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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 13, 2017
Date of decision: August 04, 2017

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W.P. (C) 9306/2015

MARUTI SUZUKI INDIA LTD. Petitioner

Through: Mr. S. Ganesh, Senior Advocate with
Mr.S.Sukumaran, Mr.Anand Sukumar
and Mr.Bhupesh Kumar Pathak,
Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Gaurav Sarin with Ms.Abha
Malhotra, Mr.Ajitesh K., Advocates
for UOI/R1.
Mr. Asheesh Jain, Senior Standing
Counsel for Income Tax
Department/R2 with Mr.Vikrant A.
Maheshwari, Advocate.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

JUDGMENT

Prathiba M. Singh, J.

1. The Petitioner-Maruti Suzuki India Ltd. is a leading automobile company in India. It has two Research & Development Centres ('R&D Centres'), one at Gurgaon and one at Rohtak, Haryana. The question that arises in this writ petition is – Whether the Petitioner is entitled to deduction under Section 35 (2AB) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in respect of the expenditure incurred by it for its R&D Centre at Rohtak for

the Assessment Year ('AY') 2011-12, AY 2012-13 and AY 2013-14.

2. Section 35 (2AB) of the Act reads as under:

“(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 two times of the expenditure so incurred.

Following proviso shall be inserted to clause (1) of sub-section (2AB) of section 35 by the Finance Act, 2016, w.e.f. 1-4-2018:

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.

Explanation-For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970)

(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.

(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General in such form and within such time as may be prescribed.

(5) No deduction shall be allowed in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2017

(6) No deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 2008."

3. Section 35 (2AB) provides for deduction of a sum equal to two times of the expenditure incurred for scientific research (not being expenditure in the nature of cost of any land or building) on in-house R&D facilities as approved by the Prescribed Authority. The purpose behind this provision is obviously to encourage the establishment of R&D facilities in the country and also to encourage innovation and investment on innovation.

Facts in brief

Assessment Year 2011 - 12

4. The Petitioner, on 30th March, 2011 wrote to the Secretary, Department of Scientific and Industrial Research ('DSIR') which is the 'Prescribed Authority' as per Section 35 (2AB), that it is in the process of setting up a second R&D Centre at Plot No. 1, Sector 33B and 33C, IMT, Rohtak - in addition to the one it already had at Gurgaon. In the said letter, the Petitioner informed the DSIR that its Rohtak R&D Centre is at its initial stage and that it would be seeking a formal approval for this facility under Section 35 (2AB) of the Act. The letter reads as under:

*"Dear Sir,
The R&D Unit of the company situated at Palam-Gurgaon Road, Gurgaon, Haryana-122015 has been approved under Section 35(2AB) of the Income Tax Act by your organization till 31/03/2015.*

We wish to inform you that our company is working on setting up another Research & Development facility at IMT-Rohtak. A brief write up on the project plan and current status is enclosed in Annexure-A herewith.

The setting up of the new R&D project of the company is currently at its initial stage and we intend to approach your good office for a formal approval of the facility u/s 35(2AB) of the Income Tax Act, 1961, in the next few months.

We request you to kindly take the above information on your records."

This letter was accompanied by a brief write up of the Rohtak R&D Centre.

5. On 31st October, 2011, the Petitioner filed an application for certification of its R&D expenses with the DSIR claiming that an expenditure of Rs.395

crores has been incurred for AY 2011-12. Though the subject line of this application mentioned the Gurgaon Centre, the Auditor's report accompanying this application gave the break-up of the expenditure incurred for both the Gurgaon and Rohtak R&D Centres separately. This was followed up with a formal application dated 30th March, 2012 seeking recognition of the Rohtak R&D Centre accompanied with the requisite application on Form 3CK of the Income Tax Rules, 1962 ('Rules').

6. On 26th April, 2013, the DSIR informed the Petitioner that it could not consider the claims for recognition of the Rohtak R&D Centre at that stage, as the said R&D Centre was not yet functional, and hence, the Petitioner's application was closed as being premature.

7. On 8th/13th January, 2014, the Petitioner again submitted an application, to the DSIR seeking recognition for the Rohtak R&D Centre as its 'Crash Test Facility' had become operational from November, 2013. In the said application, the Petitioner, inter alia, provided the following details of the Rohtak R&D Centre:

- (i) the lay out plan of the R&D Centres along with the photographs;
- (ii) break-up of the indigenous R&D equipments;
- (iii) imported R&D equipments and the details thereof;
- (iv) particulars of R&D projects which were under progress.

This was followed up with a further application on 21st February, 2014 giving more details of both its R&D Centres.

8. On 26th March, 2014, the DSIR granted recognition to both the R&D

Centres of the Petitioner in the following terms:

"Dear Sirs,

This has the reference to renewal of recognition of your in-house R&D unit(s) and also for recognition of in-house R&D unit(s) by the Department of Scientific and Industrial Research.

*2. This is to inform you that it has been decided to accord renewal of recognition to the in-house R&D unit(s) of your firm at (i) **Palam-Gurgaon Road, Gurgaon** and fresh recognition to the in-house R&D unit at (ii) **Plot No. 1, Sector 33-B and 33-C, IMT Rohtak** from **25.02.2014** by the Department of Scientific and Industrial research. The recognition is valid upto **31.03.2015**. Terms and Conditions pertaining to this recognition are given overleaf.*

*3. This letter is issued in lieu of this Ministry's letter No. **F.No. TU/IV-RD/1224/2010** dated, **29.03.2010** which has been withdrawn and cancelled.*

4. Kindly acknowledge the receipt of this letter."

9. On 31st March, 2014, the Petitioner submitted an application in Form 3CK for AY 2011-12 to the DSIR, for approval of the Rohtak R&D Centre and annexed therewith the Cooperation Agreement executed with the DSIR. On 2nd February, 2015, the DSIR granted its approval in Form 3CM in respect of the Rohtak R&D Centre from 1st April, 2013 to 31st March, 2015.

10. Thereafter, under cover letter dated 10th March, 2015, the DSIR granted approval in Form 3CL dated 9th March, 2015 for AY 2011-12 in respect of the entire R&D expenditure of Rs. 391.17 Crores, incurred by the Petitioner. This certification, though certifying the entire R&D expenditure of the

Petitioner for AY 2011-12, also gave reference of the Gurgaon R&D Centre. This error could have occurred as the subject line of the Petitioner's application dated 31st October, 2011 merely mentioned the Gurgaon R&D Centre and not the Rohtak Centre, though the Auditor's report attached therewith properly delineated the expense for both the Centres. Since, by then, the Petitioner's Rohtak R&D Centre was accorded recognition by the DSIR, on 26th March, 2015, the Petitioner sought a clarification from the DSIR that the total amount claimed as R&D expenditure for the AY 2011-12 was Rs.395 Crores, which included a sum of Rs.124.78 Crores incurred on the Rohtak R&D Centre and sought inclusion of the Rohtak R&D Centre in the said certification of expenditure. In this letter, the Petitioner relied upon two judgments namely *Commissioner of Income Tax v. Sandan Vikas (India) Ltd.*, [2011] 335 ITR 117 (Del) (hereafter 'Sandan Vikas') passed by the Division Bench of this Court, which followed the Gujarat High Court's decision in *CIT v. Claris Lifesciences Ltd.*, [2010] 326 ITR 251 (Guj.) (hereafter 'Claris Lifesciences').

11. On the basis of both these judgements, the Petitioner claimed that since the R&D expenditure was incurred by it in the financial year which ended on 31st March, 2011, relevant to AY 2011-12, it is entitled to deduction in AY 2011-12 itself and thereafter in subsequent years for both its Gurgaon & Rohtak R&D Centres, under Section 35 (2AB). The Petitioner also relied upon the Guidelines for approval in Form 3CM of in-house R&D Centres recognised by the DSIR issued in May, 2010. Clause (iv) of para 6 of the 'GUIDELINES FOR THE APPROVAL IN FORM 3CM OF IN-HOUSE R&D CENTERS REGGNISED BY DSIR AND SUBMISSION OF REPORT

IN FORM 3CL UNDER SECTION 35 (2AB) OF IT ACT 1961' reads as under:

"iv. In case of firms having signed agreement of cooperation u/s. 35(2AB) with the Prescribed Authority for one or more R&D centers approved with DSIR which implies that they have been maintaining separate accounts for R&D:- the R&D Centre newly setup by such firms may be approved from the year in which investments on these centers of capital and revenue nature commenced or after the agreement of cooperation was signed, (which ever was later) to enable these companies to claim weighted tax deduction on eligible R&D expenditure of capital and revenue on the new centers."

12. It was the stand of the Petitioner that since the DSIR has approved the recognition of the Rohtak R&D Centre, the expenditure for R&D incurred thereon, deserves to be considered since inception, and that it would therefore, be entitled to claim deduction from AY 2011-12. It was further claimed in the said letter that the Auditor's report for the AY ended 31st March, 2011 had contained the exact particulars of the expenditure incurred on the Rohtak R&D Centre. This stand of the Petitioner was not accepted by DSIR. Thus, it issued a Corrigendum dated 7th May, 2015 thereby amending and modifying the said Form 3CL dated 9th March, 2015, whereby the amount of R&D expenditure eligible for deduction u/s 35 (2AB) of the Act, relevant to AY 2011-12, was reduced by the said amount of Rs. 124.78 Crores, which was the expense attributable to the Rohtak R&D Centre. The DSIR sent a copy of the same to the Director General, Income Tax (Exemptions) on 11th May, 2015.

13. This Corrigendum is impugned by the Petitioner in the present writ petition which was originally filed seeking the following prayers:

*“(a) for a Writ of Certiorari or any other Writ, setting aside and quashing the impugned Corrigendum dated 07.05.2015 (**Annexure P-14 hereto**)*

(b) for a declaration that the Petitioner is entitled to deduction under section

35(2AB) of the Act in respect of the capital expenditure of Rs. 12478.85 lakhs incurred on the Rohtak research unit during the financial year ended 31.03.2011.

(c) for such further and other reliefs as this Hon'ble Court may consider appropriate, in the circumstances of the case.”

Notice was issued in the present petition on 28th September, 2015.

14. Thereafter, on 20th November, 2015, the Dispute Resolution Panel (DRP) which was seized of the dispute in the Petitioner's case against the Revenue for AY 2011-12, relying on the impugned Corrigendum, issued directions under Section 144C(5) of the Income Tax Act 1961 ('Act'), to the AO to consider the R&D expenses of the Petitioner only with respect to its Gurgaon R&D Centre, thereby holding that the Petitioner was not entitled to deduction in respect of the capital expenditure incurred by the Petitioner for its Rohtak R&D Centre. The relevant extract of the DRP's directions read as under:

"DRP has examined the issue. It is noted that Form 3CL is signed by Scientist 'G' for and on behalf of DSIR. In preceding AY, then DRP has taken a view

that certificate signed by Scientist 'G' shall be valid for claiming deduction u/s 35(2AB). In present case, expenses pertaining to Gurgaon facility are to the tune of Rs. 27032.58 lacs, whereas remaining expenses to the tune of Rs. 12478.85 lacs pertain to Rohtak facility which is not approved during the period under consideration. Hence, AO is directed to consider only the expenses pertaining to Gurgaon facility for showing deduction u/s 35 (2AB) of the Act. The objection is disposed off accordingly."

15. The Petitioner, approached this Court by filing application C.M. No. 30214/2015, and sought interim relief. On 9th December 2015, this Court passed an interim order directing the Respondents as follows:

".....No coercive measures be taken in the meanwhile, in relation to the subject-matter of the writ petition which pertains to Section 35(2AB) of the Income Tax Act, 1961....."

16. Pursuant to the directions of the DRP, the AO passed an assessment order dated 31st December, 2015, denying any deduction to the Petitioner for the AY 2011-2012, in respect of its Rohtak R&D Centre. The Petitioner has filed an appeal to the Appellant Tribunal against the said assessment order which remains pending.

Assessment Year 2012-13

17. On 31st October 2012, the Petitioner submitted an application with the DSIR for certification of the R&D expenditure of Rs. 367.28 Crores incurred on the two R&D Centres for AY 2012-13. On 1st January 2015, the DSIR asked the Petitioner to submit a Revised Appendix II - Annexure IV

for the Gurgaon R&D Centre with respect to AY 2012-13 and 2013-14. In response, on 12th October 2015, the Petitioner again submitted (separately) the details of R&D expenses incurred on both its R&D Centres and sought certification of the same, relevant to AY 2012-13.

18. The Petitioner did not receive any response to its request for certification. On 15th March, 2016 (*wrongly dated as 15th March, 2015*), the Petitioner again requested for issuance of Form 3CL for certification of R&D expenditure for AY 2012-13, but this was completely disregarded by DSIR. Another request dated 23rd January, 2017 met the same fate and the DSIR did not issue Form 3CL, until then, in respect of either of the R&D Centres for the AY 2012-13. Thus, in the draft Assessment Order dated 30th January, 2017 for AY 2012-13, the AO disallowed the total R&D expenditure of Rs. 734,57,78,218/- Crores (being weighted deduction @200%) and added back the said entire amount to the income of the Petitioner.

Assessment Year 2013-14

19. On 31st October, 2013, the Petitioner filed an application for certification of its R&D expenses for AY 2013-14. In this application, the subject headline did not mention as to which Centre the certification was being sought for, though there is specific mention of both R&D Centres in the documents filed therewith. Appendix II to Annexure IV to this application has a specific Note which reads as follows:

Note: *The claim includes expenditure of Rs 222,91,65,384 on the new R&D center of the Company*

under construction at Rohtak; Haryana for which the Company has already filed application on 30.03.2012 with DSIR for approval of such center.

20. On 6th December, 2016, the Petitioner sought issuance of Form 3CL from the DSIR for the expenditure incurred on both its R&D Centres for 2013-14. The DSIR did not accede to this request. In the meantime, the Revenue passed a draft Assessment Order dated 30th December, 2016 under Section 143 (3) for AY 2013-14 disallowing the expenditure of Rs. 984,27,10,769/ (being weighted deduction @200%) under Section 35 (2AB) and added back the entire amount to the income of the Petitioner.

21. Thus, the Petitioner sought amendment of the pending writ and prayed for the following reliefs in the amended writ petition:

*"(a) for a Writ of Certiorari or any other Writ, setting aside and quashing the impugned Corrigendum dated 07.05.2015 (**Annexure P-14 hereto**)*

(b) for a declaration that the Petitioner is entitled to deduction under section 35(2AB) of the Act in respect of the capital expenditure of Rs12478.85 lakhs incurred on the Rohtak research unit during the financial year ended 31.03.2011.

(bi) For a Writ of Mandamus, or a Writ in the nature of Mandamus, ordering and directing DSIR to grant and issue the necessary Form 3CL certificate in respect of the Rohtak Research units for the Financial Years 2010-11, corresponding to Asst. Years 2011-12, and Form 3 CL certificate in respect of the Gurgaon as well as the Rohtak Research units for the Financial 2011-12 and 2012-13, corresponding to Asst. Years 2012-13 and 2013-14

(bii) For a Writ of Prohibition, or a Writ in the nature of Prohibition, prohibiting and restraining the Income-tax authorities (Respondent No.2) from denying, disallowing or adding back the deduction claimed by the Petitioner under Section 35(2AB) of the Income-tax Act.

(biii) For a Writ of Certiorari or a Writ in the nature of Certiorari, setting aside and quashing the disallowance of the deduction under Section 35(2AB) claimed by the Petitioner in respect of its Gurgaon and Rohtak units for Asst. Years 2012-13 and 2013-14 in the assessment orders passed by the A.O (Annexures P-20 and P-22 hereto).

(c) for such further and other reliefs as this Hon'ble Court may consider appropriate, in the circumstances of the case."

22. The prayer for amendment was allowed by this Court on 20th February, 2017. Subsequently, during the pendency of this petition, on 8th March, 2017 and 16th March, 2017, the DSIR has certified the R&D expenditure for AY 2012-13 and AY 2013-14 in respect of the Gurgaon R&D Centre but not the Rohtak R&D Centre and has sent the same to the Income Tax authorities. In view of the fact that the DSIR has, since, certified the R&D expenditure incurred on the Gurgaon R&D Centre, the relief prayed for with respect to the said Centre is infructuous and is not being gone into in this petition.

Petitioner's Submissions

23. Mr. S. Ganesh, learned Senior Counsel for the Petitioner submits that since inception, the Petitioner has kept the DSIR in the loop about the R&D Centre at Rohtak. In fact, in the application dated 31st October, 2011, though the subject line of the cover letter only mentions the Gurgaon R&D Centre,

Appendix II to Annexure IV which was annexed to the said application clearly had the following note:

***"Note:** The claim includes expenditure of Rs 124,78,85,250 on the new R&D center of the company under construction at Rohtak; Haryana for which the Company will make the application for approval to DSIR in F-Y 2011-12. Such expenditure is eligible for claim in the FY 2010-11 as per the policy for approval prescribed in DSIR guidelines. The company has already submitted an information letter to DSIR dated 30.03.2011 on the setting up of this new R&D Centre at Rohtak."*

24. Thus, the non-mentioning of the Rohtak R&D Centre in the cover letter 31st October, 2011 could at best be termed as a clerical error. According to Mr. Ganesh, the certification dated 9th March, 2015 had certified the entire R&D expenses for both the Centres and the Petitioner had merely requested for addition of the Rohtak R&D Centre in the said certification. However, the DSIR, in the most arbitrary manner, instead of adding the name of the Rohtak R&D Centre, deleted the expense incurred for the said R&D Centre and issued the Corrigendum dated 7th May, 2015. This, according to Mr. Ganesh, has inflicted a huge financial impact to the tune of Rs. 250 crores (approx), on the Petitioner by reducing the R&D expenditure under Section 35 (2AB) of the Act by Rs.124.7 Crores. Since the Petitioner is entitled to claim twice the said amount as deduction under Section 35 (2AB) of the Act, the financial impact for the Petitioner is to the tune of Rs.250 Crores. Mr. Ganesh submits that the DSIR having issued the Form 3CL dated 9th March, 2015 for the Rohtak Centre, the Corrigendum dated 7th May, 2015 reducing the amount of R&D expenditure is *per se* contrary to Section 35

(2AB). Moreover, according to Mr. Ganesh, the purpose of approval under Section 35 (2AB) of the Act is not merely to provide deduction qua expenditure incurred on R&D Centres, from a particular date, but only to ensure that the R&D Centre is duly certified by the relevant authority. Thus, according to Mr. Ganesh, the Corrigendum dated 7th May, 2015 is liable to be quashed. He relies on *Sandan Vikas (supra)* and *Claris Lifesciences (supra)*.

25. Insofar as the subsequent AY 2012-13 and AY 2013-14 are concerned, Mr. Ganesh submits that for both these years the Petitioner is entitled for certification of the entire R&D expenditure for both the Gurgaon and the Rohtak R&D Centres as per Section 35 (2AB) of the Act. The effect of the non-certification by the DSIR is evident from the draft Assessment Orders which have failed to take into consideration the R&D expenses that have been incurred by the Petitioner.

Respondent's submissions

26. Mr. Gaurav Sarin, learned counsel for the DSIR (Respondent No.1) submits that the Petitioner has deliberately deceived the DSIR and is not entitled to the benefit of Section 35 (2AB). Mr. Sarin submits that the DSIR can consider the request for certifying the R&D expenses of the Rohtak R&D Centre only when there is a Form 3CK specifically filed for that Centre. Since the Form 3CK for the Rohtak R&D Centre was filed only for the AY 2012-13, no benefit can be given to the Petitioner for the AY 2011-12. He specifically relies upon the Note in the Auditor's report annexed to cover letter dated 30th October, 2012 which reads as under:-

***"Note:** The claim includes expenditure of Rs. 97,84,41,981 on the new R&D center of the company under construction at Rohtak; Haryana for which the Company has already filed application on 30.03.2012 with DSIR for approval of such center."*

27. It is the case of Mr. Sarin that since the approval for the Rohtak R&D Centre was pending, the Petitioner cannot seek to have the benefit of Section 35 (2AB) for a period prior to its application for the Rohtak R&D Centre. Mr. Sarin further submits that the application with the relevant Form does not mention the 'Rohtak R&D Centre'. He points out that in the application dated 31st October, 2011, there was a deliberate intention on the part of the Petitioner to merge the expenditure of the Rohtak R&D Centre with that of the Gurgaon R&D Centre and obtain certification of the said expense under the garb of the said expenses being for the Gurgaon R&D Centre. The error by the Petitioner is not merely a clerical error but a fraudulent misrepresentation and hence, there is no error in the Corrigendum which was issued by the Respondent.

28. A central plank of Mr. Sarin's submission was the decision in ***Apollo Tyres Ltd v. UOI (2010) SCC Online Del 1599*** (hereafter '*Apollo Tyres*'), on the basis of which he submits that until the agreement with the Prescribed Authority in Form 3CK is entered into, no deduction can be granted under Section 35(2AB). Mr. Sarin further submits that since the application for recognition of the Rohtak R&D centre was filed for the first time on 8th /13th January 2014, and the recognition was granted only on 26th March 2014, the Petitioner is not entitled to any benefits prior to the said recognition. Mr.

Sarin further argues that the application in Form 3CK for approval of the Rohtak R&D centre along with the agreement was filed with the DSIR only on 31st March 2014 and the approval was granted under cover letter dated 2nd February 2015. So, the Petitioner cannot avail of benefits under Section 35(2AB) prior to AY 2014-15.

29. According to Mr. Sarin, the Corrigendum merely deducted the expenditure qua the Rohtak R&D Centre, as mentioned by the Petitioner in its letter dated 26th March, 2015. Mr. Sarin, further submits that if the Petitioner submits the figures for the Rohtak R&D Centre, the Respondent is willing to consider the same. Mr. Sarin further relies on the clauses in the 'Policy of Approval' of the DSIR that the certification can be granted only with respect to recognised R&D Centres.

30. In the Counter Affidavit filed to the amended writ petition, the DSIR admits to have issued the certificates in Form 3CL in respect of the expenditure incurred on the Gurgaon R&D Centre for AY 2012-13 and 2013-14. Paragraph 4-F of the Amended Counter affidavit reads as under:

"4-F. That the contents of para 4-F of the amended writ petition are wrong and denied. It is submitted that the Reports in Form 3CL in respect of the Gurgaon R&D centre for FY 2011-12 (AY 2012-13) and FY 2012-13 (AY 2013-14) have been sent to the Chief Commissioner (Income Tax Exemption)....."

31. Mr. Asheesh Jain, learned Senior Standing Counsel for the Income Tax Department, Respondent No.2 has also been heard. Mr. Jain submits that the Respondent No.2 has passed the Assessment orders allowing the deductions

taking into account the expenditure for the Gurgaon R&D Centres, as per the certifications issued by the DSIR.

Rejoinder Submissions

32. In the rejoinder submissions, Mr. Ganesh, learned Senior Counsel for the Petitioner relies upon an affidavit dated 1st August, 2016 filed by the Petitioner of its Managing Director, Mr. Kenichi Ayukawa, which clearly provides all the details of the R&D expenditure incurred by the Petitioner and hence, the submission of the Respondent that the Respondent did not provide the details for the Rohtak Centre, is wholly incorrect as per the record.

Further submissions and notes of arguments

33. On, 17th July 2017, Mr. S. Ganesh also handed over a short note along with a few judgements on the proposition that the DSIR does not have the power to review its own certification. In response to this, the Counsel for the Respondents were given liberty to file a short note, which they have done on 19th July 2017.

Analysis and findings

34. This is a classic case wherein the purpose and the legislative intent behind the enactment of Section 35 (2AB) is being set at naught, probably due to an error made by the Petitioner in its initial request for certification and the unreasonable attitude thereafter adopted by the DSIR.

35. A perusal of the correspondence between the Petitioner and DSIR

reveals that on 31st October, 2011, when the Rohtak R&D Centre was still being set up, the Petitioner, while applying for certification of R&D expenses, had submitted the details about its Rohtak R&D Centre to the DSIR, and all the relevant documents were also filed therewith. The Auditor's report accompanying the letter dated 31st October 2011, has a clear Note and further delineates and differentiates the expenses for the Rohtak Centre in a Tabular form. The same reads as under:

"Note: *The claim includes expenditure of Rs 124,78,85,250 on the new R&D center of the company under construction at Rohtak; Haryana for which the Company will make the application for approval to DSIR in F-Y 2011-12. Such expenditure is eligible for claim in the FY 2010-11 as per the policy for approval prescribed in DSIR guidelines. The company has already submitted an information letter to DSIR dated 30.03.2011 on the setting up of this new R&D Centre at Rohtak.*
 ”

EXPENDITURE INCURRED ON CWIP-PLANT & MACHINERY NEW R&D CENTRE AT ROHTAK UNDER CONSTRUCTION						
PO NO.	PO Date	Receipt No.	Charge Account	Project No.	Total	Asset Description
204484	29-Oct-10	602735	05C2326	ETT	830,488,200	Payment towards Technical Knowhow for Test Track, Rohtak
204484	28-Oct-10	607126	05C2326	ETT	617,136,800	Payment towards Technical Knowhow for Test Track, Rohtak
215480	16-Mar-11	613179	05C2338	ETT	250,250	Tax Advisory Services for TCA & EPC Agreement
Total B					1,247,883,250	
Total A+B					1,724,505,762	

26th April, 2013 that the application for the Rohtak R&D Centre was premature. This then led to the filing of a second application. Though, the Petitioner made an error in its application for certification of R&D expenses, by not mentioning the Rohtak R&D Centre in the subject line, from the correspondence, it does not appear that there was any intention to mislead the Respondent. The Petitioner has candidly informed the requisite details of both the R&D centres since inception.

37. Both the R&D Centres, at Gurgaon and Rohtak have been granted recognition and the entire R&D expenditure was certified for AY 2011-12, but in the certification dated 9th March, 2015 only the Gurgaon R&D Centre found a mention. The Petitioner merely sought addition of the Rohtak R&D Centre in the said certification by providing the separate figures for each of the Centres. The non-addition of the Rohtak R&D Centre and instead deletion of the expenditure incurred on the same by way of issuance of the Corrigendum dated 7th May, 2015, from the certification dated 9th March, 2015, is clearly unsustainable. Such an act on behalf of the DSIR results in completely depriving the Petitioner from claiming deductions of R&D expenses qua its Rohtak R&D Centre.

38. It is the admitted position on both sides that the R&D Centre at Rohtak is recognized but the question being raised is as to whether the expenditure incurred on the said Centre since inception i.e., even prior to recognition being accorded is entitled to the benefit under Section 35 (2AB) of the ITA. The legislative intent behind this provision is to encourage innovation, research and development in India and non-grant of the benefit under

Section 35 (2AB) of the Act defeats the legislative intent. The Auditor's certificate on record is categorical that the Petitioner is maintaining separate sets of accounts for the Gurgaon and the Rohtak Centres and the necessary details of the expenditure incurred therein have also been submitted as far back as on 31st October, 2011 and even thereafter. Even the Form 3CM which was issued by the DSIR under cover letter dated 2nd February, 2015, mentions both the Gurgaon and the Rohtak R&D Centres. Just because the Petitioner sought a correction in the certificate of expenditure which was issued to it, the complete removal of the R&D expenditure of the Rohtak R&D Centre in the certification issued by the DSIR is wholly unsustainable.

39. The Petitioner has fulfilled all the necessary conditions for availing the benefit under Section 35 (2AB) of the Act in view of the settled position in ***Sandan Vikas (supra) and Claris Lifesciences (supra)***. The relevant portion of the judgement in ***Sandan Vikas (supra)*** of the learned Division Bench of this Court which in turn approves the view taken by the Gujarat High Court in ***Claris Lifesciences (supra)*** reads as under:

"3. ...The objective is to encourage research and development by the business enterprise in India.

4. The provision further states that in order to claim this weighted deduction, it is to be certified by the competent authority that the assessee had undertaken research and development activity. ...

...in CIT v. Claris Lifesciences Ltd. [2010] 326 ITR 251 (Guj). We have gone through the aforesaid judgment of the Gujarat High Court and find that the Gujarat High Court detailed in no uncertain terms that the cut-off date mentioned in the certificate issued by the DSIR would be of no relevance. What is to be seen is that the assessee

was indulging in research and development activity and has incurred the expenditure thereupon. Once a certificate by the DSIR is issued, that would be sufficient to hold that the assessee fulfils the conditions laid down in the aforesaid provisions. The discussion, which is undertaken by the Gujarat High Court while interpreting, the aforesaid provisions, is extracted below (Pg. 245) :

“7....The lower authorities are reading more than what is provided by law. A plain and simple reading of the Act provides that on approval of the research and development facility, expenditure so incurred is eligible for weighted deduction.

8. The Tribunal has considered the submissions made on behalf of the assessee and taken the view that the section speaks of:

- (i) development of facility;*
- (ii) incurring of expenditure by the assessee for the development of such facility;*
- (iii) approval of the facility by the prescribed authority, which is DSIR; and*
- (iv) allowance of weighted deduction on the expenditure so incurred by the assessee.*

9. The provisions nowhere suggest or imply that the research and development facility is to be approved from a particular date and, in other words, it is nowhere suggested that the date of approval only will be the cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly

manifests that the assessee has to develop the facility, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on a plain reading of the section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of the rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of the research and development facility has to be allowed for weighted deduction as provided by section 35(2AB). The Tribunal has also considered the legislative intention behind the above enactment and observed that to boost the research and development facility in India, the Legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, the intention of the Legislature by making the above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.

10. We are in full agreement with the reasoning given by the Tribunal and we are of the view that there is no scope for any other interpretation and since the approval is granted during the previous year relevant to the assessment year in question, we are of the view that the assessee is entitled to claim the weighted deduction in respect of the entire expenditure incurred under S.35(2AB) of the Act by the assessee."

5. We are in full agreement with the aforesaid approach of the Gujarat High Court. No substantial question of law, therefore, arises. The appeal is dismissed...."

40. The settled position in law is that, for availing the benefit under Section 35 (2AB) of the Act what is relevant is not the date of recognition or the cut-off date mentioned in the certificate of the DSIR or even the date of approval but the existence of the recognition. If a R&D Centre is not recognised it is not entitled to deduction but if it is recognised, it is entitled to the benefit. The Gujarat High Court in *Claris Lifesciences (supra)* has rightly observed that the date of approval of the R&D Centre, not being a part of the provision, extending benefit only from the date of recognition "*amounts to reading more in the law which is not expressly provided*".

41. Section 35 (2AB) clearly provides that any expenditure incurred by a party on its R&D facility except, insofar as it relates to land and building is liable to be allowed to be claimed as deduction (*twice the amount of expenditure*). A perusal of the scheme of the Act especially Sections 35 (2AB), 35A and 35AB reveals in no uncertain terms, that the purpose behind

these provisions is to provide impetus for research, development of new technologies, obtaining patent rights, copyrights and know-how.

42. Insofar as the *Apollo Tyres (supra)* is concerned, in the said case, the Petitioner had omitted to apply for approval under Form 3CK, though recognition was granted to its R&D Centre. The said Form 3CK consists of the Agreement to be entered into with the DSIR, in Part B. The omission by the Petitioner was held against it and this Court held that since the Petitioner had omitted to obtain the approval under Form 3CK, it is not entitled to the benefit of Section 35(2AB) since 2004. The facts of the present case are different and there has been no omission by the Petitioner herein to obtain approvals. The stage for approval arises after the recognition is granted by the DSIR, for which the application was filed right at inception by the Petitioner. Upon obtaining recognition, which was granted on 26th March 2014, the Form 3CK was filed on 31st March 2014. There has been no lapse of time, unlike in *Apollo Tyres (supra)* wherein the recognition was granted on 31st March, 2004 and the Form 3CK application was made only on 21st August, 2008. Thus the present case is clearly distinguishable from the facts in *Apollo Tyres (supra)*.

43. In the present case, it could be true that there are some errors in the Petitioner's application dated 31st October, 2011, however, one cannot ignore that since 2011, the Petitioner has been candid with the DSIR about its expenses for the Gurgaon and Rohtak R&D Centres and has given the break-up of the expenditure incurred thereupon; has submitted the Auditor's certificate required for the same; has entered into an agreement with the

DSIR as required for sharing of technologies; and has also repeatedly requested for certification of the expenditure incurred by it. Under such circumstances, an isolated error in an application cannot result in the entire benefit itself being refused to the Petitioner resulting in it being deprived of the deduction as permissible under Section 35 (2AB).

44. In the facts and circumstances of the present case, this Court holds that the Petitioner is entitled to deduction under Section 35 (2AB) of the Act for the expenditure in respect of its Rohtak R&D Centre as per the provisions of Section 35 (2AB) for AYs 2011-12, 2012-13 and 2013-14. Accordingly, the Corrigendum dated 7th May, 2015 is set aside and the Respondent No.1 DSIR is directed to issue a fresh certification in Form 3CL in respect of the expenditure on scientific research on the Rohtak R&D Centre of the Petitioner for AYs 2011-12, 2012-13 and 2013-14. Since the DSIR has already issued the certification for the Gurgaon R&D centres, for AYs 2012-13 and 2013-14, no orders are called for in that respect. The Respondent No.2 is further directed to give consequential deductions as per Section 35 (2AB) to the Petitioner.

45. Accordingly, the writ petition is allowed in the above terms.

PRATHIBA M. SINGH, J

S.MURALIDHAR, J

AUGUST 04, 2017/j