

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
DELHI**

**BEFORE: SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.8160/Del/2018  
(Assessment Year: 2013-14)**

Sandhar Technologies Limited, B-6/20, LSC, Safdarjung Enclave, New Delhi 110029	Vs.	The ACIT, Circle-1, (LTU), New Delhi
<b>PAN/GIR No. AAACS 0512 J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Salil Kapoor, Adv. Shri Utkarsh Gupta, Adv.
Revenue by	Shri Anuj Garg, Sr.DR
<b>Date of Hearing</b>	<b>18/10/2023</b>
<b>Date of Pronouncement</b>	<b>23/10/2023</b>

**ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.8160/Del/2018 for A.Y. 2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-22, Delhi in appeal No.317/17-18/CIT(A)-22 dated 24.09.2018 (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19.12.2017 by the Id. ACIT, Circle-1, (LTU), Delhi (hereinafter referred to as Id. AO).

2. At the outset, we find that the additional ground was raised by the assessee vide letter dated 21.9.2022. But the Id AR at the time of hearing stated that he is not pressing the same. The same is reckoned as a statement

made from the Bar. Since no arguments were advanced for even admission of the said additional ground, the same is hereby dismissed as not admitted.

3. The only issue to be decided on merits in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id AO in disallowing an amount of Rs 1,98,93,520/- on account of alleged excess claim of deduction u/s 35(2AB) of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the manufacturing of auto parts for different companies and applied for recognition of in house research and development (R&D) facility as per the provisions of section 35(2AB) of the Act, which was duly approved by the Secretary, Department of Scientific and Industrial Research (DSIR) , Ministry of Science and Technology, Technology Bhawan, New Delhi, Government of India vide letter dated 24.5.2013. The said approval was granted for the period from 20.11.2012 to 31.3.2015. The assessee submitted that although in the said approval letter, the R&D facility was approved for the purpose of section 35(2AB) of the Act from 20.11.2012 to 31.3.2015, yet it did not assign any reason for curtailing the period from 1.4.2012 to 19.11.2012 for which the assessee filed a letter on 29.6.2013 and thereafter on 29.11.2013 to DSIR. However, no reply was received from DSIR. It was the plea of the assessee that once the R&D facility is approved by DSIR, the expenditure incurred thereon would be allowable as weighted deduction to the assessee u/s 35(2AB) of the Act. The total expenditure incurred on R&D facility by the assessee is as under:-

*Towards capital expenditure – Rs 51,79,065/-*

*Towards revenue expenditure - Rs 2,49,15,390/-*

5. In the return of income, the assessee claimed deduction u/s 35(2AB) of the Act for Rs 3,52,73,520/- [Revenue expenditure of Rs 2,49,15,390/- and capital expenditure of Rs 1,03,58,130/- (51,79,065\*2) ] . The Id. AO restricted the deduction to Rs 1,53,80,000/- on the ground that DSIR had approved weighted deduction u/s 35(2AB) of the Act to the extent of Rs 96.08 lacs on account of revenue expenditure and Rs 57.72 lacs (Rs 28.86 lacs \*2) on account of capital expenditure. Accordingly, a sum of Rs 1,53,07,390/- on revenue account and Rs 45,86,130/- on capital account aggregating to Rs 1,98,93,520/- was disallowed by the Id. AO in the re-assessment. This action of the Id. AO was upheld by the Id. CIT(A).

6. The assessee submitted that the total expenditure actually incurred on R&D during the year under consideration on capital account was Rs 51,79,065/- and on revenue account was Rs 2,53,04,872/-. Whereas, the expenditure incurred on capital account was fully claimed u/s 35(2AB) of the act, the expenditure incurred on revenue account was claimed only to the extent of Rs 2,49,15,390/- as certified by the statutory auditors. It is not in dispute that the assessee had furnished the total expenditure incurred during the period 1.4.2012 to 31.3.2013 and copy of statutory auditor's certificate (M/s S R Batliboi & Associates LLP) dated 15.10.2013 for claiming deduction u/s 35(2AB) of the Act.

7. It was submitted that there is absolutely no dispute that the aforesaid expenditure did not include any expenditure which was not allowable as per the guidelines for approval issued by the DSIR. It was submitted that once a R&D facility is approved by DSIR, then the expenditure incurred thereon would be eligible for weighted deduction u/s 35(2AB) of the Act for the whole year irrespective of the fact that the approval was granted only from the period commencing from 20.11.2012 onwards. The assessee placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Sandan Vikas (India) Ltd reported in 335 ITR 117 (Del) in support of its

contentions before the Id AO. The Id. AO in the original assessment proceedings u/s 143(3) of the Act dated 17.3.2016 had duly appreciated this contention and the decision of Hon'ble Jurisdictional High Court and granted deduction u/s 35(2AB) of the Act as claimed in the return. This was sought to be disturbed in the impugned re-assessment proceedings by the Id. AO by restricting the claim of deduction only for expenditures incurred from 2011.2012 to 31.3.2013. We find that the issue in dispute is already squarely addressed by the Hon'ble Jurisdictional High Court in the case of CIT vs Sandan Vikas (India) Ltd reported in 335 ITR 117 (Del) wherein it was held as under:-

*1. The assessee claims that it is engaged in the business of manufacturing of automotive air conditioning and is also undertaking research and development activity in this behalf. In the assessment year, i.e., assessment year 2005-2006, the assessee claimed a deduction of Rs. 3,83,62,003/- under Section 35 (2AB) of the Income Tax Act (hereinafter referred to as "the Act"). The business expenses incurred are naturally allowed as deductions, however, the aforesaid provisions gives weighted deduction to the assessee, who are engaged into research and development activity. The objective is to encourage research and development by the business enterprises in India.*

*2. The provision further states that in order to claim this weighted deduction, it is to be certified by the Competent Authority that the assessee had undertaken research and development activity. The competent authority in this behalf is Department of Scientific & Industrial Research (DSIR). The assessee had approached DSIR vide application dated 10th January, 2005. The DSIR vide its letter dated 23rd February, 2006 granted recognition of the in-house R&D facilities of the assessee company and also granted approval for the expenses incurred by the company on in-house R&D facility in prescribed form 3CM by letter dated 18th September, 2006. The Assessing Officer, however, refused to accord the benefit of the aforesaid provisions of weighted deduction to the assessee on the ground that recognition and approval was given by the DSIR in February/September 2006, i.e., in the next assessment year and, therefore, the assessee was not entitled to the benefit. The CIT(Appeal) accepted this view of the Assessing Officer and dismissed the appeal, however, the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") has come to the conclusion that the assessee would be entitled to weighted deductions of the aforesaid expenditure incurred by the assessee in terms of the Section 35(2AB) of the Act and in coming to this conclusion, the Tribunal has relied upon the judgment of Gujarat High Court in CIT v. Claris Lifesciences Ltd. [\[2010\] 326 ITR 251/\[2008\] 174 Taxman 113](#). We have gone through the aforesaid judgment of the Gujarat High Court and find that Gujarat High Court detailed in no-uncertain terms that the cut-off date mentioned in the certificate issued by the DSIR would be of no relevance. What is to be seen is that the assessee was indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by DSIR is issued, that would be sufficient*

to hold that the assessee fulfills the conditions laid down in the aforesaid provisions. The discussions, which is undertaken by the Gujarat High Court while interpreting the aforesaid provisions, is extracted below:

"7. ....The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the research and development facility, expenditure so incurred is eligible for weighted deduction.

8. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of:

(i) development of facility;

(ii) incurring of expenditure by the assessee for development of such facility;

(iii) approval of the facility by the prescribed authority, which is DSIR; and

(iv) allowance of weighted deduction on the expenditure so incurred by the assessee.

9. The provisions nowhere suggest or imply that research and development facility is to be approved from a particular date and, in other words, it is nowhere suggested that date of approval only will be cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly manifests that the assessee has to develop facility, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on plain reading of section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered Rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of Rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of R&D facility has to be allowed for weighted deduction as provided by Section 35(2AB). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up research and development facility in India, the legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, intention of the legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.

10. We are in full agreement with the reasoning given by the Tribunal and we are of the view that there is no scope for any other interpretation and since the approval is granted during the previous year relevant to the assessment year in question, we are of the view that the assessee is entitled to claim weighted deduction in respect of the entire expenditure incurred under Section 35(2AB) of the Act by the assessee."

3. We are in full agreement with the aforesaid approach of the Gujarat High Court. No substantial question of law, therefore, arises. The appeal is dismissed.

8. Further we find that similar views were taken in the following decisions:-

*a) Hon'ble Jurisdictional High Court in the case of Maruti Suzuki India Ltd vs Union of India reported in 397 ITR 728 (Del)*

*b) Hon'ble Gujarat High Court in the case of Banco Products (India) Ltd vs DCIT reported in 405 ITR 318 (Guj)*

9. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that the assessee would be entitled for deduction u/s 35(2AB) of the Act for the expenditure incurred from 1.4.2012 to 31.3.2013. Accordingly, the grounds raised by the assessee on merits are allowed.

10. Since relief is granted to the assessee on merits, the other grounds raised by the assessee challenging the validity of reassessment u/s 147 of the Act need not be gone into and they are left open.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 23/10/2023.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Delhi; Dated 23/10/2023

A K Keot

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Delhi