

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.3544/Del/2023
Assessment Year: 2013-14**

Bio Med Private Limited C-96, Site-1, BS Road, Indl. Area, Ghaziabad, Uttar Pradesh PAN: AABCB3477C	Vs.	Addl. Commissioner of income Tax, Special Range, CGO Complex-2, Ghaziabad, UP
(Appellant)		(Respondent)
Appellant by	Sh. Ved Jain, Advocate Sh. Aman Garg, CA	
Respondent by	Ms. Pratibha Meena, Sr.DR	
Date of Hearing	14/01/2025	
Date of Pronouncement	09/04/2025	

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal for the Assessment Year (hereinafter, the 'AY') 2013-14 filed by the assessee is directed against the order dated 17.11.2023 of the Commissioner of Income Tax (Appeals), NFAC, New Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds have been raised in this appeal: -

- "1. Because the order passed by the CIT (Appeals) is against the facts and circumstances of case and is also grossly illegal hence is unsustainable.*
- 2. Because, Id. CIT(A) is grossly erred in sustaining the disallowance of claim of Rs. 93,16,742/- u/s 35(2AB) of Act, without appreciating the*

undisputed fact that assessee is granted certificate by the prescribed authority, DSIR, in terms SS (1) of said provision and AO himself could not have sit over the decision of said authority, thus disallowance is beyond jurisdiction, defeating the very provision itself.

3. *Because, Id. CIT(A) further failed to appreciate that claim of expenses are allowed and accounts are accepted by Id. AO and assessee had explained all the queries though unilateral and extra jurisdictional incorrect observations are made by AO without providing opportunity to cross the director or providing guidelines.*
4. *Because, Id. CIT(A) erred in sustaining the disallowance made first time in current year against the rule of consistency whereby such claim u/s 35(2AB) is continuously allowed since last many decades with identical facts before this year.*
5. *Because, Id. CIT(A) is manifestly wrong in not following the judicial discipline, whereby he declined to follow the order of hon'ble ITAT deleting addition u/s 14A with identical facts in several years in assessee's own case.*
6. *Because, even on merits Id. CIT(A) failed to consider the same like demonstration of non-incurrence of expenditure/no satisfaction etc. instead made observations align to case.*
7. *The Appellant crave leave to add, amend, alter and/or modify the grounds with the leave of the Hon'ble Court.”*

2.1 Vide seven grounds, two issues raised in this appeal are as under:

- i. Disallowance of Rs.93,16,742/- under section 35(2AB) of the Income Tax Act, 1961 (hereinafter, the 'Act').
- ii. Disallowance of Rs.11,35,257/- under section 14A of the Act.

3. The relevant facts giving rise to this appeal are that the appellant assessee is engaged in manufacturing of human and animal vaccines. It filed its Income Tax Return (hereinafter, the 'ITR') on 27.09.2013 declaring income of Rs.14,38,68,900/-. The case was scrutinized and consequential

assessment was completed at income of Rs.15,43,20,900/-. The assessee's claim of deduction of Rs.93,16,742/- under section 35(2AB) of the Act was denied by the Assessing Officer (hereinafter, the 'AO') on the following reasoning:

- i. The assessee had not maintained separate books of accounts for the R & D activity.
- ii. The Director had admitted in his statement recorded before the AO that the R & D staff had been occasionally used for business purposes also.
- iii. There was violation of guidelines for seeking approval under section 35(2AB) of the Act.
- iv. The value of closing stock and consumables were very low.
- v. Allocation of general expenditure for R & D activity was not justified.

3.1 The AO also made disallowance of Rs.11,35,257/- under section 14A of the Act. Aggrieved, the assessee filed appeal before the CIT(A) but did not succeed.

4. The Ld. Counsel submitted that the AO had verified entire R & D expenses and did not find any non-genuine expenditure claimed therein. It was contended that the separate books of accounts for the R & D activity had not been maintained; however, the ledger accounts for various expenditure falling under the head R & D activity were separately maintained. Since the assessee had maintained books of accounts in digital format; therefore, any specifics, if required, could be easily made available

at any given point. It was argued that the AO could not sit over the decision of the prescribed/designated authority of DSIR for this purpose. In support of the contention, the Ld. Counsel relied on the decision of the ITAT in the cases Marksans Pharma Ltd. [2023] 155 taxmann.com 59 (Mumbai-Trib.) and Pharmanza Herbal (P.) Ltd. [2023] 155 taxmann.com 56 (Ahmedabad-Trib.).

4.1 On the issue of disallowance of Rs.11,35,257/- under section 14A of the Act, the Ld. Counsel submitted that this issue is squarely covered by the decision of the Tribunal in the assessee's own cases in the ITA No. 6827/Del/2014 (AY 2009-10) and ITA Nos.2770 & 2771/Del/2018 (AY 2011-12 and 2012-13). It was specifically submitted that the borrowed fund was not utilized for any investment in shares resulting exempted income and trading in shares were not the business objective of the assessee.

5. On the other hand, the Ld. Sr. DR contended that in view of amended Rule 6 of the Income Tax Rules, the provision for quantification of scientific research and development expenses had been prescribed by way of Finance Act, 2016 year 2017-18 onwards only and prior to that quantification prescribed allowed the weighted deduction as claimed by the assessee and certified by the auditor of the company. The AO had rightly commented on the shortcoming and disallowed the claim under section 35(2AB) of the Act.

6. We have heard both parties at length and have perused the material available on the record. We find merit in the argument/contention/submission of the Ld. Counsel. In the case of Marksans Pharma Ltd. (supra), the Tribunal is of the view that prior to 01.07.2016 there was no legal sanctity for Form No. 3CL in context of quantifying eligible deduction weighted under section 35(2AB) of the Act. The Tribunal, in the case of Cummins India Ltd. [2018] 96 taxmann.com 576 (Pune-Trib.), has held that there is no merit in the order of the AO in curtailing the expenditure and consequent weighted deduction claimed under section 35(2AB) of the Act. The Tribunal has held that prior to 2016, the AO is empowered to verify the genuineness of expenditure. However, in the present case the veracity of expenditure is not under question. The DSIR has already approved the said expenditure in respect of development of R & D facility. The Income Tax Rules have not prescribed any format of approval before 2016. In the case of Marksans Pharma (supra), the Tribunal is of the view that prior to 01.07.2016 there was no legal sanctity for Form No. 3CL in context of quantifying eligible deduction weighted under section 35(2AB) of the Act.

7. We find merit in the assessee's case with respect to claim under section 35(2AB) of the Act. We find that in the instant case, the prescribed authority has not altered or quantified the expenses for approval towards research and development facility, but has merely expenses which have

been claimed by the assessee as incurred towards research and development expenditure including capital and revenue expenditure has been approved. As far as claim of expenditure is concerned, there is no dispute between the parties. The dispute is on the allowability of the claim under section 35(2AB) of the Act. The facility has been recognized and necessary certification has been issued by the prescribed authority. The quarrel revolves around the fulfillment of some technicalities. In the digital format of accounts maintenance, we do not find merit in the AO's finding regarding maintenance of separate books of account for R & D facility. We have perused the statements of Directors and are of the considered view that the AO has read between the lines and has drawn farfetched inferences. The expenditure in this regard has not been doubted by the AO. Only the technicalities as pointed out by the AO have come in the way. We are not convinced with the finding of the AO for disallowance of Rs.93,16,742/- under section 35(2AB) of the Act. We therefore, delete the disallowance of deduction of Rs.93,16,742/- claimed under section 35(2AB) of the Act.

8. The next issue is in respect of the disallowance of Rs.11,35,257/- under section 14A of the Act. We have perused the decision of the Tribunal in the assessee's own cases in the ITA No. 6827/Del/2014 (AY 2009-10) and ITA Nos.2770 & 2771/Del/2018 (AY 2011-12 and 2012-13) and are convinced that this issue is not covered by these decisions. In these

decisions, it has been held that the AO has held that the assessee has not incurred expenditure to derive exempted income and there was no proper recording of reason for invoking the Rule 8D read with section 14A of the Act. However, this year's case is different. The AO has recorded his satisfaction/reasoning for invoking the Rule 8D read with section 14A of the Act. The AO has categorically held that the assessee has incurred expenditure for deciding the issue of purchase and sales of shares at highest level and also on establishment cost and staff cost. It cannot be ruled out that indirect expenditure have not been incurred by the assessee in this regard when investments of Rs.31.54 Crores have been made in the relevant year in UTI Liquid Fund. The upward variation in investment portfolios and resultant quantum of exempted income clearly show that the appellant assessee is actively involved in the investments resulting exempted income. The appellant assessee has not made any disallowance under section 14A of the Act. But it cannot be ruled out that the assessee would have not incurred any expenditure on this score. The AO and the Ld. CIT(A) has given the detailed justification in their orders for the disallowance made under section 14A of the Act. The finding of the Ld. CIT(A) has not been controverted by the Ld. Counsel. It is found that the appellant assessee has not taken into account the administrative, establishment and managerial expenditure for working out the disallowance under section 14A of the Act.

8.1 There is specific Rule prescribed for working out the quantum of disallowance under section 14A of the Act. The appellant assessee has not worked out the disallowance under section 14A of the Act as per the income Tax Rules. The impugned order has held that the AO has recorded his dissatisfaction about the disallowance under section 14A of the Act. Hence, the Rule 8D comes into effect and the disallowance under section 14A of the Act has to be worked out accordingly. After careful consideration of facts of the case and orders of lower authorities, we do not find any infirmity in the finding of the Ld. CIT(A) on the issue of disallowance under section 14A of the Act. Hence, we decline to interfere with the finding of the Ld. CIT(A) on this issue. Accordingly, we sustain the disallowance of expenses of Rs.11,35,257/- under section 14A of the Act.

9. In the result, this appeal is partly allowed as above.

Order pronounced in open Court on 09th April, 2025.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:09/04/2025
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. Sr. DR-ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

ITA No.3544/Del/2023
Bio Med Private Limited