

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA Nos. 387 & 582/Ahd/2022
Assessment Years 2013-14 & 2017-18**

Pharmanza Herbal Pvt. Ltd. Tarapur Road, Near Dharmaj Chowkdi Dharmaj, Petlad, Anand (Gujarat) PAN: AADCP3692H (Appellant)	Vs	The Dy. CIT, Circle-1(1)(1), Vadodara (Respondent)
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**Assessee by: Shri Biren Shah, A.R.
Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.**

Date of hearing : 27-05-2024
Date of pronouncement : 04-06-2024

आदेश/ORDER

PER : NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:-

These two appeals are filed by the assessee against the order of National Faceless Appeal Centre (in short 'the CIT(A)') dated 28-09-2022 and 31-10-2022 for the assessment years 2013-14 & 2017-18 respectively. The common issued involved in the two appeals is disallowance u/s. 35(2AB) of the Income Tax Act (hereinafter

referred as 'the Act'). Both the appeals were heard together and are being disposed of vide this common order for the sake of convenience.

ITA No. 382/Ahd/2020 A.Y. 2013-14

2. The brief facts involved in this appeal is that the return of income was filed on 28-11-2013 declaring total income of Rs. 3,68,57,870/-. The assessment was completed u/s. 143(3) on 29-01-2016 at total income of Rs. 3,86,47,050/-. As various additions were made during the course of assessment, the assessee had preferred appeal before the first appellate authority which has been decided by the Id. CIT(A) vide the impugned order dated 28/09/2022. Aggrieved with the order of the Id. CIT(A), the assessee is in appeal before us.

3. The assessee has taken followings grounds in this appeal:-

"1. In law and in the facts and circumstances of the appellant's case, the Ld CIT (A) has erred in confirming the disallowance u/s 35 (2AB) to the extent of Rs. 7,19,878/-

2. In law and in the facts and circumstances of the Appellant's case the Ld CIT ought to have appreciated that the total R&D expenditure incurred by the appellant was of Rs 36,70,578/- and accordingly the deduction available to the appellant u/s 35 (2AB) was of Rs. 73,41,156/-. He has failed to appreciate that as held by the different decisions of ITAT Ahmedabad and decision of Gujarat High Court cited before him, once the R&D facility is approved by DSIR the entire expenditure incurred on such facility is eligible for deduction u/s 35 (2AB)

2.1 The Department has not disputed the incurring of expenditure as shown by the appellant on R&D facility and therefore, there is no question of restricting the amount eligible for deduction.

3. *The Hon'ble ITAT may please direct for allowing the entire deduction as claimed by the appellant.*
 4. *The appellant craves leave to add to amend or to raise any further grounds of appeal as case may arise."*
4. All the grounds taken by the assessee pertain to disallowance made u/s. 35(2AB) of the Act. The assessee had claimed deduction of Rs. 73,41,156/- u/s. 35(2AB) of the Act in the return of income which was @ 200% of the actual expenditure incurred on scientific research on in-house research and development facility as approved by the prescribed authority. The Assessing Officer found that the Department of Scientific and Industrial Research (DSIR) had approved the expenditure u/s. 35(2AB) as per Form No. 3CL to the extent of Rs. 29,51,000/- only and, therefore, the assessee was eligible for deduction of Rs.59,02,000/- (200% of the expenditure so approved). The excess deduction of Rs.14,39,156/- claimed u/s. 35(2AB) of the Act was disallowed by the Assessing Officer, which was upheld by the Id. CIT(A). The assessee had taken an alternate plea before the Id. CIT(A) that only difference between the revenue expenditure incurred by the appellant and that as approved by the DSIR for claiming weighed deduction, which Rs.7,19,878/- only, should be disallowed and not twice the amount as made by the Assessing Officer. This alternate plea of the assessee was accepted by the Id. CIT(A) and net disallowance was reduced to Rs. 7,19,878/- against which the assessee is in present appeal.
5. Shri Biren Shah, Id. Counsel of the assessee submitted that identical issue was involved in assessee's own case in the Assessment year 2014-15 and 2015-16 decided by the *ITAT in ITA No. 468 and 469/Ahd/2022 dated*

23-08-2023 and the relief was allowed to the assessee. The ld. Departmental Representative on the other hand supported the order of the lower authorities.

6. We have carefully considered the rival submissions. A copy of the ITAT order in assessee own case cited supra as relied upon by the assessee has been brought on record. It is found that this issue was also involved in assessment year 2014-15 and 2015-16 and the Co-ordinate Bench of this Tribunal had analyzed the provisions of section 35(2AB) of the Act as well and the corresponding Rules and Forms in great detail in that order. The relevant portion of the said order is reproduced below:-

“17. It is amply evident from the above that w.e.f. 1-4-2016, the requirement of law underwent a change to the effect that on entering into agreement with DSIR in Form no.3CK, the assessee was required to submit information of its expenditure incurred in-house research and development facility on land, building, capital and revenue expenditure every year to the prescribed authority in Annexure-2 of Form no. 3CK and prescribed authority was required to quantify the expenditure eligible for weighted deduction in Part-B of the Form No.3CL.

18. What derives from the above, therefore, is that consequent to amendment to section 35(2AB) by the Finance Act, 2015 w.e.f. 1 4.2016, requirement of law was that the prescribed authority had to quantify the quantum of eligible expenditure incurred on in-house research and development facility by the assessee. But prior to that there was no such requirement in law and the prescribed authority was the only required to grant approval to the in-house research & development activity.

19. The impugned assessment year before are Asst. Year 2014-15 & 2015-16. Since these assessments are prior to 1.4.2016, the amendment to section 35(2AB)) are not applicable to the same and in terms of un-amended provisions of section 35(2AB) of the Act, since we have held above that the prescribed authority was not required in law to quantify the amount of expenditure incurred on in-house research and development facility, such quantification, if any done by the prescribed authority in Form No 3CL was not required to be taken cognizance of by the Revenue authorities and the assessee is entitled to claim weighted deduction on all expenditure incurred by it, on in-house research & development

facility Therefore, we agree with the contentions of the Id counsel for the assessee, before us that in the impugned year involved before us, the Revenue has erred in restricting the claim of weighted deduction under section 35(2AB) of the Act to the extent approved by the prescribed authority i.e. DSIR

In view of the above, we direct the AO to allow full benefit of claim of weighted deduction to the assessee to the extent claimed in the P&L accounts and the disallowance made, therefore, in both the years amounting to Rs 23,45,490/- and Rs 27,31,502/- under section 35(2AB) is directed to be deleted.”

7. The provision of section 35(2AB) of the Act was amended w.e.f. 01.04.2016 whereby the quantum of eligible expenditure incurred on in-house research and development facility was required to be quantified by the prescribed authority i.e. DSIR. Prior to 01-04-2016, there was no such requirement for quantification of the eligible expenditure by the DSIR for claiming the deduction. Merely because DSIR had quantified such expenditure in the current year, which is prior to 01-04-2016, the same was not binding on the revenue authorities. Therefore, the Revenue was not correct in restricting the deduction u/s. 35(2AB) of the Act on the basis of the amount quantified by the DSIR in their approval. In view of this provision of the Act as well as the decision of the Co-ordinate Bench of this Tribunal in the earlier years cited supra, disallowance u/s. 35(2AB) of the Act as upheld by the Id. CIT(A) was not in accordance with the provisions of law. Therefore, the disallowance of Rs. 7,19,878/- u/s. 35(2AB) of the Act upheld in the order of the Id. CIT(A) is deleted. The assessee is eligible for deduction @ 200% of the actual expenditure incurred on scientific research on in-house research and development facility, u/s. 35(2AB) of the Act.

8. In the result, the appeal of the assessee is allowed.

ITA No. 582/Ahd/2020 A.Y. 2017-18

9. The assessee has taken the following grounds in this appeal;-

“1. The Ld CIT (A) while appreciating the fact that the R&D facility has been approved by DSIR erred in holding that the weighted deduction should be determined on the basis of quantum of expenditure approved in Form No 3CL and the balance expenditure was to be considered as per the provisions of the Income Tax Act.

2. The Ld CIT (A) further erred in holding that in respect of clinical trial/research expenditure, weighted deduction will not be allowed and it will be allowed only as revenue expenditure.

2.1 The Ld CIT (A) has failed appreciate that once the assessee has incurred expenditure on approved facility the entire expenditure is eligible for weighted deduction.

2.2 He has, further failed to appreciate that having regard to the decisions of Jurisdictional ITAT and High Court, the entire clinical expenditure was eligible for weighted deduction. Accordingly, he ought to have accepted the claim of the appellant.

2.3 Without prejudice to above, the Learned CIT (A) has also failed to appreciate that even the DSIR has also confirmed expenditure of Rs.5,53 lakhs on clinical trial expenditure in Form No 3CL.

3. The Ld. CIT (A) while appreciating the fact that the R&D facility has been approved and therefore, the appellant was entitled to weighted deduction, he has erred in not giving any directions to allow weighted deduction for the capital expenditure on such facility which is entitled to weighted deduction u/s 35 (2AB).

4. The appellant craves leave to add to amend or to raise any further grounds of appeal as case may arise.”

10. In the course of hearing, the Id. Authorized Representative submitted that the assessee does not want to press this appeal and sought permission to withdraw the appeal. A letter dated 27-05-2024 for withdrawal of the appeal has also been filed which is reproduced below:-

BEFORE THE HON'BLE MEMBERS OF 'A' BENCH,
INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD

ITA 582/AHD/2022 (Assessee's Appeal)

Pharmanza Herbal Private
Ltd., Anand

Vs.

The DCIT., Circle-
1(1)(1),

Vadodara

APPELLANT

RESPONDENT

ASSESSMENT YEAR –2017-18

Letter for withdrawal of above referred appeal

As the total addition made by assessing officer has been deleted by CIT(A), we would like to withdraw the appeal filed before the Hon'ble bench. Copy of effect giving order of CIT(A) is attached herewith as **annexure A**.

For, Pharmanza Herbal Private Ltd.,

PLACE: AHMEDABAD
DATE: 27.05.2024

sd/-

BIREN SHAH
[AUTHORISED PERSON]

11. As the assessee does not want to pursue the appeal, the same is dismissed as withdrawn.

12. In the result, the appeal of the assessee in ITA No. 387/Ahd/2022 is allowed and the appeal in ITA No. 582/Ahd/2022 is dismissed.

Order pronounced in the open court on 04-06-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad : Dated 04/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद