

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRIRAHUL CHAUDHARY, JM

ITA No. 742/Mum/2022

(Assessment Year 2016-17)

FDC Limited
FDC Limited 142-148,
FDC Limited
S.V. road,
Jogeshwari (West),
Mumbai 400102

(Appellant)

Pr. Commissioner of
Income Tax-I,
Room no. 330,
Vs. 3rd Floor, Aayakar Bhavan
MK Road
Mumbai-400 020

(Respondent)

PAN No.AAACF0253H

Assessee by : Shri K Shivaram &
Shri Rahul Hakani, ARs
Revenue by : Shri Manoj Kumar, CIT DR

Date of hearing: 20.07.2022
Date of pronouncement: 12.10.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against Revisionary order passed by the Pr. Commissioner of Income-tax, Mumbai-1, [The Ld PCIT] for A.Y. 2016-17 dated 22nd March, 2022 passed under Section 263 of the Income-tax Act, 1961 (the Act), wherein it has been held that the assessment order passed by the Asst. Commissioner of Income-tax, Circle 9(3)(1), Mumbai [The Ld AO] under Section 143(3) read with section 144C of the Act dated 19th February, 2020 is erroneous and prejudicial to the interest of the Revenue.

02. The brief fact of the case shows that assessee is a company engaged in the business of manufacturing of drugs. It filed its return of income on 30th November 2016 at ₹163,68,13,150/-. The same was assessed under Section 143(3) read with section 144C (3) of the Act at the total income of ₹182,31,81,338/-. The learned PCIT examined the record, he found that Assessee claimed deduction under Section 35(1)(iv) and under Section 35(2AB) of the Act of ₹1,92,82,924/- and ₹51,59,59,410/- respectively based on auditor's certificate, details of such capital and revenue expenditure, and form no. 3CM. Though, one of the reasons for selection of case for scrutiny was to examine the large deductions claimed by the assessee, Id. AO allowed claim of assessee under those sections despite form no.3CL issued by the DSIR certifying the eligible expenses for the purpose of claiming weighted deduction under Section 35(2AB) of the Act has not been furnished by the assessee. As learned Assessing Officer has allowed the deduction without the mandatory certificate in form no.3CL issued by DSIR, Therefore, the claim of deduction under Section 35(2AB) and section 35(1)(iv) of the Act remains unverified during the assessment proceedings and thus, The learned Assessing Officer has failed to make proper verification and therefore, the order is prejudicial to the interest of the Revenue and also erroneous.
03. Consequently, show cause notice under Section 263 of the Act was issued on 12th March 2022, which was replied on 17th March 2022 by the assessee. The assessee challenged

the validity of exercise of jurisdiction. It also stated that mere non furnishing of form No. 3CL cannot result into denial of deduction under Section 35(2AB) of the Act. It stated that failure by the DSIR to submit form no. 3CL is beyond control of assessee and therefore, deduction cannot be denied. It was further stated that requirement to furnish the form No. 3CL is effective from 1stJuly 2016 and therefore, it does not apply in A.Y. 2016-17. Assessee further contended that Hon'ble Gujarat High Court in CIT Vs. Sun Pharmaceutical Industries Ltd. [2017] 85 taxmann.com 80 (Gujarat), held that merely because of prescribed authority failed to send intimation in form no. 3CL, would not be the reason to deprive the claim of the assessee for deduction under Section 35(2AB) of the Act. It was further stated that the complete expenditure has been verified by the learned Assessing Officer by virtue of various letters submitted by the assessee. The assessee referred to letters dated 30thOctober 2017 and 5thDecember 2019. Based on these two letters, the learned Assessing Officer granted deduction. Therefore, the order passed by the learned Assessing Officer was claimed to be not erroneous or prejudicial to the interest of the Revenue.

04. The learned PCIT rejected the contention of the assessee because assessee has claimed deduction under Section 35(2AB) and 35(1)(iv) of the Act which was allowed to the assessee even though assessee has not submitted the certificate to DSIR (form no. 3CL). The learned PCIT also invoked the provisions of explanation 2 to section 263 of the Act and held that any assessment order passed

without conducting requisite enquiry and verification renders Assessment order erroneous in so far as prejudicial to the interest of the Revenue. Therefore, the learned Assessing Officer was directed to reframe the assessment order de novo after conducting necessary verification and enquiries. The order under Section 263 of the Act was passed on 22nd March 2022.

05. Assessee is aggrieved with that order and has preferred this appeal raising the following grounds of appeal: -

"1. On the facts and circumstances of the case and in law, the Principal Commissioner Income Tax-1, Mumbai (the Pr. CIT) erred in assuming jurisdiction under section 263 and holding the assessment order, under section 143(3) r.w.s 144C(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 19.02.2020 (hereinafter referred to as the assessment order), as erroneous and prejudicial to the interest of the revenue. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law;

2. The Pr. CIT failed to appreciate that the Assessing Officer had made the requisite enquiries and after due application of mind as regard allowability of deduction claimed u/s 35(2AB) and 35(1)(i) framed the assessment order without making any disallowance on the said count;

3. The Pr. CIT failed to appreciate that, where two views are possible and the Assessing Officer, after

conduct of due enquiry, has taken one view with which the Pr. CIT does not agree, the assessment order cannot be treated as erroneous and prejudicial to the interest of the revenue;

4. Assuming without admitting that the present case was a case of inadequate enquiry, the Pr. CIT failed to appreciate that the power of revision envisaged under section 263 of the Act and the Explanation 2 thereto can be exercised only where no enquiry as required under the law is done and that it is not open to invoke the said provisions in cases of inadequate enquiry;

5. The Pr. CIT failed to show that the view taken by the Assessing Officer is wholly unsustainable in law before embarking upon the exercise of revisionary powers;

6. The Pr. CIT failed to appreciate that (a) in so far as claiming deduction under section 35(1)(i) of the Act of Rs. 1,49,10,044/- (wrongly mentioned by Pr. CIT as Rs. 1,92,82,924/-), there was no requirement of obtaining the certificate from Department of Scientific and Industrial Research (hereinafter referred to as "DSIR") in Form 3CL and (b) in so far as claiming deduction under section 35(2AB) of the Act of Rs. 51,59,59,410/-, the requirement of obtaining such certificate was w.e.f. 01.07.2016 i.e. not applicable for the assessment year under consideration; and therefore, there was no reason to deny the aforesaid claims for deductions;

7. The Pr. CIT failed to appreciate that even assuming without admitting, Form 3CL was a requirement for allowing deduction under Section 35, the same is not fatal and the assessee cannot be deprived of deduction, merely because there was failure on part of the DSIR to forward such form to the Income Tax Department especially since the assessee has no role or control over the DSIR and internal mechanism between two Government Departments;

8. The above grounds/ sub grounds are without prejudice to each other;

9. The appellant craves leave to add, amend or alter all or any of the grounds of appeal.

06. The learned Authorized Representative submitted

- a. that assessee has submitted all the details before the learned Assessing Officer for claim of deduction under Section 35(1) and 35(AB) of the Act. He specifically referred to letter dated 5th December 2019, wherein the details of expenditure, form no. 3CM and Certificate of auditor was submitted to the learned Assessing Officer. After verification of the same, the claim was allowed.
- b. Form 3CL was not a requirement for AY 2016-17. It is introduced later on and is required only from AY 2017-18. Therefore, what is not required need not be enquired by Id. AO. It does not make Assessment

order erroneous. He supported this with judicial precedent.

- c. The form no. 3CL was not available with the learned Assessing Officer for the reason that assessee has made an application on 26th October 2016 to the Government of India along with the details. Further, form no.3CM issued was already available with the learned Assessing Officer. Based on this, the learned Assessing Officer allowed the claim of the assessee.
- d. Such allowance of the claim is in consonance with several judicial precedents and mainly of Hon'ble Gujarat High Court in case of Sun Pharmaceutical Industries Ltd. (Supra). The Hon'ble High Court has categorically held that mere absence of form no. 3CL cannot be a reason enough to deprive the claim of the assessee for deduction. He further referred to several judicial precedents.
- e. assessee has been allowed the deduction under the above section for all earlier years under scrutiny assessment orders passed under Section 143(3) of the Act.
- f. He further submitted that explanation 2(a) is also wrongly invoked by the learned PCIT for the reason that the learned Assessing Officer has carried out the requisite enquiries and further, when the view taken by the learned Assessing Officer is also supported by the orders of the Hon'ble High Court. The order of

the learned Assessing Officer cannot be said to be erroneous so far as it is prejudicial to the interest of the revenue.

He therefore submitted that the order of the learned PCIT is not sustainable.

07. The learned CIT Departmental Representative submitted that form no.3CL is one of the requisite conditions for claim of deduction under Section 35(2AB) and section 35(1)(iv) of the Act. The learned Assessing Officer has not asked or did not verify form no.3CL and therefore, allowing the claim of the assessee under those sections makes the Assessment order erroneous, so far as prejudicial to the interest of the revenue. He, therefore, submitted that explanation 2(a) of Section 263 of the Act is rightly invoked by the learned PCIT. He vehemently supported the order of the learned PCIT.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that assessee is engaged in the business of manufacturing of pharmaceutical products. In the return of income assessee claimed deduction of research and development expenditure under Section 35(1) and 35(2AB) of the Act. The return of income was picked up for scrutiny, where one of the reason for selection was for verification of deduction claimed under Section 35(1) and 35(2AB) of the Act. The computation of income placed on page no. 19 of the Paper Book shows that assessee has claimed deduction of Revenue expenditure at the rate of



200% [weighted] amounting to ₹41,50,69,496/-, on capital expenditure of ₹10,08,99,914/- and further, under Section 35(1)(I) of the Act at ₹1,49,10,044/-. As per letter dated 5th December 2019, assessee submitted the details of expenditure incurred on research and development along with form no.3CM approving in house R & D facilities and also the certificate of the auditor in form no.3CLA dated 24th October 2015. The assessee has also vide letter dated 26th October, 2016 intimated to the department of Science and Industrial Research, New Delhi complete details and applied for certification of expenditure in form no 3CL under Section 35(2AB) of the Act. In that letter, the assessee submitted the details of expenditure supported with the auditor certificate and also reconciliation of such expenditure that the annual report of the assessee company. Based on this fact, the claim of the assessee was allowed. Admittedly, form no.3CL was not received by the assessee and therefore, despite that, claim of the assessee was allowed. The Hon'ble Gujarat High Court in case of Sun Pharmaceutical Industries Ltd. (supra) clearly held that merely because DSIR has failed to send intimation in form no.3CL to Income Tax Authorities would not be reason enough to deprive the assessee's claim of deduction under Section 35(2AB) of the Act. In the present case, it is not the case of the PCIT that the learned Assessing Officer has failed to examine the details of the expenditure. The only reason for holding the Assessment order erroneous is absence of form No.3CL. It is not that form no.3CL is required to be

submitted by the assessee. The same form is required to be submitted by prescribed authority i.e., DSIR to the income tax authority specified under Section 35(2AB) of the Act. Therefore, there is no role of the Assessee in the same. The form no.3CL is required to be obtained from an accountant by the assessee and submitted to the learned Assessing Officer. There is no failure on the part of the assessee with respect to the same. The Rule 6 of IT Rules, 1962 clearly provides that it is a communication between one government organizations to the Income Tax Department. Therefore, the learned Assessing Officer should not have in all fairness asked the assessee to produce form no.3CL. The learned Assessing Officer asked and obtained all the details which were required to be obtained by the assessee. Therefore, we do not find that learned Assessing Officer has failed to make any inquiry from the assessee with respect to form no. 3CL. Even if it would have been enquired by Id. AO, no disallowance could have been made. Therefore, there is no prejudice caused to revenue on this count.

09. We also note that assessee argued that that form no.3CL has been introduced with effect from 1stJuly 2016 and therefore, naturally would not be applicable for A.Y. 2016-17. We find that requirement of submitting Form No 3CL was also prior to 1/7/2016 as under: -

b) The prescribed authority shall submit its report in relation to the approval of in-house Research and Development facility in Form No. 3CL to the Director



General (Income-tax Exemptions) within sixty days of its granting approval:"

This clause was amended with effect from 1/7/2016 providing for electronic filing of details. Therefore, the decision cited by the Id.AR [2021] 124 taxmann.com 73 (Bangalore - Trib.) of Provimi Animal Nutrition India Pvt. Ltd. And [2021] 125 taxmann.com 97 (Kolkata - Trib.) in STP limited ignored the fact only change is submission of Form no 3CL electronically. Earlier that was to be submitted in paper form. Therefore, this argument of Id. AR is incorrect and hence rejected.

010. In view of this, we do not find any reason to uphold the order of the learned PCIT as we do not find that the assessment order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue.

011. In the result, the order under Section 263 of the Act passed by the learned PCIT on 22nd March 2022 for A.Y. 2016-17 is quashed.

012. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12.10.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.10.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :



1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai