,  
New Delhi-110048  
PAN-AAACB0222G**

**Vs. Pr. CIT,  
Circle-2,  
New Delhi**

**(Appellant)**

**(Respondent)**

Appellant by : Sh. A.K. Malhotra, C.A.  
Respondent by : Sh. Ashok Gautam, Sr. DR

Date of hearing : 08.03.2021  
Date of pronouncement : 08.03.2021

**ORDER**

**PER R.K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 29.03.2017 of the Pr. CIT, New Delhi, relating to Assessment Year 2012-13.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing Oil Field Drilling and Production Equipment, which are used for drilling the Wells to pull out the oil from the wells. It filed its return of income 30.11.2012 declaring an income of Rs.12,04,31,650/-. This case was selected for scrutiny through CASS for

examining the details in complete manner with specific emphasis to examine the deduction claimed under section 35, 35(2AA) and 35(2AB) of the Income Tax Act, 1961 (in short 'the Act'). The Assessing Officer completed the assessment u/s 143(3) on 05.12.2014 determining the total income of the assessee at Rs.13,75,88,960/-.

3. Subsequently, the Pr. CIT, on examination of the assessment order along with the data submitted by the company during the course of assessment proceedings, found that there are certain omissions in the body of the assessment order, which has resulted into wrong determination of total assessable income. He noted that the assessee company debited an amount of Rs.10,56,75,239/- on account of deduction u/s 35(2AB) of the Act but in support of its claim, the assessee did not produce mandatory form 3CM and Form 3CL. In the absence of these mandatory forms, the claim of the assessee could not be verified, however, the same was allowed in assessment order for A.Y. 2012-13.

4. Although, the dates are given fixing the hearing, however, the assessee sought adjournment and subsequently, filed written submission dated 29.03.2017. After considering the submissions made by the assessee, the Pr. CIT came to the conclusion that the Assessing Officer never asked the assessee for Form 3CL in which the prescribed authority (DSIT) certifies the expenditure incurred on in-house R & D to avail weighted deduction of income tax nor the assessee submitted the same. In absence of the Form 3CL of prescribed authority, the weighted deduction

should not have been allowed to the assessee. Clause 14 of 3CD disclosed that the assessee had sold fixed assets at an amount of Rs.1,55,98,000/- and in this regard the Assessing Officer neither verified from the assessee nor from DSIR whether these assets were acquired for scientific research and if yes, whether the assessee obtained prior approval from the DSIT in respect of sale of fixed assets, which is an essential conditions for weighted deduction as per sub rule 7A(d) of rule 6(1) of Income Tax Rules. With regard to sale of assets of Rs.1,55,98,000/-, he noted that the assessee had sold vehicles amounting to Rs.1,55,35,000/- and computers for Rs.63,000/- during the year and same has been reduced from the W.D.V. in its depreciation chart.

5. The Pr. CIT referred to the sub rule 7A of Rule 6 of Income Tax Rules, 1962 which specifies conditions for availing weighted deduction. According to him, in view of the above Rule submission of Form 3CL to Director General (Income Tax Exemptions) is a condition which needs to be fulfilled. He observed that in this case, there is nothing on record to suggest that the above said condition was satisfied. Further no working is available on record to suggest as to how the deduction of Rs.6.58 Crore have been claimed as even if the Audit report is considered Rs.3,98,40,264/- was required to be added back before claiming u/s 35(2AB) deduction of Rs.9,45,49,060/- or net deduction of Rs.5,47,08,796/- should have been claimed. Since, all the above conditions needs to be fulfilled before availing weighted deduction u/s 35(2AB) which

has not been looked into by the Assessing Officer before allowing the said deduction, he held that the assessment order dated 05.12.2014 is erroneous and prejudicial to the interest of the Revenue. He, therefore, set-aside the order and directed the Assessing Officer to pass a fresh order after making necessary verification and after giving due opportunity of being heard to the assessee.

6. Aggrieved with such order of the Pr. CIT, the assessee is in appeal before the Tribunal by raising following grounds of appeal

**Grounds of Appeal No.1**

*Claim u/s 35(2AB) amounting to Rs. 9,45,49,060/-*

*The Hon'ble Pr. CIT has taken the ground for reopening of the Ld. ACIT, vide order passed u/s 143(3) dated 05.12.2014 as erroneous and prejudicial to the interest of the revenue, because Ld. ACIT did not verify the details of claim u/s 35(2AB), which is given to a manufacturing company whose R&D facilities are recognized by DSIR and the assessee should have approval of claim of expenditure u/s 35(2AB) on Form 3CM.*

*The Hon'ble Pr. CIT further assumed that the conditions pertaining to Rule 6(7A) in regard to sale of assets of Rs. 1,55,98,000/- by the assessee company is without taking the approval of DSIR.*

*Whereas the claim of the assessee is genuine, as the assessee has the following requisite approvals –*

- a. *Its R&D Centre is recognized by DSIR*
- b. *Approval of R&D expenditure u/s 35(2AB) on Form 3CM was duly received by the assessee company and filed before Hon'ble Pr. CIT which includes the agreement by the Assessee with DSIR.*

- c. *Form 3CL is a direct communication by DSIR to DG(Inv.) and the assessee has no role on this.*
- d. *The whole claim is reflected in Form 3CD of Tax Audit.*

*It is notable that the Hon'ble Pr. CIT did not raise any query on sale of assets by the assessee company, therefore, it is presumption. However, sale of assets as quoted by the Hon'ble Pr. CIT are not a part of the R&D assets as defined under Rule 6(7A) of the Income Tax Act 1962.*

### **Grounds of Appeal No.2**

#### *Claim of R&D Expenditure u/s 35(l)(iv) for Rs.1,11,26,179/-*

*The assessee has claimed deduction u/s 35(l)(iv) as reflected in Form 3CD at 100% pertaining to R&D asset (Building) which amount is not part of claim u/s 35(2AB). The claim of the assessee is genuine.*

*In view of the above, the order passed by the Hon'ble Pr. CIT is arbitrary, unlawful and is against the cannons of natural justice and is prayed to be cancelled.*

7. The learned counsel for the assessee referring to various case laws, submitted that it is not a case of no enquiry. The Assessing Officer has asked the query and the assessee has submitted various details, based on which the Assessing Officer has passed the order. Therefore, merely because the Pr. CIT is not agreeing with the view taken by the Assessing Officer, the same cannot be considered as erroneous and prejudicial to the interest of the Revenue. Referring to the order of the Tribunal in assessee's own case in the immediately preceding assessment year, he submitted that the Tribunal has restored this issue to the file of Pr. CIT for deciding the issue afresh as per law. He submitted that the facts of the present year are

distinguishable from the facts of earlier year, since, in this year, the Pr. CIT has given a finding that the assessee has filed Form No.3CM. He, accordingly, submitted that the order of the Pr. CIT should be set aside and the grounds raised by the assessee should be allowed.

8. The learned DR on the other hand, heavily relied on the order of the Pr. CIT. Referring to the assessment order, he submitted that although the case was selected for scrutiny to examine the deduction claimed u/s 35, 35(2AA) and 35(2AB), however, the Assessing Officer has not mentioned a single word about the allowability of the same in the body of the assessment order. Therefore, the Pr. CIT was fully justified in invoking the provisions of section 263 of the Act.

9. We have considered the rival arguments made by the both the sides, perused the orders of the Assessing Officer and Pr. CIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the Assessing Officer, in the instant case, completed the assessment, determining the total income at Rs.13,75,88,960/- against the returned income of Rs.12,04,31,650/-. Although, the case was selected for scrutiny for examining the allowability of claim of deduction u/s 35, 35(2A) and 35(2AB), however, there is no discussion in the body of the assessment order on this issue. On being a pointed query by the Bench as to the status of the case after the Tribunal restored the matter to the file of Pr. CIT, the learned counsel for the assessee expressed his inability to state the status and fairly submitted that

he has no objection if the matter is restored to the file of the Pr. CIT with similar direction.

10. We find, the Tribunal in assessee's own case in the immediately preceding assessment year vide ITA No.2418/Del/2016, order dated 24.04.2018, has restored this matter to the file of Pr. CIT for deciding the issue afresh by observing as under:-

*“3. We have heard both the sides and perused the relevant material on record. It is seen from page 2 of the impugned order that the assessee categorically stated before the ld.CIT that: “the ld. A.O. during the course of assessment proceedings u/s 143(3) did not call for any detail nor raised any query in regard to claim u/s 35(2AB).” The ld. AR submitted that this information was erroneously given to the ld. CIT inasmuch as the Assessing Officer did make enquiry as was evident from his order sheet entry dated 03.02.2014 by which certain enquiry was conducted qua deduction u/s 35(2AB) of the Act. Without going into the authenticity of the claim of deduction, we find that the ld. CIT set aside the assessment order primarily on the assessee's submission that the Assessing Officer did not call for any detail nor raised any query. Since this position does not prima facie appear to be correct, we set aside the impugned order and remit the matter to the file of CIT for deciding it afresh as per law, after allowing a reasonable opportunity of being heard to the assessee.”*

11. Respectfully following the decision of the Tribunal in assessee's own case for the immediately preceding assessment year, we deem it proper to restore this issue to the file of Pr.CIT for deciding the issue afresh and as

per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee, are accordingly, allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Oder pronounced in the open court at the time of hearing itself i.e. on 08/03/2021.

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-**

**(R.K. PANDA)  
ACCOUNTANT MEMBER**

Delhi/Dated- 08.03.2021

*Shekhar*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,  
ITAT, Delhi