IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

MONDAY, THE 13TH DAY OF SEPTEMBER 2021 / 22ND BHADRA, 1943

ITA NO. 238 OF 2019

AGAINST THE ORDER IN ITA 249/2018 OF I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

APOLLO TYRES LTD
3RD FLOOR, AREEKAL MANSION, PANAMPILLY NAGR, KOCHI-682036(PAN AAACA 6990Q)

BY ADVS.
JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.VIPIN ANTO H.M.
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA

RESPONDENT/S:

THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE-1(1), KOCHI-682018

BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 13.09.2021, ALONG WITH ITA.225/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

MONDAY, THE 13TH DAY OF SEPTEMBER 2021 / 22ND BHADRA, 1943

ITA NO. 225 OF 2019

AGAINST THE ORDER IN ITA 339/2018 OF I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

APOLLO TYRES LTD.
3RD FLOOR,AREEKAL MANSION,
PANAMPILLY NAGAR,KOCHI-682036.
(PAN - AAACA 6990 Q)

BY ADVS. JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS, SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS, SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.VIPIN ANTO H.M., SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA

RESPONDENT/S:

THE ASSISTANT COMMISSIONER OF INCOME TAX,
CORPORATE CIRCLE-1(1),KOCHI-682018.

BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 13.09.2021, ALONG WITH ITA.238/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

[ITA Nos.238/2019, 225/2019]

S.V. Bhatti, J.

Heard Senior Counsel Mr Joseph Markos and Standing Counsel Mr Christopher Abraham for parties.

2. M/s. Apollo Tyres Ltd Kochi/Assessee is the appellant. The Assistant Commissioner of Income Tax, Circle-1(1), Kochi/Revenue is the respondent in both the appeals.

2.1 The assessee, being aggrieved by the order of the Tribunal and the authorities under Section 35(2AB) of the Income Tax Act, 1961 (for short 'the Act') filed the instant two appeals. The details of the Assessment Years, Orders etc are stated in the following tabular form:

Sl. No.	Assessment Year & Date of Assessment Order	Order of Commissioner of Income Tax	Income Tax Appellate Tribunal	ITA No.
1	2006-07; dtd.31.03.2015	ITA NO.44/R-1/E/CIT(A)-I/2015-16 DT.26.03.2018	ITA NO.339/COCH/2018 DTD 21.03.2019	225/2019
2	2007-08; dtd.31.03.2015	ITA NO.43/R-1/CIT(A)-I/2015-16 DT.31.03.2017	ITA NO.249/COCH/2018 DTD 21.03.2019	238/2019

2.2 The appeals are admitted on the following substantial question of law.

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in confirming the disallowance of deduction under Section 35(2AB) of the Income Tax Act?"

The circumstances noted by the Assessing Officer in ITA No.225/2019 in respect of the present controversy are referred to and the same would be sufficient for consideration and

disposing of the other appeal as well.

ITA No.225/2019

3. The assessee has set up two in-house Research and Development (R&D) facilities, one at Perambra (Cochin) and another at Limda (Vadodara). The facilities are recognized by the Government of India, Ministry of Science and Technology, and Department of Scientific and Industrial Research (DSIR). The R&D facility at Perambra was granted recognition by DSIR in 1987 and the R&D facility at Limda was granted recognition in the year 2001. The assessee has been claiming admissible deduction, i.e., the revenue and capital expenditure incurred by the assessee for maintaining and running the R&D facilities, under Section 35(1)(i) and (2)(ia) of the Act. The issue now turns us to the entitlement of weighted deduction at 150% under Section 35(2AB). The assessee, on 12.11.2008, applied to the competent authority for approval. The DSIR, vide letter

dated 17.06.2009, granted approval for the period 01.04.2007 to 31.03.2010 by incorporating the following condition:

> "The above Research and Development facility is approved for the purpose of Section 35(2AB) from 01.04.2007 to 31.03.2010, subject to the conditions underlined therein (approval for Financial Year 2007-08 is recommended only for the purpose of claiming weight deduction on capital expenditure on R&D equipment)."

3.1 The Assessing Officer noted that on 21.08.2008 the agreement stipulated by clause (iii) of Section 35(2AB) of the Act was entered into by the assessee. Therefore, the important stipulation for availing weighted deduction has been complied with on 21.08.2008. The Assessing Officer for two reasons declined the deduction claimed by the assessee under Section 35(2AB), namely the assessee has not filed revised return claiming the weighted deduction for the subject Assessment Year, and that the agreement with the Department, which is a

condition precedent, was entered into subsequent to the Financial Year during which the deduction is claimed. Therefore, the assessee is not entitled to the weighted deduction of 150% under Section 35(2AB). The Commissioner of Income Tax (Appeals) and the Tribunal have confirmed the findings recorded by the Assessing Officer. Hence the Tax Appeal.

4. Before adverting to other circumstances, it is contextual to refer to the judgment dated 20.04.2010 of Delhi High Court in assessee's own case in W.P.(C) No.13338/2009, which has bearing on the consideration of the substantial question raised in the appeal. Briefly referred, the assessee in the said writ petition prayed for quashing the order dated 15.06.2009 wherein the approval was given with effect from 01.04.2007 to 31.03.2010 as against the claim for approval for the period 01.04.2004 to 31.03.2010. In other words, the

assessee, after appreciating the effect of the order of the Department in granting the approval for the period 01.04.2007 to 31.03.2010, questioned the said order independently and invited the judgment dated 20.04.2010. The operative portion of the judgment reads thus:

> "8. From the aforesaid two provisions of the said guidelines, it was pointed out by Mr Chandhiok that, in the first instance, the approval to in- house research and development centres having valid recognition by the Department of Scientific and Industrial Research, would, as a normal rule, be considered from the first of April of the year in which the application is made in Form 3CK. He submitted that in the present case, the application in Form 3CK was made on 21.08.2008 and, therefore, in terms of these guidelines, the approval would normally have been granted from 01.04.2008. However, in view of the guideline prescribed in Clause (vi) of para 6, a beneficial provision has been made so as to extend the approval of an in-house research and development centre to the previous year, but limited only to capital expenditure (excluding any capital expenditure on land and buildings). It is for this reason, according to Mr Chandhiok, that the approval in Form 3CM granted on 15.06.2009 has been given with effect from 01.04.2007. It was

also pointed out that it is because of these provisions, which are beneficial to the petitioner, that the benefit of weighted tax deduction for the year 2007-08, which is the year prior to the year of application, has been limited to capital expenditure (excluding expenditure on land and building). However, for the period subsequent to 01.04.2008, the petitioner would be entitled to the entire benefit as stipulated under Section 35(2AB), both on the capital expenditure as well as on revenue expenditure, excluding, of course, the capital expenditure on land and building.

9. After having considered the arguments advanced by the counsel for the parties, we are inclined to accept the submissions made by Mr Chandhiok on behalf of the respondent. While it may be true that, initially, the petitioner had obtained approval right upto 31.03.2010, but that approval would be relatable only to Section 35(2AB) Before a company is entitled for deduction under the said Sub-section (1), it must also enter into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of accounts maintained for that facility. This is specifically stipulated in Clause (3) of Section 35(2AB) of the said Act. We find that the agreement was entered into only on 21.08.2008 when the petitioner made the application in Form 3CK. We have already mentioned that part 'B' of the said form

comprises of the said agreement. Such an agreement is a condition precedent to the kind of approval, for the purposes of deduction, which the petitioner is seeking. This condition was only met on 21.08.2008. Therefore, the petitioner's plea that it ought to have been granted approval with effect from 01.04.2004 and not with effect from 01.04.2007 is not acceptable.

10. Insofar as the plea that the approval has been granted for the financial year 2007-2008 only for capital expenditure and not revenue expenditure, is concerned, we agree with the submissions made by Mr Chandhiok that the benefit would not have normally accrued to the petitioner for the financial year 2007-2008 because the approval would normally have been granted only in the year in which the application in form 3CK is made. If that were to be the case, then the petitioner could have got approval only with effect from 01.04.2008, It is only because of the beneficial provisions indicated in the guidelines that the benefit has been extended to the earlier year, being the financial year 2007-08, subject to the condition that such benefit would be limited only to the capital expenditure (excluding the capital expenditure on land and building). Thus, on this ground also, we feel that the petitioner has no case."

5. The learned Senior Counsel appearing for the assessee informs the Court that the Special Leave Petition (SLP),

filed against the judgment in W.P.(C) No.13338/2009 with delay condonation petition, was pending during the assessment proceedings. Subsequently, the Supreme Court since did not condone the delay, the SLP was dismissed. Therefore, we are of the view that, for all purposes, the entitlement of assessee for availing benefit from 01.04.2004 is covered by the order dated 15.06.2009 of DSIR and the adjudication of the Delhi High Court in assessee's own case, W.P.(C) No.13338/2009. A few judgments are referred to for bringing home the argument that once recognition is granted, approval is not very essential and need not be considered for the reason that Section 35(2AB) is an additional incentive or deduction provided by the Act. The claim is dependent on fulfilling the requirements of the Section. This argument need not be considered for the reasons that the assessee, on the strength of a right in its favour or infirmity in the stipulation of period by DSIR, availed the writ remedy. The

prayers of assessee were rejected. The result is that the conclusion recorded against the assessee by the judgment in W.P.(C) No.13338/2009 bars the assessee from re-agitating the same issue in subject assessment proceedings. The request of the assessee was to give approval with effect from 01.04.2004. For available reasons, and now approved by the judgment in W.P.(C) No.13338/2009, it has been granted with effect from 01.04.2007 to 31.03.2010. This conclusion is confirmed by the Delhi High Court. The effort of the assessee again is in respect of the very same Assessment Year for which a different conclusion is attempted to be invited from this Court. The argument for weighted depreciation is rightly rejected by all the authorities under the Act.

5.1 We are in agreement with the findings recorded by all the three authorities and are of the view that the substantial question of law, by following the judgment dated 20.04.2010 of

the Delhi High Court in assessee's own case in W.P.(C) No.13338/2009 is answered in favour of the Revenue and against the assessee.

ITA No.238/2019

6. By following the aforementioned discussions and the reasons, the substantial question framed in this appeal is answered in favour of the Revenue and against the Assessee.

Income Tax Appeals fail, accordingly dismissed. No order as to costs.

Sd/-
S.V.BHATTI
JUDGE

Sd/-
VIJU ABRAHAM
JUDGE

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APPENDIX OF ITA 225/2019

PETITIONER ANNEXURE

ANNEXURE A	TRUE COPY OF ASSESSMENT ORDER DATED 31/03/2015 PASSED BY THE RESPONDENT FOR ASSESSMENT YEAR 2006-07
ANNEXURE B	TRUE COPY OF APPELLATE ORDER DATED 26/03/2018 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-I,KOCHI.
ANNEXURE C	TREU COPY OF SECOND APPEAL DATED 04/09/2018 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH.
ANNEXURE D	CERTIFIED COPY OF ORDER DATED 21/03/2019 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH IN I.T APPEAL NO.339/COCH/2018 FOR ASSESSMENT YEAR 2006-07.

APPENDIX OF ITA 238/2019

PETITIONER ANNEXURE

ANNEXURE A	TRUE COPY OF THE ASSESSMENT ORDER DATED 31.03.2015 PASSED BY THE RESPONDENT FOR ASSESSMENT YEAR 2007-08
ANNEXURE B	TRUE COPY OF APPELLATE ORDER DATED 31/03/2017 PASSED BY THE COMMISSIONER OF INCOME (TAX) APPEALS-1, KOCHI
ANNEXURE C	TRUE COPY OF SECOND APPEAL DATED 10.05.2017 FILED BY THE APPELLATE BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
ANNEXURE D	TRUE COPY OF ORDER DATED 21.03.2019 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN IT APPEAL NO.249/COCH/2018