IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4952/MUM/2025
(A.Y. 2012-13)

M/s Flamingo Pharmaceuticals Ltd. 7/1, Corporate Park, Sion Trombay Road, Chembur, Mumbai – 400 071, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle – 14(1)(2), Aaykar Bhavan, M.K. Road, Mumbai – 400 020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACF4211B		
Appellant/अपीलार्थी	..	**Respondent/**प्रतिवादी

Appellant by :	Shri Ravindra Poojary,AR
Respondent by :	Ms. Kavitha Kaushik, (Sr.DR)

Date of Hearing	30.10.2025
Date of Pronouncement	17.12.2025

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 27.03.2025 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3)r.w.s. 254 r.w.s. 144B of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 27.09.2021 for the Assessment Year [A.Y.] 2012-13.

2. The grounds of appeal are as under:

1. *Disallowance of 200 percent R & D expenses of Rs. 1,47,70,730/-u/s 35(2AB) of the Act*
1. *On the facts of the case, in law and under the circumstances, the Ld. CIT (A) erred in confirming the disallowance of the 200 percent of R & D Expenses amounting to Rs. 1,41,70,730/- claimed u/s 35(2AB) of the Income Tax Act 1961 without considering the ITAT order dated 30/08/2019 [ITA no.3865-M-2018] where the ITAT restore the issue to A.O in respect of additional 100 percent disallowance of actual R & D expenditure of Rs. 70,85,365/- and remaining expenditure of the 100 percent R & D Expenses of Rs. 70,85,365/- was already allowed by CIT(A) in its order dated 26/02/2018 and same is not in appeal before ITAT. Therefore, CIT(A) wrongly confirmed of 200 percent of R & D expenses of Rs. 1,41,70,730/-.*
2. *On the facts of the case, in law and under the circumstances, the Ld. CIT (A) erred in disallowing the 200% of Revenue expenses of Rs. 1,41,70,730/-u/s 35(2AB) of the act despite of the actual amount which is 100% of the R & D expenses of Rs. 70,85,365/ is already added back by the appellant in it's computation.*
3. *The Ld. AO failed in law to appreciate that approval of R & D expenses which duly granted to assessee by the Respective Authority namely, Department of Scientific and Industrial Research, Ministry of Science and Technology, hence the deduction @ 200% as claimed by assessee is allowable.*
2. *Disallowance of 200% of the capital expenditure of Rs. 81,08,170/-u/s 35(2AB) of the Act*
4. *On the facts of the case, in law and under the circumstances, the Ld. CIT (A) erred in confirming the disallowance of the 200% of capital expenditure u/s 35(2AB) of the act amounting to Rs.81,08,170/- claimed u/s 35(2AB) of the Income Tax Act 1961.*
5. *The Ld. AO failed in law to appreciate that as per section 35(2AB) of the act for capital expenditure incurred for R & D, that case 200% of the expenses on R & D has to be allowable in the computation of income.*

3. At the outset, it was noticed that instant appeal is delayed by 72 days. In this regard, the assessee has filed an application requesting for condonation of delay. An affidavit of Sri Ashish Tayal, CFO has also been filed stating that the earlier CFO who was looking after all income tax matters remained absent during the relevant period and also no

action could be taken by others as email portal on which the appellate order was received was also seen by him. The present CFO was appointed on 23.07.2025 and immediate action was taken and the appeal could be filed on 6.8.2025.It is submitted that the delay was unintentional and occurred because of bonafide reasons. After taking into account these contentions, we condone the delay.

4. It may also be stated here that the **instant appeal is part of second round of litigation**. Brief facts of the case are the assessee filed return of income disclosing total income of Rs. 15,27,38,623/-. The assessment u/s 143(3) of the Act was originally completed by the AO by making certain addition. During the assessment proceedings, he noticed that as the assessee had claimed weighted deducted under section 35(2AB) of the Act, in respect of capital expenditure towards Research and Development (R & D) called upon the assessee to furnish approval of the competent authority of the Department of Science and Industrial Research (DSIR) and Ministry of Science and Technology, Government of India. Alleging that the assessee could not furnish approval of the competent authority in the prescribed form and further, it did not furnish the details of loans and fluctuation loss on such loans, the AO disallowed the deduction claimed u/s 35(2AB) of the Act. Though, the assessee challenged the aforesaid disallowance before ld,CIT(A),

however, he also sustained the disallowance on the reasoning that the assessee failed to furnish the approval of the competent authority in the prescribed form. Aggrieved with the order of the CIT (A), the assessee filed appeal before ITAT. When the appeal was called for hearing, no one was present to represent the case on behalf of the assessee in spite of the several notice of hearing In such circumstances, the Hon'ble ITAT considered it appropriate to dispose of the appeal ex-parte qua the assessee after hearing the learned DR and on the basis of material available on record. The ld. DR submitted in the proceeding before the Hon'ble ITAT that, in absence of approval of the competent authority in the prescribed manner, assessee's claim of deduction under section 35(2AB) of the Act was not allowable. On perusal of the facts on record, it appeared that the assessee had not furnished approval of the competent authority certifying the expenditure incurred. However, in the grounds raised before the Hon'ble ITAT, the assessee stated that the competent authority from DSIR had granted approval for R & D facility at its factory at Taloja. It further appeared that the assessee had applied before the competent authority for approval of the expenditure incurred towards R & D. In such circumstances, the ITAT was inclined to restore the issue to the AO for fresh adjudication keeping in view the relevant statutory provisions.

4.1 In the de novo assessment also, as per the AO ,the assessee could not produce approval of the competent authority of the Department of Science and Industrial Research (DSIR) and Ministry of Science and Technology, Government of India for claiming deduction u/s 35(2AB) of the Act. In response to a show cause notice was sent to the assessee asking it why the assessment should not be completed by making the addition on account of disallowance made u/s 35(2AB) of the Act. The assessee submitted that it had incurred expenditure under head "R&D" expenses and claimed deduction u/s 35(2AB) of Rs 222,78,900/-in aggregate comprising of revenue and capital expenditure thereon. It claimed that it had submitted the relevant Certificate for renewal of recognition of In-house R & D Unit at Taloja Unit issued by Dept. of Scientific and Industrial Research (DSIR), Ministry of Science and Technology. On perusal of the attachments, it was found that it was scan of a document which was itself a photo copy not original which could not be taken as a verifiably evidence. Moreover in the Form No. 3CM issued by GOI, Ministry of Science and Technology, Dept. of Scientific and Industrial Research, the PAN of the company was written as AAACF1794M where as the PAN of the assessee company is AAACF4211B. The earlier belonged to M/s. Franco-IndiPharmaceuticals Private Limited. The assessee company failed to furnish the requisite

certificate from the prescribed authority as per provisions contained in Sec. 35(2AB) of the Act. The purported letter from Ministry of Science and Technology, the copy of photo copy of which was attached regarding recognition of in-house R&D Unit was not specified that the certificate was specific to the requirement made u/s 35(2AB) of the Act. Even if it was a genuine copy, it was not in prescribed proforma which was mandatory requirement. In view of these observations, the assessment u/s 143(3)/ 254 of the Act was completed making addition to the income of the assessee on account of disallowance made u/s 35(2AB) of the Act.

5. In the subsequent appeal,it was submitted by the assessee that that the respective authority i.e., DSIR had already granted certificate of in-house research and development facility u/s. 35(2AB) of the Act for the F.Y. 2008-09. The assessee received the order of approval of In house R & D facility u/s. 35(2AB) of the Act vide letter dtd. 02.07.2008. The respective authority continuously renewed the recognition of In house R & D units, for that purpose the appellant referred letter bearing No. F.No. TU/IV-RD/2732/2009 dt. 16.6.2009. Further, the appellant had already applied for certificate in respect of Form No. 3CK under rule 6(4) to therespective authority vide copy of Form No. 3CK. Once the assessee company was granted approval it would apply till it is revoked with reference to all the assessment years, which come within the ambit

of that period. The application though belatedly filed, was accepted for the purpose of continuation of recognition of the unit for scientific research as per the intimation dtd. 02.07.2008 and renewal of the same vide letter dtd. 16.06.2009 up to 31.03.2012 should be treated as application for recognition u/s. 35(2AB) filed in due course

5.1 The ld.CIT(A) concluded that no certificate in Form 3CL had been produced before the AO to enable him to ascertain the correctness of the claim u/s. 35(2AB).As per him the requirement of submitting report in Form 3CL as per provisions of sec. 35(2AB) read with Rule 6 would be rendered redundant if it were to be held that weighted deduction u/s. 35(2AB) can be allowed even without submitting Form 3CL. The claim of weighted deduction u/s. 35(2AB) of the Act could not be allowed without production of approval and certificate of expenditure incurred on in house research and development facility in Form No. 3CL. Under these circumstances, in the absence of certificate in Form 3CL support of its claim, the claim could not be allowed and therefore, the disallowance of the claim by the AO was sustained. The addition of Rs.1,41,70,730/- and Rs. 81,08,170/- totalling to Rs.2,22,78,900/- was upheld.

6. Before us, the ld.AR has argued that that the assessee company is engaged in manufacturing, import and export of pharmaceutical formulations with two of units being units i.e. Rabale (Thane) and Taloja (Raigad), DSIR recognized R&D unit. The only dispute in the matter pertains to deduction claimed by the assessee u/s 35(2AB) of the Act.The claim of assessee is that during the year it has incurred R&D Expenses of Revenue nature amounting to Rs. 70,38,365/- and Capital Expenditure of Rs. 40,54,085/-. In order to claim deduction u/s 35(2AB) @ 200%, assessee had added the revenue expenditure at Rs. 70,85,365/- in the Computation of Income and separately claimed deduction @ 200% u/s 35(2AB) on account of R&D Expenses of Rs. 1,41,70,730/- and similarly of Capital Expenditure of Rs. 81,08,170/- (200% of Rs.40,54,085/-) (which was recorded in schedule of fixed asset), thus aggregate claim made u/s 35(2AB) by assessee at Rs. 2,22,78,900/-.In the assessment order passed, the AO has made the disallowance as under: -

i. Disallowed the claim of 200% of revenue exp. u/s 35(2AB) is: Rs.1,41,70,730/-)
ii. Disallowed the claim of deduction on account of Capital Expenditure: Rs.40,54,085/- (eligible claim @ 200% u/s 35(2AB) is: Rs.81,08,170/-)
iii. While disallowing the entire claim u/s 35(2AB), AO has also not allowed the actual claim of revenue expenditure incurred by the

assessee of R&D Expenses which were added in the computation of Income by assessee to claim deduction @ 200% u/s 35(2AB)

6.1 Thus, the total disallowance as per the assessment order made by AO was aggregate of Rs.2,93,64,265/- (Rs. 70,85,365/- revenue expenditure incurred by the assessee+ claim of 200% of revenue & capital expenditure Rs. 1,41,70,730/- Rs. 81,08,170/-in order to claim 35(2AB).It was submitted that there was no dispute on fact of expenditure on R&D Incurred and claimed by the assessee, the only issue is disputed by AO in the assessment order by observing that there were inconsistencies i.e scanned copy of certificate, and absence of prescribed proforma and no certificate in Form 3CL was produced before AO. It was further argued that the assessee submitted that the Form 3CK & 3CM is filed in prescribed Form. The assessee has compiled with all the approvals required and submitted before AO and there was no inconsistencies. **As regard, non-submitting of Form 3CL, assessee submit that Prior to 01.07.2016 Form 3CL had no legal sanctity and it is only w.e.f 01.07.2016 with the amendment to Rule 6(7A)(b) of the Rule,** that the quantification of the weighted deduction u/s 35(2AB) of the Act was significance. In the instant case, the year under consideration being AY 2012-13, the same would fall prior to 1/4/2016 and hence, the CIT(A) was not

justified for insisting on production of Form NO.3CL for allowing deduction u/s 35(2AB) of the Act. In support of this the assessee relied upon the case laws as under:

> ***CIT v. Sun Pharmaceutical Industries Ltd. [2017] 85 taxmann.com 80/250 Taxman 270.*** *The Gujarat High Court held that merely because the prescribed authority failed to send intimation in Form 3CL, would not be reason enough to deprive the assessee's claim of deduction under section 35(2AB) of the Act.*
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> *Provimi Animal Nutrition India Pvt. Ltd [2021] 124 taxmann.com 73 (Bangalore Trib.) (Order copy enclosed) VS PCIT*
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> *Order copy enclosed) DCIT vs Aarti Industries Ltd [2025] 178 taxmann.com 676 (Mumbai- Trib.)*
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> *(M/s Glenmark Pharmaceuticals Ltd. VS ACIT [ITA No.5651/Mumbai/2017(Mumbai - Trib.) (Order copy enclosed)*
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> *Provimi Animal Nutrition India Pvt. Ltd vs DCIT [ITA. No. 26 & 27 /Bang/2018 (Bangalore - Trib.) (Order copy enclosed)*

6.2 It was also contended that the claim u/s 35(2AB) of consistently allowed in earlier years and also subsequent assessment years by the A.O in the assessment were completed u/s 143(3) of the Act. Copies of Assessment order for A.Y. 2010-11, 2011-12, 2013-14 & 2014-15 along with ITR Acknowledgment with computation showing the claim u/s 35(2AB) were filed. Reliance was placed on **Radhasoami Satsang v. CIT [1992] 193 ITR 321/60 Taxman 248,** wherein the Apex Court declared that although the principles of res judicata do not apply to income-tax proceedings, each assessment year being a unit by itself, yet

in cases, where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it may not be appropriate to allow that position to be changed in a subsequent year.

7. The ld.DR placed reliance on the orders of authorities below. She also placed reliance on the decision of hon'ble SC in the case of Apollo Tyres Ltd 178 taxmann.com 659(SC), PCP Chemicals Ltd 88 taxmann.com 5(Mum) and ACIT v. Ajeet Seeds Ltd. [2023] 148 taxmann.com 14 (Pune).The ld.AR in the rejoinder has submitted that these decisions are distinguishable on facts. It is submitted that in PCP Chemicals (P.) Ltd. v. ITO(supra) approval in Form 3CM was granted only from 1.4.2011 to 31.3.2013;However claim was for the deduction for AY 2011-12, before approval period which is not the case here. In Apollo Tyres Ltd. v. ACIT (supra) Kerala HC held agreement with DSIR is a condition precedent while in this case, DSIR approval existed well before AY 2012-13; renewals obtained timely. Agreement was not pending. It is also stated that in Saarloha Advanced Materials (P.) Ltd. (supra) application for extension of approval denied by DSIR for non-compliance which is not the fact here where only procedural lapse in Form 3CL, which is not mandatory pre-2016.In the case of ACIT v. Ajeet

Seeds Ltd. (supra) approval expired on 31.3.2009; renewal application filed for A.Y.2010-11 to 2015-16 but extension denied by DSIR. In assessee's case, R&D facility was approved and recognized up to 31.3.2012 as it was continuing approval of R&D facility was available unlike in case of Ajeet Seeds Ltd. The ld.AR concluded that the assessee had valid DSIR approval and recognition for the relevant period and the absence of Form 3CL was not a legal defect for AY 2012-13 and principle of consistency supported continued deduction allowable.

8. We have carefully considered all the relevant facts of the case, perused the records and heard the rival submissions it is evident that the only issue in the instant appeal pertains to the deduction claimed and disallowed by the AO u/s 35(2AB) of the Act. It appears that the main reason for the said disallowance in the absence of Form no. 3CL,the prescribed from for claiming the deduction. The lower authorities have held that it a mandatory requirement for the claim. However, we find that similar issue has been adjudicated by the coordinate benches of ITAT in several cases wherein the requirement has been held to be procedural requirement and not a mandatory one. In this connection we find that in the case of **Crompton Greaves Limited, Mumbai on ITA No.5295/Mum/2017**dated 27 September, 2019, similar issue was

decided in favour of the assessee concerned, The relevant paras are extracted as below:

> "Apropos ground no.1, the Assessing Officer ('A.O.', for short) noted, after verifying Form Nos. 3CM and 3CL concerning the deduction claimed by the assessee u/s. 35(AB) of the Income Tax Act, 1961 ('the Act', for short), that the eligible amount, as noted by the Department of Scientific and Industrial Research ('DSIR' for short), in Form No. 3CL was less as compared to the deduction claimed by the assessee. The A.O. made the disallowance of Rs.42,52,032/- on this basis. The ld. CIT(A) has confirmed the assessment order on this score, by observing as follows:
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> 6. Here it is seen that it is the assessee's stand that it had incurred in-house Scientific Research expenditure (capital and revenue). It had claimed weighted deduction u/s. 35(2)(AB) of the Act, as under:
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> i. Revenue expenditure of Rs.10,05,03,198/- @ 150% - Rs.15,07,54,797/-.
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> ii. Capital expenditure of Rs.1,27,94,490/- @ 150% - Rs.1,91,91,735/-.
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> The assessee, thus, claimed deduction of a sum of Rs.16,99,46,532/-. The details of this expenditure has been filed at Assessee's Paper Book (APB for short), pgs. 93 to100. It is the claim of the assessee that this expenditure was deductible u/s.35(2AB) of the Act in computing the total income @ 150% of the actual expenditure. The expenditure was incurred for the Kanjurmarg unit of the company; rather, the unit stood approved by the DSIR, in Form No. 3CM, as on 28.08.2008 (APB, pg. 88), as per the requirements of section 35(2AB) of the Act for the period from 01.04.2007 to 31.03.2009. The assessee's Auditor duly certified the genuineness of such expenditure and its eligibility for weighted deduction u/s. 35(2)(AB), as available at APB pgs. 93 to 100, as also by the tax auditor, as evident from APB pgs. 91 ^92.
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> 7. It was the action of the DSIR in issuing Form No. 3CL (APB pgs. 89 & 90), dated 24.08.2010, quantifying the eligible expenditure at Rs.11,04,63,000/-, as against that of Rs.11,32,97,688/-, resulting in a difference of Rs.28,34,688/-, which prompted the A.O. to make the disallowance in question.
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> 8. It is seen that as rightly contended on behalf of the assessee, section 35 of the Act grants deduction for Scientific Research expenditure, under the circumstances prescribed there-under, on compliance of the conditions laid down in various provisions of section35. Now, whereas in some cases, like those coming under the provisions of sections 35(1)(i) and 35(2AB), a specific approval of quantum of expenditure, by the prescribed authority, is the pre-requisite for deduction, the provisions of section 35(2AB) requires approval for Units and not approval for the quantum of expenditure. For ready reference, section 35(2)(AB) reads as under:

Expenditure on scientific research.

35. (2AB)(1) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred:

Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred.

Explanation.--For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).

(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.

(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.

(5) [***]

(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2008.

9. The operative phrase here is "on in-house research and development facility as approved by the prescribed authority .....", the word "facility" has been hereby show us to emphasis the point that it is the unit which requires approval of the prescribed authority under this provision. Further, in the memorandum, explaining the provision of section and the notes on the clauses issued at the time of insertion of section 35(2AB) in the Act, copies of both of which have been filed on record before us by the assessee, it has been clearly provided that the deduction would be available to the assessee's having an

approved in-house R & D facility by the prescribed authority. Undisputedly, there is no mention or approval of the quantum of expenditure.

10. Then, as observed by the Ahmedbad Bench of the Tribunal in the case **of Sun Pharmaceutical Industries Ltd. Vs. Pr.CIT (2017) 162 ITD 484** as approved **by the Hon'ble Gujarat High Court vide its decision reported at 250 taxmann 270, it has been held that the objective of Form 3CL is limited to the forwarding of the intimation of the approval of the unit; that Form No. 3CL is a mere report for intimation of approval of R & D facility.** In this regard, as rightly pointed out, such aspect stands confirmed by sub- rule (7A) of Rule 6 of Income Tax Rules, as within subsisting (now amended w.e.f. 01.07.2016), to provide for quantification of expenditure as well. The Finance Act, 2015 as amended to sub section (3) of section 35 w.e.f. 01.04.2016, providing for furnishing of reports in the manner to be prescribed. It is, thus, w.e.f. 01.04.2016 that the provision has been made for approval of quantum of expenditure, for the first time.

11. Further still, in Pune ITAT decision in the case **of Cummins India Ltd. v. Dy. CIT (2018) 96 Taxmann.com 576 (Pune-Trib.),** which is a decision directly on the issue at hand, it has been held, inter alia, to the fact that though the Rules stipulate the filing of audit report before the prescribed authority by availing the deduction u/s. 35(2AB) of the Act. The provision of the Act prescribed or approved to be granted by the prescribed authority vis-à-vis the expenditure from year to year; that the amendment was brought in by the Income Tax amendment Rules w.e.f. 01.04.2016, wherein, a 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; that prior to the said amendment, no such procedure; methodology was prescribed; and that therefore, in the absence of any such procedure or methodology, the A.O. had erred in curtailing the expenditure and consequent weighted deduction claimed u/s. 35(2AB) of the Act on the summon that the prescribed authority had approved the part of the expenditure in Form No. 3CL.

12. It would also be apt to reproduce here-under the provisions substituted in clause(b) of sub rule (7A) of Rule 6, as brought in by the amendment effective from 01.07.2016 as above: "The prescribed authority shall furnish electronically its report,- (i) in relation to the approval of the in-house research and development facility in Part A of Room 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 Income Tax Act, 1961 in Part B of Form No. 3CL."

13. Hitherto, the provision was as follows: "The prescribed authority shall submit its report in relation to the approval of in-house facility and

development facility in Form No. 3CL to the Director General (Income-tax Exemptions) within sixty days of its granting approval."

The above also makes it amply clear that prior to the amendment, i.e., upto 30.06.2016, it was not required to quantify the expenditure and it was only w.e.f. 01.07.2016 that this mandate has been put in place.

14. The year under consideration is A.Y. 2009-10 and, for this year, the amendment was not applicable. Therefore, the assessee is right in contending that the non approval of the expenditure claimed by CSIR did not entitle the A.O. to make the disallowance and the ld. CIT(A) to confirm the same.....

17. Be that as it may, the disallowance stands objected to by the assessee before us, which issue we have answered in the preceding paragraphs.

In view of the above, finding merit in ground no. 1 raised by the assessee, the same is hereby accepted to the reversing order passed by the ld. CIT(A) on this issue and deleting the disallowance of Rs.42,52,032/-, made u/s. 35(2AB) of the Act."

8.1 Likewise in the case of **Provimi Animal Nutrition ITAT, Bang.** in **124 taxmann.com 73**,it was held as under:

"2. The assessee is engaged in the business of manufacture and sale of animal feed supplements and veterinary drugs. The AO completed the assessment of the year under consideration u/s 143(3) of the Act on 27.12.2017. The Ld Pr. CIT, upon examination of assessment records, noticed that the assessee has claimed deduction of Rs.2,65,43,330/- u/s 35(2AB) of the Act (being weighted deduction @ 200% of expenditure incurred by it) and it has been allowed by the AO. The Ld Pr. CIT noticed that the assessee has specifically stated before the AO that it has filed requisite documents for approval and certification of the expenditure by the Department of Scientific & Industrial Research (DSIR) in Form 3CL and is awaiting approval and certification. **The Ld Pr. CIT noticed that the assessee did not furnish approval granted by DSIR in Form 3CL before the AO in support of its claim made u/s 35(2AB) of the Act till the date of completion of assessment.** The Ld Pr. CIT noticed that the AO has allowed the deduction without ascertaining factual aspects relating to approval of expenditure. Accordingly, the Ld Pr. CIT took the view that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act.

9. Now adverting to the facts of the present case, we notice that the co-ordinate bench of Tribunal in the case of **M/s Mahindra Electric Mobility Ltd vs. ACIT (ITA No.641/Bang/2017 dated 14-09-2018) has**

expressed the view 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 weighted deduction u/s 35(2AB) of the Act has significance. For the sake of convenience, we extract below the operative portion of the order passed by the Tribunal in the above said case:-

"13. We have heard the rival submissions. The learned DR relied on the order of the AO/CIT(A). The learned counsel for the Assessee reiterated submissions as were made before the revenue authorities and placed reliance on some judicial precedents on identical issue rendered by various benches of ITAT and Hon'ble High Courts.

14. For AY 2012-13, the previous year is FY 2011-12 i.e., the period from 1.4.2011 to 31.3.2012. The facts on record go to show that the Assessee's in-house R & D facilities was approved by the DSIR, Govt. of India, Ministry of Science and Technology for AY 2012-13 vide their letter dated 20.5.2009, a copy of which is placed at Page-30 of the Assessee's ITA No. 641/Bang/2017 Page10 of 17 paper book. The approval is for the period 1.4.2009 upto to 31.3.2012. Therefore, the condition for allowing deduction u/s.35(2AB) of the Act has been fulfilled by the Assessee. The claim of the revenue, however, is that the approval by the prescribed authority in form No.3CM is not final and conclusive Bangalore and the quantum of expenditure on which deduction is to be allowed is to be certified by DSIR in form No.3CL. There is no statutory provision in the Act which lays down such a condition. We shall therefore examine what is Form No.3CL.

15. DSIR has framed guidelines for approval u/s.35(2AB) of the Act. The guidelines as on May, 2010 which is relevant for AY 2012-13, in so far as it is relevant for the present appeal, was as given below.

(i) As per guideline 5 (iv) of the guidelines so framed, every company which has obtained an approval from the prescribed authority should also submit an undertaking as per Part C of Form No. 3CK to maintain separate accounts for each R&D centre approved under Section 35(2AB) by the Prescribed Authority, and to get the accounts duly audited every year by an Auditor as defined in sub- section (2) of section 288 of the IT Act 1961. (The statutory auditors of the Company should audit the R&D accounts. To facilitate this audit separate books of accounts for R&D should be maintained. Also, the statutory auditors should sign the auditors' certificate in the details required to be submitted as per annexure- IV of the guidelines to facilitate submission of Report in Form 3CL).

(ii) As per guideline 5(vi) of the guidelines, the audited accounts for each year maintained separately for each approved centre shall be furnished to the Secretary, Department of Scientific & Industrial Research by 31st day of October of the succeeding year, along with information as per Annexure-IV of the Guidelines.

(iii) As per guideline 5(ix) Expenditures, which are directly identifiable with approved R&D facility only, shall be eligible for M/s. Provimi Animal Nutrition India Pvt. Ltd., Bangalore the weighted tax deduction. However, expenditure in R&D on utilities which are supplied from a common source which also services areas of the plant other than R&D may be admissible, provided they are metered/measured and subject to certification by a Chartered Accountant.

(iv) As per guideline 5 (x) Expenditure on manpower from departments, other than R&D centre, such as manufacturing, quality control, tool room etc. incurred on such functions as attending meetings providing advice / directions, ascertaining customer choice/response to new products under development and other liaison work shall not qualify for deduction under section 35(2AB) of I.T. Act 1961.

(v) As per guideline 10 Documents required to be submitted by 31 st October of each succeeding year of approved period to facilitate submission of Report in Form 3CL (2 sets) are Complete details as per annexure-IV of DSIR guidelines.

16. The Assessee applied for issue of Form No.3CL to the appropriate authority on 24.3.2017, after the order of the CIT(A). The application so made by the Assessee is at page 43 to 65 of the Assessee's paper book. According to the Assessee, it has complied with all the requirements of the guidelines for issue of Form No.3CL, but the DSIR has issued Form No.3CL dated 5.4.2018 for AY 2014 & 15 & 2015-16 but no Form No.3CL was issued for AY 2012-13. Though there has been no communication to the Assessee in this regard, the learned counsel for the Assessee submitted that since the audited accounts were not submitted by 31 st October of the succeeding AY, as is required under Bangalore Guideline 5 (vi), the Assessee's application would not have been considered by the DSIR.

17. Rule-6(7A)(b) of the Rules specifying the prescribed authority and conditions for claiming deduction u/s.35(2AB) of the Act has been amended by the Income Tax (10 th Amendment) Rules, 2016 w.e.f. 1.7.2016, whereby it has been laid down that the prescribed authority, i.e., DSIR shall quantify the quantum of deduction to be allowed to an Assessee u/s.35(2AB) of the Act. Prior to such substitution, the above provisions merely provided that the prescribed authority shall submit its report in relation to the approval of in-house R & D facility in Form No.3CL to the DGIT days of granting approval. **Therefore prior to 1.7.2016 there was legal sanctity for Form No.3CL in the context of allowing deduction u/s.35(2AB) of the Act.**

18. The issue as to whether deduction u/s.35(2AB) of the Act can be denied for absence of Form No.3CL by the DSIR was subject matter of several judicial decisions rendered by various Benches of ITAT.

(i) The Pune ITAT in the case of **Cummins India Ltd. Vs. DCIT in ITA No.309/Pun/2014 for AY 2009-10 order dated 15.5.2018** had an occasion to consider a case where part of the claim for deduction u/s.35(2AB) of the Act was claimed supported by Form No.3CL but part of it was not supported by Form No.3CL. The Pune ITAT held as follows:-

"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. 01.07.2016, 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 deduction claimed under section 35(2AB) of the Act by ? 6,75,000/-. Thus, grounds of appeal No.10.1, 10.2 and 10.3 are allowed."

(ii) The Hyderabad ITAT in the case of M/S. **Sri Biotech Laboratories India Ltd. Vs. ACIT in ITA No.385/Hyd/2014** for AY 2009-10 order dated 24.9.2014 took the view (vide Paragraph-13 of the order) that when the **Assessee's R & D facility is approved the deduction u/s.35(2AB) of the Act cannot be denied merely on the ground that prescribed authority has not submitted report in Form 3CL.**

19. 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 vs. 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. 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 vs. Claris Lifesciences Ltd. 326 ITR 251 (Guj).** In its decision the Hon'ble Gujarat High Court 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 in 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 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."

20**. 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**. In the present case there is no difficulty about the quantum of deduction u/s.35(2AB) of the Act, because the AO allowed 100% of the expenditure as deduction u/s.35(2AB)(1)(i) of the Act, as expenditure on scientific research. Deduction u/s.35(1)(i) and Sec.35(2AB) of the Act are similar except that the deduction u/s.35(2AB) is allowed as weighted deduction at 200% of the expenditure while deduction u/s.35(1)(i) is allowed only at 100%. The conditions for allowing deduction u/s.35(1)(i) of the Act and under Sec.35(2AB) of the Act are identical with the only difference being that the Assessee claiming deduction u/s.35(2AB) of the Act should be engaged in manufacture of certain articles or things. It is not in dispute that the Assessee is engaged in business to which Sec.35(2AB) of the Act applied. The other condition required to be fulfilled for claiming deduction u/s.35(2AB) of the Act is that the research and development facility should be approved by the prescribed authority. The prescribed authority is the Secretary, Department of Scientific Industrial Research, Govt. Of India (DSIR). It is not in dispute that the Assessee in the present case obtained approval in Form No.3CM as required by Rule 6 (5A) of the Rules. In these facts and circumstances and in the light of the judicial precedents on the issue, we are of the view that the deduction u/s.35(2AB) of the Act ought to have been allowed as weighted deduction at 200% of the expenditure as claimed by the Assessee and ought not to have been restricted to 100% of the expenditure incurred on scientific research. We hold and direct accordingly and allow the appeal of the Assessee."

8.2 In yet another decision in **Glenmark Pharmaceuticals ITA 5651/Mum/2017 AY 2013-14,** it was held as below:

"3. We have heard the rival submissions and perused the materials available on record including the judicial pronouncements that were referred to by both the parties at the time of hearing before us. We find at the outset, the ld AO had not doubted the genuineness of incurrence of this expenditure together with its purpose. This is evident from the fact that the ld AO had granted deduction to the assessee u/s 35 of the Act but had only denied the weighted deduction claimed by the assessee u/s 35(2AB) of the Act on the ground that DSIR is the only authority to approve the expenses made by the assessee company towards scientific research and accordingly the expenses thereon to the extent approved by DSIR shall be eligible for weighted deduction.

Therefore, the ld AO observed that the amount which is not approved by DSIR in the sum of Rs 827.97 lacs shall not be eligible for weighted deduction u/s 35(2AB) of the Act. The ld CITA upheld the action of the ld AO. We find that once the facility is approved by DSIR, the assessee is entitled for weighted deduction u/s 35(2AB) of the Act and there is no requirement as per the Act that the expenses need to be approved by DSIR. **In this regard, the amendment has been brought in Rule 6(7A) of the IT Rules with effect from 1.7.2016 that even the expenses need to be approved by DSIR. Since this is applicable only from Asst Year 2017-18 onwards, the same cannot be made applicable for Asst Year 2013-14.** We find that this issue is no longer res integra and is covered by the decision of this tribunal in the case of **Inventia Health Care Pvt Ltd vs DCIT in ITA No. 5350/Mum/2014 for Asst Year 2010-11** dated 26.8.2016 wherein it was held as under:-

> "5.1. We have further considered the rival submissions of either side and perused the relevant materials on record, including the orders of the authorities below as regards the addition/disallowance made by the A.O u/s 35(2AB) of the "Act" and are unable to find ourselves to be in agreement with the observations of the lower authorities, to the extent the latter had concluded that the entitlement of the assessee company as regards weighted deduction u/s 35(2AB) of the"Act" is liable to be restricted to Rs.7,37,17,242/-, i.e on the basis of the amount approved by the „Ministry of Science & Technology", as against the claim of Rs. 7,50,95,242/- raised by the assessee company as per its financial statements, for the reason as had weighed with them, the entitlement of the assessee company is statutorily required to be in parity and cannot exceed the amount computed on the basis of the figures which were approved by the 'Prescribed authority". We are of the considered view that the lower authorities had absolutely misconceived and misinterpreted the scope and gamut of the weighted deduction contemplated u/s 35(2AB) of the "Act". That as per the mandate of Sec. 35(2AB) of the "Act", an eligible assessee company which incurs any expenditure on in-house research and development facility (not being expenditure in the nature of cost of any land or building) as approved by the prescribed authority, is entitled for deduction contemplated therein, subject to the condition that it enters into an agreement with the prescribed authority for co-operation in such research & development facility and audit of the accounts maintained for that facility, andsubmits with the "Prescribed authority" by 31st day of October of the relevant assessment year the details as regards the expenditure incurred by it on the in-house research and development facility, on the basis of which the „Prescribed authority" records its approval and submits the details of the expenditure approved to the "Director General (Exemptions)" in "Form 3CL". Thus a bare perusal of Sec. 35(2AB) reveals that what is required to be approved by the „Prescribed authority" is the "in-house R & D facility", and not the „amount of expenditure incurred by R&D

approved unit". That for the sake of clarity the relevant extract of Sec. 35(2AB) is reproduced as under:-

"Sec. 35(2AB). Where a company engaged in the business of .....incurs any expenditure on scientific research.....on in-house research and development as approved by the prescribed authority then, there shall be allowed a deduction [of a sum equal to one and one half times of the expenditure so incurred].

Thus in light of the aforesaid clearly worded statutory provision, it stands inescapably gathered beyond any scope of doubt that Sec. 35(2AB) though postulates approval by the prescribed authority of the "in-house R & D facility", however the same no where provides that the amount of deduction shall be regulated and restricted on the basis of the amount approved by the „Prescribed authority". That our aforesaid view is fortified by the order of the Hon'ble Ahmedabad bench of the Tribunal, in the case of :**ACIT Vs. Torrent Pharmaceuticals Ltd.[28 CCH 783(2009)]** wherein the Tribunal observing that the amount of expenditure approved by the "Prescribed authority" in „Form 3CL" will not have any bearing as regards the allowability of the weighted deduction in the hands of the eligible assessee company, held as under:-

"Thus there was no justification in harping upon the figure contained in Form 3CL as is done by the Assessing Officer. The provisions of the Act does not contain any specific conditions for the allowance of expenditure to the effect that it will be restricted to that contained in Form 3CL"

We find ourselves to be in agreement with the aforesaid order of the co-ordinate bench of the Tribunal, and thus in light of our aforesaid observations set aside the findings of the lower authorities that the entitlement of the assessee company towards weighted deduction u/s 35(2AB) is liable to be restricted to the extent the in-house research and development expenditure incurred by the assessee company is approved by the prescribed authority."

9. From the facts of the case, it is apparent that both the lower authorities have denied the claim of the assessee mainly on the ground that the requisite Form no.3CL was not furnished by the assessee in support of this claim. As noted above in the cited decision is clearly laid down that there was no such requirement in the pre-amended period since the requirement is effective only from AY 2016-17and was not applicable to the impugned AY 2012-13.Since all other requirements of

the claim have been satisfied by the assessee and they are not disputed by the authorities, respectfully following the above decision we hold that the authorities concerned erred in disallowing a valid claim of the assessee. Accordingly, we set aside the appellate order and direct the AO to allow the claim after due verification.

10. In the result, **the appeal of the assessee is allowed.**

Order pronounced in the open court on 17/12/2025.

Sd/-	**Sd/-**
NARENDER KUMAR CHOUDHRY	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 17.12.2025
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai