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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.01.2019
Pronounced on: 08.04.2019

+ W.P.(C) 9996/2015

MANIPAL ACADEMY OF HIGHER EDUCATION Petitioner

Through: Sh. Ajay Vohra, Sr. Advocate with
Sh. Vikrant Pachnand, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Sh. Vikram Jetly, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J.

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1. This writ petition is directed against an order dated 30.07.2015 whereby the petitioner has been denied approval under Section 35 (1) (ii) of the Income tax Act 1961 (hereinafter, "the Act").

Facts and Impugned Order

2. The petitioner is a registered trust formed on 19.05.1993 and claims to undertake educational and research activities. It was granted registration as a deemed university with effect from 03.07.1993. It applied for approval under Section 35 (1) (ii) of the Act on 23.06.2014.

3. The petitioner's application was rejected by the impugned order dated 30.07.2015 after calling for information from it, and giving it an opportunity of hearing. The analysis and conclusions reached by the respondent are evident from the following extracts of the impugned order:

“III. The provisions of section 35(1)(ii) of the Act bestows number of benefits on the organization approved under this section. As per provisions of section 35(1)(ii) of Income Tax Act, any sum paid to an approved and notified organization engaged in Scientific research by any business entity is eligible for a weighted deduction of 175% as business expense. The donees falling in category of ‘university, college or other institution’, subject to fulfillment of requisite conditions, may claim exemption of income u/s 10(23C) or section 11 read with section 12 of the Act. Further, with effect from 13.07.2006, the process of approval has been streamlined by introduction of Rules 5C, 5D and 5E in Income-tax Rules, 1962 and presently, one time approval u/s 35(1)(ii) of the Act is granted which is available in perpetuity unless specifically withdrawn. Therefore, in view of the substantial outgo of revenue in the form of the weighted deduction (available to donor) and exemption of income (available to donee), certain conditions have been laid down in the Act and relevant Income tax Rules. In the context of the present application, the proviso appended to clauses (ii) and clauses (iii) in section 35(1) of the Act is relevant which states that the Central Government before granting approval may call for such documents (including audited annual accounts) or information from the ‘research association’, ‘university, college or other institution’ as it thinks necessary in order to satisfy itself about the genuineness of the activities of the organization and that Government may also make such inquiries as it may deem necessary in this behalf. Further, certain pre-conditions have been stated in relevant IT Rules as mentioned above.

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VI.2 The submissions of applicant have been carefully considered. The applicant was required to furnish details regarding scientific research activities being pursued in various departments, inter-alia, connected with sectors like nursing, business management, arts etc.. However, the applicant has merely filed explanation about the activities undertaken by the students under the projects assigned to them as a part of curriculum and no details of any full-fledged research activity being pursued in Schools of Nursing,

Communications and Commerce have been furnished. Further, the relevant documents submitted in Form 3CF-II also shows that scientific research activity is not being carried out in these schools. The details are as under:

- *As per details submitted in points 3(i) to 3(iv) in Form 3CF-II regarding availability of research facilities, these three schools are not mentioned.*
- *As per details submitted in point 4 in Form 3CF-II regarding research assets, none of the three schools are mentioned. Subsequently, when the applicant has furnished details of assets in School of Nursing, it is seen that the equipments mentioned for this School are the general items used in teaching and taking practical sessions but not for any independent research work.*
- *These three schools have also not contributed towards research projects, articles, patents, product innovation, receipt of research grants etc*

Thus, since these schools are involved in teaching activities only, the claim of the applicant that it is doing broad based scientific research in all institutions/departments within its umbrella is contrary to the facts. Similarly, although the applicant is having full fledged offshore campuses at Malaysia and Dubai which are essentially engaged in teaching of subjects like medicine and engineering, the details submitted do not indicate that any worthwhile scientific research activity is being pursued in these institutions.

VII. *It is seen that MAHE was accorded 'deemed university' status in 1993 and has been in existence since late sixties. However, as evidenced by 3CF-II application, it is seen that the various claimed research activities of the applicant have not materialized in a significant way either in form of new theories/models, new hypothesis which has wide acceptance, copyrights, earnings from patents etc.. Applicant has filed details regarding Patents in Institute of Pharmaceutical Sciences. However, the same is attributable to a large extent to one individual only namely Dr. Nayanabhirama Udupa. Besides work of Dr. Udupa, applicant does not seems to have*

achieved much in the field of Patents/Copyrights etc in other institutions being run by it. It is also seen that in many industry sponsored projects, the applicant is merely providing its infrastructural support while the research related activities are being handled by the sponsoring organization. Therefore, credit for activities being undertaken in these projects cannot be totally attributed to the applicant for purposes of section 35(1)(ii) of the Act.

VIII. *On perusal of Income & Expenditure statement of MAHE for various years and clause 9(i) of Form 3CF-II, it is seen that its main sources of income are from tuition and fees, hospital income, other services and interest income. While the receipts and corresponding expenses on account of these activities are substantial, in comparison, the year-wise details regarding expenditure claimed to be applied towards research related activities out of the sums received for research is not very significant. The details are as under:*

<i>F. Yr.</i>	<i>Amount applied on research (₹)</i>	<i>Total operating receipts as per financial statements (₹)</i>	<i>Percentage of receipts utilized on research</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>10-11</i>	<i>8.12 crores</i>	<i>632.84 crores</i>	<i>1.28%</i>
<i>11-12</i>	<i>7.69 crores</i>	<i>764. 69 crores</i>	<i>1.00%</i>
<i>12-13</i>	<i>10.63 crores</i>	<i>923.72 crores</i>	<i>1.15%</i>

- i. The above data shows that applicant is primarily involved in educational and hospital running activities and activities related to research of empirical nature are not substantial. In cases of doctors associated with hospitals, the experience gathered during treatment of patients leads to enhancement in their knowledge domain due to which expertise is gained in different branches of medical science. Research papers emanating from such experience is more of a personal*

achievement than that attributable to the institution from which only infrastructural support is drawn.

- ii. *It is worth mentioning that many of the projects in hospitals have been found to be related to clinical trial activities on which the applicant has applied significant sums out of the figures mentioned in column (2) above. As the clinical trial activities are devoid of element of empirical research, they cannot be considered for purposes of section 35(1)(ii) of the Act. A further corollary to this would be that the expenditure incurred on clinical trial activities would further reduce the figures in column (4) pertaining to percentage utilization of receipts on research vis-à-vis the total earnings of the organization.*

IX. *In support of its claimed research activities, applicant has submitted copies of few research publications also. It has also submitted a CD containing only citations of papers. A critical analysis of some of the papers which have been submitted in 'Hard copy' is as under:*

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Inference: *The above analysis brings out following observations w.r.t. claimed research activities of the applicant organization:*

- *It is seen that various research articles as submitted have been written in collaboration with other institutions by faculty member of MAHE with hardly any tangible contribution from the applicant organization. This suggests that these research articles are an outcome of personal competence and professional experience of these scholars rather than being attributable to contribution of the applicant entity as such in any significant manner.*
- *In research projects, being funded by the multilateral organizations, MAHE is only one of the participatory institutions having specific and limited role in these projects.*

X. From the note on Papers presented in National/International conferences and number of publications during the F.Yr. 2013-2014, it is seen that around 75% of the Papers presented/Publications are related to Manipal Institute of Technology, Manipal, Kasturba Medical College, Manipal and Kasturba Medical College, Mangalore while remaining institutions/departments have barely made any worthwhile contribution. Thus, claim of the applicant Trust that it is doing research activities in all the institutions/departments within its umbrella for purposes of section 35(1) (ii) of the Act does not appear to be correct.

XI. Thus, it emerges that certain institutions within ambit of MAHE are not involved in significant scientific research activities. Therefore, in view of the inference drawn from the documents and information submitted by the applicant in the Form 3CF-II as well as those submitted subsequently and the manner in which queries have been answered it is not conclusively established that the trust as a whole is entitled for claiming approval u/s 35(1) (ii) of the Act. Although applicant has tried to make a case that research activities are actually being carried out, it has not been able to show how all the institutions are conducting research activities in true sense in a structured manner. While many institutions are just imparting education, some others are facilitating carrying out of studies and projects by other institutions/organizations. Institutions related to medical and pharma education are mostly engaged in doing trial activities which are not of the nature of empirical research work. The applicant has in such cases not furnished the specific break up of empirical research activities. Thus, as observed in preceding paras, in the absence of precise and to the point information supported by relevant documents, it has not been possible to conclude that the claim regarding alleged research activities is satisfactorily explained by the applicant. The applicant has sought approval for all the institutions within its ambit for purposes of section 35(1) (ii) of the Act. However, in view of the deficiencies pointed out above, all the Institutions within the ambit of MAHE do not qualify for approval u/s 35(1)(ii) of the Act.

XII. *In view of facts mentioned above, the applicant does not merit approval u/s 35(1)(ii) of the Income-tax Act, 1961. Accordingly, the prescribed authority in Central Government, being the Union Finance Minister has held that M/s Manipal Academy of Higher Education, Manipal is not a fit case for the grant of requisite approval. Accordingly, I am directed to communicate that the aforesaid application in Form 3CF-II dated 23.06.2014 has been rejected.”*

Provisions of the Income Tax Act and Rules

4. The relevant provisions of Section 35(1) are reproduced below:

“35. Expenditure on scientific research.- (1) In respect of expenditure on scientific research, the following deductions shall be allowed—

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(ii) [an amount equal to ^{1a}[one and three-fourth] times of any sum paid] to a ^{1b}[research association] which has as its object the undertaking of scientific research or to a University, college or other institution to be used for scientific research :

²Provided that such association, university, college or other institution for the purposes of this clause—

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government;

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(iv) ...

Provided that the –research association, University, college or other institution referred to in clause (ii) or clause (iii) shall make an application in the prescribed form and manner to the⁸Central Government for the purpose of grant of approval, or continuance thereof, under clause (ii) or, as the case may be, clause (iii):

Provided further that the –Central Government may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the –research association, University, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the – research association, university, college or other institution and that –Government] may also make such inquiries as it may deem necessary in this behalf:

Provided also that any –notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years] (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:

Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government.”

5. The term “scientific research” has been defined, (*inter alia*) for the purposes *inter alia* of Section 35, in Section 43(4) of the Act:

“Definition of certain terms relevant to income from profits and gains of business or profession.

43. In sections 28 to 41 and in this section, unless the context otherwise requires-

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(4)(i) "scientific research" means any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries;]

(ii) references to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research;

(iii) references to scientific research related to a business or class of business include-

(a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class."

6. In addition to the statutory provisions, the prescribed Rules also deal with applications under Section 35 (1) (ii) of the Act. Rules 5C, 5D and 5 E of the Income Tax Rules, 1962 (hereinafter, 'the Rules ') are relevant for this purpose:

“[Guidelines, form and manner in respect of approval under clause (ii) and clause (iii) of sub-section (1) of section 35.

5C. (1) An application for approval,—

(i) under clause (ii) [or clause (iii)] of sub-section (1) of section 35 by a research association in duplicate in Form No.3CF-I;

(ii) under clause (ii) or clause (iii) of sub-section (1) of section 35 by a university, college or other institution in duplicate in Form No.3CF-II,

shall be made, at any time during the financial year immediately preceding the assessment year from which the approval is sought, to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the applicant.

(2) Annexure to the application [in] Form No. 3CF-I shall be filled out if the association claims exemption under clause (21) of section 10 of the Income-tax Act.

(3) The applicant shall send a copy of the application in Form No. 3CF-I or, as the case may be, Form No. 3CF-II to Member (IT), Central Board of Direct Taxes accompanied by the acknowledgement receipt as evidence of having furnished the application form in duplicate in the office of the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case.

(4) The period of one year, as specified in the fourth proviso to sub-section (1) of section 35, before the expiry of which approval is to be granted or the application is to be rejected by the Central Government shall be reckoned from the end of the month in which the application form from the applicant for approval is received in the office of Member (IT), Central Board of Direct Taxes.

(5) If any defect is noticed in the application in Form No. 3CF-I or Form No. 3CF-II or if any relevant document is not attached thereto, the Commissioner of Income-tax or, as the case may be, the Director of Income-tax shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application form in his office.

(6) The applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended, so however, that the total period for removal of deficiency does not exceed thirty days, and if the applicant fails to remove the deficiency within the period of

thirty days so allowed, the Commissioner of Income-tax or, as the case may be, the Director of Income-tax shall send his recommendation for treating the application as invalid to the Member (IT), Central Board of Direct Taxes.

(7) The Central Government, if satisfied, may pass an order treating the application as invalid.

(8) If the application form is complete in all respects, the Commissioner of Income-tax or, as the case may be, the Director of Income-tax, may make such inquiry as he may consider necessary regarding the genuineness of the activity of the association or university or college or other institution and send his recommendation to the Member (IT) for grant of approval or rejection of the application before the expiry of the period of three months to be reckoned from the end of the month in which the application form was received in his office.

(9) The Central Government may before granting approval under clause (ii) or clause (iii) shall call for such documents or information from the applicant as it may consider necessary and may get any inquiry made for verification of the genuineness of the activity of the applicant.

(10) The Central Government may, under sub-section (1) of section 35, issue the notification to be published in the Official Gazette granting approval to the association or university or college or other institution or for reasons to be recorded in writing reject the application.

(11) The Central Government may withdraw the approval granted under clause (ii) or clause (iii) of sub-section (1) of section 35 if it is satisfied that the research association or university or college or other institution has ceased its activities or its activities are not genuine or are not being carried out in accordance with all or any of the conditions under rule 5D or rule 5E.

(12) No order treating the application as invalid or rejecting the application or withdrawing the approval, shall be passed without giving a reasonable opportunity of being heard to the research association or university or college or other institution.

(13) A copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant, the Assessing Officer and the Commissioner of Income-tax or, as the case may be, the Director of Income-tax.

[Conditions subject to which approval is to be granted to a research association under clause (ii) or clause (iii) of sub-section (1) of section 35.

5D. (1) The sole object of the applicant research association shall be to undertake scientific research or research in social science or statistical research, as the case may be.

(2) The applicant research association shall carry on the research activity by itself.

(3) The research association seeking approval under clause (ii) or clause (iii) of sub-section (1) of section 35 shall maintain books of account and get such books audited by an accountant as defined in the Explanation to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.

(4) The research association shall maintain a separate statement of donations received and amount applied for scientific research or research in social science or statistical research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-rule (3).

(5) The research association shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax or Director of Income-tax containing—

(i) a detailed note on the research work undertaken by it during the previous year;

(ii) a summary of research articles published in national or international journals during the year;

(iii) any patent or other similar rights applied for or registered during the year;

(iv) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme.

(6) If the Commissioner of Income-tax or the Director of Income-tax is satisfied that the research association,-

(a) is not maintain books of account, or

(b) has failed to furnish its audit report, or

(c) has not furnished its statement of the sums received and the sums applied for scientific research or research in social science or statistical research or a statement referred to in sub-rule (5), or

(d) has ceased to carry on its research activities, or its activities are not genuine, or

(e) is not fulfilling the conditions subject to which approval was granted to it,

he may after making appropriate enquiries furnish a report on the circumstances referred to in clauses (a) to (e) above to the Central Government within six months from the date of furnishing the return of income under sub-section (1) of section 139.]

Conditions subject to which approval is to be granted to a University, College or other Institution under clause (ii) and clause (iii) of sub-section (1) of section 35.

5E. (1) The sum paid to a university, college or other institution shall be used for scientific research and research in social science or statistical research.

(2) The applicant university, college or other institution shall carry out scientific research, research in social science or statistical research through its faculty members or its enrolled students.

(3) A university or college or other institution approved under clause (ii) or clause (iii) of sub-section (1) of section 35 shall maintain separate books of account in respect of the sums

received by it for scientific research or, as the case may be, for research in social science or statistical research, reflect therein the amount used for carrying out research, get such books of account audited by an accountant, as defined in the Explanation to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.

(4) The university or college or other institution shall maintain a separate statement of donations received and the amount used for research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-Rule (3).

[(4A) The university, college or other institution shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax or Director of Income-tax containing—

- (i) a detailed note on the research work undertaken by it during the previous year;*
- (ii) a summary of research articles published in national or international journals during the year;*
- (iii) any patent or other similar rights applied for or registered during the year;*
- (iv) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme.]*

(5) If the Commissioner of Income-tax or the Director of Income-tax is satisfied that the university or college or other institution,-

- (a) is not maintaining separate books of account for research activities, or*
- (b) has failed to furnish its audit report, or*
- (c) has not furnished its statement of the sums received and the sums used for research [or a statement referred to in sub-Rule(4A)], or*

- (d) *has ceased to carry on its research activities, or its activities are not genuine, or*
- (e) *is not fulfilling the conditions subject to which approval was granted to it,*

he may after making appropriate enquiries furnish a report on the circumstances referred to in clauses (a) to (e) above to the Central Government within six months from the date of furnishing the return of income under section 139(1).]”

Submissions

7. Mr. Ajay Vohra, learned Senior Counsel for the petitioner, submitted that the petitioner has been granted the status of a "deemed university" on 03.07.1993 and satisfies the condition contained in the first proviso to Section 35 (1) (ii). He submitted that the petitioner had placed details and documents before the respondents to demonstrate the significant scientific research activity undertaken by the concerned institutions. He also argued that, as far as a university is concerned, in contrast to a research association, the statutory provisions do not require an exclusive focus on scientific research, as long as the sums in question are used for that purpose.

8. Mr. Vikram Jetley, learned Standing Counsel for the Central Government submitted that the impugned order has appropriately analyzed the materials placed by the petitioner and come to conclusion that there is no significant scientific research activity to which the sums received by it can be attributed. He emphasized that the petitioner manages a number of institutions including some which do not carry out scientific research such as those specializing in nursing, management, arts and a hospital. He urged that, in these circumstances, the respondent was justified in declining the approval sought by the petitioner.

Analysis and Conclusions

9. As stated in paragraph III of the impugned order, Section 35 enables donors to an approved institution/association to claim deduction of the amount donated from their taxable income. One of the categories of entities entitled to such approval is covered by Section 35(1)(ii). The donee institution, in turn, may claim exemption under Section 10(23C) of the Act. In the present case the impugned order itself (paragraph III) recognizes that the purpose of the Rules is to enable the Central Government to come to a conclusion about the genuineness of the activities of the institution concerned. An analogy may be drawn with eligibility under Section 10(23C). The Supreme Court has held that the consideration at the stage of granting exemption is regarding the genuineness of the activities, which must also thereafter be monitored in accordance with the Act and Rules. For the purposes of Section 35(1)(ii) also, Rules 5D and 5E specify the conditions (including separate accounting etc.) which must be followed by an approved institution. In *American Hotel and Lodging Association Educational Institute v. Central Board of Direct Taxes and Ors.* (2008) 10 SCC 509, the Court held as follows:

“44. Having analysed the provisos to Section 10(23-C)(vi) one finds that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardised form in terms of the first proviso. It is only if the prerequisite condition of actual existence of the educational institution is fulfilled that the question of compliance with requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose

compliance depends on events that have not taken place on the date of the application for initial approval.

45. To make the section with the proviso workable we are of the view that the monitoring conditions in the third proviso like application/utilisation of income, pattern of investments to be made, etc. could be stipulated as conditions by the PA subject to which approval could be granted. For example, in marginal cases like the present case, where appellant Institute was given exemption up to financial year ending 31-3-1998 (Assessment Year 1998-1999) and where an application is made on 7-4-1999, within seven days of the new dispensation coming into force, the PA can grant approval subject to such terms and conditions as it deems fit provided they are not in conflict with the provisions of the 1961 Act (including the abovementioned monitoring conditions). While imposing stipulations subject to which approval is granted, the PA may insist on certain percentage of accounting income to be utilised/applied for imparting education in India. While making such stipulations, the PA has to examine the activities in India which the applicant has undertaken in (sic terms of) its constitution, MoUs and agreement with the Government of India/National Council.”

This has been followed in *Queen’s Educational Society v. CIT* (2015) 8 SCC 47, wherein the Court has added a further caveat regarding the importance of the monitoring process:

*“25.... We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, *Surat Art Silk Cloth* [(1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1] , *Aditanar* [(1997) 3 SCC 346 : (1997) 224 ITR 310] and *American Hotel and Lodging* [(2008) 10 SCC 509 : (2008) 301 ITR 86] , would all apply to determine whether an educational institution exists solely for*

educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23-C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn...”

10. It may be noticed at the outset that Section 35(1) (ii) makes a distinction between the conditions which a research association must satisfy in order to avail of the benefit of the clause, and those applicable to a "university, college or other institution". While a research association must have the *objective* of undertaking scientific research, a university, college or other institutions is entitled to the benefit if the sum paid is to be *used* for scientific research. This distinction recognizes that universities, colleges, etc. may be undertaking multifarious activities in various disciplines including scientific and non-scientific areas of study. The statute, therefore, does not restrict the benefit of the provision, in the case of universities, only to those formed with the objective of scientific research, but instead emphasizes the purpose for which the money is spent. This distinction is also brought out by a comparison of Rule 5D (1) of the Rules (applicable to research associations) and Rule 5E (1) (applicable to universities, colleges or other institutions). Although Rule 5E (4A) requires a statement regarding research work undertaken by the applicant university during the previous year, the assessment of the materials provided would have to be made

keeping in mind the conditions laid down in the statute and reflected in Rule 5E (1).

11. The information submitted by the petitioner about activities carried out in sectors like nursing, business management and arts have been discounted in the impugned order (paragraph VI.2), on the grounds that they were not part of the research facilities mentioned in the petitioner's original application, that they are “*undertaken by the students under the projects assigned to them as a part of curriculum*” and that scientific research activity is not being carried out in these schools. The petitioner’s claim that it is doing broad based scientific research in all institutions/departments has, therefore, been rejected on the basis that these schools are involved in teaching activities only.

12. The reasons assigned by the respondents are, in our view, not in keeping with the statutory regime. The respondents seem to have proceeded on the basis that every department of the applicant university must undertake scientific research. However, as stated above, that is not a proper understanding of the provisions, at least insofar as they relate to universities colleges and other institutions. Similarly, Rule 5E(2) expressly recognizes that research activities may be carried out through faculty members or enrolled students of the institution. The respondents were, therefore, in error in disregarding the materials placed by the petitioner on the basis that the research projects were undertaken as part of the students’ curriculum.

13. The respondents have also placed undue emphasis on the nature of the research undertaken and its commercialization. The petitioner submitted a significant amount of material showing the activities undertaken by it, including publication of research papers, patents granted, and grants and funds received from various national and international agencies. These

have been discarded by the respondent on the ground that these research activities “*have not materialized in a significant way either in form of new theories/models, new hypothesis which has wide acceptance, copyrights, earnings from patents etc.*” The research papers and patents referred to by the petitioner have also been characterized as the work of particular faculty members rather than attributable to the contribution to the petitioner's university.

14. The respondent's focus on the impact and/or commercial success of the petitioner's research activities is not relatable to any statutory or prescribed criteria for grant of approval under Section 35(1)(ii). Section 43(4) of the Act contains a much broader definition which has been entirely overlooked in the impugned order. Scientific research is no less so because the researcher has not discovered a new theory or invented a patentable product. These results may be achieved only after years of research, or not at all. We respectfully agree with the view expressed by a Division Bench of the Gujarat High Court in *The Deputy CIT (Asstt) v. Mastek Limited* (2013) 263 CTR (Guj) 671 : 2012 SCC OnLine 4846, wherein the Court held as follows:

“24. The terms ‘research’ and ‘scientific research’ respectively thus have a wide scope. It does not necessarily mean only invention. The term ‘invention’ on the other hand has somewhat narrower meaning and is explained as: “An invention is the finding out; the contriving; the creating of something which did not exist and was not known before and which can be made useful and advantageous in the pursuance of business, or can add to the enjoyment of mankind.” In common parlance, thus, the terms ‘research’ and ‘scientific research’ respectively are understood to include wide variety of activities relatable to scientific study. We do not even need to fall back on such general principles since the term

‘scientific research’ has been defined under section 43(4) to mean any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries. Thus, scientific research need not be equated with a scientific invention. Even the term ‘invention’ as defined in the Patent Act is wider than understood in pure science where distinction is made between invention and discovery. The Patent Act thus recognises not only the product pattern where a new product has been invented through scientific research, but also recognises a process pattern where an existing product may be manufactured through an innovative process which was hitherto unknown.

25. It can thus be seen that the term scientific research in the context of the deduction allowable under section 35(1) of the Act would include wide variety of activities. It can also be appreciated that every scientific research need not necessarily result into the ultimate goal with which it may have been undertaken. Often times in the field of research and invention, the efforts undertaken may or may not yield fruitful results. What is to be ascertained is whether any scientific research was undertaken and not whether such scientific research resulted into the ultimate aim for which such research was undertaken. It can be easily envisaged that the scientific research undertaken often times would completely fail to achieve desired results. That by itself does not mean that no scientific research was undertaken. What the Legislature desired to encourage by granting deduction under section 35(1) of the Act was a scientific research and not necessarily only the successful scientific research undertaken by an assessee.”

In any event, an assessment of the “value” of the research at the hands of the respondents, is not contemplated by the Act or the Rules. Further, in view of Rule 5E (2) expressly contemplating research activity carried out

through faculty members, the analysis of the respondent appears to be rather sketchy.

15. The question required to be considered by the respondent was whether the activities claimed by the petitioner were genuine, and whether the funds being paid to the petitioner were intended for the stated purpose. On these, the impugned order is silent. It is, therefore, set aside and the respondents are directed to reconsider the petitioner's application dated 23.06.2014 in accordance with the procedure prescribed, and the principles laid down above. The respondent will carry out this exercise within eight weeks from today, after giving the petitioner another opportunity of submitting further documents and hearing. The respondent may also call for any further documents from the petitioner as it considers necessary.

16. Although some grounds have been raised in the Writ Petition regarding the respective jurisdictions of the Central Board of Direct Taxes, and the Government of India under Section 35, in the view we have taken, it is not necessary to decide those questions.

17. The writ petition is allowed in the above terms.

न्यायमेव जयते

PRATEEK JALAN, J.

S. RAVINDRA BHAT, J.

April 08, 2019

'J'