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

BEFORE

SHRI MANJUNATHA, G. ACCOUNTANT MEMBER &
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 352/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Aurobindo Pharma Ltd Hyderabad [PAN : AABCA7366H] (Appellant)	Vs.	A.C.I.T Central Circle 1(2), Hyderabad (Respondent)

ITA No.321/Hyd/2023
Assessment Year 2017-18

A.C.I.T Central Circle 1(2), Hyderabad (Appellant)	Vs.	Aurobindo Pharma Ltd Hyderabad [PAN : AABCA7366H] (Respondent)

निर्धारिती द्वारा/Assessee by: Adv. B.G. Reddy
राजस्व द्वारा/Revenue by: Shri Kumar Pranav,CIT(DR)

सुनवाई की तारीख/Date of hearing: 02/07/2024
घोषणा की तारीख/Pronouncement on: 25/07/2024

आदेश / **ORDER**

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 29/03/2023 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Aurobindo Pharma Ltd ("the assessee") for the assessment year 2017-18, both the Revenue and the assessee preferred these appeals.

2. Assessee is a company engaged in manufacture and sale of bulk drugs, Active Pharmaceutical Ingredients (APIs) and other pharmaceutical products. For the assessment year 2017-18, it filed the return of income on 28/11/2017. In respect of the international transactions of Corporate Guarantee fee and interest on receivables, the learned Transfer Pricing Officer (learned TPO) suggested upward adjustments incorporating which the learned Assessing Officer passed the draft assessment order. Assessee reported no objection for passing the final order pursuant to which the final assessment order was passed, which was challenged before the learned CIT(A). Learned CIT(A), by way of impugned order disposed of the appeal giving part relief on all the three counts, in respect of which both the assessee and Revenue preferred these appeals.

3. Insofar as these two appeals are concerned, all these three issues are involved. Those are additions made in respect of the Corporate Guarantee commission, interest on receivables and disallowance of weighted deduction claimed under section 35(2AB) of the Income Tax Act, 1961 ('the Act'). We shall now proceed to answer these three issues in the light of the submissions made on either side and available material on record.

4. Coming to the issue relating to the corporate guarantee, contention of assessee before the learned TPO was that the corporate guarantees not an international transaction and it does not require any benchmarking at all on the ground that it is the responsibility of the parent company to provide guarantee to its subsidiary companies, and, therefore, it is to be categorised as shareholders activity.

5. Learned TPO discarded the plea of the assessee that the corporate guarantee is not an international transaction, and based on a number of decisions of the Tribunal enumerated at paragraph No. 10.4.2 (i) of his order and charged the same at 2% for the corporate guarantee of above Rs. 10 crores and suggested upward adjustment. Learned CIT(A) upheld

the view taken by the learned TPO that such a transaction would be covered within the meaning of an international transaction. Learned CIT(A), however, quantified such guarantee at 0.53% instead of 2% by following the decision of a Co-ordinate Bench of the Tribunal in the case of Mylan Laboratories Ltd. vs. ACIT [2015] 63 taxmann.com 179 (Hyderabad - Trib.) and Rain Commodities Ltd., [2016] taxmann.com 240.

6. Assessee, vide ground No. 1 and 2 of its appeal, contended that corporate guarantee was given by the assessee as a procedural compliance for availing of credit facilities by its subsidiaries and for the overall benefit of the group and it was provided as a part of the parental obligation to its subsidiaries and therefore, it is in the nature of shareholding service. By way of ground No. 3 assessee further contended that the corporate guarantee commission at the rate 0.53% as directed by the Ld. CIT(A) on the guarantees provided by the assessee is excessive and since the assessee had already offered commission at 0.50% on the guarantees given the same may be accepted. Finding of the learned CIT(A) is challenged by the Revenue on the ground that adoption of 0.53% as commission on corporate guarantee relying on the rates determined in assessment year 2007-08 in the case of Mylan Laboratories Ltd., (supra), is incorrect.

7. On this issue it is vehemently argued by the learned AR before us that the transaction relating the issue of corporate guarantee does not involve any costs to the assessee and does not fall within the scope of the term 'international transaction' even after the insertion of explanation to section 92B of the Act by Finance Act, 2012 with effect from 01/04/2002, and, therefore, there is no requirement of such transaction to be reported in form No. 3CEB. Learned DR, however, submitted that this issue is no longer available to be agitated by the assessee and it is descended by the Hon'ble Madras High Court in the case of PCIT Vs. Redington (India) Ltd., (2020) 122 taxmann.com 136 (MAD).

8. Learned AR in the alternative, pleaded that corporate guarantee at 0.53% determined by the learned CIT(A) is too high and cannot be sustained. Basing on the view taken by the Co-ordinate Benches of this Tribunal in the cases of Aster Private Limited Vs. DCIT in ITA No. 220/Hyd/2015 and DCIT Vs. Lanco Infratech Limited, 81 taxmann.com 381 (Hyderabad Tribunal) he prayed that the ALP in respect of Corporate Guarantee fee may be determined at 0.25%. He further submitted that the guarantee fees charged by SEBI from the assessee in respect of guarantee extended on its behalf was only 0.20%. On this aspect, the learned DR submitted that the ALP at 0.20% and also 0.53%, as determined by the learned CIT(A) is absurdly low. In the alternative he submitted that following the view taken by the Hon'ble Bombay High Court in the case of Glenmark Pharmaceuticals Ltd. Vs. Addl. CIT [2014] 43 taxmann.com 191 (Mumbai - Trib.) may be followed.

9. In view of the decision of the Hon'ble Madras High Court in the case of Redington (India) Ltd. (supra), we have no second thought, and this decision is applicable to the facts of the case. No further debate by the Tribunal is permissible, when the higher forum decided the issue. Corporate guarantee is an international transaction, requiring benchmarking.

10. Though the learned DR argued that adoption of 0.53% as commission on corporate guarantee relying on the rates determined in assessment year 2007-08 in the case of Mylan Laboratories Ltd., (supra) is incorrect, no useful guidance is provided with reference to any latest decisions or other material, so as to take a different approach in respect of the quantification of the commission on corporate guarantee.

11. On the other hand, a Coordinate Bench of this Tribunal in assessee's own case for the assessment year 2018-19 in ITA No. 485/Hyd/ 2022 considered this issue in extenso and held that ALP on account of corporate guarantee at the 0.50% on the amount guaranteed is proper commission.

For the sake of completeness, relevant observations of the Coordinate Bench are extracted hereunder,-

> *We have considered the submissions and found that the charges paid by the assessee cannot be compared for the purposes of determining the ALP of corporate guarantee commission. In our view, no third party would provide similar type of services/corporate guarantee on behalf of its AE and expose itself to the risk of giving the corporate guarantee. Therefore, the charges paid by the assessee to SBI cannot be compared for the purpose of determining the ALP of corporate guarantee commission. The Co-ordinate Bench in the case of Vivimed Labs vide its decision dated 12-04-2022 had adjudicated corporate guarantee commission @ 0.5% qua the extent of the amount of the assessee's corporate guarantee actually utilised in these four assessment years. Thereafter, similar view had been taken by various Tribunals restricting the addition to 0.5% of the amount guaranteed as corporate guarantee commission. Recently, Delhi Tribunal in the case of Havells India Ltd. Vs. ACIT (LTU) in ITA No.6509/Del/2018 dt.09.05.2022 had also echoed the above said view and held that the addition of 0.5% on the amount guaranteed would be the appropriate benchmark to determine the ALP. Similar decision was also passed by the Bangalore and Pune ITA-TP No. 1860/Hyd/2019 Benches of the Tribunals in the case of GMR Infrastructure Ltd in ITA No.344/Pun/2022 dt.25.05.2022 and Jain Irrigation Systems in ITA 822/Pun/2022 dt.22.12.2022, respectively. Respectfully following the view taken by the Delhi, Bangalore and Pune Benches of the Tribunals in the above cited cases and also in the case of Vivimed Labs (supra), we partly allow the ground of the assessee and restrict the addition to the tune of 0.5% on the amount guaranteed as corporate guarantee commission.*

12. Following the above decision of the coordinate Bench, we direct the learned Assessing Officer/learned TPO to adopt the same at 0.50% on the guaranteed amount. Relevant grounds are answered accordingly.

13. Next issue is in respect of the interest on receivables. Again, on this issue also, the assessee had taken a plea before the learned TPO that it is not covered under the definition of international transaction and it does not require any separate benchmark. Learned Assessing Officer also again

relied upon a number of decisions on this aspect and held that the trade receivables are separate international transaction requiring separate benchmarking and while following the view taken by the Tribunal in the case of M/s. Logix Microsystems Ltd. Vs. ACIT in I.T.A No.423/Bang/2009, dated 07/10/2010, learned TPO thought it proper to consider the SBI short term deposit rate as appropriate CUP to determine the ALP of the interest on outstanding receivables.

14. Learned CIT(A) upheld the finding of the learned Assessing Officer and observed that post amendment by Finance Act, 2012 introducing explanation to Section 92B of the Act, if there is any delay in realization of a trade debt arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with Transfer Pricing adjustment on account of interest income short charged/uncharged. Learned CIT(A) further directed the learned TPO to apply the SBI short term deposit rates for the period beyond the period mentioned in the invoices.

15. Learned AR argued at length stating that this particulars transaction is not covered in the definition of international transaction as defined under section 92B of the Act; that the receivables are consequential/closely linked to the principal transaction of provision of services; that the re-characterizing the outstanding receivables as unsecured loan extended by the assessee to its AEs is improper; that the assessee is fully funded by its AEs and does not bear any working capital risks; that the assessee does not charge any interest on outstanding receivables from third party customers as well; and that the assessee has outstanding payables due to AEs on which no interest has been levied by the AEs as well.

16. Learned AR, in the alternative, submitted that in the case of Afton Chemical India Private Limited vs. ITO in ITA No. 1467/Hyd/2019, by order dated 05/09/2022 a view was taken to the effect that in this sort of cases,

the ends of justice would be met by accepting the interest rate on similar foreign currency receivables/advances as LIBOR+200 points, and if the Bench comes to the conclusion that the assessee is liable on this aspect, the same view may be adopted in this case also.

17. Per contra, learned DR submitted that this aspect does not leave any scope for any discussion in view of the decision of the Hon'ble Delhi High Court in the case of DCIT vs. McKensey knowledge Centre India Pvt. Ltd [2018] 96 taxmann.com 237 (Delhi) and the Co-ordinate Bench of the Delhi Tribunal in the case of Bhatia Airtel services Ltd vs. DCIT, [2021] 126 taxmann.com 315 (Delhi - Trib.) holding that with the introduction of the explanation to section 92B of the Act by Finance Act, 2012 it is a determinable that if there is any delay in the realization of credit arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with the transfer pricing adjustment on account of interest income short charged/uncharged. Basing on the view taken in a number of decisions of the Tribunal of various Benches, authorities held that it is incumbent upon the taxpayer to separately benchmark the arm's length price of the international transaction relating to interest on overdue receivables from the AE by way of analysis of functions, assets and risks.

18. Learned DR further argued that the credit period as per the invoice with the AE cannot be contemplated as a comparable in TP regime as it is a controlled transaction and lacks arm's length characteristic as held by the ITAT in the case of M/s. Technimont ICB P. Ltd., vs. Addl. CIT 138 ITD 23 (Mum); whereas apart from placing reliance on the view taken by the learned DRP for the assessment year 2018-19 which became final, the learned AR also placed reliance on a decision of the Mumbai Bench of the Tribunal in the case of DCIT vs. Indo American jewellery Ltd in ITA No. 5872/mum/2009 for the principle that if an entity is engaged in commercial transactions with the group entity as well as third-party unrelated customers, and if the entity is giving credit facility ranging up to 352 days

to both group entity as well as the third-party unrelated customers, in such case, no addition on account of interest adjustment can be made.

19. On the quantification of the interest on trade receivables, learned DR, while placing reliance on the view taken by a coordinate Bench in assessee's own case for the assessment year 2018-19 in ITA No. 485 /Hyd/ 2022 by order dated 27/4/2023, submitted that the rate of interest chargeable on the trade receivables at 6% was held to be reasonable. He further submitted that while reaching this conclusion, the Tribunal placing reliance on the earlier decisions of the coordinate benches in the cases of indeed India in ITA No. 254 /Hyd/ 2021, Quizlex Legal Services in ITA No. 6 /Hyd/ 2022, Zeta Interactive Systems (India) (P) Ltd., in ITA No. 1812 /Hyd/ 2017, Satyam Venture in ITA 362 /Hyd/ 2021 and Apache Footwear India Pvt. Ltd (Supra) in ITA No. 568 /Hyd/ 2022. He filed a copy of the order in ITA No. 485 /Hyd/ 2022 and it forms part of record.

20. Ld. AR, on the other hand placed reliance on the decisions reported in PCIT vs. Tecnimont (P.) Ltd. [2018] 96 taxmann.com 223 (Bombay) and CIT Vs. Cotton Naturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi) wherein it was held that interest at LIBOR rates as the rate prevailing in country where the loan is received/consumed by the AE is proper as it is in line with the decision of this Court in CIT v. Tata Autocomp Systems Ltd. [2015] 56 taxmann.com 206 (Bom.). Ld. AR submitted that the decision of the Tribunal in the earlier assessment year 2018-19 was rendered without noticing these decisions of the Hon'ble Bombay and Delhi High Court's on the aspect of the interest to be levied, whether it is at the State Bank Lending Rates or at LIBOR. He, therefore, submitted that when the decisions of the higher fora are brought to the notice of the Tribunal, it would be a mistake to prefer the decision of the coordinate benches on this aspect.

21. We have considered the submissions on either side. In the case of the DCIT vs. McKensey knowledge Centre India Pvt. Ltd [2018] 96

taxmann.com 237 (Delhi) Hon'ble Delhi High Court and in the case of Bhatia Airtel services Ltd vs. DCIT, [2021] 126 taxmann.com 315 (Delhi - Trib.) the Co-ordinate Bench of the Delhi Tribunal it was held that with the introduction of the explanation to section 92B of the Act by Finance Act, it is determinable that if there is any delay in the realization of credit arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with the transfer pricing adjustment on account of interest income short charged/uncharged. It is, therefore, not open for the assessee to agitate this question as to whether the interest on outstanding receivables is an international transaction requiring separate benchmarking time and again.

22. In respect of the credit period, assessee contended before the learned CIT(A) that instead of considering an ad hoc credit period of 90 days, as adopted by the learned TPO, the credit period as agreed in the invoice should be considered for computing interest on delayed receivables beyond the credit period agreed as per invoice. Assessee relied upon the view taken by the learned DRP in assessee's own case for the assessment year 2018-19 where the learned DRP directed the learned TPO to consider the credit period agreed as per the invoices. In that year learned DRP directed the learned TPO to verify the credit period invoice price and to charge the interest for the period beyond such credit period agreed in the invoices. Since the Revenue accepted such findings of the learned DRP and such findings of learned DRP became final, learned CIT(A) in this case followed the same and directed the learned Assessing Officer to verify the invoices and compute the interest considering the credit period as per the invoices instead of 90 days period as adopted by the learned TPO. Learned CIT(A) directed the assessee to furnish the information if required. In the decision of the Mumbai Bench of the Tribunal in the case of DCIT vs. Indo American Jewellery Ltd in ITA No. 5872/mum/2009 it was held that if an entity is engaged in commercial transactions with the group entity as well as third-party unrelated

customers, and if the entity is giving credit facility ranging up to 352 days to both group entity as well as the third-party unrelated customers, in such case, no addition on account of interest adjustment can be made.

23. Though the learned DR opposed the prayer of the assessee on this aspect, he could not contradict the fact that in assessee's own case for the assessment year 2018-19 the learned DRP took a view that the credit period should be considered as per the agreement between the parties as reflected in the invoices and directed the learned TPO to verify credit period invoice voice and to charge the interest for the period beyond such credit period agreed in the invoices.

24. Apart from this learned AR submitted that the assessee extends credit period ranging between 60 days and 240 days for realisation of sale proceeds from the non-AEs depending on many factors including terms of payment in respect of a commercial transaction and the normal business practice and submitted that whatever the credit period that is extended by the assessee to the non-AEs may be applied to the case of AEs also because it is the best comparable available in this case.

25. In the circumstances, we are of the considered opinion that when the assessee is extending the credit period between 60 days and 240 days to the non-AEs, and basing on this the learned DRP in the assessment year 2018-19 took a view that the credit period as agreed between the parties shall be respected and followed and such a finding of the learned DRP has become final without the Revenue challenging the same, the credit period which is extended to the non-AEs by the assessee shall be extended to the AEs also. On this reasoning we do not find any illegality or irregularity in the findings returned by the learned CIT(A) that the interest shall be record beyond the credit period as agreed between the parties.

26. Next issue remains to be considered is in respect of the rate of interest. While placing reliance on the decisions reported in Tecnimont ICB

House Vs. DCIT [2015] 60 taxmann.com 143 (Mumbai - Trib.), Hon'ble Bombay High Court in PCIT Vs. Tecnimont (P) Ltd., (supra) and CIT Vs. Cotton Naturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi), learned AR prayed that LIBOR+200 basis points may be adopted. This aspect is no longer res integra and dealt with by the Mumbai Bench of the Tribunal in the case of Tecnimont ICB House (supra) and confirmed by the Hon'ble Bombay High Court. Cotton Naturals (I) (P.) Ltd. (supra) is also on the same aspect.

27. In the case of the Tribunal, Tecnimont ICB House Vs. DCIT [2015] 60 taxmann.com 143 (Mumbai - Trib.) considered the view taken in Everest Kanto Cylinder Ltd. v. Asstt. CIT (LTU) [2014] 52 taxmann.com 395 (Mum.); PMP Auto Components (P.) Ltd. v. [IT Appeal No. 1484 (Mum.) of 2014, dated 22-8-2014]; Hinduja Global Solutions Ltd. v. Addl. CIT [2013] 145 ITD 361/35 taxmann.com 348 (Mum.); Tata Autocomp Systems Ltd. v. Asstt. CIT [2012] 52 SOT 48/21 taxmann.com 6 (Mum.); CIT v. Tata Autocomp Systems Ltd. [2015] 56 taxmann.com 206 (Bom.); Four Soft Ltd. v. Dy. CIT [2011] 142 TTJ 358 (Hyd.); and Everest Kanto Cylinder Ltd. v. Asstt. CIT (LTU) [2015] 56 taxmann.com 361 (Mum.) and upheld use of LIBOR for the purpose of benchmarking loan/advance given to foreign AE's, and held that the notional interest has to be worked out for so called amount receivable from AE, by applying LIBOR interest rate for the purpose of computation of transfer pricing adjustment, if any. This view is affirmed by the Hon'ble Bombay High Court in PCIT vs. Tecnimont (P.) Ltd. [2018] 96 taxmann.com 223 (Bombay) observing that in cases where any business enterprise is required to pay interest on delayed payment, it would examine the cost of interest and if the same is higher than the amount of interest payable on funds obtained locally, it would take a loan from local sources and pay the amounts payable for exports and expenses within time. Therefore, extending of credit beyond the agreed period is in substance a granting of loan to an AE so as to enjoy the funds, which the AE would otherwise have to repay within the time

agreed. On this premise the Hon'ble High Court upheld the Tribunal computing interest at LIBOR rates as the rate prevailing in country where the loan is received/consumed by the AE by observing that the same cannot be faulted.

28. In the case of CIT Vs. Cotton Naturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi) the Hon'ble Delhi High Court considered the question - whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, observed that such a question must be answered by adopting and applying a commonsensical and pragmatic reasoning and held that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid; that the interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. It is further observed that the interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters; that the interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable; that the currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. While referring to the Klaus Vogel on Double Taxation Conventions (Third Edition) under Article 11 in paragraph 115, the Hon'ble High Court held that the PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate and the PLR rates are not applicable to loans to be re-paid in foreign currency. Hon'ble Court accordingly held that whatever the principle that is applicable to the case of outbound loans, would be equally applicable to inbound loans given to Indian subsidiaries of foreign AEs, that the parameters cannot be different for outbound and

inbound loans, and a similar reasoning applies to both inbound and outbound loans.

29. In the case of PCIT vs. Tecnimont (P.) Ltd. [2018] 96 taxmann.com 223 (Bombay) AY. 2009-10, Hon'ble Bombay High Court held that interest chargeable on delayed recovery of export receivables from AEs should be taken at LIBOR rates for determining ALP of notional interest on delayed recovery.

30. In this case, the loan attributable to the AE, is deemed to have been consumed in a country outside India and, therefore, the interest at LIBOR rates as the rate prevailing in country where the loan is received/consumed by the AE cannot be said to be incorrect and such a view is in line with the decision of the Bombay High Court in the case of Tecnimont (P.) Ltd (supra). Reasons for not bringing the decisions of the Hon'ble Bombay High Court and Delhi High Court to the notice of the Bench when the matter for the assessment year 2018-19 was heard, are not known. Be that as it may, now the assessee brings to our notice the decision of the Hon'ble Bombay High Court in the case of Tecnimont (P.) Ltd (supra) and the decision of the Hon'ble Delhi High Court in the case of Cotton Naturals (I) (P.) Ltd. (supra), and such decisions are no doubt binding precedents and should be preferred to the decisions of the Co-ordinate Benches of the Tribunal. We, therefore, do not wish to enter into a fresh debate on that aspect and respectfully follow the directions of the higher fora.

31. Respectfully following the judicial opinion stated supra, we are of the considered opinion that the ends of justice would be met by accepting the interest rate on similar foreign currency receivables/advances as LIBOR+200 points. We direct the learned Assessing Officer / learned TPO to adopt the same. Grounds are partly allowed accordingly.

32. Next and last issue relates to the weighted deduction claimed by the assessee in respect of the expenditure incurred on the expenditure not

quantified in the expenditure approved by the DSIR reflected in part B of form 3CL, and on clinical trials. There is no dispute that the expenditure that is not quantified in the approval by the DSIR, such an expenditure was incurred towards rates and taxes, travelling expenses of research units. Both the authorities held that for claiming weighted deduction, such an expenditure must have been approved by the prescribed authority and that no exceptions to this rule are provided in the Act. Though such an expenditure was incurred in relation to the scientific research and development, the requirement of approval by the prescribed authority is not fulfilled in this case and therefore, it is not qualified for weighted deduction, but at the same time since there is no dispute as to the incurring of such expenditure by the assessee, the said expenditure is qualified for hundred percent deduction. To the extent we approve the view taken in the impugned order.

33. Coming to the expenditure on clinical trials this issue is no longer res integra and in fact been dealt with by the Hon'ble Gujarat High Court in extenso in the case of CIT vs. Cadila healthcare Ltd (2013) taxmann.com 300 (Gujarat), and the Hon'ble court held that the clinical trials may not always be possible to be conducted in the closed laboratory or in house like facilities and are required to be conducted outside the approved facility and, therefore, the restrictive meaning suggested by the Revenue to the expenses mentioned in the explanation to the section such as a clinical drug trials and obtaining approvals from the regulatory authorities, which normally happens outside the approved R&D facility, make the explanation meaningless.

34. Learned DR submitted that this decision of the Hon'ble Gujarat High Court has not attained the finality because the Hon'ble Apex Court remanded the case to the file of the Hon'ble Gujarat High Court and therefore, the matter was sub judice before the Hon'ble High Court and that is the reason why the lower authorities are not following the decision rendered by the Tribunal in the earlier assessment years.

35. In reply, learned AR submitted that as could be seen from the order of the Hon'ble Supreme Court in special leave petition to appeal (C) No. 770/2015, dated 13/10/2015 the grievance of the Revenue was with reference to non-framing of certain questions, it was considered by the Hon'ble Apex Court and held that such questions were substantial questions of law, and thereupon referred the matter to the Hon'ble Gujarat High Court to hear the appeal on the aforesaid three questions of law, but the judgement already passed by the Hon'ble Gujarat High Court touching the aspect of allowability of weighted deduction has not been set aside. He placed reliance on the decision taken by a coordinate Bench in assessee's own case for the assessment year 2013-14 and 2014-15 in ITA numbers 1772 and 1773 /Hyd/ 2017 where the Tribunal on a perusal of the decision of the Hon'ble Apex Court clarified that.

36. On a careful perusal of the record we find that the Hon'ble Gujarat High Court rendered the decision in Cadila healthcare Ltd (supra) holding that the clinical trials are not always possible to be conducted in the closed laboratory or in house like facilities and are required to be conducted outside the approved facility and if we go by the restricted interpretation resorted to by the Revenue, such an interpretation renders the explanation meaningless where the expenses for obtaining approvals from the regulatory authorities are also included in the clinical trials, because such expenses for obtaining approvals from the regulatory authorities normally happen outside the approved R&D facility. Subsequently the SLP was preferred by the Department and three issues were remanded for consideration by the Hon'ble Gujarat High Court by order dated 13/10/2015. Hon'ble Gujarat High Court, by order dated 25/2/2020 in PCIT vs. M/s Sun pharmaceuticals industries Ltd in R/Tax Appeal No. 92 of 2020, observed that in view of the decision in Cadila healthcare Ltd (supra) the issue relating to the allowability of weighted deduction under section 35(2AB) of the Act in respect of clinical trials expenses incurred outside the

approved facility stood covered and on that ground did not admit such an issue for consideration.

37. From the above it is clear that the issue has clearly been covered by the decision of the Hon'ble Gujarat Court High Court in the case of Cadila healthcare Ltd (supra), referred to and followed in the case of M/s Sun Pharmaceuticals Industries Limited (supra). A coordinate Bench of this Tribunal in assessee's own case for the assessment year 2018-19 having noticed the judicial review on this aspect, including the argument advanced in that case, and basing on CIT vs. Vegetable Products Ltd 88 ITR 192 (SC) reached a conclusion that when once the clinical trial expenses incurred outside the approved R&D facilities, were approved by the prescribed authority the assessee is entitled to claim deduction under section 35(2AB) of the Act. Respectfully following the same we hold the issue in favour of the assessee and allow weighted deduction in respect of the expenses incurred on clinical trials.

38. In the result, appeal of the Revenue is dismissed and the appeal of the assessee is allowed in part.

Order pronounced in the open court on this the 25th of July, 2024.

Sd/-	Sd/-
(MANJUNATHA, G.)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad,
Dated: 25/07/2024

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