IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS. SUCHITRA R. KAMMBLE, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.364 & 366/SRT/2025
AYs: (2020-21 & 2018-19)
(Physical hearing)

DCIT, Central Circle – 4, Surat	**vs.**	Sahajanand Medical Technologies Limited, 221, C-Wing, Kanakia Atrium Andheri Kurla Road, JB Nagar, Andheri East, Mumbai - 400059
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAFCS7694L		
(Appellant)		**(Respondent)**

Co. No.11/SRT/2025 (AY 2018-19)
[Arising out of ITA No.366/SRT/2025]

Sahajanand Medical Technologies Limited, 221, C-Wing, Kanakia Atrium Andheri Kurla Road, JB Nagar, Andheri East, Mumbai - 400059	**vs.**	DCIT, Central Circle – 4, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAFCS7694L		
(Appellant)		**(Respondent)**

Appellant by	Shri Rajesh C. Shah, CA
Respondent by	Shri Ravinder Sindhu, CIT-DR
Date of Hearing	28/08/2025
Date of Pronouncement	19/09/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the revenue and cross objection by the assessee emanate from the orders passed under section 250 of the Income-tax Act, 1961 (in

short, 'the Act') dated 13.01.2025 and 17.01.2025 by the Commissioner of Income-tax (Appeals), NFAC, Delhi [in short, 'CIT(A)'] for the assessment years (AYs) 2020-21 and 2018-19. With consent of the parties, the appeals were clubbed and heard together and a common order is passed for the sake of convenience and brevity. ITA No.364/SRT/2025 for AY 2020-21 is taken as 'lead' case.

2. The grounds of appeal in ITA No.364/SRT/2025 are as follows:

> *"1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.4,72,87,054/- made by the Assessing Officer being foreign exchange gain on capital loan and in not appreciating that the Assessee Company failed to follow Income Computation and Disclosure Standard IV relating to effects of changes in foreign exchange rates.*
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> *2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.4,72,87,054/- made by the Assessing Officer by relying upon certain case-laws and in not taking into cognizance the CBDT's Circular 10/2017 dated 23rd March, 2017 which were notified in the light of certain judicial pronouncements and it specifically mentioned that the provision of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.*
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> *3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.2,08,99,216/- made by the Assessing Officer being expenses for USFDA approval observing that the expenses incurred for US FDA approval are certainly business expenditure which are allowable even though the notes on account 28(A) has no mention of drug totaling Rs 67,88,159/- (32.75% of the consumption) and which formed basis of disallowance made by the Assessing Officer.*
>
> *4. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.2,08,99,216/- made by the Assessing Officer thereby ignoring that the expenses claimed to have been incurred by the Assessee were not genuine as the notes on account 28(A) has mention of only one drug (against claim of two drug) and that the Assessee was unable to submit evidences justifying the requirement made by the US FDA to the Assessee Company for approval*
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> *5. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made."*

ITA No.364/SRT/2025 (AY 2020-21):

3. The facts of the case in brief are that the assessee filed return of income for AY 2020-21 on 29.05.2021, declaring total income at Rs.39,20,57,160/-. The appellant company is a manufacturer of stent and balloon catheters. The case was selected for scrutiny and notice u/s 143(2) was issued on 29.06.2021. Various statutory notices u/s 142(1) and show cause notice were issued to the assessee. After considering the replies of the assessee, the Assessing Officer (in short, 'AO') made the following additions and disallowances (i) disallowance of donation u/s 80G – Rs.10,94,000/-, (ii) disallowance of deduction claim on health and education cess – Rs.57,07,374/-, (iii) foreign exchange gain on capital loan – Rs.4,72,87,054/-, (iv) deduction u/s 35(1)(iv) – Rs.32,50,000/- and (v) addition on account of USFDA consumption – Rs.2,08,99,216/-.

4. Aggrieved by the assessment order, appellant preferred appeal before CIT(A). The CIT(A) upheld addition in respect of ground Nos.1, 2 and 4. He has allowed ground Nos.3 and 5, being foreign exchange gain of Rs.4,72,87,054/- on capital gain and addition on account of USFDA consumption of Rs.2,08,99,216/- respectively.

5. Aggrieved by the above order of the CIT(A), the revenue has filed appeal before the Tribunal. In the assessment order, the AO stated that the assessee had treated Rs.4,72,87,054/- as foreign exchange gain on capital loan advanced by the assessee to its foreign subsidiary company and has not offered it for taxation. The

treatment is not in line with the ICDS provisions notified u/s 145(2) of the Act. He issued show cause to the assessee, requiring it to furnish justification as to why the foreign exchange gain on capital loan should not be added to the total income. He held that as per the ICDS provisions, there is no segregation of exchange gain/loss between revenue and capital nature. Except the exchange gain or loss covered u/s 43A of the Act, all other exchange gain would be taxed under the Act. He, therefore, added foreign exchange gain on the capital loan and initiated penalty proceedings u/s 270A of the Act.

5.1 The CIT(A) has reproduced relevant portions of the order of AO and submission of the appellant before him. The appellant had relied on the decision of the Hon'ble Delhi High Court in case of Chamber of Tax Consultants & Anr vs. UOI & Ors., (2018) 400 ITR 178 (Del). The CIT(A) observed that the ICDS IV itself states that if there is conflict between the Income-tax Act and ICDS, provisions of the Act will prevail. He observed that the actual income has been offered to tax and the addition made by the AO is the notional exchange gain, which cannot be added for taxation.

5.2 Before us, the learned Commissioner of Income-tax – Departmental Representative (ld. CIT-DR) relied on the order of AO.

5.3 On the other hand, the learned Authorized Representative (ld. AR) of the assessee filed a written submission and enclosed copies of the order of Hon'ble

Delhi High Court in case of Chambers of Tax Consultants (supra), copy of ICDS VI and copy of guidelines issued by the USFDA for conducting animal trials. He submitted that the addition of Rs.4,72,87,054/- was on account of unrealized gain on capital loan given to its foreign subsidiary. The loan was quasi capital in nature in foreign currency (Euro). The interest received on such loan was offered as a income from other source. The notional income is on account of the exchange difference on conversion of loans into Indian Rupee on the date of balance sheet.

He further submitted that as per ICDS VI itself, in case of conflict between provisions of the Income-tax Act and the ICDS, the provisions of Act shall prevail. The profit on conversion on foreign currency loan into Indian currency is a notional profit and is of capital nature and, hence, not taxable. The ld. AR relied on the decision in case of Chamber of Tax Consultants (supra), where it was held that ICDS cannot override binding judicial precedent or provisions of Act or Rules framed thereunder. The Hon'ble High Court also held that the losses/gains arising by valuation of monetary assets and liabilities of the foreign operations at the end of the year cannot be treated as real income. It is only in the nature of notional or hypothetical income, which cannot be even otherwise subject to tax. The ld. AR has also relied on the various decisions including decision of Hon'ble Supreme Court in case of Sutlej Cotton Mills Ltd. vs. CIT, [1979] 116 ITR 1 (SC)

5.4 We have heard both the parties and perused the materials available on record. We have also deliberated upon the case laws relied upon by ld. AR. The undisputed fact of the case is that the appellant company had advanced loan in Euro to its foreign subsidiary based out of India at Ireland. The appellant is also not in the business of money lending. The interest received on such loan has been offered as income from other sources. However, the AO has added the exchange difference on conversion of the capital loans into Indian Rupee on the balance sheet date. The profit on such conversion of foreign currency loan into Indian currency is notional in nature and is on the capital field. Relying upon the ICDS VI, the AO has added the amount as income of the assessee. However, the Hon'ble Delhi High Court in case of Chamber of Tax Consultants (supra) has clearly held that the Income Computation and Disclosure Standards (ICDS) in exercise of power u/s 145(2) of the Act cannot override binding judicial precent or provisions of the Act or Rules made thereunder. It also held that the losses/gains arising by valuation of monetary assets or liabilities of foreign operations as at the end of the year cannot be treated as real income. It is only in the nature of notional or hypothetical income, which cannot be even otherwise subject to tax. While deciding the issue, the Hon'ble High Court referred to the decision of the Hon'ble Supreme Court in case of Godhra Electrics Supply Company Ltd. vs. CIT, [1997] 225 ITR 746 (SC) and Sutlej Cotton Mills Ltd. (supra).

The Hon'ble Supreme Court in case of Sutlej Cotton Mills Ltd. (supra) has held as under:

> *"…The law is well settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature…."*

5.5 In view of the above factual positions and the authoritative precedents cited supra, we are of the considered view that the AO was not correct in adding the notional exchange gain on foreign currency loan on the balance sheet date as income of the assessee. We find no infirmity in the order of CIT(A) in deleting the addition. Accordingly, ground Nos.1 and 2 of the revenue are dismissed.

6. Ground Nos. 3 and 4 pertain to disallowance of Rs.2,08,99,216/- by the AO on the expenses for USFDA approval incurred by the assessee. This issue has been discussed at paras 8 to 8.2 of the assessment order. The assessee had claimed such expense on two products, namely, Tetrinuim and Suprabex Cruz. The assessee had submitted that it had supplied Suprabex Cruz along with others for USFDA approval. The AO observed that assessee failed to submit supporting evidences like requirements made by the USFDA to the assessee company for approval. Hence, he added proportionate amount @32.75% of consumption of USFDA trial, being Rs.2,08,99,216/- to the total income of the assessee. The CIT(A) has discussed the same at para 10 to 10.3 of the appellate order. The assessee submitted that the

company manufactures bare stents by the name Tetrinuim. In the next process, different drugs are coated on the stents. Sirolimus drug is used for coating on the bare stents and the name of drug eluting product is Suprabex Cruz. As per guidelines of USFDA on clinical trials of stents on an animal, the company has to provide both bare as well as drug eluting stents for clinical trials, so that they can observe the effect of the drug on the animal. After considering submission of the appellant as above, the CIT(A) held that the AO is not competent to point out as to how the business should be conducted by the appellant. He held that the expenses are genuine business expenses. Hence, the CIT(A) directed the AO to delete the addition.

6.1 Aggrieved by the order of CIT(A), the revenue has filed the appeal. The ld. CIT-DR relied on the order of AO and submitted that the assessee failed to submit details and evidences to support the claim of expenditure.

6.2 On the other hand, ld. AR submitted that the expenses incurred was for extending the territory of business to enter the US market of the existing product. The expenditure was not for any new business. To join the US market, certain clinical trial was to be conducted in US and on successful completion of the trial, it is possible to do business in US. Both bare stents and drug eluting stents are required for the clinical test. The same are required as per the guidelines issued by USFDA. The clinical test is to be conducted on an animal in order to evaluate the

effectiveness and suitability of the stents. Hence, expenses for both bare and drug coated stents are the primary requirement for entering in the US market. Therefore, the expenditure was wholly and exclusively for the purpose of business and cannot be separated to partially disallow the expenditure.

6.3 We have heard both the parties and perused the materials available on record. There is no dispute that the amount was incurred as expenditure by the appellant. The AO has bifurcated the amount incurred on account of USFDA approval by allowing expenditure related to drug eluting product "Suprabex Cruz" and disallowed expenditure on "Tetrinuim", which is name of the bare stent. The ld. AR has submitted that as per the guidelines of USFDA on clinical trials of stents on animal, the company has to provide both bare as well as drug eluting stent for clinical trials so that they can observed the effect of drug on the animal. Therefore, the appellant has rightly supplied both types of stents for USFDA approval. It may be mentioned that the expenses so incurred was for extending the business territory to enter the US market for the existing product. Therefore, it was expended wholly and exclusively for the purposes of business u/s 37(1) of the Act. It was certainly incurred due to consideration of commercial expediency. Therefore, the CIT(A) has rightly allowed the ground on this issue. We do not find any infirmity in the order of CIT(A). Accordingly, ground Nos.3 and 4 of revenue are dismissed.

6.4 The appellant has made a submission that in Form No.36 filed by the department, the tax effect on the grounds of appeal is mentioned at Rs.2,31,15,145/-, which is not correct. The amount disputed in appeal is Rs.6,81,86,270/- on which tax, surcharge and H&E cess comes to Rs.1,98,55,842/- and not Rs.2,31,15,145/-. The AO is directed to verify the same and made the necessary correction.

7. In the result, appeal of the revenue is dismissed.

ITA No.366/SRT/2025 (AY 2018-19) & CO No.11/SRT/2025 (AY 2018-19):

8. The grounds of appeal in ITA No.366/SRT/2025 are as follows:

"1. On the facts and in the circumstances of the case and in low the Ld CITA) has erred in selectively relying on para 6 of the AD's order in deciding that the notice u/s 148 of the Act is bad in law because sufficient time of 7 days was net granted, however has ignored Para-4 & 5 of the same order where it was clearly mentioned that notice u/s 148A(b) of the Act was issued on 17/03/202 on first set of information which the Assessee chose not reply u/s 148A(c) even by 29/03/2022.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has concluded perversely that where statutory time limit of 7 days was not granted in second 148A(B) noticed dated 23/03/2022 on second piece of information, notice u/s 148 of the Act is violated despite noting in his appeal order that the Assessee furnished his reply on 29 March, 2022 and order u/s 148A(d) of the Act was not passed before 31/03/2022.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in relying upon the order of Meghalaya High Court in a Writ Petition in the case of Jasmine Sangma V/s UOI without appreciating that said Hon'ble Bench gave a specific relief to the Assessee by setting aside 148 notice with a direction to department to consider the matter afresh with the Assessee's reply whereas the facts of the Assessee's case were completely different.

4. On the facts and in the circumstances of the case and in law and without prejudice to the above grounds, the Ld. CIT(A) has erred in admitting the additional ground challenging the validity of notice u/s 148 of the Act ignoring the applicability of provisions of section 292BB which clearly deemed the notice as valid as the

Assessee has raised no such objection before the completion of the assessment proceedings.

5. The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made."

9. The grounds of cross objection raised by the assessee are as follows:

"1. The Ld. CIT(A) erred in confirming the action of the Ld. AO on the merit of the case, without any corroborative evidence or incriminating material provided to the assessee.

2. The Ld. CIT(A) erred in confirming the action of the Ld. AO on not providing the opportunity of cross-examination (on the merit of the case) by ignoring the Hon'ble Supreme Court judgment in the case of Andaman Timber Industries (2015) 281 CTR 214 (SC) and (CIT vs. Sunita Dhadda (Diary No (s), 9432/2018) (28.03.2018) and ITAT judgment by the third member in the case of M/s. Gujranwala Jewellers Vs. ACIT (I.TT.A. No. 226/ASR/2017 and I.T.A. No. 586/ASR/20170 (Relied by the assessee in his submission) and also in his order for the same assessee for 2015-16 Asst. Year.

3. The Ld. AO has furnished incorrect information in the Form 36 filed, as the tax on the disputed income is calculated based on section 115BBE of the Act, whereas in the assessment order, no addition is made u/s 68 or 69 of the Act, or even section 115BBE of the Act is also not invoked."

10. The appellant raised additional cross objection on legal grounds as under:

"4. The ld. AO has erred in not following the prescribed section 148A(a) of the Act. As per para 6 of the assessment order, it is stated "another information was received on 22.03.2022, and thereafter, a request was again made vide letter dated 22.03.2022 to the Pr. CIT(Central), Surat to accord the permission to issue show-cause notice as per provisions of section 148A(b) of the I.T. Act, and the same has been granted by the Pr. CIT(Central), Surat vide his letter no. SRT/Pr. CIT(Central)/DCIT(HQ)/148A(b)/SMTPL/2021-22, dated 23.03.2022." It is clear that no permission as required u/s 148A(a) of the Act for inquiring was not taken, and direct permission was taken for issuing the show-cause notice u/s 148A(b) of the Act.

5. The jurisdictional Ld. AO has erred in issuing the notice as an amendment after 29.03.2022; the notice u/s 148 of the Act can be issued only by a Faceless Assessing Officer."

11. The facts of the case are that assessee filed return of income on 31.10.2018, declaring income of Rs.48,41,49,900/-. The case was re-opened on the basis of information flagged on the insight portal in accordance with risk management strategy of the CBDT. The notice u/s 148 was issued on 31.03.2022 after obtaining approval from the competent authority. The AO completed assessment u/s 143(3) r.w.s. 147 by making various disallowances and additions and determining total income at Rs.55,02,24,640/-.

12. Aggrieved by the order of AO, assessee filed appeal before the CIT(A), wherein an additional ground was raised regarding validity of notice and issuance of order u/s 148A(d) on 31.03.2022 without considering reply of the appellant. The CIT(A) admitted the additional legal ground by relying upon the decision of Hon'ble Supreme Court in case of NTPC vs. CIT, (1998) 229 ITR 383 (SC). The CIT(A) observed that as per the procedure w.e.f. 01.04.2021, before issuing notice u/s 148, the AO has to conduct enquiry with prior approval, issued show cause notice and allow not less than 7 days to file reply and consider the reply to decide whether it is a fit case for issue a notice u/s 148 of the Act. He found that the time given to the assessee was less than 7 days. Notice was issued on 23.03.2022 and date to respond the notice was 29.03.2022. Hence, the time allowed was only 6 days and less than 7 days. He further observed that the appellant had filed reply on 29.03.2022, but it was not considered in the order passed u/s 148A(d) on 31.03.2022. The above fact

could not be contravened by the AO in the remand proceedings. The appellant had relied on the decision in case of Jasmine Bonny Agitok Sangma vs. UOI, WP(C) No.179/2022, dated 20.05.2022 wherein the Hon'ble High Court set aside the notice issued u/s 148 for not considering the assessee's written response to the AO. The CIT(A) followed the above decision and held that the notice u/s 148 and re-assessment u/s 147 are against law and therefore, the order was set aside. The CIT(A), however, held that the additions were justified but they were of academic nature because the additional ground was decided in favour of the assessee.

13. Aggrieved by the order of CIT(A), the revenue filed appeal before the Tribunal. The ld. CIT-DR supported the order of AO and relied on the decision of the Hon'ble Gujarat High Court in case of Manish Kumar vs. ITO, R/Special Civil Application No.7347 of 2022, dated 19.08.2025.

14. On the other hand, ld. AR of the assessee filed written submission and a paper book giving copy of reply dated 29.03.2022 against notice dated 23.03.2022 issued u/s 148A(b) of the Act, copy of the reply to the remand report and decisions of Hon'ble Karnataka High Court in case of Thulladeedas Srinath vs. ITO, WP No.14325 of 2024 (T-IT), dated 25.06.2024 and PCIT vs. Garg Acrylic Ltd., ITA No.134/2025, dated 07.05.2025 and Jasmine Bonny Agitok Sangma (supra). He submitted that the time allowed by the AO to reply to the notice u/s 148A(b) was not as per the mandate of the said section. He submitted that the AO issued two

notices on 17.03.2022 and 23.03.2022. The second notice was issued before the time granted to file the reply to the first notice. Further, the second notice was on more issues than the first notice. In such circumstances, the first notice ceases and the amended notice survives. Further, only one order u/s 148A(d) was passed and the same was in respect of the notice dated 23.03.2022. The ld. AR submitted that the time of 6 days only granted to file reply was violation of section 148A(b) of the Act and is not a mere procedural lapse. He relied on the decision in case of Thulladeedas Srinath (supra) where the petition of the assessee is allowed because non-affording of time period of 7 days has resulted in prejudice and violation of principles of natural justice. He also submitted that the AO has accepted in a remand report that assessee had filed reply on 29.03.2022, which was not considered in the order passed u/s 148A(d) of the Act. Hence, there is contravention of section 148A(c) and 148A(d) of the Act. The ld. AR submitted that the decision relied by revenue in case of Manish Kumar (supra) is distinguishable on facts and is not applicable to the case of the appellant.

15. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied on by both sides. There is no dispute that an opportunity was given vide notice u/s 148A(b) on 23.03.2022 giving time to furnish the reply on or before 29.03.2022. Therefore, only 6 days' time was granted by AO, which is clearly in violation of the express provisions in

section 148A(b) of the Act. Further, the appellant has filed reply on 29.03.2022, which is at pages 25 to 30 of the paper books. However, the AO has passed order u/s 148A(d) on 31.03.2022 without considering the reply of the assessee dated 29.03.2022, which is again in violation of the provisions under Clauses (c) and (d) of 148A of the Act. The Hon'ble Karnataka High Court in case of Thulladeedas Srinath (supra) has held that if the period of less than 7 days is not provided for making out a reply to the notice issued u/s 148A(b), the notice itself vitiated and the consequential orders and notices are required to be set aside. The Hon'ble High Court allowed the petition of the assessee. Further, the decision of the Hon'ble Meghalaya High Court in case of Jasmine Bonny Agitok Sangma (supra) is also directly on the issue and is in favour of the assessee because the AO failed to consider reply of assessee dated 29.03.2022 in his order u/s 148A(d) dated 31.03.2022. The decisions relied upon by the ld. CIT-DR inn case of Manish Kumar (supra) is not applicable because in the said case order u/s 148A(d) was passed without granting adjournment. Accordingly, the Hon'ble Court quashed the order u/s 148A(d) and notice u/s 148 and remanded the matter back to the AO to grant opportunity to the petitioner to file reply to the notice u/s 148A(b) and pass order thereafter u/s 148A(d). In the present case, the appellant has not sought adjournment, but had actually filed reply, which was not at all considered by the AO in the order u/s 148A(d). Therefore, the facts are distinguishable and the ratio is not

applicable to the present case. In view of the above discussion, we do not find any infirmity in the order of CIT(A) and accordingly, the appeal of the revenue is dismissed.

16. The additional cross objection on the legal grounds filed by the appellant is admitted in view of the decision of the Hon'ble Supreme Court in case of NTPC (supra). Since we have already dismissed the appeal of revenue, the cross objections and the additional cross objection are not required to be adjudicated.

17. In the result, appeal of revenue is dismissed whereas CO of assessee is dismissed as infructuous.

18. In combined result, the appeals of the revenue are dismissed whereas CO of assessee is dismissed as infructuous.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 19/09/2025 in the open court.

Sd/-	**Sd/-**
(MS. SUCHITRA R. KAMMBLE)	**(BIJAYANANDA PRUSETH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat
दिनांक/ Date: 19/09/2025
SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat