

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6112/Del./2014  
(Assessment Year : 2010-11)**

M/s. DCM Shriram Consolidated Ltd., vs. ITO, Ward 3(1),  
(amalgamated company of M/s. Bioseed New Delhi.  
Research India Ltd.),  
5<sup>th</sup> Floor, Kanchenjunga Building,  
18, Barakhamba Road,  
New Delhi – 110 001.

**(PAN : AAACD0097R)**

**ITA No.1836/Del./2016  
(Assessment Year : 2011-12)**

JCIT (OSD), Circle 7(1), vs. M/s. DCM Shriram Consolidated Ltd.,  
New Delhi. (amalgamated company of M/s. Bioseed  
Research India Ltd.),  
5<sup>th</sup> Floor, Kanchenjunga Building,  
18, Barakhamba Road,  
New Delhi – 110 001.

**(PAN : AAACD0097R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Pradeep Dinodia, CA  
Shri V.P. Gupta, Advocate

REVENUE BY : Shri S.S. Rana, CIT DR

Date of Hearing : 26.11.2019

Date of Order : 24.02.2020

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER**

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, M/s. DCM Shriram Consolidated Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 24.09.2014 passed by the Commissioner of Income-tax (Appeals)-VI, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

*“1. That the CIT(A) erred in upholding the order of the Assessing Officer rejecting the claim u/s 80IB(BA) of the Income-tax Act to the extent of Rs.6,80,65,766/- being the profit determined by the Assessing Officer relating to Bt Cotton Hybrid Seeds without correctly appreciating the facts and the legal position in this regard.*

*2. That the CIT(A) also erred in not following and discussing the order of her predecessor passed in appeal of the company for AY. 2009-10, which order had also been accepted by the Department and, therefore, there was no reason with the Assessing Officer to make the disallowance in this year and also with CIT(A) to uphold the disallowance.*

*3. That the CIT(A) erred in holding that the appellant was not carried out research and development activity and it was only co-ordinating the activities between Mahyco Monsanto Biotech (I) Ltd. (MMB) and was trader of hybrid seeds and, accordingly, the profit derived was not in the nature of profit derived from the research development activities and, therefore, same were not exempt u/s 80IB(8A) of the Income-tax Act.*

*4. That the CIT(A) failed to correctly appreciate the facts of the case and also the terms of the agreement with MMB for use of their technology in relation to hybrid seeds developed by the company as a result of its own research activity. She also failed to consider and take note of activities undertaken by the appellant company duly detailed in the Annual Return submitted to Department of Scientific and Industrial Research, Ministry of Science & Technology, New Delhi (DSIR), copy of which had been duly submitted in the paper book and the fact that the company had been duly approved as research and*

*development company by DSIR commencing from A.Y.2004-05 upto A.Y. 2012-13.*

*5. That the CIT(A) also erred in not fully and correctly recording the facts of the case of the appellant as were duly explained before her supported by copies of documents submitted in the Paper Book and also making certain wrong and irrelevant observations in the order passed by her and also referring of the case law not relevant to the case of the Appellant company.*

*6. That the CIT(A) also erred in holding that amounts of Rs.4,36,035/- and Rs.3,11,229/- aggregating to Rs.7,47,264/- credited to Profit & Loss Account were also not in the nature of business income for the purpose of deduction u/s 80IB(8A) of the Act.”*

3. Appellant, JCIT (OSD), Circle 7(1), New Delhi (hereinafter referred to as ‘the Revenue’) by filing the present appeal sought to set aside the impugned order dated 22.01.2016 passed by the Commissioner of Income-tax (Appeals)-14, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

*“1. Ld. CIT (A) erred in law and on facts of the case in directing the AO to allow deduction u/s 80IB (8A) of the Income tax Act in respect of royalty income on cotton hybrid seeds.*

*2. Ld. CIT (A) erred in law and on facts of the case in directing the AO to allow deduction u/s 80IB (8A) of the Income Tax Act on miscellaneous income of Rs.2,48,932/-..”*

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : the assessee company is into the business of research in hybrid seeds, duly recognised as a research company by Department of Scientific and Industrial Research, Ministry of Science & Technology, New Delhi initially from Assessment Years 2004-05 to 2006-07 and subsequently renewed from AYs 2007-08 to 2009-10 and then from AYs 2010-11 to 2012-13 vide

different orders. Assessee company has reportedly been carrying out research activities on agriculture farms owned/taken on lease at different locations in India. On the basis of its research activities for number of products, such as, cotton, corn pearl millet, hybrid rice, sunflower, pigeon pea, sorghum, okra, tomato, gourds, brinjal, chili, barja, etc., it has developed hybrid seeds.

5. Assessing Officer (AO) following assessment order passed in AY 2009-10 dated 26.12.2011 wherein view was taken that the income of the assessee company is a result of technology it had taken from Mahyco Monsanto Biotech (I) Ltd. (hereinafter referred to as 'MMB') and it was not carrying on any research activities on its own and as such, it is not entitled for deduction under section 80IB (8A) of the Income-tax Act, 1961 (for short 'the Act'). However, aforesaid assessment order for AY 2009-10 has been overruled by the Id. CIT (A) by reaching the conclusion that the assessee company is engaged in the research activities and as such, entitled to deductions u/s 80IB (8A). For AY 2011-12, AO again followed assessment order of AY 2009-10, though overruled by the Id. CIT(A), and denied the deductions u/s 80IB (8A). Again in AY 2011-12, Id. CIT (A) agreeing with the contentions raised by the assessee reached the conclusion that the assessee company was

engaged in the research activities and as such was entitled for deductions u/s 80IB (8A) of the Act. However, in AY 2010-11, ld. CIT(A) confirmed the assessment order passed by the AO by denying the deductions claimed by the assessee u/s 80IB. Ld. CIT(A) also held an amount of Rs.7,47,264/- credited to profit & loss account not in the nature of business income for the purpose of deduction u/s 80IB of the Act.

6. Assessee carried the matter before the ld. CIT (A) for both the assessment years i.e. AYs 2010-11 & 2011-12. For AY 2010-11, ld. CIT (A) confirmed the assessment order passed by the AO whereas in AY 2011-12, ld. CIT (A) allowed the deductions claimed by the assessee company u/s 80IB of the Act. Feeling aggrieved, both the assessee as well as the Revenue have come up before the Tribunal by way of filing the separate appeals.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Undisputedly, for the initial five years from AYs 2004-05 to 2008-09, deduction claimed by the assessee company u/s 80IB(8A) has been allowed by the AO. It is also not in dispute that in AY

2009-10, AO declined the claim of assessee's company for deduction u/s 80IB but allowed by the Id. CIT (A), which order has been accepted by the Department as no further appeal has been filed. It is also not in dispute that by taking divergent view by the AO in the seventh year of claiming deduction u/s 80IB, earlier assessments for AYs 2004-05 to 2009-10 have not been reopened. It is also not in dispute that there is no change in the facts and law pertaining to the facts and circumstances of the case for the year under assessment as assessee's company is carrying out same activities on the basis of Sub-Licensee Agreement dated 11.08.2003 entered into between assessee company (sub-licensee) and M/s. Mahyco Monsanto Biotech (I) (Ltd. (MMB) (sub-licensor), which explained the scope and nature of services and technology to be provided by the sub-licensor to the sub-licensee. It is also not in dispute that assessee company has been accorded approvals as research and development company u/s 80IB (8A) of the Act by the prescribed authorities, namely, the Secretary to the Government of India in the Department of Scientific and Industrial Research. It is also not in dispute that AO/CIT(A) has disallowed the claim of deduction of assessee company u/s 80IB(8A) in A.Y. 2010-11 on the ground that since the assessee company was having

an agreement with MMB to whom payment under the head “trait value” is paid for use of their technology and as such, assessee company was not carrying out any research activities rather it was only passing on the technology of the MMB to the parties from whom royalty was being received. It is also not in dispute that the claim of the assessee for deduction u/s 80IB (8A) has been allowed by the AO as well as Id. CIT (A) in AY 2011-12. It is also not in dispute that MMB creates insect tolerance technology for BT Cotton and to avail of that technology, assessee company entered into an agreement with MMB and has been making payment to it called “trait value”.

9. In the backdrop of the aforesaid facts and circumstances of the case, the first question arises for determination is :-

*“as to whether assessee company has not carried out any research activities during the year under assessments rather merely surviving on insect tolerance technology for BT Cotton created by Mahyco Monsanto Biotech (I) Ltd. (MMB) on payment of “trait value” and has been receiving royalty from the parties by merely passing on the technology of MMB as has been held by AO/CIT(A) in AY 2010-11?”*

10. Before proceeding further, we would like to extract the relevant provisions contained u/s 80IB (8A) of the Act and Rule 18DA of the Rules for ready perusal as under :-

Rule 18DA, 1, 2, 3

**“SECTION 80IB (8A)**

*Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.*

*80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.*

.....

*(8A) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such business for a period of ten consecutive assessment years, beginning from the initial assessment year, if such company—*

- (i) is registered in India;*
- (ii) has its main object the scientific and industrial research and development;*
- (iii) is for the time being approved by the prescribed authority at any time after the 31st day of March, 2000 but before the 1st day of April, 2007;*
- (iv) fulfils such other conditions as may be prescribed.”*

**RULE 18DA**

*18DA. (1) Any company carrying on scientific research and development shall be eligible for deduction specified in sub-section (8A) of section 80-IB, if such company—*

- (a) is registered in India;*
- (b) has its main object the scientific and industrial research and development;*
- (c) has adequate infrastructure such as laboratory facilities, qualified manpower, scale-up facilities and prototype development facilities for undertaking scientific research and development of its own;*
- (d) has a well formulated research and development programme comprising*

- of time bound research and development projects with proper mechanism for selection and review of the projects or programme;*
- (e) *is engaged exclusively in scientific research and development activities leading to technology development, improvement of technology and transfer of technology developed by themselves;*
- (f) *submits the annual return alongwith statement of accounts and annual report within eight months after the close of each accounting year to the prescribed authority.*

**(2) Every company which is approved under sub-rule (2) of rule 18D shall—**

- (a) *sell any prototype or output, if any, from its laboratories or pilot plants with the prior permission of the prescribed authority;*
- (b) *intimate the change, if any, in its memorandum of association and articles of association relating to its main objects and forward the altered copy of its memorandum of association and articles of association to the prescribed authority;*
- (c) *apply for extension of the approval at least three months before expiry of the approval already granted by the prescribed authority;*
- (d) *have a system of monitoring the cost of research and development projects.*

**(3) If, at any stage, it is found that—**

- (a) *the approval granted to the company referred to in sub-rule (2) of rule 18D is to avoid payment of taxes by its group companies or companies related to its directors or majority of its shareholders;*
- (b) *any provisions of the Act or the rules have been violated,*

*the prescribed authority specified may withdraw the approval so granted.”*

11. When we seek the answer to the aforesaid question framed for adjudication of the controversy at hand in the light of the sub-licencee agreement dated 11.08.2003, it has come on record that the primary object of the sub-licencee agreement between assessee company and MMB, a leading biotech company in USA is that MMB has given the Monsanto Technology to the sub-licencee/assessee company to test, produce and sell Insect Tolerant Cotton Planting Seeds and to further sub-licence the technology granted under this Agreement to the sub-licencee. Agreement (supra) is very extensive in terms and conditions wherein insect tolerance or insect tolerant has been defined as under :-

*“1.17 “Insect Tolerance” or “Insect Tolerant” shall mean reduced damage from boll worms (as well as from certain other insects of the order Lepidoptera which may be identified by Sub-licensor) to fruiting parts of cotton plants which have been Genetically Modified by recombinant DNA technology, but not limited to B.t. Gene (s).”*

12. Furthermore, Article 2 para 2.1 of the Agreement empowers the assessee company to use Monsanto Technology to the following effect :-

*“2.1 SUBLICENSE TO USE MONSANTO TECHNOLOGY : Sublicensor hereby grants to Sublicensee, and Sublicensee hereby accepts, on and subject to the terms and conditions of this Agreement, a nonexclusive, nontransferable sublicense to use Monsanto Technology provided to Sublicensee to test, produce,*

*have produced, and sell Genetically Modified Hybrid Cotton Planting Seed in the Territory including a sublicense under applicable Monsanto Patent Rights, if any. Sublicensee shall not have a right to grant further sublicenses other than as provided in this Article 2, without prior written consent of Sublicensor.”*

13. Furthermore, sub-licence agreement granted to the assessee company also includes the right to utilize the services of third parties to act on behalf of sub-licencee in conducting those activities associated with the Hybrid Cotton Planting Seeds business which are directed towards to the production of Genetically Modified Hybrid Cotton Planting Seeds for subsequent sale by sub-licencee/assessee company to farmers in the territory.

14. There is another clause no.2.3 in the Agreement which allows sub-licensing of farmers that, *“The sale by Sublicensee of Genetically Modified Hybrid Cotton Planting Seed to any purchaser shall include a limited sublicense transferable only to farmers to use such Genetically Modified Hybrid Cotton Planting Seed only to produce a commercial commodity cotton crop within the Territory”*.

15. Furthermore, clause 2.4 of the Agreement incorporates Prohibition of Modification of Biotech Genes by the licensee which is to the effect that, *“Sublicensee shall not reverse engineer, isolate, modify or otherwise use any B.t. Gene or other*

*recombinant DNA (including but not limited to associated regulatory sequences) that is part of the Monsanto Technology that is licensed under this Agreement, without the prior written consent of Sublicensor.”*

16. In Article 3 para 3.1 sub-licence fee for technology has been settled between the parties to the Agreement as under :-

**“3.1 TECHNOLOGY AND SUBLICENSE FEES:**

*(a) In consideration for the license rights granted hereunder, Sublicensee shall pay to Sublicensor a one time nonrefundable initial fee of Rupees 50 (fifty) lakhs net of taxes, half of which shall be payable on execution of this agreement. Delivery of the Insect Tolerant cotton planting seed embodying Monsanto Technology as provided in Section 4.1 will be given by Sublicensor to Sublicensee immediately on obtaining permission by Sublicense from the Department of Biotechnology, Government of India, New Delhi and the other half of one time nonrefundable initial fee shall be payable no later than six (6) month, after the date of execution of this Agreement.*

*(b) In further consideration for the sublicense rights granted hereunder, Sublicensee shall pay to Sublicensor, as a running fee for the sublicense granted hereunder, an amount calculated for each hybrid of Genetically Modified Hybrid Cotton Planting Seed as follows: first, reduce the Trait Value by the Dealer Commission Percentage; second, multiply that reduced Trait Value by seventy percent (70%); and third multiply that amount by the Net Sales (expressed as the number of Units) by or on behalf of Sublicensee. for which sublicensee has received payment. Repeat the process for each hybrid of Genetically Modified Hybrid Cotton Planting Seed. Add up the amount due for each hybrid of Genetically Modified Hybrid Cotton Planting Seed. In case the Sublicensee does not receive the payment for the Net Sales made by it from April to August for the Genetically Modified Hybrid Cotton Planting Seed, the running fee due in respect to such Net Sales shall be paid to Sublicensor by Aug. 31 every year. This total is the amount of the running fee due. It is expressly understood that the per Unit fee payable under this Section 3.1 (b) shall not, for any Fiscal Year, be greater than the fees per Unit payable during that Fiscal Year by other sublicensees using Monsanto Technology, provided such other*

*sublicensee provides the same kinds and amounts of services as Sublicensee hereunder. The payment of these fees shall be made in accordance with Section 3.3 (a)*

*(c) This Agreement is subject to the condition precedent that all appropriate governmental agencies in the Territory have granted nonrevocable approval (to the extent any such approval is required) for the payment to Sublicensor of the fees prescribed in this Article 3 and such approval is on terms satisfactory to the Sublicensor.*

*(d) If government approval (or sale of Genetically Modified Hybrid Cotton Planting Seed is not received for a period of five (5) years from the signing of this Agreement or if any government or any government legislation bans the Genetically Modified Hybrid Cotton Planting Seed in the Territory, the initial fee paid by the Sublicensee under Section 3.1 (a) shall be refunded by the Sublicensor to the Sublicensee without interest.”*

17. In Article 4 of the Agreement, mode of providing technology assistance by MMB to the assessee company is explained as under:-

*“4.1 SEQUENCE OF ACTIVITIES: Sublicensor shall provide (or cause to be provided) to Sublicensee "Insect Tolerant cotton planting seed embodying Monsanto Technology for use in Sublicensee's Cotton Planting Seed Business. Sublicensee shall then conduct further activities associated with the Hybrid Cotton Seed Business which are directed toward preparation of Genetically Modified Hybrid Cotton Planting Seed for subsequent sale to farmers.”*

18. On 5<sup>th</sup> March, 2007, assessee company entered into supplementary and amended Agreement with MMB which is available at pages 51 to 56 of the paper book. Vide supplementary Agreement, assessee agreed to pay “trait value” for Kharif 2007 season onwards till the term of the Agreement and the amount due to MMB during such period qua Genetically Modified Hybrid

Cotton Planting Seed containing First Monsanto B.T. Gene (hereinafter referred to as the “Bollgard I Cotton Seeds” and “Bollard II Cotton Seeds”, as the case may be) shall be as under :-

*“1(A) (B), multiplied by the total number of Units Bold by the Seed Company along with applicable tax / levy (the Parties understand that the applicable tax currently is only value added tax ("VAT") @4%) as provided under clause. 1 (A) (d). The mode of payment shall be as per the provisions of the Sub License Agreement.*

*(d) Tax / levy, applicable on the payments to be made to MMB under clause 1 (A) lee) shall be invoiced by MMB and paid by the Seed Company along with the payments under clause 1 (A) (c). In the event per Unit VAT and/ or any other tax / levy, applicable on the payments to be made to MMB Under clause 1 (A) (c) exceeds Rs.8.30 (Rupees Eight and Paise Thirty only) for Bollgard.I Cotton Seeds, the maximum retail price per Unit as applicable under clause 1 (A) (a) or 1 (A) (b) shall be adjusted upwards (considering 17% trade discount applicable on such additional tax / levy) to the extent of increase in the amount of additional taxes/levies, for the purpose of determining MMB’s share of Trait Value.*

*(e) In case no VAT and/or any other tax levy is applicable or imposed on the payments made to MMB under this Supplementary Agreement in respect of Bollgard I Cotton Seeds, the maximum retail price of Rs.760/- (Rupees Seven Hundred and Sixty only) in clause 1 (A) (a) and 1 (A) (b) above shall be adjusted downwards and read as Rs.750/- (Rupees Seven Hundred and fifty only), for the purpose of determining MMB’s share of Trait Value.*

*(f) Once the per Unit maximum retail price of Bollgard I Cotton Seeds has been finalized by the Seed Company, it shall intimate the maximum retail price to MMB within 14 days of such finalisation.”*

19. Furthermore, when we examine Para 2.5 (a), (b) & (c) **it is again one of the conditions that sub-licencee, the assessee company in this case, shall not cross or backcross the B.t. Gene into any third party germplasm which have been crossed or**

**backcrossed with the B.t. Gene. It is also one of the conditions that sub-licencee or its affiliates shall not develop, commercialize, sell, distribute or otherwise commercially handle any Hybrid Cotton Planting Seed which expresses tolerance to glyphosate herbicide due to a transgenic trait unless such trait is obtained from sub-licensor.**

20. It is also one of the agreed conditions that it is understood that if sub-licencee and/or its affiliates or any third party acting on behalf of sub-licencee and/or its affiliates conducts any crossing or backcrossing of any such transgenic trait in a parent line that is either used commercially by sub-licencee and/or its affiliates to produce cotton hybrids or which are intended for commercial use to produce cotton hybrids sub-licencee shall be considered to have begun to develop such Hybrid Cotton Planting Seed for purposes of this section 2.5 (b).

21. It is also agreed between the parties as per clause 2.5 (i) that sub-licencee **will develop secure temper-proof packaging for packing Genetically Modified Hybrid Cotton Planting Seed in consultation with the sub-licensor and assessee company has been authorized to use the “Bollgard trademark” owned by Monsanto company on a non-exclusive basis in the territory**

**pursuant to a separate trademark sub-licence agreement, attached hereto as Exhibit 'D' without the sub-licencee having to make any additional payment in that behalf.** It is also further agreed by the assessee company that as sub-licencee it shall conspicuously display said trademark on all packages of **Genetically Modified Hybrid Cotton Planting Seed containing Monsanto Technology** and in all promotional and advertising material related thereto in the manner specified in the trademark sub-licence agreement.

22. Furthermore, when we go through clause 2.5 (d) of the sub-licence agreement that sub-licencee shall not market or otherwise commercialize or commercially use **(for example as a parent line for production of Genetically Modified Hybrid Cotton Planting Seed) any Genetically Modified Hybrid Cotton Planting Seed without approval of sub-licensor** as provided below, which is extracted as under :-

*“Sublicensee shall not market or otherwise commercialize or commercially use (for example as a parent line for production of Genetically Modified Hybrid Cotton Planting Seed) any Genetically Modified Hybrid Cotton Planting Seed without approval of Sublicensor as provided below. Prior to any sale or other commercial distribution of any new hybrid of Genetically Modified Hybrid Cotton Planting Seed, each such hybrid shall be tested for gene equivalency as set forth in Exhibit A and for agronomic criteria as set forth in Exhibit B (together, the "Quality Tests") for two (2) seasons (without an intervening failure to pass the "Quality Tests") and shall submit the required test materials and test results to Sublicensor for approval. Based*

*on the Quality Tests Sublicensor shall approve or disapprove the subject hybrid within thirty (30) days after it has received all of the materials and data required under the Quality Tests.”*

23. Furthermore, in sub-clause 2.5 (e), it is agreed by the assessee company that the sub-licencee, the assessee company in this case, shall test each and every lot of Genetically Modified Hybrid Cotton Planting Seed in accordance with the Quality Assurance Criteria set forth in the Exhibit ‘B’ prior to sale of that lot. Similarly, it is agreed in clause 2.5 (m) that sub-licensor, MMB in this case, shall provide recommendations for procurement of kits, instruments, or other lab supplies that will be required for sub-licencee to carry out its activities under the licence.

24. It is also agreed between the assessee company and the sub-licensor, the MMB, that as per clause 2.5 (l) that sub-licensor shall provide training relevant to sub-licencee’s activities under this sub-licence to the relevant employees of the sub-licencee in the laboratories of sub-licensor or sub-licencee.

25. Furthermore, when we examine clause 2.6 of sub-licence agreement there are restriction on the assessee company on sale of First Monsanto B.t. Gene which is extracted as under :-

*“It is agreed that, within three (3) years of governmental approval of the Second Monsanto B.t. Gene and Sublicensee's first line of Cotton Proprietary Germplasm containing SIJch gene, but in any event no later than five (5) years after the first commercial sale of Hybrid Cotton Planting Seed containing both the First Monsanto B.t. Gene and the Second Monsanto*

***B.t. Gene, Sublicensee will stop selling cotton seed containing only the First Monsanto B.t. Gene and will sell only Genetically Modified Hybrid Cotton Planting Seed containing both the First Monsanto B.t. Gene and the Second Monsanto B.t. Gene.”***

26. Undisputedly, an amount of Rs.23,33,76,405/- has been paid to MMB as the trait value which has not been made part of the profit of the assessee company nor part of the expenditure debited to Profit & Loss account nor deduction thereof u/s 80IB (8A) has been claimed. It is the case of the assessee company that “trait value” which is a royalty in respect of technology of MMB is paid by its customers, namely, Shriram Bioseed Genetics India Ltd. (SBGIL) directly to the MMB as per Tripartite Agreement entered into between assessee company, MMB and SBGIL. However, as per sub-licencee agreement between assessee and the MMB, it is the liability of the assessee company to pay the trait value to the MMB.

27. Clause 4 & 5 of the Tripartite Agreement is extracted for ready perusal as under :-

***“4. In case SBGI fails to pay the trait value fee or other cost including but not limited to penal interest for delayed payment payable by SBGI to MMB then under such circumstances BRI undertakes to pay due amount to MMB promptly. MMB reserves the right to take such other legal action as may be deemed necessary against SBGI and BRI to recover the amount due.***

***5. SBGI shall comply with all the tax provisions with relation to the trait value fee payment to MMB. SBGI and BRI agree to indemnify MMB in case there are any claims raised by Tax authorities on MMB as a result of this Agreement.”***

28. When we refer to clauses 4 & 5 of the Tripartite Agreement, it is clear that the payment of trait value by SBGIL to MMB is only on behalf of assessee company which is required to be accounted for in the books of account of the assessee company. From this arrangement, **it is safely concluded that when SBGIL claimed to have used parent seeds developed by the assessee company then why the payment of trait value has been made by SBGIL to MMB.**

29. When we examine aforesaid facts which have come on record from sub-licencee agreement and tripartite agreement in the light of the arguments addressed by the ld. AR for the assessee that *“assessee is an approved research company by the Department of Scientific and Industrial Research, Ministry of Science & Technology since AY 2004-05”*, answer to the question framed in preceding para 9 of the order is as under :-

- i. that no doubt, assessee company has claimed that it is having huge research and development infrastructure, detailed at pages 80 to 89 of the paper book, with Dr. Paresh Verma, Ph.D. (Plant Breeding) as Director and is having research labs, cold storage and seed

conditioning unit but sub-licencee agreement between assessee company and MMB, a leading Biotech company in USA, goes to prove that the assessee company is developing Hybrid B.t. Cotton Seeds on the basis of Monsanto Technology with inbuilt production for cotton seeds crops against the destructive insects;

- ii. that as per clause 1.27 of Article 1, Monsanto holding is having patent right of Hybrid Seed Technology to test, produce and sell insect tolerant cotton seed. MMB has sub-licenced the Monsanto / Bollgard technology to certain Indian companies, each of whom introduced Bollgard technology into their germplasm;
- iii. that assessee company by virtue of the agreement dated 11.08.2003 with MMB technology only developed, tested and sold Genetically Modified Cotton Planting Seed to third parties for its commercial use by the farmers;
- iv. that MMB is having strict control for the use of its technology by the assessee company, which the assessee company shall not reverse engineered,

isolate, modify or otherwise use any B.t. Gene or any other recombinant DNA without the prior written consent of the MMB and it goes to prove that role of assessee company as an approved research company is invisible;

- v. that when MMB has received trait value on the sales of Hybrid Cotton Seeds by making same arrangement by virtue of Tripartite Agreement through SBGIL for using parent seeds otherwise claimed to have been developed by the assessee company, it is difficult to understand what research part has been played by the assessee company in developing the Hybrid B.t. Cotton Seeds which are supplied to SBGIL for marketing;
- vi. that the assessee company has not brought on record the complete facts as to why the “trait value” payment has not been routed through its books of account particularly when SBGIL claimed to have marketed Hybrid B.t. Cotton Seeds developed by the assessee company but made the payment of trait value to MMB. It is also difficult to understand that when

assessee company has claimed to have developed the Hybrid Cotton Seeds through its research and development activities then what was the purpose of entering into sub-licencee agreement with MMB to avail of their technology to develop the Hybrid Cotton Seeds;

- vii. that from the entire arrangement brought on record by the assessee company as to availing of the Monsanto Technology from MMB, making the payment of trait value by the SBGIL to whom Hybrid Cotton Seeds were supplied for marketing by the assessee as per tripartite agreement and that no patent or copyright has ever been developed by the assessee company during the last 5 – 6 years, the role of the assessee company for carrying out scientific research and development is not clearly established;
- viii. that AO as well as CIT (A) have not carried out any fact finding exercise to bring on record if laboratory testing and marketing of Hybrid B.t. Cotton Seeds by the assessee company on the basis of Monsanto Technology availed of by virtue of sub-licencee

agreement dated 11.08.2003 amounts to research activity;

- ix. that so far as contention of the Id. AR for the assessee that when assessee is an approved research company by Ministry of Science & Technology, the AO has no role to play to look into the research activities of the assessee company, is concerned, we are of the considered view that provisions contained u/s 80IB (8A) and Rule 8DA are to be read conjointly and are compliment to each other. In other words, conditions of both section 80IB and Rule 18DA are required to be fulfilled for availing of such deductions. Carrying out the scientific & industrial research and development activities is *sine qua non* for allowing deductions u/s 80IB;
- x. that AO as well as Id. CIT (A) have not examined material, if any, placed before prescribed authority under Rule 18DA before approving the assessee company as a research company;
- xi. that it is also one of the conditions in the sub-licence agreement that the assessee has to maintain a

laboratory as per the requirement of sub-licensor to test the final product and for the quality control tests and the assessee **company shall not reverse engineer, isolate, modify or otherwise use any B.t. Gene or other any recombinant DNA which are part of the Monsanto Technology without prior written consent.** All these facts go to prove that assessee's functions in order to develop Hybrid Cotton Seeds in the controlled environment are without any discretion of its own rather to work as captive unit of MMB which is not a characteristic of an independent research company;

- xii. that the AO is required to outsource the expert opinion to reach out the conclusion if the assessee company is independently carrying out research and development activities in order to develop the Hybrid B.t. Cotton Seeds independent of the Monsanto Technology availed of by the assessee company by virtue of the agreement dated 11.08.2003;
- xiii. that specific scientific facts are required to be brought on record to prove that apart from the Monsanto

Technology availed of by the assessee company, it has independently carried out research and development activities as required u/s 80IB (8A);

- xiv. that not an iota of evidence has been collected by AO/CIT(A) as to what value addition has been made by assessee company in the technology received from MMB on payment of “trait value” by conducting its own research. Because when assessee company has paid “trait value” for vital technology received from MMB, then what additions they have made;
- xv. that in A.Y 2011-12 AO/CIT have also decided the issue against assessee company without conducting any investigation if the research and development activities are actually being carried out by assessee company independent & MMB technology.
- xvi. that when assessee company claimed to have developed Hybrid B.t. Cotton Seeds itself and supplied the same to SBGIL then why SBGIL has been made to pay “trait value” to MMB.
- xvii. that AO is to categorically find out the role of the assessee company as well as Monsanto Technology

independently in order to develop the Hybrid B.t.  
Cotton Seeds;

29. In view of what has been discussed above, we are of the considered view that the matter is required to be remitted back to the AO who shall examine afresh if the assessee company has carried out any scientific research and development activities during the year under assessment independent of the technology purchased from MMB in the light of Agreement (supra) between assessee company and MMB an tripartite agreement between assessee company, MMB and SBGIL, keeping in view the observations made herein before by providing an opportunity of being heard to the assessee, hence the appeals filed by the assessee as well as Revenue are allowed for statistical purposes.

**Order pronounced in open court on this 24<sup>th</sup> day of February, 2020.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 24<sup>th</sup> day of February, 2020**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-VI & CIT(A)-14, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**