



2024:DHC:1041-DB



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

% **Judgment reserved on: 06 February, 2024**
Judgment pronounced on: 13 February, 2024

+ **W.P.(C) 5666/2020**
NAGRAVISION INDIA PRIVATE LIMITED Petitioner
Through: **Mr. Deepak Chopra and**
Dr. Abhimanyu Chopra, Advs.

versus

SECRETARY, DEPARTMENT OF SCIENTIFIC AND
INDUSTRIAL RESEARCH Respondent
Through: **Mr. Jaswinder Singh, Adv.**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

J U D G M E N T

YASHWANT VARMA, J.

1. This writ petition has been preferred seeking the following reliefs: -

“a. Issue a writ of mandamus or any other appropriate writ for quashing/amending the recognition issued by the Respondent under the provisions of section 35(2AB)(1) of the Income Tax Act, 1961 dated 29.3.2019 as well as the e-mail communications dated 28.2.2020 and 11.5.2020;

b. Quash the Form 3CM dated 25.11.2019 and direct the Respondents to issue a fresh Form 3CM in respect of the R&D facilities of the Petitioner without limiting the period of claim;

c. Direct the Respondents to accept the Auditors Certificate furnished in Form 3CLA by the Petitioner certifying the expenditure incurred in respect of the R&D facilities of the Petitioner for the FY 2018-19 (relevant to assessment year 2019-20); and

d. Pass such other orders which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.”



2. The petitioner is essentially aggrieved by the weighted deductions claimed by it under Section 35(2AB) of the **Income Tax Act, 1961**¹ in respect of expenditure incurred on the creation and establishment of an in-house **Research and Development facility**², being restricted to the period - 27 February 2019 to 31 March 2020.

3. The writ petitioner contends that the stipulation of weighted deductions being eligible only from 27 February 2019 [being the date on which the research facility was approved], is wholly illegal and violative of the plain language and intent underlying Section 35(2AB) of the Act. As is evident from the reliefs claimed, the petitioner seeks deductions being granted on the entire expenditure made on the establishment and creation of the R & D facility for Financial Year 2018-19 and thus taking into account all expenditure incurred in connection therewith with effect from 01 April 2018. For the purposes of evaluating the challenge which stands raised, we deem it apposite to notice the following essential facts.

4. The petitioner - Nagravision India Private Limited, is a company duly incorporated under the provisions of the **Companies Act, 1956**³ and is stated to be a subsidiary of Kudelski SA and engaged in the business of developing software products. In addition to the above, it is also stated to provide technical support to customers, agents and distributors of its group companies. On 07 December 2017, the petitioner filed an application for grant of recognition of its R & D

¹ Act

² R & D facility

³ The 1956 Act



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facility to the Prescribed Authority and which, in terms of Rule 6 (1B) of the **Income Tax Rules, 1962**⁴ is the Secretary in the **Department of Scientific and Industrial Research**⁵.

5. DSIR is stated to have issued a communication inviting the representatives of the petitioner for a discussion on the application so made in terms of its email dated 22 February 2018. The representatives of the petitioner are stated to have discussed the application with the respondent on 01 March 2018 and allege that they were granted time to revert by 30 April 2018 with additional documentation. It is asserted that despite time having been granted up till 30 April 2018, the respondent rejected the application on 12 April 2018.

6. It is then averred that further discussion ensued between the authorized representatives of the petitioner and the respondent. However, and as is borne out from the record, the petitioner re-filed its application for recognition on 12 September 2018. It is its case that since the online filing portal was unresponsive, the same was also sent by speed post and was received by the respondent on 19 September 2018. The application was thereafter discussed on 11 December 2018 when additional documentation was required to be furnished by the petitioner. The petitioner claims that all requisite information and documents were thereafter submitted on 18 December 2018.

7. The R & D facility of the petitioner was inspected on 21 February 2019, whereafter the petitioner was called upon to amend its

⁴ Rules

⁵ DSIR



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application form and make adequate provisions for separately identifying and demarcating its two labs in order to obtain recognition. An amended application thereafter came to be submitted on 22 February 2019. The facility was ultimately accorded recognition on 29 March 2019, albeit, for the period 27 February 2019 to 31 March 2021. On 25 November 2019, the respondent is stated to have issued Form 3CM subject to the qualification that the approval would be applicable for the period 27 February 2019 to 31 March 2020. It was in the aforesaid backdrop that the petitioner appears to have been called upon to submit an amended Auditors Certificate setting out the expenditure that may have been incurred in that period. This is evident from a reading of the communication dated 28 February 2020 issued by the respondent to the petitioner.

8. The petitioner sought modification of the aforesaid stipulations as appearing in the ultimate recognition and approval granted by the respondent vide its communication dated 08 May 2020. However, on 11 May 2020, the respondent addressed a communication to the following effect: -

“From: N. K. Gupta <narender.gupta@nic.in>
Sent: 11 May 2020 11:26
To: Dubey Vachaspati
Cc: Regupathy Muralidharan; C N Ananda Kumar;
Paramasivam Ganesh
Subject: Re: 3CL documents FY 2018-19 - M/s Nagravision
Dear Sir
Your kind attention is requested for the following guidelines:



"i Approval to the in-house R&D centers *having valid recognition* by DSIR **are considered from 1st April of the year in which application is made in Form 3CK.**

ii. Approval is considered **co-terminus with DSIR recognition.**"

Please read above lines carefully, the approval is given for the recognised period, which in your case is from 27.02.2019. The approval can be given to a company from 1.4.2018 if that company has recognition on 1.4.2018.

I hope, it will clarify your doubts and claim. However, if not, you may contact the undersigned for further clarifications.

Regards
N.K.Gupta
SC E DSIR "

9. Learned counsel for the petitioner addressed submissions primarily based upon the **Guidelines for Approval in Form 3CM of In-House R & D Centres Recognised by DSIR And Submission of Report in Form 3CL under Section 35(2AB) of IT Act 1961⁶** framed by the respondent themselves, and which according to him mandate that approval is liable to be accorded from the first of April of the year in which the application in terms of Form 3CK comes to be made. It becomes pertinent to note that Form 3CK in the present case appears to have been submitted as an attachment to an email dated 31 March 2019 addressed by the petitioner to the respondent. It is in the aforesaid backdrop that learned counsel contended that the Guidelines clearly mandate weighted deductions under Section 35(2AB) being accorded with effect from 01 April 2018.

10. Reliance was also placed on the following observations as appearing in the judgment handed down by the Gujarat High Court in

⁶ Guidelines



Commissioner of Income-tax vs. Claris Lifesciences Ltd.⁷ and where while affirming the view which was taken by the Income Tax Appellate Tribunal, the High Court had held as under: -

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

- (i) development of facility ;
- (ii) incurring of expenditure by the assessee for 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 the 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 35AB(2). 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

⁷ 2008 SCC OnLine Guj 447



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 weighted deduction in respect of the entire expenditure incurred under section 35AB(2) of the Act by the assessee.”

11. The aforesaid contentions were controverted by learned counsel appearing for the respondent, who submitted that weighted deductions cannot be claimed for a period when the R & D facility had neither been recognised nor approved. Learned counsel submitted that the grant of approval is a sine qua non for claiming deductions under Section 35(2AB) of the Act. It was contended that the Guidelines themselves mandate that the approval is to be considered co-terminus with the recognition of the facility by the DSIR as specified in the Guidelines. According to learned counsel, since the facility itself came to be approved only on 27 February 2019, the conditions as imposed by the respondent warrant no interference and are liable to be upheld.

12. We at the outset note that Section 35 is a beneficial provision placed in the Act and which provides for weighted deductions being claimed in respect of expenditure that that may be incurred by an assessee in connection with scientific research. It is with the avowed objective of giving an impetus to scientific research and the creation of a robust Research and Development infrastructure that Section 35(2AB) accords deductions on expenditure incurred in connection



with scientific research and the creation of in-house R & D facilities.

Section 35(2AB) reads as follows: -

“ 35. Expenditure on scientific research

XXXX

XXXX

XXXX

(2AB)(I) Where a company engaged in the business of biotechnology 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.

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 (I) under any other provision of this Act.

(3) No company shall be entitled for deduction under clause (I) 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) [***]



(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 (I) which is incurred after the 31st day of March, 2008.”

13. For the purposes of evaluating the correctness of the stand as taken by the respondent, it would also be beneficial to refer to the provisions of Rule 6 of the Rules and which is extracted hereunder: -

“Prescribed authority for expenditure on scientific research.

6.(1) For the purposes of clause (i) of sub-section (1) and sub-section (2A) of section 35, the prescribed authority shall be the Director General (Income-tax Exemptions) in concurrence with the Secretary, Department of Scientific and Industrial Research, Government of India.

(1A) For the purposes of sub-section (2AA) of section 35, the prescribed authority shall be—

- (a) in the case of a National Laboratory or a University or an Indian Institute of Technology, the head of the National Laboratory or the University or the Indian Institute of Technology, as the case may be; and
- (b) in the case of a specified person, the Principal Scientific Adviser to the Government of India.

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

(2)[***]

(3) The application for obtaining approval under sub-section (2AA) of section 35 shall be made by a sponsor in Form No. 3CG.

Explanation : For the purposes of this rule “sponsor” means a person who makes an application in Form No. 3CG.

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

(5) The head of the National Laboratory or the University or the Indian Institute of Technology or the Principal Scientific Adviser to the Government of India shall, if he is satisfied that it is feasible to



carry out the scientific research programme then, subject to other conditions prescribed in this rule and section 35(2AA) of the Act, pass an order in writing in Form No. 3CH:

Provided that a reasonable opportunity of being heard shall be granted to the sponsor before rejecting an application:

Provided further that an order under this rule shall be passed within two months of the receipt of the application under sub-rule (1A):

Provided also that the Principal Scientific Adviser to the Government of India may authorise an officer who is not below the rank of a Deputy Secretary to issue such order, after the scientific research programme has been approved by him.

(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. 3CM:

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

(6) The National Laboratory, University, Indian Institute of Technology or specified person shall issue a receipt of payment for carrying out an approved programme of scientific research under sub-section (2AA) in Form No. 3CI.

(7) Approval of a programme under sub-section (2AA) shall be subject to the following conditions :—

- (a) The programme 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 submit its report 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 the sponsor in Form No. 3CJ within a period of three months from the date of granting approval to the programme :

Provided that the officer authorised by the prescribed authority, being the Principal Scientific Adviser to the Government of



- India, under sub-rule (5) shall submit such report 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 the sponsor];
- (c) The sponsor and the National Laboratory, University, Indian Institute of Technology or specified person, as the case may be, shall submit 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 the sponsor a yearly statement showing progress of implementation of the approved programme and actuals of expenditure incurred thereon;
- (d) The prescribed authority shall not extend the duration of the programme or approve any escalation in costs;
- (e) The National Laboratory, University, Indian Institute of Technology or specified person, as the case may be, shall maintain a separate account for each approved programme; which shall be audited annually and a copy thereof shall be furnished 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 the sponsor by 31st day of October of each succeeding year;
- (f) Assets acquired by the prescribed authority for executing the approved programme shall not be disposed of without the approval of 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 the sponsor;
- (g) On completion of the approved programme, a completion certificate along with a copy of the report on the research activities carried out and salient features of the result obtained and its further application for commercial



exploitation shall be jointly submitted by the sponsor and the National Laboratory, University, Indian Institute of Technology or specified person 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 the sponsor ;

- (h) A copy of the audited statement of accounts for the approved programme shall be submitted by the Head of the National Laboratory, University or Indian Institute of Technology or the Principal Scientific Adviser to the Government of India 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 the sponsor within six months of the completion of the programme.

(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



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(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 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.



(8). For the purposes of this rule, the Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data, and shall also be responsible for the day-to-day administration in relation to furnishing the information in the manner so specified.”

14. As is evident from Rule 6(4) of the Rules, an applicant seeking to avail the benefit of weighted deductions is obliged to furnish an application in Form 3CK. Form 3CK invites the DSIR to enter into and engage in a collaborative arrangement with the R & D facility that is created by an assessee. The agreement is thus one of the pre-conditions for an assessee who claims weighted deductions in terms of Section 35 (2AB). The application so made by an assessee is thereafter scrutinized and examined by the DSIR and if it be satisfied that all conditions specified in Rule 6 are satisfied, it proceeds to accord approval to the facility in terms comprised in Form 3CM. Form 3CM is extracted hereinbelow: -

“FORM NO. 3CM

Order of approval of in-house Research and Development facility under section 35(2AB) of the Income-tax Act, 1961

1. Name, Address and PAN of the company.
2. Nature of the business of the company - Manufacture/production of article or thing.
3. Objectives of the scientific research to be conducted by in-house Research and Development facility.
4. Address at which such Research & Development facility is located.
5. Ref. No. and date of the application.
6. Registration number, date and validity of recognition granted by Department of Scientific and Industrial Research to the in-house Research and Development centre of the company



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The above Research & Development facility is approved for the purpose of section 35(2AB) subject to the conditions underlined therein.

Place .

Date .

(Signature)

(Name)

Secretary, DSIR

(Seal)

File No.

Order No.

Copy to :

(1) Company

(2) 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 the company”

15. The approval under Rule 6(5A) is thus of the R & D facility that has been created and established by the assessee. The approval of expenditure incurred and which would qualify for weighted deduction under Section 35(2AB) of the Act is regulated by Rule 6(7A) of the Rules. The prescribed authority is called upon to draw up a report in Form 3CL certifying the qualifying expenditure for the purposes of Section 35(2AB) of the Act. The said form is extracted hereunder: -

“ FORM NO. 3CL

[See rule 6]

Report to be submitted by the prescribed authority to the Income-tax Authority specified under section 35(2AB) of the Income-tax Act, 1961

1. Name and address of the registered office of the company including Telex/Fax/Phone numbers
2. Permanent Account Number (PAN) of the company.



3. Name and designation of the Principal Officer of the company
4. Nature of business/activity of the company

(1) Business of biotechnology

(II) Manufacture/production of any eligible article or thing under sub-section (2AB) of section 35 of the Act. (Please specify)

Part A

1. Annual production of the eligible products of the company during the past three years.
2. Proposed objectives of scientific research contemplated by the company.
3. Whether the nature of the business is related to the proposed objectives of the scientific research contemplated by the company.
4. Details of the nature of existing in-house Research and Development facilities specifying whether the in-house Research and Development facility is adequate for carrying out scientific research.
5. Registration number, date and validity of recognition granted by Department of Scientific and Industrial Research to the in-house Research and Development centre of the company.
6. Whether agreement for co-operation and Research and Development facility and for audit of the accounts maintained for that facility entered into.

Part B

1. Assessment year
2. Previous year
3. Location of the research and development facility
4. Annual production of the eligible products during the year
5. Details of expenditure: (in Rs. Lakhs)
 - A. (i) Land
(ii) Buildings
 - B. Capital expenditure:
 - (i) Equipment
 - (ii) Others
 - (iii) Total



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C. Revenue expenditure:

(i) Expenditure directly related to research and development

(a).....

(b).....

(c).....

(ii) Total

D. Total expenditure on the approved research and development centre (excluding land and building)

E. Details of assets disposed of/transferred

I certify that the above details are true and correct to the best of my knowledge and belief.

Signature of Secretary, Department of Scientific and Industrial Research

Date:.....

Place:.....”

16. The report which the prescribed authority draws in Form 3CL is to be electronically transmitted to the Income Tax authorities and thus constitutes the basis for the computation of weighted deductions under Section 35(2AB).

17. The respondent, while recording approval, appears to have principally borne in mind certain provisions finding place in the Guidelines the relevant parts whereof are extracted hereinbelow: -

“5. POLICY FOR APPROVAL IN FORM 3CM u/s 35(2AB) of IT Act, 1961

- i. Approval to the in-house R&D centers having valid recognition by DSIR are considered from 1st April of the year in which application is made in Form 3CK.
- ii. Approval is considered co-terminus with DSIR recognition.
- iii. For companies not having DSIR recognized in-house R&D centre, approval is considered from the date of recognition.



- 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 the recognition is granted provided the company submits Form 3CK before end of the financial year, to enable these companies to claim weighted tax deduction on eligible R&D expenditure of capital and revenue nature on the new centers.
- v. In case of firms, not having DSIR recognized R&D centre, but which have applied for approval u/s 35 (2AB) of an in-house R&D center on which they had made capital investments on R&D of more than Rs. one crore, excluding expenditure on land and building, in the financial year preceding the year in which the firm applied to the prescribed authority for the approval – capital expenditure on the R&D facility for which approval has been requested (excluding capital expenditure on land and building) incurred from the commencement of said preceding year, provided the company claims such capital expenditure in their I.T. return for concerned assessment year and the firm/R&D centre fulfils other conditions of approval, and provided the centre was subsequently recognized by DSIR.
- vi. In case of firms, having R&D centres already recognized by DSIR and who have applied for approval of an in-house R&D centre u/s 35 (2AB) and who have made capital investment on R&D of more than Rs. one crore, excluding capital expenditure on land and buildings, on such centre in the financial year preceding the year in which the firm applied to prescribed authority for the approval – such capital expenditure incurred in the said preceding year provided the company claims such capital expenditure in their I.T. returns for concerned assessment year and fulfils other conditions of approval & *eligibility for weighted deductions*.
- vii. ***For claiming benefit on capital expenditure as mentioned in para v and vi above, Companies should:***
- ***Submit the request for claim of such expenditure in the covering letter at the time of application in Form 3CK for approval u/s 35(2AB) of IT Act, 1961.***
 - ***Provide complete break up & details of capital equipment investment on R&D of more than Rs one Crore excluding expenditure on land and building, in the financial year preceding the year in which the***



firm applied to the prescribed authority for the approval.”

18. According to the respondent, it is only such expenditure which is borne by an assessee after its R & D facility has been approved by the DSIR which would qualify for deductions under Section 35(2AB) of the Act. It is perhaps in the light of the Guidelines as framed and which provide that approval would run co-terminus with the DSIR recognition which moves the respondent to contend that any expenditure incurred prior to the recognition of the R & D facility would not be eligible for consideration. We find ourselves unable to sustain that stand for the following reasons.

19. It must at the outset be observed that it would clearly be unwise and injudicious to answer the question which stands posited based solely upon certain internal Guidelines framed by the respondent. The question of weighted deduction would have to be fundamentally examined in the backdrop of the statutory scheme comprised in Section 35(2AB) read along side Rule 6. Proceeding ahead, we find that Section 35(2AB) while speaking of expenditure incurred does not link the same to the approval of the R & D facility by the DSIR. At least the provision does not prescribe that it is only such expenditure that may be incurred post the approval of the facility which would qualify for deductions. The weighed deduction which is allowed under Section 35(2AB) of the Act, it becomes pertinent to note, is to the expenditure incurred on scientific research and the creation of in-house R & D facilities. Rule 6(7A) then speaks of approval of expenditure being duly certified by the prescribed authority in Form 3CL. The approval to the facility is granted in terms comprised in Form 3CM. While the approval



of the indigenous R & D facility may be a precondition for further consideration of a claim for deductions under Section 35(2AB), the eligible expenditure incurred in the creation of such a facility clearly does not appear to be restricted to a date anterior to the grant of approval under Rule 6(5A). Approval under Rule 6(5A) and the certification of expenditure incurred in accordance with Rule 6(7A) are preparatory steps and a pre-condition for the ultimate consideration of deductions under Section 35(2AB).

20. Interpreting Section 35(2AB) and Rule 6 in the manner suggested by the respondent would also appear to be wholly illogical when one bears in mind the indubitable fact that Section 35(2AB) is aimed at according deductions in respect of expenditure already incurred. This is manifest from the provision using the expression “*expenditure so incurred.*” The provision thus contemplates R & D facilities which have been duly created and expenditure having been incurred before approval or recognition is conferred upon that facility by the prescribed authority. If the expenditure which could form the subject of Section 35(2AB) were to be restricted only to that which is incurred post the grant of approval to the center in terms of Rule 6(5A), there would hardly be any incentive for the creation of such a facility. The irrationality of that stand further comes to the fore when one bears in mind the fact that if the facility were not existing, there would be no occasion for the DSIR to either inspect the same or enter into a collaborative arrangement.

21. The position struck by the respondent is rendered even more untenable when we test it against the plain language employed in Rule



6(7A)(b)(ii) of the Rules and which speaks of quantification of “*expenditure incurred on*” in-house scientific research and sums expended in connection therewith “*during the previous year*”.

22. Both Section 35(2AB) and Rule 6 speak of expenditure which has already been incurred and therefore it would be wholly incorrect to read those provisions as envisaging benefits being extended only to such expenditure that may have been sustained after the facility has been accorded approval. We also find ourselves in agreement with the view expressed by the Gujarat High Court in *Claris Lifesciences Ltd.*, when it observed that the provisions of the Act and the Rules nowhere suggest that the date of approval of the R & D facility would constitute the cutoff date for the purposes of evaluating eligibility of weighted deductions or for expenses incurred only from that date onwards being liable to be taken into account for the purposes of Section 35(2AB) of the Act.

23. The conditions which have come to be incorporated by the respondent in the impugned communications and which are impugned before us are rendered unsustainable even when one evaluates them on the basis of the Guidelines framed by the DSIR and more particularly Clause 5(v) thereof. As is evident from a reading of Clause 5(v), it clearly contemplates a situation where an applicant may have moved an application for approval under the Rules in respect of an in-house facility which is yet to be accorded recognition by the DSIR. Clause 5(v) while dealing with such a scenario in unambiguous terms speaks of expenditure “*incurred from the commencement of said preceding year*”. It also employs the phrase “*capital investments on R & Din the*



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financial year preceding the year in which the firm applied to the prescribed authority for the approval”. It is thus manifest that a centre which is yet to be accorded recognition by the DSIR is not prevented from claiming benefits contemplated under Section 35(2AB) of the Act. The only condition which the Guidelines impose for the extension of Section 35(2AB) benefits in such a situation is of the center being “subsequently recognized by DSIR”.

24. Viewed thus both on the anvil of Rule 6(7A)(b)(ii) of the Rules as well as the Guidelines themselves, it is evident that the condition of only such expenditure as was incurred post 27 February 2019 being eligible for deduction under Section 35(2AB) is rendered wholly untenable.

25. We accordingly allow the instant writ petition and quash the communications dated 28 February 2020 and 11 May 2020 issued by the respondent. An amended Form 3CM shall consequently be issued to be read as effective from 01 April 2018.

26. We additionally call upon the respondent to frame Form 3CL afresh specifying the expenditure incurred by the petitioner in Financial Year 2018-19 commencing from 01 April 2018 for the purposes of computation of weighted deductions under Section 35(2AB). For the aforesaid purpose, the Form 3CLA as already submitted may be duly examined and verified.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.

FEBRUARY 13, 2024/neha