

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 3494/Mum/2023 (A.Y. 2018-19)

Viswaat Chemicals Limited,

909/910 Eco Star,
Vishweshwar Nagar,
Behind Udipi Vihae
Hotel, Mumbai-400 063

PAN: AAACV4184B

..... Appellant

Vs.

DCIT Cen. Cir. 6(3),

102, 1st floor, Earnest
House, NCPA Marg,
Nariman Point
Mumbai- 400021

..... Respondent

Appellant by : Shri Ronak Doshi, Ld. AR
Respondent by : Ms. Rajeshwari Menon, Ld. DR

Date of hearing : 22/02/2024
Date of pronouncement : 15/03/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. CIT(A)-54, Mumbai dated 03.08.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short

'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

1. GROUND I:

On facts and circumstances of the case and in the law, the Id. CIT(A) has erred in upholding disallowance u/s. 35(2AB) of the Act to the extent of Rs. 14,53,256/- made by the Id. AO on the basis of Form 3CL received from the DSIR authority. The appellant prays that it shall be eligible for full weighted deduction u/s 35(2AB) of the Act as it is incurred for the purpose of scientific research. The appellant prays that the said disallowance is not correct and may please be deleted.

II. WITHOUT PREJUDICE TO GROUND I, GROUND NO. II:

On facts and circumstances of the case and in the law, the Ld. CIT(A) has erred in upholding disallowance u/s. 35(2AB) of the Act to the extent of Rs. 14,53,256/- made by the Ld. AO on the basis of Form 3CL received from the DSIR authority. The appellant prays that it shall be eligible for full weighted deduction u/s. 35(2AB) of the Act as it is incurred for the purpose of scientific research related to the business of the Appellant. The appellant prays that the said disallowance is not correct and may please be deleted.

III. GROUND NO. III:

On facts and the circumstances of the case and in law, the Id. CIT(A) has erred in confirming an addition of the duty drawback income of Rs. 2,15,783/- made by the Id. AO without considering that such income has not accrued to the appellant during the previous year. The appellant prays that the said addition is not correct and may please be deleted.

IV. GROUND NO. IV:

On facts and circumstances of the case and in the law, the Ld. A.O. has erred in calculating the interest u/s 234B of the Act. The appellant prays that the addition of such interest may please be deleted.

V. GROUND NO. V:

The appellant craves leave to add, omit or alter grounds of appeal before or during the hearing of the appeal.

Additional Grounds;

WITHOUT PREJUDICE TO GROUND NO. I

Ground II: Reduction of claim u/s 35(2AB) allowable u/s 35(1)(i)/ 37 of the Act

1. On the facts & in the circumstances of the case and in law, the CIT(A) erred in not allowing the revenue expenditure of Rs. 14,53,256/- which is otherwise eligible for deduction u/s 35(1)(i)/ u/s 37 of the Act.

2. The Appellant humbly prays that the AO be directed to allow the aforesaid revenue expenditure u/s. 35(1) (i) / u/s. 37 of the Act.

2. The brief facts of the case are that the assessee is a company that filed its return of income on 09-10-2018, declaring a total income of Rs. 6,45,38,970/-. The Case of the assessee was selected for limited scrutiny on the issue of Duty Drawbacks and Deduction on account of donation for scientific research. During the assessment proceedings, AO disallowed a deduction of Rs. 14,53,256/- claimed u/s. 35(2AB) of the Act and added back an amount of Rs. 2,15,783/- u/s. 28 of the Act on account of duty drawback income short declared by the assessee.

3. The Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT(A), who in turn confirmed the order of AO. The Assessee is further aggrieved with this order of Ld. CIT (A) passed u/s. 250 of the Act, preferred this present appeal before us. We have gone through the order of AO, Order of the Ld. CIT (A) and submissions of the assessee along with grounds raised.

4. Ground nos. 1, 2 and along with modified ground taken vide letter dated: 2nd Feb., 2024 pertains to disallowance made u/s. 35(2AB) of the Act. It is observed that the assessee claimed a total expenditure of Rs. 2, 61, 02,256/- u/s. 35(2AB) of the Act, based on the certificate issued by the Chartered Accountant in Form No. 3CLA, whereas the designated authority under the Act, i.e. DSIR found eligible deduction u/s. 35(2AB) of the Act amounting to Rs. 2, 46, 49,000/- as per

Form No. 3CL issued by them. The question that arises for our consideration is whether the assessee can claim a higher amount of deduction as compared to what is allowed by the designated authority and the second question arises in case the same is not eligible for weighted deduction, can the same be allowed u/s. 35(1)(i) or 37 of the Act?

5. To examine the first issue, we need to examine relevant sections and rules thereunder:

“Section - 35, Income-tax Act, 1961 - FA, 2023

[Expenditure on scientific research.

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

(i)	<i>any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.</i>
	<i>[Explanation.—Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April 1973) on payment of any salary [as defined in Explanation 2 below sub-section (5) of section 40A] to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced ;]</i>
(ii)	<i>[an amount equal to [one and [one half]] times of any sum paid] to a [research association] which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research :</i>
	<i>[Provided that such association, university, college or other institution for the purposes of this clause—</i>
	(A) <i>is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and</i>
	(B) <i>such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government :]</i>
	<i>[Provided further that where any sum is paid to such association, university, college or other institution in a previous year relevant to the assessment year beginning on or after the 1st day of April 2021, the deduction under this clause shall be equal to the sum</i>

	<i>so paid;]</i>
[(<i>ii</i>)]	<i>[***] any sum paid to a company to be used by it for scientific research:</i>
	Provided that such company—
	(A) <i>is registered in India,</i>
	(B) <i>has as its main object the scientific research and development,</i>
	(C) <i>is, for the purposes of this clause, for the time being, approved by the prescribed authority in the prescribed manner, and</i>
	(D) <i>fulfils such other conditions as may be prescribed;]</i>
[(<i>iii</i>)]	<i>[***] [any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university]], college or other institution to be used for research in social science or statistical research:</i>
	[Provided that <i>[such association, university], college or other institution for the purposes of this clause—</i>
	(A) <i>is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and</i>
	(B) <i>[such association, university], college or other institution is specified as such, by notification in the Official Gazette, by the Central Government.]</i>
	<i>[Explanation.—The deduction, to which the assessee is entitled in respect of any sum paid to a [research association], university, college or other institution [to which clause (ii) or clause (iii) or to a company to which clause (iia)] applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in [clause (ii) or clause (iii) or to a company referred to in clause (iia)] has been withdrawn;]</i>
(<i>iv</i>)	<i>in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2):</i>

Provided that the [research association], university, college or other institution referred to in clause (ii) or clause (iii) shall make an application in the prescribed form and manner to the [Central Government] for the purpose of grant of approval, or continuance thereof, under clause (ii) or, as the case may be, clause (iii) :

Provided further that the [Central Government] may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the [research association], university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the [research association], university, college or other institution and that [Government] may also make such inquiries as it may deem necessary in this behalf :

Provided also that any [notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years] (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:]

[Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President[†], every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government:]

[Provided also that every notification under clause (ii) or clause (iii) in respect of the research association, university, college or other institution or under clause (iia) in respect of the company issued on or before the date on which this proviso has come into force, shall be deemed to have been withdrawn unless such research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) makes an intimation in such form and manner, as may be prescribed, to the prescribed income-tax authority within three months from the date on which this proviso has come into force, and subject to such intimation the notification shall be valid for a period of five consecutive assessment years beginning with the assessment year commencing on or after the 1st day of April 2022:

Provided also that any notification issued by the Central Government under clause (ii) or clause (iia) or clause (iii), after the date on which the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding five assessment years as may be specified in the notification.]

[(1A) Notwithstanding anything contained in sub-section (1), [the deduction in respect of any sum paid to the research association, university, college or other institution referred to in clause (ii) or clause (iii), or the company referred to in clause (iia) of sub-section (1), shall not be allowed], unless such research association, university, college or other institution or company—

(i)	prepares such statement for such period as may be prescribed and deliver or cause to be delivered to the said prescribed income-tax authority or the person authorised by such authority such statement in such form, verified in such manner, setting forth such particulars and within such time, as may be prescribed:
	Provided that such research association, university, college or other institution or the company may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed;
(ii)	furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of sum, as may be prescribed.]

(2) For the purposes of clause (iv) of sub-section (1), —

[(i)	in a case where such capital expenditure is incurred before the 1st day of April, 1967, one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous years;
(ia)	in a case where such capital expenditure is incurred after the 31st day of March 1967,

	<i>the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year :]</i>
	<i>[Provided that no deduction shall be admissible under this clause in respect of any expenditure incurred on the acquisition of any land, whether the land is acquired as such or as part of any property, after the 29th day of February 1984.]</i>
	<i>[Explanation 1]. —Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced.</i>
	<i>[Explanation 2. —For the purposes of this clause, —</i>
	(a) <i>"land" includes any interest in land; and</i>
	(b) <i>the acquisition of any land shall be deemed to have been made by the assessee on the date on which the instrument of transfer of such land to him has been registered under the Registration Act, 1908 (16 of 1908), or where he has taken or retained the possession of such land or any part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), the date on which he has so taken or retained possession of such land or part ;]</i>
(ii)	<i>notwithstanding anything contained in clause (i), where an asset representing an expenditure of a capital nature [incurred before the 1st day of April 1967,] ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deductions already allowed under clause (i) falls short of the said expenditure, then—</i>
	(a) <i>there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and</i>
	(b) <i>no deduction shall be allowed under that clause for that previous year or for any subsequent previous year;</i>
(iii)	<i>if the asset mentioned in clause (ii) is sold, without having been used for other purposes, in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place ;</i>
(iv)	<i>where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed under [clause (ii) of sub-section (1)] of section 32 for the same [or any other] previous year in respect of that asset;</i>
(v)	<i>where the asset [mentioned in clause (ii)] is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under [clause (ii) of sub-section (1)] of section 32.</i>

[(2A) Where[, before the 1st day of March 1984,] the assessee pays any sum [(being any sum paid with a specific direction that the sum shall not be used for the acquisition of any land or building or construction of any building)] to a scientific research association or university or college or other institution referred to in clause (ii) of sub-section (1) [or to a public sector company] to be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority having regard to the social, economic and industrial needs of India, then,—

(a)	<i>there shall be allowed a deduction of a sum equal to one and one-third times the sum so paid; and</i>
(b)	<i>no deduction in respect of such sum shall be allowed under clause (ii) of sub-section (1) for the same or any other assessment year.]</i>

*[Explanation. —For the purposes of this sub-section, "public sector company" shall have the same meaning as in clause (b) of the Explanation below sub-section (2B) of **section 32A.**]*

[(2AA) Where the assessee pays any sum to a National Laboratory [or a [University or an Indian Institute of Technology or a specified person] with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority, then—

(a)	<i>there shall be allowed a deduction of a sum equal to [one and one-half] times the sum so paid; and</i>
(b)	<i>no deduction in respect of such sum shall be allowed under any other provision of this Act:</i>

*[**Provided** that the prescribed authority shall, before granting approval, satisfy itself about the feasibility of carrying out the scientific research and shall submit its report to the [Principal Chief Commissioner or Chief Commissioner or] [Principal Director General or] Director General in such form as may be prescribed:]*

*[**Provided further** that where any sum is paid to such National Laboratory or university or Indian Institute of Technology or specified person in a previous year relevant to the assessment year beginning on or after the 1st day of April 2021, the deduction under this sub-section shall be equal to the sum so paid.]*

[Explanation 1. —The deduction, to which the assessee is entitled in respect of any sum paid to a National Laboratory, University, Indian Institute of Technology or a specified person for the approved programme referred to in this sub-section, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to,—

(a)	<i>such Laboratory, or specified person has been withdrawn; or</i>
(b)	<i>the programme, undertaken by the National Laboratory, University, Indian Institute of Technology or specified person, has been withdrawn.]</i>

[Explanation [2]. —For the purposes of this section, —

(a)	<i>"National Laboratory" means a scientific laboratory functioning at the national level under the aegis of the Indian Council of Agricultural Research, the Indian Council of Medical Research, the Council of Scientific and Industrial Research, the Defence Research and Development Organisation, the Department of Electronics, the</i>
-----	---

	<i>Department of Bio-Technology or the Department of Atomic Energy and which is approved as a National Laboratory by the prescribed authority in such manner as may be prescribed ;</i>
(b)	<i>"University" shall have the same meaning as in Explanation to clause (ix) of section 47;</i>
(c)	<i>"Indian Institute of Technology" shall have the same meaning as that of "Institute" in clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961)];</i>
((d)	<i>"Specified person" means such person as is approved by the prescribed authority.]</i>

[(2AB)(1) Where a company engaged in the business of [biotechnology 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:

[Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April 2021, the deduction under this clause shall be equal to 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 a 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 to deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and [fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed].

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

*(5)[***]*

[(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (ia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March 2008.]

[(2B)(a) Where [, before the 1st day of March 1984,] an assessee has incurred any expenditure (not being in the nature of capital expenditure incurred on the acquisition of any land or building or construction of any building) on scientific research undertaken under a programme approved in this behalf by the prescribed authority having regard to the social, economic and industrial needs of India, he shall, subject to the provisions of this sub-section, be allowed a deduction of a sum equal to one and one-fourth times the amount of the expenditure certified by the prescribed authority to have been so incurred during the previous year.

(b) Where a deduction has been allowed under clause (a) for any previous year in respect of any expenditure, no deduction in respect of such expenditure shall be allowed under clause (i) of sub-section (1) or clause (ia) of sub-section (2) for the same or any other previous year.

(c) Where a deduction is allowed for any previous year under this sub-section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed in respect of that asset under [clause (ii) of sub-section (1)] of section 32 for the same or any subsequent previous year.

(d) Any deduction made under this sub-section in respect of any expenditure on scientific research in excess of the expenditure actually incurred shall be deemed to have been wrongly made for the purposes of this Act if the assessee fails to furnish within one year of the period allowed by the prescribed authority for completion of the programme, a certificate of its completion obtained from that authority, and the provisions of sub-section (5B) of section 155 shall apply accordingly.]

[(3) If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question to—

<i>(a)</i>	<i>the Central Government, when such question relates to any activity under clauses (ii) and (iii) of sub-section (1), and its decision shall be final;</i>
<i>(b)</i>	<i>the prescribed authority, when such question relates to any activity other than the activity specified in clause (a), whose decision shall be final.]</i>

*(4) The provisions of sub-section (2) of **section 32** shall apply in relation to deductions allowable under clause (iv) of sub-section (1) as they apply in relation to deductions allowable in respect of depreciation.*

[(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing an expenditure of a capital nature on scientific research, —

<i>(i)</i>	<i>the amalgamating company shall not be allowed the deduction under clause (ii) or clause (iii) of sub-section (2); and</i>
<i>(ii)</i>	<i>the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the asset.]]</i>

6. Nature of expenditure, eligibility of assessee and its genuineness is not under question. DSIR was not empowered to give any approval for expenditure incurred on in-house scientific research before 1-4-2016 when Form No. 3CL issued by DSIR was only to certify that the assessee was approved to carry out in-house research and development and that only after the amendment made in the

rule *i.e.* rule-6 of the Income-tax Rules, 1962 and in Form No. 3CL that the requirement of certifying the amount of expenditure incurred by the assessee on in-house research development, was also required to be mentioned in Form No. 3CL by DSIR; that the assessee's case pertains to the period post 1-4-2016, and therefore quantum approved by DSIR of expenditure incurred by the assessee on in-house research and development as mentioned in Form No. 3CL is of relevance, and Form No. 3CL was to be read-only to the extent of DSIR approving the fact that the assessee had facility for carrying on in-house research and development.

7. Given the above discussion, we don't find any perversity in the order of lower authorities including AO and Ld. CIT(A), but the additional ground raised by the assessee about allowing the same u/s. 37 of the Act is concerned same can certainly be examined in the light of section 37 of the Act. Given this, we sustain the order of Ld. CIT(A) partly concerns weighted deduction to be allowed u/s. 35(2AB) of the Act, but restore the matter to the file of AO for a fresh examination of the claim of the assessee w.r.t. section 37 of the Act after giving a reasonable opportunity of being heard to the assessee. Assessee is directed to produce all relevant documents and explanations to succeed in claim u/s. 37 of the Act. **In the result, original grounds no. 1 and 2 raised by the assessee are dismissed and revised grounds no. 1 and 2 are allowed for statistical purposes.**

8. Next ground no. 3 pertains to the taxability of duty drawback as disclosed by the assessee vis-à-vis value taken by the AO based on ITS data received by him. It is observed assessee has shown income from duty drawback amounting to Rs. 31,93,326/- duly approved by the customs authorities and actually received. Being

a company, the assessee is duty-bound to follow the mercantile system of accounting, but as submitted by the assessee this particular income is being declared on an actual receipt basis and the amount involved is also not so material, which can create any suspicious on the practice of the assessee, we don't see any strength in the order of authorities below. Especially when AO was relying on a departmental ITS database, but no breakup of the amount or justification was shared with the assessee. Whereas the assessee is regularly following a method for this head of income and not under challenge, the same can't be doubted upon or called to change the same. **In the result, ground no. 3 raised by the assessee is allowed.**

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 15th of March 2024.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 15/03/2024

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai