IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 233 of 2016

With

TAX APPEAL NO. 234 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-1....Appellant(s)

Versus

B.A.RESEARCH INDIA LTD.....Opponent(s)

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Appearance:

MR MANISH BHATT, SR COUNSEL WITH MS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

MR MUKESH M PATEL WITH MR RK PATEL WITH MR BD KARIA WITH MR JIGAR M PATEL WITH MR DARSHAN R PATEL for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 16/06/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These appeals arise in similar background. While admitting these appeals on 30.3.2016, the Court had framed the following substantial question of law :

   "Whether the Income Tax Appellate Tribunal has substantially erred on facts and in law in holding that once the prescribed authority grants approval under sub-rule (2) of rule 18D of the Income Tax Rules, 1962, the revenue cannot deny deduction under section 80IB read with rules 18D and 18DA and thereby considering such grant of approval to be the sole requirement for granting deduction under section 80IB(8A)(ii) of the Act?"

2. We may notice facts from Tax Appeal No.233/2016. The respondent assessee is a company engaged in scientific research activities. For the assessment year 2008-2009, the assessee had filed its return of income on 15.9.2008 declaring a total income of Rs.3.32 lacs(rounded off). Such return was taken in scrutiny by the Assessing Officer during which the assessee's principal claim of deduction under section 80-IB(8A) of Income Tax Act, 1961 ("the Act" for short) came up for consideration. The Assessing Officer questioned the assessee regarding sample storage income of Rs.22.81 lacs, calling upon the assessee to show how such income was derived from the research and

development activities. The assessee pointed out to the Assessing Officer that in the process of its scientific research, at times, the assessee is requested by the customers to hold or store clinical samples collected from the volunteers for carrying out such research work, till the approval is granted by the approving authorities. If the clinical data submitted is found inadequate, further study may also be required to be carried out. Since these are biological samples they are required to be stored in specific storage conditions. The assessee therefore, charges the respective customers for storage of such clinical samples and the income therefore, is derived from the research activities of the company.

3. The Assessing Officer however, was not convinced. He gave detailed reasons to hold that the said income of sample storage was not derived from research and development activity and, therefore, could not form part of deduction under section 80-IB(8A) of the Act. Barring this disallowance, the rest of assessee's claim of deduction under section 80-IB(8A) of the Act was left undisturbed.

4. The order of the Assessing Officer was taken in revision by the Commissioner prima facie, believing that the assessment was erroneous and prejudicial to the interest of the Revenue since in the opinion of the Commissioner, such deduction was allowed by the Assessing Officer without verification of the eligibility of the assessee to claim the same. The Commissioner after hearing the assessee passed order dated 26.3.2013 under section 263 of the Act and asked the Assessing Officer to make a fresh

assessment.

5. The assessee carried the matter in appeal before the Tribunal. The Tribunal by an order dated 19.7.2013 set aside the revisional order of the Commissioner and remanded the proceedings before the Commissioner for fresh consideration and disposal. The Commissioner thereupon passed fresh order dated 29.3.2014 and held that the assessee was not eligible to claim deduction under section 80-IB(8A) of the Act as it did not satisfy all the provisions listed in the said sub-section and rule 18DA of Income Tax Rules, 1962 ("the Rules" for short). He passed the following order :

"12. Considering the above facts and findings, it is amply clear that the assessee is not eligible to claim deduction u/s 80IB(8A) as it does not satisfy all the provisions enlisted in section u/s 80IB(8A) and Rule 18DA. Since the Assessing Officer had allowed deduction u/s 80IB(8A) amounting Rs.11.79 crores without thoroughly examining the requisite documents and conducting independent inquiry, there was substantial loss of revenue to the exchequer since the income of the assessee was assessed at a lower rate due to granting of excessive deduction. In light of these facts, it is held that the assessment order passed u/s 143(3) dated 31-12-2010 for AY 2008-09 was erroneous and prejudicial to the interest of revenue. Accordingly, the Assessing Officer is directed to pass a fresh assessment order after considering the issue involved and after allowing opportunity to the assessee as per law."

In such order, the Commissioner had referred to following four conditions which had to be complied:

That the 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) fulfills such other conditions as may be prescribed;

He agreed that the assessee had fulfilled conditions no.(i) and (iii) but failed to satisfy conditions no.(ii) and (iv). Inter-alia on such grounds, the Commissioner passed the said order.

6. Against the order of the Commissioner, the assessee approached the Tribunal again. The Tribunal by order dated 31.7.2015 allowed the assessee's appeal. The Tribunal referred to and relied upon the decision of coordinate Benches of Bombay and Delhi Tribunal to come to the conclusion that the Revenue authorities cannot sit in appeal over the order of the prescribed authority. The Tribunal was of the opinion that the prescribed authority was an expert body exercising powers to grant approval for the purpose of deduction under section 80-IB(8A) of the Act and the Revenue cannot decline the deduction ignoring such approval. It is this judgement of the Tribunal which the Revenue has challenged in this appeal.

7. Learned counsel Shri Bhatt for the Revenue contended that the approval from the prescribed authority is just one of the many conditions to be fulfilled before the assessee can claim deduction under section 80-IB(8A) of the Act. In the present case, the Assessing Officer without verifying satisfaction of such conditions, granted deduction. The Commissioner therefore, rightly exercised revisional powers. The Commissioner prima facie, found that no research and development activities had been undertaken by the assessee. He therefore, required the Assessing Officer to examine such issues. Counsel took us through the provisions of section 80-IB(8A) of the Act and rules 18D and 18DA of the Rules to contend that the approval by the prescribed authority would not shut out the inquiry by the revenue authorities regarding the fulfillment of other conditions of deduction. In this context, counsel relied on the decision of the Supreme Court in case of **Southern Technologies Ltd. v. Joint Commissioner of Income-tax** reported in (2010) 320 ITR 577(SC), in which the Supreme Court held that the provisions made in the Companies Act allowing non banking financial companies to adjust a provision for possible diminution of value of the asset or for doubtful debt would not govern the manner in which the income should be taxed as per the Income Tax Act.

8. On the other hand, learned counsel Shri Mukesh Patel for the assessee submitted that the question of granting approval is exclusively in the domain of the prescribed authority which is the expert body. Once such an approval is granted, the Assessing Officer cannot disallow the claim on an alleged breach of any of the provisions of the Act or

the Rules. He submitted that the statutory provisions envisage granting of approval after detailed consideration of relevant facts. Such approval can be granted maximum for a period of three years at a time and would be subject to renewals. The approval can also be withdrawn by the same authority in terms of sub-rule(3) of rule 18DA. He therefore, contended that the Commissioner committed a grave error in examining the very same aspects which the prescribed authority was required to consider while granting or extending approval.

Counsel pointed out that the Revenue authorities had in fact, approached the prescribed authority for cancellation of the approval. However, by communication dated 20.3.2013, the prescribed authority refused to withdraw the approval giving detailed reasons.

Counsel relied on the following decisions :

1) In case of **Gestetner Duplicators Pvt. Ltd. v. Commissioner of Income tax** reported in 1979(1) Taxman 1 (SC), in which the Supreme Court in the context of business expenditure under section 36(1)(iv) of the Act, regarding the company's contribution to provident fund held as under :

"12. Dealing next with the second question it seems to us clear that having regard to our view on the proper construction of the expression 'salary' occurring in Rule 2(h) of Part A of the Fourth Schedule to the Act it must be held that the Tribunal was right in holding that the Provident Fund maintained by the assessee satisfied the

condition laid down in Rule 4(c) of Part A of the Fourth Schedule and that question also must be answered in favour of the assessee and against the Revenue However, we would like to make some observations with regard to the true impact of the recognition granted by the Commissioner of Income-Tax to a Provident Fund maintained by an assessee. The facts in the present case that need be stressed in this behalf are that it was as far back as 1937 that the Commissioner of Income-tax had granted recognition to the Provident Fund maintained by the assessee under the relevant rules under 1922 Act, that such recognition had been granted after the true nature of the commission payable by the 804 assessee to its salesmen under their contracts of employment had been brought to the notice of the Commissioner and that said recognition had continued to remain in operation during the relevant assessment years in question; the last fact in particular clearly implied that the Provident Fund of the assessee did satisfy all the conditions laid down in Rule 4 of Part A of the Fourth Schedule to the Act even during the relevant assessment years. In that situation we do not think that it was open to the taxing authorities to question the recognition in any of the relevant years on the ground that the assessee's Provident Fund did not satisfy any particular condition mentioned in Rule 4. It would be conducive to judicial discipline and the maintaining of certainty and uniformity in administering the law that the taxing authorities should proceed on the basis that the recognition granted and available for any particular assessment year implies that the Provident Fund satisfies all the conditions under Rule 4 of Part A of the Fourth Schedule to the Act and not sit in judgment over it. There is ample power conferred upon the Commissioner under Rule 3 of Part A of the Fourth Schedule to withdraw at any time the recognition already granted if, in his opinion, the Provident Fund contravenes any of the conditions required to be satisfied for its recognition and if during assessment proceedings for any particular assessment year the taxing

authority finds that the Provident Fund maintained by an assessee has contravened any of the conditions of recognition he may refer the question of withdrawal of recognition to the Commissioner but until the Commissioner acting under the powers reserved to him withdraws such recognition the taxing authority must proceed on the basis that the Provident Fund has satisfied all the requisite conditions for its recognition for that year; any other course is bound to result in chaos and uncertainty which has to be avoided."

2) In case of **Indian Planetary Society v. Central Board of Direct taxes** reported in 318 ITR 102 (BOM), in which Bombay High Court in the context of provisions of section 35 of the Act, for expenditure on scientific research observed that :

"12. The other aspect of the matter is while considering application under section 35(1)(ii), the amendments have been made from time to time as set out in the earlier part of our order. The earlier prescribed authority were the organizations concerned with science and technology or Agricultural or medicine. In other words a body of persons who would be conversant with the subject. In so far as scientific research association is concerned, this has undergone various changes and now the power has been conferred on the Central Government. Even here we find that the Central Government whilst deciding the matter is empowered to make such inquiries as it may think necessary in this behalf. In our opinion, the application of mind in the absence of the person discharging the function having the expertise must be to make inquiries with the body conversant with the subject and having knowledge of the subject including research that can be done in the subject. In the absence of such an examination the action will be vitiated as being a nullity being by a person having no expertise in that particular field of science or research;.

The power to make inquiries has advisedly been conferred so that the person discharging the function has the advise of persons in the field conversant with the field of science and research. In a case where the appellant is a person like the Petitioner herein who claim to be doing research in the field of Astro Physics etc, the Government is duty bound to make inquiries with bodies like Council of Scientific Research. In the field of medicines may be by the Council of Medical Research, in Agricultural by Indian Agricultural Research and so on. These are the aspects which mus t be borne in mind while considering the application."

9. From the above materials on record, the question that arises for our consideration is, whether once the prescribed authority grants approval in terms of sub-rule(2) of rule 18D of the Rules, can the Revenue authorities examine fulfillment of conditions of deduction and deny the same?

10. In this context, we may notice the statutory provisions. Section 80-IB of the Act pertains to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. Sub-section (8A) pertains to deduction in cases of company carrying on scientific research and development and reads as under :

"(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;"

Under Sub-section(8A) of section 80-IB, in case of a company carrying on scientific research and development, there would be hundred per cent deduction of the profits and gains of such business for a period of ten consecutive assessment years, provided the company satisfies the four conditions mentioned therein.

11. Rule 18D of the Income Tax Rules, 1962 prescribes the authority for approval of companies carrying on scientific research and development and reads as under :

"18D. (1) For the purposes of sub-section (8A) of section 80-IB, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India.

(2) The prescribed authority shall initially grant approval to a company carrying on scientific research and development for a period of three assessment years and subject to satisfactory performance of that company on periodic review extend the said approval for a further period of three assessment years so that the total period of approval is for ten consecutive assessment years, beginning from the initial assessment year."

Sub-rule(1) of Rule 18D prescribes the Secretary, Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India ("DSIR" for short) as the authority for the purpose of sub-section(8A) of section 80-IB.

Sub-rule(2) of Rule 18D provides that the prescribed authority shall initially grant approval to a company for a period of three assessment years and subject to satisfaction of satisfactory performance of that company, on periodic review, extend the approval for a period of three assessment years so that the total period of approval is for ten consecutive assessment years, beginning from the initial assessment year.

12. Rule 18DA pertains to prescribed conditions for deduction under sub-section (8A) of section 80-IB and reads as under:

"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.

(4) Every company referred to in sub-rule (1) shall make an application to the prescribed authority for the purposes of obtaining approval.

(5) Every application referred to in sub-rule (4) shall be accompanied by—

(a) memorandum of association and articles of association incorporating all amendments duly certified by the company secretary or managing director of the company;

(b) annual report of the company for the last three years, if available;

(c) photocopies of the memorandum of understanding relating to all on-going and future sponsored research projects or programmes.

6) The prescribed authority may call for any information or document which may be necessary for consideration of the grant of approval under sub-rule (2) of rule 18D.

(7) The prescribed authority shall grant approval within four months from the date of receipt of the application :

Provided that where the approval is not granted, the decision of the said authority shall be communicated to the applicant within the said period of four months :

Provided further that no approval shall be refused unless the applicant has been given an opportunity of being heard."

13. Combined reading of the statutory provisions noted above, the scheme for grant of deduction to the companies

involved in scientific research and development becomes clear. Sub-section (8A) of section 80-IB provides for deduction and also prescribes four conditions upon fulfillment of which such deduction shall be granted. These conditions are that the company must be registered in India, that it has its main object of scientific and industrial research and development, is approved by the prescribed authority and fulfills such other conditions as may be prescribed.

14. The Commissioner in his revisional order agreed that in respect of the assessee company, first and third conditions were duly satisfied, but he referred to second and fourth conditions, which according to him, were not fulfilled. In this context, we may refer to rule 18D. This rule in addition to prescribing DSIR as the prescribed authority; under sub-rule(2) authorises such prescribed authority to grant approval initially for a period of three years. The renewal is subject to satisfactory performance to be judged on periodic review. The maximum extension would be for a period of 10 years from the initial assessment year. Rule 18DA carries the title “Prescribed conditions for deduction under sub-section(8A) of section 80-IB” and thus has correlation to the fourth condition contained in sub-section (8A) of section 80-IB. Sub-rule(1) of Rule 18DA prescribes six requirements contained in clauses (a) to (f) for a company to be eligible for deduction under section 80-IB (8A). Conditions No. (i) and (ii) contained in sub-section(8A) are repeated in clauses (a) and (b). Clause (c) pertains to requirement of adequate infrastructure such as laboratory facilities, qualified

manpower, scale-up facilities and prototype development facilities for undertaking scientific research and development of its own. Clause (d) requires 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. Clause (e) requires the company to be engaged exclusively in scientific research and development activities leading to technological development, improvement of technology and transfer of technology developed by themselves. Clause (f) requires the company to submit the annual return alongwith statement of accounts and annual report within eight months after the close of each accounting year to the prescribed authority. Under sub-rule(2) of rule 18DA every company which is approved under sub-rule (2) has certain obligations such as to sell any prototype or output from its laboratories or pilot plants with the prior permission of the prescribed authority. It has to 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. It would have to apply for extension of the approval, three months before expiry of the previous approval granted by the prescribed authority. It would also have to have a system of monitoring the cost of research and development projects. Under sub-rule(3) of rule 18DA, the prescribed authority has the power to withdraw the approval if it is found that the approval granted was to avoid payment of taxes by its group companies or companies related to its directors or

majority of its shareholders or that any provisions of the Act or the rules have been violated. Sub-rule(4) of Rule 18DA provides that every company referred to in sub-rule (1) shall make an application to the prescribed authority for the purpose of obtaining approval. Sub-rule(5) of Rule 18DA provides for documents and details required to be filed along with such application for approval. Under Sub-rule(6) of Rule 18DA, the prescribed authority may call for any further information and documents which will be necessary for consideration of application for grant of approval. Sub-rule(7) of Rule 18DA lays down the time limit within which such approval will be granted. Further proviso to sub-rule(7) provides that the applicant would be heard before rejecting the application for approval.

15. It can thus be seen that detailed provisions have been made under rule 18D and Rule 18DA of the Rules for the prescribed authority to examine the nature of research and scientific development, proposed to be or being carried out by the company who seeks approval or extension of approval. For example, under sub-rule(2), approval once granted has validity for a period of three years and no more. It could be extended only upon satisfactory performance of the company which would be judged on periodic review by the prescribed authority. While granting approval in addition to information prescribed under sub-rule(5) of Rule 18DA, the prescribed authority is empowered to call for such other information or documents, which may be found necessary for consideration of the application for grant of approval. Even during the currency of the approval granted by the

prescribed authority, in terms of sub-rule(2) of rule 18DA, the company has to satisfy several conditions including, as noted above, to sell its prototype or output, only with the permission of the prescribed authority and intimate any change in its memorandum of association and articles of association. This later condition would enable the prescribed authority to examine whether in view of any change in memorandum of association and articles of association relating to the main objects of the company, the fundamental requirement i.e. the company's main object of scientific and industrial research and development has been maintained.

16. As noted, if at any stage, the prescribed authority finds either that the approval granted to the company was to avoid payment of taxes by its group companies or companies related to its directors or majority of its shareholders or that there has been breach of any of the provisions of the Act or the Rules, the prescribed authority would be empowered to withdraw the approval.

17. Thus the statutory scheme envisages the prescribed authority as a body which can minutely examine all these highly technical and scientific requirements in case of a company. We may recall that the prescribed authority is the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. It has experts at its command in the field of scientific research to advise it on various extremely complex scientific issues which may arise while granting, extending or recalling the approval. In this context, the requirements

contained in clauses (c) to (e) of sub-rule(1) of rule 18DA would also have to be necessarily examined by the said authority. When these clauses refer to requirement of adequate infrastructure such as laboratory facilities, well formulated research and development programme and engagement of the company exclusively in scientific research and development activities, the same would be within the realm of the said prescribed authority.

18. Under the circumstances, once such authority grants approval and such approval holds the field, it would not be open for the Assessing Officer or any other revenue authority to go behind such approval certificate and reexamine for himself, the fulfillment of the conditions contained in sub-rule(1) of rule 18DA. These conditions are prescribed in terms of clause no.(iv) of sub-section(8A) of section 80-IB of the Act. The Commissioner was therefore, completely in error in observing that even though the assessee company had valid approval issued by the prescribed authority, the Assessing Officer still had to examine whether such company had fulfilled the conditions referred to in clause(iv), as such other conditions as may be prescribed, reference to which we find in rule 18DA. Any other view would create conflict of decision making process. Even counsel for the Revenue could not dispute that many of these requirements prescribed under rule 18DA are to be examined by the prescribed authority. If once the prescribed authority examines such conditions and upon being satisfied that the conditions are fulfilled, grants approval, can the Assessing Officer take a different view? The answer

obviously has to be in the negative. First and foremost, the prescribed authority is a specialised body having expertise in the field of scientific research and development. The requirements are extremely complex scientific requirements and have therefore, been rightly placed in the hands of an expert body to judge. Secondly, there is no reason why once an authority which is prescribed under the Rules for a specific purpose has been invested with statutory functions, the Assessing Officer should be allowed to overrule the decision of the said body. Thirdly, there are multiple indications within the Rules themselves. We may recall, under sub-rule(2) of rule 18D, extension of approval once granted is subject to satisfactory performance of the company, to be judged on periodic review. Further, sub-rule(3) of Rule 18DA gives wide powers to the prescribed authority to withdraw the approval if it is found that the same was to avoid payment of taxes by its group companies or companies related to its directors or majority of its shareholders or that any provisions of the Act or the Rules have been violated. Thus once again the task of judging whether the provisions of the Act or the Rules have been violated or not, has entrusted to the prescribed authority with matching powers for withdrawal of the approval, if the authority is satisfied about such breach.

19. The word 'may' used while empowering the prescribed authority, according to the counsel for the Revenue, would be of some significance. He contended that even if there has been a violation of the Acts and the Rules, the prescribed authority is not duty bound to withdraw the

approval since the legislature has used the word 'may' and not 'shall'. According to him therefore, it would be open to the Assessing Officer to disallow the deduction on the ground of breach of the provisions of the Act and the Rules even if the prescribed authority has not withdrawn the approval on that basis. To our mind, this is not the correct position. Sub-rule(3) is an enabling power empowering the prescribed authority to withdraw the approval, if it finds violation of provisions of the Act or the Rules. However, the Act and the Rules make various provisions, breach of many of them may be purely technical. It is not necessary therefore, in every such breach, irrespective of the nature of the breach, the prescribed authority must withdraw the approval, the moment it is pointed out that there has been a violation of any other provisions of the Act or the Rules. It is possibly therefore, that the legislature has while clothing the prescribed authority with sufficient powers to withdraw the approval, used the word 'may' rather than 'shall' giving discretion in appropriate cases to the authority not to withdraw the approval. This however, would not mean that the Assessing Officer would have any role in the context of verifying requirements relatable to grant, extend or withdraw the approval. These issues solely rest within the jurisdiction of the prescribed authority.

20. Judged from such angle, in our opinion, once the approval is granted by the prescribed authority and such approval is valid, it would no longer be open for the Assessing Officer to verify the satisfaction of the conditions prescribed under rule 18DA in order to refuse deduction under sub-section(8A) of section 80-IB of the Act. This

however, does not mean that other issues relevant to the claim of deduction by the assessee would be taken away from the jurisdiction of the Assessing Officer. We do not share the anxiety of the counsel for the Revenue that interpretation that we have adopted would divest the Assessing Officer from examining any claim of deduction under the said provisions and grant deduction mechanically without verifying the claim. For example, in this very case, the Assessing Officer had doubt about the sample storage income being part of the income from eligible business. After hearing the assessee, he disallowed the deduction holding that the same does not form part of the income of the assessee's business of scientific research and development.

21. Before closing, we may refer to the decision cited by Shri Bhatt for the Revenue. In case of **Southern Technologies Ltd.**(supra), the issue was regarding the taxability of income ignoring the provisions contained in the Companies Act concerning non banking financial company which permitted adjustment of a provision for possible diminution of value of assets of the company allowing the company to show only the net figure in the balance-sheet.

22. In the result, while answering the question in favour of the assessee, we clarify that the power of the Assessing Officer to verify the claim of deduction is not taken away. He can certainly verify the accounts and refuse deduction which does not form part of section 80-IB(8A) and the income which does not arise out of the eligible business.

He however, cannot ignore the approval granted by the prescribed authority and hold that the prescribed conditions are not fulfilled by the assessee.

23. Both the tax appeals are dismissed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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