INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.3260/Del/2023
(Assessment Year: 2015-16)

Bio Med Pvt. Ltd, C-96, Site-1, BS Road, Industrial Area, Ghaziabad	Vs.	Addl. CIT, Special Range, Ghaziabad
(Appellant)		(Respondent)
PAN: AABCB3477C		

Assessee by :	Shri Ved Jain, Adv Shri Aman Garg, CA
Revenue by:	Shri Ajay Kumar Arora, Sr. DR
Date of Hearing	03/06/2025
Date of pronouncement	/07/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3260/Del/2023 for AY 2015-16, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. NFAC', in short] dated 25.09.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 05.12.2017 by the Assessing Officer, ACIT, Special Range, Ghaziabad (hereinafter referred to as 'ld. AO').

2. Ground Nos. 1 and 7 raised by the assessee are general in nature and does not require any specific adjudication.

3. Ground Nos. 2 to 4 raised by the assessee are challenging the action of the ld CIT(A) sustaining the disallowance of claim of Rs. 1,41,18,922/- u/s 35(2AB) of the Act.

4. We have heard the rival submissions and perused the material available on record. Both the parties mutually agreed that this issue is covered by the decision of this Tribunal in assessee's own case for AYs 2013-14, 2014-15 and 2016-17. For the sake of convenience, the relevant operative portion of the order of this Tribunal for AY 2013-14 in ITA No. 3544/Del/2023 dated 09.04.2025 is reproduced below:-

> *"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.*
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> *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 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 ofthe claimunder 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 disallowanceof 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."*

5. Similar was the finding given for AYs 2014-15 and 2016-17. Respectfully following the decision, ground Nos. 2 to 4 raised by the assessee are hereby allowed.

6. Ground Nos. 5 and 6 raised by the assessee are challenging the confirmation of disallowance u/s 14A of the Act.

7. We have heard the rival submissions and perused the material available on record. Both the parties mutually agreed that this issue has been decided against the assessee by the order of this Tribunal for AY 2013-14 in ITA 3544/Del/2023 dated 09.04.2025. The relevant operative portion of this order is reproduced herein:-

> *"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.*
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> *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."

8. Respectfully following the same, ground Nos. 5 and 6 raised by the assessee are hereby dismissed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30/07/2025.

-Sd/-	-Sd/-
(C. N. PRASAD)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 30/07/2025

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi