

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA NO. 3224/MUM/2022	:	A.Y : 2015-16
ACIT, Circle – 14(1(2), Mumbai. (Appellant)	Vs.	M/s. Centaur Pharmaceuticals Pvt. Ltd. Centaure House, Shanti Nagar Vakola, Santacruz East Mumbai 400055 (Respondent)

CO No. 25/MUM/2023	:	A.Y : 2015-16
M/s. Centaur Pharmaceuticals Pvt. Ltd. Centaure House, Shanti Nagar Vakola, Santacruz East, Mumbai 400055 PAN : AAACC0444K (Respondent)	Vs.	ACIT, Circle – 14(1(2), Mumbai. (Appellant)

**Appellant by : Shri Vishwas Mahendale, Advocate
Respondent by : Shri B. Bagchi, Sr. A.R.**

**Date of Hearing : 21/03/2023
Date of Pronouncement : 13/06/2023**

ORDER

PER_PRASHANT MAHARISHI, ACCOUNTANT_MEMBER:

- 1) This appeal is filed by the ACIT 14(1)(2) Mumbai [the Id AO] for Assessment Year (AY) 2015-16 against the appellate order passed by the National Faceless Appeal Center (NFAC), Delhi [CIT(A)] dated 26.10.2022 raising solitary ground regarding deletion of the disallowance of deduction claimed by the assessee under section 35(2AB) of the Income Tax Act, 1961 (the Act).

- 2) Assessee has filed cross objection in CO No. 25/Mum/2023, which is against failure of Id CIT (A) to grant direction to allow deduction u/s 35(2AB) on full amount without netting off of expenditure.
- 3) The brief fact of the issue is that the assessee is a company engaged in the business of manufacturing of pharmaceutical products and active pharma ingredients. It filed its return of income on 29.09.2015 declaring income of Rs.61,37,56,686/-. The return of income was picked up for scrutiny. The learned Assessing Officer consequently passed assessment order under section 143(3) of the Act on 28.02.2017 determining the total income of the assessee at Rs.70,01,34,740/-.
- 4) In the assessment proceedings the learned Assessing Officer disallowed deduction claim by the assessee under section 35(2AB) of the Act. The facts shows that the assessee claimed deduction of Rs.8,42,52,127/- containing capital expenditure of Rs.1,68,22,856/- and revenue expenditure of Rs.15,17,169/-. The income earned from research and development activities of Rs.9,94,10,754/- was reduced from the expenditure. The assessee was asked to justify the claim. The assessee could not produce the certificate of DISR for the said expenditure of research and development and therefore the learned Assessing Officer disallowed the claim of Rs.8,42,52,127/-.
- 5) Against Assessment order the assessee preferred appeal before the Id. CIT(A). The assessee submitted that it is entitled to deduction without reducing revenue from revenue expenditure based on the decision of the Hon'ble Karnataka High Court and Hon'ble Madras High Court and Mumbai Tribunal. It was further stated that there is no such guidelines or the provision of law to consider only net expenditure for deduction u/s 35 (2AB) of The Act. The Id. CIT(A) allowed the claim of the assessee following the decision of the Hon'ble Madras High Court and the Coordinate Bench, against this the learned Assessing Officer is in appeal.

- 6) We have carefully heard the rival contentions and perused the orders of the lower authorities. The learned Assessing Officer has disallowed the entire claim for the reason that the relevant certificate was not received at the time when the assessment order was finalized, i.e. till February, 2017 but in fact it was received in May, 2017. During the course of appellate proceedings, the assessee submitted that certificate. The Id. CIT(A) also noted that it is not the fault of the assessee if the certificate is not received in time. This fact is not disputed. Therefore now the reason for which disallowance was made, no longer exists. He further considered that the Coordinate Bench in assessee's own case for AY 2013-14 accepted the claim of the assessee Further that the Id. CIT(A) decided the issue as per paragraph 6 as under: -

"6.1 The AO asked the assessee to explain why the R&D Expenditure of Rs.8,42,52,127/- should not be disallowed as the DSIR has not issued any certificate for the said R&D Expenditure till date. Assessee submitted that the DSIR Certificate I will be received in due course of time. AO did not accept the explanation given by assessee and disallowed Rs.8,42,52,127/-."

6.2 In the grounds of appeal, the appellant contested that the AO was not justified in making a disallowance of Rs.8,42,52,127/- u/s. 35(2AB) as the assessee has incurred the expenses in actual. The appellant had made the application for DSIR Certificate in time. The appellant cannot be held responsible for non-receipt of DSIR Certificate till the passing of the assessment order.

6.3 In the written submission the appellant stated that - (i) The AO disallowed the entire claim because

the relevant certificate was not received at the time when the Assessment order was finalised in Feb 2017 but was in fact received in May 2017. The certificate is now enclosed. It is not the fault of the appellant that the certificate was not received in time. Several tribunals and courts have held that the disallowance cannot be made if the certificate is received late from another government agency. (i) Hon'ble ITAT Mumbai in appellants own case for A.Y 2013- 14 accepted the claim and contentions of the appellant and remanded the case back to the AO to verify whether revenue receipts are from sale of capital assets or normal sale receipts.

6.4.1 In [2020] 116 taxmann.com 498 (Mumbai Trib.) Advance Enzyme Technologies (P) Ltd vs ACIT, Hon'ble ITAT Mumbai Bench A held - Assessee-company had set up three R & D facilities which had been recognised by competent authority DSIR up to 31-3-2016 Subsequently, renewal of recognition was also granted up to 31-3-2019 Assessee had claimed deduction under section 35(2AB) from assessment years 2002-03 to 2008-09 and such claim had been accepted by department for those years. However, for assessment years 2009-10 to 2013-14, department denied weighted deduction claimed under section 35(2AB), for reason that necessary approval from competent authority in Form 3CM was not produced before Assessing Officer. It was observed that assessee had filed its application in Form 3CK for relevant period which was pending before competent authority and competent authority neither rejected said application nor sent any communication in this regard. Once existence of R & D facility was not disputed and expenditure for that purpose was genuine in nature and recognition to facility was granted way back in 2001-02, which was

valid during relevant period, then merely for reason of non- issue of approval for certain period in prescribed Form 3CM by competent authority. weighted deduction claimed under section 35(2AB) could not be denied.

6.4.2 [2019] 105 Taxmann.com 36 (Madras) Commissioner of Income Tax. Chennai vs TVS Electronics Ltd, High Court of Madras held - Assessee incurred expenditure on development of Research and Development facilities. Revenue disallowed assessee's claim of weighted deduction taking view that approval for current assessment year was not complied with. Assessee submitted that approval from concerned Ministry of Central Government for year in question was under active consideration and awaited. Assessee could not be punished for bureaucratic delay and since approval was on record for period anterior and posterior to year in question, claim of weighted deduction was allowable under section 35(2AB).

6.5 Respectfully following the above stated decisions of the Hon'ble jurisdictional ITAT, Mumbai and the Hon'ble High Court of Madras, the AO is directed to verify the genuineness of the DSIR Certificate and allow the deduction u/s.35(2AB) as per the law and facts.”

- 7) Even otherwise the issue is covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Microlabs Ltd. (2017) 79 taxmann.com 365. In view of this we do not find any infirmity in the order of the Id. CIT(A).
- 8) The cross objection of the assessee was with respect to granting deduction on the gross expenditure without reducing the income. This issue is decided by the Hon'ble Karnataka High Court as well the coordinate bench in ITA No. 7401/Mum/2019 dated 04.08.2022.

Accordingly, we direct the learned Assessing Officer to grant deduction under Section 35(2AB) of the Act on the gross amount of expenditure incurred by the assessee.

- 9) In the result the appeal filed by the Assessing Officer is dismissed and the cross objections of the assessee are allowed.

Order pronounced in the open court on 13th June, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Date 13th June, 2023

n.p.

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "C" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai

Sr. No.	Particulars	Date	Initials	Person concerned
1	Dictation given on	12.06.2023		Sr.PS
2	Draft placed before author	12.06.2023		Sr.PS
3	Draft proposed & placed before the second Member			JM
4	Draft discussed/approved by Second Member			JM
5	Approved Draft comes to the Sr.PS			Sr.PS
6	Kept for pronouncement on			Sr.PS
7	File sent to the Bench Clerk			Sr.PS
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			