

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

ITA No. 5996/Mum./2025

(Assessment Year : 2018-19)

Ultramarine & Pigments Ltd.

Plot No. 101/102, 2nd Floor Thirumalai House,
Road No.29, Sion (East),
Mumbai - 400022
PAN : AAACU0718Q

..... Appellant

v/s

Assistant Commissioner of Income Tax,

Circle – 8(3)(1),

Room No.615, 6th Floor,
Aayakar Bhavan, Maharishi Karve Road,
Mumbai - 400020

..... Respondent

Assessee by : Shri Dharan Gandhi

Revenue by : Shri Vikas Chandra, Sr.DR

Date of Hearing – 21/04/2026

Date of Order – 12/05/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 17.07.2025 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional/Joint Commissioner of Income Tax (Appeals)-1, Guwahati [*"learned Addl./Joint CIT(A)"*], which in turn arose from the order passed under section 154 of the Act, for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: -

"1. The rectification order dated 02.02.2023 passed under section 154 of the Act is bad in law. Therefore, should be set aside.

2. The Ld. CIT(A), erred in passing the order dated 17.07.2025 under section 250 of the Act, without considering the submission of the Appellant.

3. The Ld. CIT(A) has erred in upholding the action of the Ld. AO in not rectifying the assessment order dated 24.04.2021, by restricting the disallowance u/s 35(2AB) of the Act to Rs. 12.99 lakhs in place of Rs. 26.13 lakhs as made in the said assessment order.

4. The Ld. CIT(A) erred in upholding the action of the Ld. AO stating that since documentary evidence in Form 3CL was not filed in the course of assessment proceeding and therefore, such form being additional evidence cannot be considered in the course of rectification proceeding.

5. The Ld. CIT(A) erred in upholding the action of the Ld. AO stating that documentary evidence in Form 3CL was not part of record and therefore, there is no mistake apparent from record.

6. The Ld. CIT(A) erred in upholding the action of the Ld. AO in failing to take into consideration the fact that such Form 3CL was sent by the authority to the Ld. AO as per Rule 6, sub-rule (7A) of the Income-tax Rules, 1962 and therefore, it is not an additional evidence and therefore, forms part of record."

3. The solitary grievance of the assessee is against the computation of deduction under section 35(2AB) of the Act.

4. We have considered the submissions of both sides and perused the material available on the record. The brief facts of the case are that the assessee is a manufacturer of chemical products at its factories situated at Ambattur and Ranipet in the State of Tamil Nadu. The assessee is also engaged in the business of electricity generation through windmills. For the year under consideration, the assessee filed its return of income on 05.10.2018, declaring a total income of Rs. 53,78,38,920/-. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(3) and section 142(1) of the Act were issued and served on the assessee. During the year under consideration, the assessee incurred capital expenditure of

Rs.17,42,218/- and a revenue expenditure of Rs.1,12,38,310/-, (i.e., total Rs. 1,29,80,528/-), on in-house scientific research and development facility. As the assessee claimed a deduction of Rs. 1,94,70,792/- (i.e., 150% of Rs. 1,29,80,529/-) under section 35(2AB) of the Act, vide notice dated 18.12.2020 issued under section 142(1) of the Act, the assessee was asked to provide various details, *inter alia*, including details of revenue and capital expenditure being undertaken by the assessee on its in-house scientific research and development facilities, for the purpose of claiming deduction under section 35(2AB) of the Act. In response, the assessee, *inter alia*, provided the following breakup of capital and revenue expenditure incurred on its in-house scientific research and development facility: -

Sl. No.	Particulars	Amount (Rs.)	Remarks
A	Capital Equipment	17,42,218	Attached as Annexure 14 - Point No. 10.3b Details of the Capital expenditure
B	Revenue Expenditure		
	(i) Salaries/wages	84,64,367	
	(ii) Material /Consumables /spares	22,22,010	Attached as Annexure 15 - Point No. 10.3b Details of the Revenue Expenditure (Mtrl, Consmble, Sprs, etc)
	(iii) Utilities (Power Consumption)	2,90,639	
	(iv) Any other expenditure directly related to R&D:		
	Travelling Expenses	62,572	
	Staff Welfare Expenses	1,58,773	
	Others	13,714	
	Seminar & Training Fees	26,236	
	Total Revenue Expenditure B(i)to(iv)eligible U/S 35(2AB)	1,12,38,310	
	Total Expenditure on the approved R&D centre (A+B)	1,29,80,528	

5. The assessee also provided various other details as sought during the scrutiny assessment proceedings. Vide another notice dated 17.04.2021 issued under section 142(1) of the Act, the assessee was asked to furnish Form 3CL working and approval letter. In view of the COVID pandemic restrictions, the assessee sought further time from the AO with its letter dated 22.04.2021. However, the Assessing Officer ("AO"), vide order dated 24.04.2021 passed under section 143(3) read with section 144B of the Act, disallowed the entire amount of deduction claimed under section 35(2AB) in respect of capital expenditure amounting to Rs. 26,13,327/- (150% of Rs. 17,42,218/-) on the basis that the assessee has not submitted any supporting documents and report in Form 3CL for capital expenditure.

6. On 17.05.2021, the assessee filed rectification application under section 154 of the Act, *inter alia*, in respect of its claim of deduction under section 35(2AB) of the Act on the basis that in view of the Form 3CL dated 24.06.2020 issued by the prescribed authority, the disallowance of deduction under section 35(2AB) of the Act can only be to an extent of Rs. 12.99 lakh as against Rs. 26.13 lakh made by the AO. The said rectification application, *inter alia*, was dismissed vide order dated 02.02.2023 on the basis that the AO rightly made a disallowance as the assessee failed to submit documentary evidence such as Form 3CL and expenses incurred with respect to its claim of deduction under section 35(2AB) of the Act. It was further held that Form 3CL, now relied upon by the assessee, is additional evidence which cannot be entertained during the proceedings under section 154 of the Act. In appeal by the assessee against the rectification order, the learned Addl./Joint CIT(A) dismissed the appeal and

upheld the rectification order passed under section 154 of the Act in respect of disallowance made under section 35(2AB) of the Act, by observing as follows: -

"4.1.6 The submission of the appellant has been gone through. At the cost of repetition it is again mentioned that in the assessment order, the impugned disallowance of Rs.26,13,327/-was made as appellant could not produce supporting document of capital expenditure and Form 3CL. In respect of non-production of supporting document of capital expenditure the appellant did not submit anything neither at the time of assessment proceedings nor during the appellate proceedings too. During rectification proceedings, the application was rejected as it was concluded that assessment proceedings was finalized u/s. 143(3) of the Act and the issues raised were not within the purview of provisions of section 154 of the Act. Also during the course of appellate proceedings the appellant has brought nothing on records which suggest that non production of supporting document of capital expenditure comes within the purview of mistake apparent from records. On perusal of documents there is always occasion of rising of two opinions, so even if supporting documents were produced in the instant case two views were always possible. The same cannot be termed as "mistake apparent from records". Therefore on the basis of details available on the records and the impugned order u/s. 154 dated 02.02.2023, no infirmity is found in the order u/s. 154 dated 02.02.2023 of the Act. In the light of discussion in foregoing paras, the contention of the appellant that the assessing officer has erred in not rectifying the assessment order dated 24.04.2021, by restricting the disallowance u/s 35(2AB) of the Act to Rs. 12.99 lakhs in place of Rs. 26.13 lakhs as made in the said assessment order is not found correct. Hence, the action of the assessing officer is confirmed."

Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorized Representative ("*learned AR*") submitted that Form 3CL was issued by the Secretary, Department of Scientific and Industrial Research ("*DSIR*"), Ministry of Science and Technology, Government of India, on 24.06.2020 and the copy of the said Form 3CL was also marked to ACIT, Circle 8(3)(1), Room Number 615, 6th Floor, Aaykar Bhawan, MK Road, Mumbai, who was the Jurisdictional Assessing Officer of the assessee. The learned AR submitted that as Form 3CL issued by the DSIR allowed the entire capital expenditure of Rs. 17,42,218/-, the assessee, in its rectification application, claimed that the disallowance of Rs. 26,13,327/-, being 150% of the capital expenditure, be deleted. Further, in all fairness, as

the DSIR vide Form 3CL only approved revenue expenditure to an extent of Rs. 103.72 lakhs as against the Rs. 112.38 lakhs claimed by the assessee, the assessee submitted that the differential amount of Rs. 8.66 lakhs be not approved and the corresponding deduction under section 35(2AB), i.e., Rs. 12.99 lakhs (being 150% of Rs. 8.66 lakhs) be disallowed. Thus, the learned AR submitted that the assessee, vide its rectification application, prayed that the disallowance of deduction claimed under section 35(2AB) of the Act be reduced to Rs. 12.99 lakhs as per Form 3CL. It was further submitted that Form 3CL was not additional evidence, as was held vide rectification order passed under section 154, since the same was already available with the Jurisdictional AO. It was also submitted that, in the year under consideration, being the first year of e-assessment, there is a possibility that the said form was not uploaded on the portal by the DSIR.

8. On the other hand, the learned Departmental Representative, vehemently relying upon the orders passed by the learned lower authorities, submitted that the rectification request of the assessee was rightly rejected as the claim of deduction under section 35(2AB) of the Act is a debatable issue.

9. Having considered the submissions of both sides and perused the material available on record, at the outset, it is evident that the assessee claimed a deduction of Rs. 1,95,70,792/-, being 150% of the total expenditure of Rs. 1,29,80,529/- (which comprises of capital expenditure of Rs. 17,42,218/- and revenue expenditure of Rs. 1,12,38,310/-) under section 35(2AB) of the Act. It is further pertinent to note that out of the said claim, the AO only disallowed the deduction claimed under section 35(2AB) of the Act of

Rs. 26,13,327/-, i.e. 150% of capital expenditure of Rs. 17,42,218/-, whereas the deduction claimed under section 35(2AB) of the Act in respect of revenue expenditure of Rs. 112.38 lakh was entirely allowed by the AO. Thus, it is evident that there was no dispute amongst the parties regarding the assessee's entitlement to the deduction under section 35(2AB) of the Act, and rather, the dispute was only qua the expenditure eligible for deduction under the said section. We further find that vide its submission filed before the AO in response to the notice issued under section 142(1) of the Act, the assessee provided a detailed breakup of the expenditure incurred as noted in the foregoing paragraphs. However, the assessee could not furnish the report of the specified authority under Form 3CL, as sought vide notice issued under section 142(1) of the Act on 17.04.2021, due to COVID-related restrictions. From the perusal of the copy of Form 3CL as placed in the paper book at pages 94-95, we find that the Form 3CL issued by the specified authority on 24.06.2020 was also sent to the Jurisdictional Assessing Officer. Therefore, we do not find any merit in the findings in the rectification order, as upheld by the learned Addl./Joint CIT(A), that the said Form 3CL was additional evidence which was produced by the assessee for the first time during the rectification proceedings, since the said Form 3CL was already available in the record of the Jurisdictional Assessing Officer.

10. At this stage, it is relevant to note the provisions of section 35(2AB)(1) of the Act, as it stood in the relevant year, which read as follows: -

"(2AB)(1) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of

cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred:

Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred."

11. Further, the relevant Rules insofar as the same concern the deduction under section 35(2AB) are provided in sub-rule (1B), (4), (5A), and (7A) of Rule 6 of the Income Tax Rules, 1962. These rules read as follows: -

"(1B) For the purposes of sub-section (2AB) of section 35, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research.";

"(4) The application required to be furnished by a company under sub-section(2AB) of section 35 shall be in Form No.3CK.";

"(5A) The prescribed authority shall, if he is satisfied that the conditions provided in this rule and in sub-section (2AB) of section 35 of the Act are fulfilled, pass an order in writing in Form No. 3 CM:

Provided that a reasonable opportunity of being heard shall be granted to the company before rejecting an application."

"(7A) Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely:—

(a) The facility should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;

(b) The prescribed authority shall furnish electronically its report,—

(i) in relation to the approval of in-house research and development facility in Part A of Form No. 3CL;

(ii) quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form No. 3CL;

(ba) The report in Form No. 3CL referred to in clause (b) shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner

of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over such company within one hundred and twenty days,—

(i) of the grant of the approval, in a case referred to in sub-clause (i) of clause (b);

(ii) of the submission of the audit report, in a case referred to in sub-clause (ii) of clause (b);

(c) The company shall maintain a separate account for each approved facility; which shall be audited annually and 44[a report of audit in Form No. 3CLA shall be furnished electronically to the Secretary, Department of Scientific and Industrial Research on or before the due date specified in Explanation 2 to sub-section (1) of section 139 of the Act for furnishing the return of income, for each succeeding year].

Explanation.— For the purposes of this sub-rule the expression "audited" means the audit of accounts by an accountant, as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961;

(d) Assets acquired in respect of development of scientific research and development facility shall not be disposed of without the approval of the Secretary, Department of Scientific and Industrial Research."

12. From the plain reading of the provisions of Rule 6(7A) of the Rules, it is evident that the approval of expenditure incurred on an in-house scientific research and development facility under section 35(2AB), *inter alia*, is subject to the report of the prescribed authority quantifying the expenditure incurred by a company on the in-house scientific research and development facility during the previous year in Part B of Form 3CL report, and eligible for weighted deduction under section 35(2AB) of the Act. We further find that the said requirement was inserted in the statute by the IT (Tenth Amendment) Rules, 2016, with effect from 01.07.2016. Therefore, for the year under consideration, i.e., the assessment year 2018-19, the approval of deduction of expenditure under section 35(2AB) can only be made on the basis of expenditure quantified by the prescribed authority in Form 3CL as eligible for weighted deduction under section 35(2AB) of the Act. Thus, we are of the

considered view that even if for an argument's sake it is accepted that copy of Form 3CL was not available with the National e-assessment Centre, as the same was sent to the Jurisdictional Assessing Officer, once the assessee filed the rectification application for quantifying the deduction under section 35(2AB) of the Act as per Form 3CL, the AO was mandated by the statute to take cognizance of the said report. Accordingly, we do not find any merit in the findings of the lower authorities in not quantifying the deduction under section 35(2AB) of the Act, for the year under consideration, as per Form 3CL issued by the prescribed authority. Therefore, we set aside the impugned order and restore the issue, qua the quantification of weighted deduction under section 35(2AB) of the Act, to the file of the Jurisdictional AO as per the expenditure approved by DSIR in Form 3CL. Needless to mention, no order shall be passed without affording reasonable and adequate opportunity of hearing to the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

13. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12/05/2026

Sd/-
BIJAYANANDA PRUETH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 12/05/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai