

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.6200/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

**ITA No.867/Del./2019  
(ASSESSMENT YEAR : 2015-16)**

**ITA No.1418/Del./2020  
(ASSESSMENT YEAR : 2016-17)**

Curadev Pharma Pvt. Ltd.,  
H-3/63, First Floor, Vikaspuri,  
New Delhi – 110 018.

vs. ITO, Ward 6 (4),  
New Delhi.

**(PAN : AADCC8368D)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Karanjot Singh, Advocate  
REVENUE BY : Shri Rajendra Jha, Sr. DR

Date of Hearing : 09.11.2022

Date of Order : 15.12.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These appeals by the assessee are directed against the respective orders of the ld. CIT (Appeals).

2. Since issues are common and connected and the appeals are heard together, these are being consolidated and disposed off by this common order.

3. One common issue relates in these appeal is ESOP expenditure.

The grounds of appeal for AY 2014-15 is reproduced for the sake of reference :-

“1. That on the fact and the circumstances of the case. the Commissioner of Income Tax -(Appeals)-2 [hereinafter referred to as 'Ld. CIT(A)'] erred on facts and in law by confirming the additions of Rs.74,71,910/- made to the returned income of Rs.2,27,130/- of the Appellant by the Ld. Assessing Officer (hereinafter after referred to as Ld. AO) under section] 43(3) of the Income-tax Act. 1961.

2. That on the facts and in the circumstances of the case the Ld. CIT (A) erred in upholding the disallowance made by the Ld. AO rejecting the claim of the Appellant of deduction of expenditure incurred by it on ESOP amounting to Rs.72,80,083/- u/s 37 of the Income-tax Act. 1961.

2.1. That the Ld. CIT( ) erred in simply following the decision in Appellant' own case, pertaining to Assessment Year 2013-14 appeal against which is pending adjudication before this Honble Tribunal, and disallowing the expenditure incurred on ESOP without any independent application of mind and examining the factual and legal position in this regard.

2.2. That the Ld. CIT(A) erred in holding that the ESOP expenditure was only notional and capital in nature, thus attracting disallowance.

2.3 That the Ld. CIT(A) erred in disallowing the expenditure incurred on ESOP on the premise that the Appellant has not actually disbursed any amount towards ESOP. The ld. CIT(A) failed to appreciate that for an expenditure to be claimed as deductible u/s 37(1) of the Income-tax Act. 1961, there is no mandate that the expenditure should actually be spent especially when the assessee was following Mercantile system of accounting.

2.4. That the Ld. CIT (A) erred in holding that the Appellant has not been able to prove that expenses pertaining to ESOP

were actually incurred inasmuch as the Appellant vide its written submissions categorically submitted that 22,918 ESOPs were vested. The Ld. CIT(A) failed to understand that by undertaking to issue shares at a discount, the Appellant was under an obligation to issue shares at a discounted price on future date in lieu of services rendered by the employees, which is nothing, but an expenditure incurred as contemplated u/s 37 (1) of the Act.

2.5. That the Ld. CIT (A) erred in holding that the Appellant failed to furnish copy of the agreements entered with the employees to whom options were allowed inasmuch as such copy of all the agreements was never sought by the Ld. CIT(A) in the first place. Despite the aforesaid factual position, a specimen ESOP agreement of the Appellant with one of its employee was submitted before the Ld. CIT(A).

2.6. That the Ld. CIT(A) erred in not appreciating that such disallowance of expenditure would result in taxation of such amount twice, once in the hands of the employee as perquisite and secondly in the hands of the Appellant. “

4. Brief facts of the case are that the assessee has claimed Rs.72,80,083/- as employee stock option expenses during the year under consideration. The Assessing Officer asked the assessee to submit relevant details for claiming the deduction. The assessee company submitted that stock options are subject to vesting, requiring continued service over a specified period of time. ESOPs are used as a compensation tool to attract and retain talented employees. The companies believe that ESOPs enhanced productivity, motivate employees and increase their interest in the overall performance. The Assessing Officer distinguished two judgments of special Bench in the

case of M/s Biocon Ltd. vs DCIT and M/s SSI Ltd. vs DCIT 85 TTJ 1049. The A.O observed that the assessee company provided the list of 23 employees to whom ESOP benefits were provided but the copy of agreement was provided only in the case of Nalinkant Vashisth, that too for F.Y 2011-12. No copy of agreement was provided in respect of the employees under ESOP scheme for F.Y 2013-14. In the reply, no specific criteria for allotment of shares under the scheme was defined/explained. The A.O observed that three relevant events are important during an ESOP lifecycle, these are (a) grant options (b) vesting of options and (c) exercise of options. The assessee failed to submit as to how the facts of case laws are similar to the facts of the assessee company. According to the Assessing Officer there are notional expenses, capital in nature. The Assessing Officer placed his reliance on the decision of the Delhi & Mumbai Benches of the Tribunal, in the cases of M/s Ranbaxy Laboratories Ltd. vs ADIT and M/s VIP Industries Ltd. vs. DCIT. Accordingly, the Assessing Officer disallowed Rs.72,80,083/- claimed in the P&L Account.

5. Upon assessee's appeal, ld. CIT (A) found that his predecessor in AY 2013-14 has confirmed the similar order of the AO. Hence following the same, ld. CIT (A) confirmed the disallowance.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the record.

7. Ld. Counsel of the assessee submitted that the CIT(A)'s order for AY 2013-14, on which ld. CIT (A) has placed reliance, has been reversed by the ITAT in assessee's own case in ITA No.7187/Del/2017 for AY 2013-14 vide order dated 01.11.2021. The ITAT after elaborately discussing this issue has decided the issue in favour of the assessee by observing as under :-

"6. The Co-ordinate Bench of ITAT in the case of DCIT Vs. Integrated Cleanroom in ITA No. 428/Hyd./2020 vide order dated 17.09 .2021 dealing with the similar issue held as under:

"23. We have considered the rival submissions as well as the relevant material on record . There is no t dispute that for the year under consideration the assessee did not claim the deduction in respect of the payment made to the parent company on account of Employees Stock Option and compensation . However we find that an identical issue has been considered in assessee's own case for the Assessment Year 2008-09 and it was held that it is an allowable deduction. Therefore, so far as the issue of allowability of the deduction is concerned it has been decided in favour of the assessee by this tribunal by following the decision of the Special Date of Judgment 16-8-2018, ITA No. 241/2017 The Pr. Commissioner of Income Tax - 7 & Anr. Vs . The Hon'ble High Court of Delhi in ITA 107/2015 in the case of CIT vs Lemon Tree Hotels Ltd. vide order dated 18.08.2015 has adjudicated as under:

"2. The question sought to be projected by the Revenue is whether the ITAT erred in deleting the addition of Rs.1,28,19,169/- made by the Assessing Officer ('AO') by way of disallowance of the expenses debited as cost of Employees Stock Option ('ESOP') in profit and loss account? <http://www.itatonline.org> ITA No. 107/2015 Page 2 of 23 . The

Court has been shown a copy of the decision dated 19th June 2012 passed by the Division Bench of Madras High Court in CIT-III Chennai v . PVP Ventures Ltd. (TC(A) No. 1023 of 2005) where a similar question was answered in favour of the Assessee by holding that the cost of ESOP could be debited to the profit and loss account of the Assessee . This Court has also in its decision dated 4th August 2015 in ITA No.2 of 2002 (CIT v. Oswal Agro Mills Ltd .) held that the expenditure incurred in connection with issue of debentures or obtaining loan should be considered as revenue expenditure . 4. In the circumstances, the impugned order of the ITAT answering the question in favour of the Assessee is affirmed.

The Hon'ble ITAT Delhi in the case of Ranbaxy Laboratories has also decided the issue subsequently in the favour of the assessee for AY 2008-09 in ITA No. 196/Del/2013 vide order dated 25-4-2016 as reported in 68 taxmann.com 322.

Thus, the Hon'ble ITAT of Hyderabad, the jurisdictional Bench has already decided the issue holding ESOP expenses as allowable u/s. 37(1) and further as the Hon'ble High Courts of Delhi and Karnataka have also decided the issue of allowability of ESOPs as revenue expenditure, therefore the ESOP expense claimed by the appellant has to be allowed in principle accordingly.

As regards the quantum of allowance, the appellant has calculated the ESOPs on the basis of market value of Rs.505 and has charged the employees Rs. 100 (face value being Rs.10 and security premium Rs.90). The difference has been considered as an expense and the relevant perquisite has been ITA No. 428/Hyd/2020 AY 2017- 18 DCIT vs . M/s Integrated Cleanroom Technologies Pvt. Ltd. accounted for in the hands of employees and the same have been taxed in their hands and due TDS has been deducted by the appellant.

The Assessing Officer however has taken the value as per book value by considering the value around Rs.335/- and the Assessing Officer has commented that the valuation taken at Rs. 505/- is very high. The appellant has followed the DCF method and no fault has been found in the same by the Assessing Officer with regard to the parameters considered for

the said valuation and the AO simply brushed aside that it is based on future projections. DCF method is a method prescribed by the Income Tax Act and the valuation requires future projections, therefore, the act of the AO in not examining and not finding anything improper and merely rejecting the value was incorrect. The appellant has also justified the financials considered for DCF method in its submission dated 18.02.2020 in the para 6. The same is reproduced as under: From the above statement actuals are little higher than the valuation as per DCF method and hence the estimates are reasonably good and are not made with intention to value share at higher price to claim expenses at a higher rate.

From above, it is noted that the three years average cash flow as taken by the valuer for DCF method at the time of issuance was 31.95, whereas as per actual as on today, the three years cash flow is 32.29. Thus, the DCF method has estimated a fair value of the company by considering correct financials.

In view of the above, the method adopted by the appellant is reasonable and therefore there is no change required in the valuation. To sum up, the ESOP expenses are allowable and the ESOP has been calculated at a fair value and therefore the sum of Rs.2,31,02,829/- is allowable as revenue expenditure.”

7. The Hon'ble Madras High Court in the case of CIT Vs. Vs. M/s. PVP Ventures Limited T. Nagar, Chennai in TC(A). No.1023 of 2005, vide order dated 19.06.2021, while the order has been passed in relation to appeal against the order u/s 263, we find that the issue of the allowability of the expenditure pertaining to ESOP has been clearly dealt by the Hon'ble High Court. The relevant portion is as under:

“11. As regards the second issue which is now canvassed before this Court viz., on the issue of expenditure of 66.82 lakhs towards the issue of shares to the Employees Stock Option is concerned, the Tribunal pointed out that the shares were issued to the employees only for the interest of the business of the assessee to induce employees to work in the best interest of the assessee. The allotment of shares was done by the assessee in strict compliance of SEBI regulations, which mandate that the difference between the market prices and the

price at which the option is exercised by the employees is to be debited to the Profit and Loss Account as an expenditure. The Tribunal pointed out that what had been adopted was not notional or contingent as had been submitted by the Revenue. Pointing out to the Employees Stock Option Plan, the Tribunal in its order stated that it was a benefit conferred on the employee. So far as the company is concerned, once the option was given and exercised by the employee, the liability in this behalf got ascertained. This was recognized by SEBI and the entire Employees Stock Option Plan was governed by guidelines issued by SEBI. On the facts thus found, the Tribunal held that it was not a case of contingent liability depending on the various factors on which the assessee had no control. The expenditure in this behalf was an ascertained liability, thus the expenditure incurred being on lines of the SEBI guidelines, there could be no interference in the relief granted by the Assessing Authority for the expenditure arising on account of Employees Stock Option Plan. This expenditure incurred as per SEBI guidelines and granted by the Officer could not be considered as erroneous one calling for exercise of jurisdiction under Section 263 of the Act.”

8. In the case of CIT Vs. Lemon Tree Hotels Ltd. in ITA 107/2015 order dated 18.08.2015, the Hon’ble Jurisdictional High Court allowed the ESOP expenditure as expenses has revenue expenditure. The relevant portion of the order is as under:

“2. The question sought to be projected by the Revenue is whether the ITAT erred in deleting the addition of Rs.1,28,19,169/- made by the Assessing Officer (‘AO’) by way of disallowance of the expenses debited as cost of Employees Stock Option (‘ESOP’) in profit and loss account? <http://www.itatonline.org> ITA No. 107/2015 Page 2 of 23. The Court has been shown a copy of the decision dated 19<sup>th</sup> June 2012 passed by the Division Bench of Madras High Court in CIT-III Chennai v. PVP Ventures Ltd. (TC(A) No. 1023 of 2005) where a similar question was answered in favour of the Assessee by holding that the cost of ESOP could be debited to the profit and loss account of the Assessee. This Court has also in its decision dated 4th August 2015 in ITA No.2 of 2002 (CIT v. Oswal Agro Mills Ltd.) held that the expenditure incurred in

connection with issue of debentures or obtaining loan should be considered as revenue expenditure. 4. In the circumstances, the impugned order of the ITAT answering the question in favour of the Assessee is affirmed.”

9. Since, it can be gauged from the above judgments that the expenditure incurred in connection with the ESOP is treated as revenue expenditure, we hereby allow the ground of appeal on this issue. Since, the grounds have been allowed on merits of the case in principle, the additional evidences filed by the assessee are not required to be considered by this Court.”

8. Since no dispute has been made about the facts in these cases as compared to the one dealt with by the ITAT hereinabove, we follow the judicial discipline and decide the issue in favour of the assessee following the aforesaid order of ITAT in assessee’s own case. It is also not the case of the Revenue that aforesaid order of ITAT has been reversed by the Hon’ble jurisdictional High Court. Hence, this issue is decided in favour of the assessee.

9. One issue raised in AY 2014-15 is as under :-

“3. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the disallowance made by the Ld. AO amounting to Rs.77,882/- on account of interest paid on money borrowed as unsecured loan.

3.1. That the Ld. CIT(A) erred in confirming the disallowance of interest expenditure without providing an) cogent basis. The Ld. CIT(A) also erred in upholding the disallowance on the basis that the Appellant did not furnish evidence of first approaching banks/financial institutions for obtaining loans and upon their denial to provide the same the Appellant approached, Smt. Vasantha Surva.”

10. Brief facts of this issue are that AO noted that the assessee company had paid interest to M/s Vasntha Surya at the rate of 24% whereas the rate of interest charged by the banks/financial institutions was 17% to 18% on working capital. The Assessing Officer prepared a chart in which interest paid to Smt. Vasntha Surya was Rs.8,36,424/- and the rate of interest varied between 13% to 24%. The Assessing Officer has selected those amounts of interest which were paid at the rate of 24%. Before the Assessing Officer the assessee submitted that banks charge interest @ 17% to 18% and take the collateral security. Smt. Vasntha Surya supported the assessee company by providing unsecured loan, hence interest rate of 24% is justified. The assessee further submitted that Smt. Vasntha Surya paid tax on the income of interest @ 30.90%, therefore, there was no loss of revenue. The Assessing Officer disagreed with the explanation of the assessee company and restricted the rate of interest to 18% and accordingly disallowed Rs. 77,882/-.

11. Upon assessee's appeal, Id. CIT (A) noted that assessee had submitted that it needed funds for the R&D activities and approached the banks to obtain the loan. However, none of the banks or financial institutions agreed to provide unsecured loans. That Smt. Vasntha Surya provided unsecured loan of Rs.25 lakhs but with a higher rate of interest. That the prevailing market rate of loans was 17% - 18% when the

borrower was in the position to provide some collateral security. But in the case of the assessee, the loan was obtained without any collateral security. Ld. CIT (A) agreed with the AO that assessee has not submitted any evidence of approaching the banks and financial institutions for the loan. He held that paying interest at higher rate than the rate prevailing in the market cast a responsibility on the assessee to demonstrate that it had exercised available options for obtaining the loan at lower rate of interest. Accordingly, ld. CIT (A) confirmed the addition.

12. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

13. We note that the AO has prepared a chart in which interest paid to Smt. Vasntha Surya was Rs.8,36,424/- and the rate of interest varied between 13% to 24%. Assessee's claim was that it was in need of funds and banks did not provide necessary assistance, has been rejected by the authorities below on the ground that no such evidence is available. Comparing the interest rate with bank rates in the facts of this case is quite anomalous considering the fact that assessee has claimed that assessee has got the loan without any collateral security and rate varied from 13% to 24%. So blanket disallowance by the AO and confirmed by the ld. CIT (A) is without any basis. It is not the case that the expenditure

is bogus. In these circumstances, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

14. Other issues raised vide grounds no.4, 5 & 6 in AY 2014-15 are as under :

“4. That on the facts and in the circumstances of the case, the ld. CIT (A) erred on facts and in law in disallowing the expenditure incurred by the Appellant amounting to Rs.52,739/- towards gift provided to foreign delegate as a part of business promotion.

5. That on the facts and in the circumstances of the case. the Ld. CIT (A) erred on facts and in law in disallowing the expenditure incurred by the Appellant amounting to Rs.50,003/- towards the guest house taken on rent to provide accommodation facility to its foreign delegates.

6. That on the facts and in the circumstances of the case. the Ld. C IT(A) erred on facts and in law in disallowing the expenditure incurred by the Appellant amounting to Rs.11,200/- pertaining to donations, electricity repair and reimbursements made to the employees.”

15. Following expenses claimed by the assessee as incurred has been disallowed by the AO :-

(a)	Expense on purchase of Gold chain	Rs.52,739/-
(b)	Guest House Expenses	Rs.50,003/-
(c)	Miscellaneous Expenses Donations, Electricity Repair & reimbursements	Rs.11,200/-

16. The reasoning of the AO for making the disallowance is as under:-

“16.2 The Assessing Officer examined a bill dated 17.08.2013 for the purchase of gold chain amounting to Rs.52,739/- in the name of Sh. Manish in place of the assessee company. The AR

for the assessee company did not file any explanation before the A.O, therefore, he disallowed the amount claimed under the head 'Business Promotion'.

16.3 The Assessing Officer observed that Rs. 1100/- and 5100/- were paid as donation. But there was no exemption certificate no. of the donee. In the absence of any explanation from the assessee, the Assessing Officer disallowed Rs. 6200/-.

16.4 In a bill Rs.4000/- was claimed as Sales Tax, but no Sales Tax bill was produced in support of the above voucher. The Assessing Officer disallowed the amount for the want of any explanation.

16.5 The Assessing Officer has disallowed Rs.50,003/- claimed towards Guest House Expenses on the ground that no register for maintaining the records of guests was produced nor were any supporting documents filed. The assessee company did not submit any explanation before the Assessing Officer.

17. Before the Id. CIT (A), it was submitted that gold chain of Rs.52,739/- was purchased to provide one of the clients, being foreign delegate, as a souvenir. The souvenir was bought by the Director of the assessee, Mr. Manish Tondon, therefore, the bill was in the name of the Director. Id. CIT (A) noted that assessee has not produced any evidence that the souvenir was gifted to any foreign delegate having business connection. In the absence of such evidence, he held that it cannot be treated as expenditure relating to business of the assessee company.

18. As regards guest house expenses, Id. CIT (A) confirmed the same by observing as under :-

“16.7 In respect of the claim of Guest House expense of Rs.50,003/-, the appellant has submitted that accommodation

facility is provided to foreign and domestic scientific advisors. The appellant entered into an agreement with Ms. Teena Goel for taking the premise on rent. The disallowance is confirmed for the reason that appellant did not furnish any details before the Assessing Officer and secondly even before me it has not been proved that the rented accommodation was used for the guests related to the business.”

19. The other expenditure on misc. expenses was confirmed by the Id.

CIT (A) with following reasons :-

“16.8 With regard to the miscellaneous expenses disallowances it is submitted by the appellant that those pertained to grocery items, amounts paid to cook, electricity bill etc. The expenses are not allowable because the assessee failed to explain the nature of expenses before the A.O and before me. It has been held above that the appellant company failed to prove that the guest house was used for the guests related to the assessee company. Therefore, other expenses related to the guest house cannot be allowed. Before the Assessing Officer these expenses were found to be related to some donations. Accordingly, the additions made by the Assessing Officer are hereby confirmed.”

20. Against this, the assessee is in appeal before us. We have heard both the parties and perused the records.

21. Upon hearing both the parties and perusing the record, we find that assessee has not adduced any evidence before us also to take a contrary view than the one taken by Id. CIT (A) on above issues. As regards gold chain, we may also observed that if it was a souvenir on behalf of the assessee company, there is no reason why the bill is in the name of the Director in person. Hence, we confirm the disallowances as sustained by Id. CIT (A).

22. One another issue was raised in ITA No.867/Del/2019 for AY 2015-16 as ground no.3 which reads as under :-

“3. That on the facts and circumstance of case and in law, The Ld. CIT(A) has wrongly upheld the disallowance made by the Ld. A.O. in disallowing the claim for weighted deduction in respect of expenditure on scientific research amounting to Rs.3,72,54,792/- under section 35(2AB) of the Act stating that the conditions for availing the same have not been complied with.

3.1. That on the facts and circumstance of case and in law, The Ld. CIT(A) has wrongly upheld the disallowance made by the Ld. A.O. to appreciate that there is no dispute regarding nature of expenses or incurring of the same, the Appellant's research facility has been duly approved by the Department of Scientific and Industrial Research (hereinafter referred to as "DSIR") and hence the eligibility for weighted deduction under section 35(2AB) of the Act cannot be disputed.

3.2. That on the facts and circumstance of case and in law, The Ld. CIT(A) has wrongly upheld the disallowance made by the Ld. A.O. in denying deduction u/s 35(2AB) of the Act on the ground that Form 3CL has not been received by the department when non-receipt of Form 3CL is not a ground to deny deduction.

3.3. That on the facts and circumstance of case and in law, The Ld. CIT(A) has wrongly upheld the disallowance made by the Ld. A.O. had invoked a technicality of the Form 3CL not being issued by the DSIR and received by the department. The appellant cannot be denied deduction over non-receipt of Form 3CL which is not in the power of the Appellant and the formality is to be completed by the DSIR.”

23. On this issue, AO dealt with assessee's claim of deduction u/s 35(2AB) of the Income-tax Act, 1961 (for short 'the Act') of Rs.3,72,54,792/-. AO observed and held as under :-

“During the course of the proceedings, the assessee was asked to file full details of the claim with the justification of the claim. In reply vide letter dated 22.09.2017 certain details has finished along with copy of Auditors Certificates. A copy of Form 3CM dated 11.02.2016 issued by Dept. of Scientific & Industrial Research, New Delhi filed on the dak on 09.11.2017. Perusal of Form 3CM dated 11.02.2016 submitted by the assessee revealed that approval to R&D facility of the assessee was w.e.f. 01-04-2015. This was brought to the AR's attention vide order sheet entry dated 28.11.2017. Thereafter vide letter dated 06.12.2017, the assessee furnished another Form 3CM dated 01.12.2017 as per which the R& D facility of the assessee is approved w.e.f. 01.04.2014 to 31.03.2015 for capital expenses only and from 01.04.2015 to 31.03.2017 for both capital & revenue expenses.

4.2 Before we proceed further, it would be useful to examine the provisions of Section 35(2AB) of the Income Tax Act and Rule 6 of the Income Tax Rules. The relevant portion of Section 35(2AB) of the I.T. Act, 1961 & Rule 6 of the I.T. Rules are reproduced below-

"Expenditure on scientific research;

35. (1) In respect of expenditure on scientific research, the following deductions shall be allowed- ,.....

.....

(2AB)(J) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule]] incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to two times of the expenditure so incurred .....

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority (emphasis supplied) for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and

audit thereof and furnishing of reports in such manner as may be prescribed.

(4) The prescribed authority shall submit its report in relation to the approval (emphasis supplied) of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or } Director General in such form and within such time as may be prescribed. (emphasis supplied) ....

Rule - 6, Income-tax Rules

Prescribed authority for expenditure on scientific research.

6.(1) For the purposes of clause (i) of] sub-section (1) and sub-section (2A) of] section 35, ...

[(4) The application required to be furnished by a company under sub-section (2AB) of section 35 shall be in Form No. 3CK.} ....

.....

[(7A) Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely:-

- (a) The facility should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;
- (b) The prescribed authority shall furnish electronically its report,-
  - (i) in relation to the approval of in-house research and development facility in Part A of Form No.3CL( emphasis supplied);
  - (ii) quantifying the expenditure incurred on in-house research and development facility by

the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form No.3CL;

- (ba) The report in Form No.3CL referred to in clause (b) shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over such company .... "

4.3 Letter dated 11.12.2017 was issued to the office of the CCIT(Exemptions), Delhi, requesting it to confirm whether a copy of the Form 3CL had been received from the Secretary, Dept. of Scientific & Industrial Research for the Asst. Year 2015-16 in the case of the assessee and also to specify the date of receipt of the Form 3CL. In response, vide letter dated 13.12.2017, the CCIT(Exemptions), Delhi, has forwarded a copy of Form 3CM dated 11.02.2016 received in his office and further stated that as per the revised procedure under amended Rule 6 of the I.T. Rules w.e.f. 01.07.2016, the relevant forms are being filed with the PCCIT/CCIT/PDGIT/DG1T having jurisdiction over the applicant. Accordingly, a letter dated 18.12.2017 was addressed to the office of the CCIT-2, Delhi, to furnish the required information. In response, vide letter dated 22.12.2017, the office of the CCIT, Delhi-2, has informed Form 3CL has not been received from the Department of Science & Industrial Research in the case of the above mentioned assessee. In the letter, it has also been stated that Form 3CM dated 01.12.2017 alongwith a forwarding letter date 04.12.2017 from the Department of Science & Industrial Research have been received. Copies of both these documents have been forwarded to this office. Perusal of the letter dated 04.12.2017 reveals that Form 3CL has not been issued to the assessee as the letter requires the assessee to undertake certain further formalities.

4.4 It needs to be highlighted that Form 3CL issued by the Secretary, Dept. of Scientific & Industrial Research which is the pre-requisite for claiming deduction u/s 35(2AB) has not

been received in the office of the CCIT( Exemptions)/CCIT-2 till the date of passing of this order.”

24. On the assessee's appeal, ld. CIT (A) confirmed the same by holding as under :-

“ This ground is directed against disallowance of expenses on scientific research u/s 35 (2AB) on the basis of non-furnishing of Form 3 CL. From AO's order it appears that form 3 CMs granting approval of scientific research were issued twice. First was applicable for FY 15-16 only. The second one was issued cancelling the previous one mentioning both FY 15-16 and 16-17. The form 3CM was without quantification or categorisation of expenditure as capital or recurring.

8.1 The appellant requested the AO to allow its claim of deduction without form 3CL which was not accepted. It was pleaded that it was issued to CCIT/CCIT (Exemption). On verification, it was found that the form was not received by any IT authority. The fact is that the form 3 CL was never issued.

8.2 The issue of form 3 CL is termed by the appellant as mere technicality but this form quantifies, categorizes as recurring and capital and recommends the research expenditure which decides the amount of allowable deduction. Thus, without this form, the deduction was indeterminate. The form being a necessary requirement, The AO has denied the deduction.

8.3 During appellate proceeding, the Appellant has produced a copy of Form 3 CL reportedly issued by DSIR on 1/5/18 with quantification of expenditure. The quantification of expenditure which is done in F.Y.18-19, the appellant wants to be applied in F.Y.14-15.

8.4 This Form 3CL is not a fresh evidence of an old fact but is a new fact itself. Till assessment in 2017, no such quantification, categorization or recommendation of DSIR was available. Being a new fact, it is not admissible at this stage. Therefore, the order of the AO is confirmed.”

25. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

26. The Id. Counsel of the assessee in his submissions referred that the section and rule referred by the AO are after amendment. That the same are not applicable here. Further, assessee made following submissions :-

“2.7 The Form 3CL comes under rule 6(7 A) of the Income-tax Rules, 1962 framed under the provisions of the Act. The above sub-rule is relevant for approval of expenditure incurred on in house research & development facility by a company under section 35(2AB). Sub-clause (b) thereof is the specific provision thereto stipulating that the prescribed authority shall submit its report in relation to the approval of in-house Research & Development facility in Form No. 3CL to the Director General (Income Tax Exemptions) within 60 days of its granting approval. The same is merely in the form of intimation to be sent from prescribed authority's end to the department. An assessee engaged in such Research & Development activity having already obtained Form 3CM approval of its facility has no role to play in such correspondence. However, it is submitted that the Appellant has duly fulfilled its obligations to obtain the required certificate from DSIR within time and the delay in receipt of Form 3CL cannot be attributed to any act or omission on part of the Appellant.

2.8 Further during the appellate proceedings before the LD. CIT(A), the appellant duly submitted the form 3CL issued by the DSIR on 31.05.2018 certifying that the amount of Rs.186.27 lakhs have been spent as capital expenditure in the relevant previous year and is recommended for deduction under section 35(2AB) of the Act.

2.9 The Appellant submits that it is eligible to claim the deduction in the relevant previous year in view of the decision in the case of DCIT v. Famy Care Ltd, [2014152 taxmann.com 461 (Mumbai -Trib) wherein the Tribunal held that the assessee cannot be denied deduction under section 35(2AB) of the Act merely on the ground that the prescribed authority did not submit Form 3CL in time to the Income Tax Department.

2.10 The Appellant also wishes to place reliance on the decision in the case of CIT v. Sun Pharmaceuticals Ltd. [2017185 taxmann.com 80 (Gujarat) wherein the Hon'ble High Court of Gujarat held that merely because the prescribed authority failed to send intimation in Form 3CL which is a matter of intra- department correspondence, the assessee cannot be denied deduction under Section 35(2AB).

2.11 Thus, the objection of the Ld. AO as regards non-receipt of the form 3CL cannot be a valid ground to deny deduction. The addition to income on account of the same deserves to be deleted.”

27. Upon careful consideration, we find ourselves in agreement with the submission of Id. Counsel of the assessee as above. Assessee has duly fulfilled the obligation cast upon it. It has duly obtained the required certificate from DSIR. The delay in respect of Form 3CL is not attributable to any act or omission of the assessee. Moreover the case laws referred above duly cover the issue in favour of assessee. No contrary decision has been brought to our notice. Hence, following the aforesaid precedents, we set aside the order of authorities below and decide the issue in favour of assessee.

28. In the result, assessee’s appeal for AY 2014-15 is partly allowed and appeals for AYs 2015-16 & 2016-17 are allowed.

**Order pronounced in the open court on this 15<sup>th</sup> day of December, 2022.**

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

**sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Dated the 15<sup>th</sup> day of December, 2022**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-2, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT

NEW DELHI.