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

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.345/Ahd/2020
Assessment Year: 2012-13

The Deputy Commissioner of Income Tax, Circle – 1(1)(2), Ahmedabad.	Vs.	M/s. Cadila Pharmaceuticals Limited, 708, Cadila Corporate Campus Sarkhej Dholka Road, Bhat, Ahmedabad – 382 210. **[PAN – AAACC 6251 E]**

ITA No.383/Ahd/2020
Assessment Year: 2012-13

M/s. Cadila Pharmaceuticals Limited, 708, Cadila Corporate Campus, Sarkhej Dholka Road, Bhat, Ahmedabad – 382 210. **[PAN – AAACC 6251 E]**	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(1)(2), Ahmedabad.
(Appellants)		(Respondents)

Assessee by	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by	Shri Prithviraj Meena, CIT-DR & Shri Surendra Kumar, Sr. DR
Date of Hearing	30.09.2024
Date of Pronouncement	12.11.2024

O R D E R

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

These cross appeals are filed by the Revenue and Assessee against order dated 12.03.2020 passed by the CIT(A)-1, Ahmedabad for the Assessment Year 2012-13.

2. The Revenue has raised the following grounds of appeal :-

"(1) The ld. CIT(A) has erred in facts and law in deleting the transfer pricing adjustment made in respect of Corporate guarantee fees of Rs.60,83,440/-

(2) The id. CIT(A) has erred in facts and law in deleting the interest disallowance of Rs.1,64,86,560/- u/s.36(1)(iii) of the Act.

(3) The ld. CIT(A) has erred in facts and law in directing the AO to allow the claim of Rs.1,07,08,000/- being excess claim made by the assessee over the amount approved by DSIR.

(4) The ld. CIT(A) has erred in facts and law in allowing the claim of Rs.8,65,000/- despite giving a finding that the same was incurred outside R&D facility.

(5) The ld. CIT(A) has erred in facts and law in allowing the product registration expenses of Rs.14,75,75,116/- [Net disallowance made by AO in assessment order is 19,67,66,821 less 4,91,91,705].

(6) The ld. CIT(A) has erred in facts and law in restricting the addition of Rs.3,69,04,183/- made by the AO u/s.144 to Rs.7,158/-.

(7) The ld. CIT(A) has erred in facts and law in directing the AO to allow additional claim of withdrawal of suo-moto disallowance of Rs.2,97,07,492- notwithstanding that no such claim was made in the ROI.

(8) The ld. CIT(A) has erred in facts and law in directing the AO to allow foreign currency loss of Rs.40,42,60,000/-.

(9) The ld. CIT(A) has erred in facts and law in deleting the disallowance of Rs.1,22.60,093/- being cash salary payments.

(10) The ld. CIT(A) has erred in facts and law in deleting the disallowance of Rs 7,88,43,745/- in respect of freebies of Doctors which is not admissible u/s.37 of the Act

(11) The ld. CIT(A) has erred in facts and law in deleting the disallowance of Rs.64,67,783/- in respect of deduction u/s.36(1)(vii) on account of provision of bad debts

(12) The ld. CIT(A) has erred in facts and law in directing the AO to allow deduction of Rs.7,75,91,097/- u/s.80IB ignoring that assessee had not allocated R&D expenses proportionately.

(13) The ld. CIT(A) has erred in facts and law in allowing sum of Rs.2,94,67,574/- u/s.43B on account of gratuity and without calling for any remand report.

(14) The ld. CIT(A) has erred in facts and law in allowing the depreciation on assets of Rs.27,38,895/- which was not made by return of income.

(15) The ld. CIT(A) has erred in facts and law in deleting the adjustment of Rs.6,66,11,675/- made u/s.115JB of the Act.

(16) It is, therefore, prayed that the order of ld. CIT(A) may be set aside and that of the Assessing Officer be restored."

The Assessee has raised the following grounds of appeal :-

"1. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not allowing additional claim made by the appellant for claiming weighted deduction under Section 35(2AB) of the Act on gross research and development expenditure, without reducing contract research income amounting to Rs.52.43.475/- from the eligible R&D expenditure.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in considering the amount of abovementioned additional claim at Rs.52,43,475/-, Instead of Rs.1,04,86,950/-, being 200% weighted deduction in respect of contract research income of Rs.52,43,475/- under Section 35(2AB) of the Act.
(Tax Effect for Ground no.1 & 2 - Rs.34,01,960/-)

3. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming disallowance under Section 2(24(x) of the Act to the extent of Rs.38.840/- in respect of delayed payment of Employees' State Insurance Contributions (ESIC)."
(Tax Effect for Ground no.3 - Rs.12,600/-)

Total Tax Effect - Rs.34,14,560/-"

3. The assessee was carrying on business of manufacturing of pharmaceutical bulk drugs various hospital products disposable items and Agro products. During the year under consideration, the assessee has shown total turnover of Rs.933,61,64,163/- on which net profit of Rs.19,77,87,586/- was declared. The return of income was filed on 23.11.2012 declaring loss of Rs.(-) 11,67,17,728/-. The return was duly processed under Section 143(1) of the Income Tax Act, 1961 and notice under Section 143(2) of the Act was issued on 06.08.2013 which was duly served upon the assessee. Notice under Section 142(1) of the Act along with detailed questionnaire was also issued on 04.12.2015 which was duly served upon the assessee. In response to notice under Section 143(2) of the Act, the assessee vide letter dated 22.08.2013 furnished details such as return of income, Audited

Balance Sheet, Profit & Loss Account, Audited Report in Form No.3CD. In response to the notices, the General Manager (Taxation) of the assessee's Company as well as Deputy Manager (Taxation), and Assistant Manager appeared before the Assessing Officer and furnished the details/evidences. After considering the submissions of the assessee, a draft Assessment Order was passed under Section 144C(1) read with Section 143(3) of the Act and served upon the assessee on 31.03.2016. The assessee vide later dated 21.04.2016 opted to file appeal before the CIT(A) against the Assessment Order. Since no objection has been filed by the assessee Company against Department's Assessment Order before the Dispute Resolution Panel within the stipulated time, the assessment was completed as per the provisions of Section 144C(3) read with Section 143(3) of the Act. The Assessing Officer observed that in respect of Transfer Pricing addition, the TPO passed an order under Section 92CA(3) of the Act on 31.12.2015 thereby quantifying an upward adjustment of Rs.60,83,440/- on International Transaction of the assessee. The Assessing Officer further made disallowance under Section 36(1)(iii) of the Act towards interest free advances to the Companies under same management amounting to Rs.1,64,86,560/-. The Assessing Officer made disallowance of deduction under Section 35(2AB) of the Act in respect of Research & Development being 200% of expenditure amounting to Rs.2,19,81,593/-. The Assessing Officer made disallowance on Production Registration Expenses of Rs.14,75,75,116/-. The Assessing Officer made disallowance under Section 14A of the Act amounting to Rs.3,69,04,183/-. The Assessing Officer made disallowance of Foreign Currency Loss amounting to Rs.40,42,60,000/-. The Assessing Officer made disallowance of Cash Salary Payment of Rs.1,22,60,093/-. The Assessing Officer made addition of inadmissible expenses under Section 37(1) of the Act amounting to Rs.7,88,43,745/-. The Assessing Officer made disallowance of Income Tax Refund under Section 244A of the Act amounting to Rs.19,32,350/-. The Assessing Officer made disallowance under Section 36(1)(vii) of the Act amounting to Rs.64,67,783/-. The Assessing Officer also made addition of Rs.38,840/ in respect of Section 2(24)(x) of the Act relating to the late payment of PF/ESIC payment. The Assessing Officer assessed the income at Rs.61,61,15,800/-. The Assessing Officer also calculated MAT under Section 115JB of the Act thereby making addition of Rs.6,66,11,675/-. Disallowance under Section 14A of the Act and

also adjustment amount considered in the previous year as per the statement amounting to Rs.37,57,035/- was made. Thus, the book profit calculated as per MAT provisions at Rs.45,30,56,074/-

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. Firstly, we are taking up the Revenue's appeal being ITA No.345/Ahd/2020 for Assessment Year 2012-13. Ground no.1 of the Revenue's appeal is relating to the deletion of Transfer Pricing Adjustment made in respect of Corporate Guarantee Fees amounting to Rs.60,83,440/-

6. The Ld. DR submitted that the extended guarantee should have not been allowed by the CIT(A). The Ld. DR relied upon the Assessment Order and TPO order.

7. The Ld. AR submitted that the issue is squarely covered in assessee's favour in Assessment Years 2010-11, 2004-05 & 2011-12 filed by the Department being ITA No.74/Ahd/2020, order dated 01.07.2024 and ITA No.117/Ahd/2012, 848 &918/Ahd/2016 order dated 11.09.2017 .

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Department/Ld. DR could not point out any distinguishing facts in the present Assessment Year to that of Assessment Year 2010-11 and, therefore, the issue is squarely covered by the decision of the Tribunal passed in Assessment Year 2010-11 and 2011-12. The Tribunal held as under:

"13. We come to assessee's appeal. Its first grievance therein challenges upward transfer pricing adjustment of Rs.60,83,440/- pertaining to corporate guarantee fee; as made by the TPO and affirmed in dispute resolution penal; "DRP"s directions. The said lower authorities hold that the assessee ought to have charged @1.24% on corporate guarantee amount of Rs.49,06,00,000/-. The assessee admittedly had provided the corporate guarantee in question to its associate enterprise in earlier assessment years. There is no quarrel that relevant factual backdrop remains the same in the impugned assessment year as it was in

preceding assessment year 2010-11. Both the lower authorities make the impugned adjustment by drawing support from their respective orders in said earlier assessment year. Case file indicates that a co-ordinate bench in assessee's appeal itself ITA No.694/Ahd/2015 for assessment year 2010-11 decided on 03.03.2017 has already deleted the said corporate guarantee adjustment after concluding that the same is not an international transaction u/s.92B of the Act. Learned Departmental Representative fails to indicate any distinction on facts or law in the impugned assessment year. We therefore adopt the very A.Ys. 2004-05 & 2011-12 reasoning herein as well to delete the impugned corporate guarantee adjustment of Rs.60,83,440/-."

The CIT(A) rightly followed the Tribunal order in A.Y. 2011-12 as there are no distinguishing fact in present assessment year. Therefore, there is no need to interfere with the findings of the CIT(A). Thus, Ground no.1 of Revenue's appeal is dismissed.

9. Ground no.2 of the Revenue's appeal is relating to deleting the interest disallowance of Rs.1,64,86,560/- under Section 36(1)(iii) of the Act. The Ld. DR submitted that the assessee was paying huge amount of interest on borrowed funds and, therefore, the details were called but the assessee has not demonstrated that the assessee Company has interest free funds and in fact the amount advanced is out of the borrowed fund only as this interest-free fund has already been exhausted in acquiring capital asset. This fact was totally ignored by the CIT(A). Hence, the Ld. DR submitted that the Assessing Officer was right in disallowing interest-free advance to Companies under the same management.

10. The Ld. AR submitted that this issue is covered in assessee's favour for the Assessment Year 2008-09 being ITA No.73/Ahd/2020 order dated 17.04.2024 as well as decided in 2010-11, 2004-05 & 2011-12 filed by the Department being ITA No.73/Ahd/2020, order dated 01.07.2024 and ITA No.117/Ahd/2012, 848 & 918/Ahd/2016 order dated 11.09.2017 .

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11. We have heard both the parties and perused all the relevant material available on records. It is pertinent to note that there is no discrepancy pointed out by the Ld. DR towards the submissions that there were no interest-free funds available in this particular year. The Tribunal in A.Y. 2011-12 held as under:

"14. The assessee's second substantive ground challenges Section 36(1)(iii) interest disallowance of Rs.1,68,88,558/- as made by both the lower authorities. The assessee's balance sheet schedule 10 revealed it to have advanced a gross amount of Rs.5,40,74,507/- to its nine domestic and overseas sister concerns namely M/s. Casil Health Products Ltd., CPL Infrastructure Ltd., Apollo Hospitals International Ltd., Kadera Yakuhin Ltd., IRM Enterprise Pvt. Ltd., SOHL (UK), Cadila Pharmaceuticals (Ethopia) PLC, CPL Holdings Pvt. Ltd. and CPL Agro Products Ltd. The Assessing Officer observed in assessment order that "it may be true that the nature of advances are strategic investments for the purpose of job work or any other purposes; nonetheless, it is also true that certain amount has remained outstanding during the year. In essence, the accounts of all these associate companies in the books of the assessee is a combined account of loans and advances". The Assessing Officer further took note of the fact that assessee's interest expenditure in relevant previous year reads a figure of Rs.40,10,60,348/-. We notice in this factual backdrop that a co-ordinate bench has followed various judicial precedents CIT vs. Raghuvir Synthetics (2013) 354 ITR 222 (Guj), CIT vs. Dalmia Cements Pvt. Ltd. (2002) 254 ITR 377 (Delhi), S A Builders Ltd. vs. CIT (2007) 288 ITR 1(SC) to delete identical disallowance(s) in assessment years 2006-07 & 2007-08. Hon'ble jurisdictional high court has upheld the same in Tax Appeal no. 39/2015 decided on 23.01.2015. The Revenue fails to dispute all the above facts as well as legal developments. We therefore conclude that both the lower authorities have erred in invoking the impugned disallowance of interest in assessee's strategic interest free advances made to its sister concerns. This second substantive ground is accordingly accepted."

In the present assessment year 2012-13 the summary of Long Term and Short Term Loan are as under:

No	Name of the associated company	Amount(Rs.)
1	CPL Infrastructure	44161621
2	Apollo Hospitals International Ltd.	138382149
3	IRM Enterprise Pvt. Ltd.	462898
4	Karnavati Engineering Ltd.	25000000
5	Casil Health Products Ltd.	17608368
6	Casil Industries Ltd.	20300405
7	Kedara Yakuhin Ltd.	460000

All these details were reflected in Assessee's financials more specifically in Note 12 and Note 16 and is evident that it has been given for the purpose of the business of

the assessee only. Thus, the Assessing Officer was not right in disallowing the same and the CIT(A) rightly taken cognizance of the same. As the facts are identical to that of Assessment Year 2008-09, 2010-11, 2004-05 & 2011-12, as well as the facts of the present assessment year, Ground no.2 of Revenue's appeal is dismissed.

12. As regards Ground no.3 and 4 that of directing the Assessing Officer to allow the claim of Rs.1,07,08,000/- being excess claim made by the assessee over and above the amount approved by the DSIR. The Ld. DR submitted that the facilities were not located as prescribed by the DSIR and, therefore, the disallowance was rightly made by the Assessing Officer. As regards ground no.4 relating to the claim of Rs.8,65,000/- related to R&D facility outside India, the Ld. DR submitted that this fact was not taken into account by the CIT(A) and, therefore the ld. DR relied upon the Assessment Order.

13. The Ld. AR submitted that the factual aspect of this year is similar to the Assessment Year 2009-10 & 2008-09. The Ld. AR relied upon the decision of the Tribunal in ITA No.76/Ahd/2020, order dated 17.04.2024 and ITA No.73/Ahd/2020, order dated 17.04.2024.

14. We have heard both the parties and perused all the relevant material available on record. The facts of the present Assessment Year are identical to that of Assessment Year 2008-09 & 2009-10. The Tribunal in A.Y. 2011-12 held as under:

"18. Heard both the learned representatives. Relevant findings perused. It is evident that the DRP has worked out the impugned disallowance merely because the assessee has mentioned in its reconciliation an amount of Rs.4,67,54,326/- is to be disallowed as per DSIR's form 3CL. There is therefore no independent adjudication. It emerges that the assessee's endeavor before the DRP was to appraise it about DSIR's form 3CL instead of suo mottu making the impugned disallowance. We notice in this factual backdrop that a co-ordinate bench in assessee's case itself ITA No.383/Ahd/012 decided on 04.01.2017 follows tribunal's decision in ITA No.3569/Ahd/2004 ACIT vs. Torrent pharmaceuticals in holding that once an assessing authority accepts revenue expenditure claim regarding an amount spent on clinical trial/research & development, the very sum is

eligible for the impugned weighted deduction as well since there is no stipulation incorporated in the Act that the same would be allowable only to the extent of relevant figures stated in Form no. 3CL . This is admittedly not the Revenue's case that the assessee has not incurred the impugned expenditure for the above specified purpose u/s.35(2AB) of the Act. We therefore draw support from the above co-ordinate bench finding in assessee's appeal for assessment year 2007-08 for directing the Assessing Officer to delete the impugned disallowance. This substantive ground is accordingly accepted."

The facts are identical in the present assessment year as well. The reliance of the decision of Torrent Pharma (supra) is not justified as in the said case admittedly, there were certain expenditures on which the assessee therein has claimed weighted deduction under section 35(2AB) of the Act. However, the same was not approved by the DSIR which also includes certain expenditure allegedly incurred outside the approved facility. But in the present assessee's case the said expenditures were approved and therefore, the said decision will not be applicable in the present assessee's case. As indicated in Tribunal's order in the respective years', no discrepancy or distinguishing facts brought on record by the Ld. DR. Hence, Ground nos.3 & 4 of Revenue's appeal are dismissed.

15. As regards Ground no.5 relating to Product Registration Expenses of Rs.14,75,75,116/-, the Ld. DR submitted that the Assessing Officer has rightly disallowed the said claim of the assessee as once an expenditure is termed as capital expenditure and brought within the compass of Section 32 of the Act, the residual Section 37 of the Act would not come in to play and, therefore, the same is that of capital in nature.

16. The Ld. AR submitted that this issue was decided by the Tribunal in Assessment Year 2008-09 being ITA No.73/Ahd/2020, order dated 17.04.2024 and ITA Nos. 1146/Ahd/2011 and 1518/Ahd/2011 order dated 11.07.2014 for A.Y. 2006-07 in assessee's favour.

17. We have heard both the parties and perused all the relevant material available on record. The Tribunal in A.Y. 2006-07 held as under:

"27. Ground No.2 is against the deletion of Rs.1,43,79,597/- being product registration expenses treated as capital expenditure with a direction to withdraw depreciation already allowed. The ld.Sr.DR supported the order of the AO. On the contrary, the ld.counsel for the assessee submitted that there is no illegality in the order of the ld.CIT(). He submitted that the issue is squarely covered by the judgement of Hon'ble Gujarat High Court rendered in the case of Commissioner of Income Tax vs. Torrent Pharmaceuticals Ltd. reported at (2013) 263 CTR 683(Guj.):: (2013) 29 taxmann.com 405(Gujarat).

27.1. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The ld.counsel for the assessee has drawn our attention to the question No.(B) which reads as under:-

> *"[B] Whether the Appellate Tribunal is right in law and on acts in directing the Assessing Officer to treat the expenditure of rs.28,14,355/- incurred on foreign registration fees as revenue expenses?"*

27.2. The Hon'ble Gujarat High Court answered the question by observing as under:-

> *"5. The findings of the Tribunal are justified on both the issues. The garden expenditure was for the purpose of maintaining garden to control the pollution. The company had put up an affluent treatment plant and pollution used to generate because of release of pollutants. The maintaining a garden helped in controlling pollution arising from the pollutants. It cannot be gainsaid that the expenses for garden had nexus with business activity. It can well be treated for business purpose and can be claimed as revenue expenditure. Similarly the expenses for foreign country registration was for business purpose only, because the same helped the assessee in marketing its products in the foreign countries and promoting the sales."*

27.3. In view of the aforesaid judgement of the Hon'ble Jurisdictional High Court, we do not find any infirmity in the order of the ld.CIT(A), same is hereby upheld. Thus, this ground of Revenue's appeal is rejected."

It is pertinent to note that the facts of the Assessment Year 2008-09 and the present Assessment Year i.e. 2012-13 are identical in nature and, therefore, this issue is squarely covered in assessee's favour by the Tribunal's decision. No distinguishing facts was pointed out by the Ld. DR. Hence, Ground no.5 of Revenue's appeal is dismissed.

18. As regards Ground no.6, the Ld. DR submitted that the CIT(A) erred in restricting the addition of Rs.3,69,04,183/- made by the Assessing Officer under Section 14A of the Act to Rs.7,158/- overlooking that the invocation of Rule 8D to subsequent Assessment Year 2008-09 i.e. the present Assessment Year is 2012-13.

19. The Ld. AR submitted that the facts are identical and the assessee has already made suo-moto deduction as relates to Section 14A of the Act and, therefore, the issue is squarely covered as held in Assessment Year 2008-09 by the Tribunal being ITA No.73/Ahd/2020, order dated 17.04.2024.

20. We have heard both the parties and perused all the relevant material available on record. The issue is squarely covered by the Assessment Year 2008-09 and the assessee in fact has made suo-moto disallowance for the present Assessment Year and after calculating the same and verifying the calculation given by the assessee, the CIT(A) was right in restricting the addition to Rs.3,69,04,183/- to Rs.7,158/-. Thus, Ground no.6 of Revenue's appeal is dismissed.

21. As regards Ground no.7, the Ld. DR submitted that the CIT(A) was not right in directing the Assessing Officer to allow additional claim of withdrawal of suo-moto disallowance of Rs.2,97,07,492/- notwithstanding that no such claim was made in return of income.

22. The Ld. AR relied upon the order of the Tribunal for Assessment Year 2008-09 being ITA No.73/Ahd/2020, order dated 17.04.2024, as facts of the present Assessment Year are identical.

23. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the disallowance made by the assessee is properly reflected in return of income as it is a suo-moto disallowance on the part of the assessee and after taking cognisance the CIT(A) has rightly directed the Assessing Officer to allow this additional claim of withdrawal of suo-moto disallowance. The facts are identical to Assessment Year 2008-09 and there is no

distinguishing facts pointed out by the Ld. DR. Hence, Ground no.7 of Revenue's appeal is dismissed.

24. As regards Ground no.8, the Ld. DR submitted that the CIT(A) was not right in directing the Assessing Officer to allow Foreign Currency Loss of Rs.40,42,60,000/-. The Ld. DR submitted that it was blanket contract for hedging of currency and the loss debited by the assessee towards the hedging loss against the contracts with SBI was not for actual export of goods. Thus, the Assessing Officer has rightly held that the currency swap transaction by the assessee was not carried out in a recognised Stock Exchange as per explanation not clause (d) of Section 43(5) of the Act and, therefore, not an eligible transaction. Therefore, this cannot be allowed as business expenditure being in the nature of speculative loss.

25. The Ld. AR relied upon the Assessment Order. The Ld. AR relied upon the order of the Tribunal in Assessment Year 2011-12 being ITA No.848Ahd/2016, order dated 11.09.2017.

26. We have heard both the parties and perused all the relevant material available on record. The facts of the present Assessment Year is identical to that of Assessment Year 2011-12 which was held in favour of the assessee by the Tribunal. The Tribunal held as under:

> *"26. We have heard rival submissions. The assessee's case throughout has been that it had entered into a forex contract with the State Bank of India on the basis of its foreign currency exposure in import/export transactions with public sector banks to cover fluctuation risk upto Rs.200crores. One of the bank namely Bank of Baroda is stated to have issued a certificate dated 12.02.2015 claiming realization of Rs.123,71,57,417/- which could be realized to the tune of Rs.111,72,18,092/- as on 31.03.2011. Its SBI contract enabled it to book losses against the above unrealized bills. Lower authorities as well as learned Departmental Representative do not rebut this factual position. The assessee claims to have been inter alia recording its sales to overseas clients on the day of transaction in its books in indian currency at the rate prevailing on the very day, it would lodge conversion claim upon payment of its consideration money by said customers, this currency settlement took time after lodgment to be realized resulting in fluctuation loss as is the case herein. We notice in this backdrop that hon'ble jurisdictional high court's decision in CIT vs. Friends & Friends Shipping Pvt. Ltd. (2013) 35 taxmann.com 553 (Guj) holds losses arising from similar foreign exchange contracts to be business losses than speculative ones. Their*

lordships A.Ys. 2004-05 & 2011-12 conclude that such exchange transactions are hedging transactions instead of being speculative transactions in nature. Next comes hon'ble Bombay high court's decision in CIT vs. D. Chetan & Co. (2016) 75 taxmann.com 300 (Bom.) holding that forward contracts in the nature of hedging transactions in course of normal import export activities to cover up losses on account of foreign exchange valuation difference results in business losses and not speculative one. We find that hon'ble jurisdictional high court's decision in Pankaj Oil Mills vs. CIT (1978) 115 ITR 824 (Guj) (Full Bench) also holds inter alia that hedging contracts; in order to be out of speculative transactions, must be in respect of raw materials only in manufacturers' cases though they could be both with regard to sales and purchases, such hedging contracts need not succeed the contract for sale and actual delivery of goods manufactured, but the latter could be subsequently entered into within reasonable time not exceeding the relevant assessment year in normal circumstances and such transactions should not exceed the total stock of the raw material or merchandise on hand including existing stocks as well as that acquired under the firms contract of purchases in order to be genuine and valid hedging contract of sales; respectively. Learned Departmental Representative fails to indicate any distinction therein vis-à-vis those involved in the instant adjudication. We therefore direct the Assessing Officer to delete the impugned disallowance."

It is pertinent to note that the assessee categorically mentioned before the Assessing Officer that the size of contract with SBI is based on the export sales of the assessee only. Since, SBI is not the AD Banker of the assessee with which it transacts with respect to its exports sales, therefore, neither any lodgement is claimed not any export documents were submitted to SBI. All the necessary documents were submitted to Corporation Bank and Bank of Baroda as these banks are the AD Bankers of the assessee. These Bankers are only concerned with processing the export realization of the assessee by applying the rate of prevalent as on date of processing. Thus, there is no certainty as to whether the assessee is going to have a gain or loss as to export sales realisation as it solely depends on whether the rate on the date of realisation was higher or lower as compared to rate on the date on which sales were recorded, this contentions of the assessee appears to be correct. Further from the perusal of records it can be seen that the observation of the Assessing Officer that the assessee has a separate contract for hedging with Corporation Bank and Bank of Baroda is incorrect and is not based on any evidence. Hence, Ground no.8 is dismissed.

27. As regards ground no.9, relating to deletion of disallowance of Rs.1,22,60,093/- being Cash Salary Payments, the Ld. DR relied upon the

Assessment Order as cash salary payments were exceeding Rs.20,000/- per day in the present Assessment Year.

28. Ld. AR relied upon the order of the CIT(A) and also pointed out that there is no violation of Section 40A(3) of the Act. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in the case of Anupam Tele Services vs. ITO, 366 ITR 122.

29. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) categorically observed that for the genuineness of incurrence of expenditure in the nature of reimbursement driver's and helper's salary paid to employees for which the assessee submitted vouchers signed by the employees. The Assessing Officer has not pointed out any discrepancy in the evidence put up by the assessee. Thus, the CIT(A) has rightly deleted the said addition. There is no need to interfere with the findings of the CIT(A). Besides, this, there is no violation of Section 40A(3) of the Act and the decision relied by the Ld. AR in the case of Anupam Tele Services (supra) is squarely applicable in assessee's case. Hence, Ground no.9 of Revenue's appeal is dismissed.

30. As regards to Ground No. 10 relating to freebies, the Ld. DR submitted that this issue is covered in favour of Revenue by the Hon'ble Supreme Court decision in case of M/s Apex Laboratories Pvt.. Ltd. vs. DCIT 135 taxmann.com 286(SC).

31. The Ld. AR submitted that this issue is decided by the Hon'ble Apex Court against the assessee.

32. We have heard both the parties and perused all the relevant material available on record. The Hon'ble Supreme Court in case of M/s Apex Laboratories (supra) held that freebies given by pharmaceutical companies to medical practitioners/doctors is prohibited by law and Explanation 1 to Section 37(!) shall get triggered. Thus, this issue is covered against the assessee. Ground No. 10 of Revenue's appeal is dismissed.

33. As regards Ground no.11 relating to deletion of disallowance of deduction of Rs.64,67,783/- under Section 36(1)(vii) of the Act, the Ld. DR relied upon the Assessment Order and submitted that quantification and return of bad debt was not explained by the assessee during the assessment proceedings and no details were filed.

34. The Ld. AR submitted that in fact the bad debts were actually written off in this very year and entry of these bad debts were explained to the Assessing Officer at the time of assessment proceedings. The Ld. AR relied upon the order of the Hon'ble Apex Court in the case of TRF Limited vs CIT, 323 ITR 397.

35. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the bad debts were written off in the present assessment year itself and from the perusal of financials of the assessee especially indicated in Note 25 of Profit and Loss account. Thus, the Assessing Officer was not right in disallowing the bad debts which were written off in this assessment year i.e. A.Y. 2012-13 only. The ratio of the Hon'ble Supreme Court in case of TRF Ltd. (supra) is applicable in assessee's case. Hence Ground No. 11 is dismissed.

36. As regards Ground no.12, the Ld. DR submitted that CIT(A) erred in directing the Assessing Officer to allow deduction of Rs.7,75,91,097/- under Section 80IB of the Act thereby not allocating R&D expenses proportionately. The Ld. DR relied upon the Assessment Order.

37. The Ld. AR relied upon the Order of the CIT(A) wherein the CIT(A) has followed A.Y. 2011-12 which was decided in favour of the assessee being ITA No.848/Ahd/2016, order dated 11.09.2017.

38. We have heard both the parties and perused all the relevant material available on record. The issue is squarely covered by the Tribunal's order in

Assessment Year 2011-12 and no distinguishing facts were pointed out by the Ld. DR in the present Assessment Year. The Tribunal held as under:

> *"24. We have heard both the parties at length. The assessee admittedly has three production divisions at Jammu, Ankleshwar and Dholka; respectively. Case records at page 396 indicate the same to be operating exclusively for formulation (domestic sales), bulk drugs (domestic and export sales) and formulations (domestic and international sales); respectively. The assessee pleaded before the DRP at page 409 that it had not done any research and development for any of the formulation product manufactured in Jammu unit in relevant previous year. The same has neither been specifically rebutted nor accepted in DRP's directions. Nor is there any specific material quoted to disturb assessee's accounts separately maintaining each and every minute detail pertaining to these three units in question. It thus emerges that the authorities below have adopted adhocism in applying the above turnover formula for allocating the impugned expenditure. Hon'ble Bombay high court's decision in Zhandu Pharmaceutical Works Ltd. vs. CIT (2013) 350 ITR 366 (Bom.) deletes A.Ys. 2004-05 & 2011-12 similar disallowance in absence of non establishment of any nexus between R&D facilities and other units. We find that the authorities below have nowhere arrived at such a nexus in instant case as well. We therefore delete the impugned allocation by adopting the above discussed reasoning. The assessee succeeds in its substantive ground."*

The assessee has five plants/units through which it carries out its productions of pharmaceutical products. Out of the said plants/units, the assessee claimed deduction under Section 80IB(4) of the Act with regard to the profits of the plant located in the state of Jammu and Kashmir (Jammu Unit) only. While deriving the profit of the Jammu Unit R&D expenditure was not required to be allocated to Jammu unit as the R&D activities were not related to the products manufactured and sold by the Jammu unit. The products manufactured by the Jammu Unit are well established in the market and do not require any further research and development activities. These factual aspect of the assessee's case were not disputed by the Assessing Officer in the assessment order. Therefore, following the earlier years order of the Tribunal, the CIT(A) has rightly allowed the claim of assessee in respect of allocation of proportionate R&D expenses of Rs. 7,75,91,097/- towards computation of deduction under Section 80IB of the Act. Hence, Ground no.12 of the Revenue's appeal is dismissed.

39. As regards Ground no.13, the Ld. DR submitted that the CIT(A) erred in allowing sum of Rs 2,94,67,574/- under Section 43B of the Act on account of gratuity and without calling for remand report.

40. The Ld. AR submitted that the CIT(A) has examined the issue and the assessee admitted that it is inadvertent error on the part of the assessee and, therefore, the gratuity which is paid to the employees has to be allowed under Section 43B of the Act.

41. We have heard both the parties and perused all the relevant material available on record. The assessee has rectified his inadvertent error and has admitted it regarding the payment of gratuity and has produced all the relevant details to that effect. The Assessee has paid Rs. 1,55,76,109 by way of gratuity out of the carry forward gratuity provisions of the earlier years and the same is reflected in Annexure J(i) of the Tax Audit Report of the assessee. If the taxpayer is not introducing new evidence at the appeal stage but is instead relying on information already submitted during the assessment, the CIT(A) may rely on the existing records to grant relief. In the absence of fresh evidence, the CIT(A) is within his discretion to resolve the matter without a remand report. Therefore, the CIT(A) has rightly allowed the sum of Rs.2,94,67,574/- under Section 43B of the Act on account of gratuity and there is no need of remand report. The CIT(A) has examined these issues. Thus, Ground no.13 is dismissed.

42. As regards Ground no.14, the Ld. DR submitted that the CITA) erred in allowing the depreciation on assets of Rs.27,38,895/- which was not made in return of income. The Ld. DR relied upon the Assessment Order.

43. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in the case of Mitesh Impex, 367 ITR 85 and further submitted that this issue has been decided in Assessment Year 2010-11 being ground no.8 therein and the Tribunal has directed the Assessing Officer to allow this claim after verification.

44. We have heard both the parties and perused all the relevant material available on record. The facts of the present Assessment Year is that of identical to Assessment Year 2010-11 and, therefore, we are inclined to direct the Assessing Officer to allow this claim after verification. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, Ground no.14 of Revenue's appeal is partly allowed for statistical purpose.

45. As regards Ground no.15, the Ld. DR submitted that the CIT(A) was not correct in deleting the adjustment of Rs.6,66,11,675/- made under Section 115JB of the Act.

46. The Ld. AR relied upon the decision of Special Bech in the case of Vireet Investments (P) Limited, 165 ITD 27, the same was approved by the Hon'ble High Court of Karnataka in the case of JJ Glastronics (P) Ltd. 446 ITR 712.

47. We have herd both the partis and perused all the relevant material available on record. As per the decision in the case of Vireet Investments (P) Limited (supra) and the decision of Hon'ble Karnataka High Court in the case of JJ Glastronics (P) Ltd.(supra), the deletion of adjustment made under Section 115JB of the Act was rightly deleted as since the assessee has not incurred any expenses in connection with making and managing investment, no adjustment to that extent related to Section 115JB provides that single income needs to be reduced from Net Profit while computing the Book Profit. There is no need to interfere with the finding of the CIT(A). Hence, Ground no.15 of Revenue's appeal is dismissed.

48. Thus, ITA No.345/Ahd/2020 of the Revenue is partly allowed for statistical purpose.

49. Now coming to the assessee's appeal being ITA No.383/Ahd/2020 for Assessment Year 2012-13.

50. As regards ground nos.1 & 2 of assessee's appeal, the Ld. AR submitted that the CIT(A) erred in not allowing additional claim of deduction under Section 35(2AB) of the Act of Rs.52,43,475/- from the eligible R&D expenditure, as in Assessment Year 2009-10 in assessee's own case this issue was decided in assessee's favour. The Ld. AR relied upon the said decision of the Tribunal as the DSIR Authority has approved the increase of capital for the purpose of in-house R&D facilities.

51. The Ld. DR relied upon the Assessment Order.

52. We have heard both the parties and perused all the relevant material available on record. This issue is already decided by the Tribunal in Assessment Year 2008-09 and thus the CIT(A) was not right in disallowing the additional claim of weighted deduction under Section 35 (2AB) of the Act on gross research and development expenditure without reducing contract research income of Rs.52,43,475/- from the eligible R&D expenses. The reliance of two decisions i.e. Bosch Limited 167 ITD 650 and Microlab Ltd. 383 ITR 490 (Kar. HC) have also decided this issue in favour of the assessee and thus reliance by the Ld. AR on these decisions are apt. Besides this issue was decided in favour of the assessee in A.Y. 2009-10 in assessee's own case and the facts are identical to the present assessment year. No distinguishing facts were pointed out by the Ld. DR. Hence, Ground nos.1 & 2 of the assessee's appeal are allowed

53. The Ld. AR submitted that Ground no.3 relating to delayed payment of Employees' State Insurance Contributions (ESIC), the same is held against the assessee in the case of Checkmate Services Pvt. Ltd., 448 ITR 518 (SC). Hence, Ground no.3 of assessee's appeal is dismissed.

54. Thus, ITA No.383/Ahd/2020 of the assessee is partly allowed.

55. In the result, appeal of the Revenue is partly allowed for statistical purpose and the appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 12th November, 2024.

Sd/-	*Sd/-*
(MAKARAND VASANT MAHADEOKAR)	**(SUCHITRA KAMBLE)**
Accountant Member	Judicial Member

Ahmedabad, the 12th November, 2024

PBN/*

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad