IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No. 4/Bang/2014
Assessment year : 2010-11

M/s. Micro Labs Limited, 27, K.C.N. Towers, Race Course Road, Bangalore. **PAN: AABCM 2131N**	Vs.	The Assistant Commissioner of Income Tax, LTU, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Parthasarathi, Advocate
Respondent by	:	Smt. Nisha Padma, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	22.12.2022
Date of Pronouncement	:	04.01.2023

O R D E R

Per Padmavathy S., Accountant Member

This appeal of the assessee arises out of the directions of the Hon'ble High Court of Karnataka vide judgment dated 13.11.2020 in ITA No.104 of 2017 for the assessment year 2010-11 in the following facts and circumstances of the case.

2. Brief facts of the case are that the assessee is a company engaged in the business of manufacture of pharmaceuticals. The assessee filed return of income for the AY 2010-11 on 18.9.2010

declaring total income of Rs.66,76,95,460. The AO vide order dated 18.5.2012 completed the assessment assessing book profits chargeable u/s. 115JB of the Income-tax Act, 1961 [the Act] at Rs.2,55,75,40,181 while income under the normal provisions of the Act was assessed at Rs.65,56,91,920. The AO has made additions towards weighted deduction claimed u/s.35(2AB) and also enhanced the disallowance made towards expenses on earning exempt income u/s.14A r.w.r. 8D. On further appeal, the CIT(Appeals) by order dated 18.9.2013 partly allowed the appeal whereby the enhanced disallowance u/s.14A was deleted and the addition towards weighted deduction claimed u/s.35(2AB) was sustained. Aggrieved the assessee filed appeal before the Tribunal and vide order dated 16.9.2016 the Tribunal set aside the order of the CIT(A) by relying on the decision of the Hon'ble Gujarat High Court in the case of CIT vs Cadila Healthcare Ltd 214 Taxmann 672 disallowance of expenditure.

3. The revenue preferred appeal before the Hon'ble High Court of Karnataka. The High Court has remitted the matter back to the Tribunal with the following observations :–

> "5. We have considered the submissions made on both sides and have perused the record. From perusal of paragraph 9 of the order passed by the Tribunal, it is evident that the Tribunal has allowed the deduction in respect of expenses incurred by the assessee on scientific research on inhouse research and development facility by placing reliance on the decision of the Gujarat High Court. It is pertinent to mention here that against the aforesaid decision, the revenue preferred special leave petition and the Supreme Court, by order dated 13.10.2015 in SLP No.770/2015 has remitted the matter to the High Court for

> consideration afresh along with other issues. Since the Tribunal has neither recorded any reasons nor has recorded any findings on the claim of the assessee, we are left with no option but to quash the order of the Tribunal dated 16.02.2016 insofar it pertains to claim of deduction of assessee under Section 35(2)(AB) of the Act and remit the matter to the Tribunal for decision afresh in accordance with law after affording an opportunity of hearing to the parties. Therefore, it is not necessary for us to answer the substantial question of law."

4. In the light of the above directions of the Hon'ble High Court, the appeal is now before the Tribunal for the second time. The facts relating to the impugned issue is that the assessee has claimed a weighted deduction of Rs.19,39,52,807 u/s.35(2AB) towards research & development expenses incurred on laboratory & Clinical Trial. During the course of hearing the assessee officer noticed that Department of Scientific Industrial Research (DSIR) in clause 9 of Form 3CL which is the report submitted to the Director General (Income Tax Exemptions) u/s.35(2AB) has given the breakup of total cost of in-house research facility as extracted below –

Assessment Year	**2010-11 (Amount in Rs.Lakhs)**
Land & Building	Nil
Capital Equipment	51.15
Revenue expenditure incurred in the R&D centre less expenses on clinical trials / equivalence tests, building repairs and rates and taxes	350.10
Total cost of inhouse Research Facilities **Excluding** land & Building	**401.25**
Expenses related to clinical trial conducted outside the approved facilities not included in the above	891.77

5. The AO further noticed from the above table that the sum of Rs.8,91,76,870 is incurred on clinical trials which were conducted by external agencies the breakup of which is as given below –

CLINICAL TRAIL & BIO-EQU.STUDY FOR THE YEAR 2009-10

	Amount
ACCUTEST RESEARCH LAB (I) PVT.LTD-MUMBAI	40261183
BIOEQUIVALENCE STUDY CENTRE-KOLKATA	980000
DRUG MONITORING RESEARCH INST.	3350000
GVK BIOSCIENCES PRIVATE LIMITED-HYDERABAD	26746741
LAMBDA THERAPEUTIC RESEARCH LTD-AHMEDABAD	6203250
MANIPAL ACUNOVA LTD-MANIPAL	2674201
RELIANCE LIFE SCIENCES PVT LTD-MUMBAI	1560520
SEMLER RESEARCH CENTER PVT LTD-BANGALORE	1582600
TRIDENT LIFE SCIENCES LTD-HYDERABAD	5818375
TOTAL	**89176870**

6. The AO was of the view that the expenses towards clinical trial conducted outside the approved facility is not included in the amount of cost of in-house Research Facilities and that weighted deduction u/s.35(2AB) is available only for in-house R&D facility. The assessee submitted before the AO that outsourced agencies are approved clinical trial facilities who provide services in connection with the in-house

research conducted by the assessee to ensure availability of safe, effective and affordable medicines. The assessee further submitted that there is no restriction provided in section 35(2AB) with respect to outsourcing the clinical trial since the words used in the said section are "on in-house research and development facility". The assessee relied on the decision of the Hyderabad Bench of the Tribunal in the case of DCIT vs Bharat Biotech International Ltd in ITA No.1150&1151/Hyd/2014 dated 15.10.2014.

7. The AO however did not accept the submissions of the assessee and held that –

> Section 35(2AB) is concerned only about in-house R&D facility. Weighted deduction u/s 35(2AB) has been provided to give incentive for in-house R&D facility and just because the company did not have the R&D facility for clinical trials and bio equivalence studies, the expenditure incurred on outsourcing of facilities cannot not be allowed. The phraseology used in sec 35(2AB) is "on in-house research or development facility" and therefore only the expenditure incurred on in-house research can be allowed under sec 35(2AB). The section nowhere states that expenditure incurred on clinical trials even outside the in-house R&D facility can be allowed. Accordingly any expenditure incurred outside such facility cannot be allowed as deduction.

8. The AO relied on the decision of the Mumbai bench of the Tribunal in the case of *Concept Pharmaceuticals Limited vs ACIT in ITA No.1739 & 1034/M/2009* where it is held that though clinical trial is integral part of the scientific research the same will be eligible for weighted deduction only if the expenditure is incurred on an in-house R&D facility and not the expenditure incurred outside the R&D facility.

9. Before the CIT(A), assessee submitted that assessee's case is covered by the decision of Hon'ble Gujarat High Court in the case of CIT vs Cadila Healthcare Ltd (ITA No.752 of 2012) where the Hon'ble court has held that the Explanation to section 35(2AB) expands the scope of "expenditure on scientific research" and do not contemplate a restricted meaning for the said expenditure whereby it is linked only to in-house facilities. Accordingly the Court held that the clinical trials conducted outside the approved laboratory facility would be included for the weighted deduction u/s.35(2AB). The CIT(A) did not accept the submissions of the assessee by holding that –

> "5.2 I have gone through the judicial decision relied upon by the appellant and am compelled to respectfully differ from it since the scope of clinical trials envisaged in the Explanation, especially in view of the objective sought to be promoted through the deduction, does not appear to have been placed before the Hon'ble Court for their appreciation. The Explanation speaks of 3 things which will be included in the said expenditure relating to drugs and pharmaceuticals - clinical trials, filing of patent application and obtaining approval of any regulatory authority. All the three are clearly different in nature and are not linked by any generic identify. In this context, clinical drug trials are to be conceptually and semantically linked not to patent application or regulatory approval expenditure mentioned in the explanation, but to the core idea of "in-house research & development facility" mentioned in the main provision i.e. sub-section (1) of Sec. 3 5(2AB).
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> 5.3 The above linkage is also evident from the language of the Auditor's certificate required under the section. The certificate format states that " it is further certified that the expenditure do not include the following (original emphasis).
>
> (i) Expenditure on outsourced R&D activities
>
> (ix) Clinical trial activities carried out outside the approved facilities.

The certification requirement as above emphasises the fact that outsourced R&D activities and clinical trials conducted outside approved facilities are not within the scope of expenditure expected to be covered u/s. 3 5(2AB). To read a broader scope into the language of the explanation would defeat the very purpose of the deduction, which is to encourage setting up of R&D facilities of the highest quality with government approval for conducting research in the interest of the country. It is notable that the process for claiming deduction starts with an agreement entered into with the DSIR for "co-operation in in-house R&D facility." The language of the Guidelines of May 2010(supra) in clause (v) clearly indicate it as below:

> "Note: The word co-operation shall, inter-alia, mean that the first party shall be willing to undertake projects of national importance, as may be assigned to it by the Prescribed Authority, on its own, or in association with laboratories of CSIR, ICAR, ICMR, DRDO; DBT, MCIT, M/O Environment, DOD, DAE, Department of Space, Universities, Colleges or any other public funded institution(s). The First Party would be free to exploit the results of such R&D projects, subject however, to any conditions which may be imposed by Government of India, in view of national security or in public interest".

5.4 The above purpose cannot be expected to be achieved through outsourced facilities/research, even though the cause of Science & Technology in general may be advanced though such outsourced research. But this is not the purpose for which the government has allowed the weighted deduction to such a substantial extent. In light of the above understanding of law, I hold that the AO's interpretation is correct and the same is, accordingly, confirmed."

10. To summarise, the main ground on which the CIT(A) upheld the disallowance of weighted deduction is that the expenditure incurred on outsourced R&D activities is not eligible for weighted deduction.

11. In the second round of appeal before the Tribunal, the ld AR submitted that -

> In accordance with the Explanation to Section 35(2AB), the clinical trial expenses are includible for weighted deduction. In the Explanation there is no condition that clinical trial expenses have to be incurred only in the approved lab of the Appellant. Even Section 35(2AB)(1) referred to the allowance of 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 which shall be allowed to the extent referred to in the section. Here again, it referred to in-house research and development facility and has only referred to in-house research and development facility belonged to the Appellant as approved. There is no bar even under Section 35(2AB) for such facility as approved even if it is not owned by the Appellant. As stated earlier, the expenditure also does not qualify that it should be incurred only in the in-house facility of the Appellant.
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> In the circumstances, the claim that the expenditure on clinical trial incurred outside the approved facility of the Appellant is also eligible for weighted deduction. In this connection, we rely on the following judgments:

1) DCIT vs. Bharat Biotech International Ltd (ITA No.1150 & 1151/Hyd/2014 dt. 15.10.2014) – Paper Book at Page Nos.89–98.
2) DCIT vs. Aurobindo Pharma Ltd (ITA No.1604 & 1605/Hyd/2016 dt. 20.08.2018)
3) Intas Pharmaceuticals Ltd vs. DCIT (807 to 809/Ahd/2010 & 20/Ahd/2011 dt. 14.08.2015) – Paper Book at Page Nos.99-124.
4) Intas Pharmaceuticals Ltd vs. DCIT (Guj High Court) - Paper Book at Page Nos.97-98.
5) ACIT vs. Torrent Pharmaceuticals Ltd (ITA No.3569/Ahd/2004 dt. 13.11.2009)
6) Apollo Tyres Ltd vs. ACIT (2017) 88 taxmann.com 656 (Cochin-Trib)
7) USV Ltd vs. ACIT (ITA No.6747/Mum/2012 & 4248/Mum/2013 dt 20.02.2015).

No doubt, in the case of Intas Pharmaceuticals Ltd, Apollo Tyres Ltd, the judgment of the Gujarat High Court in Cadila has been referred to. The Tribunal in the case of Mahindra Electric Mobility Ltd vs. ACIT (ITA No.641/Bang/2017 dt. 14.09.2018) has allowed the claim by referring to Rule 6(7A)(b) after taking notice of the fact that quantification of relief by the prescribed authority is a condition only with effect from 01.07.2016 and not applicable to preceding years.

In the same judgment of the Tribunal in the case of the assessee has also been followed in another judgment in the case of Provimi Animal Nutrition India Pvt.Ltd vs. PCIT (2021) 124 taxmann.com 73 (Bangalore ITAT). In this case the main issue is with regard to the jurisdiction under Section 263 by the Commissioner. In principle the Tribunal has followed its earlier judgment in the case of Mahindra Electric Mobilility Ltd.

- Explanation to section 35(2B)(1) specifically states that expenditure on scientific research in relation to drugs and pharmaceuticals shall, inter alia, include expenditure incurred on clinical drug trial. The said Explanation also does not state that clinical trial expenses should be incurred only in an in-house research and development facility. Thus, the place where the expenditure incurred is not relevant.
- The relevant criteria is the **utilisation** of the expenditure should be by the in-house research and development facility or the benefit of the expenditure should be for the in-house research and development facility. This criteria will be satisfied in case of clinical trials expenses as the said expenditure is incurred by and utilised for the benefit of in-house research and development facility.
- Guidelines for approval in Form No 3CM of in-house research and development centres recognised by DSIR was issued by Department of Scientific & Industrial Research Ministry of Science and Technology in May 2010 at para 5(ix) states that

expenditures which are **directly identifiable** with approved R&D facility only shall be eligible for the weighted tax deduction. The clinical trials expenses incurred for the sole purpose of in-house R&D centre is directly identifiable with the approved R&D facility and hence eligible for weighted deduction. The guidelines also does not prescribe that clinical trials expenses should be incurred inside the in-house R&D centre.

- The Guidelines, at para 1, recognise the fact that section 35(2AB) was introduced in order to encourage R&D initiatives by the Industry and to make R&D an attractive proposition. It is a settled principle that once the eligibility conditions for the claim of deduction is satisfied on a strict interpretation, the provision has to be interpreted liberally with regard to other conditions so as to advance the purpose and not frustrate the same. [Ramnath & Co v CIT [2020] 116 taxmann.com 885 (SC)] In the present case, the eligibility to claim deduction under section 35(2AB) is not in dispute with the approval granted by the DSIR. Thus, clinical trial expenses incurred where ever, for the benefit of in-house R&D facility should be allowed a weighted deduction.

12. The ld DR submitted that though the assessee has claimed a total expenditure of Rs19.39 Cr (150%) on R&D in Form 3CL, the expenditure certified by DSIR as having been spent on "in-house" facility is only 4.01 Cr which does not include clinical trials conducted by external agencies to the tune of Rs 8.91 Cr which is specifically mentioned in Form 3CL report that Rs 8.91 is spent on clinical trial conducted outside the approved facility not included in the above. The ld DR further submitted that the assessee's reliance of on the decision of Gujarat HC in the case of Cadila Healthcare (dtd 20.03.2013) does not hold good after the decision of Hon'ble Karnataka HC in the case

of Tejas Network Ltd in WP No 7004/2014 dated 24.04.2015 and that a review petition/SLP was filed against the order of the Gujarat High Court and the Supreme Court has remitted the matter to Gujarat High Court for fresh consideration.

13. The ld. DR drew our attention to Form 3CL as submitted by DSIR in the case of Dr. Reddy's Laboratories Ltd. for AY 2017-18 and Strides Pharma Science Limited to drive home the point that on perusal of the excerpt of Form 3CL, one can clearly observe that DSIR has specifically approved the total amount eligible for deduction under section 35(2AB) and the expenses incurred on clinical trials expenses outside approved R&D facility has been SPECIFICALLY KEPT OUTSIDE THE PURVIEW OF DEDUCTION TO BE CLAIMED UNDER SECTION 35(2AB). This fact therefore leaves no iota of doubt that the amount which is eligible for deduction under section 35(2AB) IS ALWAYS MENTIONED IN THE 2ND LAST ROW OF THE TABLE IN THE PERFOMA TABLE MENTIONED IN FORM 3CL. The fact that the report makes a mention of "clinical trial expenses outside of the approved R&D facility is only mentioned because as per the table in for 3CL all expenses claimed by the assessee 35(2AB) is to be mentioned out of which DSIR certifies the amount which is eligible for the claim in the second last row of 3CL.

14. The ld. DR therefore submitted that the claim of the assessee that expense incurred on clinical research outside the approved facilities has been mentioned in 3CL report and therefore eligible for

deduction u/s. 35(2AB) is nothing but misinterpretation of the report issued by DSIR in Form 3CL. It was submitted that the assessee has completely ignored the clinical research "CONDUCTED OUTSIDE THE APPROVED FACILITIES NOT INCLUDED IN THE ABOVE" mentioned by DSIR.

15. The ld. DR submitted that the in-house facility mentioned in the section refers to the assessee's in-house facility and not that of any third party. The reason why section 35(2AB) specifically mentions that the in-house facility should belong to the assessee is because every assessee who has any such facility approved by the Prescribed Authority is eligible for deduction under section 35(2AB) at the rate of 200%/150% of the expense incurred. This is a beneficial provision for the benefit of the assessee to encourage research and development in India. According to the ld. DR, now, if the intent of the Act was to allow the assessee deduction under section 35(2AB) for expenses incurred on clinical trials with respect to facilities belonging to third parties, the Act would have specifically mentioned either in the section or by way of an explanation " other such facility approved by prescribed authority". In absence of such a phase in the section, one cannot give a liberal interpretation that in-house facility includes those approved facilities of other assessee's as well.

16. The alternate contention of the ld DR is construing that expenses incurred outside approved facility of the assessee as eligible for weighted deduction u/s.35(2AB) would have other problems. The

assessee would be getting clinical trials done in other approved facilities. Now, the assessee would be making payments to these entities whose clinical trial facilities are being used by the assessee. As such, these entities are required to reduce any amount received by way of income from R&D activities out of its eligible facilities from the total expenses under section 35(2AB). This shall not be a beneficial scenario for these third party assesses as they would lose out on claiming weighted deduction. Therefore, any payment received by third party assesses towards R&D expenses carried out in the approved facility eligible for 35(2AB) deduction would be shown as normal income. It is for this reason the assesses are allowed to claimed deduction only on their respective in-house R&D facilities approved by prescribed authority. Had the intent of the Act not been so, there was no reason for the DSIR to specify in Form 3CL the expenses incurred on outside facilities Moreover, if the clinical research in third party approved/ eligible R&D facility was eligible for claim under section 35(2AB), DSIR while approving the expenses would have taken due care to include those expenses as eligible. But they have explicitly kept such expenses outside of the purview of the deduction. It may be noted that the DSIR gives its approval based on guideline (which were revised in 2016). If the said expenses are not getting DSIR approval it only means that there is no such provision for allowing deduction on such expenses either under the Act or under the guidelines of DSIR based on which approvals are granted by it.

17. The ld DR further submitted that the jurisdictional HC has dealt with the issue of allowability of expenses u/s 35(2AB) in the case of Tejas Networks Ltd reported in WP. 7004/2014 dated 24th April 2015. The Karnataka Hon'ble HC has decided the issue in the Tejas Networks case for AY 2009-10 and the assessee's case under appeal is for AY 2010-11 and therefore the decision of Hon'ble Jurisdictional HC is very much applicable to the assessee's case as well. In the case of Tejas Network, the Hon'ble Karnataka High Court has stated that where the Department of Scientific and Industrial Research (DSIR/the prescribed authority) has certified Research and Development (R&D) related expenditure under Section 35(2AB) of the Income-tax Act, 1961 (the Act), the AO would be out of bounds to examine whether such expenditure as certified by DSIR can be allowed or disallowed under Section 35 of the Act. The allowability or otherwise of such expenditure cannot be the subject matter of scrutiny by the AO. The High Court observed that Section 35(3) of the Act indicates that where the AO does not accept the claim of the taxpayer made under Section 35(2AB) of the Act, the AO has to refer the matter to the Central Board of Direct Taxes (CBDT), which in turn, will refer the question to the prescribed authority. The decision of the prescribed authority would be final.

18. The Hon'ble Court has further stated that as per Rule 6(1B) of the Rules, it would be clear that the prescribed authority for the purpose of Section 35(2AB) is the Secretary, DSIR. The prescribed authority would examine the claim for grant of approval under Section

35(2AB) of the Act. On reference to the facts of the present case, it indicates that the application had been filed by the taxpayer with the DSIR for the benefit of Section 35(2AB) of the Act and after calling for documents/information from the taxpayer, and on examination and scrutiny of such documents/information furnished by the taxpayer, the DSIR had granted order of approval in favour of the taxpayer. Further, **perusal of Section 35(3) of the Act indicates that where the AO does not accept the claim of the taxpayer made under Section 35(2AB) of the Act. the AO has to refer the matter to the CBDT. which in turn will refer the question to the prescribed authority. The decision of the prescribed authority would be final. Neither the AO nor the CBDT is competent to take any decision on any such controversy relating to report and approval granted by the prescribed authority. It is the prescribed authority alone to take a decision with regard to correctness of expenditure under Section 35(2AB) of the Act read with Rule 6(7A) of the Rules**.

19. The aforesaid view is also fortified by the Gujarat High Court in the case of Mastek Limited wherein it was held that whenever a question arises as to whether any activity constitutes or any asset is or was being used for scientific research, the CBDT would have to refer the issue to the prescribed authority whose decision would be final.

20. The Hon'ble Court has further held that there was no dispute to the fact that the DSIR being the prescribed authority in the instant case had issued the report. When the prescribed authority had certified the

extent of expenditure which would be allowable, the AO could not sit in the judgment over such certification made by the prescribed authority. The allowability or otherwise of such expenditure cannot be the subject matter of scrutiny by the AO. The AO would be out of bounds to examine as to whether such expenditure can be allowed or disallowed under Section 35 of the Act. The AO is precluded from examining the correctness or otherwise of the certificate issued by the prescribed authority on the grounds that it is either being contrary to facts or contrary to the express provisions of the Act. When the taxpayer files the report issued by the prescribed authority under Section 35(2AB) before the jurisdictional AO and seeks for allowability of such expenditure, the AO should not examine the correctness of the certificate issued by the prescribed authority.

21. The ld. DR submitted during the course of hearing that the ld. AR also stated that 35(2AB) that is a beneficial provision for the assessee and the same should be construed and interpreted liberally. In this regard it is stated that the Department vehemently rejects such contentions by the assessee. The beneficial provisions are to be applied more strictly. In this regard reliance is placed on the decision of the Hon'ble Apex Court in the case of Ramnath & Co. vs. CIT (2020) 116 taxmann.com 885), the Supreme Court has taken the view that a beneficial provision has to be interpreted 'strictly' and the benefit of an ambiguity in its interpretation should go to the Revenue. The Hon'ble Court held that the 'principles of liberalism for interpreting an 'Incentive based deduction provision' is not a 'sound statement of law';

rather, such a provision must be interpreted `strictly' and any ambiguity in interpretation of such a provision would be tipped in favour of the Revenue. Though the issue involved in the case of Ramnath & Co (Supra) was section 80, nonetheless the following observations of the Hon'ble Supreme Court on the issue of interpretation of statute is relevant for the instant case:-

> (i) While accepting that section 80-0 was an incentive provision, with an objective of earning foreign exchange by imparting technical know-how or furnishing the information concerning industrial, commercial, scientific knowledge, or rendering of technical or professional services to foreign countries, the Hon'ble Supreme Court, nevertheless, held that this deduction provision ought to be interpreted strictly; the burden of proving its applicability was on the assessee and in case of ambiguity, the benefit thereof cannot be claimed by the assessee, rather it would be interpreted in favour of the revenue.

22. The ld. DR submitted that similar view was taken by the 5-Judge Constitution Bench in the case of CC v. Dilip Kumar & Co. (2018) 9 SCC 1 that exemption provisions have to be interpreted strictly, and in case of any ambiguity in such interpretation, the benefit must go in favour of the Revenue.

23. In view of the above, the ld. DR prayed that the assessee is not eligible to claim weighted deduction on expenses incurred on clinical trials conducted outside the approved facilities and not approved by DSIR as per Form 3CL of the assessee.

24. With regard to the submissions of the learned DR, the ld. AR submitted that the ld. DR’s reference to the judgment of the Karnataka

High Court in the case of Tejas Networks Ltd vs. DCIT & Anr (2015) 125 DTR 153 in WP No.7004/2014 dated 24.04.2015 for the proposition that the amount to be deducted is in accordance with the amount determined by the prescribed authority and the revenue authorities have no power to interfere with the said order of the prescribed authority. According to the Revenue, Form 3CL in the case of the Appellant at Para 9 the cost of in-house research facility has been provided and the in-house research facility has been quantified at Rs.401.25 lakhs and the expenses related to clinical trials conducted outside the approved facility which is not included in the above quantification was shown at Rs.891.77 lakhs. Accordingly, the clinical trial conducted outside the approved facility was not eligible for deduction. It is submitted that though the expenses related to clinical trial outside the approved facilities has been shown separately, it has not been excluded from the eligible deduction as it has been done in two other cases referred to by the learned DR i.e., in the case of Dr.Reddy's Laboratories Ltd and Strides Pharma Science Ltd. Even in these two cases, the eligible in-house expenditure has been quantified and clinical trial expenses have been shown separately. Even in these cases it is not mentioned that clinical trial expenses are not outside the approved facility which are not eligible for deduction. It is submitted in this regard that the prescribed authority has quantified the clinical trial expenses and having verified the correctness of the same, had quantified as above. Thus, the clinical trial expenses by virtue of Explanation to Section 35(2AB) are liable to be allowed. The learned

DR was not correct in inferring that the said expenditure was not liable to be allowed especially quantification of relief was not required to be done by the prescribed authority prior to the amendment to Rule 6(7A)(b) with effect from 01.07.2016.

25. The ld. AR further submitted that there was no quarrel with the revenue's proposition relying on the judgment of the Karnataka High Court referred to supra for the proposition that the amount provided in the report of the prescribed authority cannot be disturbed by anybody including the Department authority. In the case of the assessee, the expenditure incurred under in-house facility towards research and also the clinical trial expenses outside the approved facility of the assessee are recorded. As stated earlier, there is no ineligibility of the expenses recorded by the prescribed authority since the allowance of expenditure is not in their forte before 01.07.2016. Accordingly, the ratio of the High Court of Karnataka referred is not relevant to the issue before the Tribunal in the case of the assessee. The learned DR had made a reference to Section 35(2AB) read with Rule 6(7A) to support that relief should be granted only to the extent of the quantified relief by the prescribed authority. Here again, the eligible relief with regard to in-house expenses have been quantified and with regard to clinical trial expenditure has been shown separately and there is no qualification that the expenditure was not liable to be allowed. By virtue of the Explanation to Section 35(2AB), the clinical trial expenses wherever incurred is required to be allowed as long as the expenses incurred were with regard to the approved facility. In the assessee's case, all the

facilities wherein clinical trials have been conducted are approved facilities. In this regard the details of the laboratories and approvals obtained are provided at Paper Book Page 36-71. Thus, all the facilities where the clinical trials have been conducted were all approved facilities. As submitted earlier, there is no condition precedent that the facilities should belong to the assessee. Accordingly, the benefit of deduction is liable to be given to the assessee in light of the judgments which support the claim of the Appellant.

26. The ld. AR therefore submitted that undisputedly, the assessee was eligible to get weighted deduction under Section 35(2AB) of the Act which has also been accepted by the Revenue. The expenses were incurred on various clinical trials and also inclusive research facility expenses in the in-house facility approved have been fully verified by the prescribed authority and accordingly recorded in Form 3CL as required for the allowance under Section 35(2AB) of the Act. There is no ineligibility expenditure which has been recorded and there was no condition that the facilities in which the clinical trials have been conducted should belong to the Appellant. In the circumstances, the benefit claimed is not liable to be denied. As stated earlier, the section and also the Explanation therein did not provide as a condition that the facility should belong only to the Appellant which should have been approved by the prescribed authority being absent, the benefit of deduction cannot be denied by restricting the amount to the extent incurred only in the approved facility belonged to the Appellant. Even

the judgment in the case of Ramnath And Co vs. CIT reported in (2020) 425 ITR 337 (SC) supports the claim of the Appellant rather than the Revenue's interpretation. The Hon'ble Supreme Court has also referred to the judgment of its own in the case of Wood Papers Ltd (1991) 83 STC 251 (SC). The principle laid down in Dilip Kumar and Co (supra) was taken note of by Supreme Court in Ramnath And Co (supra).

27. Thus, the ld. AR submitted that in order to decide the exemption or deduction to be provided strict interpretation is required to be done and once the eligible deduction is decided in favour of such person who claims the deduction, it should be construed liberally with regard to other requirements which may be formal or directory in nature. In the case of the Appellant, the eligibility of deduction is not under dispute and once the eligibility is decided, quantification has to be decided in accordance with the provisions of the Act and the prescribed authority has no jurisdiction to decide the quantification of the deduction until the Rule stood amended with effect from 01.07.2016. The prescribed authority is required to certify the expenses incurred under various categories for consideration of quantification. This is precisely what has been done in Form 3CL in the case of the Appellant and also in the other cases referred to by the Revenue authority. Just because the clinical trial has been quantified separately, it cannot be construed that they were not eligible for deduction under Section 35(2AB) of the Act.

28. We heard the parties and perused the material on record. Before proceeding further, we will look at the relevant provisions of section 35(2AB), Rules and the Guidelines for approval by DSIR of the in-house R&D facility :-

Section 35(2AB):

(*1*) 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 *one and one-half* times of the expenditure so incurred.

Explanation.—For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).

(*2*) No deduction shall be allowed in respect of the expenditure mentioned in clause (*1*) under any other provision of this Act.

(*3*) No company shall be entitled for deduction under clause (*1*) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility.

(*4*) The prescribed authority shall submit its report in relation to the approval of the said facility to the Director General in such form and within such time as may be prescribed.

(*5*) No deduction shall be allowed in respect of the expenditure referred to in clause (*1*) which is incurred after the 31st day of March,2012.

(6) No deduction shall be allowed to a company approved under sub-clause (*C*) of clause (*iia*) of sub-section (1) in respect of the expenditure

referred to in clause (*1*) which is incurred after the 31st day of March, 2008.

(emphasis supplied)

29. Provisions of Sec.35(2AB) were introduced by the Finance Act, 1997 w.e.f. 1.4.1988. It is worthwhile noticing that while expenditure on scientific research whether done in house or outsourced were eligible to deduction of 100% of the expenditure prior to 1.4.1988 u/s.35(1) of the Act, the legislature thought it fit to give more benefits for in house scientific research and preferred to give a weighted deduction of 150% of the expenditure on scientific research. The statement of objects and reasons for introduction of the aforesaid provisions makes this purpose evident and it reads thus:

"**Weighted deduction in respect of expenditure on in-house R&D**

Under section 35 of the Income-tax Act, certain deductions are allowed in respect of expenditure on scientific research.

The Bill proposes to introduce a new sub-section(2AB) to allow a company, a deduction of a sum equal to 1-1/4th times the sum paid on any expenditure incurred by a company on scientific research including an expenditure of capital nature related to the business. This deduction will be available to the companies having in-house Research & Development facility approved for the purpose of this section by the prescribed authority and engaged in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipment, computers, telecommunication equipment, chemicals or any other article or thing notified in this behalf. It is also proposed that no deduction shall be allowed in respect of expenditure on land and building. It is also proposed that the company shall enter into an agreement of co-operation and audit with the prescribed authority before approval of the research and development facility.

> The proposed amendment will take effect from 1st April, 1998 and will, accordingly, apply in relation to assessment year 1998-99 and subsequent years. "

30. The legislature did not choose to define the term "in house scientific research". The legislature did not visualize a situation where an Assessee would carry on "in house" scientific research and in the process outsource part of the research to an external agency. For example an Assessee carries on "in house scientific research" to invent a drug for a particular ailment, but does not have facility to carry on clinical trial of the drug on animals and outsources that part of the clinical trial to external agencies and incurs expenditure in the form of payment to the external agency.

31. In terms of Sec.35(2AB)(4), the prescribed authority has submit its report in relation to the approval of the said facility to the Director General in such form and within such time as may be prescribed. Income Tax Rules, 1962 (Rules) prescribes the procedure for approval of the prescribed authority and the manner in which report has to be prepared by the prescribed authority.

32. The relevant rules in so far as it concerns deduction u/s.35(2AB) of the Act are provided in Sub-Rule(1B), (4), (5A) and 7A of Rule 6 of the Rules. These rules read as follows:

> "(1B) For the purposes of sub-section (2AB) of section 35, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research.";

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

"(5A) The prescribed authority shall, if he is satisfied that the conditions provided in this rule and in sub-section (2AB) of section 35 of the Act are fulfilled, pass an order in writing in Form No. 3 CM:
Provided that a reasonable opportunity of being heard shall be granted to the company before rejecting an application.

"(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 submit its report in relation to the approval of inhouse Research and Development facility in Form No. 3CL to the Director General (Income Tax Exemptions) within sixty days of its granting approval;

(c) The company shall maintain a separate account for each approved facility; which shall be audited annually and a copy thereof shall be furnished to the Secretary, Department of Scientific and Industrial Research by 31st day of October of each succeeding year;

Explanation:-For the purposes of this sub-rule the expression "audited" means the audit of accounts by an accountant, as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961.

(d) Assets acquired in respect of development of scientific research and development facility shall not be disposed off without the approval of the Secretary, Department of Scientific and Industrial Research"

In terms of Sub-Rule (4) of Rule-6, the application required to be furnished by a company under sub-section(2AB) of section 35 shall be in Form No.3CK. The said Application contemplates annexure of Directors declaration and declaration by the Auditor. The form of declaration to be given by the Auditor is important and it reads thus:

AUDITOR'S CERTIFICATE

I have audited the accounts of the in-house R&D Centre of M/s _____ located at _____ which is approved U/S 35(2AB) by the Prescribed Authority (Secretary, DSIR).
I certify that:
a) The company has maintained separate accounts for the R&D Centre approved by DSIR U/S 35(2AB).
b) The accounts have been satisfactorily maintained. The expenditure certified are also in consonance with DSIR guidelines.
c) The firm has extended full co-operation to me in carrying out the audit of the accounts of the R&D Centre. The expenditure of Rs. ---------- reported for the financial year ----------relevant to the assessment year ---------- as detailed out in Appendix II to Annexure IV of DSIR guideline at para `4' is correct to the best of my knowledge and belief as per the result of the audit of the approved R&D Centre carried out by me. Also R&D capital expenditure is reflected on page ----and revenue expenditure on page ---- in the audited financial statement/annual report
It is further certified that the expenditure claims do not include the following: -

i. Expenditure on outsourced R&D activities.
ii. Expenditure purely related to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature.
iii. Lease rent paid for research farms or research labs.
iv. Capitalized expenditure of intangible nature.
v. Expenditure on foundation seeds multiplication, demonstration crops and grow out test etc. beyond breeder seed development.
vi. Foreign patent filing expenditure.
vii. Consultancy expenditure, retainership, contract manpower / labour.

viii. Building maintenance, Municipal taxes and rental charges being paid.
ix. Any interest component on loans for R&D.
x. Clinical trial activities carried out outside the approved facilities.
xi. Contract research expenses duly certified by chartered accountant.
xii. Expenditure on any payments made to members of the board of Directors or any other part time employees working for R&D.

Signature & Seal of the Statutory Auditor

Date :
Place:

33. The auditor is required to specifically certify in terms of clause (i) and (x) that the expenditure claimed does not include expenditure on outsourced Research and development and clinical trial activities carried out outside the approved facilities. It is the stand of the revenue that even though the term "in house scientific research" has not been defined in the Act for the purpose of sec.35(2AB), the natural meaning of the term "in-house" coupled with intrinsic evidence available in the form of the Rules and the form of certificate of auditor is sufficient to hold that expenditure on outsourced research and development and clinical trials carried out outside the approved facility will not be entitled to weighted deduction u/s.35(2AB) of the Act but will be entitled to only 100% deduction in terms of Sec.35(1) of the Act.

34. The learned DR submitted that on a plain reading of the statutory provisions of Sec.35(2AB)(1) shows that the prescribed authority has to approve only the in house research and development facility and not expenditure so incurred on scientific research. But the other surrounding circumstances coupled with the purpose of introduction of Sec.35(2AB) of the Act that the research should be "in-

house" seems to suggest that expenditure on outsourced research and devilment and trials carried out outside the in house research facility will not be eligible to weighted deduction u/s.35(2AB) of the Act. The other indications in the section are that the weighted deduction is allowed at 1.50 times of the expenditure only if the scientific research is carried out "in house". The absence of the definition of the word "in house" cannot be construed as the intention of the legislature to allow deduction of expenditure incurred on "outsourced research and development". This becomes clear on a reading of Rule 7A(3) of the Rules, which mandates audited accounts being given to the DSIR. Further Form 3CK prescribes that the expenditure on scientific research has to be certified by chartered accountant. The form of certificate as given in the DSIR guidelines clearly specifies that expenditure on outsourced research and development, (even though related to in house scientific research), shall not be eligible for weighted deduction u/s.35(2AB) of the Act. It may be eligible for deduction u/s.35(1) at normal rate of 100% as normal expenditure on scientific research but not weighted deduction of 150% u/s.35(2AB) of the Act. This distinction between normal deduction and weighted deduction is discernible from a reading of the entire statutory provisions of Sec.35 of the Act. The AO has denied the benefit of weighted deduction for the sum of Rs.891.77 lakhs on this ground that the said expenses are incurred towards clinical trial conducted outside the approved facility and not in-house. The CIT(A) while upholding the order of the AO had taken strength from the fact that the auditor

while certifying the amount for the purpose of section 35(2AB) should also certify that the said amount does not include expenditure on outsourced R&D activities and clinical trial activities carried out outside the approved facilities as per point (i) and (x) of the auditor's certificate.

35. In assessee's case, there is no dispute that the assessee has fulfilled all the conditions for the purpose of section 35(2AB). This fact has been accepted by the revenue which is evidenced by the AO's order of assessment where he has allowed the deduction towards the impugned amount @ 100% as against the 150% claimed by the assessee. Therefore the issue for consideration is limited to whether the expenditure incurred on clinical trials which were conducted by the external agencies is eligible for weighted deduction u/s.35(2AB) or only 100% as allowed by the AO. In other words the issue before us is limited to whether weighted deduction u/s.35(2AB) is available to expenses incurred towards clinical trials conducted not in the in-house approved facility but outside approved facilities. We notice that the Ahmadabad Bench of the Tribunal in the case of Cadila Healthcare Ltd vs ACIT [2012] 21 taxmann.com 483 (Ahd.) has considered a similar issue and held that –

> 4.5 We have heard both the side and carefully perused the law applicable in the light of the compilation filed and explanation tendered. For the promotion of scientific research so as to give a boost to such activity the Hon'ble Law makers have introduced this section. Further considering the importance of "clinical drug trial" as a part and parcel of the scientific research as also the obtaining of approval from regulatory authority; in their prudence; considered the same as a part of research. It

was brought into the Statute through an Explanation, reproduced below for reference:—

'Sec. 35(2AB)(1) Where a company engaged in the business of biotechnology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on inhouse research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred.

Explanation : For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).' 4.6. As far as the definition of "scientific research" is concerned, we have been informed that Section 43(4) has defined the same as under:—

'Section 43(4) : (i) "scientific research" means any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries; (ii) references to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research; (iii) references to scientific research related to a business or class of business include- (a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class; (b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;' 4.7 In the background of these two applicable provisions, we have noticed that the A.O.'s main concern was that when the law prescribes research to be done "in-house" then the weighted deduction should be allowed to that extent only. According to him as per settled proposition of law no word is superfluously used in a Statute book. Because of this main reason of disallowance, we have examined the term "in-house" which can be termed, in the present context, that by utilizing the staff of an

organization or by utilization of resources of the organization if a research is conducted within the organization; rather than utilization of external resources or staff; then it can be called as in-house research. To further elaborate; say for an example a ship is built in-house in a dock-yard does not mean that all the component have to be made within the four-walls of a ship-yard. An in-house job is that when a job is done within the organization and not by any other organization. The Corporates thus depend upon their own Research Development to be an "inside-job". To innovate new products such Corporates feel that "inside-job" is more dependable. Therefore, an internal research is distinguishable from external research. For doing internal research there can be a possibility to mobilize some external resources. But that external mobilization is only a part of the entire in-house research.

4.8. If we closely examine the language used in section 35(2AB)(1) its says, quote "incurs any expenditure on scientific research on in-house research and development facility", unquote. The significance is that the Statute has used the terminology "on in-house". As per the dictionary, meaning of the word "on" means (i) in contact with and supported by a surface, (ii) to a position in contact with such a surface of, (iii) in a condition or process of, (iv) towards or to, (v) directed towards, (vi) in the direction of, (vii) applied to, (viii) close to, beside, (ix) exactly or very nearly at (x) at the time, date or occasion of, (xi) engaged in and (xii) with respect to. Therefore, to understand the intention of using the word "on" we can say that "scientific research with respect to in-house research and development". We can also read in this manner that any expenditure on "scientific research" engaged in an in-house research and development facility. We can also read the sentence in this manner that any expenditure on scientific research directed towards in-house research and development facility. Therefore, the language of this section do not suggest that any expenditure on scientific research should be within the in-house research and development. The language do not suggest that the research is to be conducted within four walls of an undertaking. Had the Legislature intended to restrict the research within the four-walls of a compound, then the possible terminology could be that "any expenditure on scientific research by a in-house research and development facility". Therefore by using the word "by" the meaning gets changed and then it can be read that through the action or means of in-house research the expenditure is incurred. We are of the view that clinical trial is one of the various steps involved in a scientific research specially for the development in a new drug. For the purpose of clinical

trial a pharmaceutical company is required to set up a inhouse research facility. To conduct the research the qualified team of scientists may have to collect datas from several resources, both, within the premises or outside the premises. But the datas so collected by them is to be brought into the in-house research facility and on the basis of those collected datas or clinical trials carried out the team of experts thereafter arrived at a result. Therefore, for the purpose of conducting scientific research the requirement is that in-house research and development facility is to be created or established by an organization. Even by the introduction of Explanation the scope of "expenditure on scientific research" was defined which is required to be in relation to drug and pharmaceutical and thus include expenditure incurred on clinical drug trial. In the compilation, the assessee has placed several approvals through which the Directorate General of Health Services has accepted the bio-equivalence report of the studies in respect of new drugs form the assessee's laboratory. One of the approval is from The Drug Controller General (India). Like wise, Directorate General of Health Services (Drug trial section), Nirman Bhavan, New Delhi has informed that the said Directorate continued to accept the protocols and the report of the studies conducted by the assessee's laboratory. Before us, there was a recognition of renewal of scientific and Industrial research issued by the Government of India, Ministry of Science and Technology. The Ministry of Science and technology has extended an approval as R&D company u/s.80-IB(8A) of the I.T. Act. Number of such approvals and acceptance of reports submitted in respect of new drugs are placed on record. Even before us, it was argued that in the case Claris Life sciences (supra) the Hon'ble Gujarat High Court has opined that once the scientific research facility is approved, then the expenditure incurred on research and development facility has to be allowed for weighted deduction u/s.35(2AB) of the I.T. Act. Under the totality of the circumstances of the case and in the light of the material placed before us and the discussion made hereinabove, we are of the conscientious view that the conditions as prescribed u/s.35(2AB)(1) of the I.T.Act has been complied with by this assessee, therefore, entitled for the prescribed deduction. Ground No.4 of the assessee is, therefore, allowed.

36. It is argued by the ld DR that the decision of the Tribunal in the case Cadila Healthcare Ltd(supra) cannot be applied as judicial

precedent in assessee's case for the reason that order of the Hon'ble Gujarat High Court affirming the above order of the Tribunal has been reversed by Hon'ble Supreme Court inasmuch as Hon'ble High Court has been directed to adjudicate on the matter on merits. However in our considered view, this argument is not tenable since the decision of Hon'ble Supreme Court does not dilute the binding nature of the decision of the Tribunal and therefore the decision hold good as on now.

37. From the breakup of the sum of Rs.891.77 lakhs as extracted in earlier part of this order it is clear that the entire amount is incurred towards outsourced clinical trial activities and considering the facts of the present case in our view the impugned issue in assessee's is covered by the decision of the Hon'ble Tribunal in the case of Cadila Healthcare Ltd (supra). Accordingly the expenses incurred towards clinical trial conducted outside the approved facilities would be eligible for weighted deduction u/s.35(2AB).

38. The alternate contention of the revenue is that the amount mentioned in Form 3CL issues by DSIR in a separate line as expenses related to clinical trial conducted outside the approved facilities is sourced from the certificate of the auditor wherein the auditor has certified the said amount to be not part of expenses eligible for weighted deduction u/s.35(2AB) and therefore the disallowance made by the AO is justified.

39. The provisions of Sec.35(2AB) of the Act contemplate approval by the prescribed authority of the "in house Scientific Research facility" but not the quantum of expenditure. After 1.4.2016, the law has been amended to the effect that even the quantum of expenditure on "in house Scientific Research" has to be certified by the prescribed authority. The question is whether prior to 1.4.2016, expenditure incurred on "in house scientific research" where part of the expenditure includes payment to external agencies for conducting research which is necessary and linked to the "in house Scientific Research", should also be entitled to weighted deduction u/s.35(2AB) or only 100% deduction u/s.35(1) of the Act.

40. The contention of the ld AR is that prior to the amendment with effect from 1.7.2016, the prescribed authorities were not required to quantify the amount eligible for weighted deduction u/s.35(2AB) and that form No.3CL is only a report in the form of intimation regarding approval of in-house R&D facility to be sent from prescribed authority's end to the Department. Therefore the argument of the ld AR is that once the facility is approved in form No.3CM, the expenses incurred within the notified period have to be allowed under section 35(2AB) of the Act. Therefore the contention is that the quantification of expenditure allowable for weighted deduction is brought only from 1.7.2016 and prior to the amendment, the amount mentioned in Form 3CL cannot be the basis for allowability of weighted deduction. The dispute of the revenue is that the amount of Rs.891.77 lakhs which is

mentioned separately in Form 3CL is not eligible for weighted deduction.

41. The various benches of the Tribunal have been taking a view that prior to amendment introduced w.e.f. 01/07/2016, the deduction u/s 35(2AB) of the Act would be available to an assessee having an approved in-house R&D facility by the prescribed Authority Act and that Form 3CL is only an intimation sent to the department that the facility is approved that is eligible for weighted deduction towards expenditure incurred on scientific research. Prior to 1.7.2016 there is no requirement by DSIR to certify the amount eligible for weighted deduction and the assessee cannot be denied the weighted deduction for the reason that the amount claimed is more than what is mentioned in Form 3CL. We have extracted herein below some of the observations of the Tribunals :-

Cummins India Ltd. v. DCIT [2018] 96 taxmann.com 576 (Pune - Trib.)

"Clause (b) to sub-rule (7A) has been substituted by IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016, under which the prescribed authority has to furnish electronically its report (i) in relation to approval of in-house R & D facility in part A of form No.3CL and (ii) quantifying the expenditure incurred on in-house R & D 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. In other words the quantification of expenditure has been prescribed vide IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016. Prior to this amendment, no such power was with DSIR i.e. after approval of facility.

Under the amended provisions, beside maintaining separate accounts of R & D facility, copy of audited accounts have to be submitted to the prescribed authority. These amendments to rules 6 and 7a are w.e.f. 01.07.2016 i.e. under the amended rules, the prescribed authority as in part A give approval of the facility and in part B quantify the expenditure eligible for deduction under section 35(2AB) of the Act.

The issue which is raised before us relates to pre-amended provisions and question is where the facility has been approved by the prescribed authority, can the deduction be denied to the assessee under section 35(2AB) of the Act for non issue of form No.3CL by the said prescribed authority or the power is with the Assessing Officer to look into the nature of expenditure to be allowed as weighted deduction under section 35(2AB) of the Act. The first issue which arises is the recognition of facility by the prescribed authority as provided in section 35(2AB) of the Act.

…..The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below."

DCIT v. Force Motors 133 taxmann.com 71 (Pune - Trib.)

"10. Therefore, there is categorical finding given by the Tribunal that the amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 1-7-2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No. 3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure/methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the

expenditure and consequent weighted deduction claim under section 35(2AB) of the Act. The case before us pertains to FY 2013-14 relevant to AY 2014-15 and therefore, facts and circumstances are absolutely identical in assessee's case also. Therefore, respectfully, following the order of the Tribunal (supra.) on the same parity of reasoning and under same set of facts and circumstances, we find no reason to interfere with the findings of the Ld. CIT(Appeal) and relief provided to the assessee is hereby sustained. Thus, grounds raised by the Revenue are dismissed."

ACIT v. Crompton Greaves Ltd.[2019] 111 taxmann.com 338 (Mumbai - Trib.)

"9. The operative phrase here is "on in-house research and development facility as approved by the prescribed authority ……", the word "facility" has been hereby show us to emphasis the point that it is the unit which requires approval of the prescribed authority under this provision. Further, in the memorandum, explaining the provision of section and the notes on the clauses issued at the time of insertion of section 35(2AB) in the Act, copies of both of which have been filed on record before us by the assessee, it has been clearly provided that the deduction would be available to the assessee's having an approved in-house R & D facility by the prescribed authority. Undisputedly, there is no mention or approval of the quantum of expenditure.

10. Then, as observed by the Ahmedbad Bench of the Tribunal in the case of Sun Pharmaceutical Industries Ltd. v. Pr.CIT [2017] 77 taxmann.com 202/162 ITD 484 as approved by the Hon'ble Gujarat High Court vide its decision reported at 250 taxmann 270, it has been held that the objective of Form 3CL is limited to the forwarding of the intimation of the approval of the unit; that Form No. 3CL is a mere report for intimation of approval of R & D facility. In this regard, as rightly pointed out, such aspect stands confirmed by sub-rule (7A) of Rule 6 of Income Tax Rules, as within subsisting (now amended w.e.f. 01.07.2016), to provide for quantification of expenditure as well. The Finance Act, 2015 as amended to sub section (3) of section 35 w.e.f. 01.04.2016, providing for furnishing of reports in the manner to be prescribed. It is, thus, w.e.f. 01.04.2016 that the provision has been made for approval of quantum of expenditure, for the first time."

42. Similar view is held by the Mumbai Bench of the Tribunal in the case of **Omni Active Health Technologies Ltd. v. ACIT [2020] 117 taxmann.com 229 (Mumbai - Trib.)** held that Once in-house R & D facility is recognized by prescribed authority, role of Assessing Officer is to allow expenditure incurred on in- house R&D facility as weighted deduction under section 35(2AB). The Coordinate Bench of the Tribunal has also held a similar vie in the case of **Provimi Animal Nutrition India Pvt. Ltd. v PCIT [2021] 124 taxmann.com 73 (Bangalore - Trib.)** and **M/s.Natural Remedies Pvt.Ltd vs ACIT (ITA No.704/Bang/2020 dated 01.01.2021)**

43. There can be merit in revenue's contention that the reason behind the requirement for the auditor to certify that the amount for the purpose of section 35(2AB) does not include expenses towards clinical trial conducted outside the approved facility mentioned in Form 3CL separately is that the said amount is not eligible for weighted deduction u/s.35(2AB). However based on the binding effect of the various judicial rulings discussed herein above we are inclined to take a view that prior to 1.7.2016 Form 3CL does not certify the amount of deduction and therefore the same cannot be the reason for restricting the amount eligible for weighted deduction.

44. In view of the above discussion we see merit in the alternate submissions of the ld AR and accordingly we are of the considered view that the amount of Rs.891.77 lakhs as mentioned in Form 3CL as expenses incurred towards clinical research outside facility would also

be eligible for weighted deduction u/s.35(2AB) on this count also. Accordingly the disallowance made in this regard is deleted.

45. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 4th day of January, 2023.

Sd/-	Sd/-
(N V VASUDEVAN)	(PADMAVATHY S)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 4th January, 2023.
/*Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.