

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 1057 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

|   |                                                                                                                                               |  |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?                                                                        |  |
| 2 | To be referred to the Reporter or not ?                                                                                                       |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?                                                                           |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

BANCO PRODUCTS (INDIA) LTD.

Versus

DY. COMMISSIONER OF INCOME TAX CIRCLE 1(1)

Appearance:

MR B S SOPARKAR(6851) for the PETITIONER(s) No. 1

MRS MAUNA M BHATT(174) for the RESPONDENT(s) No. 1

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 26/03/2018

ORAL JUDGMENT

**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. Notice of final disposal was issued in the appeal admitting the following substantial question of law :

“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in restoring the matter back to the Assessing Officer for deciding the allowability of deduction under section 35(2AB) of the Income Tax Act, 1961?”

2. The appellant assessee is a company registered under the Companies Act and is engaged in business of manufacturing of automotive gaskets, radiators and similar other automobile parts. For the assessment year 2008-2009, the assessee had filed return of income on 27.9.2008 declaring total income of Rs.20.23 crores (rounded off). One of the claims made by the assessee in such return was of deduction of Rs.1.26 crores (rounded off) under section 35(2AB) of the Income Tax Act. The Assessing Officer took the return in scrutiny and in his order dated 24.3.2010, under section 143(3) of the Act, disallowed the assessee's claim of deduction under section 35(2AB) of the Act.

3. Before the Assessing Officer, the assessee had pointed out that the assessee had set up Research and Development facilities by incurring expenditure. An application for recognition of such facility was filed before the Ministry on 22.12.2006. Such recognition was granted on 2.9.2007. In the meantime, the assessee had applied for approval of the facility on 26.6.2007 which was approved by the concerned authority on 22.10.2008. The assessee relied on

decision of Division Bench of this Court in case of **Commissioner of Income-tax v. Claris Lifesciences Ltd.** reported in (2010) 326 ITR 251 to contend that the expenditure incurred even before the grant of approval would be recognised for deduction under section 35(2AB) of the Act.

4. The Assessing Officer however did not grant such deduction for the period prior to 1.4.2008 on the ground that approval was granted specifically for a period of two years from 1.4.2008 to 31.3.2010. His observations in this respect were as under :

“I have perused the above submission. However the same is not acceptable. The assessee has incurred capital expenditure (other than land and building) of Rs.88,73,918 and revenue expenditure of Rs.1,63,73,719 and claimed weighted deduction of 150% of such expenditures u/s.35(2AB). I have perused the Form No.3CM dated 22.10.2008 giving approval u/s. 35(2AB) in which it is specifically mentioned that the above Research and Development facility is approved for the purpose of section 35(2AB) with effect from 1.04.2008 to 31.03.2010. In view of such specific mentioned of the date it is very clear that the approval is granted for a specific period and therefore the deduction u/s.35(2AB) is restricted for the period 1.04.2008 to 31.03.2010.”

5. The assessee carried the matter in appeal before the CIT(Appeals). CIT(Appeals) dismissed the assessee's appeal confirming the view of the Assessing Officer. Judgment in case of **Claris Lifesciences Ltd.**(supra) was distinguished in the following manner :

“In the case of Claris Lifesciences Ltd. (2008) 174 Taxman 113 (Gujarat) relied upon by the appellant, Hon'ble Gujarat

High Court decided the matter in favour of the assessee as per para-8 of the decision on the ground that the approval was granted during the previous year relevant to assessment year in question in that case. Based on this fact, the High Court had held that assessee was entitled to claim weighted deduction u/s.35(2AB) in respect of entire expenditure incurred during the previous year. In appellant's case, facts are different in as much as the approval was received in F.Y. 2008-09 i.e after F.Y. 2007-08 was already over and even the application seeking approval was made in F.Y. 2008-09. Decision in the case of Claris Lifesciences Ltd. is therefore distinguishable and not applicable to appellant's case.”

6. The assessee carried the matter in further appeal before the Tribunal. The Tribunal disposed of the appeal making the following observations :

“9. We have heard both the sides and perused the material on record. We have noticed that the ld. CIT(A) reported in his decision that the case of Claris Life Sciences Ltd. was distinguishable from the case of the assessee as the facts are different in as much as in the case of the assessee the approval was received in F.Y. 2008-09 i.e. after F.Y. 2007-08 was already over. He has also reported that even the application seeking the approval was made by the assessee in the FY 2008-09.

During the course of appellate proceedings before us the assessee has furnished paper books. We have perused the paper book furnished by the assessee and find that as per page no. 146 of this paper book the assessee claim that application for approval of in-house research and development was made on 22-12-2006. In order to verify the same we have gone through the pages of paper book and find that as per para 43 of page no.235. It was stated that application to the prescribed authority was made on 26-06-2008. We have further verified from page no. 162 in the paper book that a letter dated 24-10-2008 was addressed to the assessee from the Ministry of Science and Technology Department of Scientific and Industrial Research Training providing reference of the application of

the assessee dated 26.06.2008. The claim of the assessee that it had applied on Dec 22, 2006 could not be substantiated in view of supporting material indicating that assessee had applied on 26/06/2008. We observed that above findings throw lights on the contentions that the facts of the case of the assessee are distinguished from the decision of the case of Claris Life Sciences Ltd. In view of contradictory facts and supporting evidential material found to be existing as elaborated supra, we considered it will be more appropriate to restore the issue of applicability of the decision in the case of the Claris Life Sciences Ltd to the file of the Assessing Officer to decide a fresh after requisite verification and examination of materials as stated supra after providing due opportunities to the assessee. “

7. The record would thus show that the assessee claimed weighted deduction under section 35(2AB) of the Act on the expenditure incurred for setting up research and development facility. This was backed by the approval granted by the concerned authority with respect to such facility. The Revenue authorities i.e. the Assessing Officer and the CIT(Appeals) were of the opinion that such deduction cannot be granted for the period prior to the effective date of approval. The Tribunal however, thought that the facts are somewhat contradictory. It was not clear when the application for approval was made and when actually approval was granted. The Tribunal therefore, remanded the proceedings for fresh consideration by the Assessing Officer.

8. The assessee has challenged this decision of the Tribunal on the basis of two judgments. One of this Court in case of **Claris Lifesciences Ltd.**(supra) already referred earlier and other of Delhi High Court in case of **Maruti Suzuki**

**India Ltd. v. Union of India** reported in (2017) 397 ITR 728. Revenue however contends that both these judgments are distinguishable on facts. It was canvassed that in case of **Claris Lifesciences Ltd.**(supra), the expenditure, application and approval, all three occurred in the same year which is not the case in the present appeal. With respect to **Maruti Suzuki India Ltd.**(supra), it was canvassed that point of distinction according to the Revenue is that the application for approval was made in the same year during which the expenditure was incurred, may be order of approval was passed in the later year.

9. Section 35 of the Act pertains to expenditure on scientific research. Sub-section (2AB) thereof grants weighted deduction to a company engaged in the business of biotechnology or manufacture or production of any article or thing, except those specified in the Eleventh Schedule, where it incurs any expenditure on scientific research (excluding the expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority. At the relevant time, such deduction was one and one-half times of the expenditure incurred. Said section contains various conditions subject to which such deduction will be granted. However, the main requirements are that the expenditure should be on scientific research on in-house research and development facility as approved by the prescribed authority. As observed by this Court in case of **Claris Lifesciences Ltd.**(supra) and Delhi High Court in case of **Maruti Suzuki India Ltd.**(supra), this provision is aimed at encouraging in-house research and development

facilities for specified purposes. The legislature recognised the weighted deduction on such expenditure. The approval of such facility by the prescribed authority is a prime condition.

10. In case of **Claris Lifesciences Ltd.**(supra), this Court examined a situation where the Tribunal had allowed the assessee's claim of deduction under section 35(2AB) of the Act when such expenditure was incurred during the period prior to the date of approval by the prescribed authority. The Court noted with approval the conclusion of the Tribunal that the provision is made for giving a boost to research and development facilities in India and once the facility is approved, entire expenditure so incurred in developing the same has to be allowed by way of deduction. It may be that as pointed out by the Revenue, all events i.e. incurring of expenditure, applying for approval and grant of approval happened in the same financial year. However, this was not the basis on which the Court has confirmed the decision of the Tribunal. There is nothing in the said judgment to suggest that had these events fallen in different years, the view of the Court would have been any different.

11. Judgment of this Court in case of **Claris Lifesciences Ltd.**(supra) was followed by Delhi High Court in case of **Maruti Suzuki India Ltd.**(supra) in order to grant the assessee's claim of deduction under section 35(2AB) of the Act. The Court held that for availing deduction under section 35(2AB) of the Act, what is relevant is not the date of recognition or the cut-off date mentioned in the

certificate of the prescribed authority or even the date of approval, but the existence of recognition. The Court observed as under :

“41. Section 35(2AB) clearly provides that any expenditure incurred by a party on its R&D facility, except, insofar as it relates to land and building is liable to be allowed to be claimed as deduction (twice the amount of expenditure). A perusal of the scheme of the Act especially Sections 35(2AB), 35A and 35AB reveals in no uncertain terms, that the purpose behind these provisions is to provide impetus for research, development of new technologies, obtaining patent rights, copyrights and know-how.”

12. In view of above-referred two decisions and by applying the same to the facts on hand, we have no hesitation in allowing the assessee's claim for deduction under section 35(2AB) of the Act. Shorn of any controversy, documents on record would suggest that at any rate, the assessee had applied for approval of research and development facility to the prescribed authority on 22.12.2006 and such approval was granted on 22.10.2008. The Assessing Officer and CIT(Appeals) restricted the assessee's claim for deduction in relation to such expenditure which was incurred prior to 1.4.2008 on the ground that the approval was granted for two years between 1.4.2008 to 31.3.2010. Combined reading of the judgment of this Court in case of **Claris Lifesciences Ltd.** (supra) and judgment of Delhi High Court in case of **Maruti Suzuki India Ltd.**(supra), would show that period during which the approval is granted is not relevant as long as such approval has been granted and expenditure has been incurred for the specified purpose. As noted, the provision is aimed at promoting development of in-house research

and development facility which necessarily would require substantial expenditure which immediately may not yield desired results or could be co-related to generation of additional revenue. By the very nature of things, research and development is a hit and miss exercise. Much of the efforts, capital as well as human investment may go waste if the research is not successful. The legislature therefore, having granted special deduction for such expenditure, the same should be seen in light of the purpose for which it has been recognised. Research and development facility can be set up only after incurring substantial expenditure. The application for approval of such facility can be made only after setting up of the facility. Once an application is filed by the assessee to the prescribed authority, the assessee would have no control over when such application is processed and decided. Even if therefore, the application is complete in all respects and the assessee is otherwise eligible for grant of such approval, approval may take some time to come by. The claim for deduction cannot be defeated on the ground that such approval was granted in the year subsequent to the financial year in which the expenditure was incurred. No such indication was given by this Court in case of **Claris Lifesciences Ltd.**(supra), none appears from the judgment of the Delhi High Court in case of **Maruti Suzuki India Ltd.**(supra).

13. In the result, appeal is allowed. Question is answered in favour of the assessee. Decision of Assessing Officer to restrict the assessee's claim for deduction on the expenditure which was incurred prior to 1.4.2008 is set aside. The Assessing Officer shall recompute such

deduction and give its effect to the assessee for the relevant assessment year.

14. Tax Appeal is disposed of accordingly.

(AKIL KURESHI, J)

(B.N. KARIA, J)

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