IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1417/Ahd/2016
(Assessment Year : 2010-11)

Sun Pharmaceutical Industries Ltd., SPARC, Tandalja, Vadodara – 390 020.	Vs.	Pr. Commissioner of Income Tax, Central Circle – 2, 2nd Floor, Aaykar Bhavan Annex, Race Course Circle Baroda – 390 007.
[PAN No. AADCS 3124 K]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri S. N. Soparkar, A.R.
Respondent by :	Shri O. P. Sharma, CIT-D.R.
Date of Hearing	01/05/2019
Date of Pronouncement	17/05/2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 28.03.2016 passed by the Pr. Commissioner of Income Tax -2, Vadodara under section 263 of the Income Tax Act, 1961 (in short 'the Act') arising out of the order dated 28.03.2014 passed by the ACIT, Central Circle-1, Baroda under section 143(3) r.w.s. 92CA of the Act for the Assessment Year 2010-11.

2. **Ground No.1 and 2** are general in nature and hence no order needs to be passed.

3. **Ground No.3** relates to disallowance u/s 35(2AB) of Rs.12,99,26,499/-; deduction restricted to the amount contained in Form No.3CL.

4. The plea of the assessee before us is this that the Learned CIT disallowed deduction of such benefit on the allegation that the said expense was not approved by DSIR without appreciating the followings:

1. The provisions of the Income Tax Act, 1961 does not contain any specific provision for the allowance of expenditure u/s 35(2AB) to be restricted to the amount as certified by the prescribed authority i.e. DSIR in Form No.3CL;

2. The role of the DSIR is only to approve the R&D facility of the Assessee and that once the facility is approved the deduction u/s. 35(2AB) of the expenditure incurred towards R&D is to be allowed.

3. The DSIR had in respect of the R&D facilities of the Appellant has already issued Form 3CM in favour of the Appellant recognizing the research and development activity carried on by the Appellant;

4. The judicial precedents holding that once the facility is approved by DSIR in Form 3CM, the Assessee is eligible to claim weighted deduction u/s 35(2AB) irrespective of the amount of expenditure approved by the Authority in Form 3CL.

The learned CIT failed in considering the fact that the Assessing Officer was conversant with the facts of the case in course of the assessment proceedings and had consciously after his application of mind and also after

relying on Form 3CM submitted by the Assessee decided not to make any additions on account of revenue and capital R&D expenditure.

Without prejudice to the above**,** the CIT grossly erred in invoking revision proceedings, without appreciating that disallowance u/s 35(2AB) was already a subject matter of appeal and accordingly earning out revision proceedings was not within powers of CIT as per explanation (c) to Section 263(1).

Without prejudice to the above, the CIT ought to have allowed deduction of the expenditure incurred on research and development under the provisions of sec. 35(l)(i) and 35(l)(iv).

Without prejudice to the above, the amount of disallowance as worked out by the CIT is grossly incorrect and ought to be substantially reduced.

5. At the very outset of the hearing of the instant appeal, the Learned Sr. Counsel appearing for the assessee submitted that the issue is covered in assessee's own case by the order passed by the Co-ordinate Bench in ITA No.929/Ahd/2017 for A.Y. 2010-11; copy of the same was also handed over to us. However, the Learned DR failed to controvert the contention made by the Learned AR.

6. We have heard the respective parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench deciding the identical issue in favour of the assessee. The relevant portion thereof is as follows:

"29. The issue raised by the assessee in the ground no. 6 is that the Ld.CIT (A) erred in not allowing the weighted deduction under section 35(2AB) of the Act in respect of certain expenses.

30. The assessee during the year has incurred total research and development expenses amounting to Rs. 11,962.75 lacs. But the assessee claimed weighted deduction under section 35(2AB) of the Act in respect of the expenses amounting to Rs. 11,271.35 lacs only. As such the assessee omitted to claim the weighted deduction in respect of the expenses of Rs. 689.37 lacs inadvertently. Accordingly, the assessee claimed the weighted deduction in respect of such expenses under section 35(2AB) of the Act during the assessment proceedings by way of filing a letter dated 7th February 2014.

30.1. However, the AO disregarded the contention of the assessee by observing that it has not claimed the weighted deduction under section 35(2AB) of the Act in the books of accounts. Moreover, the assessee should have filed the revised return of income for claiming the weighted deduction under section 35(2AB) of the Act, but the assessee has not done so. Thus the AO disallowed the weighted deduction claimed by the assessee.

31. Aggrieved assessee preferred an appeal to the Ld.CIT (A).

31.6 In view of the above the ld. CIT-A rejected the claim of the assessee and confirmed the order of the AO.

32. Being aggrieved by the order of the Ld.CIT (A), both the assessee and Revenue are in appeal before us. The assessee is in appeal before us against the confirmation of the disallowance of weighted deduction whereas the Revenue is in appeal before us on the ground that the DSIR did not certify the impugned expenses.

32.1 The ground of appeal no. 10 raised by the Revenue stands as under:

> *"10. On the facts and in the circumstances of the case, learned CIT(A) erred in law and facts in directing to allow weighted deduction on the R&D expenses which was not certified by DSIR without appreciating that as per provisions of section 35(2AB), the assessee is eligible to for weighted deduction only in respect of the amount which is certified by the prescribe authority i.e. Secretary, Department of Scientific and Industrial research, government of India."*

32.2 The Ld. AR before us submitted that in the identical facts and circumstances this ITAT in the own case of the assessee in ITA No. 1666/AHD/2016 vide order dated 08-09-2017 has allowed the deduction under section 35(2AB) of the Act.

33. On the other hand, the Ld. DR vehemently supported the order of authorities below.

34. Both the parties relied on the order of the authorities below as favorable to them.

35. We have heard the rival contentions and perused the materials available on records. At the outset, we find that in the identical facts and circumstances in the own case of the assessee's (supra), the ITAT allowed the deduction u/s 35(2AB) of the Act. The relevant extract of the order is reproduced as under:

> *"41.After giving a thoughtful consideration, we find force in the contention of the ld. Senior Counsel. There is no dispute that all the factual details were available before the lower authorities. The claim made by the assessee was purely legal claim as it is eligible for weighted deduction as per the provisions of Section 35(2AB) of the Act. Merely because the same was not claimed in the return of income nor through a revised return of income, the same cannot be denied. The relevant portion of Section 35(2AB) reads as under:-*
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> *35[2AB] (1) where a company engaged in the business of [bio-technology or in [any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule]] incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of [a sum equal to [two] times of the expenditure] so incurred.*
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> *[Explanation.- For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority . A.Y. 2009-10 under any Central, State or Provincial Act and filing an application for a patent under the patents Act, 1970 (39 of 1970).]*
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> *42.A perusal of the aforementioned section clearly establishes that expenditure on scientific research is also eligible for weighted deduction. Considering the facts in totality in the light of the provision, we set aside the findings of the ld. CIT(A) and direct the A.O. to allow weighted deduction. Ground Nos. 9 & 10 are accordingly allowed."*

36. As the facts in the case on hand are identical to the facts of the case as discussed above, therefore respectfully following the same we set aside the order of ld. CIT-A. Accordingly, we direct the AO to Allow the weighted

deduction u/s 35(2AB) of the Act as claimed by the assessee. Hence the ground of appeal of the assessee is allowed. Now coming to the Revenue ground of appeal as discussed above.

37. The grievance of the Revenue in this ground of appeal is that the Ld.CIT (A) erred in directing the AO to allow the weighted deduction under section 35(2)AB of the Act in respect of the expenses which were not certified by DSIR.

37.1 Regarding this we note that the identical issue was also there in the own case of the assessee in ITA No. 1390/AHD/2016 pertaining to the AY 2009-10 which was decided vide order dated 22-12-2016 as held under:

> *"6. We have heard both the parties. Case file perused. There does not appear to be any dispute that the assessee is admittedly an entity running the specified in house research and development facilities. The prescribed authority in the instant case is the "DSIR" i.e. Department of Scientific & Industrial Research, Ministry of Science & Technology, Government of India. This prescribed authority has undisputedly issued "Order of approval of in house Research & Development Facility u/s.35(2AB) of the Income Tax Act, 1961" in Form 3CM on 11.06.2009 as pertaining to the previous year relevant to the impugned assessment year. It further contains a list of assessee's various in house research & development facilities. Ld. PCIT's case as made out in his above extracted findings is that the assessee has failed to produce Form 3CL with respect to approval of its impugned revenue and capital expenses. His view is that the Assessing Officer ought not to have accepted assessee's weighted deduction in absence of the above approval Form 3CL.*
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> *7. We have given our thoughtful consideration to rival contentions as well as ld. PCIT's concern expressed in order revising the above regular assessment. We deem its appropriate at this stage to throw some light on the nature and ambit of Form 3CL. The same comes under Rule 6(7A) of the Income Tax Rules, 1962 framed under the provisions of the Act. The above sub rule is relevant for approval of expenditure incurred on in house research & development facility by a company u/s.35(2AB). Sub clause (b) thereof is the specific provision thereto stipulating that the prescribed authority shall submit its report in relation to the approval of in house Research & Development facility in Form No.3CL to the Director General (Income Tax Exemptions) within 60 days of its granting approval. The same is merely in the form of intimation to be sent from prescribed authority's end to the department. An assessee engaged in such Research & Development activity having already obtained Form 3CM approval of its facility has no role to play in such correspondence. We notice that a co-ordinate bench of this tribunal in ACIT vs. M/s. Torrent Pharmaceuticals ITA No.3569/Ahd/2004 decided on 13.11.2009 holds that the impugned weighted deduction is not to be restricted to the extent of the amount of the necessary expenditure*

incurred stated in such Form 3CL. We further find that hon'ble jurisdictional high court's decision in CIT vs. CLARIS LIFESCIENCES Ltd. (2010) 326 ITR 251 (Gujarat) upholds this tribunal's decision in the very assessee's case observing that expenses incurred before Form 3CM approval cannot be denied for the purpose of Section 35(2AB) weighted deduction. We follow the very reasoning to opine that facts of the instant case rather go a step further wherein the appellant has only claimed those expenses which relate to the time period as approved in the Form 3CM. We accordingly hold that the assessee is very much entitled for claiming the above capital and revenue expenses incurred on in house research and development amounting to Rs.237,77,05,310/-. The Assessing Officer had rightly held it entitled for the above weighted deduction after verifying all necessary particulars during the course of scrutiny."

37.2 We further note that the above order of the ITAT was also affirmed by the Hon'ble Gujarat High Court in the assessee's case in tax appeal no. 541 of 2017 dated 14-8-2017 wherein it was held as under:

"5. Having heard Ld. Counsel for the parties and having perused the orders on record, we are broadly in agreement with the view of the Tribunal. Undisputedly, the research and development facility set up by the assessee was approved by the prescribed authority and necessary approval was granted in the prescribed format. The communication in Form 3CM was thereafter, between the prescribed authority and the department. If the same was not so, surely, the assessee cannot be made to suffer. To this extent, the Tribunal was perfectly correct and the Commissioner was not, in observing that in absence of such certification, claim of deduction under section 35(2AB) was not allowable.

However, neither the prescribed authority nor the Assessing Officer has applied the mind as to the expenditure, be it revenue or or capital in nature, actually incurred in developing the in-house research and development facility. To the limited extent, the Commissioner desired the Assessing Officer to verify such figures, we would allow the Assessing Officer to do so. In other words, in principle, we accept the Tribunal's reasons and conclusions. Merely because the prescribed authority failed to send intimation in Form 3CL, would not be reason enough to deprive the assessee's claim of deduction under section 35(2AB) of the Act. However, in facts of the present case, it would be open for the Assessing Officer to verify the actual expenditure incurred by the assessee."

37.3 Thus respectfully, following the same, we do not find any reason to interfere in the order of the Ld. CIT-A. Hence the ground of appeal of the Revenue is dismissed.

38. Moreover, we are bound to follow the order of this Tribunal in the own case of the assessee in the earlier year as the facts are identical in the

impugned issue before us. It is also important to note that the Ld. DR has not brought anything on record contrary to the argument advanced by the Ld. Counsel for the assessee and the finding of the Ld. CIT-A.

38.1 We also place our reliance on the judgment of Hon'ble Madras High Court in the case of CIT v. L.G. Ramamurthi 1977 CTR (Mad.) 416 : [1977] 110 ITR 453 (Mad.). The relevant extract has been reproduced in the preceding paragraph. In the light of the ratio decidendi in the above-said judgment, we are of the considered opinion that the view adopted by the co-ordinate bench as discussed above shall be applied in the case on hand with full strength. The ld. DR and the ld. AR has not brought any decisions varying from similar or identical facts or circumstances. Therefore, the ratio decidendi rendered by the earlier order of the Tribunal has necessarily to be followed by us in line and tune with the judicial discipline and decorum. In view of the above and respectfully following the ITAT order as discussed above, we allow the ground of appeal of the assessee and dismiss the ground of appeal of the Revenue."

Taking into consideration the order passed by the Co-ordinate Bench in identical issue in assessee's own case as discussed above, we find the disallowance ordered by the Learned PCIT is not sustainable in the eye of law. We, therefore, respectfully relying on the said order passed by the Co-ordinate Bench, delete the addition made by the Learned CIT. Hence, assessee's ground of appeal is allowed.

7. **Ground No.4** relates to the addition on account of Capital R&D expense allocated to Sun Pharmaceuticals Industries (Partnership Firm) of Rs.22,93,81,646/-.

8. At the very outset of hearing of the instant appeal, the Learned Sr. Counsel appearing for the assessee submitted that the issue is covered in assessee's own case passed by the Co-ordinate Bench in ITA No.929/Ahd/2017 for A.Y. 2010-11; copy of the same was also handed over to

us. However, the Learned DR failed to controvert the contention made by the Learned AR.

9. We have heard the respective parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench deciding the identical issue in favour of the assessee. The relevant portion thereof is as follows:

> *"39. The issue raised by the assessee in ground No. 7 is that the Ld.CIT (A) erred in confirming the order of the AO by allocating the research and development expenses incurred by it to the other partnership firms and accordingly made the disallowance of such expenses proportionately.*
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> *40. The assessee is a partner in two partnership firms namely Sun Pharma Industries and Sun Pharma Sikkim (for short SPI and SPS). Both the partnership firms were engaged in manufacturing the drugs. However, the assessee was carrying out research and development expenses for the drugs manufactured by both the firms. Accordingly, the assessee claimed the deduction for all the research and development expenses incurred by it in its books of accounts.*
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> *41. The AO during the assessment proceeding observed that both the partnership firm are claiming deduction under section 80IC of the Act. As such both the partnership firms were showing a huge amount of profit which was allocated to the partners of the firm. The assessee being a major shareholder in the firms received a huge amount as a share of profit which was claimed as exempted under section 10(2A) of the Act. Accordingly, the AO was of the view that the research and development expenses incurred by the assessee on the drugs manufactured by the partnership firms should be allocated to these partnership firms. Thus the AO worked out the research and development expenses pertaining to the firms for Rs. 58,07,48,088/- on the basis of the turnover of the formulations and disallowed the same by adding to the total income of the assessee.*
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> *42. The aggrieved assessee, preferred an appeal to the Ld. CIT (A) who partly confirmed the order of the AO after having a reliance on the order of his predecessor for the assessment year 2008-09 by observing as under:*
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> > *"12.1. Similar disallowance was made in A.Y. 2008-09 after reopening the proceedings u/s. 147. The order u/s. 143(3) r.w.s. 147 for A.Y. 2008-09 was passed by the Assessing Officer on 14.02.2014. The above mentioned issue was challenged before the CIT(A)-2, Vadodara. The appeal of the assessee*

has been decided by my predecessor vide order dated 31.03.2015 contained in Appeal No. CAB/(A)- 2/387/14~15 (A.Y. 2008-09) and his findings recorded in para-7.3 to7.5.2 are reproduced as under:-

"7.3 I have considered the appellant's submission and the AO's observations. The appellant's main contention are that that the product technology developed are completely owned by it and no part of ownership of the product technology or processes developed during such R & D work is for any other party. Besides being a working partner, the appellant in pursuance of the obligation undertaken under the partnership deed had provided these services in relations to the manufacturing activities of the firm and that no R & D activity was carried out for SPI. In relation to the these claims, the appellant has also stated that it has received remuneration and share of profit from SPI, credits of which are available to it to the corresponding debit in the books of accounts of the SPI, and hence the profit were not understated. Another related claim made by the appellant is that the expenditure incurred by it for the partnership firm is as good as its own expenditure because ultimately the appellant is going to be the major beneficiary of any profit earned by the partnership firm as a result of this R & D expenditure.

7.3.1 These claims of the appellant are to be examined in view of the different provisions of the IT Act 1961. The share of profit received by the appellant from the firm is exempt from the Income Tax. The remuneration is received from the firm is taxable under the head income from business and profession, as per the provision of clause (v) of section 23 of the IT Act 1961. But the proviso to this section says that where such remuneration or part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted. Now as per the provisions of section 40(b)(i), any payment of salary, bonus, commission or remuneration to any partner who is not a working partner is not allowed as a deduction in computation of the total income of the firm. The explanation 4 to clause (b) says that working partner means an individual who is actively engaged in conducting the business or provision of the firm of which he is a partner. Hence, the appellant being a company cannot be a working partner of a firm for the purposes of provisions of Income Tax Act 1961. Accordingly, any remuneration paid to the appellant is not allowable as a deduction in the computation of the total income of the firm and at the same time such remuneration will not form part of total income of the appellant. Thus, both the share of profit and remuneration received by the appellant from the firm will not form part of its total income and accordingly any expenditure incurred by the appellant for earning such share of profit or remuneration cannot be allowed as a deduction in computation of its total income. Hence it is held that the AO has rightly disallowed the R & D expenditure incurred by the appellant, the results of which have been given by the appellant to the firm SPI in the capacity of its partner for manufacturing drugs by this firm. Hence this contention of the appellant is rejected.

7.4 The other contention of the appellant is that as per section 35, R & D expenditure has been incurred by it for its own business and hence same cannot be debited in the books of accounts of SPI. But as already stated, once it is proved that part of such expenditure has been incurred by the appellant for the purpose of earning of share of profit and remuneration from the firm which is not forming part of its own total income, such expenses cannot be allowed as a deduction in computation -of its total income. The AO has disallowed such expenditure only and it is not a case where such expenses have been directed to be debited in the books of accounts of the firm, SPI. Hence, this contention is also rejected.

7.5 The other contentions of the appellant are related to the method adopted by the AO for the purposes of allocation of such R & D expenses to the manufacturing activities undertaken by the appellant and the manufacturing activity undertaken by the firm SPI. In this regard, the appellant has submitted that it had submitted working on unit profitability statement before AO during the course of assessment proceedings vide letter dated 21/11/2011 whereby the bifurcation .of turnover between domestic/export and formulation/bulk is clearly evident. These workings have been submitted by the appellant during the course of the current appellate proceedings also and the same are being utilized for the purpose of deciding this issue.

7.5.1 The first contention of the appellant is that the partnership firm and the appellant company cater to the different sections of business with underline facts. These differences have been submitted by the appellant which have already been reproduced above. The first difference pointed out is that the partnership firm is only into production of formulation drugs for the domestic market, whereas appellant incurred R & D expenditure on bulk drug segment and formulation segment both and that too for domestic market as well as international market and regulated market. It has been submitted that the partnership firm has sold its product in domestic market only. In this regard, the appellant has also submitted the copy of Financial statement for FY 2007-08 of Sun Pharmaceutical Industries. As per this, the turnover of this firm is 1086.2 crore, which is the same figure as adopted by the Ad in his order. Besides in Clause ' 8' of the Notes on Financial Statement, it has been mentioned that the firm operates in one reportable geographical segment i.e. "within India". On the basis of details furnished by the appellant it is seen that the firm is not into bulk drug formulations. Hence, R & D expenditure related to bulk formulation are not to be allocated towards the expenditure for the firm SPI and the AO has also accepted this contention. But the AO has allocated entire R & D expenditure for formulation drugs in the ratio of total turnover of the appellant and of the firm M/s. SPI. The appellant's claim that R & D expenditure Incurred for export formulations should not be allocated to SPI is found to be correct as SPI has not exported any drug during the FY 2007-08. But at the same time if this method is adopted, then the export turnover of the appellant will have to be reduced from its total turnover for the purposes of computing the allocation of expenses on R & D

for formulation drugs. Besides, the appellant's claim is that only an amount of 1651.48 lakhs have been incurred pertaining to domestic formulation business. From the details submitted by the appellant before the AO it is seen that the expenses incurred under different Heads are as follows:-

Department	*Description of department*		*Rs. in Lacs*	*Remarks*
FDD1	*Formulation Development of Oral - Solids/tablets/capsules {for Domestic, US & Rest of the world market)*	*Anriexure 1*	*1651.48*	*Mainly Domestic market-mfg at Silvassa, Dadra, Jammu, Halol, LL & 3rt Party*
FDD2	*Formulation Development of Injectibles {Syringe/Nasal Spray Cream}*	*Annexure 2*	*2193.40*	*Manufactured by SPIL at Halol or at 3rd party/LL but not by SPI*
Mahakali	*Formulation & Analytical Development (For Regulated market-US & Europe)*	*Annexure 3*	*1618.62*	*Mainly for US, Europe & Rest of the world market. Domestic may be negligible.*
Orgainic Synthesis Process	*Organic synthesis (basic) for bulk drugs Organic synthesis (process) for bulk drugs Total R & D Expenditure dept. wise*	*Annexure 4 Annexure 5*	*873.62 1065.83 7402.95*	*Only for Bulk Drug/API Only for Bulk Drug/API*
Regulatory/Overseas Expenses		*Annexure 6 a)*	*217.96*	*Expenses on accounts of Products Registration, Clinical Trails, Subscription etc. for product for overseas market.*
		b)	*500.89*	*Expenses on accounts Clinical Trails for Domestic market.*

R & D *Professional* *Fees*		*a)*	*4751.79*	*Expenses for Professional* *Charges for products for overseas market.*
		b)	*167.71*	*Expenses for Professional* *Charges for products for* *Domestic market.*
Other.- *Miscellaneous* *expenditure*			*62.90*	
Grand Total R & D Expenditure			*13104.19*	

Thus, the total expenses for formulation drug for domestic market is 1651.48,+ 2193.40 + 167.61 +.62.90 = 4075.49 lakhs.

The balance expenditure of 9028.7 lakhs is for the purpose ofoverseas market. The appellant's claim that only 1651.48 lakhs of expenditure should be considered for allocation to SPI is not acceptable due to lack of proper details filed by it before the AO or during the current appellate proceedings.

The Domestic formulations turnover of SPIL is Rs. 1451.25 crores andthat of SPI is Rs.1086.2 crores. Hence, the R & D expenditure related to formulation drug fordomestic purposes is to be allocated in the ratio of these two turnovers. Hence, the R & D expenditure related to the formulationproductionmade by the SPI comes to 1086.2/2537.45x 4075.49 =Rs.1744.56 lakhs.

7.5.2 Accordingly, the AO is directed to restrict the disallowance out of - R&D expenses to this figure of Rs.1744.56 lakhs. The appellant gets part relief accordingly."

12.2. It is noticed that the appellant has furnished similar written submission in this year also and the details of various expenses incurred under different heads submitted before the Assessing Officer are as fellows:-

Department	*Description of department*		*Rs. In Lacs*	*Remarks*
FDD1	*Formulation Development of Oral - Solids/tablets/capsules {for Domestic, US & Rest of the world market)*	*Annexure 1*	*2332.84*	*Mainly Domestic market-mfg el Silvassa, Dadra, Jammu, Halo), LL & 3rd Party*
FDD2	*Formulation Development of Injectibles {Syringe/Nasal Spray Cream}*	*Annexure 2*	*3201.08*	*Manufactured by SPIL at lialol or at 3rd party/LL but not b/ SPI*
Mahakali	*Formulation & Analytical Development (For Regulated market-US & Europe)*	*Annexure 3*	*2816.97*	*Mainly for US, Europe a. Rest of the world market. Domestic may be negligible.*
Orgainlc Synthesis Process	*Organic synthesis (basic) for bulk drugsOrganic synthesis (process) for bulk drugs Total R & D Expenditure dept. wise*	*Annexure 4 Annexure 5*	*1142.87 10997.61*	*Only for Bulk Drug/API Only for Bulk Drug/API*
Regulatory/0 verseas Expenses	.	*Annexure 6 a)*	*812.71*	*Expenses on acox'rfc of Products Registration, C".rfJc:.'.~.> Trails, Subscription cLc. for I product for overseas market,, , 1*
		b.)	*194.80*	*Expenses on accounts Clinic:1 Trails for Domestic market*

R . & : D *Professional* *Fees* *Other* *miscellaneous* *expenditure*		 *b)* .	*640.65* *130.68* —	*Expenses for Professional* *Charges for products for* *overseas market* *Expenses for Professional* *Charges for product for* *Domestic market*
Grand Total R & D Expenditure			*12776.45*	

Since the facts are identical in this year a/so, I respectful/y following the order of my predecessor in appellant's own case as mentioned above, hold that the R&D expenses incurred by the appellant admittedly are also pertaining to SPI/SPS and hence the same are required to be allocated in the ratio of turnover of appellant and SPI/SPS. I also agree with the views of my predecessor that the expenses incurred for Development of Formulation Drugs for domestic market are to be consideredonly because SPI/SPS has no business outside the country. As per the details furnished the R&D expenses for Development of Formulation drugs for domestic market are Rs.3201.08 + 2816.97 + -194.80+ 130.68 = Rs,6343.53 lacs. Accordingly, the Assessing Officer is directed to work outthe disallowance of R&D expenses out of Rs. 6343.53 lacs in the ratio of domestic turnover of SPI/SPS and SPIL i.e. appellant, after necessary verification of the figures. Thus, appellant succeeds partly in respect of Ground No. 9."

43. Being aggrieved by the order of the Ld.CIT (A), both the assessee and the Revenue are in appeal before us. The assessee is in the appeal for the allocation of R&D expenses to SPI and SPS whereas the Revenue is in appeal

against the direction of Ld.CIT (A) to allocate the expenses excluding export turnover.

44. The Revenue has raised ground no 6 reproduced as under:

"2. On the facts and in the circumstances of the case, learned CIT(A) erred in law and facts in restricting the disallowance of R&D expenses after excluding the export turnover of the assessee for the purpose of computing the allocation of R & D expenses without appreciating that the AO had applied the same pro-rata method of allocating the R & D expenditure which the assessee itself was applying for allocation of the R & D expenditure within the assessee itself was applying for allocation of the R & D expenditure within its units in the ratio of their turnover."

45. The Ld. AR before us submitted that in the identical facts and circumstances this ITAT in the own case of the assessee and Revenue bearing ITA Nos. 1666/AHD/2016 and 1663/AHD/2016vide order dated 08-09-2017 deleted the addition made by AO.

46. Both the Ld. AR and the DR before us relied on the order of respective authorities below as favorable to them.

47. We have heard the rival contentions and perused the materials available on records. At the outset, we find that in the identical facts and circumstances in the own case of the assessee's (supra), the ITAT deleted the addition made by the TPO/AO. The relevant extract of the order is reproduced as under:

"We have given a thoughtful consideration to the facts in issue before us. There is no dispute that the assessee did incurred expenditure under the head "Research & Development" activity. The only dispute relates to the . A.Y. 2009-10 allegation that part of such expenditure belong to the business activity of the partnership firm SPI. There is also no denying by the lower authorities that the entire Research and Development activities are done by the appellant company only being the flagship company of Sun Pharma Group. In our understanding of the facts, the appellant company had assisted the partnership firm in carrying on its business by using its network for marketing the pharmaceuticals products successively. Since the assessee is holding 97.5% of share in the partnership firm, SPI it becomes the duty of the assessee to promote the business of the partnership firm in the capacity of the majority stake holders. Incidentally, the revenue authorities have not brought anything on record which could suggest that the expenditures have not been incurredfor the purposes of business. Be it assessee's business or the business of the partnership firm where the assessee is a majority stake holder. In our understanding of the law an expenditure is allowable if it is incurredfor the purposes of the business of the assessee. Finding that the assessee is having 97.5% share in the profits of the firm SPI, we do not find any merit in the disallowance made by the A.O. and confirmed by the First

Appellate Authority. We, accordingly, direct the A.O. to delete the addition of Rs. 5,30,29,5255/-. Ground no. 12 is accordingly allowed"

48. Regarding the Revenue appeal, the relevant finding of the ITAT in ITA 1663/AHD/2016 in its order is extracted below:

"137. Similar issue has been considered and decided by us in assessee's appeal (supra) vide ground nos. 9 to 11 of that appeal. For our detailed discussion therein, ground no. 11 is dismissed."

49. As facts in the case on hand are identical to the facts of the case as discussed above, therefore respectfully following the finding of the Tribunal (supra), we direct the AO accordingly.

49.1 Moreover, we are bound to follow the order of this Tribunal in the own case of the assessee in the earlier year as the facts are identical in the impugned issue before us. It is also important to note that the ld. DR has not brought anything on record contrary to the argument advanced by the ld. Counsel for the assessee and the finding of the ld. CIT-A.

49.2 We also place our reliance on the judgment of Hon'ble Madras High Court in the case of CIT v. L.G. Ramamurthi 1977 CTR (Mad.) 416 : [1977] 110 ITR 453 (Mad.). The relevant extract has been reproduced in the preceding paragraph. In the light of the ratio decidendi in the above-saidjudgment, we are of the considered opinion that the view adopted by the co-ordinate bench as discussed above shall be applied in the case on hand with full strength.The ld. DR and the ld. AR has not brought any decisions varying from similar or identical facts or circumstances. Therefore, the ratio decidendi rendered by the earlier order of the Tribunal has necessarily to be followed by us in line and tune with the judicial discipline and decorum. In view of the above and respectfully following the ITAT order as discussed above, we allow the ground of appeal of the assessee and dismiss the ground of appeal of the Revenue."

Taking into consideration the order passed by the Co-ordinate Bench in identical issue in assessee's own case as discussed above, we find no reason to disallow the claim of the assessee towards R & D expenditure allocated to Sun Pharma Industries of Rs.22,93,81,646/-. We, therefore, respectfully relying on the said order passed by the Co-ordinate Bench, delete such addition made by the authorities below. Hence, assessee's ground of appeal is allowed.

10. **Ground No.5** relates to the addition on account of re-characterization of remuneration earned from partnership firm (SPI) as royalty income of Rs.44,09,54,508/-.

11. At the very outset of hearing of the instant appeal, the Learned Sr. Counsel appearing for the assessee submitted that the issue is covered in assessee's own case passed by the Co-ordinate Bench reported in ITA Nos. 3297 & 3420/Ahd/2014 for A.Y. 2008-09 which has been failed to controvert by the Learned DR copy whereof is also on record before us.

12. We have heard the respective parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench deciding the identical issue in favour of the assessee. The relevant portion thereof is as follows:

> *127. Ground No.13 relates to the addition on account of re-characterizing remuneration as alleged royalty income from the partnership firm SPI for use of Trademark, Brand and Technology amounting to Rs.40.12 crores.*
>
> *128. During the course of the appellate proceedings before the First Appellate Authority, it was noticed that the assessee has given all present and future Trademarks/ Brands to the partnership firm SPI for a token consideration of Rs. 1 only. The FAA further noticed that the assessee has received remuneration of Rs. 40.12 crores from the firm SPI. The FAA was of the firm belief that the payment of Rs. 40.12 crores in the garb of remuneration is nothing but royalty paid by the firm for the use of trademark, brand and technology. The First Appellate Authority was of the opinion that in this line of trade, trademarks/brands carry a very high valuation and, therefore, no prudent industrialist will allow usage of present and future trademarks, for five years only for a token consideration of Rs. 1. Accordingly, the First Appellate Authority issued an enhancement notice asking the assessee to show cause why the income of Rs. 40.12 crores should not be taxed as royalty income.*
>
> *129. In its reply, the assessee strongly objected to the proposed action of the Id. CIT (A) stating that it has a control of 97.5% of profit share in the firm SPI and as per the provisions of the partnership deed read with*

supplementary partnership deed, the assessee has received a remuneration of Rs. 40.12 crores for rendering the following services-
(a) Technical assistance in manufacturing activities.
(b) Advising on Product Stability and Product Positioning,
(c) Looking after entire Marketing and Distribution of the products.

130. It was further brought to the notice of the first Appellate Authority that the proposed addition is based on the findings of the A.O. given in the case of the firm SPI wherein the A.O. had made addition of Rs. 73.38 crores and Rs. 17.29 crores applying the provisions of Section 80-18(10) of the Act. Assessee drew further attention to the decision; of the Tribunal, Amritsar Bench in ITA No. 129/ASR/2009 wherein the Bench deleted the addition made by the A.O. in the case of firm SPI. It was further contended that in assessee's own case in earlier years, such remuneration has never been re-characterized and added back.

131. The contentions of the assessee did not find any favour with the First Appellate Authority who stated that the order of the' Tribunal Amritsar Bench has been challenged by the Department before the Hon'ble High Court, therefore, the same has not reached finality. The ld, CIT (A) further opined that the assessee company has arranged the Business affairs with the partnership firm SPI in such a manner that such arrangement is an obvious device of tax evasion. The ld. CIT (A) observed that the payment of remuneration was not allowed in the hands of the partnership firm SPI because the recipient which is the assessee company does not fit into the definition of whole time working partner being a legal person and not a natural person. However, such disallowance of remuneration' did not affect the partnership firm SPI since its income was exempted u/s. 80-IB of the Act.

132. The assessee company also did not offer the remuneration of Rs. 40.12 crores taking shelter behind the provisions of Section 28(v) of the Act. Thus neither the firm nor the appellant company have paid any taxes on such amount and yet the amount of Rs. 40.12 crores came to the appellant company and, therefore, it is nothing but royalty and accordingly the ld. CIT (A) concluded by holding that the assessee has received Rs. 40.12 crores from SPI as consideration for permitting usages of all present and future trademarks/brands for a period of five years and the same has to be taxed as royalty.

133. Aggrieved by this, the assessee is before us.

134. The Id. Senior Counsel assailed the observations of the First Appellate Authority. It is the say of the Id. counsel that in the past years none of the appellate authority have been re-characterized the remuneration as royalty.

He further stated that the issue relating to the disallowance made in the hands of the firm SPI in earlier assessment years have been settled in favour of the assessee and against the revenue by the benches of the Tribunal. Therefore, rule of consistency should have been followed by the First Appellate Authority.

135. Per contra, ld. G.C. Shrivastava reiterated what has been held by the First Appellate Authority.

136. We have given a thoughtful consideration to the facts in issue. It is an undisputed fact that the remuneration has been paid by the firm SPI as per the partnership deed read with supplementary partnership deed. It is also an undisputed fact that the said partnership deed read with supplementary deed has not been treated as sham or unlawful deeds. The First Appellate Authority emphasized on the entire transaction as a device of tax evasion. The partnership firm SPI has claimed Rs. 40.12 crores as remuneration to the assessee company but at the same time, it did not claim the same as deduction as it was not paid to a whole time partner as provided in the Act. It is true that the appellant company has also not offered the same for taxation taking a shelter behind the provisions of Section 28(v) of the Act. No doubt, the profits of the partnership firm are exempt u/s. 80-IB(4) of the Act, Even, if the partnership firm had not charged Rs. 40.12 crores as remuneration to the appellant company, the profits of the firm would have increased by this amount. Since the assessee is holding 97.5% share in the profits of the partnership firm, this amount of 40.12 crores would have otherwise come to the assessee in the firm of share of profit which again is exempt from taxation u/s. 10 (2A) of the Act, Therefore, in our considered opinion, the allegation that it is a case of tax evasion is ill-founded. The fact of the matter is that such payments were never re-characterized as royalty in earlier assessment years and the action of the First Appellate Authority in the year under consideration is nothing but based Upon assumptions and presumptions. No addition can be sustained which are based upon assumptions, surmises or conjectures. We, therefore, set aside the findings of the ld. CIT (A) and direct the A.O. to delete the amount of Rs. 40.12 crores re-characterized by the First Appellate Authority. Ground No. 13 is allowed."

Taking into consideration the order passed by the Co-ordinate Bench in identical issue in assessee's own case as discussed above, we find no reason to disallow the claim of the assessee. We, therefore, respectfully relying on the said order passed by the Co-ordinate Bench, delete the addition on account of

re-characterization of remuneration earned from partnership firm as royalty income. Hence, assessee's ground of appeal is allowed.

13. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on 17/05/2019

Sd/-	Sd/-
(WASEEM AHMED)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 17/05/2019

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad