IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No. 712/Ahd/2019 **Asst Year 2015-16**

Sun Pharma Laboratories Ltd., Plot No.201/B-1, Sun House, Western Express Highway, Goregaon East, Mumbai-400063. **PAN: AACCS6163P** **(Appellant)**	V s	The D.C.I.T, Circle-2(1(1), Vadodara. **(Respondent)**

ITA No.741/Ahd/2019 **Asst Year 2015-16**

The D.C.I.T, Circle-2(1(1), Vadodara. **(Appellant)**	Vs	Sun Pharma Laboratories Ltd., Plot No.201/B-1, Sun House, Western Express Highway, Goregaon East, Mumbai-400063. **PAN: AACCS6163P** **(Respondent)**

Assessee Represented: Shri SN Soparka, Sr.Advocate with Shri Parin Shah, AR
Revenue Represented: Dr.Darsi Suman Ratnam, CIT-DR

Date of hearing : 25-07-2024
Date of pronouncement : 09-10-2024

आदेश/ORDER

PER T.R SENTHIL KUMAR, JUDICIAL MEMBER:-

These cross appeals are filed by the Assessee and the Revenue as against the appellate order dated 28.02.2019 passed by

the Commissioner of Income Tax (Appeals)-2, Vadodara arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. The assessee in **ITA No.712/Ahd/2019** raised the following concise Grounds of Appeal:

1. *Ground No.1. Disallowance of deduction under section 80IB/80IE in respect of interest on staff advances & statutory/bank deposit of Rs.4,07,269/-*
2. *Ground No.2. Disallowance of expenditure incurred for doctors for promotion of business - Rs.9,81,46,332/-*
3. *Ground No.3. Disallowance under section 14A read with Rule 8D -Rs.69,89,859/-*
4. *Ground No.4. Disallowance of amortization of Intangibles under section 115JB Rs 15,23,97,50,000/-*
5. *Ground No.5 Disallowance of stamp duty charges Rs.28,00,000/-*
6. *Ground No.6 Disallowance u/s. 36(1)(va) r.w.s.2(24)(x) for delayed payment of employees' contribution to ESIC Rs.34,083/-*
7. *Ground No.7 Loss on sale of land Rs.49,80,848/-*
8. *Ground No.8 Deduction of education and secondary & higher education cess under section 37(1)*

3. The **Ground No.1** relates to disallowance of deduction u/s.80IB/ 80-IE in respect of interest on staff advances and statutory/ bank deposits. Brief facts is the Ld AO observed that the Assessee is not entitled for deduction under Section 80-IB/80-IE on loan to employees and bank deposits as such interest income is not

income derived from industrial undertaking as held by Hon'ble Supreme Court in the case of CIT -Vs- Sterling Foods reported in 237 ITR 579 and Liberty India -Vs- CIT reported in 317 ITR 218. The above disallowance of deduction was upheld by CIT (Appeal) in his order, wherein he has observed that identical issue has been decided against the erstwhile Sun Pharma, Sikkim [SPS] by CIT(Appeals)-37, Mumbai, for A.Y. 2010-11 following the order of Hon'ble ITAT in the case of Sun Pharmaceutical Industries which was also merged with assessee in ITA No.184/ASR/2009, dated 11th June, 2010.

3.1. Aggrieved by the appellate order, the assessee is in appeal before us. Ld. Senior Counsel Sri S.N. Soparkar appearing for the assessee fairly conceded that similar issue was decided against the assessee by Co-ordinate Bench of the Tribunal in ITA No. 3507/ Mum/2016 in A.Y. 2011-12 in the case of erstwhile SPI which was later on merged with Assessee Company and then in assessee's own case by Co-ordinate Bench decision in ITA Nos.1464 & 1465/ Ahd/2018 & Others vide its decision dated 06-10-2023 relating to the Asst. Years 2013-14 & 2014-15. Ld CIT DR Dr. Darsi Suman Ratnam appearing for the Revenue supported the order passed by this Tribunal.

4. We have heard the rival contentions and perused the materials available on record. Identical issue has been decided against the Assessee by the Co-ordinate Benches in A.Yrs. 2011-12 to 2014-15 [cited supra] and relevant portion of the said order is reproduced as follows:

"… 34. We have heard the rival contention of both the parties and perused the material available on record. We found that the issue on hand is covered against the assessee by the order of the coordinate bench of Amritsar Tribunal in the own case of the assessee for AY 2004-05 followed in subsequent years being AY 2006-07 to 2010-11. The relevant finding of the coordinate bench in ITA No.2465/Mum/2014 reads as under:

"23. Ground No IV pertains to adjustment of delayed payments, staff advances and statutory/bank. The issue regarding interest on delayed payments from customers is covered in favour of the assessee. But the issues regarding interest on staff advances and FDRs are covered against the assessee by the orders of the Amritsar Tribunal passed in assessee's own cases pertaining to the financial years 2004-05, 2006-07, 2007-08, 2008-09 and 2009-10. The relevant paras of the order passed by the Amritsar tribunal are reproduced as under:-

"51. As - regards ground No 3 of the Revenue, regarding disallowance of deduction under section 80-16 in respect of delayed payments from M/s Aditya Medisales Ltd. Amounting to Rs.48,20,32,772/-, the facts are identical to the facts in assessee's own case for the assessment year 2004-05 decided by us hereinabove. Following the same/ this ground of the Revenue is dismissed,"

"54. As regards ground No 5&6 of the assessee with respect to the interest on FDR amounting to Rs. 3,27,5997- (correct figure Rs.2,27,599/-) and loan to employees with regard to disallowance of deduction u/s 80-IB, the facts of the issues in hand are identical to the facts decided by the tribunal in assessee's own case dated 11.06.210 in ITA No 184(Asr)/2009for the assessment year 2005-06. Following the same, the ground No 5&6 of the assessee are dismissed."

24. Following the orders of the decisions of the Amritsar Tribunal in the identical issues, we allow the assessee's claim of deduction under section 80-IB of the Act in respect of interest on delayed payments in question and direct the AO to delete the additions. However, we disallow the assessee's claim of deductions in respect of interest on staff advances & statutory/bank deposits."

> 34.1 Thus, respectfully following the consistent view of Amritsar tribunal in the own case of the assessee, we do not find infirmity in the finding of the learned CIT(A). Hence the ground of appeal of the assessee is hereby dismissed. "

4.1. Thus, respectfully following the above orders of the Co-ordinate Benches of the Tribunal in assessee's own case, we uphold the finding of the learned CIT(A). Thus, **the Ground no.1 raised by the assessee is hereby dismissed**.

5. The **Ground No.2 relates to** disallowance of expenditure incurred for doctors towards business promotion and accommodation of Rs.9,81,46,332. **The Ground No. 4 in Departmental Appeal** also relates to disallowance of business/ conference fee and sponsorship expenses under the gift and freebies to doctors of Rs.2,26,07,758/-. As both the grounds of appeal are interlinked with each other, they are adjudicated together.

5.1. The Ld AO has observed that the assessee has incurred various expenditure being accommodation, Business Promotion Expenses, Conference Fees aggregating to Rs.9,81,46,332/= and freebies and gifts paid to Doctors of Rs.2,26,07,758/-. The Ld. AO has referred to CBDT Circular No. 5/2012 in F.No. 225/142/2012 ITA II, dated 1st August, 2012 wherein it is stated that expenditure incurred for providing freebies of the above nature by pharmaceutical and allied healthcare sector is inadmissible expenditure u/s. 37(1) of the Act. The above addition made by Ld. AO was partially upheld by Ld CIT(A).

5.2. Aggrieved by the above appellate order, both the Assessee and Revenue are in appeal before us. Ld. Senior Counsel Sri S.N. Soparkar argued that such expenditure is allowable business expenditure u/s. 37 of the Act as the assessee is aided through this expenditure in determining new scope for research and development for its products and eventually attaining better product standards. The Ld. Senior Counsel also relied upon the submissions filed before CIT (Appeals) wherein nature of such expenditure was explained in detail and drawn our attention to Ground No.2.5 wherein it was claimed that the disallowance of expenditure would lead to higher deduction u/s.80-IB/80-IE.

5.3. Per contra Ld CIT DR appearing for the Revenue supported the order passed by the lower authorities and decision dated 06-10-2023 in assessee's own case by Co-ordinate Bench decision in ITA Nos.1464 & 1465/Ahd/2018 & Others relating to the Asst. Years 2013-14 & 2014-15. The Ld. CIT DR has relied upon the observation of the lower authorities and contended that considering the decision Hon'ble Supreme Court in case of **Apex Laboratories Limited 135 taxmann.com 286**, freebies provided to Doctors cannot be allowed as revenue expenditure u/s. 37(1) of the Act.

6. We have heard the rival contentions, perused the materials available on record and given our thoughtful consideration. The assessee has claimed accommodation, business promotion and conference expenses incurred, which are mainly gifts and freebies to doctors. While passing the assessment order, the Ld. AO has verified the ledger account of such expenditure and found that

such expenditure are freebies that include sponsorship for attending conferences, medical equipment, travel facilities and hospitality to be distributed to such medical practitioners, which is prohibited by Medical Council of India [MCI]. It is found that Ld. CIT(A) has confirmed the expenditure in nature of accommodation and business promotion but deleted Conference and Sponsorship expenses incurred for Doctors on the ground that same are incurred for sharing the knowledge in the medical field, which is not hit by Circular No.5/2012 and amended MCI guidelines. The Ld. CIT DR on the other hand placed reliance on the decision of the Supreme Court in the case of Apex Laboratories cited supra.

6.1. Ld. Sr. Counsel on the other hand pointed out that the facts in the case before the Apex court were completely different. He also pointed out that in the case of Apex Laboratories, it had given costly personal gifts/benefits like Gold coins, LCD TV, Laptops, etc. to medical practitioners and thereby it had solicited favourable prescriptions at the cost of patients. The Hon'ble Supreme Court also observed that there was an 'quid pro quo' arrangement between the parties requiring the medical practitioners to prescribe the products of the company in lieu of receiving the freebies. Accordingly, the ratio of the said decision should not be made applicable in the case. Alternatively, he also submitted that in order to avoid litigation and uncertainty, Assessee Company out of abundant caution would like to NOT PRESS the ground on allowability of said expenditure for the years under consideration. Thereby the Ld. Counsel specifically requested the Bench not to make this decision binding on subsequent years and any other

years as facts in every year shall vary. Ld. Senior counsel also argued that any disallowance of such expenditure if relatable and attributable to the Undertaking eligible for deduction u/s.80IB/IE of the Act, it should be increased to that extent.

6.2. We have gone through the facts as well as the orders of the lower authorities. We find that since the Senior Counsel appearing for the assessee **has not pressed** this ground of appeal for the year under consideration, the **Ground no.2 raised by assessee becomes infructuous and dismissed**. However, this finding should not be considered as a binding precedent for all the subsequent years and it goes without saying that the assessee company has the right to bring out relevant facts so as to allow claim of expenditure u/s. 37(1) of the Act. So far as alternate claim of the assessee that it is entitled for higher deduction u/s. 80-IB/80-IE on the above disallowance is concerned, claim of assessee is allowable as per CBDT Circular No. 37 of 2016, dated 2nd November, 2016. Thus the Ld. AO is directed to verify that if above referred expenditure is part of profit & loss account for Unit eligible for deduction under Section 80-IB/80-IE, the assessee would be entitled for higher deduction and re-compute the same accordingly. Thus, **Ground of Appeal no.2 raised by assessee is dismissed** and **relevant ground no.4 in Revenue's appeal is allowed.**

7. The **Ground of Appeal No. 3** relates to disallowance under Section 14A r.w. Rule 8D for Rs.69,89,859/-. The Ld AO at para 7.1 of the assessment order has observed that assessee has claimed income of Rs.1.59 crores as exempt u/s.10[15] of the Act

on account of interest arising from tax free bonds and not made any disallowance u/s. 14A of the Act. The A.O has observed that assessee on one hand debited interest amounting to Rs.77,64,817/= in its P&L account and on the other hand has claimed interest arising from investment in tax free bonds as exempt even though the said investment may have been made from the interest bearing funds also. In addition the assessee must have incurred administrative expenditure and part of such expenditure is attributable to earning of exempt income. The Ld. AO has referred to the decision of Hon'ble Supreme Court in the case of Wallfort Shares & Brokers Ltd 310 ITR 421 and Godrej Boyce & Manufacturing Co. Ltd and observed that Rule 8D is applicable and he computed such disallowance at Rs.69,89,859/-. The above disallowance was confirmed by CIT(A) in para 13.2 of his order observing as follows:

> "13.2. I have carefully considered the facts on records and submission of the Ld. Authorized Representative. Undisputedly, average value of investment resulting into exempt income is Rs.121.02 Crores against which share capital & share application money etc. amounted to Rs.90 Crores only (excluding revaluation capital reserve). Since investment was more than the own interest free funds available, it is clear that borrowed funds have been used for earning exempt income and hence decisions relied upon by the appellant are distinguishable on facts. Thus I am of the considered view that the interest expenditure incurred by the appellant at Rs.22,55,110/- was also relatable to the exempt income warranting application of Rule 8D. Accordingly, disallowance made out of interest under Rule 8D at Rs.56,609/- is confirmed. As regards the disallowance made at 0.5% of average value of investment on account of administrative cost, undisputedly, time and energy of the management and resources of the company have been utilized for earning exempt income from the partnership firms. The disallowance on this account under Rule 8D has been upheld by the Hon'ble ITAT, Ahmedabad in the case of Flagship Company of this group i.e. Sun Pharmaceutical Industries Ltd. in various years including A.Ys. 2008-09 and 2009-10. Respectfully, following the same, disallowance of Rs. 70,08,250/- on account of administrative cost under Rule 8D is also confirmed. Total disallowance u/s 14A amounting to Rs.69,89,859/- (Rs.56,609 + 70,08,250 - 75,000)under Rule 8D is confirmed. Thus, Ground No. 9 is dismissed."

7.2. Aggrieved by the above appellate order, the assessee is in appeal before us. During the course of hearing, the Ld. Senior Counsel appearing on behalf of assessee has vehemently argued that as evident from the audited financial statements, the assessee had sufficient interest-free funds to carry out the investments, proportionate interest disallowance u/s.14A cannot be made. The Ld. Senior Counsel further contended that the assessee has not specifically incurred any administrative expenditure in respect to the exempt income earned which is substantially from the investments in Partnership firm. Hence no disallowance under any limb of Rule 8D can be made.

7.2. On the other hand, the Ld. CIT DR relied upon the finding of the lower authorities and argued that addition made by Ld. AO deserves to be upheld and relied upon the observation of the AO.

8. We have heard the rival contentions and perused the materials available on record and given our thoughtful consideration. The Ld AO has made disallowance u/s.14A read with Rule 8D of Rs.69,89,859/-. So far as proportionate interest disallowance is concerned, the Ld Senior Counsel contended that it is evident from audited financial statements that the assessee has sufficient interest-free funds, whereas the Ld. CIT(A) has given adverse findings in this regard. Considering these facts, **we set aside this issue to the file of Ld. AO and direct him to verify whether the assessee has sufficient interest-free funds or not and workout the disallowance in accordance with law.**

8.1. So far as the disallowance under Rule 8D(2)(iii) is concerned, considering the principle of natural justice, we direct the AO to verify the disallowance on the basis of facts of the case and provisions of the law. Thus, **the ground no.3 raised by the assessee is hereby allowed for statistical purpose**.

9. The **Ground No. 4** of the Appeal relates to addition of the amortization of Intangibles of Rs.1523,97,50,000/- while computing book profits under section 115JB. The brief facts of the case are that Domestic Formulation Unit (DFU) of Sun Pharmaceutical Industries Ltd. (SPIL) has been Spun off/ transferred to the assessee company in term of Scheme of Arrangement approved by the Hon'ble High Court of Gujarat vide judgement dated 03.05.2013 under sections 391 to 394 of the Companies Act, 1956. As a result of this arrangement, certain tangible and intangible assets have been transferred from SPIL to the assessee company. On perusal of the Schedule-11 (Fixed Assets) of the Audited Account, the Ld AO noticed that Rs.15,23,97,000/= were debited by the assessee company under the head (depreciation/amortization) against the Intangible Assets of Rs.182,87,70,00,000/= for the first time in the relevant column of e-ITR. In the computation of income, the assessee company has added back depreciation/amortization amount, but no adjustment is carried out while computing book profit under clause (iia) to Explanation 1 to section 115JB(1) of the Act. Accordingly, the assessee company was required to explain the same vide show cause notice and Assessee's reply was considered by the Ld AO and rejected the same by observing that the assessee merely

revalued and claimed these intangible assets in its hands attracting thereby the applicability of the provisions contained in section 115JB of the Act. Accordingly, the sum of Rs.15239.75 millions already having been debited by the assessee is added for the purpose of working out book profit u/a.115JB of the Act and also initiated penalty proceeding for furnishing inaccurate particulars of income.

9.1. On appeal against the assessment order, the Ld. CIT(A) who confirmed the order of the AO and following his predecessor's appellate orders for A.Y. 2013-14 and 2014-15 and confirmed the addition made by the AO.

10. Ld. Sr Counsel Sri S.N. Soparkar appearing on behalf of the assessee submitted that this issue is now allowed in favour of the assessee in its own case by the Co-ordinate Bench decision in ITA Nos.1464 & 1465/Ahd/2018 vide its decision dated 06-10-2023 relating to the Asst. Years 2013-14 & 2014-15, following the same the addition is liable to be deleted. Ld CIT DR could not dispute the same.

11. We have heard the rival contentions and perused the materials available on record. Identical issue was considered by this Tribunal and held that recording of Assets at Fair Value pursuant to Scheme of Arrangement and at time of initial recognition cannot be regarded as Revaluation of Assets and consequently no adjustment is required to made to book profit u/s.115JB of the Act. Operative portion of the Co-ordinate Bench decision in ITA

Nos.1464 & 1465/Ahd/2018 [wherein the JM was the Author of the decision] reads as follows:

> "… 15. We have heard the rival contentions and perused the materials available on records and given our thoughtful consideration. The Domestic Formulation Unit [DFU] of Sun Pharmaceutical Industries Ltd., the holding company, has been spunoff/transferred to the assessee company in term of Scheme of Arrangement ('Scheme') approved by Hon'ble Bombay High Court [pages 648 to 678 of the Paper Book] under sections 391 to 394 of Companies Act, 1956 vide order dated 03.05.2013 in Company claim Petition No. 283 of 2013 and also by the Hon'ble Gujrat High Court vide order dated 03.05.2013 [pages 679 to 682 of the Paper Book] in Company Petition No. 31 of 2013 connected with the Company Application No. 373 of 2012. The assets received by the assessee company have been recorded at fair value pursuant to said Scheme. The entire objective of the above action was to enable the assessee company to focus on the domestic formulation business which significantly differed from the rest of the parent company in terms of the customer base, regulatory environment, supply chain, risks and rewards, etc. thereby resulting into significant value addition in the hands of the stakeholders.
>
> 15.1. Pursuant to the above arrangement, the intangibles have been recorded by the assessee company for the first time at their value as on 31-03-2012 based on the valuation report obtained from two independent Valuers like Earnest & Young and KPMG. The Ld AO has held that the assessee company revalued intangibles as on 01-04-2012, which is contrary to the facts as intangible assets have been accounted as on 31-03-2012 based on valuation report as on the date of spin off, thus the Ld AO misunderstood the whole transaction as revaluation of assets and failed to understand that valuation is for purpose of recording value of assets which is already with the assessee company. The AO also held that intangible assets have NOT been transferred to the assessee company, but only a perpetual and irrevocable right to use such intangibles has been granted to the assessee company ignoring the fact that intangible assets have been actually transferred as can be evidenced from Transfer Form TM-24 submitted by the assessee under the Trade Marks Act, 1999 for the

durgs namely ZOLAM, PIRANULIN, TETRAFOL, NOMYGRIN, SESOLEX, SESOVAL, DERILONG, SEMIVAL, COFODIL, PULVITAB, PULZAC, VIGABRIL, NOTERAL, EPIVAL, etc which are placed in the Paper Book at pages 7 to 65.

15.2. Further under the Scheme approved by the Hon'ble High Courts which inter-alia also includes the obligation of the assessee company to record the assets acquired under the Scheme at Fair Value. Thus the assessee company has the right to record the Assets at a Fair Value in its books of accounts. The relevant extracts of the High Court Judgement (Co. petition no. 31 of 2013 connected with Company Application No. 373 of 2012) permitting the assessee company to recognize the asset at fair value is as reproduced below:

> "9. Accounting by Transferor Company and the Transferee Company in respect of transfer of domestic formulations undertaking
>
> (i) Accounting treatment in the books of the Transferor Company:
> …….
> (ii) Accounting treatment in the books of the Transferee Company:
>
> a) Upon coming into effect of this scheme and upon the arrangement becoming operative, **the Transferee Company shall record the assets transferred to and vested in them pursuant to this Scheme, at the estimated fair values of the respective assets as on the Appointed date.** The decision of the Board of Directors of the Transferee Company in this regard shall be final and binding
>
> b) **The sum total of assets recorded at fair values shall be credited to Capital Reserve Account in the books of the Transferee Company.** The Capital Reserve shall be available for issue of bonus shares or such other application as may be permissible under the law."
>
> … … … …

15.6. In the above referred decision, Co-ordinate Bench of Delhi Tribunal had concluded the issue based on the reading of clause (j) of Explanation to section 115JB for calculation of book profit u/s. 115JB, provisions of Section 129 of the Companies Act, AS14 of the recognized accounting standard, keeping in view the fact that the revenue has not brought any tangible material to prove that the scheme is a colourable device to avoid taxes, keeping in view of the amalgamation of the companies and keeping in view of the accounting resorted by the group companies regarding the book value of investments in shares pre and post amalgamation, we hereby hold that, the appeal of the assessee on this ground is allowed. **We are in conformity with the above view taken by the Co-ordinate Bench of Delhi Tribunal and in view of above discussion we are of the view that recording of the assets at fair value pursuant to scheme of arrangement and at time of initial recognition cannot be regarded as revaluation and consequently no adjustment is required to be made to book profit.**

15.7. Further, section 115JB is a deeming provision and the same is required to be interpreted strictly and that no further adjustment is required in addition to the items specified under section 115JB. The Assessing Officer has no power to tinker book results by any adjustments other than adjustments provided in explanation to Section 115JB of the Act and addition made by the AO does not fall within any ambit of adjustments. The impugned action of the Ld. AO to re-characterize the fair valuation as revaluation, is contrary to the provisions of section 115JB and also contrary to the law enshrined by the Hon'ble Supreme Court in the case of Apollo Tyres Ltd [255 ITR 273]. The Hon'ble Supreme Court in Apollo Tyres Ltd (supra) has categorically stated that where the accounts are prepared in accordance with Companies Act and certified by the Auditor, then the assessing officer should not go beyond the net profit, except to the extent specifically provided under section 115JB of the Act observing as follows:

> *"…the assessing Officer while computing the income under Section 115-J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making*

> *increases and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J."*

15.8. Thus, in light of above decision of the Hon'ble Supreme Court, it is held that the assessing officer does not have a power to tinker with the financial statements prepared in accordance with the provisions of the Companies Act and certified by the statutory auditor. **The action of the Ld. AO in the present case is therefore contrary to the provisions of the law and therefore the adjustment made by the Ld AO is hereby quashed.**

16. It is relevant to place on record that the Institute of Chartered Accountants of India (ICAI) had come out with a Compendium of Accounting Standards, wherein they had specifically covered the impugned scenario and clarified that the accounting treatment prescribed by the High Court/ITAT shall have legal force. Further, as pointed out by the Ld. Sr Counsel that the assets received under restructuring are allowed to be recorded at fair value under various Accounting Standard namely AS-14 and AS-10 and it is a fundamental requirement that the accounts must present true and fair view. To re-iterate Paragraph 12 of AS-14, which is to be mandatorily followed by the assessee company, which permits the Transferee Company to record the assets and liabilities of the amalgamating companies, acquired under the scheme of amalgamation, at Fair Values as on the date of amalgamation. Therefore, recording of the assets received on spinoff date at fair value is also in line with the accounting framework. Furthermore, the difference was the difference between the fair market value of assets and liabilities taken over as per the book values, which has resulted in 'capital reserve' and been recorded in the books of the Assessee.

16.1. Further, as we examine the issue it is also imperative to consider the relevant provisions of section 115JB pursuant to which the Ld. Assessing Officer has made an adjustment:

> "*Explanation 1.—For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by—*
> *…*
> *(g) the amount of depreciation,*
> *…*
> *if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, and as reduced by,—*
> *…*
> *(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); …*"

Section 115JB has laid down specific approach for computation of Book Profit. The book profit is to be computed by making adjustment to the net profit as per statement of profit and loss account of items as specifically provided for.

16.2. It is observed that as seen from above, clause (iia) to Explanation 1 to section 115 JB(1) provides for reduction from the book profit of the amount of depreciation debited to the statement of profit and loss, excluding the amount of depreciation on account of revaluation of assets. Therefore, the moot question for consideration is that **Whether the assets recorded by the Assessee Company at Fair Value is in accordance with the Scheme approved by the High Court could be termed as revaluation ?** Undisputedly, upon transfer, the assessee company was required to record the assets for the first time in its books of account. Pursuant to the receipt of intangible assets by the assessee company by virtue of the scheme of arrangement, the assessee company has recognized the intangible assets so received for the first time in its books of accounts at their respective Fair Values to reflect the true position of the assets and liabilities as on 31.03.2012 and such treatment is as per scheme approved by Hon'ble High Court as stated supra.

16.3. Therefore in our considered opinion, in no way, this can be considered similar to the revaluation. **The recording of intangibles at Fair Value in the books of accounts by the assessee company is**

part of the process of initial recognition of the assets and not revaluation of existing assets held by it. The LD Sr. Counsel has correctly referred to dictionary meaning of revaluation of assets which means that **'assessing the value of something again'** which is not the case of the assessee. We are in absolute agreement with the principle that for revaluation, there must be an existing ownership in first place. It is a fundamental principle that revaluation requires an existing value that is sought to be revalued. In the case on hand, there was no previous ownership of the intangible assets with the assessee company, instead these assets were transferred to and acquired by the assessee company as a consequence to the Scheme of Arrangement approved by the Hon'ble High Court of Gujarat. The recording of these assets in the books of the assessee company at Fair Value is in accordance with the generally accepted accounting principles and cannot be treated as revaluation of assets. In absence of any revaluation of assets carried out by the assessee company, there should not be any adjustment to the computation of the book profit u/s.115JB as erroneously considered by the Assessing Officer and confirmed by the Ld CIT[A].

16.4. Further, the issue under consideration is also covered by the order of the ITAT, Delhi in case of **Hespera Realty (P.) Ltd v. DCIT** reported in [2020] 121 taxmann.com 80 (Delhi-Trib.). In the case before the Tribunal the assessee company had recorded assets and investments received on amalgamation at fair value, however the AO treated it to be in the nature of the revaluation and adjustment was made to book profit under clause (j) of Explanation 1 to section 115JB of the Act on sale thereof. The co-ordinate bench quashed the adjustments made by the assessee by making following significant observations:

> "47. **We find that the Assessing Officer failed to appreciate that a "Revaluation Reserve" is created when an enterprise revalues its own assets**, already acquired and recorded in its books at certain values. In other words, when an entity makes reinstatement of the book value of its existing assets, it amounts to revaluation of assets. **In the instant case, the assessee has not revalued its existing asset but has only recorded the fair values of various assets and liabilities**

"acquired" by the assessee from the transferor/ "amalgamating companies" pursuant to the scheme of amalgamation as its "cost of acquisition" in accordance with the terms of the court-approved scheme of amalgamation and the provisions of AS14."

16.5. We note that the intangible assets are acquired and owned by the assessee company pursuant to the approved Scheme. Furthermore, we note here that there is perpetual and irrevocable transfer of the intangible assets such as Trade Marks to the assessee company. The Bench had called for evidences showing transfer documents of Trade Marks from SPIL to the assessee company by the virtue of the spin off approved by Hon'ble HCs. The ld. Sr. Counsel of the assessee placed all these documents [at pages 7 to 65 of the Paper Book] during course of hearing which have been perused by us. **In light of this fact, we are unable to agree to the contention of the Ld. AO that there was no transfer of ownership of the assets to the assessee company.**

16.6. Lastly, we observe that the assets have been acquired and recorded at fair value in A.Y. 2012-13 and the same has been accepted by the Ld. AO by way of order of scrutiny assessment order passed under section 143(3) of the Act dated 19-01-2015. Once the recording of the intangible assets at fair value have been accepted and not questioned in the relevant year being the initial year of recording i.e. A.Y. 2012-13 in the instant case, it is not open to the revenue authorities to question the same in succeeding years.

16.7. In view of the above, we set aside the findings of the lower authorities and direct the AO to delete the adjustment made by him to the book profit under section 115JB of the Act. **Hence, the ground of the assessee company is allowed."**

11.1. There is no change in the facts of the present case with that of the earlier asst years 2013-14 and 2014-15, the Co-ordinate Bench considered various judgements, Accounting Standard AS-14, AS-10 and also provision of section 115JB of the Act and held that adjustment made by the Ld AO in the Book profit is liable to

be deleted. Thus respectfully following the above decision of the Co-ordinate Bench dated 06-10-2023 in ITA Nos.1464 & 1465/Ahd/ 2018 and various other judicial precedents, **we hereby set-aside the findings of the lower authorities and direct the AO to delete the adjustment made in the book profit under section 115JB of the Act**. **Hence, the ground no.4 of the assessee company is hereby allowed.**

12. **Ground No. 5** of the Appeal relates to disallowance of Stamp Duty charges of Rs.28,00,000/- being capital in nature on the share expenses pursuant to the terms of Court sanctioned Scheme of Arrangement. The Ld AO at para 19 of the assessment order has observed that RoC filing fees paid for increase in share capital is capital expenditure in view of decisions of Brooke Bond India Ltd Vs CIT [225 ITR 798] and Punjab State Industrial Development Corporation Ltd Vs CIT [225 ITR 792]. The above addition was upheld by Ld. CIT(A) mainly relying on the findings of the Ld. AO in his order.

12.1. Ld. Senior Counsel appearing for the assessee fairly admitted that this issue is held against the assessee in its own case by the Co-ordinate Bench in ITA Nos.1464 & 1465/Ahd/2018 relating to the Asst. Years 2013-14 & 2014-15.

13. We have heard the rival contentions and perused the materials available on record. The expenditure incurred by the assessee is directly connected with such increase in authorized capital and such expenditure cannot be allowed in view of judgements of Punjab State Industrial Development Corporation and Brooke Bond India Limited [cited supra]. **Thus, the addition**

made by the Ld.AO of Rs.28,00,000 is confirmed. **This Ground no. 5 raised by the of assessee is dismissed.**

14. Next Ground No.6 is disallowance made u/s.36[1][va] rws 2[24][x] for delayed payment of employees contribution to ESIC of Rs.34,083/=. Ld. Senior Counsel appearing for the assessee fairly admitted that this issue is held against the assessee by the Hon'ble Supreme Court in Checkmate Services Pvt Ltd reported in 448 ITR 518. Respectfully following the same, this **Ground no. 6 raised by the of assessee is dismissed.**

15. Next Ground No.7 is disallowance of long term loss on sale of land amounting to Rs.49,80,848/=. The assessee acquired leasehold rights of plot of land vide Lease Agreement dated 16-09-2010 for a consideration of Rs.1,07,06,320/= which was surrendered back for Rs.1,04,38,662/= during this asst. year after indexation which has resulted in a long term capital loss [LTCL] of Rs.49,80,848/= but the same was neither claimed in the original RoI nor in the Revised RoI filed by the assessee. During the assessment proceedings the assessee requested the AO to consider the inadvertent omission and allow LTCL. The Ld AO instead of allowing the loss, added back the amount of loss to the income of the assessee. Aggrieved against the addition assessee was on appeal and Ld CIT[A] though not allowed the LTCL, since the loss return was not filed u/s.139[5] of the Act but deleted the addition made as income in the hands of the assessee by observing as follows:

> "22.2. I have carefully considered the facts on records and submission of the Ld. Authorized Representative. On perusal of submission made by the Appellant it is observed that the Appellant has already added LTCG of Rs.369461/- (10438662 10069201) on sale of land while computing book profit u/s 115JB. However, with indexation appellant claimed LTCL of Rs. 49,80,848/- during assessment proceedings. The appellant has failed to record LTCL in ITR under normal provisions of the Act. The appellant has filed ITR on 28.11.2015 and revised its ITR u/s 139(5) on 30.03.2016. In both the ITRs filed, the appellant has not claimed Long Term Capital Loss of Rs.49,80,848/-, hence, such loss cannot be carried forward to future years. Another grievance of the appellant is that the AO has added this loss of Rs 49,80,848/- in total income. I agree with the Ld. AR's that the loss cannot be added to the income rather it should have been restricted from setting off from business loss during current year. Such long-term capital loss on sale of land amounting to Rs.49,80,848/- should not be allowed for set off and carry forward to future years accordingly. Thus, addition on this count is directed to be deleted. Ground No.18 is partly allowed."

15.1. Ld Senior Counsel made reliance on the judgements of jurisdictional High Court in the case of CIT -Vs- Mitesh Impex reported in 270 CTR 66 [Guj] and Bombay High Court judgement in the case of Pruthvi Brokers reported in 349 ITR 336 [Bmy] and the LTCL is to be allowed. Per contra Ld CIT DR supported the order passed by the CIT[A].

16. We have heard the rival contentions and perused the materials available on record. The judgements relied by the assessee are not applicable to the present case, since the LTCL is neither claimed by the assessee in the original return nor in the revised return, but claimed during the course of assessment proceedings. The judgements referred above deals with fresh claim namely 80IA, depreciation made for the first time during the appellate proceedings and not on a LTCL/loss. Section 139[3] makes it mandatory to claim business loss or capital loss in the return filed u/s.139[1] and as per Rule 12 of Income Rules. Thus we do not find any infirmity in the order passed by Ld CIT[A] and **the Ground**

no.7 raised by the assessee is devoid of merits and the same is liable to be dismissed.

17. Last Ground No.8 is deduction of education and secondary & higher education cess u/s.37[1] of the Act. Ld. Senior Counsel appearing for the assessee submitted **that the assessee is NOT PRESSING this ground, recording the same, this ground is dismissed.**

18. In the result **the appeal filed by the assessee in ITA No. 712/Ahd/2019 is partly allowed.**

19. Now we take it up appeal filed by the Revenue in **ITA No. 741/Ahd/2019** and the Grounds of Appeal is as follows:

> *1. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee and in not confirming the additions made by the AO on these issues.*
>
> *2.1 On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing deduction u/s 80IE of Rs.1013,01,69,988/- in respect of Sikkim Unit without appreciating the facts and reasons mentioned by the AO in the assessment order.*
>
> *2.2 On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing deduction u/s 80IE of Rs.1013,01,69,988/- in respect of Sikkim Unit, without appreciating the facts and reasons mentioned by the AO in the assessment order of erstwhile firm Sun Pharma Sikkim (SPS), which after its conversion into a Part IX company, has amalgamated with the assessee company.*
>
> *2.3 On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing deduction u/s 80IE of Rs. 1013,01,69,988/- in respect of Sikkim Unit, without appreciating the fact that erstwhile Sun Pharma Sikkim was formed by the splitting up and reconstruction of the existing business of Sun Pharmaceutical Industries (SPI), and the condition that used machinery is less than 20% of the stipulated limit, has not been fulfilled by the assessee.*

2.4 On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in holding that the claim of the appellant in respect of deduction u/s. 80IE is allowable without appreciating that in the absence of proper details and bills, it could not be ascertained as to whether plant and machinery were new and not used earlier, and without appreciating that plant and machinery transferred by Sun Pharmaceutical Industries to Sun Pharma Sikkim was used by Sun Pharmaceutical Industries prior to put to use by Sun Pharma Sikkim, and hence such plant and machinery could not be regarded as new plant and machinery.

2.5 On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in holding that the claim of deduction u/s. 80IE in respect of Sikkim Unit, is allowable without appreciating that mere submission of journal entries generated in computer cannot be treated as an authentic document for having purchased plant and machinery and accordingly the A.O. had clearly established that Sun Pharma Sikkim was constituted by reconstruction of existing business of Sun Pharmaceutical Industries.

2.6 On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in holding that the claim of deduction u/s. 80IE is allowable without appreciating that the assessee could not substantiate its claim with verifiable and reliable documents, and failed in establishing that it had satisfied all the conditions laid down in section 80IE. and the A.O. had correctly disallowed deduction u/s 80IE of Rs.1013,01,69,988/-.

2.7 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the claim of deduction u/s. 80IE is allowable without appreciating the A.O's finding on the issue of period of use, and depreciation of plant and machinery used by Sun Pharma Industries & Sun Pharma Sikkim.

3.1 On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing deduction u/s 80 IB/80 IE in respect of receipt of interest of Rs.29,49.60,969/- on delayed payments on sales, without appreciating the facts and reasons mentioned by the AO in the assessment order.

3.2 On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing the assessee's ground on disallowance of deduction u/s 80IB/80IE in respect of receipt of interest on delayed payments on sales without appreciating the fact that the interest was not derived from manufacturing activity and deduction u/s 80IB/80IE was rightly disallowed by the AO.

4.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.2,26,07,758/- in respect of conference fees and sponsorship under the head gift and freebies to doctors without appreciating the facts and reasons mentioned by the AO in the assessment order.

4.2 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 2,26,07,758/- in respect of conference fees and sponsorship under the head gift and freebies to doctors without appreciating the real nature of these expenses which were actually freebies and gifts to medical practitioners.

5.1 On the facts and circumstances of the case and in law, CIT(A) erred in deleting the addition of Rs.69,89,859/- to Book Profit u/s. 115JB on the issue of disallowance u/s 14A, without appreciating the facts and reasons mentioned by the AO in the assessment order.

5.2 On the facts and circumstances of the case and in law, CIT(A) erred in deleting the addition of Rs. 69.82,659/- to Book Profit u/s. 115JB without appreciating the fact that the said amount was disallowed u/s. 14A and hence was required to be added to the book profit as per clause (f) to Explanation 1 of section 115/8(2).

On the facts and circumstances of the case and in law, CIT(A) erred in deleting the addition of Rs.89,39,883/- on account of disallowance of expenditure made towards care protection plan for Apple i-Pads being part of subsequent years without appreciating the fact that the assessee has taken care protection plan for various I-Pad purchased for its field staff and the said plans were valid for the period ranging from 12 month to 24 months we / February 2015 and therefore, although the whole expenditure was made in the year under consideration, the benefit of the same would be availed for 02 months for the year under consideration and the remaining benefit would be availed in subsequent years.

7.1 On the facts and circumstances of the case and in law, CIT(A) erred in deleting the disallowance of interest expenditure of Rs.50,16,000/- paid to Neetnav Real estate pvt. Ltd. without appreciating the fact that the claim of interest payment to M/s Neetnav Real Estate Pvt. Ltd. is nothing but an arrangement with its group concem.

7.2. On the facts and circumstances of the case and in law, CIT(A) ought to have appreciate that fact that assessee company is a cash rich company & has been making huge investments in Mutual funds & even outstanding mutual fund as on 31/03/2015 was Rs. 1847.01 crores on one side and on other side, even after entering into agreement with Neetnav, the assessee company has paid security deposit late not only by 30 days but by 232 days which resulted in to payment of interest to Neetnav Real Estate Pvt. Ltd.

7.3 On the facts and circumstances of the case and in law, CIT(A) failed to appreciate the ratio laid down in the Hon'ble Apex Court's decision in the case of Premier Breweries Ltd. vs. CIT, Cochin [372 ITR 180 (SC), date 10.03.2015).

8. On the facts and circumstances of the case and in law, CIT(A) erred in deleting the disallowance of Rs.1,49,62,413/- on account of software upgradation and support expenses without appreciating the fact that the assessee had accepted the enduring nature of benefit of the said expenses in its submission submitted during the assessment proceedings.

9. On the facts and circumstances of the case and in law. CIT(A) erred in deleting the addition of Rs.3,20,000/- to the book profit for computation u/s 115JB, without appreciating the fact that the provision relating to Wealth tax forms part of Income Tax Act, 1961, and therefore, provision of wealth tax is to be added for the purpose of determination of book profit u/s 115JB.

10.1. On the facts and circumstances of the case and in law, CIT(A) erred in deleting the disallowance of management consultancy charges paid to Mckinsey & Company. without appreciating the findings of the AO in assessment order.

10.2 Without prejudice to the above, on the facts and circumstances of the case and in law, CIT(A) erred in deleting the disallowance of management consultancy charges paid to Mckinsey & Company, without appreciating the fact that the impugned expenses being arisen on account of merger of Ranbaxy & SPIL and therefore clearly attracts the provision of Section 35 DD of the Act.

11.1 On the facts and circumstances of the case and in law, CIT(A) erred in deleting the disallowance of expenses incurred towards consultancy charges to Makov Associates Ltd. amounting to Rs.67,64,69,735/-, without appreciating the findings of the AO in assessment order and also the fact that the assessee company itself declared that the benefits of the services provided by the M/s. Makov Associates Limited would provide enduring benefits to the company in domestic as well as global level market.

11.2 On the facts and circumstances of the case and in law, CIT(A) failed to appreciate that the disallowance in the assessee's case was made by the AO on the basis of agreement between the assessee company and Makov Associates Limited.

12. The appellant craves leave to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

20. The **Ground No.1** is General in nature, which does not require any adjudication and **hence dismissed**.

21. **Ground No. 2** of the Revenue appeal relates to disallowance of deduction u/s 80IE in respect to Sikkim Unit. The AO at page

27 of his order has followed the earlier assessment order relating to the A.Y. 2010-11 in the case of erstwhile firm M/s Sun Pharma, Sikkim which now stands merged with the assessee, has disallowed the deduction u/s.80IE claimed by the assessee in respect of Sikkim unit mainly on the ground that such unit is formed by splitting up and reconstructing existing business and Assessee has failed to submit that it has used less than 20% of old plant of total plant and machinery installed. Aggrieved by the said order, the assessee filed an appeal before CIT(A), whereby the CIT(A) deleted the addition by following the order of his predecessor CIT(A) in the case of erstwhile firm being M/s Sun Pharma, Sikkim for AY 2010-11 which has been subsequently followed for A.Yrs. 2011-12 and 2012-13. Aggrieved by the order of CIT(A), department is in appeal before us.

22. We have heard the rival contentions and perused the materials available on record. The Ld. CIT DR mainly relied upon the findings of AO in the Assessment Order, whereas the Ld. Senior Counsel has relied upon the order of CIT(A) as well as the decision of Co-ordinate Bench for AY 2010-11 to 2012-13. The brief facts of the case are that one of the group concerns of the Sun Pharma Group, M/s. Sun Pharma Industries was in the process of setting up a new industrial undertaking located at Sikkim. The firm Sun Pharma Industries agreed to assign all assets and liabilities on 'as in where in' basis together with all capital work in progress. In pursuance thereof, the said new undertaking was acquired by Sun Pharma, Sikkim (SPS) on 05.03.2009 as a 'going concern' basis. The claim of deduction u/s

80IE was made for the first time by SPS in AY 2010-11. In the present case for the Asst. Year 2015-16, the AO has solely relied upon the findings of the Assessment Order for AY 2010-11 in the case of SPS. However, such order for AY 2010-11 was not confirmed by the higher authorities. It is observed that the Co-ordinate Bench in the case of erstwhile firm SPS for AY 2010-11 (subsequently followed in 2011-12 and 2012-13) has allowed such deduction by holding as under. The relevant finding of the Co-ordinate Bench for AY 2012-13 reads as under:

> "… 8. We have heard the rival contention of both the parties and perused the materials available on record. At the outset, we find that issue on hand is covered by the order of the coordinate bench of this tribunal in the own case of the assessee for AY 2010-11 in ITA Nos. 3541/Mum/2017, where the bench vide order dated 16th May 2019 held as under:
>
> … ...
>
> 26. We have duly considered rival contentions and gone through the details. According to the AO, bills having value of Rs.6.88 crores with regard to certain additions to plant & machinery were not furnished. Therefore, he presumed such machinery as second-hand machinery. Against his presumption, the assessee has filed an application for permission to adduce additional evidence. It was contended therein that questionnaire issued on 12.11.2012; bills were lying at factory premises in Sikkim; staff was not well conversant with income tax proceedings; they were lying in boxes; hence in a short span of time, complete details could not be submitted. Thereafter, the assessee produced complete details. The remand report was called for by the ld.CIT(A) on those details. In the remand proceedings, each bill was analysed and objection of the AO were noted. The bills have been discussed by the CIT(A) and the details are available in tabular form extracted (supra). We also have perused such details and are of the view that the defects are not substantive. They have only shown that some of the bills are photo-

> copies, LRs are not available etc. The ld.CIT(A) while considering these defects observed that the AO should have made an inquiry from the original suppliers and when such machineries were supplied. He did not make any inquiry rather presumed certain facts that machineries are old one. In the finding recorded by the first appellate authority extracted (supra) reveals a detailed analysis and a finding of fact that total machinery having value of Rs.14.98 crore considered by the AO as representing old was not sustainable. Therefore, after going through the detailed analysis made by the ld.CIT(A) we are of the view that Revenue failed to demonstrate that machineries exceeding 20% of the total value of the plant & machinery were old machinery. Therefore, considering the facts on this fold of grievance of the Revenue, we do not find any error in the order of the ld.CIT(A). Assessee is entitled for deduction under section 80IE of the Act.
>
> 8.1 Before us, no material has been placed on record by the Revenue to demonstrate that the decision of Tribunal as discussed above has been set aside / stayed or overruled by the Higher Judicial Authorities. Before us, the learned DR has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of earlier year nor has placed any contrary binding decision in its support. Thus, respectfully following the order this tribunal in the own case of assessee, we uphold the finding of the learned CIT(A). Thus, the ground of appeal raised by the Revenue is hereby dismissed.'

22.1. Since the eligibility of deduction was upheld in the first year of claim being AY 2010-11, the same cannot be disputed in the subsequent year of claim on the same ground of ineligibility. More particularly when the AO himself has observed that there is no change in facts and circumstances of the case during the year under consideration. Before us, no material has been brought on record by the Revenue to demonstrate the above decision of the Co-ordinate bench in earlier year has been reversed or set aside by

the higher Judicial Forums. Thus, respectfully following the Co-ordinate Bench decision, we find no infirmity in the findings of Ld. CIT(A). **This ground no.2 raised by the revenue is hereby dismissed.**

23. Ground No. 3 of the Department's appeal relates to disallowance of deduction u/s 80-IB/80-IE in respect of receipt of interest of Rs.24,49,60,959/-. The AO at para 5.5.5 of the assessment order has observed that interest income cannot be said to have been 'derived from' the Industrial undertaking as held by the Hon'ble Supreme Court. Aggrieved by the Assessment Order, the assessee filed an appeal before Ld. CIT(A), whereby the Ld. CIT((A) has allowed such deduction u/s 80IB/80IE in respect of interest on delayed payments by following the decision of Hon'ble Jurisdictional High Court as well as the decision of ITAT Amritsar in the case of erstwhile firm M/s. Sun Pharma Industries (which is also merged with the assessee company). Aggrieved by the order of CIT(A), the revenue is in appeal before us.

23.1. We have heard the rival contentions and carefully perused the materials available on record. The Ld. CIT DR Dr. Darsi Suman Ratnam mainly relied upon the findings of the AO in the Assessment Order, whereas the Ld. Senior Counsel Sri S.N. Soparkar appearing on behalf of the assessee vehemently relied upon the order of CIT(A) as well as ITAT in the case of M/s Sun Pharma Industries, wherein the decision of Hon'ble Jurisdictional High Court is followed. It is undisputed fact that during the year under consideration, the assessee has claimed deduction u/s. 80IB/80IE in respect of interest received from M/s. Aditya

Medisales Ltd. and others being interest due on overdue payments outstanding as a result of trading liability. Similar issue was decided by the Co-ordinate Bench of ITAT Amritsar in the case of erstwhile firm M/s Sun Pharma Industries (now merged with the assessee company) for AY 2005-06 to 2009-10, which was subsequently followed in AY 2010-11 and 2011-12 wherein following the decision of **Hon'ble Gujarat High Court** in the case of **Nirma Industries Ltd. Vs. CIT (2006) 155 Taxman 330** and decision of **Hon'ble Madras High Court** in the case of **CIT Vs. Rane Ltd. 238 ITR 377 (Mad.)** wherein it has been held that interest received by the assessee from its trade debtor towards late payment of sale consideration is not required to be excluded from the profit of the industrial undertaking for the purposes of computation of deduction u/s.80IB/80IE as the same is income derived from business of industrial undertaking. The relevant finding of the coordinate bench for AY 2011-12 reads as under:

> "……45. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we find that the issue on hand is covered in favour of the assessee by the order of the coordinate bench of Mumbai Tribunal in own case of the assessee for AY 2010-11 bearing ITA No. 2465/Mum/2014 where the coordinate bench by following the order of Amritsar Tribunal in own case of the assessee for AY 2005-06 to AY 2009-10 decided the issue in favour of the assessee. The relevant finding of the coordinate bench in ITA No. 2465/Mum2014 reads as under:
>
> 23. Ground No IV pertains to adjustment of delayed payments, staff advances and statutory/bank. The issue regarding interest on delayed payments from customers is covered in favour of the assessee. But the issues regarding interest on staff advances and FDRs are covered against the

assessee by the orders of the Amritsar Tribunal passed in assessee's own cases pertaining to the financial years 2004-05, 2006-07, 2007-08, 2008-09 and 2009-10. The relevant paras of the order passed by the Amritsar tribunal are reproduced as under:-

> "51. As regards ground No .3 of the Revenue, regarding disallowance of deduction under section 80-IB in respect of delayed payments from M/s Aditya Medisales Ltd. Amounting to Rs. 48,20,32,772/-, the facts are identical to the facts in assessee's own case for the assessment year 2004-05 decided by us hereinabove. Following the same, this ground of the Revenue is dismissed."
>
> "54. As regards ground No 5&6 of the assessee with respect to the interest on FDR amounting to Rs. 3,27,599/- (correct figure Rs. 2,27,599/-) and loan to employees with regard to disallowance of deduction u/s 80-IB, the facts of the issues In hand are identical to the facts decided by the tribunal in assessee's own case dated 11.06.210 in ITA No 184(Asr)/2009 for the assessment year 2005-06. Following the same, the ground No 5&6 of the assessee are dismissed."
>
> 24. Following the orders of the decisions of the Amritsar Tribunal in the identical issues, we allow the assessee's claim of deduction under section 80-IB of the Act in respect of interest on delayed payments in question and direct the AO to delete the additions. However, we disallow the assessee's claim of deductions in respect of interest on staff advances & statutory/bank deposits."
>
> 45.1 Thus respectfully following the consistent view of Tribunal in the own case of the assessee, we do not find any infirmity in the finding of the learned CIT(A). Hence, the ground of appeal raised by the Revenue is hereby dismissed'

23.2. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of earlier year nor has

placed any contrary binding decision in its support. Thus, respectfully following the order of this Tribunal, the assessee is entitled to claim deduction u/s. 80IB/80IE in respect of the interest earned on overdue payments being the debts arising from trading liability. **Hence Ground No.3 raised by the Revenue is dismissed.**

24. **Ground No. 4** of Department's appeal related to disallowance of business/conference fee and sponsorship expenses under the gift and freebies to doctors of Rs.2,26,07,758/-. Vide paragraph 6.2. of this order the above disallowance was confirmed and the Ld. AO is directed to verify that if above referred expenditure is part of profit & loss account for Unit eligible for deduction under Section 80-IB/80-IE, the assessee would be entitled for higher deduction and re-compute the same accordingly. Thus, **Ground no. 4 in Revenue's appeal is partly allowed.**

25. **Ground No. 5** of Department's appeal relates to CIT(A) erred in deleting the addition of Rs.69,89,859/- to Book Profit u/s. 115JB on the issue of disallowance u/s 14A. This issue is dealt by the co-ordinate Bench in ITA No. 1464/Ahd/2017 at paragraphs 16.1 to 16.5 of the order, holding no adjustment be made in the Book Profit u/s. 115JB of the Act. Thus following the same principle **this Ground No.5 raised by the Revenue is hereby dismissed.**

26. **Ground No.6** of Department's appeal relates to CIT(A) erred in deleting the addition of Rs.89,39,883/= on account of disallowance made towards care protection plan for Apple i-pads ignoring the

fact that same is valid for more than 12 to 24 months. The AO held the same as prepaid expenditure and the assessee contended that according to the mercantile system of accounting, a prepaid expenditure is one in respect of which the payment has been made prior to the arising of any liability. The ld CIT[A] in para 16.2.1. of his order directed to delete the addition by observing as follows:

> "16.2.1. After due deliberation to the contentions of the Appellant and on perusal of the purchase invoice, I am of the considered view that the liability in the present case arose in its entirety as soon as the agreement to purchase the protection plan had been entered into. **The expenditure at-most ought to be regarded as 'deferred revenue expenditure' akin to advertisement, staff-training expenses, etc., where the expenditure is incurred in year one and the benefit of which will be availed and enjoyed for longer period. An expenditure on revenue field cannot be disallowed simply because the assessee is going to enjoy the benefits of it for longer period.** Therefore, the contention of Assessing Officer that the expenditure should be only partly allowed is untenable. Therefore, the expenditure not being capital in nature and for the purposes of the business of the Appellant, the same shall be allowed under section 37(1) in its entirety. The Assessing Officer is directed to allow the afore-mentioned relief. Addition of Rs.89,39,883/- is cancelled. Accordingly, Ground No. 12 is allowed."

26.1. Ld. D.R. appearing for the Revenue could not point out any error in the findings arrived by Ld. CIT(A).

26.2. Per contra Ld. Senior Counsel appearing for the assessee supported the order passed by the Ld. CIT(A) and also relied upon Jurisdictional High Court Judgment in the case of PCIT-vs-Gujarat Industries Power Company Ltd. reported in (2023) 154 Taxmann.com 583 wherein it was held as follows:

> "Section 37(1) of the Income-tax Act, 1961 Business expenditure. Allowability of (Software) - Assessment year 2005-06 - Whether in view of decision in case of CIT v. N.J. India Invest (P.) Ltd. [2013] 32 taxmann.com

> 367/215 Taxman 78 (Guj.) where assessee-company had incurred expenses on upgradtion of software, since said expenditure was incurred only for facilitating trading operation leaving fixes untouched, said expenditure was to be allowed as Revenue in nature and could not be treated as capital in nature - Held, yes [In favour of assessee]"

26.3. Respectfully following the above judicial precedent, the expenses incurred by the assessee of Rs. 89,39,883/- towards care protection plan for Apple i-pads is allowable as Revenue expenditure u/s.37(1) of the Act. Thus the **Ground No. 6 raised by the Revenue is hereby dismissed.**

27. **Ground No.7** of Department's appeal relates to CIT(A) erred in deleting disallowance of interest of Rs.50,16,000/= paid to M/s.Neetnav Real Estate Pvt Ltd. Ld CIT[A] after considering the facts on the penal interest paid and contractual agreement between the parties which is well within Arm's Length pricing deleted the above addition by making a detailed order as follows:

> "17.2.1. I find that as per the agreement between the Appellant and Neetnav, the Appellant was liable to pay security deposit of Rs. 8,75,00,000/- to Neetnav for the use of the specified area. It was also agreed by the parties that in case of failure to pay deposit within the stipulated time, the Appellant was liable to pay interest @ 9% p.a. Consequent to the said agreement. The Appellant defaulted in making timely payment of the security deposit thereby triggering the interest obligation on delayed payment of security deposit. As per the agreement, interest was to be levied at the rate of 9% p.a. for the period of delay in making the payment. Accordingly, for the period of delay of 232 days, interest amounting to Rs. 50,16,000/- was payable by the Appellant and the same was claimed as a deduction u/s 37(1) of the Income-tax Act, 1961 (the 'Act"). However, the Assessing Officer has disallowed the Appellant's claim questioning the Appellant's rationale and business expediency in failing to make a timely payment of the amount despite being cash rich. Further, the Assessing Officer has disallowed the interest expenditure on the ground that the entire arrangement is between group concerns.

17.2.2. From the above agreement it is evidently clear that not only the said expenditure incurred for the purpose of the Appellant's business but also was it pursuant to a legal obligation imposed on the Appellant due to an agreement entered between the Appellant with Neetnav. The agreement categorically stated that in case the security deposit is not paid within the stipulated time period of 30 days, then the Appellant was liable to pay interest @ 9% p.a. It is obvious that the interest rate on delayed payment of 9% p.a. was quite lower than the general interest rate prevailing in the market. There is no denial of the fact by the Assessing Officer that the Appellant has made late payment of the security deposits. There is also no denial of the fact that the Appellant has utilized the funds lying with it for the business purposes. It is also undisputed that the Appellant has made payment of Rs.50,16,000/- to Neetnav, after deducting tax at source. All the above factors collectively corroborate the genuineness of the interest payment made by the Appellant. The expression 'wholly and exclusively' used in section 37(1) does not mean 'necessarily'. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business.

17.2.3. Now coming to the arrangements amongst related parties, it is true that the Appellant as well as Neetnav fall within the related parties as mentioned in section 40A(2)(b). However, it is equally true the transaction of payment of interest was subject to domestic transfer pricing provisions u/s. 92BA of the Act. and after conducting an exhaustive FAR analysis of the transaction, it has been found that the rate of 9% p.a. paid by the Appellant conforms to the arm's length standards. Under these circumstances, it is not open to the Assessing Officer to step into the shoes of the businessman and adopt a subjective standard of reasonableness of the amounts paid.

17.2.4. It is added here that the said expenditure has been accepted to be incurred for the business purposes even by the independent statutory auditors of the Appellant company who have issued unqualified opinion in their audit report. Moreover, it is an established principle that once the transaction is accepted to be genuine and undertaken with bona fide belief, then the expenditure in respect thereof ought to be allowed as a deduction.

17:2:5 In view of the several above decisions cited by the appellant as the transaction has actually taken place after complying with the applicable regulatory requirements and nothing contrary is brought by the Assessing Officer on record to prove otherwise, the expenditure in question need to be allowed as a deduction u/s 37(1) of the Act. The

> Assessing Officer is directed to allow the afore-mentioned relief. Addition of Rs.50,16,000/- is hereby cancelled. Accordingly, Ground No.13 is allowed."

27.1. Perusal of the facts, the assessee paid interest of Rs.50,16,000/- to M/s. Neetnav Real Estate Pvt Ltd. though being a related party u/s.40A[2][b] of the Act, but the interest was subject to domestic transfer pricing provisions u/s.92BA of the Act. Further as per FAR analysis of the transaction, it has been found that the rate of 9% p.a. paid by the Assessee company is in conformity with the Arm's Length Pricing and also much lesser than the prevailing interest rates in the market. It is undisputed fact that based on contractual obligation the late payment of 232 days has attracted the penal interest of Rs.50,16,000/- which is to be allowed u/s.37(1) of the Act. Thus the addition made by the Ld AO on this account is against the provisions of law and was rightly deleted by Ld. CIT(A). **Thus Ground No. 7 raised by the Revenue is hereby dismissed.**

28. **Ground No.8** of Department's appeal relates to CIT(A) erred in deleting disallowance of Rs.1,49,62,413/= on account of software upgradation and support expenses. The assessee claimed that these expenditures were mainly on account of data migration charges, online support services, improve its accounting software so as to effectively manage its day-to-day operation and also includes expenditure for regular maintenance of the software. The AO held that the said software expenses gives benefit which would be available for more than one year i.e. enduring in nature and held as capital expenditure. The Ld CIT[A] held that software

upgradation expenses are revenue in nature and allowable u/s.37[1] of the Act by observing as follows:

> "18.2. I have carefully considered the facts on records and submission of the appellant. I find that the appellant has incurred expenditure to improve its accounting software so as to effectively manage its day to day operation and also includes expenditure for regular maintenance of the software. The software has assisted in efficient and secure maintenance of its recording financial transactions, handling payroll matters, stock registers, fixed asset records, etc., which predominantly are in the administrative field of business. Further the vendor has provided various functions such as corrective and adaptive maintenance services, installing periodic updates, network and remote connectivity management, preventing system performance from degrading to unacceptable levels etc. The nature for which the expenditures have been incurred and the need to continuously and regularly upgrade the software clearly shows that the expenditure incurred is recurring in nature.
>
> 18.2.1. It is a settled law that an expenditure which enables the profit-making structure to work more efficiently without altering the profit-making structure per se should be considered as revenue expenditure. In my considered view, the case of the Appellant is directly covered by the decisions of the Hon'ble Jurisdictional High Court of Gujarat in the case of N J India Invest P Ltd [2013] 215 Taxman 78 (Guj) and PCIT v. Kitchen Express Overseas Ltd [2018] 89 taxmann.com 407. Therefore, I hold that the software upgradation expenses are revenue in nature and thus eligible for deduction under section 37(1) of the Act. Addition of Rs.1,49,62,413/- is deleted. Accordingly, Ground No. 14 is allowed."

28.1. Ld. D.R. appearing for the Revenue could not point out any error in the findings arrived by Ld. CIT(A) but supported the order passed by the AO.

28.2. Per contra Ld. Senior Counsel appearing for the Revenue supported the order passed by the Ld. CIT(A) and also relied upon various Judgments rendered by the Jurisdictional High Court namely CIT -vs- NJ (India) Invest Pvt. Ltd. reported in (2013) 32

taxmann.com 367 (Guj.) wherein it was held that software upgradation expenses are held to be Revenue in nature and allowable u/s. 37(1) of the Act observing as follows:

> "6. These services, thus essentially were in the nature of maintenance and support services providing essentially backup to the assessee, who had procured software for its purpose. **These services, thus essentially did not give any fresh or new benefit in the nature of a software to be used by the assessee in the course of the business but were more in the nature of technical support and maintenance of the existing software and hardware.** For example service provider had to provide technical support to the employees of the company and to maintain the computers and the laptop, had to supply security service for controlling the data theft and providing checks on access by unauthorized persons to the data etc.
>
> 7. In essence, **these services, therefore, were in the nature of maintenance, back up and support service to the existing hardware and software already installed by the company for the purpose of its business.** The Tribunal, in our opinion, therefore, rightly held that the expenditure is type: revenue in nature. The Tribunal observed that even the test of enduring benefit, may, in given of the set of circumstances, break down as held by Delhi High Court in the case of CIT v. Asahi India The Safety Glass Ltd. [2011] 203 Taxman 277/15 taxmann.com 382 in which it was observed, inter alia, on of that the expenditure which is incurred enables the profit-making structure to work more efficiently leaving the source of the profit-making structure untouched would be an expenditure in the nature of revenue."

28.3. Respectfully following the judicial precedent of jurisdictional High Court, the disallowance made on this account by the AO was rightly deleted by the Ld CIT[A] which does not require and interference. Thus **Ground No. 8 raised by the Revenue is devoid of merits and is hereby dismissed.**

29. **Ground No.9** of Department's appeal relates to CIT(A) erred in deleting addition of Wealth Tax of Rs.3,20,000/= to book profit for computation u/s.115JB of the Act. The Ld. CIT(A) following his

predecessor's order held that Wealth-tax paid cannot be treated on par with Income-tax and accordingly the payment of Wealth-tax was not required to be added to the book profit u/s.115JB of the Act by observing as follows:

> "20. Ground No. 16 is against the action of the Assessing Officer in adding the provisions of Wealth-tax of Rs.3,20,000/- to the book profit for computation w/s. 115JB. This issue has been discussed by the Assessing Officer in para-14.2 of his order and it has been held that the Wealth-tax is of same nature as Income-tax. This issue was also involved in the case of appellant in A.Y. 2008-09 and the CIT(A)-IV, Ahmedabad vide para-16.2 to 16.2.2 of the appellate order has allowed the appeal of the appellant on this account holding that the Wealth-tax paid, payable or a provision thereof, cannot be treated on par with Income-tax and accordingly the provisions for Wealth-tax was not required to be added to the book profit u/s. 115JB. Following the above order, relief has been allowed in A.Y. 2010-11. Respectfully following the order of CIT(A)-IV, Ahmedabad, I also direct the Assessing Officer to exclude the provisions of Wealth-tax from the book profit computation u/s. 115JB. Addition of Rs.3,20,000/- is hereby deleted. Thus, appellant succeeds in respect of Ground No. 16."

29.1. Ld. Sr. Counsel appearing for the assessee submitted that this issue is squarely covered in favour of the assessee by the Bombay High Court in the case of CIT -vs- Reliance Industries Ltd. reported in (2019) 102 taxmann.com 142 wherein it was held as follows:

> "4. Section 115JB of the Act pertains to special provision for payment of tax by certain companies As is well known, detailed provisions have been made to compute the book profit of the assessee for the purpose of the said provision. Explanation 1 contains list of amounts to be added while computing assessee's book profit under Section 115JB of the Act. Clause (a) thereof reads as under-
>
> > "(a) To the amount of income-tax paid or payable, and the provision therefor,"
>
> Likewise, clause (c) reads as under-

> "(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities,"
>
> In plain terms, clause (a) as noted above refers to amount of income tax paid or payable or the provision made therefor. The legislature has advisedly not included wealth tax in this clause. By no interpretative process, the wealth tax can be included in clause (a). The Revenue, further made a vague attempt to bring this item in clause (c) noted above. Clause (c) would include the amount set aside for provisions made for meeting liabilities other than ascertained liabilities. For applicability of this clause, therefore, fundamental facts would have to be brought on record which in the present case, the Revenue has not done. In fact, the entire thrust of the Revenue's argument at the outset appears to be on clause (a) which refers to the income tax which according to the Revenue would also include wealth tax. This question, therefore, is not required to be entertained."

29.2. Thus clause (a) of Section 115JB of the Act clearly talks on the Income Tax paid or payable only liable to be included for the purpose of book profit u/s. 115JB of the Act. Thus the addition made by the AO to Wealth Tax paid is liable to be deleted. **Ground No.9 raised by the Revenue is devoid of merits and is hereby dismissed.**

30. **Ground No.10** of Department's appeal relates to CIT(A) erred in deleting the disallowance of management consultancy charges paid to Mckinsey & Company. Brief fact is that the Ld AO disallowed the consultancy fees firstly on the basis that the payment was incurred for the benefit of the parent company namely, SPIL and not the Assessee company. But the assessee contended that prior to the merger, the entire domestic formulation business of Sun Pharma group was carried out by the assessee, while SPIL majorly dealt with foreign markets. However,

post-merger full fledged domestic pharmaceutical business of Ranbaxy got transferred to SPIL, thereby leading to carrying out of domestic businesses simultaneously by the two entities of the same group namely, SPIL and the assessee company. Although the merger was between SPIL and Ranbaxy, it is natural that Assessee being a wholly owned subsidiary of the amalgamated entity ie. SPIL, the merger would also impact the business and the support functions of the Assessee company. Accordingly, McKinsey & Co was hired to realize synergy benefits, reorganize business functions and extract maximum value from the acquisition streamline overlapping business functions, eliminate redundancies, suggest cost saving opportunities, rationalize product portfolio, alignment of marketing field force, etc., post happening of the merger so that the Assessee's and SPIL business can be carried out efficiently.

30.1. Further the assessee claimed that Mckinsey & Co. was hired to streamline common therapeutic verticals, identify and discard redundancies and duplications in business, identify and implement saving opportunities across high potential areas, rationalize product, alignment of marketing field force, adopt optimum marketing techniques and avail synergy benefits in order to facilitate the Assessee's business in the post-merger scenario. Thus the genuineness of the consultancy services rendered by Mckinsey & Co. is not questioned by the AO. Further, it is not even the case of the AO that entire consultancy expenditure for the Ranbaxy merger integration was borne by the Assessee. As per the communication issued by Mckinsey & Co., the cost for the project

was recommended to be allocated in the ratio of 65 : 35 between SPIL and the Assessee. Thus it makes abundantly clear that the services provided by Mckinsey & Co. were not just for SPIL as alleged by the AO, but for both the entities. Thus, the expenditure of Rs.16,55,52,260/- has been wholly and exclusively incurred by the Assessee for the purposes of its business.

30.2. The Ld AO has disallowed the consultancy fees secondly on the basis that incurrence of the same will benefit the Assessee for an indefinite period without providing any evidence in support thereof. Aggrieved against the addition assessee filed appeal before the Ld CIT[A] who deleted the addition by observing as follows:

> " 23.4.2. …. The assessee claimed that mere incurrence of an expenditure does not guarantee or entitle the payer to any benefits. It is fact on record that the consultancy services rendered by Mckinsey were concerned with devising probable ways in which the post-merger business could be optimally handled. These advices by themselves don't lead to achieving enduring benefits to the Assessee. In fact, it is almost impossible to say, with any degree of certainty, as to what percentage of the advice was accepted and implemented and what proportion can endure indefinitely. One cannot treat the said expenditure as capital in nature solely on an assumption that enduring benefits have arisen to the Assessee. It is undisputed that the impugned expenditure has been incurred with a view to optimize the functioning of the Assessee and ensure the trade operations to be carried out with great efficacy thereby bearing relevance in the revenue field. It is settled position of law that the revenue expenditure is the one which is operational in its perspective and solely intended for the furtherance of the enterprise on a routine/regular basis. The word 'capital' connotes permanency and therefore, capital expenditure is closely akin to the concept of securing a tangible or intangible property or corporeal or incorporeal right, so that they could be of a lasting or enduring benefit to the enterprise in issue. The said principle laid down in

Empire Jute Co. Ltd. [1980] (124 ITR 1) has been reaffirmed by the Hon'ble Supreme Court while deciding the case of CIT v. Associated Cement Companies Ltd. [1988] 172 ITR 257 (SC). The same has also been recently upheld in the case of Axis Bank Ltd. v. ACIT [2017] 185 TTJ 722 (Ahmedabad Trib.). What has to be seen is the nature of advantage in a commercial sense whether it is in the capital field or for the running of the business. If the advantage enables the assessee to undertake business efficiently without having impact on fixed capital, then such expenditure has to be reckoned on revenue account, even though the advantage may endure in future. This principle has been enshrined by the Hon'ble Apex Court in the decision of Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd. [1965] 58 ITR 241 (PC).

23.4.3. In a similar facts and circumstance, the Hon'ble Madras High Court in case of CIT v. Crompton Engg. Co. Ltd. (2000) 242 ITR 317 held that -

> "The assessee with the intention of bringing about improvements in the way it did its business had sought and obtained report of the consultants, so that efficiency of the business could be increased by employing better methods and re-organising the business itself to the extent required. The fact that it sought such advice did not imply that it would accept all the advice that was tendered and would implement it in the manner recommended. Merely obtaining a report from a management consultant and paying fees therefore, could not be regarded as capital expenditure, as such report was not obtained as part of documentation packages, but in a contract covering comprehensive restructuring of the business involved. No new line of business was started on the strength of the report of the consultants. That report was not regarded as essential part for any new business that the assessee commenced thereafter.
>
> In the circumstances of the case, the expenditure incurred by the assessee in obtaining that report was clearly an expenditure of revenue character. It is not only permissible but is abo necessary for any business to update its own knowledge and adopt better ways of organizing its business if it is to survive in the market The expenditure incurred for such purpose could not be regarded as capital expenditure and was only a revenue expenditure"

23.4.4. The decision rendered in the case of CIT v. Carborandum Universal Ltd. [2008] 219 CTR 202 (Madras) is more akin to the facts of the case as the management consultant involved in both these cases is the same third party namely Mckinsey.

…….

23.4.5. In light of the above substantiated services received by the Appellant from McKinsey, it is clear beyond doubts that the same had been availed for the purposes of the Appellant's business only. It is found out that the benefits accruing to the Appellant as a result of the aforesaid services are evident from a plain perusal of the audited financial statements for the financial year 2015-16 to 2017-18. In view of scope of work of Mckinsey as discussed above, even if any enduring benefit arises, the same would be in the revenue field and therefore, treated as revenue expenditure. All the conditions for making a claim for deduction u/s 37(1) viz: The expenditure should not be covered by section 30 to section 36, It should not be in the nature of capital or personal expenditure, It should be laid out or expended wholly and exclusively for the purpose of business, It should be incurred in the previous year under consideration & The expense should not be incurred for an offence or be prohibited by any law are fulfilled in the Appellant's claim for allowability of the professional charges of Rs. 16,55,52,260/- towards consultancy services rendered from Mckinsey and hence, ought to been allowed as a business deduction in computing the profit or gains from business or profession.

23.4.6. Under the above said facts and circumstance and following the above cited case laws, I am of the considered view that all the pre-requisites as established by section 37(1) are satisfied and therefore, I hold that the expenditure incurred towards the payment of consultancy fees to McKinsey & Co. are revenue in nature and have a direct nexus with the business of the Appellant and therefore, shall be allowed as a deduction under section 37(1) of the Act. The Assessing Officer is directed to delete the addition of Rs. 16,55,52,260/-. Accordingly, Ground No. 19 is allowed."

30.3. Ld. D.R. appearing for the Revenue could not point out any error in the findings arrived by Ld. CIT(A) therefore supported the order passed by the Ld AO.

30.4. Per contra Ld. Senior Counsel appearing for the Revenue supported the order passed by the Ld. CIT(A) and also relied upon various Judgments rendered by the Jurisdictional High Court namely (i) CIT-Vs-Gujarat State Fertilizers & Chemicals Ltd. 358 ITR 323 (Guj.), (ii) CIT-Vs-Gujarat Urja Vikas Ltd. 51 taxmann.com 517 and (iii) CIT-Vs-Telco Construction Equipment Co. Ltd. 127 taxmann.com 488 (Karnataka). Thus claimed that the consultancy services rendered by Mckinsey & Company is allowable as a deduction u/s 37(1) of the Act and the Ld. CIT(A) correctly deleted the addition made by the Assessing Officer. Thus the Revenue appeal on this count is liable to be dismissed.

31. We have given our thoughtful consideration and perused the materials available on record. The Ld. AOs disallowed the consultancy fees firstly, on the ground that payment was incurred for the benefit of the parent company namely, SPIL and not that of the assessee. Secondly, the consultancy fees will benefit the assessee for indefinite period being capital in nature, therefore not allowable u/s 37(1) of the Act. It is not in dispute that consultancy services were rendered by Mckinsey & Co to the assessee. As per communication from Mckinsey & Co the cost for the project was recommended to be allocated in the ratio of 65:35 between SPIL and the assessee company. So both the companies enjoying the benefit of consultancy services from McKinsey & Co in the ratio

of 2 : 1. The findings rendered by Ld. CIT(A) is not disputed by the Revenue.

31.1. Apart from various case laws relied by the Ld. CIT(A). The Jurisdictional High Court in the case of Gujarat State Fertilizers & Chemicals Ltd. (cited supra) held that payment to financial consultants for negotiating waiver of interest with banks under corporate debt restructuring expenses was held to be Revenue in nature by observing as follows:

> "4. Insofar as the second question is concerned, it pertains to Corporate Debt Restructuring (hereinafter referred to as 'the CDR') expenses of Rs.2.57 crore on payment to financial consultants in connection with waiver of loans, the Assessing Officer noted that the respondent-assessee paid the sum of Rs.2.57 crore to the financial consultant M/s. Brescon Corporate Advertisers Ltd., who provided their professional services in connection with the scheme of CDR by negotiating with the banks and financial institutions, which eventually helped the reduction of interest burden of the assessee. They were claimed to be the revenue expenditure aimed at reduction of recurring revenue expenditure of interest. The Assessing Officer held that the assessee would derive benefit of enduring nature as a result of CDR exercise and, therefore, it was of the opinion that all the expenses are to be treated as capital expenditure and the same were needed to be disallowed and added to the income of the assessee. The Assessing Officer relied upon the decision of the Supreme Court in the case of India Cements Ltd. v. CIT [1966] 60 ITR 52 and dismissed the plea of the assessee.
>
> 4.1 The assessee on being aggrieved by such order travelled to the CIT (Appeals), which considered this issue in detail. It noticed that the amount of Rs.60.13 crore had been waived under the CDR and interest had also been reduced for the financial year 2003-2004. The CIT (Appeals) on discussing various cases held that the same cannot be considered to be having an enduring benefit.
>
> 4.2 The Tribunal on this very issue relied on the decision of the Madras Industrial Investment Corpn. Ltd. v. CIT [1997] 225 ITR 802/91 Taxman 340 (SC), wherein the question arose, whereby the Supreme Court was

deciding whether a particular expenditure was revenue expenditure incurred for the purpose of business or capital in nature. It held that such question needs to be determined on a consideration of all the facts and circumstances of the case and by application of principle of commercial trading. While holding the expenditure as revenue in nature, it spread the same over a period. The Tribunal further held that :

> "34. We have considered the rival submissions, perused the materials on record and gone through the orders of authorities below and various judgments cited by ld.AR of the assessee. We find that Ld.CIT(A) has decided this issue in favour of assessee by following these very judgments of Hon'ble Apex Court which are cited by the Ld.AR of the assessee before us and considering the facts of the present case, we do not find any good reason to interfere in the order of Ld.CIT(A) on this issue. We therefore decline to interfere in the order of Ld.CIT(A) on this issue. This ground of Revenue is also rejected."

4.3 In the present case also, the CDR expenses to the tune of Rs.2.57 crore have been rightly held by both the CIT (Appeals) and the Tribunal as revenue in nature and the same has rightly not been held to be capital in nature. For the waiver of the loan, the payment has been made to the financial consultants. This was for the purpose of business and the same was held to be allowable under Section 37(1) of the Act. Having held the said amount to be revenue in nature applying the decision of the Supreme Court in the case of Madras Industrial Investment Corpn. Ltd.(supra), when the amount has been spread over a period of six years, no error is committed by both the authorities. Once the expenditure is held to be revenue in nature incurred wholly and exclusively for the purpose of business, it can be allowed in its entirety in the year in which it is incurred. However, considering the decision in the case of Madras Industrial Investment Corpn. Ltd.(supra), when the spreading is done for over a period of six years and as the assessee-respondent has no objection to such revenue expenditure being spread out, though it could have insisted for this amount allowed in the year under consideration, with no such objection having been raised, the Revenue would not succeed in this issue as the expenditure is held to be revenue in nature. Thus, the second question also does not merit any consideration"

31.2. Similarly the Jurisdictional High Court in the case of Gujarat Urja Vikas Ltd. (cited supra) held that expenses towards IT system maintenance in respect of restructuring of a company was not

having enduring benefit and as no asset was brought into existence on such expenses, said expenditure could not be capital in nature following Gujarat State Fertilizers & Chemicals Ltd. case law by observing as follows:

> "9. Before dilating further on this issue, a reference needs to be made in this regard to the decision in case of CIT v. Gujarat State Fertilizers & Chemicals Ltd. [2013] 358 ITR 323/217 Taxman 229/36 taxmann.com 230 (Guj.) wherein question was with regard to payment to financial consultants for professional services in connection with the corporation debt restructuring by negotiating with Banks and Financial Institutions. Such expenditure was considered for the purpose of business and allowable in entirety in the year in which it was incurred and it was held to be revenue in nature and not capital.
>
> 10. Reference to a decision of Supreme Court in case of Madras Industrial Investment Corpn. Ltd v. CIT, [1997] 225 ITR 802/91 Taxman 340 (SC) where the Apex Court was deciding whether a particular expenditure was revenue expenditure incurred for the purpose of business or capital in nature. Such question needs to be determined on a consideration of all the facts and circumstances of the case and by application of the principle of commercial expediency. This Court answered the question as follow :—
>
> > "4.3 In the present case also, the CDR expenses to the tune of Rs. 2.57 crores have been rightly held by both the Commissioner of Income-tax (Appeals) and the Tribunal as revenue in nature and the same has rightly not been held to be capital in nature. For the waiver of the loan, the payment has been made to the financial consultants. This was for the purpose of business and the same was held to be allowable under section 37 (1) of the Act. Having held the said amount to be revenue in nature applying the decision of the Supreme Court in the case of Madras Industrial Investment Corporation Limited (Supra), when the amount has been spread over a period of six years, no error is committed by both the authorities. Once the expenditure is held to be revenue in nature incurred wholly and exclusively for the purpose of business, it can be allowed in its entirety in the year in which it is incurred. However, considering the decision in the case of Madras Industrial Investment Corporation Limited (Supra), when the spreading is done for over a period of six years and as the assessee-respondent has no objection to such revenue expenditure being spread out, though it could have insisted for this amount allowed in the year

> under consideration, with no such objecting having been raised, the Revenue would not succeed in this issue as the expenditure is held to be revenue in nature. Thus, the second question also does not merit any consideration."
>
> 11. In the instant case also, this decision would have a direct applicability particularly when expenditure in incurred for the purpose of business. Considering the principle of commercial trading, when the question is to be addressed, both the CIT [A] as well as the Tribunal rightly held it to be revenue in nature and the same cannot be said to be capital. It is quite apparent that the fees paid for support for LAN work; providing and upgradation of Internet Bandwidth, or for coordination with BSNL for internet connectivity, etc are not having any enduring benefit. If any consultancy is required for the said purpose, the amount clearly would come under the head of Consultancy and that surely could not be considered as capital in nature. In the present form, the expenditure made was at the best for continuing the benefit for one year. Resultantly, such payment cannot be categorized as capital in nature as no asset is brought into existence on account of such payment."

31.3. Further Hon'ble Karnataka High Court in the case of Telco Construction Equipment Co. Ltd. held that consultancy fee paid for the purpose of studying and preparing a strategy to reduce cost of production by the assessee, such study conducted was only improving the sales and profitability of the assessee and no new asset had come into existence, then the consultancy fee paid by the assessee was to be allowed only as a revenue expenditure by observing as follows:

> "9. So far as second substantial question of law is concerned, the Commissioner of Income-tax (Appeals) has deleted the addition holding that the expenditure was incurred towards cost reduction initiative for sustained profitability and the provisions of section 35D are not applicable to the case as it is not the case of pre initial activity or setting up of a new capital asset. The tribunal has affirmed the aforesaid finding in appeal and has held that consultancy fee paid by the assessee is for the purposes of studying and preparing a strategy to reduce the cost of production by the assessee. It has further been held that no new asset has come into existence and the study conducted was only for improving the sales and

> profitability of the assessee and has upheld the order of the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) has placed reliance on the decision of the Supreme Court on Empire Jute Co. supra. The aforesaid concurrent findings of fact have not been challenged on the ground of perversity. Thus, concurrent findings of fact which have been recorded on the aforesaid issue, could not be demonstrated to be perverse. Therefore, no interference is called with the aforesaid concurrent findings of fact in this appeal under section 260A of the Act. [SEE: Syeda Rahimunnisa v. Malan Bi [2016] 10 SCC 315 and Principal Commissioner Of Income Tax, v. Softbrands India (P.) Ltd. [2018] 94 taxmann.com 426/406 ITR 513 (Kar.) In view of aforementioned well settled legal principles, the second substantial question of law is also answered against the revenue and in favour of the assessee."

31.4. Respectfully following the judicial precedents, we have no hesitation in upholding the order passed by Ld. CIT(A) deleting the addition made on account of consultancy service charges paid to Mckinsey & Company.

31.5. In the result, **the Ground No.10 raised by the Revenue is hereby dismissed.**

32. **Ground No.11** namely CIT(A) erred in deleting consultancy charges to M/s.Makov Associates amounting to Rs.67,64,69,735. Brief facts of this issue is during the financial year 2012-13, Sun Pharma Industries Ltd. (SPIL) entered into an Agreement dated 28-05-2012 with M/s.Makov Associates for availing strategic consulting services especially with respect to strategy building, business development, management of mergers and acquisitions, etc. for an initial period of three years. However, vide order dated 03-05-2013 passed by the Hon'ble High Court of Gujarat and Hon'ble High Court of Bombay, the domestic formulation undertaking of SPIL was transferred to the Assessee w.e.f. 31-03-

2012. Consequent thereto, the part of the services covered under the original agreement pertaining to the business of domestic formulation undertaking have been agreed to be rendered to the Assessee vide first Addendum to Agreement dated 18-02-2015 by Makov Associates. In terms of the aforesaid Agreement read with the Addendum, Makov Associates has raised an invoice for USD 10 million (equivalent to Rs. 67.65 crores) towards consultancy services rendered by it during the year under consideration. However, the AO has disallowed the consultancy fees paid to Makov Associates merely on the basis that incurrence of the same will benefit the Assessee for an indefinite period without providing any evidence in support thereof. Further the AO treated the impugned expenditure as capital in nature on the ground that the same resulted in enduring benefit to the assessee thereby disallowed the consultancy charges paid to M/s. Makov Associates amounting to Rs.67,64,69,735/- and added as the income of the assessee.

32.1. On appeal before Ld CIT[A] the assessee submitted that it hired the services of Makov Associates as a consultant with the main intention of bringing about improvements in the way it carried out its business so that efficiency could be achieved and at the same time, proper focus is maintained on growth prospects thereby facilitating strategic and business decision making by the top-level management. The functions of Makov Associates included the following:

- Keeping a macro view of general operations of the domestic formulation undertaking
- Improving its capability for future growth

- Involved in strategic planning including preparation of short, medium and long-term business plans
- Identifying profitable business opportunities
- Geographic expansion and diversification of business
- Competitive intelligence and feasibility analysis
- Striking strategic alliances with business partners involving mergers and acquisitions
- Negotiating and closing strategic and commercial deals
- Focusing on market enlargement, product differentiation
- Building/enhancing the brand of the company
- Designing marketing and market promotion strategies
- Building the right human resources pool for the Company
- Holding periodic meetings/discussions with senior management

32.2. Thus the assessee pleaded the payment made to Makov Associates is wholly and exclusively for the purpose of its business, to enable the Assessee company to effectively undertake its operation and at the same time focus on growth prospects and the expenditure incurred during the course of running of the business. It is undisputable fact that the nexus of the expenditure with the Assessee's business is not under any question and the addition made by the AO is liable to be deleted.

32.3. The Ld CIT[A] considered the above submission of the assessee and allowed the claim of consultancy fees paid to Makov Associates as an allowable expenses by observing as follows:

> "….. In the present case, the consultancy services rendered by Makov Associates were concerned with devising probable ways in which the domestic formulation business could be optimally handled. These advices by themselves don't lead to achieving enduring benefits by the Appellant. Further, even if any enduring benefit arises, the same would be in the revenue field and therefore, treated as revenue expenditure.

24.2.4. However, it is well settled position of the law that revenue expenditure is operational in its perspective and solely intended for the furtherance of the enterprise on a routine basis. The word 'capital' connotes permanency and therefore, capital expenditure is closely akin to the concept of securing a tangible or intangible property or corporeal or incorporeal right, so that they could be of a lasting or enduring benefit to the enterprise in issue. The above principle laid down in Empire Jute Co. Ltd. (supra) has been reaffirmed by the Hon'ble Supreme Court while deciding the case of CIT v. Associated Cement Companies Ltd. [1988] 172 ITR 257 (SC) wherein the Court had remarked as under-

> "In the case of Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1, the Supreme Court observed that there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the cost of enduring benefit may break down. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessees trading operations or enabling the management and conduct of the assessee's business to be carried on more effectively or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future."

24.2.5. The judgement of the Hon'ble Calcutta High Court in case of Singlo (India) Tea Co. Ltd. v. CIT [1993] 68 Taxman 302 (Calcutta) that has been vehemently relied upon by the AO for the impugned disallowance made by him. The Hon'ble High Court held that since the assessee came into existence only as a result of amalgamation, the expenditure was capital in nature so far as the assessee was concerned. The said decision was pronounced on the basis of a peculiar fact that is when the expenditure has been incurred prior to the existence of the assessee. However, the facts of the case of the Appellant are entirely on a different footing i.e. the appellant is on-going concern and the expenses for consultancy fees have been incurred in the ordinary course of its business, the case law relied upon by the Assessing Officer is distinguishable and hence not

applicable law. It is apparent that the expenditure incurred on consultancy services received from Makov Associates Ltd. was for the purposes of smoother and more efficient functioning of the business. In any case, the Consultant's report by the said expenditure has not brought into existence any new assest in the hands of the appellant so as to be regarded as capital expenditure.

24.2.6. It is well equally well settled position of the law that what has to be seen is the nature of advantage in a commercial sense whether it is in the capital field or for the running of the business. If the advantage enables the assessee to undertake business efficiently without having impact on fixed capital, then such expenditure has to be reckoned on revenue account, even though the advantage may endure in future. This principle has been enshrined by the Hon'ble Apex Court in the decision of Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd. [1965] 58 ITR 241 (PC) Moreover, It is well settled law that any payment made to remove the possibility of recurring disadvantage cannot be considered as payment made to secure an enduring advantage as held by the Hon'ble Supreme Court in the case of CIT v. Ashok Leyland Ltd. (1972) 86 ITR 549 (SC). My attention is also drawn to the decision of the Hon'ble Madras High Court in the case of CIT v. Carborandum Universal Ltd. [2008] 219 CTR 202 (Madras) wherein consultancy fees paid by the assessee has been held as revenue in nature.

24.2.7. It may not be out of place to point out that SPIL, the holding company of the Appellant, had incurred and claimed consultancy fees paid to Makov for obtaining identical nature of services like the one in this case, as a deduction while computing income for AY 2013-14 and AY 2015-16. During the assessment proceedings, the said issue was picked up for scrutiny by the then Assessing Officer for thorough examination. The said expenses were fully allowed as a deduction. The services rendered by Makov to the Appellant in the instant case are similar in nature as those rendered to the SPIL. Hence, there is no reason for not allowing the impugned payment as a deduction under section 37(1) of the Act.

24.2.8. Accordingly, following the principles laid down by the Hon'ble Supreme Court, I hold that the expenditure incurred

> towards the payment of consultancy fees to Makov Associated Ltd are revenue in nature and have a direct nexus with the business of the Appellant and therefore, shall be allowed as a deduction under section 37(1) of the Act. Accordingly, the Assessing Officer is directed to allow the afore-mentioned relief. Thus, Ground No. 20 is allowed."

33. Ld. D.R. appearing for the Revenue could not point out any error in the findings arrived by Ld. CIT(A) but supported the order passed by the AO and requested to uphold the disallowance.

34. Per contra Ld. Senior Counsel appearing for the Revenue supported the order passed by the Ld. CIT(A) and also relied upon relied upon same set of judgments referred in [Paragraph 30.4. of this judgement] in the case of management consultancy charges paid to Mckinsey & Company which is squarely applicable to the consultancy charges paid to Makov Associates. Therefore requested to uphold the order passed by Ld. CIT(A).

35. We have perused the materials available on record and consultancy charges paid to Makov Associates for availing strategic consulting services especially with respect to strategy building, business development, management of mergers and acquisitions etc. for an initial period of three years vide agreement dated 28-05-2012. Even after the domestic formulation undertaking of SPIL was transferred to the assessee w.e.f. 31-03-2012. The consultancy services was continued further by way of Addendum in the original agreement. The Ld AO treated the above expenses will benefit the assessee for indefinite period and therefore treated as capital in nature. In our considered view following various judicial precedents, the Ld AO failed to consider that the consultancy

services rendered by Makov Associates enabled the assessee company to effectively undertake its operation and at the same time focus on the growth aspects of the company. Thus the above expenses is directly have nexus with the business of the assessee company and liable to be allowed as revenue expenditure u/s. 37(1) of the Act. Further Ld CIT[A] also observed that in the case of SPIL the concerned AO after going through various documents, allowed the claim of Consultancy Service expenses paid to Makov Associates as allowable expenses u/s.37[1] of the Act. Thus the Jurisdictional High Court judgments cited in Paragraphs 31.1 to 31.3 are squarely applicable to the facts of the present case also. Thus the **Ground No. 11 raised by the Revenue is devoid of merit and the same is liable to be dismissed**.

31. **In the result, the Department's appeal is partly allowed.**

32. **In the combined result, the appeal filed by the Assessee in ITA No.712/Ahd/2019 and appeal filed by the Revenue in ITA No. 741/Ahd/2019 are partly allowed**.

Order pronounced in the open court on 09/10/2024

Sd/- **Sd/-**

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

Ahmedabad : Dated 09/10/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT

4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद