

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

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

1. आयकर अपील सं./ITA No.1423/Ahd/2024 - Asst.Year 2017-18
2. आयकर अपील सं./ITA No.1425/Ahd/2024 - Asst.Year 2017-18

1. The ACIT Race Course Vadodara - 390 007	<u>बनाम/ v/s.</u>	1. Unimed Technologies Ltd. Baska Ujiti Road Baska Halol Dist., Panchmahal., Panchmahal - 389 350
2. Unimed Technologies Ltd. Baska Ujiti Road Baska Halol Dist., Panchmahal., Panchmahal - 389 350		2. The ACIT Circle-2(1)(1) Vadodara - 390 007
स्थायी लेखा सं./PAN: AAACE 4022 B		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri S.N. Soparkar, Sr. Advocate	
Revenue by :	Shri Sher Singh, CIT-DR & Shri Abhijit Sr.DR	

सुनवाई की तारीख/Date of Hearing : 08/09/2025
घोषणा की तारीख /Date of Pronouncement: 29/10/2025

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JM:

These are cross-appeals filed by the Department and Assessee against the order of the Ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], dated 01/06/2024 for the Assessment Year (AY) 2017-18, passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment

Year (AY) 2017-2018. Since the facts and issues for consideration are common to both the appeals, both the appeals are being take up together.

2. The brief facts of the case are that the assessee, **Unimed Technologies Limited**, filed its return of income for the assessment year 2017-18 on **31.10.2017**, declaring total income of **Rs. 22,90,06,750/-** under the normal provisions and book profit of **Rs. 8,04,69,930/-** under section 115JB of the Act. The case was selected for complete scrutiny under CASS, and assessment was completed under section 143(3) of the Act, computing the total income at **Rs. 27,23,20,040/-**. Subsequently, the Principal Commissioner of Income Tax (PCIT), Vadodara-1, examined the records and held that the order passed by the Assessing Officer was **erroneous and prejudicial to the interests of the Revenue**, invoking powers under section 263 of the Act. The matter was thus set aside with directions to the Assessing Officer to make a fresh assessment considering the issues discussed in the revision order. During the course of the set aside assessment proceedings, the Assessing Officer noticed from Note No. 28.9 of the financial statements that the assessee had reported discontinuance of its manufacturing operations and sale of its undertaking to **Sun Pharmaceutical Medicare Ltd.** on a slump sale basis with effect from **25.03.2017**. The assessee had reported a loss before tax of **Rs. 28,95,65,513/-** from the discontinued operations for the year ended 31.03.2017. The Assessing Officer was of the view that, since the slump sale was effective from 25.03.2017, the loss pertaining to the period after that date, i.e., from **25.03.2017 to 31.03.2017**, was not allowable in the hands of the assessee. The assessee, however, had not furnished a specific working of such post-sale period loss. On a pro-rata computation, the Assessing Officer worked out the disallowable portion of the loss at **Rs. 55,53,311/-** and proposed to add the

same to the total income on account of **excess claim of loss**. In response, the assessee submitted that the loss figures disclosed in Note 28.9 already pertained to the period **01.04.2016 to 25.03.2017** and not to the entire financial year. It was submitted that the buyer, M/s Sun Pharmaceutical Medicare Ltd., had accounted for the income and expenses of the subsequent period (26.03.2017 to 31.03.2017) in its books, and therefore, there was no overlapping claim. However, the Assessing Officer rejected this explanation, observing that no evidence such as the buyer's ledger or bifurcation of accounts was furnished. Accordingly, the AO disallowed the claim of **Rs. 55,53,311/-** as excess loss pertaining to the post-sale period. Further, on verification of the **Tax Audit Report in Form 3CD**, the Assessing Officer observed that the assessee had received employees' contributions towards Provident Fund amounting to **Rs. 7,45,642/-**, which were deposited on **16.01.2017**, one day after the statutory due date of **15.01.2017**. The assessee contended that since 15.01.2017 fell on a Sunday, the payment made on the next working day constituted valid compliance under the General Clauses Act. However, the Assessing Officer did not accept this contention, holding that in such circumstances, the contribution should have been deposited on the last working day before the due date. Relying on the decisions of the **Hon'ble Gujarat High Court in CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj)** and the **Hon'ble Supreme Court in Checkmate Services (P.) Ltd. v. CIT [2022] 448 ITR 518 (SC)**, the AO held that delayed deposits of employees' contributions, even by a single day, are not allowable under section 36(1)(va) of the Act. Accordingly, a disallowance of **Rs. 7,45,642/-** was made and added back to the total income. The Assessing Officer also examined the claim of **software expenses amounting to Rs. 14,49,002/-**, which were claimed as revenue expenditure. On examination of

invoices, the AO noted that the items included software licenses, validation modules, and data management tools which, according to him, were of enduring benefit and capital in nature. The assessee contended that these expenses were incurred for product-related manufacturing activities essential for maintaining quality and efficiency, without creating any capital asset. However, the AO held that such expenditure resulted in an enduring advantage to the business and was therefore capital in nature. Accordingly, the expenditure was disallowed and directed to be capitalized, with a corresponding addition of **Rs. 14,49,002/-** to the total income. Similarly, the Assessing Officer scrutinized the claim of **consultancy expenses amounting to Rs. 4,18,64,285/-** paid to **Quality Executive Partners Inc., USA**, for rendering services relating to obtaining **US-FDA approval** for the assessee's manufacturing plant at Baska. The assessee argued that the expenses were incurred in the ordinary course of business to facilitate regulatory compliance and enhance export opportunities, and therefore, they were allowable as revenue expenditure. The Assessing Officer, however, observed that such expenditure conferred an enduring benefit upon the assessee, as the US-FDA approval would remain effective over several years and enable sustained export operations. The AO referred to similar disallowances in earlier years, the AO held the expenditure to be **capital in nature** and disallowed the same and added a sum of **Rs. 4,18,64,285/-** to the total income. Accordingly, the assessment was completed by making four disallowances – (i) excess loss on discontinued operations of Rs. 55,53,311/-, (ii) employees' contribution to PF of Rs.7,45,642/-, (iii) software expenses of Rs. 14,49,002/-, and (iv) consultancy fees of Rs. 4,18,64,285/-.

3. In appeal, before CIT(Appeals), in respect of **Ground No. 1**, relating to the disallowance of software expenses amounting to Rs. 14,49,002/-, the CIT(Appeals) noted that the Assessing Officer had treated the said expenditure as capital in nature on the ground that it resulted in enduring benefit. The assessee, on the other hand, submitted that the expenditure was incurred on software licenses, data modules, validation servers, and related tools used for product manufacturing and operational efficiency, and was part of the routine business expenditure. **The CIT(Appeals), after considering the submissions, observed that a similar issue had already been decided in favour of the assessee by the National Faceless Appellate Centre (NFAC) for the assessment year 2016-17 vide order dated 08.02.2024.** Following the said decision and holding that the expenses were allowable under section 37(1) of the Act, the CIT(Appeals) directed the Assessing Officer to allow the same. Accordingly, **Ground No. 1 was allowed.** In respect of **Ground No. 2**, relating to the disallowance of consultancy fee of Rs. 4,18,64,285/-, the CIT(Appeals) recorded that the Assessing Officer had disallowed the **claim treating it as capital in nature on the ground that the payment was made to Quality Executive Partners Inc., USA, for obtaining US-FDA approval for the manufacturing facility, which conferred an enduring benefit.** The assessee contended that the payment was for professional consultancy services incurred in the ordinary course of business to ensure compliance and facilitate exports, and that no new asset was created. The CIT(Appeals) accepted the explanation of the assessee and observed that the expenditure was incurred to improve the efficiency of business operations and did not result in creation of any capital asset. Relying on the judgment of the Hon'ble Karnataka High Court in *CIT v. Telcom Construction Equipment Co. Ltd.* [(2021) 127 taxmann.com 488 (Karn.)], the

CIT(A) held that such consultancy expenses are allowable as revenue expenditure. Accordingly, **the addition was deleted and Ground No. 2 was allowed.** In respect of **Ground No. 3**, concerning the disallowance of Rs. 7,45,642/- under section 36(1)(va) of the Act on account of delayed deposit of employees' contribution to provident fund, the CIT(Appeals) observed that the assessee had deposited the amount on 16.01.2017, one day after the statutory due date of 15.01.2017, which fell on a Sunday. The assessee contended that since the due date was a holiday, payment on the next working day should be treated as valid. After considering the legal position and by referring to the provisions of section 36(1)(va) read with section 2(24)(x) and the explanatory memorandum to the Finance Bill, 2021, the CIT(Appeals) held that the amendment clarifying the distinction between employer's and employees' contributions was retrospective in nature. The CIT(A) observed that employees' contribution must be deposited strictly within the prescribed statutory due date, and even a single day's delay renders it disallowable. Therefore, **the disallowance made by the Assessing Officer was upheld, and Ground No. 3 was dismissed.** In respect of **Ground No. 4**, concerning the disallowance of pro-rata loss of Rs. 55,53,311/- for a period of seven days after the slump sale of the manufacturing unit on 25.03.2017, the CIT(Appeals) noted that the Assessing Officer had disallowed the claim on the ground that the assessee failed to provide the actual working of loss attributable to the post-sale period and that such loss could not be claimed since the business had already been transferred. The assessee argued that all expenses and incomes for the post-sale period had been accounted for by the purchaser, Sun Pharmaceutical Medicare Ltd., and no claim had been made by the assessee in its books. The CIT(Appeals), however, held that no new facts or supporting evidence had been produced by the assessee and that

the burden of proof to establish error in the findings of the Assessing Officer was not discharged. Accordingly, **the disallowance was upheld and Ground No. 4 was dismissed.** In the result, the CIT(Appeals) held that the appeal of the assessee was **partly allowed.**

4. Both the assessee and Department are in appeal against the order of CIT(Appeals). We shall first take up the assessee's appeal in ITA No.1425/Ahd/2024. The assessee has raised the following Grounds of Appeal:

"Unimed Technologies Limited (hereinafter referred to as the 'Appellant') is engaged in the manufacture and trading of pharmaceuticals products well as involved in development/ sale of product technologies relating to pharmaceutical formulations. The Appellant had e-filed its return of income on October 31, 2017 declaring an income of Rs 22,90,06,750/- Subsequently, the Appellant's case had been selected for scrutiny and assessment was completed u/s 143(3) after making various unwarranted disallowances and additions.

Thereafter, the Assessment Unit passed a fresh assessment order u/s 143(3) r.w.s. 1448 r.w.s. 263 of the Act dated March 21, 2023 Being aggrieved by the same, the Appellant appealed before Hon'ble Commissioner of Income Tax (Appeals) (hereinafter referred to as the 'Hon'ble CIT(A)'] where some unwarranted disallowances and additions were made and an order u/s 250 was passed dated June 01, 2024 Being aggrieved, the Appellant Company is in appeal before your Honors. The Appellant Company submits the following grounds which are without prejudice to one another.

1 On the facts and in the circumstances of the case and in law, the assessment order passed by the Assessment Unit under section 143(3) read with section 263 r.w.s. 1448 of the Income Tax Act, 1961 has been framed with a prejudiced mindset and needs to be quashed in toto. The Hon'ble CIT(A) upheld the contentions and disallowances made by the Ld. AO in his order

2 Ground No. 2: Disallowance of pro-rata loss for a period of 7 days - Rs. 55,53,311/-.

2.1 On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has grossly erred in disallowing pro-rata loss of discontinuing manufacturing undertaking sold on slump sale' basis on March 25, 2017 without appreciating the fact that all the incomes and expenditures pertaining to 7 days le from March 25,

2017 to March 31, 2017 have already been accounted by the Transferee Company and none of the expenses after slump sale were debited by the Appellant Company in its books of accounts nor claimed as deduction and hence ought to be deleted

2.2 On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has grossly erred in not appreciating that certain expenses paid for by the Appellant Company on behalf of Sun Pharmaceutical Medicare Limited (SPML) have been reimbursed to the Appellant Company by the Transferee Company and accordingly, there is no hit to the statement of profit and loss of the Appellant Company for the corresponding amount.

2.3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has grossly erred in not appreciating that no deduction has been claimed in respect of the said expenses under the Act.

2.4 Without prejudice to the above, the Hon'ble CIT(A) has grossly erred in ascertaining the said amount of Rs. 55.53,311/- on imaginary/pro-rata basis and without considering the factual position, ledger accounts etc. submitted to him which clearly indicates that none of the expenses after slump sale was debited by the seller company in its books of accounts but the same was debited in SPML's books of accounts

3. Ground No. 3: Disallowance u/s 36(1)(va) - Rs. 7.45,642/-.

3.1 On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has grossly erred in treating amount deposited towards provident fund on January 16, 2017 instead of January 15, 2017 as delayed deposit by 1 day without appreciating that January 15, 2017 was a Sunday The payment was made on the next working day, which ought to be treated as proper compliance considering the provisions of Section 8 of General Clauses Act and hence, ought to be allowed as deduction u/s. 36(1)(va) of the Act

3.2 Without prejudice to the above, the Hon'ble CIT(A) grossly erred in considering the amendment in Section 36(1)(va) by the Finance Act, 2021 as 'retrospective which is contrary to the judicial decisions and thereby erred in disallowing the same despite the fact that the amount was deposited before the due date of filing the return of income u/s 139(1).

4 The Appellant craves leave to add, to alter, to amend or to delete any ground of appeal at or before the time of hearing."

Ground of Appeal Number 2: Pro-rata allocation of expenses of Rs. 55,53,311/-.

5. Before us, the learned counsel for the assessee submitted that no portion of the expenses for the 7-day period from 25.03.2017 to 31.03.2017 was borne by the assessee, as all the incomes and expenditures pertaining to this period had already been accounted for by the transferee company, namely M/s. Sun Pharmaceutical Medicare Ltd. ("SPML"). The learned counsel drew our attention to pages 148 and 176 of the paper book read with pages 32-33, 45-64, and pages 92-93, to demonstrate that the manufacturing undertaking of the assessee company was sold on a slump sale basis with effect from 25.03.2017 pursuant to an agreement dated 10.03.2017. It was submitted that from the effective date of transfer, all assets, liabilities, and operations of the said manufacturing unit vested with the transferee company, and consequently, the assessee neither booked any expense in its books of account nor claimed any deduction for any expenditure pertaining to the post-transfer period. The ld. counsel for the assessee further explained that the transferee company, SPML, had accounted for all income and expenses from 26.03.2017 to 31.03.2017 and had also duly recorded the same in its audited financial statements. It was submitted that the Assessing Officer, while disallowing a sum of Rs. 55,53,311/- on a pro-rata basis, erred in assuming that the assessee had incurred expenditure after 25.03.2017. The counsel submitted that that this assumption was contrary to the factual record and devoid of any evidentiary basis. He invited our attention to the Affidavit filed by the Director of the assessee company, placed on record, affirming that no expenses related to the transferred unit were incurred or claimed after 25.03.2017. It was further contended that the expenses on and after the date of slump sale were duly recorded in the books of the transferee company,

SPML, which had no other business activity except the one acquired from the assessee. The counsel referred to the balance sheet of SPML as supporting evidence. He further submitted that the pro-rata disallowance made by the Assessing Officer was arbitrary, without any logical or scientific basis, and contrary to the principles of natural justice. The method adopted by the Assessing Officer was purely presumptive and ignored the contemporaneous records demonstrating that no expenses were incurred after the transfer date. The counsel submitted that the burden lay on the Revenue to establish that the expenditure claimed by the assessee was inadmissible, and in the absence of any material to that effect, the disallowance could not be sustained. Accordingly, the learned counsel submitted that the assessee had claimed losses only for the period up to 24.03.2017 during which the manufacturing undertaking was held by it, and hence the disallowance of Rs. 55,53,311/- representing the pro-rata loss for seven days post slump sale was based on incorrect appreciation of facts and presumptions.

6. In response, Ld. DR placed reliance on the observations made by CIT(Appeals) in the appellate order.

7. We have heard the rival contentions and perused the material on record. The assessee has contended that no portion of the expenditure for the period from 25.03.2017 to 31.03.2017 was claimed by it in the profit and loss account, as the manufacturing undertaking was transferred to M/s. Sun Pharmaceutical Medicare Ltd. ("SPML") on slump sale basis with effect from 25.03.2017, and that all incomes and expenses thereafter were duly accounted for by the transferee company. The assessee has further placed on record copies of the slump sale agreement, audited financial statements, and an

Affidavit of the Director confirming that no expenditure relating to the post-transfer period was incurred or claimed by the assessee. On the other hand, the CIT(Appeals) proceeded on a presumption that a portion of the expenditure for the remaining seven days of the financial year pertained to the assessee and accordingly disallowed a sum of Rs. 55,53,311/- on a pro-rata basis without bringing any material evidence to support such conclusion. In this regard, it is a well-settled position in law that **no disallowance can be made in respect of an allowance or expenditure which has not been claimed by the assessee**. Therefore, unless an assessee makes a claim for deduction in its return or books of account, the question of disallowing such non-existent claim does not arise. In the present case, since the claim of the assessee that it had not debited or claimed any expenditure for the period after 25.03.2017 requires factual verification with reference to its books of account and those of SPML, we consider it appropriate, in the interests of justice, to set aside this issue to the file of the Assessing Officer. The Assessing Officer shall verify the relevant books of account, supporting documents, and the audited financials of both entities to ascertain whether any expenditure for the period 25.03.2017 to 31.03.2017 was claimed by the assessee, and decide the issue afresh in accordance with law after granting due opportunity to the assessee.

8. Accordingly, **this ground of appeal is allowed for statistical purposes.**

Ground Number 3: Employees' contributions towards Provident Fund amounting to Rs. 7,45,642/-.

9. Before us, the Id. counsel for the assessee primarily reiterated the arguments put forth before CIT(Appeals) to the effect that since 15.01.2017 fell on a Sunday, the payment made on the next working day constituted

valid compliance under the General Clauses Act. In response, Ld. DR placed reliance on the observations made by CIT(Appeals) in the appellate order.

10. We have heard the rival contentions and carefully perused the material on record. The issue involved in this ground relates to the disallowance of employees' contribution towards Provident Fund amounting to Rs. 7,45,642/- under section 36(1)(va) of the Act. The undisputed facts are that the statutory due date for deposit of employees' contribution for the relevant month was 15.01.2017, which fell on a Sunday, and the assessee deposited the said amount on the very next working day, i.e., 16.01.2017. The Assessing Officer disallowed the payment on the ground that it was made beyond the due date prescribed under the relevant Provident Fund Act, and the learned CIT(Appeals) upheld the disallowance holding that the delay, even though only of one day, was inadmissible in view of the amended provisions of section 36(1)(va) of the Act. We find merit in the contention of the assessee that the delay of one day occurred solely because the due date fell on a Sunday, and the payment made on the next working day ought to be treated as having been made within time in terms of section 10 of the General Clauses Act, 1897. The said section provides that where any act is required to be done within a prescribed period and the last day happens to be a day on which the office is closed, the act done on the next working day shall be deemed to have been done within the prescribed period. This principle has been consistently recognized by judicial authorities while dealing with similar cases of delayed deposits due to intervening holidays. In **G.D. Foods and Manufacturing (India) (P.) Ltd. v. Assistant Director of Income-tax [(2023) 152 taxmann.com 323 (Delhi - Trib.) / (2023) 202 ITD 116 (Delhi - Trib.)]**, the Delhi Bench of the Tribunal held that where the due date for depositing the employees' contribution of ESI and EPF fell on a Sunday or

gazetted holiday and the assessee deposited the contribution on the very next day, such deposit must be treated as made within time as per section 10 of the General Clauses Act. The Tribunal observed that the assessee had no intention of not depositing the contributions within time, and the payment on the next working day established the bona fides of the assessee. The ITAT held that the authorities erred in disallowing the contribution merely because of a one-day delay arising due to a public holiday. A similar view has been taken by the Kolkata Bench of the Tribunal in **SREI Equipment Finance Ltd. v. CIT(A) [(2025) 178 [taxmann.com](https://www.taxmann.com) 427 (Kolkata - Trib.)]**, where it was held that the deposit of ESI contribution made on 16.10.2017, when the due date of 15.10.2017 happened to be a Sunday, was to be treated as timely and the disallowance made on account of one day's delay was directed to be deleted. Respectfully following the ratio laid down in the aforesaid judicial pronouncements and applying the provisions of section 10 of the General Clauses Act, 1897, we hold that the payment of employees' contribution to provident fund made by the assessee on 16.01.2017, being the next working day after the due date which fell on a Sunday, shall be deemed to have been made within the prescribed time. The disallowance of Rs. 7,45,642/- made by the Assessing Officer and confirmed by the CIT(Appeals) is, therefore, unsustainable.

11. Accordingly, **this ground of appeal is allowed**, and the disallowance of Rs. 7,45,642/- on account of delayed deposit of employees' contribution towards Provident Fund is hereby directed to be deleted.

Now we shall come to Department's Appeal in ITA No.1423/Ahd/2024

12. The Department has raised the following Grounds of Appeal:

"(i) Whether, on facts and in circumstances of the case and in law, the Ld CIT(A) is justified in deleting the addition of Rs. 14,49,002/ made on account of disallowance of software expenditure holding it as allowable expenditure u/s 37(1) of the income Tax Act, 1961, without appreciating the findings of the A.O that the expenditure was incurred on the items which gave enduring benefit to the assessee?"

(ii) "Whether, on facts and in circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the addition of Rs 4,18,64,285/ made on account of disallowance of consultancy fee, treating the same as revenue expenditure without appreciating the findings of the A.O. that the expenditure was made for US FDA approval, which is not restricted for one year of usages and the said expenditure has resulted into creation of an asset having enduring benefits on account of its usage over a long period of time?"

(iii) Whether, on facts and in circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the addition of Rs. 4,18,64,285/ made on account of disallowance of consultancy fee, treating the same as revenue expenditure by ignoring Ld.CIT(A)'s decision on identical issue in assessee's own case for AY 2016-17, wherein the issue stands decided in favour of the Revenue?"

(iv) The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

Grounds Number 1: Deleting disallowance of software expenditure of Rs. 14,49,002/- treating them as allowable u/s 37(1) of the Act:

13. Before us, the Ld.Counsel for the assessee submitted that the issue is covered by the order passed by ITAT Ahmedabad Benches in assessee's own case for AY 2016-17 in ITA no.632 & 623/ Ahd/2024, wherein a similar issue had been decided in favour of the assessee. It would be useful to reproduce the relevant extract of the Ruling for ready reference:

"7. Adjudication on Revenue's Grounds of Appeal

We shall first take up for adjudication the grounds raised by the Revenue in ITA No. 632/Ahd/2024, wherein the Revenue has challenged the deletion of two disallowances made by the Assessing Officer.

8. Software expenses of Rs. 31,96,245/-

8.1 The first ground pertains to the disallowance Rs. 31,96,245/- made by the Assessing Officer **on account of software expenses, which was treated as capital in nature**. The Assessing Officer observed that the said amount had been debited by the assessee under the head "software expenses" in the profit and loss account and treated it as revenue expenditure. However, on examination of the details from the copies of the bills, the AO noted that the expenditure comprised items such as rugged computers, barcode scanners, printers, and associated accessories which, in his opinion, were tangible items providing enduring benefit. Accordingly, the AO concluded that the said expenditure was capital in nature and disallowed the same in full under section 37(1) of the Act.

8.2 In appellate proceedings, the assessee contended that the disallowance was made without verifying the nature and description of the software expenditure and that the AO had erroneously clubbed hardware items which were capitalised separately in the fixed asset schedule. It was submitted that the expenditure actually pertained to software license fees, annual renewals, upgrades, and user access costs relating to quality control and inventory systems, and the same were incurred recurrently in the normal course of business. The CIT(A) accepted the assessee's explanation and held that the expenditure, being incurred towards application software that did not create any asset of enduring nature, was rightly allowable as revenue expenditure. It was further observed that the AO had not brought any conclusive evidence on record to establish the capital nature of the expenditure or any error in the assessee's claim.

8.3 Before us, the learned Departmental Representative (DR) reiterated the findings of the AO. The learned Authorised Representative (AR), on the other hand, supported the order of the CIT(A) and pointed out the submission made before CIT(A) according to which the sole purpose of obtaining the software licenses was improvement and increase in the efficiency of business operations. It was also pointed out that the software licenses were only for a period of 12 months and therefore the said expenditure is of routine nature. The AR placed reliance on the judgement of Hon'ble High Court of Madras in case of CIT, Chennai Vs. Danfos Industries (P.) Ltd. [2022] 284 taxman 475.

9. We have carefully considered the rival submissions and perused the material placed on record along with the judicial precedent. It is not **in dispute that the assessee had separately capitalised hardware purchases and the expenditure in question pertained only to software licences and renewals used in day-to-day business operations**. The CIT(A)'s finding that the expenditure related to operating software used in routine inventory and quality control processes and did not result in acquisition of any capital asset or enduring advantage, remains **unrebutted by the Revenue**. The Revenue has also not pointed out any specific item falling under the disallowed head that contradicts this finding. We have noted the judicial precedent relied on in case of Danfos Industries (supra) where it was decided that a license which is valid for one year and did not confer any enduring benefit, expenditure incurred in acquiring such software license is revenue in nature.

In view of the consistent judicial view that expenditure incurred on application software or renewal of licences in the ordinary course of business is revenue in nature, we see no infirmity in the order of the CIT(A) allowing the claim. This ground of appeal raised by the revenue is therefore dismissed."

14. In view of the ruling by ITAT in assessee's own case for AY 2016-17, wherein an identical issue has been decided in favour of assessee, ground No.1 of the Departmental appeal is dismissed.

Ground Number 2 & 3: Deleting disallowance of Rs. 4,18,64,285/- being consultancy fees treating it as revenue in nature; not appreciating it was incurred on US FDA approval for creating an asset having enduring benefits

15. With respect to Ground Nos.2 & 3 of Departmental appeal, it was submitted before us that the ITAT Ahmedabad Benches in assessee's own case for AY 2016-17 in ITA Nos. 632 & 623/Ahd/2024 have decided these identical issues in favour of assessee. Accordingly, the appeal may be disposed of in light of the observations made by the ITAT Ahmedabad Bench in assessee's own case for AY 2016-17.

15.1. It would be useful reproduce the relevant extract on the order passed by ITAT in assessee's own case for AY 2016-17. For ready reference, the same is reproduced hereunder:

"15. Disallowance of Consultancy Fee Rs. 2,18,58,050/-

15.1 The first ground pertains to the disallowance of Rs. 2,18,58,050/-incurred by the assessee towards consultancy services obtained from M/s. Quality Executive Partners Inc., USA, in connection with the process of obtaining regulatory approvals from the United States Food and Drug Administration (USFDA) for the assessee's pharmaceutical manufacturing facility located at Baska. It was contended that such expenditure was incurred in the regular course of business to fulfil mandatory regulatory requirements, which are a precondition for marketing pharmaceutical products in foreign jurisdictions. The assessee submitted that the consultancy services primarily related to technical documentation, dossier preparation, on-site

audit assistance, and compliance facilitation, which are recurring and integral to the export operations of a pharmaceutical enterprise. The expenditure, it was asserted, did not result in the creation of any tangible or intangible asset, nor did it bring about an enduring advantage in the capital field. Accordingly, the same was claimed as revenue expenditure under section 37(1) of the Act.

15.2 The Assessing Officer, however, treated the expenditure as capital in nature on the ground that the regulatory approvals facilitated by the consultancy services conferred upon the assessee a benefit of enduring nature. The CIT(A) upheld the disallowance by accepting the view that the expenditure resulted in an enduring benefit in the form of US FDA's approval of assessee's manufacturing facility situated at Baska and was therefore capital in character.

15.3 During the course of hearing before us, the learned AR reiterated that the consultancy fees of Rs.2,18,58,050/- were incurred for obtaining USFDA approval for the already established manufacturing facility at Baska, Gujarat. It was clarified that the expenditure was not towards setting up the manufacturing unit per se, but for obtaining product-wise and facility-specific regulatory approvals, which are essential for exports to regulated markets such as the United States. It was further pointed out that the CIT(A) had wrongly proceeded on the assumption that the expenditure was for setting up the facility, whereas the facility was already operational, and the approvals pertained only to allowing products manufactured therein to be accepted for export in the U.S. market. The AR also contended that no enduring benefit or capital asset was created as a result of such regulatory consultancy, which was incurred in the normal course of business to comply with mandatory legal and regulatory requirements.

15.3 In support of the above, the AR placed reliance on the decisions of the coordinate benches of the Tribunal in Aarti Drugs Ltd. v. ACIT, ITA No. 2503/Mum/2021 and ITA No. 3070/Mum/2023 (Paras 15-21), wherein identical expenditure towards USFDA consultancy fees was held to be revenue in nature. Further reliance was placed on the judgment of the Hon'ble Gujarat High Court in Torrent Pharmaceuticals Ltd. v. DCIT [(2013) 29 taxmann.com 405 (Guj)], where the Hon'ble Court held that expenditure incurred for obtaining product approvals from international agencies does not result in the creation of a capital asset. Reference was also made to the decision of the Hon'ble Karnataka High Court in CIT v. Telco Construction Equipment Co. Ltd. ((2021) 127 taxmann.com 488 (Kar)], where expenditure incurred for technical consultancy in relation to regulatory compliance was allowed as revenue expenditure. It was further submitted that in assessee's own case for A.Y. 2017-18, the CIT(A) had accepted a similar claim and allowed the deduction.

15.4 The DR relied on the order of lower authorities.

16. We find that the facts of the present case are materially similar to those dealt with in the judicial precedents cited above. The approvals from USFDA are necessary for continuing export operations and do not result in a new source of income or acquisition of a capital asset. The consultancy services availed are periodic, compliance-driven, and recurring in nature, and cannot be characterised as resulting in an enduring benefit of the kind contemplated for capitalisation. It is also relevant to observe that in assessee's own case for Assessment Year 2017-18, similar expenditure incurred for USFDA compliance was allowed by the CIT(A), and the Revenue has not brought on record any change in facts or legal position to distinguish the present year's claim from the earlier accepted position. The principle of consistency mandates that when a fundamental aspect of the case remains unchanged, a different view should not ordinarily be taken. **The learned Departmental Representative, despite raising general objections, could not bring on record any tangible material or fact to controvert the above position. No evidence has been placed before us to show that the expenditure led to acquisition of any capital asset or that the approvals obtained resulted in enduring benefit in the capital field.**

16.1 In light of the above discussion, we hold that the expenditure incurred by the assessee was revenue in nature, incurred wholly and exclusively for the purposes of business, and is therefore allowable under section 37(1) of the Income-tax Act. The order of the CIT(A) to the contrary is not sustainable. We accordingly set aside the disallowance of Rs. 2,18,58,050/-and allow this ground of appeal of the assessee in full."

16. In view of the above observations, Ground Nos.2 & 3 of the Departmental appeals are dismissed.

17. In the result, the Departmental appeal is dismissed for AY 2017-18.

18. In the combined result, the Assessee's appeal is partly allowed for statistical purposes and the Departmental appeal is dismissed.

Order pronounced in the Open Court on 29/10/2025 at Ahmedabad.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

29/10/2025

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

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

आदेशानुसार/ BY ORDER,

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