IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.1975/M/2024
Assessment Year: 2014-15

M/s. S. Kant Healthcare Ltd., 3-A, Shiv Sagar Estate, Dr. Annie Besant Road, Worli S.O Mumbai Mumbai – 400018 Maharashtra **PAN: AAECS5406P**	Vs.	DCIT-5(3)(1), 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 021 Maharashtra
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Vipin Goyal, A.R.
Revenue by : Shri Manish Ajudiya, Sr. A.R

Date of Hearing : 18 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2014-15 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1061445573(1) dated 24.02.2024, in proceedings under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.

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

> *"1.0 That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) [here-in-after referred to as Ld. CIT (Appeals)) was not justified and grossly erred in disallowing weighted deduction u/s 35(2AB) despite the amendment relating to Form 3CL requirement is w.e.f 01-07-2016.*
>
> *2.0 That on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was not justified and grossly erred in not treating subsidy received under FTP policy i.e. Focus Market Scheme (FMS) /Focus Product Scheme (FPS) as capital receipt not chargeable to tax as per the ratio laid down in by Hon'ble Apex Court.*
>
> *3.0 That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal."*

4. Suffice to say, the assessee's first and foremost substantive ground raised herein seeks to claim section 35(2AB) "weighted" deduction which has been disallowed by both the lower authorities to the tune of Rs.76,46,246/- on the ground that the prescribed authority i.e. Department of Scientific and Industrial Research "DSIR" had not approved

the quantification thereof to this extent. Learned departmental representative drew strong support from both the learned lower authorities' action in light of the corresponding statutory amendment in rule 6(7)(A)'s amendment in the Income Tax Rules w.e.f. 01.07.2016. His case accordingly is that the Assessing Officer had rightly disallowed the impugned sum in assessment order dated 26.12.2016 as upheld in the learned CIT(A)/NFAC's lower appellate discussion.

5. We have given our thoughtful consideration to the foregoing vehement rival stands. We note in this factual backdrop that case law ITA No.38/M/2020 M/s. Laxmi Organic Industries Ltd. vs. DCIT decided on 05.10.2021 has already rejected the Revenue's vehement contentions invoking rule 6(7A) for assessment years before 01.07.2016 as under:

> *"6.1 The assessee had recognition for in-house R & D units from Department of Scientific & Industrial Research (DSIR) and accordingly, it claimed deduction u/s 35(2AB) for Rs.150.19 Lacs in the computation of income on account of scientific research & development. The deduction was claimed for revenue expenditure as well as capital expenditure. The expenditure debited to Profit & Loss Account was Rs.92.34 Lacs whereas capital expenditure was Rs.57.85 Lacs (excluding the cost of land*

& building). The claim was duly certified by the Tax Auditor. However, going by the approval letter dated 08/07/2013 in Form No.3CL, the assessee submitted that enhanced deduction u/s 35(2AB) was to be restricted to the extent of Rs.115.48 Lacs. Accordingly, the differential of Rs.34.70 Lacs was added back to assessee's income.

6.2 During appellate proceedings, the assessee submitted that as against aggregate expenditure of Rs.150.19 Lacs as claimed by the assessee u/s 35(2AB), the approval in Form 3CL was given for Rs.115.48 Lacs. Thus, the allowable deduction @200% would be Rs.230.96 Lacs. As against the same, the assessee claimed only Rs.242.53 Lacs (Rs.150.19 Lacs in Computation of Income + Rs.92.34 Lacs debited in Profit & Loss Account) and Ld. AO allowed deduction of 207.82 Lacs only since Rs.34.71 Lacs were disallowed. Thus, there was short deduction to the extent of Rs.23.14 Lacs. Concurring with the same, Ld. CIT(A) directed Ld. AO to verify the claim and allow the deduction, if found correct.

6.3 Before us, it is the argument of Ld. AR that the amount mentioned in Form 3CL would have no relevance prior to amendment in the Rule 6(7A)(b) w.e.f. 01/07/2016 and the deduction has to be allowed as claimed by the assessee and certified by the Auditors. For the same, Ld. AR referred to the cited decision of Pune Tribunal. The Ld. DR, on the other hand, submitted that deduction would be

available only in accordance with Form 3CL issued by the prescribed authority.

6.4 After going through the cited decision of Pune Tribunal, we concur with the submissions of Ld. AR that deduction has to be allowed as claimed by the assessee and certified by the Auditors since the amendment was brought in the Rule 6(7A)(b) w.e.f. 01/07/2016 only. Prior to the amendment, the prescribed authority was to submit its report in relation to the approval of in-house research & development facility in form No.3CL to the DG (IT exemptions) within 60 days of its granting approval. It was only with effect from 01/07/2016, the prescribed authority was required to quantify the expenditure incurred by the assessee on in-house research & development facility. The relevant findings of Pune Tribunal in Cummins India Ltd. V/s DCIT (ITA No.309/Pun/2014 dated 15/05/2018) were as under: -

> *45. The issue which is raised in the present appeal is that whether where the facility has been recognized and necessary certification is issued by the prescribed authority, the assessee can avail the deduction in respect of expenditure incurred on in-house R&D facility, for which the adjudicating authority is the Assessing Officer and whether the prescribed authority is to approve expenditure in form No.3CL from year to year. Looking into the provisions of rules, it stipulates the filing of audit report before*

the prescribed authority by the persons availing the deduction under section 35(2AB) of the Act but the provisions of the Act do not prescribe any methodology of approval to be granted by the prescribed authority vis-à-vis expenditure from year to year. The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below.

Similar is the decision of Mumbai Tribunal in ACIT V/s M/s. Crompton Greaves Ltd. (111 Taxmann.com 338; 27/09/2019) and various other decisions as placed on record.

We find that fact as well as issue is pari-materia the same. In the absence of any contrary decision on record, respectfully following the above decisions, we would hold

that the assessee would be entitled for deduction u/s 35(2AB) on actual expenditure incurred by it. The aggregate amount of expenditure stated be to be incurred by the assessee is Rs.150.19 Lacs and the assessee is eligible to claim deduction @200%. The Ld. AO is directed to quantify the exact claim and allow the deduction of the same. This ground stand allowed."

6. We adopt the above extracted detailed discussion mutatis mutandis to accept the assessee's instant former substantive ground claiming section 35(2AB) weighted deduction in very terms.

7. Next comes the latter issue of assessee's subsidy relief claimed for the first time in the lower appellate proceedings which stands rejected in the CIT(A)'s order as under:

"4(c) I have gone through the above submissions and I have also considered the facts and circumstances of the case. The assessee's additional grounds are hereby admitted in view of Apex Court judgements in the case of Jute corporation of India Ltd. Vs. CIT (187 ITR 688) and NTPC Ltd. Vs CIT (229 ITR 383).

4(d) The assessee submitted various material with regard to its claim of receipt in respect of Focus Market Scheme/Focus Product Scheme. From the facts it is understood that, Focus Market Scheme is designed to

encouragement to make exports to selected markets. The objective of FMS is to offset high freight cost and other externalities to select international markets with a view to enhance or export competitiveness in those countries. Focus Product Scheme's objective is that to incentivize export of select products that have high export intensity/employment potential. Thereby to offset infrastructure inefficiencies and other associated costs involved in marketing these products. From the given material it is understood that, the assessee receives duty credit scrips issued by the DGFT under the schemes of FPS and FMS which can be used for payment of excise duty on domestic procurement of such items as permitted to be imported under respective schemes. From the verification of material, it is seen that the assessee has been making a claim of 4% on FOB value of exports and the assessee receives duty scrips to this extent from DGFT which can be utilized to offset further excise duty payments etc. Thus, from the facts it is understood that the assessee has been receiving incentives from DGFT at 4% on value of current exports made in each year. Further, if these scrips are not utilized by the assessee, then it can resale these licenses to third parties. Thus, the nature of duty scrips received are clearly linked to current year exports and it is not any one time amount received for any enduring benefits. Therefore, the nature of incentives received towards FPS and FMS schemes are clearly under the category of revenue receipt. These

incentives also in a way are similar to duty entitlement passbook scheme. For the similar circumstances, Hon'ble Apex Court in the case of Saraf Exports vs. CIT (149 taxmann.com 145) after analyzing other judgements of Apex Court in the case of Liberty India Vs. CIT (317 ITR 218) clearly analyzed at length and endorsed that these export incentives are taxable. Therefore, the assessee's claim that incentives received on FPS and FMS schemes are capital receipts are totally baseless and therefore, this additional ground is hereby rejected and the same is dismissed."

8. Both the parties reiterated their respective stands against and in support of the impugned disallowance. Learned counsel more particularly quoted PCIT vs. Nitin Spinners Ltd. (2021) 130 taxmann.com 402 (SC) affirming (2022) 116 taxmann.com 26 (Rajasthan); holding such a subsidy as a capital receipt not taxable under the provisions of the Act.

9. We have given our thoughtful considerations to the fact that hon'ble apex court has already decided the instant issue in assessee's favour and against the department. The fact, however, remains that neither the Assessing Officer had made the impugned disallowance/addition after examining all relevant facts once the assessee had not claimed the same; as

an inadvertent omission, nor the learned CIT(A) could put all the relevant facts for necessary verification in this regard in lower appellate proceedings. Faced with this situation, we accept the assessee's instant latter substantive ground in principle and leave it open for the learned Assessing Officer to verify all the relevant facts in consequential proceedings as per law. Ordered accordingly.

10. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 24.07.2024.

Sd/-	**Sd/-**
(OMKARESHWAR CHIDARA)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.