

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष
**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 973/Mds/2015
निर्धारण वर्ष /Assessment year : 2011-2012

M/s. Elgi Equipments Ltd,
Elgi Industrial Complex,
Trichy Road,
Singanallur,
Coimbatore 641 005.

Vs. The Joint Commissioner of
Income Tax,
Corporate Circle 2,
Coimbatore

[PAN AAACE 4784E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. N.V. Balaji, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. Supriyo Pal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 22-09-2016
घोषणा की तारीख /Date of Pronouncement : 21-10-2016

आदेश / ORDER

PER SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

This appeal of the assessee is directed against an order dated 23.02.2015 of the Commissioner of Income-tax (Appeals)-1, Coimbatore.

2. Assessee has taken altogether nine grounds, of which Grounds No. 1 & 9 are general in nature needing no specific adjudication

3. Ground No. 8, is on levy of interest u/s.234B and u/s.234C of the Income Tax Act, 1961 (herein referred as 'the Act') which is consequential in nature. Effective grounds appear as numbers 2 to 7.

4. Through its ground Nos. 2 to 5, assessee is aggrieved on denial of weighted deduction of 200% allowed u/s.35(2AB) of the Act, for the revenue expenditure incurred for its in-house research and development facility.

5. Facts apropos are that the assessee a manufacturer of Air Compressors and Automobile Equipment had filed a return of income for the impugned assessment year disclosing income of ₹122,83,67,099/- under normal provisions and book profit of ₹123,06,61,275/- u/s.115JB of the Act. During the course of assessment proceedings, assessee filed a letter dated 27.01.2014 seeking weighted deduction for revenue expenditure incurred on its Scientific Research and Development facilities. As per assessee, during the relevant previous year, it had incurred capital expenditure

of ₹1,75,67,713/- and revenue expenditure of ₹14,81,50,097/- for its DSIR approved research facility. Assessee pointed out that the said facility was originally approved by the competent authority as early as 1994-1995 and thereafter it was periodically renewing such approval. As per assessee for the relevant previous year renewal letter was issued by DSIR on 14.07.2010 with reference No.TU/IV-RD/1328/2010. Contention of the assessee was that they had by way of abundant caution, claimed 200% deduction in respect of capital expenditure alone in return of income filed. As per assessee it was eligible for 200% deduction on revenue expenditure also. Relying on the judgment of Hon'ble Gujarat High Court in the case of *CIT vs. Claris Life Sciences Ltd (2010) (326 ITR 251)* and that of Hon'ble Delhi High Court judgment in the case of *CIT vs. Sandan Vikas (India) Ltd (2011) (335 ITR 117)*, assessee submitted before the Id. Assessing Officer that it was eligible for weighted deduction of 200% on the revenue expenditure also. Contention of the assessee was that competent authority had authority only to approve the research and development facility but not the amount of expenditure eligible for weighted deduction. Assessee also pointed out that it was not a fresh claim but only improvement of a claim already made by it in the return of income.

6. However, Id. Assessing Officer was not impressed by the above representation and explanations. According to him, Government of India had given approval for weighted deduction of 200% only for the capital expenditure of the R & D facility for the relevant financial year, and not for the revenue expenditure. He did not accede to the request of the assessee for granting weighted deduction on revenue expenditure incurred by it for the R & D facility.

7. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Contention of the assessee was that it had submitted all details regarding claim of expenditure u/s.35(2AB) of the Act but Id. Assessing Officer had rejected such claim without giving any reason. On all other aspects, similar contentions as taken before Id. Assessing Officer were reiterated before Id. Commissioner of Income Tax (Appeals).

8. Id. Commissioner of Income Tax (Appeals) however was not impressed by the arguments of the assessee. According to him, Delhi High Court in the case of *Sandan Vikas (India) Ltd (supra)* and Gujarat High Court in the case of *Claris Lifesciences Ltd (supra)* were adjudicating the relevance of the date of approval of a research and development facility in relation to a claims of deduction u/s.35(2AB) of the Act. As per Id. Commissioner of Income Tax (Appeals) these

judgments had nothing to do with the quantum of deduction. Further, as per Id. Commissioner of Income Tax (Appeals) the Id. Assessing Officer had to go by the approval of expenditure given by DSIR and had no lee-way on the quantum.

9. Now before us, the Id. Authorised Representative, strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that terms and conditions under which Ministry of Science & Technology gave approval u/s.35(2AB) of the Act, for in-house R & D unit interalia mentioned that such recognition did not tantamount to an approval under Income Tax Act, for any tax concessions, rebates, import concessions etc. Argument of the Id. Authorised Representative was that quantum of deduction was a matter which was to be considered by the Id. Assessing Officer under the Act and not by DSIR. Reliance was placed on the renewal of recognition granted on 14th July, 2010 by Ministry of Science and Technology, Government of India, wherein the above condition was mentioned. Id. Authorised Representative brought to our attention order of approval dated 21st December, 2011 placed at paper book at page 74. According to him, limitation placed by Ministry of Science and Technology which disabled the assessee from claiming weighted deduction for the revenue expenditure incurred in its to R & D facility, went beyond the scope of

powers vested in them. According to him, Id. Assessing Officer had never doubted the correctness of the claim, but erroneously went by the DSIR letter. As per Id. Authorised Representative disallowance was only made for a reason that approval given by the DSIR was for capital expenditure and not for revenue expenditure. According to him, authority who was to determine the quantum of expenditure on which weighted deduction could be claimed u/s.35(2AB) of the Act was only the Id. Assessing Officer and not Department of Scientific and Industrial Research. Relying on Form 3CK prescribed under Income Tax Rule, for moving an application before the Secretary of Department of Scientific & Industrial Research of Government of India, placed at paper book page 3 to 43, Id. Authorised Representative submitted that said form did not in any way limit the allowance u/s.35(2A) only to capital expenditure. Further, as per Id. Authorised Representative approval was to be given by the said authority in form no.3CM and this form did not have any column or row wherein the quantum of expenditure on which weighted deduction could be given was to mentioned or quantified. Reliance was placed by the Id. Authorised Representative once again on the decision of Gujarat High Court in the case of *Claris Lifesciences Ltd (supra)* and Delhi High Court in the case of *Sandan Vikas (India) Ltd (supra)*. Apart from this, Id. Authorised Representative also placed considerable reliance on the

decision of Mumbai Tribunal in the case of *USV Ltd vs. DCIT (2012) 54 SOT 0615*. As per Id. Authorised Representative the latter decision squarely covered the issue in favour of the assessee.

10. Per contra, the Id. Departmental Representative submitted that once DSIR, which was the competent authority to give approvals u/s. 35(2AB) of the Act, had specified the items of expenditure on which such deduction was to be granted, in its letter of approval, Id. Assessing Officer could not go beyond the said approval and examine whether assessee was eligible for a higher claim than that. As per Id. Departmental Representative judgments of the Gujarat High Court and Hon'ble Delhi High Court were not only on the cut of dates that were to be applied but also on the quantum of deduction. Thus, according to him, lower authorities were justified in restricting the claim of weighted deduction only to capital expenditure

11. We have considered the rival contentions and perused the orders of the authorities below. Section 35(2AB) of the act is reproduced hereunder:-

“(2AB)(1) Where a company engaged in the business of biotechnology or in the 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 two times of 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 for audit of the accounts maintained for that facility.

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

(5) No deduction shall be allowed in respect of expenditure referred to in clause (1) which is incurred after the 31st day of March, 2012.

(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''.

A reading of the above Section clearly show that there was no restriction on the type of expenditure for preferring a claim under it except for the restrictions placed on cost of land and building. Land and building were not eligible for such weighted deduction. Careful reading of Sub-sec. (1) would also show that the deduction was for expenditure incurred on in-house research and development facility 'as'

approved by prescribed authority. It was not on expenditure for scientific research on in-house research development facility/approved by the prescribed authority. The critical difference is the word "as". This particular word coming between "research and development facility" and " approved by the prescribed authority" in our opinion clearly means that the approval contemplated was not for the facility alone. Income Tax rules do prescribed the form in which approval is to be given by Secretary DSIR. This is form No.3 CM. The said form is reproduced as under:-

Form No. 3CM
Order of approval of in-house Research and Development facility under section 35(2AB) of the Income-Tax Act, 1961.

1. *Name. Address and PAN of the Company:*
2. *Nature of the business of the company –Manufacturing/ production of article or thing.*
3. *Objectives of the scientific research to be conducted by in-house Research and Development facility:*
4. *Address at which such Research & Development facility is located.*
5. *Ref. No. and Date of the application:*

The above Research & Development facility is approved for the purpose of section 35(2AB), subject to the conditions underlined therein.

Place:

Date:

.....
(Signature)
(Name)
Secretary, DSIR,
(Seal)

File No.
Order No.

The above form no doubt does not give any column or row for specifying the quantum of expenditure on which approval was being given. However, the format of this 'form' cannot in our opinion, dilute the provisions of the Act. In fact there is no rule as such in the Income Tax Rules which require the authority concerned to issue the approval, in form 3CM alone. There is no dispute in the case before us that research and development facility had the approval of DSIR. Contention is that there could have been no denial of such weighed deduction on revenue expenditure. Form 3 CM issued by the competent authority which is placed on record at page 74 of paper book is reproduced hereunder:-

*Government of India,
Ministry of Science and Technology,
Department of Scientific and
Industrial Research,
Technology Bhavan,
New Mehruadi Road,
New Delhi 110 016.*

Form 3 CM

Order of approval of in-house Research and Development facility under section 35(2AB) of the Income-Tax Act, 1961.

1. Name. Address and PAN of the Company:

*M/s Elgi Equipments Ltd.,
Elgi Industrial Complex,
Trichy Road, Singanallur
Coimbatore 641 005
Fax no. 04222573697*

AAACE4784E

2. Nature of the business of the company:

Manufacturing and production of mechanical equipments.

3. *Objectives of the scientific research to be conducted by in-house Research and Development facility:*
- *To design and develop competitive products in line with international standards*
 - *To initiate new technologies that improves quality, performance, and manufacturing aspects of products.*
 - *To identify new technology initiatives that meet the short term and long term business goals.*
 - *To focus on technology improvements required to get ahead aspects in compressors/heat exchange.*
 - *Work toward reduce the noise levels in compressors to meet the global sales requirements.*
4. *Address at which such Research & Development facility is located Elgi Industrial Complex, Trichy Road, Singanallur, Coimbatore.*
5. *Ref. No. and Date of the application: letter no. Nil Dated 23.05.2011. The above Research & Development facility is approved for the purpose of section 35(2AB) from 01.04.2010 to 31.03.2011 for capital expenditure only and from 01.04.2011 to 31.03.2012, for both capital and revenue expenditure subject to the conditions underlined therein.*

(KVSP Rao)

Scientist "G"

(for and on behalf of Secretary, DSIR)

Place: New Delhi

Date : 21 December, 2011

DSIR Ref.:-

File No. TU/IV-15(670)/2010

Order No. TU/IV-15(670)/35(2AB)/3CM/49712011 dated .21.12.2011

Copy to: The Director General Income Tax (Exemption), District Centre, 2nd Floor, Plot No.15, Lakshmi Nagar. Delhi 110 092

It can be seen from clause 5 above that for the subsequent year authority had granted weighted deduction both capital and revenue expenditure.

12. We do find that an almost similar issue had come up before Mumbai Bench of the Tribunal in the case of *USV Ltd (supra)*. In the said case, there was a difference between amount specified in DISR certificate and amount claimed by the assessee in respect of the following items:-

-Clinical trials being incurred on outside laboratory	₹ 4,00,32,682/-
-Patent filing in various foreign countries & foreign consultancy	₹1,84,87,038/-
-Expenses on repairs, rent, rates and taxes pertaining to building	₹71,58,991/-
<i>Difference between the amount reported in annual report and claimed</i>	
-	
<i>in ROI</i>	₹ 1,25,17,261/-

<i>Total</i>	₹ 7,81,95,972/-

Argument taken by the assessee and the Id. Departmental Representative in the said case were also similar to these taken here before us. These arguments appears at para 27 to 29 of the said order which is reproduced here under:-

"27. Learned Counsel for the assessee submitted before us that section 35(2AB) only excludes cost of land or building from weighted deduction and not any charges and expenses relating to land or building. He submitted that the expenditure such as repairs, rent and rates cannot be treated as cost of land and building. He submitted that such expenses are revenue in nature. He submitted that when the expenditure are incurred for renting the R&D premises and for incurring expenditure on

normal repairs on R&D facilities have to be allowed in full weighted deduction. To substantiate his submissions the learned Counsel for the assessee referred the decision of the Hon'ble Delhi High Court in the case of CIT v. Sandan Vikas (India) Ltd. [2012] 207 Taxman 216/ 22 taxmann.com 19 a copy of which is placed at Page-167 of the paper book. He also referred to the decision of the Hon'ble Madras High Court in the case of CIT v. Wheel's India Ltd.[2012] 20 taxmann.com 682 and submitted that DSIR certificate is only to certify the facilities of research and development activity undertaken by the assessee and not a certificate for expenditure incurred by the assessee. He further submitted that the details mentioned in DSIR certificate should be treated as a mere clarification and not an indication for disallowance of the expenditure incurred by the assessee. The learned Counsel submitted that merely because in the certificate issued by the DSIR certain amounts were not approved, it does not mean that the assessee has not incurred expenditure on research and development activity and, therefore, the disallowance of weighted deduction @ 150% as per section 35(2AB) of the Act is not justified.

28. On the other hand, the learned Departmental Representative justified the order of the Commissioner (Appeals) and submitted that the DSIR certificate is pre-requisite for any expenditure to be allowed under section 35(2AB) of the Act has weighted deduction @ 150%. He submitted that since DSIR did not approve the said expenditure in certificate issued by it, the Assessing Officer rightly disallowed the same on the basis of certificate of DSIR as he is to follow the said certificate of DSIR for considering as to whether the assessee is entitled for weighted deduction under section 34(2AB) or not and he is not to apply his mind for that purpose. He submitted that the order of the Commissioner (Appeals) should be confirmed.

29. In the rejoinder, the learned Counsel for the assessee to his submissions referred to Rule-6(7A) of the I.T. Rules, 1962, and submitted that this rule lays down the condition subject to which the expenditure incurred on in-house research and development facilities is to be allowed under section 35(2AB) of the Act and the said rule does not provide that the expenditure incurred in connection with building of R&D facilities should not be allowed. He submitted that there is no authority given under section 35(2AB) to make any rule laying down additional condition(s) for grant of weighted deduction under section 35(2AB). He submitted that if the quantification of eligible expenditure, as determined by the prescribed authority i.e., DSIR is considered as final, then an important right of appeal to the assessee against such quantification will be lost as the

quantification so laid down and treated by the prescribed authority will be treated as binding on the appellate authority as well. The learned Counsel for the assessee submitted that the assessee is entitled for weighted deduction of the expenditure incurred on rent, rate and taxes”.

The direction of the Id. Tribunal are contained in para 30 to 34 of the order and they are also reproduced hereunder:-

'30. We have carefully considered the submissions of the learned Representatives of the parties and the orders of the authorities below as also the provisions of section 35(2AB) r/w Rule-6(7A) of the Rules. On perusal of the provisions of section 35(2AB) of the Act, we do agree with the learned Counsel for the assessee that the said section excludes the expenditure in the nature of cost of any land or building from weighted deduction to be allowed under section 35(2AB). The said section 35(2AB) as applicable to the assessment year under consideration along with the explanation reads as under:

"Section 35(2AB) provides that

(2AB)(1) where a company engaged in the business of [bio-technology or in the business of] manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board 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.

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).]"

31. Therefore, it is evident that this section excludes from weighted deduction only cost of land and building and not any charges and expenses related to land or building. The repairs, rent, etc., the expenditure incurred relating to R&D premises cannot form part of cost of land or building. In the absence of any fact that the said claim of the assessee aggregating to Rs. 62,00,689, is not the expenditure on rents, rates and taxes relating to R&D premises, we are of the considered view that the said expenditure has to form part of weighted deduction as per section 35(2AB) of the Act. Therefore, we, by reversing the orders of the authorities below, hold that the assessee is entitled to weighted deduction on the said amount @ 150% as per section 35(2AB) of the Act. Hence, ground no.1(b) of the appeal taken by the assessee is allowed.

32. In respect of ground no.1(c) of the appeal taken by the assessee relating to denial of weighted deduction on the claim of Rs. 1,25,17,261, not reported in DSIR certificate, we, in the absence of any details before us, do not find any reason to interfere with the order of the Commissioner (Appeals). Hence, we uphold the order of the Commissioner (Appeals) to deny weighted deduction on the above claim of the assessee under section 35(2AB) of the Act. Therefore, ground no.1(c), taken by the assessee is rejected.

33. In respect of ground no.3, of the appeal of the Department to allow weighted deduction in respect of consulting charges of Rs. 8,65,131, and patent filing charges of Rs. 74,38,119, the learned Departmental Representative, during the course of hearing, relied on the order of the Assessing Officer and whereas the learned Counsel for the assessee submitted that the same very issue was considered by the first appellate authority in assessee's own case for assessment year 2006-07 and he has followed the same for the assessment year under consideration. The learned Counsel for the assessee submitted that when the Department filed appeal for assessment year 2006-07 before the Tribunal, the Department accepted the said order of the Commissioner (Appeals) to allow consulting charges and patent filing charges for weighted

deduction under section 35(2AB) of the Act and did not dispute the same before the Tribunal.

34. We have considered the orders of the authorities below and submissions of the learned Representatives and we have also carefully considered the Commissioner (Appeals)'s order for assessment year 2006-07, a copy of which is placed at Pages-197 to 208 of the paper book (relevant pages 206-208. We observe that the consultancy charges had been paid by the assessee in providing technical services regarding the patents, obtaining patent information from innovator companies and obtaining innovator samples for R&D purposes. The payments have been accepted towards research and not towards registering the patents. Therefore, these expenditures have been incurred towards research expenses and not towards any patent filing. Further, it is also observed that the expenditure incurred in respect of patent application filed under The Patent Act, 1970. Explanation to section 35(2AB), as reproduced herein above, specifically provides that the expenditure on scientific research for the purpose of section 35(2AB) of the Act shall include filing of application for a patent under The Patent Act, 1970, in relation to drugs and pharmaceuticals. Any application for patent foreign country has to be filed in India as per section 7 of The Patent Act, 1970, according to patent cooperation treaty. Therefore, we hold that the Commissioner (Appeals) has rightly held that the said expenditure incurred by the assessee towards patent filing charges is eligible for weighted deduction under section 35(2AB) r/w Explanation thereto. In view of the above, we uphold the order of the Commissioner (Appeals) by rejecting ground no.3 of the appeal taken by the Department”.

13. From a reading of the directions in the order of the Tribunal in the case of USV Ltd (supra), what we understand is that for certain items of difference, the Tribunal had approved the denial of weighed deduction whereas for certain other items which were connected to R

& D facility of the assessee, such claim was allowed despite DSIR certificate not covering the claim. The Bench had duly considered the judgments of Hon'ble Delhi High Court in the case of *Sandan Vikas (India) Ltd (supra)* and Hon'ble Madras High Court in the case of *CIT vs. Wheels India Ltd (2011) (336 ITR 513)*. Latter judgment had in turn considered the judgment of Gujarat High Court in the case of *Claris Lifesciences Ltd (supra)*.

14. Considering all the above, we are of the opinion that the issue require a fresh look. Ld. Assessing Officer has to carefully check whether claim of weighted deduction will be available to the revenue expenditure also for the impugned assessment year. He has to apply the position of law mentioned by us in the preceding paras. Therefore, we set aside the orders of lower authorities and remit the issue back to the file of the Id. Assessing Officer for consideration afresh in accordance with law. Ground Nos. 2 to 5 allowed for statistical purpose.

15. Vide its ground Nos. 6 & 7, grievance raised by the assessee is on an addition of ₹95,847/- made u/s.14A of the Act r.w.r 8D.

16. Ld. Counsel for the assessee submitted that Id. Assessing Officer had applied Rule 8D(2)(iii) of the Act disregarding claim of the assessee that no expenditure was incurred for earning exempt income.

17. Per contra, the Id. DR strongly supported the orders of the authorities below.

18. We have considered the rival contentions and perused the orders of the authorities below. What we find that assessee had substantial investments which gave it tax free dividend income of ₹34,46,860/-. The investments as on 31.03.2011 came to ₹47.35 Crores. Ld. Commissioner of Income Tax (Appeals) in his order has specifically noted that assessee was unable to give any information as to the investments position as on beginning of the relevant previous year. It may be true that assessee had accumulated resources much more than the investments. However, disallowance made was under rule 8D(2)(iii) for indirect overheads. Though the assessee had made a claim that no expenditure was incurred for earning the exempt income, considering the huge investments, in our opinion Id. Assessing Officer was justified in rejecting this claim. We do not find

any reason to interfere with the orders of the lower authorities.

19. Ground Nos. 6 & 7 of the assessee stand dismissed.

20. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Friday, the 21st day of October, 2016, at Chennai.

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st October, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |