

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-03-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.Nos.1457 & 1458 of 2008

Commissioner of Income Tax,
Chennai.

... Appellant in both Appeals

-VS-

M/s.TVS Electronics Limited

... Respondent in both Appeals

T.C.A.No.1457 of 2008 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 11.02.2008, passed in ITA.No.247/MDS/2007.

T.C.A.No.1458 of 2008 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 11.02.2008, passed in ITA.No.600/MDS/2007.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel,
assisted by Ms.V.Pushpa,
Junior Standing Counsel.

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by **Dr.Vineet Kothari,J.**)

Revenue has filed these Appeals under Section 260A of the Income Tax Act, 1961, in short, 'Act', raising the Substantial Questions of Law, arising from the order of the learned Income Tax Appellate Tribunal, in short, 'Tribunal', dated 11.02.2008, whereby the Appeal filed by the Revenue came to be dismissed and the Appeal filed by the Assessee came to be allowed for Assessment Year 2003-2004.

2. The Questions of Law, on which these Appeals were admitted by a Co-ordinate Bench of this Court on 08.09.2008, are quoted below for ready reference :

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in granting relief under Section 35 (2AB) of the Income Tax Act when the Assessee has not produced the relevant approval from the

prescribed authorities for the claim for weighted deduction under Section 35 (2AB) of the Act ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the approval received for the subsequent years as such should be looked into for the earlier years on retrospective basis for the claim of deduction under Section 35 (2AB) of the Act ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that interest under Section 234D of the Act cannot be charged in respect of the refund granted prior to the insertion of Section 234D of the Act, when the regular assessment was completed only subsequent to the insertion of Section 234D of the Act ?

(4) Whether on the facts and in the circumstances of the case, no interest can be charged even for the period subsequent to the introduction of Section 234D of the Act merely on the ground that the refund was granted prior to its introduction ?

3. The findings of the learned Tribunal with regard to the

aforesaid Questions are quoted below for ready reference :

"5.5. In this regard, it is the contention of the learned counsel of the assessee that Form 3 CM does not prescribe as from what date the deduction has to be given. Further, the learned counsel of the assessee produced before us letter from the prescribed authority dated 18.5.2007 whereby it has been mentioned that the assessee's in-house R&D Unit's application for renewal of recognition beyond 31.3.2006 has been considered and it was decided to accord renewal of recognition to the unit up to 31.3.2009. Again, vide letter from the prescribed authority dated 26.6.2003, it has been mentioned that the assessee's in-house R&D Unit's application for renewal of recognition beyond 31.3.2003 had been considered and it was decided to accord renewal of recognition to the Unit up to 31.3.2006. The learned counsel of the assessee further produced letter dated 10.7.2000 whereby, by reference to similar application for recognition beyond 31.3.2000, the concerned authority had decided to accord renewal up to 31.3.2003. Again, vide letter dated 24.4.1997, with reference to application for renewal of recognition beyond 31.3.1997, the renewal was accorded for a period up to 31.3.2000. The learned counsel of the assessee further submitted that assessee had duly submitted application

dated 16.6.1998 whereby request for necessary certificate to claim deduction u/s 35 (2AB) had been made. By way of this letter, the assessee had also enclosed Form 3 CK in duplicate, duly signed, along with a detailed note of R&D facility and activity. The learned counsel further produced Form 3 CM approving the in-house R&D facility u/s 35 (2AB). This approval is dated 19.2.2004 under which reference to the assessee's application dated 15.12.2003 is mentioned. It has been further mentioned that the approval is from 1.4.2003 to 31.3.2005.

5.6. The learned counsel of the assessee further submitted that the projects in connection with which the expenditure has been incurred are all which require a longer period. Under such circumstances, the learned counsel of the assessee submitted that it is not possible that a part of the same project duration will get weighted deduction while some part will not get the necessary deduction. The learned counsel of the assessee further placed reliance upon decision of ITAT, Ahmedabad Bench in I.T.A.No.311/Ahd/2005 dated 22.12.2006 in the case of Claris Lifesciences Ltd. Vs. ACIT 111 TTJ 902 (Ahd.) for the proposition that once the facility is approved, the entire expenditure incurred on development of R&D facility has to

be followed for weighted deduction. The deduction cannot be restricted only to the expenditure incurred after the date of approval. The learned Departmental Representative on the other hand relied upon the order of authorities below.

5.7. We have heard both the counsels and perused the relevant records. Admittedly, the assessee in this case fulfilled all the necessary requirements for getting weighted deduction except as per authorities below, a specific reference to the assessment year, in the approval from the prescribed authority. On perusal of documents produced, we find considerable cogency in the submissions of the assessee that it has been granted recognition long before the present assessment year and the same has been continuously renewed. It is also noted that the exemption granted is with reference to the detail of projects that were in progress during the assessment year. We further find that the duration of the projects for which approval has been given spill beyond the current assessment year into the periods in which there has been no denial of deduction.

5.8. Further, we note that as per the decision of ITAT, Ahmedabad Bench in I.T.A.No.311/Ahd/2005 dated

22.12.2006 in the case of Claris Lifesciences Ltd Vs. ACIT 111 TTJ 902 (Ahd.), once the facility is approved the entire expenditure incurred on development of R&D facility has to be allowed for weighted deduction. The Form 3 CM does not postulate any specific period for grant of weighted deduction. The deduction cannot be restricted only to the expenditure incurred after the date of approval. Relevant paragraph of the order is noted as under :

'All along, s. 35(2AB) speaks of (i) development of facility and (ii) incurring of expenditure by the assessee for development of such facility (iii) approval of the facility by the prescribed authority which is "DSIR" in the instant case and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee. Provision nowhere suggests or implies that "R&D" facility is to be approved from a particular date. 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 assessee has to develop facility which presupposes incurring

expenditure in this behalf, application to the 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. These words refer back to the facility which is so developed. Consequently, a plain reading clearly indicates that the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. This can be viewed from another angle. Provision postulates approval of "R&D" facility which implies that a development facility shall be in existence, which in turn presupposes that assessee must have incurred expenditure in this behalf. If the interpretation of the lower authorities is accepted, it creates absurdity in this provision, inasmuch as, words which are not provided in the statute are to be read in, which is against settled proposition of law with regard to plain and simple meaning of provision. Therefore, a plain reading cannot be given away and an interpretation cannot be assumed so as to provide a cut-off date for eligibility of weighted

deduction of expenditure, which is not provided by the law. Further s.6(5A) also provides only to the effect that if conditions are fulfilled, the prescribed authority shall pass an order in Form No.3CM. It nowhere refers to any cut-off date for eligibility of weighted deduction. Similarly, Form No.3CM which is order of approval, does not provide any power to the prescribed authority or any stipulation to set out a cut-off date in this behalf. A plain and harmonious reading of provision, rule and form clearly suggests that once facility is approved, entire expenditure so incurred on development of "R&D" facility has to be allowed for weighted deduction as provided by s.35(2AB).'

5.9. In the background of aforesaid discussion and precedents, we are of the opinion that since the facility and project has been approved, the entire expenditure incurred on development of R&D facility has to be allowed for weighted deduction. Hence we hold that assessee is eligible for allowance u/s 35 (2AB). Therefore, we set aside the order of authorities below and decide the issue in favour of the assessee.

5.10. In the result, the assessee's Appeal is allowed."

4. Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant-Revenue, has submitted that since the Assessee did not produce the requisite approval of the Scientific Research undertaken by him for the period in question though such approval was available for the period prior to Assessment Year 2003-2004 and for the period subsequent to it, the mandatory condition of producing the approval for the Assessment Year in question was not complied with by the Assessee and, therefore, the learned Tribunal erred in allowing such weighted deduction of expenditure incorporated under Section 35 (2AB) of the Act.

5. On the Second Question of Levy of Interest under Section 234D of the Act on the excess refund made to the Assessee along with the Assessment Intimation sent to him under Section 143 (1) of the Act, the learned Senior Standing Counsel for the Revenue drew our attention to a judgment of this Court in the case of *Commissioner of Income Tax v. Fisher Sanmar Ltd.*, (2014) 361 ITR 296 (Mad), wherein, a Division Bench of this Court held that if the regular assessment of the Assessee is made after the amendment of provisions of Section 234D of the Act w.e.f. 01.06.2003,

then, the provisions of Section 234D for levy of interest on the excess refund amount would become applicable, even though the assessment period may be prior to the said date of amendment.

6. We have heard the learned Senior Standing Counsel for the appellant-Revenue. None appeared on behalf of the respondent-Assessee, despite service of notice.

7. We do not concur with the submission made by the learned Senior Standing Counsel for the Revenue Mr.M.Swaminathan on the First Question of allowability of weighted deduction to the Assessee under Section 35 (2AB) of the Act since the requisite approval for the project on which expenditure was incurred by the Assessee on Scientific Research was approved for the period prior and even subsequent to Assessment Year 2003-2004. In the case before us, we are of the opinion that the said condition of approval stood substantially complied with. The Assessee had contended before the authorities below that approval from the Ministry concerned of the Central Government for the year in question was also under active consideration and awaited.

8. The Assessee cannot be punished for the bureaucratic delay

in giving such approval for the year in question, which was in the hands of the Department concerned of the Central Government itself. On the very fact that for the period anterior and posterior to the year in question such approval was very well on the record of the Revenue, the weighted deduction for the expenditure incurred on the Scientific Research could not have been disallowed by the authorities below and, therefore, the learned Tribunal, in our view, rightly held such Scientific Research expenditure to be allowable under Section 35 (2AB) of the Act. Therefore, first two Questions of Law are answered in favour of the Assessee and against the Revenue.

9. As for the Question of Levy of Interest under Section 234D of the Act, though computation of interest will depend upon the appeal effect order to be passed, the quantum of net payment is to be determined accordingly, after allowing weighted deduction under Section 35 (2AB) of the Act, as indicated above. The provisions of Section 234D of the Act have been held applicable for Assessment Year 2003-2004 in question in terms of the decision of the Co-ordinate Bench of this Court in the case of *Fisher Sanmar Ltd.*, cited supra. Accordingly, Questions of Law Nos.3 and 4 are

answered in favour of the Revenue and against the Assessee.

10. Appeals of the Revenue are allowed in part, as above. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking Order

(V.K.,J.) (C.V.K.,J.)
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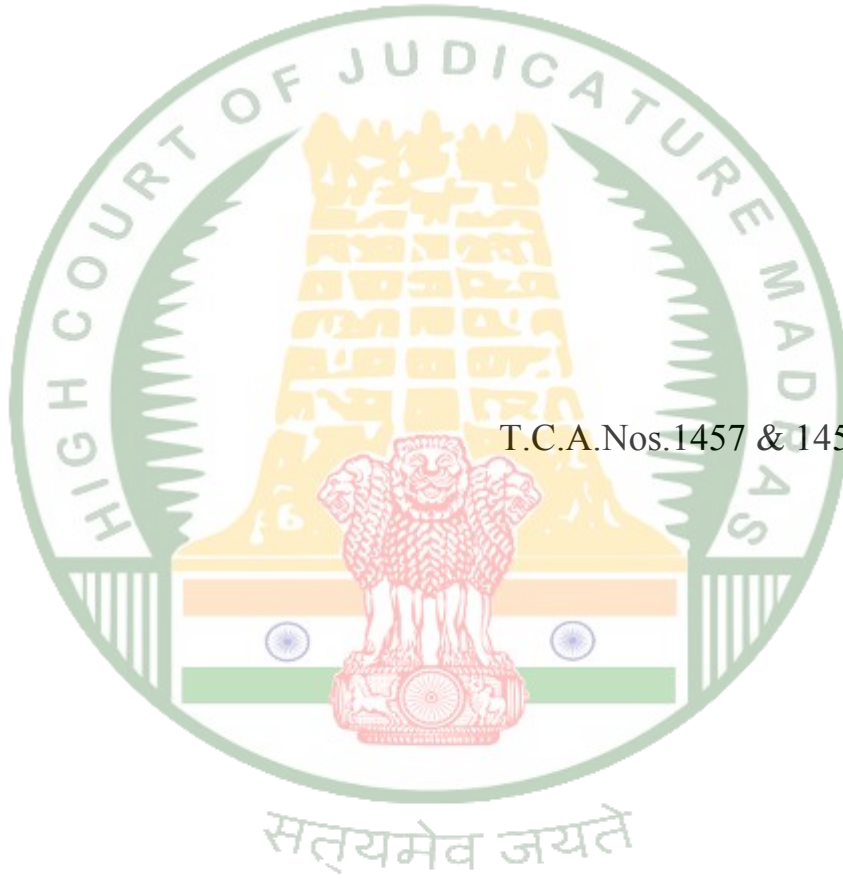
Income Tax Appellate Tribunal,
Chennai 'C' Bench,
Chennai.



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DR.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

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