

Weighted deduction u/s 35(2AB) wasn't available unless R&D facility was approved by competent authority

Summary – The Mumbai ITAT in a recent case of PCP Chemicals (P.) Ltd., (the Assessee) held that In order to claim weighted deduction under section 35(2AB), approval of R&D facility by competent authority in prescribed format is mandatory

Facts

- The assessee company was engaged in the business of manufacturing rust preventive chemicals and adhesives. For relevant year, the assessee has claimed weighted deduction at 200 per cent under section 35(2AB) in respect of R&D expenditure.
- The assessee submitted that though its research and development expenditure had been approved for the assessment year 2012-13 onwards, said expenditure had been recognized by the Secretary, Department of Scientific and Industrial development Research, therefore, it could continue to claim weighted deduction even though the certificate of approval had been given on a subsequent date.
- The Assessing Officer opined that for claiming deduction and section 35(2AB) the approval for research and development by the prescribed authority was mandatory. In instant case, though approval date was from 1-4-2011 to 31-3-2013, the assessee had claimed weighted deductions for the period prior to approval given by the competent authority *i.e.* for Assessment year 2011-12 which could not be allowed. Accordingly, assessee's claim was rejected.
- The Commissioner (Appeal) upheld rejection of weighted deduction claimed by the assessee under section 35(2AB).
- On second appeal:

Held

- The solitary issue came up for consideration is weighted deduction claimed by the assessee under section 35(2AB) in respect of R&D expenditure incurred by the assessee towards research and development in its in-house R&D which is not disputed by the lower authorities. The only dispute is with regard to the date of approval by the competent authority and period of approval. According to the Assessing Officer, the assessee is not entitled for the benefit for the Assessment year 2011-12 because the competent authority has approved the assessee's R&D facility with effect from 1-4-2011 onwards.
- The Assessing Officer further observed that the assessee has filed an application in prescribed form 3CK on 12-8-2011 and the competent authority has issued approval in prescribed form 3CM from 1-4-2011 to 31-3-2013. Therefore, the assessee is not entitled for weighted deductions for the year

under consideration. It is the contention of the assessee that date of approval is not material for the purpose of claiming weighted deduction, if the facility is recognized by the competent authority.

- The assessee further contended that its R&D facility has been recognized by the competent authority i.e. Secretary, Department of Scientific and Industrial Development & Research, Government of India and the formal approval has been accorded in prescribed form with effect from 1-4-2011 to 31-3-2013 but the assessee has incurred R&D expenditure in the impugned financial year relevant to Assessment year 2011-12, therefore, the assessee is eligible for weighted deduction under section 35(2AB) of the Act.
- The provisions of section 35(2AB) provides for weighted deduction of 200 per cent on research and development expenditure incurred by the assessee in its in-house R&D facility, if such R&D facility has been prescribed in Rules 6(1B), 6(4), 6(5A) and 6(7A) of the Income-tax Rules, 1962. As per the rules, the assessee has to make an application in prescribed form with necessary evidences along with agreement with the competent authority. The competent authority, having satisfied with the conditions prescribed under the Act, can approve the R&D facility in prescribed form 3CM with intimation to the department through proper channel.
- In this case, the facts with regard to the assessee's R&D expenditure and recognition from the competent authority are not doubted by the lower authorities. The only dispute is with regard to the period of approval. As per the certificate issued by the competent authority in Form 3CM assessee's R&D facility had been approved for the period from 1-4-2011 to 31-3-2013 on the basis of application filed by assessee in prescribed form 3CK on 12-8-2011. Therefore, the assessee was not entitled for weighted deductions towards its R&D expenditure for the assessment year under consideration.
- In the result, appeal filed by the assessee is dismissed.