

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. AMIT SHUKLA, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.4291/Del/2018  
Assessment Year: 2013-14

<b>DCIT (E) Circle – 8 (1) New Delhi</b>	<b>Vs</b>	<b>Elofic Industries Ltd. C-44, Friends Colony, New Delhi PAN No.AAACE0425C (RESPONDENT)</b>
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Appellant by	Sh. Mahesh Thakur, Sr. DR
Respondent by	Sh. Sandeep Vimani, CA

Date of hearing:	08/07/2021
Date of Pronouncement:	08/07/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-3, Delhi dated 16.02.2018 pertaining to A.Y. 2013-14.

2. The only grievance of the revenue read as under :-

*“1. The Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition*

*of Rs.2,25,36,552/- made by the AO on account of expenditure incurred on in-house Research & Development u/s. 35 (2AB).*

2. During the course of the scrutiny assessment proceeding the AO noticed that the assessee has claimed deduction u/s. 35 (2AB) of the Act at Rs.2,25,36,552/- on weighted basis on R & D expenses. The assessee was asked to furnish form No.3CL issued by DSIR for qualifying for deduction u/s.35 (2AB) of the Act. The assessee filed necessary documents with a detailed submission. The submissions of the assessee were dismissed by the AO who was of firm belief that the assessee has failed to furnish approval issued by DSIR and accordingly denied the claim of deduction and made addition of Rs.22536552/-. Assessee assailed the assessment before the CIT(A) and furnished all the necessary documents. After considering the facts and the submissions the CIT(A) held as under :-

*2.1 I have carefully considered the assessment order, submissions of the appellant had obtained certificate of registration dated 20.04.2012 issued by DSIR valid upto 31.03.2015, for the period relevant to impugned assessment year issued by Ministry of Science and Technology, Government of India. The certificate of registration was issued by the Department of Scientific and Industrial Research of the Ministry of Science and Technology and appellant has complied with all the statutory requisites for claim of weighted deduction u/s 35(2AB), as prescribed u/s 35(2AB)(3) namely*

*1) Entering into an agreement with the Department of Scientific & Industrial Research in Form 3CK as prescribed under Rule 5(4).*

*2) Maintenance of separate books of account in respect of In-house Research & Development Facility.*

*3) Filing of audit report in respect of both capital nature and revenue nature. These were also mentioned in submissions filed before the Assessing Officer during the course of assessment proceedings. The appellant has also relied on the decision of Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd. vs. Union of India and Others [2017] 397 ITR 728 (Delhi) which has held that in order to avail of the benefit u/s 35(2AB) what is relevant is not the date of recognition or the cutoff date mentioned in this certificate of the Department of Scientific and Industrial Research (DISR) or even the date of approval but the existence of the recognition. Once approval is granted by DISR, the same would apply till it is removed.*

*In view of the decision of Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd. (Supra) Assessing Officer is directed to delete the disallowance of Rs. 2,25,36,552/- u/s 35(2AB). Hence, grounds of appeal 1, 2 and 3 are allowed.*

3. Before us the DR vehemently stated that there is a contradiction in the date of registration as per certificate and further stated that since this certificate was never submitted before the AO, therefore, the AO had no opportunity to examine the same. The DR requested for setting aside the issue for verification by the AO. The counsel for the assessee fairly conceded to this.

4. We have given a thoughtful consideration to the orders of the authorities below. In one of its submission the assessee

claimed that the approval is given for 01.04.2016 to 31.03.2018 and in another submission the assessee claimed that it has obtained the certificate of registration which is dated 20.04.2012 issued by DSIR filed valid upto 31.03.2015. No doubt there are conflicting dates in the certificate and since the certificate was never examined by the AO we deem it fit to restore the entire issue to the files of the AO. The assessee is directed to furnish the certificate before the AO and the AO is directed to examine the same and decide the issue afresh after giving a reasonable opportunity of being heard to the assessee.

5. In the result, the appeal filed by the revenue is allowed for statistical purpose.

6. Decision announced in the open court in the presence of both the representatives on 08.07.2021.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:-08.07.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
 ITAT NEW DELHI

Date of dictation	08.07.2021
Date on which the typed draft is placed before the dictating Member	08.07.2021
Date on which the typed draft is placed before the Other member	08.07.2021
Date on which the approved draft comes to the Sr.PS/PS	08.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	08.07.2021
Date on which the final order is uploaded on the website of ITAT	08.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	