

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE : [HYBRID HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GD PADMAHSHALI, , ACCOUNTANT MEMBER

I.T.A.No.247/PUN./2024 [E-APPEAL]
Assessment Year 2017-2018

Mahle Anand Thermal Systems Private Limited, 29-Milestone, Pune-Nashik Highway Chakan, PIN - 410 501. Maharashtra. PAN AABCB2186L	vs.	The ACIT, Circle-9, Pratyakshakar Bhavan, Dr. Ambedkar Marg, Near Akurdi Railway Station, Pune – 411 044. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Viksit Bhargava
For Revenue :	Shri Keyur Patel, CIT-DR

Date of Hearing :	27.05.2024
Date of Pronouncement :	28.05.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment years 2017-2018, arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1058843681(1), dated 18.12.2023, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case files perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

On the facts & circumstances of the case and in law,

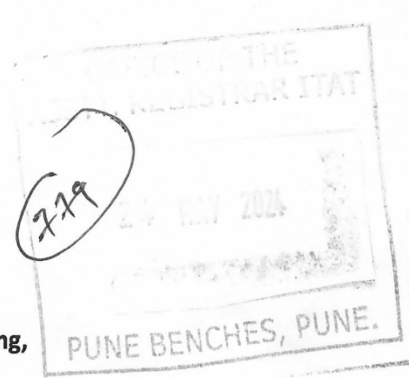
1. The learned CIT(A) erred in confirming disallowance of claim for weighted deduction amounting to Rs. 23,89,05,598/- in respect of expenditure incurred by the appellant in the relevant previous year on scientific research undertaken by the appellant in its duly recognised in house research and development (R & D) facility u/s 35(2AB) of the Income Tax Act, 1961 (the Act).
2. The learned CIT(A) failed to appreciate that the said claim of the appellant u/s 35 (2AB) was made after duly complying with and in conformity with the relevant provisions of the Act including the submission of requisite information regarding the R & D expenditure in the prescribed forms and non receipt of the report from Department of Scientific and Industrial Research (DSIR) quantifying in Form 3 CL the said expenditure as per Rule 6 was a technicality beyond the control of the appellant and clearly was not fatal to the entitlement of the said claim.
3. Learned CIT A failed to appreciate that rejection of appellant's claim solely on the basis of non receipt of DSIR report especially when the appellant was held to be eligible to claim deduction of expenditure on in house approved R & D for the period anterior to the year in question did not serve the purpose of meeting ends of substantial justice. The AO erred in drawing an adverse and unwarranted inference that a notified rule takes precedence over the provisions of Law.
4. The CIT(A) erred in passing the order in haste without providing an opportunity of being heard i.e. opportunity to make submissions by appearing in virtual mode through video conferencing) and without appreciating that the facts in the impugned year in question were not similar to that of the AY 2011-12.
5. The learned CIT(A) after having confirmed denial of weighted deduction claimed u/s 35 (2AB) in respect of the salary of employees being revenue expenditure incurred on approved in house scientific research erred in not allowing deduction thereof under the provisions of Section 35 (1) (iv) or under Section 37 of the Act.
6. The learned CITA after having confirmed the denial of weighted deduction claimed u/s 35 (2AB) in respect of expenditure of capital nature on approved in house R & D viz. cost of tangible assets erred in not allowing deduction at one hundred percent under the provisions of Section 35(1) (iv) or depreciation thereon under Section 32 of the Act.
7. The appellant craves leave to add to, alter, amend or withdraw the grounds of Appeal.

3. It emerges during the course of hearing that the assessee has filed its adjournment request reading as under :

(9)

May 23, 2024

The Honourable Members
Income Tax Appellate Tribunal, Bench A
Stavley Road, Maharashtra Jeevan Pradhikaran Building,
Pune -411001.



May it Please Your Honours

In the Matter of Mahle Behr India Pvt. Ltd PAN AABC2186L
(‘the assessee’ or ‘the appellant’)
Income Tax Appeal No. 247/PUN/2024 AY 2017-18 Assessee’s Appeal

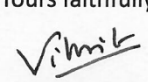
A
24/5/24
SC
24/5/24

The aforesaid appeal of the Assessee is fixed for hearing on May 27, 2024. The appeal involves the issue of denial of weighted deduction claimed by the appellant u/s 35 (2 AB) of the Act for non receipt of the report of DSIR in Form 3 CL only for the impugned A.Y. 2017-18.

It is submitted that the Revenue has also filed appeal arising from the order of CIT(A) vide appeal no. ITA 228/Pun/2024. The said revenue appeal is fixed for hearing on June 26, 2024.

It is further submitted that the appellant company after continuous follow up recently received letter dated March 18, 2024 from the DSIR informing it that the application for the report in Form 3CL under section 35(2AB) could not be entertained as the application was filed belatedly by the appellant. Aggrieved by the DSIR communication the appellant has decided to agitate the issue before the Bombay High Court invoking its writ jurisdiction. It is submitted that the outcome of the writ has a direct bearing on the assessee’s appeal and therefore it is prayed that the appeal be adjourned.

It is therefore also prayed that the extant hearing be adjourned to a date convenient to Your Honours. And for this act of kindness we remain.

Thanking you,
 Yours faithfully,

 Viksit Bhargava
 CA and AR

4. Suffice to say, there could be hardly any dispute that the assessee’s sole substantive grievance herein seeks to claim it’s sec.35(2AB) weighted deduction claim rejected in

both the learned lower authorities respective order(s). The assessee is fair enough indeed in its foregoing adjournment averments that the prescribed authority i.e., Department of Scientific and Industrial Research (“DSIR”) has already rejected its application “Form-3CL” on March 18, 2024. Faced with this situation, we are of the considered view in light of Rule 6(7A)(b)(ii) that quantification of the impugned expenditure by the above prescribed authority, for the purpose of claiming sec.35(2AB) relief, indeed forms a mandatory condition from 01.07.2016 onwards relevant to assessment year 2017-2018 before us. We thus see no merit in the assessee’s foregoing adjournment request at this stage in very terms subject to all just exceptions.

5. Learned counsel at this stage fairly informed us that the assessee has filed its sec.154 rectification before the lower appellate authority regarding alternative claim of deduction u/sec.35(1)(iv) r.w.s.37 of the Act. He sought to buttress the point that the learned NFAC has nowhere adjudicated the same. Without commenting anything on merits, we conclude in this factual backdrop that it shall be very much open to the assessee to pursue its above stated sec.154 rectification, if any, as per law in very terms. Ordered accordingly.

6. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open Court on 28.05.2024.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A) concerned.
4.	The Pr. CIT, Pune concerned.
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.