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

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+ **W.P.(C) 3043/2022**

SRF LTD

..... Petitioner

Through : Mr. Satyen Sethi and Mr.Arta Trana
Panda, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Naginder Benipal, Senior Panel
Counsel for Union of
India/Respondent No. 1 along with
Mr.Ankit Siwach, Advocate.
Ms. Vibhooti Malhotra, Senior
Standing Counsel for Revenue along
with Mr.Udit Sharma, Advocate.

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+ **W.P.(C) 3209/2022 and CM APPL. Nos. 9343/2022**

SRF LTD

..... Petitioner

Through : Mr. Satyen Sethi and Mr.Arta Trana
Panda, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Naginder Benipal, Senior Panel
Counsel for Union of
India/Respondent No. 1 along with
Mr.Ankit Siwach, Advocate.
Ms. Vibhooti Malhotra, Senior
Standing Counsel for Revenue along
with Mr.Udit Sharma, Advocate.



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+ **W.P.(C) 3243/2022 and CM APPL. Nos. 9407/2022**

SRF LTD

..... Petitioner

Through : Mr. Satyen Sethi and Mr.Arta Trana
Panda, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Naginder Benipal, Senior Panel
Counsel for Union of
India/Respondent No. 1 along with
Mr.Ankit Siwach, Advocate.
Ms. Vibhooti Malhotra, Senior
Standing Counsel for Revenue along
with Mr.Udit Sharma, Advocate.Date of Decision: 14th July, 2022**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, J (Oral):**

1. Present writ petitions have been filed seeking directions to the Respondent No. 1 to issue reports on the expenditure incurred by the Petitioner in Form 3CL. The Petitioner also seeks a declaration declaring that the expenditure of Rs.164,72,14,000/-, Rs.115,98,27,000/- and Rs.77,36,85,164/- for the Assessment Years 2017-18, 2018-19 and 2020-21 are entitled to deductions under Section 35(2AB) of the Income Tax Act, 1961 (hereinafter referred to 'the Act').



2. Since the facts in all the three cases are similar, this Court to avoid prolixity refers to facts in one of the cases, i.e. W.P.(C) No. 3043/2022.

3. In terms of the guidelines issued by Department of Scientific and Industrial Research (hereinafter referred to 'DSIR') which required that in-house R&D unit must have valid 'recognition', recognition upto 31st March, 2020 was granted/renewed to Petitioner's in-house R&D units on 30th August, 2017. Further, certificate of registration for availing custom duty exemption to Petitioner's R&D units was granted on 30th August, 2017. The said certificate was valid upto 31st March, 2020. In terms of Rule 6(4), the Petitioner submitted Form 3CK i.e agreement with DSIR for cooperation in R&D facility on 19th February, 2018. DSIR on being satisfied that the conditions for "approval" as specified in para 5 of the guidelines are met, issued an order in Form 3CM granting approval to R&D units of the Petitioner valid up to 31st March, 2020. On 27th October, 2020, an application for certification of R&D expenditure of Rs.99.50 crores in respect to all R&D units was furnished in terms of Rule 6(7A)(c). The application was accompanied by the auditor's report and Form 3CLA. However, in spite of repeated requests, DSIR has not issued report in Form 3CL certifying the expenditure incurred by the Petitioner on its in-house R&D units.

4. Learned counsel for the Petitioner contends that in the absence of report in Form 3CL, assessment for the aforesaid three assessment years will be made denying deductions under Section 35(2AB), which would result in huge demands. He submits that Section 35(2AB) of the Act provides for weighted deduction of one and one half times (150%) of the expenditure incurred by a company on scientific research on in-house R&D facilities



approved by the prescribed authority i.e. DSIR. In support of his submission, he relies upon Rule 6(1B) of the Rules. Further, according to him, Section 35(2AB)(3) provides that no company shall be entitled to deduction, unless it has entered into an agreement with DSIR for cooperation in R&D facility, which in terms of Rule 6(4) has to be in Form 3CK. DSIR, on being satisfied that all the conditions are met is required to pass an order of approval in Form 3CM under Rule 6(5A) of the Rules. He also submits that under Section 35 AB(4) read with Rule 6(7A)(c), the DSIR has to furnish audit report in Form 3CLA to DSIR. DSIR is required to submit report in Form 3CL under Rule 6(7A)(b) to Principal Commissioner of Income Tax/Chief Commissioner of Income Tax, quantifying the expenditure on scientific research incurred on in-house R&D units.

5. Mr. Naginder Benipal, learned counsel for Union of India, has today in Court handed over a photocopy of the counter-affidavit filed by him in W.P.(C) No. 3043/2022. The same is taken on record. In the said affidavit, the only defence taken is that DSIR has not initiated the process of issuing Form 3CL to the Petitioner as the High Court in W.P.(C) No. 1772/2018 has not issued any directions to issue the said Form.

6. In rejoinder, learned counsel for Petitioner clarifies that in W.P.(C) No. 1772/2018, the Petitioner has only challenged the quantification of the amount eligible for deduction in the assessment years 2015-16 and 2016-17.

7. Having heard learned counsel for the parties, this Court is of the view that DSIR is statutorily bound to issue the Form 3CL within 120 days in accordance with Rule 6(7A)(ba).

8. Further, this Court in W.P.(C) No.1772/2018 has not restrained DSIR from issuing Form 3CL for any other assessment year.



9. Consequently, the present writ petitions are allowed with a direction to the DSIR to issue reports on the expenditure incurred by the Petitioner for the Assessment Years 2017-18, 2018-19 and 2020-21 in Form 3CL within six weeks. With the above direction, present writ petitions stand disposed of.
10. List the matters for compliance on 22nd September, 2022.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 14, 2022
j/KA

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