

**IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH,
MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1004/Mum/2021
(Assessment Year: 2016-17)

Strides Pharma Science Ltd.
201, Devavrata, Sector-17,
Vashi, Navi Mumbai, 400703

(Appellant)

Vs. DCIT 15(1)(2)
Aayakar Bhavan, M K Road,
Mumbai 400020

(Respondent)

PAN No. AADCS8104P

Assessee by	:	Shri Nishant Gandh, AR
Revenue by	:	Ms Samruddhi Hande SR DR, Aditya M Rai Sr AR, Suresh Gaikwad SR AR

**Date of hearing: 17-02-023,23/06/2023 and
07/07/2023**

Date of pronouncement : 05.10.2023

ORDER

PER PRASHANT MAHARISHI, AM:

1. This Appeal, ITA No. 1004/Mum/2021 for assessment Year 2016-17 is filed by Strides Pharma Science Ltd. [The Assessee/ Appellant] against the assessment order passed u/s 143(3) r.w.s 144C of the Income Tax Act (hereinafter "the Act"), dated 31.10.2019 determining the total income of the assessee at Rs. 673,72,86,723/-.
2. The assessee is aggrieved with the above order and has preferred order before us, raising following 10 grounds;



I Transfer Pricing

1 *The learned Assessing Officer ("AD"), the learned Transfer Pricing Officer ("TPO") and the Honorable ("Hon'ble) Dispute Resolution Panel ("DRP") erred in making adjustment under section 92CA of the Act amounting to INR 9,5,.43,090, details of which are provided below.*

2. ***Imputation of interest on the Share application money pending allotment - INR 9,25,35,248 [Page 3 and 4 of the Final Assessment Order]***

The learned AO/ the learned TPO and the Hon'ble DRP erred in facts and in law in imputing the interest on share application money, pending allotment, and in doing so have grossly erred

2.1 *In failing to appreciate:*

2.1.1 *that re-characterization of the transactions is not permissible under the transfer pricing provisions.*

2.1.2 *the fact that only real income can be brought within the ambit of taxation and imputing interest on unearned income is unwarranted and unjustified.*

2.2 *In ignoring the fact that investments have been made as share application money to the Associated Enterprises ("AES") of the Appellant and hence, the amount remitted as share application money (and invested by the Appellant) could not be deemed as granting of loan.*

2.3 *In ignoring the fact that subsequently corresponding shares were allotted as against such payment of share application money. Further, such payment is also capital account. transaction and provision of Chapter X is not applicable.*

2.4 ***In disregarding the binding judgment of Mumbai ITAT in Appellant's own case for AY 2014-15 wherein the Hon'ble ITAT has deleted the interest adjustment on same matter. Further, there are various other binding judgments of the jurisdictional***



ITAT and Hon'ble High Court, which had been equally disregarded.

- 2.5 *Notwithstanding the above arguments of the Appellant that there should not be any transfer pricing adjustment, the learned AO/ the learned TPO and the Hon'ble DRP erred in not restricting the transfer pricing adjustment till the end of the year Le. March 31, 2016, and instead computed and added notional interest for the subsequent year (i.e. AY 2017-18) in the Assessment Order of AY 2016-17, which is incorrect.*
- 2.6 *Without prejudice to the above arguments of the Appellant, the learned AO/ the learned TPO and the Hon'ble DRP erred in not providing six months as grace period as per Foreign Exchange Management Act ("FEMA") regulation.*
3. *Imputation of interest on advance recoverable- INR 33,07,842 [Page 3 and 4 of the Final Assessment Order]*

The learned AO/ the learned TPO and the Hon'ble DRP erred in facts and in law in imputing the interest on the advance recoverable, and in doing so have grossly erred:

- 3.1 *In failing to appreciate:*
- 3.1.1 *that re-characterization of the transactions is not permissible under the transfer pricing provisions*
- 3.1.2 *the fact that only real income can be brought within the ambit of taxation and imputing interest on unearned income is unwarranted and unjustified.*
- 3.2 *In ignoring the fact that advance recoverable is on account of "delay in receipt of amounts referred above and hence, such amounts recoverable cannot be deemed/ considered as granting of loan.*

II Corporate Tax



- 4 Disallowance under Section 14A of the Act amounting to INR 15,34,55,236 [Page 4 to 8 of the Final Assessment Order]**
- 4.1 *The Hon'ble DRP and the learned AO erred in law and on facts by invoking Section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (" the Rules") while determining expenditure in relation to earning of exempt income.*
- 4.2 *The Hon'ble DRP and the learned AO ought to have appreciated:*
- 4.2.1 *that the investments in domestic companies and Mutual Funds from internal accruals and no interest-bearing funds have been utilized for making such investments.*
- 4.2.2 *that the said investments were made out of commercial expediency and entirely for business reasons and not to earn dividend income.*
- 4.3 *The Hon'ble DRP and the learned AD erred in not following the decisions of **Hon'ble Mumbai ITAT in Appellant's own case for AYs 2001-02/ AY 2002-03/ 2006-07** wherein the Mumbai ITAT deleted the disallowance under section 14A of the Act. Further, the same have also erred in not relying on the decision of Hon'ble Mumbai ITAT in Appellant's own case for AY 2014-15 and not restricting the disallowance (if, any) to INR 2,52,50,670 based on the specific directions given by the Hon'ble ITAT in the order passed for AY 2014-15.*
- 4.4 *Without prejudice to the above argument of the Appellant, disallowance, (if any) under Section 14A should be computed based on the methodology provided under **Rule 8D of the Rules as amended by Notification No. 50 1949(E) [F.NO.370142/7/2016-TPL]**.*
- 5. Disallowance under Section 36(1)(iii), Section 37 and Section 38 of the Act amounting to INR 15,34,55,236 (Page 9 to 18 of the Final Assessment Order)**



The Hon'ble DRP and the learned AO erred in facts and in law in making disallowance under Section 36(1)(i), Section 37 and Section 38 of the Act, and in doing so have grossly erred:

5.1 *In law in holding that equity investment in a foreign company, though would be outside Section 14A for the purpose of expenses disallowance, would still fall under the head capital gains and expenses need to be disallowed under capital gain.*

5.2 *In failing to appreciate:*

5.2.1 *that the Appellant constitutes only **one indivisible business** and expenses incurred solely for the purpose of business and hence, that apportionment of expenses is not warranted.*

5.2.2 *that expenses cannot be assessed under the head 'capital gains, since the expenses are running expenses and not expenses in relation to acquisition of a capital asset, cost of improvement, or transfer, thereof. As such, the expenses: continue to be allowable under Section 36, Section 37 and Section 38 of the Act.*

5.2.3 *that any general expense is allowed under Section 37, although not specifically mentioned in Sections 30 to 43D of the Act.*

5.2.4 *that the Appellant has suo-motu disallowed 10% as administrative expenses under section 14A of the Act and hence, further disallowance towards employee cost, audit cost, communication expenses, building expenses, etc. under Section 36, Section 37 and Section 38 of the Act is not warranted.*

5.3 *In stating the fact that the Appellant has not provided the rationale behind arriving at such suo motu adjustment.*

5.4 *In disallowing the interest on borrowing under Section 36(1)(ii) of the Act without appreciating the fact that the investments were made during the current/past years out of its own funds/ internal accruals.*

**6 Re-computation of book profits under Section 115JB of the Act
INR 15,34,55,236 [Page 4 to 8 of the Assessment Order]**



- 6.1 *The Hon'ble DRP and the learned AO grossly erred in re-computing the book profit under Section 11518 of the Act by making addition of an amount of INR 15,34,55,236 towards expenditure incurred for earning exempt income under section 14A of the Act.*
- 6.2 *The Hon'ble DRP and the learned AO has failed to appreciate that the disallowance as prescribed in clause (f) of Explanation 1 to Section 1151B of the Act is applicable in cases*
- 6.3 *Which relates only to the exempt income and not otherwise. The Hon'ble DRP and the learned AO erred in disregarding the decision of Mumbai ITAT in the Appellant's own case for AY 2014-15 wherein the Hon'ble ITAT has deleted the addition made to the book profit under Section 1151B of the Act by the learned AO*
- 6.4 *The Hon'ble DRP and the learned AO erred in disregarding the decision of Special Bench of the ITAT in the case of ACIT Vs. Vireet Investment Pvt. Ltd. [2017] ITA No. 502/Del/2012 (Delhi Tribunal), which squarely applies to the Appellant's case.*
- 6.5 *The Hon'ble DRP and the learned AO erred in disregarding the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. v. CIT (2002) 255 ITR 273 (SC), wherein the Hon'ble Court has held that the AO does not have the jurisdiction to go beyond the net profit shown in the audited profit and loss account except to the extent provided in the explanation to section 115JB of the Act*
- 7. *Disallowance of weighted deduction amounting to INR 17,54,78,992 claimed under Section 35(2AB) of the Act (Page 25 & 26 of the Assessment Order)***

The Hon'ble DRP and the learned AO erred in facts and in law in making disallowance of weighted deduction claimed under Section 35(2AB) of the Act, and in doing so have grossly erred:

7.1 *In failing to appreciate:*

7.1.1 *that Section 35(2AB)(1) prescribes the requirement of approval of the facility and not the expenditure. Further, amended Rule 6*



of the Rules vide CBDT Notification No. 29/2016 dated April 28, 2016 come into effect from July 01, 2016 and the said Rule should not be made applicable to AY 2016-17.

- 7.1.2 that the Mumbai ITAT in Appellant's own case for AY 07-08 has gone one step further and referred the decision of Gujarat High Court in the case of Claris Lifesciences Limited [2009] 221 CTR 301 (Gujarat) and Delhi HC in the case of CIT vs. Sandan Vikas (India) Limited (ITA No. 348 of 2011), wherein the Hon'ble ITAT has allowed the deduction in the favour of company on the basis of Form No. 3CM issued by the DSIR even without the submission of Form No. 3CL*
- 7.1.3 that the same are not bound to disallow the R&D expenditure which has not been reported by the Department of Scientific & Industrial Research (DSIR) in the Form 3CL Further, since the expenditure were incurred on scientific research in the in house R&D facility approved by DSIR, there should not be any disallowance against the weighted deduction claimed under Section 35(2AB) of the Act by the Appellant.*
- 7.2 In disregarding the various other binding judgements of the ITAT and Hon'ble High Court which squarely applies to the Appellant's case with regard to allowability of weighted deduction under section 35(2AB) which are in relation to expenses incurred by DSIR approved R&D facility.*
- 8. Credit for Tax Deducted at Source ("TDS") and Advance Tax has been granted short by INR 50,12,376 and INR 5,50,00,000 respectively [Refer Income tax computation Form along with Final Assessment Order]**
- 8.1 The Hon'ble DRP and the learned AO erred in granting short credit for TDS and Advance tax amounting to INR 50,12,376 and INR 5,50,00,000 respectively in the Final Assessment Order.*
- 8.2 The Hon'ble DRP and the learned AO erred in not considering the tax credit as provided under "TDS" and "Advance Tax in Form 26AS of AY 2016-17.*



9. *Erroneous levy of interest under Section 2348 of the Act amounting to INR 3,46,58,553 [Refer Income tax computation Form along with Final Assessment Order]*

The learned AO erred in levying interest under Section 2348 of the Act amounting to INR 3,46,58,553 without taking cognizance of the fact that the Appellant had paid more than 90 percent of the assessed tax as advance tax.

10. *Initiation of penalty proceedings under Section 271(1)(c) of the Act (Page 29 of the Final Assessment Order)*

The learned AO erred in law and facts in initiating penalty proceedings under Section 274 read with Section 271(1)(c) of the Act, as no case is made out by the AO that the Appellant has concealed any particulars of income/ furnished inaccurate particulars to the learned AO either in the tax return or during the assessment proceedings.

The appellant craves to add, alter, amend, or delete all or any of the grounds of appeal before or during the course of Hearing before the Honorable ITAT.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be granted.

3. Assessee is a company engaged in integrated manufacturing and export of pharmaceutical dosages forms. It markets and supply pharmaceutical products. Assessee filed return of income on 28/11/2016 showing income of ₹ 534,925,020/-. The return of income was picked up for scrutiny. As assessee has entered into international transactions, reference under section 92CA (1) of the act was made by the learned assessing officer to The Assistant Commissioner Of Income Tax, Transfer Pricing, 4 (1) (2), Mumbai (the learned TPO) to examine arm's-length price of those international transactions.



4. The learned TPO passed an order under section 92CA (3) on 31/10/2019 dealing with the international transactions as under: –
- i. On verification of Form No. 3CEB, the TPO noted that assessee has given advance recoverable from the foreign associated enterprise amounting to ₹ 430,920,620. The majority of such advances are outstanding guarantee commission receivable and reimbursement of expenses. Assessee did not charge any interest on any of these advances outstanding as on 31st of March 2016. Therefore, the assessee was asked to explain the same. The assessee submitted that the payment of advances only incidental to normal course of business but not a separate transaction by itself, those advances are neither loans nor are in the nature of transaction of capital financing. Assessee submitted that it has not charged interest on advances from non-associated enterprises as well. It further stated that the learned Dispute Resolution Panel for assessment year 2014 – 15, 13 – 14 and 11 – 12 has deleted the similar adjustment made by the TPO with respect to the export receivables. Assessee stated that if at all an interest is to be imputed, interest rate should be calculated with reference to LIBOR only. The learned TPO rejected the contention of the assessee and held that it is an international transaction under section 92B of the act and as per clause (c) of the explanation , it specifically covers all type of advances/payments/deferred payments etc. in the course of the business and therefore these international transactions are required to be benchmarked appropriately. The learned TPO further held that as the facts in this case are similar to the



earlier year, the adjustment on account of interest is worked out as per the date direction of the DRP on the basis of Bloomberg rate applicable for the respective country and currency. The learned TPO found that Bloomberg rate with respect to the various subsidiaries such as Cyprus, Singapore, United Kingdom, Nigeria and Malaysia are available. He therefore held that the outstanding amount due and recoverable as on 31st of March 2015 in case of 8 associated enterprises amounting to ₹ 430,920,620 is outstanding on which the interest of ₹ 3,307,842 should have been charged by the assessee and therefore the adjustment was made towards interest on advances receivable to assessee from its associated enterprises.

- ii. LD TPO further noted that assessee has invested in share application money in two foreign companies situated at Singapore and United Kingdom. In Singapore entities the assessee has invested a sum of ₹ 2,814,042,859 and in the United Kingdom associated enterprise assessee has invested ₹ 1,578,339,875/- as share application money. In the earlier years, the above sum was treated as loan by the TPO and interest was charged, according to the direction of the learned dispute resolution panel. Therefore the learned assessing officer noted that where there is a delay of more than six months between the payment of share application money and the issue of shares by the foreign associated Enterprises, share application money becomes the loan i.e. capital financing transaction. Therefore, the imputation of interest on share application money is justified. As the assessee has not charged,



any interest on this account adjustment was warranted. The learned TPO took Bloomberg rate as per the country/currency. Accordingly, with respect to UK entity, the total interest was computed at ₹ 19,244,744 and with respect to the Singapore entities, the amount was computed at ₹ 73,290,504. Accordingly, the total interest was imputed at ₹ 92,535,248.

5. Consequently the order under section 92CA (3) of the act was passed on 31/10/2019 wherein the above adjustment totaling to ₹ 95,843,090 was proposed.
6. The learned assessing officer further examined the corporate tax issue and found that:-
 - i. Assessee has investments, income of which is not forming part of the total income and therefore the expenses are disallowable under section 14 A of the act. In the computation of total income they assessee has disallowed ₹ 6,996,212/- the AO was not satisfied with the disallowance made by the assessee and therefore the assessee was asked to explain the disallowance. Assessee submitted that (1) no disallowance should be made where own funds utilized for making investment, (2) no disallowance of expenditure in the absence of the actual expenditure incurred by the company, (3) nexus between the exempt income and expenditure disallowed under section 14 A of the act needs to be established and the assessee has disallowed on its own , ₹ 6,996,212 which is computed on a rational basis and therefore the disallowance should be accepted. Assessee



on 23/12/2019 without prejudice has also submitted the detail submission about the disallowance. The learned that Id AO computed the disallowance under rule 8D holding that circular number 5/2014 clarifies that even if there is no exempt income earned by the assessee in the year under consideration, disallowance under section 14 A is to be made, computed disallowance of ₹ 16,40,51,448/-. As assessee has offered the disallowance of ₹ 6,996,212/- disallowance under section 14 A of ₹ 153,455,236 was made.

- ii. Alternatively, the learned AO held that above sum of ₹ 153,455,236/- is disallowable under section 37 (1) under section 36 (1) (iii) and section 38 of the act.
- iii. The AO found that assessee is engaged in the business of manufacturing and selling pharmaceutical products wherein the assessee has debited ₹ 152,013,488 under the head business promotion expenses in the profit and loss account. The assessee has booked a sum of ₹ 15,199,296/- out of the above expenditure on account of sale promotion activities to be distributed to the field staff, dealers, distributors and doctors in the form of various products such as bags, watches, travel bags, earphones, study lamp, Wallet, coffee Mixtures, books, stationery, pen etc. The assessee submitted that these are the sales promotion activities and incurred expenses for promotion of the name and brand of the company. The learned TPO held that the above expenditure incurred



by the assessee is against the notification issued by the Medical Council of India on 10/12/2009. The learned AO asked the assessee to submit details of the expenditure however; assessee has merely furnished the breakup of the expenses. Therefore, the learned assessing officer considering the guidelines of the Indian Medical Council, circular number 5/2012 dated 1/8/2012 has disallowed the sum of ₹ 15,199,296 as expenditure incurred but prohibited by law.

- iv. The learned assessing officer further noted that assessee has incurred expenditure in the form of provision of expenses, audit fees amounting to ₹ 29,802,989/- on which tax deduction at source has not been made and therefore 30% of same is disallowable under section 40a (ia) of the act, accordingly ₹ 8,940,897/- being 30% of ₹ 29,802,989 was disallowed.
- v. Assessee has claimed deduction under section 35 (2AB) of the act at the rate of 200% of such expenditure incurred of ₹ 627,182,992 (deduction claimed of ₹ 1,254,365,984). The assessee was asked to furnish the form number 3CL wherein it was found that DSIR has approved the revenue expenditure only of ₹ 439,695,000 whereas the assessee has shown the revenue expenditure of ₹ 514,737,350 and capital expenditure of Rs. 120,09,000 where the assessee has incurred capital expenditure of ₹ 112,445,642/-. Accordingly, in the revenue expenditure there was a



difference of ₹ 75,042,350 and in capital expenditure of ₹ 104,036,642 totaling to ₹ 175,478,992. Accordingly against the claim of the assessee of ₹ 1,254,365,984/- according to form number 3CL received assessee is entitled to the deduction of ₹107,88,86,992 and the difference of ₹ 175,478,992/- was disallowed. The assessee stated that prior to 1/7/2016 form number 3CL had no legal sanctity and it is only with effect from 1/7/2016 the amendment to rule 6 (7A) (b) of the rules that the quantification of the weighted deduction has any significance. Therefore the claim of the assessee before the learned assessing officer was that it is the impugned assessment year 2016 – 17 wherein disallowance under section 35 (2AB) of the act cannot be made on the basis of form number 3CL issued by DSIR.

- vi. The learned assessing officer also noted that the book profit shown by the assessee under section 115JB of ₹ 1,529,452,860 – which is also required to be increased by the disallowance on account of section 14 A ₹ 153,455,236/- and accordingly the net book profit was computed at ₹ 1,622,908,042/-.
7. Accordingly, the draft assessment order under section 144C of the income tax act was passed on 28/12/2019 wherein the income of the assessee was computed as per the normal computation at ₹ 980,205,253. The book profit was determined at ₹ 1,622,908,042/-.



8. Assessee preferred an objection before the learned dispute resolution panel – 2, Mumbai – 2 (the learned DRP) who issued directions on 18/3/2021. The learned DRP: –
- i. On the issue of imputation of interest of ₹ 330,700,842/- on advances receivable by the assessee from the associated enterprises, upheld the action of the AO following the direction of the learned dispute resolution panel in earlier years.
 - ii. On the issue of computation of interest amounting to ₹ 92,535,248 on share application money pending allotment with various foreign associated Enterprises, the learned dispute resolution panel following its direction in earlier years confirms the action of the learned AO.
 - iii. With respect to the disallowance of business promotion expenditure of ₹ 15,199,296/- under section 37 (1) of the act, the learned DRP followed its earlier direction and the assessing officer was directed to restrict the disallowance to the 50% of the expenses incurred similarly Provided in the earlier years.
 - iv. With respect to disallowance under section 14 A of the act of ₹ 153,455,236/-, the learned DRP following the direction of dispute resolution panel in earlier years confirm the disallowance.
 - v. With respect to the adjustment to the book profit under section 115JB of the act of the same amount disallowed



under section 14 A of the act, the learned dispute resolution panel held that the assessing officer has taken one of the possible views and therefore the disallowance was confirmed.

- vi. On the issue of deduction under section 35 (2AB) of the act of disallowance of ₹ 175,478,992/–, following the CBDT notification number 29/2016 dated 28 April 2016 that there was no such provision in the notification which says that prior to the amendment the AO cannot rely upon form number 3CA issued by DSIR. The learned DRP stated that DSIR is highly accredited agency and deserves due attention for the form number 3CL issued by it and therefore the disallowance was upheld.

9. Based on the direction of the learned dispute resolution panel the learned assessing officer passed the final assessment order under section 143 (3) read with section 144C (13) read with section 143 (3A) and 143 (3B) of the act on 13 April 2021 computing the total income of the assessee under section 115JB of the act of ₹ 1,622,908,043/–. In the normal computation of total income total disallowance of ₹ 424,777,318/– was made. The assessee before us along with the adjustment to the book profit challenged the same.
10. The Ld. Authorised Representative has submitted a chart. according to that chart, all the issues in this appeal are covered by decision of Coordinate Bench in assessee's own case for earlier years.



11. It was further stated that grounds no 9 is not pressed and ground no. 10 is premature. In view of this, we dismissed grounds no. 9 and 10 of the appeal.
12. The ground no. 1 of the appeal merely challenges the transfer pricing adjustment and is general in nature, as each Ground has been dealt with separately on merits, this ground of appeal is dismissed.
13. Ground number 2 of the appeal of the assessee is against the interest imputation on share application money paid to the associated enterprises. The learned authorized representative submitted that the identical issue arose in case of the assessee which has also been referred to by the learned dispute resolution panel wherein the coordinate bench when the assessment order travelled to the tribunal, for assessment year 2014 – 15 and 2015 – 16 has decided this issue in favour of the assessee and therefore, this issue stands squarely covered in favour of the assessee. He further submitted that there is no difference in the facts and circumstances of the case as covered in the earlier years as well as in this year, this is also recorded by the learned dispute resolution panel and the learned transfer pricing officer because both of them have made and confirmed directions based on their findings of the earlier year in the case of the assessee.
14. The learned departmental representative vehemently supported the order of the learned transfer pricing officer and direction of the learned dispute resolution panel stating that assessee has issued loan to its associated concerns in the garb of share application money and therefore, it is a capital financing transaction that should have been benchmarked for the interest imputation.



15. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that identical issue arose in the case of the assessee for assessment year 2014 – 15 and 2015 – 16 wherein adjustment proposed by the learned TPO and confirmed by the learned dispute resolution panel were this deleted by the coordinate bench. We find that for assessment year 2014 – 15 in ITA number 7370/M/2018, coordinate bench has decided ground number 2 of the appeal wherein the share application money pending allotment resulted into the imputation of interest of ₹ 50,815,164 which was deleted by the coordinate bench as per paragraph number 14 of the order dated 7/2/2020. Further for assessment year 2015 – 16 [2022] 141 taxmann.com 430 (Mumbai - Trib.)[06-04-2022] identical issue arose wherein the coordinate bench has dealt with this issue as under:-

“3. The issue arising in ground no. 2, in assessee's appeal is with regard to imputation of interest on share application money paid to the Associated Enterprises ("A.Es").

4. The brief facts of the case pertaining to this issue as emanating from the record are: During the relevant assessment year, the assessee had invested as share application money in two A.Es namely Strides Pharma Asia Pte. Ltd., Singapore, and Strides Pharma International Ltd., Cyprus. The share application money was remitted to its A.Es from time-to-time during the relevant assessment year. In addition to this, during the earlier years, the assessee had invested the share application money in following A.Es which was outstanding as on 31-3-2014.

Sl. No.	Name of A.E.	Amount outstanding as on 31 st March 2014
1.	StridesPharma Asia Pte. Ltd., Singapore	Rs.144,48,94,320
2.	Aglia	Rs.141,35,85,582



	Specialties Ltd., Cyprus	
3.	Strides Arolab International Ltd. U.K.	Rs.14,55,61,515

5. The Assessing Officer made a reference to the Transfer Pricing Officer ("TPO") for determination of arm's length price of international transactions entered into by the assessee. During the proceedings before the TPO, the assessee was asked to show cause as to why there should not be any interest imputation on the share application money. In reply, the assessee submitted that the funds remitted to A.Es for share application money was for the sole purpose of obtaining the shares and it was never intended to be a loan. The assessee further submitted that the A.Es have refunded/set-off the share application money during the relevant assessment year and there is no outstanding/share application money. The money has been returned by the A.Es since the process for which the funds were received no longer exists or the A.Es have received alternative source of funds. Thus, the repayment of part of share application money by the A.Es is part of the process relating to share allotment. The assessee on without prejudice basis further submitted that if at all any interest is to be imputed the interest rate to be calculated with reference to LIBOR rate. The TPO *vide* order dated 25-10-2018, passed under section 92CA(3) of the Act at the outset noted that interest adjustment on similar issue was made in earlier years *i.e.*, in assessment years 2011-12, 2012-13, 2013-14 and 2014-15 and the same was upheld by the Dispute Resolution Panel ("DRP"). Following the approach adopted in the earlier years, the TPO rejected the contention of the assessee and held that imputation of interest on share application money is justified as there has been a delay of more than six months between the payment of share application money and the issue of shares by the foreign A.Es for which no interest was charged by the assessee from its A.Es. The TPO further noted that in respect of share application money invested by the assessee during the relevant assessment year interest imputation is not required as either the investment was itself made in

March 2015, or the amount was refunded during the same year. However, in respect of share application money investment which was outstanding as on 31-3-2014, the TPO by applying Boomberg rate for the respective country made an adjustment of Rs. 3,11,09,890, towards notional interest on share application money remitted by the assessee to its A.Es for which shares were allotted after more than six months. The Assessing Officer passed draft assessment order dated 20-12-2018, under section 143(3) r/w section 144C(1) of the Act, inter-alia, on the basis of adjustment proposed by the TPO.

6. The DRP, *vide* its directions dated 30-9-2019, issued under section 144C(5) of the Act, inter-alia, upheld the order passed by the TPO following its directions issued in preceding assessment years and accordingly rejected the objections filed by the assessee. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, Shri Nishit Gandhi, learned Authorised Representative for the assessee ("learned A.R.") submitted that similar issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case.

8. On the other hand, Ms. Vatsalaa Jha, learned Departmental Representative ("learned D.R.") vehemently relied on the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in *StridesPharmaScienceLtd. v. Dy. CIT* [IT Appeal No. 7370 (Mum.) of 2018, dated 7-2-2020], has decided the issue in favour of the assessee by observing as under :—

'14. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below along with case laws cited by the Id. AR for the assessee. At the outset, it needs mention that it has been held by the Hon'ble Bombay High Court in the case of *DIT v. Besix Kier Dabhol* - (2012) 210 Taxman 151 (Bombay) that the Revenue has no power to re-characterize a transaction entered into by the Assessee. Therefore admittedly, the AO or



the TPO are not empowered to convert and re-characterize a transaction of share application into a loan transaction. This aspect of the matter and this judgment has been overlooked by the DRP in its order for earlier year. As such, it could not be followed. Secondly, the remittance of the said share application money was approved and supervised by the RBI and the purpose of remittance as approved was investment in share capital. As such, there is no dispute to the fact that the amounts paid were on account of investment in share capital of the associates or subsidiaries. We further note that even otherwise the transaction of issue of shares is a capital account transaction and not a revenue account transaction and therefore could not be said to result in any income per se. We further notice that the co-ordinate benches of the Tribunal have also taken a view that no imputation of interest could be made on a transaction of share application money paid to subsidiaries. The coordinate bench of Mumbai Tribunal in the case of *Aries Agro Ltd. v. DCIT* - ITA No. 1452/Mum/17(*supra*) has been held as follows :

"18. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee has advanced money as share application money to Golden Harvest a foreign AE to set up a plant in free trade zone in Sharjah. It is also undisputed that the AE could not convert the share application money into share capital by issuing shares to the assessee as the permission from the free trade zone authorities with whom the AE was registered was pending and this was the only sole reason for not issuing the shares in favour of the assessee. Now the issue before us is whether the share application money could be treated as loan and could be subjected to the transfer pricing provisions. After perusing the facts on record and going through the decision relied on by the Ld. A.R., we find that no income has accrued from the share application money to the assessee and therefore such transactions could not be subjected to transfer pricing provisions. The Hon'ble Jurisdictional Bombay High Court in the case

of *Shell India Markets Pvt. Ltd. v. ACIT* and others has also held that the provisions of chapter 10 of the Act would apply only when income arises from the international transactions. The relevant portion of the said order is reproduced as under :

"9. We shall now consider the above submissions on behalf of the Revenue. So far as the availability of alternative remedy is concerned, the petitioner has at the beginning of today's hearing itself undertaken to withdraw its objection on the issue of jurisdiction before the Dispute Resolution Panel. This was accepted by us before considering the issue on the merits. Moreover, this petition was filed on April 24, 2013, challenging the impugned orders dated January 30, 2013, of the Transfer Pricing Officer and the draft assessment order dated March 28, 2014, of the Assessing Officer, on the issue of jurisdiction. This issue has been decided in *Vodafone IV* and would be binding on all authorities within the State till the apex court takes a different view on it. Therefore, in view of the fact that the Revenue does not dispute that the issue on the merits stands covered by the decision of *Vodafone IV* it would serve no useful purpose by directing the petitioner to prosecute its objections before the Dispute Resolution Panel and the Dispute Resolution Panel disposing of the same in accordance with *Vodafone IV*. Thus, in the present facts the distinction sought to be made on the ground of alternative remedy is not such as to warrant not entertaining the petition.

10. The second distinguishing feature from that of *Vodafone IV*, as canvassed by the Revenue, is that Form 3CEB in respect of the transaction of issue of shares to its associated enterprises, is not disclosed as an international transaction. This the petitioner was obliged to do as the transaction is an international transaction. This was in fact done by the petitioners in *Vodafone IV*. This stand by the Revenue is a little curious as in *Vodafone IV* the Revenue contended that as the petitioners therein had filed Form 3CEB in respect of issue of shares to its associated enterprise, they had submitted to the jurisdiction of Chapter X of the Act and cannot now contend that the proceeding to tax such shortfall on capital account is



without jurisdiction. In this case, an exactly opposite stand is being taken by the State. The State is expected to be consistent and not change its stand from case to case. Be that as it may, the petitioner herein had not disclosed the transaction in Form 3CEB as, according to the petitioner, it was not an international transaction for the reason that it did not give rise to any income. The fact that the petitioner chose not to declare issue of shares to its non-resident associated enterprises in Form 3CEB as in its understanding it fell outside the scope of Chapter X of the Act now stands vindicated by the decision of this court in Vodafone IV. If the petitioner did not file a particular transaction in Form 3CEB when so required to be filed, the consequences of the same as provided in the Act would follow. However, the mere not filing of Form 3CEB on the part of the petitioner would not give jurisdiction to the Revenue to tax an amount which it does not have jurisdiction to tax. Therefore, we do not find any substance in this objection also.

11. The last objection taken by the Revenue was that in view of the variation in the shareholding pattern amongst different shareholders of the petitioner during the year clearly brought the issue of shares within clause (e) of the *Explanation* to section 92B of the Act. In terms of the above provision an international transaction would include a transaction of restructuring entered into by an enterprise with an associated enterprise. Mr. Pardiwala, learned counsel appearing for the petitioner, points out that there has been no restructuring of the organization but there has been a mere change in the shareholding of different shareholders of the petitioner. However, in the present facts we need not examine this for the reason that even if it is assumed that it is an international transaction, the jurisdictional requirement for Chapter X of the Act to be applicable is that income must arise. In this case, admittedly following Vodafone IV no income has arisen. Thus, the jurisdictional requirement for application of Chapter X of the Act is not satisfied.

12. As held in Vodafone IV, the jurisdiction to apply Chapter X of the Act would occasion only when income arises out of international transaction and such income is

chargeable to tax under the Act. The issues raised in the present petition are identical to the issues which arose for consideration before this court in Vodafone IV. Therefore, following the aforesaid decision we set aside the order dated January 30, 2013, of the Transfer Pricing Officer to the extent it holds that the arm's length price of issue of equity shares is Rs. 183.44 per share as against Rs. 10 per share as declared by the petitioner and consequent deemed interest brought to tax on the amount not received when benchmarked to the arm's length price. Accordingly, we set aside the draft assessment order dated March 30, 2013, to the extent it seeks to bring to tax the arm's length price of the share issued by the petitioner to its non-resident associated enterprises and also deemed interest which is sought to be brought to tax on the ground of non-receipt of the consideration equivalent to the arm's length price by the petitioner on issue of equity shares. It is further clarified that the petitioner's objection before the Dispute Resolution Panel filed on April 25, 2013, on all issues save and except the issue covered by this order would be considered by the Dispute Resolution Panel on its own merits."

19. The Hon'ble Bombay High Court further in the case of *Equinox Business Parks (P.) Ltd. v. Union of India* has held as under :

"This has been accepted by the Revenue and is evident from the order of DRP dated 30 October 2014 in Petitioner's case for A.Y. 2010-11. In the A.Y.2010-11 also the Petitioner had issued CCDs and equity-shares and the basis was identical to the present Petition. The Revenue sought to tax the Petitioner in terms of Chapter X of the Act. However, the Petitioner objected to the Draft Assessment order before DRP. On 30 October 2014, DRP issued directions under section 144C(5) of the Act to the Assessing Officer for the A.Y. 2010-11 and on identical facts *qua* equity shares and CCDs holding as under :

"3.4 We find that the issue under consideration of applying Transfer Pricing Provisions on 'issue of shares' has been decided in favour of the assessee by the Hon'ble Bombay High Court in the case of M/s Vodafone India Services Private Limited in Writ Petition number 871 of 2014 dated



10th October 2014. The honorable High Court has held that the amounts received on issue of shares is a capital account transaction not separately brought within the definition of 'income' as per the provisions of section 2(24) as well as sections 4 & 5 of the Act. Therefore, such capital account transaction not falling within a statutory exception cannot be brought to tax. Even income arising from international Transaction between AE must satisfy the test of income under the Act and must find its home in one of the above heads *i.e.* charging provisions. There is no charging section in chapter X of the act. Only if there is income which is chargeable to tax under the normal provisions of the act, then alone Chapter X of the act could be invoked. Further, since there is no income arising from the transaction of issue of shares, the provisions of chapter X would not apply. The Hon'ble Bombay High Court in the said case has quashed and set aside as Being without jurisdiction, null and void, the reference made by the TPO, and the order of the TPO making a transfer pricing adjustment on issue of shares. Respectfully following the decision of the jurisdictional Bombay High Court, the adjustment proposed by the' TPO on account of issue of shares is deleted. Accordingly, ground of objection number 16 of the assessee is allowed."

20. We, therefore, respectfully following the ratio laid down by the Hon'ble Bombay High Court, reverse the direction of DRP and direct the AO to delete the addition on account of notional interest of Rs. 2,44,20,173/-."

15. Similar view is also taken in other judgments relied on by the Ld. AR. Since, no contrary judgments have been brought to our notice, relying on the above stated judgments, we direct the AO to delete the impugned adjustment made by the TPO as affirmed by the DRP towards notional interest on share application money for belated allotment of equity shares.'

10. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law were alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co- ordinate Bench of the Tribunal in assessee's own case cited *supra*, we direct the Assessing Officer/TPO to delete the



adjustment towards notional interest on share application money for delayed allotment of shares. Accordingly, ground no. 2, raised in assessee's appeal is allowed.”

16. As the issue is squarely covered in favour of the assessee, in earlier years on identical facts and circumstances, respectfully following the decision of the coordinate bench we direct the learned AO to delete the adjustment on account of interest imputed on share application money. Accordingly, ground number 2 of the appeal of the assessee is allowed.
17. Ground number 3 of the appeal of the assessee is against the interest imputed by the learned transfer-pricing officer on advance recoverable from associated enterprises. The assessee submitted that this issue is decided in favour of the assessee by the coordinate bench in case of the assessee itself for earlier years in ITA number 7370/M/2018 for assessment year 2014 – 15 and in ITA number 7992/M/2019 for assessment year 2015 – 16. Therefore, the issue is squarely covered in favour of the assessee and there is no change in the facts and circumstances of the case.
18. The learned departmental representative vehemently supported the order of the learned transfer-pricing officer and the direction of the learned dispute resolution panel.
19. We have considered the rival contention, perused the order of the lower authorities, and considered the decision of the coordinate bench in assessee's own case for the above to assessment year cited before us. We find that coordinate bench



has dealt with this issue in paragraph number 16 – 17 in ITA number 7992/M/2019 for assessment year 2015 – 16 following the decision of the coordinate bench in assessee's own case for assessment year 2014 – 15 holding as under:-

“12. The brief facts of the case pertaining to this issue as emanating from the record are: During the course of proceedings before the TPO, it was observed that the assessee has advances recoverable from the foreign A.Es amounting to Rs. 14,06,59,329. It was further noted that the assessee has not charged any interest on any of these advances outstanding as on 31-3-2015. Accordingly, the assessee was asked to explain the same. In reply, the assessee submitted that the payment of advances was only incidental to normal course of business and thus not a separate transaction by itself. The assessee further submitted that the advances were neither loan nor in the nature of loan and, therefore, no interest was charged from the A.Es. Similarly, no interest was also charged from the non-A.Es on advances. The TPO *vide* order dated 25-10-2018, noted that the adjustment on account of delayed realization of advance recoverable was also made in assessment year 2014-15, wherein the delayed receipt of advances were treated as loan and interest was imputed thereon. The TPO further noted that the DRP in earlier year has held that the adjustment in respect of advances recoverable should be calculated after allowing the credit period of 180 days as per the agreement. Following the approach, which was followed in earlier years (as per the directions issued by the DRP), the TPO made an adjustment of Rs. 31,26,172, towards interest on advances recoverable from its A.Es. The Assessing Officer passed the draft ITA No. 7992/Mum./2019 assessment order dated 20-12-2018, inter-alia, on the basis of adjustment proposed by the TPO.

13. The DRP *vide* directions dated 30-9-2019, following the directions issued in the assessment year 2014-15 rejected the objections filed by the assessee. Being aggrieved, the assessee is in appeal before us.

14. During the course of hearing, the learned A.R. submitted that similar issue has been decided by the Coordinate Bench of the Tribunal in assessee's own case for the earlier assessment year.

15. The learned D.R. vehemently relied on the orders passed by the lower authorities.

16. We have considered the rival submissions and perused the material available on record. We find that the Coordinate Bench of the Tribunal in assessee's own case in *StridesPharmaScienceLtd. (supra)* has decided the issue by holding that the interest on advances recoverable from the A.Es to be calculated by applying LIBOR plus 300 basis points by observing as under :—

'19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. On consideration of the facts of the case, we notice that similar issue has been decided by the ITAT in the earlier years in ITA 8540/Mum/2010 and 8614/Mum/11, where it was held that in order to compute interest on receivable from AE,s LIBOR + 300 Basis points is appropriate rate for benchmarking TP adjustment. The relevant part of the order is reproduced below :

"46. The learned Counsel for the assessee stated that this issue is covered in regard to adjustment of such notional interest and according to him the same cannot exceed the LIBOR plus 300 in view of assessee's own case of ITAT's for AY 2004-05 in ITA No. 4063/Mum/2010 and CO. No. 61/Mum/2010 order dated 29-4-2016, wherein Tribunal at page 29 paras 39 and 40 has directed the AO to apply LIBOR rate of 1.698% + 300 basis point on interest relating to advancement of interest free loans/extended credit facility to the overseas AE. The relevant Paras 39 and 40 of the Tribunal's order in assessee's own case reads as under :—

"39. We have considered the submissions of the parties and perused the material available on record. As far as the contention of the learned Authorised Representative that the interest free advances to the overseas subsidiary on account of reimbursement of expenditure is not an international transactions and the transfer pricing

provisions are not applicable, we are not convinced with the same. On a reference to section 92B of the Act, it is observed that after amendment effected *vide* Finance Act, 2012, with retrospective effect from 1st April 2002, the definition of international transactions IT A No. 8614/Mum/2011 as provided under the *Explanation (i)* to section 92B, has been expanded to include the following transactions.

Explanation.--For the removal of doubts, it is hereby clarified that-- (i) the expression 'international transaction' shall include--

- (a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licenses, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (d) provision of services, including provision of market research, market development, ITA No.8614/Mum/2011 marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (e) a transaction of business restructuring or reorganization, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of



such enterprises at the time of the transaction or at any future date;

40. On a plain reading of clause (c) of *Explanation-(i)* to section 92B, it is evident that any type of advance payment or deferred payment or receivable or any other debt arising during the course of business including capital financing would come within the scope of 'International Transaction'. Thus, the assessee having incurred expenditure on behalf of its overseas A.Es which are receivables from the A.Es comes within the meaning of 'International Transactions'. Therefore, contention of the learned Authorised Representative that receivables on account of expenditure incurred on behalf of A.E. are not international transaction or no computation can be made is not acceptable in view of specific statutory provisions. The next contention of the learned Authorised Representative is, the assessee has long standing business relation with the subsidiary and as a result of investment/advances made, assessee has derived benefit as substantial sales have been recorded from the geographical locations where the subsidiaries are IT A No. 8614/Mum/2011 situated. In our view, plea of business/commercial expediency are not applicable to such type of transactions. Under the transfer pricing provisions, it has to be seen whether a particular transaction between the related parties is at arm's length. Therefore, it has to be seen whether under similar circumstances, assessee would have entered into such transaction with unrelated parties. If the facts on record suggest that the assessee would not have entered into such type of transactions with unrelated parties, then the transaction between the related parties cannot be considered to be at arm's length. There is no dispute to the fact that while the assessee has incurred cost by availing credit facility it has advanced interest free funds by not charging interest on the expenditure incurred on behalf of the subsidiaries. Therefore, certainly, a benefit has accrued to the subsidiary on account of the assessee whereas a part of the profit base of the assessee on account of cost incurred on credit facility has been shifted to the subsidiary which otherwise could have been avoided if the surplus funds were available with it. In these circumstances, the principle of commercial expediency would not come into

play. Therefore, in our view, as the assessee has not charged interest on outstanding receivables from the overseas subsidiaries, arm's length price of the same has to be determined. Having held so, it is necessary to quantify the rate of interest of such transaction. It is observed, the Transfer Pricing Officer has applied the average interest rate of domestic credit facility availed by the assessee. However, it is seen from the material on IT A No. 8614/Mum/2011 record, the entire expenditure incurred by the assessee on behalf of the overseas subsidiary are on foreign currency (dollar), therefore, domestic PLR rate in terms of Indian rupee cannot be applied. It has been brought to our notice through the working submitted before the Departmental Authorities that the average cost of borrowings to the assessee is 4.84%. The learned Authorised Representative has also submitted a working showing the average LIBOR rate of financial year 2002-03 at 1.698%. In a number of decisions, different benches of the Tribunal have consistently held that in such type of international transaction, domestic PLR rate cannot be applied and the rate of interest has to be quantified either with reference to LIBOR or EURIBOR depending upon the country and currency in which the transaction has taken place. Considering the facts of the present case, we are of the considered opinion that LIBOR rate of 1.698% plus 300 basis point would be the appropriate interest rate applicable to the international transactions relating to advancement of interest free loan/extended credit facility to the overseas A.E. Accordingly, we direct the Assessing Officer/Transfer Pricing Officer to compute the interest on the interest free advances paid to the A.E. Ground no. 5, is partly allowed."

47. The learned Departmental Representative has also stated that the issue is also been dealt with in earlier and exactly on the same lines, the directions can be given.

48. We find that the issue is squarely covered and respectfully following and taking a consistent view, we direct the AO to compute the IT A No. 8614/Mum/2011 disallowance by taking LIBOR rate plus 300 basis point. We direct the AO accordingly."



20. In this view of the matter and consistent with view taken by the coordinate bench, we direct the AO/TPO to consider LIBOR +300 basis point to benchmark interest on receivables from Associated Enterprises. Further, while computing credit period, the credit period allowed by AE's to be considered and only on net credit period interest needs to be charges.'

17. The learned D.R. could not show us any reason to deviate from the aforesaid order and no change in facts and law were alleged in the relevant assessment year. Thus, respectfully following the order passed by the Co- ordinate Bench of the Tribunal in assessee's own case cited *supra*, we direct the Assessing Officer/TPO to consider LIBOR plus 300 basis point to compute the interest on advances recoverable from the A.Es. We further direct that while computing the interest, the credit period allowed by the A.Es to be considered and only on net credit period interest needs to be charged. Accordingly, ground no. 3, raised in assessee's appeal is allowed for statistical purpose.”

20. As the learned departmental representative could not distinguish the above decision and further as per the chart submitted by the assessee as per ground number 3 it is also the player that the issue has been covered by the above decision, we set-aside this ground of appeal with similar direction as given for assessment year 2015 – 16 to consider it in the similar manner. Accordingly, ground number 3 of the appeal is allowed with above directions.
21. Ground number 4 is with respect to the disallowance under section 14 A of the act the learned authorized representative submitted that the identical issue arose in the case of the assessee for assessment year 2014 – 15 in ITA number 7370/M/2018 wherein the coordinate bench has dealt with this issue and further this issue arose in the case of the assessee for



- assessment year 2015 – 16 wherein following the decision of the coordinate bench in assessee's own case for assessment year 2014 – 15 the issue was decided in favour of the assessee. Therefore, in absence of any change in the facts and circumstances of the case, the issue needs to be decided based on the above two decisions. It was further stated that the honourable Karnataka High Court has held that in case no expenditure is directly incurred in earning exempt income since the entire exempt income is directly credited in the bank account of the assessee hence no disallowance is sustainable in Canada bank versus ACIT 265 CTR 385, identical facts exists in the case of the assessee also and therefore no disallowance should be made.
22. The learned departmental representative vehemently submitted that argument raised placing reliance on the decision of the honourable Karnataka High Court does not have any relevance in the case of the assessee as the assessee has invested into various companies and is also nurture in and periodically reviewing the above investment and therefore that decision does not apply.
23. We have carefully considered the rival contention and perused the orders of the lower authorities. The learned authorized representative stated that identical issue arose in the case of the assessee for the earlier years. The latest year is assessment year 2015 – 16 wherein the coordinate bench has dealt with this issue as under:-



19. The issue arising in ground no. 4, raised in assessee's appeal is with regard to disallowance under section 14A of the Act r/w rule 8D of the I.T. Rules., 1962 ("Rules").

20. During the relevant assessment year, the assessee has made *suo motu* disallowance of expenditure under section 14A of the Act to an extent of Rs. 46,77,100, while computing its income. During the course of assessment proceedings, the assessee was asked to explain as to why expenditure attributable to earning of exempt income should not be disallowed under section 14A of the Act r/w rule 8D of the Rules. In reply, the assessee submitted that it has made investment in domestic companies and mutual funds out of the cash generated from its business operations and not from loan funds. The assessee further submitted that it has not incurred any interest or any other expenditure for making the aforesaid investment. The assessee also submitted that it has not earned any exempt income from its equity investments during the year. The assessee further submitted that the disallowance under section 14A of the Act should not exceed the actual expenditure incurred by the assessee (and debited to Profit & Loss Account) for earning the exempt income. The assessee on without prejudice basis has *suo motu* disallowed an amount of Rs. 46,77,100, which was computed on a rational basis and was offered as disallowance under section 14A of the Act. The Assessing Officer *vide* draft assessment order dated 20-12-2018, rejected the contentions of the assessee and made disallowance of Rs. 2,94,18,763, under section 14A of the Act r/w rule 8D of the Rules.

21. The DRP *vide* directions dated 30-9-2019, inter-alia, rejected the objections filed by the assessee. The DRP, however, directed the Assessing Officer to allow *suo-motu* disallowance of Rs. 46,77,100, made by the assessee under section 14A of the Act. Being aggrieved, the assessee is in appeal before us.



22. During the course of hearing, the learned A.R. submitted that Co-ordinate Bench of the Tribunal in assessee's own case for preceding years has restored the issue to the file of the Assessing Officer.

23. On the other hand, the learned D.R. vehemently relied on the orders of the authorities below.

24. We have considered the rival submissions and perused the material available on record. We find that the assessee during the course of assessment proceedings, has raised the following submissions :—

- (i) The assessee has made investment in domestic companies and mutual funds out of the cash generated from its business operations and not from loan funds;
- (ii) The assessee has not incurred any interest or any other expenditure for making the aforesaid investment;
- (iii) The assessee has not earned any exempt income from its equity investments during the year; and
- (iv) The disallowance under section 14A of the Act should not exceed the actual expenditure incurred by the assessee (and debited to Profit & Loss Account) for earning the exempt income.

25. We find that while making a further disallowance under section 14A of the Act, over and above *suo motu* disallowance offered by the assessee, the Assessing Officer has not considered any of the submissions made by the assessee which have bearing on the issue. We also noticed that the Co-ordinate Bench in assessee's own case in *StridesPharmaScienceLtd. (supra)* has restored the



issue to the file of the Assessing Officer by observing as under :—

"30. The sum and substance of ratio laid down by above judgments is that only those investments which yield exempt income needs to be considered for computation of average value of investments. In this case, we notice that the Assessee has himself disallowed an amount of Rs. 21,27,797/- which has not been found to be accepted by the AO or the DRP. Further, the facts with regard to total investments and investments which yield exempt income is not readily available before us. We, therefore, are of the considered view that ends of justice would be met if the disallowance is made after re-computing average value of investment by considering only those investments which yield exempt income. Hence, the matter is restored to the AO to re-work the disallowance in line of our discussions given hereinabove."

26. In view of the above, we deem it appropriate to restore this issue to the file of the Assessing Officer for denovo adjudication in accordance with the directions of the Co-ordinate Bench of the Tribunal in the order cited *supra* and the law applicable after consideration of the submissions of the assessee. Needless to mention that before passing the order on this issue, adequate opportunity of hearing shall be provided to the assessee. Accordingly, ground no. 4, raised in assessee's appeal is allowed for statistical purpose."

24. In view of the similar facts and circumstances, and as it is claimed that issue is covered in favour of the assessee by the decision of the coordinate bench in assessee's own case which has not been disputed by the learned CIT DR, we restore this ground of appeal back to the file of the learned assessing officer with similar direction as were given by the coordinate bench in



- case of the assessee for assessment year 2015 – 16. Accordingly, ground number 4 of the appeal is allowed as above.
25. Ground number 5 is the alternative disallowance under section 36 (1) (iii) made by the learned assessing officer with respect to the disallowance of interest and other expenditure holding that same has not been incurred by the assessee for the purposes of the business, the learned authorized representative submitted that that the learned assessing officer has not considered the observation of the coordinate bench in assessee's own case for assessment year 2014 – 15 wherein disallowance under section 14 A of the act has been adjudicated and further the learned AO has grossly ignored the submission of the assessee that not borrowed funds were utilized for the purpose of investment and in view of the judgment of the honourable Bombay High Court in case of CIT versus reliance utilities and power limited 313 ITR 340, no disallowance of interest can be made.
26. The learned departmental representative vehemently supported the order of the learned assessing officer stating that where there is no nexus proved by the assessee of the borrowed fund and interest refund viz a viz investment in the non-interest-bearing investments, the theory of appropriation should be applied.
27. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that when the assessee is having higher non-interest-bearing funds available with the assessee in the form of share capital and interest free



- reserves, then the amount of investment made in the non-interest-bearing investments, no disallowance under section 14 A under section 36 (1) (iii) can be made. As the issue of disallowance under section 14 A of the act has been restored back to the file of the learned assessing officer with certain directions, the learned AO should also consider the above directions relevant for deciding this ground also. As this ground is a joint with the ground number 4 of the appeal of the assessee which has been set-aside to the file of the learned assessing officer in the interest of justice we have set-aside ground number 5 of the appeal back to the file of the learned assessing officer to decide it a fresh in accordance with the above observations. Accordingly, ground number 5 of the appeal is allowed with above directions.
28. Ground number 6 is with respect to the disallowance under section 14 A of the act whether it needs to be imputed on increased to the book profit computed under section 115JB of the act has already been decided by the honourable Bombay High Court in CIT versus JSW energy Limited {2015 SCC ONLINE BOM 52432015 ITR 379 362015 TAXMANNCOM BOMBAY 60 3032015 TAXMAN BOMBAY 234 1332015 ITR BOMBAY 379 36], therefore the issue squarely covered in favour of the assessee, therefore ground number six of the appeal is allowed and the learned AO is directed to delete the increase of the book profit under section 115JB of the act by the disallowance under section 14 A of the act.



29. Ground number 7 is with respect to the disallowance of deduction under section 35 (2AB) of the act. The facts relevant to the issue have already been narrated earlier. Undisputedly assessee has the infrastructure facility approved for research and development. The facility are also eligible for deduction under section 35 (2AB) of the act. The necessary form number 3CL are also issued to the assessee. It is not the case of the revenue that any of the expenditure incurred by the assessee has not been accounted for. The only issue is that assessee is entitled to weighted deduction at the rate of 200% expenditure incurred for the research and development facilities. The assessee has incurred revenue expenditure of ₹ 514,737,350 and capital expenditure of ₹ 112,445,642 totalling to ₹ 627,182,992 on the basis of application made by the assessee with DSIR certified by the auditor of the company. On this basis the assessee has claimed deduction at the rate of 200% of the expenditure amounting to ₹ 1,254,365,984. When form number 3CL is issued by the authority, they approved revenue expenditure of ₹ 439,695,000 and capital expenditure of ₹ 12,009,000/- totaling to ₹ 451,704,000. Accordingly, there was a shortfall of revenue expenditure of ₹ 75,042,350 and capital expenditure of ₹ 100,436,642 in the expenses reported by the assessee and the expenses approved by the DSIR in form number 3CL.. Therefore AO held that assessee has made the higher claim and disallowed the amount of ₹ 175,478,992 being the excess claim of 100% allowing 100% of such expenditure as deductible under section 37 (1) of the act. The assessee has also raised an objection before the DSIR that there are certain materials



consumed in the process of conducting clinical trials et cetera that has not been considered by the DSIR, certain expenditure of conducting buyer study by week study for evaluating the safety of the drugs are not considered. There was also certain expenditure with respect to each of the process, which was not considered by DSIR while issuing form number 3CL. The reason being that that though this expenditure are classified in the financial statement of the assessee as capital expenditure but they pertain to various materials consumed in the research and development project and therefore those expenditure should also have been considered. Therefore, I it is apparent that as per appendix 8 the assessee has stated that the expenditure of ₹ 104,036,095/- pertaining to the Bangalore research and development unit has not been considered by the DSIR in the capital expenditure and simultaneously the revenue expenditure of ₹ 75,042,350/- has also been not considered. The learned authorized representative has stated that identical issue arose in the case of the assessee in ITA number 1903/M/2015 for assessment year 2000 – 11 which was decided by the coordinate bench and 23/5/2023 wherein the disallowance of weighted deduction under section 35 (2AB) of the act has been considered. The learned coordinate bench in Para number 11.6.8 has categorically held that the requirement of form number 3CL has been introduced with effect from 1/7/2016 and prior to that there was no such requirement. The coordinate benches relied on the decision of the Pune bench of the tribunal in case of Cummins India Ltd (2018) 96 taxmann.com 576, the decision of the coordinate bench in the case of ultratech cement limited



versus deputy Commissioner of income tax (2022) 139 taxmann.com 151 and the decision of the coordinate bench in assessee's own case in earlier assessment year, directed the learned assessing to delete the disallowances. Therefore respectfully following the decision of the coordinate bench in assessee's own case, the decision of the Pune tribunal and other decisions cited before us, we allow ground number 7 of the appeal of the assessee and direct the learned assessing officer to grant the deduction under section 35 (2AB) of the act.

30. Ground number 8 of the assessee is with respect to the short credit of tax deduction at source of ₹ 5,012,276 which has not been granted by the learned assessing officer despite making a rectification application dated 19 August 2021 and 29 April 2022. In view of the above fact, after hearing both the parties we direct the learned assessing officer to dispose of the application of rectification dated 19 August 2021 and 29 April 2022 in accordance with the law. This is also the request of the assessee. Accordingly, ground number eight of the appeal is allowed with above direction.

31. In the result ITA number 1004/M/2021 filed by the assessee for assessment year 2016 – 17 is allowed.

Order pronounced in the open court on 5.10.2023.

Sd/-

(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Mumbai, Dated: 5.10.2023

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)



Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai