

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2015

PRESENT

THE HON'BLE MR.JUSTICE MOHAN M. SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

I.T.A. NO.435/2014

BETWEEN :

1. The Commissioner of Income-Tax
LTU
JSS Towers
BSK III Stage
Bangalore
2. The Deputy Commissioner of Income-Tax
LTU
JSS Tower
BSK III Stage
Bangalore-560085

..Appellants

(By Sri K.V. Aravind, Adv.,)

AND :

M/s. Biocon Ltd.,
20th KM, Hosur Road
Electronic City, Hebbagodi
Bangalore-560100

..Respondent

This Income Tax Appeal is filed under Section 260-A of Income Tax Act 1961, arising out of order dated 30.04.2014 passed in ITA No.248/Bang/2010, for the assessment year 2004-2005 praying to formulate the substantial questions of law stated and allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal.

This ITA coming on for admission, this day, **MOHAN M. SHANTANAGOUDAR, J.**, delivered the following:-

J U D G M E N T

The assessee is engaged in the business of manufacture of enzymes and pharmaceutical ingredients. The matter pertains to return of income for the assessment year 2003-04. The records reveal that during the relevant assessment year, the assessee has incurred certain expenditure on capital towards cost of machinery for a sum of Rs.7,82,25,431/-. The assessing Officer noticed that the said amount included a sum of

Rs.2,72,59,589/- incurred towards three items of machinery. The assessing Officer also noticed that the said three items of machinery have not been installed and commissioned and therefore the assessee is not entitled for weighted deduction under Section 35(2AB) of the Income Tax Act ('Act' for short) and hence held that such expenditure does not amount to expenditure incurred during that period. The Commissioner of Income Tax (Appeals), Bangalore as well as the Income Tax Appellate Tribunal disagreed with the said conclusion reached by the assessing Officer and have held that the assessing Officer is not justified in not allowing weighted deduction under Section 35(2AB) of the Act, inasmuch as the words which are not provided in the statute are sought to be read into, by the assessing Officer.

2. We do not find any ground to disagree with the conclusion reached by the Commissioner of Income Tax (Appeals) and the appellate Tribunal. What Section

35(2AB) of the Act speaks of is (a) development of facilities; (b) incurring of expenditure by the assessee for development of such facilities; (c) approval of facility by the prescribed authority, which is 'DSIR'; and (d) allowance of weighted deduction on the expenditure so incurred by the assessee.

3. On plain reading of the said provision makes it amply clear that the assessee has to develop facility by incurring expenditure for scientific research and he will have to file application before the prescribed authority, who after following the proper procedure, will allow the application or otherwise and the assessee would be entitled for weighted deduction in respect of all expenditure so incurred. The provision nowhere suggests or implies that machinery is required to be installed and commissioned before the expiry of the relevant previous year. The provision postulates approval of 'R & D' facility, which implies that a

development facility shall be in existence, which in turn, presupposes that the assessee must have incurred expenditure in this behalf. The appellate Tribunal has rightly concluded that in case if the interpretation of the assessing Officer is accepted, it creates absurdity in the provision, inasmuch as the words which are not provided in the statute are to be read into, which is against the settled proposition of law with regard to plain and simple meaning of the provision. The plain and homogenous reading of the provisions would suggest that the entire expenditure incurred in respect of 'R & D' has to be allowed for weighted deduction under Section 35(2AB) of the Act.

Even on facts, it has been found by the assessing Officer that an installation certificate had been issued on 31.3.2004 by one Mr. Virupaksha (concerned officer) evidencing that three scientific machines were installed. Hence, we do not find any ground to interfere with the

orders passed by the Income Tax Appellate Tribunal and no substantial question of law is involved in this appeal.

Accordingly, appeal fails and same stands ***dismissed.***

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*ck/-