

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4325/Mum/2024
Assessment Year: 2014-15

Asst. Commissioner of Income tax -Mumbai	Vs	Lupin Limited, Mumbai 3 rd Floor, Kalptaru Inspire Off Western Express Highway Santacruz (East) Mumbai -400055 [PAN: AAACL1069K]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Rajan Vora, A/R
Revenue by :	Shir Lieder Panicker, Sr.D/R

सुनवाई की तारीख/**Date of Hearing** : 08/10/2024
घोषणा की तारीख/**Date of Pronouncement** : /10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order dated 22/07/2024 passed by NFAC, Delhi [hereinafter 'ld. CIT(A)'] pertaining to AY 2014-15.

2. The solitary grievance of the revenue is that the ld. CIT(A) erred in not appreciating the fact that DSIR has not approved the expenditure amounting to Rs. 4,68,63,285/- on account of hire charges, stipend to apprentice, consultancy fees & guest house expenses, weighted deduction u/s 35(2AB) of the Act.

3. Briefly stating the facts of the case are that the assessee is a listed company engaged in the business of manufacturing and sale of pharmaceutical products, namely, formulation and bulk drugs and carrying on research and development for its own business etc. The return

of income was filed electronically on 27/11/2014 declaring income of Rs.22,79,79,20,430/- as per normal provisions of the Act and book profit of Rs.31,64,54,07,912/- as per the provisions of Section 115JB of the Act.

3.1. The return of income was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee and subsequently, assessment u/s 143(3) of the Act was framed on 28/12/2016 assessing total income at Rs.24,55,90,49,100/- under the normal provisions of the Act and book profit of Rs.31,66,06,07,540/- u/s 115JB of the Act. The Id. AO while computing income under the normal provisions of the Act made following additions:-

Particulars	Amount (Rs.)
Disallowance of depreciation on unverified purchases and other expense of capital nature	76,93,322
Disallowance of sales promotion expense under Section 37(1) of the Act	68,13,16,982
Disallowance of ESOP expenditure	38,88,61,998
Disallowance of Pithampur SEZ-II and Nagpur revenue expenses incurred prior to commercial production	10,13,92,699
Disallowance under sec 35(2AB) of weighted R & D deduction on revenue expenditure not approved by DSIR [(Clinical trial/analytical expenses incurred outside inhouse R&D facility - Rs. 6635.70 lakhs) + (Other R&D expenses not approved by DSIR - Rs. 589.54 lakhs)]	72,25,23,505
Additional deduction under sec 10AA on account of disallowances made in the assessment order	(8,14,24,023)
Additional deduction under sec 80-IB on account of disallowances made in the assessment order	(5,92,35,813)

3.2. Further, the Id. AO while computing income under the MAT provisions had made additions on account of tax on non-monetary perquisites disallowed under Section 40(a)(v) of the Act amounting to Rs.1,51,99,628/-.

3.3. The assessment order is challenged before the Id. CIT(A) and the challenge is still pending, however, in the meantime, as the assessee did not receive Form 3CL while passing of the assessment order and as

subsequently when said Form has been received, the AO rectified the order u/s 154 of the Act and added back R&D expenses not approved by Department of Scientific & Industrial Research (DSIR) totaling to Rs. 468.64 Lakhs and granted additional deduction u/s 10AA and u/s 80IB of the Act on account of the aforementioned disallowance determining the total income at Rs. 24,60,09,35,214/- under the normal provisions of the Act and Rs. 31,66,06,07,540/- u/s 115JB of the Act.

3.4. The aforementioned rectification order was challenged before the Id. CIT(A) and the Id. CIT(A) drawing support from the earlier orders in assessee's own case allowed the appeal.

4. Before us, the Id. D/R strongly supported the assessment order. Per contra, the Id. Counsel for the assessee reiterated what has been stated before the Id. CIT(A).

5. We have carefully perused the orders of the authorities below. We find that in AY 2013-14, on identical set of facts, the Co-ordinate Bench in *ITA No. 1241 to 1242/Mum/2024 vide order dt. 18/03/2024*, relying on assessee's own case for earlier years allowed the deduction of R&D expenses not approved by DSIR in Form 3CL holding that the Form 3CL did not have any legal sanctity and it is only w.e.f 01/04/2016 with the amendment to Rule 6(7A)(b) of the Rules, that the quantification of the weighted deduction u/s 35(2AB) of the Act has significance. The relevant findings of the Co-ordinate Bench reads as under:-

"38. Ground No.1 to 3 in the appeal of the revenue pertain to weighted deduction allowed by the CIT(A) towards the amount not allowed by DSIR in Form 3CL to the tune of Rs.817.46 lakhs. The CIT(A) allowed the claim through a rectification order under [section 154](#) of the Act. In this regard we notice that the coordinate bench in assessee's own case has considered a similar issue where it has been held that -

14.5 The next question is Whether the weighted deduction [u/s 35\(2AB\)](#) could be allowed during the year under consideration, even if the expenditure has not been certified by DSIR in Form no.3CL?. The Id D.R placed her reliance on the

decision rendered by Hon'ble Karnataka High Court in the case of Tejas Network Ltd (2015)(60 taxmann.com 309)(Kar), wherein it was held that the AO cannot sit in judgment over the report submitted by prescribed authority. Accordingly, the Ld D.R submitted that the AO has to necessarily 35 ITA Nos. 77/M/21, 1241 to 1242/M/ 2021 & C.O. 01/M/2022 Lupin Limited follow the report given by the prescribed authority. The Ld D.R submitted that, in the instant case, the DSIR (Prescribed authority) has not certified the expenses incurred outside the in-house facility and the AO could not sit in judgment over the said report. Accordingly, the Ld D.R submitted that the unapproved expenses cannot be allowed deduction [u/s 35\(2AB\)](#) of the Act.

14.6 The next question is whether expenditure incurred prior to the date of approval could be allowed as deduction? Both these questions are answered together.

14.7 The legal sanctity of Form no.3CL was examined by the Pune bench of ITAT in the case of Cummins Ltd vs. DCIT (ITA No.309/Pun/2014 dated 15.5.2018 relating to AY 2009-10). It was held 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. 1-7-2016, 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.

46. The Courts have held that for deduction under [section 35\(2AB\)](#) of the Act, first step was the recognition of facility by the prescribed authority and entering an agreement between the facility and the prescribed authority. Once such an agreement has been executed, under which recognition has been given to the facility, then thereafter the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under [section 35\(2AB\)](#) of the Act. Accordingly, we hold so. Thus, we reverse the order of Assessing Officer in curtailing the 36 ITA Nos. 77/M/21, 1241 to 1242/M/ 2021 & C.O. 01/M/2022 Lupin Limited deduction claimed

under [section 35\(2AB\)](#) of the Act by Rs. 6,75,000/-. Thus, grounds of appeal No.10.1, 10.2 and 10.3 are allowed."

14.8 The question of allowing deduction [u/s.35\(2AB\)](#) of the Act was considered by the Hon'ble Delhi High Court in the case of [CIT v. Sadan Vikas \(India\) Ltd.](#) [2011] 335 ITR 117 (Del) where AO refused to accord the benefit of the weighted deduction to the assessee under [s. 35\(2AB\)](#) on the ground that recognition and approval was given by the DSIR in February/September, 2006, i.e., in the next assessment year and, therefore, the weighted deduction cannot be allowed. In this case, the CIT(A) confirmed the order of the AO. The Tribunal held that the assessee would be entitled to weighted deductions of the aforesaid expenditure incurred by the assessee in terms of the [s. 35\(2AB\)](#) of the Act and in coming to this conclusion, the Tribunal relied upon the judgment of Gujarat High Court in [CIT v. Claris Lifesciences Ltd.](#) 326 ITR 251 (Guj). In its decision the Hon'ble Gujarat High Court had held that the cut-off date mentioned in the certificate issued by the DSIR would be of no relevance. What is to be seen is that the assessee was indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by DSIR is issued, that would be sufficient to hold that the assessee fulfils the conditions [laid down in](#) the aforesaid provisions. The Hon'ble Delhi High Court followed the decision of the Hon'ble Gujarat High Court and upheld the decision of the Tribunal. The Hon'ble Delhi High Court quoted the following observations of the Hon'ble Gujarat High Court and agreed with the said view:

"7. ... The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the research and development facility, expenditure so incurred is eligible for weighted deduction.

8. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of : (i) development of facility; (ii) incurring of expenditure by the assessee for development of such facility; (iii) approval of the facility by the prescribed authority, which is DSIR; and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee.

9. The provisions nowhere suggest or imply that research and development facility is to be approved from a particular date and, in other words, it is nowhere suggested that date of approval only will be cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly manifests that the assessee has to develop facility, which presupposes incurring expenditure in this behalf, application to prescribed authority, who after following proper procedure will approve 37 ITA Nos. 77/M/21, 1241 to 1242/M/2021 & C.O. 01/M/2022 Lupin Limited the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on plain reading of s. itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered r. 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of rule and Form

clearly suggests that once facility is approved, the entire expenditure so incurred on development of R&D facility has to be allowed for weighted deduction as provided by [s. 35\(2AB\)](#). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up research and development facility in India, the legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, intention of the legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction."

From the above discussion it is clear that prior to 1-7-2016 Form 3CL had no legal sanctity and it is only w.e.f 1-7-2016 with the amendment to Rule 6(7A)(b) of the Rules, that the quantification of the weighted deduction u/s.35(2AB) of the Act has significance. Further, the date of approval shall not be cut off date for allowing scientific research expenditure [u/s 35\(2AB\)](#) of the Act.

39. Considering that the facts for the year under consideration being similar, we respectfully follow [the above decision](#) and see no infirmity in the order of the CIT(A) allowing the weighted deduction towards the amount not approved by DSIR.

6. The nature of expenses in the year under consideration are exactly like those incurred in AY 2013-14 and since the allowability of the expenditure are not in dispute, therefore, we do not find any reason to interfere with the findings of the ld. CIT(A).

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 11th October, 2024 at Mumbai.

Sd/-

**(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 11/10/2024

**S.C.S.P.*

7

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai