आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।

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

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

आयकर अपील सं./**ITA(TP).No.2365 and 2366/Ahd/2018**

निर्धारण वर्ष/Asstt. Years: 2013-14 and 2014-15

Torrent Pharmaceuticals Ltd. Torrent House, Nr. Dinesh Hall, Off.Ashram Road Ahmedabad 380009. **PAN: AAACT5456A**	Vs.	D.C.I.T, Circle-4(1)(2) Ahmedabad.

And
ITA No.1172/Ahd/2019
Asstt. Year 2015-16

Torrent Pharmaceuticals Ltd. Torrent House, Nr. Dinesh Hall, Off.Ashram Road Ahmedabad 380 009. **PAN: AAACT5456A**	Vs.	A.C.I.T, Circle-4(1)(2) Ahmedabad.

आयकर अपील सं./**ITA.Nos.2369 and 2368/Ahd/2018**

निर्धारण वर्ष/ Asstt. Years: 2013-14 and 2014-15

AND

आयकर अपील सं./**ITA.No.1279/Ahd/2019**

निर्धारण वर्ष/ Asstt. Year: 2015-16

D.C.I.T, Circle-4(1)(2) Ahmedabad.	Vs.	Torrent Pharmaceuticals Ltd. Torrent House, Nr. Dinesh Hall, Off.Ashram Road Ahmedabad 380 009. **PAN: AAACT5456A**

(Applicant)		**(Responent)**

Assessee by :	Shri Vartik Choksi, With Shri DhrunalBhatt, ARs.
Revenue by :	Shri Ritesh Parmar, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 28/11/2023**
घोषणा की तारीख /**Date of Pronouncement: 26/02/2024**

आदेश/O R D E R

PER BENCH:

The above captioned appeals have been filed by the assessee and the revenue against the separate orders of ld. Commissioner of Income-Tax (Appeals), Ahmedabad arising in the matter of assessment order passed under section 143(3) of the Income tax Act 1961 (in short, the 'Act') involving respective Assessment Years. Since issues are inter-connected, we dispose of all these appeals by way of this common order.

2. First, we take up ITA No. 2365/AHD/2018, an appeal by the assessee for AY 2013-14. The assessee has raised following grounds of appeal:

1. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance of Rs. 15,15,09,216 from out of total disallowance of Rs. 19,63,90,203 made by the Assessing Officer in respect of legitimate business expenditure incurred by the appellant-company for sponsorship expenses of medical practitioners/doctors.

*2. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance of Rs.21,29,612 made by the Assessing Officer in respect of employees' contribution to PF/ESI, on the ground that the same was not paid within the prescribed time limit under the PF / E * SI Acts, even though the payment was made within the time limit for filing the return of income u / s * 0.139(1) of the I.T. Act.*

3. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the Assessing Officer's action in reducing the quantum ofdeduction u/s.80-IC in respect of the Baddi Unit by excluding the following items of income from the profits of the Baddi Unit eligible for such deduction:

		Rs.
(a)	*Cash discount*	*9,40,184*
(b)	*Export benefits*	*3,72,14,846*
(c)	*Insurance Income*	*8,418*
(d)	*Government Grant*	*3,41,469*
(e)	*Interest Income*	*23,106*
	Total	*3,85,28,023*

4. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in upholding the Assessing Officer's action in further reducing the quantum of deduction u/s.80-IC in respect of the Baddi Unit by allocating additional administrative expenses of Rs.2,36,92,391 to the Baddi Unit thereby reducing the profit of the Baddi Unit eligible for such deduction.

5. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in upholding the Assessing Officer's action in reducing the quantum of deduction u/s. 80-IE in respect of the Sikkim Unit, by allocating additional administrative expenses of Rs.5,50,80,826 to the Sikkim Unit resulting into reduction of the profits of the Sikkim Unit eligible for such deduction.

6. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in rejecting the relevant ground of appeal to the effect that the appellant- company is entitled to deduction of Rs.7,72,50,875 being provision for leave encashment notwithstanding the provisions of section 43B(f) of the I.T. Act.

7. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not allowing weighted deduction u/s.35(2AB) in respect of the following items of expenditure incurred by the appellant-company on research and development.

(a)	*Interest on loan*	*45,65,573*
(b)	*Labour and Job work charges*	*165,00,296*
(c)	*Capital expenditure on furniture, electrical equipments and vehicles*	*52,95,000*
	Total	*263,60,869*

8. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in holding that the addition of Rs.57,45,891/- on account of disallowance u/s.14A of the Act while computing the appellant's book profit becomes infructuous and related ground does not require adjudication, when he ought to have deleted such addition to book profit.

9. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming Transfer Pricing upward adjustment u/s.92CA(1) of the I.T Act as under:

(a)	*Corporate Guarantee to Aes*	*8,32,291*
(b)	*Capital Infusion to Aes*	*14,05,927*
(c)	*Interest on Loan to Aes*	*4,39,625*
	Total:	*26,77,843*

10. On the facts and in the circumstances of the case, the learned CIT(Appeal) erred in confirming exclusion of the following items of income from the profits of the Sikkim Unit for the purposes of granting deduction u/s.80-IE of the I.T Act.

		Rs.
(a)	*Insurance Income*	*49,259*
(b)	*Government Grant*	*57,071*
(c)	*Interest Income*	*68,809*
	Total:	*1,75,139*

11. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

3.1 The assessee vide letter dated 13-01-2023 also raised following additional grounds of appeal:

> *The Appellant craves leave to raise these additional grounds of Cross Objections before the Hon'ble ITAT. This are legal grounds and therefore, as per the decision of Hon'ble Supreme court in the case of National Thermal Power (229 ITR 383), it can be raised before the Hon'ble ITAT.*
>
> *In view of the above, the appellant hereby raises following grounds as additional grounds of Appeal, which is without prejudice to the grounds raised by the appellant while filing appeal in Form 36A.*
>
> *1. Without prejudice to all the grounds raised, in law and in the facts and circumstances of the appellant's case, the appellant requests Hon'ble ITAT for admission of its additional claim and for not including the Excise Refund of Rs. 22,00,96,112/- received by the appellant, while computing the Book Profit u/s. 115JB of the Act on the ground that it is income in the nature of "capital receipts" as per the settled legal precedents.*
>
> *2. Without prejudice to all the grounds raised, in law and in the facts and circumstances of the appellant's case, following the decision of the Hon'ble Gujarat High Court in Assessee's own case, the Appellant craves that no R & D expenditure including development cost should be allocated to industrial unit eligible for deduction u/s.80-IC of Rs.16,97,00440 and section 80-IE of Rs.4,32,67,969 though allocated while filing the return of income.*
>
> *In view of the above, the additional grounds raised may kindly be admitted in view of natural justice to the appellant.*

3.2 It was pleaded by the assessee in the application filed for the admission of the additional ground that the issues raised in the additional grounds of appeal are legal in nature and go to the root of the matter. Accordingly, it was prayed by the learned AR for the assessee that the same should be admitted for adjudication.

3.3 On the other hand, the learned DR opposed admitting the additional grounds of appeal on the reasoning that they were not raised before the authorities below.

3.4 We have heard both the parties and perused the materials available on record. The Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT reported in 229 ITR 383 has held as under:

> *" Under section 254 of the Income-tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If,*

for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier.

3.5 From the above, it is transpired that the view that the Tribunal is confined only to those issues arising out of the appeal before Commissioner (Appeals) is too narrow a view to describe the powers of the Tribunal. Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. In view of the above judgment referred to above, we admit the additional grounds raised by the assessee.

4. The **1st issue** raised by the assessee is that the Ld. CIT-A erred in confirming the disallowance of Rs. 15,15,09,216/- out of total disallowance of Rs. 19,63,90,203/- made by the AO related to expenses incurred on account of sponsorship expenses of medical practitioners/doctors.

5. The facts in brief are that the assessee, a public company, engaged in the business of manufacturing and marketing of pharmaceutical products. The assessee during the year under consideration claimed certain expenditure under the head selling and distribution expenses detailed as under:

(1) Business Advancement Expenses Rs. 53,06,10,021/-
(2) Sales Promotion Expenses Rs. 3,77,89,705/-
(3) Doctor's Sponsorship Rs. 19,63,90,203/-

5.1 As per the assessee, these expenditures were incurred in the ordinary course of business to create its brand, goodwill, and trade relationship. The impugned expenditure includes expenses incurred on distribution of various brochures, literature specifying its products, new development, and research activities. It also includes various types of gifts distributed to different

stakeholders such as distributors, wholesalers, and retailers as well as doctors to promote its products. In nutshell, the assessee contended that the impugned expenditures were incurred wholly and exclusively for the purposes of business and therefore, the same are allowable under section 37 of the Act.

5.2 On the other hand, the AO found that the expenses incurred for the benefits of doctor cannot be allowed under the provision of section 37 of the Act, as the same were incurred in violation of regulation issued by the Indian Medical Council in exercise of power conferred under section 33 of Indian Medical Council Act 1956. Further, the CBDT also issued circular bearing number 05/2012 dated 01-08-2012 prohibiting the deduction of such expenses. Therefore, the AO disallowed 100% of the expenditure incurred under the head "Doctor's Sponsorship" amounting to Rs. 19,63,90,203/- only. Likewise, the AO found that the assessee failed to establish that the expenses incurred under the head "Business Advancement and Sales Promotion" do not include the expenditure in connection with doctor benefit. The assessee also failed to furnish any detail specifying the amount not incurred/ falling under the category of doctor benefits. Thus, the AO in absence of necessary details proceeded to estimate the expenditure for doctor's benefit included under the head "Business Advancement and Sales Promotion" @ 10% of such expenditures and accordingly disallowed an amount of Rs. 5,30,61,002/- and Rs. 37,78,978/- respectively.

6. On appeal by the assessee, the learned CIT(A) allowed part relief to the assessee. As such the learned CIT(A) regarding the expenses claimed under the "Business Advancement and Sales Promotion" held that expenses under the impugned head includes gift items distributed to various stakeholders which were less than Rs. 1000/- only. Further, it is also not the case that the gift items were exclusively given to doctors/medical practitioners only. Therefore, same cannot be said to be incurred in violation of regulation issued by the Indian Medical Council in exercise of power conferred under section 33 of Indian Medical Council Act 1956 and the consequent CBDT circular bearing No. 05/2012 dated 01-08-2012. The learned CIT(A) also found that identical disallowance was made in the own

case of the assessee for AY 2011-12 and 2012-13 which was allowed by predecessor CIT(A) in favour of the assessee. Accordingly, the learned CIT(A) deleted the disallowances of 10% of "Business Advancement and Sales Promotion" made by the AO for Rs. 5,30,61,002/- and Rs. 37,78,978/- respectively.

6.1 Regarding the expenses claimed under the head "Doctor's Sponsorship" amounting to Rs. 19,63,90,203/-, the learned CIT(A) concurred with the view of the AO. However, the learned CIT(A) held that CBDT circular prohibiting the expenses for benefit of doctor was issued on 01-08-2012. Therefore, the expenses incurred before 01-08-2012 cannot be disallowed. Accordingly, the learned CIT(A) deleted the addition to the extent of Rs. 4,48,80,987/- being expenses incurred before the date of CBDT circular. Thus, the ld. CIT-A allowed the ground of appeal of the assessee in part.

7. Being aggrieved by the order of the learned CIT(A), both the assessee and the revenue are in appeal before us. The assessee is in appeal against the confirmation of disallowance of "Doctor's Sponsorship" expense for Rs. 15,15,09,216/- whereas the revenue is in appeal against the deletion of disallowance of "Doctor's Sponsorship", Business Advancement and Sales Promotion" for Rs. 4,48,80987, Rs. 5,30,61,002 and Rs. 37,78,971/- respectively. The relevant ground of revenue's appeal in ITA No. 2369/Ahd/2018 for the AY 2013-14 reads as under:

> *1. That the Ld.CIT(A) has erred in law and on the facts in the disallowance of selling/distribution/publicity/Medical/Literature expenses u/s.37(1) of the Act consisting of:*
>
> *i. Doctor Sponsorship Expenses of Rs.4,48,80,987/- out of Rs.19,63,90,203/-*
> *ii. Selling and distribution expenses under the heads Business advancement expenses of Rs.5,30,61,002/-*
> *iii. Sales promotion expenses of Rs.37,78,971/-*

7.1 The learned AR before us filed a paper book running from pages 1 to 224 and submitted that the expenses under the category of doctor's sponsorship were incurred for the better running of the business. Likewise, it was submitted that the expenses claimed under the head "Business Advancement and Sales Promotion" were representing and included the gift items distributed to various stakeholders

which were less than Rs. 1000/- only and not to the doctors, thus no disallowance is warranted as there was no violation of regulation issued by the Indian Medical Council.

7.2 On the other hand, the learned DR before us filed a paper book running from pages 1 to 340 and contended that the assessee has incurred the expenses in violation of regulation issued by the Indian Medical Council and therefore, the same needs to be disallowed.

7.3. Both the learned AR and DR before us supported the order of the authorities below to the extent favourable to them.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The Indian Medical Council (MCI) by exercising power conferred under section 33 of Indian Medical Council Act 1956 issued Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10-12-2009 wherein the MCI has imposed prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash, or monetary grant from the pharmaceutical and allied health sector Industries. Subsequently, the CBDT vide circular No. 05/2012 dated 01-08-2012 clarified that expenditure incurred by the pharmaceutical or allied health sector industries in the nature of freebie to doctors is in violation of above mentioned regulation of MCI and therefore, such expenditure will not be allowed as deduction to the pharmaceutical or allied health sector industries under the provision of explanation to section 37(1) of the Act being expenses incurred for a purpose which is either an offence or prohibited by law.

8.1 However, based on the judicial trend, freebies given to /expenses incurred for the benefit of doctors by pharmaceutical companies were allowed as a deduction under section 37(1) of the Act. Previously, it has also been held that regulation issued by the MCI are only applicable to medical practitioners/doctors and same cannot be extended to the pharmaceutical companies or allied health

sector industries. Once the MCI regulation is not applicable to the pharmaceuticals companies, then it cannot be said that the expenses incurred by the assessee are falling under the provision of explanation to section 37(1) of the Act. As such, there were contrary views.

8.2 The above discussed judicial trend/view have been reversed by the Hon'ble Supreme court in the case of M/s Apex Laboratories (P.) Ltd. *(P.) Ltd.* v. *Dy. CIT reported in 135 taxmann.com 286.* In the case of M/s Apex Laboratories (P.) Ltd., the Hon'ble Supreme Court observed that said MCI regulations are originating from Medical Council Act 1956 which is a statuary regime and when a statutory provision/regime requires a thing to be done in a certain manner then it also implies that doing such thing in the other form also impressible even in absence of express terms to this effect. Acceptance of freebie by the doctors is prohibited and even punishable by the said MCI regulation, then the pharmaceuticals companies providing such freebies to the medical doctors cannot be granted tax benefit despite knowing that such freebies have been prohibited by the statutory provision. The Hon'ble Supreme Court also highlighted that the freebies or gifts have the potential to influence or manipulate the prescription of a medical practitioner which can incentivize the doctor's intention to avail more luxurious and expensive freebies offered by the pharmaceutical companies which will lead to suffering of public at large. The relevant extract of the judgment is extracted below:

> ***33.*** *Thus, pharmaceutical companies' gifting freebies to doctors, etc. is clearly "prohibited by law", and not allowed to be claimed as a deduction under section 37(1). Doing so would wholly undermine public policy. The well-established principle of interpretation of taxing statutes - that they need to be interpreted strictly - cannot sustain when it results in an absurdity contrary to the intentions of the Parliament.*

8.3 From the above, it is clear that the prohibition imposed by the MCI regulation and further by the CBDT circular is applicable on the pharmaceutical and allied health industries and the expenses incurred in providing the freebies to the doctors cannot by allowed as deduction under section 37(1) of the Act.

8.4 Now coming to issue whether the CBDT Circular 05/2012 dated 01-08-2012 shall be applicable prospectively or retrospectively i.e. whether applicable from the date on which circular was published (01-08-2012) or from the date on which MCI regulation was published (14-12-2009). In this regard we note that the Hon'ble Supreme court in case of *M/s Apex Laboratories (P.) Ltd. (Supra)* held that *"The CBDT circular being clarificatory in nature, was in effect from the date of implementation of Regulation 6.8 of the 2002 Regulations, i.e., from 14-12-2009."* Hence, it is settled position now that CBDT circular prohibiting allowance/ deduction of expenses incurred by the pharmaceuticals industries in nature of freebie to doctor is applicable retrospectively from 14-12-2009.

8.5 Coming to the facts of the case on hand, the assessee has claimed deduction of certain expenditures which are, or which included expenses in the nature of freebies to doctors. Such expenditures are detailed as under:

(1) Business Advancement Expenses Rs. 53,06,10,021/-
(2) Sales Promotion Expenses Rs. 3,77,89,705/-
(3) Doctor's Sponsorship Rs. 19,63,90,203/-

8.6 Regarding the expenses under the head "Business Advancement & Sales Promotion" it was alleged by the AO that the assessee failed to establish that such amount does not include expenses in nature of freebie to doctors and assessee has also not provided breakup. The AO in absence of detailed breakup estimated the expenses in nature of freebie to doctor @ 10% of gross amount under the impugned head. The learned CIT(A) deleted the amount disallowed by the AO by holding the expenses under the impugned are in nature of small gift item distributed by the assessee and same are not exclusively for the doctor. In our considered opinion the learned CIT(A) failed to bring finding on record that no expense in nature of freebies to doctor is included in the amount claimed by the assessee. The learned CIT(A) deleted the addition merely for the reason thatthe expenses included under the impugned head was not exclusively for the benefit of doctors. From the discussion in preceding paragraphs, it is clear that any expense incurred by the pharmaceutical company in the nature of freebie to doctor is

required to be disallowed by virtue of the Hon'ble SC in the case discussed above. As such there is no requirement that the incurred by the pharmaceutical company under particular head should be exclusively for doctors. Hence, we are not in agreement with finding of the learned CIT(A). At the same time, we are also conscious to the facts that the AO in the absence of detailed bifurcation has estimated the amount pertaining to freebies to doctors at @ 10% of the gross expenses on ad-hoc basis. As such, in the absence of any detail working provided by the assessee, the AO left with no option but to estimate the amount pertaining to freebies to doctors. Indeed, the AO even for making estimates, should adopt some reasonable criteria but the AO in its finding failed to point out the basis of such estimation. Therefore, in the absence of any working provided by the assessee and in the absence of any basis to be adopted for making such estimation by the AO, we in the interest of justice and fair play, restrictthe disallowance at 5% of the gross amount claimed by the assessee under the head "Business Advancement & Sales Promotion".

8.7 Coming to the expenses claimed under the head "Doctors Sponsorship", both the AO and the learned CIT(A) agree that expenses incurred under the impugned head are in nature of freebie to doctors. The learned AR for the assessee before us also failed to establish that the expenses under the head "Doctors Sponsorship" are not in the nature of freebies to doctor. However, the learned CIT(A) divided the amount incurred before and after the date of issue of CBDT circular bearing No. 05/2012 dated 1-8-2012. The learned CIT(A) accordingly held that the expenses incurred before 1st August 2012 shall not be subject to the disallowance. As such, the learned CIT(A) held the applicability of the impugned circular with prospective effect. On the other hand, we have already discussed in the preceding paragraph that the Hon'ble Supreme Court has taken the view that the impugned circular is clarificatory in nature and applicable with retrospective effect from 1st April 2009. Hence, we hereby set aside the finding of the learned CIT(A) and held that entire amount of expenses incurred during the year under the head "Doctors Sponsorship" shall be disallowed. Thus, in view of

the above discussion, the grounds of appeal raised by the assessee and Revenue are herebypartly allowed.

9. The **next issue** raised by the assessee vide ground No. 2 of its appeal is that Ld. CIT(A) erred in confirming the disallowance of employee's contribution to PF/ESI of Rs. 21,29, 612/- made by AO on account of late deposits.

10. The AO found that the assessee in the year under consideration has made the deposit of employee's contribution of ESI for the month of June 2012 and January 2013 aggregating to Rs. 21,29,612/- after the due date of payment specified under the ESI Act. Thus, the AO by invoking the provisions of section 2(24)(x) read with section 36(1)(va) of the Act added the same to the total income of the assessee.

11. On appeal by the assessee, the learned CIT(A) also confirmed the addition made by the AO.

12. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

13. At the outset, we note that the learned AR before us submitted that the issue on hand has been covered against the assessee by the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. G.S.R.T.C reported in 366 ITR 170. Therefore, following the binding decision of the Hon'ble JurisdictionalHigh Court, we hereby confirm the finding of the learned CIT(A). Hence, the ground of appeal of the assessee is hereby dismissed.

14. The next interconnected issue raised by the assessee vide ground No. 3 of its appeal is that the learned CIT(A) erred in confirming the action of the AO in reducing the eligible profit under section under section 80IC of the Act of Baddi Unit.

14.1 The corresponding ground of appeal bearing No. 2 raised by the revenue in ITA No. 2369/AHD/2018 in the cross appeal, having similar issue as of the assessee's ground of appeal discussed above, hence clubbed together for the sake of convenience, is reproduced as under:

> *2) "that the Ld. CIT (A) has erred in law and on the facts in directing the AO toallow deduction u/s. 80IC after allowing the claim of the assessee of*
> *i) Notice Pay of Rs. 8,48,476/-*
> *ii) Sale of Scrap of Rs. 93,83,606/-*
> *iii) Service Tax Refund Income of Rs. 2,92,338/-*
> *iv) Miscelleneous income and rounding off of Rs. 34,59,039/-*
> *v) Net Foreign Exchange Gains of Rs. 54,93,768/-*
> *as income derived from eligible business by an appropriate enterprise of theassessee."*

15. The AO during the assessment proceedings found that there were several incomes shown by the assessee under different heads which were not directly arising from the activity of manufacturing of article or things. The details of the same stand as under:

(i)	Notice pay	Rs. 8,48,476/-
(ii)	Sale of Scrap	Rs. 93,83,606/-
(iii)	Service tax refund	Rs. 2,92,338/-
(iv)	Miscellaneous and rounding off	Rs. 34,59,093/-
(v)	Forex gain	Rs. 54,93,768/-
(vi)	Cash discount	Rs. 9,40,184/-
(vii)	Export benefit	Rs. 3,72,14,846/-
(viii)	Insurance income	Rs. 8,418/-
(ix)	Interest Income	Rs. 23,106/-
(x)	Government grant	Rs. 3,41,469/-

15.1 Nevertheless, the assessee has claimed deduction under section 80-IC of the Act by treating them as profit derived from the business of eligible undertaking. However, the AO disputed the deduction with respect to such items of income by holding that such incomes are not derived from business of manufacturing of article or things.In other words, the above incomes did not have direct nexus with the manufacturing activity of the eligible undertaking. Thus, the AO denied the deduction claimed by the assessee. On appeal by the assessee, the learned CIT(A) allowed deduction on certain items as income eligible for deduction

under section 80-IC of the Act and simultaneously, confirmed the disallowance of certain item by holding them non-eligible for deduction under section 80-IC of the Act. Thus, both the assessee and the Revenue are in appeal before us. The assessee is before us vide ground No. 3 of its appeal whereas the revenue is before us vide ground No. 2 of its appeal. For the sake of convenience, we proceed to adjudicate each item of income shown by the assessee and claimed deduction under section 80-IC of the Act in the manner as detailed below:

(i) & (ii) Notice Pay & Sale of scrap (Revenue appeal)

16. At the outset, we note that identical issue came before this Tribunal in the own case of the assessee for AY 2009-10 in ITA No. 1327/Ahd/2017 where the issue has been decided in favour of the assessee and against the Revenue vide order dated 22-02-2022. The relevant finding of the Bench is extracted as under:

> *69.1. Similarly, the issue of income on account of notice pay and sale of scrap is also covered in favour of the assessee and against the revenue by the order of this tribunal in own case of the assessee in ITA No 1634/Ahd/2012 for A.Y. 2008-09. The relevant finding reads as under:*
>
> > *73.1 It is undisputed fact that all the aforesaid income or arising from the activities carried out by the industrial undertaking eligible for deduction under section 80IC of the Act. Therefore we are of the considered view all the incomes are eligible for deduction under section 80A of the Act. Regarding this we find support and guidance from the judgment of Hon'ble High Court in the case of Metrochem Industries Ltd (supra) wherein the head note of the judgment reads as under:*
> >
> > > *"I Section 80-I of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings, etc., after a certain date (Computation of deduction) - Assessment years 1994-95, 1996-97 and 1997-98 - Deduction under section 80-I is allowable in respect of Kasar, discount and sales-tax set off [In favour of assessee]*
> > > *I Deduction under section 80-I is allowable in respect of Kasar, discount and sales-tax set off.*
> > > *II Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings (Computation of deduction) - Assessment years 1994-95, 1996-97 and 1997-98 - Foreign exchange fluctuation and duty drawback is an income derived from industrial undertaking, eligible for deduction under sections 80-I and 80-IA [In favour of assessee]*
> > > *II Foreign exchange fluctuation and duty drawback is an income derived from industrial undertaking, eligible for deduction under sections 80-I and 80-IA."*
> >
> > *73.2 In view of the above, we hold that the assessee is eligible for deduction in respect of the income as discussed above under section 80 IC of the Act. Accordingly we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed and the Revenue is dismissed.*

> *69.3. Respectfully following the same, we do not find any reason to interfere in the order of the ld. CIT-A and thus direct the AO grant the deduction under section 80-IA of the Act on the items of income as discussed above. Hence, we hereby dismiss the ground of appeal of the Revenue.*

16.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee as discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, we hold that the assessee is eligible for deduction under section 80-IC of the Act with respect to the income being ***Notice Pay & Sale of scrap*** discussed above.

(iii) Service Tax Refund (Revenue appeal)

17. The assessee claimed, in the process of export of goods manufactured, that it has availed the services of custom clearing agents who in their invoice charged service tax. The amount paid to clearance agentswas inclusive of service tax which was debited in profit and loss account. Subsequently, as per the provision of service tax, it got the refund of service tax paid to clearing agent which was shown as income in the profit loss account. Hence, such income on account of service tax is eligible for deduction under section 80-IC of the Act.

17.1 However, the AO disallowed the same by holding that the deduction under section 80-IC of the Act is eligible only for the profit and gains derived from the activity of manufacturing and income on account of refund of service tax does not arise from the manufacturing activity.

17.2 On appeal by the assessee, the learned CIT(A) allowed the claim of the assessee by holding that when service tax amount was paid, the same was debited in the profit and loss account, therefore the profit of eligible unit got

reduced by the amount of service tax. Accordingly, the refund of such service tax will increase the profit of eligible unit.

17.3 Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

17.4 Both the learned DR and the learned AR before us vehemently supported the stand of the respective authorities below as favorable to them.

17.5 We have heard the rival contentions of both the parties and perused the material available on records. It was not disputed by the revenue that the assessee, at the time of making payment to custom clearing agent,debited the profit and loss and account along with the amount of service tax. Thus, the profit of the eligible unit got reduced by the amount of service tax. Therefore, in our considered opinion when such services tax is refunded to the assessee, the same will reduce the expense of eligible unit. The assessee instead of reducing the expense has shown such receipt separately. Thus, it is just a manner of representation. Accordingly, we do not find any infirmity in the order of the learned CIT(A). Thus, we hold that the assessee is eligible for deduction under section 80-IC of the Act with respect to the income being service tax discussed above in the given facts and circumstances.

(vi) Miscellaneous income (Revenue appeal)

18. At the outset, we note that identical issue came before this Tribunal in own case of the assessee for A.Y. 2007-08 and 2008-09 in ITA No. 907 and 1634/AHD/2012 where the issue has been decided in favour of the assessee and against the Revenue vide order dated 15-05-2019. The relevant finding of the Bench is extracted as under:

> *"73. We have heard the rival contention and perused the material available on record. The issue in the instant case is whether the miscellaneous income such as Penalty Received from Supplier, Discount Received from Vendors and Export Benefits are eligible for the deduction u/s 80IC of the Act.*

> *73.1 It is an undisputed fact that all the aforesaid income or arising from the activities carried out by the industrial undertaking eligible for deduction under section 80IC of the Act. Therefore we are of the considered view all the incomes are eligible for deduction under section 80A of the Act. Regarding this we find support and guidance from the judgment of Hon'ble High Court in the case of Metrochem Industries Ltd (supra) wherein the head note of the judgment reads as under:*
>
> > *"I Section 80-I of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings, etc., after a certain date (Computation of deduction) - Assessment years 1994-95, 1996-97 and 1997-98 - Deduction under section 80-I is allowable in respect of Kasar, discount and sales-tax set off [In favour of assessee]*
> > *I Deduction under section 80-I is allowable in respect of Kasar, discount and sales-tax set off.*
> > *II Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings (Computation of deduction) - Assessment years 1994-95, 1996-97 and 1997-98 - Foreign exchange fluctuation and duty drawback is an income derived from industrial undertaking, eligible for deduction under sections 80-I and 80-IA [In favour of assessee] II Foreign exchange fluctuation and duty drawback is an income derived from industrial undertaking, eligible for deduction under sections 80-I and 80-IA."*
>
> *73.2 In view of the above, we hold that the assessee is eligible for deduction in respect of the income as discussed above under section 80 IC of the Act. Accordingly, we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed, and the Revenue is dismissed."*

18.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of Tribunal in own case of the assessee as discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, we hold that the assessee is eligible for deduction under section 80-IC of the Act with respect to the income being Miscellaneous Income discussed above.

(v) Forex Gain (Revenue appeal)

19. At the outset, we note that identical issue came before this Tribunal in the own case of the assessee for AY 2012-13 in ITA No. 1415/AHD/2018 where the

issue has been decided in favour of the assessee and against the Revenue vide order dated 22-02-2022. The relevant finding of the Bench is extracted as under:

> *223. We have heard the rival contentions of both the parties and perused the material available on records. With respect to the foreign exchange income, we note that this issue has already been allowed in favour of the assessee in the series of judgments which have been reproduced in the order of the learned CIT-A. At the time of hearing, the learned DR has not brought anything on record contrary to the finding of the learned CIT-A.*

19.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, we hold that the assessee is eligible for deduction under section 80-IC of the Act with respect to the income being Forex Gain discussed above.

(vi) cash discount (Assessee's appeal)

20. At the outset, we note that identical issue came before this Tribunal in the own case of the assessee for AY 2012-13 in ITA No. 1415/Ahd/2018 where the issue has been decided in favour of the assessee and against the Revenue vide order dated 22-02-2022. The relevant finding of the Bench is extracted as under:

> *218. We have heard the rival contentions of both the parties and perused the materials available on record. As regards income shown by the assessee under the head cash discount amounting to Rs. 2,00,147/- , we note that such cash discount is against the purchases on account of prompt payment made by the assessee. In other words, the purchases were recorded by the assessee at the higher value without adjusting the amount of cash discount. Had the assessee been adjusted such cash discount against the purchases, the gross value the purchases would have come down by the amount of cash discount which would have resulted in the greater amount of income and the same would have been eligible for deduction under section 80IC of the Act. Thus, we are of the view that amount of income by way of cash discount cannot be denied for the benefit of the deduction under section 80IC of the Act merely on account of the different presentation shown by the assessee.*
> *218.1 Without prejudice to the above, if the cash discount shown by the assessee as income is excluded from the deduction provided under section 80IC of the Act, then the corresponding expenses should also be excluded while calculating the deduction under section 80IC of the Act. In such a scenario as well, there will not be any impact on the*

amount of deduction claimed by the assessee. In other words, the amount of net income should only be considered while excluding from the amount of deduction available under section 80IC of the Act. Thus the contention of the assessee with respect to income under the head cash discount is allowed.

20.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of Tribunal in own case of the assessee as discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we hereby set aside the finding of the learned CIT(A). Thus, we hold that the assessee is eligible for deduction under section 80-IC of the Act with respect to the income being Cash Discount discussed above.

(vii) & (viii) Export benefit & Insurance Income(Assessee's appeal)

21. At the outset, we note that identical issue came before this Tribunal in the own case of the assessee for AY 2010-11 in ITA No. 1286/Ahd/2017 where the issue has been decided in favour of the assessee and against the Revenue vide order dated 22-02-2022. The relevantground of appeal and the relevant finding of the Bench is extracted as under:

Ground of appeal

89. Ground No.4 : By this ground, assessee challenges order of the ld. CIT(A), who has confirmed the action of the ld.AO in reducing the following income while computing deduction under section 80IC of the Income Tax Act, 1961.
(d) Other income Rs. 76,774/-
(e) Export Benefits Rs. 1,23,57,230/-
(f) Insurance Income Rs. 2,69,386/-
(g)Penalties recovered from suppliers Rs. 2,60,250/-

Finding of the bench

94. Heard both the sides. We have also gone through the impugned order, judgments cited before us and the materials available on record. We find that the question whether impugned incomes are to be excluded or included in the eligible profit for claiming deduction under section 80IC of the Act or not, was already answered by the co-ordinate bench of this Tribunal in assessee's own case cited (supra) for the earlier assessment

years i.e. 2007-08 and 2008- 09. For the adjudication of this issue, it would be sufficient, if we reproduce relevant findings of the Coordinate Bench. It reads as under:

> *"73. We have heard the rival contention and perused the material available on record. The issue in the instant case is whether the miscellaneous income such as Penalty Received from Supplier, Discount Received from Vendors and Export Benefits are eligible for the deduction u/s 80IC of the Act.*
>
> *73.1 It is an undisputed fact that all the aforesaid income or arising from the activities carried out by the industrial undertaking eligible for deduction under section 80IC of the Act. Therefore we are of the considered view all the incomes are eligible for deduction under section 80A of the Act. Regarding this we find support and guidance from the judgment of Hon'ble High Court in the case of Metrochem Industries Ltd (supra) wherein the head note of the judgment reads as under:*
>
> > *"I Section 80-I of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings, etc., after a certain date (Computation of deduction) - Assessment years 1994-95, 1996-97 and 1997-98 - Deduction under section 80-I is allowable in respect of Kasar, discount and sales-tax set off [In favour of assessee]*
> >
> > *I Deduction under section 80-I is allowable in respect of Kasar, discount and sales-tax set off.*
> >
> > *II Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings (Computation of deduction) - Assessment years 1994-95, 1996-97 and 1997-98 - Foreign exchange fluctuation and duty drawback is an income derived from industrial undertaking, eligible for deduction under sections 80-I and 80-IA [In favour of assessee] II Foreign exchange fluctuation and duty drawback is an income derived from industrial undertaking, eligible for deduction under sections 80-I and 80-IA."*
>
> *73.2 In view of the above, we hold that the assessee is eligible for deduction in respect of the income as discussed above under section 80 IC of the Act. Accordingly, we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed, and the Revenue is dismissed."*

94.1. In view of the above order of the Tribunal, we do not find any disparity of facts and circumstances in the present year as that of earlier years. Therefore, we are unable to deviate from the view taken by the Co-ordinate Bench on this issue. We set aside orders of the Revenue authorities on this issue, and allow impugned claim of the assessee. This ground of appeal of the assessee is allowed.

21.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we hereby set aside the finding of the learned CIT(A). Thus, we hold that the assessee is eligible for deduction under section 80-IC of the Act with respect to the income being Export Benefits &Insurance claim discussed above.

(ix) Interest Income (Assessee's appeal)

22. During the year, the assessee earned interest income on account of deposits in the bank for Rs. 23,106/- only. The assessee claimed that the deposit was made from business fund lying with it, therefore the same has direct nexus with the activity of the undertaking. However, the AO held that the deduction under section 80IC of the Act is available for the income derived from manufacturing activity and the interest income on deposits cannot be equated with income derived from the activity of manufacturing.

22.1 On appeal by the assessee, the learned CIT(A) also confirmed the finding of the finding of the AO.

22.2 Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

22.3 The learned AR of the assessee submitted that it is only business fund, which was invested, therefore the same should be allowed as deduction under section 80IC of the Act.

22.4 On the other hand, the learned DR vehemently supported the order of the authorities below.

23. We have heard the rival contentions of both the parties and perused the materials available on record. Undeniably, the deposits were made by the eligible undertaking and interest was earned thereon. On perusal of the order of the AO, we also note that there was surplus fund available with the assessee which was parked in the bank deposits. Thus, it is transpired that the assessee has not made deposits under any obligation in the course of carrying on the business of manufacturing articles or thing. The provisions of Section 80-IC of the Act provide for deduction of the profits derived by the undertaking from the business of

manufacturing articles or things. *The expression 'derived from the business'* has generated a lot of controversy. To our understanding, it refers to the effective source from which the income arises. But to find out the effective source, the term *derived from* indeed demands an enquiry into the genealogy of the product which should be stopped as soon as the effective source is discovered.

23.1 At this juncture it is important to refer the judgment of Hon'ble SC in the case of *Cambay Electric Supply Industrial Co. Ltd.* v. *CIT* [1978] 113 ITR 84 (SC) which have interpreted the term 'derived from'. The relevant decision of the Supreme Court reads as under:

> *"The Legislature has deliberately used the expression 'attributable to', having a wider import than the expression 'derived from', thereby intending to cover receipts from sources other than the actual conduct of the business of the specified industry." (p.85)*

23.2 From the ratio of the aforesaid decision of the Hon'ble Apex Court, it emerges that the phrase 'derived from' covers receipts from the actual conduct of business of the specified industry as provided under section 80-IC of the Act.

23.3 Likewise, as per the Hon'ble Bombay High Court in the case of *Hindustan Lever Ltd.* v. *CIT* [1980] 121 ITR 951/3 Taxman 390, the word 'derived' as far as income-tax law is concerned, has been given a narrow meaning - a strict meaning, by the courts and has been understood in the restricted sense of a direct derivation and not understood in the broad sense as equivalent to be derived directly or indirectly. In other words, only the proximate source has to be considered and not the source to which it may ultimately be referable.

23.4 In the light of the aforesaid discussion, it may safely be concluded that the expression *"Profit and gain derived by an Industrial undertaking from specified business"* used in sections 80-IC of the Act, will include all the profits and gains earned by the Industrial undertaking by the actual conduct of its manufacturing activity. It would mean that all the income which has a direct nexus with the business of the Industrial Undertaking, will be includible in such profits and gains.

However, to our understanding interest income on deposit with bank/intercorporate deposits is not a profit or gain derived from the actual conduct of business i.e. manufacturing of article or thing in the given facts and circumstances.

23.5 Before parting, it is also important to note that the assessee has alternatively claimed that it has incurred interest expenditure also therefore only net interest shall be excluded from the profit eligible for deduction under section 80-IC of the Act. We find force in the alternative contention of the assessee. In this regard we also find support and guidance from the judgment Hon'ble Gujarat High court in the case of CIT vs. CLP India (P) Ltd reported in [2019] 103 taxmann.com 442 [Guj.] where it was held as under:

> *2. Third question pertains to netting of the interest for disallowance under Section 80IA of the Act. In this respect, we notice that in the decision of the Supreme Court in case of ACG Associated Capsules (P.) Ltd. v. Commissioner of Income Tax[2012] 18 taxmann.com 137/205 Taxman 136 (Mag.)/343 ITR 89 such issue in the context of deduction under Section 80HHC of the Act has been settled. It is held that it would only be the net of the interest excluding the expenditure incurred in earning such interest income which should be excluded for the purpose of under Section 80 HHC of the Act. To our mind, same would apply even when the revenue desirous to exclude certain interest income from the deduction available under Section 80IA of the Act. In our view, the Tribunal committed no error.*

23.6 The above judgment of the Hon'ble High Court was in connection with the deduction under section 80IA of the Act but in our considered opinion, the same will also be applicable on the issue on hand as the provision of section 80IA and 80IC of the Act are perimetria. Therefore, following the above-mentioned judgment of Hon'ble Jurisdictional High Court, we hereby direct the AO to exclude the net interest income i.e. excluding the expenses incurred in earning such interest income. Hence the ground of appeal of the assessee in this regard is partly allowed.

(x) Government grant (Assessee)

24. The assessee during the year under consideration receives a government grant of Rs. 3,41,469/- in the Baddi unit from the Department of Biotechnology under the scheme of Biotechnology Industry Partnership Program. Such grant was received by the assessee for undertaking research in frontier futuristic technology to make Indian industry globally competitive. The assessee claims that the research activity is essential to its business, therefore such receipt of grant is eligible for deduction under section 80-IC of the Act.

24.1 However, AO disallowed the claim of the assessee by holding Government Grant for undertaking research activity is not the profit or gains derived from the activity of manufacturing.

24.2 On appeal by the assessee, the learned CIT(A) also confirmed the finding of the AO.

24.3 Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

24.4 The learned AR before us submitted that the grant received by it has direct nexus and therefore, the same should be eligible for deduction under section 80IC of the Act.

24.5 On the other hand, the learned DR vehemently supported the order of the authorities below.

24.6 We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the impugned government grant was received by the assessee to undertake frontier futuristic research activity in the field of biotechnology. The assessee is running an in-house research center under which it is involved in the activity of discovery of molecule/formula of new medicine etc. The assessee itself treated the research activity for discovery of future molecule/technology as separate unit from the manufacturing units eligible

for deduction under section 80-IC of the Act. The assessee on one hand has not allocated the expenditure incurred on R&D activityto eligible units by treating the same as separate activity and at the same time, it is claiming the receipt of grant for conducting futuristic research in biotechnology as part of manufacturing unit. In our considered opinion the assessee cannot take a different stand for expenses incurred and grant received for research activity. Therefore, we hereby confirm the finding of the learned CIT(A) by holding that the receipt of government grant for biotechnology research is not connected to the activity of units eligible for deduction under section 80-IC of the Act. Hence, the assessee is not eligible for a deduction under section 80-IC of the Act on account of receipt of the government grant.

24.7 In view of the above elaborated discussion the ground of appeal of the assessee regardingthe allowances of deduction under section 80IC of the Act on different type of receipts are partly allowed whereas the counter ground of appeal of the Revenue is hereby dismissed.

25. The next issue raised by the assessee vide ground Nos. 4 & 5 of its appeal is that the learned CIT(A) erred in confirming the action of the AO by allocating the administrative expenses to Baddi and Sikkim Unit eligible for deduction under section 80-IC and 80-IE of the Act respectively.

26. The assessee in the year under consideration has allocated common administrative expenses based on the number of employees between Baddi Unit and Sikkim unit. However, the AO was of the view that the basis adopted by the assessee for the allocation of the administrative expenses is not proper. As per the AO, the administrative expenses arerequired to be allocated based on the turnover of the respective units. Accordingly, the AO allocated an additional sum of Rs. 2,36,92,391/- to Baddi Unit and Rs. 5,50,80,826/- to the Sikkim Unit which resulted in a reduction in the deduction under section 80IC and 80IE of the Act of the respective eligible unit.

27. On appeal by the assessee, the learned CIT(A) confirmed the finding of the AO by observing that the method adopted by the AO for allocation of administrative expenses based on turnover is an appropriate method.

28. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

28.1 The learned AR before us submitted that in the earlier year, the administrative expenses were allocated based number of employees, and the same basis should be adopted by the Revenue in the year in dispute.

28.2 On the other hand, the learned DR vehemently supported the order of the authorities below.

29. We have heard the rival contentionsof both the parties and perused the materials available on record. At the outset, we note that an identical issue came before this Tribunal in the own case of the assessee for AY 2007-08 in ITA No. 907/Ahd/2012 where the issue has been decided in favour of the assessee and against the Revenue vide order dated 15-05-2019. The relevant finding of the Bench is extracted as under:

> *21. We have heard the rival contentions and perused the materials available on record. The issue in the instant case relates to the allocation of the said expenses between Indrad and Baddi unit. As per the assessee, the administrative expenses need to be allocated based on the number of employees working whereas the AO allocated the expenses based on the turnover. The learned CIT (A) subsequently confirmed the order of the AO. 21.1 Now the issue before us arises so as to adjudicate the basis of allocation of the administrative expenses. At the outset, we note that the impugned issue of the allocation of the administrative expenses was also there in the assessment year 2008-09. Therefore, the argument of the learned AR for the assessee is not correct. As such the AO has also disputed the basis of allocation of the administrative expenses in the year 2008-09 as well. 21.2 Administrative expenses are the expenses which are not directly connected/ attributable with a specific function/ department/ undertaking such as manufacturing, production or sales of the organization. But these represent essential costs to maintain a company's daily operations and administer its business. The administrative expenses generally include:*
>
> - *Rent*
> - *Utilities*
> - *Insurance*
> - *Executives wages and benefits*

- *The depreciation on office fixtures and equipment*
- *Legal counsel and accounting staff salaries*
- *Office supplies*
- *Salary to the management*
- *Audit Fees*

21.3 These expenses are incurred by a company regardless of whether the company produces or sells anything, generates income or incurs a loss. Most of these expenses either are fixed or semi-fixed, and there is a limited scope to reduce them. The companies that have a centralized management system tend to have higher general and administrative expenses. On the contrary in the case of decentralizing system, certain functions are delegated to subsidiaries.
21.4 Similarly these expenses cannot be linked to any particular undertaking of the company in a case the assessee has more than one undertaking. Thus the dispute arises for the allocation of such expenses among the different unit/ undertaking of the assessee. Regarding the allocation, we are of the view that these expenses cannot be allocated based on the turnover. It is because the turnover of any undertaking is very much volatile and keep on changing depending upon the market forces, competition, Government policies, etc. There can be a situation that the turnover of one undertaking is very high in a particular year but in the subsequent year the turnover may go done or vice versa which will affect the pattern and consistency in the allocation of the administrative expenses and distort the presentation of the financial statements for different years. Therefore we are of the considered view that the basis of the allocation of administrative expenses based on the turnover is not advisable.
21.5 The next controversy arises what should be the basis of the allocation of the said expenses in the given facts and circumstances. Generally, the human resources working in any of the undertakings of the assessee does not frequently change as the market forces do not regulate it, unlike the sales. Therefore, in the given facts and circumstances, we are of the view that the allocation of the administrative expenses should be done based on the human resources engaged in the different undertaking of the assessee.
21.6 In view of the above, we reverse the order of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

29.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in the own case of the assessee discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we hereby set aside the finding of the learned CIT(A). Thus, the ground of appeal raised by the assessee is hereby allowed.

30. The next issue raised by the assessee vide ground No. 6 of its appeal is that the learned CIT(A) erred in confirming the disallowance of claim representing the provision for leave encashment.

31. The AO during the assessment proceedings noticed that the assessee has claimed deduction of provision for leave encashment amounting to Rs. 7,72,50,875/- only. The AO found that the provision of section 43B of the Act clearly specifies that the amount payable to employees on account of leave encashment will be allowed on payment basis only. The AO in this respect also referred to various case lawsholding that the deduction for the provision of leave encashment cannot be allowed in the year under consideration in the absence of actual payment. Thus, the AO added the same to the total income of the assessee.

32. The learned CIT(A) also confirmed the disallowance made by the AO by observing that the provision does not represent the actual expense and the same are created to meet the future expenses. Therefore, the same cannot be allowed as deduction considering the nature of the provision as well as the considering the clear provision of section 43B(f) of the Act.

33. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

33.1 The learned AR before us reiterated the arguments made before the lower authorities.

33.2 On the other hand, the learned DR vehemently supported the order of the authorities below.

34. We have heard the rival contentionsof both the parties and perused the materials available on record. At the outset, we note that an identical issue came before this Tribunal in the own case of the assessee for AY 2011-12 in ITA No. 1396/AHD/2018 where the issue has been decided against the assessee vide order dated 22-02-2022. The relevant finding of the Bench is extracted as under:

146. We have heard the rival contentions of both the parties and perused the materials available on record. There are certain expenses which are allowed on payment basis in pursuance to the provisions of section 43B of the Act irrespective of the year of incurrence. One of such expenditure is leave encashment. Admittedly, the assessee has not made the payment of the leave encashment and therefore the same can't be allowed as deduction. However, the assessee is at liberty to claim the deduction of such expense in the year of payment. Thus the ground of appeal of the assessee is dismissed in terms of the above.

34.1 Before us, no material has been placed on record by the learned ARdemonstrating that the decision of Tribunal in own case of the assessee discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we do not find any reason to interfere in the finding of the learned CIT(A). Thus, the ground of appeal raised by the assessee is hereby dismissed.

35. The next issue raised by the assessee vide ground No. 7 of its appeal is that the learned CIT(A) erred in confirming the disallowance of weighted deduction under section 35(2AB) of the Act on certain items.

36. The AO during the assessment proceedings found that the assessee claimed weighted deduction under section 35(2AB) of the Act on certain expenses relating to the R&D division which are not approved by the DSIR. The detailsof such expenses stand as under:

Particulars	***Amount (Rs. In Lakhs)***
Revenue Expenses	*272.31*
Building repair expenses	*91.63*
Municipal Taxes	*11.86*
Clinical Research Expenses	*983.94*
Patent Related Expenses & Professional Fees:	
Patent Expense (Official Fees) outside India	*26.71*
Patent Expense (Consulting Fees) outside India	*515.05*
Professional fee outside India	*19.71*
Professional fee inside India	*46.45*
Interest on loan	*45.66*

Labour & Job work charges	*165*
Other studies expenses	*110.77*
Total(A)	***2289.09***
Capital Expenses	
Furniture & Fixtures	*34.82*
Electrical equipment	*12.71*
Vehicles	*5.42*
Total (B)	***52.95***
Total (A+B)	***2342.04***

36.1 Besides the above, the AO further found that out of the above list of unapproved expenses, there were certain expenditures incurred outside the approved R&D facility. The details of the same stand as under:

Particulars	*Expense*	*Weighted Deduction claimed*
Clinical Research expenses	*983.94*	*1967.88*
Professional fees in and outside India	*66.16*	*132.32*
Patent Expense (Consulting Fees) outside India	*515.05*	*1030.1*
Interest on Loans	*45.66*	*91.32*
Labour & Job work charges	*165.00*	*330.00*
Other Studies Expenses	*110.77*	*221.54*
Total	*1913.29*	*3826.58*

The above expense of Rs. 1913.29 lacs are incurred outside the approved in house R&D centre and not on the in-house research and development centre which is very much required as per the provisions of section 35(2AB). The explanation in no way obliterates the primary condition that the expenditure must be approved by the prescribed authority (DSLR). When the prescribed authority has categorically certified that such expenditure is outside approved facility it cannot be allowed. In this regards reliance is also placed upon the decision of the Hon'ble Supreme Court in a bench of Five Judges in the case of Padmasundara Rao vs State of Tamil Nadu [2002] 255 ITR 147 and also in the case of Prakash Nath Khanna vs. CIT [2004] 266 ITR 1 (SC).

"Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be"

Further reliance is placed on the judgment of II'AT [2012] 54 SOT 615 (MUM) / [2012] 24 taxmann.com 218 (MUM) [04.07.2012] in the case of USV Ltd. vs. DCIT Circle-32, Mumbai wherein hon'ble tribunal held as under:

"Whether expenses not reported in Department of Scientific and Industrial Research (DSLR) certificate, would not be eligible for deduction under section 35(2AB) - Held, yes"

Similar issue is considered by the ITAT Mumbai "F" Bench in ITA No. 2179/Mum/2009 fir AY 2005-06 and reliance is placed on the same. It is pertinent to mention here that the decision in case of CIT-I vs. Cadila Health care Ltd. (2013) 31 taxmanu.com 300, has not

been accepted by the department and the department has gone into appeal before Hon'ble Supreme Court.

In view of this, the weighted protion of the said expenditure of Rs.1913.29 lacs incurred outside the approved facility is disallowed. Accordingly, the disallowance works out to Rs.1913.29 lacs.

Similarly, the other revenue expenditure which is not approved by the prescribed authority, as mentioned hereunder, is disallowed to the extent of weighted portion of the said expenditure.

Particulars	*Expense*	*Weighted Deduction claimed*
Building related recurring expenses	*91.63*	*183.26*
Municipal Taxes	*11.86*	*23.72*
Salary to Dr. C. Dutt	*272.31*	*544.62*
Capital expenditure on R &D (other than building)	*428.75*	*857.5*

36.2 As per the AO, the weighted deduction under section 35(2AB) of the Act is only allowable if the expenses incurred are approved by the DSIR and same are also incurred within the approved R&D facility. Accordingly, the AO disallowed the amount of weighted deduction on the above expenditures being incurred outside the facility and not approved by the DSIR for Rs. 23,42,01,943/- only.

37. The aggrieved assessee preferred an appeal before the learned CIT(A) who partially allowed the appeal of the assessee. The learned CIT(A) found that the issue of weighted deduction on salary to Dr. C Dutt for Rs. 272.31 Lakhs, Building repairs for Rs. 91.63 Lakhs and Municipal tax for Rs. 11.86 Lakhs covered in favour of the assessee by the order of the Tribunal in own case of the assessee for AY 2003-04 to 2005-06. Hence, the learned CIT(A) deleted the disallowances made by the AO.

37.1 Likewise, the learned CIT(A) found that expenditure on clinical trial, patent registration and approval etc.incurred outside the approved facility are covered under the provisions of section 35(2AB) of the Act by the explanation inserted to section 35(2AB) of the Act vide Finance Act 2001 and also covered by the judgment of Hon’ble Gujarat High Court in the case of Cadila Healthcare reported in 31 taxmann.com 300. Hence, the learned CIT(A) deleted the disallowances

made by the AO for the weighted deduction on the expenditure of clinical research for Rs. 983.94 Lakhs, professional fee for Rs. 66.16 Lakhs, patent registration expense for 26.71 & 515.05 Lakhs and studies expenses of Rs. 110.77 Lakhs.

37.2 Regarding the claim of weighted deduction on the remaining expenditures being interest on loan, labour, and job work charges and capital expenditure on furniture & electrical equipment, the learned CIT(A) found that such expenditures are not approved by the DSIR. Further, the assessee failed to establish that such expenditureswere incurred in connection with R&D expenses. Thus, the ld. CIT-A confirmed the disallowance made by the AO.

38. Being aggrieved by the order of the learned CIT(A), both the assessee and the Revenue are in appeal before us. The assessee is in appeal against the confirmation of disallowance of weighted deduction claimed whereas the revenue is in appeal against the deletion of the disallowances of weighted deduction. The relevant ground of appeal of the Revenue in ITA No. 2369/Ahd/2018 reads as under:

> *8. That the Ld.CIT(A) has erred in law and on the facts in deleting the disallowance made by the assessing officer out of Rs.23.42,01,943/- out of deduction claimed by the assessee u/s.35(2AB) in respect of research and development expenditure consisting of.*
> *i. Salary to Dr. Dutt of Rs.272.31 lakhs*
> *ii. Building repait expenses of Rs.91.63 lakhs*
> *iii. Municipal Tax of Rs.11.86 lakhs.*
> *iv. Patent related expenses and professional fees of Rs.607.92 lakhs.*
> *v. Studies expenses of Rs.110.77 lakhs.*
> *vi. Clinical Research Expesnses of Rs.983.94 lakhs*

38.1 Both the learned AR and the ld. DR before us supported the findings of the authorities below to the extent favourableto them.

39. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there were certain expenditures on which the assessee has claimed weighted deduction under section 35(2AB) of the Act. However, the same was not approved by the DSIR which also includes certain expenditure allegedly incurred outside the approved facility. The AO disallowed the claim of the weighted deduction on such expenditure whereas the learned

CIT(A) deleted disallowances of deduction on certain items of the expenditure and at the same time, confirmed the disallowance on certain items which have detailed in the preceding paragraph. As far as, the issue of rates and taxes, building repairs and salary to Dr. C Dutt is concerned, we note that the same are squarely covered in favour of the assessee by the order of this Tribunal in the own case of the assessee in ITA 1869/AHD/2009 vide order dated 31-5-2012 pertaining to the AY 2005-06. The relevant extract of the order is reproduced as under:

> *6. Another effective ground as raised by the Revenue is with regard to deleting the disallowance of weighted expenses on R & D of Rs.1,03,25,000/-. Ld. CIT-DR submitted that order passed by Ld. CIT(A) is erroneous. On the contrary, Ld. Authorized Representative for the assessee submitted that weighted deduction on Rs.33.33 expenses relating to repairing building expenses Rs.9.01 lakh municipal tax paid by the assessee and Rs.75.97 lakh, salary to Mr. C Dutta has been allowed in the earlier year. Ld. AR submitted that this issue is squarely covered in favour of assessee in ITA No.3569/Ahd/2004 A.Y. 2001-02.*
> *7. We have heard the rival submissions, perused the materials available on record and judgment cited by the parties. So far the disallowance with regard to R&D, building, municipal tax and salary to Dr. C. Dutt are concerned this issue has been decided by the Hon'ble co-ordinate bench in ITA No.3569/Ahd/2004 (supra) in favouor of assessee. In view of the matter, we do not find any infirmity into the order passed by Ld. CIT(A). Hence, this ground of Revenue's appeal is dismissed.*

39.1 Thus, respectfully following the order of this Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the order of the learned CIT(A) with respect to the claim of deduction on salary to Dr. C Dutt, Building repairs and Municipal tax.

39.2 Coming to the issue of claim of deduction on the expenditures incurred relating to clinical trial, product/patent registration, studies, and professional charges in relation to clinical trial & patient registration etc.,we note the same has been covered in favour of the assessee by the order of this Tribunal in own case of the assessee in ITA 1327/AHD/2017 vide order dated 22-02-2022 pertaining to the AY 2009-10. The relevant extract of the order is reproduced as under:

> *50. Coming to deduction with respect to expenses incurred on account of clinical trial and patient registration, we note this issue also covered in favour of the assessee by the order of special bench of the Tribunal in case of Cadila Healthcare Ltd. vs. ADIT reported in 29 taxmann.com 229 where the special bench held as under:*
>
> > *For a clinical drug trial, the first stage is to enroll volunteers and/or patient into small pilot studies and subsequently large scale studies are carried out on patients and such clinical drug trial may be in one country or in multiple countries. Carrying out drug trial is essential for approval of the drug in question to be sold in the*

public and hence, clinical drug trial cannot be carried out inside an in-house research facility i.e. usually the laboratory.
Hence, Explanation to section 35(2AB)(1) does not require that the expenses are essentially to be incurred inside an in-house research facility because it is not possible to incur these expenses inside in-house research facility. [Para 3.6]
Thus, all the three expenses included in the Explanation are not capable of being incurred inside the in-house research and development facility and, therefore, for all the expenditures included in the Explanation including the expenditure on clinical drug trial, it is not required that the same has to be incurred inside the in-house research and development facility and if the same are incurred in relation to drug developed in an in-house research and development facility, the same become eligible for deduction under section 35(2AB)(1). [Para 3.8] .

50.1 Respectfully following the above finding of special bench of Tribunal, we hold that the assessee is eligible for weighted deduction on expenses incurred on clinical trial and patent registration. Accordingly, we do not find any infirmity in the order of learned CIT(A) and directed the AO to allow weighted deduction. Hence the ground of appeal of the Revenue is hereby dismissed.

39.3 Thus, respectfully following the order of this tribunal in own case of the assessee as discussed above, we do not find any infirmity in the order of the learned CIT(A) with respect to the claim of weighted deduction on the expenditure of clinical trials & studies and on product/ patent registration etc.

39.4 Coming to the issue of disallowance of weighted deduction confirmed by the learned CIT(A)with regard tointerest on loan, labour& job works charges, furniture and fixture and electrical equipment. At the outset we note the present assessee in the A.Y. 2012-13 also claimed weighted deduction on the impugned expenditure being interest on loan, labour& job works charges, furniture and fixture and electrical equipment and same was disallowed by the AO and the learned CIT(A). The assessee carried mater before this tribunal in ITA No. 1397/Ahd/2018. The tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

192. We have heard the rival contentions of both the parties and perused the materials available on records. At the outset, we note that issue of allowance of weighted deduction on account of expenditure incurred in connection with research and development activity is covered in favour of the assessee by the order of the Hon'ble Gujarat High Court in the own case of the assessee (supra) wherein the Hon'ble court held as under:

13. As regards Question No.(A), we find that the Tribunal has followed its earlier decision passed in respect of this very assessee in ITA No.446/Ahd/2002. In our opinion, the Tribunal rightly held that the assessee is entitled to weighted deduction in respect of the entire expenditure incurred for the development of in-house "R&D" facility in terms of Section 35(2AB) of the Act. Consequently, we answer Question No. (A) in favour of the assessee and against the Revenue.

191.1. Respectfully following the above order of the Hon'ble High court in own case of the assessee, we set aside the finding of the learned CIT(A) and direct the AO to allow the deduction to the assessee. Hence, the ground of appeal of the assessee is allowed.

39.5 Thus, respectfully following the order of this tribunal in own case of the assessee as discussed above, we hereby setaside the finding learned CIT(A) with respect to the claim of weighted deduction on the expenditure of interest on loan, labour& job works charges, furniture and fixture and electrical equipment and direct the AO to allow the claim of the assessee.Hence, in view of the above elaborated discussion the ground of appeal raised by the revenue is dismissed whereas the ground of appeal raised by the assessee is allowed.

40. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition in book profit by the amount of disallowance made under section 14A of the Act.

41. The AO found that the assessee under normal computation of income has made suo-moto disallowance under section 14A r.w. rule 8D(2) of the IT rule for Rs. 47,45,891/- only. However no disallowance was made while computing the book profit as per the provisions of clause (f) of explanation to section 115JB(2) of the Act. Accordingly, the AO made addition of Rs. 47,45,891 to the book profit.

42. On appeal by the assessee, the learned CIT(A) found that the income of the assessee under normal provisions of the Act is higher than the book profit even after making addition to the book profit by the amount disallowances computed under section 14A of the Act. Therefore, the issue of addition to book profit become infructuous.

43. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

43.1 The learned AR before us submitted that the ld. CIT-A should have decided the issue on merit instead of holding the same as infructuous.

43.2 On the other hand, the learned DR supported the order of the authorities below.

44. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the issue on hand are elaborated in preceding paragraph hence which are not in dispute. Therefore, we are not inclined to repeat the same. At the outset, we note that the Special Bench of Hon'ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 has held that the disallowance made u/s 14A r.w.r. 8D cannot be the subject matter of disallowance while determining the net profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

> *"In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962."*

44.1 The ratio laid down by the Hon'ble Tribunal is squarely applicable to the facts of the case on hand. Thus, it can be concluded that the disallowance made under section 14A r.w.r. 8D cannot be resorted while determining the expense as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

44.2 However, it is also transparent that disallowance needs to be made with respect to the exempted income in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. The provision of clause (f) of explanation 1 to subsection 2 of section 115JB of the Act requires that while computing book profit, the expenses in relation to exempted income under section 10/11/12 of the Act (other than subsection 38 of section 10) shall be added to the profit of the year. We have perused the computation of income under the Act and find the assessee has not claimed any income under section 10 or 11 or 12 of the Act. Therefore, in our considered opinion, the question of applicability of the provision of clause (f) of explanation 1 to subsection 2 of section 115JB of the Act

does not arise.Thus, the ground of appeal of the assessee in relation to the addition to book profits is allowed.

45. **The next** issue raised by the assessee vide ground No. 9 of its appeal is that the learned CIT(A) erred in confirming the upward adjustment in TP on account of corporate guarantee, capital infusion, interest on loan.

46. In the captioned ground of appeal, the assessee has challenged the addition made by the adjustment in ALP of different international transactions. We, for the sake of better representation, proceed to adjudicate the same one by one.

First, we take up corporate guarantee:

47. The assessee during the year has extended corporate guarantee to its AE detailed as under:

1. Zao Torrent Pharma, Russia 2 Mn USD
2. Torrent Pharma Gmbh 2 Mn Euro

47.1 The assessee has not charged any fee from AE for extending such corporate guarantee. However, the assessee in TP report suo-moto offered ALP @ 1.5% of guarantee amount with respect to guarantee extended to its AE namely Zao Torrent Pharma Russa whereas no such ALP was offered with regard tothe guarantee furnished to Torrent Pharma Gmbh. The assessee before the TPO contended that the corporate guarantee was not utilized by the AE, therefore there was no risk associated with unutilized guarantee. Accordingly, the question of charging commitment fee does not arise. The assessee further submitted that the corporate guarantee was extended to help the AE in their growth which ultimately be beneficial for its business. Therefore, no adjustment of ALP is required to be made.

47.2 However, the TPO disagreed and following the order of his predecessor AO/TPO for earlier years benchmarked guarantee fee with respect to Zao Torrent

Pharma Russia @ 2.23% against the 1.5% offered by the assessee and @ 0.205% with respect to Torrent Pharma GmbH against the NIL offered by the assessee. The TPO/AO accordingly made addition of Rs. 8,32,291/- only to the total income of the assessee.

48. On appeal by the assessee, the learned CIT(A) confirmed the adjustment made by the AO/TPO by following the order of itspredecessor CIT(A).

49. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

49.1 The learned AR before us submitted that the AE did not utilize the guarantee furnished by the assessee. Therefore, there is charging any fees from the AE.

49.2 On the other hand, the learned DR before us vehemently supported the order of the authorities below.

50. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the issue in hand have been elaborated in the preceding paragraphs.Therefore, we are not inclined to repeat the same for the sake of brevity. The transaction of extending corporate guarantee to the AE has been covered under the net of international transaction by the explanation inserted to subsection 2 of section 92B of the Act vide Finance Act 2012. Recently the Hon'ble Madras High Court in the case of PCIT vs. Redington (India) Ltd. reported in 122 taxmann.com 136 has held that corporate guarantee is covered under the limb of international and having bearing on profit and loss account. Therefore, the same needs to be determined at arm length in TP report. The relevant finding of the Hon'ble Court reads as under:

> *The concept of bank Guarantees and Corporate Guarantees was explained in the decision of the Hydrabad Tribunal in the case of ProlificsCorpn. Ltd v. Dy. CIT [2015] 55 taxmann.com 226/68 SOT 104 (URO). In the said case, the revenue contended that the transaction of providing Corporate Guarantee is covered by the definition of international*

transaction after retrospective amendment made by Finance Act, 2012. The assessee argued that the Corporate Guarantee is and additional guarantee, provided by the Parent company. It does not involve any cost of risk to the shareholders. Further, the retrospective amendment of section 92B does not enlarge the scope of the term 'international transaction' to include the Corporate Guarantee in the nature provided by the assessee therein. The Tribunal held that in case of default, Guarantor has to fulfil the liability and therefore, there is always an inherent risk in providing guarantees and that may be a reason that Finance provider insist on non-charging any commission from Associated Enterprise as a commercial principle. Further, it has been observed that his position indicates that provision of guarantee always involves risk and there is a service provided to the Associate enterprise in increasing its creditworthiness in obtaining loans in the market, be from Financial institutions or from others. There may not be immediate charge on profit & loss account, but inherent risk cannot be ruled out in providing guarantees. U1 and adjustment are to be made on guarantee commissions on such guarantees provided by the Bank directly and also on the guarantee provided to the erstwhile shareholders for assuring the payment of Associate Enterprise.

In the light of the above decisions, the Tribunal committed an error in deleting the additions made against Corporate and Bank Guarantee and the order passed by the DRP is to be restored. [Para 76]

50.1 From the above observation of the Hon'ble Madras High court, it is discernible that the corporate guarantee extended by the company to the AE is in the nature of service and the AE by utilizing such services increase their creditworthiness in obtaining finance from market. The company in this process takes inherent risk. Therefore, the guarantee commission for the same needs to be benchmarked.

50.2 Coming to the case on hand, the assessee company has extended corporate guarantee to its AE. However, such guarantee was not utilized by the AE. Therefore, in the given facts and circumstances, we are of the considered opinion that no inherent risk arises to the assessee company or financial services utilized by the AE from the assessee company. However, the assessee has suo-moto offered guarantee commission on the corporate guarantee to the one AE namely Zao Torrent Pharma Russia @ 1.5% of the guaranteed amount.

50.3 Be that as may be, we find that the assessee in A.Y. 2009-10 has also provided corporate guarantees to its 4 different AE and benchmarked the guaranteed commission at NIL. The TPO in its order benchmarked the commission at @ 3% of guaranteed value based on analysis of US Bond data and risk factor. The issue travelled before this Tribunal in assessee's appeal bearing ITA No.

1285/Ahd/2017. The Bench vide order dated 22-02-2022 after analyzing the various case laws held that commission @ 0.5% of value of corporate guarantee shall be taken as ALP. In the present case the assessee has already offered ALP commission @ 1.5% of the guaranteed value extended to the AE namely Zao Torrent Pharma Russia. Therefore, in our considered opinion no further adjustment is required to be made.

50.4 Likewise, the AO with respect to guarantee furnished to Torrent Pharma GmbH has calculated @ 0.205% as guarantee fees against the NIL offered by the assessee. Therefore, we are of the view that the same cannot be determined at 0.50% based on the order of the ITAT discussed above in the earlier year. As such, we hold that the guarantee fee charged by the revenue is at the ALP. Hence the ground of appeal of the assessee is partly allowed.

Interest on loan to AE.

51. The assessee has extended loans and advances to its foreign AEs on which it credited interest in the books of account at LIBOR + 175 basis points. However, the assessee in TP report has determined ALP at LIBOR + 400 basis point as internal CUP method.

51.1 The TPO disagreed with benchmarking of the assessee by holding that interest payable by the assessee on its borrowing cannot be taken as comparable for the reason that the assessee poses strong financial base whereas the AE are comparatively financially weaker. Thus, the TPO determined the ALP of interest at LIBOR + 473 basis point and accordingly made addition of Rs. 4,39,625/- only.

52. On appeal by the assessee, the learned CIT(A) confirmed the order of the AO.

53. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

53.1 The learned AR before us submitted that the rate of interest between the corporates cannot be compared with loan extended by the banks whose main activity is extending loans to generate revenue. Therefore, the basis adopted by the AO/ TPO is not sustainable.

53.2 On the other hand, the learned DR vehemently supported the order of the authorities below.

54. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee has extended loans and advances to its foreign AEs on which credited interest in the books at LIBOR+175 basis point. However, the assessee in TP report offered notional interest income by taking ALP at LIBOR + 400 basis point by taking internal cup. The notional interest offered by the assessee at LIBOR + 400 basis point was not accepted by the TPO and computed ALP at LIBOR + 473 basis point and made upward adjustment. As such, the TPO in computing the ALP also considered the risk adjustment on account of financial strength of the assessee and the AE. The view of the TPO has been confirmed by the learned CIT(A). In our considered view, the learned CIT(A) failed to appreciate the fact that in the given case a holding company extended loans and advances to its foreign subsidiary to grow the business. Such a transaction cannot be compared with loan extended by the banks whose main activity is extending loans to generate revenue. In holding so, we draw support and guidance from the judgment of judgment of Hon'ble Bombay High Court in case of CIT vs. Everest Kento Cylinders Ltd reported in 58 taxmann.com 254 wherein it was held that as under:

> *In the present case, it is assessee-company that is issuing corporate guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the assessee would make good the amount and repay the loan. The considerations which apply for issuance of a corporate guarantee are distinct and separate from that of bank guarantee and, accordingly, commission charged cannot be called in question, in the manner TPO has done. The comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company.*

54.1 The above finding of the Hon'ble Bombay High Court is in relation to extension of corporate guarantee, but the principle laid down therein can be applied here in the case of extension of loans and advances also. Therefore, in our considered TPO was not right in considering the upfront fee charged by the bank as well adjustment of risk associated with unsecured loan.

54.2 We also note that this tribunal in case of M/s Arvind Ltd bearing ITA No. 2347 & 2292/AHD/2018, where the facts and circumstances were identical to the case on hand, after considering the series of finding of different Tribunal held that in case of loan extended by parent company to foreign subsidiary, the reasonable rate of interest should be LIBOR +2%. The relevant finding of the Tribunal in case M/s Arvind Ltd (supra) reads as under:

> *41. Before deciding ground of appeal, it would be useful to discuss some judicial precedents which have analyzed this issue before us. In the case of IPCA Laboratories Ltd.146 taxmann.com 28 (Mumbai - Trib.), the Mumbai ITAT held that where assessee-company had given interest Free loans to its AEs, since loan was given in foreign jurisdiction, LIBOR +200 points was correct benchmarking for interest. In the case of Bhansali & Co. 54 taxmann.com 131 (Mumbai - Trib.), the Mumbai ITAT held that interest charged as LIBOR plus 200 basis points on foreign currency loan given abroad is most correct benchmark. In the case of Motherson Sumi Systems Ltd. 58 taxmann.com 38 (Delhi - Trib.), the Delhi ITAT held that where TPO made addition to assessee's ALP in respect of interest on loan given to its AE, since interest rate charged by assessee from its AE was higher than LIBOR rate in the year under consideration, impugned addition was to be set aside. In the case of Soma Textiles & Industries Ltd.149 taxmann.com 163 (Ahmedabad - Trib.), the Ahmedabad ITAT held that ALP adjustment of interest on loan given to AE was to be benchmarked at LIBOR + 2 per cent. We observe that in the instant facts, the assessee has computed the ALP at LIBOR plus 2.5%. The Ld. CIT(Appeals) has upheld the order of the Ld. Assessing Officer on the Ground that the assessee has not given the comparable basis for arriving at the aforesaid rate. However, in our view, the Ld. CIT(Appeals) has failed to appreciate various judicial precedents which have held that LIBOR plus 2% is a reasonable margin to compute ALP of loan given to subsidiaries. In the instant case, the assessee has worked out the ALP at LIBOR plus 2.5%. Further, the Ld. CIT(Appeals) has also not appreciated the fact that the mark-up of 3.72% computed by the TPO works out to nearly 72% of LIBOR which in our view, is quite excessive. Accordingly, looking into the instant facts of the instant case, we are of the considered view that the assessee is justified in computing the ALP at 7.69% (i.e. at LIBOR plus 2.5%) and the appeal of the assessee is allowed with respect to this Ground of Appeal.*

54.3 In view of the above discussion and finding by the tribunal that the reasonable rate of interest shall be LIBOR + 2%, we hereby hold that suo-moto notional interest offered by the assessee at LIBOR + 400 basis is at ALP and no further adjustment is required to be made. Hence, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the upward adjustment made on

account of benchmarking of loan to AE. Thus, the ground of the appeal filed by the assessee is hereby allowed.

Capital Infusion.

55. The TPO found that the assessee during the year has made payment of share application money to the following AEs:

S. No.	Name of AE	Amount in Rs.	Date of payment	Date of share allotted
1	Zao Torrent Pharma	20,51,66,850/-	08-08-2012	28-03-2013
2	Zao Torrent Pharma	15,19,72,500/-	16-11-2011	18-05-2012

55.1 The TPO found that as per the provision of FEMA 1999 and RBI master circular No. 15/2014-15 dated 01-07-2014, the process of allotment of shares/equity instrument shall be completed within 180 days from the date of payment of money whereas in the case of the assessee the shares were allotted after expiry of 180 days. Therefore, the TPO treated the share application money as loans & advances and determined ALP for the interest at LIBOR + 473 basis point. The TPO/AO accordingly worked out the amount of interest on such share application at Rs. 86,77,761/- in the following manner:

S. No.	Amount in Rs.	Dt. of Payment	Dt. of allotment	Delay falling in C.Y.	Interest in Rs.
1	20,51,66,850/-	08-08-2012	28-03-2013	232	72,24,571/-
2	15,19,72,500/-	16-11-2011	18-05-2012	63	14,53,190/-

56. The aggrieved assessee preferred an appeal before the learned CIT(A). The learned CIT(A) concurred with the alternative plea of the assessee that the interest if any is to be determined on the share application money then such interest shall be calculated for the period of delay beyond 180 days only but not for the period starting from the date of payment to date of allotment.

56.1 The learned CIT(A) accordingly found that there were total 184 days taken for completing the allotment of shares against the application money of Rs. 15,19,72,500/-paid. Thus, there was only a delay of 4 days for which interest shall

be charged and the same has already been made subject to the addition in the AY 2012-13 by the order of the ld. predecessor CIT(A). Hence the learned CIT(A) deleted the addition of interest charged by the TPO/AO for Rs. 14,53,190/-

56.2 Likewise, the learned CIT(A) regarding the share application money of 20,51,66.850/- paid on 08-08-2012 found that there was delay of 52 days only from the date of expiry of 180 days. Therefore, interest shall only be charged for 52 days which worked out at Rs. 14,05,927/-. Thus, the learned CIT(A) restricted the addition to the extent of Rs. 14,05,927/- against Rs. 72,24,571/- made by the AO/TPO.

57. Being aggrieved by the order of the learned CIT(A) both the assessee and the revenue are in appeal before us. The assessee is in appeal against the addition confirmed by the ld. CIT-A for Rs. 14,05,927/- whereas the Revenue is against the deletion of the addition made by the AO. The relevant ground of appeal of the revenue in ITA No. 2369/Ahd/2018 reads as under:

> *10) "that the Ld. CIT (A) has erred in law and on the facts in deleting the upward adjustment amounting to Rs 9,30,45,293/- made by TPO consisting of:"*
> *i) Liaison Support Services of Rs. 1,72,06,725/-*
> *ii) Dossier Licensing Fee of Rs* 5,49,35,742/-
> *iii) Capital Infusion Transaction of Rs 72,71,834/- out of total adjustment* of Rs 86,77,761/-
> *iv) Custodian Fee of Rs 1,09,53,149/-"*

57.1 Both the ld. AR and the DR before us vehemently supported the order of the authorities below to the extent favorable to them.

58. We have heard the rival contentions of both the parties and perused the material on record. At the outset, we note that the part of share application amount on which the TPO/AO benchmarked the interest were paid in immediate previous assessment year i.e. A.Y. 2012-13 wherein also interest adjustment was made by the TPO/AO and part relief was provided by the learned CIT(A). The issue travelled before this Tribunal in cross appeal in ITA No. 1397 & 1498/Ahd/2018. The Tribunal vide order dated 22-02-2022 has decided the issue

in favour of the assessee and against the revenue. The relevant finding of the bench reads as under:

> *180. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that the assessee has advanced money to its AE for acquiring the shares which is a capital account transaction. Therefore, there cannot be any adjustment under the provisions of transfer pricing on account of capital account transaction being the acquisition of shares. Merely, there was a delay in the allotment of shares by the AE to the assessee, such delay cannot change the character of the transaction as loan. We note that the Delhi bench of ITAT in the case of Bharti Airtel Limited vs. ACIT reported in 43 taxmann.com 150 has held as under:*
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> > *47. We find that in the present case the TPO has not disputed that the impugned transactions were in the nature of payments for share application money, and thus, of capital contributions. The TPO has not made any adjustment with regard to the ALP of the capital contribution. He has, however, treated these transactions partly as of an interest free loan, for the period between the dates of payment till the date on which shares were actually allotted, and partly as capital contribution, i.e. after the subscribed shares were allotted by the subsidiaries in which capital contributions were made. No doubt, if these transactions are treated as in the nature of lending or borrowing, the transactions can be subjected to ALP adjustments, and the ALP so computed can be the basis of computing taxable business profits of the assessee, but the core issue before us is whether such a deeming fiction is envisaged under the scheme of the transfer pricing legislation or on the facts of this case. We donot find so. We donot find any provision in law enabling such deeming fiction. What is before us is a transaction of capital subscription, its character as such is not in dispute and yet it has been treated as partly of the nature of interest free loan on the ground that there has been a delay in allotment of shares. On facts of this case also, there is no finding about what is the reasonable and permissible time period for allotment of shares, and even if one was to assume that there was an unreasonable delay in allotment of shares, the capital contribution could have, at best, been treated as an interest free loan for such a period of ' inordinate delay' and not the entire period between the date of making the payment and date of allotment of shares. Even if ALP determination was to be done in respect of such deemed interest free loan on allotment of shares under the CUP method, as has been claimed to have been done in this case, it was to be done on the basis as to what would have been interest payable to an unrelated share applicant if, despite having made the payment of share application money, the applicant is not allotted the shares. That aspect of the matter is determined by the relevant statute. This situation is not in parimateria with an interest free loan on commercial basis between the share applicant and the company to which capital contribution is being made. On these facts, it was unreasonable and inappropriate to treat the transaction as partly in the nature of interest free loan to the AE. Since the TPO has not brought on record anything to show that an unrelated share applicant was to be paid any interest for the period between making the share application payment and allotment of shares, the very foundation of impugned ALP adjustment is devoid of legally sustainable merits.*
>
> *180.1 In view of the above, we hold that there cannot be any adjustment under the provisions of transfer pricing in the given facts and circumstances. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him.*

58.1 Thus, respectfully following the order of the Tribunal in the own case of the assessee for AY 2012-13, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him on account of capital

infusion. Hence, the ground of appeal of the assessee with respect to capital infusion is hereby allowed whereas the ground of revenue's appeal in this regard hereby dismissed.

59. The next issue raised by the assessee vide ground No. 10 of its appeal is that the learned CIT(A) erred in confirming the disallowance of deduction under section 80-IE of the Act in Sikkim Unit on other incomes.

60. The AO during the assessment proceedings found that the assessee has claimed deduction of profit derived from Sikkim Unit under section 80-IE of the Act. As per the AO, there were certain incomes considered by the assessee eligible for deduction under section 80-IE of the Act but the same were not directly arising from the eligible business activity. The details of the same stand as under:

(i)	Miscellaneous Income	Rs. 4,27,344/-
(ii)	Sale of Scrap	Rs. 8,35,083/-
(iii)	Excise duty on sale of scrap	Rs. 1,248/-
(iv)	Government Grant	Rs. 57,071/-
(v)	Notice Pay	Rs. 3,40,963/-
(vi)	Insurance income	Rs. 49,259/-
(vii)	Forex gain	Rs. 3,712/-
(viii)	Cash discount	Rs. 2,56,886/-
(ix)	Interest Income	Rs. 68,809/-

60.1 The AO disallowed the deduction with respect to above mentioned items of income by holding that such incomes are not derived from the business of manufacturing of article or things. In other words, the above incomes did not have a direct nexus with the manufacturing activity of the eligible undertakings.

61. On appeal by the assessee, the learned CIT(A) allowed deduction on certain items as income eligible for deduction under section 80-IE of the Act and simultaneously confirmed the disallowances of certain item by holding that the itemswere not eligible for deduction under section 80-IE of the Act.

61.1 The item of income on which learned CIT(A) allowed the deduction under section 80-IE of the Act read as under:

i.	Notice Pay	Rs. 3,40,963/-
ii.	Sale of Scrap	Rs. 8,35,083/-
iii.	Excise duty on sale of scrap	Rs. 1,248/-
iv.	Cash discount	Rs. 2,56,886/-
v.	Miscellaneous Income	Rs. 4,27,344/-
vi.	Forex gain	Rs. 3,712/-

61.2 The item of income on which learned CIT(A) disallowed the deduction under section 80-IE of the Act read as under:

i.	Insurance income	Rs. 49,259/-
ii.	Interest Income	Rs. 68,809/-
iii.	Government Grant	Rs. 57,071/-

62. Being aggrieved by the order of the learned CIT(A) both the assessee and the Revenue are in cross appeal before us. The assessee is in appeal against the amount of disallowance sustained by the learned CIT(A) whereas the revenue is appeal against the deduction allowed by the ld. CIT-A. The relevant ground of revenue's appeal in ITA No. 2369/Ahd/2018 reads as under:

> *11) "that the Ld. CIT (A) has erred in law and on the facts in directing the AOto allow deduction u/s. 80IE after allowing the claim of the assessee consistingof:*
> *i) Notice Pay of Rs. Rs.* 3,40,963/-
> *ii) Sale of Scrap of Rs.* 8,35,083/-
> *iii) Excise duty on sale of scrap of Rs. l,248/~*
> *iv) Cash Discount(other income) of Rs.* 2,56,*886/-*
> *v) Miscelleneous income and rounding off of Rs.* 4,27,344/-
> *v) Net Foreign Exchange Gains of Rs.* 3,712/-."

62.1 Both the learned AR and the learned DR before us supported the order of the authorities below to the extent favorable to them.

63. We have heard the rival contention of both the parties and perused the material available on record. At the outset, we note that similar disallowances

have been made by the AO with regard toBaddi Unit of the assessee eligible under section 80-IC of the Act. The provision of section 80-IC and 80-IE of the Act are perimetria. Both the sectionsdeal with the deduction against the profit and gains derived by the undertaking from eligible business i.e. manufacturing of articles or things. The AO also disallowed the deduction under section 80-IE of the Act on same reasoning used for disallowing the deduction claimed under section 80-IC of the Act. In the case of disputes under section 80-IC of the Act, the learned CIT(A) in identical manner has allowed deduction on certain income and simultaneously sustained the disallowances of deduction on certain item of incomes. Against the order of the learned CIT(A) with respect to deduction under section 80-IC of the Act both the assessee and Revenue were in appeal before us.The issue for the deduction under section 80-IC of the Act relating to different items of income has been adjudicated by us vide paragraph No. 16, 18, 19, 20, 21, 23, 24 of this order. Since the provisions of both the sectionsare inperimetria, therefore the findings given in the above-mentioned paragraph shall also be applicable to the issue in hand. In the above said paragraphs, we have dismissed the revenue's grounds of appeal with respect to Notice Pay, Scrap sale, Excise, Cash discount, Miscellaneous Income and Forex Gain. Hence, following the same reasoning, the revenue's grounds of appeal with respect to such income for deduction u/s 80IE of the Act are hereby also dismissed. Similarly, the assessee's ground for deduction under section 80-IC of the Act with respect to insurance income has been allowed whereas interest income and government grant have been dismissed as shown in the above said paragraphs. Hence, the assessee's grounds of appeal for the same u/s 80IE of the Act are hereby partially allowed.

64. The assessee vide first additional ground of appeal requested to give directions with respect to exclusion of excise refund of Rs. 22,09,96,112/- from the computation of book profit under section 115JB of the Act.

65. At the outset, we note that the issue raised by the assessee in the additional ground of appeal discussed above has been settled by the ITAT in the cases listed below:

i. Greenply Industries Limited v. ACIT in ITA No. 232/Gua/2019
ii. Ambuja Cement Limited vs. Addl CIT in ITA No. 2968/Mum/2015

65.1 The relevant finding of the ITAT in the case of Greenply Industries Limited v. ACIT reads as under:

> *10. We have heard the rival contentions and perused the relevant material available on record. We note that the assessee runs two manufacturing units in the name of Rudrapur Plywood Unit and Rudrapur MDF Unit and both are covered by the Excise Notification No.50/2003 dated 10.06.2003. Both the units are located in backward areas and are eligible for 100% excise duty exemption in respect of goods manufactured and cleared from such units for a period of 10 years from the date of commencement of commercial production. The assessee has claimed the excise duty exemption from these two units at Rs.87,98,09,432/- which is in the nature of capital receipt not liable to be taxed. We also find that though the said amount is reflected in the Profit & Loss Account of the assessee and the amount being capital receipt has not been objected by the ld. CIT(Appeals) also, who has allowed deduction of the said amount vide his order dated 25.03.2019 under normal provisions of the Act, however, the order is silent on the exclusion of the said amount while computing the book profit under section 115JB of the Act, therefore, the issue is for our examination that "whether the excise duty exemption which is a capital receipt and not chargeable to tax under the normal provisions of the Act, is to be considered as a part of book profit for computing the book profit under section 115JB of the Act".*
>
> *11. We will like to first go through the judicial jurisprudence available for the issue in hand. We find that in the case of Sunrise Biscuit Co. Pvt. Limited –vs.- ITO, ward -1(5), Guwahati ITA No. 92/Gau/2019 (page 87- 102 of the case law paper book), the Hon'ble Guwahati Tribunal was dealing with the issue whether subsidy received by the assessee was capital in nature and, therefore, not exigible to income-tax, both under normal computational provisions as well as book profit u/s 115JB. The Hon'ble ITAT relied upon of the judgement of the Hon'ble Supreme Court in the cases of Sahney Steel & Press Works (supra) & Ponni Sugar & Chemicals Ltd. (supra) and had held that the object or purpose for which the subsidy was given was relevant. It was held that the source of subsidy is immaterial, form of subsidy is equally immaterial and the time at which the subsidy is paid is also immaterial. It was held that the purpose of the scheme which enabled the grant of subsidy to the assessee was the only material factor in determining the taxability of such receipts. Further, placing reliance on the decision of the Hon'ble Kolkata Tribunal in case of DCIT vs. M/s. Century Plvboards (I) Ltd, in ITA No. 2149/Kol/2019 (Refer Page 103-122 of the Case Law Paperbook), it was held that such capital subsidy received by the assessee is also liable to be excluded from the computation of book profit. Relevant extract of the order of the Hon'ble Tribunal is reproduced below:*
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> *****************
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> *12. The Hon'ble Kolkata ITAT in case of DCIT -vs.- M/S Century Plyboards (I) Ltd. (ITA No. 2149/Kol/2019 And C.O. No. 22/Kol/2020 In ITA No.2149/Kol/2019) relied upon finding of its coordinate bench in the case of Sicpa India (P) Ltd. - vs.- DCIT T20171 186 TTJ 289 (Kol.) (Refer Page 123-150 of the Case Law Paper book) wherein it has been held that subsidies cannot be regarded as income even for the purpose of book profits u/s.115JB of the Act though credited in the profit and loss account and have to be excluded for arriving at the book profits u/s. 115JB of the Act.*
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> *13. Coordinate Bench Delhi in case of Uflex Limited -vs.- ACIT 2022 (1) TMI 731 - ITAT Delhi held that CENVAT credit, as received by the Assessee, in accordance with the incentive scheme for J & K as formulated by the Central Government is a capital receipt not*

liable to tax, accordingly the same cannot be part of book profit under Section 115JB also. Relevant extract of the order of the Hon'ble ITAT is reproduced below:
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14. Coordinate Delhi ITAT in case of M/S BR Agrotech Ltd, -vs.- ACIT (2021 (9) TMI 233 - ITAT DELHI) decided in favour of the Assessee holding that only that receipt which forms part of the "income" are to be taxed. The capital receipts which are otherwise not subject to tax under the normal provisions of the Act are not envisaged to be taxed under the provisions of "Minimum Alternate Tax". Once a receipt is not considered as income, the same cannot be subjected to tax under this Act as such receipt naturally classified under capital receipt, which was never meant to be taxed cannot be taxed even u/ s 115 JB. Relevant extract of the order of the ITAT is reproduced below:
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16. By placing reliance on the above decision in the case of Shree Cement Limited (Supra), carbon credit being a capital receipt was held to be excludible while computing Book Profit in the following cases-

ACIT -vs.- Shree Cement Ltd. NTA No. 504/JP/2012, order dtd. 27-01- 2014
ACIT -vs.-M/s L.H. Sugar Factory Limited NTA No. 417 & 418/LKW/2013, order dtd. 09-02-2016.

17. Hon'ble Bombay High Court in the case of CIT -vs.- Harinagar Sugar Mills Ltd. (ITA No. 1132 of 2014), order dtd. 04-01-2017 (Refer Page No. 752-755 of Paper Book) has held that the object or purpose of the subsidy decides its character - whether on revenue or capital account. The point of time at which subsidy is paid and the source of subsidy are immaterial. Where the receipt was on capital account, the same needs to be excluded in computing Book Profit u/s 115JB.

18. In the case of DCIT -vs.- Binani Industries Ltd. (ITA No. 144/Kol/2013, order dtd 02-03-20161. (Refer Page No. 772-789 of Paper Book), it was held that receipt from forfeiture of share warrants credited to the P & L A/c and disclosed in the notes to accounts being a capital receipt shall be excluded in computing Book Profit. It held that in order to determine the real profit of the assessee as laid down by the Hon'ble Apex Court in the case of Indo Rama Synthetics (supra) adjustment need to be made to the disclosures made in the notes on accounts forming part of the profit and loss account of the assessee and the profits arrived after such adjustment should be considered for the purpose of computation of book profits u/s 115JB of the Act.

19. In the case of ACIT -vs.- The Nilgiri Tea Estate Ltd. (2014) 65 SOT 14 (Cochin) (URO) (Refer Page 151 -156 of the Case Law Paperbook) wherein it was held that any income, which does not fall within the purview of Total Income u/s 5 of the IT Act, cannot be taxed under any other provisions of the Act. Further, the Hon'ble Tribunal held that the provisions of Chapter Xll-B of the Act do not operate to extend the scope of Total Income but provides an alternative basis for computing the income and hence income which is not chargeable to tax cannot be included in the computation of Book Profit u/s 115JB.

20. In the case of Sutlej Cotton Mills Ltd -vs.- ACIT (1993) 45 ITD 22 (Cal) (SB) (Refer Page 157-201 of the Case Law Paperbook), it was held that according to standard accounting practice, capital receipt cannot be part of the profit. Therefore, capital receipts which do not have the character of income cannot be liable to income-tax by adding it to the book profit. When an amount which forms part of the book profit itself cannot be taxed under s. 115J, when it does not have the income character it has to be accepted that when what is routed through the P&L account and carried to reserve is of a capital receipt and does not have an income character. It cannot be added back to the book profits merely because of the enabling provision in the Expln. to s. 115J for the purpose of imposing a tax thereon.

21. After going through the above referred judgments and decisions and on examining the facts of the instant case, we find that the excise duty exemption has been admittedly the capital receipt and the finding of the ld. CIT(Appeals) that the excise duty exemption is not

liable to be taxed under the normal provisions of the Income Tax Act being not in dispute for us, the alleged capital receipt cannot be categorised as part of the book profit. In the case of assessee being covered by the excise duty notification, such sum collected on the goods manufactured and sold is in the nature of incentive subsidy given for establishing the units in backward areas and to generate employment opportunities. The said fact is evident from the office memorandum dated 07.01.2003 of Ministry of Commerce and Industry, which reads as under:-

> *3.4 On perusal of the above, it can be seen that incentive in the form of Excise Duty Exemption has been given with an objective to achieve industrialization in the backward areas of Himachal Pradesh and Uttaranchal and to generate employment opportunities. The object of the assistance was not to enable the businessman to run the business more profitably but encourage a businessman to set up a new unit or expand the existing unit for overall economic development of the state. Hence, the incentives granted by the Government of India vide Office Memorandum No. 1(10)/2001-NER issued by DIPP, Ministry of Commerce and Industry, GOI dated 07-01-2003 read with Notification No. No.50/2003- CE dated 10-06-2003, will be treated as capital receipt and not liable to tax. In this regard, statement showing computation of excise duty exemption received during the year aggregating to Rs. 87,98,09,432/- alongwith copy of Excise Returns (in case of Rudrapur Unit 1) and copy of Form A (in case of Rudrapur Unit 2) has been enclosed (Refer Page No. 599-683 of Paper Book).*

22. In the light of above decision as well as the Memorandum issued by the Ministry of Commerce & Industry, we find that the excise duty exemption is purely capital receipt and is neither chargeable to tax under the normal provisions of the Income Tax Act nor is to be included as part of the book profit for computing the minimum alternative tax as per the provisions of section 115JB of the Act. Thus Ground No. 2 raised by the assessee is allowed.

65.2 Likewise, the relevant finding of the ITAT in the case of Ambuja Cement Limited vs. Addl CIT (supra) is reproduced as below:

106. We find that a coordinate bench of this Tribunal, in JSW Ltd's case (supra), has inter alia, observed as follows:

> *47. We further noted that Hon'ble Kolkata High Court, in the case of Pr. CIT v. Ankit Metal & Power Ltd. [2019] 109 taxmann.com 93/266 Taxman 237 Ltd. had considered an identical issue and after considering the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (supra) held that when a receipt is not in the character of income as defined under section 2(24) of the I.T. Act, 1961, then it cannot form part of the book profit u/s 115JB of the I.T. Act, 1961. The Hon'ble High court, further observed that sales tax subsidy received by the assessee is capital receipt and does not come within definition of income under section 2(24) of the I.T. Act, 1961 and when, a receipt is not a in the nature of income, it cannot form part of book profit u/s 115JB of the I.T. Act, 1961. The Court, further observed that the facts of case before the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (supra) were altogether difference, where the income in question was taxable, but was exempt under a specific provision of the Act, and as such it was to be included as a part of book profit, but where the receipt is not in the nature of income at all, it cannot be included in book profit for the purpose of computation u/s 115JB of the I.T. Act, 1961.*
> *48. We further noted that the ITAT special bench of Kolkata Tribunal, in the case of Sutlej Cotton mills Ltd. v. Asstt. CIT [1993] 45 ITD 22 (Cal.) (SB), held that a particular receipt, which is admittedly not an income cannot be brought to tax under the deeming provisions of section 115J of the Act, as it defies the basic intention behind introduction of provisions of section 115JB of the Act. The ITAT Jaipur bench, in case of Shree Cement Ltd. (supra) had considered an identical*

issue and held that incentives granted to the assessee is capital receipt and hence, cannot be part of book profit computed u/s 115JB of the Act. Similarly, the ITAT Kolkata Bench, in the case of Sipca India (P.) Ltd. v. Dy. CIT [2017] 80 taxmann.com 87 (Trib.) had considered an identical issue and held that when, subsidy in question is not in the nature of income, it cannot be regarded as income even for the purpose of book profit u/s 115JB of the Act, though credited in the profit and loss account and have to be excluded for arriving at the book profit u/s 115JB of the Act.

49. Insofar as, case laws relied upon by the department , we find that all those case laws have been either considered by the Tribunal or High Court and came to conclusion that in those cases the capital receipt is in the nature of income, but by a specific provision, the same has been exempted and hence, the came to the conclusion that, once particular receipt is routed through profit and loss account, then it should be part of book profit and cannot be excluded, while arriving at book profit u/s 115JB of the Act 1961.

50. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that when a particular receipt is exempt from tax under the Income tax law, then the same cannot be considered for the purpose of computation of book profit u/s 115JB of the I.T. Act 1961. Hence, we direct the Ld. AO to exclude sales tax subsidy received by the assessee amounting to Rs. 36,15,49,828/- from book profits computed u/s 115JB of the I.T. Act, 1961.

107. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the same, we uphold the plea of the assessee and direct the Assessing Officer to exclude the sales tax incentive subsidy for computing book profit under section 115 JB of the Act. The assessee gets the relief accordingly.

66. The principles laid down by the ITAT in the cases cited above are squarely applicable in the given facts and circumstances. However, we find that the issue was first-time raised before the ITAT and therefore we are inclined to set aside the same to the file of the AO for fresh adjudication as per the provisions of law after considering the cases listed above. Hence the addition of appeal of the assessee is allowed for the structural purposes.

67. The last issue raised by the assessee in the additional ground of appeal is that no R&D expenses either for discovery or product development or capital expenses shall be allocated to the eligible units.

68. The necessary facts are that the assessee has been incurring expenditures on in-house R&D for pharmaceutical products produced by it. The R&D expenditures incurred are classified by the assessee in two stages i.e. discovery stage and product development stage. The expenditure incurred on the product development stage has been suo-moto allocated by the assessee to the different manufacturing units including units eligible for deduction under section 80-IC or

80IE of the Act whereas R&D expenditure on discovery stage and capital expenses were allocated to head office only. The tribunal in earlier years and in the year under consideration vide para 80 of this order had taken view in favour of the assessee that the R&D expenditureof capital nature and R&D expenditure on discovery stage are not liable to be allocated to the unit eligible for deduction under section 80-IC or 80IE of the Act.

69. Now the assessee videthis additional ground of appeal contended that the R&D expenditure on product development stagesuo-moto allocated to the eligible unit should be withdrawn. As per the learned AR of the assessee, no expense incurred on R&D are liable to be allocated to the eligible units in view of the judgment of Hon'ble Gujarat High Court in its own case reported in 88 taxmann.com 530 where it was held as under:

> ***8.1*** *It is not in dispute that research centre is an independent centre and that its main object is to conduct research for the business of the assessee. The research centre, therefore, in our opinion, is not directly linked with the eligible undertaking. Thus, for the purpose of computing deduction u/s.80HH and 80I, profit from eligible undertaking is to be computed on the basis of gross income by reducing expenditure which has been incurred for the eligible undertaking out of the gross income derived from the industrial undertaking. In view of the aforesaid, question no.(A) is answered in favour of the assessee and against the Revenue.*

69.1 Thus, in view of the above finding of the hon'ble high court in own case of the assessee we hold that the R&D expenditure incurred by the assessee constitute an independent unit not having any link to the units eligible for deduction under section 80IC or 80IE of the Act. Therefore,no expenses of R&D unit be it discovery stage, product development stage or capital expensescan be allocated to the units eligible for deduction under section 80IC or 80IE of Act while computing the profit eligible for deduction u/s 80IC or 80IE of Act. Hence the ground of appeal raised by the assessee in additional ground of appeal regarding allocation of R&D expense is hereby allowed.

70. In the result, the appeal of the assessee is hereby partly allowed for statistical purposes.

Coming to ITA No. 2369/Ahd/2018, an appeal by the Revenue for AY 2013-14.

71. The Revenue has raised following grounds of appeal:

1) "that the Ld. CIT (A) has erred in law and on the facts in the disallowance of selling / distribution /publicity / Medical/Literature expenses u/s. 37(1) of the Act consisting of:
i) Doctor Sponsorship Expenses ofRs. 4,48,80,987/- out of Rs.19,63,90,203/-
ii) selling and distribution expenses under the heads Businessadvancement expenses of Rs. 5,30,61,002/-
iii) sales promotion expenses ofRs. 37,78,971/-. "
2) "that the Ld. CIT (A) has erred in law and on the facts in directing the AO toallow deduction u/s. 80IC after allowing the claim of the assessee of
i) Notice Pay ofRs. 8,48,47 6/-
ii) Sale of Scrap ofRs. 93,83,606/-
iii) Service Tax Refund Income ofRs. 2,92,338/-
iv) Miscelleneous income and rounding off ofRs. 34,59,039/-
v) Net Foreign Exchange Gains ofRs. 54,93,768/-
as income derived from eligible business by an appropriate enterprise of theassessee. "

3) "that the Ld, CIT (A) has erred in law and on the facts in allowing the appeal of the assessee on the issue of reallocation of R & D Expenditure of Rs. 15,90,98,509/- u/s. 80IC and Rs. 4,19,35,952/- u/s. 80IE made by the Assessing Officer. "
4) "that the Ld. CIT (A) has erred in law and on the facts in deleting the disallowance of garden expenses of Rs. 43,54,892/-. "
5) "that the Ld. CIT (A) has erred in law and on the facts in directing to allow depreciation on computer and computer software @ 60% instead of 25%. "
6) "that the Ld. CIT (A) has erred in law and on the facts in deleting disallowance of Rs. 2,34,902/-made on account of treating capital investment subsidy of Rs. 30,00,000/- received from Government of India under the Central Capital Investment Subsidy Scheme, 2003 as received towards cost of capital asset and therefore not allowing depreciation on it."
7) "that the Ld. CIT (A) has erred in law and on the facts in deleting the disallowance of additional depreciation on Pallets, Trolley and Mobile racks of Rs. 29,55,245/-."
8) "that the Ld. CIT (A) has erred in law and on the facts in deleting thedisallowance made by the assessing officer out of Rs. 23,42,01,943/- out ofdeduction claimed by the assessee u/s. 35(2AB) in respect of research anddevelopment expenditure consisting of:
i) Salary to Dr. Dutt of Rs. 272.31 lakhs
ii) Building repair expenses of Rs. 91.63 lakhs
iii) Municipal Tax of Rs. 11.86 lakhs
iv)Patent related expenses and professional fees of Rs. 607.92 lakhs
v) Studies expenses of Rs. 110.77 lakhs
vi) Clinical Research Expenses of Rs, 983,94 lakhs
9) "that the Ld. CIT (A) has erred in law and on the facts in deleting the disallowance of deduction of Rs. 60,83,768/~ and Rs. 74,10,914/- claimed by the assessee u/s. 80G and u/s. 80GGB respectively."
10) "that the Ld. CIT (A) has erred in law and on the facts in deleting theupward adjustment amounting to Rs 9,30,45,293/- made by TPO consistingof: "
i) Liaison Support Services of Rs. 1,72,06,725/-
ii) Dossier Licensing Fee of Rs 5,49,35,742/-
iii) Capital Infusion Transaction of Rs 72,71,834/- out of total adjustmentof Rs S6,77,761/-
iv) Custodian Fee of Rs 1,09,53,149/-

11) "that the Ld. CIT (A) has erred in law and on the facts in directing the AOto allow deduction u/s. 80IE after allowing the claim of the assessee consistingof:
i) Notice Pay of Rs. Rs. 3,40,963/-
ii) Sale of Scrap of Rs. 8,35,083/-
iii) Excise duty on sale of scrap of Rs. 1,248/-
iv) Cash Discount(other income) of Rs. 2,56,886/-
v) Miscelleneous income and rounding off of Rs. 4,27,344/~
v) Net Foreign Exchange Gains of Rs. 3,712/-
12) " that the Ld. CIT(A) has erred in law and on the facts in deleting the addition of unutilized MODVAT/CENVAT credit of Rs. 7,14,75,444/- made u/s. 145A of the I.T. Act."

72. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of expense incurred in contravention of MCI regulation.

73. At the outset, we note the issue raised by the revenue in the captioned ground of appeal has been adjudicated along with assessee's ground of appeal raised on the same issue in ITA No. 2365/Ahd/2018. The ground of appeal of the assessee has been adjudicated vide paragraph No. 8 of this order wherein we have decided the issue partly in favour of the Revenue and assessee. For the detailed discussion, please refer to the said paragraph of this order. Hence, the ground of appeal of the Revenue is hereby partly allowed.

74. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of deduction claimed under section 80-IC of the Act on the other incomes.

75. At the outset, we note the issue raised by the revenue in the captioned ground of appeal has been adjudicated along with the assessee's ground of appeal raised on the same issue in ITA No. 2365/Ahd/2018. The ground of appeal of the assessee has been adjudicated vide paragraph Nos. 16, 17, 18 and 19 of this order wherein we have decided the issue against the revenue and partly in favour of the assessee. For the detailed discussion, please refer to the said paragraphs of this order. Hence, the ground of appeal of the Revenue is hereby dismissed.

76. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the allocation of R&D expenses to the Baddi and Sikkim unit eligible for deduction under section 80-IC and 80-IE of the Act.

77. The AO during the assessment proceedings found that the assessee during the year has incurred R&D expenditure in relation to discovery, development of product and capital expenses on building, furniture, and electrical equipment. The R&D expenses on development of product has been allocated to eligible unit (Baddi& Sikkim Unit) in sales ratio whereas 100% of R&D expenses on discovery and capital expenditure were allocated to head office. The assessee submitted that R & D expenses on discovery are incurred prior to clinical trial of new molecule. As such, on the discovery of a new molecule, it passesthrough the clinical trial phase,but it is not known in which unit such molecule will be produced. Therefore, the cost incurred on discovery of the molecule cannot be allocated to any unit other than the head office. Similarly, the R&D capital expenditures are also not directly linked to any eligible unit, therefore the same cannot be allocated to the eligible units.

77.1 However, the AO disagreed with the submission of the assessee and held that without incurring discovery cost and capital expenses, the product cannot be developed. Therefore, the R&D cost incurred on discovery and capital item is also required to be allocated like development cost. Accordingly, the AO allocated the R&D development cost and capital expenses in the manner detailed below:

Particulars	*Total*	*Baddi*	*Sikkim*	*Others*
<u>Revenue Expenses</u>				
Discovery Cost	*38,32,88,000*	*7,01,83,556*	*1,84,99,320*	*29,46,05,124*
Development Cost	*72,80,75,925*	*16,97,00,440*	*4,32,67,969*	*51,51,07,516*
Total	*1,11,13,63,925*	*23,98,83,996*	*6,17,67,288*	*80,97,12,641*
<u>Capital Expenses</u>				
Building	*39,44,364*	*7,22,249*	*1,90,374*	*30,31,741*
Other than Building	*4,91,75,979*	*90,04,574*	*23,73,469*	*3,77,97,936*
Total	*5,31,20,343*	*97,26,823*	*25,63,843*	*4,08,29,677*

Accordingly, the following further amounts are allocated to Baddi unit and Sikkim unit as under

Nature	*Baddi unit*	*Sikkim Unit*
Discovery Cost	*70,183,556*	*1,84,99,320*
Capital expenditure (Building)	*7,22,249*	*1,90,374*
Capital expenditure (Other than Building)	*90,04,574*	*23,73,469*
Total	*7,99,10,379*	*2,10,63,163*

77.2 The AO further found that the assessee has claimed weighted deduction under section 35(2AB) of the Act @ 200% on the above R&D expenses except for expenditure on building repairs (i.e. 100% on building repair). Thus, the AO considering the same reduced the eligible profit of Baddi and Sikkim unit under section 80-IC & 80-IE for Rs. 15,99, 98,509/- and 4,19,35,952/-.

78. On appeal by the assessee, the learned CIT(A) deleted the allocation made by the AO and thereby reducing the eligible profit under section 80-IC or 80IE of the Act as the case may be by following the order of his predecessor CIT(A) for the AY 2012-13 in the own case of the assessee.

79. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

79.1 Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favorable to them.

80. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in own case of the assessee identical allocation was made by the AO in the assessment 2009-10. The issue came before this tribunal in the assessee's appeal being ITA No. 1285/Ahd/2017. The Tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

25. We have considered rival submissions and gone through the materials available on record. We have further considered order passed by the Coordinate Bench of the ITAT, Ahmedabad Bench in assessee's own case vide consolidated order in ITA No. 907/Ahd/2012 (Department) and 938/Ahd/2012 (assessee) for the assessment years 2007-08 and ITA No.1634/Ahd/2012 (assessee's) and 1725/Ahd/2012 (department) for the assessment years 2008-09 (Revenue's appeal). While dealing with the identical issue, the Coordinate Bench has observed as under:

> *"40. We have heard the rival contentions and perused the materials available on record. There is no dispute about the facts of the case. Therefore we are not inclined to repeat the same for the sake of brevity and convenience. The issue in the instant case relates whether the expenditure incurred by the assessee on research under the head discovery cost and capital cost is to be allocated to the unit eligible for deduction under section 80IC of the Act. 40.1 The provisions of section 80IC of the Act mandates to claim the deduction in respect of eligible unit considering the income from such unit as only the source of income. The assessee in the case on hand has allocated the cost of research expenditure which was directly connected with its eligible unit. The assessee besides the direct cost has also incurred the cost of scientific research activity which did not materialize. Therefore the same was not allocated to the eligible unit as the same was not directly connected with the eligible unit. In our considered view the cost which is directly connected with the eligible unit is eligible for deduction while determining the deduction under section 80 IC of the Act. 40.2 We further note that the Hon'ble ITAT in the own case of the assessee (supra) has not allocated the cost incurred on the scientific research activity while working out the deduction under section 80-HH/80-I of the Act. Though the decision of the tribunal was about the deduction under section 80HH/80I of the Act, in our considered view the principles laid down by the Tribunal are directly applicable to the facts of the case on hand. At this juncture we find important to refer the relevant extract of the order of this tribunal in the own case of the assessee (supra) which reads as under: 5. We have heard the rival submissions, perused the material available on record and the judgment cited by the parties. There is no dispute that the facts in the present case are identical with the facts of the case pertaining to A.Y. 2004-05. We have perused the order of the Hon'ble co-ordinate Bench in assessee's own case in ITA No.4356/Ahd/2007 (supra). The Hon'ble Tribunal following the decision of coordinate Bench in ITA No.1347/Ahd/2007 for A.Y. 2003-04 dismissed the ground of appeal raised by Revenue. In view of the fact thatissue has already been decided by Hon'ble co-ordinate Bench in ITA No. 4356/Ahd/2007 for A.Y. 2004-05 and ITA 44 ITA Nos. 907, 938, 1634 & 1725/Ahd/No.1347/Ahd/2007 for A.Y. 2003-04 in assessee's own case. Respectfully following the order of the coordinate bench, this ground of Revenue's appeal is dismissed. 40.3 It is also important to note that, the AO in the subsequent assessment year 2008-09 has not allocated the cost on scientific research under the head discovery and capital cost to the eligible unit. Thus in our considered view the principle of consistency needs to be applied in the case on hand as held by the Hon'ble apex court in the case of RadhaswoamiSatsang v/s CIT reported in 193 ITR 221 wherein it was held as under: "13. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year." After considering the facts in totality as discussed above, we do not find any infirmity in the order of the learned CIT-A. Hence we decline to interfere in his order. Thus the ground of appeal raised by the Revenue is dismissed."*

25.1. We find that while allowing the issue, Coordinate Bench has taken into consideration the order passed by the ITAT in assessee's own case where it has not allocated cost

incurred on scientific research activity while working out deduction under section 80HH/80I of the Act, although relied upon the principle laid down therein that there is no need to allocate cost of scientific research under the head discovery and capital cost to the eligible unit. Needless to mention that principle of consistency has been applied, as held by the Hon'ble Supreme Court in the case of Radhaswoami Satsang Vs. CIT reported in 193 ITR 121 (SC).

25.2. It is also important to note that the Hon'ble Gujarat High Court in the own case of the assessee reported in 88 taxmann.com 530 has held that the R and D expenses should not be allocated to the units eligible for deduction under section 80-IA of the Act. The relevant extract of the judgment is reproduced as under:

> *8.1 It is not in dispute that research centre is an independent centre and that its main object is to conduct research for the business of the assessee. The research centre, therefore, in our opinion, is not directly linked with the eligible undertaking. Thus, for the purpose of computing deduction u/s.80HH and 80I, profit from eligible undertaking is to be computed on the basis of gross income by reducing expenditure which has been incurred for the eligible undertaking out of the gross income derived from the industrial undertaking. In view of the aforesaid, question no.(A) is answered in favour of the assessee and against the Revenue.*

25.3. In that view of the matter, we do not hesitate to hold that R&D expenditure is need not to be allocated to Baddi Unit as the case made out by the assessee are to be viewed this particular fact of not extending any research work by the said unit, and no benefit thereof was being rendered by it. In view of the matter, we delete the impugned addition of Rs. 36,16,40,065/- disallowed by the ld.AO. Hence the ground of appeal of the assessee is allowed.

80.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee as discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing features in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

81. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the garden expenses for Rs. 43,54,892/- only.

82. The Assessee during the year incurred garden expenses of Rs. 43,54,892/- only and claimed the same as revenue expense. The assessee contended that such expense was incurred for maintaining a good atmosphere within the factory premises as well as to comply with the direction of Gujarat pollution control board to avoid the pollution arising on account of the chemical process.

82.1 However, AO disallowed the said expenditure on the ground that it was disallowed in the preceding year and by incurring the substantial expenditure, theassessee has derived the enduring benefit. Therefore, the same should be treated as capital expenditure. Accordingly, the AO disallowed Rs. 43,54,892/- and added to the total income of the assessee.

83. On appeal by the assessee the learned CIT(A) deleted the disallowance made by the AO by following the order of itspredecessor CIT(A) for the AY 2007-08 in the own case of the assessee for earlier years.

84. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

84.1 Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favorable to them.

85. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in own case of the assessee identical disallowance was made by the AO in the assessment 2007-08. The issue came before this tribunal in Revenue's appeal bearing ITA No. 938/Ahd/2012. The Tribunal vide order dated 15-05-2019 decided the issue in favour of the assessee by observing as under:

> *26. We have heard the rival contentions and perused the material on records. In the instant case we note that the co-ordinate bench decided the identical issue in favor of assessee in ITA No. 1869/Ahd/2009 pertaining to the AY 2005-06 by observing as under:*
>
> > *"4. Ground No.1 is against deletion of disallowance of garden expenses of Rs.27,06,563/-. Ld. CIT-DR strongly supported the order passed by Assessing Officer and submitted that Ld. CIT(A) has wrongly deleted the disallowance made by Assessing Officer. On the contrary, Ld. Authorized Representative for the assessee pointed out that this issue is squarely covered in favour of assessee in ITA No.4356/Ahd/2007 order dated 31-01-2011 by the co- ordinate Bench. Ld. AR submitted Hon'ble ITAT has followed the decision rendered in respect of A.Y. 2004-05."*
>
> *As the facts are identical to the facts of the case as discussed above, therefore respectfully following the same, we do not find a reason to interfere in the order of the ld. CIT-A. Hence, the ground of appeal raised by Revenue is dismissed.*

85.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing features in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A).Thus, the ground of appeal raised by the revenue is hereby dismissed.

86. The next issue raised by the Revenue is that the learned CIT(A) erred in allowing the depreciation on computer software @ 60%.

87. The assessee in the books of account recorded computer software under intangible assets but in computation of income clubbed the same with the block of assets under the head computer and claimed depreciation on the same @ 60%. The assessee submitted that in the books of account, the software was recorded as intangible asset as per the requirement of AS-26 being "Intangible Assets". However, in the computation of income, it was claimed the same as part of computer in accordance with appendix-I of IT rules which provided depreciation @ 60% on *"computers including computer software"*. Further, note 7 to depreciation schedule defines the phrase computer software as *"Computer software" means any computer program recorded on any disc, tape, perforated media or other information storage device"*.

87.1 However, the AO disregarded the contention of the Assessee by observing that the word in note 7 to depreciation schedule under the Act, as "computer and computer software" are only applicable to system software which are necessary and inbuilt in computer to perform basic function such as operating system. While the application software is different from system software which is not necessary for operation of basic computer function. Applications software are the software which are used for specific task in computer and the assessee acquires

themseparately. As such, this software should be classified as intangible assets under the provision of section 32 of the Act. As such, the assessee itself has classified this application software separately from the computer in the books of accounts. Thus, the AO reduced the rate of the depreciation from 60% to 25% and disallowed the excess deprecation of Rs. 60,84,447/- by adding to the total income of the assessee.

88. On appeal by the assessee the learned CIT(A) allowed the depreciation on software @ 60% by following the order of this Tribunal in the case of ACIT vs. Voltamp Transformer Ltd in ITA No. 1676/Ahd/2012 vide order dated 22-03-2013.

89. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

89.1 The learned DRbefore us vehemently supported the order of the AO. On the other hand, the learned AR before us submitted that the issue on hand is covered in favour of the assessee by the order of the Tribunal in its own case for AY 2009-10.

90. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in own case of the assessee identical disallowance was made by the AO in the assessment year 2009-10. The issue came before this Tribunal in Revenue's appeal bearing ITA No. 1327/Ahd/2017. The Tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

> *56. We have heard the rival contentions of both the parties and perused the materials available on record. The issue on hand confined to the extent whether the software purchased by the assessee is part of computer for purpose of depreciation or the same can be treated as intangible assets. At this juncture it is pertinent to refer the depreciation schedule as provided under Act. On perusal of the same we find that Part-A, block III sub block (5) of the Depreciation Schedule contain the rate of depreciation for computer including computer software which reads as under:*
>
> ***III. MACHINERY AND PLANT***
> *****
> *(5) Computers including computer software [See note 7 below the Table]*
> ***Notes:***

7. "Computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device.

56.1. From the reading of the above, it becomes clear that software is part of computer. Hence, the depreciation on the same is allowable at the rate applicable for computer. In this regard we also find support and guidance from the judgment of Hon'ble Madras High Court in case of CIT vs. Computer Age Management Services (P.) Ltd. reported in 109 taxmann.com 134 where in similar facts, Hon'ble court held as under:

***8.** The question would be as to whether the software application, which was acquired by the assessee would fall under Entry 5 of Part A of New Appendix I, which states that computers including computersoftware are entitled to depreciation at 60%. Note 7 of the Appendix defines the expression 'computersoftware' to mean any programs recorded on CD or disc, tape, perforated media or other information storage devices.*

***9.** The case of the Revenue is that software are licences and that they are intangible assets and would fall under Part B of New Appendix I, which deals with knowhow, patents, copyrights, trademarks, licenses, francises or any other business or commercial rights of similar nature.*

***10.** We find that Part B of New Appendix I is a general entry whereas Entry 5 of Part A of New Appendix I is a specific entry read with Note 7. In the instant case, the Tribunal, in our considered view, rightly held that the assessee is eligible to claim depreciation at 60*

56.2. In view of the above discussion and the principle laid down by the Hon'ble Madras High court, we do not find any infirmity in the finding of the learned CIT (A). Hence the ground of the Revenue's appeal is dismissed.

90.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of Tribunal in the own case of the assessee discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

91. The **next issue** raised by the revenue is that Ld. CIT-(A), erred in deleting the disallowance of depreciation of Rs. 2,34,902/- made on capital investment subsidy of Rs. 30 lakhs by treating the costof capital assets.

92. At the outset, we note that the issue on hand arising from AY 2009-10. As such, the assessee during AY 2009-10 received subsidy of Rs. 30 Lakh from central government under Capital Investment Scheme 2003 for its unit situated at Baddi Himachal Pradesh. The assessee treated such receipt as capital receipt.

However, the AO was of the view that the subsidy was received on account of capital investment which is directly linked with capital assets deployed by the assessee in Baddi Unit. Therefore, the cost of capital assets should be reduced by the amount of the subsidy which has been provided to meet the cost of capital assets. Accordingly, the AO in A.Y. 2009-10 reduced the amount of Block Assets and disallowed the proportionate depreciation @ 15%. Following the same, the AO in subsequent years and in the year under consideration,has disallowed the proportionate depreciation for Rs. 2,34,902/- only.

92.1 We note that the disallowances made by the AO in A.Y. 2009-10 were deleted by the learned CIT(A) against which the Revenue was in appeal before this Tribunal in ITA No. 1327/Ahd/2017. The Tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

67. We have heard the rival contentions of both the parties and perused the materials available on record. The dispute on hand is whether the WDV of block assets can be reduced by the amount of subsidy or not. At this juncture, we note that the subsidy was provided on account of setting up of small scale industrial unit in backward area under Central Capital Investment Scheme 2003 and not for plant and machinery or any other fixed assets. Therefore, in in our considered opinion, we are inclined to agree with the contention of the learned AR that the same cannot be reduced from WDV of the block assets. Furthermore, the depreciation on assets are allowed on the concept of block assets/ WDV of block of assets which is defined under section 43(6) r.w.s 43(1) of the Act which reads as under:

***43.** In sections 28 to 41 and in this section, unless the context otherwise requires—*

(6) "written down value" means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:

Provided** **********************

(c) in the case of any block of assets,—

*(i) *****************

(ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i).

***43.** In sections 28 to 41 and in this section, unless the context otherwise requires—*

> *(1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:*

67.1. On perusal of the above provision, we find that the WDV is to be actual cost of the assets at which the assessee acquired the same. There is no provision for reducing the value of WDV by any amount of incentive or subsidy. In this regard we also find support and guidance from the judgment of Hon'ble supreme court in case of CIT vs. PJ Chemicals reported in 210 ITR 830, where in the similar facts and circumstances it was held as under:

> *In the instant case, the reasoning underlying, and implicit in, the conclusion reached by the majority of the High Courts cannot be said to be an unreasonable view and on a preponderance of preferability that view commends itself particularly in the context of a taxing statute. The expression 'actual cost' needs to be interpreted liberally. The subsidy of the nature in the instant case did not partake of the incidents which attract the conditions for their deductibility from 'actual cost'.*
>
> *The Government subsidy, is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. If that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the 'actual cost'.*

67.2. In view of the above discussion and judgment of Hon'ble Supreme Court, we do not find any infirmity in the order of the learned CIT(A). Thus, the ground of appeal of the Revenue is hereby dismissed.

92.2 Once the year in which impugned capital subsidy was received it has been held that such receipt shall not be adjusted against the cost of the block assets then the disallowances of depreciation in subsequent year based on same cannot be sustained. Hence, the ground of appeal raised by the Revenue is hereby dismissed.

93. The **next issue** raised by the Revenue is that Ld. CIT-A erred in allowing the additional depreciation of Rs. 19,55,145/- with respect to pallets, trolleys, and mobile racks.

94. The necessary facts are that the assessee has been treating assets such Trolleys, Mobile Racks and Wooden Pallets as part of Plant & Machinery and claiming depreciation and additional depreciation on the same as applicable for the block being Plant & Machinery. The assessee claimed that the impugned assets are used, at manufacturing plants,for the movement and storage of goods in stable condition. As such, the Trolleys are used for movement of goods, mobile racks are used as storage units whereas wooden pallets are used for transportation of goods in stable condition. Therefore, same are part and parcel of the machinery.

94.1 On the other hand, the AO was of the view that these assets not used in the production process but used for purpose of movement, storage, and transportation of the finished goods. Therefore, the same cannot be treated as part and parcel of Plant & Machineries. Accordingly, the AO treated such assets being Trolleys, Mobile Racks and wooden pallets as furniture and fixture and disallowed the excess depreciation and additional depreciation of Rs. 19,55,145/- on the same.

95. On appeal by the assessee the learned CIT(A), deleted the disallowances made by AO following the order of itspredecessor CIT(A) in own case of the assessee.

96. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

96.1 Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favorable to them.

97. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in the own case of the assessee identical disallowance was made by the AO in the assessment year 2012-13. The issue came before this Tribunal in Revenue's appeal bearing ITA No. 1415/Ahd/2018. The Tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

> *230. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee during the year under consideration purchased certain Trolleys, Mobile Rackets and Pallets and treated the same as part and parcel of the plant and machinery and claimed depreciation accordingly whereas the AO treated the same as furniture and fixture and disallowed the excess deprecation which has been reversed by the learned CIT (A).*
> *230.1. Now the question arises before us whether the assets being Trolleys, Mobile Rackets and pallets used in manufacturing plant for movement and safe storage of goods can be described as plant and machinery or furniture. At this juncture, we note that the coordinate of bench Pune Tribunal in case of Serum Institute of India (supra) in similar facts and circumstances observed that nature of the assets used in the business is to be decided on the basis of functional test of the assets and accordingly held that tables,*

stools, rackets etc. used in laboratories are part and parcel of plant and machinery. We also find that the learned CIT(A) in his order followed the order cited above i.e. order of the Pune Tribunal i.e. Serum Institute of India (supra). The relevant extract of the order has already been reproduced in the order of the ld. CIT-A. Therefore, respectfully, following the same, we do not find any infirmity in the order of the learned CIT(A). Hence the ground of appeal of the Revenue is hereby dismissed.

97.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee as discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

98. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance of weighted deduction claimed by the assessee under section 35(2AB) of the Act.

99. At the outset, we note the issue raised by the revenue in the captioned ground of appeal has been adjudicated along with the assessee's ground of appeal raised on the same issue in ITA No. 2365/Ahd/2018. The ground of appeal of the assessee has been adjudicated vide paragraph No. 39 of this order wherein we have decided the issue against the Revenue. For detailed discussion, please refer to the said paragraph of this order. Hence, the ground of appeal of the Revenue is hereby dismissed.

100. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance of deduction claimed by the assessee under section 80G and 80GGB of the Act.

101. The assessee during the year donated Rs. 9,67,55,000/- and Rs. 5,30,00,000/- to the institutions eligible for deduction under section 80G & 80GGB

of the Act respectively. The assessee accordingly claimed deduction of Rs. 4,83,77,500 under section 80G and Rs. Rs. 5,30,00,000/- under section 80GGB of the Act.

101.1 However, the AO found that the assessee has not allocated the donation to the Baddi and Sikkim Units eligible for deduction under section 80-IC and 80-IE of the Act. The AO was of the view that the donation paid by the assessee is also to be allocated to the eligible unit as the HO paid such the donation. The AO accordingly allocated an amount of Rs. 96,50,814 (80G) & Rs. 58,78,048/- (80GGB) to the Baddi unit and an amount of Rs. 25,16,721/- (80G) & 15,32,866 (80GGB) to the Sikkim unit as per their turnover ratio.

101.2 The AO further found that both the unit are claiming 100% deduction under section 80-IC and 80-IE of the Act, therefore deduction u/s 80G and 80GGB of the Act cannot be allowed in respect of the eligible unit. Thus, the AO disallowed the deduction under section 80G and 80GGB of the Act in respect of these two units for Rs. 60,83,768/- and 74,10,914/- only.

102. On appeal by the assessee, the learned CIT(A) deleted the disallowance made by the AO by following the order of itspredecessor CIT(A) in own case of the assessee for earlier years.

103. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

103.1 Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favorable to them.

104. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in own case of the assessee an identical disallowance of the deduction under section 80G of the Act was made by the AO in the assessment 2007-08. The issue came before this

tribunal in Revenue's appeal bearing ITA No. 938/Ahd/2012. The Tribunal vide order dated 15-05-2019 decided the issue in favour of the assessee by observing as under:

> *45. We have heard the rival contentions of both the parties and perused the materials available on record. The controversy in the case on hand relates whether the donation paid by the assessee under section 80G of the Act needs to be allocated to the unit eligible for deduction under section 80-IC of the Act. Regarding this, we note that the donation paid by the assessee has no connection with the unit eligible for deduction under section 80 IC of the Act.*
> *45.1 The scheme of the Act provides to claim the deduction under section 80G of the Act after claiming all the deduction provided under chapter VI-A of the Income Tax Act. Therefore the assessee can claim the deduction on account of such donation only against the Gross Total Income after claiming all other deduction.*
> *45.2 We further note that the donation paid by the assessee cannot be claimed as an expense in the profit and loss account as the same has not been incurred wholly and exclusively for the purpose of the business as provided under section 37(1) of the Act. Thus even if the assessee claimed the donation as an expense in the profit and loss account, then it has to be disallowed while computing the income under the head business and profession. Thus the only option available to the assessee to claim the deduction on account of such donation is only under the provisions specified under section 80G of the Act which can be claimed in the manner as discussed above.*
> *In view of the above, we do not find any infirmity in the order of the learned CIT (A). Accordingly, we decline to interfere in his order. Hence the ground of appeal of the Revenue is dismissed.*

104.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee as discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

105. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the upward adjustment under TP provisions on account of liaison support, dossier licensing, custodian fee, and capital infusion.

106. In the captioned ground of appeal, the assessee has challenged the addition made by adjustment the ALP of different international transactionscarried

out with the AE. We, for the sake of better representation, proceed to adjudicate the same one by one.

Liaison Support Services:

107. The assessee during the year has reimbursed cost of liaising support services to its different AEs along with markup on cost varying @ 0%, 5%, 10% and 13% which are detailed as under:

AE	*Country*	*Mark-up*
Laboratories Torrent Malaysia SDN	*Malaysia*	*0%*
TORRENT AUSTRALASIA PTY. LTD	*Australia*	*10%*
Laboratories Torrent S.A. de C.V	*Mexico*	*0%*
TORRENT PHARMA SRL	*Romania*	*5%*
TORRENT PHARMA INC.	*USA*	*13%*
TORRENT PHARMA CANADA INC	*Canada*	*5%*

107.1 The TPO found that the identical cost + markup was paid by the assessee to its AE in AY 2012-13 without conducting proper benchmarking. In the year under consideration also, the assessee has not conducted proper benchmarking of such payments. Thus, the TPO following the finding given in A.Y. 2012-13 benchmarked the markup paid to AEs on Liaising support services @ 2% against the 5%, 10, and 13% taken by the assessee. Accordingly, the TPO/AO made an upward adjustment of Rs. 1,72,06,725/- only.

107.2 On appeal by the assessee, the learned CIT(A) deleted the adjustment made by the AO by following the order of its predecessor for AY 2012-13.

107.3 Being aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

107.4 The learned DR before us vehemently supported the order of the Assessing Officer.

107.5 On the other hand, the learned AR before us vehemently supported the order of the ld. CIT-A.

107.6 We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in own case of the assessee, an identical adjustment was made by the TPO in the assessment year 2010-11. The issue came before this Tribunal in ITA No. 1286/Ahd/2017. The Tribunal vide order dated 22-02-2022 decided the issue in the favour of the assessee by observing as under:

> *84. Coming to upward adjustment of Rs. 6,80,243/- on account liaison fee paid to AE. We note that the identical addition was made by the TPO/AO in immediate preceding assessment year 2009-10 which has been deleted by the learned CIT(A) by observing as under:*
>
>> *The order of the TPO and above submission given by the appellant has been considered carefully. It is noticed that the TPO has restricted the compensation to the AEs to 2% on the basis of Ahmedabad ITAT ruling in case of Cadila 1 Health Care. The TPO has not denied the services provided by the AEs which include Registration of Dossier, Liaison support, Market information, Regulatory support and Logistic support. The assessee also provided the copy of agreement where the nature of services being received from AEs is mentioned. The appellant also provided the report of the independent review of the expert after considering the factuality and nature of services rendered where mark up of 10% to 16% over costs has been considered as appropriate so as to compensate for these services. The AR also argued that in earlier years also the appellant company had compensated AL's at 10% mark up which has already been accepted in the assessment proceedings, The facts and circumstances have not changed in this year, still the TPO has taken a different view.*
>>
>> *Looking at the submission of the appellant and details therein it seems that the compensation paid to AEs @ 10% is justifiable. The view is also supported by Calcutta High Court in the 'case ofCIT V. ITC. Infotech India Limited (2016) 66 taxmann.com 106/237 Taxman 476/384 ITR 380 (Cal.) A.Y.2006-07, where in respect of marketing and administrative services rendered by AEs assessee adopted a revenue sharing model whereby assessee kept 75 per cent of revenue and paid 25 per cent of revenue to AEs, since said model was duly supported by relevant documents, impugned addition made to assessee's ALP by adopting revenue sharing model of 1 5 per cent was to be set aside.*
>>
>> *In view of abovediscussion the adjustment of Rs. 1,51,247 /- on account of Liason Services by restricting it to 2% is not sustainable. The AO is directed lo delete the addition made on the basis of this adjustment.*
>
> *84.1. We note that the above finding of the learned CIT (A) reached to finality as none of the party either Revenue or the assessee challenged the same. Therefore we are of the*

view principle of consistency should be followed in the given fact and circumstances as there is no change in the facts and law applicable for the time being in force. Thus we set aside the finding of the authority below, hence the ground of appeal the assessee is allowed.

107.7 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in own case of the assessee discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue regarding liaising support services is hereby dismissed.

Dosier License fee

108. The assessee in the year under consideration has shown an income of ₹ 2,74,67,871/- from its associated enterprises based in Germany on account of Dossier licensing fees. It was explained that there is an agreement between the assessee and Torrent Pharmaceuticals Gmbh Germany. As per the agreement, the AE has to get registration of the product developed by the assessee and subsequently market the same. In return, the AE has to share the income with the assessee in the ratio of 75:25. In other words, the shareof the income from the impugned activity of the AE is 75% whereas the share of the assessee is 25% only. The assessee to benchmark the transaction has adopted a profit split method. As per the assessee, the sharing of income with the AE was at the arm length price. However, the TPO found that the major work i.e. the development of the product was carried out by the assessee. Likewise, the ownership of the IPR of the product was also with the assessee. Accordingly, the TPO held that the major risk was born by the assessee. On the other hand, the AE only provided support services and marketing of the product. Thus, the TPO attributed the profit in the Ratio 75% to the assessee and 25% to the AE and accordingly made an upward adjustment of Rs. 5,49,35,742/-.

108.1 On appeal by the assessee, the learned CIT(A) deleted the adjustment made by the AO by following the order of its predecessor for A.Y. 2012-13.

108.2 Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

108.3 The learned DR before us vehemently supported the order of the Assessing Officer.

108.4 On the other hand, the learned AR before us vehemently supported the order of the ld. CIT-A.

108.5 We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in own case of the assessee, an identical adjustment was made by the TPO in the assessment 2012-13. The issue came before this Tribunal in revenue's appeal bearing ITA No. 1415/Ahd/2018. The Tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

> *241. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the profit sharing ratio has already been accepted by the revenue in the earlier years. There is no change in the facts and circumstances for the year under consideration viz a viz the earlier years. It is the same agreement based on which the income has been shared between the assessee and the AE in the year under consideration. As such the agreement was entered dated 18-02-2003 which was still in force in the year under consideration without any modification. Therefore we are of the view that, the principles of consistency should be adopted. At the time of hearing, the learned DR has also not brought anything on record contrary to the finding of the learned CIT-A. Thus the order of the learned CIT(A) is well reasoned and does not require any interference. Hence the ground of appeal of the revenue to the extent of TP adjustment on account of Dossier licensing fee is hereby dismissed.*

108.6 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in the own case of the assessee discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing features in the facts of the case of earlier AY and the year under

consideration. Thus, respectfully following the order of the Tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

Custodian Fees

109. The assessee during the year paid an amount of Rs. 1,09,53,149/- to its German AE namely Torrent Pharma GMBH (here after- TPG). The assessee in this regard submitted that it was paid in pursuance of the agreement with TPG for dossier license since the year 2003. As per the agreement,the TPG was eligible to sub-license dossier document of the assessee company. The impugned dossier agreement was terminated in the year under consideration and all the economic and beneficial interest in the dossier was transferred to it (the assessee). However, for marketing of dossier in Germany it is necessary to hold such document in the name of local entity. TPG agreed to hold marketing authorization of dossier on its behalf and for such services TPG charged custodian fee in following manner:

No. of Marking authorization	Fee per authorisation
0 to 250	500 Euro
251 to 500	250 Euro

109.1 The assessee further submitted that identical custodian fee to independent party namely Emifarma SA de C.V. for holding its Marketing Authorization in Maxico @ $ 2000 to $ 3500 whereas it paid custodian fee to TPG @ $ 320 (250 euro) to $ 640 (500 Euro). Thus, the same is at ALP.

109.2 The assessee with regard to reimbursement of administrative expenses to TPG submitted the transaction of custodian fee are different from reimbursing of administrative expenses. As such reimbursement of administrative expenses are in relation to traveling and freight expenses. Therefore, the allegation that there

no need to pay custodian fee when administrative expenses already reimbursed does not hold ground.

109.3 However, the TPO, on the other hand, disagreed with the contention of the assessee. The TPO found that the assessee for benchmarking the transaction relied on the custodian fees paid to Emifarma S.A de C.V., but as per the form 3CEB report, such party is a related party of assessee to whom it sold finished goods of Rs. 2,21,94,712/-. Hence, the comparable submitted by the assessee were rejected.

109.4 The TPO further found that the assessee,on one hand,is reimbursing the expense of Rs. 6,43,56,069/- to the AE which includes registration charges of Rs. 5,59,04,417/- and at the same time also paying custodian fee for market authorization of dossier. The TPO was of the view that custodian fee is not a regulatory fee paid by the TPG on assessee's behalf which is required to be reimbursed. As such whatever expenses incurred by the TPG on behalf of the assessee have already been reimbursed. Hence, the TPO benchmarked the custodian fee at NIL and accordingly made an adjustment of Rs. 1,09,53,149/- to the income of the assessee.

109.5 The aggrieved assessee preferred an appeal before the learned CIT(A). The learned CIT(A) after considering the facts in totality deleted the adjustment made by the AO by observing as under:

"1.9 On going through the entire set of arguments, submissions made by the A.R., I find merit in the arguments advanced by the appellant and am inclined to delete the adjustment proposed by the TPO for the following reasons:

* *The legal and economic interests in all the Dossiers and marketing authorization shall rest with the appellant company.*

* *All income generating from dossiers'/ Marketing 'authorizations shall be vesting and accruing to the appellant company and not it's A.E.*
* *In the immediately preceding years the custodian fees paid by appellant to Emifarma was at much higher rate and was found to be comparable by the TPO and therefore when higher fees paid to related party has been accepted as ALP the question of making adjustment in the current year does not arise. More particularly when the fees charged by TPO is much lower than charged by Emifarma;*
* *The TPO has erred in not determining the actual Arm's Length Price of the transaction and disallowing the entire sum of payments. In doing so he has also challenged the prudence of the transaction. It is noticed that the Appellant has*

> *made efforts in justifying the benchmarking undertaken by him. On the contrary the TPO has summarily rejected all arguments put forth and disallowed the entire custodian fees. It is not a case that the TPO has confronted with a more acceptable comparable instance to the appellant.*
>
> *In view of the above the upward adjustment made by the TPO amounting to Rs 1,09,53,149/- by disallowing the entire custodian fee is not sustainable and same is deleted."*

109.6 Being aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

109.7 The learned DR before us vehemently supported the order of the Assessing Officer.

109.8 On the other hand, the learned AR before us vehemently supported the order of the ld. CIT-A.

109.9 We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the TPO has determined the ALP of the custodian fees paid by the assessee to its AE at Rs. NIL. However, the learned CIT-A has held that the custodian fees paid by the assessee are at ALP. The basis of the ld. CIT-A was this that the assessee has paid custodian fee to another company which was much more than the amount in dispute and the same was also accepted by the Revenue. Likewise, the ld. CIT-A also observed that all the economic benefits were transferred to the assessee and there was no of sharing the income for the marketing of assessee's product. In our considered view, the ld. CIT-A has given the reason and detailed finding which has not been controverted by the learned DR appearing on behalf of the revenue. Accordingly, we do not find any reason to interfere in the finding of ld. CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed.

Capital infusion

110. As far as issue of deletion of upward adjustment on account of capital infusion is concern, we note that the same has been adjudicated along with

assessee's appeal vide ground No. 9 in ITA No. 2365/Ahd/2018 where the issue has been decided against the revenue vide paragraph No. 58 of this order. Hence, the ground of the Revenue's appeal to this extent is dismissed.

111. The next issue raised by the Revenue is that the learned CIT(A) erred in allowing the deduction under section 80-IE of the Act on the income not arising from eligible business.

112. At the outset, we note that issue raised by the revenue in the captioned ground of appeal has been adjudicated along with assessee's appeal vide ground No. 10 in ITA No. 2365/Ahd/2018 where the issue has been decided against the revenue vide paragraph No. 63 of this order. Hence, the ground of the Revenue's appeal is dismissed.

113. The last issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition made on account on unutilized MODVAT/CENVAT under section 145A of the Act.

114. The assessee in the books of account has shown unutilized MODVAT/CENVAT as "loans and advances". The assessee stated that it has been regularly following exclusive method, therefore the amount of unutilized MODVAT/CENVAT credit is not added to value of closing stock. The assessee also claimed that even if books of account were maintained following the inclusive method, still there would be no impact on P & L account.

114.1 However, the AO disagreed with the submission of the assessee and held that unutilized amount of the dutyis required to be adjusted with the closing value of stock. As such, the unutilized MODAVT/CENVAT was a kind of subsidy and incentives given by the Government, which could not be treated as an advance, and therefore, stock should be valued in accordance with the provisions of section 145A of the Act. Accordingly, the unutilized portion of MODVAT/CENVAT for Rs. 7,14,75,444/- was added by the AO to the total income of the assessee.

115. On appeal by the assessee, the learned CIT(A) deleted the addition made by the AO by following order of this tribunal in the case of ITO vs. Gujarat ParafinsPvt Ltd in ITA No. 2335/Ahd/2011 and ACIT vs. Kiran Industries Pvt Ltd in ITA No. 1450/Ahd/2012.

116. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

116.1 The learned DR before us vehemently supported the order of the Assessing Officer.

116.2 On the other hand, the learned AR before us vehemently supported the order of the ld. CIT-A.

117. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that in the own case of the assessee, an identical addition on account of unutilized value of MODVAT/CENVAT was made by the AO in the assessment year 2009-10. The issue came before this tribunal in revenue's appeal bearing ITA No. 1327/AHD/2017. The Tribunal vide order dated 22-02-2022 decided the issue in favour of the assessee by observing as under:

> *61. Having heard both the parties, we have gone through orders of the authorities below and materials available on record. It is submitted by the ld. counsel for the assessee, that assessee is regularly following 'exclusive method', i.e. 'net method' of accounting, whereby cost of purchases are accounted for without taking into effect i.e. net of MODVAT including inventory i.e. opening stock and closing stock. He relied on the proposition of law laid down by the Hon'ble Supreme Court in the case of Indo Nippon Chemicals Co. Ltd. (supra), where it was held that the MODVAT being irreversible credit in the hands of the manufacturer, the same would not amount to income taxable under the Act. It is not in dispute that the assessee is following exclusive method of accounting for the past several years. In other words, valuing purchase price minus MODVAT credit is permissible method of accounting. The ld. CIT(A) has rightly relied upon the judgment of Hon'ble Apex Court in the case of Indo Nippon Chemical Co. Ltd. (supra) wherein it was observed that merely because MODVAT credit was irreversible credit offered to manufacturers upon purchase of duty paid on raw-material, that would not amount to income which was liable to be taxed under the Act. It has further held that whichever method of accounting is adopted, the net result would be same. Considering the proposition of law laid down by the Hon'ble Apex Court on this issue, we do not find any justification for the AO to add unutilized MODVAT credit to the closing stock. The ld. CIT(A) has not committed any error in allowing claim of*

the assessee on this issue, which we uphold, and this ground of Revenue's appeal is dismissed.

117.1 Before us, no material has been placed on record by the Revenue demonstrating that the decision of the Tribunal in the own case of the assessee discussed above has either been set aside/stayed or overruled by the Higher Judicial Authorities. Before us, no material was placed on record pointing out any distinguishing feature in the facts of the case of earlier AY and the year under consideration. Thus, respectfully following the order of the tribunal in the own case of the assessee discussed above, we do not find any infirmity in the finding of the learned CIT(A). Thus, the ground of appeal raised by the revenue is hereby dismissed.

118. In the result appeal of the Revenue is hereby partly allowed.

Coming to ITA No. 2366/Ahd/2018, an appeal by the assessee for AY 2014-15

119. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance of Rs. 25,99,87,036 made by the Assessing Officer in respect of legitimate business expenditure incurred by the appellant-company for sponsorship expenses of medical practitioners/doctors.

2. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance of Rs.1,87,614 made by the Assessing Officer in respect of employees' contribution to PF/ESI, on the ground that the same was not paid within the prescribed time limit under the PF/ESI Acts, even though the payment was made within the time limit for filing the return of income 139(1) of the LT. Act.

3. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the Assessing Officer's action in reducing the quantum of deduction / 80-IC in respect of the Baddi Unit by excluding the following items of income from the profits of the Baddi Unit eligible for such deduction:

(a) Cash discount	*1,62,156*
(b) Export benefits	*5,91,95,648*
(c) Insurance income	*3,959*
(d) Interest Income	*2,50,787*
Total :	*5,99,12,550*

4 On the facts and in the circumstances of the case, the learned (IT(Appeal) erred in upholding the Assessing Officer's action in reducing the quantum of deduction w% 8018 in respect of the Salim Unit by allocating additional administrative expenses of Rs 27,74,99,662 to the Satin Unit resulting into reduction of the profits of the Sikkim Unit eligible for such deduction.

5. On the facts and in the circumstances of the case, the learned CIT(Appeal) erred in rejecting the relevant ground of appeal to the effect that the appellant company is entitled to deduction of Rs. 5,59,52,253 being provision for leave encashment notwithstanding the provisions of section 438(1) of the IT. Act

6 On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not allowing weighted deduction u/s 35(2AB) in respect of the following items of expenditure incurred by the appellant-company development on research and development:

(3) Interest on loan	*44,71,530*
(b) Labour and Job work charges	*176,32,716*
(c) Capital expenditure on furniture, electrical equipments and vehicles	*275,00,000*
(d) Expenses on employees not having not having degree in science.	*338,55,000*
Total:	*834,59,245*

7 On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming exclusion of the following items of income from the profits of the Sikkim Unit for the purposes of granting deduction u/s 80-IE of the LT. Act

	Rs
(a) Insurance Income	*4,36,336*
(b)Interest Income	*1,22,762*
(c) Export benefits:	*11,679*
Total	*5,70,777*

8 The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

119.1 The assessee vide letter dated 13-01-2023has raised following additional grounds of appeal:

"The Appellant craves leave to raise these additional grounds of Cross Objections before the Hon'ble ITAT. This are legal grounds and therefore, as per the decision of Hon'ble Supreme court in the case of National Thermal Power (229 ITR 383), it can be raised before the Hon'ble ITAT.

In view of the above, the appellant hereby raises following grounds as additional grounds of Appeal, which is without prejudice to the grounds raised by the appellant while filing appeal in Form 36A.

1 Without prejudice to all the grounds raised, in law and in the facts and circumstances of the appellant's case, the appellant requests Hon'ble ITAT for admission of its additional claim and for not including the Excise Refund of Rs 26,75,10,140/- received by the appellant, while computing the Book Profit u/s 115JB of the Act on the ground that it is income in the nature of "capital receipts as per the settled legal precedents.

2 Without prejudice to all the grounds raised, in law and in the facts and circumstances of the appellant's case, following the decision of the Honable Gujarat High Court in Assese's own case, the Appellant craves that no R&D expenditure including development cost should be allocated to industrial unit eligible for deduction u/s 80-IC of Rs. 15,86,14,030 and section 80-IE of Rs. 10,59.25,615, though allocated while filing the return of income

In view of the above, the additional grounds raised may kindly be admitted in view of natural justice to the appellant."

119.2 At the outset, we note that the additional grounds raised by the assessee in its appeal for the AY 2014-15 are identical to the additional grounds raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. The additional grounds of appeal of the assessee for the A.Y. 2013-14 have been admitted by us vide paragraph No. 3.4 to 3.5 of this order in the light of the principles laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT. Hence, following the same the additional grounds of appeal filed by the assessee for the year under consideration are hereby admitted.

120. The first issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of doctor's sponsorship expenses of Rs. 25,99,87,036/- only.

121. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 8 of this order against the assessee. The learned AR and the DR also agreed that whatever will be the findings for the

assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby dismissed.

122. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of employee contribution to PF/ESI of Rs. 1,87,614/- only.

123. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 13 of this order against the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby dismissed.

124. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of deduction under section 80-IC of the Act on receipt of cash discount, export benefit, insurance income and interest income.

125. At the outset, we note that the issues raised by the assessee in its ground of appeal for the AY 2014-15 are identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the AY 2013-14 with respect to receipt of cash discount, export benefit and insurance income has been decided by us vide paragraph No. 20 and 21 of this order in favour of the assessee whereas ground with respect to interest income has been decided by us vide paragraph No. 23 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby partly allowed.

126. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the allocation of additional administrative expenses to Baddi and Sikkim unit and thereby reducing the deduction under section 80-IC and 80-IE of the Act.

127. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for AY 2013-14 has been decided by us vide paragraph No. 29 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby allowed.

128. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of deduction on account of provision for leave encashment amounting to Rs. 5,59,52,253/- only.

129. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 34 of this order against the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby dismissed.

130. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of weighted deduction under section 35(2AB) of the

Act on account of Interest cost, labour& Job work charges, furniture & fixture, electrical equipment, vehicle, and expenses on employee not having degree in science.

131. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 39 of this order in favour of the assessee after placing reliance on the judgment of Hon'ble Gujarat High court in own case of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby allowed.

132. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of deduction under section 80-IE of the Act on the receipt of Interest, insurance, and export benefit.

133. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 63 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby partly allowed.

134. The assessee vide first Additional ground of appeal request to give direction with respect to exclusion of excise refund of Rs. 26,75,10,140/- from the computation of book profit under section 115JB of the Act.

135. At the outset, we note that the issue raised by the assessee in its additional ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 65 to 66 of this order in favour of the assessee for statistical purposes. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby allowed for statistical purposes.

136. The last issue raised by the assessee on additional ground of appeal is that no R & D expenses either for discovery or product development or capital expenses shall be allocated to the eligible units.

137. At the outset, we note that the issue raised by the assessee in its additional ground of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 69 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the assessee is hereby allowed.

138. In the result,the appeal filed by the assessee is hereby partly allowed for statistical purposes.

Coming to ITA No. 2368/Ahd/2018, an appeal by the Revenue for AY 2014-15

139. The Revenue has raised following grounds of appeal:

"1) that the Ed CIT (A) hat erred in law and on the facts in the disallowance of selling/dutribution/publicity / Medical/Literature expenses s. 37(1) of the Act consisting of

i) Selling and distribution expenses under the heads Business

ii) advancement expenses of Rs. 5,51,37,4271

iii) Sales promotion expenses of Rs. 56,21,474

2) "that the LA CIT (A) has erred in law and on the facts in directing the AQ to allow deduction u/s. 80IC after allowing the claim of the assessee of

i) Sale of Scrap of Rs. 96,73,002/-

ii) Service Tax Refund Income of Rs. 33,575/-

iii) Miscelleneous income and rounding off of Rs. 1,48,948/-

as income derived from eligible business by an appropriate enterprise of the assessee

3) "that the Ld CIT (A) hat erred in law and on the facts in allowing the appeal of the assessee on the issue of reallocation of R & D Expenditure of Rs. 18,85,27,570/- to Baddi Unit and u/s. 8010 and Rs. 40,81,86,014/- to Sikkim Unit w/s. 801E made by the Assessing Officer.

4) that the Ld CIT(A) haserred in law and on the facts in directing to increase eligible profit for Baddi Unit by Rs. 6.28.27,394/-

5) "that the Ld CIT (A) hat erred in law and on the facts in deleting the diallowance of garden expenses of Rs. 49,40,748/-.

6) that the Ld CIT (A) has erred in law and on the facts in deleting disallowance of Rs. 1,99,667/- made on account of treating capital investment subsidy of Rs. 30,00,000/- received from Government of India under the Central Capital Investment Subsidy Scheme, 2003 as received towards cost of capital asset and therefore not allowing depreciation on it.

7) that the Ld CIT (A) hat erred in law and on the facts in deleting the disallowance of additional depreciation on Pallets, Trolley and Mobile racks of Rs. 70,65,179/-

8) (a) "that the Ld CIT (A) has erred in law and on the facts in deleting the disallowance made by the assessing officer out of Rs. 23,42,01,943/- out of deduction claimed by the assessee u/s. 35(2AB) in respect of research and development expenditure consisting of:

i) Salary to Dr. Dutt of Rs. 274.19 lakhs

ii) Building repair expenses of Rs. 104.88 lakhs

iii) Municipal Tax of Rs. 12.84 lakhs

iv) Fees and legal expenses of Rs. 14.73 lakhs

8) (b) "that the Ld. CIT (A) has erred in law and on the facts in allowing weighted deduction on the disallowance made by the assessing officer out of Rs. 23,42,019/- out of deduction claimed by the assessee k. 35(CAB) in respect of research and development expenditure consisting of

i) Chnical Research Expenses of Rs. 1214.01
ii) Patent Expense(Official fees) of Rs. 57.32 lakhs
iii)Patent Expense (Consulting Fees) of Rs. 409.41 lakhs
iv) Professional fees (outside India) of Rs. 8.59 lakhs
v)Professional fees (inside budha) of Rs. 81.89 lakhs
vi)Interest on loan of Rs. 44.72 lakhs
vii) Other Studies expenses of Rs. 201.32 lakhs

9) that the Ld CIT (A) has erred in lave and on the facts in deleting the disallowance of deduction of Rs. 1,73,65,884/- and Rs. 1,90,25,206/- claimed by the assessee u/s, 80G and u/s 80GGB respectively.

10) "that the Ld. CIT (A) has erred in law and on the facts in deleting the disallowance made u/s. 14A for Rs. 18.14.792/- while computing book profits u/s 115JB of the Act."

140. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of expense incurred in contravention of MCI regulation.

141. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the AY 2013-14 has been decided by us vide paragraph No. 8 and73 of this order partly in favour of the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby partly allowed.

142. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of deduction claimed by the assessee under section 80-

IC of the Act on the receipts representing sale of scrap, service tax refund and miscellaneous receipt.

143. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the AY 2013-14 has been decided by us vide paragraph No. 16 to 19 and 75 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

144. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the allocation of R&D expenses to the Baddi and Sikkim unit eligible for deduction under section 80-IC and 80-IE of the Act.

145. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 80 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

146. The next issue raised by the revenue is that the learned CIT(A) erred in directing to increase the eligible profit of the Baddi unit by Rs. 6,28,27,394/- only on account of allocation of administrative expenses.

147. The assessee in the year under consideration has incurred common administrative expenses amounting to Rs. 67,38,35,945/- which were allocated to the different units based on the number of employees. Accordingly, the assessee allocated common administrative expenses of Rs. 19,75,94,583/- and Rs. 8,59,00,063/-to Baddi and Sikkim units respectively eligible for deduction under section 80IC and 80IE of the Act.

147.1 On the other hand, the AO was of the view that the common administrative expenses should be allocated to the different units based on the turnover of the respective units. Accordingly, the AO worked out the amount of administrative expense liable to be allocated to the eligible unit being Baddi and Sikkim units, based on turnover at Rs. 13,47,67,189/-and Rs. 36,33,99,725/- respectively.

147.2 However, the AOheld that the amount of administrative expenses allocated by the assessee to Baddi Unit is higher than the amount calculated based on turnover ratio therefore no adjustmentis required to be made toBaddi unit but allocated the additional amount of administrative expenses of Rs. 27,74,99,662/- to Sikkim unit based on turnover ratio.

148. On appeal by the assessee, the ld. CIT(A) confirmed the view of the AO that the common administrative expenses should be allocated based on the turnover of the respective units. The ld. CIT(A) was also of the view that if additional administrative expenses was allocated to Sikkim unit due to change in the basis from number of employees to turnover, then excess amount already allocated to BaddiUnit based on number of employeesshall be reduced. Accordingly, the learned CIT(A) directed the AO to reduce the amount of administrative expenses allocated to Baddi Unit by Rs. 6,28,27,394/- (Rs. 19,75,94,583/- already allocated by the assessee less Rs. 13,47,67,189/- calculated based on turnover ratio.

149. Being aggrieved by the order of ld. CIT(A), the Revenue is in appeal before us.

149.1 The learned DR before us vehemently supported the order of the Assessing Officer.

149.2 On the other hand, the learned AR before us contended that the ITAT in the earlier years in the own case of the assessee has adopted the basis of allocating the administrative expenses between the eligible and non-eligible unitsbased on number of employees in the respective units. Thus, the same basis should be continued in the year under consideration.

149.3 Both the ld. DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

150. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee allocated the common administrative expenses to different units being eligible for deduction under section 80IC or 80IE and noneligible units bases on number of employees in respective units. On the other hand, the AO and learned CIT(A)were of the view that such administrative expenses should be allocated to different unitsbased on turnover of the respective units. Finally, the learned CIT(A)based on turnover reduced the amount administrative expenses allocated to Baddi unit eligible for deduction u/s 80IC from Rs. 19,75,94,583/- to Rs. 13,47,67,189/- and simultaneously increased the amount administrative of expenses allocated to Sikkim unit eligible for deduction u/s 80IE from Rs. 8,59,00,063/- to Rs. 27,74,99,662/- only.

150.1 At the outset, we note that against additional amount allocated to the Sikkim unit by changing the basis from number of employees to turnover the assessee was in appeal before us vide ground No.4 of its appeal in ITA No. 2366/Ahd/2018 in AY 2014-15. We have decided the grounds of appeal of the assessee vide paragraph No. 127read with Para No. 29 of this order in favour of the assessee by holding that the common administrative expenses should be

allocated based on number of employees of the respective units.Thus, we hold that the same basis should be adopted for the issue under consideration and accordingly the amount of Rs. Rs. 19,75,94,583/-should be allocated to the Baddi unit as done by the assessee based on the number of employees as against the amount Rs. 13,47,67,189/- directed by the learned CIT(A). Hence, the ground, of appeal of the revenue is hereby allowed.

151. The next issue raised by the revenue is that the learned CIT(A) erred in deleting garden expenses for Rs. 49,40,748/- only.

152. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 85 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

153. The **next issue** raised by the revenue is that Ld. CIT-(A), erred in deleting the disallowance of depreciation of Rs. 1,99,667/- made on capital investment subsidy of Rs. 30 lakhs by treating the same as related to cost of capital assets.

154. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 92 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the

assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

155. The **next issue** raised by the revenue is that Ld. CIT-A erred in allowing the additional depreciation of Rs. 70,65,179/- with respect to pallets, trolleys, and mobile racks.

156. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 97 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

157. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowances of weighted deductions under section 35(2AB) of the Act for Rs.23,42,01,943.00 only.

158. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 99 read with para 39 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

159. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance of deductions under section 80G and 80GGB of the Act.

160. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2014-15 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2014-15. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 104 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2014-15. Hence, the ground of appeal filed by the revenue is hereby dismissed.

161. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance/ addition made to book profit u/s 115JB of the Act by the amount of disallowance made u/s 14A of the Act.

162. The AO found that the assessee under normal computation of income has made suo moto disallowance under section 14A r.w. rule 8D(2) of the IT rule for Rs. 18,14,792/- only. However no disallowance was made while computing the book profit as per the provisions of clause (f) of explanation to section 115JB(2) of the Act. Accordingly, the AO made addition of Rs. 18,14,792/- to the book profit.

163. On appeal by the assessee, the learned CIT(A) deleted the addition made by the AO in book profit after placing reliance on order of this tribunal in case of Adani Agro Pvt Ltd in ITA No. 2539/Ahd/2013 where the bench vide order dated 2nd February 2018 held that the disallowances made under section14A of the Act while computing normal profit cannot be imported for the purpose making disallowance/addition to book profit as per the provisions of clause (f) of explanation to section 115JB(2) of the Act.

164. Being aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

164.1 The learned DR before us vehemently supported the order of the Assessing Officer. On the other hand, the learned AR before us vehemently supported the order of the ld. CIT-A.

165. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the issue on hand are elaborated in preceding paragraph, which are not in dispute. Therefore, we are not inclined to repeat the same. At the outset, we note that the Special Bench of Hon'ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 has held that the disallowance made u/s 14A r.w.r. 8D cannot be the subject matter of disallowance while determining the net profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

> *"In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962."*

165.1 The ratio laid down by the Hon'ble Tribunal is squarely applicable to the facts of the case on hand. Thus, it can be concluded that the disallowance made under section 14A r.w.r. 8D cannot be resorted while determining the expense as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

165.2 However, it is also transparent that disallowance needs to be made with respect to the exempted income in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw support from the judgment of Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance regarding the exempted income needs to be made as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:

> *"We find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section*

115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal.

We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a complete code in itself and resort need not and cannot be made to section 14A of the Act."

165.3 Now the question arises to determine the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. In this regard, we note that there is no mechanism/ manner given under clause (f) to Explanation-1 of Sec. 115JB of the Act to workout/ determine the expenses with respect to the exempted income. Therefore, in the given facts &circumstances, we feel that ad-hocdisallowance will serve the justice to the Revenue and assessee to avoid the multiplicity of the proceedings and unnecessary litigation. Thus we direct the AO to make the addition of Rs. 5 Lacs as discussed above under clause (f) to Explanation-1 of Sec. 115JB of the Act. Thus, the ground of appeal of the Revenue in relation to additon to book profits is partly allowed.

166. In the result appeal of the Revenue is hereby partly allowed.

Coming to ITA No. 1172/Ahd/2019, an appeal by the assessee for A.Y. 2015-16

167. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming disallowance of Rs. 26,20,83,897/- made by the Assessing Officer in respect of legitimate business expenditure incurred by the appellant-company for sponsorship expenses of medical practitioners/doctors.

2. On the facts and in the circumstances of the case the learned CIT(Appeals) erred in confirming disallowance of Rs.3,28,550 made by the Assessing Officer in respect of employees contribution to PF/ESI on the ground that the same was not paid within the prescribed time limit under the PF/ESI Acts, even though the payment was made within the time limit for filing the return of income is. 139(1) of the IT Act.

3. On the facts and in the circumstances of the case the earned CIT(Appeals) erred in confirming the Assessing Officer's action reducing the quantum of deduction u/s 80-IC in respect of the Baddi Unit by excluding the following items of income from the profits of the Baddi Unit eligible for such deduction:

Rs

(a) Cash discount	*3,01,566*
(b) Export benefits	*8,46,08,269*
(c) Insurance income	*14,086*
(d) Interest Income	*2,45,800*
Total	*8,51,69,721*

4 On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in upholding the Assessing Officer's action reducing the quantum of deduction u/s 80-1E in respect of the Sikkim Unit, by allocating additional administrative expenses of Rs 10,54,02,221/- to the Sikkim Unit resulting into reduction of the profits of the Sikkim Unit eligible for such deduction.

5 On the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not allowing weighted deduction u/s 35(2AB) in respect of the following items of expenditure incurred by the appellant- company on research and development

	Rs. in Lacs
(a) Interest on loan	*17.11*
(b) Labour and Job work charges	*228.16*
(c) Capital expenditure on furniture, electrical equipments and vehicles (being 200% of exp Incurred of Rs. 427 42 lacs)	*854.84*
(d) Expenses on employees not having not having degree in science	*365.16*
(e) Expense not identified	*12.32*
Total:	*1477.59*

6. On the facts and in the circumstances of the case the learned CIT(Appeals) erred in confirming exclusion of the following items of Income from the profits of the Sikkim Unit for the purposes of granting deduction u/s 80IE of the IT Act:-

(a) Insurance Income	*2,83,757*
(b) Other Income	*18427*
(c) Interest Income	*1,10,040*
Total	*4,13,124*

7 The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

168. The assessee vide letter dated 13-01-2023has raised following additional grounds of appeal:

"The Appellant craves leave to raise these additional grounds of Cross Objections before the Hon'ble ITAT This are legal grounds and therefore, as per the decision of Han'ble Supreme court in the case of National Thermal Power (229 ITR 383) can be raised before the Hon'ble ITAT.

In view of the above, the appellant hereby raises following ground as additional ground of Appeal which is without prejudice to the grounds raised by the appellant while filing appeal in Form 36A.

1. Without prejudice to all the grounds raised, in law and in the facts and circumstances of the appellant's case, the appellant requests Hon'ble ITAT for admission of its additional claim and for not including the Excise Refund of Rs 26.50.23,405/- received by the appellant, while computing the Book Profit u/s. 115JB of the Act on the ground that it is income in the nature of "capital receipts" as per the settled legal precedents.

2 Without prejudice to all the grounds raised, in law and in the facts and circumstances of the appellant's case, following the decision of the Hon able Gujarat High Court in Assese's own case, the Appellant craves that no R&D expenditure including development cost should be allocated to industrial unit eligible for deduction u/s 80-IC of Rs. 20,38,55,616 and section 80-IE of Rs. 9,55,28,770 though allocated while filling the return of income.
In view of the above, the additional grounds raised may kindly be admitted in view of natural justice to the appellant."

168.1 At the outset, we note that the additional grounds raised by the assessee it its appeal for the AY 2015-16 are identical to the additional grounds raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. The additional ground of appeal of the assessee for the AY 2013-14 has been admitted by us vide paragraph No 3.4 to 3.5 of this order in the light of the principles laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT (supra). Hence, following the same, the additional ground of appeal filed by the assessee for the year under consideration are hereby admitted.

169. The first issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of doctor's sponsorship expenses of Rs. 26,20,83,897/- only.

170 At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the AY 2013-14 has

been decided by us vide paragraph No. 8 of this order against the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby dismissed.

171. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of employee contribution to PF/ESI of Rs. 3,28,550/- only.

172. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 13 of this order against the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby dismissed.

173. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of deduction under section 80-IC of the Act on receipts of cash discount, export benefit, insurance income and interest income.

174. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the A.Y. 2013-14 with respect receipt of cash discount, export benefits and insurance income has been decided by us vide paragraph No. 20 and 21 of this order in favour of the assessee whereas ground with respect to interest income has been decided by us vide paragraph no. 23 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment

year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby partly allowed.

175. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the allocation of additional administrative expenses Sikkim unit and thereby reducing the deduction under section 80-IE of the Act.

176. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 29 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby allowed.

177. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of weighted deduction under section 35(2AB) of the Act on account of Interest cost, labour& Job work charges, furniture & fixture, electrical equipment, vehicles, and expenses on employee not having degree in science.

178. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the AY 2013-14 has been decided by us vide paragraph No. 39 of this order in favour of the assessee after placing reliance on the judgment of hon'ble Gujarat high court in own case of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment

year 2015-16. Hence, the grounds of appeal filed by the assessee is hereby allowed.

179. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of deduction under section 80-IE of the Act on the receipts of Interest, insurance, and export benefit.

180. At the outset, we note that the issue raised by the assessee in its ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 63 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby partly allowed.

181. The assessee vide first Additional ground of appeal requested to give direction with respect to exclusion of excise duty refund of Rs. 26,50,23,405/- from the computation of book profit under section 115JB of the Act.

182. At the outset, we note that the issue raised by the assessee in its additional ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 65 to 66 of this order in favour of the assessee for statistical purposes. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby allowed for statistical purposes.

183. The last issue raised by the assessee in additional ground of appeal is that no R & D expenses either for discovery or product development or capital expenses shall be allocated to the eligible units.

184. At the outset, we note that the issue raised by the assessee in its additional ground of appeal for the AY 2015-16 is identical to the issue raised by the assessee in ITA No. 2365/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2365/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 69 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the assessee is hereby allowed.

185. In the result,the appeal of the assessee is hereby partly allowed for statistical purposes.

Coming to ITA No. 1279/Ahd/2019 an appeal by the Revenue for A.Y. 2015-16

186. The Revenue has raised following grounds of appeal:

> *"1) that the Ld CIT (A) has erred in law and on the facts in allowing the disallowance made u/s 37(1) of the Act consisting of*
>
> *i) Selling and distribution expenses under the heads Business*
>
> *ii)advancement expenses of Rs. 17,06,29,200/-*
>
> *iii)Sales promotion expenses of Rs. 2,12,65,122/-"*
>
> *2) "that the Ld. CIT (A) has erred in law and on the facts in directing the AO to allow deduction u/s. 80IC after allowing the claim of the assessee of*
>
> *i) Sale of Scrap of Rs. 1,48,67,792/-*

ii) Forex Gains of Rs. 48,40,17,969/-

iii) Miscelleneous income and rounding off of Rs. 15,20,346/-

as income derived from eligible business by an appropriate enterprise of the assessee"

3) "that the Ld CIT (A) has erred in law and on the facts in allowing the appeal of the assessee on the addition made by the AO on account of reallocation of R & D Expenditure of Rs. 15,12,09,260/- to Baddi Unit u/s. 80IC and Rs. 52,26,33,895/- to Sikkim Unit u/s. 801E of the I. T. Act, 1961.

4) that the Ld CIT(A) has erred in law and on the facts in directing the AO to increase eligible profit for Baddi Unit by Rs. 13,82,53,211/-

5) that the Ld CIT (A) has erred in law and on the facts in deleting the disallowance of garden expenses of Rs. 64,20,381/-.

6) "that the Ld CIT (A) has erred in law and on the facts in deleting disallowance of Rs. 1,69,717/- made on account of capital investment subsidy of Rs. 30,00,000/- received front Government of India under the Central Capital Investment Subsidy Scheme, 2003 received towards cost of capital asset is not eligible for depreciation.

7) "that the Ld CIT (A) has erred in law and on the facts in deleting the disallowance of additional depreciation on Pallets, Trolley and Mobile racks of Rs. 69,05,331/.

8) "that the Ld. CIT (A) has erred in law and on the facts in allowing the claim of investment allowance u/s 32AC of the Income Tax Act of Rs. 84,11,534/- on Pallets, Trolley and Mobile racks and few other assets.

9) "that the Ld. CIT (A) has erred in law and on the facts in deleting the disallowance made by the assessing officer of Rs. 42,80,90,000/- claimed by the assessee u/s. 35(2AB) in respect of research and development expenditure.

10) that the Ld CIT (A) has erred in law and on the facts in deleting the disallowance of deduction of Rs. 5,07,09,261/- and Rs. 2,54,75,000/- claimed by the assessee u/s 80G and u/s. 80GGB respectively.

11) "that the Ld. CIT (A) has erred in law and on the facts in deleting the disallowance made u/s. 14A for Rs. 12,23,993/- while computing book profits u/s 115JB of the Act.

12) "that the Ld. CIT (A) has erred in law and on the facts in reducing the disallowance of deduction claimed by the assessee for eligible deduction u/s 801E of the Income Tax Act, 1961.

13) "that the Ld. CIT (A) has erred in law and on the facts in deleting the addition of unutilized MODVAT/CENVAT credit of Rs. 8,71,14,462/-."

187. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of expenses incurred in contravention of MCI regulation.

188. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 73 read with para 8 of this order partly in favour of the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby partly allowed.

189. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance of deduction claimed by the assessee under section 80-IC of the Act on the receiptsrepresenting sale of scrap, service tax refund and miscellaneous receipts.

190. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 75 read with para 16 to 19 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

191. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the allocation of R&D expenses to the Baddi and Sikkim unit eligible for deduction under section 80-IC and 80-IE of the Act.

192. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 80 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

193. The next issue raised by the revenue is that the learned CIT(A) erred in directing to increase the eligible profit of the Baddi unit by Rs. 13,82,53,211/- only on account of allocation of administrative expenses.

194. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2368/AHD/2018 for the assessment year 2014-15. Therefore, the findings given in ITA No. 2368/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2014-15 has been decided by us vide paragraph No. 150 of this order in favour of the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby allowed.

195. The next issue raised by the revenue is that the learned CIT(A) erred in deleting garden expenses for Rs. 64,20,381/- only.

196. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year

2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 85 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

197. The **next issue** raised by the revenue is that Ld. CIT-(A), erred in deleting the disallowance of depreciation of Rs. 1,69,717/- made on capital investment subsidy of Rs. 30 lakhs by treating the same relating to cost of capital assets.

198. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 92 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

199. The **next issue** raised by the revenue is that Ld. CIT-A erred in allowing the additional depreciation of Rs. 69,05,331/- with respect to pallets, trolleys, and mobile racks.

200. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 97 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the

assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

201. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the disallowance made by the AO on account of investment allowances claimed u/s 32AC of the Act.

202. The assessee during the year claimed investment allowances under section 32AC(1) of the Act for Rs. 26,11,62,127/- on account of purchases of Plant and Machineries. The AO found that the impugned purchases of plants and machinery includes purchases of pallets, trollies and mobile racks which are treated as furniture and fixtures by him while allowing/disallowing the claim of depreciation and additional depreciation. Accordingly, the AO was of the view that once the impugned assets are treated as part of furniture and fixtures, then the investment allowances under section 32AC(1) of the Act cannot be allowed on the same as part of investment in plant and machinery. Thus, the AO disallowed corresponding amount of investment allowances for Rs. 84,11,534/- only.

203. On appeal by the assessee, the learned CIT(A)deleted the addition made by the AO by observing as under:

> *"11.3 Decision: It is observed that claim of additional depreciation on trolleys, mobile racks, pallets have been duly allowed in preceding years by the undersigned. These assets are used in manufacturing process and fulfil the functional test, hence, the same are held to be Plant and Machinery. Also, similar issue has been allowed in favour of appellant in A.Y. 2011-12, 2012-13, 2013-14 and 2014-15 by the undersigned. Even while deciding similar issue during the year under consideration in Para 10 hereinabove, the claim of additional depreciation on such assets has been duly allowed. As claim of additional depreciation has been allowed on such assets and all conditions mentioned in section 32AC have been complied in the present case, the Assessing Officer is directed to grant investment allowance on aforesaid assets for Rs. 4,72,79,446/- during the year under consideration. It is also undisputed fact that disallowance of additional depreciation on such assets has been deleted while passing order of preceding year being A.Y. 2014-15, the facts of the case and the assets under consideration continue to be same, hence disallowance made for that year being Rs. 3,34,63,818/- is also deleted. Disallowance made by Assessing Officer for Rs. 84,11,534/- is deleted. Ground No. 14 is allowed."*

204. Being aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

204.1 Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

205. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the assets in dispute being pallets, trolleys and mobile racks have been treated by the assessee as part of the plant and machinery and therefore the depreciation at the rate of 15% and additional depreciation was claimed which was disallowed by the AO and subsequently allowed by the learned CIT(A).Against the finding of the learned CIT(A), regarding the allowance of depreciation on impugned assets as part of plant and machinery, the revenue was in appeal before us. While deciding the revenue's appeal with regard to depreciation, vide paragraph no. 200 read with para 97 of this order, we held that the impugned assets being pallets, trollies and mobile racks are part of plant and machinery. Once the impugned assets has been held as part of machinery, we are of the considered opinion that the same are also eligible for investment allowances as provided under section 32AC(1) of the Act. Hence the ground of appeal of the revenue is hereby dismissed.

206. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance of weighted deduction made by the AO under section 35(2AB) of the Act.

207. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 99 read with para 39 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

208. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance of deductions under section 80G and 80GGB of the Act.

209. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 104 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

210. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowances/ addition made by the AO to the book profit u/s 115JB of the Act by the amount of disallowance u/s 14A of the Act.

211. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2368/AHD/2018 for the assessment year 2014-15. Therefore, the findings given in ITA No. 2368/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2014-15 has been decided by us vide paragraph No. 165 of this order partly in favour of the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby partly allowed.

212. The next issue raised by the Revenue is that the learned CIT(A) erred in allowing the deduction under section 80-IE of the Act on the income not arising from eligible business.

213. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the A.Y. 2013-14 has been decided by us vide paragraph No. 112 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

214. The last issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition made on account on unutilized MODVAT/CENVAT under section 145A of the Act.

215. At the outset, we note that the issue raised by the revenue in its ground of appeal for the AY 2015-16 is identical to the issue raised by the revenue in ITA No. 2369/AHD/2018 for the assessment year 2013-14. Therefore, the findings given in ITA No. 2369/AHD/2018 shall also be applicable for the assessment year 2015-16. The relevant ground of appeal of the revenue for the AY 2013-14 has been decided by us vide paragraph No. 117 of this order against the revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment year 2015-16. Hence, the ground of appeal filed by the revenue is hereby dismissed.

216. In the result appeal of the Revenue is hereby partly allowed.

217. The combined results of the appeals are as follows:

Sr.No.	ITA No.	A.Y	Appeal By	Result
1-2	2365-2366/Ahd/2018	2013-14 & 2014-15	Assessee	Partly allowed for statistical purposes
3-4	2369-	2013-14 &	Revenue	Partly allowed

	2368/Ahd/2018	2014-15		
5	1172/Ahd/2019	2015-16	Assesee	Partly allowed for statistical purposes
6	1279/Ahd/2019	2015-16	Revenue	Partly allowed

Order pronounced in the Court on 26/02/2024 at Ahmedabad.

Sd/-	**Sd/-**
(MADHUMITAROY)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(**True Copy)**

Ahmedabad; Dated 26/02/2024

Manish/Ashish

<u>आदेशकीप्रतिलिपिग्रेषित</u>/<u>Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad