IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NOs. 3344 & 3345/MUM/2019
(A.Ys: 2009-10 & 2011-12)

Titan Laboratories Pvt. Ltd., 102, Titan House 60 Feet Road Opp. Bank of Maharashtra M.P. Vidya Marg, Ghatkopar (E) Mumbai-400077 PAN: AACCT0509Q	*v.*	DCIT – 10(2) 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

ITA NO. 3762/MUM/2019 (A.Y: 2011-12)

DCIT – 14(3)(1) Room No. 455, 4th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	*v.*	Titan Laboratories Pvt. Ltd., 102, Titan House 60 Feet Road Opp. Bank of Maharashtra M.P. Vidya Marg, Ghatkopar (E) Mumbai-400077 PAN: AACCT0509Q
(Appellant)		(Respondent)

Assessee by	:	Shri Nishit Gandhi
Department by	:	Shri Bharat Andhale
Date of Hearing	:	06.08.2021
Date of Pronouncement	:	01.10.2021

O R D E R

PER C.N. PRASAD (JM)

1. These three appeals are filed by the assessee [for the A.Y. 2009-10 and A.Y. 2011-12] and revenue for the A.Y. 2011-12 against different orders of the Ld.CIT(A) dated 28.02.2019.

2. First we take up the cross appeals of the assessee and revenue for the A.Y. 2011-12.

ITA.No. 3345/MUM/2019 (A.Y. 2011-12) (Assessee Appeal)

3. Assessee raised following grounds in its appeal: -

> *"The Learned CIT(A) erred on facts, in law and under the circumstances in confirming the disallowance of Rs.41,94,244/- being 10% of disputed purchase made during the year.*
>
> *The Learned CIT(A) further erred in rejecting its claim of deduction of allowance u/s 35(2AB) of IT Act, 1961 of Rs.4,98,89,829/-.*
>
> *The appellant respectfully submits that no disallowance is required to be made of Rs.41,94,244/- being purchase from disputed parties and also the expenses on Research & Development incurred as per Sec.35(2AB) of Rs.4,98,89,829/- should have been allowed."*

4. Ground No.1 of grounds of appeal is in respect of confirming the disallowance at 10% of disputed purchases made during the year. The Assessing Officer while completing the assessment noticed that the

assessee is one of the beneficiaries of various dealers who provide only accommodation entries without any delivery of goods based on the information received from Sales Tax Department, Mumbai. In view of the above information a survey u/s. 133A was carried out on 22.11.2012 in the business premises of the assessee. The assessee declared ₹.9.27 crores as additional income on account of non-genuine purchases for Financial Years 2008-09 to 2011-12. For the Financial Year 2010-11 relevant to the A.Y. 2011-12 the declaration made by the assessee in the form of non-genuine purchases was at ₹.4,19,42,439/-. The Assessing Officer noticed that assessee company has not filed any revised return of income for the relevant assessment year disclosing the additional income declared during the survey proceedings. In the course of the assessment proceedings assessee was required to establish the genuineness of the purchases thereon which have been made from above parties as mentioned in the Assessment Order. Assessee vide letter dated 07.03.2014 furnished party wise details of purchases from various parties along with copies of their ledger in the Books of Accounts and submitted that the purchases made by the assessee are genuine. Not convinced with the submissions of the assessee the Assessing Officer disallowed purchases of ₹.4,92,14,139/- as agreed by the assessee in the survey

proceedings as non-genuine. Before the Ld.CIT(A) the assessee furnished all the necessary information and documents regarding purchases made from various parties. On analyzing the information furnished by the assessee and after calling for remand report from the Assessing Officer the Ld.CIT(A) restricted the addition to 10% in view of the order of the Tribunal in assessee's own case in ITA.No. 3768/Mum/2014 dated 11.12.2018 for A.Y. 2010-11. Against this order both assessee as well as revenue are in appeal.

5. Ld. Counsel for the assessee submits that entire details evidencing the purchases, consumption, sales and the closing stock was furnished before the lower authorities and those have not been doubted or disputed by the Assessing Officer as well as Ld.CIT(A). Ld. Counsel for the assessee submits that the addition has been made by the Assessing Officer based on some statements of third parties whose cross examination was not granted despite request and even the copies of their statements were not furnished. Ld. Counsel for the assessee submits that assessee has retracted its statement given during survey proceedings and therefore such retracted statement could not be the basis of addition.

6. Ld. Counsel for the assessee further referring to the remand report of the Assessing Officer, submits that no adverse inference is drawn by the Assessing Officer except stating that the information was not provided in the course of assessment proceedings. The allegation of the Assessing Officer is that furnishing of information for the first time before the Ld.CIT(A) is an afterthought and no adverse findings have been given on the stock reconciliations on the purchases, consumptions and sales etc. Ld. Counsel for the assessee submits that even though Tribunal estimated the profit element in alleged non-genuine purchases at 10% on a flat basis this was done without the basis of any remand report from the Assessing Officer. Whereas during the assessment year under consideration the Ld.CIT(A) has called for the remand report wherein the assessee has furnished all the required details in respect of purchases, consumption, sales, stock reconciliation etc., and there were no adverse comments by the Assessing Officer and therefore estimation at flat rate of 10% is not justified rather it is excessive. Therefore, he pleads that the disallowance restricted by the Ld.CIT(A) at 10% be deleted. Without prejudice, Ld.Counsel for the assessee submits that, if at all, if any estimation is required to be made the disallowance may be restricted to 2% of the alleged non-genuine purchases.

7. On the other hand, Ld. DR strongly supported the order of the Assessing Officer.

8. We have heard the rival submissions, perused the orders of the authorities below and the documents on record. We have perused the remand report of the Assessing Officer furnished before the Ld.CIT(A). We find from the remand report that the Assessing Officer has not doubted records, details and evidences i.e. purchases made by the assessee, consumption, sales and stock reconciliations furnished by the assessee during the remand proceedings. No adverse inference was drawn by the Assessing Officer in the remand report against the claim of the assessee. We observe that even though the Tribunal in assessee's own case for A.Y. 2010-11 restricted the disallowance to 10%, however, the facts in the current assessment year are slightly different as there is a remand report called for by the Ld.CIT(A) in the year under consideration but whereas such remand report was not available for adjudication before the Ld.CIT(A) and also before the Tribunal for A.Y.2010-11. Taking the totality of the facts and circumstances into consideration we are of the view that ends of justice would be met if the disallowance is sustained at 6% of the alleged bogus purchases considering the fact that even the Assessing Officer in his remand report

did not dispute the records in respect of purchases, consumption, sales as well as the stock reconciliation etc., furnished by the assessee. Thus, we direct the Assessing Officer to restrict the disallowance to 6% of the alleged bogus purchases. Ground raised by the assessee on this issue is partly allowed.

9. The second grounds of appeal of the assessee is in respect of sustaining the action of the Assessing Officer in rejecting the claim for deduction u/s. 35(2AB) of the Act.

10. Briefly stated the facts are that, the Assessing Officer in the course of the assessment proceedings noticed that assessee company has incurred expenditure of ₹.4,98,89,829/- on research and development activities and has claimed additional deduction u/s. 35(2AB) of the Act. The Assessing Officer noticed that assessee company has two in-house Research and Development (R & D) centers situated at Ghatkopar and Mahad. He noticed that the breakup of the expenditure incurred into revenue and capital which has been considered by the assessee company for the purpose of claim of weighted deduction u/s. 35(2AB) is as under:-

Particulars	Mahad R & D centre (Rs.)	Ghatkopar R & D Centre (Rs.)	Total
Revenue Expenditure	1,98,036	90,71,576	92,69,612
Capital Expenditure (other than land and building)	3,25,33,399	80,86,817	4,06,20,216
Less: income earned by R & D centre			
Net Expenditure incurred	3,27,31,435	1,71,58,393	4,98,89,829

11. In order to verify the eligibility of the assessee company for claim of weighted deduction, the Assessing Officer required the assessee to provide various details. Assessee furnished various details in respect of its claim and the relevant details are as under: -

Date	Event	Remarks
08.02.2011	Filing of Application dated 28.01.2011 with the DSIR for recognition of the facilities	The assessee-appellant made the requisite application for the in-house R&D facilities owned by it
02.06.2011	Date of granting recognition to the R&D Facilities of the assessee-appellant at Ghatkopar and Mahad by DSIR	The approval from the DSIR does not mention a specific from when the facilities is approved but mentions that the facilities is approved till 31.03.2014
11.08.2011	Filing of Form 3CK with the DSIR	The assessee-appellant Filed form 3CK after receiving approval from DSIR since the said approval is required to be attached to Form 3CK seeking approval u/s 35(2AB)
13.10.2011	DSIR grants approval in Form 3CM	The approval form 3CM mentions that the facilities is approved from 02.06.2011 to 31.03.2012
10.07.2012	Application for extension of recognition u/s 35(2AB)	A detailed application alongwith Form 3CK, details of research, accounts from FY 2008-09 to 2010-11, income tax returns, etc. was furnished to the DSIR

12. However, Assessing Officer denied the claim of the assessee holding that assessee does not fulfill the basic conditions required for being eligible for claiming the deduction u/s. 35(2AB) observing as under: -

> *"5.8.9 To summarize, the conditions required to be fulfilled for being eligible to claim weighted deduction u/s 35(2AB) of the Act are as under: -*
>
> *i. Company incurs any expenditure on scientific research in an in-house R&D facility as approved by the prescribed authority. The words "as approved by the prescribed authority" have to be read here together with the "R & D facility". The condition of the approval of the R&D facility has to be satisfied with respect to the period for which weighted deduction is claimed. The subsequent approval effective for a period after March, 2011 would not make the unit eligible for claiming deduction u/s 35(2AB) in respect of the period when the said facility is not approved.*
>
> *ii. Valid recognition by the DSIR must be there for an R & D Centre.*
>
> *iii. The application for approval u/s 35(2AB) of the Act as prescribed in the form 3CK have to be filed.*
>
> *iv. The R&D facility should be approved in form 3CM for the period for which the expenditure incurred is claimed as weighted deduction*
>
> *Clause (3) of the section 35(2AB) that no deduction under clause (i) of section 35(2AB) of the Act shall be allowed to the assessee company unless it enters into an agreement for cooperation in such research and development facility and for the audit of the accounts maintained for that facility entered into with the prescribed authority in the prescribed Form No. 3CK.*
>
> *vi. Further, as required under the provisions of clause (4) of section 35(2AB) of the Act, report in relation to such approval of facility in form No. 3CL is required to be submitted to the Director General (Income Tax Exemptions) within 60 days of grant of general approval (given in the prescribed form no. 3CM) and this report specifies the satisfaction of various conditions required under section 35(2AB) for being eligible to claim weighted deduction. Unless such*

a report is obtained by the assessee company for the relevant period, no such weighted deduction is allowable to the assessee company u/s 35(2AB)(i) of the Act.

vii. The audited accounts for each year maintained separately for each approved centre shall be furnished to the Secretary, Department of Scientific & Industrial Research by 31st day of October of the succeeding year, along with information as per Annexure-IV of the Guidelines. The weighted deduction is allowable only on the expenditure as approved by the DSIR for the period for which deduction is claimed.

viii. The expenditure eligible should necessarily be reported in the audited financial statement prepared for the purpose of published annual report as well as for the purpose of Income Tax returns.

5.9 In the light of above essential conditions required to be fulfilled for being eligible to claim weighted deduction u/s 35(2AB) of the Act, it is seer, that the assesse company does not fulfill the basic conditions required for being eligible for claiming deduction u/s 35(2AB) of the Act as discussed under for each of the conditions mentioned above."

13. On appeal the Ld.CIT(A) sustained the action of the Assessing Officer in rejecting the claim for weighted deduction u/s. 35(2AB) as claimed by the assessee observing as under: -

"5.3 *Decision:*

I have considered the facts of the case and submissions made by the appellant. The appellant agitated against disallowance of Rs.4,98,89,829/- being expenditure incurred on research and development facilities u/s 35(2B) of the Act at its laboratories situated in Ghatkopar and Mahad. The AO has disputed the expenditure on various grounds and has analysed the reasons lucidly citing various judgements on the issue. The reasons recorded by the AO in the assessment order briefly are in house research facilities were recognised by DSIR on 02.06.2011 through the application for recognition was filed on 08.02.2011 and further approval in Form

3CM by DSIR vide order dated 13.10.2011 w.e.f.02.06.2011 to 31.03.2012 and hence for FY 2010-11 related to AY 2011-12 no deduction u/s 35(2AB) was allowable, no agreement for co-operation in research and for audit of accounts of the R&D facilities with the DSIR, non maintenance of books of accounts In respect of the R&D facilities and getting the same audited by a tant, failure of the appellant to obtain a report from DSIR in Form 3CL in respect of the activities undertaken in the said approved facilities and therefore the expenditure was not certified by DSIR. The AO has also made certain observations on the operationalisation of R&D facilities.

On the contrary, the appellant stated that the said section may be interpreted in a more liberal instead of a hyper technical way considering the purpose behind the provision is to provide impetus to R&D of new technologies, obtaining patent rights, copyrights and know-how etc and cited many judgements in support of its contention. During the course of appellate proceedings, the appellant submitted copy of application dated 28,01.2011 filed on 08.02,2011, Letter dated 02.06.2011 received from GOI, Ministry of Science & Technology, DSIR recognising in-house P&D units situated at Ghatkopar and Raigad., Form 3CM, Financial statements etc.

The appellant has stated that the AO has not doubted the genuineness of the expenditure and the date of approval of the facilities is irrelevant for the purpose of allowing deduction u/s 35(2AB) of the Act. I am not in agreement with the submissions of the assessee as it has not satisfied the conditions of Sec 35(2AB) during the year under consideration. Although it has made an application during the year, DSIR has clearly mentioned the effective date of the approval date in the certificate. The appellant company has only applied in form 3CK (prescribed form of application for approval u/s 35(2AB) of the Act on 11.08.2011) and the application dated 28.01.2011 is only the application for seeking recognition by DSIR, which is not the same as the application in mandatory form 3CK which was made only on 11,08.2011, Therefore, the appellant's submission that it has completed all the requirements and filed the necessary application for approval on 08.022011 is not acceptable as the form 3CK was filed only on 11.08.2011. The condition of the approval has to be satisfied with respect to the period for which weighted deduction is claimed. The subsequent approval effect from period after March 2011 would not make the unit eligible for claiming deduction in respect of the period when the said facility is not

approved. The effective date of approval of the facility is the cut-off point for the purpose of claiming deduction u/s 35(2AB) of the Act.

It is also essential to note that as per clause (3) of Sec 35(2AB) of the Act, no deduction under clause (1) of Sec 35(2AB) of the Act shall be-allowed to the assessee company unless it enters into an agreement for cooperation in such research and development facility and for the audit of the accounts maintained for that facility entered into with the prescribed authority in the prescribed form No 3CK. The appellant company has not produced any documents for compliance of this condition. The appellant has also failed to produce separate books of accounts and getting the same audited by a CA as brought out by the AO in the assessment order. In view of the aforesaid discussions made, I am of the considered opinion that the AO had a clear finding of allowability of deduction u/s 35(2AB) to the appellant company and the appellant has not complied with the provisions of Sec 35(2AB) of the Act. The referred judgements by the appellant has been distinguished in the assessment order. Thus, disallowance of Rs 4,98,89,829/- made by the AO being weighted deduction u/s 35(2AB) of the Act is confirmed. Therefore, this ground of appeal is dismissed."

14. Ld. Counsel for the assessee submitted as under: -

"As regards the present issue is concerned, the Appellant submits that first of all, all the documents evidencing the claim of the Appellant (the Assessee) were furnished before the Ld. AO during the assessment proceedings as well the Ld. CIT (A) during the appellate proceedings, which has also been enlisted at pages 23, 24 of the order of the Ld. CIT(A). All the details pertaining to the claim are furnished which evidence that the research facility of the Appellant is approved by the Department of Scientific and Industrial Research ["DSIR"] as well as under the Act and the only issue is regarding the legality of claim of deduction u/s 35(2AB) in case where application for approval is made before the close of the previous year but the approval is granted after the close of the previous year i.e. in the subsequent year. The Ld. CIT (A) has denied the deduction on the following reasons mentioned at Pages 3 7 and 38 of his order:

a) The effective date of registration with the DSIR is 02.06.2011 which falls beyond the relevant previous year and hence

deduction cannot be granted for this previous year i.e. PY2010-11 i.e. AY2011-12.

b) *The mandatory form 3CK seeking approval under the Act was filed only on 11.08.2011 i.e. after the end of the relevant previous year*

c) *That the subsequent approval effective from the period after March, 2011 would not make the unit eligible for deduction.*

d) *That the Appellant has not produced any documents manifesting the compliance of condition pertaining to entering into an agreement for co-operation in such research and development facility.*

e) *That the condition regarding maintenance of separate books of account and getting the same audited by CA are not satisfied.*

f) *The judgements relied on by the Petitioner are distinguishable (without stating how).*

As could be seen, the Ld. CIT (A) has affirmed the order of the Ld. AO and sustained the disallowance simply relying on the order of the Ld. AO (albeit on fewer grounds than that done by the Ld. AO) without even remotely considering the submissions made by the Assessee.

2. It is humbly submitted that detailed submissions were made before the Ld. CIT(A) dealing with each and every aspect of the claim and each and every observation of the Ld. AO. The same have also been reproduced in the order of the Ld. CIT (A) [Ref. pgs. 23 to 36 of the CIT(A) order] and on which reliance is placed. However, for the sake of brevity the same are not reproduced herein. For the purpose of the present appeals, briefly the propositions raised are as follows:

i. A perusal of the scheme of the Act and especially Sections 35 (2AB), 35A and 35AB reveals in no uncertain terms, that the purpose behind these provisions is to provide impetus to research, development of new technologies, obtaining patent rights, copyrights and know-how. Hence it is imperative to give the said section a more liberal interpretation instead of a hypertechnical interpretation as given by the Ld. AO and the Ld. CIT(A) [Ref. pgs.24 & 25 of CIT(A)]

ii. The genuineness and the actual incurring of expenditure admittedly stands accepted by the A O [Ref. pg. 25 of CIT (A)]

iii. The only requirement for allowability of deduction u/s 35(2AB) is that the expenditure should be incurred in the research facility approved by the DSIR. The year of approval is irrelevant. Hence, once the facility is approved (by way of approval in Form 3CM) and the expenditure is incurred in such a facility, 200% of the said expenditure is eligible for deduction u/s 35(2AB). Undisputedly in this case the facility of the Assessee is approved by DSIR. [Ref. pgs.25 & 26 of CIT(A)]. Extensive reference to case law has been made which is not considered by the Ld. CIT(A) [PCIT v/s Strides Arcolab Ltd. -ITXA No. 1674 of 2016, Hon'ble Bombay High Court and other judgements, Ref.pgs. 26 to 28 of CIT(A)]. The issue in appeal is covered by these judgements. A short note giving brief description of judgements and the copy of the judgements is enclosed herewith.

iv. According to the CIT(A), since the assessee-appellant made an application in Form 3CK only on 11.08.2011, therefore it is not eligible for claim of deduction for AY 2011-12. However, as evident from the said Form 3CK itself and even as admitted by the AO, the recognition from DSIR is to be annexed to Form 3CK and without the said recognition the application would not be complete. As such, it was not possible for the Assessee to apply for approval of the facility and get the approval in Form 3CM until and unless the recognition was received from the DSIR. Admittedly the application for recognition was made on 08.02.2011. However, the recognition from DSIR was itself received on 02.06.2011 i.e. after the close of the financial year for no fault of the Assessee. As such, only after the receipt of the said recognition the Assessee could file the application in Form 3CK and in response to which the approval was granted to the facilities in Form 3CM. As such, the delay was not attributable to the Assessee at all. In fact, it has been held that even in such cases, the deduction u/s 35(2AB) is allowable to the Assessee since the date of approval relates back to the date of application which in the present case is 08.02.2011 [Ref. Proceedings. 28 to 30 of CIT(A)]. Even the case law (Banco Products Ltd. v/s DCIT - Tax Appeal No. 1057 of 2017, Hon'ble Gujarat High Court and other judgements) relied on this proposition has not been considered by

the Ld. CIT(A). The issue stands covered even by this case law (copy enclosed).

v. As regards the judgements relied on by the Assessee-Appellant, it needs to be stated that it has been invariably held by the judgements of Hon'ble High Courts some of which have also been approved by the Hon'ble Supreme Court, that the date of approval is irrelevant and the only requirement to claim deduction u/s 35(2AB) is that the expenditure is incurred in an approved facility. This condition has been admittedly fulfilled by the Appellant. The Ld. CIT(A) has not stated as to how these judgements relied on by the Appellant are not applicable to the facts of the present case. Hence, even on this count the deduction u/s 35(2AB) deserves to be allowed. [Also Ref.pgs.30 & 31 of CIT(A) dealing with the AO's observations on certain judgements]

vi. As far as the other reasons given by the CIT(A) for denying deduction u/s 35(2AB) are concerned viz., the assessee-appellant has not entered in any agreement for cooperation in research and for audit of accounts of the R&D facilities with the DSIR, it is worth noting that on a bare perusal of Form 3CK, it is evident that the agreement as stated by the lower authorities is contained in Part "B" of the said form. The said form, complete in all respects, has been filed with the DSIR. Therefore, an agreement for cooperation in research and for audit of accounts of the R&D facilities with the DSIR is already signed by the assessee-appellant and filed with the DSIR. It is only after the DSIR has considered the entire application in Form 3CK and after itself being completely satisfied, that an approval in Form 3CM were granted by the DSIR. As such admittedly, even these conditions are satisfied. This reasoning for denying deduction u/s 35(2AB) of the Act is therefore totally baseless and contrary to the fact on record. [Ref. pgs.31 & 32 of CIT(A)]

vii. The next basis of denying deduction u/s 35(2AB) of the Act is that the assessee-appellant has not fulfilled the condition of maintaining separate books of accounts in respect of Research facilities and getting the same audited by CA. However, this observation is patently incorrect since the at paragraph 5.9.3 on Page 25 of the Assessment order, the AO himself accepts that the assessee-appellant has submitted the copy of report of the CA in respect of the R&D expenditure incurred in the facilities. Further, the

AO has not pointed out any defect either in the expenditure incurred in the facilities and the accounts thereof or in the Audited Balance Sheet and Profit & Loss Account of the assessee-appellant for the relevant year. Further, the AO has himself admitted that he has perused the P&L account of Mahad Unit at para 5.9.6 and also at various places made references to separate accounts. As such, the observations of the AO / CIT(A) that no separate books are maintained for the R&D facilities, are patently incorrect and contrary to the facts on record. In any case, the entire details including the separate accounts were also furnished with the AO during the course of assessment alongwith letters dated 12.12.2013, 13.03.2014, etc. The books of accounts were actually produced before the AO during the course of assessment which have been admittedly verified by him. [Ref. proceedings. 32 & 33 of CIT(A)] "

15. Ld. DR vehemently supported the orders of the authorities below.

16. It was primarily contended by the Ld. Counsel for the assessee that the issue in appeal is already decided by numerous judgments of the Hon'ble Jurisdictional and other High Courts in favour of the Assessee. In this regard Ld. Counsel for the assessee also furnished copies of various judgements along with a note giving gist of the said judgements. The Ld. DR on the other hand relied on the orders of the lower authorities.

17. We have heard the rival submissions, perused the orders of the authorities below, the synopsis and judgements, we notice that the primary issue based on which the deduction has been denied by the lower authorities is that the expenditure has been incurred in previous year

i.e., FY 2010-11 (AY 2011-12) whereas the approval of the Research Facilities of the assessee is granted from 02.06.2011 i.e. after the close of the relevant previous year. This issue is already covered in favour of the assessee by numerous judgments. We first take up the judgement of the Jurisdictional High Court in the case of PCIT *v.* Strides Arcolab Ltd. in ITXA No. 1674 of 2016 Bombay High Court. In this case, admittedly, the research facilities were approved subsequently after the close of the relevant year. The question raised before the Hon'ble High Court was:

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in directing the AO to grant the benefit of deduction u/s 35(2AB) when it was evident from the approval letters that the approval for the R&D activities were given in the subsequent Assessment Years and not for the assessment year under consideration?"*

While dismissing the appeal of the Revenue it was observed by the High Court as follows: -

> *"2. Question no. (i) relates to the Revenue's objection to the assessee's claim of deduction under Section 35(2AB) of the Income Tax Act, 1961 ("the Act" for short) primarily on the ground that the approval for the research facilities established by the assessee was granted by the competent authority subsequently. We notice that several High Courts have held that such research and development activity once approved by the competent authority, the approval would relate back to the date of application. Reference in this respect can be made to the decision of the Division Bench of Gujarat High Court in the case ofCIT Vs. Claris Lifesciences Ltd. (2008) 174 Taxman 113 and the decision of the Delhi High Court in case of CIT New Delhi Vs. Sandan Vikas (India) Ltd. 335 ITR 117. We are informed that the decision of Delhi High Court in case of Sandan Vikas (India) Ltd.*

(Supra) was carried in appeal before the Supreme Court and the SLP came to be dismissed by an order dated 09th January, 2012. This question is therefore not entertained."

18. Similar issue came up before the Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd. *v.* UOI in IMP. (C) A/o. 5306 of 2015. In fact, in this case, the approval to the facilities was granted in 2015 and the claim for deduction was made pertaining to expenditure incurred since inception i.e. AY 2011-12. The facts as reproduced from the said judgement are as follows:

"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.

.....

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 338 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 ? 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 Facility1 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) Pa I am- 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 f 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 ? 395 Crores, which included a sum of ? 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 SUBMITION 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 ₹.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 ? 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."

Similar claims were made by the Petitioner, Maruti Suzuki for other years. After considering various judgements, the Hon'ble High Court allowing the Petitions held as follows: -

"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 if 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 cutoff 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.I DSIR is directed to issue afresh 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."

19. In the case of CIT *v.* Wheels India Ltd. [336 ITR 513] the following question was raised before the Hon'ble Madras High Court by the revenue:

"ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in ignoring the letter of the Department of Scientific and Industrial Research dated 11.8.2005 addressed to the assessee wherein it has been clearly mentioned that for the year 2004-05 the R and D expenditure incurred after 21.9.2004 to 31.3.2005 would be eligible for weighted deduction and the assessee was to segregate accounts accordingly?"

After considering the submissions from both sides, it was held as follows: -

"2. As far as the questions Nos. 1 and 2 are concerned, we do not find any scope to entertain this appeal, inasmuch as we find that the

order of the Tribunal in holding that once the Central Board of Direct Taxes issued a notification dated September 21, 2004, notifying automobiles including automobile components, as article or thing for the purpose of clause (1) of sub-clause (2AB) of section 35 of the Income-tax Act, 1961, such benefit provided under the said section should enure to assessee for the whole of the assessment year and cannot be restricted from the date of the notification, is sustainable.

3. When the Commissioner of Income-tax in exercise of powers under section 263 of the Act sought to revise the order of the assessing authority relied upon the certificate issued by the prescribed authority, namely DSIR, wherein it was mentioned that for the year 2004-05, the research and development expenditure incurred after September 21, 2004 to March 31, 2005 would be eligible for weighted deduction, the Tribunal while setting aside the order of the Commissioner of Income-tax relied upon the decision of the Gujarat High Court reported in CIT v. Claris Lifesciences Ltd.[2010] 326ITR 251.

4. In the said decision, the Division Bench of the Gujarat High Court noted the facts which are almost identical to the facts involved in the case on hand. The Division Bench of the Gujarat High Court has further noted that the DSIR in its approval letter dated February 27, 2001, by way of note mentioned that the facility approved for the purpose of section 35AB(2) was from February 27, 2001 till March 31, 2003. However, the assessee in the return claimed weighted deduction under the said provision at one and half times the expenses incurred on the entire expenditure on establishment of the facility. The claim was restricted by the assessing authority only with effect from February 27, 2001. On appeal, the Tribunal set aside the order of the assessing authority and allowed the claim for the whole of the year. Dealing with the said situation, the Division Bench of the Gujarat High Court made a specific observation, which reads as under (pages 254 and 255) :

> *"The Tribunal has also considered rule 6(5A) and Form 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 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."

5. We are in full agreement with the reasoning which weighed with the Division Bench of the Gujarat High Court while holding that de hors any specific dates specified in the certificate of the prescribed authority, namely DSIR, once the prescribed authority approved the existence of research and development facility and the expenditure incurred on such scientific research, the assessee would be entitled for the expenditure incurred for the whole of the assessment year and cannot be granted in a truncated manner.

6. In the light of the above decision of the Division Bench of the Gujarat High Court, which we fully agree with, we do not find any scope to entertain the appeal on the first two grounds. Hence, the appeal is dismissed as far as the first and second questions of law raised by the appellant."

20. In the case of CIT *v.* Claris Lifesciences Ltd [326 ITR 251] while deciding on the allowability of deduction u/s 35(2AB) of the Act the Hon'ble Gujarat High Court held as follows: -

"9. The provisions nowhere suggest or imply that the research and development facilities 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 facilities, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facilities 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 facilities. The Tribunal has also considered rule 6(5A) and Form No. 3CM and come to the that a plain and harmonious reading of the rule and Form clearly suggests that once the facilities is approved, the entire expenditure so incurred on development of

the research and development facilities 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 facilities by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facilities, the intention of the Legislature by making the above amendment is very clear that the entire expenditure incurred by the assessee on development of facilities, 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."

21. A similar view has been taken by the Hon'ble Delhi High Court in the case of CIT *v.* Sandan Vikas India Ltd., [335 ITR 117] which has been affirmed by the Hon'ble Supreme Court in SLP(C) No. 001523/2012 & SLP(C).CC No. 021706/2011.

22. Further even this Tribunal has consistently taken the same view as stated in above precedents. In the case of ACIT *v.* Meco Instruments P. Ltd. in ITA NO. 4246/Mum/2009 it was held as follows:

"A close reading of the section r.w. Rule 6 would reveal that nowhere any time has been prescribed within which the application is required to be filed by the assessee company. Further, nowhere, any condition has been prescribed regarding cut off date from which the approval could be made effective. Therefore, once the assessee company is

granted approval it will apply till it is revoked with reference to all the assessment years, which come within the ambit of that period. Therefore, mere mentioning of 1.4.2007 in the order dated 28.8.2008 was of no consequence and the approval granted in Form 3CM was also applicable for A.Y. 2005-06. - Therefore, impliedly, the application for the entire period, for which it was made, has to be deemed to have been granted. On the basis of above discussion, we are of the opinion that the assessee was entitled for weighted deduction u/s. 35(2AB). - at best it could be said that it was only a procedural defect and from the various decisions, noted in the arguments of Id Counsel for the assessee, it is clear that merely on the ground of technicalities of procedure, the benefit bestowed by legislature cannot be denied."

23. Similar view was taken in the case of Matrix Comsec P. Ltd. *v.* ACIT in ITA Nos.2446 & 2907/Ahd/2013.

24. In view of the above, merely because approval is received in the subsequent year, the deduction u/s 35(2AB) could not be denied to the assessee.

25. Further, the denial of deduction u/s. 35(2AB) of the Act on the ground that the application for approval in form 3CK was made after the close of the Financial Year is also unsustainable. The said issue is also decided in favour of the assessee by the judgment of the Hon'ble Gujarat High Court in the case of Banco Products I. Ltd. *v.* s DCIT in Tax Appeal No. 1057 of 2017. The facts in this case as taken from the said judgement are as follows: -

"2. The appellant assessee is a company registered under the Companies Act and is engaged in business of manufacturing of automotive gaskets, radiators and similar other automobile parts. For the assessment year 2008-2009, the assessee had filed return of income on 27.9.2008 declaring total income of ₹.20.23 crores (rounded off). One of the claims made by the assessee in such return was of deduction of ₹.1.26 crores (rounded off) under section 35(2AB) of the Income Tax Act. The Assessing Officer took the return in scrutiny and in his order dated 24.3.2010, under section 143(3) of the Act, disallowed the assessee's claim of deduction under section 35(2AB) of the Act.

3. Before the Assessing Officer, the assessee had pointed out that the assessee had set up Research and Development facilities by incurring expenditure. An application for recognition of such facility was filed before the Ministry on 22.12.2006. Such recognition was granted on 2.9.2007. In the meantime, the assessee had applied for approval of the facility on 26.6.2007 which was approved by the concerned authority on 22.10.2008. The assessee relied on decision of Division Bench of this Court in case of Commissioner of Income tax v. Claris Lifesciences Ltd. reported in (2010) 326 ITR 251 to contend that the expenditure incurred even before the grant of approval would be recongnised for deduction under section 35(2AB) of the Act.

4. The Assessing Officer however did not grant such deduction for the period prior to 1.4.2008 on the ground that approval was granted specifically for a period of two years from 1.4.2008 to 31.3.2010. His observations in this respect were as under:

> *"I have perused the above submission. However the same is not acceptable. The assessee has incurred capital expenditure (other than land and building) of ₹.88,73,918 and revenue expenditure of ₹.1,63,73,719 and claimed weighted deduction of 150% of such expenditures u/s.35(2AB). I have pursued the Form No.3CM dated 22.10.2008 giving approval u/s. 35(2AB) in which it is specifically mentioned that the above Research and Development facility is approved for the purpose of section 35(2AB) with effect from 1.04.2008 to 31.03.2010. In view of such specific mentioned of the date it is very clear that the approval is granted for a specific period and therefore the deduction u/s.35(2AB) is restricted for the period 1.04.2008 to 31.03.2010."*

5. The assessee carried the matter in appeal before the CIT(Appeals). CIT(Appeals) dismissed the assessee's appeal confirming the view of the Assessing Officer. Judgment in case of

Claris Lifesciences Ltd.(supra) was distinguished in the following manner:

> *"In the case of Claris Lifesciences Ltd. (2008) 174 Taxman 113 (Gujarat) relied upon by the appellant, Hon'ble Gujarat High Court decided the matter in favour of the assessee as per para 8 of the decision on the ground that the approval was granted during the previous year relevant to assessment year in question in that case. Based on this fact, the High Court had held that assessee was entitled to claim weighted deduction u/s.35(2AB) in respect of entire expenditure incurred during the previous year. In appellant's case, facts are different in as much as the approval was received in F.Y. 200809 i.e after F.Y. 200708 was already over and even the application seeking approval was made in F.Y. 200809. Decision in the case of Claris Lifesciences Ltd. is therefore distinguishable and not applicable to appellant's case."*

Against the said order of the CIT(A), the assessee carried the matter in further appeal before the Tribunal. The Tribunal disposed off the appeal remanding the issue back to the Assessing Officer for a fresh consideration. On such facts the Assessee filed appeal before the High Court raising the following question:

> *"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in restoring the matter back to the Assessing Officer for deciding the allowability of deduction under section 35(2AB) of the Income Tax Act, 1961?"*

The Hon'ble High Court after considering the submissions of both sides held as follows: -

> *"7. The record would thus show that the assessee claimed weighted deduction under section 35(2AB) of the Act on the expenditure incurred for setting up research and development facility. This was backed by the approval granted by the concerned authority with respect to such facility. The Revenue authorities i.e. the Assessing Officer and the CIT(Appeals) were of the opinion that such*

deduction cannot be granted for the period prior to the effective date of approval. The Tribunal however, thought that the facts are somewhat contradictory. It was not clear when the application for approval was made and when actually approval was granted. The Tribunal therefore, remanded the proceedings for fresh consideration by the Assessing Officer.

8. The assessee has challenged this decision of the Tribunal on the basis of two judgments. One of this Court in case of Claris Lifesciences Ltd.(supra) already referred earlier and other of Delhi High Court in case of Maruti Suzuki India Ltd. v. Union of India reported in (2017) 397 ITR 728. Revenue however contends that both these judgments are distinguishable on facts. It was canvassed that in case of Claris Lifesciences Ltd.(supra), the expenditure, application and approval, all three occurred in the same year which is not the case in the present appeal. With respect to Maruti Suzuki India Ltd.(supra), it was canvassed that point of distinction according to the Revenue is that the application for approval was made in the same year during which the expenditure was incurred, may be order of approval was passed in the later year.

9. Section 35 of the Act pertains to expenditure on scientific research. Subsection (2AB) thereof grants weighted deduction to a company engaged in the business of biotechnology or manufacture or production of any article or thing, except those specified in the Eleventh Schedule, where it incurs any expenditure on scientific research (excluding the expenditure in the nature of cost of any land or building) on in house research and development facility as approved by the prescribed authority. At the relevant time, such deduction was one and one half times of the expenditure incurred. Said section contains various conditions subject to which such deduction will be granted. However, the main requirements are that the expenditure should be on scientific research on in house research and development facility as approved by the prescribed authority. As observed by this Court in case of Claris Lifesciences Ltd. (supra) and Delhi High Court in case of Maruti Suzuki India Ltd.(supra), this provision is aimed at encouraging in house research and development facilities for specified purposes. The legislature recognised the weighted deduction on such expenditure. The approval of such facility by the prescribed authority is a prime condition.

10. In case of Claris Lifesciences Ltd.(supra), this Court examined a situation where the Tribunal had allowed the assessee's claim of deduction under section 35(2AB) of the Act when such expenditure was incurred during the period prior to the date of approval by the prescribed authority. The Court noted with approval the conclusion of the Tribunal that the provision is made for giving a boost to research and development facilities in India and once the facility is approved,

entire expenditure so incurred in developing the same has to be allowed by way of deduction. It may be that as pointed out by the Revenue, all events i.e. incurring of expenditure, applying for approval and grant of approval happened in the same financial year. However, this was not the basis on which the Court has confirmed the decision of the Tribunal. There is nothing in the said judgment to suggest that had these events fallen in different years, the view of the Court would have been any different.

11. Judgment of this Court in case of Claris Lifesciences Ltd.(supra) was followed by Delhi High Court in case of Maruti Suzuki India Ltd.(supra) in order to grant the assessee's claim of deduction under section 35(2AB) of the Act. The Court held that for availing deduction under section 35(2AB) of the Act, what is relevant is not the date of recognition or the cutoff date mentioned in the certificate of the prescribed authority or even the date of approval, but the existence of recognition. The Court observed as under:

> *"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 knowhow."*

12. In view of above referred two decisions and by applying the same to the facts on hand, we have no hesitation in allowing the assessee's claim for deduction under section 35(2AB) of the Act. Shorn of any controversy, documents on record would suggest that at any rate, the assessee had applied for approval of research and development facility to the prescribed authority on 22.12.2006 and such approval was granted on 22.10.2008. The Assessing Officer and CIT(Appeals) restricted the assessee's claim for deduction in relation to such expenditure which was incurred prior to 1.4.2008 on the ground that the approval was granted for two years between 1.4.2008 to 31.3.2010. Combined reading of the judgment of this Court in case of Claris Lifesciences Ltd. (supra) and judgment of Delhi High Court in case of Maruti Suzuki India Ltd. (supra), would show that period during which the approval is granted is not relevant as long as such approval has been granted and expenditure has been incurred for the specified purpose. As noted, the provision is aimed at promoting development of inhouse research and development facility which necessarily would require substantial expenditure which immediately may not yield desired results or could be corelated to generation of additional revenue. By the very nature of things,

research and development is a hit and miss exercise. Much of the efforts, capital as well as human investment may go waste if the research is not successful. The legislature therefore, having granted special deduction for such expenditure, the same should be seen in light of the purpose for which it has been recognised. Research and development facility can be set up only after incurring substantial expenditure. The application for approval of such facility can be made only after setting up of the facility. Once an application is filed by the assessee to the prescribed authority, the assessee would have no control over when such application is processed and decided. Even if therefore, the application is complete in all respects and the assessee is otherwise eligible for grant of such approval, approval may take some time to come by. The claim for deduction cannot be defeated on the ground that such approval was granted in the year subsequent to the financial year in which the expenditure was incurred. No such indication was given by this Court in case of Claris Lifesciences Ltd. (supra), none appears from the judgment of the Delhi High Court in case of Maruti Suzuki India Ltd. (supra).

13. In the result, appeal is allowed. Question is answered in favour of the assessee. Decision of Assessing Officer to restrict the assessee's claim for deduction on the expenditure which was incurred prior to 1.4.2008 is set aside. The Assessing Officer shall recompute such deduction and give its effect to the assessee for the relevant assessment year."

26. As such, in view of the above judgments, we have no hesitation in holding that the deduction u/s.35(2AB) of the Act as claimed by the assessee is to be allowed. Hence, the deduction u/s 35(2AB) as claimed by the assessee of ₹.4,98,89,829/- is allowed. The order of the Assessing Officer as well as Ld.CIT(A) are reversed and the impugned order is set-aside. We order accordingly.

27. The third ground of appeal is a general ground and need no adjudication. Hence same is dismissed accordingly.

ITA.No.3762/MUM/2019 (A.Y. 2011-12) (Revenue Appeal)

28. Revenue has raised following grounds in its appeal: -

> *"1. "On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the disallowance @10% of bogus purchases on gross basis without appreciating the fact that during the course of survey proceedings the assessee had made declaration in the form of undisclosed income of Rs.4,19,42,439/- being bogus purchases."*
>
> *2. "On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the disallowance @10% of bogus purchases on gross basis without appreciating the fact that restricting these bogus claims goes against the principles of Sections 68 and 69C of the Income Tax Act.*
>
> *3. Whether on the facts of the instant case and in law, the CIT(A) erred in restricting the disallowance U/s.14A to the extent of exempt income earned by the Assessee Company, without having regard to the fact that the disallowance was rightly worked out in accordance with Rule 8D(2)(ii).″*

29. Ground Nos 1 and 2 are in respect of Ld.CIT(A) restricting the disallowance @10% of bogus purchases. As we have restricted the disallowance of alleged bogus purchases to 6% while adjudicating the ground raised by the assessee in its appeal in ITA.No. 3345/Mum/2019, for the reasons given therein, we reject the ground of appeal raised by the revenue. We order accordingly.

30. In so far as Ground No. 3 of grounds of appeal is concerned i.e., in respect of disallowance u/s. 14A r.w. Rule 8D(2)(ii) of I.T. Rules the Ld.CIT(A) deleted the disallowance of ₹.39,354/- observing as under:

> ***"6.2*** *Decision*
>
> *I have considered the facts of the case material available on record. The appellant contested against disallowance of Rs 39,3547- u/s 14A of the Act. Though the appellant raised the ground, it has not made any submissions in support of its contention during the course of appellate proceedings. Therefore, the issue is decided in accordance with facts of the case and judgements available on the issue. It is seen from the financial statements that the appellant has sufficient own funds (share capital and reserve and surplus) to make the investments on equities. Therefore, in view of decision of the jurisdictional High Court in the cases of Reliance Utilities and Power Ltd. (313 ITR 340) and HDFC Bank Ltd. in appeal no. 330 of 2012 vide order dated 23.07.2014, there is no case for disallowance of any interest under rule 8D(2)(ii). The disallowance calculated under rule 8D(2)(ii) is deleted.*
>
> *Similarly, disallowance under section 14A of the IT Act can not exceed the exempt income earned by the appellant. In view of the decision of the jurisdictional tribunal in the case of Tata Industries Ltd. Vs ITO [2016] 181 TTJ 600 (Mumbai - Trib.) and Future Corporate Resources Ltd. Vs DCIT [2017] 85 taxmann.com 190 (Mumbai - Trib.) and following other decisions, the AO is directed to verify and restrict the disallowance under section 14A of the IT Act to the exempt income earned by the appellant during the year. Therefore, this ground of appeal is allowed subject to verification."*

31. The findings of the Ld.CIT(A) have not been controverted by the revenue. It is the finding of the Ld.CIT(A) that the financial statements of the assessee shows that it had sufficient own funds to make the investments on equities. The Ld.CIT(A) following the decision of the

Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Ltd. [313 ITR 340] and HDFC Bank Ltd. in Appeal No. 330 of 2012 vide order dated 23.07.2014, held that there is no case for disallowance of any interest under Rule 8D(2)(ii) of I.T. Rules. We do not find any infirmity in the order of the Ld.CIT(A) in deleting the interest disallowance. The order of the Ld.CIT(A) is affirmed on this issue. The ground raised by the revenue is rejected.

32. Coming to assessee's appeal for the A.Y. 2009-10 in ITA.No. 3344/Mum/2019 the only issue is in respect of confirming the disallowance of non-genuine purchases of ₹.15,55,062/-.

33. Briefly stated the facts are that, assessee company which is engaged in the business of manufacturing and trading in drugs, pharmaceuticals and formulations, filed its return on 27.07.2009 declaring income at NIL after setoff of brought forward losses. The assessment was completed u/s. 143(3) of the Act on 29.12.2011 determining the income at NIL under normal provisions of Act after set off of brought forward losses. Later on the assessment was reopened u/s. 147 of the Act based on the information received from DGIT (Investigation), Mumbai that the assessee has obtained accommodation entries in the form of purchases

from various dealers without any delivery of goods. In the course of the re-assessment proceedings the assessee was required to prove the genuineness of the transactions made from the four parties referred to in the Assessment Order where the assessee claimed to have made purchases of ₹.15,55,062/-. Assessee vide letter dated 25.02.2014 submitted copies of ledger of the parties with copies of invoices and claimed that the purchases were genuine. Subsequently, the assessee filed revised return of income on 18.01.2013 offering ₹.15,55,062/- as income. Subsequently, the assessment was completed by the Assessing Officer disallowing the purchases of ₹.15,55,062/- and computed the income under normal provisions at NIL after set off of brought forward losses. The Assessing Officer computed the book profits u/s. 115JB of the Act at ₹.84,73,270/-. Assessee carried out the matter before the Ld.CIT(A) and the Ld.CIT(A) after calling for the remand report sustained the disallowance observing that the assessee voluntarily offered additional income in the revised return of income based on the statements recorded in the survey proceedings u/s. 133A of the Act and therefore concluded that there is no infirmity in the Assessment Order.

34. Ld. Counsel for the assessee reiterated the submissions made before lower authorities.

35. On the other hand, Ld. DR placed reliance on the orders of the Authorities below.

36. We have heard the rival submissions, perused the orders of the authorities below. Ld.CIT(A) had considered the submissions of the assessee and taking note of the fact that the assessee himself in his revised return of income offered additional income based on the statements recorded in the survey and concluded that there is no infirmity in the order passed by the Assessing Officer observing as under: -

> *"3.3 Decision:*
>
> *I have considered the detailed submission made by the appellant and the case laws relied upon vide its letters dt.26.02.2016, 09.01.2019 & 22.02.2019 and the view of the AO found narrated in the Assessment Order & Remand Report of the AO dt.29:11.2018. In this case, the original assessment was completed by order of AO u/s 143(3) dt29.12.2011 accepting the returned income and thereafter based on the information received by the AO about the purchases from tainted parties made by the appellant from various parties, as listed above, the case was reopened u/s 147 of Income Tax Act, 1961. After issue of notice u/s 148 dt.05.12.2012, the appellant filed revised return and in this return it offered additional income of Rs.15,55,062/- on account of surrender made during the survey which included purchases of packing material of Rs.5,57,596/- and other expenses of Rs.9,97,468/-. This offer of additional income was retracted by the appellant.*
>
> *Later on during re-assessment proceedings before the AO, the appellant claimed that sum of Rs.15,55,062/- offered in the revised return was incorrectly offered and claimed by way of evidence vide letter dt.25.02.2014 that all the purchases are genuine. It was stated that further details were also under preparation which were to be filed before AO but before it can be filed, the AO completed the*

assessment on 04.03.2014 even though the assessment was getting time barred on 31.03.2014. The appellant, therefore, filed additional evidence before the CIT(A) in support of its claim moved the petition u/r 46A to admit such additional evidence. In the petition, the appellant clarified that all the evidence now tendered were all available and were in the process of filing but it could not be filed during the re-assessment proceedings. However, the AO suddenly closed the assessment and passed the order on 04.03.2014 even though there was sufficient time to pass the" order till 31.03.2014, During the remand proceedings before AO, further evidence was filed by letter dt.07.08.2018 in support of its claim that the sum of Rs. 15,55,062/- is actually incurred and that offering such amount as additional income in revised return was an error. After verifying the details filed during the remand proceedings and personally hearing the appellant's AR, the AO made a Remand Report dt.29.11.2018 in which inter-alia in Para 6.2 the AO has observed

Remand Report:

6.1Aggrieved by the assessment order under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, the assessee preferred an appeal to the CIT(A)-22 , Mumbai. During the appellate proceedings, the assessee filed additional evidences as per section 46A of the Income Tax Act, 1961 vide letter dated 26.02.2016.

6.2During the course of remand proceedings, the assessee was asked to produce the additional evidences vide letter dated 07.08.2018. The assesses through the authorized representative attended on 25.10.2018 filed the details. The assessee stated that the addition of Rs. 15,55,0627- includes purchase of packing materials of R.s 5,57,596/- and expense of Rs.9,97,468/- of repairs & maintenance expenses, stores & spares etc., and these are expenditure incurred in ordinary course of business. Top prove the genuineness of the purchases the assesse filed the following details:

i) Party - wise / item-wise purchases/expenses in the form of a chart,

ii) Copy of bills, GRN, PO, Transport Receipts etc. for alleged purchases/expenses.

iii) The Nature and use of the packing materials in the business,

iv) Confirmation of the parties from whom the above referred purchases were made.

7.1 The submission of the assessee has been verified and considered. However, the same is not acceptable. It is seen from the above facts that the during the survey proceedings the assessee had accepted that the purchases were not genuine. During the survey proceedings as well as the reassessment proceedings, the assessee did not submit any kind of quantitative details or any submission to prove that the transactions were genuine and for the purpose of business. Further the parties with whom the assessee entered onto the above referred transactions have been proved non-genuine. During the survey proceedings as well as the reassessment proceedings, the assessee did not submit any kind of quantitative details or any submission to prove that the transactions were genuine and for the purpose of business, and now, the contention of the assessee that they were genuine transaction is an afterthought, and hence, rejected."

On the above facts of case, it is evident that appellant voluntarily offered additional income of Rs. 15,55,062/- in the revised return of income. 'This offer of additional income was based on declaration made in the statement recorded during survey proceedings u/s 133A carried out on the appellant. Since the income is voluntarily offered, I hold that it has been correctly offered and there is no infirmity in the assessment order as the findings have been reiterated in the remand report correctly by the AO, therefore, the ground raised by the Appellant is dismissed."

37. As could be seen from the above order of the Ld.CIT(A) in fact a remand report was called for on the genuineness of the purchases from the Assessing Officer and during the remand proceedings the assessee furnished party wise, item wise purchases/expenses in the form of chart, copy of bill, Goods Received Note (GRN), Purchase orders, transport

receipts etc., to prove the genuineness of the purchases. Assessee also furnished details of packing materials used and importantly assessee filed confirmations from parties from whom the purchases were made. We observe from the remand report that the Assessing Officer has not found any adverse inference on the evidences furnished by the assessee in support of its claim that the purchases made are genuine. The only grievance of the Assessing Officer in the remand report is that the details were not furnished in the course of the assessment proceedings or re-assessment proceedings, therefore, it is an afterthought. Assessing Officer has simply gone by the statement of the assessee made during the survey proceedings ignoring the fact that the assessee retracted the said statement later on. Assessing Officer completely ignored the details furnished by the assessee in respect of the purchases made. The Ld.CIT(A) also simply relying on the remand report held that since the assessee has given a statement in the survey u/s. 133A of the Act voluntarily offering the purchases, the same are not genuine. We observe that even the Ld.CIT(A) ought to have gone into the evidences furnished before him in the absence of any finding by the Assessing Officer in his remand report, when assessee made a claim before him that the purchases made are genuine with supporting evidences. In the

circumstances, we are of the view that the entire purchases cannot be treated as non-genuine without finding fault with the evidences furnished by the assessee including the confirmations from the parties from whom the purchases were made.

38. Further, identical issue has been dealt with by us while dealing Ground No. 1 in grounds of appeal of the assessee for the A.Y. 2011-12 and for the reasons given therein we estimate the profit element from the alleged non-genuine purchases at 6% to meet the ends of justice. Thus, we direct the Assessing Officer to restrict the disallowance to 6% of the alleged non-genuine purchases and recompute the income accordingly. Ground raised by the assessee is partly allowed.

39. In the result, appeals of the assessee are partly allowed as indicated above and appeal of the Revenue is dismissed.

Order pronounced on 01.10.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	(C.N. PRASAD)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai / Dated 01/10/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum