

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2600/Chny/2024
निर्धारण वर्ष /Assessment Year: 2014-15

The DCIT, NCC-8(1), Chennai.	v.	M/s. Ashok Leyland Ltd., No.1, Sardar Patel Road, Guindy, Chennai-600 032.
		[PAN: AAACA 4651 L]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Department by	:	Mr.R. Clement Ramesh Kumar, CIT
Assessee by	:	Mr.R. Vijayaraghavan, Advocate
सुनवाई की तारीख/Date of Hearing	:	20.03.2025
घोषणा की तारीख /Date of Pronouncement	:	02.05.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as 'Ld.CIT(A)'), Delhi, dated 19.07.2024 for the Assessment Year (hereinafter referred to as 'AY') 2014-15.

2. The Revenue has raised the following grounds in this appeal:

1. The order of the learned Commissioner of Income Tax (Appeals) in ITA ITBA/API/S/250/2024-25/1066852823(1) dated 19/07/2024 for the



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Assessment year 2014-15 is erroneous in law, facts and circumstances of the case.

2. The Ld. CIT(A) erred in allowing the entire claim for deduction@ 200% u/s 35(2AB) of Rs.43.97 crores in respect of the R&D expenditure claimed of Rs. 21.98 crores without appreciating that the assessee had not submitted Form 3CL Issued by DSIR certifying the said R& D expenditure was incurred and without appreciating that the quantum of deduction u/s 35(2AB) as per Form 3CL subsequently obtained shows the eligible amount on R&D expenditure to be of Rs. 14.46 crores and therefore the eligible deduction u/s 35(2AB) works out to only Rs 28.93 crores.

3. The Ld. CIT(A) erred in allowing the said deduction u/s 35(2AB) without giving an opportunity to the AO to verify as to whether the balance expenditure of Rs. 7.52 crores (R&D expenditure claimed by the assessee of Rs. 21.98 crores (-) R&D expenditure certified by DSIR of Rs.14.46 crores) has been incurred for eligible R&D only.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored.

3. At the outset, it is noted that there is a delay of '22' days in filing of appeal and the Revenue has filed an application for condonation of delay. After going through the contents of the application, we find that there is a reasonable cause for condoning the delay and therefore, the same is condoned and we proceed to decide the appeal on merits.

4. The sole grievance of the Revenue in this appeal is against the action of the Ld. CIT(A) allowing normal deduction for the capital expenditure incurred at the approved R&D Facility u/s 35(1)(iv) of the Act, which had been disallowed by the AO u/s.35(2AB) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

5. The brief facts as noted are that, the assessee company had filed the Return of Income (RoI) for the AY 2014-15 on 28.11.2012 declaring loss at Rs.(-) 762,77,55,971/-. Subsequently, the case was selected for



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scrutiny under CASS and notice u/s.143(2) dated 10.09.2015 was issued to the assessee, the income was assessed income at Rs.406,76,80,822/- vide order u/s.143(3) of the Act dated 30.12.2016. In the original assessment, the assessee was not able to furnish the copy of Form 3CL issued by DSIR and therefore the AO had disallowed the weighted component of the deduction claimed u/s 35(2AB) of the Act, but otherwise allowed normal deduction u/s 35(1)(i)/35(1)(iv) of the Act in respect of both the revenue and capital expenditure incurred at the approved R&D facility. Later on, the case of the assessee was reopened by issue of notice u/s 148 of the Act and the assessment was completed u/s.143(3) r.w.s. 147 of the Act vide order dated 09.12.2019 assessing total loss at Rs.(-) 301,90,10,983/- in which several additions/disallowances were made, which *inter alia* included disallowance of the normal deduction of Rs.21,98,62,276/- originally allowed in respect of capital expenditure incurred at approved scientific R&D facility.

6. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who partly allowed the appeal of the assessee and *inter alia* deleted the disallowance which is impugned before us. Being aggrieved by the action of the Ld.CIT(A), the Revenue is now in appeal before us.

7. Heard both the parties. It was brought to our notice that, the assessee had claimed weighted deduction u/s 35(2AB) of the Act in



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relation to the expenditure incurred at their approved R&D facility which worked out to Rs.446.98 crores [200% of Rs.223.49 crores] i.e., 200% of both the revenue & capital expenditure of Rs.201.51 crores and Rs.21.98 crores respectively. Though the AO in the original assessment held that, in absence of Form 3CL, the weighted deduction u/s 35(2AB) was not allowable; but he allowed normal deduction i.e. 100% in relation to both the revenue & capital expenditure incurred for scientific research in terms of Section 35(1) of the Act. This action of the AO's predecessor *inter alia* allowing normal deduction for the capital expenditure of Rs.21.98 crores incurred for scientific research was subsequently disputed by the AO in the impugned reassessment, which was disallowed in the impugned reassessment order. We find that, before the Ld. CIT(A), the assessee pointed out that, it had later on received the Form 3CL and had accordingly filed rectification application u/s 154 of the Act for allowing the weighted 35(2AB) of the Act. Subsequent to the order passed by the Ld. CIT(A), the AO is also found to have acceded to the assessee's rectification application, and he is noted to have allowed the weighted deduction u/s 35(2AB) of the Act to the extent of the amount certified in Form 3CL i.e. Rs.424.26 crores (200% of Rs.212.13 crores). The details thereof are noted to be as follows: -



(Amount Rs. in crores)

Particulars	Amount incurred towards scientific research at approved R&D Facility claimed as weighted deduction u/s 35(2AB)	Amount certified by DSIR in Form 3CL	Remaining amount not eligible for weighted deduction
Revenue	201.51	198.32	3.19
Capital	21.98	14.81	7.57
	223.49	212.13	

8. Though there were infirmities in the manner of calculation in the rectification order, in as much as, the AO is apparently found to have allowed excessive deduction u/s 35(2AB) of the Act viz., instead of allowing only the further weighted component of deduction of 100%, over the normal deduction allowed in original assessment, the AO has allowed entire weighted deduction of 200%. Be that as it may, the fact however remains that, there is no dispute in principle between the parties before us regarding the allowability of weighted deduction u/s 35(2AB) in respect of expenditure to the extent of Rs.212.13 crores [revenue – Rs.198.32 crores & capital – Rs.14.81 crores] as allowed by the AO in the rectification order u/s 154 of the Act which *inter alia* includes the weighted deduction for the capital expenditure to the extent of Rs.14.81 crores (*wrongly mentioned as Rs.14.46 crores in the grounds of appeal*) incurred by the assessee towards scientific research at its approved R&D facility, as certified by the DSIR in their Form 3CL. Accordingly the action of the Ld. CIT(A) deleting the disallowance of capital expenditure incurred for scientific research to the extent of Rs.14.81 crores, in light of Form



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3CL as well as subsequent rectification order passed by the AO, does not call for any interference.

9. In view of the above, the limited dispute now before us is against the Ld. CIT(A)'s action of allowing the normal deduction for the balance capital expenditure of Rs.7.57 crores [21.98 crores – 14.81 crores] u/s 35(1)(iv) of the Act, which was not allowed for weighted deduction u/s 35(2AB) of the Act by the DSIR. We find this particular issue to be squarely covered in the favour of the assessee by the decision rendered in their own case for AY 2018-19 in ITA No.554 & 561/Chny/2023 dated 14.02.2025 wherein it was held that, the deduction for capital expenditure incurred by the assessee for scientific research at its approved R&D facility, if not approved for weighted deduction u/s 35(2AB) is otherwise allowable as normal deduction u/s 35(1)(iv) of the Act. The relevant findings are noted to be as under:-

"4.6 We now come to the alternate claim raised by the assessee for deduction of the capital R&D expenditure of Rs.100,21,22,016/- u/s 35(1)(iv) of the Act. It is noted that, the lower authorities have denied this alternate claim on the ground that, no evidence was provided by the assessee in relation thereto. Before advertng to the facts of the present case, it is noted that Section 35(1)(iv) of the Act, provides that any expenditure of a capital nature on scientific research, related to the business of the assessee shall be admissible as deduction in terms of provision of Section 35(2) of the Act. It is further noted that sub-clause (ia) of Section 35(2) of the Act provides that, where the capital expenditure has been incurred after 31.03.1967, the entire value of capital expenditure is eligible for deduction from the profits of the business. Hence, in our considered view therefore, an assessee is entitled for normal deduction i.e. 100% of the capital expenditure incurred at its R&D facility in terms of Section 35(1)(iv) read with



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Section 35(2)(ia) of the Act, irrespective whether such capital expenditure is eligible for weighted deduction u/s 35(2AB) of the Act or not.

4.7 Our view finds support from the decision of the Hon'ble jurisdictional Madras High Court in the case of CIT vs Rajapalayam Mills Ltd. (265 Taxman 209). In the decided case, the assessee had claimed deduction u/s 35(2AB) of the Act in respect of the expenditure, both revenue and capital, incurred at its R&D facility. Since the assessee was unable to fulfill the conditions prescribed in Section 35(2AB) of the Act, the claim for weighted deduction was denied to it. The assessee had alternatively claimed normal deduction us 35(1)(i) and 35(1)(iv) of the Act in respect of the revenue and capital expenditure respectively. On appeal, this tribunal is noted to have upheld the allowance of deduction at normal rate u/s 35(1) of the Act. On further appeal by the Revenue, we find that the Hon'ble High Court upheld the order of this Tribunal, by holding as under:

"2. The present Appeal has been filed by the Revenue under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal dated 31.7.2008, by which the learned Tribunal upheld the order of the learned Commissioner of Income Tax (Appeals) and held that the expenditure incurred by the Assessee on Scientific Research was not entitled to weighted deduction of 1.5 times under Section 35(2AB) of the Act as the Project in question was not duly approved by the Competent Authority, however, the Assessee, was entitled to normal deduction of 100% of expenditure incurred only under Section 35(1)(i) of the Act.

3. The learned Commissioner of Income Tax (Appeals) had discussed the above aspect in his order dated 31.10.2006 as hereunder: --

.....

3.2 After considering the submissions I find that the assessing officer has rightly rejected the claim of the appellant u/s. 32(2AB) as there was no approval from the prescribed authority as on the date of completion of assessment. Having regard to alternative claim, I find that the assessing officer had no occasion to consider the claim of the appellant. In the circumstances, the assessing officer is directed to consider the claim of deduction u/s. 35(1)(i) for Rs. 55,12,558/- representing R&D Revenue Expenditure and deduction u/s. 35(1)(iv) for Rs. 46,387/- representing expenditure incurred for the purchase of Camera used in R&D unit."



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4. However, the Revenue took up the matter before the Tribunal which held against the Revenue on the said aspect of the matter in the following manner:--

"4. After considering the rival submission carefully, we agree that Sec.35(1) as well as Sec.35(2AB) deal with the same expenditure i.e., scientific expenditure consisting of revenue and capital expenditure and only difference is that Sect.35(1) provides for allowance at normal rate i.e., actual expenditure whereas Sec.35(2AB) allows deduction to be claimed at weighted rate of 150% subject to fulfilment of certain conditions. Therefore, we find nothing wrong with the directions of the CIT(Appeals) to the Assessing Officer to allow normal deduction under Sec.35(1) particularly in view of the fact that the Assessing Officer himself has allowed deduction for the Asst. Year 2005-06."

5. Though there was no issue about the claim of weighted deduction, the Revenue has still preferred the present Appeal under Section 260A of the Act which was admitted by a coordinate Bench of this Court by order dated 9.1.2009, by framing the following substantial questions of law:--

"(i) Whether, on the facts and circumstances of the case, the Tribunal was right in law in entertaining a change of claim of deduction by the assessee from 35(2AB) to 35(1) of the Income Tax Act?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was right in granting relief under Section 35(1) when the Assessee has not produced the relevant approval from the prescribed authorities for the claim of deduction?"

6. Having heard the learned Senior Standing Counsel for the Revenue, we are satisfied that there is no substance in the present Appeal, since the claim of weighted deduction at 1.5 times of the expenditure incurred by the Assessee on Scientific Research was not even decided against the Revenue by the Appellate Authorities, viz., the Commissioner of Income Tax (Appeals) and the Tribunal and therefore, there was no occasion for the Revenue to prefer any further appeal, as the expenditure was allowed only under Section 35(I)(i) of the Act which does not require any approval by the Competent Authority.

7. Since the spending of the amount on Scientific Research itself was not even disputed by the Revenue, in our opinion, the



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Appellate Authorities have rightly allowed the claim under Section 35(1)(i) of the Act. The Assessee has not preferred any Appeal against that finding and therefore, the question of approval by the Competent Authority for making such claim becomes irrelevant. Therefore, we do not find any substantial question of law to be arising in the present Appeal.

8. We do not find any merit in the present Appeal filed by the Revenue and the same is liable to be dismissed and accordingly, it is dismissed.

No order as to costs. A copy of this judgment may be sent to the Assessee forthwith."

4.8 In view of the above decision supra, the legal position which emerges is that, the denial of weighted deduction u/s 35(2AB) will not disable the assessee from claiming normal deduction for the said R&D expenditure, both revenue & capital, u/s 35(1)(i) and 35(1)(iv) of the Act respectively. Now reverting back to the facts of the present case, it is noted that the assessee had furnished the details of the expenditure incurred at its approved in-house R&D facility before the lower authorities, which was inter alia included in the audited accounts certified by the statutory auditor in Form 3CLA. It was brought to our notice that the assessee vide letter dated 05.03.2021 had furnished the Form 3CLA, which contained the details of R&D expenditure, including expenditure of capital nature, consolidated claim statement, details of disclosure of R&D expenditure in the notes to audited financial statements along with a reconciliation statement between the amount certified in Form 3CLA and the figures reported in notes to audited financial statements. Having perused these details, we find that the details evidencing incurrence of capital expenditure at the approved in-house R&D facility was duly disclosed in the notes to the audited financial statements and further the statutory auditor had verified and certified the same being relatable to scientific research in Form 3CLA. According to us therefore, these contemporaneous evidences sufficiently establish that the capital expenditure of Rs.100,21,22,016/- was incurred in relation to scientific research and was therefore eligible for deduction u/s 35(1)(iv) of the Act. Hence, the order of the lower authorities to that extent stands reversed. 4.9 In view of our above findings therefore, we direct the AO to further allow normal deduction for the capital R&D expenditure of Rs. 100,21,22,016/- u/s 35(1)(iv) of the Act, and resultantly delete disallowance to the extent of Rs.70,14,85,411/- (Rs.100,21,22,016/- minus Rs.30,06,36,605/-). This ground therefore stands partly allowed."



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10. Following the above, we therefore see no reason to interfere with the reasoning given by the Ld. CIT(A) for deleting the impugned disallowance made by the AO. Overall therefore, all the grounds raised by the Revenue are dismissed.

11. Before parting, we may clarify that, our above findings do not have any bearing on the calculation mistakes, if any, committed by the AO, while passing the rectification order u/s 154 of the Act for allowing the weighted deduction u/s 35(2AB) in respect of the amount since approved by DSIR in Form 3CL.

12. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on the 02nd day of May, 2025, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबीटी. वर्की)

(ABY T. VARKEY)

न्यायिकसदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 02nd May, 2025.

TLN

आदेशकीप्रतिलिपिअग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF