

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**I.T.A No.5168/Mum/2018 - A.Y. 2011-12  
I.T.A No.5169/Mum/2018 - A.Y. 2012-13**

DCIT-CC-2(4)  
Room No.802, 8<sup>th</sup> Floor  
Old CGO, Annex Bldg  
M.K. Road,  
Mumbai-400 020

**Vs.**

Macelods Pharmaceuticals  
Limited, 304, Atlanta Arcade  
Marol Church Road,  
Andheri (E),  
Mumbai-400 059  
**PAN :AAACM4100C**  
**Respondent**

**Appellant**

**I.T.A No.5092/Mum/2018 - A.Y. 2011-12  
I.T.A No.5093/Mum/2018 - A.Y. 2012-13**

Macelods Pharmaceuticals  
Limited, 304, Atlanta Arcade  
Marol Church Road,  
Andheri (E), Mumbai-400 059  
**PAN :AAACM4100C**  
**Appellant**

**Vs.**

DCIT-CC-2(4)  
Room No.802, 8<sup>th</sup> Floor  
Old CGO, Annex Bldg  
M.K. Road, Mumbai-400 020  
**Respondent**

Assessee by : ShriAshok Bansal  
Revenue by : Smt.Riddhi Mishra [CIT (DR)]

Date of Hearing : 10/01/2023  
Date of pronouncement : 31/01/2023



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross appeals by the Revenue and the assessee are directed against a common order dated 27<sup>th</sup> June, 2018 passed by the Ld. Commissioner of Income-tax (Appeals)-48, Mumbai [ In short, the Ld. CIT(A)] for Assessment Year 2011-12 & 2012-13.

2. Firstly, we are taking up the cross appeals for A.Y. 2011-12. The sole ground raised by the Revenue in A.Y. 2011-12 is reproduced as under: -

*"1. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in deleting the disallowance of Rs. 111,11,70,050/-made on account of freebees paid to Doctors, despite the fact that the decision of Hon'ble IT AT on this issue in assessee's case in respect of A.Y. 2010-11 and A.Y. 2011-12 has not been accepted by the Revenue and an appeal is pending before the Hon'ble Bombay High Court."*

3. The grounds raised by the assessee in A.Y. 2011-12 are reproduced as under: -

*"1. The authorities below have erred in law as well as facts in apportioning/ upholding the apportionment of Research & Development expenses u/s 35(2AB) to units eligible for deduction u/s 80IB and 80IC.*

*2. The authorities below have erred in holding that the appellant has inflated claim of deduction u/s 80IC by inter unit transfer of material at lower prices.*

*3. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated."*

4. Briefly stated, facts of the case are that the assessee company was engaged in the business of manufacturing of formulations and various pharmaceutical products. In the year under consideration, the assessee filed its return of income electronically on 28/09/2011



declaring total income at Rs.15,83,93,089/-, which was subsequently revised on 11/10/2011 to Rs. 28,69,03,699/- The return of income filed by the assessee was selected for scrutiny assessment and the Assessing Officer vide order dated 29/01/2014 assessed the total income at Rs.85,13,17,680/- under section 143(3) of the Income-tax Act, 1961 (in short, 'the Act'). In the said assessment, the Assessing Officer made one of the disallowances for promotional items, free gifts given to various doctors / medical practitioners etc.

4.1 Subsequently, a search and seizure action under section 132 of the Act was carried out on 28/01/2016 and consequently assessment under section 153A r.w.s. 143(3) of the Act was completed on 30/12/2017. In the said assessment, various additions/disallowances including (i) disallowance of expenses on promotional items including free gifts to doctors/medical representatives (ii) proportionate withdrawal of deduction under section 80IB & 80IC of the Act for apportionment of research and development expenses and (iii) withdrawal of deduction u/s 80IC for inter unit transfer of material were made.

5. Aggrieved, the assessee filed appeal before the Ld.CIT(A), who vide impugned order deleted the disallowance of promotional items/free gifts, etc. in view of the order of the ITAT passed in appeals arising from original assessment proceedings (in order



passed under section 143(3) of the Act) but upheld the disallowance of deduction under section 80IB / 80IC for allocation of research and development expenses and as well as disallowance of deduction u/s 80IC for inter unit transfer of material. Aggrieved by the above finding of the Ld.CIT(A), both the parties are in appeal before the ITAT (in short, the Tribunal) by way of raising grounds as reproduced above.

6. Before us, the assessee has also filed an additional ground challenging the validity of the addition made under section 153A of the Act without aid of any incriminating material in case of completed assessments. The Ld.Counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the order of the Hon'ble Bombay High Court in the case of **CIT vs Continental Warehousing Corporation Income Tax Appeal No. 523 of 2013 dated 21/04/2015**. This additional ground being purely legal in nature and no fresh investigation of facts is required, therefore the additional ground is admitted for adjudication in view of decision of the Hon'ble Supreme Court in the case of **NTPC Ltd reported in 222 ITR 385(SC)**.

7. We have heard rival submissions of the parties on the issue in dispute and perused the relevant material on record. We find that in this case, the original assessment was completed by the Assessing Officer under section 143(3) of the Act on 29/01/2014



which is much before the date of the search action in the case of the assessee i.e. 28/01/2016 and, therefore, the assessment year falls under the completed or unabated assessment. Thus, in view of the Hon'ble Bombay High Court judgment in the case of CIT vs. **Continental Warehousing Corporation (supra)**, no addition could have been made qua the assessment year except based on any incriminating material. Since we find that in this assessment year, the issue of free gifts/promotional items to doctors/medical representatives, was raked up in the original assessment proceedings and, therefore, addition made on the same issue of free gifts to Doctors etc in assessment order consequent to search is not a new addition. Actually, the Assessing Officer should have started computation of Total Income under the order passed u/s 153A read with 143(3) from the last income assessed or upheld in appellate proceedings, instead, he has repeated the addition, which was made in original assessment. Therefore, this issue is not covered by the decision of the Hon'ble Bombay High Court in the case of CIT vs Continental Warehousing Corporation (supra). As far as this addition is concerned, we uphold the finding of the Ld.CIT(A) as the issue against the addition made in original assessment proceedings has been already deleted by the ITAT in ITA No. 7405.Mum/2014 for AY 2011-12. The ld. DR submitted that appeal of the Revenue on the matter is pending before the Hon'ble Bombay High Court and, therefore, the decision of the same shall be followed in respect



of the addition made in proceedings consequent to search. The sole ground of appeal of the Revenue is accordingly allowed.

7.1 As far as the issues challenged by the assessee is concerned, we find that there is no reference of any incriminating material qua the allocation of R&D expense amongst units eligible for deductions under sections 80IB and 80IC of the Act. In the absence of any incriminating material found during the course of search qua issue of allocation of R & D expenses, no addition could have been made on this issue. Similarly, there is no reference of any incriminating material qua the disallowance of deduction u/s 80IC for inter unit transfer of material. Therefore, following the finding of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (supra), the disallowance of deduction consequent to allocation of R & D expenses and for inter unit transfer of material are deleted. Accordingly, additional ground of the assessee is allowed and the ground of appeal of the assessee also stands allowed.

8. Now, we take up the cross appeals for A.Y. 2012-13. The grounds raised by the Revenue in A .Y. 2012-13 are as under:-

*1. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in deleting the disallowance of Rs. 137,62,61,659/- made on account of freebees paid to Doctors, despite the fact that the decision of Hon'ble ITAT on this issue in assessee's case in respect of A.Y. 2010-11 and A.Y. 2011-12 has not been accepted by the Revenue and an appeal is pending before the Hon'ble Bombay High Court."*



9. The grounds raised by the assessee in A.Y. 2012-13 are as under:

“1. The authorities below have erred in law as well as facts in apportioning/ upholding the apportionment of Research & Development expenses u/s 35(2AB) to units eligible for deduction u/s 80IB and 80IC.

2. The authorities below have erred in holding that the appellant has inflated claim of deduction 80IC by inter unit transfer of material at lower prices.

3. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated.”

10. In this year also, the Revenue is before the Tribunal by way of raising grounds against the deletion of expenses on promotional items, free gifts, etc. to doctors / medical representatives by the Ld.CIT(A), whereas the assessee is in appeal for withdrawing the deduction under section 80IB / 80IC for allocation of research and development expenses and disallowance of deduction u/s 80IC for inter unit transfer of material.

11. In this year also, the assessee has raised additional ground challenging the addition made under section 153A without aid of any incriminating material, which is admitted in view of our finding in AY 2011-12. However, we find that in the year under consideration, the Ld.CIT(A) has wrongly mentioned that assessment was made prior to the search action whereas the Ld. DR submitted that in this assessment year case was selected for scrutiny & notice u/s 143(2) of the Act was issued and matter was referred to the Ld. Transfer Pricing Officer. The limitation date for completion of scrutiny assessment was 31/03/2016. Thus, we find that in this case assessment proceedings under section 143(3) were



pending as on the date of the search and the assessment got abated due to search dated 28/01/2016. The Ld. Counsel of the assessee also admitted that in the assessment year under consideration regular scrutiny assessment proceedings were pending and same got abated on account of search. For application of ratio of Hon'ble Bombay High Court in the case Continental warehousing Corporation (supra), the twin conditions of, firstly no incriminating material and secondly completed or unabated assessment are to be fulfilled. In the instant case the assessment is undisputedly abated, the said ratio cannot be applied and therefore plea of the assessee of no addition in absence of any incriminating material qua the assessment year, is rejected. Therefore, the additional ground raised by the assessee in the year under consideration is dismissed.

12. As far as ground 1 of the appeal of the Revenue is concerned, the AO made addition observing as under:

*10.10 The reply of the assessee is perused, however, it is not found to be tenable and the sales promotion expenses on account of freebies to doctors to the tune of ₹1376261659 are disallowed and are hold to be in violation of Explanation I to section. 37(1) of the Act on the following grounds:-*

- 1. Boardvide circular No. 05/2012 (F.No. 225/142/2012-ITA.II), dated 01.08.2012 stated that Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations.2002. on 10.12.2009 imposed a prohibition on*



*medical practitioners and their professional associations from taking any Gift. Travel facility. Hospitality. Cash or monetary grant from pharmaceutical and allied health sector industries.*

- 2. Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those falling under section 30 to 36) from business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession.*
- 3. However, the explanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by*
- 4. Thus, the claim of any expense incurred in providing freebies in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall not be admissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector industries or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income.*
- 5. Once this has been prohibited by the Medical Council under the powers vested in it, Section 37(1) of Income Tax Act comes in to play. The amendment to the Indian Medical*



*Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 would only be clarificatory in nature.*

- 6. Further, the explanation inserted to the section 37(1) by the Finance Act (No.2), 1998 is with retrospective effect from 01.04.1962. Therefore, the expense of the nature specifically mentioned to be not allowable in the captioned circular of CBDT would have its applicability in respect of the cases of the earlier period/ years as well. The explanation to section 37(1) is on the statute w.e.f. 1st April, 1962. The same has simply been clarified by way of a circular issued by CBDT.*
  
- 7. The Medical Council of India in exercise of powers conferred under section 204 read with section 33(m) of the Indian Medical Council Act, 1956 (MCI) has made " The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002. which describes unethical acts under Chapter 6 of the said regulations. The MCI has made amendment in the above regulation vide notification dated 10-12-2009. As per said notification a medical practitioner is not allowed to receive any gif, travel facility. hospitality. cash or monetary grants from the pharmaceuticals or allied health care industry and violation of these conducts are liable for punishment as per The Indian Medical Council (Professional Conduct. Etiquette and Ethics) Regulations. 2002. The Hon'ble Himachal Pradesh High Court in case of Confederation of Indian Pharmaccutical Industries has upheld the validity of circular No. 5 of 2012 issued by the*



*CBDT. The Hon'ble High Court has also observed that any violation of the same will attract the provisions of explanation to section 37(1) of the Act.*

- 8. In the case Kap Sean and Diagnostic Centre (P.) Ltd, the Hon'ble High Court of Punjab & Haryana held that payments which are opposed to public policy being in the nature of unlawful consideration cannot equally be recognized. It cannot be held that businessmen are entitled to conduct their business even contrary to law and claim deductions of payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole. The Court further held that if demanding of such commission was bad, paying it was equally bad. Both were privies to a wrong. Therefore such commission paid to private doctors was opposed to the public policy and should be discouraged. The payment of commission by the assessee for referring patients to it cannot by any stretch of imagination be accepted to be legal or as per public policy. Undoubtedly, it is not fair practice and has to be termed as against the public policy.*
- 9. In the case of Confederation of Indian Pharmaceutical Industry (Supra), the Hon'ble High Court of Himachal Pradesh has observed that MCI has imposed certain prohibition on medical practitioners as mentioned above under The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002. The Court held that*



*this regulation is a very salutary regulation which is in interest of the patients and the public. This Court is not oblivious to the increasing complaints that the medical practitioners do not prescribe generic medicines and prescribe branded medicines only in lieu of the gifts and other freebies granted to them by some particular pharmaceutical industries. Once this has been prohibited by the Medical Council under the powers vested in it. Section 37(1) of the Income-tax Act comes into play. The Court further held that the explanation to Section 37 (1) makes it clear that an expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. Therefore, if the assessee satisfies the assessing authority that the expenditure is not in violation of the regulations framed by the medical council then it may legitimately claim a deduction. but it is for the assessee to satisfy the assessing officer that the expense is not in violation of the Medical Council Regulations*

- 10. In the case of LivaHealthere Ltd, the Hon'ble Mumbai ITAT has held that the CBDT circular dated 01.08.2012 is merely a clarification in nature and creates a bar on such illegal payments being against public policy. the said bar always existed in the statute by virtue of the existence of explanation of Section 37 of the Act which was inserted by Finance Act, 1998 w.e.f. 01-04-1962.*



11. I Therefore, it is amply clear from the above discussion that the expenditure claimed by the assessee is not allowable under the provisions of the Act.

10.11 Thus, Rs. 1376261659 is disallowed (which has been incurred for gifts, providing travel facilities & hospitality to medical practitioners) from the total expenditure incurred for sales promotion Keeping in view the discussion in paras above and added to the total income of the assessee. As apparent from the above discussion, it is clear that the nature of pre and post MCI notification expenses for freebees to doctors are illegal in nature. These illegal practices were later on noticed by Medical Council of India and Central Board of Direct Taxes which resulted in the amendment made in the Medical Council of India (MCI) Regulations vide Notification dated 10.12.2009 and Circular No. 05/2012 dated 01.08.2012 issued by the Central Board of Direct Taxes. New Delhi vide F.No. 225/142/2012-ITA-II respectively. In absence of these notification and circular also. the freebees to doctors are illegal in nature and liable to be disallowed us.37() of the Act.”

12.1 The Ld CIT(A), deleted the addition following the finding of the ITAT in order dated 21/09/2016 for AY 2011-12.

13. We have heard rival submission and perused the relevant material on record. We find that issue on the expenses on promotional items / free gifts to doctors / medical representatives is concerned, the Hon'ble Supreme Court in the case of **Apex Laboratories Ltd vs. CIT Special Leave Petition (CIVIL) No.**



**23207 Of 2019 judgment dated 22<sup>nd</sup> February, 2022** has upheld the disallowance of such promotional items. The relevant finding of the Hon'ble Supreme Court is reproduced as under:

*“36. In the present case too, the incentives (or “freebies”) given by Apex, to the doctors, had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect. The conceded participation of the assessee- i.e., the provider or donor- was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or “freebies” was no less a prohibition on the part of their giver, or donor,*

14. Respectfully following the finding of the Hon'ble Supreme Court (supra), we set aside the finding of the Ld.CIT(A) on the issue in dispute and uphold the order of the Assessing Officer on the issue. The ground No. 1 of appeal of the Revenue is accordingly allowed.

15. As far as ground of the assessee regarding allocation of research and development expenses to the units eligible for deduction under section 80IB / 80IC of the Act is concerned, we find that the assessee claimed deduction of ₹ 102.18 crores under section 35 (2AB) for research and development expenses incurred through its two units located in Mumbai, which are approved by the



Department of scientific and industrial research (DSIR). The Ld. Assessing Officer has apportioned the said expenses among the units eligible for deduction under section 80IB and section 80IC aggregating to ₹ 50, 21, 51, 424/-. Before the Assessing Officer and the Ld. CIT(A), the assessee claimed that issue of allocation of research and development expenses is covered in its favour by the decision of the Hon'ble Bombay High Court in the case of **Zandu Pharmaceutical Works Ltd Vs. CIT in ITA No. 8 of 2007**. The submission of the assessee before the ld CIT(A) is reproduced as under:

“ B. R&DEXPENDITURE

.....

*The LAO has discussed the issue in para 11 of the Order from page 10 to 15. The disallowance is in contrast with the consistent procedure of last many years when the department has, after comprehensive scrutinies each year, agreed with the appellant's contention that there is no need to - , apportion the R & D expenditure.*

*Moreover, the issue is squarely covered by the Bombay HC judgement in Zandu Pharmaceutical Works Ltd. Vs. CIT in ITA No. 8 of 2007. (Copy enclosed). Also enclosed is copy of appellant's submission before the LAO explaining, inter-alia, on page 3 that the company's Research & Development activities are not directly related to its manufacturing unit as the R & D division is working on future products and future innovation and launches and not present products manufactured by the manufacturing units. Also, R & D expenses are on futuristic research and the result of research is always uncertain and none of the items of research was forming part of qualifying undertakings. Further, company's R & D units are housed in separate buildings very far away from its manufacturing units and are stand alone/Independent units and separate financial statements are prepare and audited for the same.*

*It was also pointed out that the appellant has smaller R & D facilities at each manufacturing unit where routine R & D activities related to existing products being manufactured at those*



*respective units are being carried out and that the company is not claiming any weighted deduction for these R & D units.*

*Also enclosed to the letter submitted to the LAO is a detailed tabulation showing year wise details of formulations developed by the R & D wing and status of such products. From the same, it is amply clear that the R & D expenditure is totally unrelated to the present manufacturing activities of the appellant.*

*Moreover, in a large number of cases, most notably CIT Vs. Sterling Foods (SC) and Pandian Chemicals Ltd. Vs. CIT (SC), it has been repeatedly held that the words "derived from" used in sections 80HH, 80I (and 80IA and 80IC) means that there must be a direct nexus between the profits and gains and an industrial undertaking. It must follow equally that there must be a direct nexus between the industrial undertaking and the expenses sought to be apportioned to it."*

16. The Ld CIT(A) upheld the disallowance observing as under:

*"5.2.1. The assessee has relied on the Bombay High Court decision in the case of Zandu Pharmaceuticals Ltd., whereby it was held that R&D expenses in relation to new drugs cannot be assigned to eligible manufacturing units.*

*I have considered the facts of the case. The submission of the assessee are not acceptable and are in fact contrary to the facts of assessee's case in view of the following:-*

- a) As stated by AO in para 11.3 of his assessment order, assessee has not submitted any documents to establish beyond doubt that these future products will not be formed in the exempted unit. Therefore, basically, the objection of the AO was that assessee could not prove that these R&D expenses and the research being undertaken in this centre was in no way related to the eligible units.*
- b) Further, in para 11.5 of the assessment order, AO has brought out the details of R&D being undertaken by the assessee and has held in the subsequent paras that it cannot be adduced from any evidence that expenditure incurred on R&D has no nexus with the products being manufactured in 80IB / 80IC units.*



- c) *At the time of appellate proceedings, the details of letter forwarded by assessee to the Ministry of Science & Technology dated 24.10.2011 were called for, wherein, details regarding certification of expenses are forwarded to the Ministry. The details of formulation for the domestic market and bulk drugs and the additional products undertaken by the assessee as per enclosure I and enclosure II, forwarded to the Ministry of Science & Technology, it can be seen that the various medicines and the products contain generic as well as chemical names of the medicines. Apparently, the details are scientific, however, a little detailed perusal shows that these products are related to development of variants of various medicines being produced by assessee at its various units including exempted units. The details of R&D work show that the drugs like ofloxacin, levofloxacin, azithromycin, ethionamide tablets, rifampicin, isoniazid, ethambutol, paracetamol etc. amongst several others are being manufactured at the R&D centre and the medicines of the same genre are being manufactured at the units having exempted income. Therefore, the different formulation or different presentation of the chemical composition or medicines are being produced at the exempted units as well in the R&D centers. Therefore, the detailed perusal of actual R&D work of assessee shows that R&D is closely related and associated with production at the exempted units. There are several illustrations in the details filed by assessee, which prove that R&D products are in no way unrelated to the products at the exempted centers.*
- d) *In view of this factual revelation of facts R&D work(based on actual details of drugs & chemical formulation), it would be very logical & as per law to assign these expenses proportionately to all manufacturing units. The hollow argument without verifying actual facts of assessee's R&D work thus fall flat and loses all its strength.*

5.2.2 *The reliance in case of Zandu Pharmaceuticals Ltd. is misplaced as in that case, on the facts, it was decided that R&D expenses were in relation to totally new drugs. However, the case of assessee is different as has been illustrated above. In view of this, the findings given by AO is found to be correct and the appeal*



*of the assessee in this ground is dismissed. Hence ground no. 2 of appeal is dismissed.”*

17. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. CIT(A) has held that research and development carried out with assessee has been applied for manufacturing in units eligible for deduction under section 80IB and 80IC of Act. Before us the Ld. Counsel of the assessee has filed a detailed list of items manufactured by the units eligible under section 80IB and 80IC of the Act and also the formulations/items underdevelopment in research and development units. Both these lists are placed on record. Further, the rebuttal of the assessee on finding of the CIT(A) is reproduced as under:

*“One of the purpose of R&D in a company like the Appellant (Macleods) is to develop new variants of formulations from existing resources available in the form of API or bulk drugs. If the existing API or bulk drugs are not used for development of new medicines then more than 98% of pharmaceuticals R&D will stop working and there are multiple number of ingredients which are present in almost all types of medicines. Hence the observation that some of the bulk drugs which are already used in eligible units are being tested in R&D for different variant is completely misplaced.*

*Secondly, we had given details of two activities of R&D before LAO and CIT(A) wherein details bulk drugs developed at R&D and formulations developed at R&D were given. It was clearly mentioned that bulk drugs developed at R&D were used to manufacture the same at our Sarigam API unit which was not eligible for any tax incentive. Formulations were manufactured at Palghar, Premier, Daman and Baddi units and out of these Baddi unit was an eligible unit for 100% tax incentive. However*



*Baddi unit only manufactured formulations and did not produce any bulk drugs*

*As regards specific names being given in Appeal order, we respectfully submit as under:*

- a) Olloxacin: The appellant manufactured tablets containing this API Ofoxacin at its eligible unit. However, there was no agile eialed io any tablet containingOfloxacin at its R&D unit.*
- b) Levofloxacin: Our R&D unit was developing a tablet containing Levoffoxacin which was approved by regulators but manufacturing of the same did not start. Our eligible unit was manufacturing an oral syrup that contained Levoffoxacin.Appellant has been manufacturing this orai syrup since more than 10 years and the R&D unit was not undertaking any activity related to this syrup.*
- c) Azithromycin: The appellant manufactured tablets containing this API Azithromycin at its eligible unit. However, there was no activity related to any tablet containing Azithromycin at its R&D unit.*
- d) Ethionamide: The appellant manufactured tablets containing this API Ethionamide at its eligible unit. However, there was no activity related to any similar tablet containing Ethionamide as API at its R&D unit.*
- e) Rifampicin: The appellant manufactured tablets and capsules containing this API Rifampicin at its non-eligible unit. However, there was no activity related to any similar tablet containing Rifampicin as API at its R&D unit.*
- f) Isoniazid: The appellant did not manufacture any formulation containing this API at its eligible unit. There was no activity related to any formulation containing Isoniazid as API at its R&D unit.*
- g) Ethambutol: The appellant did not manufacture any formulation containing this API at its eligible unit. There was development effort for a combination drug containing Ethambutol as one of the API at its R&D unit.*



*h) Paracetamol: The appellant manufactured a tablet having combination of Nimesulide and Paracetamol at its eligible unit. However in R&D we tried to develop a new tablet having Sustained Release (SR) of Paracetamol having 665mg of Paracetamol which was designed to be completely different from existing combination drug. However, the LAO has failed to appreciate that the new tablet being developed at R&D was not approved by regulator and hence was never manufactured till date.”*

18. On perusal of list of products manufactured in eligible units and drug under development and R & D units, we find that products manufactured under the units eligible for 80IB and 80IC unit are totally unrelated with the product under development in R&D units. In some cases, variant of formulation like injectable form etc. have been under development in R & D Units, which are different from tablet of same drug manufactured in eligible / non-eligible units. Moreover, in research and development units the formulations or the drugs developed, firstly, undergo a process of 4 to 5 years, before those formulations or drugs undergo manufacturing. From the submission filed before the lower authorities, which have been filed before us also, it is verified that at least in the current assessment year, the research and development expenditure incurred is not related to the units eligible for deduction under section 80IB and 80IC of the Act. The Ld. CIT(A) has made a general comment that drugs manufactured in exempted unit and research carried out in R&D unit are in respect of the same items. The Ld. CIT(A) has not pointed out as to which drugs or formulation under development in R&D unit has been



manufactured by particular unit eligible under 80IB or 80IC of the Act. Accordingly, the finding of the Ld. CIT(A) being contrary to facts, same are set aside and the disallowance for deduction under section 80IB and 80IC of the Act corresponding to the allocation of R&D expenditure is hereby deleted.

18.1 The ground raised in relation to the deduction u/s 80IC for inter unit transfer of material is concerned, same was not pressed before us, therefore same is dismissed as infructuous.

19. In the result, the appeal of the assessee and the Revenue for A.Ys. 2011-12 are allowed, whereas appeal of the assessee for AY 2012-13 is partly allowed and appeal of Revenue for AY 2012-13 is allowed.

**Order pronounced under Rule 34(4) of the ITAT Rules, 1963 on 31/01/2023.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/01/2023  
Dragon Legal/Pavanan, Sr. P.S (on contract)



**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**