IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.2313/DEL/2022
Assessment Year 2018-19

Mankind Pharma Limited 208 Okhla Industrial Estate, Phase-III Okhla Industrial Estate S.O. Tehkand South East Delhi	Vs.	**DCIT** Circle-1(1)(1) Meerut
TAN/PAN: AAACM9401C		
(Appellant)		(Respondent)

Appellant by:	Shri Gaurav Jain, Adv. Shri Sudarshan Roy, Adv.		
Respondent by:	Shri Rajesh Kumar, CIT (DR)		
Date of hearing:	08	02	2024
Date of pronouncement:	01	05	2024

O R D E R

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal has been filed at the instance of the assessee against the final assessment order dated 28.07.2022 passed under Section 143(3) r.w. Section 144C(13) r.w. Section 144B of the Income Tax Act (in short 'the Act') in pursuance of directions issued by Dispute Resolution Panel (DRP) dated 21.06.2022 relevant to Assessment Year 2018-19.

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

"1. That the assessing officer erred on facts and in law in completing assessment under section 144C(13) read with section 143(3) and 144B of the Income-tax Act, 1961 (the Act') at Rs.808,53,61,917 as against returned income of Rs.7,68,21,64,860.

2. That on the facts and circumstances of the case and in law the order dated 28.07.2022 passed by the assessing officer under section 144C(13), having been passed beyond limitation provided in terms of Section 144C(13) read with section 153(3) of the Act, is illegal being barred by limitation, void ab initio and is liable to be quashed.

3. That the assessing officer erred on facts and in law in making transfer

pricing adjustment of Rs. 21,92,40,676/- in relation to the specified domestic transactions undertaken by the appellant.

3.1 That the assessing officer erred on facts and in law in adding the transfer pricing adjustment made by the TPO to the income of the appellant not appreciating that the addition / disallowance ought to have been restricted to the deduction under section 80IC/80IE of the Act

3.2 That the assessing officer / TPO erred on facts and in law in not appreciating that the assessee being an entrepreneur is engaged in activities such as research and development, brand building and advertising and therefore cannot be selected as the tested party for the purpose of undertaking benchmarking analysis.

3.3 That the assessing officer/TPO erred on facts and in law in not appreciating that the associated enterprises being the simpler of the transacting entities ought to have been selected as the tested party.

3.4 That the assessing officer / TPO erred in facts and in law in selecting functionally different companies as comparable for the purpose of undertaking benchmarking analysis

Re: Disallowance of deduction under section 80G of the Act amounting to Rs. 6,38,13,601/-

4. That the assessing officer erred on facts and in law in making disallowance of Rs. 6,38,13,601 on account of disallowance of deduction under section 80G of the Act holding that expenditure incurred for the purpose of meeting Corporate Social Responsibility requirements is not an allowable expenditure.

4.1 That the assessing officer erred on facts and in law in not appreciating that there is no bar in claiming deduction under section 80G of the Act in respect of donations made as part of CSR expenditure.

Re: Disallowance of Deduction under section 35(2AB) amounting to Rs. 12,01,42,780/-

5. That the assessing officer erred on facts and in law in allowing weighted deduction under section 35(2AB) of the Act at Rs.100,90,68,000 as against Rs.112,92,10,780 claimed by the appellant towards expenditure incurred on scientific research.

5.1 That the assessing officer failed to appreciate that the appellant having approved R&D Centres and having fulfilled the conditions of section 35(2AB) of the Act, is entitled to weighted deduction in respect of the entire gross expenditure incurred on scientific research.

5.2 That the assessing officer erred on facts and in law in allowing deduction under section 35(2AB) of the Act only to the extent of expenditure approved by Department of Scientific and Industrial Research (DSIR) in Form 3CL.

5.3 That the assessing officer erred on facts and in law in not appreciating

that there is no provision under the Act empowering DSIR to approve the quantum of expenditure for the purposes of claiming deduction under section 35(2AB) of the Act.

5.4 That the assessing officer erred on facts and in law in not appreciating that the only requirement for claiming deduction under section 35(2AB) of the Act is that the in-house Research and Development facility is to be approved by DSIR and not for approval of expenses.

6. That on the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under Section 270A of the Act."

3. The assessee has also moved an application under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 dated 08.02.2024 seeking admission of additional ground which read as under:

""Re: Disallowance of Deduction under section 35(2AB) amounting to Rs 12,01,42,780

5. That the assessing officer erred on facts and in law in allowing weighted deduction under section 35(2AB) of the Act at Rs.100,90,68,000 as against Rs.112,92,10,780 claimed by the appellant towards expenditure incurred on scientific research.

5.1 That the assessing officer failed to appreciate that the appellant having approved R&D Centres and having fulfilled the conditions of section 35(2AB) of the Act, is entitled to weighted deduction in respect of the entire gross expenditure incurred on scientific research.

5.2 That the assessing officer erred on facts and in law in allowing deduction under section 35(2AB) of the Act only to the extent of expenditure approved by Department of Scientific and Industrial Research (DSIR) in Form 3CL.

5.3 That the assessing officer erred on facts and in law in not appreciating that there is no provision under the Act empowering DSIR to approve the quantum of expenditure for the purposes of claiming deduction under section 35(2AB) of the Act.

5.4 That the assessing officer erred on facts and in law in not appreciating that the only requirement for claiming deduction under section 35(2AB) of the Act is that the in-house Research and Development facility is to be approved by DSIR and not for approval of expenses."

4. The ld. counsel contended that additional ground so filed are admissible in view of judgment rendered by the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)* and by the judgment of the Hon'ble Delhi High Court in the

case of *Taylor Instrument Co. (India) Ltd. vs. CIT 198 ITR 1 (Del.)* The prayer for admission of additional ground noted above which are not in memorandum of appeal are being admitted for adjudication in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in additional ground are legal in nature for which relevant facts are stated to be emanating from the existing records.

5. The assessee has also filed application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 for admission of additional evidences to support the case built by the assessee before the lower authorities. A paper book (volume 4) dated 04.10.2023 containing additional evidences were sought to be referred and relied upon on its admission by the Tribunal. The additional evidences are stated to be primarily in the nature of invoices and comparative charts / tabulations to justify the execution of transactions of eligible units at ALP. We shall deal the petition for admission of the additional evidences in the subsequent paragraph at appropriate place.

6. Grounds No.1 and 2 are dismissed as not pressed.

7. Ground No.3 and sub-grounds thereto concerns Transfer Pricing Adjustment in relation to Arms' Length Price(ALP) of Specified Domestic Transactions(SDTs).

8. Briefly stated, the assessee-company is engaged in the business of manufacturing of pharmaceutical and healthcare products. The assessee has three manufacturing units at Paonta Sahib- Himachal Pradesh, Unit-I, II and III. Out of the said three units, Unit-II and Unit-III are eligible for deduction under Section 80-IC of the Act, whereas Unit-I is not eligible for any beneficial treatment or deduction under tax laws. Besides, the assessee has another manufacturing unit situated in Sikkim, which is eligible for deduction under Section 80-IE of the Act.

8.1 For the assessment year under consideration, the return filed by the assessee was selected for scrutiny under Section 143(3) of the Act. The

case was referred to the Transfer Pricing Officer (TPO) in terms of S. 92BA r.w.s 80IA(8) & 80IA(10) of the Act for computing Arms' Length Price in respect of Specified Domestic Transactions (SDTs) towards purchase and sale of goods & services, entered into between the units eligible for deduction under Section 80IC/80IE of the Act and other units *inter se* and also other AEs of the assessee entity. The assessee as per its Transfer Pricing Study Report did not separately benchmark the SDTs entered into by the eligible units with the Associated Enterprises (AEs) of the assessee. The Assessee conducted entity level comparison of OP/OR of the assessee-company (combining all units) as a whole and compared it with the operating margins of other comparable companies. Considering the OP/OR/TNM (Transaction Net Margin) of the assessee-company as a whole which amounted to 19.11% as compared to OP/OR/TNM of comparable companies averaging 8.72%, the entire transactions, whether Specified Domestic Transaction or International Transactions were opined to pass the Arms' Length Price test as per the TP Study Report.

8.2 However, on reference to TPO for verification of ALP of Specified Domestic Transaction entered into by the eligible units, the TPO passed order dated 30.07.2021 under Section 92CA(3) of the Act alleging that since the respective eligible units have earned higher profits *vis a vis* median of OP/OR of comparable companies, there was an existence of arrangement between eligible units and AEs which resulted in higher than ordinary profits to eligible units and thus has given rise to excessive deduction under s. 80IC/ 80IE of the Act.

8.3 The TPO after conducting fresh search on comparable companies determined the OP/OR at 11.33% [median of comparable companies selected by the TPO]as against OP/OR of eligible Unit II @ 14.91%; Unit III 38.33% and Sikkim Unit 33.61% reported by the Assessee and consequently quantified adjustment of Rs. 64,34,78,261/- under s. 92CA(3) by invoking Section 80IA(10) of the Act in respect of eligible profit for the purposes of claiming deduction under Section 80IC/80IE of

the Act. The TPO/ AO also observed that the OP/OR of non eligible Unit-I is 5.76% whereas OP/OR of eligible units i.e. Unit-II and Unit-III are 14.91% and 38.33% respectively. The OP/OR of Sikkim unit was found to stand at 33.31%. The TPO thus observed that the assessee's business model has been designed in such a way so as to grant more than ordinary profits to the eligible party and the profits were being actually shifted from non eligible unit and AEs to eligible units.

8.4 The TPO thus concluded that the assessee has unjustifiably claimed higher deduction under Section 80IC/80IE quantified at Rs. 64,34,78,261/- and proceeded to make adjustment under s. 80IA(10) of the Act.

9. Pursuant to the order of the TPO, the AO forwarded a draft of the proposed order of the assessment to the assessee proposing *inter alia* following adjustments.

Details of Transaction	*Amount (in Rs.)*
TP adjustments w.r.t. specified domestic transaction	
Adjustment u/s 92CA(3)/80IA(10)/801C/80IE of the Act	*64,34,78,261*
Ageing of Receivables	*5,72,619*
Other additions/disallowances	
Addition w.r.t. to expenditure incurred on in-house scientific research under section 35(2AB) of the Act	*12,01,42,780*
Disallowance w.r.t. deduction claimed under section 80G of the Act on account of donations given	*638,13,601*
Addition w.r.t. difference in Duty Drawback	*2,18,481*

10. On receipt of the draft order, the assessee filed its objection to such variations with the Dispute Resolution Panel (DRP).

11. Pursuant to reference made by the Assessee, the DRP issued its direction dated 21.06.2022 wherein the view of the TPO that there existed an arrangement between the assessee and its Associated Enterprises (AEs) to shift profit to the eligible units from AEs in order to claim higher deductions was upheld on first principles. The transfer pricing adjustments of SDTs undertaken between eligible units and the

AEs of the assessee were thus carried out based on OP/OR of comparable companies to reduce the claim of eligible deductions. The DRP, on facts, however modified and restricted the proposed adjustments in proportion to the value of Specified Domestic Transactions undertaken by the assessee.

12. In terms of the directions of the DRP, the TPO passed an order giving effect to the DRP direction dated 21.06.2022 vide order dated 21/07/2022 and recomputed the ALP adjustment as per the directions issued. The proposed adjustment was thus brought down from Rs.64,34,78,261/- to Rs.21,92,40,676/-.

13. The AO passed final assessment order dated 28.07.2022 and made additions/disallowances as under:

Details of Transaction	*Amount (in Rs.)*
TP adjustment w.r.t. specified domestic transaction	
Adjustment u/s 92CA(3)/80IA(10)/80IC/80IE of the Act	*21,92,40,676*
Other additions/disallowances	
Addition w.r.t. to expenditure incurred on in-house scientific research under section 35(2AB) of the Act	*12,01,42,780*
Disallowance w.r.t. deduction claimed under Section 80G of the Act on account of donations given	*6,38,13,601*

14. Aggrieved by the adjustments made to the returned income, the assessee preferred appeal before the Tribunal.

15. As regards impugned adjustments to the deductions eligible under s.80IC & s.80IE of Act in terms of section 80IA(10) r.w.s 92CA(3) of the Act, the ld. counsel for the assessee made wide ranging submissions which are broadly enumerated hereunder:

(i) the unit-wise deduction claimed by the respective units of the assessee situated in Himachal Pradesh (available for deduction under Section 80IC) and manufacturing unit situated at Sikkim (eligible for deduction under Section 80IE) during the year under consideration is as under:

Unit	*Total Profit*	*Deduction claimed during the year under consideration*
Unit II; Poanta (@30%)	*Rs. 37,37,59,333/-*	*Rs. 11,21,27,800/-*
Unit-III; Poanta (@30%)	*Rs. 37,36,74,411/-*	*Rs. 11,21,02,323/ -*
Sikkim Unit (@100%)	*Rs. 16,41,98,940/-*	*Rs. 16,41,98,940/-*
Total	*Rs. 91,16,32,684/-*	*Rs. 38,84,29,063/-*

(ii) The aforesaid eligible units have entered into some transactions relating to purchase(mainly raw-material/ packing material etc.) and sale (mainly scrap etc.) with other related Associated Enterprises(AEs) of the assessee company. The summary of unit wise purchase and sale transactions between the deduction seeking units and associated enterprises (AEs) is tabulated as under:

			Figures in Crore(s)
	Sikkim Unit	***Unit –II***	***Unit – III***
Total Sales	*77.53*	*268.42*	*138.73*
Sales to AEs	*0.15*	*17.91*	*0.65*
% of sales to AEs	*0.19%*	*6.67%*	*0.47%*
Total Purchase	*13.28*	*67.85*	*18.50*
Purchase from AEs	*4.38*	*19.65*	*5.99*
% of purchase to AEs	*32.98%*	*28.96%*	*32.39%*

(iii) The assessee did not separately benchmark the SDTs entered into by the eligible units with the AEs of the assessee-company with any specific most appropriate method but conducted entity level comparison of OP/OR of the assessee-company as a whole and compared it with the operating margins of other comparable companies. Considering the OP/OR/TNM Method of the assessee-company as a whole, the profit

margin stands at 19.11% which is far more than the operating margin of comparable companies which stands at an average of 8.72% as computed by the Assessee.

(iv) The operating profits of the respecting eligible units as stated are tabulated below.

Units	*Turnover (Rs. Crores)*	*Operating Profit (Rs. Crores)*	*OP/OR %*
Paonta Unit-II	*268.42*	*40.03*	*14.91*
Paonta Unit-III	*138.73*	*53.17*	*38.33*
Sikkim Unit, Sikkim	*77.55*	*26.06*	*33.31*

(v) The TPO proceeded to make adjustments under s. 80IA(10) on the sole ground that eligible units have reported higher profits compared to Unit-I not eligible for deduction. The TPO in page 9, para 2 of its order observed that since the eligible units have earned higher profits, there existed an arrangement between the eligible units and AEs by implication that resulted in higher profits. The existence of so called arrangement contemplated under s. 80IA(10) was thus supposed and presumed having regard to higher profits by eligible units vis-à-vis non-eligible unit. For holding presumption of 'arrangement' the TPO failed to point out any inaccuracy at the transaction level between eligible units and AEs and whether such transactions were at market price / Arms' Length Price or not.

(vi) As per the mandate of section 80IA(10) of the Act read with first proviso thereto, existence of 'arrangement is a pre-condition before proceeding to make an arm's length adjustment under s. 92BA of the Act.

16. It is at this stage and in this context to canvass & vindicate the

point that the transactions entered into by eligible units with its AEs were at arm length indeed and were quite comparable to contemporaneous prices of similar transactions with non-AEs, an exhorted reference was made to the additional evidences so filed on behalf of assessee. It was submitted that additional evidences are essentially meant to augment its plea of bonafides and probity in the transactions carried out at market price between eligible units and AEs of the Assessee entity.

16.1 The Ld. Counsel paused to contend here that the need to file additional evidences emanate from the purport of findings of the TPO at page 9 of its order. The ld. counsel stoutly pointed out that the additional evidences have been filed with a solemn intent to demonstrate with high quality internal CUP data that the transactions between eligible units and its AEs are at arms length and comparable with the transactions carried out with non AEs/ third parties. Taking the point further, the Ld. counsel contends that it was incumbent on TPO/AO in law to demonstrate existence of so called 'arrangement' with reference to some material to indicate indulgence of the Assessee in any 'arrangement' so as to produce to the assessee more profits than what the assessee might have ordinarily expected to arise from such business. The AO/TPO has miserably failed to discharge its onus in this regard. The Ld. Counsel reiterated that the existence of 'arrangement' under Section 80IA(10) of the Act can not be alleged and presumed solely for the reason that eligible units have earned more profits than non eligible units as wrongly done by the AO/TPO without sanction of law. The AO thus has glaringly failed to discharge its onus while alleging existence of 'arrangement.

16.2 The Ld Counsel valiantly contested that even without the additional evidences, the action of the AO/TPO is outside the bounds of law on the ground of bald supposition of existence of arrangement contemplated under s. 80IA(10) without any corroboration with tangible material. The action of the AO/TPO is dictated by the sole consideration of relatively higher profits reported by the eligible units qua non eligible unit. Presumption of arrangement on such premise is contrary to stated

legal position as enunciated in *CIT vs. Schmetz India P. Ltd. 26 taxmann.com 336(Bom.); PCIT vs. Vedansh Jewels Pvt. Ltd. (2018) 97 taxmann.com 521 (Raj.); CIT vs. H P Global Soft Ltd. 342 ITR 263(Kar.); Honeywell Automation India Ltd. vs. DCIT in ITA no. 287/PUN/2015 order dated 25.02.2015* and many other decisions of the co-ordinate bench of tribunal.

16.3 The Ld. Counsel for the Assessee next submitted that while the onus of existence of arrangement lay upon the revenue, the assessee on its part seeks to blunt any thin suspicion of arrangement by assertively demonstrating arm's length nature of transactions with the help of such additional evidences. The Ld. Counsel submits that the additional evidences placed under Rule 29 of the ITAT Rules will only bring ground realities to the fore and will only testify the arm length nature of transactions by eligible units. The additional evidences merely supports the transaction at market price by the eligible units.

17. Expounding on the petition for admission of additional evidences, the ld. Counsel submitted that for the purposes of Section 92BA r.w. Section 80IA(10) of the Act, the true test is Arms' Length Price of purchase and sales between eligible units and parties in close connection. It is only when the TPO/AO arrives at a finding that transactions of purchase and sales between the eligible units and its AEs are in departure to Arms' Length Price, i.e., the question of any adjustment to profits of eligible units, by applying any TP method, would arise. A reference was made to Section 80IA(8) and s. 80IA(10) of the Act to submit that these provisions require that the profits and gains of an eligible business to be computed as if the transfer of goods or services were made at the market value of goods or services on the date of transfer. As a corollary, what is required to be ascertained is whether the transfer of goods and services between eligible unit and the non eligible unit inter se under s.80IA(8) or with AEs of the assessee under s. 80IA(10) has happened at market price or otherwise. The Ld. Counsel submitted that there is no inter transfer of goods or services between eligible units and non eligible units

and hence section 80IA(8) is neither attracted nor alleged. The transactions of purchase and sale of goods / services between eligible units with AEs of the Assessee entity have however happened albeit in an insignificant proportion. As pointed out, the additional evidences have been filed to demonstrate that transactions with AEs have happened on commercial considerations and at ordinary market price and consequently no breach of Section 80IA(10) of the Act can be perceived.

18. As contended, the TPO also ignored the significant contention of the assessee that each of the eligible unit manufactures different kind of products having different production process and different margins of profits by having different FARs. The TPO continued with the same exercise of conducting comparison of operating profits of eligible units at unit level with operating profits of alleged comparable companies by applying TNM Method. The entire basis of benchmarking conducted by the TPO by comparing profit of eligible unit (instead of entity level) with operating profits of alleged comparable companies is inherently fallacious without fulfilling the test of presence of 'arrangement' as judicially understood, which holds the key for invoking provisions of Section 92BA r.w. Section 80IA(10) of the Act. The ld. counsel thus harped that the additional evidences would merely demonstrate the basic tenet that the transaction between the eligible units, vis-a-vis its AEs are comparable and at Arms' Length and has not resulted in any clandestine profits to eligible units for which deduction has been claimed under Section 80IC/80IE of the Act.

19. The Ld. Counsel adverted to the DRP directions and submitted that the DRP has endorsed the action of the TPO/AO on existence of arrangement between the assessee and its associated enterprises to shift the profits to the eligible units from AEs without making any independent examination of the test of alleged 'arrangement' either. The DRP has acted in a mundane and nonchalant manner as can be seen from para 3.1 and 3.2 of the DRP order wherein it was sweepingly observed that in view of the higher profits declared by eligible units qua non

eligible units, the presence of arrangement i.e. collusion automatically exists. No objective considerations to legal or factual position has been given by the DRP.

20. The Ld. Counsel thus urged for admission of additional evidences for adjudication of the grievance raised in its grounds of appeal.

21. Joining the issue, the ld. CIT-DR for the Revenue strongly raised its objection to the admission of additional evidences at this belated stage before the Tribunal.

21.1 The ld. DR pointed out that Rule 29 does not confer, as a matter of right, any allowance to parties to produce any additional evidence either oral or documentary before the Tribunal. The rules governing the admission of additional evidences are quite narrow and strict in nature. Rule 29 is couched in a negative language to bar the parties to produce the additional evidences before Tribunal. The power to admit additional evidences under Rule 29 is only vested with Tribunal. The Tribunal has a discretion to admit the additional evidences where it requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass order or for any other substantial cause. The discretion to admit the additional evidences is required to be exercised judicially. The ld. DR thus submitted that the assessee at this stage is not entitled in law to render fresh evidence to support its case which has the consequence to make out a new case altogether. An attempt was made to distinguish the judgment delivered in the case of *Sanjay Kumar Singh vs. State of Jharkhand in Civil Appeal No.1760 of 2022 dated 10th March, 2022 (SC)*; *CIT vs. Text Hundred India Pvt. Ltd. in ITA No.2077, 2061 and 2065/2010 judgment dated 14.01.2011* referred to and relied upon by the assesse. A reference was also made to *CIT vs. Smt. Kamal C. Mehboobani, (1995) 214 ITR 15 (Bom); Kanniappan Muriugadoss vs. ITO, (2017) 79 taxmann.com 244 (Chennai Tribunal)* in this regard.

22. In rejoinder, the Ld. Counsel submitted that Rule 29 permits the Tribunal to admit the additional evidences where the test of 'substantial cause' is found to exist. In the present case, the TPO as well as AO proceeded against the assessee without showing existence of 'arrangement'. Such point goes to the root of the matter. The whole addition is a complete non-starter in the absence of fulfillment of such paramount condition. The additional evidences, on the contrary, positively proves absence of 'arrangement'. Notwithstanding, the onus which lay upon the revenue was not discharged, assessee on its part proactively seeks to demonstrate otherwise. The additional evidences provide enunciation of bonafides in the action of Assessee and absence of any arrangement *per se* and non admission thereof may possibly provide misleading results would in turn, led to substantial miscarriage of justice. This is more so where the TPO has made bald allegation of arrangement giving rise to alleged more than normal profits to the eligible units based on a novice comparison of profit margins of eligible and non eligible units [page 9 of TPO order] without taking note of different FARs of such units. The ld. counsel next submitted that it is wrong to contend on the part of revenue that the assessee seeks to make out a new case by changing the stance on benchmarking from TNMM to CUP method with the aid of additional evidences. In this regard, the ld. counsel pointed out that the assessee did not specifically benchmark its SDTs through any specific method in the TP Study Report. Otherwise also, the assessee is entitled to resile from wrong position taken in law and can even choose to change the MAM for TP benchmarking for the first time before ITAT as held in the case of Star India (P) Ltd. vs. ACIT, 151 Taxmann.com 77 (Mum)(SB); Rosoboronservices India Ltd. vs. DCIT, ITA No.7255/MUM/2018. It was contended that in any event CUP is most direct and reliable method and thus most appropriate method for determination of ALP where reasonably comparable data are available.

23. We have heard the rival submissions in length and perused the relevant order passed by the TPO/AO/DRP. The material referred to and

relied upon have also been perused carefully. The contentions on admission of additional evidences filed with reference to Rule 29 of Income Tax (appellate) Tribunal Rules 1963 argued in length, has been simultaneously examined.

24. The adjustment made by the AO under Section 92BA r.w. Section 92CA r.w. Section 80IA(10) is in question which has the effect of reduction of quantum of deduction under Section 80IC/80IE of the Act to the extent of Rs.21,92,40,676/- in controversy.

25. We shall first address ourselves on the admission of additional evidences strongly contested by both sides.

25.1 Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, ostensibly places a bar on the parties to the appeal to produce additional evidences either oral or documentary before the Tribunal. However, the Tribunal is vested with a judicial discretion to allow the production of additional evidences in the following circumstances;

(i) when the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or

(ii) when the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed for any other substantial cause or

(iii) when the Income Tax Authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidences either on points specified by them or not specified by them.

25.2 In this backdrop, we take note of the plea raised on behalf of the assessee that additional evidences filed primarily demonstrate that the transactions between the eligible units and non eligible units / AEs are at arms length and at ordinary market price and therefore, no cause of action arises for invocation of 80IA(10) to allege the existence of any

kind of 'arrangement' fetching more than ordinary profits to the assessee.

25.3 Para 2 page 9 of the order of TPO gathers significance for adjudication of controversy towards Transfer pricing adjustments under challenge as per Ground No. 3 of the Grounds of appeal. The operative para of the order of TPO would be relevant for this purpose.

"In the present case, the point to be noted is that the Assessee is showing excessive profits to claim higher deduction under section 80-1C/80IE of the Act. When two related parties, one of whom is eligible for a profit linked deduction under section 80-IC/80IE of the Act transacts business between them which is not an arm's length, designed in a way to grant more than normal profits to the eligible party, the profits are actually being shifted from the non-eligible party to the eligible party, which then unjustifiably claims higher deduction under section 80-IC/801E. From the above table it can be seen that OP/OR of Unit I (non eligible units) is 5.76% and OP/OR of eligible units (Unit-II is 14.91%, Unit-III is/38.33%, Sikkim Unit is 33.31%). Therefore it is clearly seen that assesse's business model is designed in such a way that to grant more than normal profits to the eligible party, the profits are actually being shifted from the non-eligible party to the eligible party, which then unjustifiably claims higher deduction under section 80-IC/80IE."

25.4 Likewise, the directions of DRP on such observations of TPO is also extracted for easy reference

3.1 The assessee has claimed deduction u/s.80IC/80IE fo the Act. It has three eligible units for claiming the above deductions, namely Unit-II (Paonta Shahib). Unit-III (Paonta Shahib) & Unit-IV (Sikkim). Unit-I (Paonta Sahib) is the non-eligible unit. The TPO has noted as follows:-

S. No.	*Name of Unit*	*OP/OR ratio*
1.	*Unit I (Paonta Sahib) Non-eligible*	*5.76%*
2.	*Unit II (Paonta Sahib) eligible*	*14.91%*
3.	*Unit III (Paonta Sahib) eligible*	*38.30%*
4.	*Unit IV (Sikkim) eligible*	*38.31%*

3.2 In view of the above, the TPO has pointed out that there is an 'arrangement' between the assessee and the AE to shift profit to the eligible units from the non-eligible units."

25.5 The controversy towards TP adjustments and admission of additional evidences has the genesis flowing from the provisions of S. 80IA(10) of the Act which reads as under;

"Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

80-IA. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

...]

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F."

[Emphasis Added]

25.6 The nature of documentary evidence(s) sought to be admitted as additional evidences as per Rule 29 are broadly outlined as under:

- *Copy of purchase invoices showcasing a comparison of product-by-product purchases by eligible units from associated enterprises (AEs) and third parties during the year under consideration.*
- *Copy of a purchase invoice(s) reflecting purchases by the deduction seeking units from the AEs and invoices of sales made by the AEs of same products to third parties.*
- *Copy of the tax invoices for the sale transactions undertaken by the deduction seeking units with the associated enterprises, as well as invoices for further sales of the same products made by the associated enterprises.*

26. For the purposes of adjudication of Ground no. 3 of the appeal towards TP adjustments in controversy, s. 80IA(10) of the Act was adverted and assessee has raised a plea that the TPO has made a bald allegation towards shifting of profits from AEs / non eligible units to the eligible units of the assessee to make unjustifiable claims of higher deductions under Section 80IC / 80IE of the Act by the eligible units of assessee. To arriving at such sweepings conclusions, the TPO has not called for any documents to compare transactions wise details nor

gathered any material in corroboration as self evident from the observations noted in *para 25.4* supra. Mere earning of higher profits by eligible units vis-a-vis other units has been made the basis for allegation of 'arrangement' contemplated under s. 80IA(10) of the Act which is squarely opposed to legal position as echoed in judicial precedents. The transactions with AE by eligible units or transactions of AE with third parties etc. as tabulated in the additional evidence documents manifestly depicts arm length nature of transactions as sought to be demonstrated in the course of hearing. The transactions when compared would show that no perceptible increase in the profits of the eligible units have resulted firstly on account of small *percentage* of transaction of purchase / sale carried out by the assessee with its AEs / non eligible units and thus have no material impact on profitability, secondly the transaction prices are quite comparable with market prices and thirdly in terms of S. 80IA(10) of the Act, the onus lay upon the revenue to prove existence of arrangement which was never discharged. The allegation by TPO/AO/DRP is abstract in nature and has been made solely for the reason that the profits of eligible units are higher than that of non eligible unit as can be seen from para 25.3 and 25.4 extracted above. Adverse inference based on such bald allegation of TPO, endorsed by DRP in a mechanical manner has compelled the assessee to assimilate the data to rebut such bald allegation and discharge the purported onus which was never shifted to Assessee by the revenue while alleging arrangement. The ld. counsel draws a fine distinction and submits that arrangement is a 'cause' and the higher profit is the effect. The high profit must necessarily be the consequence of such arrangement. The onus to establish arrangement is upon the one who alleges so. The ld. counsel submits that on examination of additional evidences filed by Assessee as a proactive measure, it will be apparent that the findings of the TPO which resulted in the impugned additions are contrary to the elementary facts available in the matter. The additional evidences filed are in the form of comparative charts and Invoices showing value of purchases / sales made by the eligible units *qua* comparative transactions carried out

by non AEs etc. The additional evidences attempts to uncover the myth propogated by the revenue and exposes the conceptual flaw in the approach adopted by it. The additional evidences would negate the artificial price distortion to claim higher deductions alleged by revenue without any basis. The assessee thus submits that the Tribunal is fully justified in admitting the additional evidences where it is of the opinion that substantial cause of justice cannot be carried out by ignoring the additional evidences. In the absence of such additional evidences, the Tribunal would be prevented from appreciating the relevant facts in perspective and the substantial cause of justice would be consequently defeated and denied to the assessee. The Assessee contends that the additional evidences merely seek to discharge onus which was never shifted to the Assessee by revenue. As pleaded, a fair comparison of controlled and uncontrolled transactions would be necessary for drawing fair conclusions on the issue.

27. To address the controversy, we firstly affirmatively notice that the legal position for applicability of Section 80IA(10) is the existence of 'arrangement' between the eligible unit and AEs which holds the key and is a condition precedent to trigger the provisions of Section 80IA(10). In the absence of any arrangement, the business transacted between eligible units and its AE do not get covered within the ambit of SDTs defined under 92BA of the Act and eventual Transfer Pricing analysis. It is the plea of the assessee that no efforts were made by the AO to prima facie conclude existence of any arrangement *per se* as called upon by law before making reference to TPO for TP analysis. The existence of arrangement thus goes to the root of the matter of the controversy and unless the existence of arrangement is demonstrated with some evidences, the adjustment made by the TPO would have no leg to stand. Both AO and TPO have clearly proceeded on hypotheses rather than any factual existence and such action of the revenue authorities has caused substantial injustice to the assessee. In the backdrop, while the aforesaid evidences have been brought on record for the first time before the

Tribunal, it is manifest that such analysis of comparative purchases and sales strikes to the root of the matter and are extremely necessary to correctly adjudicate the pertinent issue on existence of 'arrangement' before taking any rational view in matter. It is further plea of the assessee that the additional evidence goes to prove conspicuous absence of any arrangement and the whole basis of reference to TPO and consequent addition by way of TP adjustment is vitiated and unsustainable in law. It is thus the plea of the assessee that to render substantial cause of justice, the Tribunal is not only entitled in law but also under a sacrosanct duty to admit the additional evidences, more so, where the lower authorities have omitted to examine the factual aspect on comparable market value of goods/services on the date of transfer expected of them in law.

28. The ld. counsel contends that it is judicially settled that the presence of comparably higher profit yield attributable to eligible units, would not *ipso facto* lead to a presumption that there inevitably exists an arrangement per se. For such proposition, a reference was made to the judgment delivered in the case of *CIT vs. Schmetz India Pvt. Ltd., (2012) 26 taxmann.com 336 (Bom)* wherein it was held that where the AO has not been able to prove any arrangement between parties which resulted in extraordinary profit, denial of deduction under Section 10A is not permissible. Similar view has been expressed in *Pr.CIT vs. Vedansh Jewels Pvt. Ltd., (2018) 97 taxmann.com 521 (Raj)* along with evidence of arrangement is paramount for such allegation. The ld. counsel also referred to the judgment in the case of *CIT vs. H.P. Global Soft Ltd., 342 ITR 263 (Kar.)* wherein it was *inter alia* observed by the Court that there should be material to indicate that assessee had indulged in an arrangement with other person so as to produce to the assessee more profits than what the assessee might have been ordinarily expected to arise from such business. The ld. counsel also referred to the decision of the Co-ordinate in the case of *Honeywell Automation India Ltd. vs. DCIT in ITA No.287/PUN/2015 order dated 25.02.2015,* wherein it was held

that onus is placed upon the AO to discharge the burden of existence arrangement.

29. On conspectus of the various judgments cited *viz; M/s. Schetmz India India Pvt. Ltd., (2012) 26 taxmann.com 336 (Bom), Pr.CIT vs. Vedansh Jewels Pvt. Ltd., (2018) 97 taxmann.com 521 (Raj); CIT vs. H.P. Global Soft Ltd., 342 ITR 263 (Kar.); Eton Technologies Pvt. Ltd. vs. DCIT, ITA No.1002/PUN/2017 (Pune ITAT); M/s. AB Knowledge Systems v ITO (ITA 894/PUN/2016) (Pune ITAT); ACIT vs. Faurecia Interior Systems India (P) Ltd. (2020) 116 taxmann.com 973 (Pune-Tribunal); Honeywell Automation India Ltd. vs. DCIT in ITA No.287/PUN/2015 order dated 25.02.2015.* Following salient principles emerges on application of provisions of Section 80IA(10) of the Act read with first proviso thereto.

(i) Existence of arrangement between the deduction seeking units and other associated enterprises is a pre-condition for invoking the rigor of section 80-IA(10) of the Act and needs corroboration.

ii) Mere close connection cannot *per se* lead to an inference that there is an arrangement which has resulted into higher profits,

(iii) Extraordinary profits cannot *per se* lead to the conclusion that there is an arrangement between the parties.

(iv) The concept of PLI cannot *per se* be applied to hold that the assessee has earned super normal profits in carrying on its business.

(v) The onus is on Revenue to establish the existence of arrangement on the basis of some material while seeking adjustment in the deduction claimed with the aid of Section 80IA(10) read with proviso thereto.

(vi) If the assessee has demonstrated that the transactions between the eligible unit and AE were carried out at market price, the burden placed on the assessee stands discharged and the burden shifts upon the Assessing Officer to rebut the same.

(vii) The AO has to discharge the burden by proving that the transactions were not at market price, before satisfying the condition of arrangement while making reference to TPO for computation of ALP.

30. On a nuanced consideration of the plea raised on behalf of assessee and counter plea of the revenue, we find force in the stance of the assessee that the TPO/AO has made adjustment under Section 80IA(10) r.w.s 92BA by supposition of existence of 'arrangement' merely on the grounds of comparably higher profits reported by the eligible units vis-a-vis non eligible party. No other basis is discernible. The TPO/AO has compared the profits, unit wise instead of entity level comparison i.e. Single Unified business entity vis-à-vis uncontrolled comparables. The Assessee unequivocally claims non existence of any arrangement which, as observed earlier, is the bedrock for any plausible TP adjustment. The additional evidences appear to bring comparative purchase prices of various products transacted between AEs and non AE by an eligible unit to the fore. Similar is the case with sales carried out AEs vis a vis non AEs. Noticeably, the sales to AEs are insignificant in the context of total sales. The purchases from close connections are also moderate. In such matrix, to dispel the misconception of facts, if any, and to come to any definitive finding on existence of 'arrangement', the admission of additional evidence, in our view, would be paramount.

31. The TPO had no occasion to make any comparative data analysis of the transactions between eligible units and AEs and similar transaction executed by eligible units with non AEs. The TPO has also not taken into account the low *percentage* of such SDTs in the context of the case and hence no significant impact on resultant profits. The assessee, on the other hand, has adverted to tabulations to show that transactions between eligible units and its AE are at ALP indeed. We thus find ostensible merit in plea for admission of additional evidences filed under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.

32. While admitting the additional evidences, yet another angle occur

in our mind. If the documentary evidences filed by way of additional evidences are ignored, it would be rather difficult for revenue to take a rational view towards existence of such arrangement. Hence, the documentary evidences filed for such purposes would be rather be necessary from the perspective of revenue also. The cause of substantial justice also demands admission to arrive at just and fair conclusion.

33. We also advert to address the vehement plea of revenue that a new case is sought be prepared in the garb of additional evidences. The assessee in this regard has also pointed out that no new case has been sought to be built. Section 80IA(10) merely postulates existence of arrangement giving rise to more than normal profits to eligible units resulting in unlawful excessive deductions. The choice of TNMM or CUP as a most appropriate method is relevant only for the transfer pricing analysis and quantification of adjustments. The provisions of section 80IA(10) itself is a nonstarter in the absence of arrangement. We thus see no merit in the plea raised on behalf of the Revenue that by filing such additional evidences, the assessee is seeking to make out a new case of benchmarking from TNMM to CUP method which allegedly runs contrary to TP Study Report in which the assessee has itself taken stance for non applicability of CUP method. Statedly, the assessee, in the instant case, did not specifically benchmark its STDs through any specific method in the TP Study Report and therefore, it would be erroneous to conclude that the assessee is seeking to make out a new case by changing the method of benchmarking from TNMM to CUP method for the first time before the Tribunal. The internal CUP available in the instant case is the most direct and realistic method to evaluate market price of transactions carried with close connections. The additional evidences filed would throw light on the bonafides of such transactions.

34. The Hon'ble Supreme Court in the matter of *Tek Ram vs. CIT (2014) 44 taxmann.com 367 (SC)* has held that documents which are relevant to the case should be looked into by the appellate body. The Hon'ble Delhi High Court in the case of *CIT vs. Text Hundred India Pvt. Ltd., 351 ITR*

57 (Del) and CIT vs. Virgin Securities and Credits (P.) Ltd. (2012) 20 taxmann.com 681 (Del) relied upon on behalf of the assessee have held that the additional evidences which are crucial to the disposal of the appeal and had a direct bearing on the subject matter requires to be taken into account.

35. To conclude, the additional evidences placed under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 stands admitted.

36. On merits, the ld. counsel referred to the additional evidences and contended that firstly; the total sales to AEs in respect of Sikkim units and other eligible units at Paonta Sahib, Himachal Pradesh is miniscule as can be seen from the tabulations made in paragraph 15(ii) supra. Thus, sales to AEs do not have any material impact on the resultant profits derived by the eligible units. Likewise, the purchase from AEs are comparable to similar purchase from non AEs / third parties as demonstrable from the additional evidences. The ld. counsel referred to tabulation/charts of purchases showing comparison of the purchase price of different items with AE and with non AE extracted below to submit that there is no material departure in the purchase price when compared with the quantity and time of purchase etc. is borne in mind. The purchases made with AE and non AE are in the similar range and at times, to a disadvantage of the assessee and has resulted in disadvantaged profit of the eligible units albeit insignificantly.

Entity	*Name of related Concern*	*Nature of transaction*	*As per 10CCB*	*Correction*	*Amount of purchase*
Poant Unit II	*ANM Pharma Private Limited*	*Purchase of product*	*43322738*	-	*43322738*
Poant Unit II	*Pharma Force Lab-II*	*Purchase of product*	*97431*	-	*97431*
Poant Unit II	*Medipack Innovation Private Limited*	*Purchase of product*	*37111100*	-	*37111100*
Poant Unit II	*A To Z Printer*	*Purchase of product*	*21365945*	-	*21365945*
Poant Unit II	*Printman*	*Purchase of product-*	*923195*	-	*923195*
Poant Unit II	*J.K. Print Pack*	*Purchase of product*	*10075239*	-	*10075239*
Poant Unit II	*Pharma Pet Industries*	*Purchase of product*	*5546657*	-	*5546657*
Poant Unit II	*Sirmour Remedies Private Limited*	*Purchase of product*	*33630*	-	*33630*

Poant Unit II	A.S. Packers (Unit-II)	Purchase of product	34510418	-	34510418
Poant Unit II	A.S. Packers	Purchase of product	34510418	22577293	11933125
Poant Unit II	N.S. Industries-Poanta	Purchase of product	6961986	-	6961986
Poant Unit II	N.S. Industries – Unit-II	Purchase of product	28655811	-	28655811
Sub Total	Poanta Unit-II		223114568	22577293	200537275
Poanta Unit III	A To Z Packers	Purchase of product	4205460	-	4205460
Poanta Unit III	A.S. Packers	Purchase of product	376776	-	376776
Poanta Unit III	Medipack Innovation Private Limited	Purchase of product	26484648	-	26484648
Poanta Unit III	Mediforce Health Care Pvt. Ltd.	Purchase of product	160300	-	160300
Poanta Unit III	Pharma Force Lab-Unit II	Purchase of product-	34810	-	34810
Poanta Unit III	Print Man	Purchase of product	421418	-	421418
Poanta Unit III	ANM Pharma Pvt. Ltd.	Purchase of product	63956	-	63956
Poanta Unit III	J.K. Print Packs	Purchase of product	140185	-	140185
Poanta Unit III	JPR Labs Private Limited	Purchase of product	4011250	-	4011250
Sub Total	Poanta Unit III	Purchase of product	35898803	-	35898803
Sikkim	A To Z Packers	Purchase of product	1955058	-	1955058
Sikkim	A.S. Packers Unit II	Purchase of product-	1039068	-	1039068
Sikkim	Copmed Pharmaceuticals Pvt. Ltd.	Purchase of product	41990	-	41990
Sikkim	J.K. Print Packs (Pharma Division)	Purchase of product	683178	-	683178
Sikkim	Medipack Innovations Pvt. Ltd.	Purchase of product	39166844	-	39166844
Sikkim	Pharma Force Lab-Unit I	Purchase of product	357000	-	357000
Sub Total	Sikkim		43243138		43243138
			302256509	22577293	279679216

Mat Code	Mat – Desc	Inv. Vendor	Inv-Vendor Name	RPT	UoM	Qty	Amt	Avg Rate	Min Rate	Max Rate
10000009	Di Sodium Edetate I.P.	0000100060	Sirmour Remedies Pvt. Ltd.	Yes	KG	100.00	28500.00	285	285	285
10000009	Di Sodium Edetate I.P.	0000101761	Kronox Lab Sciences Ltd.	(blank)	KG	650.00	172253.70	265	265	265
10000090	L-Carnitine L-Tartrate	0000102706	ANM Pharma Pvt. Ltd.	Yes	KG	400.00	740001.00	1850	1850	1850
10000090	L-Carnitine L-Tartrate	0000103593	J.K. Prints Packs (Pharma Division)	(blank)	KG	25.00	44500.00	1780	1780	1780
10000110	Pantoprazole Sodium IP	0000105589	JPR Labs Pvt. Ltd.	Yes	KG	600	3900000.00	6500	6500	6500
10000110	Pantoprazole Sodium IP	0000100091	ABS Mercantiles Pvt. Ltd.	(blank)	KG	1100.00	6415002.20	5832	5400	6275
10000117	Povidone IP (K-30)	0000100046	Pharma Force Lab-Unit II	Yes	KG	50.00	29500.00	590	590	590
10000117	Povidone IP (K-30)	0000100112	Nischem International	(blank)	KG	100.00	61000.00	610	610	610
10000376	Alpha Lipoic Acid USP	0000102706	ANM Pharma Pvt. Ltd.	Yes	KG	1000.00	4175805.60	4176	4105	4275
10000376	Alpha Lipoic Acid USP	0000102126	Nischem International Pvt.	(blank)	KG	500.00	2095501.93	4191	4030	4275

			Ltd.							
10000572	Ofloxacin IP	0000102706	ANM Pharma Pvt. Ltd.	Yes	KG	13175.00	25869960.00	1964	1836	2345
10000572	Ofloxacin IP	0000100094	Archit Chemicals Pvt. Ltd.	(blank)	KG	1500.00	2962500.00	1975	1975	1975
10000813	Calcium Carbonate (Fine Powder) IP	0000100046	Pharma Force Lab-Unit II	Yes	KG	455.65	13669.50	30	30	30
10000813	Calcium Carbonate (Fine Powder) IP	0000100097	Clarion Pharmaceuticals Co.	(blank)	KG	33875.00	926175.00	27	27	28
10001213	MCC (Avicel PH-102) Ph. Eur / USNF	0000100038	Mediforce Healthcare Pvt. Ltd.	Yes	KG	250.00	122500.00	490	490	490
10001213	MCC (Avicel PH-102) Ph. Eur / USNF	0000100117	Signet Chemical Corp. Pvt. Ltd.	(blank)	KG	550.00	275657.75	501	490	585
10001287	Microcrystaline Celulose (Avicel PH101) IP	0000100046	Pharma Force Lab-Unit II	Yes	KG	79.40	40494.00	510	510	510
10001287	Microcrystaline Celulose (Avicel PH101) IP	0000100117	Signet Chemical Corp Pvt. Ltd.	(blank)	KG	1000.00	478000.47	478	478	478
11000062	Plain Alu Alu Foil 0.13x139Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	6348.11	2094874.65	330	330	330
11000062	Plain Alu Alu Foil 0.13x139Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	1296.66	434381.10	335	335	335
11000205	Plain Alu Alu Foil 0.13x170Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	6099.61	2012871.30	330	330	330
11000205	Plain Alu Alu Foil 0.13x170Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	6011	2008522	335	335	335
11000235	Plain Alu Alu Foil 0.13x240Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	3455.82	1140418.95	330	330	330
11000235	Plain Alu Foil 0.13x240Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	101.32	33942.20	335	335	335
11000267	Alu Alu Foil 0.13x214Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	1349.66	445387.80	330	330	330
11000267	Alu Alu Foil 0.13x214Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	218.02	73036.70	335	335	335
11000268	Plain Alu Alu Foil 0.13x202Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	1875.25	618832.50	330	330	330
11000268	Plain Alu Alu Foil 0.13x202Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	309.66	103736.10	335	335	335
11000395	Bl. Foil Ptd. REheptin Tab 210x0.025 PS	0000100759	Print Man	Yes	KG	179.09	71909.66	402	400	405
11000395	Bl. Foil Ptd. REheptin Tab 210x0.025 PS	0000102316	Medipack Innovations Pvt. Ltd.	(blank)	KG	199.63	83644.97	419	419	419
11000420	Plain Alu Alu Foil 0.13x222Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	8903.56	2938174.80	330	330	330
11000420	Plain Alu Alu Foil 0.13x222Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	1080.33	361169.25	335	335	335
11000480	Plain Alu Alu Foil 0.13x216Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	4445.55	1499692.44	337	330	386
11000480	Plain Alu Alu Foil 0.13x216Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	356.12	118528.05	333	330	335
11000517	Plain Alu Alu Foil 0.13x248Mm	0000102316	Medipack Innovations Pvt. Ltd.	Yes	KG	4611.08	1522065.39	330	330	330
11000517	Plain Alu Alu Foil 0.13x248Mm	0000102198	ICM Plastics Pvt. Ltd.	(blank)	KG	709.79	234230.70	330	330	330
20007791	LDPE Poly Bag 24"X36"	0000100666	A To Z Packers	Yes	KG	10332.63	1498231.35	145	145	145
20007791	LDPE Poly Bag 24"X36"	0000104206	Satyam Stationery & General Mart	(blank)	KG	25.00	3050.00	122	122	122

37. On being inquired by the bench, the ld. counsel strenously took

us through the various items of purchase and corresponding purchases from unrelated entities or such purchases made by AEs etc. to demonstrate that the supply rate by the AEs to eligible units and the third party are broadly in the similar range and having no real impact on the so called extraordinary profits of the eligible unit on account of SDTs. The ld. counsel thus asserts that all the transactions of purchase and sale undertaken by the eligible units with AEs are at market price / ALP and therefore, in the absence of any arrangement giving rise to any abnormal profits to the eligible units, invocation of Section 80IA(10) r.w. Section 92BA of the Act is wholly unwarranted and consequently the adjustment made under transfer pricing provisions in the final assessment order is contrary to the position of law and factual matrix and thus requires to be reversed.

38. In essence, it is the case of assessee that revenue has merely alleged existence of arrangement to invoke rigours of Section 80IA(10) of the Act merely on the ground that the eligible units have derived higher percentage of profit in comparison to non eligible units. As culled out in the preceding paragraph, in the absence of any material to establish shifting of profit and existence of arrangement, the higher profit derived by eligible unit vis-à-vis unit by itself cannot give rise to any adverse inference of existence of arrangement. The assessee in the instant case has attempted to demonstrate that the transaction between eligible unit and AEs were carried out on market price by producing the bills and tabulations in the shape of additional evidences. As noted in the preceding paragraphs, the primary onus was on the AO to call for such documents as may be considered necessary to scrutinize whether higher profits in eligible units are on account of any arrangement *per se*. The AO has not discharged such onus but has made bald allegation on the grounds of relatively higher profits earned by the eligible units vis-à-vis non eligible units.

39. In the course of hearing, we have been greatly assisted on behalf of the assessee to gather understanding that the transaction with connected

entities are at market price. When seen in totality, we are inclined to agree with the plea of the assessee on first principles that rigours of Section 80IA(10) are not applicable in a case where neither the AO has discharged its onus to establish existence of arrangement nor such arrangement is demonstrable on factual analysis. The findings of the TPO/AO holding existence of arrangement between the eligible units and AEs merely on the basis of higher operating profits of the eligible units cannot be upheld on first principles in the instant case. The assessee has placed additional evidences to rebut the unsupported finding of the TPO/AO to dislodge existence of arrangement and transactions between the eligible units and AEs to be at market price.

40. Hence, to the limited extent of verification of additional evidences, we deem it appropriate to remit the matter back to the file of the AO. The AO shall be at liberty to verify the correctness of the claim of the assessee that transactions of purchase undertaken by the eligible units with its AEs are at ordinary and comparable market price to justify ALP. The assessee shall also be entitled to benchmark transaction of the eligible unit by applying CUP method as most appropriate method to justify lack of any arrangement contemplated under Section 80IA(10) of the Act. To this limited extent, the matter is set aside to the file of the AO. The assessee shall be entitled to adduce such evidences as may be considered expedient to support its plea on comparability of purchase transactions carried out by eligible units with its AE viz. uncontrolled transactions.

41. As regards sale transactions by eligible units with its AEs, we do not consider it necessary to beset with further burden of proof on assessee towards aspects of ALP having regard to nominal percentage of sale transactions carried out with AEs owing to miniscule effect, if any, on the overall profitability when seen in the context.

42. The AO shall pass a reasoned order towards presence of ‘arrangement’ contemplated under Section 80IA(10), if any while

determining the issue. The AO may make reference to TPO for determination of ALP of the controlled transactions as per CUP method in the event the prima facie existence of 'arrangement' is discovered by him in the factual matrix.

43. Ground no. 3 is thus allowed for statistical purposes.

44. Ground No.4 concerns disallowance of deduction under Section 80G of the Act amounting to Rs.6,38,13,601/-.

45. The AO observed that the assessee has claimed deduction to the extent of Rs.6,38,13,601/- under Section 80G of the Act. The AO noted that the assessee has filed the list of mostly private institutions/trust/university to whom the assessee has made contribution during the year under consideration aggregating to Rs.12,76,27,202/- in the computation of income while carrying out the total contribution of Rs.12,87,88,979/- towards Corporate Social Responsibility (CSR) in terms of Explanation-2 to Section 37(1) of the Act. The AO thus observed that the assessee has wrongly claimed deduction of 50% of CSR expenses Rs.12,87,82,979/- under Section 80G of the Act towards outgo/expenses which are otherwise not eligible for business expenses deduction. The AO accordingly denied the claim of deduction under Section 80G of the Act connected to expenses incurred on account of CSR. The DRP endorsed the action of the AO while issuing directions under Section 144C of the Act.

46. The assessee before us submitted that during the financial year under consideration, the assessee has incurred an expenditure of Rs.12,87,83,000/- in aggregate being donations and contributions to various charitable institutions and funds. Such contributions made to implementing agencies for undertaking CSR activities and registered under s. 12A and 80G of the Act, have not been claimed as business expenditure being in the nature of CSR expenses in view of Explanation-2 to Section 37(1) of the Act. Operation of section 37 and section 80G

being mutually exclusive, a deduction of Rs.6,38,13,601/-[being 50% of such contributions] was claimed under Section 80G of the Act which was wrongly disallowed by the Revenue Authorities. The claim under 80G was denied on the ground that such expenditure being in the nature of CSR as per terms of Section 135 of the Companies Act, 2013, and thus not an allowable expenditure under the head 'business and profession' as per Section 37(1) of the Act and hence also not entitled to be covered for deduction under Section 80G of the Act.

46.1 In this context, the ld. counsel submits that there can be no quarrel that as per Explanation-2 to Section 37 of the Act, the deduction towards expenditure incurred on CSR activities referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of 'business or profession'. However, disallowance of such expenses/ outgo in view of stipulations made in section 37 of the Act does not put any fetters on the eligibility under other provisions of the Act viz. Section 80G of the Act. The claim is eligible for deduction under S. 80G unless statutorily prohibited. The ld. counsel contends that there being no bar in law to claim deduction under Section 80G of the Act notwithstanding its ineligibility under Section 37(1) of the Act, the denial of deduction under s. 80G is wholly misconceived and unjustified action.

46.2 The Ld. Counsel submits that section 80G of the Act allows a taxpayer to claim deductions in respect of contributions made to certain charitable Institutions and Funds etc. Further, sub-Section (2)(a) of Section 80G of the Act enumerates Funds to whom contributions are eligible for such deduction.

46.3 Adverting to such list enumerated, the Ld. Counsel points out that Clause (iiihk) and (iiihl) of the Act of sub-section (2)(a) of section 80G of the Act are peculiar and provides for specific instances where CSR expenditure not eligible under s. 37, is also not to be allowed as deduction under s. 80G too. The relevant position of section 80G(2)(a) of

the Act is reproduced hereunder:

> *"(iiihk) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013); or*
>
> *(iiihl) the Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013); or"*

46.4 The learned counsel thus submitted that as corollary to the legislative fiat, save and except cases falling in exceptions under 80G(2)(a)(iiihk) & (iiihl), the assessee is duly eligible for deduction under s. 80G subject to fulfilment of conditions, unhindered by ineligibility under s. 37 of the Act.

46.5 The assessee referred to the decisions rendered by the Co-ordinate Bench in the case of *National Seeds Corporation Limited vs. ACIT, ITA No. 6794/Del/2014; First American (India) Private Limited [ITA No. 1762/Bang/2019; Societe Generale Securities India Pvt. Ltd. [TS-770-ITAT-2023 (Mum)]; Goldman Sachs Services Private Limited [IT(TP) A No. 2355/Bang/2019* to buttress its claim that in the similar facts the claim of deduction on CSR expenses have been allowed under Section 80G of the Act notwithstanding ineligibility for claim for the purposes of deduction under Section 37 of the Act. The ld. counsel thus urged for reversal of the action of the Revenue Authorities.

47. The ld. DR for the Revenue however referred to and relied upon the view taken by the AO and DRP.

48. We have heard the rival submissions. The controversy revolves around the deductibility of donations and contributions to Funds/bodies registered under s. 12A of the Act on the counters of s. 80G of the Act where CSR contributions are not eligible for deduction under s. 37 of the Act.

48.1 We find that the issue is no longer *res integra.* S. 135 of the Companies Act, 2013 read with FAQs dated 25/08/2021 issued by the Ministry of Corporate Affairs GOI (MCA) provides for different modes of incurring CSR expenses. One of the specified modes is ' Contribution to Funds route', which inter alia allows the assessee to make contributions to various funds specified in Schedule VII of the Companies Act. The contributions to such funds, qualified to be in the nature CSR expenses under Companies Act, is not eligible for deduction as business expenditure in view of statutory exclusion carved out by Explanation-2 to Section 37(1) of the Income Tax Act, 1961. However, such exclusion extends only to the extent of computing business income under Chapter IV-D of the Act. As per the scheme of the Act, in the absence of any non-obstante clause, there does not appear to be any bar for the assessee to claim benefit under Section 80G, bracketed under Section VIA of the Act, if such contributions are eligible for deduction otherwise. The exclusions provided in 80G (2)(a)(iiihk) & (iiihl) qua certain specific contributions such as 'Swachh Bharat Kosh' and 'Clean Ganga Fund' rather exhibits the legislative intent loud and clear. Thus on a plain reading, it is evident that the assessee would be ordinarily entitled to deduction on contributions made to funds and bodies registered under s. 12A of the Act regardless of stipulations made in s. 37(1) of the Act barring the exclusion codified in s. 80G(2)(a)(iiihk) & (iiihl). As a corollary to delineations made in the preceeding paragraphs, s. 37 and S. 80G, appear mutually exclusive subject to exceptions provided in sub-clause (2)(a)(iiihk) & (iiihl) of S. 80G of the Act.

48.2 Hence, the exception carved out by way of Explanation 2 to s. 37 (1) prohibiting claim of CSR expenses as business expenditure, by itself, will not serve as any kind of impediment for the purposes of claim of deduction under s. 80G of the Act.

49. The Co-ordinate benches have affirmatively adjudicated the issue as quoted on behalf of the assessee (supra). In consonance with the view taken by the Co-ordinate Benches referred to on behalf of the assessee,

we are inclined to accept the plea raised on behalf of the assessee. The contribution made in question are not shown to be falling in exclusions provided in (iiihk) or (iiihl) of sub-section 2 clause (a) of S. S. 80G of the Act. The action of the Revenue Authorities is thus not sustainable in law. The claim of deduction on CSR expenses on the touchstone of Section 80G is thus allowed.

50. Ground No.4 of the appeal of the assessee is allowed.

51. Ground No.5 and sub-grounds thereto concerns eligibility towards weighted deductions under Section 35(2AB) of the Act.

52. Briefly stated, the assessee incurred a sum of Rs.75,28,07,186/- as expenditure on scientific research on which a weighted deduction of Rs.112,92,10,780/- under Section 35(2AB) of the Act [being 150% of sum incurred] was claimed by raising additional ground under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963. The AO curtailed the claim and quantified the weighted deduction at Rs.100,90,68,000/-. with reference to the approval of expenditure granted by the competent authority i.e. Department of Scientific and Industrial Research (DSIR).

53. The disallowances were made by the AO in the draft order towards deduction under s. 35(2AB) which was however not challenged by the assessee in the proceedings before DRP under s. 144C of the Act. The AO accordingly reinstated the disallowance in the final assessment order to the extent of Rs. 12,01,42,780/-. The assessee has raised additional ground before the Tribunal seeking to challenge the reduction of claim of deduction.

54. The ld. counsel for the assessee submits that as against the claim of weighted deduction of Rs. 1,12,92,10,780/-; such deduction claimed by the assessee was restricted to Rs.100,90,68,000/- by the AO on the ground that DSIR has granted approval of the expenditure incurred quantified at Rs.67,27,12,000/- as against the expenditure claimed to have been incurred by the assessee at Rs.75,28,07,186/-. The AO thus

worked out eligible weighted deduction at 150% of Rs. 67,27,12,000/- and allowed deduction of Rs.100,90,68,000/- under s. 35(2AB) of the Act. In essence, the AO has scaled down the claim of weighted deduction under Section 35(2AB) to the extent of Rs.12,01,42,780/-. [unapproved portion of expenditure Rs. 8,00,95,000 + 50% weight thereon Rs. 4,00,47,500].

55. The Ld. Counsel adverted to tabulation detailing claim of deduction under Section 35(2AB) of the Act for the relevant A.Y. 2018-19 under consideration reproduced hereunder:

Srl. No.	*Details of Scientific Expenditure*	*As per Assessee 'A'*	*As per DSIR 'B'*	*Difference 'C' (A-B)*
1.	*Revenue Expenditure*	*65,29,50,000*	*57,73,93,000*	*7,55,57,000*
2.	*Capital Expenditure*	*9,98,57,000*	*9,53,19,000*	*45,38,000*
3.	*Total:*	*75,28,07,000*	*67,27,12,000*	*8,00,95,000*
4.	*100% deduction u/s. 35(1)(i)/(iv)*	*75,28,07,000*	*67,27,12,000*	*8,00,95,000*
5.	*Weighted deduction @ 50% u/s. 35(2AB)*	*37,64,03,500*	*33,63,56,000*	*4,00,47,500*
6.	*Total:*	*112,92,10,500*	*100,90,68,000*	*12,01,42,500*

56. With reference to such tabulations, the ld. counsel submitted that the aggregate expenditure incurred by the assessee on the scientific research stands at Rs.75,28,07,000/-. The DSIR has however approved the expenditure incurred at Rs. 67,27,12,000/- only. Based on approval at a curtailed figure, the AO, in turn, has recomputed the weighted deduction Rs. 100,90,68,000/- being 150% of the approved expenditure.

56.1 In this regard, the ld. Counsel made two fold submissions.

56.1.1 Firstly, in terms of Section 35(1)(i) r.w. Section 35(1)(iv), expenditure on scientific research being related to the business of the assessee is eligible for business deduction in entirety without any further rider *qua* approval of expenses by DSIR insofar as Section 35(1) is concerned. Whether the expenditure incurred is capital or revenue in nature is also of no consequence. The requirement of approval of expenses by DSIR, if any, is not applicable insofar as aforesaid

provisions of Section 35(1)(i)/(iv) is concerned. Hence, without prejudice, the assessee is entitled to normal deduction of 100% of the expenses incurred under the umbrella of s. 35(1) of the Act without any fetters of approval of DSIR. The quarrel regarding approval of entire expenses by DSIR, if any, can possibly exist only with reference to weighted deduction with reference to Section 35(2AB) of the Act. Hence, the deduction of 100% of the revenue and capital expenditure aggregating to Rs.8,00,95,000/- incurred on scientific research is qualified under Section 35(1)(i)/(iv) without prejudice to the contention towards weighted deduction thereof under Section 35(2AB) of the Act. A reference was made to the decision of the Tribunal in the case of *FDC vs. PCIT, ITA No.1031/Mum/2023 order dated 02.08.2023*. The ld. counsel thus submits that the AO has committed gross error in refusing to grant deduction of Rs.8,00,95,000/- available in law under Section 35(1)(iv) of the Act on the wrong premise of lack of approval of amount eligible by prescribed authority which approval is not necessary in view of judicial fiat. The ld. counsel reiterated that quantification of expenditure by DSIR is not the condition precedent for the purpose of Section 35(1)(i)/(iv) of the Act as long as the facility is approved by DSIR. It is not the case of the AO that such expenditure has not been laid out or expanded for the purposes of scientific research. The ld. counsel also pointed out on facts that the capital expenditure component does not include any expenditure incurred on acquisition of any land or building and therefore, whole of the capital expenditure is allowable under Section 35(1)(i) r.w. Section 35(1)(iv) of the Act. The deduction of the expenditure has been denied under Section 35(1)(i)/(iv) solely due to non approval thereof by DSIR.

56.1.2 Secondly, The main provision of weighted deduction under s. 35(2AB) do not postulate the requirement of quantification of expenditure and approval thereof by DSIR either. The underlying Rules imposing such conditions seek to widen the terms of main provisions and thus not enforceable in law.

57. We advert to first aspect of the issue. Section 35(1) provides for normal deduction in respect of expenditure on scientific research subject to the conditions specified therein. The assessee claims that all the conditions are broadly similar to the eligibility under Section 35(2AB) of the Act and have been fully met to assert claim under s. 35 (1) of the Act. The AO has not tested the claim of expenditure under Section 35(1) and has disallowed the expenditure solely for the reason that such expenditure to the extent of Rs.800,95,000/- has not been approved by the DSIR. As repeatedly echoed in the judicial precedents, the quantification and approval of DSIR is not the condition precedent for the purposes of amount eligible for deduction under s. 35(1) of the Act. We thus see rationale in the plea of the assessee on this score. The disallowance of claim of deduction of Rs. 8,00,95,000 is not justified on the counters of s. 35(1) merely owing to lesser quantification of eligible expenditure by DSIR.

58. We now advert to the second limb of the argument for eligibility of weighted deduction thereon amounting to Rs.4,00,47,500/- under the shelter of Section 35(2AB) of the Act. In a sequel to plea towards claim of deduction under Section 35(1), the ld. counsel for the assessee submitted that the assessee is also eligible for weighted deduction of additional 50% on expenditure incurred at Rs.8,00,95,000/-. The ld. counsel referred to the provision of Section 35(2AB) which deals with weighted deductions and contended that the substantive provision of Section 35(2AB) only prescribe to the extent that the R&D facility should be approved by the competent authority, i.e., DSIR. The section nowhere provides for approval of expenditure by the competent authority *per se*. There is no requirement in the substantive provision that the expenditure also needs to be approved by DSIR for the purpose of claiming deduction of weighted amount if the R&D Centre is approved for this purpose. To buttress such proposition, the ld. counsel relied upon the judgment delivered by the Hon'ble High Courts in the case of *CIT vs. Claris Lifesciences Ltd., (2010) 326 ITR 251 (Guj.); CIT vs. Sandan*

Vikas (India) Ltd., 335 ITR 117 (Del.) and Co-ordinate Bench of Tribunal in the case of *DCIT vs. Force Motors Ltd., (2021) 133 taxmann.com 71 (Pune-Trib.); Minilec India (P.) Ltd vs. ACIT, (2018) 93 taxmann.com 213 (Pune-Trib.); Provimi Animal Nutrition India Pvt. Ltd. vs. PCIT, (2021) 24 taxmann.com 73 (Bangalore-Trib.).*

58.1 Riding on such decisions, the ld. counsel reiterated that once the R&D Centre/ facility stands approved by the prescribed authority, the assessee becomes entitled to benefit of weighted deduction on whole of actual expenses incurred notwithstanding lesser amount approved by prescribed authority. The judgements referred have interpreted the provisions of s. 35(2B) that quantification of expenditure eligible for weighted deduction by prescribed authority is not the requirement of law and an approval of facility thus would sufficiently entitle the Assessee to claim weighted deduction on whole of expenditure incurred towards scientific research.

58.2 The ld. counsel however thereafter fairly referred to substituted sub Rule (7A) of Rule 6 of the Income Tax Rules 1962 which lays down guidelines relating to procedure to be followed pre and post approval of R&D facility by DSIR. The substituted portion of the aforesaid Rule is applicable w.e.f. 01.07.2016 reads as under:

> *"[Prescribed authority for expenditure on scientific research.*
>
> *[(7A) Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely : -*
>
> *(a) The facility should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;*
>
> *(b) The prescribed authority shall furnish electronically its report, -*
>
> *(i) in relation to the approval of in-house research and development facility in Part A of Form No.3CL;*
>
> *(ii) quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form no. 3CL;"*

58.3 With reference to substituted Rule which seeks to insert condition of approval of expenditure incurred on in-house research and development facility, the ld. counsel submitted that such amendment is subservient to main provision and thus cannot override and broaden the bandwidth of the substantive provisions of Section 35(2AB) of the Act. The ld. counsel submitted that the underlying Rules being sub-ordinate to the main provisions, cannot burden the assessee with additional fetters on the substantive conditions enacted in the main statute, i.e., Section 35(2AB) for the present purpose. The ld. counsel submitted that as interpreted by the Hon'ble High Court of different jurisdiction in chorus, the availability of benefit under Section 35(2AB) towards expenditure incurred in relation to R&D facility is not dependent upon the quantification and approval by DSIR. The benefit under S. 35(2AB) would be available on actual expenditure incurred as long as the R & D facility holds the approval of the prescribed authority.

58.4 The ld. counsel thereafter referred to the judgment rendered in the case of *CIT vs. Taj Mahal Hotel, (1971) 821 ITR 44 (SC); CIT vs. Bombay State Transport Corporation (1979) 118 ITR 399 (Bombay)* to submit that it is a cardinal rule of construction that Rules are meant only for the purposes of carrying out the provisions of the Act and Rules cannot be take away what was conferred by the Act or whittle down its effect.

58.5 The ld. counsel thus submitted that the essence of such judgment is that substantive provisions of the statute cannot be modified or diluted through delegated legislation in the form of rules, notification and circulars.

58.6 The ld. counsel also referred to the decision of the Co-ordinate Bench rendered in the case of *USV Pvt. Ltd. vs. DCIT, ITA No.891/Mum/2021 order dated 20.06.2023* to submit that it pertains to AY 2018-19 and thus despite the amendment in Rule 6(7A) coming in force w.e.f. 01.07.2016, the Tribunal followed the order passed in the

assessee's own case for the earlier Assessment years where the amended Rules had not come into force and held that quantification of expenditure by DSIR as provided in Rule 6(7A) is not binding on the AO. The ld. counsel thus sought appropriate relief in the matter.

59. The ld. DR for the Revenue, on the other hand, cited the decision of the Co-ordinate Bench in the case of *Natural Remedies Pvt. Ltd. vs. ACIT, ITA No.704/Bang/2020 order dated 01.01.2021* to counter the eligibility claim of the assessee under Section 35(2AB) of the Act.

60. In rejoinder, the ld. counsel submitted that the aforesaid decision in the case of *Natural Remedies (supra)* relied upon by the Revenue actually helps the case of the assessee. The ld. counsel referred to paragraph 8.5 of the aforesaid order and submitted that the Co-ordinate Bench has observed therein that amended Rule 6(7A) affects the substantive right vested under Section 35(2AB) of the Act due to insertion of conditions towards quantification of expenditure by DSIR in terms of amended Rule and therefore, the provisions of Section 35(2AB) would prevail over amended Rules.

61. We have carefully considered the rival submissions on the eligibility of weighted deduction under Section 35(2AB) of the Act in the context of the case.

62. Section 35(2AB), in a plain language, states that where a company engaged in prescribed business incurs any expenditure (excluding expenditure on certain specified capital asset), on in-house research and development facility as approved by the prescribed authority, then such company shall be entitled to weighted deduction of expenditure so incurred. Rule 6(7A) lays down procedure and conditions for eligibility of deduction under Section 35(2AB). One of the conditions prescribed is towards quantification of expenditure by the prescribed authority. The substituted provisions of Rule 6(7A) *inter alia* provides for approval of in-house research and development facility in Part-A of form 3CL

prescribed for this purpose. Besides, in terms of substituted Rule 6(7A) inserted w.e.f 1-6-2016, the prescribed authority shall also quantify the expenditure incurred on in-house research and development facility by the company for the previous year which is eligible for weighted deduction under Section 35(2AB) of the Act as per part-B of Form 3CL. Admittedly, the approval of the prescribed authority is not available in respect of expenditure incurred to the tune of Rs.800,95,000/- in contention. Therefore, weighted deduction of 50% on such amount which works out to Rs.4,00,47,500/- is not eligible for deduction owing to non-compliance of amended Rule 6(7A) of the Income Tax Rules insofar as A.Y. 2018-19 in question is concerned.

63. Various judgments referred to and relied upon on behalf of the assessee relates to assessment years prior to the amendment in Rule 6(7A) coming into effect w.e.f. 01.07.2016. The Hon'ble Courts had occasion to interpret the provisions of Section 35(2AB) which was silent on the quantification aspect. The erstwhile Rule was also silent on the quantification. Having regard to ambiguity, the Courts, at the relevant time, have held that quantification of expenditure by prescribed authority is not incumbent for the purposes of claiming deduction eligible under Section 35(2AB) of the Act. The judgments were thus rendered at the time when such conditions were not inbuilt by legislature in Rule 6(7A) of the Rules. The Hon'ble Courts were solely dependent on interpretative process to understand the purport of s. 35(2AB) due to prevailing ambiguity in law without the benefit of substituted Rule enacted later.

64. There can be no quarrel that, in the case of any conflict, 'Rules' being sub-ordinate legislation must yield to main Statute. However, there does not appear to be any conflict between the main statute and the underlying Rule. The main Statute is silent on quantification aspect of eligible deduction. The substituted Rule 6(7A), in our view, merely stipulates the quantification of expenditure by a prescribed authority and hence cannot be said to be repugnant to the provisions of Section 35(2AB) of the Act silent on such aspect. Rule 6(7A) is machinery in

nature enacted to give full effect to main provision of S. 35(2AB) of the Act. The quantification of eligible expense for weighted deduction is procedural or a machinery exercise. Hence, there is no warrant to negate the effect of the substituted Rule which seeks to limit the amount of weighted deduction to the extent of approval by prescribed authority supposedly carrying domain expertise in the field. The observations made by the Co-ordinate Bench in Natural Remedies (supra) are merely in the nature of *obiter* while adjudication of the case relating to A.Y. 2016-17 where the substituted Rule had not come into force. The observations made thus do not carry any precedent value *per se*. Similarly, the co-ordinate bench in USV P. Ltd. (supra) has applied the decision rendered in assessee's own case in earlier year without any discussion on effect of amendment in Rule 6(7A) of I.T. Rules. Hence, the view expressed in USV P. Ltd. (supra) is not entitled to great weight.

65. We thus see little merit in the plea raised on behalf of the assessee to ignore the substituted law expressly provided in Rule 6(7A) of the Act and to ignore the quantification carried out by the prescribed authority for the purposes of deduction under Section 35(2AB) of the Act. The contention of the assessee to avail weighted deduction on unapproved amount of Rs.8,00,95,000/- is thus devoid of any merit. The aspect is thus adjudicated against the assessee and in favour of the Revenue.

66. In the result, the additional Ground No.5 is allowed in part.

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

Order pronounced in the open Court on 01/05/2024

Sd/-	**Sd/-**
[CHALLA NAGENDRA PRASAD]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **/05/2024**

Prabhat