

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER &
SHRI VINAY BHAMORE, JUDICIAL MEMBER

I.T.A.No.2719/PUN/2024
(Assessment Year : 2018-2019)

ACIT, Panvel Circle, Panvel	vs.	Epygen Biotech Pvt. Ltd., Shop No.14, Ground Floor, Reheja Arcade, CBD Belapur, Plot No. 61, Sector-2, Panvel. PAN : AACCE 8299 C
(Appellant)		(Respondent)

For Assessee	:	Shri Satya Prakash Singh, CA
For Revenue	:	Shri Nasavarak Jore, atj, Addl.CIT

Date of Hearing	:	23.02.2026
Date of Pronouncement	:	10.03.2026

ORDER

PER : Dr. MANISH BORAD, AM

This appeal at the instance of the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**"CIT(A)"**] dated 10/10/2024 passed under section 250 of the Income Tax Act, 1961 (**"Act"**) which is arising out of assessment order dated 06.04.2021 passed u/s. 143(3) r.w.s. 143(3A) r.w.s. 143(3B) of the Act for the Assessment Year (**AY**) 2018-19.

2. Revenue has raised the following grounds of appeal:-

(1) On the facts and circumstances of the case, being the first fact finding authority, the CIT(A) erred in not carrying out necessary enquiries and investigation through the Assessing Officer by visiting the premise or by examining several documents issued by several other authorities, specifically to determine the year of commencement of the business by the assessee, thereby bringing the order of the CIT(A) within the ambit of perversity.

(2) The order of the Ld.CIT(A) may be vacated and that of the Assessing Officer may be restored.

(3) The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.”

3. Brief facts of the case are that assessee is a Biopharmaceutical Enterprises, engaged in research and manufacturing of therapeutic proteins for oncology, cardiovascular and immune disorders. Loss of ₹ 5,25,98,291/- declared in the return for A.Y. 2018-19 e-filed on 28.11.2018. Case selected for complete scrutiny on two issues, namely, business loss and large deduction claimed on account of scientific research u/s. 35(1)(iv) of the Act. Valid statutory notices u/s. 143(2) and 142(1) of the Act duly served upon the assessee. During the course of assessment proceedings, Ld.AO observed that assessee has claimed capital expenditure on scientific research at ₹ 3,72,88,916/- u/s. 35(1)(iv) of the Act. Ld.AO also observed that during the year under consideration, there are no purchases, no stock in hand and no sales of products or services except booking unbilled Revenue against the sale of dossiers of ₹ 14,63,492/- . Even though, assessee claimed that identification of land and construction of factory

started in A.Y. 2016-17. However, Ld.AO was not satisfied with the submissions and observed that the requirement of law of commencement of the business for admissibility of capital expenditure in the instant year, incurred in previous three years, has not been established in the case of assessee. Ld.AO also observed that the decision of Hon'ble Gujarat High Court in the case of *Sauashtra Cement & Chemical Industries Ltd.* (1973) 91 ITR 170 (Guj.-HC) is not applicable on the facts of the case because the facts dealt with are different from that of the assessee. Ld.AO concluded the assessment disallowing claim u/s. 35(1)(iv) of the Act at ₹3,72,88,916/- and assessed the business loss at ₹1,53,09,375/-.

4. Aggrieved, assessee preferred appeal before the Ld.CIT(A) and succeeded as Ld.CIT(A) allowed the claim of the assessee u/s. 35(1)(iv) of the Act observing as follows:-

“In ground No.3, regarding the disallowance of capital expenditure related to scientific research amounting to Rs.3,72,88,916 under Section 35(1)(iv) of the Act, the appellant highlighted that the company had commenced its business activities, including the identification of land, construction of the factory, and incurring expenses related to research and development, salaries, and financial costs. The appellant asserted that these expenses, claimed under Section 35(1)(iv) for scientific research, were legitimate and supported by documentary evidence such as invoices, bank statements, and the DSIR registration certificate. The appellant also referenced the decision of the Honourable Gujarat High Court in the case of Saurashtra Cement and Chemical Industries Limited, which held that the business can be said to have commenced when the initial activity, which must precede all others, has started. The appellant contended that for a biopharmaceutical business, research is integral and its initiation signifies the commencement of business operations. The appellant also noted that the company had made a sale of a product dossier of biopharmaceutical products, as reflected under "Other Income" in the annual report.

On the other hand, the assessing officer observed in the assessment order that there were no sales or revenue from business operations, no opening and closing stock, and no purchases made in the financial year relevant to the assessment year 2018-19. Consequently, the officer concluded that actual business activity had not commenced during the assessment year in question. Furthermore, the officer relied on Explanation 1 of Section 35(1), which allows for the deduction of capital expenditure incurred within three years immediately preceding the commencement of business, to disallow the expenditure claimed under Section 35(1)(iv) by the appellant.

To resolve the dispute in the appeal, one must determine the year of commencement of the business in the appellant's case. Although the Income Tax Act mentions the setup and commencement of a business, these terms are not defined within the Act. Therefore, examining the nature of the taxpayer's business activity is necessary. In the case of CIT vs Saurashtra Cement and Chemical Industries Limited, the business involved quarrying the limestone, manufacturing cement, and establishing a marketing network to sell cement. Revenue argued that extracting limestone by quarrying leased land was merely preparatory and that the business could only be considered set up upon installing the plant and machinery for manufacturing cement. However, the Hon'ble High Court held that the business would commence when the activity which, is first in point of time and which must necessarily precede the other activities is started. Take, for example, a case where an assessee engages in the business of a trader which consists of purchasing and selling goods. The assessee must necessarily purchase goods in order to be able to sell them and purchase of goods must, therefore, necessarily precede their sale.

In the appellant's case the business involves biopharmaceutical research and development, including product testing, certification, and regulatory approval before commercial exploitation or market sales. The appellant submitted that their in-house R&D was recognized by the DSIR and that the expenditure claimed was for acquiring lab equipment and machinery needed for the R&D facility. The appellant also argued that research and development are integral to their business and that they had already generated income from the sale of product dossiers, recorded under "Other Income."

Considering the nature of the appellant's business, which includes time-consuming research and development as part of the pharmaceutical industry, it is my view that the appellant had indeed commenced their business Activities related to the business, even those preceding the commercial sale of the product, are sufficient to constitute the commencement of business. Therefore, the appellant is entitled to the deduction

under Section 35(1)(iv) of the Act, and the disallowance made by the assessing officer is hereby deleted.”

5. Aggrieved, Revenue is now in appeal before this Tribunal.
6. Ld. Departmental Representative (DR) supporting the order of Ld.CIT(A) submitted that since the assessee has not commenced the business activity of selling the product for which the research has been carried out, the claim u/s. 35(1)(iv) of the Act deserves to be disallowed.
7. On the other hand, learned counsel for the assessee apart from placing heavy reliance on the findings of the Ld.CIT(A) also made reference to the written submissions filed during the assessment proceedings which are placed in paper book at page Nos. 98-114 and also the documents including registration certificate issued by Department of Scientific and Industrial Research (DSIR) recognizing the company as a scientific research company and also about the nature of work of the capital expenditure in question, ledger account, invoices and copy of bank statement.
8. We have heard rival contentions and perused the records placed before us and also carefully gone through the decisions /judgments referred to and relied on by the assessee in the written submissions filed before the Ld.CIT(A) as well as the findings of the Ld.CIT(A) dealing with such decisions. The only grievance of the Revenue is that Ld.CIT(A) erred in allowing the claim of capital expenditure u/s. 35(1)(iv) read with

Explanation 1 of section 35(2) of the Act without appreciating the fact that commencement of business has not started during the year as required under Explanation 1 to the provisions of section 35(2)(ia) of the Act. So far as the issue under consideration is that section 35(1) and section 35(2) has a direct bearing, therefore the same are reproduced as below:-

35. (1) In respect of expenditure on scientific research, the following deductions shall be allowed—

(i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.

Explanation.—Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary as defined in Explanation 2 below sub-section (5) of section 40A to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced ;

(ii) an amount equal to one and one half times of any sum paid to a research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research :

Provided that such association, university, college or other institution for the purposes of this clause—

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government :

Provided further that where any sum is paid to such association, university, college or other institution 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 sum so paid;

(iia) any sum paid to a company to be used by it for scientific research:

Provided that such company—

(A) is registered in India,

(B) has as its main object the scientific research and development,

(C) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(D) fulfils such other conditions as may be prescribed;

(iii) any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in social science or statistical research :

Provided that such association, university, college or other institution for the purposes of this clause—

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government.

Explanation.—The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) or to a company to which clause (iia) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) or to a company referred to in clause (iia) has been withdrawn;

(iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2) :

Provided that the research association, university, college or other institution referred to in clause (ii) or clause (iii) shall make an application in the prescribed form and manner to the Central Government for the purpose of grant of approval, or continuance thereof, under clause (ii) or, as the case may be, clause (iii) :

Provided further that the Central Government may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the research association, university, college or other institution and that Government may also make such inquiries as it may deem necessary in this behalf :

Provided also that any notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:

Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government:

Provided also that every notification under clause (ii) or clause (iii) in respect of the research association, university, college or other institution or under clause (iia) in respect of the company issued on or before the date on which this proviso has come into force, shall be deemed to have been withdrawn unless such research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) makes an intimation in such form and manner, as may be prescribed, to the prescribed income-tax authority within three months from the date on which this proviso has come into force, and subject to such intimation the notification shall be valid for a period of five consecutive assessment years beginning with the assessment year commencing on or after the 1st day of April, 2022:

Provided also that any notification issued by the Central Government under clause (ii) or clause (iia) or clause (iii), after the date on which the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding five assessment years as may be specified in the notification.

(1A) x x x x x x

(2) For the purposes of clause (iv) of sub-section (1),—

(i) in a case where such capital expenditure is incurred before the 1st day of April, 1967, one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous years ;

(ia) in a case where such capital expenditure is incurred after the 31st day of March, 1967, the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year :

Provided that no deduction shall be admissible under this clause in respect of any expenditure incurred on the acquisition of any land, whether the land is acquired as such or as part of any property, after the 29th day of February, 1984.

Explanation 1.—Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced.

Explanation 2.—For the purposes of this clause,—

(a) "land" includes any interest in land ; and

(b) the acquisition of any land shall be deemed to have been made by the assessee on the date on which the instrument of transfer of such land to him has been registered under the Registration Act, 1908 (16 of 1908), or where he has taken or retained the possession of such land or any part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), the date on which he has so taken or retained possession of such land or part ;

(ii) notwithstanding anything contained in clause (i), where an asset representing expenditure of a capital nature incurred before the 1st day of April, 1967, ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deductions already allowed under clause (i) falls short of the said expenditure, then—

(a) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and

(b) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year ;

(iii) if the asset mentioned in clause (ii) is sold, without having been used for other purposes, in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation ; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place ;

(iv) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed under clause (ii) of sub-section (1) of section 32 for the same or any other previous year in respect of that asset ;

(v) where the asset mentioned in clause (ii) is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under clause (ii) of sub-section (1) of section 32.

9. The assessee in the instant case has claimed the alleged expenditure u/s. 35(1)(iv) of the Act read with Explanation 1 to Section 35(2) of the Act which deals with the capital

expenditure incurred after the 31st day of March, 1997, but before the commencement of business for which an assessee can claim the aggregate of the expenditure so incurred during three years immediately preceding the year of commencement of the business, as deemed to have been incurred in the previous year in which the business is commenced. So far as capital expenditure incurred after the commencement of business, the same is taken care by Section 35(2)(ia) of the Act.

10. We can further understand the said provision with the help of example. For instance, assessee has incurred capital expenditure on scientific research from A.Y. 2012-13 to 2017-18 and during the A.Y. 2018-19, the assessee has commenced the business, then only the capital expenditure for scientific research incurred from A.Ys.2015-16 to 2017-18 shall be deemed to have been incurred during the A.Y. 2018-19, during which the business has commenced and can claim the same as deduction u/s. 35(1)(iv) of the Act.

11. Now coming to the facts of the assessee's case and also the submissions made during the course of hearing, it is gathered that assessee has been incurring capital expenditure to incentivize innovation in-house R&D to find the formula for manufacturing a new product. Learned counsel for the assessee fairly admitted that scientific research for making the

formula for manufacturing the product and other related research work are still undergoing during the A.Y. 2018-19 and that the product for which the research has been carried out, has not been manufactured and the object of such R & D not achieved, and, therefore, there is no question of selling of such product in the market. It is also not in dispute that as per audited financial statement, revenue from operations is NIL. There is no purchase of raw material during the year, closing stock in the balance sheet as on 31.03.2018 and only capital work in progress of ₹ 17.78 Cr. approx is appearing in the balance sheet. Before claiming alleged capital expenditure u/s.35(1)(iv) of the Act and without carrying any purchases/sales activity during the year, the assessee has incurred loss of ₹ 2,01,34,712/- which is further increased by the alleged claim u/s. 35(1)(iv) of the Act. The decisions and judgments referred by the assessee before the Ld.CIT(A) are mainly dealing with the issue of claim of depreciation but the assets ready to use cannot be equated with the special provisions of capital expenditure allowable u/s. 35(1)(iv) of the Act and there is no decision referred and relied by assessee which specifically deals with the claim of capital expenditure u/s. 35(1)(iv) of the Act in the year of commencement of business. In our view, allowing the claim of capital expenditure u/s. 35(1)(iv) is logically provided under the Act for the promotion of research and development activities in various fields of

business and also to promote the scientific research work. On bare perusal of Explanation (1) to section 35(2) of the Act indicates that prior to the commencement of business only the capital expenditure incurred for three years immediately preceding the year of commencement of business is allowable as an expenditure which means that capital expenditure for R&D incurred prior to preceding three years of commencement of business are not allowed to be claimed u/s. 35(1)(iv) read with Explanation 1 to section 35(2) of the Act. Now once capital expenditure has been incurred and a product is formally devised and manufacturing of such product commences, the assessee starts exploiting such research and development and then the capital expenditure which has been incurred in preceding three years for scientific research can be claimed as an expenditure u/s. 35(1)(iv) of the Act in the year when the business is commenced. Sometimes, the research and development work may take more than three years prior to the actual commencement of business, but then only the capital expenditure incurred on research and development work during the three years preceding the year of commencement of business can be claimed as an expenditure u/s. 35(1)(iv) of the Act and not for the remaining years. In the instant case also, we notice that the assessee has not carried out any purchase/sale activity nor there is any closing stock. It is also discernable that during A.Y. 2016-17, the assessee

has earmarked the land and thereafter installed the plant and machinery which are ready to use i.e. another part of business activity for carrying out manufacturing work. Here we are dealing with a special provision of allowing capital expenditure incurred on scientific research and development as a normal revenue expenditure. Now on one hand, assessee purchased the land and installs plant and machinery and such plant and machinery is ready to use and whenever the assessee purchases raw-material and as per formula derived for research and development work starts manufacturing, the product then such plant and machinery comes into use. Now capital expenditure on scientific research is a continuous process in case of some companies where products on and off are developed and regular research activities is carried out. But in the instant case, the assessee has still not commenced manufacturing work and after claiming alleged expenditure at ₹3,72,88,916/- and after other adjustments for inadmissible items, loss of ₹ 5,25,98,291/- has been declared in the income tax return.

12. The moot question before us is whether assessee has commenced the business during the year under consideration. Apparently, the commencement of business has not been defined under the Act. In the instant case, Ld.CIT(A) has given relief placing reliance on the judgment of Hon'ble Gujarat High Court in the case of *Sauashtra Cement & Chemical Industries*

Ltd. (supra) where it has been held that business can be said to have commenced, when the activity which is first point of time and which must necessarily precede all other activities, is started. Further, in the case of *Sauashtra Cement & Chemical Industries Ltd.* (supra), the business involved quarrying limestone manufacturing cement and establishing a marketing network to sell cement. Though, Revenue argued that extracting the limestone by quarrying lease-land is merely preparatory the business could only be considered as set up upon installing the plant and machinery for manufacturing cement. However, Hon'ble Court held that business would commence when the activity which is first in point of time and which must necessarily precede all other activities, is started.

13. We further observe that Ld.CIT(A) has given an example about the assessee engaged in the business of trader carrying purchase and sale of goods and even if the assessee has only purchase goods, but has not sold the same, then also it is to be considered that business has commenced because goods have been purchased. In the instant case, assessee is involved in Biopharmaceutical research and development including product testing. Certificate issued by DSIR is merely a final recognition granted to companies and research institutes having in-house R&D units. There is no dispute that the assessee is carrying on product research and development activity in-house and research activity is consistently going

but the first product for which the alleged expenditure has been claimed has still not been manufactured by the assessee company. In our considered view, once the object of research and development gives the result and the assessee starts manufacturing such product then it has to be constructed that for the purpose of claiming deduction u/s. 35(1)(iv) read with Explanation 1 to section 35(2) of the Act business has commenced. Before us, learned counsel for the assessee has not placed any evidence firstly to indicate that what is the outcome of the research and development work carried out in the preceding three financial years, and secondly, whether any product is ready to be manufactured. What has been admitted before us is that capital expenditure on scientific research and development is still undergoing, which clearly proves that there is no commencement of business as required for the purpose of Explanation 1 to section 35(2) of the Act. We, therefore, are of the considered view that Ld.CIT(A) erred in allowing the assessee's claim u/s. 35(1)(iv) of the Act without examining the fact that business activity as required for the purpose of claiming section 35(1)(iv) of the Act has not commenced during the year under consideration and therefore conditions envisaged in section 35(1)(iv) of the Act are not fulfilled. We therefore, reverse the findings of the Ld.CIT(A), thereby confirming the alleged disallowance u/s. 35(1)(iv) of

the Act made by the Ld.AO and allow the effective grounds of appeal raised by the Revenue.

14. In the result, appeal of the Revenue is allowed.

Order pronounced in the open Court on 10.03.2026

Sd/-
[VINAY BHAMORE]
JUDICIAL MEMBER

Sd/-
[MANISH BORAD]
ACCOUNTANT MEMBER

Pune, Dated 10th March, 2026

vr/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. PCIT concerned.
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//True Copy //

By Order

Assistant Registrar,
ITAT, Pune.