

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No. 1860/Hyd/2019**
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Aurobindo Pharma
Limited,
Hyderabad
[PAN No. AABCA7366H]

Asst. Commissioner of Income
Tax,
Central Circle-1(2),
Hyderabad

अपीलार्थी / Assessee

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri PVSS Prasad, AR
राजस्व द्वारा/Revenue by: Shri T. Vijay Bhaskar Reddy, CIT-DR

सुनवाई की तारीख/Date of hearing: 16/05/2023
घोषणा की तारीख/Pronouncement on: 21/06/2023

आदेश / **ORDER**

PER LALIET KUMAR, JM:

This appeal of the assessee is directed against the assessment order of ACIT, Central Circle 1(2), Hyderabad dated 29.10.2019 passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') in furtherance to the directions of Dispute Resolution Panel (DRP)-1, Bengaluru dated 30.09.2019 issued u/s 144C(5) of the Act.

2. The grounds raised by the assessee read as under :

“A. General

1. The subject order of Ld. Dispute Resolution Panel (DRP) / Ld Assessing Officer (AO) is erroneous in law and on the facts of the case in respect of the following grounds:

B. Transfer Pricing (TP) Grounds

(i) Corporate Guarantee fees

2. The Ld. DRP/AO erred in endorsing the transfer pricing adjustment of Rs. 2,58,44,350/- proposed by the TPO on account of alleged shortfall in corporate guarantee fees on the corporate guarantee issued by the assessee company to its Associated Enterprise.

3. The Ld. DRP/AO ought to have appreciated the fact that corporate guarantee was given by the assessee company as a procedural compliance for availing the loan by its subsidiary and for the overall benefit of the group and it was provided as a part of the parental obligation to its subsidiaries and is in nature of shareholder service.

4. The Ld. DRP/AO erred in not appreciating the fact that corporate guarantees are totally different from bank guarantees and in case of bank guarantees they are highly secured and liquid and encashable by the beneficiary instantly without any legal route. The Ld. DRP/AO further erred in adopting rate which is fixed by the Indian Bankers considering the various factors in India failing to appreciate the fact that the said transaction entered by the appellant is outside India.

5. The Ld. DRP/AO has erred in law and on facts in adopting an average rate of 1.8% of the amount of loan outstanding for computing corporate guarantee fees without bringing anything on the record with regard to terms and conditions and circumstances under which the banks have been charging guarantee commission at 1.8% (median) as the charging of a guarantee commission depends upon transaction to transaction and mutual understanding between the parties.

6. Without prejudice to the above, the Ld. DRP/AO erred on facts and in law in not appreciating that, the appellant has itself paid commission at the rate of 0.22% on bank guarantee to State Bank of Hyderabad, which may be considered as CUP.

7. Without prejudice to the above, the Ld. DRP/AO erred on facts and in law in not appreciating that, the appellant has made a suo-moto adjustment of 0.5% as a commission from its associated enterprise which is higher than the rate of guarantee commission of 0.22% charged by State Bank of Hyderabad in uncontrolled transactions with the Appellant.

Interest on receivables

8. The Ld. DRP/AO have erred in endorsing the Ld. TPO's action of applying the rate of interest at 7.5% on the receivables from its associated enterprises by equating it incorrectly with the Indian investment in bank deposits etc and proposing an adjustment of Rs. 12,42,15,444/- as imputed interest on alleged delayed trade receivables.

9. The Ld. AO/TPO have erred in treating trade receivables from AEs as a separate international transaction.

10. The Ld. DRP/AO ought to have appreciated that the trade receivables arise in the normal course of business and are not to be treated as unsecured loans for levy of interest.

11. The Ld. DRP/AO ought to have appreciated that the Assessee did not charge any interest on receivables from its Non-AEs and that not charging any interest to its AEs on the trade receivables is consistent with the arm's length principle while applying the CUP method for determining the ALP.

(iii) Allocation of Forex loss to SEZ Unit

12. The Ld. DRP/AO have erred in endorsing the transfer pricing adjustment of Rs. 1,39,35,455/- proposed by the TPO on account of allocation of Forex loss to SEZ unit disregarding the method of allocation of Head office expenses/Forex Loss to SEZ Unit consistently adopted by the appellant, which has also been accepted in earlier years.

13. The Ld. DRP/AO ought to have appreciated the fact that the forex loss may also consist of loss on import of raw materials which is also used for manufacturing and selling in domestic market and therefore allocating the forex loss in the ratio of sales turnover would be more appropriate.

c. Non-TP grounds

14. The Ld. DRP/AO erred in not allowing the weighted deduction U/s 35(2AB) of the IT Act 1961, in respect of the expenditure incurred in connection with Clinical Trials / Bio Analytical and Bio equivalence studies without appreciating the legal implication of Explanation to sec.35(2AB) of the IT Act which entitles the assessee company for its claim.

D. General

15. Any other ground that may be urged at the time of hearing with the previous approval of the Hon'ble Tribunal, it is prayed that the relief sought for may be granted to the assessee.”

4. Feeling aggrieved by the order passed by the DRP/assessing officer, the assessee is in appeal before us on the grounds mentioned hereinabove.

5. The ld.AR for the assessee had made elaborate submissions before us in support of the grounds of the assessee. Ld. AR submitted that ground nos.1 and 15 are general in nature and requires no adjudication he further submitted that with respect to Corporate Guarantee, Interest on receivables and Non-TP grounds i.e., ground nos.2 to 7, 8 to 11 and ground no.14, the Tribunal in the case of the assessee had decided these grounds in I.T.A.No.485/Hyd/2022 for A.Y. 2018-19 and therefore, the similar directions may be passed for these grounds also.

6. On the other hand, ld. DR had relied on the orders passed by lower authorities.

7. We have heard the rival contentions and perused the material on record. The ground nos. 2 to 7 pertains to corporate guarantee issues and 8 to 11 pertains to interest on receivables and ground no.14 pertains to disallowance of weighted deduction u/s 35(2AB) of the Act. In this regard, we have decided the appeal

of the assessee in ITA No.485/Hyd/2022 for A.Y. 2018-19 wherein we have held as under :

“8. We have heard the rival contentions of the parties and perused the material available on record. The issue of whether the corporate bank guarantee given by the assessee on behalf of its AE is an international transaction or not, is no more *res integra*, as the explanation to section 92B of the Act itself had made it abundantly clear that if the assessee is providing the capital financing, including any type of long term or short term borrowing, lending or “guarantee”, purchase or sale etc., then such transaction shall be considered as international transaction. Undoubtedly, the assessee has given Corporate Guarantee on behalf of its AE, which fact has not been disputed by the assessee either before the TPO or before the DRP and, therefore, we are of the opinion that the corporate guarantee given by the assessee is an international transaction and, therefore, the same has rightly been held so by the lower authorities.

8.1 Having held that the corporate guarantee issued by the assessee on behalf of its AE is an international transaction, the sequator to that is whether the corporate guarantee estimated by the DRP to the tune of 1% on the amount guaranteed as a corporate guarantee commission as against 0.10% was justified or not.

8.2 In this regard, the assessee had made elaborate submissions which are reproduced elsewhere and submitted that the assessee is taking the financial facilities from the SBI and is paying 0.10% as schedule of fees and charges to the bank.

8.3. We have considered the submissions and found that the charges paid by the assessee cannot be compared for the purposes of determining the ALP of corporate guarantee commission. In our view, no third party would provide similar type of services/corporate guarantee on behalf of its AE and expose itself to the risk of giving the corporate guarantee. Therefore, the charges paid by the assessee to SBI cannot be compared for the purpose of determining the ALP of corporate guarantee commission. The Co-ordinate Bench in the case of Vivimed Labs vide its decision dated 12-04-2022 had adjudicated corporate guarantee commission @ 0.5% qua the extent of the amount of the assessee’s corporate guarantee actually utilised in these four assessment years. Thereafter, similar view had been taken by various Tribunals restricting the addition to 0.5% of the amount guaranteed as corporate guarantee commission. Recently, Delhi Tribunal in the case of Havells India Ltd. Vs. ACIT (LTU) in ITA No.6509/Del/2018 dt.09.05.2022 had also echoed the above said view and held that the addition of 0.5% on the amount guaranteed would be the appropriate benchmark to determine the ALP. Similar decision was also passed by the Bangalore and Pune

Benches of the Tribunals in the case of GMR Infrastructure Ltd in ITA No.344/Pun/2022 dt.25.05.2022 and Jain Irrigation Systems in ITA 822/Pun/2022 dt.22.12.2022, respectively. Respectfully following the view taken by the Delhi, Bangalore and Pune Benches of the Tribunals in the above cited cases and also in the case of Vivimed Labs (supra), we partly allow the ground of the assessee and restrict the addition to the tune of 0.5% on the amount guaranteed as corporate guarantee commission. Thus, ground nos. 1 to 4 are partly allowed.

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13. *We have heard the rival contentions of the parties and perused the material available on record. This Tribunal while passing the decision in the case of Apache Footwear ITA No. 568/Hyd/2022 (supra) had considered the similar arguments raised by the assessee and thereafter, had decided the issue in the following manner:*

“9. We have heard the rival submissions and perused the material on record. From the perusal of the order passed by the TPO, it is clear that both the lower authorities have given an elaborate reasoning for coming to the conclusion that the delay in receiving the receivables is an international transaction and is required to be bench marked in accordance with law. We are reproducing hereinbelow the chart filed by the assessee which is to the following effect :

APACHE FOOTWEAR INDIA PVT. LTD / AY 2018-19				
Export Receivables Realisation pattern				
during A.Y. 2018-19				
	Particulars	Total Number of Invoices during the A.Y. 2018-19	Amount Export Invoice value in Rs.	% of invoices realized to total invoices raised during the year
A)	Realised within credit period	3,001	6,48,15,77,864	91.22
B)	Realised beyond credit period of 60 days			
	<10 days	241	36,27,20,363	5.10
	10-20 days	204	18,88,04,889	2.66
	20-30 days	45	7,11,80,351	1.00
	30-45 days	--	--	--
	45-60 days	--	--	--

	>=60 days	29	11,63,338	0.02
	Sub total (B)	519	62,38,68,941	
	Total (A) + (B)	3520	7,10,54,46,805	

10. From the perusal of the Chart, it is absolutely clear that there were 519 invoices valued at Rs.62,38,68,941/- for which the payments were due beyond the credit period 60 days. In our view, the lower authorities have computed the Arm's Length Price and have mentioned that the same being international transaction, the same is required to be bench marked by considering the SBI short term deposit interest rate.

11. The above-said issue of delay in receivables is no more res integra. The co-ordinate Bench in the cases relied upon by the Revenue examined the issue and thereafter directed the TPO / Assessing Officer to apply rate of interest of 6% on outstanding receivable at the year end. The assessee had relied upon various judgements. All these judgments have been considered by the coordinate Bench and thereafter, the above said direction was issued by the Bench. 12. The reliance of the assessee on the decision of Hon'ble Delhi High Court in the case of PCIT Vs. Boeing India Pvt. Ltd., reported in 2022 (10) TMI 498 is of no use to the assessee as in the said judgement, the Hon'ble Delhi High Court in Para 15 had mentioned that the issue receivable is essentially a question of fact. As mentioned hereinabove, in the present case, there is a delay in receiving the outstanding of Rs.62,38,68,941/- in respect of 519 invoices as mentioned hereinabove and there is no explanation given by the assessee for such a delay in receiving the amount. The very purpose of benchmarking the transaction is to ascertain whether assessee, who is similarly situated, would render the same kind of services at the same or similar price to a third party or not. If we examine the issue in the above-said 21 Apache Footwear India Pvt.Ltd. context, it would be clear that the assessee would charge bank interest or any other interest with a view to compensate itself on account of delay in making the payment. Hence, we do not find any error in the same.

13. The reliance of the assessee in the case of Betchal India Pvt Ltd (supra) is also not correct as A.Y. in that case was 2010-11. By the Finance Act, 2012, the Explanation was inserted in Sec.92B of the Act and by virtue of which "payment or deferred payment or receivable or any other debt arising during the course of business" has been considered to be an international transaction which is required to be benchmarked. Following the above said Explanation, the co-ordinate Bench for the subsequent assessment years vide order dt.16.05.2017 in the case of Betchal India Pvt. Ltd ITA No.6530/Del/2016 (supra) had decided the issue against the assessee. In view of the above, the decision relied upon by the assessee is of no help to assessee.

14. So far as the argument of the assessee that the assessee is a debt free company and therefore, no borrowed fund was used for making supplies to it's A.E. and therefore, is not liable to be compensated for the delay in receiving the receivable is concerned, the same in our view, suffers from inherent flaw as in the T.P. analysis, the TPO is required to examine whether the assessee had supplied the product / services to it's A.E. at Arm's Length Price or not ? If by providing the services / goods at a discounted rate or permitting the assessee to receive the payment after a long period of 60 days or 90 days, then it will amount to permitting the A.E. to use the working capital of the assessee for the purposes of earning the profit. No prudent business man would venture into 22 Apache Footwear India Pvt.Ltd. this kind of activity and permit a third party to use the working capital of the assessee and earn profit thereon. In the present case, though the assessee was required to maintain the T.P. Study and file the same before the TPO to show that the assessee's transactions with it's A.E. were at Arms Length however, nothing has been brought to our notice that the assessee has brought any comparable instance. In these circumstances, the TPO had applied the banking rate as applicable to short term loans. In our view, the same is required to be corrected and instead thereof, ALP is to be computed by adding notional interest @ 6% on the receivable. Considering the totality of facts and circumstances, in view of the decisions cited supra and in view of foregoing discussion, we dismiss the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed."

14. Respectfully following our own decision, we direct the Assessing Officer to determine the ALP and compute the same by adding notional interest @ 6% on the receivable beyond a period of 60 days. Thus, ground nos. 5 to 10 are partly allowed.

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21. We have heard the rival contentions of the parties and perused the material available on record. Admittedly the tribunal in its earlier order had decided this identical issue in favour of the assessee in ITA No.1604 & 1605/HYD/2016 for A.Ys. 2011-12 and 2012-13 decided on 20.07.2018 wherein it was held as under :

"8.4 As noted above the sum of Rs.2,632.50 lakhs (Rs.3,400.02 lakhs in A.Y. 2012-13) added by the Assessing Officer includes a sum of Rs.1,72,91,656/- (Rs.1,28,31,395/- in AY. 2012-13) on other expenses like Rates & Taxes, Travelling Expenses, etc. The Ld. AR. Relied upon the case of Intas Pharmaceuticals Ltd supra for the proposition that any revenue expenditure incurred in respect of the approved R&D facility is eligible for the weighted deduction. It is seen that the Hon'ble ITAT relied upon its

earlier decision in the case of *ACIT v. Torrent Pharmaceuticals Ltd*, ITA No. 3569/Ahd/2004 dt.13.11.2009 in the context of the fact that there was no dispute that the assessee had actually incurred the impugned expenditure on building repairs and maintenance. In this light of the matter this amount of Rs.1,72,91,656/- (Rs.1,28,31,395/- in AY. 2012-13) will be examined for broad account heads and the fact of which research unit the expenditure pertains to. To the extent it is a revenue expenditure pertaining to the approved R&D facility the assessee is eligible for weighted deduction. Alternatively, the claim will be allowed in terms of section 37 if actually incurred. Subject to this factual verification the claim is allowed.”

6. It was the submission of the Ld. CIT-© that the decision relied upon by the Ld. CIT(A) was set-aside by the Hon’ble Supreme Court as the Court has not considered Revenue question that ITAT has not followed the decision in the case of Concept Pharmaceuticals Ltd vs. ACIT (43 SOT 423). Referring to the above decision, it was the submission that the coordinate Bench did not allow the weighted deduction on expenditure incurred outside the R & D facility. Ld. CIT- © relied on the grounds raised.

7. In response, Learned Counsel for the Assessee referred to the decision of the Hon’ble Gujarat High Court in the case of CIT v. Cadila Health Care Ltd [2013] (214 Taxman.com 672) to submit that the issue has been crystallised in favour of the assessee and Hon’ble Supreme Court has referred further three questions which were not answered and that does not affect the decision already given and the order of Gujarat High Court has not been set-aside. He further referred to the Explanation-2 to section 32(2AB) and relied on the following case law:-

(i) *ITAT Ahmedabad decision in the case of Intas Pharmaceuticals Ltd v. DCIT* (ITA Nos. 807/Ahd/2010 and others, dated 14.08.2015);

(ii) CIT vs. Cadila Healthcare Ltd (214 Taxman 0672);

(iii) SRI Biotech Laboratories India Ltd vs. ACIT (36 ITR (Trib) 88);

(iv) CIT vs. Claris Lifesciences Ltd (326 ITR 251) (Guj) and

(v) CIT vs. Sandan Vikas (India) Ltd (335 ITR 117) (Guj)

8. Referring to the decision of *Concept Pharmaceuticals Ltd* (supra) it was submitted that the later decision of the ITAT has analysed the Explanation to section 32(2AB) which was approved by the Gujarat High Court. Since the decision has not considered the Explanation given, the decision need not be followed. It was further contended that when there are two possible views, the one which is in favour of the assessee should be followed as held by the Hon’ble Supreme Court in the case of CIT vs. Vegetables Products Ltd (88 ITR 192) (SC). It was the submission that the Hon’ble Supreme Court has referred additional three questions to Gujarat High Court and

has not stayed or set-aside the judgment already given, on which the Ld. CIT(A) relied upon. He also submitted that the objects of the assessee R & D facility as stated in Form 3CM has been analysed by the Ld. CIT(A) and even though the expenditure was incurred outside for field trials, the expenditure has to be considered for the purpose of 'in-house' research. He supported the order of the Ld. CIT(A).

9. We have considered the rival contentions and perused the case law placed on record. In the decision of Concept Pharmaceuticals Ltd (supra) the Coordinate Bench did not allow the expenditure spent outside the R & D unit but the Bench has not considered the explanation introduced with reference to 'Clinical Trials'. By very nature, the Clinical Trials cannot alone be done within research facility as they require cooperation from the Medical Doctors, Hospitals, Volunteers and patients, therefore such expenditure has to be necessarily spent outside the facility, but for the purpose of 'in-house' research. This issue was examined by the Coordinate Bench which was subject matter of appeal before the Gujarat High Court and Gujarat High Court has approved the same. As seen from the order of the Supreme Court in Special Leave to Appeal © No. 770/2015, dated 13.10.2015, the grievance of Revenue with reference to non-framing of three questions were considered by the Hon'ble Supreme Court as those three questions are considered to be 'substantial question of law' and referred to the Hon'ble High Court to hear the aforesaid three questions of law. However, the judgment already passed by the Gujarat High Court has not been set-aside. As Ld. CIT(A) has followed the Coordinate Bench decision, which was approved by the Gujarat High Court and as no contrary High Court judgment has been placed on record, we approve the order of the CIT (A) and reject the Revenue contentions.

22. Following the above order, the Tribunal again in assessee's own case for A.Ys. 2013-14 and 2014-15 vide ITA Nos.1772 and 1773/Hyd/2017 order dt.14.09.2018 decided the issue in favour of the assessee by observing as under :

"7. Considered the rival submissions and perused the material on record. We find that similar issue came up for consideration before the coordinate bench of this Tribunal in assessee's own case for Ays 2011-12 and 2012-13 (supra), wherein the coordinate bench has held as under:

"9. We have considered the rival contentions and perused the case law placed on record. In the decision of Concept Pharmaceuticals Ltd (supra) the Coordinate Bench did not allow the expenditure spent outside the R & D unit but the Bench has not considered the explanation introduced with reference to 'Clinical Trials'. By very nature, the Clinical Trials cannot alone be done within research facility as they require cooperation from the Medical Doctors, Hospitals, Volunteers and patients, therefore such expenditure has to be necessarily spent outside the facility, but for the purpose of

‘in-house’ research. This issue was examined by the Coordinate Bench which was subject matter of appeal before the Gujarat High Court and Gujarat High Court has approved the same. As seen from the order of the Supreme Court in Special Leave to Appeal © No. 770/2015, dated 13.10.2015, the grievance of Revenue with reference to non framing of three questions were considered by the Hon’ble Supreme Court as those three questions are considered to be ‘substantial question of law’ and referred to the Hon’ble High Court to hear the aforesaid three questions of law. However, the judgment already passed by the Gujarat High Court has not been set-aside. As Ld. CIT(A) has followed the Coordinate Bench decision, which was approved by the Gujarat High Court and as no contrary High Court judgment has been placed on record, we approve the order of the CIT(A) and reject the Revenue contentions.”

As the issue in both the years under consideration are materially identical to that of Ays 2011-12 and 2012-13, following the decision of the coordinate bench in those years, we uphold the order of the CIT(A) and dismiss the grounds raised by the revenue in both the years under consideration.”

23. *In the present case, undisputedly, the facts of the assessee are identical to the facts of the earlier years. The DRP in its order had acknowledged that the assessee is having the requisite certificate from the DSIR form no 3CL dated 15.7.2021 mentioning therein that the eligible R&D expenditure for the assessment year 2018 – 19 was ₹ 33509.81 lakhs (para 2.15.5 and para 2.15.6). The Assessing Officer as well as the DRP after noticing the above said fact also mentioned in Para 2.15.11 though the order of the Tribunal in the assessee’s own case is available for earlier years, however, the DRP had mentioned that the order passed by the hon’ble Gujarat High Court in the case of Cadella has been remanded back by the Hon’ble Supreme Court, hence, DRP is not granting relief to the assessee for this year before it.*

24. *Admittedly, the Revenue had preferred appeal against the order of the Tribunal in the case of the assessee for A.Ys. 2011-12 to 2014-15 before the Hon’ble High Court and the same are pending for adjudication before the Hon’ble High Court.*

25. *In the present case, undisputedly, the assessee had filed letter from Axis Clinical along with its balance-sheet and profit and loss account which is on record wherein it is clearly mentioned that the said Axis Clinicals have not claimed any benefit / weighted deduction u/s 35(2)(AB) of the Income Tax Act, 1961.*

26. *In our view, the reasons for filing the appeal before the Hon’ble High Court cannot be said to be plausible reason for not accepting the decision passed by the co-ordinate Bench when admittedly, there is no change in*

facts. The Hon'ble jurisdiction High Court in the case of State of Andhra Pradesh Vs. Commercial Tax Officer and another reported in 169 ITR 564 and also in the case of Mylan Laboratory [2022] 137 taxmann.com 178 (Telangana) had reiterated that the decision of the Co-ordinate Bench of the Tribunal is binding on the Assessing Officer in the following manner :

“34. We are afraid such a view taken by the Assessing Officer can be justified. Rather, it is highly objectionable for an Assessing Officer to say that decision of the Income Tax Appellate Tribunal is not acceptable; and that since it has been appealed against, the issue of allowability of depreciation on goodwill has not attained finality. Unless there is a stay, order/decision of the jurisdictional Income Tax Appellate Tribunal is binding on all income tax authorities within its jurisdiction.

35. In *Union of India v. Kamlakshi Finance Corporation Ltd.* 1992 taxmann.com 16, Supreme Court held and reiterated that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department, which in itself is an objectionable phrase, and is the subject matter of an appeal can be no ground for not following the appellate order unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the assessee and chaos in administration of the tax laws.

36. Following the above decision, Supreme Court again in *Collector of Customs v. Krishna Sales (P.) Ltd.* 1994 Supp. (3) SCC 73, reiterated the proposition that mere filing of an appeal does not operate as a stay or suspension of the order appealed against. It was pointed out that if the authorities were of the opinion that the goods ought not to be released pending the appeal, the straight-forward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal.

37. Following the above decisions of the Supreme Court, a Division Bench of the Bombay High Court in *Ganesh Benzoplast Ltd. v. Union of India* 2020 (374) ELT 552 held that non-compliance of orders of the appellate authority by the subordinate original authority is disturbing to say the least as it strikes at the very root of administrative discipline and may have the effect of severely undermining the efficacy of the appellate remedy provided to a litigant under the statute. Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

38. This principle has been reiterated by the Bombay High Court in *Himgiri Buildcon & Industries Ltd. v. Union of India* 2021 (376) ELT 257.

39. Therefore, the stand taken by the Assessing Officer that since the decision of the Income Tax Appellate Tribunal in the case of the petitioner

itself for the assessment year 2014-15 has been appealed against the issue in question has not attained finality, is not only wrong but is required to be deprecated in strong terms being highly objectionable.

40. The second view expressed by the Assessing Officer vis-à-vis the decision of the Supreme Court in SMIFS (1 supra) is still more problematic. It is not open to the Assessing Officer to try to evade from the binding effect of a Supreme Court decision by trying to find out 'distinguishing features'. Though unnecessary, we are still compelled to refer to Article 141 of the Constitution of India which says that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Therefore, it is the bounden duty of all authorities whether administrative or quasi-judicial or judicial to follow the law declared by the Supreme Court.

41. While we agree with the learned Standing Counsel that the draft Assessment Order has not yet attained finality as it still has to be placed before the Dispute Resolution Panel and therefore, in the circumstances, we feel that interfering at this stage may not be justified as it would pre-empt decision-making by the high-powered Dispute Resolution Panel. However, we hope and trust that the Dispute Resolution Panel shall look into all aspects of the matter, more particularly, the discussions made above while passing appropriate order(s) under sub-section (8) of section 144C of the Act, and if necessary further personal hearing shall be afforded to the petitioner.

42. We make it clear that we have not expressed any opinion on merit. However, the Dispute Resolution Panel shall look into and consider the objections raised by the petitioner more particularly, about the decision of the Income Tax Appellate Tribunal in its own case for the Assessment Year 2014-15 and the judgment of the Supreme Court in SMIFS (1 supra) keeping in mind the discussions made above.”

27. In the light of the above, respectfully following the decision of the Co-ordinate Bench of the Tribunal in the case of assessee for the earlier years and more particularly when the approval in Form 3CL had been granted by the DSR (requisite authority) approving the expenditure for clinical trial expenses incurred outside approved R & D facilities, the assessee is entitled to weighted deduction u/s 35(2)(AB) and accordingly, the grounds 11 to 14 raised by the assessee are allowed.

28. In the result, the appeal of assessee is partly allowed.”

8. As there is no change in the facts, circumstances and law, after passing of the order in ITA No.485/Hyd/2022, therefore, following our own decision in the case of the assessee for A.Y. 2018-19, we hereby issue similar directions for the present assessment year also, which are as follows :

(i) **Ground Nos. 2 to 7 : Corporate Guarantee Fee** – We hereby restrict the addition with respect to corporate guarantee fee to the tune of 0.5% on the amount granted on corporate guarantee commission. Thus, these grounds are partly allowed.

(ii) **Ground Nos.8 to 11 – Trade Receivables** – We hereby direct the computation of interest on trade receivables adding notional interest of 6% on trade receivables beyond a period of 60 days. Thus, these grounds are partly allowed.

(iii) **Ground No.14 – Weighted Deduction** u/s 35(2)(AB) – We hereby allow the weighted deduction u/s 35(2)(AB) for the expenditure incurred by the assessee after getting approval in Form 3CL from DSR approving the expenditure for clinical trial expenses incurred outside approved R & D facilities. Thus, this ground is allowed.

GROUND 12 AND 13:

9. With respect to allocation of Head Office expenses, ld. AR for the assessee had drawn our attention to Paras 9.1 to 9.5 of the order of TPO which are to the following effect :

“9.1 As seen from Form 3CEB, the assessee has reported the following Specified Domestic Transactions:

Description	Amount (in Rs.)
Allocation of interest, bank charges and exchange loss on operations from other units to SEZ units	23,74,30,807
Allocation of formulation head office salaries to SEZ division on sales basis	20,64,64,037

9.2. It is seen from the page 74 of the TP Study Report that the assessee has adopted other method as the MAM to benchmark the above transactions. It is further seen that the assessee has allocated the interest, bank charges, exchange loss and head office salaries from other units to the SEZ unit based on sales made by each unit as follows :

Particulars	Amount (Rs.)	Reference
Total Sales	80,91,31,01,110	A
SEZ Sales	17,91,82,97,495	B
Formulation + SEZ Sales	53,56,44,01,321	C
Total Interest and Bank Charges	56,53,67,571	
Total Exchange Loss	50,67,91,371	
Total interest, bank charges and exchange loss	107,21,58,942	D
Total Head Office Salaries	61,71,97,173	E
Total interest, bank charges and exchange loss	23,74,30,807	(D/A)*B
Allocation of Head Office Salaries	20,64,64,037	(E/C)*B

9.3. The above analysis of the assessee was considered and it is seen that forex loss which is directly linked with the import and export transactions of each unit has also been allocated based on the sales made by the respective Units. This approach of the assessee is incorrect. Hence, it was proposed vide this office show cause notice dated 16/10/2018, to allocate the forex loss of Rs.50,67,91,371/- based on the proportion of export sales made by the SEZ unit on the total export sales.

9.4. In response to the above, the assessee vide its letter dated 24/10/2018 has merely submitted the allocation based on net sales is more appropriate method of allocation due to the reason that the exchange loss shall include loss incurred on capital transactions as well.

9.5. The above submissions of the assessee were considered and found to be not acceptable for the reason that Forex loss related to

capital items cannot be debited to the profit and loss account. Since the forex loss is incidental to the exports and import transactions, it would be more appropriate to allocate the forex loss of Rs.50,67,91,371/- based on the proportion of export sales made by the SEZ unit on the total export sales.

Description		Amount (in Rs.)
Total export sales	A	64,46,59,89,097
Export sales of SEZ Unit	B	16,04,87,14,381
Forex loss	C	50,67,91,371
Proportionate Forex loss of SEZ Unit	$D=C*(B/A)$	12,61,64,976
Less : Forex loss allocated by the assessee to SEZ as per TP Study Report		11,22,29,521
Adjustment u/s 92CA(3)		1,39,35,455

w.r.t the allocation of forex loss from other units to SEZ unit as computed above is Rs.1,39,35,455/- is made as adjustment u/s 92CA(3) of the Income Tax Act.

10. The TPO had noted down that the assessee had adopted the other method as against Most Appropriate Method for benchmarking the transactions. However, the TPO after affording the opportunity to the assessee had concluded that forex loss is directly related to the export and import transactions and it would be appropriate to allocate the forex loss based on the proportion of export sales made by the SEZ unit on the total export sales. Thereafter, the Assessing Officer/TPO had quantified the adjustment to Rs.1,39,35,455/-. The above said order was confirmed by the DRP on appeal.

11. It was the contention of the assessee before us that the allocation of the Head Office expenses should be based on net sales as against the export sales made by the SEZ. It was submitted in the written submissions at page 37 in Para 14.2 as under :

a. *Exchange loss also contains a portion which is due to import of raw material which is also used for sales made in domestic market and in exports by Units other than SEZ unit.*

b. *The exchange loss may also include loss incurred on capital transactions as well. Such proportionate loss will not be considered if the forex loss is allocated based on the export sales.*

c. *The export incentives will also be included in the "net sales". Such export incentives will not be considered if the forex less is allocated based on the export sales alone.*

12. On the other hand, ld.DR relied upon the orders passed by the lower authorities.

13. We have heard both sides and perused the material on record. It is the contention of the assessee that the said method of accounting had been continuously followed by the assessee for the earlier assessment years also. However, no such submissions / practice were cited before the Assessing Officer/TPO or before the DRP or before us to buttress its contention. Further, the contention raised by the assessee in its written submissions were fully considered by the TPO while passing the order, reproduced hereinabove and we do not find any reasons to agree with the contentions of the assessee, more particularly, when the assessee has not filed any document in support of the bifurcation of forex exchange loss for import of raw material used for domestic sales as well as for the exports. Hence, we do not find any reasons to interfere with the order of the TPO and accordingly, this ground is dismissed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 21st June, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st June, 2023.
TYNM/SPS

Copy to:

S.No	Addresses
1	Aurobindo Pharma Limited, Hyderabad, C/o. Prasad and Prasad, C.As, Flat No.301, M.J. Towers, H.No.8-2-698, Road No.12, Banjara Hills, Hyderabad.
2	Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad.
3	The Director of Income Tax (IT & TP), Hyderabad.
4	ACIT (Transfer Pricing), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order