

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2841/Del/2022
Assessment Year: 2018-19

Indian Tonners and Developers Ltd., Tower-B, 1223 DLF, Jasola, New Delhi	Vs.	ACIT, Circle-10(1), New Delhi
PAN :AAACI2848B		
(Appellant)		(Respondent)

Appellant by	Sh. Pramod Kapur, CA
Respondent by	Sh. Anuj Garg, Sr. DR

Date of hearing	09.05.2023
Date of pronouncement	16.05.2023

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 28.10.2022 passed by National Faceless Appeal Centre (NFAC), Delhi, pertaining to assessment year 2018-19.

2. The dispute in the present appeal is confined to disallowance of Rs.29,05,724/- claimed as deduction under section 35(2AB) of the Income-tax Act, 1961 (in short 'the Act').

3. Briefly the facts are, the assessee is a resident corporate entity engaged in manufacturing and sale of inks and toners for

photocopiers. For the assessment year under dispute, the assessee filed its return of income claiming deduction under section 35(2AB) of the Act in respect of research and development expenditure. While examining assessee's claim of deduction in course of assessment proceeding, the Assessing Officer observed that though the assessee had submitted Form 3CLA and 3CK for the impugned assessment year, however, it has not submitted Form 3CL. Thus, being of the view that in absence of Form 3CL issued by the competent authority, assessee's claim of deduction under section 35(2AB) is not acceptable, the Assessing Officer disallowed deduction claimed under section 35(2AB) of the Act and restricted the deduction to the extent of revenue expenditure incurred. Though, the assessee contested the disallowance before learned first appellate authority, however, it was unsuccessful.

4. Before us, learned counsel appearing for the assessee submitted that, though, before the Assessing Officer, the assessee could not furnish Form 3CL, as, it was not issued by competent authority, however, in course of proceeding before the first appellate authority, the assessee did furnish Form 3CL issued by the competent authority for assessment years 2018-19, 2019-20 and 2020-21. He submitted, Form 3CL submitted by the assessee

was completely ignored by the first appellate authority while confirming the addition.

5. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. We have considered rival submissions and perused the materials on record. As per Assessing Officer's own admission, in course of assessment proceeding the assessee did furnish Form 3CLA and Form 3CK for the impugned assessment year. Even, Form 3CL issued by the competent authority for assessment year 2017-18 was furnished. Only because Form 3CL for assessment year 2018-19 was not furnished, the Assessing Officer disallowed assessee's claim of weighted deduction under section 35(2AB) of the Act. However, there cannot be any doubt regarding the genuineness of the expenditure claimed as the Assessing Officer has allowed 100% deduction of revenue expenditure related to research and development. He has only disallowed the excess deduction claimed under section 35(2AB) of the Act. Pertinently, after completion of assessment the assessee did receive Form 3CL issued by the competent authority for assessment years 2018-19,

2019-20 and 2020-21, which was furnished before the first appellate authority.

7. As could be seen from the perusal of Form 3CL, it was issued by the competent authority on 31st March, 2022, which is post completion of assessment but before order was passed by the first appellate authority. Surprisingly, while deciding the appeal, the first appellate authority has completely ignored Form 3CL issued by the competent authority, though, it was placed on record. This, in our view, is unacceptable. When the competent authority has issued Form 3CL entitling the assessee to claim deduction in respect of both capital and revenue expenditure, which is a mandate under section 35(2AB) of the Act, the departmental authorities cannot disentitle the assessee from availing the deduction by ignoring Form 3CL. Hence, disallowance of Rs.29,05,724/-, is unsustainable. Accordingly, we delete the disallowance. Grounds raised are allowed.

8. In the result, appeal is allowed.

Order pronounced in the open court on 16th May, 2023

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 16th May, 2023.
RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi