आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

SN	ITA No.	AY	Appellant	Respondent
1-4	ITA Nos. 109 to 112 /Ahd/2020	2006-07 to 2009-10	Sun Pharmaceutical Industries Limited, SPARC, Tandalja, Vadodara-400012 PAN : AADCS 3124 K	Deputy Commissioner of Income-tax, Circle-2(1)(1)), Vadodara
5	ITA No. 113/Ahd/2020	2011-12	Sun Pharmaceutical Industries Limited, SPARC, Tandalja, Vadodara-400012 PAN : AADCS 3124 K	Deputy Commissioner of Income-tax, Circle-2(1)(1)), Vadodara
6-7	ITA Nos. 116 & 117 /Ahd/2020	2005-06 & 2006-07	Deputy Commissioner of Income-tax, Circle-2(1)(1)), Vadodara	Sun Pharmaceutical Industries Limited, SPARC, Tandalja, Vadodara-400012 PAN : AADCS 3124 K
8	ITA No. 118/Ahd/2020	2011-12	Deputy Commissioner of Income-tax, Circle-2(1)(1)), Vadodara	Sun Pharmaceutical Industries Limited, SPARC, Tandalja, Vadodara-400012 PAN : AADCS 3124 K

Assessee by	:	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by	:	Dr. Darsi Suman Ratnam, CIT-DR

सुनवाई की तारीख/Date of Hearing : 30.01.2024
घोषणा की तारीख /Date of Pronouncement: 24.04.2024

आदेश/O R D E R

PER BENCH

These eight appeals filed by the assessee and the Department (i.e. 5 appeals by assessee and 3 appeals by Revenue) relate to the same assessee and pertain to different assessment years. While both the assessee and the Revenue are in appeal against the orders passed by the learned Commissioner of Income-tax (Appeals)-2, Vadodara [hereinafter referred to

as "CIT(A)" for short] in Assessment Years (AY) 2006-07 and 2011-12, the Department alone is in appeal against the order passed by the ld. CIT(A) pertaining to AY 2005-06; and the assessee alone is in appeal against the orders passed by the ld. CIT(A) pertaining to AYs 2007-08 to 2009-10.

2. Giving the brief background of these present appeals, it was pointed out that the appeals pertaining to AY 2005-06 to 2008-09 have come up before us in the second round against the assessment made on the assessee by the AO adjudicated upon by the Ld. CIT(A), in alignment with the directions made by the ITAT in first round when the matter travelled to it. The appeal for AY 2009-10, it was pointed out, arose in pursuance to the appeal effect order passed by the Assessing Officer in pursuance to the order passed by the ITAT in the first round, while that for AY 2011-12 has arisen on account of the appeal effect order passed by the Assessing Officer in pursuance to the order passed by the ld. CIT(A) in the first round. Therefore, while the appeals for AYs 2005-06 to 2008-09 have come up in appeal before us in the second round of litigation after the ITAT passed the order in the first round giving directions on specific issues, the appeals for AYs 2009-10 and 2011-12 have been filed in pursuance to the appeal effect orders passed by the Assessing Officer giving effect to the order of the ITAT and ld. CIT(A) respectively for the said two years.

3. It was common ground that the issues raised in the aforestated appeals were common; therefore, all the appeals were taken up together for adjudication and are being disposed of by way of this common consolidated order.

4. For the sake of clarity, the ld. Counsel for the assessee filed a brief gist of the issues arising in the different appeals before us arranging them in such

a manner so as to place together the appeals involving common issues and common grounds. Referring to the same, the appeals were argued before us by both the parties. It was pointed out that while the Department's appeals for AYs 2005-06 and 2006-07 involved one common issue, the assessee's appeals for AYs 2006 -07 to 2009-10 also involved common issues. Therefore, these two sets of appeals could be dealt with together, while the cross-appeals of the assessee and the Department for AY 2011-12 could be dealt with separately since it involved different issues from those pertaining to the other years before us.

5. Arguments, therefore, were advanced first with respect to the **Department's appeals for AYs 2005-06 and 2006-07 in ITA Nos. 116 & 117/Ahd/2020.**

ITA Nos. 116 & 117/Ahd/2020 : AYs 2005-06 & 2006-07 Revenues appeal

6. It was pointed out that the solitary issue in both these appeals related to the treatment of Foreign Exchange Fluctuation Gain earned by the assessee in both these years amounting to Rs.15,98,49,917/- and Rs.24,01,43,981/- respectively. Ground of appeal raised in both the years, it was stated, was identically worded. For the sake of brevity therefore the ground raised in ITA No. 116/Ahd/2020, A.Y. 2005-06 is reproduced hereunder:-

> *"1. The Ld. Commissioner of Income-tax (A) erred in fact and in law in allowing the assessee's appeal to claim "Foreign Exchange Fluctuation Gain" as capital receipt, when the same has to be treated as revenue receipt as per Accounting Standard-II, which provides that the exchange rate gain or loss is a normal business income/expenditure."*

It was stated that the issue had been restored back by the ITAT in the first round for determining the nature of foreign exchange gain earned, as to

whether capital or revenue, for the purposes of subjecting it to tax. That, in the second round the Assessing Officer treated it as revenue in nature but was held to be capital in nature by the ld. CIT(A) in both the years. It was pointed out that the ld. CIT(A) had held so noting that in AY 2007-08 identical Foreign Exchange Fluctuation Gain arising from the same set of investments as in the impugned year had been held by the ITAT to be capital in nature which had been confirmed by the Hon'ble jurisdictional High Court also. Our attention accordingly was drawn to the facts and findings of the ld. CIT(A) in AY 2006-07 which, it was pointed out, was identical to that in AY 2005-06 also, as contained in paragraph Nos. 7 & 7.2 of the order as under:-

"7. Ground No.3 pertains to consideration of foreign exchange fluctuation gain of Rs.24,01,43,981/-. Details are as under:

1. Forward contract in respect of loan/ Investment in Caraco Pharmaceutical Laboratories Ltd.	:	*(21,41,824)*
2. Reinstatement of FCCB	:	*27,66,11,029*
3. Reinstatement of FCCB proceeds	:	*28.66,118*
4. Reinstatement of loan to other subsidiaries out of FCCB Proceeds	:	*(3,71,91,342)*
		24,01,43,981

7.1. At the outset, the Ld. AR brought my attention towards order of the jurisdictional tribunal wherein full relief was allowed by the Hon'ble Tribunal in its own case for AY 2007-08. Revenue carried the matter before the Hon'ble Gujarat High Court unsuccessfully as also reflected in ITA No. 312 & 316/2018.

However, in AY 2006-07, The Hon'ble ITAT restored the matter before AO since the same issue was pending in earlier year.

7.2. Coming to the facts of the case, schedule-19, notes to financial statement clearly states that the exchange difference arising on foreign exchange on settlement/transaction are recognized in the revenue accounts. Appellant has also affected its P/L account but without giving any effect in its balance sheet.

I find amount of capital reflected in Balance sheet against Caraco, USA as under:

As on 31.03.2005	-	*Rs. 1711.6 millions*
As on 31.03.2006	-	*Rs.303.9 millions (share holding reduced from 1,18,34,957 to 83,82,866 shares fully paid common shares of no par value)*
As on 31.03.2007	-	*Rs.303.9 millions*

Undisputedly, appellant is crediting gain in its books and debiting loss also in its books. However, for tax purposes it is doing vice versa in computation of income prepared under the normal provisions of the Act. This practice is being followed in further AYs as well. There is no change in facts as well. The Hon'ble Tribunal has already considered investment in Caraco as fixed capital in nature and not a working capital. Since there is no change in facts in AY under consideration hence I am of firm opinion to follow the order of the higher judicial forum. AO's conclusion that order of the Jurisdictional HC has been challenged by the Revenue should not be bar in allowing this ground. Of course, decision of the Hon'ble SC is binding for all for all purposes. Accordingly, this issue goes in favour of appellant."

7. Our attention was also drawn to the order of the ITAT in AY 2007-08, placed before us at paper-book page Nos. 186-194, pertaining to appeal of the assessee for AY 2005-06, and the relevant paragraphs dealing with the said issue at paragraph Nos. 53 to 62 of the order as under:-

"53. Ground no. 9 relates to the Foreign Exchange Fluctuation Gain as taxable income amounting to Rs. 14,33,80,289/-.

54. While scrutinizing the revised computation of normal business income, the A.O. noticed that the assessee has treated exchange rate gain of Rs. 30,87,40,379/- as a capital receipt. The assessee was asked to show cause why the same should not be taxed as normal business income. The assessee strongly objected to the proposed action of the A.O. In support of its contention, the assessee relied upon the various decisions namely Homi Mehta Sons Pvt. Ltd. 22 ITR 528 (Bom.), Sutlej Cotton Mills Ltd. 116 ITR 1 (SC), Tata Iron & Steel Co. Ltd. 231 ITR 285 (SC), Padamjee Pulp & Paper Mills Ltd. 210 ITR 801 (Bom.)

55. The contentions of the assessee were dismissed by the A.O. who was of the firm belief that the receipt in the case on hand is nothing but a revenue receipt. The A.O. accordingly taxed the same as revenue receipt.

56. Assessee carried the matter before the ld. CIT(A) and reiterated what has been stated during the course of the assessment proceedings.

57.After considering the facts and the submissions, the ld. CIT(A) was of the considered opinion that the assessee has entered into forward contracts to safeguard the value of investments made by the assessee in its subsidiary against the adverse forex fluctuation and to that extent the ld. CIT(A) restricted the addition to Rs. 14,33,80,289/-.

58. Insofar as the loans received by way of ECG/FCCB, the ld. CIT(A) was of the opinion that these borrowings were for the purpose of capital expansion of the business since the proceeds can be used for capital purposes only. Therefore, there is no case for any addition on account of forex gain in respect of reinstatement of FCCB and conversion of FCCB into equity shares as well as repayment of ECB since these gains/receipts are held as capital receipt only. The ld. CIT(A) confirmed the addition of Rs. 14,33,80,289/- being forex gain in respect of rolling over of forward contract for safeguarding investment in Caraco and OFCD in Global.

59. Before us, the ld. Senior Counsel once again heavily relied upon the very same decisions which were relied upon before the lower authority. Per contra, the ld. D.R. supported the findings of the revenue authorities.

60. We have given a thoughtful consideration to the factual matrix. The main particulars of foreign exchange gain are as under:-

S. No.	*Particulars of Foreign Exchange gain*	*Amount (Rs.)*
(i)	*Forward Contracts in respect of investment in Caraco and OFCD in Global*	*14,33,80,289/-*
(ii)	*Reinstatement of FCCB and Exchange gain on conversion of FCCB into equity shares*	*29,62,23,740/-*
(iii)	*Repayment of ECB*	*13,78,089/-*

The other particulars relating to foreign exchange loss are on account of reinstatement of bank balance/bank deposit out of FCCB proceeds and reinstatement of loan given to subsidiaries out of FCCB proceeds/reinstatement of investment in mutual funds out of FCCB proceeds. The appellant has treated the forex loss in respect of the above also as capital loss. Thus, the net forex gain treated as Capital receipt is reported at Rs. 31,03,51,524/-.

61. In our considered opinion profits accrued to the assessee is not in the course of any trading activity but on account of appreciation on account of hedging in forex even if the same has been held for investment purposes. Therefore, such gains have to be treated as capital receipt. For this proposition, we draw support from the decision of the Hon'ble High Court of Bombay in the case of Homi Mehta Sons Pvt. Ltd. 222 ITR 528. We find that the forward contract in respect of investment in Caraco and OFCD in Global are on capital account and any profits received by assessee on cancellation of forward contract would not change its character same being in connection with a capital asset and, therefore, has to be treated as capital receipt. For this proposition, we draw support from the decision given in the case of Mahindra & Mahindra Ltd. 5 SOT 217 (Mum.).

62.Considering the facts in totality in the light of the nature of contract entered into by the assessee, we do not find any merit in the findings of the First Appellate Authority. We set aside the same and direct for the deletion of the addition of Rs. 14,33,80,289/-."

8. Our attention was also drawn to the order of the Hon'ble Gujarat High Court confirming the order of the ITAT, which was placed before us in the paper-book filed.

9. The ld. DR fairly agreed that the issue stood covered in favour of the assessee by the order of the Hon'ble jurisdictional High Court in the case of the assessee for AY 2007-08. He fairly agreed that there was no distinction in the facts of the case pertaining to AY 2007-08 and the present two years i.e. AYs 2005-06 and 2006-07, and he was unable to point out any distinction on law also before us. In view of the above, we see no reason to interfere in the order of the ld. CIT(A) treating the Foreign Exchange Fluctuation Gain of Rs.15,98,49,917/- and Rs.24,01,43,981/- in AYs 2005-06 and 2006-07 respectively as being capital in nature.

Ground of appeal raised by the Revenue in this regard for both the years merit no consideration and is accordingly dismissed.

10. The appeals of the Revenue in ITA Nos. 116 & 117/Ahd/2020 for AYs 2005-06 and 2006-07 are dismissed.

11. Ld. Counsel for the assessee thereafter stated that the appeals of the assessee in ITA Nos. 109 to 112/Ahd/2020, pertaining to AYs 2006-07 to 2009-10, can be taken up for adjudication since the same involved identical issues. The same was pointed out from the brief synopsis of the issues involved in these years filed before us, and the ld. DR fairly agreed with the same. Accordingly, the assessee's appeal in ITA No. 109/Ahd/2020 pertaining to AY 2006-07 was first taken up for hearing and is being adjudicated by us as under:-

ITA No. 109/Ahd/2020 : AY 2006-07 - Assesses appeal

12. Ground No. 1 is general in nature and therefore, needs no separate adjudication.

13. Ground No. 2 raised by the assessee reads as under:-

> *"2. Reduction of unrealized export proceeds from export turnover for the purpose of deduction under section 10B - Rs. 1,70,28,337*
>
> *2.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the reduction of the export turnover for computing deduction under section 10B by Rs. 1,70,28,337/- without appreciating the fact that the goods were returned in next financial year and were reduced from sales while computing deduction under section 10B.*
>
> *2.2 The Ld. CIT(A) grossly erred in confirming the reduction of the total export turnover for computing deduction under section 10B by doubting the genuineness of the transaction without appreciating that particular transaction cannot be questioned merely on basis of non-production of factual details.*
>
> *2.3 The Ld. CIT(A) has questioned the transaction without appreciating that the accounts of the Appellant Company have been duly confirmed, certified and audited by the Auditors.*

2.4 The Ld. CIT(A) has grossly erred in exceeding his jurisdiction by enhancing the scope of directions given by the Hon'ble Tribunal.

2.5 Without prejudice to the above, the Ld. CIT(A) grossly erred in not directing the Ld. AO to consequently enhance the deduction in the subsequent year when the goods have been returned or the amount has been written off, as the case may be."

14. The issue, it was pointed out, related to deduction of profits claimed u/s 10B of the Act by the assessee on account of goods exported, which was disallowed in the first round to the extent of Rs.1,70,28,337/- for the reason that the assessee had not received the export consideration within six months from the end of the financial year ,which was a condition necessary for claiming deduction u/s 10B of the Act. The ITAT had restored the matter to the Assessing Officer in the light of the provisions of Section 155(11A) of the Act. In the second round before the Assessing Officer and even before the ld. CIT(A), the contention of the assessee remained that the goods exported to the said tune of Rs.1.70 crores had returned back in the next year i.e. in FY 2007-08 pertaining to AY 2008-09. The claim of the assessee was that the return of these goods had been accounted for in the books of the assessee for that year, reducing export sales to that year, resulting in lesser claim of deduction u/s 10B to the said extent. Thus, as a consequence, there was no double deduction claimed by the assessee on account of the sale of exported goods to the tune of Rs.1.70 crores since the impact of its return had been accounted for in AY 2008-09 by the turnover being reduced to that extent in the said year. Both the Assessing Officer and the ld. CIT(A), noting the above submissions of the assessee, held that since undeniably and admittedly the export consideration relating to the sale of exported goods to the tune of Rs.1.70 crores had not been received in the impugned year, the assessee had, therefore, been rightly denied deduction u/s 10B of the Act on the said

turnover. The CIT(A) further directed the Assessing Officer to give the consequential effect of the return of these goods accounted for in the subsequent year after verification of the claim of the assessee that they were so returned in the subsequent year.

15. Before us, the ld. Counsel for the assessee reiterated the contentions made before the lower authorities that, admittedly, the export turnover with respect to the impugned amount of Rs.1.70 crores was not received during the year since the goods were returned in the subsequent year and their return was accounted for in the books of the assessee in the said year. That, as a consequence, it was not a claim of double deduction; that the assessee be allowed deduction therefore, in the impugned year, since its claim in the subsequent year had been reduced to the said extent on account of having accounted for the return of exported goods in that year, or alternatively, if the assessee is not allowed deduction on the impugned export turnover in this year, direction be given to allow the same in the year of receipt of return of these goods.

16 The ld. DR supported the order of the ld. CIT(A).

17. Having heard the contentions of both the parties, we have no hesitation in confirming the order of the ld. CIT(A) upholding the disallowance of deduction u/s 10B of the Act on export sales of Rs.1.70 crores, the sale consideration of which was admittedly not received within six months from the end of the impugned financial year, but the sales was actually returned back in the succeeding year. There is no dispute with regards to the provision of law allowing claim of deduction u/s 10B of the Act only on those goods exported whose sale consideration is received within six months from the end of the concerned financial year. The assessee admittedly having failed to fulfil

this necessary prerequisite, the ld. CIT(A), we hold, has rightly held the assessee not entitled to claim deduction u/s 10B of the Act with respect to the export turnover of Rs.1.70 crores. The alternative claim of the assessee for direction to allow deduction u/s 10B in the year of return of the impugned goods when it is duly accounted for in the books of the assessee, we find, has been adequately addressed by the ld. CIT(A) giving necessary directions in this regard to allow the assessee's claim after due verification of the facts of the return of sale of goods.

In view of the same, ground of appeal No.2 of the assessee is dismissed.

18. Ground of appeal No.3 reads as under:-

> *"3. Addition of provision for doubtful debts and advances while calculating book profit u/s. 115JB of the Act Rs. 50,68,982:*
>
> *3.1 On the facts and in the circumstances of the case and in law, the Ld. CIT (A) grossly erred in confirming the addition of provision for doubtful debts and advances while calculating book profit u/s 115JB of the Act.*
>
> *3.2 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in observing that the Hon'ble High Court of Gujarat in the case of Vodafone Essar Gujarat Limited is yet to adjudicate upon the issue under consideration without appreciating that the larger bench of Hon'ble High Court of Gujarat has already decided the matter in 397 ITR 55, holding that provision for doubtful debts if in nature of write off, should not be added back while computing the book profit.*
>
> *3.3 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the amount of provision of doubtful debts and advances actually constituted write-off and therefore deduction of same ought to be allowed under the provisions of section 115JB of the Act.*
>
> *3.4 The Ld. CIT(A) has grossly erred in exceeding his jurisdiction by enhancing the scope of directions given by the Hon'ble Tribunal."*

19. The issue pertains to the upward adjustment to be made to the book profits of the assessee on account of provision for bad and doubtful debts in

terms of provision of Section 115JB of the Act read with *clause (i) of Explanation* to the said section. In the first round the provision made for bad and doubtful debts amounting to Rs.50,68,982/- was added by the AO to the book profits of the assessee for the purposes of paying tax thereon u/s 115JB of the Act. The assessee contested this adjustment and remained unsuccessful before the ld. CIT(A). However, the Tribunal, in the first round, restored the matter to the file of the Assessing Officer for fresh consideration after considering the decision of the larger bench of the Hon'ble Gujarat High Court in the case of Vodafone Essar Gujarat Limited. During the pendency of the proceedings in the second round before the Assessing Officer, the case of Vodafone Essar Gujarat Ltd (supra) was stated to be pending before the Hon'ble jurisdictional High Court and the Assessing Officer accordingly kept the matter in abeyance for want of judgment in the said case. Before the ld. CIT(A) also the judgement of the full bench of the Hon'ble jurisdictional High Court was noted to be pending; therefore, instead of keeping the issue pending for adjudication, he followed the order of his predecessor, and thereby confirmed the addition made to the book profits of the assessee of the provision of bad and doubtful debts amounting to Rs.50,68,982/-.

20. Before us, the ld. Counsel for the assessee contended that the issue has since been decided by the full bench of the Hon'ble jurisdictional High Court in the case of CIT Vs. Vodafone Essar Gujarat Limited, [2017] 397 ITR 55 (Gujarat). Copy of the order was placed before us; and it was pointed out there from that the Hon'ble Gujarat High Court in the full bench decision had held that the provision of bad and doubtful debts, *per se,* would not be added back to the book profits of the assessee in terms of *clause (i)* of the *Explanation* to Section 115JB of the Act. That if an assessee debits the provision to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an

assessee debits `provision for doubtful debt' to the profit and loss account and makes a corresponding credit to the `current liabilities and provisions' on the liabilities side of the balance-sheet, then it would constitute a provision for doubtful debt liable for adjustment to the Book Profits in terms of Clause(i) to the Explanation to the section. Our attention was drawn to paragraph no. 23 of the order as under:-

> *"23. By way of culmination of above judicial pronouncements and statutory provisions, the situation that arises is that prior to the introduction of clause(i) to the explanation to section 115JB, as held by the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra), the then existing clause (c) did not cover a case where the assessee made a provision for bad or doubtful debt. With insertion of clause (i) to the explanation with retrospective effect, any amount or amounts set aside for provision for diminution in the value of the asset made by the assessee, would be added back for computation of book profit under section 115JB of the Act. However, if this was not a mere provision made by the assessee by merely debiting the Profit and Loss Account and crediting the provision for bad and doubtful debt, but by simultaneously obliterating such provision from its accounts by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year showing the loans and advances on the asset aside of the balance sheet as net of the provision for bad debt, it would amount to a write off and such actual write off would not be hit by clause (i) of the explanation to section 115JB. The judgment in case of Deepak Nitrite Ltd. (supra) fell in the former category whereas from the brief discussion available in the judgment it appears that case of Indian Petrochemicals Corpn. Ltd. (supra), fell in the later category."*

21. The ld. Counsel for the assessee, therefore, stated that as per the decision of the full bench, if the provision for bad and doubtful debt was reduced from the debtor's balance in the balance-sheet, it had to be treated as a write off of debt and not provision and, therefore, could not be added back to the book profits in terms of *clause (i) of Explanation* to Section 115JB of the Act. Having stated so, he drew our attention to the Audited Balance-sheet of the assessee for the impugned year placed before us at paper-book page nos.

16-41. Our attention was specifically drawn to the Schedule-9 of Current Assets revealing the debtors' balances at page No.32 of the paper-book. It was pointed out there from that the provision for doubtful debts had been reduced from the debtor's balance. Thus, the ld. Counsel for the assessee contended that the case of the assessee was squarely covered by the decision of the full bench of the Hon'ble jurisdictional High Court in the case of Vodafone Essar Gujarat Limited (supra), according to which the provision for bad and doubtful debts having been netted/reduced from the debtor's balance appearing in the balance-sheet, the same need not be added back to the book profit of the assessee u/s 115JB of the Act.

22. The ld. DR fairly agreed with the ld. Counsel for the assessee that the issue was covered in favour of the assessee by the decision of the full bench of the Hon'ble jurisdictional High Court in the case of Vodafone Essar Gujarat Limited (supra).

In view of the same, we have no hesitation in holding that the provision for bad and doubtful debts amounting to Rs.50,68,982/- are not to be added to be book profit of the assessee for the purposes of Section 115JB of the Act.

Ground of appeal No.3 of the assessee is accordingly allowed.

23. In effect, the appeal of the assessee i.e. ITA No. 109/Ahd/2020 for AY 2006-07 is partly allowed.

ITA No. 110/Ahd/2020 : AY 2007-08 Assesses Appeal

24. Ground of appeal No.1 is general in nature and, therefore, does not require any adjudication.

25. Ground of appeal No. 2 reads as under:-

> *"2 Reduction of unrealized export proceeds from export turnover for the purpose of deduction under section 10B - Rs. 6,35,631/-*
>
> *2.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the reduction of the export turnover for computing deduction under section 10B by Rs. 5,54,142/- without appreciating the fact that the goods were returned in next financial year and were reduced from sales while computing deduction under section 10B.*
>
> *2.2 The Ld. CIT(A) grossly erred in confirming the reduction of the export turnover by Rs. 81,489/- for computing deduction under section 10B without appreciating the facts that the said amount was written off by the Appellant in the next financial year.*
>
> *2.3 The Ld. CIT(A) grossly erred in confirming the reduction of the total export turnover for computing deduction under section 10B by doubting the genuineness of the transaction without appreciating that particular transaction cannot be questioned merely on basis of non-production of factual details.*
>
> *2.4 The Ld. CIT(A) has questioned the transaction without appreciating that the accounts of the Appellant Company have been duly confirmed, certified and audited by the Auditors.*
>
> *2.5 The Ld. CIT(A) has grossly erred in exceeding his jurisdiction by enhancing the scope of directions given by the Hon'ble Tribunal."*

26. It was common ground and the issue raised in the above ground was identical to that raised in the assessee's appeal for AY 2006-07 in Ground No.2 of ITA No.109/Ahd/2020 dealt with by us above . Our decision rendered therein at paragraph No.17 of the order above will squarely apply to this ground, following which we confirm the order of the ld. CIT(A) upholding the disallowance of deduction u/s 10B on the export turnover of Rs.6,35,631/- which were admittedly not realized within six months of the impugned year, but were returned back in the succeeding years.

Ground of appeal No.2 of the assessee is, therefore, dismissed.

27. Ground of appeal No.3 reads as under:-

> *"3. Provision for Leave Encashment under section 43B - Rs. 1,83,33,509/-*
>
> *3.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not allowing provision for leave encashment amounting to Rs. 1,83,33,509/-.*
>
> *3.2 The Assessing Officer as well as Ld. CIT(A) by confirming the disallowance of provision for leave encashment, have grossly erred in disregarding the directions given by the Hon'ble Income tax Appellate Tribunal ('Tribunal') that the issue is to be decided afresh in light of decision of Hon'ble Supreme Court in the case of Exide Industries Limited."*

28. The issue relates to the disallowance made of the provision for leave encashment of Rs.1,83,33,509/- on account of the same having not been paid during the year under consideration, u/s 43B of the Act.

29. In the first round, the ITAT had restored the issue to the Assessing Officer to decide the same in the light of the decision of the Hon'ble Apex Court in the case of Exide Industries Ltd, where the matter was pending for adjudication. Before both the Assessing Officer and the ld. CIT(A), the decision of the Hon'ble Apex Court in the case of Exide Industries Ltd. (supra) still remained pending. The ld. CIT(A), therefore, to be safe and keeping the interest of the Revenue, confirmed the order of his predecessor upholding the disallowance of provision for leave encashment remaining unpaid amounting to Rs.1.83 crores.

30. Before us, the ld. Counsel for the assessee fairly agreed that the Hon'ble Apex Court in the case of Union of India Vs. Exide Industries Ltd., [2020] 425 ITR 1 (SC), has decided the issue against the assessee ruling that the leave encashment will be allowed as deduction only on payment of the same in terms of provision of Section 43B of the Act.

In view of the above admission of the ld. Counsel for the assessee, we see no reason to interfere in the order of the ld. CIT(A) confirming the disallowance of leave encashment u/s 43B of the Act amounting to Rs.1,83,33,509/- .

Ground of appeal No.3 is accordingly dismissed.

31. Ground of appeal No.4 reads as under:-

"4. Disallowance u/s 14A read with rule 8D – Rs.1,48,94,208/-:

4.1 'Value of investment' in case of investment in partnership firms:

4.1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the action of the Ld. AO to consider the balance in partners current account for the purpose of computing disallowance u/s. 14A read with rule 8D of the Income tax Rules, 1962 ('the Rules') in relation to investment in the partnership firm.

4.1.2 The Ld. CIT(A) failed to appreciate that it is only the fixed capital contributed in partnership firm which can be considered as 'value of investment for the purposes of computing disallowance u/s. 14A read with rule 8D.

4.1.3 The Ld. CIT(A) grossly erred in confirming the action of the AO to consider balance in partners current account without appreciating that the interest of the Appellant in the partnership firm was created pursuant to the initial contribution of capital in the fixed capital account.

4.1.4 The Ld. CIT(A) failed to appreciate that considering balance reflected in current account of partnership firm for the purpose of computing disallowance u/s. 14A read with rule 8D would result into absurdity and several discrepancies.

4.2 No disallowance in relation to investments from which no exempt income is earned.

4.2.1 The ld. CIT(A) grossly erred in confirming the action of Ld. AO to make disallowance under Section 14A in respect of investments other than investment in partnership firm Sun Pharmaceuticals Industries.

4.2.2 The Ld. CIT(A) failed to appreciate that the Ld. AO grossly erred in computing disallowance in respect of investments from which no exempt income is received."

32. The issue raised in the above ground relates to the disallowance u/s 14A read with rule 8D amounting to Rs.1,48,94,208/-. The disallowance made was in respect of tax exempt income earned from partnership firm in which the assessee had invested i.e. M/s. Sun Pharma Industries (SPI) and M/s. Sun Pharma Exports (SPE). The ITAT, in its order passed in first round before it, had directed the Assessing Officer to compute the disallowance, so far as the administrative expenses were concerned, as per Rule 8D of the Income-Tax Rules, 1962 read with Section 14A of the Act. The Assessing Officer computed the disallowance to be Rs.1,48,94,208/-, though as per the assessee's working submitted to the Assessing Officer the same worked out to Rs.4,29,691/-. The difference in the two working was on account of the fact that the assessee had considered only the portion of the investments made in fixed capital of the partnership firm and excluded the portion reflected as current capital while computing the disallowance @ 0.5% of the average of investments made by the assessee in the said firm during the year. The Assessing Officer, on the other hand, had considered both the fixed capital and current capital investment for the said purpose. The ld. CIT(A) also had dismissed all contentions made by the assessee for considering only the fixed capital investment made for the purpose of computing the disallowance as per Rule 8D of the IT Rules, 1962. His findings in this regard are at paragraph Nos. 7.1 to 7.2 of his order as under:

> *"7.1. My predecessor has certified documents made by AO from the plain reading of the order of the tribunal. There is clear mandate to disallow @ 0.5% as administrative expenses under Rule 8D(iii) The AR argued that Rule 8D(iii) requires to be computed on average investment. If it is so, then the average investment has to be half of sum of opening and closing investment. The AR's arguments that only actual capital needs to be considered as investment cannot fit into the intention of tribunal while directing the AO to consider Rule 8D(iii) so far administrative expenditure is considered. The AR could not show in its own balance sheet as to where the profit from both the firms are taken as "receivables" and subsequently reflected in P/L. Once that*

is not the case then entire profit earned by the firm stand exempt u/s 10(2A) without paying any tax. Admittedly, both the firms enjoying special deduction under Chapter-VIA of the Act. If AR's logic is adopted then on one hand neither the firm would pay any tax nor the partner. Obviously, no businessman shall invest its money in any firm for no profit. Of course, interest expenditure has already been calculated by the AO. Further relief not at all required in this case. The AO has rightly calculated average value of investment taking fixed capital and current capital account of both the firm. SPI and SPE.

7.2 Adjoining argument of the AR is that the appellant has rights on the balance reflected in the current account and share of interest is earned year on year on fixed capital hence value of investment should be taken as fixed capital. However, the AR's argument is not convincing. If value of investment is taken as fixed capital, then administrative expenses would be same in each year. In other words, till the firm is dissolved, administrative expenses under rule 8D should be constant because fixed capital remains the same. The AR being very qualified Chartered Accountant agreed that administrative expenses year on year cannot be constant. It is impossible under commercial/business prudence. Legislature has enacted Rule 8D (iii) with an intention to disallow same expenditure to safeguard the interest of the revenue. Neither the AO nor the CIT (A) has power to deviate from that rule.

The Hon'ble Supreme Court in the case of SBI, Patiala (Supra) held that investment made even for strategic purposes in its AE attract section 14A r.w. Rule 8D. The intention of the assessee hardly makes any difference. Given the facts of the case, I do not find any infirmity in the AO's action. Ground No.3 is accordingly, dismissed."

33. Before us, the ld. Counsel for the assessee emphasized that it is only the investments made in fixed capital of the partnership firm of the assessee by the assessee which is to be considered for computing the disallowance as per Rule 8D of the IT Rules, 1962 read with section 14A of the Act. For the said purpose, his argument was that the capital of a partnership firm by way of fixed capital and current account capital were of different nature, and it is only the fixed capital which qualified as investment; the amount kept in current capital account related to whatever was due to the partners by way of interest, remuneration or otherwise which the partners had not taken from the firm. He referred to Section 48 and 13 of the Partnership Act to point out

that even the Partnership Act recognizes the two sets of capital to be different. The ld. DR, however, relied on the order of the ld. CIT(A).

34. We have heard both the parties. The solitary issue for adjudication before us is whether for the purpose of computing the disallowance of expenses u/s 14A in accordance with the formula provided in Rule 8D of the Income Tax Rules, 1962, the investments in partnership firm to be considered in the said formula are to constitute only the fixed capital investment and not the investment reflected in the current capital account.

34.1 We are not convinced with the contentions made by the ld. Counsel for the assessee. Undeniably, the amounts reflected in the fixed capital account and the current capital account are both capital accounts only. Their nature is the same, being by way of capital accounts. The only difference is that while the amount in the fixed capital account remains fixed with no frequent fluctuation in the same, that reflected in the current capital account shows frequent movement by way of addition and reduction on account of amounts being added to it by way of profits, interest or remuneration or any other amount earned by the partner and reduced on account of withdrawals made therefrom. It is basically the volatility of the capital account which is different in the two sets of accounts, but their nature is the same, i.e. reflecting the capital contribution of the different partners in the partnership firm. If that were not so and the amount reflected in the current capital account was not by way of capital, there was no occasion to name it as capital account. Besides, ld. Counsel for the assessee has not pointed out any distinction in the Partnership Act to the effect that the amounts shown in the current account have any priority in payments over the amounts reflected in the fixed capital account. The treatment of both appears to be at par with the partners eligible to the same, on settlement of accounts between the partners, to the

extent of residue remaining in the partnership firm to the extent of their capital contribution. Section 48 of the Indian Partnership Act, to which the ld. Counsel for the assessee drew our attention, nowhere makes any distinction in this regard with respect to the payment of amounts outstanding in current capital account and fixed capital account on the settlement of accounts between the partners. For the sake of clarity, the said section is being reproduced hereunder:-

> *"48. Mode of settlement of accounts between partners*
>
> *In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: --*
>
> *(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.*
>
> *(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:--*
>
> *(i) in paying the debts of the firm to third parties;*
>
> *(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;*
>
> *(iii) in paying to each partner rateably what is due to him on account of capital; and*
>
> *(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."*

35. As is evident, Section 48, clause (b), sub-clause (iii) states that on settlement of accounts between partners, the assets of the firm are to be applied in paying the debts of the firm to the third parties; thereafter paying partners what is due to them for advances other than capital and then paying the partners rateably what is due to them on account of capital. There is no distinction made by Section 48 between the amount to be paid to the partners

on account of current capital account and fixed capital account. It is only any amount paid by partner to the firm as **an advance as distinguished from capital** which has priority of payment over the amount to be paid to partners as capital. We noted no distinction made between the two sets of capital account in section 13 of the partnership Act also. Therefore, even as per the Partnership Act, there is no distinction between the current capital account and fixed capital account. As rightly pointed by the ld. CIT(A), the assessee has never reflected the amount in the current capital account "as receivable". On the contrary, the same is reflected as current capital, i.e. part of capital account only, to be construed as capital contributed by the partner in the firm. In view of the same, we have no hesitation in confirming the order of the ld. CIT(A) that the computation of disallowance of administrative expenses as per Rule 8D of the Income-Tax Rules, 1962 read with Section 14A of the Act is to be made after taking into consideration both the investment made by the assessee in the fixed capital and current capital of the firm. The disallowance, therefore, made by the Assessing Officer in accordance with the said formula amounting to Rs.1,48,94,208/- is accordingly confirmed.

Ground of appeal No.4 raised by the assessee is, therefore, dismissed.

36. Ground of appeal No.5 reads as under:-

"5. Addition on account of Corporate Guarantee provided to Associated Enterprise ('AE') - Rs. 49,48,000/-

5.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not deleting transfer pricing adjustment on corporate guarantee provided by Appellant to its AE's amounting to Rs. 39,48,000/-.

5.2 The Assessing Officer as well as Ld. CIT(A), by confirming the addition on account of corporate guarantee provided to AE, have grossly erred in disregarding the directions given by the Hon'ble Tribunal that the issue is to be decided afresh in light of decision of Hon'ble Gujarat High Court in the case of Micro Inks Limited."

37. The issue relates to the addition made to the Arm's Length Price of International Transaction as Corporate Guarantee on account of upward adjustment made to the tune of Rs.39,48,000/-- Corporate Guarantee having been provided by the assessee to its Associated Enterprise Sun Pharmaceuticals Industries Inc. and Sun Pharmaceuticals Bangladesh Ltd.

38. In the first round, the issue was restored back by the ITAT to the Assessing Officer to be decided in the light of decision of the Hon'ble jurisdictional High Court which was seized with an identical issue in the case of Micro Inks Ltd. in Tax Appeal No. 507 of 2016. During the pendency of the matter before the Assessing Officer and the ld. CIT(A), the decision of the Hon'ble jurisdictional High Court in the case of Micro Inks Ltd (supra) was noted to be still pending. The ld. CIT(A), therefore, confirmed the adjustment made by the TPO to the international transaction of corporate guarantee amounting to Rs.39,48,000/- keeping the interest of Revenue in mind.

39. Before us, the ld. Counsel for the assessee stated that the issue has been decided against the assessee by the Hon'ble Madras High Court in the case of Principal Commissioner of Income-tax-5, Chennai Vs. Redington (India) Ltd., [2021] 430 ITR 298 (Madras), categorically holding the provision of guarantees to be in the nature of international transactions and adjustment being necessitated for guarantee commission therefore. In view of the same, we see no reason to interfere in the order of the ld. CIT(A) confirming the addition made to the Arm's Length Price of Corporate Guarantee amounting to Rs.39,48,000/-.

Ground of appeal No.5 of the assessee is accordingly dismissed.

40. Thus, the appeal of the assessee in ITA No. 110/Ahd/2020 for AY 2007-08 is dismissed.

ITA No. 111/Ahd/2020 : AY 2008-09

41. Ground of appeal No.1 is general in nature and, therefore, does not require any adjudication.

42. Ground of appeal No. 2 reads as under:-

> *"2. Reduction of unrealized export proceeds from export turnover for the purpose of deduction under section 10B - Rs. 67,216/-*
>
> *2.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the reduction of the export turnover for computing deduction under section 10B by Rs. 67,216/- without appreciating the fact that the goods were returned in subsequent financial year and were reduced from sales while computing deduction under section 10B.*
>
> *2.2 The Ld. CIT(A) grossly erred in confirming the reduction of the total export turnover for computing deduction under section 10B by doubting the genuineness of the transaction without appreciating that particular transaction cannot be questioned merely on basis of non-production of factual details.*
>
> *2.3 The Ld. CIT(A) has questioned the transaction without appreciating that the accounts of the Appellant Company have been duly confirmed, certified and audited by the Auditors.*
>
> *2.4 The Ld. CIT(A) has grossly erred in exceeding his jurisdiction by enhancing the scope of directions given by the Hon'ble Tribunal.*
>
> *2.5 Without prejudice to the above, the Ld. CIT(A) grossly erred in not directing the Ld. AO to consequently enhance the deduction in the subsequent year when the goods have been returned."*

43. It was common ground and the issue raised in the said ground was identical to that raised by the assessee in its appeal for AY 2006-07 in ITA No. 109/Ahd/2020 in Ground No.2, which was been dealt with by us above in our order. Our decision rendered therein at paragraph No.17 of order above will squarely apply to this ground, following which we uphold the disallowance of deduction u/s 10B on account of export turnover of

Rs.67,216/-, the sale consideration of which was admittedly not received within six months from the end of the financial year, but in fact the sales was returned in the subsequent years.

Ground of appeal No.2 is accordingly dismissed.

44. Ground of appeal No.3 reads as under:-

"3. Provision for Leave Encashment under Section 43B – Rs.39,98,673/-
3.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not allowing provision for leave encashment amounting to Rs.39,98,673/-.

3.2 The Assessing Officer as well as Ld. CIT(A) by confirming the disallowance of provision for leave encashment, have grossly erred in disregarding the directions given by the Hon'ble Income tax Appellate Tribunal ('Tribunal') that the issue is to be decided afresh in light of decision of Hon'ble Supreme Court in the case of Exide Industries Limited."

45. It was common ground that the issue raised in the aforesaid ground was identical to that raised by the assessee in its appeal for AY 2007-08 in ITA No. 110/Ahd/2020 in Ground No. 3, which was been dealt with by us above in our order. Our decision rendered therein at paragraph Nos.28-30 of order above will squarely apply to this ground, following which we confirm the disallowance of leave encashment of Rs.39,98,673/- u/s 43B of the Act.

Ground of appeal No.3 of assessee's appeal is accordingly dismissed.

46. Ground of appeal No.4 reads as under:-

"4. Disallowance u/s 14A read with rule 8D – Rs.2,97,68,071/-:

4.1 'Value of investment' in case of investment in partnership firms:

4.1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the action of the Ld. AO to consider the balance in partners current account for the purpose of computing disallowance

u/s. 14A read with rule 8D of the Income tax Rules, 1962 ('the Rules') in relation to investment in the partnership firm.

4.1.2 The Ld. CIT(A) failed to appreciate that it is only the fixed capital contributed in partnership firm which can be considered as 'value of investment for the purposes of computing disallowance u/s. 14A read with rule 8D.

4.1.3 The Ld. CIT(A) grossly erred in confirming the action of the AO to consider balance in partners current account without appreciating that the interest of the Appellant in the partnership firm was created pursuant to the initial contribution of capital in the fixed capital account.

4.1.4 The Ld. CIT(A) failed to appreciate that considering balance reflected in current account of partnership firm for the purpose of computing disallowance u/s. 14A read with rule 8D would result into absurdity and several discrepancies.

4.2 No disallowance in relation to investments from which no exempt income is earned.

4.2.1 The ld. CIT(A) grossly erred in confirming the action of Ld. AO to make disallowance under Section 14A in respect of investments other than investment in partnership firm Sun Pharmaceuticals Industries.

4.2.2 The Ld. CIT(A) failed to appreciate that the Ld. AO grossly erred in computing disallowance in respect of investments from which no exempt income is received."

47. It was common ground that the issue raised in the aforesaid ground was identical to that raised by the assessee in its appeal for AY 2007-08 in ITA No. 110/Ahd/2020 in Ground No. 4, which was been dealt with by us above in our order. Our decision rendered therein at paragraph Nos.34-35 of order above will squarely apply to this ground, following which we confirm the disallowance made by the Assessing Officer, and confirmed by the ld. CIT(A), u/s 14A read with rule 8D of the IT Rules, 1962 in relation to investment in the partnership firm amounting to Rs. 2,97,68,071/-.

Ground of appeal No.4 of assessee's appeal is accordingly dismissed.

48. Ground of appeal No.5 reads as under:-

> *"5. Addition on account of Corporate Guarantee provided to Associated Enterprise ('AE') - Rs. 23,88,000/-*
>
> *5.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not deleting transfer pricing adjustment on corporate guarantee provided by Appellant to its AE's amounting to Rs23,88,000/-.*
>
> *5.2 The Assessing Officer as well as Ld. CIT(A), by confirming the addition on account of corporate guarantee provided to AE, have grossly erred in disregarding the directions given by the Hon'ble Tribunal that the issue is to be decided afresh in light of decision of Hon'ble Gujarat High Court in the case of Micro Inks Limited."*

49. It was common ground and the issue raised in the said ground was identical to that raised by the assessee in its appeal for AY 2007-08 in ITA No. 110/Ahd/2020 in Ground No.5, which was been dealt with by us above in our order. Our decision rendered therein at paragraph Nos.39 of order above will squarely apply to this ground, following which the addition to the Arm's Length Price of Corporate Guarantee of Rs.23,88,000/- is confirmed.

Ground of appeal No.5 of assessee's appeal is accordingly dismissed.

50. The appeal of the assessee in ITA No. 111/Ahd/2020 for AY 2008-09 is thus dismissed.

ITA No. 112/Ahd/2020 : AY 2009-10

51. Ground of appeal No.1 is general in nature and, therefore, does not require any adjudication.

52. Ground of appeal No. 2 reads as under:-

> *"2. Disallowance u/s 14A read with rule 8D – Rs.4,22,77,759/-:*
>
> *2.1 'Value of investment' in case of investment in partnership firms:*
>
> *2.1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the action of the Ld. AO to consider the*

balance in partners current account for the purpose of computing disallowance u/s. 14A read with rule 8D of the Income tax Rules, 1962 ('the Rules') in relation to investment in the partnership firm.

2.1.2 The Ld. CIT(A) failed to appreciate that it is only the fixed capital contributed in partnership firm which can be considered as 'value of investment for the purposes of computing disallowance u/s. 14A read with rule 8D.

2.1.3 The Ld. CIT(A) grossly erred in confirming the action of the AO to consider balance in partners current account without appreciating that the interest of the Appellant in the partnership firm was created pursuant to the initial contribution of capital in the fixed capital account.

2.1.4 The Ld. CIT(A) failed to appreciate that considering balance reflected in current account of partnership firm for the purpose of computing disallowance u/s. 14A read with rule 8D would result into absurdity and several discrepancies.

2.2 No disallowance in relation to investments from which no exempt income is earned.

2.2.1 The ld. CIT(A) grossly erred in confirming the action of Ld. AO to make disallowance under Section 14A in respect of investments other than investment in partnership firm Sun Pharmaceuticals Industries.

2.2.2 The Ld. CIT(A) failed to appreciate that the Ld. AO grossly erred in computing disallowance in respect of investments from which no exempt income is received."

53. It was common ground that the issue raised in the aforesaid ground was identical to that raised by the assessee in its appeal for AY 2007-08 in ITA No. 110/Ahd/2020 in Ground No. 4, which was been dealt with by us above in our order. Our decision rendered therein at paragraph Nos.34-35 of order above will squarely apply to this ground, following which we confirm the disallowance made by the Assessing Officer, and confirmed by the ld. CIT(A), u/s 14A read with rule 8D of the IT Rules, 1962 in relation to investment in the partnership firm amounting to Rs. 4,22,77,759/-.

Ground of appeal No.2 of assessee's appeal is accordingly dismissed.

54. Ground of appeal No.3 reads as under:-

> *"3. Addition on account of Corporate Guarantee provided to Associated Enterprise ('AE') - Rs. 21,90,400/-*
>
> *3.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not deleting transfer pricing adjustment on corporate guarantee provided by Appellant to its AE's amounting to Rs.21,90,400/-.*
>
> *3.2 The Assessing Officer as well as Ld. CIT(A), by confirming the addition on account of corporate guarantee provided to AE, have grossly erred in disregarding the directions given by the Hon'ble Tribunal that the issue is to be decided afresh in light of decision of Hon'ble Gujarat High Court in the case of Micro Inks Limited."*

55. It was common ground that the issue raised in the said ground was identical to that raised by the assessee in its appeal for AY 2007-08 in ITA No. 110/Ahd/2020 in Ground No.5, which was been dealt with by us above in our order. Our decision rendered therein at paragraph Nos.39 of order above will squarely apply to this ground, following which the addition to the Arm's Length Price of Corporate Guarantee of Rs.21,90,400/- is confirmed.

Ground of appeal No.3 of assessee's appeal is accordingly dismissed.

56. The appeal of the assessee in ITA No. 112/Ahd/2020 for AY 2009-10 is thus dismissed.

ITA Nos. 113 & 118/Ahd/2020 : AY 2011-12 (Cross Appeals)

57. Now we take up the cross-appeals of the assessee and Revenue for the Assessment Year 2011-12.

58. Both the assessee and the Revenue are in grievance with respect to the identical issue of claim of weighted deduction u/s 35(2AB) of the Act on account of expenses incurred in in-house research and development

activities. The Assessing Officer had disallowed the weighted deduction so claimed by the assessee of expenses which were allegedly not certified by the prescribed authority i.e. Department of Scientific and Industrial Research (DSIR) in Form No. 3CL amounting to Rs.27,67,66,000/-. The ITAT, in the first round, had restored the issue back to the Assessing Officer for verification of facts and the ld. CIT(A) in turn in the second round had once again restored the matter back to the Assessing Officer for verification of the claim of expenses directing him to verify the assets register, inspection report of DSIR etc.

59. Aggrieved by the order of the ld. CIT(A), both the assessee and the Revenue are in appeal before us raising the following grounds:-

By Assessee

"Non-deduction of R&D Expenses not approved by DSIR – Rs.27,67,66,000/-

The Ld. CIT(A) grossly erred in not quashing the disallowance carried out by the Ld. AO without appreciating that the time limit to pass an order giving effect to the appeal of CIT(A) has expired.

On the facts and in circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that claim made by the Appellant was to be unconditionally allowed where the Ld. AO failed to pass the order within the time limit prescribed under the Income-tax Act, 1961."

By Revenue

1. Whether on the facts and in the circumstance of the case and in law, the Commissioner of Income Tax(A) was justified in allowing the claim of the assessee u/s 35(2AB) of the Act without appreciating that the expenditure claimed is in excess to what is approved expenditure eligible as per the prescribed authority?

2. Whether on the facts and in the circumstance of the case and in law, the Commissioner of Income Tax(A) was justified in allowing the claim of the

assessee u/s 35(2AB) of the Act without appreciating that exemption provision is subject to strict interpretation and when there is ambiguity the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue (Supreme Court in Civil Appeal No. 3327 of 2007, in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company & Others)."

60. During the course of hearing before us, the ld. Counsel for the assessee contended that it is now settled by various decisions of the Hon'ble jurisdictional High Court, followed by the ITAT, Ahmedabad Bench in several cases, that for the impugned year i.e. AY 2011-12, the DSIR was not required to certify the quantum of expenses incurred by the assessee in in-house development and research expenses and, therefore, the non-approval of expenses by DSIR could not be a ground for refusing weighted deduction to the assessee on expenses so incurred for the specified purpose. Reference was made to the decision of the Hon'ble jurisdictional High Court in the case of Banco Products (India) Ltd. Vs. DCIT, [2018] 95 taxmann.com 132 (Gujarat) and to the decision of ITAT, Ahmedabad Bench in the case of Pharmanza Herbal (P.) Ltd. Vs. DCIT, [2023] 155 taxmann.com 56 (Ahmedabad Trib.). The ld. DR fairly agreed with the same.

61. In view of the above, since the denial of weighted deduction in the present case of Rs.27,67,66,000/- is solely for the reason that the amount was not approved by the DSIR, the disallowance, we hold, is not sustainable in view of the decisions cited by the ld. Counsel for the assessee before us. The disallowance made u/s 35(2AB) of the Act is, therefore, directed to be deleted. The assessee, therefore, succeeds in its appeal while the Revenue's appeal is dismissed.

62. Accordingly, ITA No. 113/Ahd/2020 filed by the assessee is allowed, whereas ITA No. 118/Ahd/2020 filed by the Revenue is dismissed.

63. In the combined result, the appeals filed by the Revenue i.e. ITA Nos. 116, 117 & 118/Ahd/2020 for AYs 2005-06, 2006-07 & 2011-12 and the appeals filed by the assessee bearing ITA Nos. 110 to 112/Ahd/2020 for AYs 2007-08 to 2009-10 are dismissed, whereas the appeal filed by assessee bearing ITA No.109/Ahd/2020 for AY 2006-07 is partly allowed, and the appeal of the assessee bearing ITA No. 113/Ahd/2020 for AY 2011-12 is allowed.

Order pronounced in the open Court on 24th April, 2024 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 24/04/2024

bt*

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

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

आदेशानुसार/BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad