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

BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No. 1842/Ahd/2024
(Assessment Year: 2016-17)

Asst. Commissioner of Income-tax, Central Circle 2(3), Ahmedabad	Vs.	M/s. Intas Pharmaceuticals Ltd. Corporate House, S.G. Highway, Nr. Sola Bridge, Thaltej, Ahmedabad-380 054 [PAN : AAACI 5120 L]
(**Appellant**)	..	(**Respondent**)

Appellant represented by :	Shri Sher Singh, CIT (DR)
Respondent represented by:	Shri S. N. Soparkar, Sr. Advocate & Ms. Urvashi Sodhan, AR

Date of Hearing	07.01.2026
Date of Pronouncement	24.02.2026

O R D E R

PER MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER :-

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income-tax (Appeals), Ahmedabad-13 [hereinafter referred to as "CIT(A)" for short] dated 12.08.2024, under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2016-17.

2. The Revenue has raised the following grounds:-

"1) Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the upward adjustment of Rs 1,27,16,929/-made by the TPO, by applying the rate of LIBOR/EURIBOR with different mark up and further addition of 100 points towards Forex Risk Adjustment, and by ignoring the fact that amount given to the subsidiary company are in the nature of advances/loans given by the assessee company, which needs to be equated with benchmarking methodology adopted for advancement of loan by one concern to another concern.

2) Whether on the facts and the circumstances of the case and in law, the Id. CIT (A) was justified in rejecting the external CUP method applied by the Ld. TPO to benchmark the interest rate on loans/advances given to its AEs by the assessee company and not appreciating the factors considered by the TPO such as credit

quality of the borrower, geography of the transactions etc. in accordance with the judgment delivered in the case of Aithent Technologies (Pvt.) Ltd.

3) Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the upward adjustment of Rs 3,77,22,240/- made towards notional interest on extra credit period on sales realization/receivables, and ignoring the fact that extra credit period on sales realization/receivables are in the nature of advances given by the assessee company, which needs to be equated with benchmarking methodology adopted for money advanced by one concern to another concem and accordingly interest needs to be charged on such extra period.

4) Whether on the facts and the circumstances of the case and in law, the ld.CIT(A) was justified in not appreciating the findings of TPO by deleting the upward adjustment made on account of charging of interest on outstanding receivables given to its AEs by the assessee company.

5) Whether on the facts and the circumstances of the case and in law, the ld. CIT (A) has erred in accepting the ALP determined by the assessee company by ignoring the guidelines laid down under the I.T. Act and Rules, thereby, violating the ratio laid down by the Hon'ble Supreme Court in the case of SAP Labs India Pvt. Ltd. Vs. ITO.

6) Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 170,94,37,500/- made on account of depreciation on Goodwill disallowed by the AO, without appreciating the fact that, DCF method adapted in the valuation report to value equity of M/s Intas Lifesciences Pvt. Ltd., was not the appropriate method of valuation of shares, as entire cash flow of M/s Intas Lifesciences Pvt. Ltd is from the assessee company and also in comparable company method, comparable companies have been taken such as Aarti Drugs Limited, Piramal Enterprises Limited, Indoco Remedies Limited and Granules India Limited and all these companies are different from M/s Intas Lifesciences Pvt. Ltd, as in these companies, mare than 40% shareholding was issued to the public and in the instant case, 96% shareholding of M/s Intas Lifesciences Pvt. Ltd was held by the assessee company and its shareholders, hence the most appropriate method to value equity of M/s Intas Lifesciences Put. Ltd would be Net Asset Value Method, considering the facts of this case in particular.

7) Whether on the facts and the circumstances of the case and in law, the Id CIT(A) has erred in ignoring the fact that, the assessee company has revalued intangibles to the extent of Rs 9,11,70,00,000/- On further analysts of financial statements of M/s Intas Lifesciences Pvt. Ltd., it was observed that the assessee company has only one customer and the entire sales of M/s Intas Lifesciences Put. Ltd was being to the assessee company In these situations, by the amalgamation of M/s Intas Lifesciences Pvt. Ltd. with the assessee company, there is no gain of brand equity, unique clientele, unique niche market, customer relations etc as mentioned in the valuation report and thus, revaluation of intangibles is not appropriate to the facts of this particular case.

8) Whether on the facts and the circumstances of the case and in law, the id. CIT(A) has erred in ignoring the fact that, after amalgamation, the assessee company has

shown the acquired assets at the same value as recorded in the books of M/s Intas Lifesciences Pvt. Ltd before amalgamation and balance between revalued equity shares and recorded value of assets of M/s Intas Lifesciences Pvt. Ltd has been shown on the asset side of the assessee company as "Goodwill" and on the liability side in "Reserve and Surplus" and this accounting treatment further strengthen the fact that, entire modus of valuation of intangibles is to create Goodwill in the books of accounts and consequently to claim depreciation on such Goodwill

9) Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in ignoring the fact that, the assessee company has tactfully used purchase method of accounting instead of merger method of accounting by revaluing the intangibles, though amalgamation between the assessee company with its subsidiary company M/s Intas Lifesciences Private Limited is basically "Amalgamation in the nature of merger" and the assessee company in order to create the Goodwill in the books of accounts and consequently to claim depreciation thereon, has revalued the intangibles to the extent of creation of Goodwill in the books of accounts. This process of revaluation of intangibles, thus, allowed the assessee to claim that the nature of amalgamation is "Amalgamation in the nature of purchase" and not "Amalgamation in the nature of merger".

10) Whether on the facts and the circumstances of the case and in law, the ld.CIT(A) has erred in ignoring the fact that, Para 8 of Appendix-C of Ind AS-103, which make it mandatory that in the case of amalgamation of commonly controlled entities, pooling of interest method to be followed. In the instant case, 96% shareholding of M/s Intas Lifesciences Pvt. Ltd were held by the assessee company, hence, these are commonly controlled entities and as per Para 8 of Appendix-C of Ind AS-103, which make it mandatory that in the case of amalgamation of commonly controlled entities, pooling of interest method to be followed.

11) Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in ignoring the fact that, Hon'ble Supreme Court in the case of M/s Kedarnath Jute Mfg. Co. Ltd. Vs. CIT 82 ITR 363(SC), held as under.

> *"Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter."*

12) Without prejudice to the other grounds, whether on the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in not verifying, whether the shareholders of M/s Intas Lifesciences Pvt. Ltd had made payment of tax on Capital Gain earned from transfer of their shares to the assessee company.

13) Whether on the facts and the circumstances of the case and in law, the Id. CIT (A) has erred in deleting addition of Rs. 14,87,29,364/- on account of adjustment for allocation of common expenses while computing deduction/exemption u/s 80IC, 801E and 10AA of the Act without appreciating that the common expenses needs to

be allocated amongst units having deduction/exemption u/s 80IC, 801E and 10AA of the Act.

14) Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the disallowance of Rs. 94,26,38,250/- on account of weighted Deduction claim of the assessee u/s 35(2AB) in excess of that allowed by the DSIR in Form 3CL.

15) Whether on the facts and the circumstances of the case and in law, the ld CIT(A) has erred in deleting the disallowance of interest of Rs. 14,06,15,203/u/s.36(1)(iii) of the IT Act, without appreciating that there is no nexus between surplus fund available with the assessee with utilization for CWIP.

16) Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the disallowance of Rs.5,92,507/- made u/s.14A r.w.r. 8D of the Income Tax Act without appreciating the finding of A.O. that, the assessee company has made huge investment in shares of subsidiaries and other companies and claimed interest expenditure of Rs. 15,52,99,000/- However, the assessee has made no disallowance u/s 14A of the Act r.w.r. 8D of I.T. Rules in its statement of computation of income and thus, ignoring the CBDT circular no.5/2014 dated 11.02.2014.

17) Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of commission payment made to non-residents of Rs.25,55,75,035/-u/s.40(a)(ia) of the Income Tax Act, on which no TDS was deducted, and ignoring the facts of the case these payment was made for utilization of their services for procuring orders from the overseas companies and therefore the assessee company was under obligation to deduct tax at source as envisaged u/s 195 of the Act from the payments of commission made to nonresident agents towards the services rendered by them.

18) Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in not considering all the facts of the instant case and rulings delivered by Hon'ble Authority for Advance Rulings (Income Tax) in the cases of Rajiv Malhotra (2006) 284 ITR 564/155 Taxman 101 (Delhi) and SKF Boilers and Driers (P.) Ltd. 18 taxmann 325 [2012] which was squarely applicable to the assessee-company, which stated that, since the income from commission payment to non-resident have arose in India and is taxable under the Act in view of the specific provision of section 5(2)(b) r.w.s. 9(1)(i) of the IT Act, and thus, the AO has correctly made addition of Rs.25,55,75,035/- on account of disallowance of commission paid to non-resident under section 40(a)(ia) of the IT Act."

3. At the outset itself, the Ld. AR, appearing for the assessee, submitted that all the issues raised by the Revenue in its grounds of appeal are squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of this Tribunal

in assessee's own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021 vide order dated 21.05.2025.

Ground Nos. 1 & 2 – Transfer Pricing Adjustment on Interest on Loans to AEs

4. These grounds relate to the deletion of upward adjustment of Rs.1,27,16,929/- made by the TPO/AO by applying LIBOR with a different mark-up and further addition of 100 basis points towards alleged forex risk adjustment in respect of loans advanced to Associated Enterprises (AEs). The Revenue has also challenged the rejection of the external CUP method adopted by the TPO.

4.1 The Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been duly followed by the Ld. CIT(A) while granting relief.

4.2 We have carefully considered the rival submissions and perused the material available on record. We find that an identical issue arose in the assessee's own case for AY 2015-16, wherein the Tribunal, after detailed examination, held as under:-

> *"Ground No. 1(i) - Transfer Pricing Adjustment on Interest on Advances to Associated Enterprises*
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> *5. The assessee had during the year under consideration advanced loans to its Associated Enterprises (AEs) in foreign currency aggregating Rs.5,85,87,394/-. These advances were made to five AEs across different jurisdictions and were uniformly charged interest at the rate of 3.22%, determined on the basis of an internal CUP, i.e., a loan quotation obtained from Bank of Nova Scotia, Singapore at 6-month USD LIBOR + 2.60%. The assessee contended that the advances were made for commercial expediency, namely for facilitating product registration, marketing, and distribution infrastructure in foreign jurisdictions where the AEs were responsible for securing necessary regulatory approvals to market the assessee's products. The advances were thus stated to be intrinsically linked to the assessee's core business operations and adequately compensated through the rate charged. The TPO, however, held that the benchmarking using a single internal CUP*

across AEs situated in different jurisdictions was not appropriate. The TPO also held that the assessee's benchmarking lacked a geographical and economic comparability analysis. The TPO observed that external Comparable Uncontrolled Price (CUP) using "Loan Connector" database, filtered for borrower region, tenor, unsecured status, and purpose (working capital), yielded higher ALP interest rates for certain AEs. Additionally, the TPO made an ad hoc addition of 100 basis points to cover forex and country risk, leading to an upward adjustment of Rs.53,93,893/-.

6. The Ld. CIT(A) in the current assessment year upheld the TPO's adjustment of Rs.53,93,893/- on account of undercharging of interest on loans to AEs. In doing so, the CIT(A) primarily relied on the decisions rendered in the assessee's own case for Assessment Years (AY) 2013–14 and 2014–15, where similar issues were adjudicated. In those earlier years, the CIT(A) had rejected the assessee's benchmarking approach, which was based on an internal CUP method using a quotation from Bank of Nova Scotia, Singapore. The CIT(A) held that the quotation did not constitute a valid internal CUP, as it was not a binding commitment or an actual transaction. Furthermore, the CIT(A) accepted the TPO's application of an external CUP method, which included a forex risk adjustment of 100 basis points, considering the funds were advanced from India and repayments were subject to foreign exchange fluctuations. The CIT(A) also referred reliance of AO on the decision in Perot Systems TSI (India) Ltd. v. DCIT [37 SOT 358 (Del)], which emphasized that all international transactions with AEs must be benchmarked at Arm's Length Price (ALP), regardless of the commercial expediency claimed by the assessee.

7. The Authorised Representative (AR) of the assessee stated that the issue is covered by the decision of Co-ordinate Bench in assessee's own case for the A.Y. 2013-14 (ITA No. 400/Ahd/2028). The AR took us through the operative part of the said decision. The Departmental Representative (DR) relied on the order of lower authorities.

8. We have carefully considered the rival submissions, the findings of the lower authorities, and the material placed on record. It is pertinent to note that the issue involved stands squarely covered in favour of the assessee by the decision of the Coordinate Bench in assessee's own case for Assessment Year 2013–14, in ITA No. 400/Ahd/2018, order dated 31.10.2023. In the said decision, after considering similar facts and identical contentions, the Bench held that the internal CUP adopted by the assessee, based on the quotation received from Bank of Nova Scotia, Singapore, constituted a valid and authentic comparable. The Bench observed that the quotation, although not a public domain publication, was obtained from an internationally reputed financial institution and there was no material brought on record by the Revenue to doubt its authenticity. The Bench further held that merely

because the quotation was not a public domain document, it could not be disregarded for benchmarking purposes. Distinguishing the reliance placed by the CIT(A) on the decision of the Hon'ble Gujarat High Court in CIT v. Adani Wilmar Ltd. (363 ITR 338), the Bench observed that what is relevant is the authenticity of the document and not necessarily its public domain status. Accordingly, the Bench accepted the assessee's internal CUP benchmarking and rejected the external CUPs relied upon by the TPO. It was further held that no ad-hoc addition of 100 basis points towards forex risk was warranted, as there was no evidence of significant forex risk affecting the assessee's transactions. Following the binding precedent laid down by the Coordinate Bench in assessee's own case for Assessment Year 2013–14 (supra), and there being no distinguishing facts brought on record for the year under consideration, we respectfully apply the same ratio to the present case. Consequently, we hold that the benchmarking done by the assessee based on internal CUP is valid, and the adjustment of Rs.53,93,893/- made by the TPO and confirmed by the CIT(A) on account of alleged undercharging of interest on advances to AEs is unsustainable. We accordingly direct the deletion of the addition of Rs.53,93,893/-."

4.3 It is an undisputed position that the facts and circumstances for the year under consideration are identical. The Revenue has not brought on record any distinguishing feature nor cited any contrary decision of a higher judicial forum warranting a different view.

4.4 Respectfully following the decision of the Co-ordinate Bench in the assessee's own case for the preceding assessment year, and in the absence of any material change in facts or law, we find no infirmity in the order of the Ld. CIT(A) in deleting the transfer pricing adjustment.

Accordingly, Ground Nos. 1 & 2 raised by the Revenue are dismissed.

Ground Nos. 3 & 4 – Upward Adjustment on Account of Interest on Outstanding Receivables

5. The above grounds relate to the deletion of upward adjustment made by the TPO/AO by charging notional interest on outstanding receivables from AEs beyond the stipulated credit period.

5.1 The Ld. AR submitted that the issue is also squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been duly followed by the Ld. CIT(A) while granting relief.

5.2 We have carefully considered the rival submissions and perused the material available on record. We find that an identical issue arose in the assessee's own case for AY 2015-16, wherein the Tribunal, after detailed examination, held as under:-

> *"14. The issue relates to the transfer pricing adjustment made by the TPO and confirmed by the CIT(A) by imputing notional interest on receivables outstanding from AEs beyond a credit period of 180 days, resulting in an upward adjustment of Rs.14,64,47,827/-. It is not disputed that the assessee had benchmarked its international transactions of export of finished goods to AEs under the TNMM, and that working capital adjustment had been undertaken while computing the Profit Level Indicator (PLI). The assessee contended that the receivables are incidental and intrinsically linked to the primary international transaction of sale of goods. The assessee also stated that the working capital adjustment duly captures the impact of credit terms, and therefore, a separate adjustment on outstanding receivables would lead to double taxation and the assessee maintained a uniform policy of not charging interest on delayed payments from both AEs and non-AEs. In assessee's own case for Assessment Year 2013–14 (ITA No. 400/Ahd/2018), the Coordinate Bench has categorically held that where TNMM has been applied and working capital adjustment has been given while benchmarking the main international transaction, no separate upward adjustment is warranted for notional interest on outstanding receivables. The Bench relied upon the decision of the Hon'ble Delhi High Court in Pr. CIT v. Kusum Healthcare Pvt. Ltd. [(2017) 398 ITR 66 (Del)], where it was held that once working capital adjustment is made under TNMM, no separate addition for outstanding receivables is justified. The Bench rejected the reliance placed by the Revenue on the earlier ITAT rulings (such as Bechtel India Pvt. Ltd. and Ameriprise India Pvt. Ltd.) which were rendered prior to Kusum Healthcare's decision. It was specifically noted that the DR in that case could not show any distinguishing facts nor cite any contrary High Court or Supreme Court decision. In the present case also, it is not in dispute that the assessee applied TNMM for benchmarking the sale transactions, working capital adjustment was made to the profit level indicator (PLI) and no contrary decision has been cited by the DR. It was also noted that the assessee submitted the documentary evidence before lower authorities relating to*

instances of transactions with non-AEs of not charging interest on late realisations of receivables.

15. In view of the foregoing and respectfully following the decision of the Coordinate Bench in assessee's own case for A.Y. 2013-14 (supra), we hold that the receivables are merely an extension of the main international transaction of sale of goods and do not constitute a separate international transaction warranting independent adjustment. We, therefore, direct deletion of the addition of Rs. 14,64,47,827/- made towards notional interest on delayed receivables from AEs."

5.3 Before us, it is not in dispute that the facts and circumstances for the year under consideration are identical. The Revenue has not brought on record any distinguishing feature nor cited any contrary decision of a higher judicial forum warranting a different view. Therefore, respectfully following the decision of the Co-ordinate Bench in the assessee's own case for the preceding assessment year, and in the absence of any material change either in facts or in law, we find no infirmity in the order of the Ld. CIT(A) in deleting the upward adjustment made on account of notional interest on outstanding receivables.

Accordingly, Ground Nos. 3 & 4 raised by the Revenue are dismissed.

Ground No.5.

6. General Ground. No specific adjudication required.

Ground Nos. 6 & 12 –Depreciation on Goodwill arising pursuant to Amalgamation

7. These grounds relate to the deletion of addition made by the Assessing Officer on account of depreciation claimed on goodwill arising pursuant to a scheme of amalgamation, along with allied objections raised by the Revenue regarding valuation, accounting treatment, allocation to eligible units, and applicability of various statutory provisions.

7.1 We find that the issues raised by way of above grounds are the identical issue arose in the assessee's own case for AY 2015-16, wherein the Tribunal, after detailed examination, held as under:-

> *"45. We have carefully considered the rival submissions, perused the orders of the lower authorities, the scheme of amalgamation sanctioned by the Hon'ble Gujarat High Court, and the judicial precedents relied upon by both parties. We have also carefully perused the order of the Ld. CIT(A). The CIT(A) has recorded a detailed and reasoned finding that the goodwill of Rs. 911.70 crore arose due to excess of consideration over the net book value of assets and liabilities taken over by the assessee pursuant to a scheme of amalgamation sanctioned by the Hon'ble Gujarat High Court. It is not in dispute that the scheme was scrutinized by the Regional Director, Ministry of Corporate Affairs, and the Income Tax Department was duly invited to submit objections in accordance with General Circular No. 1/2014 dated 15.01.2014, read with section 394A of the Companies Act, 1956. The Department, however, did not raise any objections at that stage. The scheme was sanctioned on 03.10.2015 with the appointed date being 01.04.2014.*
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> *46. The CIT(A) observed that in accordance with the purchase method of accounting under AS-14, the difference between the consideration paid and the net book value of the amalgamating company's assets was recognised as goodwill. Out of the total goodwill of Rs. 911.70 crore, Rs. 301.14 crore was allocated to the Dehradun unit and Rs. 601.56 crore to the Sikkim unit. The CIT(A) further noted that depreciation of Rs. 227.92 crore was claimed on the said goodwill at the applicable rate of 25%. After referring to the binding decisions of the Hon'ble Supreme Court in Smifs Securities Ltd., and the Hon'ble Gujarat High Court in PCIT v. Zydus Wellness Ltd. [(2017) 87 taxmann.com 82], the CIT(A) held that goodwill qualifies as an intangible asset under Explanation 3(b) to section 32(1) and is eligible for depreciation. The CIT(A) also noted that the SLP filed by the Department against Zydus Wellness Ltd. was dismissed by the Hon'ble Supreme Court, giving finality to the issue.*
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> *47. On the question of cost, the CIT(A) rightly held that the goodwill arose as a result of an actual transaction supported by a court-sanctioned scheme and a valuation report, and not merely by accounting jugglery. The CIT(A) distinguished Explanation 7 to section 43(1) and Explanation 2 to section 43(6) by observing that they apply to tangible assets transferred in amalgamation but not to goodwill which arises afresh in the books of the transferee as a balancing figure when the consideration exceeds net assets. The CIT(A) further held that the Assessing Officer's suspicion regarding the valuation was unsubstantiated as no reference was made to the Departmental Valuation Officer and the valuation was supported by a report*

from a professional valuer. Relying on the decision of the Co-ordinate Bench of the Tribunal in Urmin Marketing Pvt. Ltd.(ITA 1806/Ahd/2019), the CIT(A) found that similar contentions had been rejected in earlier proceedings involving comparable facts.

48. We are in agreement with the view taken by the Ld. CIT(A). Once the scheme of amalgamation has been sanctioned by the Hon'ble High Court, and no objection has been raised by the Department at the appropriate stage, the consequential accounting recognition of goodwill in the books of the amalgamated company cannot be brushed aside as a colourable device. The consideration paid by way of share allotment constitutes valid consideration for the purpose of recognising goodwill. The Hon'ble Delhi High Court in CIT v. Mira Exim Ltd. [(2013) 359 ITR 70] has affirmed that share allotment as consideration constitutes "payment" in kind and satisfies the requirement for depreciation claim under section 32.

49. As regards the DR's reliance on the fact that ILPL had no independent customers and that the entirety of its business was dependent on transactions with the assessee itself, we are of the considered view that such an observation, even if factually correct, does not in itself negate the existence or allowability of goodwill as an intangible asset. It is now well settled in law that the term "goodwill" is not limited to a customer list or an externally acquired brand. It encompasses a broad range of commercial attributes including the reputation of the business, expected future earnings, access to supply and distribution networks, management synergies, and benefits of operational integration. The value of goodwill is often derived from the expectation of continuing business advantage, and may even arise internally from economies of scale, vertical integration, or enhanced production efficiencies. Therefore, even in cases where the amalgamating entity does not possess third-party clientele, the commercial reality of future economic benefits arising from the merger—particularly where business functions, personnel, licenses, or assets are integrated— can result in the generation of goodwill. In the present case, the scheme of amalgamation was a court-approved transaction involving complete transfer of business, assets, liabilities, and workforce from ILPL to the assessee. The excess of consideration paid over the net book value of assets taken over has been duly recognised in the books of the assessee as goodwill under the purchase method of accounting as per AS-14. This recognition was not arbitrary or notional but supported by an independent valuation report prepared by a registered valuer. No contrary valuation has been placed on record by the Revenue nor was the matter referred to the Departmental Valuation Officer. In any event, the presence or absence of third-party clients cannot be the sole criterion to determine whether goodwill was acquired. The Hon'ble Supreme Court in Smifs Securities Ltd. has held that goodwill falls within the expression "any other business or commercial rights of similar nature" as

appearing in Explanation 3(b) to section 32(1) and is therefore eligible for depreciation. The statute does not require such rights to arise only from external dealings or unrelated parties. Once the transaction satisfies the requirements of section 2(1B), which defines amalgamation to include even group company mergers where 100% shareholding may vest with the amalgamated company, the legal form and accounting consequences must be respected.

50. Coming to the assessee's contention regarding the allocation of goodwill to the tax-exempt units in Sikkim and Dehradun, we find that the issue was duly considered by the CIT(A) in para 5.10 of the appellate order. As per the assessee's accounting treatment, the total goodwill of Rs.911.70 crore was allocated as follows:

- *Rs.301.14 crore to the Dehradun Unit, which was eligible for deduction under section 80-IC (30% deduction), and*
- *Rs. 601.56 crore to the Sikkim Unit, which was eligible for deduction under section 80-IE (100% deduction).*

51. The assessee contended that even if depreciation on such goodwill were to be disallowed, the disallowance would correspondingly enhance the profit of the eligible units, thereby increasing the quantum of deduction under Chapter VI-A, in view of CBDT Circular No. 37/2016 dated 02.11.2016. The CIT(A) accepted this contention in principle, holding that any disallowance of depreciation on goodwill relating to the Sikkim unit would automatically result in an equivalent increase in eligible profits, making the disallowance revenue neutral. The AO had not disturbed the allowability or quantification of deduction under section 80-IE, and therefore no disallowance attributable to the Sikkim unit was sustained by the CIT(A). However, in the case of the Dehradun unit, which was eligible for only 30% deduction under section 80-IC, the CIT(A) rightly held that 70% of the depreciation claimed—representing the portion not eligible for deduction—would be an effective addition to income. Accordingly, the CIT(A) restricted the disallowance to Rs.52,69,97,415/-, being 70% of the depreciation claimed in respect of goodwill allocated to the Dehradun unit. This computation was consistent with the guidance in CBDT Circular No. 37/2016, which clarified that in computing eligible profits under Chapter VI-A, disallowances under the head "business income" should not result in denial of deduction on the enhanced income. The Revenue has not challenged this working, nor has it shown that any portion of depreciation relating to the Sikkim unit was ineligible.

52. We have considered the objections raised by the Departmental Representative regarding the computation and recognition of goodwill in the present case. The primary contention of the Revenue is that the goodwill was artificially created in the books of the amalgamated company without any

actual commercial basis, and that the valuation was not based on the Net Asset Value (NAV) method. It is seen, however, from the record that the assessee had engaged KPMG for a detailed valuation of both the amalgamating and amalgamated companies as part of the court-sanctioned scheme of amalgamation. The valuation was carried out using recognized income and market approaches, namely the Discounted Cash Flow (DCF) and Comparable Companies Multiples (EV/EBITDA and PE ratios), in accordance with global best practices. The equity value per share for Intas Pharmaceuticals Ltd. (the amalgamated company) was determined at Rs.147.65, while the equity value per share for ILPL (the amalgamating company) was arrived at Rs.96.56. Based on this, the swap ratio was recommended at 100:65, i.e., 100 shares of the amalgamated company were to be issued for every 65 shares of the amalgamating company held. As regards the estimation of goodwill, the summary of working as derived from the KPMG valuation report is tabulated below:

Particulars	*Amount (INR million)*
Enterprise value of Intas Lifesciences Pvt. Ltd. (ILPL)	*9,656*
Book value of tangible assets and net working capital taken over	*(539)*
- *Book value of fixed assets*	*(463)*
- *Book value of current assets and advances*	*(10,218)*
- *Book value of cash and bank balances –*	*654*
- *Book value of current liabilities –*	*9,488*
- *Identifiable intangibles and goodwill*	*Nil*
Residual amount treated as goodwill	*9,117*

53. The estimated goodwill of Rs.9,117 million arises as the residual value representing excess consideration paid over the net book value of identifiable assets and liabilities acquired. This goodwill is accounted for in the books under the purchase method of accounting as per Accounting Standard–14 (AS-14) and is stated to represent future economic benefits arising from the amalgamation.

54. While it is an undisputed fact that Intas Lifesciences Pvt. Ltd. (ILPL), the amalgamating company, did not maintain an independent customer base and that its revenues were almost exclusively derived from transactions with the assessee-company, such a factual matrix, by itself, does not invalidate the recognition of goodwill for tax purposes. In modern commercial jurisprudence, and as acknowledged by a long line of judicial precedents, the concept of "goodwill" is not confined to the presence of external clientele or tradable intellectual property. Rather, goodwill is a composite intangible, often representing a spectrum of commercial advantages and strategic benefits which accrue to the acquiring entity as a result of the amalgamation. It is well-settled that goodwill may encompass diverse elements such as the continuity of trained workforce, access to regulatory licenses, embedded

operational systems, management expertise, optimized supply chain alignment, intra-group cost efficiencies, shared infrastructure, and even the mere continuity of profitable operations. These elements, though not individually valued or transferable, together constitute an economic benefit which the transferee entity expects to realize over time. The Courts have consistently upheld that the absence of independent third-party customers or standalone brand assets does not, per se, disentitle the acquirer from recognizing goodwill, where the consideration paid exceeds the net book value of the assets acquired and is duly supported by a professional valuation. Further, goodwill arising from amalgamation between group entities, where there may be common control or overlapping ownership, is specifically contemplated under section 2(1B) of the Act. The legal permissibility of such amalgamations is not dependent on the existence of arms-length operations or unrelated party dealings. The character of goodwill remains intact, so long as the excess consideration paid is bonafide, attributable to commercial intent, and not a colourable device, and where the valuation is backed by objective and auditable parameters, as is evident in the present case from the KPMG valuation report. Accordingly, we do not agree with the DR's contention that goodwill must necessarily arise only where identifiable third-party rights or clientele are acquired. The jurisprudence laid down in Smifs Securities Ltd. and consistently followed thereafter recognizes that "business or commercial rights of similar nature" under Explanation 3(b) to section 32(1) covers a wide ambit of intangible assets including goodwill that is recognized through proper valuation in a scheme of amalgamation.

55. We also note that both the AO and the DR have attempted to distinguish the assessee's case from the facts of Smifs Securities Ltd. on the premise that ILPL lacked independent clients, the goodwill was created within the same group, and there was no real transfer of business value. However, such a distinction, in our considered view, does not undermine the binding nature of the ratio laid down by the Hon'ble Supreme Court in Smifs Securities Ltd. (supra), wherein it was categorically held that goodwill arising out of amalgamation is a depreciable intangible asset under Explanation 3(b) to section 32(1). The test laid down is whether goodwill is acquired at a cost and recorded in the books pursuant to a valid transaction; it is not contingent on the nature of clientele or independence of operations of the amalgamating entity. The CIT(A), in our view, has correctly rejected the distinction made by the AO and upheld the allowability of depreciation on goodwill, following binding judicial precedents. We endorse this conclusion.

56. We have also noted the reliance placed by the Ld. AR on the decision of the Co-ordinate Bench in the case of Suzlon Energy Ltd. vs. DCIT, ITA Nos. 198 & 199/Ahd/2023 for A.Ys. 2016–17 and 2017–18, wherein the Tribunal allowed the claim of depreciation on goodwill arising on amalgamation of

wholly-owned subsidiaries. In that case, the goodwill had been recorded in the books of the amalgamated company as the difference between the consideration paid and the net book value of the assets and liabilities acquired under a scheme of amalgamation duly sanctioned by the Hon'ble NCLT. The Co-ordinate Bench, after considering the provisions of section 32(1)(ii) read with Explanation 3(b) and relying on the binding precedent of the Hon'ble Supreme Court in CIT v. Smifs Securities Ltd. [(2012) 348 ITR 302 (SC)], held that such goodwill constitutes an intangible asset eligible for depreciation under the Act. We find the reasoning adopted by the Co-ordinate Bench in Suzlon Energy Ltd. to be legally sound and applicable to the present case. Here too, the goodwill arose as a consequence of the amalgamation of ILPL with the assessee, was recognised in the books of the assessee as per the purchase method of accounting under AS-14 and represents a determinable excess of consideration over the net asset value. The transaction was sanctioned by the Hon'ble Gujarat High Court, and the goodwill so arising was not self-generated, but traceable to a valid and binding scheme of arrangement. We are therefore in agreement with the view taken in Suzlon Energy Ltd. that such goodwill qualifies as a depreciable intangible asset under section 32(1)(ii), and that the depreciation claimed thereon has to be allowed in accordance with law.

57. In view of the above, we are unable to accept the DR's argument that the goodwill lacks substance merely because the business of ILPL was functionally integrated or wholly dependent on the assessee. The principles of commercial reality, as recognised in Smifs Securities, Urmin Marketing, and Zydus Wellness Ltd., support the view that goodwill may arise even in intra-group amalgamations when excess consideration is paid and booked transparently. We thus uphold the conclusion of the CIT(A) that the goodwill so recognised constitutes a valid depreciable asset within the meaning of section 32(1)(ii), and that depreciation claimed thereon is allowable in law, subject only to the proportionate restriction of Rs.52,69,97,415/- in respect of the Dehradun unit as correctly computed and sustained by the first appellate authority.

58. We shall now proceed to deal with the revised grounds raised by the Revenue in light of our detailed analysis above:

Revised Ground No. 1:
59 The Revenue contends that depreciation on goodwill is not allowable as there was no goodwill recorded in the books of the amalgamating company and the same was created only in the books of the amalgamated company. We find this contention devoid of merit. As held by the Hon'ble Supreme Court in Smifs Securities Ltd. [(2012) 348 ITR 302 (SC)], goodwill arising as a balancing figure from excess consideration over net asset value is a depreciable intangible asset under section 32(1)(ii), irrespective of its prior

existence in the books of the amalgamating company. The CIT(A) has correctly appreciated this legal position, and we find no infirmity in his conclusion.

Revised Ground No. 2:
60. The Department argues that goodwill is a self-acquired asset with nil cost in the hands of the amalgamated company, and hence the WDV should be taken as nil under Explanation 2 to section 43(6). This contention ignores the fact that in the present case, goodwill was acquired at a determinable cost, being the excess consideration paid under a High Court sanctioned scheme of amalgamation. The cost so paid forms the actual cost for purposes of depreciation. The CIT(A) has rightly rejected this ground by holding that the goodwill was not self-generated but arose from a lawful acquisition transaction, supported by valuation.

Revised Ground No. 3:
61. The Revenue contends that the CIT(A) erred in holding that no objection was raised by the Department during High Court proceedings, and that the scheme's compliance with section 2(1B) should have been more strictly interpreted. We note that the Department was duly served notice under section 394A of the Companies Act and was given an opportunity to object under Circular No. 1/2014 issued by the Ministry of Corporate Affairs. No such objection was filed. The Hon'ble High Court sanctioned the scheme after full compliance. The CIT(A) has not held that mere lack of objection precludes scrutiny but has rightly drawn support from the judicial sanctity of the scheme and its procedural compliance.

Revised Ground No. 4:
62. It is contended that depreciation on goodwill should not be allowed as there was no actual allocation of shares to the shareholders of ILPL during the year, and hence no actual consideration paid. We find this ground misconceived. The scheme provides for the cancellation of shares held by the assessee and issuance of shares to the remaining shareholders. The share swap ratio was determined through an approved valuation report. Consideration paid through allotment of shares is recognised in law as valid consideration (CIT v. Mira Exim Ltd. [(2013) 359 ITR 70 (Del)]). There is no requirement under section 32 for cash outflow.

Revised Ground No. 5:
63. The DR argues that the method adopted by the assessee was effectively the pooling of interest method and not the purchase method under AS-14, and therefore the excess should have been credited to capital reserve. We do not find any merit in this argument. The assessee has clearly followed the purchase method as permitted by AS-14, whereby the difference between consideration and net asset value is to be recorded as goodwill. The

accounting method has been consistently applied and supported by audit and judicial approval of the scheme. The AO has not brought any evidence to show that pooling of interest was applied or that the accounting treatment was incorrect.

Revised Ground No. 6:
64. The Revenue contends that the goodwill was created merely by netting the consideration against net assets without identifying specific assets or rights. This argument is also misplaced. The Hon'ble Supreme Court in Smifs Securities Ltd. held that even unidentified commercial rights can constitute goodwill eligible for depreciation. In the present case, the goodwill represents the expected future economic benefits arising from business consolidation, synergy, and operational continuity — all recognized aspects of goodwill under law.

Revised Ground No. 7:
65. The Department seeks to apply Explanation 7 to section 43(1), sixth proviso to section 32(1), section 49(1)(iii)(e), and Explanation 2 to section 43(6), asserting that the cost or WDV in the hands of the amalgamating company should be taken as nil. We find that these provisions apply to tangible assets transferred in amalgamation, not to newly recognised intangible assets like goodwill which arises as a balancing figure under a recognised accounting method. The CIT(A) has dealt with these statutory provisions in detail and rightly held them inapplicable to self-arising goodwill in the hands of the amalgamated company.

Revised Ground No. 8:

66. The final ground pertains to the allocation of goodwill to Dehradun and Sikkim units and the allegation that the goodwill represents revaluation of existing assets. We find this argument factually and legally unsustainable. The CIT(A) has accepted the assessee's contention that the goodwill was allocated to both units as per internal allocation policies. He applied CBDT Circular No. 37/2016 to correctly restrict the disallowance to Rs.52,69,97,415/- (i.e., 70% of depreciation on Dehradun unit, which enjoyed 30% deduction under section 80-IC). Since Sikkim unit enjoys 100% deduction under section 80-IE, disallowance of depreciation would only result in corresponding enhancement of eligible profit and hence would be revenue-neutral. The AO has not disturbed the computation of deduction under section 80-IE. The goodwill recorded in the books has not been shown to be revaluation of existing tangible assets, and therefore, the ground is without merit.

67. In light of the above discussion, we do not find any error in the order of the Ld. CIT(A) allowing the depreciation on goodwill. The facts have been

thoroughly verified, the legal position is supported by binding precedents, and the Revenue has failed to demonstrate that the transaction lacks commercial substance or that the claim falls afoul of any specific bar under the Act. All the revised grounds of appeal raised by the Revenue stand rejected."

7.2 Before us, it is not in dispute that the facts and circumstances for the year under consideration are identical to those considered by the Tribunal in AY 2015-16. The Revenue has not brought on record any distinguishing feature nor cited any contrary judgment of a higher judicial forum warranting a departure from the earlier view.

7.3 Respectfully following the decision of the Co-ordinate Bench in the assessee's own case for the preceding assessment year, and in the absence of any material change either in facts or in law, we find no infirmity in the order of the Ld. CIT(A) allowing depreciation on goodwill and granting consequential relief.

Accordingly, Ground Nos. 6 to 12 raised by the Revenue are dismissed.

Ground No. 13 – Allocation of Common Expenses while Computing Deduction under Sections 80-IC, 80-IE & 10AA

8. This ground relates to deletion of addition made by the Assessing Officer on account of allocation of common/indirect expenses to the eligible units while computing deduction under sections 80-IC, 80-IE and 10AA of the Act.

8.1 The Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench in assessee's own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been followed by the Ld. CIT(A).

8.2 We have considered the rival submissions and perused the material on record. We find that in the immediately preceding assessment year, the Tribunal examined an identical issue and held as under:-

> *"71. We have carefully considered the rival submissions and perused the material available on record, including the assessment order, the detailed written submissions of the assessee, and the findings of the learned CIT(A). The assessee, during the course of assessment as well as appellate proceedings, contended that the said undertakings maintain separate books of account, and unit-wise Profit and Loss Accounts are independently prepared and audited. It was submitted that all direct expenses, including employee benefits and selling and distribution expenses (such as commission on sales, freight, forwarding, marketing incentives, etc.), are duly accounted for and debited in the respective unit accounts based on actuals or appropriate turnover-based allocation keys. The assessee further explained that the SEZ unit, being export-oriented, is not required to bear selling and distribution expenses related to domestic sales, and that each of the undertakings had separate borrowings, thereby obviating any requirement for further allocation of finance cost. The assessee placed reliance on the decision of the Co-ordinate bench in the case of Cibatul Ltd. v. DCIT (ITA No. 3259/Ahd/1992) and other judicial precedents, to submit that indirect or common expenses cannot be mechanically allocated to profit-linked deduction units unless a clear nexus exists with the income derived from such units. It was argued that a mere apportionment without factual justification leads to unwarranted disallowance and duplication, particularly when the direct expenditures have already been absorbed in the unit's own audited accounts.*
>
> *72. The CIT(A), having examined the assessee's contentions and verified the books of account, accepted that the common expenses sought to be allocated by the Assessing Officer had, in fact, already been accounted for in the unit-wise financials prepared and audited separately for each eligible undertaking. The CIT(A) observed that any further allocation of such expenses would result in double disallowance and would not reflect the correct profit derived from the respective eligible undertakings. The CIT(A) further took note of the fact that the methodology adopted by the assessee was consistent and in accordance with accepted accounting practices, and that in earlier years, the same treatment had been accepted by the Department without dispute.*
>
> *73. We find merit in the reasoning given by the learned CIT(A). The Assessing Officer, while reallocating the common expenses, did not rebut the factual*

position that the concerned cost heads—such as audit fees, finance charges, legal and professional charges, and other indirect expenses—had already been accounted for in the Profit and Loss Accounts of the respective undertakings. The Assessing Officer also failed to demonstrate any specific instance where the assessee had claimed deduction in excess of its entitlement under the provisions of section 80IC, 80IE, or 10AA by reason of not allocating common costs.

74. In our considered view, while computing the profits eligible for deduction under sections 80IC, 80IE, and 10AA of the Act, it is essential to confine the computation to those expenses which have a direct and proximate nexus with the operations of the eligible undertaking. Any attempt to allocate general or common expenses that are not specifically relatable to the activities of such undertaking would distort the true profits derived therefrom. The principle that governs such computation is one of factual linkage, and unless the expense can be clearly identified as incurred for the functioning of the eligible unit, it cannot be brought into the computation for the purposes of determining the deduction under the said provisions.

75. In view of the above discussion, we find no infirmity in the conclusion of the learned CIT(A) in deleting the disallowance of Rs. 10,19,24,003/- on account of allocation of common expenses to the Dehradun, Sikkim, and SEZ units. The accounting treatment adopted by the assessee is based on separate books and verifiable entries, and the disallowance made by the Assessing Officer is not sustainable in the facts and circumstances of the case. We accordingly uphold the order of the CIT(A) on this issue. This ground of the Revenue is dismissed."

8.3 Before us, it is not in dispute that the facts for the year under consideration are identical. The Revenue has not brought on record any distinguishing feature nor cited any contrary decision of a higher judicial forum.

8.4 Respectfully following the decision of the Co-ordinate Bench in the assessee's own case for the preceding assessment year, and in the absence of any material change in facts or law, we uphold the order of the Ld. CIT(A).

Accordingly, Ground No. 13 raised by the Revenue is dismissed.

Ground No. 14 – Disallowance of Weighted Deduction u/s 35(2AB)

9. This ground relates to the deletion of addition made by the Assessing Officer by restricting the assessee's claim of weighted deduction under section 35(2AB) of the Act to the amount approved by the Department of Scientific and Industrial Research (DSIR) in Form 3CL.

9.1 The Ld. AR submitted that the issue is covered in favour of the assessee by the decision of the Co-ordinate Bench in assessee's own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been followed by the Ld. CIT(A).

9.2 We find that the Tribunal in the earlier year, relying on the judgments of the Hon'ble Gujarat High Court in Claris Lifesciences Ltd. and Cadila Healthcare Ltd., held that prior to 01.07.2016, DSIR's role was limited to approval of the R&D facility and not quantification of expenditure. Accordingly, deduction under section 35(2AB) could not be restricted merely to the amount mentioned in Form 3CL.

9.3 Since the facts are identical and no contrary decision has been brought on record, we respectfully follow the earlier order and uphold the relief granted by the Ld. CIT(A).

Accordingly, Ground No. 14 is dismissed.

Ground No. 15 – Disallowance under Section 36(1)(iii)

10. This ground relates to deletion of disallowance of interest expenditure made by the Assessing Officer under section 36(1)(iii) of the Act on account of alleged utilization of borrowed funds for capital work-in-progress (CWIP).

10.1 The Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench in assessee's own case for AY

2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been followed by the Ld. CIT(A).

10.2 We have considered the rival submissions and perused the material on record. We find that in the preceding assessment year, the Tribunal examined an identical disallowance made on proportionate basis without establishing any direct nexus between borrowed funds and CWIP. The Tribunal noted that the assessee had substantial own interest-free funds far in excess of the amount invested in CWIP. Relying on the judgment of the Hon'ble Supreme Court in Reliance Industries Ltd., it was held that where sufficient own funds are available, a presumption arises that investments are made out of such interest-free funds, and in the absence of contrary material, no disallowance under section 36(1)(iii) is warranted.

10.3 In the year under consideration also, the Revenue has not brought any material to establish a nexus between borrowed funds and CWIP, nor demonstrated any change in facts. The Ld. CIT(A), following earlier appellate orders in assessee's own case, deleted the disallowance.

10.4 Respectfully following the decision of the Co-ordinate Bench in the assessee's own case for the preceding assessment year, and in the absence of any distinguishing feature, we find no infirmity in the order of the Ld. CIT(A).

Accordingly, Ground No. 15 raised by the Revenue is dismissed.

Ground No. 16 – Disallowance under Section 14A read with Rule 8D

11 This ground relates to the deletion of disallowance made by the Assessing Officer under section 14A read with Rule 8D.

11.1 The Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's

own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been followed by the Ld. CIT(A).

11.2 We have considered the rival submissions and perused the material on record. An identical issue arose in the preceding year, where the Tribunal held as under:-

> *"92. We have carefully considered the rival submissions and perused the orders of the lower authorities as well as the material placed on record. The Assessing Officer disallowed a sum of Rs.8,70,747/- under section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962. The disallowance comprised Rs.3,42,992/- under Rule 8D(2)(ii) towards proportionate interest and Rs.5,27,755/- under Rule 8D(2)(iii) being 0.5% of average value of investments. It is an admitted position that the assessee did not earn any exempt income during the relevant previous year. This fact is also recorded in the assessment order and not disputed by the Revenue.*
>
> *93. The primary issue for consideration is whether disallowance under section 14A read with Rule 8D is sustainable in a year when the assessee has not earned any exempt income. The Hon'ble Gujarat High Court in the case of CIT v. Corrtech Energy Pvt. Ltd. [(2014) 223 Taxman 130] has categorically held that in absence of any exempt income, no disallowance under section 14A is warranted. This legal position has been consistently affirmed by several High Courts including the Madras High Court in CIT v. Chettinad Logistics Pvt. Ltd. [(2017) 80 taxmann.com 221] and by the Hon'ble Delhi High Court in PCIT v. IL & FS Energy Development Co. Ltd. [(2017) 84 taxmann.com 186]. The Hon'ble Supreme Court has also dismissed SLPs filed against these decisions, thereby lending finality to the proposition that earning of exempt income is a sine qua non for invoking section 14A.*
>
> *94. In the instant case, the learned CIT(A) has correctly appreciated this principle and deleted the disallowance under section 14A in its entirety. This conclusion is also supported by the fact that no fresh investments were made during the year and the assessee had substantial interest-free own funds available, far in excess of the amount of investments. The ratio of interest free funds to total investment stood at 7.62 times as on 31 March 2015 and 4.94 times as on 31 March 2014.*
>
> *95. The learned Departmental Representative has relied on the order of the AO, whereas the Authorised Representative has drawn our attention to the decision of the Co-ordinate Bench in assessee's own case for A.Y. 201314 in ITA No. 704/Ahd/2018, where, under similar facts, the Co-ordinate Bench held that in the absence of exempt income and in the presence of old*

investments funded out of interest-free funds, no disallowance under Rule 8D(2)(ii) was warranted. Respectfully following the binding jurisdictional High Court judgment and the decision of the Co-ordinate Bench in assessee's own case, we find no reason to interfere with the CIT(A)'s decision in deleting the disallowance made under Rule 8D(2)(ii).

96. Coming to the disallowance of Rs.5,27,755/- under Rule 8D(2)(iii), we note that unlike the earlier year where the assessee had made a suo motu disallowance under Rule 8D(iii), no such disallowance has been made by the assessee in the current year. However, it remains a settled position in law, following the same line of decisions, that if no exempt income is earned, even the disallowance under Rule 8D(2)(iii) cannot survive. This view is consistently upheld in Chettinad Logistics (supra), Corrtech Energy (supra), and by the Co-ordinate Bench in DCIT v. Asian Granito India Ltd. [(2020) 113 taxmann.com 445]. The CIT(A) has rightly concluded that since the investments were old and no administrative expenditure was demonstrably incurred in relation to such investments during the year, the disallowance under Rule 8D(2)(iii) was also unsustainable.

97. Accordingly, we uphold the deletion of the disallowance of Rs.8,70,747/- made by the learned CIT(A) under section 14A read with Rule 8D, including both components under Rule 8D(2)(ii) and 8D(2)(iii). Consequently, the adjustment made by the Assessing Officer to the book profit under section 115JB on account of section 14A disallowance is also directed to be deleted. The grounds of appeal raised by the Revenue are, therefore, dismissed."

11.3 In the year under consideration, the facts and circumstances remain identical. The Revenue has not produced any distinguishing feature or contrary judicial authority. Following the decision of the Co-ordinate Bench in the assessee's own case for the preceding year, and in the absence of any change in facts or law, we find no infirmity in the order of the Ld. CIT(A).

Accordingly, Ground No. 16 raised by the Revenue is dismissed.

Ground Nos. 17 & 18 – Disallowance of Commission Paid to Non-Resident Agents

12. This ground relates to the disallowance made by the Assessing Officer under section 40(a)(i) on account of commission paid to non-resident agents without deduction of tax at source u/s 195 of the Act.

12.1 The Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2015-16 in ITA Nos. 222 & 281/Ahd/2021, which has been followed by the Ld. CIT(A).

12.3 We have carefully considered the rival submissions and perused the material on record. In the preceding year, the Tribunal observed as under:-

> *"102. We have carefully considered the rival contentions advanced during the hearing, perused the assessment order, the impugned order of the CIT(A), and the material placed on record. We have also duly taken note of the judicial authorities cited before us by the parties. The Assessing Officer, in the assessment order dated 19.12.2018, disallowed commission expenditure of Rs.23,71,88,037/- paid by the assessee to various nonresident commission agents on the ground that no tax was deducted at source under section 195 of the Act. The AO held that in view of section 5(2)(b) read with section 9(1)(i) of the Act, the income in the hands of such agents was deemed to accrue or arise in India, particularly since the execution of export contracts and the accrual of right to commission occurred in India. The AO thus concluded that the assessee was liable to deduct TDS and, having failed to do so, was liable for disallowance under section 40(a)(i) of the Act. The AO placed reliance on the decision of the AAR in the case of Rajiv Malhotra (284 ITR 564) and that of SKF Boilers & Driers (P.) Ltd. (18 taxmann.com 325) and took note of the withdrawal of erstwhile Circular No. 23 of 1969 by CBDT Circular No. 7 of 2009. In appeal, the Ld. CIT(A) recorded a categorical finding of fact that all services were rendered by the non-resident agents from outside India. Relying upon the landmark decision of the Hon'ble Supreme Court in the case of CIT v. Toshoku Ltd. [(1980) 125 ITR 525 (SC)], the CIT(A) held that commission earned by nonresident agents for services rendered abroad cannot be deemed to accrue or arise in India and is not taxable under the Act. He distinguished the factual matrix from the decisions relied upon by the AO and emphasized that none of the agents had any business connection, fixed place, or permanent establishment in India.*
>
> *103. We have gone through the order of the Co-ordinate Bench in detail. It was noted that the AO had disallowed export commission paid to nonresident agents under section 40(a)(ia) for non-deduction of TDS, alleging that income had accrued in India under section 5(2)(b) r.w.s. 9(1)(i). However, the Co-ordinate Bench rejected this view and upheld the order of the CIT(A), who had followed the Supreme Court's decision in Toshoku Ltd. (supra) and categorically held that all services were rendered outside India. The Co-*

ordinate Bench held that the CIT(A) had rightly decided the issue on the twin aspects: (i) taxability under section 5(2)(b) r.w.s. 9(1)(i), and (ii) whether section 195(2) obligated the assessee to obtain a nil deduction certificate. The Co-ordinate Bench approved the CIT(A)'s factual finding that no part of the activity took place in India, the services were rendered abroad, and hence, income did not accrue or arise in India.

104. The Co-ordinate Bench's conclusion in the earlier year was unambiguous: where commission agents operate entirely outside India and do not have a PE or business connection in India, commission paid to them for facilitating export sales is not taxable in India. Hence, there is no requirement to deduct tax under section 195, and consequently, section 40(a)(i) is not attracted. This binding decision in assessee's own case for an earlier year squarely covers the facts of the present assessment year, which are materially identical. We also find merit in the CIT(A)'s reliance on the judgment of the Hon'ble Gujarat High Court in DCIT v. Jay Chemical Industries Ltd. [(2020) 422 ITR 449 (Guj)], where identical payments to foreign agents for export facilitation were held to be outside the scope of income deemed to accrue or arise in India. Similarly, in GE India Technology Centre (P) Ltd. v. CIT [(2010) 327 ITR 456 (SC)], the Hon'ble Apex Court held that the obligation under section 195 arises only if the payment is chargeable to tax in India.

105. We further note that the Revenue has not brought any material on record to establish that the agents had a business connection in India within the meaning of section 9(1)(i), or that services were rendered in India. The mere fact that the contracts were executed in India does not render the commission taxable in India when the source of income – namely, the activity of soliciting and securing export orders – occurred entirely outside India. The situs of income in such cases is the place where the services are rendered, as consistently held in judicial precedents.

106. In view of the above discussion, we uphold the well-reasoned order of the Ld. CIT(A) and respectfully follow the binding decision of the Co-ordinate Bench in assessee's own case for A.Y. 2013–14. The disallowance made under section 40(a)(i) on account of commission paid to non-resident agents without deduction of TDS is therefore not sustainable. Accordingly, this ground raised by the Revenue is dismissed."

12.3 In the present year, the facts and circumstances are materially identical. The Revenue has not brought any material to distinguish the current year from the earlier year or cited any contrary higher judicial authority. Following the Co-

ordinate Bench's binding decision, we find no infirmity in the CIT(A)'s order deleting the disallowance under section 40(a)(i).

Accordingly, Ground Nos. 17 & 18 raised by the Revenue are dismissed.

13. In the result, the appeal of the Revenue is dismissed.

The order is pronounced in the open Court on 24.02.2026.

Sd/-	**Sd/-**
(NARENDRA PRASAD SINHA)	**(SUCHITRA R. KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 24.02.2026

***btk*

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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