IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member

ITA Nos. : 1661 & 1662/Ahd/2024 and
ITA Nos. : 1674 & 1675/Ahd/2024
Asst. Years: 2018-19 & 2020-21

Alembic Pharmaceuticals Limited 5th Floor, Alembic Admin Building, Alembic Road, Vadodara, Gorva, Vadodara, Gujarat-390003 **PAN: AAICA5591M**	Vs	Deputy Commissioner of Income Tax Circle – 1(1)(1), Vadodara
Deputy Commissioner of Income Tax Circle – 1(1)(1), Vadodara	Vs	Alembic Pharmaceuticals Limited 5th Floor, Alembic Admin Building, Alembic Road, Vadodara, Gorva, Vadodara, Gujarat-390003 **PAN: AAICA5591M**
(Appellant)		**(Respondent)**

Assessee Represented: Shri S.N.Soparkar, Sr. Advocate
Revenue Represented: Shri R P Rastogi, CIT.DR

Date of hearing : 10-03-2026
Date of pronouncement : 27-03-2026

आदेश/ORDER

PER: T.R. SENTHIL KUMAR, JUDICIAL MEMBER

These cross appeals are filed by the Assessee and Revenue as against separate appellate orders both dated 24-07-2024 passed by the Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment orders passed under section 143(3) read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to both Assessment Years 2018-19 and 2020-21. Since common disallowances are involved in both the assessment years, for the sake of convenience the same are disposed of by this common order.

2. Brief facts of the case are that the Assessee is a limited company engaged in the manufacture and marketing of pharmaceuticals products. For the Asst. year 2018-19 the Assessee filed its Return of income on 28-11-2018 declaring total income of Rs.6,65,67,500/- under normal provisions and book profit of Rs.5,25,43,74,080/ under MAT provisions. Assessment order was passed by making following disallowances:

2.1. <u>Disallowance of weighted deduction under section 35(2AB) of the Act on certain R&D related expenses of Rs.17,60,63,542/-</u>. The Assessee company has in-house Research & Development unit which are approved by the Department of Scientific and Industrial Research [DSIR] and eligible for weighted deduction u/s.35(2AB) of the Act. The Assessee claimed Rs.409.95 crores as revenue expenses incurred on scientific research on approved in-house R&D unit eligible for weighted deduction of u/s.35(2AB) as against Rs.392.34 crores certified by the Auditors. All revenue expenditure incurred in the in-house R&D facility being entitled to weighted deduction, accordingly the Assessee claimed all R&D related expenses such as contract labour charges, salary to non-technical staff, building maintenance, rent, bank charges, rates & taxes, etc. However, the Assessing Officer restricted the claim of

weighted deduction to the amount certified by the Auditor and accordingly disallowed Rs.17.60 crores being the weighted portion of differential revenue R & D expenditure.

2.2. <u>Claim of export incentives (MEIS - Merchandise Export Incentive Scheme) as a capital receipt.</u> During the year owing to its exports, the Assessee was entitled to various export incentives in the form of scripts under Merchandise Export Incentives Scheme pursuant to the Foreign Trade Policy 2015-2020 (hereinafter referred to as 'FTP'). The assessee claimed MEIS was introduced with the object of offsetting infrastructural inefficiencies and associated costs involved export of goods or products which produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness. Thus, it is capital in nature. Hence, the assessee claimed the incentives received should also be treated as capital receipt and accordingly not taxable. However, the Assessee inadvertently offered the above receipts as income in its return of income. Accordingly, the Assessee made a claim to treat the aforesaid receipts as capital in nature and not chargeable to tax both under normal computation as well as computation under section 115JB of the Act.

2.3. Thus, regular assessment was completed u/s.143(3) of the Act after making the above disallowances and additions. As a result, the taxable income is recomputed at Rs.24,26,30,990/- under normal provisions and there is no change in the income computed u/s. 115JB of the Act.

3. Aggrieved against the assessment order the assessee filed appeal before Ld CIT [A] who confirmed the disallowance of

Rs.8,80,31,771/= being weighted deduction u/s.35[2AB] of the Act on the R & D expenses and deleted the additions made on account of MEIS receipts and u/s.115JB of the Act.

4. Aggrieved against the appellate orders both the assessee and Revenue are in appeal before us raising the following:

4.1. Grounds of appeal in ITA No.1661/Ahd/2024 (Assessee's appeal for A.Y. 2018-19)

"1. Disallowance of weighted deduction of INR 8,80,31,771 under section 35(2AB) of the Act on certain R&D related expenses of INR 17,60,63,542/-:

1.1 The CIT(A) grossly erred in not allowing weighted deduction under section 35(2AB) of the Act and limiting the claim of deduction only to the extent allowable under section 35(1) of the Act in respect of certain R&D expenditure incurred on contract labour charges, salary to non-technical staff, building maintenance, rent, bank charges, rates & taxes, etc. amounting to INR 8.80.31.771/- without appreciating that the approval of in-house R&D facility by Department of Scientific and Industrial Research (DSIR) is the only condition for claim of deduction under the main provisions of section 35(2AB) of the Act and therefore, any additional requirement including ascertaining quantum of R&D expenses provided under the Rule cannot override the main provision of the Act."

4.2. Grounds of appeal in ITA No.1662/Ahd/2024 (Assessee's appeal for A.Y. 2020-21)

"1. Disallowance of weighted deduction of INR 12,43,04,124 under section 35(2AB) of the Act on certain R&D related expenses of INR 24,86,08,248/-:

1.1 The CIT(A) grossly erred in not allowing weighted deduction under section 35(2AB) of the Act and limiting the claim of deduction only to the extent allowable under section 35(1) of the Act in respect of certain R&D expenditure incurred on contract labour charges, salary to non-technical staff, building maintenance, rent, bank charges, rates & taxes, etc. amounting to INR 12,43,04,124/- without appreciating that the approval of in-house R&D facility by Department of Scientific and Industrial Research (DSIR') is the only condition for claim of deduction under the main provisions of section 35(2AB) of the Act and therefore, any additional requirement including ascertaining quantum of R&D expenses provided under the Rule cannot override the main provision of the Act."

5. The solitary ground raised by the assessee namely disallowance of weighted deduction u/s.35(2AB) of the Act on certain R&D related expenses. Ld. Sr. Counsel vehemently argued that the disallowance confirmed by Ld CIT(A) is against the provisions of law. However, Ld. Sr. Counsel fairly admitted this issue was decided against the assessee in the case of Pharmanza Herbal (P.) Ltd. Vs. DCIT reported in [2023] 155 taxmann.com 56 (Ahmedabad-Trib.). Ld CIT DR also confirmed the same.

6. We have considered the submissions of the Ld. Counsel. The Co-ordinate Bench decision in the case of Pharmanza Herbal (P.) Ltd. (cited supra) wherein it is held as follows:

> ***"... 17.*** *It is amply evident from the above, that w.e.f. 1-4-2016, the requirement of law underwent a change to the effect that on entering into agreement with DSIR in Form no. 3CK, the assessee was required to submit information of its expenditure incurred in-house research and development facility on land, building, capital and revenue expenditure, every year to the prescribed authority in Annexure-2 of Form no. 3CK and prescribed authority was required to quantify the expenditure eligible for weighted deduction in Part-B of the Form No. 3CL.*
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> ***18.*** *What derives from the above, therefore, is that consequent to amendment to section35(2AB) by the Finance Act, 2015 w.e.f. 1-4-2016, requirement of law was that the prescribed authority had to quantify the quantum of eligible expenditure incurred on in-house research and development facility by the assessee. But prior to that there was no such requirement in law and the prescribed authority was the only required to grant approval to the in-house research & development activity.*
>
> ***19.*** *The impugned assessment year before are Asst. Year 2014-15 & 2015-16. Since these assessments are prior to 1-4-2016, the amendment to section 35(2AB)) are not applicable to the same and in terms of un-amended provisions of section 35(2AB) of the Act, since we have held above that the prescribed authority was not required in law to quantify the amount of expenditure incurred on in-house research and development facility, such quantification, if any done by the prescribed authority in Form No. 3CL was not required to be taken cognizance of by the Revenue authorities and the assessee is entitled to claim weighted deduction on all expenditure incurred by it, on in-house research & development facility. Therefore, we agree with the contentions of the*

ld.counsel for the assessee, before us that in the impugned year involved before us, the Revenue has erred in restricting the claim of weighted deduction under section 35(2AB) of the Act to the extent approved by the prescribed authority i.e. DSIR.

6.1. Pursuant to the amendment in Section 35(2AB) by the Finance Act, 2015 w.e.f. 01-04-2016, the Ld AO is not empowered to allow the weighted deduction beyond the amount of expenses certified by the DSIR in Form No.3CL. In this case DSIR had certified the amount of expenditure incurred by the assessee company as per the audit report received by it in FormNo.3CLA. Thus, the disallowance made by the lower authorities does not require any interference. Therefore, the solitary ground raised by the assessee is devoid of merits and liable to be dismissed.

7. In the result, **the appeals filed by the assessee in ITA No. 1661 & 1662/Ahd/2024 are hereby dismissed.**

7.1. **ITA No. 1674 & 1675/Ahd/2024 (Revenue Appeal)**

Grounds of appeal in ITA No.1674/Ahd/2024 (Revenue's appeal for A.Y. 2018-19)

(i) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding the additional claim of MEIS receipts as capital in nature, without appreciating the fact that the same were received in lieu of export sales?"

(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding the additional claim of MEIS receipts as capital in nature and not subjected to taxation u/s 115JB of the Act,?"

(iii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the additional claim of loss on account of investment in subsidiary company without revising the ITR ?"

(iv) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing the additional claim of loss

on account of investment in subsidiary company, without appreciating the fact that the investment in the subsidiary company is a capital investment and loss arising out of capital investments is a capital loss?"

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

7.2. Grounds of appeal in ITA No.1675/Ahd/2024 (Revenue's appeal for A.Y. 2020-21)

"(i) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the additional claim of MEIS receipts without revising the ITR ?"

(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding the additional claim of MEIS receipts as capital in nature, without appreciating the fact that the same were received in lieu of export sales?"

(iii) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding the additional claim of MEIS receipts as capital in nature and not subjected to taxation u/s. 115JB of the Act,?"

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

8. Ground No.1 namely additional claim of MEIS receipts as capital in nature, Ld. Senior Counsel submitted that this issue of additional claim of MEIS is covered in favour of the assessee vide order dated 25-11-2025 in ITA No.436/Ahd/2025 in assessee's own case for the Asst. Year 2021-22 which was also rectified with the typo errors vide in M.A. No. 118/Ahd/2025 dated 25-02-2026. Ld. CIT-DR appearing for the Revenue could not dispute the above facts.

9. We have considered the rival submissions and perused the materials available on record. Co-ordinate Bench of this Tribunal in assessee's own case for the Asst. Year 2021-22 held as follows:

"…7. With regard to MEIS, we find that the issue stands adjudicated by the orders of the Co-ordinate Benches of Chennai, Delhi and Mumbai ITAT. Further reliance is being placed on the following judgments of the Hon'ble Apex Court:-

a) Shree Balaji Alloys v. Commissioner Of Income-Tax:
b) CIT v. Ponni Sugars and Chemicals Ltd. (2008);

In the absence of any change in the factual matrix and legal preposition, we decline to interfere with the order of the Ld. CIT(A)."

9.1. Respectfully following the above decision, Ground No. 1 raised by the Revenue is devoid of merits and hereby dismissed.

10. Ground No. 2 namely MEIS receipts taxable u/s. 115JB of the Act. This issue is also covered against the Revenue by Co-ordinate Bench of this Tribunal in the case of Munjal Auto Industries Ltd. Vs. ITO [2025] 173 taxmann.com 498 wherein it is held as follows:

"…..16.1. Thus, once the subsidy is held to be a capital receipt, it cannot be added back to book profit, as the mere credit to reserves does not fall under the specific additions required under Explanation 1 to Section 115JB. The statutory language is clear that amounts specified in clauses (a) to (i) are to be added only if they are debited to the statement of profit and loss. Explanation 1 explicitly states that "if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, then such amount shall be added or reduced, as the case may be." Since the sales tax subsidy was directly credited to the capital reserve and was never debited to the Profit & Loss Account, the AO was not justified in making an addition to book profit under Section 115JB. The AO's adjustment in this regard is not justified, and we allow the first ground in favor of the assessee.

17. We have discussed and decided in the earlier part of this order while dealing with the Revenue's appeal that once it has been accepted that the subsidy pertains to fixed assets and is capital in nature, the natural consequence under Explanation 10 to Section 43(1) is that it must be reduced from the cost of fixed assets for the purpose of calculating depreciation. In light of the findings and decision, Ground No. 2 of the assessee's appeal is dismissed.

17.1. The CIT(A) has observed that the accounts of the assessee were not prepared in accordance with Part II & III of Schedule VI of the Companies Act, 1956 because the subsidy was not appropriately accounted for in book profits. The AO, based on this observation, sought to re-compute book profit under Section 115JB of the Act. We note that the assessee is a public company whose financial statements have been certified by statutory auditors, approved by shareholders in the AGM, and filed with the Registrar of Companies. The Hon'ble Supreme Court in Apollo Tyers (supra) has held that once the accounts are certified by the auditors and approved by shareholders, the AO cannot make adjustments unless there is fraud, misrepresentation, or non-compliance with Schedule VI of the Companies Act. There is no finding in the CIT(A)'s order that the accounts were not in accordance with the Companies Act, apart from the difference in accounting treatment of the subsidy. A mere difference in accounting interpretation cannot be a reason to modify book profits under Section 115JB. Therefore, we hold that the accounts of the assessee were correctly prepared, and the AO's adjustment was beyond his jurisdiction. We allow the Ground number 3 in favor of the assessee."

10.1. Respectfully following the above decisions, we do not find any infirmity in the order passed by the Ld. CIT(A) who upheld the deletion made under section 115JB of the Act. Hence Ground No. 2 is devoid of merits and hereby dismissed.

11. Ground No. 3 namely additional claim of loss on account of investment in subsidiary company without revising the Income Tax Return. This issue is also covered against the Revenue by the Judgment of the Bombay High Court in the case of CIT Vs. Colgate Palmolive (India) Ltd. by observing as follows:

"... **7.** The Commissioner and the Tribunal concurrently found that the Camelot was fully owned subsidiary of the assessee and engaged in the manufacturing of tooth brushes exclusively for the sole client, namely, the assessee. Shares purchased of Camelot were also sold by the assessee to one Ramesh Sukharam Vaidya for a consideration of Rs.45,00,000. The Assessing Officer held that the sum of Rs. 5,50,00,000 which was invested by the assessee in the equity of Camelot on March 17, 2003, and which have been used to repay the

loan to the assessee-company, amounting to Rs. 5.50 crores, before March 1, 2003, would demonstrate that the purpose of investment was to give a long-term enduring benefit to the assessee. Merely because it was made in the normal course of business, it cannot be termed as anything but long-term investment. This conclusion of the Assessing Officer was challenged in the appeal before the first appellate authority and the Commissioner concluded that the main reason for setting up Camelot was to manufacture tooth brushes exclusively for the assessee. Since the assessee was relying on Camelot for manufacturing of tooth brushes to be traded by the assessee, the investment is nothing but a measure of commercial expediency to further business objectives and primarily related to the business operations of the assessee. At no point of time the investment in Camelot was made with an intention to realise any enhancement value thereof or to earn dividend income. The investment was made to separately house the integral part of the business activity. In such circumstances, the Commissioner relied upon the above judgments and allowed the appeal. He concluded that the loss of Rs. 5.50 crores is a business loss in the hands of the assessee. He set aside the order of the Assessing Officer.

8. The Revenue carried the matter in appeal and the Tribunal has dealt with this issue extensively. In paragraph 7 of its order, the Tribunal has upheld the conclusion of the Commissioner and by giving additional reason.

9. Upon a perusal of this material, we are unable to agree with Mr. Pinto that question 5.1 reproduced above is a substantial question of law. Given the peculiar facts and circumstances and the nature of the investment so also being for commercial expediency, the view taken by the Commissioner and the Tribunal concurrently cannot be termed as perverse. That view being imminently possible in the given facts and circumstances. It does not raise any substantial question of law."

11.1. Respectfully following the above judicial precedent, the ground no.3 raised by the Revenue is devoid of merits and liable to be dismissed.

12. Ground No. 4 namely loss on investment in subsidiary company be considered as capital loss. This issue is also covered against the Revenue by the Judgment of the Karnataka High Court in the case of

ACE Designers Ltd -Vs.- Addl. CIT reported in [2020] 120 taxmann.com 321 [Kar] by observing as follows:

> "5. We have considered the submissions made by learned counsel for the parties and have perused the record. The core issue, which arises for consideration in this appeal is with regard to disallowance of business loss written off on account of loss arising out of business investment from WOS in USA. It is well settled legal proposition that while deciding the question whether a receipt is a capital or income, it is not possible to lay down any single test as infallible or any single criteria as decisive. The question must ultimately depend on fact of particular case and authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. It has further been held that for determining the question of capital and incomes, trading profit or non trading profit are questions do involve a question of law to be drawn from the facts. [CIT v. Rai Bahadur Jairam Valji [1959] 35 ITR 148 (SC), P.H. Divecha v. CIT [1963] 48 ITR 222 (SC), Kettlewell Bullen & Co. Ltd. v. CIT [1964] 53 ITR 261 (SC), Gillanders Arbuthnot & Co. Ltd. v. CIT [1964] 53 ITR 283 (SC) and CIT v. BEST and Co. (P.) Ltd. [1966] 60 ITR 11 (SC) The aforesaid tests laid down by the Supreme Court in the aforesaid decisions were referred to with approval in 'Karamchand Thapper And Bros. (P.) Ltd. and Oberoi Hotel (P) Ltd.(supra).
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> 6. The Bombay High Court dealt with the issue viz., where an assessee made an investment in its 100% subsidiary for business purpose, the loss on sale of investment would be treated as business loss. The aforesaid issue was answered in the affirmative by the Bombay High Court in Colgate Palm Olive (India) Ltd. (supra) and it was held that investment was made for commercial expediency. The aforesaid decision has been upheld by the Supreme Court as has been noted by Income-tax Appellate Tribunal, New Delhi Bench in its order dated 31-12-2018 in Cosmos Industries Ltd. (supra) In Patnaik & co. Ltd. (supra), it was held that the assessee did not hold on the investment the loan indefinitely and there was no enduring advantage and the investment did not bring in an asset of a capital in nature and the loss suffered by the assessee was a revenue loss and not a capital loss. In Investa Industrial Coporation Ltd.,(supra), the division Bench of the High court dealt with a question whether the finances made by the assessee to manage the company were part of or incidental to carrying on a business by the assessee a and since, the managed company went into liquidation the advances became irrecoverable, the loss sustained by the assessee shall be regarded as trading loss.

7**.** In the backdrop of aforesaid well settled legal position, the facts of the case in hand may be adverted to. From the perusal of the note annexed to the income filed before the assessing officer, it is evident that assessee had set up an establishment in USA during Financial Year 1992-93 for the exclusive purpose of marketing assessee's products and for promoting its business in US and Latin America. It has further been stated in the note that looking to the stringent norms of product liability in US market, the assessee decided to have a separate Wholly Owned Entity in the US having limited liability. The approval for aforesaid purpose was obtained from the Reserve Bank of India. The assessee therefore, invested funds in equity for meeting the revenue expenses of Wholly Owned Subsidiary Company's balance sheet. However, WOS could not perform upto company's expectations and therefore, it was decided to wind up WOS operations in USA. While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss of Rs. 3,41,23,200/- as revenue expenses allowable under the provisions of the Act.

8. Thus, from perusal of the aforesaid facts, it is evident that the issue involved in this appeal is covered by decision of Bombay High Court in Colgate Palm Olive (India) Ltd. (supra), which has been upheld by the Supreme Court. The ratio of aforesaid decision is where the assessee makes investment in its 100% subsidiary for business purpose, loss or sale of investment has to be treated as business loss of the assessee. In the instant case, the assessee made investment in the shares of WOS for the business purpose i.e., for the enhancement of business activity of the assessee in global market which primarily related to business operation of the assessee. The WOS suffered losses and therefore the assessee wrote off the assessment of Rs. 3,41,23,200/- as business loss. The investment was made for the purpose of extension of business activity and not with a view to creating capital asset in the form of holding shares. It is also pertinent to note that the assessee never acquired any capital asset or expenditure of enduring benefits to WOS and there is no relinquishment or transfer of capital asset to any third party.

In view of preceding analysis, the first substantial question of law is answered in the negative and in favour of the assessee. It is not necessary for us to answer the remaining substantial questions of law in view of our answer to the first substantial question of law. In the result, the order of the Tribunal dated 14-12-2012 to the extent of the findings contained against the assessee is quashed.”

12.1. Respectfully following the above judicial precedent, Ld. CIT(A) correct in hold the loss in revenue loss therefore the ground no.4 raised by the Revenue is devoid of merits and liable to be dismissed.

13. In the result, **the appeals filed by the Revenue in ITA No. 1674 & 1675/Ahd/2024 are hereby dismissed.**

14. In the combined result, **both the Assessee and Revenue appeals are hereby dismissed.**

Order pronounced in the open court on 27-03-2026

Sd/-		**Sd/-**
(DR. BRR KUMAR)		**(T.R. SENTHIL KUMAR)**
VICE PRESIDENT	***True Copy***	**JUDICIAL MEMBER**

Ahmedabad :
Dated 27/03/2026

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद