

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 1756, 1757 & 1758/MUM/2024  
Assessment Years: 2014-15, 2017-18 & 2018-19**

Jayant Agro-Organics Ltd.  
701, Tower A, Peninsula Business  
Park, Senapati Bapat Marg,  
Lower Parel (West),  
Mumbai-400013.

**PAN NO. AAACJ 7581 Q  
Appellant**

Vs. Addl./Joint/Dy./Asst.  
Commissioner of Income-tax  
Officer, National Faceless  
Assessment Centre, Delhi –  
DCIT-6(1)(2),  
Aayakar Bhavan,  
Mumbai.

**Respondent**

**ITA Nos. 1918, 1952 & 1915/MUM/2024  
Assessment Years: 2014-15, 2017-18 & 2018-19**

Asst. CIT Circle 6(1)(2),  
Room No. 506, 5<sup>th</sup> floor, Aayakar  
Bhavan, M K Road,  
Mumbai-400020.

**Appellant**

Vs. Jayant Agro-Organics Ltd.  
701, Tower A, Peninsula  
Business Park, Delisle Road,  
Mumbai-400013.

**PAN NO. AAACJ 7581 Q  
Respondent**

Assessee by : Mr. Madhur Aggarwal/Nilay Jhaveri  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 10/07/2024  
Date of pronouncement : 19/08/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross-appeals by the assessee and the Revenue are directed against separate orders, all dated 16.02.2024, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2014-15, 2017-18 and 2018-19 respectively.

2. As common grounds have been raised in these appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

3. In assessment years 2014-15 and 2017-18, the assessee has challenged finding of Ld. CIT(A) on the validity of the reassessment proceedings as well as issue on merit, whereas Revenue has challenged the order of Ld CIT(A) on merit but in the assessment year 2018-19, addition on the merit has only been challenged both by the assessee and the Revenue.

4. We have heard rival submissions of parties. As far as assessment years 2014-15 and 2017-18 are concerned, before us the Ld. counsel for the assessee submitted that assessee had filed a rectification application before the Ld. CIT(A) for rectifying the impugned orders on the issue of validity of the reassessment. The Ld. counsel intimated that said rectification application of the



assessee for quashing the reassessment proceedings u/s 147 of the Income-tax Act, 1961 ( In short 'the Act') has been allowed by the Ld. CIT(A) by way of his order dated 26.06.2024. In the circumstances, the assessee filed an application for withdrawing the appeals for AY 2014-14 and 2017-18. The relevant part of his application is reproduced as under:

*“The appellant had filed the captioned appeal before the Hon'ble Tribunal to inter alia challenge the order of the Commissioner of Income-tax (Appeals) upholding the jurisdiction of the Assessing Officer under section 147 of the Act. The Appellant had also filed a rectification application before the Commissioner of Income-tax (Appeals) and the appellant has received the order of rectification from Commissioner of Income-tax (Appeals) dated 28.06.2024 allowing the application of the appellant by quashing the reassessment proceedings u/s 147 of Income-tax Act, 1961.*

*Accordingly, the appellant requests that since appeal filed by the Appellant have become infructuous, therefore the same may be treated as withdrawn with liberty to refile the appeal in case, the Revenue challenges the order dated 28.06.2024 before the Tribunal and succeeds on the ground that there was no mistake in the original order of the Commissioner of Income-tax (Appeals).”*

4.1 The Ld. counsel for the assessee submitted that the Ld. CIT(A) has quashed the reassessment proceedings while deciding the rectification application. The Ld. Departmental Representative (DR) was asked to confirm whether the Revenue intends to challenge the said finding and matter was adjourned for 10/07/2024. However, the Ld. DR could not confirm whether any appeal was filed by the Revenue on this issue or intends to file therefore, in the circumstances, we allowed the request of the assessee to withdraw these appeals being infructuous. Once, the reassessment proceedings stands quashed by the ld CIT(A), the addition on merit



also does not survive. Therefore, the appeals of both the parties on the merit also are rendered infructuous. But if the Revenue prefers to challenge the finding of the Ld. CIT(A) passed in its rectification order dated 28.06.2024 and same is decided against the assessee then the appeals of the parties on the merit needs to be revived and to be heard in future, therefore, at present we dismiss both the appeals of the assessee and the Revenue as infructuous subject to liberty to file Miscellaneous Application for reviving the appeals challenging the grounds on merit, if the Revenue succeeds before the ITAT on the issue of the validity of the reassessment. Accordingly, the appeals of the assessee and the Revenue for both the assessment years 2014-15 and 2017-18 are dismissed as infructuous.

5. In assessment year 2018-19, both the parties are aggrieved with the finding of the Ld. CIT(A) in respect of deduction u/s 35(2AB) of the Act. The facts in brief qua the issue in dispute are that during assessment proceedings, the Assessing Officer observed claim of weighed deduction u/s 35(2AB) of the Act at the rate of 150% of expense, both capital and revenue , incurred on in house research and development during the financial year 2017-18, which amounted to Rs.4,02,56,307/-. The detail of the deduction claimed is reproduced as under:

<i>R &amp; D Revenue</i>	<i>Rs.2,66,14,538/-</i>	<i>Rs.3,99,21,807/- (150%)</i>
--------------------------	-------------------------	--------------------------------



R & D Capital	Rs.2,23,000/-	Rs.3,34,500/- (150%).
Total	Rs.2,68,37,538/-	Rs.4,02,56,307/- (150%)
Less:-Amount debited to Profit & Loss A/c		Rs.2,66,14,538/-
Claimed u/s 35(2AB)- weighted deduction		Rs.1,36,41,769/-
Total claim u/s 35(2AB)- Rs.(2,66,14,538 + 1,36,41,769)		Rs.4,02,56,307/-

5.1 For claiming deduction u/s 35(2AB) of the Act, the CBDT has prescribed Rule 6 under Income-tax Rules, 1962. The Rules 6(4) prescribe that a company is required to file an application in form no. 3CK to Department of Scientific and Industrial Research i.e. prescribed authority. Further, the Rule 6(7A) prescribes following requirement:

*“(7A)Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely :-*

*(a)The facility should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;*

*(b)The prescribed authority shall furnish electronically its report,-*

*(i)in relation to the approval of in-house research and development facility in Part A of Form No.3CL;*

*(ii)quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form No.3CL;*

*(ba)The report in Form No.3CL referred to in clause (b) shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over such company within one hundred and twenty days,-*

*(i)of the grant of the approval, in a case referred to in sub-clause (i) of clause (b);*



***(ii)of the submission of the audit report, in a case referred to in sub-clause (ii) of clause(b);***

***(c)The company shall maintain a separate account for each approved facility; which shall be audited annually and a report of audit in Form No.3CLA shall be furnished electronically to the Secretary, Department of Scientific and Industrial Research on or before the due date specified in Explanation 2 to sub-section (1) of section 139 of the Act for furnishing the return of income, for each succeeding year.***

*Explanation. - For the purposes of this sub-rule the expression "audited" means the audit of accounts by an accountant, as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961;*

*(d)Assets acquired in respect of development of scientific research and development facility shall not be disposed of without the approval of the Secretary, Department of Scientific and Industrial Research.*

*(8) For the purposes of this rule, the Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data, and shall also be responsible for the day-to-day administration in relation to furnishing the information in the manner so specified."*

*( emphasis supplied by us)*

5.2 The clause (b)(ii) of Rule 6(7A) has been introduced by Income-tax (Tenth Amendment ) Rules, 2016 w.e.f. 1.7.2016, which is effective for year under consideration.

5.3 Thus as per rules, ***firstly***, the assessee was required to furnish an application in form No. 3CK. ***Secondly***, the assessee was required to submit a audit report in Form No. 3CLA to the Secretary, Department of Scientific and Industrial research on or before the date of filing of return of income u/s 139(1) of the Act for succeeding year. ***Thirdly***, the prescribed authority was required to issue report in form No. 3CL to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal



Director General of Income-tax or Director General of Income-tax having jurisdiction over the company, for approval of research facility within 120 days from grant of approval under clause (b)(i) of rule 6(7A) and for qualifying expenditure , within 120 days of submission of audit report.

5.4 The Assessing Officer disallowed the claim of the assessee for the reason that said Form 3CLA was filed beyond the due date of filing of the return of income. The relevant finding of the Assessing Officer is reproduced as under:

*“3.5 The submissions of the assessee have been examined but found not tenable. As seen from the above that the provision of Section 35(2AB)(3) of the Act, is very specific in regard to allowability of deduction. There exists no exclusion or exception clause. As per the said provisions of Income-tax Act, 1961 read with Rule 6(7)(c) of the Income-tax Rules, 1962, to avail the deduction u/s.35(2AB), the assessee is required to furnish Form No.3CLA (applicable from the Assessment year:2017-18) electronically to the Secretary, Department of Scientific and Industrial Research on or before the due date specified in Explanation 2 to sub-section (1) of section 139 of the Act i.e. on or before due date of filing return of income. As the assessee has filed the said Form only on 18/03/2021 and hence the deduction claimed u/s.35(2AB) is not allowable. In the scenario, the assessee is found not eligible for deduction of Rs.4,02,56,307/- i.e. ( Rs.2,66,14,538/- debited to Profit & Loss A/c and Rs. 1,36,41,769/- weighted deduction) under section 35(2AB) of the Income-tax Act, 1961, in the light of provision of sub-sections 2 & 3 of Section 35(2AB) of the Act read with Rule 6(7)(c) of the Income-tax Rules, and accordingly, this claim of deduction is disallowed.”*

5.6 On further appeal, the Ld. CIT(A) observed that Form No. 3CL was to be issued by the prescribed authority within prescribed period granting its approval. Though the Ld. CIT(A) allowed the claim of weighted deduction however directed the Assessing Officer to withdraw the claim if the prescribed authority deny the



expenditure claimed by the assessee or quantify at lesser amount. The Revenue is aggrieved with the direction to allow the weighted deduction u/s 35(2AB) of the Act whereas assessee is aggrieved with the direction given for reduction in the claim in case the expenditure is accordingly modified by the prescribed authority.

5.7 During the course of the hearing, the Ld. counsel for the assessee was asked to provide current status of the Form No. 3CL for determining amount of expenditure approved by the prescribed authority for weighted deduction. However, the Ld. Counsel for the assessee submitted that till date no such form no. 3CL was issued by the prescribed authority for quantifying the expenditure for deduction u/s 35(2AB) of the Act. In our opinion, it is for the assessee to explain as why said approval has been withheld by the prescribed authority. Since, the Ld. counsel for the assessee could not file a convincing reply, therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer with the direction to find out the status of the proceedings before the prescribed authority for approval of expenditure incurred on the scientific research by the assessee and then decide the issue of deduction u/s 35(2AB) of the Act in accordance with law. The grounds raised by the assessee and the Revenue are accordingly allowed for statistical purposes.



6. In the result, the appeals of the assessee and the Revenue for assessment year 2014-15 and 2017-18 are dismissed whereas the appeals for assessment year 2018-19 are allowed for statistical purposes.

**Order pronounced in the open Court on 19/08/2024.**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 19/08/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**