THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 17/Ahd/2019 **Assessment Year 2014-15**

Cadila Healthcare Ltd., Zydus Tower, Opp. Iscon Temple, Satellite Cross Road, Ahmedabad-15 PAN: AAACC6253G (Appellant)	Vs	DCIT, Circle-1(1)(2), Ahmedabad (Respondent)

Assessee by: **Shri Mukesh Patel, A.R. & Shri Jigar Patel, A.R.**
Revenue by: **Shri Atul Pandey, Sr. D.R.**

Date of hearing : 21-06-2022
Date of pronouncement : 14-09-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the ld. Deputy Commissioner of Income Tax, Circle-1(1)(2) Ahmedabad vide order dated 31/10/2018 passed for the assessment year 2014-15.

2. The assessee has taken the following Grounds of Appeal:-

"Aggrieved by the order u/s. 143(3) r.w.s. 144C passed by the Assessing Officer, the Appellant wishes to raise the following Grounds of Appeal for the kind adjudication of the Hon'ble ITAT:

1. That the learned Assessing Officer erred in law and on facts in making upward adjustments on international transactions under the provisions relating to Transfer Pricing in respect of the following three issues:

a. Addition of Rs. 17,44,51,548/- on account of Corporate Guarantee Charges,

b. Addition of Rs. 18,83,57,844/- on account of Interest Imputation on Optionally Convertible Loans advanced to Zydus International Pvt. Ltd.

c. Addition of Rs. 15,56,62,098/- on account of Reimbursement of Expenses.

2. That the learned Assessing Officer erred in law and on facts in making an addition of Rs. 27,39,58,741/- by holding that the Product Registration Expenses and reimbursement of expenses for Product Registration Support Services were capital in nature, merely eligible for depreciation u/s. 32 and liable to be disallowed as business revenue expenses.

3. That the learned Assessing Officer erred in law and on facts in making an addition of Rs. 10,35,19,784/- by holding that the Trademark Registration Fees and Patent Registration Fees incurred by the appellant were capital in nature, merely eligible for depreciation u/s. 32 and liable to be disallowed as business revenue expenses.

4. That the learned Assessing Officer erred in law and on facts in making an addition of Rs. 32,43,28,000/- by holding that the appellant was not entitled to the weighted deduction for expenditure on Scientific Research u/s. 35(2AB) being non-eligible expenditure.

5. That the learned Assessing Officer erred in law and on facts in making an addition of Rs. 38,98,08,000/- by holding that the appellant was not entitled to the weighted deduction for expenditure on Scientific Research u/s. 35(2AB) in respect of Clinical Trial and Bio-equivalence Study.

6. That the learned Assessing Officer erred in law and on facts in disallowing depreciation of Rs. 6,60,491/- on the cost of Hummer H2 imported motor car, alleging that the vehicle was owned by the Director and not by the appellant.

7. That the learned Assessing Officer erred in law and on facts in making an adjustment of Rs. 14,56,85,632/- in respect of disallowance u/s.14A for purposes of computation of book profit u/s. 115JB.

8. That the learned Assessing Officer erred in law and on facts in not acknowledging in the Assessment Order, the availability of the amount of Carried Forward MAT Credit u/s 115JAA of Rs.64,98,97,941/-, to which the Appellant is lawfully entitled to in view of it being covered under the provisions of MAT u/s 115JB.

9. That the learned Assessing Officer erred in law and on facts in allowing credit for TDS of Rs. 15,07,07,071/- instead of Rs. 15,26,74,4887- claimed by the appellant in its Return of Income filed for A. Y. 2014-15.

10. That the learned Assessing Officer erred in law and on facts in charging interest u/s. 234B and u/s 234C.

11. That the learned Assessing Officer erred in law and on facts in mechanically initiating penalty proceedings u/s 271(1)(c) of the IT. Act in respect of each of the additions made by him in the assessment order u/s 143(3) r.w.s.144C, on the ground that the assessee has furnished inaccurate particulars of income, clearly ignoring the ratio of the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd.' (2010) 322 ITR 158 (SC).

The appellant prays that leave may be granted to add, amend or alter any of the grounds at any time before the final hearing of the appeal."

3. The brief background the case is that the assessee is engaged in the business of trading and manufacturing of pharmaceutical goods. The Ld. Assessing Officer proposed various additions which were subsequently confirmed by DRP vide order dated 21-09-2018. The assessee is in appeal against the aforesaid additions, which shall be discussed hereinafter.

Ground number 1(a): addition of ₹ 17,44,51,548/- on account of corporate guarantee charges

4. The brief facts in relation to this ground of appeal are that the assessee has provided guarantees to banks with respect to borrowings of its Associated Enterprises (AEs). The TPO, following the orders of the past assessment years, held that the service rendered by the assessee by offering guarantees to financial institutions on behalf of its AEs is liable to be benchmarked at 2.52% of the guarantee given. The TPO held that in line with the benchmarking done assessment it 2013-14, the corporate guarantee fee is benchmarked at 2.52%, which is the arithmetic been of external CUPs in the form of corporate guarantee fees charged by State Bank of India @2.75% per annum and Bank of India @ 2.16% and the coupon rates of A rated bonds and BB rated bonds @ 2.66 %. Accordingly, an upward adjustment of ₹ 17,44,51,548/- was done on this count. The DRP confirmed addition proposed by the TPO.

5. Before us, the counsel for the assessee submitted that the issue is directly covered in favour of the assessee by the orders of the ITAT in the assessee's own case for assessment year 2012-13 and assessment year 2013-

14. Accordingly, the Ld. Counsel for the assessee argued that addition on this count is liable to be dismissed.

6. For the sake of reference, it would be useful to reproduce the order of ITAT for assessment year 2012-13 and 2013-14 in ITA Number 954/Ahd/ 17 and 213/ Ahd/18:

> *"10. We find that the stand taken by the Dispute Resolution Panel, granting relief to the assessee on this point, came up for consideration before a coordinate bench of this Tribunal, and, vide order dated 3rd March 2017, it has been upheld by the coordinate bench. The copies of these orders were placed before us as. As to what is a fair arm's length price for issuance of corporate guarantee for the group entities of the assessee group is a factual aspect, and once in the earlier years a coordinate bench has approved the stand that 1% is a reasonable guarantee commission, there is no reason for us to deviate from the said stand as parties to the guarantees are broadly the same and most of these guarantees are continuing guarantees. We, therefore, see no reasons to disturb the accepted past history of the case and disturb the corporate guarantee commission rate adopted by the assessee. As regards the TPO's observation that the concept of shareholder activity will apply only in respect of Zydus Netherlands as it was the holding company, and not the assessee company, all we can say is that admittedly the assessee company is the parent company for this holding company as well and the end beneficiary, therefore, is the assessee company. The observation made by the Assessing Officer is thus incorrect. In any case, the methodology adopted by the TPO for computation of arm's length price of these guarantees is wholly erroneous. The TPO has proceeded on the basis that the guarantee commission charges by the State Bank of India and Bank of India are static rates which held good in all circumstances, but then, in reality, the guarantee commission rates vary on a large number of factors and vary from client to client. The adoption of difference between coupon rate of A rated bonds and BB rated bonds is even more inappropriate and it proceeds on the assumption, an unrealistic assumption at that,*

pre issuance of corporate guarantee by the assessee for its AE, its credit equivalence is of BB rated bond, which gets converted into A rated bond upon issuance of assessee's corporate guarantee, and the said benefit belongs entirely to the assessee. A computation based on such assumptions can never qualify to be treated as an external CUP. None of the rates, described as external CUPs, can be treated as valid inputs for the computation of arm's length price on the facts of this case. Such crude and unscientific methods of determining ALPs of corporate guarantees cannot meet any judicial approval. ***There was thus, in any event, no sound basis for disturbing the arm's length computation of these corporate guarantees, issued by the assessee in favour of its AEs abroad, taken at 1% which has been approved for earlier assessment years as well. In view of these discussions, as also bearing in mind, we approve the plea of the assessee, direct the Assessing Officer to adopt the benchmarking @1% as done by the assessee, and delete the impugned ALP adjustment of Rs 10,45,32,855. The assessee gets the relief accordingly.***

11. Ground no. 1 is thus allowed."

6.1 In our view, since the issue is directly covered in favour of the assessee in its own case for assessment year 2012-13 and 2013-14, respectfully following the orders passed in the assessee's own case, we hereby allowing this ground of appeal filed by the assessee.

7. In the result, ground number 1(a) of the assessee's appeal is allowed.

Ground number 1(b): addition of ₹ 18,83,57,844/- on account of interest imputation on optionally convertible loans advanced to Zydus International Private Limited (ZIPL):

8. The brief facts in relation to this ground of appeal are that the assessee had advanced optionally convertible loans to ZIPL, Ireland, its subsidiary on

which no interest was charged. The TPO observed that although the assessee has categorised the above transaction as a loan transaction, it has claimed that these loans to be in the nature of quasi equity as the assessee has an option to convert the same into equity of ZIPL at par value. Since the assessee has not exercised any option, no interest has accrued to the assessee. The assessee has not charged any interest on this amount, although interest is inbuilt into the mechanism of the agreement. Therefore, it is clear that the instrument has been characterised as quasi-equity merely to pass it off as an equity instrument to ensure interest free loan to the AE. The TPO relied on the case of Perot Systems TPS v DCIT (ITAT Delhi) and held that since no benchmarking of the loan transaction has been done by the assessee company, transfer pricing study of this transaction carried out by the assessee was not found to be in conformity with the provisions of section 92C of the Act. The TPO placed reliance on the order of assessment year 2012-13 and held that in lines of the above order, this year too the interest on these loans is benchmarked at the contractual rate applicable to the said loans (6 month LIBOR comes to 0.376, one year LIBOR comes to 0.631 and 6 month E LIBOR comes to 0.281). The DRP confirmed the order of the TPO.

9. Before us, the counsel for the assessee submitted that the issue is directly covered in favour of the assessee by the orders of the ITAT in the assessee's own case for assessment years 2012-13, 2013-14, 2010-11, 2009-10 and 2008-09. Accordingly, the Ld. Counsel for the assessee argued that addition on this count is liable to be dismissed. It would be useful to

reproduce the relevant extracts of the ruling for A.Y. 2013-14 for ready reference:

> *"17. Learned representatives fairly agree that this issue is covered, in favour of the assessee, by decisions of the coordinate benches in assessee's own cases for the assessment years 2009-10 and 2010-11. Learned Departmental Representative, however, submits that even though the issue is covered in favour of the assessee, and to that extent that decision binds us, he nevertheless relies upon the stand of the Assessing Officer and would like to justify the same. We find that a coordinate bench, vide order dated 3rd March 2017 for the assessment year 2009-10, has, inter alia, observed as follows:*
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> > *10. There is no dispute that the transactions in question are not of the transactions of lending money to the associated enterprises. The amounts advanced to the AEs are attached with the obligation of the AEs to issue share capital, in case the assessee exercise option for the same, on certain conditions, which are admittedly more favourable, and at an agreed price, which is admittedly much lower, vis-a-vis the conditions and prices which independent enterprise would normally agree to accept.* ***The lending is thus in the nature of quasi capital in the sense that substantive reward, or true consideration, for such a loan transaction is not interest simplictor on amount advanced but opportunity to own capital on certain favourable terms.*** *Contrast this reward of owning the capital in the borrower entity with interest simplictor, which is typically defined as "the reward of parting with liquidity for a specified period" (Prof Keynes) or as "a payment made by the borrower of capital by virtue of its productivity as a reward for his capitalist's abstinences" (Prof Wicksell). However, in the case of transactions like the one before us, there is something much more valuable which is given as a reward to the lender and that valuable thing is the right to own capital on certain favourable terms. Therefore, the true reward as we have noted earlier, is the opportunity and privilege to own capital of the borrower on certain favourable terms. It is for this reason that the*

transactions before us belong to a different genus than the act of simply giving the money to the borrower and fall in the category of 'quasi capital'.

11. As for the connotations of 'quasi capital', in the context of determination of arm's length price under transfer pricing regulations, we may refer to the observations made by a coordinate bench of this Tribunal- speaking through one of us (i.e. the Accountant Member), in the case of Soma Textile & Industries Ltd. v. Asst.CIT [20151 154 ITD 745/59 taxmann.com 152 (Ahd.), as follows:

> *'5.. ..... The question, however, arises as to what are the connotations of expression 'quasi capital' in the context of the transfer pricing legislation.*
>
> *6. Hon'ble Delhi High Court, in the case Chryscapital Investment Advisors India Ltd. v. ACIT [(2015) 56 taxmann.com 417 (Delhi)l, has begun by quoting the thought provoking words of Justice Felix Frankfurter to the effect that "A phrase begins life as a literary expression; its felicity leads to its lazy repetition; and repetition soon us take briefly deal with the connotations of "quasi capital', and its relevance, under the transfer pricing regulations.*
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> *7. The relevance of 'quasi capital', so far as ALP determination under the transfer pricing regulation is concerned, is from the point of view of comparability of a borrowing transaction between the associated enterprises.*
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> *8. It is only elementary that when it comes to comparing the borrowing transaction between the associated enterprises, under the Comparable Uncontrolled Price (i.e. CUP) method, what is to be compared is a materially similar transaction, and the adjustments are to be made for the significant variations between the actual transaction with the A E and the transaction it is being*

compared with. Under Rule 10B(l)(a), as a first step, the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified, and then such price is adjusted to account for differences, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the o pen market. Usually loan transactions are benchmarked on the basis of interest rate applicable on the loan transactions simplictor which, under the transfer pricing regulations, cannot be compared with a transaction which is something materially different than a loan simplictor, for example, a non-refundable loan which is to be converted into equity. It is in this context that the loans, which are in the nature of quasi capital, are treated differently than the normal loan transactions.

9. The expression 'quasi capital', in our humble understanding, is relevant from the point of view of highlighting that a quasi-capital loan or advance is not a routine loan transaction simplictor. The substantive reward for such a loan transaction is not interest but opportunity to own capital. As a corollary to this position, in the cases of quasi capital loans or advances, the comparison of the quasi capital loans is not with the commercial borrowings but with the loans or advances which are given in the same or similar situations. In all the decisions of the coordinate benches, wherein references have been made to the advances being in the nature of 'quasi capital', these cases referred to the situations in which (a) advances were made as capital could not subscribed to due to regulatory issues and the advancing of loans was only for the period till the same could be converted into equity, and (b) advances were made for subscribing to the capital but the issuance of shares was delayed, even if not inordinately. Clearly, the advances in such circumstances were materially different

> *than the loan transactions simplicitor and that is what was decisive so far as determination of the arm's length price of such transactions was concerned. The reward for time value of money in these cases was opportunity to subscribe to the capital, unlike in a normal loan transaction where reward is interest, which is measured as a percentage of the money loaned or advanced.'*

12. It is thus quite clear that the considerations for extending a loan simplictor are materially distinct and different from extending a loan which is given in consideration for, or mainly in consideration for, option to convert the same into capital on certain terms which are favourable vis-avis the terms available, or, to put it more realistically, hypothetically available, to an independent enterprise. On a conceptual note, the entire purpose of the exercise of determination of arm's length price is to neutralize the impact of intra AE relationship in a transaction, the right comparable for such a transaction of quasi capital is a similar transaction of lending money on the same terms i.e. with an option to convert the loan into capital on materially similar terms. However, what the authorities below have held, and wrongly held for that reason, is that a quasi capital transaction like one before us can be compared with a simple loan transaction where sole motivation and consideration for the lender is the interest on such loans. In the case before us, the consideration for having given the loan is, as we have noted earlier, opportunity and privilege of owning capital of the borrower on certain favourable terms. If at all the comparison of this transaction was to be done with other loan transaction, the comparison should have been done with other loans giving rise to similar privilege and opportunity to the lender. The very foundation of impugned ALP adjustment is thus devoid of legally sustainable basis.

13. Let us, at this stage, take note of the US Tax Court decision, relied upon by the TPO, in the case of Pepsi Cola Bottling Co of Puerto Rico Inc (Docket Nos. 13676-09, 13677-09; order dated 20th September 2012). It has been referred to by the TPO as decision of the US Supreme Court but in fact it is a decision

of the US Tax Court, broadly at the same level of judicial hierarchy as this Tribunal. This decision deals with the limited question whether a particular transaction is required to be treated as debt or as equity. The precise question, which came up for consideration of the US Tax Court, were (1) whether advance agreements issued by Pepsi Co's Netherlands subsidiaries to certain Pepsi Co domestic subsidiaries and PPR are more appropriately characterized as debt than as equity; and, (2) if the advance agreements are characterized as debt, whether, and to what extent payments on the advance agreements constitute original issue discount, relating to contingent payment debt instruments under section 1.1275-4(c), Income Tax Regulations. This provision is a deduction provision and not a provision relating to determination of arm's length price. Nothing, therefore, turns on this decision. In any event, it is nobody's case that the transaction before us is of the debt. The case of the assessee is that since in consideration of this transaction, the assessee is entitled to own the capital at certain admittedly favourable terms, the true reward of this debt is the availability of such an option, and, therefore, it cannot be compared with a debt simplictor for the purpose of determining arm's length price. Nothing, therefore, turns on this decision, and whatever be its persuasive value, or lack thereof, the authorities below were in error even in relying upon this decision

14. We have noted that, as noted by the TPO, it is wholly immaterial as to whether or not the assessee, by the virtue of this transaction, is entitled to subscribe to capital of the AE on certain concessional terms, because, in any case, the AE is a wholly owned subsidiary of the assessee-and none else can subscribe to the AE's capital. What has been overlooked, however, in this process of reasoning is that the very concept of arm's length price is based on the assumption of hypothetical independence between AEs. Essentially, what is, therefore, required is visualization of a hypothetical situation in which AEs are independent of each other, and, as such, impact of intra AE association on pricing of transaction is neutralized. Once we do so, as is the compulsion of hypothesis involved in

arm's length price, the fact that normally a parent company has a right to subscribe to the capital of the subsidiary at such price as suits the assessee is required to be ignored. An arm's length price is hypothetical price at which independent enterprises would have entered the transaction, and, as such, the impact of intra AE association cannot have any role to play in determination of arm's length price. The stand so taken by the TPO, which has met the approval of the DRP as well, does not, therefore, meet our approval.

15. As regards the stand of the authorities below that Irish subsidiary has shown huge profits and high operational profits @ 93%, and this fact shows that the assessee should have charged interest on commercial rates, we are unable to even understand, much less approve, this line of reasoning. It is incomprehensible as to what role profits earned from the funds raised can have in determining arm's length consideration of raising the funds, unless profit sharing is implicit in the consideration for raising the funds itself-which is neither the normal commercial practice nor the case before us. The cost of raising funds is determined much before the returns from funds so raised is even known. To hold that cost of funds raised should have been higher because the returns from funds employed by the enterprise is higher is putting cart before the horse. In the commercial world, interest does not represent any participation of profits, and it does not vary because of the profits made by the borrower from monies so raised. In any event, while determining arm's length price of a transaction, it is immaterial as to what 'benefit' an AE subsequently derives from such a transaction. What is to be determined is the consideration of a transaction in a hypothetical situation, in which AEs are independent of each other, and not the benefit that AEs derive from such transactions. It is not even the case of the authorities below that in the event of hypothetically dealing with an independent enterprise, no independent enterprise would not have given him an interest free loans even if there was an option, coupled with such a deal, to subscribe to the capital of the AE on the terms as offered by the AE to the

> *assesses. Unless that happens, there is not even a prima facie case made out for an ALP adjustment.*
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> *16. We have also noted that, in any event, whenever the assessee's right to exercise the option of converting the loan into equity comes to an end, the assessee is entitled to interest on the commercial rates. It is not even the case of the authorities below that the interest so charged by the assessee, in a situation in which the right to exercise the option has come to an end, is not an arm's length price.* ***Keeping in mind all these factors, as also entirety of the case, we deem it fit and proper to delete the arms length price adjustment of Rs. 5,00,35,270 in respect of interest which, according to the revenue authorities, should have charged on the optionally convertible loan granted to the AEs.***
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> *18. The views so expressed by the coordinate bench were also followed for the assessment year 2010-11 as well. It is also an admitted position, as fairly accepted by the learned Departmental Representative, that all the material facts and circumstances are the same, and many of these loans are merely extensions of the earlier loans. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench in assessee's own case. Respectfully following the same, we uphold the plea of the assessee on this issue as well, and delete the impugned ALP adjustment of Rs 9,97,52,304 as well.*
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> *19. Ground no. 2 is also thus allowed."*

9.1 In our view, since the issue is directly covered in favour of the assessee in his own case for assessment years 2012-13, 2013-14, 2010-11, 2009-10 and 2008-09, respectfully following the orders passed on the assessee's own case, we hereby allowing this ground of appeal filed by the assessee.

10. In the result, ground number 1(b) of the assessee's appeal is allowed.

Ground number 1(c): Addition of ₹ 15,56,62,098/- on account of reimbursement of expenses:

11. The brief facts in relation to this ground of appeal are that during the year under consideration, the assessee had reimbursed expenses to three associated Enterprises: Zydus pharmaceuticals Mexico, Zydus France and Zydus Japan. The assessee's contention is that all these expenses were made by way of reimbursement on cost of cost basis to these overseas associated enterprises. With respect to reimbursements made to Zydus Mexico, the assessee's contention is that Zydus Mexico had incurred certain expenses related to clinical research and product registration for assessee's products. The assessee's contention is that the reimbursements have been made by the assessee for the products wherein the assessee is the IP owner and plays the role of entrepreneur whereas Zydus Mexico is only a distributor entity. With respect to reimbursement of expenses to Zydus France, the assessee submission was that the expenses have been reimbursed to Zydus France only for those matters where the assessee is acting as an entrepreneur (while the assessee admitted that for some products, he also acted as a contract manufacturer, but the assessee submitted that no reimbursements were made by the assessee to Zydus France in respect of the same). During the year, Zydus France had incurred certain expenses related to product submission and regulatory fees, control and testing fees, leaflet replacement cost and production sample cost for assessee's products. These costs have been reimbursed by the assessee to Zydus France on cost to cost basis without any markup. Thirdly, the assessee also made reimbursements to Zydus Japan on

cost to cost basis by way of reimbursement of certain expenses in the nature of insurance for clinical trial studies on behalf of the assessee for administrative convenience. The TPO as well as the DRP however took the view that there was contradiction in the FAR analysis in the transfer pricing report and the submissions made while justifying the reimbursement of expenses. This was also observed by the TPO in the orders for assessment year 2012-13 and assessment year 2013-14. In the FAR in transfer pricing report for transactions with AEs viz. Zydus France, Zydus Japan, the assessee has been classified as a contract manufacturer. Since the assessee company has been taken to be a contract manufacturer and benchmarked as such, then the expenses incurred by the Associated Enterprises cannot be taken to have been incurred on behalf of the assessee company. The TPO to the view that no contract manufacturer, in similar uncontrolled transactions, would reimburse the expenses of another/third-party. Contract manufacturing is a very limited risk activity with low rewards and hence does not require incurring expenses of such nature. In view of this, the arms-length price (ALP) was taken as "Nil" by the TPO.

12. Before us, the counsel for the assessee reiterated the arguments taken before TPO/DRP to the effect that the assessee had reimbursed the Associated Enterprises on cost to cost basis. The counsel for the assessee submitted that the TPO and DRP has erred in facts in coming to the conclusion that the assessee was acting as a contract manufacturer for the above entities and the cost to cost reimbursements to these entities were in respect of its activities as a contract manufacturer. He submitted that the assessee was the IP owner and all the reimbursements were made with

respect to assessee's business interests in these jurisdictions. In respect of **Zydus Mexico**, the assessee filed submission dated 2nd June 2022 and drew our attention to relevant extracts of the supply and distribution agreement between the assessee company and Zydus Mexico to demonstrate that in fact, assessee is the IP owner and therefore reimbursements were made in connection with protection of assessee's interest outside of India. He further drew our attention to the Transfer Pricing Study Report at pages 48 and 49 of the paper book to reiterate that the assessee is acting as an entrepreneur/IP owner and Zydus Mexico is acting as its distributor. He further drew attention to pages 593 to 613 of the paper book by giving necessary supporting for expenses reimbursed to Zydus Mexico for clinical research and product registration. The assessee further submitted that similar expenses were reimbursed by the assessee to Zydus USA, who is acting as a limited risk distributor for the assessee. The assessee obtained a favourable order of ITAT for assessment year 2012-13 (copy annexed at pages 166 to 168 of paper book) in respect of these reimbursements made by the assessee to Zydus USA. With respect to payments made to **Zydus France,** the counsel for the assessee submitted that the fact that the assessee is acting as an entrepreneur/IP owner and Zydus France is acting as its low risk distributor (LRD) is evident from the transfer pricing report at pages 48-49 of the paper book. He drew attention to the supply and distribution agreement at pages 491-498 of the paper book to reiterate that the assessee is the IP owner. He further drew our attention to pages 505-592 of the paper book, to the supportings for expenses reimbursed by Zydus France for product submission and regulatory fees, control and testing fees, the leaflet replacement cost of product innovator sample costs. The assessee submitted

that all these expenses have been reimbursed in respect of those expenses incurred by Zydus France where the assessee company is acting as the entrepreneur/IP owner and Zydus France is acting as low risk distributor. The assessee obtained a favourable order of ITAT for assessment year 2012-13 (copy annexed at pages 166 to 168 of paper book) in respect of these reimbursements made by the assessee to Zydus USA, whereas the latter was acting as the low risk distributor for the assessee. With respect to cost to cost reimbursements made by the assessee to **Zydus Japan**, the assessee submitted that these were reimbursements made to Zydus Japan for insurance charges and he drew attention to pages 614-15 of the paper book. The assessee's contention is that in all cases, the expenses were reimbursed on cost of cost basis to the overseas entities in respect of those expenses which were incurred by these overseas associated Enterprises on behalf the assessee company wherein the assessee was acting in the capacity of an entrepreneur/IP owner. Accordingly, the AO has erred in facts and in law computing the arm's-length price at "Nil" in respect of these payments.

13. We have heard the rival contentions and perused the material on record. In our considered view, the assessee has been able to demonstrate that these expenses were incurred by way of reimbursement to its associated Enterprises-Zydus Mexico, Zydus France and Zydus Japan in respect of expenses incurred by these overseas Associated Enterprises on behalf of the assessee company, wherein the assessee were acting in the capacity is an entrepreneur/IP owner, on a cost to cost basis. The assessee has given supporting documents in respect of the nature of reimbursements, from which it can be inferred that the expenses were essentially incurred with

respect to assessee's business interests in these overseas jurisdictions. The TPO/DRP has not questioned/challenged the assertion of the assessee that these expenses were reimbursed on a cost to cost basis. We further note that the assessee for assessment year 2012-13 and assessment year 2013-14 had reimbursed similar expenses towards associated Enterprise in USA and the TPO had determined the arm's-length price at "Nil". In this respect, the key findings of the ITAT are reproduced below for reference.

> *"23. We find that the TPO has, in essence, proceeded to make disallowance under section 37(1) by holding that there was no commercial expediency in making these reimbursements. That is certainly travelling beyond the domain of his powers under the scheme of the Act. The TPO only has to ascertain arm's length price of a transaction in the sense that if the same transaction was to be incurred between unrelated parties as to what would theoretically have been an arm's length price of the transaction in question, and that exercise is to be carried out on the basis of a permissible method of ascertaining arm's length price of a transaction. Whether the transaction should have taken place or not is not any of the TPO's business. It is not his job to decide whether a business enterprise should have incurred a particular expense or not. A business enterprise incurs the expenditure on the basis of what is commercially expedient and what is not commercially expedient. As held by Hon'ble Delhi High Court in the case of CIT v. EKL Appliances Ltd. [(2012) 345 ITR 241 (Del)] "Even Rule 10B(l)(a) does not authorize disallowance of any expenditure on the ground that it was not necessary or prudent for the assessee to have incurred the same". The very foundation of the action of the TPO is thus devoid of legally sustainable merits. We have also noted that there is no mark up in the reimbursement of expenses, and, as such, there is no question of making any ALP adjustment in respect of these reimbursements of expenses. We have further noted that similar reimbursement of expenses to the US based AEs were made in the period relating to the assessment years 2010-11, 2011-12, 2013-14, 2014-15 and 2015-16, but no such arm's length price adjustments were made in any of these*

years. Undoubtedly, there is no res judicata in tax proceedings but principles of consistency definitely have a crucial rule to play- particularly in respect of a factual matter which permeates through the different assessment years. Similar transactions have been accepted to have been entered into on arm's length basis in the preceding, as also succeeding, years. There is thus no justification for deviation in this particular assessment year. In any case, so far product liability insurance is concerned, the assessee has justified bearing the same on the ground that US AE is an LRD (limited risk distributor) with a targeted operated margin, and, therefore, under this business model, these costs are to be borne by the assessee company. We see no infirmity in this approach and this explanation. When AE is only doing distribution, it is entirely a commercial call of the assessee as to which type of product related expenses are to be borne by the assessee. These expenses thus clearly pertain to the assessee as the US AE is admittedly, and beyond dispute, only an LRD. The same is the position with respect to the legal expenses. It has been specifically explained by the assessee, and this explanation has not even been called into question, that the US AE was holding the ANDAs and patents, as a trustee and in fiduciary capacity, for the assessee company. It would, therefore, be wholly immaterial as to who is holding the patents and the ANDAs- the assessee or the US AE, because, at the end of the day, the beneficiary is only the assessee company. Yet, the TPO has held the legal expenses to be not at an arm's length price only because the ANDA in question was held by the US AE. Whosever owns the IPRs in question, it is related only for the business of the assessee company and not the US AE. The approach adopted by the TPO is erroneous for this reason also. Similar is the position with respect to stability charges and analytical charges. The TPO has held that there is nothing to show that these expenses were for the purpose of business of the assessee, but then there is no dispute that these expenses pertains to the products owned by the company and in respect of which US AE is only an LRD. The expenses in question were thus clearly for the purpose of the business of the assessee, and deserved to be allowed in full. The TPO should not have ventured into the job of the AO, but that technicality apart, even on merits, entire related expenses, which have been wrongly disallowed by making an ALP- something clearly contrary to the scheme of the Act, these expenses were fully admissible for deduction. ***In any case,***

there is not even a whisper of a discussion about the method of ascertaining the ALP employed by the TPO. When a TPO makes an ALP adjustment, he has to justify on the basis of a prescribed method of ascertaining the ALP. Thus, whichever way we look at it, the impugned ALP adjustment cannot be justified. We, therefore, uphold the plea of the assessee on this point as well, and direct the Assessing Officer to delete the impugned ALP adjustment of Rs 21,43,79,368- subject to necessary verifications about the figures.

24. Ground no. 3 is thus allowed."

13.1 Respectfully following the observations of the ITAT in assessee's own case for assessment year 2012-13 and assessment year 2013-14 in ITA number is 954/AHD/17 and 213/AHD/18, referred to above, we are of the considered view that the TPO has erred in fact and law in holding that the arm's-length price in respect of these cost to cost reimbursements should be determined at "Nil". Further, we also observed that the High Courts in various cases have held that the TPO cannot determine the arm's-length price of transaction as "Nil" on ad- hoc basis without employing any of the prescribed methods as the same is against the scheme of the Act. *[Johnson & Johnson Ltd (Bombay High Court) (ITA No. 1030 of 2014), Kodak India Private Limited (Bombay High Court) (ITA No. 15 of 2014), Merck Limited (Bombay High Court) (ITA No. 1272 of 2014)].* Further, the High Court's have also held on various occasions that the TPO's jurisdiction is limited to determine the arm's-length price of a transaction and does not have the jurisdiction to examine the allowability of expenses as provided in section 37 of the Act. *[Luwa India Pvt. Ltd (Karnataka High Court) (I.T. A.No.296 of 2017), Lumax Industries Limited (Delhi High Court) (ITA Nos. 102,103, 104 & 587/2014), Cushman and Wakefield (India) Pvt. Ltd. (Delhi High*

Court) (ITA No. 475 OF 2012), EKL Appliances Ltd. (Delhi High Court) (ITA No. 1068 & 1070 OF 2011), Hive Communication Private Ltd. (Delhi High Court) (ITA No. 306 OF 2011).]

14. In view of the above observations, ground number 1(c) of the assessee's appeal is allowed.

Ground Number 2: Addition of ₹ 27,39,58,741/- on account of product registration expenses/reimbursement of expenses for product registration support services:

15. The brief facts in relation to this ground of appeal are that the assessee debited a sum of ₹ 26,24,72,651/- under the head "product registration expenses" and ₹ 5 70,03,770/- under the head "product registration services". During the course of assessment, the assessee submitted that before any pharmaceutical company can sell its products in any foreign country, it is essential to obtain registration for its pharmaceutical products from the Government Drug Regulatory Authority of that country. During the year under consideration, the assessee has got various products registered in foreign countries. Moreover, expenses have also been incurred for registration of products the local bodies of medical associations of various States in India. Since by incurring the expenditure on product registration, the assessee has neither acquired any fixed assets not there was any change in the fixed capital and these expenses were incurred for earning better profits arising out of expansion of assessee's existing business, these expenses are allowable under section 37(1) of the Act. However, the AO disallowed the above expenses as being "capital expenditure" and after

allowing depreciation on such disallowances, added the residual difference amounting to ₹ 27,39,58,741/- as income of the assessee during the year under consideration.

16. Before us, the counsel for the assessee submitted that the issue is decided by the ITAT in favour of the assessee, the assessee's own case for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14. The counsel for the assessee further submitted that the Gujarat High Court has further decided that no question of law arises on this point in its orders for assessment years 2006-07 to 2008-09. In response, the Ld. DR relied upon the observations made in the assessment order.

17. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the ITAT, Ahmedabad ruling for assessment year 2013-14 on this issue:

> *"84. In ground no, 4 the assessee has raised the following grievance:*
> *That the learned Assessing Officer erred in law and on facts in making an Addition of Rs, 21,07,52,058/- by holding that the Product Registration Expenses and reimbursement of expenses for Product Registration Support Services were capital in nature, merely eligible for depreciation u/s. 32 and liable to be disallowed as business revenue expenses.*
>
> *85. Learned representative fairly agree that as an identical issue has come up before us in the appeal for the assessment year 2012-13, whatever we decide in the assessment year 2012-13 will apply mutatis mutandis for this assessment year as well As observed earlier in this consolidated, we have decided this issue in favour of the assessee and observed as follows:*

"42. To adjudicate on this grievance, only a few material facts need to be taken note of. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee was debited Rs 7,34,49,394 under the head product registration expenses and Rs 4,49,20,897 as product support services. The Assessing Officer was of the opinion that these expenses were capital in nature as was held by Ms predecessors all along. While he was alive to the fact that this issue is decided in favour of the assessee by the appellate authorities, he was equally alive to the fact that these orders have not been accepted by the income tax authorities and the matter in thus in appeal before the higher authorities, It was in this backdrop that he treated the aggregate amount of Ms 11,83,70,291 as capital expenditure, but allowed depreciation of Rs 1,99,68,460 thereon, and disallowed net amount of Rs 9,84,01,831 The assessee did raise objection against this treatment but without any success. The assessee is now in appeal before us.

43. Having heard the rival submissions and having perused the material on record, we are of the considered view that the assesses does indeed deserve to succeed on this point for the short reason that even the Assessing Officer has admitted that the issue is covered by the binding judicial precedents in assesaee's own case and the additions have been made, so to say, keep the issue alive. Learned representatives fairly agree that this issue is settled in favour of the assessee by decisions of the coordinate benches in assessee's own case, and Hon'ble High Court has declined to admit appeal against such decision, as in the esteemed views of Their Lordships, no question of law arises from these decisions. The relief granted to the on this point in past has achieved finality, In this view of the we uphold the plea of the assessee, and direct the Assessing Officer to treat the product registration expenses and product support service expenses as revenue expenditure, and to, therefore, delete the impugned disallowance of Rs 9,84,01,831. The assessee gets the relief accordingly.

> *86. We see no reasons to take any other view of the matter than the view so taken by us fox the immediately preceding assessment year, and observations made therein will apply mutatis mutandis for this assessment year as well, Respectfully following the same, we uphold the plea of the assesses and direct the Assessing Officer to delete the impugned disallowance of Rs 21,07,52,058.*
>
> *87. Ground no 4 is thus allowed."*

18. In our view, since the issue is directly covered in favour of the assessee in his own case for assessment years for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14, respectfully following the orders passed on the assessee's own case, we hereby allowing this ground of appeal filed by the assessee.

Ground number 3: Addition on account of trademark registration fees and patent fees of ₹ 10,35,19,784/-:

19. During the year, the assessee had debited amount of ₹ 12,62,44,079/- comprising of trademark registration fees and patent fees. The assessee submitted that registration of trademarks was done to enable the assessee company speedy and less-expensive remedy against infringement of trademarks. Similarly, patented registration fees was incurred to grant the assessee company exclusive right to prevent others from making use of the patented invention without permission. Since both expenses were incurred wholly and exclusively for the purpose of the assessee's business, the same are allowable under section 37 of the Act. However, the AO disallowed the above expenses as being "capital expenditure" and after allowing depreciation on such disallowances, added the residual difference amounting

to ₹ 10,35,19,784/-as income of the assessee during the year under consideration.

20. Before us, the counsel for the assessee submitted that the issue is decided by the ITAT in favour of the assessee, the assessee's own case for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14. The counsel for the assessee further submitted that the Gujarat High Court has further decided that no question of law arises on this point in its orders for assessment years 2006-07 to 2008-09. In response, the Ld. DR relied upon the observations made in the assessment order.

21. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the ITAT, Ahmedabad ruling for assessment year 2013-14 on this issue:

"88. In ground no, 5, the assesses has raised the following grievance:

That the learned Assessing Officer erred in law and on. facts in making an addition of Rs, 6,95,33,042/- by holding that the Trademark Registration Fees and Patent Registration Fees incurred by the appellant were capital in nature, merely eligible for depreciation u/s. 32 and liable to be disallowed as business revenue expenses.

89. Learned representative fairly agree that as an identical issue has come up before us in the appeal for the assessment year 2012-13, whatever we decide in the assessment year 2012-13 will apply mutatis mutandis toy this assessment year as well. As observed earlier in. this consolidated, we have decided this issue in favour of the and observed, as follows:

46. To adjudicate on this grievance as well, only a few material facts need to be taken note of, During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee was debited Rs 56,69,871 under the head trademark registration expenses and Rs 9,83,49,671 as patent registration expenses. The Assessing Officer was of the opinion that these expenses were capital in nature as was held by his predecessors all along. While he was alive to the fact that this issue is decided in favour of the assessee by the appellate authorities, he was equally alive to the fact that orders have - riot been accepted by the income tax authorities and the matter in thus in appeal before the higher authorities. It was in this backdrop that he treated the aggregate amount of Rs. 10,40,19,342 as capital expenditure, but allowed depreciation of Rs. 1,79,92,917 thereon, and disallowed net amount of Rs. 8,60,25,625/-. The assessee did raise objection against this treatment but without any success. The assessee is now in appeal before us.

47. Having heard the rival submissions and having perused the material on record, we are of the considered view that the assessee does indeed deserve to succeed on this point for the short reason that even the Assessing Officer has admitted that the issue is covered by the binding judicial precedents in assessee's own case and the additions have been made, so to say, keep the issue alive. Learned representatives fairly agree that issue is settled in favour of the assessee by decisions of the coordinate benches in assessee's own case, and Hon'ble High Court has declined to admit appeal against such decision, as in the esteemed views of Their Lordships, no question of law arises front these decisions. The relief granted to the assessee on this point in past has thus achieved finality. In this view of the matter, we uphold the plea of the assessee, and direct the Assessing Officer to treat the product registration expenses and product support service expenses as revenue expenditure^ and to, therefore, delete the impugned disallowance of Rs 9,84,01,831. The assessee gets the relief accordingly.

90. We see no reasons to take any other view of the matter than the view so taken by us for the immediately preceding assessment year,

and observations made therein will apply mutatis mutandis for this assessment year as well. Respectfully following the same, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs 6,95,33,042

91. Ground no 5 is thus allowed."

22. In our view, since the issue is directly covered in favour of the assessee in his own case for assessment years for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14, respectfully following the orders passed in the assessee's own case by the ITAT, Ahmedabad, we are hereby allowing this ground of appeal filed by the assessee.

Ground number 4: addition of ₹ 32,43,28,000/- as non-eligible expenditure under section 35(2AB) of the Act:

23. The facts in relation to this ground of appeal are that the AO and DRP have made addition on the ground that the amount allowed by the DSIR was less as compared to deduction claimed by the assessee. The counsel for the assessee relied on the case of Crompton Greaves Ltd 111 Taxman.com 338 (ITAT Mumbai). In response, the DR relied on the observations made by the AO and the DRP.

24. We have heard the rival contentions and perused the material on record. The Pune ITAT in the case of **Cummins India Ltd. v. DCIT [2018] 96 taxmann.com 576 (Pune - Trib.)** made the following relevant observations, while deciding the issue on identical facts in favour of the assessee:

"Clause (b) to sub-rule (7A) has been substituted by IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016, under which the prescribed authority has to furnish electronically its report (i) in relation to approval of in-house R & D facility in part A of form No.3CL and (ii) quantifying the expenditure incurred on in-house R & D facility by the company during the previous year and eligible for weighted deduction under sub-section 2AB of section 35 of the Act in part B of form No.3CL. In other words the quantification of expenditure has been prescribed vide IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016. Prior to this amendment, no such power was with DSIR i.e. after approval of facility.

Under the amended provisions, beside maintaining separate accounts of R & D facility, copy of audited accounts have to be submitted to the prescribed authority. These amendments to rules 6 and 7a are w.e.f. 01.07.2016 i.e. under the amended rules, the prescribed authority as in part A give approval of the facility and in part B quantify the expenditure eligible for deduction under section 35(2AB) of the Act.

The issue which is raised before us relates to pre-amended provisions and question is where the facility has been approved by the prescribed authority, can the deduction be denied to the assessee under section 35(2AB) of the Act for non issue of form No.3CL by the said prescribed authority or the power is with the Assessing Officer to look into the nature of expenditure to be allowed as weighted deduction under section 35(2AB) of the Act. The first issue which arises is the recognition of facility by the prescribed authority as provided in section 35(2AB) of the Act.

…..The amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted

> *deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below."*

25. We also note that the ITAT Pune Tribunal in the case of **DCIT v. Force Motors 133 taxmann.com 71 (Pune - Trib.)** while dealing with identical issue held that prior to amendment in 2016, section 35(2AB) does not provide any methodology of approval to be granted by prescribed authority vis-a-vis expenditure from year to year and therefore, order of Assessing Officer in curtailing expenditure and consequent weighted deduction claimed under section 35(2AB) on ground that deduction cannot exceed claims approved by prescribed authority, had rightly been set aside. The Pune ITAT, while passing the order, observed as below:

> *"10. Therefore, there is categorical finding given by the Tribunal that the amendment brought in by the IT (Tenth Amendment) Rules w.e.f. 1-7-2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No. 3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure/methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act. The case before us pertains to FY 2013-14 relevant to AY 2014-15 and therefore, facts and circumstances are absolutely identical in assessee's case also. Therefore, respectfully, following the order of the Tribunal (supra.) on the same parity of reasoning and under same set of facts and circumstances, we find no reason to interfere with the findings of the Ld. CIT(Appeal) and relief provided to the assessee is hereby sustained. Thus, grounds raised by the Revenue are dismissed."*

25.1 The Kolkota Tribunal in recent case of **DCIT v. STP Ltd.[2021] 125 taxmann.com 97 (Kolkata - Trib.)** held that Prior to 1-6-2016, only requirement to claim deduction under section 35(2AB) was to receive recognition from prescribed authority, since said recognition was obtained by assessee on 26-3-2013, deduction could not be denied merely because prescribed authority failed to send intimation in Form 3CL in respect of expenditure incurred by R&D unit for relevant assessment year.

25.2 In the case of **ACIT v. Crompton Greaves Ltd.[2019] 111 taxmann.com 338 (Mumbai - Trib.)**, the Mumbai Tribunal held that since the mandate of approval of quantum of expenditure had been put in place only with effect from 1-7-2016, hence, non-approval of quantum of expenditure for assessment year 2009-10 did not entitle Assessing Officer to make disallowance under section 35(2AB) of the Act. The Mumbai ITAT in the above case made the following observations:

> *"9. The operative phrase here is "on in-house research and development facility as approved by the prescribed authority ……", the word "facility" has been hereby show us to emphasis the point that it is the unit which requires approval of the prescribed authority under this provision. Further, in the memorandum, explaining the provision of section and the notes on the clauses issued at the time of insertion of section 35(2AB) in the Act, copies of both of which have been filed on record before us by the assessee, it has been clearly provided that the deduction would be available to the assessee's having an approved in-house R & D facility by the prescribed authority. Undisputedly, there is no mention or approval of the quantum of expenditure.*
>
> *10. Then, as observed by the Ahmedbad Bench of the Tribunal in the case of Sun Pharmaceutical Industries Ltd. v. Pr.CIT [2017] 77 taxmann.com 202/162 ITD 484 as approved by the Hon'ble Gujarat*

> *High Court vide its decision reported at 250 taxmann 270, it has been held that the objective of Form 3CL is limited to the forwarding of the intimation of the approval of the unit; that Form No. 3CL is a mere report for intimation of approval of R & D facility. In this regard, as rightly pointed out, such aspect stands confirmed by sub-rule (7A) of Rule 6 of Income Tax Rules, as within subsisting (now amended w.e.f. 01.07.2016), to provide for quantification of expenditure as well. The Finance Act, 2015 as amended to sub section (3) of section 35 w.e.f. 01.04.2016, providing for furnishing of reports in the manner to be prescribed. It is, thus, w.e.f. 01.04.2016 that the provision has been made for approval of quantum of expenditure, for the first time."*

25.3 Again, the Mumbai Tribunal in the case of **Omni Active Health Technologies Ltd. v. ACIT [2020] 117 taxmann.com 229 (Mumbai - Trib.)** held that Once in-house R & D facility is recognized by prescribed authority, role of Assessing Officer is to allow expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB).

25.4 The Bangalore Tribunal in the case of **Provimi Animal Nutrition India Pvt. Ltd. v PCIT [2021] 124 taxmann.com 73 (Bangalore - Trib.)**held that prior to 1-7-2016, Form 3CL granting approval by prescribed authority in relation to quantification of weighted deduction under section 35 (2AB) had no legal sanctity and it was only with effect from 1-7-2016 with amendment to rule 6(7A)(b) that quantification of weighted deduction under section 35(2AB) has significance.

26. In our view, on a perusal of the various other Rulings cited above, the position is clear that prior to amendment introduced w.e.f. 01/07/2016, the deduction u/s 35(2AB) of the Act would be available to an assessee having an approved in-house R&D facility by the prescribed Authority Act and

there is no mention of approval of the 'quantum' of expenditure in the law as it stood prior to that date. The mandate of quantification of expenditure has been put in place only w.e.f. 01.07.2016. In view of the above observations, we allow this ground of appeal of the assessee.

27. In the result, appeal of the assessee is allowed in respect of Ground Number 4.

Ground number 5: eligibility for weighted deduction under section 35(2AB) of the Act in connection with R&D expenses in respect of clinical trial and bio-equivalence study of ₹ 38,98,08,000/-

28. The facts in relation to this ground of appeal are that the AO and DRP confirmed disallowance under section 35(2AB) of the Act in connection with R&D expenses in respect of clinical trial and bio-equivalence study of ₹ 38,98,08,000/- on the ground that the above expenses have been incurred outside the approved in-house R&D facilities under section 35(2AB) of the Act.

29. Before us, the counsel for the assessee submitted that the issue is decided by the ITAT in favour of the assessee in the assessee's own case for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14. The counsel for the assessee further submitted that the Gujarat High Court has further decided that no question of law arises on this point in its orders for assessment years 2006-07 to 2008-09. In response, the Ld. DR relied upon the observations made in the assessment order.

30. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the ITAT, Ahmedabad ruling for assessment year 2013-14 on this issue:

> *"101. In ground no. 7, the assessee has raised the following grievance:*
>
> *That the learned Assessing Officer erred in, law and on facts in making an addition of Rs. 67,00,09,438 by holding that the appellant was not entitled to the weighted deduction for expenditure on Scientific Research u/s 35(2 AB) in respect of Clinical Trial and Bio-equivalence Study.*
>
> *102. Learned representative fairly agree that as an identical issue has come tip before us in the appeal for the assessment year 2012-13, whatever we decide in the assessment year 2012-13 will apply mutatis mutandis for this assessment year as well As observed earlier in this consolidated, we have decided this issue in favour of the and observed as follows:*
>
> > *51. The facts relating to this ground of appeal are also somewhat similar, in many respects, to the preceding two grounds of appeal. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee was debited Rs. 39,39,31,000* ***on account of research and development expenses incurred outside inhouse approved facilities, and that the assessee has claimed enhanced deduction @ 200% in respect of the same.*** *The Assessing Offices was of the opinion that these expenses were to be excluded from enhanced deduction trader section 35(2AB) as the expenses were incurred outside of the approved inhouse facilities, as was held by Ms predecessors all along. While he was alive to the fact that this issue is decided in favour of the assesses by the Tribunal and Hon'ble jurisdictional High Court has not admitted appeal against the same, be was equally alive to the fact that the stand so taken by the Hon'ble Jurisdictional High Court has been reversed by Hon'ble Supreme Court inasmuch as Hon'ble jurisdictional High Court*

has been directed to adjudicate on the matter on merits. It was in this backdrop that he proposed to disallow Rs 39,3931,000 on account of R&D expenses. The assessee did raise objection against this treatment but without any success. The assesses is now in appeal before us.

52. Having heard the rival submissions and having perused the material in record, we are of the considered view that the assesses does indeed deserve to succeed on this point for the short reason that even the Assessing Officer has admitted that the issue is covered by the binding judicial precedents in assesses own case and the additions have been made, so to say, keep the issue alive in the hope that Hon'ble jurisdictional High Court, in this round of proceedings, may decide the issue in favour of the revenue. That does not, however, dilute the binding nature of judicial precedents, as now, by the coordinate benches of this Tribunal. Learned representatives fairly agree that this issue is settled in favour of the assessee by decisions of the coordinate benches in assessee's own case, These decisions hold good as on now, and we are respectfully bound by those decisions as on now, Of course,, whatever we hold does, and shall always, remain, subject to what Hon'ble Courts above decide- as and when that happens, In this view of the matter, we uphold the plea of the assessee, and, direct the Assessing Officer to delete the impugned disallowance of Rs 39,39,31,000. This disallowance must stand deleted as on now. The assessee gets the relief accordingly.

103. We see no reasons to take any other view of the matter than the view so taken by us for the immediately preceding assessment year/ and observations made therein will apply mutatis mutandis for this assessment year as well. Respectfully following the same, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs 67,00,09,138.

104. Ground no 7 is thus allowed."

31. In our view, since the issue is directly covered in favour of the assessee in his own case for assessment years for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14, respectfully following the orders passed on the assessee's own case, we hereby allowing this ground of appeal filed by the assessee.

Ground number 6: disallowance of depreciation on Hummer car of ₹ 6,60,491/-

32. The facts of this case are that on verification, during the course of assessment proceedings, the AO observed that Hummer vehicle is owned by the director of the company and the above asset is not owned by the assessee company. Accordingly, the AO held that the claim of depreciation on such assets is not in accordance with section 32 of the Act. The DRP confirmed disallowance made by the AO.

33. Before us, the counsel for the assessee submitted that the issue is decided by the ITAT in favour of the assessee, the assessee's own case for assessment years 2009-10 and 2010-11 and assessment years 2012-13 and 2013-14. The counsel for the assessee further submitted that the Gujarat High Court has further decided that no question of law arises on this point in its orders for assessment years 2009-10 and 2010-11. He also submitted that the Honourable Supreme Court of India dismissed the SLP of the Department for assessment year 2010-11 and the order of the High Court has attained finality. In response, the Ld. DR relied upon the observations made in the assessment order.

34. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the ITAT, Ahmedabad ruling for assessment year 2013-14 on this issue:

> *"105. In ground no. 8, the assessee has raised the following grievance:*
>
> ***That the learned Assessing Officer erred in law and on facts in disallowing depreciation of Rs. 7,77,048/- on the cost of Hummer H2 imported motor car, alleging that the vehicle was owned by the Director and not by the appellant.***
>
> *106. Learned representatives fairly agree that this issue is also covered, in favour of the assessee, by a coordinate bench decision in assessee's own case for the assessment year 2010-11, In the said decision, the coordinate bench has, inter alia/ observed as follows:*
> *130. In ground No. 7, the Assessing Officer has raised the following grievance:*
>
> > *The DRP has erred in allowing depreciation of Rs.12,65,293/- on Hummer Car despite the fact that the same was in the name of the Director and there was no evidence to show that the same was used wholly and exclusively for the purpose of business. The provisions of section 32 were therefore not satisfied.*
> >
> > *131. As far as this grievance of the Assessing Officer is concerned, there is no dispute that the car was not legally owned by the assessee company but by the director, even though the payment for acquisition o£ this car was made by the assessee company and the car is used by the company. The beneficial ownership thus rests with the assessee company. The depreciation was proposed to be declined by the Assessing Officer mainly on the ground that the assessee did not own the vehicle in question. However, the assessee succeeded in the DRP in his objection to this proposal. We have noted that the DRP has given a categorical finding to the effect that the car*

> *was used for the purpose of business and the Assessing Officer has himself allowed the running and maintenance expenses of this car. It has also been noted that the registration of car in the name of driver was a matter of convenience as it gave advantage to the assessee in terms of road tax. On these facts, as held by the t>RP$_7$ the mere fact that the cat was not legally owned by the assesses company- particularly when beneficial ownership of this vehicle is not even in dispute,, the depreciation on car cannot be declined. Aggrieved, assessee is in appeal before us.*
>
> *132. Having heard the rival contentions and having perused the material on record, we are not inclined to disturb very well reasoned findings of the DRP and the conclusions arrived at by the DRP. Once it is not in dispute that the vehicle was owned? in substance, by the assessee and the vehicle was used f 01 the purposes of its business, there cannot be any legally sustainable reasons for declining the depreciation.....*
>
> *107. We see no reasons to take any other view of the matter than the view so taken by us, in assessed a own case, for the preceding year. We, therefore, uphold the plea o£ the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs 7,77,048 on account of depreciation on Hummer car. The assessee gets the relief accordingly.*
>
> *108. Ground no. 8 is thus allowed."*

35. In our view, since the issue is directly covered in favour of the assessee in his own case for assessment years 2009-10 and 2010-11 and assessment years 2012-13 and 2013-14, respectfully following the orders passed on the assessee's own case, we hereby allowing this ground of appeal filed by the assessee.

Ground number 7: Adjustment of ₹ 14,56,85,632/- in respect of disallowance under section 14A for computation of book profits under section 115JB

36. The brief facts in relation to this ground of appeal are that in the return of income, income under section 115JB of the Act has been shown by the assessee at ₹ 295,48,98,521/-. The AO was requested to show cause as to why the expenses disallowed under section 14A of the Act should not be added back for the purpose of profits under section 115JJ of the Act. The assessee submitted that the issue has been covered in favour of the assessee by the order of the ITAT, Ahmedabad in the assessee's own case for assessment year 2006-07 to assessment year 2010-11. The AO however rejected the assessee's argument on the ground that the Department is in appeal against the aforesaid orders cited by the assessee in its own favour. Accordingly, the disallowance under section 14A of the Act amounting to ₹ 14,56,85,632/- was added in computing book profit under section 115 JB of the Act by the AO.

37. Before us, the counsel for the assessee submitted that the issue has been conclusively decided in favour of the assessee by the ITAT to in the assessee's own case by the ITAT for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14. In response, DR relied upon the observations made by the AO and DRP.

38. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of the ITAT, Ahmedabad ruling for assessment year 2013-14 on this issue:

"109. Ground no. 9, the assessee has raised the following grievance:

That the learned Assessing Officer erred in law and on facts in making an adjustment of Rs. 18,77,51,234/- to respect of disallowance u/s. 14A for purposes of computation of book profit u/s. 115JB.

110. As regards this grievances of the assessee, learned representatives fairly agree that the issue is covered, in favour of the assessee, by a coordinate bench in assessee's own case for the assessment year 2008-09, which in turn has followed the assessment years 2006-07 and 2007-8. The DRP itself has noted this factual position, and yet confirmed the action of the Assessing Officer, in making this adjustment, so as to keep the issue alive. Aggrieved, the assessee is in appeal before us.

*111**. Having heard the rival submissions and having perused the material on record, we are of the considered view that the assesses does indeed deserve to succeed on this point for the short reason that even the Assessing Officer has admitted that the issue is covered by the binding judicial precedents in assessee's own case and the additions have been made, so to say, keep the issue alive.** Learned representatives fairly agree that this issue is settled in favour of the assessee by decisions of the coordinate benches in assessee's own cases. In this view of the matter, and respectfully following the coordinate benches, we uphold the plea of the assesses and direct the Assessing Officer to delete the aforesaid adjustment of Rs 14,21,33,753. The assessee gets the relief accordingly.*

112 Ground no, 11 is thus allowed. No other ground was pressed before us."

39. In our view, since the issue is directly covered in favour of the assessee in his own case for assessment years 2006-07 to 2010-11 and assessment years 2012-13 and 2013-14, respectfully following the orders

passed on the assessee's own case, we are hereby allowing this ground of appeal filed by the assessee.

40. The counsel for the assessee has submitted that he shall not be pressing Grounds 8 to 11 being consequential in nature/not pressed in view of necessary action taken in course of rectification proceedings. Accordingly grounds 8 to 11 of the assessee's appeal are dismissed as not pressed.

41. In the combined result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 14-09-2022

Sd/-	**Sd/-**
(WASEEM AHMED)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad : Dated 14/09/2022

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