

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **I.T.A. No.348/2011**

% **Date of Decision: 24.02.2011**

The Commissioner of Income Tax - III ..... Appellant  
Through: Ms.Rashmi Chopra, Sr. Standing  
Counsel.

Versus

Sandan Vikas (India) Ltd. .... Respondent  
Through: Mr.S. Krishnan, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE A.K. SIKRI**

**HON'BLE MR. JUSTICE M.L. MEHTA**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the reporter or not?                                | No. |
| 3. Whether the judgment should be reported in the Digest?                | No. |

**A.K. Sikri, J. (ORAL)**

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**CM No.3499/2011**

For the reasons stated in the application, delay in filing the appeal is condoned.

The application is disposed of.

**ITA No.348/2011**

1. The assessee claims that it is engaged in the business of manufacturing of automotive air conditioning and is also undertaking research and development activity in this behalf. In the assessment year, i.e., assessment year 2005-2006, the assessee claimed a deduction of ₹3,83,62,003/- under Section 35 (2AB) of the Income Tax Act (hereinafter referred to as "the Act"). The business expenses incurred are naturally allowed as deductions, however, the aforesaid provisions gives weighted deduction to the assessee, who are engaged into research and development activity. The objective is to encourage research and development by the business enterprises in India.

2. The provision further states that in order to claim this weighted deduction, it is to be certified by the Competent Authority that the assessee had undertaken research and development activity. The competent authority in this behalf is Department of Scientific & Industrial Research (DSIR). The assessee had approached DSIR vide application dated 10<sup>th</sup> January, 2005. The DSIR vide its letter dated 23<sup>rd</sup> February, 2006 granted recognition of the in-house R&D facilities of the assessee company and also granted approval for the expenses incurred by the company on in-house R&D facility in prescribed form

3CM by letter dated 18<sup>th</sup> September, 2006. The Assessing Officer, however, refused to accord the benefit of the aforesaid provisions of weighted deduction to the assessee on the ground that recognition and approval was given by the DSIR in February/September 2006, i.e., in the next assessment year and, therefore, the assessee was not entitled to the benefit. The CIT(Appeal) accepted this view of the Assessing Officer and dismissed the appeal, however, the Income Tax Appellate Tribunal (hereinafter referred to as “the Tribunal”) has come to the conclusion that the assessee would be entitled to weighted deductions of the aforesaid expenditure incurred by the assessee in terms of the Section 35(2AB) of the Act and in coming to this conclusion, the Tribunal has relied upon the judgment of Gujarat High Court in ***Commissioner of Income Tax v. Claris Lifesciences Ltd.***, 326 ITR 251. We have gone through the aforesaid judgment of the Gujarat High Court and find that Gujarat High Court detailed in no-uncertain terms that the cut-off date mentioned in the certificate issued by the DSIR would be of no relevance. What is to be seen is that the assessee was indulging in R&D activity and had incurred the expenditure thereupon. Once a certificate by DSIR is issued, that would be sufficient to hold that the assessee fulfills the conditions laid down in the aforesaid provisions. The discussions, which is undertaken by the

Gujarat High Court while interpreting the aforesaid provisions, is extracted below:

- “7. ....The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the research and development facility, expenditure so incurred is eligible for weighted deduction.
8. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of:
  - (i) development of facility;
  - (ii) incurring of expenditure by the assessee for development of such facility;
  - (iii) approval of the facility by the prescribed authority, which is DSIR; and
  - (iv) allowance of weighted deduction on the expenditure so incurred by the assessee.
9. The provisions nowhere suggest or imply that research and development facility is to be approved from a particular date and, 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 the 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. The Tribunal has, therefore, come to the conclusion that on plain reading of section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered Rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of Rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of

R&D facility has to be allowed for weighted deduction as provided by Section [35\(2AB\)](#). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up research and development facility in India, the legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, intention of the legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.

10. We are in full agreement with the reasoning given by the Tribunal and we are of the view that there is no scope for any other interpretation and since the approval is granted during the previous year relevant to the assessment year in question, we are of the view that the assessee is entitled to claim weighted deduction in respect of the entire expenditure incurred under Section [35\(2AB\)](#) of the Act by the assessee.”

3. We are in full agreement with the aforesaid approach of the Gujarat High Court. No substantial question of law, therefore, arises. The appeal is dismissed.

**A.K. SIKRI, J.**

**FEBRUARY 24, 2011**

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**M.L. MEHTA, J.**