

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.5480/Mum/2018

(A.Y: 2013-14)

ACIT – 8(1)(1) Room No. 624, 6 th Floor, Aayakar Bhavan, MK Road, Mumbai – 400 020.	Vs.	M/s Raj Petro Specialties Pvt Ltd., 124, Raj Group, GD Ambekar Marg, Kalachowky, Cotton Green (W), Mumbai – 400 033.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCS4923P		
Appellant	..	Respondent

Appellant by :	Shri Manoj Kumar Singh, DR
Respondent by :	None

Date of Hearing	25.08.2021
Date of Pronouncement	01.09.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-14, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal.

1. *On the facts and in the circumstances of the case, Ld. CIT(A) erred in allowing the appeal of the assessee in respect of deduction u/s 35(2AB) amounting to Rs. 2,76,66,791/- without appreciating the fact that the assessee did not satisfy the*

requisites conditions necessary for allowing deduction u/s 32(2AB) of the Act.

2. In light of the recent supreme court judgment in case CIT Vs. Dilip Kumar (Civil appeal No. 3327 of 2007) as the principle upheld in Meco Instrument is overturned which was relied on by the CIT(A), CIT(A) erred in allowing the deduction u/s 35(2AB) amounting to Rs. 2,76,66,791/-

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading in specialty oils, hospitality and healthcare services. The assessee has filed the return of income for the A.Y 2013-14 on 29.11.2013 declaring a total income of Rs.11,09,22,970/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with query letter was issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details and explanations and the case was discussed. The A.O. on perusal of the financial statements found that the assessee has claimed weighted deduction u/s 32(2AB) of the Act in respect of R & D expenses being revenue expenditure of Rs. 1,66,20,361/- and R & D Capital expenditure of Rs. 1,93,56,610/- aggregating to Rs. 2,76,66,791/-. The assessee was called to submit the details in respect of claim made u/s 32(2AB) of the Act and the assessee has filed the information on 13.10.2015.

3. The A.O. perused the copy of renewal of recognition of

in house R & D units dated 30.04.2010 issued by DSIR granting recognition up to 31.10.2014, Auditor certificate dated 31-08-2013 and the ledger account of in house R & D expenses. The A.O dealt on the provisions of the Sec. 35(2AB)(1) of the Act and was of the opinion that the assessee in order to claim the weighted deduction, the certificate has to obtained from the competent authority(DSIR) that the assessee has undertaken R & D Activities. The assessee has to approach DSIR, which grants approval for the expenses incurred by the company in house R & D facility in prescribed Form 3CM as per Rule 6(5A) of the IT Rules and the A.O. required the assessee to produce the Form. The assessee has replied stating that due to oversight, the auditors certificate which certifies the expenditure incurred on R&D activities during the year was not sent to the prescribed authority for approval and hence Form 3CM cannot be obtained from DSIR. Therefore, the A.O in the absence of certificate in Form.No. 3CM is of the opinion that the assessee has not complied with the conditions and made disallowance of Rs. 2,76,66,791/- and passed the order u/s 143(3) of the Act. dated 25-03-2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee, provisions of law and judicial decisions. The CIT(A) has relied on the facts and judicial decisions with respect to the claim and observe that the non submission of the form is only a procedure delay and is curable and granted the relief and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal with the Honble Tribunal. At the time of hearing none appeared on behalf of the assessee. The Ld. DR relied on the order of the A.O and prayed for allowing the appeal.

5. We heard the Ld. DR submissions and perused the material on record. The only disputed issue the revenue is challenging that there is a lapse on the part of the assessee in not obtaining Form No 3CM from competent authority (DSIR). The contentions of the assessee before the CIT(A) that the claim is not disputed and due to oversight, the auditors certificate of expenditure incurred in R & D during the year was not sent to the prescribed authority for approval and therefore formNo. 3CM could not be produced. Whereas, the CIT(A) considered the judicial decisions and has granted the

relief and observed at page 4 Para 6.7 to 6.9 of the order, which is read as under:

“6.7 I have gone through the facts of the case and the decisions relied upon by the Appellant. The decision of the jurisdictional tribunal in the case of Meco Instruments (P) Ltd (supra) relied upon by the assessee is directly on the issue under consideration in this appeal. The facts in the said case were that the assessee had filed a return of income after claiming weighted deduction under Section 35(2AB) of the Act. The learned AO, inter-alia, required the assessee to furnish copy of order of the prescribed authority in Form No 3CM and 3CL as per IT Rules. The assessing officer in that case, denied deduction under Section 35(2AB) of the Act to the assessee mainly for the following reasons

The Assessee had not made application to the prescribed authority ie. Secretary, DSIR in the prescribed Form No 3CK

The Assessee had accepted that it had not obtained order from the prescribed authority in Form No 3CM

The Assessee had not obtained report submitted by prescribed authority to DG (Exemption) in Form No 3CL

The Assessee had also accepted that it had not sent any audit report to the prescribed authority before the date prescribed under Section 35(2AB) of the Act read with Rule 6

In other words, the assessing officer had denied the assessee's claim in that case under Section 35(2AB) of the Act on the ground that procedure as prescribed by Finance Act, 1997 with effect from 1-4-1998 was not complied with. The learned CIT(A) allowed the claim of the assessee.

The Hon'ble Mumbai ITAT, rejecting the appeals filed by the revenue, held as under:

"6.3 Now, we will also examine the issue having regard to the object of legislation. The entire scheme deals with the granting of approval to the facilities and the object is that

the research and development facilities is not related purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature. The purpose is to have research and development facilities which contribute to the technological advancement and not merely limited to earning of profits. Therefore, once the approval is there by the prescribed authority, it could be easily concluded that the same met the basic requirement and merely the same is not in prescribed form, it would not lead to the conclusion that the approval was of no purpose.

6.4 Further, in any view of the matter, at best it could be said that it was only a procedural defect and from the various decisions, noted in the arguments of id. Counsel for the assessee, 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.

7. In view of above discussion, we dismiss the revenue appeal.

6.8 As can be seen from the above, the honorable ITAT, Mumbai has allowed the claim of the assessee in the case of Meco Instruments (P) Ltd (supra) where the assessee did not have the approval from DSIR in the prescribed format and also did not carry out any annual compliance. The Tribunal held that the exemption provisions have to be interpreted liberally and benefit of exemption cannot be denied on the ground of technicalities of procedure ie. failure to file certain forms. In the instant case, the Appellant had the DSIR approval in place, a copy of which was filed before me. The same was valid for the year under consideration. Thus, relying on the decision of Meco Instruments (P) Ltd (supra), the benefit of Section 35(2AB) of the Act cannot be denied to the Appellant Company merely

because it did not carry out the formalities of filing Form No 3CM and obtaining Form No 3CL. More so, the Appellant having realised his defect sought to rectify it by filing application on 23/02/2016 and as per the assessee there has been no adverse observation of the concerned authorities on such filing till date.

6.9 Accordingly, the rejection of claim of the Appellant u/s 35(2AB) of the Act by the learned AO is hereby set aside and the AO is directed to allow the appellant deduction u/s 35(2AB) of the Act as claimed by it in the return of income.”

6. The Ld. DR could not controvert the observations of the CIT(A) with any cogent or new information and relied on the order of the A.O.

7. We find that the CIT(A) has relied on the coordinate Bench of this Honble Tribunal decision, where the Tribunal has observed that the exemption provisions have to be interrupted/ construed liberally and the benefit of exemptions cannot be denied on the ground of technical lapses or procedure failures. Further in the present case the assessee has rectified the procedural defect subsequently by filling application on 23-06-2016 which cannot be ignored. We find the CIT(A) took a reasonable view relying on the Honable Tribunal decision and also the assessing officer has not doubted the genuineness of the revenue and capital expenditure. Accordingly we are not inclined to interfere with the order of the CIT(A) and

uphold the same and dismiss the grounds of appeal of the revenue.

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

Order pronounced in the open court on 01.09.2021.

Sd/- (SHAMIM YAHYA) ACCOUNTANT MEMBER
Sd/- (PAVAN KUMAR GADALE) JUDICIAL MEMBER

Mumbai, Dated 01.09.2021

KRK, PS

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

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//

1.

(Asst. Registrar)
ITAT, Mumbai