

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1260/Del/2022
[Assessment Year : 2016-17]**

DCIT Circle-4(2) New Delhi	vs	Curadev Pharma Pvt. Ltd., 1 st Floor, Vikash Puri, West Delhi, Delhi-110018 PAN-AADCC8368D
APPELLANT		RESPONDENT

Revenue by	Ms. Pooja Swaroop, CIT DR
Appellant by	Shri Mukesh Jain, CA & Shri Samyak Jain, Adv.

**ITA No.3887/Del/2023
[Assessment Year : 2018-19]**

Curadev Pharma Pvt. Ltd., H-3/63, 1 st Floor, Vikash Puri, New Delhi-110018 PAN-AADCC8368D	vs	ITO NFAC, Delhi
APPELLANT		RESPONDENT

**ITA No.3886/Del/2023
[Assessment Year : 2020-21]**

Curadev Pharma Pvt. Ltd., H-3/63, 1 st Floor, Vikash Puri, New Delhi-110018 PAN-AADCC8368D	vs	DCIT Central Circle-4(2), Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Mukesh Jain, CA & Shri Samyak Jain, Adv.	
Revenue by	Shri Rajesh Kumar Dhanesta, Sr.DR	

Date of Hearing	29.01.2026
Date of Pronouncement	17.04.2026

ORDER

PER MANISH AGARWAL, AM :

The captioned appeals are filed by the Revenue and the assessee against the separate orders by Ld. Commissioner of Income Tax (A), Delhi [“Ld.CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of different assessment orders pertaining to Assessment Years 2016-17, 2018-19 & 2020-21 respectively which are tabulated as under:-

Sr. Nos.	ITA Nos.	CIT(A) Order dated	Assessment Order dated	Assessment Order passed under section
1.	1260/Del/2022 [AY 2016-17] [Revenue’s appeal]	CIT(A)-16, New Delhi order dated 09.03.2020	28.12.2018	143(3) of the Income Tax Act, 1961
2.	3887/Del/2023 [AY 2018-19] [Assessee’s appeal]	CIT(A), NFAC, Delhi order dated 04.12.2023	20.03.2021	143(3) r.w. sections 143(3A) & 143(3B) of the Act
3.	3886/Del/2023 [AY 2020-21] [Assessee’s appeal]	CIT(A), NFAC, Delhi order dated 06.12.2023	27.09.2022	143(3) r.w.s. 144B of the Act

2. All captioned appeals filed by the Revenue and the assessee are having identical issues, therefore, all these appeals are taken together for consideration and decided by a common order.

3. First we take the appeal of the Revenue in ITA No.1260/Del/2022 for Assessment Year 2016-17.

ITA No.1260/Del/2022 [Assessment Year 2016-17]
[Revenue’s appeal]

4. Brief facts of the case are that the assessee has filed its return of income u/s 139(1) on 29.11.2016, declaring total income at

INR 2,15,96,610/-. The case was selected for complete scrutiny and notice u/s 143(2) was issued on 04.07.2017. The AO has made addition of INR 1,31,81,258/- of ESOP expenses debited in the Profit & Loss Account. Besides this, weighted deduction claimed u/s 35(2AB) of the Act of INR 40,84,02,592/- was disallowed. The AO observed that the assessee has made payment of salary to full-time Director which is not part of the expenditure on scientific research and development. Further the Department of Scientific Industrial Research ("DSIR") in Form 3CL has not recommended such expenses as incurred for scientific research and development. Accordingly, the AO has disallowed the weighted deduction claimed u/s 35(2AB) of INR 40,84,02,592/-.

5. Aggrieved by the said order, the assessee preferred appeal before Ld. CIT(A) wherein Ld. CIT(A) has deleted the disallowance made u/s 35(2AB) of the Act and confirmed the addition made on account of ESOP expenses.

6. Aggrieved by the said order, the Revenue is in appeal before the Tribunal in the present appeal.

7. In support of all the grounds of appeal taken by the revenue, before us, Ld. CIT DR for the Revenue submits that the assessee has claimed weighted deduction u/s 35(2AB) of the Act on the payment of remuneration to Dr. Arjun Surya who is full-time Director and working in the capacity of Chief Scientific Officer of the company.

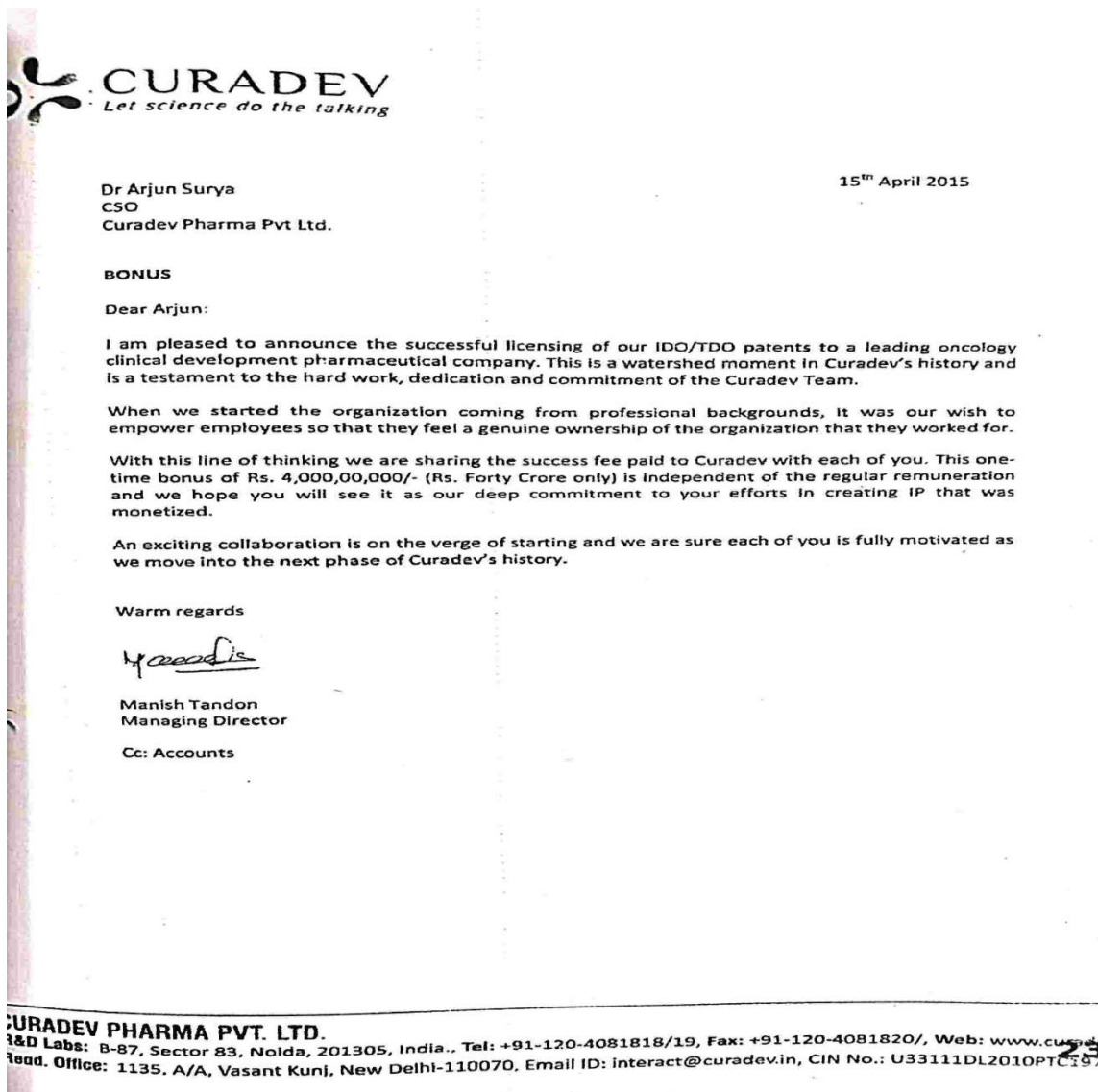
Ld.CIT DR submits that salary paid to full-time Director cannot be treated as expenditure incurred on scientific research. Further, DSIR in Form 3CL has not approved such payment as incurred for the purpose of scientific research and development. As per Ld.CIT DR, payment of INR 40 crores was made to the Director as performance bonus which could not be treated as expenditure on scientific research and as per the letter though which such one-time bonus was paid as available at page 23 of PB, it is stated that it was recommended to Dr. Arjun Surya for his hard work in successful licenses of the patents to the assessee company. As per Ld. CIT DR this expenditure is not directly related to the scientific research activity and could be termed as performance bonus not eligible for weighted deduction u/s 35(2AB) of the Act and therefore, requested for the confirmation of the order of AO who has allowed deduction u/s 37(1) for the said expenses.

8. On the other hand, Ld.AR for the assessee submits that as per section 35(2AB) of the Act, a company is engaged in the business of bio-technology and business of manufacturing of Article or thing which is not specified in the list of 11 Schedules incurs scientific research expenditure and such research development facility is approved by DSIR, expenditure incurred is eligible for weighted deduction. Ld. AR further submits that only condition for claiming weighted deduction u/s 35(2AB) is that the scientific research facility should be approved by the DSIR and there is no rule prescribed which says that the expenditure on scientific research must be

quantified and certified by DSIR for claiming deduction u/s 35(2AB) of the Act. For this, he placed reliance on the judgement of Coordinate Bench of Ahmedabad Tribunal in the case of **ACIT vs Torrent Pharmaceuticals Ltd. in ITA No.3569/Ahd/2004** vide order dated 13.11.2009 and further the judgement of Hon'ble Gujarat High Court in the case of **CIT vs Claris Life Sciences Ltd.** reported in **326 ITR 251 (Guj.)**. Ld. AR further submits that amendment in section 35(2AB) regarding approval from Ld. PCIT or DGIT for scientific research expenditure and weighted deduction u/s 35(2AB) of the Act are applicable from 01.07.2016 relevant to AY 2017-18 onwards and not applicable for AY 2016-17 i.e. the year under appeal. He thus, submits that remuneration paid to Dr. Arjun Surya who worked as Scientific Research Officer, cannot be disallowed for weighted deduction u/s 35(2AB) of the Act merely for the reason that he was also a full-time Director of the assessee company. It is thus, requested to allow the weighted deduction claimed u/s 35(2AB) of the Act on the salary payment to Director.

9. Heard the contentions of both the parties at length and perused the material available on record. The sole issue of dispute between the AO and the assessee is with respect to the weighted deduction claimed u/s 35(2AB) of the Act on scientific research expenditure incurred which includes the payment made to one, Dr. Arjun Surya who was full-time Director and Chief Scientific Officer of the company. It is observed that during the year under appeal, the assessee company has been able to get IDO/TDO patent to a leading

oncology clinical development pharmaceutical company namely Roche. The company has given the credit of such success to its Chief Scientific Officer cum full-time Director, Dr. Arjun Surya and made the payment of one-time bonus of INR 40 crores in addition to the regular payment made and claimed weighted deduction on the same u/s 35(2AB) of the Act being part of expenditure incurred on scientific research and development. The letter issued for payment one-time bonus of INR 40 crores dated 15.02.2015 is reproduced as under:-



10. It is further observed that in terms of the Board resolution dated 10.04.2015, the company has authorized Dr. Arjun Surya and Shri Manish Taneja, Managing Director of the company to pay success fee bonus to all the employees of the company who are engaged in the activity of scientific research for obtaining licensing of their patent. It is further observed that in terms of Form 3CL issued by DSIR dated 01.05.2018, capital expenditure in inhouse research development facility was certified for FY 2015-16 at INR 186.27 Lakhs and INR 397.12 Lakhs in FY 2016-17. Like wise the recurring expenditure was certified at Rs. 1251.12 lacs. It is further observed that as per Form 3CM issued by DSIR, assessee's in-house research development facility was approved u/s 35(2AB) of the Act for the period from 01.04.2014 to 31.03.2017. The Auditor in terms of its report dated 20.09.2016 has recommended the expenditure of INR 57,88,68,995/- being incurred on R&D facility approved by DSIR under section 35(2AB) of the Act which *inter-alia* includes the payment made to Dr. Arjun Surya for his service as Chief Scientific Officer. It is correct that weighted deduction u/s 35(2AB) is to be allowed in AY 2016-17 in which in-house facility is approved by DSIR which is an undisputed fact in the instant case.

11. The only dispute is whether remuneration of INR 40,84,02,592/- (including one-time performance bonus of INR 40 crores) paid to Dr. Arjun Surya who worked in the capacity of Chief Scientific Officer, is eligible for being part of scientific research

expenses for the purpose of claiming weighted deduction u/s 35(2AB) of the Act or not.

12. As could be observed from the letter dated 15.04.2015, written by the Managing Director of the company, Dr. Arjun Surya was granted one-time bonus on successful license of the patent to Roche which was paid as a recognition of his hard work, dedication and commitment to the Core team of the company. Had there been no license granted, such payment could not be made therefore, this expense of bonus cannot be held as directly related to scientific research and development activity carried out by the assessee company rather it is paid as a gratitude/recognition of the hard work and dedication of Dr. Arjun Surya towards the work. Therefore, the payment of one-time bonus of INR 40 crores cannot be held as expenses incurred on scientific research and development eligible for weighted deduction u/s 35(2AB) of the Act. The balance amount of INR 40,84,02,592/- is with respect to the day-to-day services referred by Dr. Arjun Surya as Chief Scientific Officer which could be treated as expenditure incurred on scientific research and development and is eligible for weighted deduction u/s 35(2AB) of the Act. In view of the above discussion, we hold that the assessee company is eligible for weighted deduction u/s 35(2AB) of the Act of the amount of INR 40,84,02,592/- paid to Dr. Arjun Surya which is part of the total expenses incurred on scientific research & development at INR 53,91,56,868/- and a sum of INR 40 crores paid as one-time bonus, cannot be treated as part of scientific research and therefore, the

same is directed to be excluded from the amount of scientific research expenses eligible for weighted deduction u/s 35(2AB) of the Act. Accordingly, both the Grounds of appeal raised by the Revenue are partly allowed.

13. In the result, appeal of the Revenue is partly allowed.

14. Now we take appeals of the assessee in ITA Nos.3887 & 3886/Del/2023 for Assessment Years 2018-19 & 2020-21 respectively.

ITA No.3887/Del/2023 [Assessment Year 2018-19]
[Assessee's appeal]

15. Brief facts of the case are that the assessee has e-filed its return of income on 29.11.2018, declaring loss of INR 25,34,02,489/-. The case of the assessee company was selected for scrutiny under CASS and notice u/s 143(2) was issued on 22.09.2019 thereafter, the notice u/s 142(1) alongwith questionnaires were issued and served upon the assessee. The AO passed the assessment order wherein it had disallowed weighted deduction u/s 35(2AB) of the Act on the expenditure of INR 1,72,16,832/- and further disallowed ESOP expenditure to the extent of INR 45,48,000/- and accordingly, the total income of the assessee was assessed at a loss of INR 23,16,37,660/-.

16. Aggrieved by the said order, the assessee filed appeal before Ld.CIT(A) who vide order dated 04.12.2023, dismissed the appeal of the assessee.

17. Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before the Tribunal by taking various Grounds of appeal.

18. **Ground of appeal Nos. 1 & 2** raised by the assessee are general in nature hence, not adjudicated.

19. **Ground of appeal Nos. 3 & 4** raised by the assessee are with respect to the disallowance of ESOP expenditure of INR 45,48,000/- made u/s 37(1) of the Act.

20. Before us, Ld.AR for the assessee manually submits that which issue has been decided in assessee's own case for AYs 2013-14 to 2016-17 therefore, as a principal of consistency, the same be allowed. The necessary copy of the order for respective years was placed in the Paper Book pages 1 to 35.

21. On the other hand, Ld.CIT DR supported the orders of the lower authorities and requested for the confirmation of the additions made.

22. Heard the contentions of both the parties at length and perused the material available on record. It is observed that this issue is a

legacy issue and in preceding AYs 2013-14 to 2016-17, the Co-ordinate Bench of the Tribunal had deleted the disallowance made. It is observed that in AYs 2014-15 to 2016-17 by a common order dated 15.12.2022, the Co-ordinate Bench has followed the order of the Tribunal in ITA No.7187/Del/2017 for AY 2013-14 dated 01.11.2021 and deleted the disallowance by making following observations:-

7. The brief facts leading to the above common issue are that the assessee claimed weighted deduction u/s.35(2AB) of the Act amounting to Rs.31,86,54,942/-. The Assessing Officer stated that for this deduction, the approval in Form No CM is required from Secretary Department of Science and Industrial Research (DSIR in short). Before the Assessing Officer the assessee submitted the agreement for research in Form No.3CL and filed the approval for the facility of in-house research in Form No.3CL. The assessee also filed the approval in Form No. 3CL giving the details of expenditure to be allowed for the purpose of deduction u/s.35(2AB) of the Act for the relevant assessment year. According to the Assessing Officer, the date of approval in Form No.3CL is 23-01-2004 and the assessee has filed its copy of letter sent by DSIR to DG (Income-tax Exempt) Kolkata, dated 27-01-2004. The assessee submitted the total break up of expenditure allowed as per Form No.3CL as under:-

(Rs. in lacs)

		A.Y. 2001-02
i)	<i>Capital Expenditure</i> <i>Land:</i>	<i>Nil</i>
	<i>Building</i>	<i>4 9.92</i>
ii)	<i>Capital Expenditure</i>	

	<i>Other than Land & Building</i>	<i>178.61</i>
iii)	<i>Recurring Expenditure (Building related)</i>	<i>37.55</i>
iv)	<i>Recurring Expenditure (Other than building)</i>	<i>1723.02</i>
v)	<i>Total cost of In-house research facility excluding land & Building</i>	<i>1901.63</i>
vi)	<i>Total cost of In-house research facility including land & Building</i>	<i>1989.10</i>
vii)	<i>Expenses related to clinical trials outside the approved facility not included in the above</i>	<i>51.26</i>

According to the Assessing Officer the assessee claimed expenditure for R & D as under:-

“(1) Revenue expenses	<i>Rs.19,45,75,518/-</i>
(2) Capital expenditure (Other than bldg.)	<i>Rs. 1,78,61,110/-</i>
	<i>Rs.21,24,36,628/-</i> “

But DSIR in Form No.3CL allowed as under:-

“(1) Revenue expenses	<i>Rs.19,45,75,518/-</i>
Less: Disallowed by DSIR	
(1) Bldg. repairs	<i>Rs. 37,55,000/-</i>
(2) Other revenue exp.	<i>Rs.1,33,92,000/-</i>
	<i>Rs. 1,71,47,000/-</i>
(2) Capital expenditure (Other than bldg.)	<i>Rs.17,74,28,518/-</i>
	<i>Rs. 1,78,61,110/-</i>
	<i>Rs.19,52,89,628/-</i> “

Whereas the Assessing Officer finally disallowed as under:-

(1) Allowable @ 150% on	<i>Rs.19,52,89,628/-</i>	<i>Rs.29,29,34,442/-</i>
Allowable @ 100% on	<i>Rs.1,71,47,000/-</i>	<i>Rs. 1,71,47,000/-</i>
		<i>Rs.31,00,81,442/-</i>
(2) Claimed		<i>Rs.31,86,54,942/-</i>
		<i>Rs. 85,73,500/-</i>

(Addition of Rs.86,73,500/-)”

Aggrieved, the assessee preferred appeal before CIT(A), who confirmed the exclusion of Rs.48 lakhs on account of professional fee paid to Dr. C Dutt as well as garden expenses of Rs.6.93 lakhs and allowed the balance deduction by holding in para-5.3 of his appellate order as under:-

“5.3 I have considered the above submissions and the assessment order. On perusal of the nature of expenditure is on market research, sales promotion quality control testing commercial production style change or routine data collection. Therefore the disallowance of the above expenditure made by the assessing officer only on the basis of the report of the prescribed authority was not justified. What is to be seen by the AO is the nature of expenditure. Therefore I consider this ground for disposal on merits. On perusal of the nature of expenditure it is seen that except for professional fees of Rs.48 lacs – and garden expense of Rs.6.93 lacs the other expense are not of the nature referred to above or like. The professional fees are in connection with patent to be registered overseas and hence it would be covered by the nature of expenses covered above. Garden expense has no relation with the research activity. Therefore, I hold that the A.O was justified in excluding these two expenses in granting deduction u/s.35(AB). However, he is directed to allow deduction in respect of the other deductions. This ground is accordingly partly allowed.”

8. Before us Ld. CIT Departmental Representative relied on the assessment order and stated that the Assessing Officer has rightly allowed the weighted deduction at 100% on 1,71,47,000/- on the amount of building repairs and other revenue expenses. Accordingly, he supported the orders of the Assessing Officer. On the other hand Ld. Counsel for the assessee carried us to assessee’s paper book at page 127 and 128 and narrated the facts as given as under:-

Sr.		Financial Year - 2001-02 (Rs.In lac)		
		Claimed	Granted	Disallowed
(i)	<u>Capital Expenditure:</u> Land:- Building	NIL 49.92	NIL 49.92	0.00 0.00

(ii)	Capital Expenditure (other than land & building)	178.61	178.61	00
(iii)	Recurring Expenditure (other than building)	37.55	--	37.55
(iv)	Recurring Expenditure (other than building)	1856.94	1723.02	133.92
(v)	Total cost of In-house research facility <u>excluding</u> land & building	2073.10	1901.63	--
(vi)	Total cost of In-house Research facility <u>including</u> land & building	2123.02	1989.10	--
(vii)	Expenses related to clinical trials outside the approved facility not included in the above	51.26	51.26	--

The Ld. counsel for the assessee also co-relate the expenditure disallowed as under:-

	<u>Rs.in Lac.</u>
1. Recurring Expenditure (Building related)	- 37.55
2. <u>Recurring Expenditure:</u> (other than building)	
i) Security expenses	11.01
ii) Gardening expenses	9.44
iii) Municipal Tax	6.93
iv) Professional Fees	48.00
v) Salary to Dr. C. Dutt	<u>58.54</u> <u>133.92</u>
	133.92 171.47

And further stated that as per provisions of section 35(2AB) the assessee is entitled to weighted deduction for the following expenditure:-

		Rs. In lac
i)	Capital expenditure (other than	

	land & building)	178.61
ii)	Revenue expenditure relating to building	37.55
iii)	Recurring expenditure i.e. revenue expenditure (other than building)	1856.94
iv)	Expenses related to clinical trials outside the approved facility not included in the above expenditure.	51.26
		2124.36
v)	Actual weighted deduction at 1.1/2 times of the eligible expenditure above referred to of Rs.2124.36 lacs.	3186.54

In view of the above facts and figure, the Ld. counsel for the assessee stated that the weighted deduction should be allowed to the assessee as per the provisions of Section 35(2AB) of the Act.

23. Since facts are identical therefore, by respectfully following the order of Co-ordinate Bench of Tribunal in assessee's own case for preceding AYs, the disallowance made is hereby, deleted. Accordingly, Ground of appeal Nos. 3 & 4 raised by the assessee are allowed.

24. **Ground of appeal Nos.5 & 6** raised by the assessee are with respect to disallowance of weighted deduction on account of research and development of INR 1,72,16,832/-.

26. The claim of the assessee was that the expenditure on manpower for Research and Development Centre has to be considered for weighted deduction u/s 35(2AB) of the Act and claimed that the remuneration paid and expenditure incurred on the travelling of Dr. Arjun Surya, Chief Scientific Officer and full-time Director were for the purpose of scientific research and development and therefore, the same should be treated as part of gross expenditure incurred on research and development. The ld. CIT(A) has allowed the weighted deduction u/s 35(2AB) on the expenditure verified and certified by DISR in Form 3CL which is in accordance with law. Therefore, we find no error in the order of Ld.CIT(A) which is upheld. Accordingly, Ground of appeal Nos. 5 & 6 raised by the assessee are dismissed.

27. During the course of hearing, the assessee has taken an additional Ground of appeal wherein it is claimed that weighted deduction u/s 35(2AB) was claimed on the expenditure incurred on research & development of 50% of the total expenditure, and since the AO has disallowed the weighted deduction, at least 100% of such expenses deserves to be allowed u/s 37(1) of the Act on the payment basis.

28. Heard the contentions of both the parties at length and perused the material available on record. Claim of the assessee is that it had only claimed INR 57,39,000/- i.e. 50% of the expenditure incurred towards remuneration and travelling of Dr. Arjun Surya as weighted

deduction however, the AO has disallowed the same of INR 1,72,16,832/- u/s 35(2AB) of the Act. The claim of the assessee is that at least 1,14,78,000/- should be allowed as deduction u/s 37A of the Act.

29. On careful consideration of the facts and arguments, we are of the considered opinion that the assessee should be allowed expenses incurred u/s 37(1) of the Act. Under these circumstances, we direct the AO to verify whether the assessee has claimed 50% of the expenditure of INR 1,14,78,000/- separately in the Profit & Loss Account, if not, the same should be allowed u/s 37(1) of the Act as we have already denied the weighted deduction u/s 35(2AB) of the Act on the same. With these directions, additional ground of appeal raised by the assessee is allowed for statistical purposes.

30. In the result, appeal of the assessee is partly allowed.

31. Now we take appeal of the assessee in ITA No.3886/Del/2023 for Assessment Year 2020-21.

ITA No.3886/Del/2023 [Assessment Year 2020-21]
[Assessee's appeal]

32. **Ground of appeal Nos.1 & 2** are general in nature, need no separate adjudication.

33. **Ground of appeal Nos. 3 & 4** raised by the assessee are with respect to the ESOP expenses.

34. Heard the contentions of both the parties at length and perused the material available on record. It is observed that this issue has already been decided in favour of assessee by the coordinate bench of Tribunal in assessee's own case for AY 2018-19 in ITA No.3887/Del/2023 which observations are ***Mutatis Mutandis*** applicable to the facts of this year also. Therefore, by respectfully following the same, Grounds of appeal Nos. 3 & 4 raised by the assessee are allowed.

35. **Ground of appeal Nos. 5 to 7** raised by the assessee are with respect to the disallowance of weighted deduction of INR 23,76,000/- claimed u/s 35(2AB) of the Act. This issue has already been dealt with in the assessee's appeal for AY 2018-19 in ITA No.3887/Del/2023 and same observations are ***Mutatis Mutandis*** applicable in this case also. Therefore, by respectfully following the same, Ground of appeal Nos. 5 to 7 raised by the assessee are dismissed.

36. In the result, appeal of the assessee is partly allowed.

37. In the final result, appeal of the Revenue in **ITA No.1260/Del/2022 [Assessment Year 2016-17]** is partly allowed and both appeals of the assessee in **ITA Nos.3887 & 3886/Del/2023 [Assessment Years 2018-19 and 2020-21]** respectively, are partly allowed.

Order pronounced in the open Court on 17.04.2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:-17.04.2026

Amit Kumar, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT
6. Guard File

ASSISTANT REGISTRAR
ITAT, NEW DELHI