R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 376 OF 2017

Pr. Commissioner of Income Tax -15 .. Appellant

Versus

M/s. Strides Arcolab Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Nitesh Joshi a/w Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 22, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration:-

"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in directing the AO to grant the benefit of deduction u/S. 35(2AB) when the approval for the R & D activities were given in the subsequent assessment years and not for assessment year under consideration?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in deleting disallowance u/S. 36(1)(va) being employee's contribution to provident fund and ESI even though the same were not deposited in the respective fund within the stipulated time?"

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the interest on loans borrowed for advancing to its subsidiary companies in India and Overseas is allowable under Section 36(1)(iii) of the Income Tax Act when the fact remains that the moneys borrowed were utilized for business of the Indian and overseas subsidiary company and not for the business of the assessee as such and the AO had made only proportionate disallowance at 10% of the interest expenditure?

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct to direct the AO to treat exchange rate fluctuation as business income and not the income from other source stating that similar relief was granted in AY 2002-03 when in the preceding year, the same issue was set aside to the CIT(A) for fresh consideration and has not reached finality?"

2. It is a common ground that Question Nos. (a) and (b) noted above have come up for consideration before this Court in Income Tax Appeal No. 1674 of 2016 concerning this very assessee. While dismissing the appeal by order dated 4.2.2019, these two questions were considered as under:-

"2. Question no. (i) relates to the Revenue's objection to the assessee's claim of deduction under Section 35(2AB) of the Income Tax Act, 1961 ("the Act" for short) primarily on the ground that the approval for the research facility established by the assessee was granted by the competent authority subsequently. We notice that several High Courts have held that such research and development activity once approved by the competent authority, the approval would relate back to the date of application. Reference in this respect can be made to the decision of the Division Bench of Gujarat High Court in the case of ***CIT Vs. Claris Lifesciences Ltd. (2008) 174 Taxman 113*** and the decision of the Delhi High Court in case of ***CIT New Delhi Vs. Sandan Vikas (India) Ltd. 335 ITR 117***. We are informed that the decision of Delhi High Court in case of Sandan Vikas (India) Ltd. (Supra) was carried in appeal before the Supreme Court and the SLP came to be dismissed by an order dated 09th January, 2012. This question is therefore not entertained.

4. In relation to question nos. (iii) and (iv), we notice that similar questions came up for consideration before this Court in Income Tax Appeal (L) No. 2111 of 2012 in case of this very assessee where by order dated 26th February, 2013 while dismissing the Revenue's Appeal, these questions came up for consideration. These questions in the present appeal, therefore are not entertained."

3. In relation to Question No. (c), we notice that the Tribunal has held that the assessee had sufficient own interest free funds and therefore, the disallowance was not justified.

4. With respect to Question No. (d), the issue is whether the additional proceeds of export sales due to foreign exchange rate fluctuation would also qualify for deduction under Section 80HHC of the Income Tax Act, 1961 ("the Act" for short". The Assessing Officer was of the opinion that the said amount cannot be said to have arisen out of the assessee's export business. The CIT(A) and the Tribunal, however, reversed the decision of the Assessing Officer holding that the amount in question was part of the assessee's export sales proceeds. This issue is considered by this Court on earlier occasions in cases of **CIT Vs. Amber Exports (India)**[1] and **CIT Vs. Gem Plus Jewellery India Ltd**[2] .

5. In view of above, the Income Tax Appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**

1 [2010] 326 ITR 455 (Bom)
2 [2011] 330 ITR 175 (Bom)