IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH MUMBAI

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 2978/MUM/2025
Assessment Year: 2016-17

Assistant Commissioner of Income Tax-8(1)(1), Mumbai	Vs.	Reliance Life Sciences Pvt. Ltd. R-282, Dals Centre, T.T.C. Industrial Area, Thane Belapur Road, Rabale, Thane – 400701 Maharashtra (PAN : AABCR7594L)
(Appellant)		**(Respondent)**

Present for:

Assessee : Shri Nimesh Vora & Ms. Moksha Mehta, CAs

Revenue : Shri Asif Karmali, Sr. DR

Date of Hearing : 04.06.2025
Date of Pronouncement : 25.08.2025

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by Revenue is against the order of CIT (A)-57, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1073776074(1), dated 27.02.2025 passed against the assessment order by Assistant Commissioner of Income-tax Circle 8(1)(1), Mumbai, u/s. 143(3) r.w.s. 144C(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 22.01.2020 for Assessment Year 2016-17.

2. Grounds taken by the Revenue are reproduced as under:

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the TP adjustment of Rs. 5,74,65,926/- as interest charged on the loans advanced by the assessee to its various A.E's?

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the TP adjustment of Rs.5,74,65,926/- as interest charged on the loans advanced by the assessee to its various A.E's by rejecting the analysis carried out by the TPO using the Bloomberg Software ?

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the TP adjustment of Rs.5,74,65,926/-, as no third party would have waived off interest on the outstanding loans provided to the AE in uncontrolled circumstances?

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the TP adjustment of Rs.5,74,65,926/-, where the appellant benchmarking of the interest using 'Other method' without giving any cogent justification?

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the TP adjustment by holding that non charging of interest would cause base erosion to India?

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the fact that the AE got benefitted from the money by saving its interest cost whereas the assessee has been deprived from getting reasonable interest on the loans advanced to its AE, which is against the transfer pricing principles as in Section 92F(ii)?

7. Whether, on the facts and circumstances of the case and in light of the provisions of law, the learned Commissioner of Income Tax (Appeals) was correct in deleting the Transfer Pricing (TP) adjustment on the ground that the subsidiary of the Associated Enterprise (AE) is not performing, despite the legal position that the utilization of funds by the subsidiary does not absolve the borrowing AE from its liability for the service of the loan?

8. Whether, on the facts and circumstances of the case and in view of the provisions of law, the learned Commissioner of Income Tax (Appeals) was correct in deleting the Transfer Pricing adjustment when it is a settled legal position that the AE and its subsidiary are two distinct legal entities, and the loan given to the AE is a direct liability of the borrowing AE and is not contingent upon the performance of the subsidiary, thereby adjustment made by the TPO charging nominal interest is justified and need to be sustained.

9. Whether, on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in giving relief of weighted deduction u/s. 35(2AB) despite the fact that the DSIR, being the approved authority, had not approved the expenses incurred.

10. Whether, on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in deleting the disallowance made under section 35(2AB) of the Act, by relying upon the facts of the case and on identical issue for A.Y. 2011-12 to 2013-14 despite the fact that the revenue has not accepted the decision of the Honble ITAT for the said assessment years."

3. Revenue has taken 10 grounds of appeal broadly comprising of only two issues. Ground number 1 to 8 relate to one issue in respect of transfer pricing adjustment of Rs.5,74,65,926 towards interest on loans advanced by the assessee to its associated enterprise (AE). Ground No. 9 and 10 are in respect of the second issue relating to weighted deduction u/s. 35(2AB).

4. Brief facts of the case are that assessee is engaged in life sciences initiatives such as pharmaceuticals, bio pharmaceuticals, clinical research services, research and development activities and providing guidance for work in the area pertaining to these businesses. Assessee filed its return of income on 30.11.2015 reporting total loss at Rs.2,16,96,190/-. In the course of assessment proceedings, a reference was made u/s. 92CA(3) to the transfer pricing officer (TPO) to compute arm's length price (ALP) of international transactions undertaken by the assessee with its AEs. In the order passed by ld. TPO u/s. 92CA(3), an upward adjustment of Rs.5,74,65,926/- was made in respect of interest on loan advanced by the assessee to its AEs.

4.1. Assessee had advanced a sum of EUR 1,44,81,827 to its AE namely Reliance Life Sciences BV (RLSBV) in parts, on various dates during the period 01.04.2009 to 31.03.2013 for which a loan agreement

was entered into, dated 08.01.2010 with subsequent addendum to it vide agreement dated 15.05.2011. RLSBV is a subsidiary of assesse, whose main activity is to act as holding company for overseas investments of the life sciences business. RLSBV is Reliance Life Sciences BV based at Netherlands. Reliance Genemedics Limited (RGMX) is a company based in London, UK, which is engaged in development, manufacturing and marketing of biopharmaceuticals, biotechnology and other products. RLSBV owns more than 75 percent shares of RGMX.

4.2. Assessee advanced loan to RLSBV which in turn advanced the loan to RGMX for undertaking commercial manufacturing operations of EPO. The manufacturing operations did not progress as envisaged and RGMX suffered huge losses amounting to EUR 70 million as on 31.03.2014. In these circumstances, RGMX requested for waiver of interest on the said loan, effective from 01.04.2014. Similar request was made by RLSBV to the assesse, since loans were advanced back to back from assessee to RLSBV and from RLSBV to RGMX. Owing to poor financial health of the associated enterprise, an amendment was made to the agreement dated 08.01.2010 on 20.03.2014 for waiving of the interest effective from 01.04.2014. On account of this amendment to the agreement, assessee did not charge any interest on the outstanding balance of the loan advanced to RLSBV. A letter was issued for waiver of interest which is placed on record.

4.3. For the purpose of transfer pricing compliance and reporting requirements, assessee used 'Other Method' to benchmark the transaction and the ALP was determined at 'nil' considering that no income could be realized by the assessee from RLSBV or RGMX on account of their poor financial condition. To substantiate the

benchmarking at 'nil' in respect of charging of interest on the loan outstanding, assesse submitted certain factual position backed by documentary evidences placed on record. In this respect, assessee stated that loss of RGMX as on 30.09.2015 was EUR 86 million. Net worth of RGMX was completely eroded. Balance in equity was negative as on 30.09.2015 with EUR 15 million and as on 30.09.2016 with EUR 13 million, respectively. It also submitted that manufacturing facility was sold in September 2015 and its employees were made redundant since manufacturing was discontinued.

4.4. RGMX had surrendered the rented property in UK in the year 2014-15 so as to reduce long term commitments on account of operating lease. This surrender was executed without any charge on RGMX from the owner of the said property. RGMX also terminated secondary manufacturing agreements which led to litigation with the third parties. It also settled third party loans to the extent of only 10% of the total loan liability. It was also submitted that the third parties could not recover more than 10% of their total outstanding principal amounts and had to forego the balance close to 90% since RGMX was not in a position to repay its outstanding loans, due to financial constraints and continuous losses in business operations.

4.5. Assessee has placed on record the annual report and financial statements of RGMX for the period ended on 30.09.2015. Relevant contents from the annual report and financial statements of RGMX are extracted below which substantiate the above narration of the factual position.

> *"Background*
>
> *Reliance GeneMedix is a globally-focused pharmaceutical company, specialising in the development and marketing of high-quality, cost-effective treatments for some of the world's most serious diseases. Since February 2007, the company has been part of the Reliance Life Sciences Group of companies. The Reliance Life*

Sciences Group is working towards the development, manufacture and marketing of a portfolio of bio-similar recombinant therapeutic proteins for global markets.

Principal activities

The principal activities of the company were historically the development and production of pharmaceuticals including bio-similars, which are a generic version of innovative recombinant therapeutic proteins. In the period the company ceased its manufacturing operations and is now focused on marketing products on behalf of the parent and group. There are plans to expand the business in the future to include own sales and distribution network.

Financial review

The directors present their report on the affairs of the Company and the audited financial statements for the 18 month period ended 30 September 2015. The comparative period is for the year ended 31 March 2014 which is for 12 months

The headline figures from the Company's financial statements for the period are as follows:

	€'000	*€'000*
	30.09.2015 (18 Months)	*31.03.2014*
Revenue from continuing operations	*92*	
Operating loss	*(75)*	*(69)*
Loss from Discontinued Operation	*(15,028)*	*(4,060)*
Loss before tax	*(15,194)*	*(4,185)*
Shareholders deficit	*(14,898)*	*(3,190)*
Intangible assets	*1,650*	*14,483*

Revenue from continuing operations was €92,000 as this was the first period for which the company launched and sold group products in the European Union. The previous trade of manufacturing and selling pharmaceuticals has been discontinued, with the closure of the ireland manufacturing facility and impairment of intangible assets as result of discontinuation of EPO development program

Operating losses of € 75,000 (2014: € 69,000) for the period are in line with budget and indicative of planned expenditure. The company continues to exercise strict financial discipline and cost control in order to sustain its activities

4.6. Erosion of its equity capital as reported in its annual report is tabulated below:

Shareholders' equity			
Share capital	16	26,412	26,412
Share premium	16	41,601	41,601
Other reserves	18	3,281	(206)
Retained losses		(86,192)	(70,997)
Total equity attributable to equity holders of the parent		(14,898)	(3,190)

4.7. Further, RGMX made disclosures in the notes to financial statements forming part of its annual report. In respect of the aspect of going concern, it has reported the following.

"Going concern

The Company is part of the Reliance Life Sciences Group of companies. The Company was previously working towards the development, manufacture and marketing of a portfolio of bio-similar recombinant therapeutic proteins for global markets

In April 2015, the Company in its meeting of its Board of Directors decided to discontinue its manufacturing operations at its Ireland facility and downsize the team and explore sale of the facility. The Company sold the Ireland facility in September 2015.

Notes to the Financial Statements-Continued

The Company has switched focus to selling other Group products to the EU market. During the period, the Company acquired rights from its parent company to market pharmaceuticals products in UK and Europe. The Company has received market authorisation to sell its oncology product "Temozolomide" in United Kingdom (UK) and Germany.

During the period, the company has met all its cash outflow requirements through the sale of its EPO products to RLSPL, the disposal of Ireland facility and sales from Oncology products.

Considering the above, the directors, having assessed the financial budget of 2015-16 and business plan of trading Pharmaceuticals Oncology products for the next 3 years, have no reason to believe that a material uncertainty exists that may cast significant doubt about the ability of the company to continue its operations as envisaged in the budget The Company will also have the support of its parent company, as needed, and as such the directors are satisfied that the "Going Concern" basis of preparing the financial statements is appropriate."

4.8. Assessee also placed on record the amendment in terms of loan agreement dated 08.01.2010. The interest clause which got amended is extracted below:

> *"The Loan shall bear interest @ 6.75% per annum on the amount of loan outstanding at any time during its tenure till 31st March, 2014. There will be no interest w.e.f 1 April, 2014 For the five years beginning April 1, 2009, a moratorium on Interest payment is granted. During this period, Interest will accrue and accumulate from respective dates of disbursement. The Interest payment will be for an amount accumulated since April 1, 2009 until March 31, 2014 and will fall due for payment on September 30, 2015."*

4.9. Subsequent to this amendment, the annual report for the year 2016 of RGMX made appropriate disclosure in notes to the financial statements in note no. 13 relating to borrowings which is extracted below:

Borrowings

	30 Sep 2016 *€'000*	*30 Sep 2015* *€'000*
Current		
4% convertible loan note due 2008"	*145*	*1,687*
Equity component		*(437)*
Currency translation difference		*(54)*
Amortisation cost		*106*
	145	*1,302*

**Subsequent to year end, the Company has settled the loan note of 4% €1.7 million (denominated in sterling for the amount of £ 1,177,442) for €0.145 million (denominated in sterling for the amount of £ 0.125 million). The settlement was agreed at 30 September 2016 and paid in January 2017.*

The Equity Component of € 436,918 which was credited to Capital reserve, has been reversed post crystallising the liability. Refer to Note 15

	30 Sep 2016 *€'000*	*30 Sep 2015* *€'000*
Non-current		
7% unsecured loan"	*14,121*	*14,136*

14,121	*14,136*

On 8 January 2010, the Company entered into a 7% unsecured loan agreement with RLS BV, the Parent Company.

The above loan agreement was subject to a series of revisions based on Company's business plans, Increasing the loan amount and tenure. In the previous period the parent Company (i.e. RLS BV) waived all the interest payable on the loan from the date of inception. The interest payable to the Parent Company aggregating to € 3,487,000 in the previous period has been treated as capital contribution and credited to 'Capital Reserve' (Refer note 15). The Company anticipates that future interest will also be waived by the parent Company. As per current revision, the entire amount borrowed is repayable in three equal instalments on 31 March 2020, 2021 and 2022 therefore it is treated as Non-Current at 30 September 2016.

5. With all this material placed on record by the assessee, ld. TPO observed that assessee had failed to offer any valid justification for not charging any interest on loan outstanding to satisfy the arm's length principle. He thus, rejected the submissions made by the assessee. According to him, international transaction representing nil interest on outstanding loan to its AE is not at arm's length price within the meaning of section 92C(3)(a) r.w.r. 10B(1)(a). He thus, proceeded to determine arm's length interest by following CUP method. For this, he referred to the Bloomberg database to identify comparable loans. Based on the data obtained from Bloomberg, he found that the prevailing interest rates were as under:

For the Loan advanced in FY	*Rate (%)*
2009-2010	*5.76*
2010-2011	*5.68*
2011-2012	*5.07*
2012-2013	*2.87*

5.1. He thus worked out the adjustment which is tabulated below:

Year ended	*Loan given during the year (in Euro)*	*Rate of interest from Bloomberg database in %*	*Adj amt (in Euros)*
31-03-2010	*57,70,123*	*5.77*	*3,32,936,10*
31-03-2011	*44,32,392*	*5.68*	*2,51,759,87*
31-03-2012	*26,21,812*	*5.07*	*1,32,925.87*
31-03-2013	*16,57,500*	*2.87*	*47,570.25*
Total	*1,44,81,827*		*7,65,192.09*
*Avg Exchange Rate (as on 31.03.2016)**			*75.10*
Adjustment amount in INR			*5,74,65,926*

6. Assessee went in appeal before the ld. CIT(A) and reiterated its factual position as narrated above. It also furnished a document to demonstrate that RGMX was dissolved on 26.03.2019. Its name was struck off the register for which relevant documentary evidences are placed on record. Assessee strongly submitted before the ld. CIT(A) that ld. TPO has charged hypothetical/notional interest when there was no possibility of recovering either interest or principal due to the poor financial health of the AEs. Ld. TPO has proceeded to benchmark the interest on the premise that what assessee would have earned in advancing loan to unrelated third party with similar financial strength as that of the associated enterprise.

7. Assessee contented that ld. TPO while conducting the benchmarking exercise by adopting CUP method has only considered the criteria of loans taken in same currency, same financial year in which loan is given, loans pertaining to the country in which loan is given and unsecured loans and has not considered the 'financial strength' criteria at all. Thus, ld. TPO has not applied the correct filter on the aspect of financial strength while choosing the unrelated third parties. Assessee also strongly contended that the computation methodology adopted by ld. TPO ignoring the current financial profile of RGMX is not correct since he has computed the ALP after determining

interest rates as applicable for the year in which loans were granted, i.e., in financial year 2009-10, 2010-11, 2011-12 and 2012-13.

7.1. However, in these years when the loans were granted, the interest rate as charged by the assessee was accepted to be at ALP and no adverse inference was drawn. According to the assesse, the benchmarking analysis undertaken by ld. TPO is faulty as it failed to consider the financial strength of the independent parties. Assessee strongly argued that the loan given by it to its AE was non-performing asset and no adjustment could have been made for notional interest when there is no possibility of recovering either the interest or principal, more so in a given set of facts where RGMX had ultimately been dissolved. After thoroughly analysing the submissions made by the assessee, corroborated by documentary evidences, Ld. CIT(A) dealt with every aspect of the contentions made by the assessee to deal with the adjustment made by Ld. TPO. Ld. CIT(A) in the ultimate analysis agreed with the submissions made by the assessee and deleted the adjustment so made by Ld. TPO on account of notional interest on the loan advanced by assessee to its AE.

7.2. The detailed observations and findings arrived at by Ld. CIT(A) in this respect are reproduced for ready reference which also includes references and reliance placed on various judicial precedents dealing with the issue in hand before us.

> *"6.2.2 The appellant has pointed out that in the TP order, the TPO has stated that while benchmarking the transaction under Bloomberg database, the main issue is to decide the interest rate which the appellant would have earned in advancing loan of above amounts to unrelated third parties with similar financial strength as that of the subsidiary. It has been claimed by the appellant that the charging of interest in the instant financial year has been affected by the deteriorating financial health of the AE - RLS BV and RGMX and this was the reason for not charging of interest during the relevant financial year on loans advanced earlier. The appellant has pointed out that it had charged interest at ALP from its AE in*

the years in which such loan was advanced, but only after 31.03.2014, no interest has been charged due to deteriorating financial strength of its AE, and the appellant has submitted various documentary evidences in support of this claim, which shall be discussed in detail in the succeeding paragraphs. Thus, the appellant has claimed that this deteriorating financial health of its AE's has resulted in non-charging of interest in the instant assessment year and has alleged that the said fact has not been appropriately considered by the TPO while selecting suitable comparables by following "CUP" methodology, if he was not satisfied with its selection of "Other Method" as MAM and consequent determination of ALP of impugned transactions at "NIL" by the appellant. The appellant has pointed out that while conducting the search for appropriate comparables, the TPO has not applied any such filter to arrive at comparable companies with similar financial strength as that of the AE's RGMX/RLS BV. On perusal of the order of the TPO, it is noted that the on page 6 of its order, the TPO has stated that:-

" The main issue is to decide the interest rate at which the assessee would have earned in advancing loan of above amounts to unrelated third parties with the same financial strength as that of the subsidiary." (emphasis supplied) .

It is noted that while the TPO himself has stated that unrelated third parties with the same financial strength as that of the subsidiary needs to be identified, the criteria adopted by him for selection of appropriate comparables as mentioned in the succeeding paragraph in the TP Order, however, only considers the criteria of:- loans taken in same currency; same financial year in which loan is given; loans pertaining to the country in which loan is given and unsecured loans and does not consider the financial strength criteria at all. Thus, there is merit in the claim of the appellant that the TPO has not applied appropriate filter of choosing unrelated third parties with the same financial strength as that of the subsidiary, even though it was identified as the main issue by the TPO himself.

6.2.3 It is noted that since the adjustment carried out by the TPO pertains to the instant assessment year, the financial strength of the AE's in the relevant financial year is also an essential criteria influencing FAR profile of the appellant and the AE's w.r.t impugned transactions. However, the TPO has carried out the comparability analysis by totally ignoring the current financial profile of the AE and has computed ALP after determining interest rates as applicable for the year in which loans were granted, i.e. FYs.2009-10, 2010-11, 2011-12 and 2012-13. However, it is noted that in the year of grant of such loans, the interest rate as charged by the appellant was accepted to be at ALP / no adverse inference was drawn by the TPO. The appellant has referred to subsequent amendment made in its agreement with the AE dated 20/03/2014 as per which the interest was not charged from 01.04.2014. The TPO has not dealt with this amendment at all in his order, and the issue of poor financial health of the AE has not been discussed in the TP order. It is noted that vide its letter dated 01/04/2019 filed by the appellant in response to show-cause notice issued by the TPO, the appellant had referred to earlier submissions filed before the TPO and pointed out all the relevant facts alongwith the relevant balance-sheets of RGMX and RLS BV. Based on such documentary evidences, it was claimed that the losses of RGMX as on 30th September, 2015 was Euro 86 Million; net worth of RGMX was completely eroded; manufacturing facility of RGMX was sold in September 2015; surrender of rented property was done by RGMX in 2014-15; RGMX was involved in litigation with third party resulting from termination of secondary

manufacturing agreement and that RGMX had settled third party loan of 4% Euro 1.7 million for Euro 0.145 Million, i.e less than 10% of the loan amount. It is noted that the appellant had submitted before the TPO that due to these facts pointing towards poor financial strength of RGMX, RGMX was not in a position to repay even the principal amount due to third party as well as also to its related party (RLS BV) due to the financial constraints and due to continuous losses in business operations. The appellant had argued that even if interest was to be charged by it, it could not be recovered from RGMX and even a third party could only recover a part of the principal amount from RGMX and had to forego more than 90% of its total outstanding principal amount, and had referred to relevant notes in the annual accounts of the AE's to substantiate this claim. However, it is noted that while the TPO has quoted this submission of the appellant in his order, but he has summarily rejected these contentions by stating that no third party would have waived off interest on outstanding loans provided to the AE in uncontrolled circumstances and that no prudent businessman will provide interest-free funds to another party at its own liquidity cost. The TPO was of the opinion that since the appellant had kept the loan outstanding in its books of accounts, in such a scenario, waiving off the interest is not a prudent business practice, had it been with a third party. However, it is noted that the TPO has not justified these statements in detail through any kind of legal or factual details and has summarily proceeded to apply "CUP" after rejecting the "other Method" adopted by the appellant for benchmarking the impugned transactions. Further, the appellant has pointed out that the TPO has selected comparable companies engaged in financial services, media, supermarket, retail sector, etc., which cannot be valid comparable to the business of the AE which is engaged in investing in / manufacturing of life science products. Further, the appellant has claimed that the loan advanced by the appellant as per the agreement with the AE was for pursuing investment in life sciences sector, whereas the loan type of the comparable companies as selected by the TPO were that of term loan, revolving credit, bridge finance, delay in debtors, etc.

6.2.4 Thus, based on the above discussion, it is clear that the TPO has carried out the comparability analysis by ignoring / not properly dealing with the contentions of the appellant regarding financial health of the AE's and other issues raised by the appellant regarding applicability of "Other method" as MAM. Further, there is merit in the claim of the appellant that the TPO has not applied appropriate filter of choosing unrelated third parties with the same financial strength as that of the subsidiary, which was necessary to identify suitable comparables having similar FAR profile as that of the appellant/AE's.

6.2.5 With respect to the reasons for not charging interest from its AE, the appellant has submitted that RLS BV (also referred as 'AE') is a wholly owned subsidiary of the appellant and its main activity is to act as the holding company for overseas investments of the life sciences business. It owns more than 75% shares of Reliance Gene Medix Ltd. ('RGMX'), a UK and Ireland based globally focused bio pharmaceutical company. The appellant has claimed that it had advanced sum of Euro 1,44,81,827 to RLS BV, in parts, on various dates from 1 st April, 2009 to 31st March, 2013, pursuant to loan agreements dated 8 th January, 2010 and 15th May, 2011. As per the terms of the loan agreement, the AE were to utilize the funds borrowed for the purpose of investment requirements, and has enclosed a copy of the said loan agreement in this regard. The appellant has submitted that accordingly the loan advanced by it to RLS BV was in turn

advanced as loan to RGMX for undertaking commercial manufacturing operations of Erythropoietin ('EPO'). The appellant has submitted that the manufacturing operations, however, did not progress as envisaged and that RGMX suffered huge losses amounting to Euro 70 million as on 31st March, 2014. It has been claimed that the Net worth of RGMX, too, turned negative in FY.2013-14 and in this regard, the appellant has submitted the independent auditors report for the relevant financial year. It has been claimed that in these circumstances, RGMX requested for waiver of interest w.e.f. 1 st April, 2014. The appellant has claimed that the business of RLS BV mainly consisted of making investment in RGMX and, therefore, upon loss of interest income from RGMX, RLS BV, too, started suffering losses. Consequently, request for waiver of interest was also made by RLS BV to the Appellant. In this regard, the appellant has referred to the Profit and Loss Account of RLS BV for FYs.2015-16 and 2014-15. It has been claimed that considering the poor financial health of RGMX and consequent effect on RLS BV, it was decided by the appellant to accept the request of RLS BV and an amendment was made on 20th March, 2014 to the agreement dated 8 th January, 2010 and 15th May, 2011 such that no interest would be charged with effect from 1 st April, 2014. Based on the above reasons and by virtue of this amendment to its agreement, the appellant has not charged any interest on the outstanding balance of Euro 1,44,81,827 advanced to RLS BV. The relevant extract of the amendment to the agreement has also been submitted by the appellant in this regard. The appellant has claimed that subsequent events also substantiate these claims of the appellant. It has been claimed that during FY.2014-15, the business of RGMX deteriorated further and RGMX ceased the manufacture of EPO at its manufacturing facility. The appellant has claimed that the manufacturing facility of RGMX was sold on 30th September, 2015, and that this further demonstrates that RGMX incurred huge losses and did not have the financial capacity to repay the loan to RLS BV. The appellant has claimed that consequently, RLS BV, too, provided for impairment of investment in RGMX and had suffered huge losses during the relevant period and in this regard has submitted the audited balance sheet and P&L account of relevant period. It is noted that as on 31st March 2016, the reserves and surplus of RLS BV was a negative figure of Euro 41482711. The appellant has submitted that due to the poor financial health of its AE's, during the year under consideration, the assessee has not charged any interest on the outstanding balance of Euro 1,44,81,827 advanced to RLS BV. The appellant has further submitted during FY.2018-19, RGMX had been liquidated without repaying the aforesaid loan to RLS BV, and hence it has been claimed that the subsequent events further substantiates the claim of the appellant that there was no scope of recovery of interest on the subject loan. Thus, the appellant has justified the use of "Other Method" to benchmark the transaction and the ALP was determined to be NIL considering that no income could have been realized by the appellant from RLS BV or RGMX due to the poor financial condition of the AEs. The appellant has further justified the noncharging of interest from its AE during the relevant financial year by pointing out that even the interest charged in earlier years from its AE, RLS BV, could not be recovered and hence interest charged and accrued in earlier years but could not be recovered was written off in AY.2015-16 and the said claim was allowed as deduction on account of bad debt by the AO in AY.2015-16, and further upheld by Hon'ble ITAT vide ITAT Order No.ITA-534/Mum/2021 dated 05/10/2021 by quashing the order u/s.263 dated 22/03/2021.

6.2.6 On perusal of the various evidences and contentions of the appellant as described above, it is noted that these claims made by the appellant regarding financial distress of RGMX and consequent financial distress of RLS BV and suffering of huge losses by these AE's are based on the relevant documentary evidences. It is noted that the appellant has also pointed out (based on the audit report/annual report of RGMX and RLS BV for the relevant period as per above quoted submissions of the appellant) that an independent enterprise also could not recover its principal amount of loan from RGMX and could recover only around 10% of such loan advanced to it. Thus, it can be said that the appellant has been able to demonstrate through documentary evidences pertaining to the relevant period that it was not possible to recover interest from it AE's due to these reasons. Thus, it is noted that the appellant has been able to substantiate the claims regarding the poor financial health of its AE's through documentary evidences. However, it is noted that even though these evidences and claims were submitted before the TPO, the TPO has summarily rejected the said claims without any discussion etc. and has stated that no independent enterprise would give loans in such circumstances at its own liquidity cost or write-off interest. The TPO has ignored the fact that the loan was given earlier on interest, but later the interest has not been charged from its AE by the appellant due to the above facts and circumstances. The TPO has claimed that since the appellant has kept the loan as outstanding, and in such circumstances write-off of loan is not a prudent business practice. However, it is noted that the TPO has not justified this claim in any manner. It has been discussed above that the TPO has applied CUP without identifying similar comparables having similar FAR profiles and his methodology does not address the contentions raised by the appellant. Accordingly, the appellant has rightly claimed that the comparability analysis carried out by the TPO is erroneous.

6.2.7 Based on the above discussion, the claim of the appellant that the TPO has not brought on record any comparable uncontrolled transactions to demonstrate that a comparable entity in an uncontrolled transaction of borrowing would have paid interest in comparable circumstances is found correct. The claim of the appellant that the benchmarking analysis undertaken by the TPO is faulty, as it failed to consider the financial strength of the independent parties is also found correct based on the above discussion.

6.2.8 The appellant has claimed that it had selected "Other Method" for benchmarking its transactions, since no such transaction between independent parties would be found which can be comparable to facts of the case of the assessee. In this regard, the appellant has placed reliance on the Jurisdictional Tribunal decision in the case of The Bombay Dyeing & Mfg. Co. Limited vs. Dy. Commissioner of Income Tax (ITA No. 1716/Mum/2017). In the said case, due to poor financial health, AE was unable to remit technical know-how fees to assessee and pursuant to restructuring, the outstanding entitlements on account of technical know-how fees was converted to shareholder's deposit. TPO made addition of interest @ 8.39% in relation to non-interest-bearing shareholders deposit. The Tribunal accepted the argument of the appellant that when interest and principal amount itself is doubtful of recovery, the question of taxing hypothetical interest does not arise and in this regard referred to the decision of Hon'ble Supreme Court in the case of UCO Bank vs. CIT (1999) 237 ITR 889 (SC). The Tribunal deleted the addition of notional interest. The appellant has further placed reliance on the decision of the jurisdictional Hon'ble Mumbai Tribunal in

the case of Hilti Manufacturing India Pvt Ltd. vs. ACIT [2021] 1565/Mum/2017, dated 12th July 2021, wherein the assessee had advanced loan to its AE who had suffered heavy losses and ultimately went into liquidation and dissolved. Therefore, considering doubtful recovery of advances itself, the assessee did not charge any interest on the said loan to AE and did not benchmark this transaction. The TPO went on to make ALP adjustment of charging interest on the said loan. Hon'ble ITAT held that charging interest on such outstanding loans by the TPO is not a prudent practice. It is noted that the facts of the case of the appellant are very similar to that of the case which has been decided by Hon'ble jurisdictional ITAT. Relevant para of the said decision is reproduced here under:

> *"5. .....We are of the view that in such circumstances, the recovery of the amount due is doubtful and the TPO charging interest on such outstanding balances and advances cannot be treated as prudent practice. Therefore we considering the overall facts and the circumstances direct the TPO not to charge interest in respect of balance of advances and outstanding receivables of Peacock Diamond System Inc. USA and partly allow the grounds of appeal of the assessee."*

It is noted that in the instant case also, the appellant has been able to factually demonstrate that the recovery of amount due was doubtful. The same is apparent from the annual audited accounts of the AE's; the fact that the appellant had to also write off earlier interest which was charged from its AE in AY.2015-16; the AE RGMX sold its manufacturing activity and could not fully repay the outstanding loans of third party lenders also and later was dissolved; the net worth of AE RLS BV turning negative due to exposure to RGMX and other related factual claims made by the appellant as discussed above. Thus, it is clear that based on above decisions, since recovery of amount due was doubtful, the TPO was not correct in charging of such interest as law. Therefore, based on the above facts and circumstances of the case of the appellant, the argument of the appellant that the loan given to AE was non-performing asset and no adjustment for hypothetical/notional interest could be made where there is no possibility of recovering either the interest or principal, is found to be correct, based on, and also relying upon the above two decisions of the jurisdictional ITAT.

6.2.9 The appellant has claimed that it had selected "Other method" as MAM, as it was not practically possible to identify any suitable comparables. In this regard, the appellant has placed reliance on the decision of Hon'ble Jurisdictional Mumbai Tribunal in the case of Bennett Coleman & Co Ltd 129 Taxmann.com 397. In this case, since the assessee had done interest-free debt funding of fully owned overseas subsidiary company which was in the nature of SPV with a corresponding obligation to use the funds for overseas acquisition of Target Company abroad. The TPO made ALP adjustment on account of notional interest following CUP method. The ITAT held that such transaction between independent enterprises is not possible and even if it is hypothetically possible, arm's length interest on such funding would be 'Nil'.

> *"22. To sum up, there cannot be a transaction, between the independent enterprises, of interest-free debt funding of an overseas SPV by its sponsorer; if such a transaction between independent enterprises is at all hypothetically possible, the arm's length interest on such funding will be 'nil'; and, if there has to be an arm's length consideration under the*

> *CUP method, other than interest, for such funding, it has to be net effective gains- direct and indirect, attributable to the risks assumed by the sponsor of the SPV, to the SPV in question."*

The appellant has pointed out that it had entered into a loan agreement with RLS BV for the purpose of making investments and hence claimed that facts of its case are on similar footing. Further, the appellant has placed reliance on the decision of Hon'ble Chennai Tribunal in the case of Ucal Fuel Systems Ltd. (ITA No. 725/Mds/2015). On perusal of this decision, it is noted that the assessee had given advances to its wholly owned subsidiary (WOS) and no interest was charged as the WOS had suffered huge losses. The TPO made transfer pricing adjustment on account of notional interest on said advances applying CUP method. The Tribunal held that CUP method cannot be applied as no banker would have advanced sum to a company whose net worth is eroded and the risk would have been too much for such banker. In such circumstances, finding a comparable uncontrolled price for benchmarking was not practical or feasible. Accordingly, the Tribunal deleted the adjustment on account of interest. The relevant portion of this decision has been quoted below:-

> *'46. Thus, when CUP method is applied for benchmarking the international transaction, primary requisite is identification of price charged or paid for the property transferred or services provided in a comparable uncontrolled transaction. No doubt, the TPO had for the Exim loan considered Libor plus rate as the comparable uncontrolled price. However, the party to which loan was advanced by the assessee here was not only a subsidiary but also one whose capital stood completely eroded, and which was suffering continuous losses. No banker would have advanced any sums to such a company since the risk would have been too much. Thus the only source for such a subsidiary to raise any funds was its principal alone. It is an accepted position that the subsidiary company of the assessee to which the advances were made was sick. Thus, finding a comparable uncontrolled transaction, where a loan was given to an entity which was subsidiary to the tested party, and whose capital stood completely eroded due to loss was not practical or feasible. The simple reason is that no other person would have given any loan to such an entity, whatever might be the interest rate since the chances of recovery was negligible. In such a situation, when there could have been no reasonably identifiable comparable uncontrolled transaction, computation of comparable uncontrolled price by applying of Rule 10B(1), fell at the threshold. Section 92C(1) prescribes computation of ALP by comparable uncontrolled price method, resale price method, cost plus method, profit split method, transactional net margin method and any other method prescribed by the Board could have been applied. In our opinion, the question of benchmarking the transaction of the nature mentioned, applying any of the methodology prescribed in sec.92C (1) did not arise at all due to the particular facts and circumstances. According to us, fastening of an interest rate on the assessee when there was no comparable uncontrolled rate that could have been identifiable was incorrect. We, therefore, have no hesitation in deleting the addition made by the Assessing Officer/TPO in this regard. Ground Nos. 2 to 4 are allowed.'*

Based on the above decisions, the appellant has claimed that it had correctly applied "Other Method" to determine ALP of impugned transactions, since in its case also, finding a comparable uncontrolled transaction, where a loan was given to an entity which was subsidiary to the tested party, and whose capital stood completely eroded due to losses was not practical or feasible. The appellant has claimed that no comparable uncontrolled transaction was possible to be identified in similar facts and circumstances as that of the appellant. In view of the above facts and circumstances, the appellant has claimed that the adoption of "Other Method" as MAM and determination of NIL ALP by the appellant was in order. The appellant has also relied upon the decision of jurisdictional Hon'ble Bombay High Court in case of CIT vs. Neon Solutions Pvt. Ltd. [2016] 387 ITR 667, where it was held that even in mercantile system of accounting, an item would be regarded as accrued income only if there is certainty of receiving it and not when it has been waived and, therefore, it was held that non-recognition of income on the ground that the income had not really accrued as the realizability of the principal outstanding itself was doubtful, is legally correct under the mercantile system of accounting. (ITA No. 2251 of 2013 with 2360 of 2013, dtd. 05.04.2016) (AYs. 2007-08, 2009-10). It is noted that the principle laid down in these judgments is squarely applicable to the facts of the appellant.

6.2.10 Based on the above discussion, it is clear that in the given facts and circumstances of the case and in law, the action of the appellant in selecting "Other Method" as MAM and determining the ALP of impugned transactions as "NIL" is found to be justified.

6.2.11 Based on the above discussion, the upward Transfer Pricing adjustment of Rs.5,74,65,926/- as notional interest on interest free loan to Reliance Life Sciences BV ('RLS BV') is directed to be deleted. As a result, Grounds 2 to 6 of appeal are considered as Allowed."

7.3. Considering the above detailed observations and findings of Ld. CIT(A) and in the given set of facts and circumstances, we find no reason to interfere with the findings so arrived at by Ld. CIT (A). Accordingly, ground nos. 1 to 8 are dismissed.

8. On the second issue dealt by ground nos. 9 and 10 in respect of weighted deduction u/s. 35(2AB), fact of the matter is that assessee had claimed deduction of Rs.52,14,62,516/- being 200% of expenditure incurred. Ld. AO while completing the assessment had restricted the deduction by an amount of Rs.41,38,000/- since, according to him, the revenue expenditure was incurred but not approved by the competent

authority of Department of Industrial and Scientific Research (DSIR). Ld. AO worked out the disallowance which is detailed below.

Deduction u/s 35(2AB)	
R & D expenditure incurred as per Tax Audit report	*Rs. 26.07,31,258*
Less: Expenditure not approved by DSIR	*Rs. 41,38,000*
Deduction u/s 35(2AB) allowable @200%	*Rs. 25,65,93,258*
Deduction u/s 37(1) allowed	*Rs. 51,31,86,516*
Revenue Expenditure incurred but not approved by DSIR	*Rs. 41,38,000*

8.1. On this issue, submission of the assessee is that Act requires approval of only the R&D facility and not the expenditure in the relevant year under consideration. Rule 6(7A) was amended vide Income-tax (10th amendment) Rules, 2016 w.e.f. 01.07.2016 to enable the DSIR to approve the quantum of deduction as well. This amendment was applicable from AY 2017-18, as the amendment was introduced with effect from 01.07.2016. Assessee had claimed that under the amended provisions, beside maintaining separate accounts of R&D facility, copy of audited accounts have to be submitted to the prescribed authority. These amendments to Rule 6(7A) apply from AY 2017-18. In the present case, claim of the assessee relates to pre-amended provisions, where the facility has been approved by the prescribed authority, i.e., DSIR and that prior to the aforesaid amendment in 2016, no such procedure/methodology was prescribed and therefore, curtailing the deduction claimed by the assessee does not merit.

8.2. Further, it was submitted that in assessee's own case for the preceding years namely AY 2011-12 to AY 2013-14, Coordinate Bench of ITAT, Mumbai had accepted the contentions of the assessee and has

allowed the said claim in those years. The appeals in this respect for these years were filed in ITA No.4957 and 6434/Mum/2018 and CO.No.303/Mum/2018 and CO. No.242/Mum/2019, order dated 16.02.2021. The relevant portion of the order of Coordinate Bench on this issue wherein the claim of the assessee has been allowed are extracted below for ready reference. It may also be noted that ld. CIT(A) has taken cognizance of this judicial precedence in assessee's own case and after considering the facts and position of law has allowed the entire claim of the assessee and the disallowance made by the ld. AO by restricting it for an amount of Rs.41,38,000/- was deleted.

"4. Disallowance of weighted deduction u/s 35(2AB) due to short approval in Form 3CL.

11. Before us, Ld. AR brought to our notice para 6 of AO order and para 4.3 of Ld. CIT(A) order and submitted that if R & D facility is approved, disallowance cannot be made based on Form 3CL, DSIR was not required to approve quantum of expenditure prior to Assessment Year 2017-18. Only from A.Y. 2017-18, the section was amended to incorporate the approval of expenses. In this respect, he submitted that the similar issue has already been decided by the Coordinate Bench of ITAT in the case of Glenmark Pharmaceuticals Ltd. vrs. ACIT (2019) ITA No. 5651/Mum/2017 (Mum-Trib) on merits in favour of the assessee. He also relied on the following case law, which are reproduced below:-

i) ACIT vrs. Crompton Greaves Ltd. (2019) 111 taxmann.com 338 (Mum-ITAT)
ii) Cummins India Ltd. vrs. DCIT (2018) ITA No. 309/Pun/2014 (Pune ITAT)
iii) CIT vrs. Claris Lifescience Ltd. (2008) 174 taxmann.com 113 (Guj-HC).

He also relied on Rule 6 of IT Rules, 1962.

12. On the other hand, Ld. DR relied on the orders passed by revenue authorities and he submitted that section 35(2AB) clearly indicate that the expenses has to be approved by „DSIR".He brought to our notice Pg. 207 of the paper book and submitted that no doubt the R&D is approved but the expenses is not approved by the approving authority. Therefore, the benefit u/s 35(2AB) is not available to the assessee.

13. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT(Mumbai and Pune) and Hon"ble Gujarat High Court on merits, which are given below:-

i) Glenmark Pharmaceuticals Ltd. vrs. ACIT (2019)
ii) ACIT vrs. Crompton Greaves Ltd. (2019) 111 taxmann.com 338 (Mum-ITAT)
iii) Cummins India Ltd. vrs. DCIT (2018) ITA No. 309/Pun/2014 (Pune ITAT)
iv) CIT vrs. Claris Lifescience Ltd. (2008) 174 taxmann.com 113 (Guj-HC).

14. For the sake of clarity, the decision in the case of Cummins India Ltd (supra) is reproduced below:-

38. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against the claim of deduction under 35(2AB) of the Act i.e.

expenditure incurred on Research & Development activity. For computation of business income under section 35 of the Act, expenditure on scientific research is to be allowed on fulfillment of certain conditions which are enlisted in the said section. Under various subsections of section 35 of the Act, the conditions and the allowability of expenditure vary. Sub-section (1) to section 35 of the Act deals with expenditure on scientific research, not being in the nature of capital expenditure, is to be allowed to research association, university, college or other institution; for which an application in the prescribed form and manner is to be made to the Central Government for the purpose of grant of approval or continuation thereto. Before granting the approval, the prescribed authority has to satisfy itself about the genuineness of activities and make enquiries in this regard. Under sub-section (2B) to section 35 of the Act, a company engaged in the specified business as laid there on, if it incurs expenditure on scientific research or in-house Research & Development facility also needs to be approved by the prescribed authority, is entitled to deduction, provided the same is approved by the prescribed authority.

39. Now, coming to sub-section (2AA) to section 35 of the Act, it talks about granting of approval by the prescribed authority but the approval to the expenditure being incurred is missing under the said section. Similar is the position in sub-section (2A). Further in subsection (2AB), it is provided that facility has to be approved by the prescribed authority, then there shall be allowed deduction of expenditure incurred whether 100%, 150% or 200% as prescribed from time to time. Clause (2) to section 35 of the Act provides that no deduction shall be allowed in respect of expenditure mentioned in clause (1) under any provisions of the Act. Clause (3) further lays down that no company shall be entitled for deduction under clause (1) unless it enters into agreement with prescribed authority for co-operation in such R & D facility. The Finance Act, 2015 w.e.f. 01.04.2016 has substituted and provided that facility has to fulfill such condition with regard to maintenance of accounts and audit thereof and for audit of accounts maintained for that facility.

40. Under Rule 6 of Income Tax Rules, 1962 (in short „the Rules), the prescribed authority for expenditure on scientific research under various subclauses has been identified. As per Rule 6(1B) of the Rules for the purpose of sub-section 2AB of section 35 of the Act, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research i.e DSIR. Under sub-rule (4), application for obtaining approval under section 35(2AB) of the Act is to be made in form No.3CK. Under sub-rule (5A) of rule 6 of the Rules, the prescribed authority shall, if satisfied that the conditions provided in the rule and in sub- section (2AB) being fulfilled, pass an order in writing in form No.3CM. The proviso however lays down that reasonable opportunity of being heard is to be granted to the company before rejecting an application. So, the application has to be made under sub-rule (4) in form No.3CK and the prescribed authority has to pass an order in writing in form No.3CM. Sub-rule (7A) provides that the approval of expenditure under sub- section (2AB) of section 35 of the Act, shall be subject to the conditions that the facilities do not relate purely to market research, sales promotion, etc. Clause (b) to sub-rule (7A) at the relevant time provided that the prescribed authority shall submit its report in relation to the approval of in-house R & D facility in form No.3CL to the DG (Income-tax Exemption) within sixty days of its granting approval. Under clause (c), the company at the relevant time had to maintain separate accounts for each approved facility, which had to be audited annually. Clause (b) to sub-rule (7A) has been substituted by IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016, under which the prescribed authority has to furnish electronically its report (i) in relation to approval of inhouse R & D facility in part A of form No.3CL and (ii) quantifying the expenditure incurred on in-house R & D facility by the company during the previous year and eligible for weighted deduction under sub-section 2AB of section 35 of the Act in part B of form No.3CL. In other words the quantification of expenditure has been prescribed vide IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016. Prior to this amendment, no such power was with DSIR i.e. after approval of facility.

41. Under the amended provisions, beside maintaining separate accounts of R & D facility, copy of audited accounts have to be submitted to the prescribed authority. These amendments to rules 6 and 7a are w.e.f. 01.07.2016 i.e. under the amended rules, the prescribed authority as in part A give approval of the facility and in part B quantify the expenditure eligible for deduction under section 35(2AB) of the Act.

42. The issue which is raised before us relates to pre- amended provisions and question is where the facility has been approved by the prescribed authority, can the deduction be denied to the assessee under section 35(2AB) of the Act for non issue of form No.3CL by the said prescribed authority or the power is with the Assessing Officer to look into the nature of expenditure to be allowed as weighted deduction under section 35(2AB) of the Act. The first issue which arises is the recognition of facility by the prescribed authority as provided in section 35(2AB) of the Act.

43. The Hon''ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (2010) 326 ITR 251 (Guj) have held that weighted deduction is to be allowed under section 35(2AB) of the Act after the establishment of facility. However, section does not mention any cutoff date or particular date for eligibility to claim deduction. The Hon''ble High Court held as under:-

8. The Tribunal has considered the submissions made on behalf of the assessee and took the view that 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 R&D facility is to be approved from a particular date and, in other words, it is nowhere suggested that date of approval only will be 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 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 plain reading of 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 r. 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of Rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of R&D facility has to be allowed for weighted deduction as provided by s. 35(2AB). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up R&D 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, intention of the legislature by making 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 s. 35(2AB) of the Act by the assessee."

44. The Hon''ble High Court of Delhi in CIT Vs. Sandan Vikas (India) Ltd. (2011) 335 ITR 117 (Del) on similar issue of weighted deduction under section 35(2AB) of the Act

held that the condition precedent was the certificate from DSIR, but the date of certificate was not important, where the objective was to encourage research and development by the business enterprises in India. In the facts before the Hon''ble High Court of Delhi, the assessee had approached DSIR vide application dated 10.01.2015. The DSIR vide letter dated 23.02.2006 granted recognition to in-house research and development facility of assessee. Further, vide letter dated 18.09.2006, DSIR granted approval for the expenses incurred by the company on in-house research and development facility in the prescribed form No.3CM. The Assessing Officer in that case refused to accord the benefit of aforesaid provision on the ground that recognition and approval was given by DSIR in the next assessment year. The Tribunal allowed the claim of assessee relying on the decision of the Hon''ble High Court of Gujarat in CIT Vs. Claris Lifesciences Ltd. (supra). The Hon''ble High Court of Delhi taking note of the decision of the Hon''ble High Court of Gujarat observed that it has been held that cutoff date mentioned in the certificate issued by DSIR would be of no relevance where once the certificate was issued by DSIR, then that would be sufficient to hold that the assessee had fulfilled the conditions laid down in the aforesaid provisions.

45. The issue which is raised in the present appeal is that whether where the facility has been recognized and necessary certification is issued by the prescribed authority, the assessee can avail the deduction in respect of expenditure incurred on in-house R&D facility, for which the adjudicating authority is the Assessing Officer and whether the prescribed authority is to approve expenditure in form No.3CL from year to year. Looking into the provisions of rules, it stipulates the filing of audit report before the prescribed authority by the persons availing the deduction under section 35(2AB) of the Act but the provisions of the Act do not prescribe any methodology of approval to be granted by the prescribed authority vis-àvis expenditure from year to year. The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below.

46. The Courts have held that for deduction under section 35(2AB) of the Act, first step was the recognition of facility by the prescribed authority and entering an agreement between the facility and the prescribed authority. Once such an agreement has been executed, under which recognition has been given to the facility, then thereafter the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. Accordingly, we hold so. Thus, we reverse the order of Assessing Officer in curtailing the deduction claimed under section 35(2AB) of the Act by 6,75,000/-. Thus, grounds of appeal No.10.1, 10.2 and 10.3 are allowed.

15. Therefore, respectfully following the above decision of Coordinate Bench of ITAT, we are inclined to accept submission of Ld. AR. Accordingly, the ground raised in CO and appeal by the assessee is allowed."

8.3. From the above, it is noted that requirement for approval of DISR for weighted deduction u/s.35(2AB) is applicable from AY 2017-18 after the amendment in Rule 6(7A) effective from 01.07.2016 for approving the expenditure incurred for the purpose of deduction u/s.35(2AB). The

R&D facility of the assessee is approved by DSIR as required under the Act. Considering the facts on record and the decision in assessee's own case by the Coordinate Bench, there being no change in fact and position of law relevant to the year under consideration, we find no reason to interfere with the observations and findings arrived at by ld. CIT(A). Accordingly, ground Nos.9 and 10 raised by the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 25 August, 2025

Sd/-	Sd/-
(Beena Pillai)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 25 August, 2025

MP, Sr.P.S.

Copy to :

1 The Appellant
2 The Respondent
3 DR, ITAT, Mumbai
4 Guard File
5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai