THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

Before: Shri TR Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member

ITA No. 53/Ahd/2020 **Assessment Year: 2010-11**		
Cadila Pharmaceuticals Ltd. 708, Corporate Campus, Sarkhej Dholka Road, Bhat, Ahmedabad	Vs	The ACIT, Circle-1(1)(2), Ahmedabad
(Appellant)		(Respondent)

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ITA No. 74/Ahd/2020 **Assessment: Year 2010-11**		
The DCIT, Circle-1(1)(2), Ahmedabad	Vs.	**Cadila Pharmaceuticals Ltd.** 708, Corporate Campus, Sarkhej Dholka Road, Bhat, Ahmedabad
PAN No. : AHMC00381D		
(Appellant)		(Respondent)

Assessee by :	Shri Bandish Soparkar & Shri Parin Shah, A.Rs.
Revenue by :	Dr. Darsi Suman Ratnam, CIT. DR

Date of Hearing	13/06/2024
Date of Pronouncement	01/07/2024

आदेश/ORDER

PER : NARENDRA PRASAD SINHA, AM :

These cross appeals are filed by the assessee and the Revenue against the order of the ld. Commissioner of Income

Tax (Appeals)-4, Ahmedabad (in short 'the CIT(A)') dated 07/11/2019 for the assessment year 2010-11.

2. The brief facts of the case are that the assesse company, M/s Cadila Pharmaceuticals Ltd., is engaged in the business of manufacturing of pharmaceutical products. The return of income for assessment year 2010-11 was filed on 05/10/2010 declaring Nil income. The assessment was completed u/s 143(3) at total income of Rs.5,14,23,000/- by disallowing certain claims made by the Company in the return of income. The assessee had preferred an appeal before the CIT(A) which was decided vide the impugned order. Aggrieved by the order of the CIT(A), both the assessee as well as the Revenue are in appeal before us. We will take up the appeal of the assessee first for adjudication.

ITA No. 53/Ahd/2020

3. The assessee has raised the following grounds in this appeal: -

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming upward transfer pricing adjustment towards interest amounting to Rs 56,88,205/- by adopting rupee loan rate instead of LIBOR linked rate in respect of foreign currency loans advanced to subsidiary.*
>
> *2. On the facts and circumstances of the case and in law the Ld CIT(A) erred in not allowing the additional claim of Rs 60,36,617 made by the Appellant for claiming weighted deduction under section 35(2AB) on gross research and development (R&D) expenditure without reducing contract research income amounting to Rs. 1,20,73,234 from the eligible R&D expenditure."*

4. Ground Number-1: TP adjustment of interest

4.1 The first ground of the assessee is in respect of transfer pricing adjustment towards interest. The assessee has obtained short term loan of

Rs.45 crores from Corporation Bank and Rs.10 crores from Allahabad Bank at the rate of interest of 11.5% and 9.5% respectively. This loan amount was provided as short term financial assistance to its associated enterprise (AE) Satellite Overseas Holding Ltd. to enable the AE to make acquisition related business investment. In return for this financial assistance, the assessee had charged interest of Rs. 2,56,79,344/- from its AE at the average interest rate of 7.08%. In the course of assessment proceeding the matter was referred by the AO to the TPO to ascertain the arm's length price (ALP) of this international transaction. The TPO found that assessee had not recovered the full amount of interest from this AE. Accordingly, the differential amount of interest was considered for adjustment to make the recovery of interest from the AE at arm's length. The adjustment in respect of loan from Corporation Bank and Allahabad Bank was worked out by the TPO as under:-

Corporation Bank: Amount of loan is Rs 45,00,00,000/-

Description	Amount (Rs)
Loan Amount(A)	45,00,00,000
Rate of interest(B)	11.5%
Days(C)	180
ALP Interest(D=[A*B*C]/[100*365]	2,55,20,548
Interest charged(E)	2,16,72,580
Adjustment (F=D-E)	38,47,968

Allahabad Bank: Amount of loan is Rs 10,00,00,000/-

Description	Amount (Rs)
Loan Amount(A)	10,00,00,000
Rate of interest(B)	9.5%
Days(C)	180
ALP Interest(D=[A*B*C]/[100*365]	46,84,932
Interest charged(E)	40,06,764
Adjustment (F=D-E)	6,78,168

In addition, an adjustment of Rs.11,62,068.99/- was also made in respect of further loan of Rs. 9,87,14,044/- advanced to the AE. Thus total adjustment of Rs.56,88,205/- (38,47,968/-+6,78,168/-+11,62,069/-) was made in respect of international transaction of grant of loan and consequent non-charging of interest at ALP. The addition as made by the Assessing Officer/TPO was partly confirmed by the ld. CIT(A).

4.2 Shri Bandish Soparkar, ld. Authorized Representative of the assessee submitted that the average 12 months GBP LIBOR rate for financial year 2009-10 was 1.685% against which the assessee had charged interest at a rate of 7.08% on the outstanding amount during the year. Therefore, the interest charged by the assessee from the AE was at ALP. He further submitted that the cost incurred by the assessee in getting the loan from the third party bank was recovered in full and, therefore, the adjustment made to the interest was not correct. He further submitted that the TPO had wrongly computed the cost of interest to the assessee and had also added the LIBOR (0.79%+4.7%) as consideration for providing the loan which was not correct. According to the ld. A.R. since the assessee had charged more than the LIBOR rate, no further addition could have been made. He relied upon the decision of ITAT, Delhi in the case of *ACIT vs. Uniparts India Ltd. (150 taxmann.com 142*) in this regard.

4.3 The ld. CIT.D.R. on the other hand supported the orders of the Assessing Officer and the ld. CIT(A) in respect of this ground.

4.4 We have carefully considered the rival submissions and the materials available on record. The contention of the assessee is that interest was charged from the AE at a rate of 7.08% as against average 12 months GBP LIBOR rate of 1.685% during the year and therefore, no further TP adjustment was required. The Ld. ITAT has held in the case of *Uniparts* India Ltd. (supra) that the rate of interest on loans advanced by assessee to AEs had to be in accordance with rate of interest prevailing in the country of residence of AEs wherein loan was availed and that the domestic PLR rate could not be applied in respect of loans advanced in foreign currency to AEs situated in USA and Europe. However, this finding was given in the context that the loan in that case was given out of own funds of the assessee.

4.5 There is no dispute to the fact that CUP method is the most appropriate method to ascertain ALP of the international transaction of interest received on loan. Where the transaction was of lending money in foreign currency to its foreign subsidiary, the comparable transaction would be foreign currency tended by unrelated parties. This will be applicable in the situation where the loan is advanced to AE out of its own fund. However, in a case where the loan is advanced to AE out of loan taken from banks, this principle will not apply. In such a situation, the interest paid by the assessee to the banks must be recovered from the foreign AE. In case the interest charged by the assessee from the AE is less than the rate of interest paid to the banks, it would benefit the assessee by shifting profits outside India and principle of BEPS would be applicable to such transactions. Therefore, our approach has to be two-fold to assessee whether the transaction was at ALP:

(i) Where the loan is advanced to AE by obtaining loan from the banks, whether the interest paid by the assessee to the banks was recovered from the AE.

(ii) Where the loan is advanced to AE out of its own funds, whether the interest recovered was in accordance with the rate of interest prevailing in country of residence of the AE.

4.6 There is no dispute to the fact that the loan of Rs.45 crores from Corporation Bank and Rs.10 crores from Allahabad Bank taken by the assessee was utilized for providing short term financial assistance to its AE. In the course of the proceedings before the TPO, it was submitted by the assessee that the entire interest charge incurred on the borrowings made from Allahabad Bank and Corporation bank was recovered in full. In support a copy of the debit note raised on the AE for the said recovery was furnished which is reproduced below:-

ANNEXURE TO DEBIT NOTE TO SATELLITE OVERSEAS HOLDINGS LTD. UK
FOR INTEREST AND OTHER CHARGES
PERIOD: MAR-2009 TO MARCH 2010

SN	Nature	Bank/Institution	CY	STL Amt.	Month	CY	Amount	CY	Amount	Ex. Rate	GL Code
1	Interest on STL	Corporation Bank	INR	450,000,000	Mar-09	USD	4,657.00	INR	234,247	50.3000	69004
					Apr-09	USD	68,729.78	INR	3,515,528	51.1500	69040
					May-09	USD	71,884.27	INR	3,633,750	50.5500	69040
					Jun-09	USD	73,355.16	INR	3,513,712	47.9000	69040
					Jul-09	USD	74,174.10	INR	3,630,822	48.9500	69040
					Aug-09	USD	74,554.87	INR	3,630,822	48.7000	69040
					Sep-09	USD	71,344.14	INR	3,513,699	49.2500	69040
							438,699.31		21,672,580		
2	Interest on STL	Allahabad Bank	INR	100,000,000	Mar-09	USD	3,758.27	INR	189,041	50.3000	69030
					Apr-09	USD	20,327.00	INR	1,039,726	51.1500	69030
					May-09	USD	19,420.91	INR	981,727	50.5500	69030
					Jun-09	USD	19,740.79	INR	945,584	47.9000	69030
					Jul-09	USD	17,378.67	INR	850,686	48.9500	69030
							80,625.64		4,006,764		

4.7 It is found from the above chart that the interest on short term loan from Corporation Bank was Rs. 2,16,72,580/- whereas the interest of STL from Allahabad Bank was Rs. 40,06,764/-. This interest was worked out on the basis of the actual lending period for which the amount was advanced to the AE. The TPO in his working has, however, considered the entire period

of 180 days to work out the ALP interest. The interest from the AE can be charged only for the period for which the amount was actually advanced. The assessee might have obtained the loan from the banks for the entire 180 days period but the loan was advanced to the AE in installments. Therefore, the period for which the loan amount was lying with the assessee, no interest could have been charged from the AE. Hence, the adjustment of Rs. 38,47,968/- in respect of Corporation Bank interest and of Rs. 6,78,168/- in respect of Allahabad Bank interest is not found correct as the amount was not advanced to the AE for entire 180 days period. Therefore, **the TP adjustment of Rs.38,47,968/- and Rs.6,78,168/- in respect of interest is deleted.**

4.8 In addition to the above amounts advanced to the AE out of loan obtained from the bank, the assessee had also granted loan of Rs. 9,87,14,044/- to its AE out of its own funds. The TPO considered six months LIBOR (which was 0.79% for this year) + 4.75% as the comparable uncontrolled price for this transaction and had accordingly worked out the interest required to be charged by the assessee from its AE as under:-

S.no.	Amount (Rs.)	Date of grant of loan	Days till 31.03.2010	Rate of interest	Interest
	A	B	C	D	E=(C/365)*D*100*A
1	25,200	15.10.2009	167	5.54%	638.75
2	1,39,77,000	22.10.2009	160	5.54%	3,39,430.49
3	70,26,000	01.12.2009	121	5.54%	1,29,035.86
4	65,07,900	23.12.2009	98	5.54%	96,801.89
5	1,83,32,820	11.01.2009	79	5.54%	2,19,823.07
6	68,08,500	27.01.2010	63	5.54%	65,104.18
7	2,06,04,119	02.02.2010	57	5.54%	1,78,256.68
8	1,90,40,105	15.02.2010	44	5.54%	1,27,156.60
9	63,92,400	25.03.2010	6	5.54%	5,821.46
TOTAL					11,62,068.99

4.9 The Ld. AR submitted that the addition of Rs.11,62,069/- in respect of adjustment of interest was not adjudicated by the Ld. CIT(A). It is found from the order of the Ld. CIT(A) that he had confirmed the upward adjustment of Rs.38,47,968/- and Rs.6,78,168/- to the interest charged by the assessee to its AE in respect of loans obtained from Corporation Bank and Allahabad Bank. However, the adjustment of Rs.11,62,069/-, the working of which was reproduced at Page No.7 of his order, had not been adjudicated. Therefore, **the matter is set aside to the file of the AO for re-adjudication of adjustment of Rs.11,62,069/- in respect of interest on loan of Rs.9,87,14,044/- advanced to the AE ought of its own fund, on the basis of the principle as enunciated in Para 4.5 of this order.**

4.10 The ground taken by the assessee is allowed in part.

5. Ground Number-2: Deduction u/s 35(2AB)

5.1 The second ground pertains to additional claim of Rs. 60,36,617/- made by the assessee for weighted deduction u/s 35(2AB) of the Act on gross research and development (R&D) expenditure, without reducing contract research income amounting to Rs. 1,20,73,234/- from eligible R&D expense. The ld. A.R. explained that the assessee had made additional claim of Rs.60,36,617/- being 50% of weighed deduction in respect of return towards CRO realization, which was suo moto disallowed by the assessee on a conservative basis. He explained that the assessee had earned certain income from contract research carried for other companies which was reduced from the amount of expense eligible for deduction u/s. 35(2AB) of the Act on a conservative basis. However, the claim for this deduction was

made by the assessee in the course of the assessment proceedings which was not allowed by the AO and which was upheld by the Ld. CIT(A). The ld. A.R. placed reliance on the decision of *Bosch Ltd. 167 ITD 650 and Mircolabs Ltd. 383 ITR 490 (Kar)* in respect of this claim. He further submitted that similar ground was involved in assessee's appeal for A.Y. 2009-10 which was allowed by the Ld. ITAT.

5.2 The ld. CIT-D.R. on the other hand relied on the order of ld. CIT(A).

5.3 We have carefully considered the rival submissions. The ld. CIT(A) has given the finding in respect of this claim of the assessee, which is as under:

> *"8.8 I have considered the contentions of the Appellant. The ARs could not lay their hands on any of the decisions either from ITAT, Ahmedabad or Hon'ble Gujarat High Court. There is also no decision in favour of appellant from any of appellate authorities in assessee's own case. In my opinion, the issue is still evolving and has not reached its finality. In the circumstances, the contention raised by the appellant claiming the weighted deduction u/s. 35(2AB) on gross R&D expenditure without netting off contract R&D income / CRO income from the amount of eligible R&D expenditure, is hereby rejected."*

5.4 It is found that the ld. CIT(A) has not examined the claim of the assessee on merits. As per the provision of section 35(2AB) of the Act any expenditure on scientific research (other than cost of land and building) on in-house research and development facility as approved by the prescribed authority is eligible for weighted deduction. Therefore, the assessee was eligible for deduction of its entire expenditure on scientific expenditure without adjusting the income earned, if any, from such scientific research & development activity. As explained by the assessee, the income from contract research work was reduced from the amount of expense eligible for

deduction u/s. 35(2AB) of the Act. The Assessing Officer is directed to verify this fact and thereafter allow deduction u/s. 35(2AB) of the Act on the gross expenditure on scientific research in accordance with the provisions of the Act. It is seen that this issue was also involved in the assessee's own case for A.Y. 2009-10 which was decided in favour of the assessee by the Co-ordinate Bench of this Tribunal in *ITA No. 52/Ahd/2020 dated 17-04-2024.* The ground taken by the assessee is, therefore, allowed.

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

ITA No. 74/Ahd/2020

6. We now take up the Revenue's cross appeal being ITA No.74/Ahd/2020. At the outset the ld. AR submitted that most of the grounds taken by the Revenue are covered by the decision of the *ld. ITAT, Ahmedabad* in the assessee's own case for the *A.Y. 2008-09 & 2009-10 vide Combined order in ITA No. 51&52/Ahd/2020 and ITA No.73and 76/Ahd/2020 dated 17/04/2024 as well as by the order for the A.Y. 2008-09 2011-12 in ITA No. 848&918/Ahd/2016 dated 11.09.2017.* The ld. CIT-DR while admitting this fact submitted that the Revenue is in appeal before the higher forum and that the facts in respect of some of the grounds were not properly appreciated.

7. The Revenue has raised the following grounds in this appeal:

> *"(1) That the Ld. CIT(A) has erred in law and on facts of the case by deleting the upward adjustment of Rs.6127088/- on account of corporate guarantee tees made by the TPO.*

(2) That the Ld. CIT(A) has erred in law and on facts of the case by ignoring the fact that corporate guarantee is clearly in the nature of an international transactions as defined by the Explanation to Section 92B of the Act.

(3) That the Ld. CIT(A) has erred in law and on facts of the case by ignoring the fact that the guarantor assumes certain risks for the provision of a corporate guarantee which ought to be compensated by way of sharing the benefits accruing from the betterment in conditions accruing as a result of such guarantee.

(4) That the Ld. CIT(A) has erred in law and on facts of the case in ignoring the amended provisions of section 92B of the Act wherein the transaction of guarantee is inserted vide Explanation to provisions u/s 92B of the Act by the Finance Act, 2012 w.e.f. 01.04.2002 thereby covering such transaction under the ambit of International Transaction as defined u/s 92B of the Act for the said Assessment Year,

(5) The CIT(A) has erred in facts and law in deleting the interest disallowance of Rs.99.06.570/- u/s 36(1)(iii) of the Act.

(6) The CIT(A) has erred in facts and law in directing the AO to allow the claim of Rs.2,94.52.415/- being excess claim made by the assessee over the amount approved by DSIR

(7) The CIT(A) has erred in facts and law in allowing the additional claim of Rs.70,14,434/- which had been disallowed by the assessee suo-moto and which had never been examined by the AO

(8) The CIT(A) has erred in facts and law in directing the AO to allow depreciation on R&D assets of Rs. 10.53.64.250/- ignoring that 100% deduction had already been claimed and without any verification of claim by the AO notwithstanding that such claim was not made in the ROI.

(9) The CIT(A) has erred in facts and law in deleting the addition of Rs. 68.96,075/- and directing the AO to allow depreciation thereon.

(10) The CIT(A) has erred in facts and law in directing the AO to allow additional claims without appreciating that such claims have not emanated from the assessment order.

(11) The CIT(A) has erred in facts and law in deleting the product registration expenses of Rs. 1,76,84,264/- which are capital in nature.

(12) The CIT(A) has erred in facts and law in restricting the addition of Rs. 72,74,923/-made by the AO u/s 14A to Rs.5,208/-.

(13) The CIT(A) has erred in facts and law in directing the AO to allow additional claim of withdrawal of suo-moto disallowance of Rs. 2,82,07,492/- notwithstanding that no such claim was made in the ROI and does not emanate from the assessment order.

(14) The CIT(A) has erred in facts and law in deleting the disallowance of Rs.94.25.132/-u/s 40(a) (ia) of the Act.

(15) The CIT(A) has erred in facts and law in deleting the foreign currency loss of Rs.29.22.90.000/- which were treated as speculation loss based on the findings in the assessment order.

(16) The CITIA) has erred in facts and law in deleting the adjustment of Rs. 3.54,82.415/- made u/s 115JB of the Act.

(17) The CIT(A) has erred in facts and law in directing the AO to allow weighted deduction @ 150% on expenditure of Rs.25.99.42.442/-

(18) It is, therefore, prayed that the order of Id. CITIA) may be set aside and that of the Assessing Officer be restored."

8. Ground Number-1 to 4: TP adjustment of corporate guarantee fee

8.1 Ground Nos. 1 to 4 pertain to upward adjustment of Rs.61,27,088/- in respect of corporate guarantee fees. The assessee had provided corporate guarantee to its AE but no guarantee fee was charged. The quantum of guarantee provided was Rs.49,41,20,000/-. The assessee did not quantify the benefit accruing to the AE on account of pledge of shares and the guarantee provided by the assessee. The AO had worked out the guarantee fee rate @1.24% on the following basis:

S. No.	*Description*	*Rate (%)*
1.	*Interest rate for the AE before guarantee (A)*	*10.5%*
2.	*Interest rate for AE after guarantee (B)*	*5.54%*
3.	*Interest differential benefit (C=A-B)*	*4.96%*
4.	*Benefit attributable to guarantee being 50% (D=50% of C)*	*2.48%*
5.	*Benefit attributable to the AE being 50% (E=50% of D)*	*1.24%*

Accordingly, guarantee fee of Rs.61,27,088/- was worked out by applying rate of 1.24% and upward adjustment was made on account of Arm's Length Price (ALP) of this international transaction. The Ld. CIT(A) has deleted

this adjustment following the decision of the ITAT in appellant's own case for the A.Y. 2011-12. It was held therein that the corporate guarantee was not an international transaction and, therefore, no adjustment was called for.

8.2 It is a well settled position now that the transaction of furnishing corporate guarantees to overseas AE constitutes an international transaction and would be subject to transfer pricing regulations. The Explanation to Section 92B of the Act defines 'lending or guarantee' as international transaction and by providing corporate guarantee the guarantor assumes certain risks for such provision, for which he ought to be compensated by way of sharing the benefit. The Ld. AR too fairly conceded that the corporate guarantee was an international transaction and adjustment was required to be made. The Ld. CIT-DR has relied upon the decision of this Tribunal in the case of *Intas Pharmaceuticals Ltd. ACIT, [2024] 159 taxmann.com 429 (Ahmedabad-Trib.)* and submitted that following the decision as taken in that case the adjustment for corporate guarantee should be made @ 0.8%. On the other hand, the Ld. AR relied upon the decision in the case of *Rubamin Ltd. vs. DCIT, [2021] 131 taxmann.com 344 (Ahmedabad-Trib.)* and in the case of *Mastek Ltd. vs. DCIT, [2023] 152 taxmann.com 608 (Ahmedbad-Trib.)* and submitted that adjustment may be restricted @ 0.5% only.

8.3 We have considered the rival submissions. It is found that in the case of *Intas Pharmaceuticals Ltd. (supra)*, the assessee itself had accepted to charge the guarantee fee @ 0.8% before the AO in the assessment proceedings, which was upheld by the ITAT. In the instant case, the assessee did not agree to any such adjustment on account of corporate

guarantee. It is also not apparent as on what basis figure of 0.8% was arrived in the case of *Intas Pharmaceuticals Ltd. (supra).* In the case of *Mastek Ltd. (supra),* the issue involved was performance guarantee and not corporate guarantee. Therefore, the facts of that case are found to be distinct and separate. In the case of *Rubamin Ltd. (supra),* the issue involved was guarantee commission and the adjustment was restricted to 0.5% of the guarantee amount, which was on the basis of average rate of commission for the guarantee obtained from Bank. The TP adjustment in international transaction has to be benchmarked on the basis of independent third-party transaction. Therefore, the adjustment of corporate guarantee has to be done in accordance with the guarantee fee paid in respect of third-party transaction and a fair yardstick for such adjustment would be what the assessee would have paid as guarantee commission, if the guarantee was obtained from a bank. Accordingly, the rate of commission charged by the Bank should be applied to determine the ALP. In the case of *Rubamin Ltd. (supra),* the rate of 0.5% of guarantee commission was on the basis of average rate of commission charged by the Banks. Accordingly, we direct that guarantee commission adjustment in this case may be restricted @ 0.5% on the corporate guarantee amount of Rs.49,41,20,000/-. The grounds of Revenue are allowed in part.

9. Ground Number-5: Disallowance u/s 36(1)(iii):

9.1 This ground pertains to disallowance of Rs. 99,06,570/- under Section 36(1)(iii) of the Act on account of interest free advance. The impugned disallowance was made in respect of loans and advances given by the assessee to Casil Health Products Ltd., Apollo Hospitals International Ltd.,

Cadila Infrastructure Ltd., IRM Ltd. and CLP-Biological Ltd., all associated companies of the assessee. The AO found that the assessee was paying huge amount of interest on borrowed funds and accordingly proportionate interest in respect of the funds diverted towards these loans and advances was disallowed. According to the AO, the assessee had failed to substantiate the purpose of business for which the advances were given to associate concerns and that the assessee had diverted its interest-bearing funds as interest free advances. The Ld. CIT(A) deleted the addition following the decision of the ITAT in assessee's own case in A.Y. 2011-12 in *ITA No. 848/Ahd/2016 and 918/Ahd/2016*. He also noted that the appeal filed by the Revenue before the High Court against the above order was dismissed by the Hon'ble Jurisdictional High Court in Tax Appeal No.200-201 of 2018 vide order dated 04.04.2018. He further noted that the assessee had sufficient interest free funds to make business advances to its sister concerns. The Ld. CIT-DR was unable to controvert any of the factual findings as recorded by the Ld. CIT(A). The Ld. AR, on the other hand, supported the order of the Ld. CIT(A).

9.2 We have considered the rival submissions. The AO had made the disallowance of interest on the assumption that interest bearing funds were utilized for advancing interest free amounts to sister concern. However, no material has been brought on record to establish this nexus. On the other hand, the assessee has contended that it had sufficient interest free funds which were utilized for making advances to its sister concerns. We do not find any merit in the addition as made by the AO. An identical issue was involved in the A.Y. 2011-12, which was decided against the Revenue by the Co-ordinate Bench of this Tribunal as already referred earlier. We,

therefore, do not find any reason to interfere with the order of Ld. CIT(A) deleting the disallowance of interest under Section 36(1)(iii) of the Act amounting to Rs.99,06,570/-. The ground taken by the Revenue is dismissed.

10. <u>Ground Number- 6, 7 & 17: Disallowance u/s 35(2AB) of the Act:</u>

10.1 These three grounds pertain to claim of the assessee u/s 35(2AB) of the Act, hence, are dealt together.

10.2 Ground No.6 is regarding excess claim of Rs.2,94,52,415/- under Section 35(2AB) of the Act over the amount approved by the DSIR. The assessee had claimed weighted deduction of Rs.38,99,13,663/- which was 150% of actual expenses of Rs.25,99,42,442/- on account of Research and Development (R&D) expenditure. The AO found that the DSIR had approved total cost of Rs.2112.84 lacs only in respect of in-house R&D expenditure. The AO, therefore, disallowed the differential amount of Rs.2,94,52,415/- by concluding that deduction was admissible only if such expenditure was approved by the DSIR. The Ld. CIT(A) deleted this addition following the decision of the ITAT in assessee's own case for A.Y. 2011-12 (supra).

10.3 We do not find any merit in the ground as taken by the Revenue. The AO had held that deduction u/s 35(2AB) is admissible only if such expenditure is approved by DSIR. We find that at the relevant point of time, there was no requirement of law that R&D expenditure should be approved by the DSIR. The provision of section 35(2AB) of the Act was amended

w.e.f. 01.04.2016 whereby the quantum of eligible expenditure incurred on in-house research and development facility was required to be quantified by the prescribed authority i.e. DSIR. Prior to 01-04-2016, there was no such requirement for quantification of the eligible expenditure by the DSIR for claiming the deduction. Merely because DSIR had quantified such expenditure in the current year, which is prior to 01-04-2016, the same was not binding on the revenue authorities. Therefore, the Revenue was not correct in restricting the deduction u/s. 35(2AB) of the Act on the basis of the amount quantified by the DSIR in their approval. The disallowance as made by the AO was not in accordance with the provisions of the Act. Therefore, we do not find anything wrong with the order of Ld. CIT(A) deleting this addition following the decision of Co-ordinate Bench of this Tribunal in A.Y. 2011-12. The ground of appeal raised by the Revenue is dismissed.

10.4 Ground No.7 pertains to additional claim of Rs.70,14,434/- under Section 35(2AB) of the Act. The assessee had made additional claim of Rs.70,14,434/- being 50% of deduction in respect of expenses towards clinical trials carried outside R&D facility, which was suo motto disallowed by the assesse on a conservative basis. This claim was made in the course of assessment proceedings which was not allowed by the AO. The Ld. CIT(A), however, allowed the claim of the assessee following the decision of ITAT in assessee's own case for A.Y. 2011-12. The Ld. CIT-DR submitted that this additional claim of Rs.70,14,434/- was not verified by the AO and, therefore the CIT(A) was not correct in allowing the claim. On the other hand, Ld. AR submitted that this issue was also involved in A.Y. 2009-10 and the additional claim of assessee was allowed to the assessee.

10.5 We have considered the rival submissions. There is no dispute to the fact that additional claim of weighted deduction under Section 35(2AB) of the Act in respect of expenses towards clinical trials carried outside R&D facility was consistently allowed by the Co-ordinate Bench of this Tribunal in A.Y. 2011-12 as well as in A.Y 2009-10 (supra). Therefore, we do not find anything wrong with the order of the Ld. CIT(A) allowing this claim in this year. The only issue is about verification of actual expenses towards clinical trials carried out outside R&D facility. This issue is not found discussed by the AO in the assessment order and verification of this expense doesn't appear to have been made. Therefore, the matter is set aside to the file of the AO for limited purpose of verification of actual expense incurred on clinical trials carried out outside R&D facility. On verification, the claim of the assessee should be allowed as directed above. The ground is treated as dismissed for statistical purpose.

10.6 Ground No.-17 pertains to allowing of weighted deduction under Section 35(2AB) of the Act @150% on expenditure of Rs.25,99,42,442/-. As mentioned earlier the assessee had claimed weighted deduction of Rs.38,99,13,663/- (150%) under Section 35(2AB) of the Act on expense of Rs.25,99,42,442/- on R&D expense. In the assessment, the AO disallowed the claim of the assessee to the extent of Rs.3,63,48,490/-. The assessee has taken separate grounds against these disallowances. While deciding those grounds, the Ld. CIT(A) had observed as under:

> *"8.9 Also, it is observed that the AO committed error in the computing the assessed total income by granting only 100% deduction instead of weighted 150% deduction under section 35(2AB) of the Act. Therefore, I hereby direct AO to allow weighted deduction of 150% on entire eligible expenditure of Rs.259,942,442/-as certified by auditors."*

The Revenue is in appeal against this direction.

10.7 There is no dispute with the fact that the assessee was entitled to weighted deduction of 150% under Section 35(2AB) of the Act in respect of expenses on account of R&D. The finding of the Ld. CIT(A) that the AO had committed an error in granting this deduction @ 100% only is found to be correct. **In computation of income, the AO had considered deduction under Section 35(2AB) of the Act at Rs.25,99,42,442/- only, which was 100% of R&D expenses, whereas, the claim made by the assessee was Rs.38,99,13,663/- @ 150% of the expense.** Therefore, the Ld. CIT(A) had rightly directed the AO to allow weighted deduction @ 150% of the expense of R&D. We do not find anything wrong with the direction of the Ld. CIT(A). Therefore, the ground taken by the Revenue is dismissed.

11. Ground Number- 8 to 10: Depreciation on R&D Assets:

11.1 Ground Nos. 8 to 10 pertain to depreciation on R&D assets. It was explained that assets amounting to Rs.10,53,64,250/- were removed out of the R&D facility in A.Y. 2009-10. The entire cost of these assets was originally claimed as 100% deduction but was offered as income in the year in which it was removed from R&D facility. Therefore, the assessee was eligible to claim proportionate depreciation on these assets. Accordingly, the Ld. CIT(A) had rightly allowed proportional depreciation on these assets. The AO had also made addition of Rs.68,96,075/- under Section 35(2AB) of the Act towards the additional claim of depreciation made by the assessee in this regard. The Ld. CIT(A) has deleted this addition on the ground that this claim was made during the assessment proceedings and assessee had not claimed the said amount in the return of income, therefore,

no addition was called for. The Ld. CIT-DR submitted that the Ld. CIT(A) had allowed the claim of the assessee and deleted the addition as made by the AO without properly verifying the facts. The Ld. AR, on the other hand, submitted that the entire cost of machinery was offered to tax in A.Y. 2009-10 and, therefore, the assessee was eligible for additional depreciation of Rs.68,96,075/-. The Ld. AR further submitted that the assessee had not claimed this depreciation in the return of income. Therefore, the addition of this claim by the AO resulted into double disallowance.

11.2 We have considered the rival submissions. The facts regarding this claim are not coming out clearly from the assessment order and from the order of the Ld. CIT(A). **The contention of the assessee is that the entire cost of machinery taken out from R&D facility Rs.10,53,64,250/- was offered as income in the A.Y. 2009-10. The AO is directed to verify this fact from the records of A.Y. 2009-10. If the claim of the assessee is found to be correct, then the assessee is entitled to depreciation on this amount and accordingly depreciation on opening WDV of this asset should be allowed to the assessee in this year.**

11.3 As regard disallowance of depreciation of Rs.68,96,075/-, the assessee has contended that this amount was not claimed in the return of income. It appears that this depreciation of Rs.68,96,075/- was claimed as set off in the deduction under Section 35(2AB) of the Act, which was disallowed by the AO. This claim of the assessee is not found to be correct. Once the assets are taken out of R&D facility, the depreciation thereon can't be set off or adjusted with the deduction u/s 35(2AB) of the Act. The AO should first verify as to whether the addition of fixed assets of Rs.10,53,64,250/-, which

was removed from R&D facility in A.Y. 2009-10, was taken to the block of assets in that assessment year. If the assets were not taken to block of assets, then the depreciation on this asset could not have been part of the depreciation claim in the return of income. The AO may also verify as the how the claim of this additional depreciation of Rs.68,96,075/- was made by the assessee. **There is no dispute that if the assets were not capitalized to block of assets, the assessee is entitled for separate claim of depreciation on these assets which should be worked out on the reduced WDV for this year.** The AO should carry out the verifications as directed above and should allow the claim of the assessee, if found correct. The grounds are allowed for statistical purposes.

12. <u>Ground Number- 11: Product Registration Expense:</u>

12.1 Ground No.11 pertains to product registration expenses of Rs.1,76,84,264/. The AO treated this expenditure as capital in nature and allowed depreciation thereon. The Ld. CIT(A) deleted the addition following the decision of the ITAT in assessee's own case in the A.Y. 2011-12. The Ld. AR submitted that this issue was also involved in the A.Y. 2008-09.

12.2 We find that the Co-ordinate Bench of this Tribunal in the assessee's own case for AY 2008-09 & 2009-10 and also in A.Y.2011-12 (supra) had upheld the findings of the Ld. CIT(A) that product registration expense was a revenue expenditure. In fact, appeal of the Revenue on this issue was also dismissed by the Hon'ble High Court in Tax Appeal No. 200-201 of 2018 vide order dt. 4.4.2018. We, therefore, do not find any reason to interfere

with the order of the Ld. CIT(A) deleting the disallowance of product registration expense of Rs.1,76,84,264/-. The ground of the Revenue is dismissed.

13. Ground Number- 12 & 13: Disallowance u/s 14A

13.1 Ground No.12 pertains to restriction of addition of Rs.72,74,923/- made under Section 14A of the Act to Rs.5,208/- only by the Ld. CIT(A). It is found that the Ld. CIT(A) has restricted the disallowance under Section 14A of the Act to Rs.5,208/- equal to the exempt income earned during the year. The Ld. CIT(A) has followed the decision of the Tribunal on this issue in assesse's own case in the earlier years (supra). It is a settled position that the disallowance u/s 14A of the Act can't exceed the exempt income earned. We, therefore, do not see any reason to interfere with the order of the Ld. CIT(A) restricting the disallowance under Section 14A of the Act to the extent of exempt income earned by the assessee following the decision of the Co-ordinate Bench of this Tribunal on this issue in the earlier years. The ground raised by the Revenue is dismissed.

13.2 Ground No.13 pertains to additional claim of Rs.2,82,07,492/- suo motto disallowed by the assessee under Section 14A of the Act. It is found from the assessment order that the AO has worked out total disallowance of Rs.3,54,82,415/- under Section 14A r.w.s. Rule 8D. Since the assessee had suo motto disallowed Rs.2,82,07,492/- in the computation of income, the AO had made addition of differential amount of Rs.72,74,923/- only in the assessment order. As already discussed earlier in Ground No.12, the disallowance under Section 14A was restricted by the CIT(A) to Rs.5,208/-

only i.e. equal to the exempt income earned during the year. In view of this fact, the assessee's additional claim of withdrawal of suo motto disallowance Rs.2,82,07,492/- made in the computation of income was allowed by the Ld. CIT(A). The Ld. CIT-DR contended that this issue does not emanate from the assessment order. The Ld. AR, on the other hand, submitted that identical issue was involved in the A.Y. 2008-09 and the relief was granted by the Ld. ITAT on this ground.

13.3 We have carefully considered the rival submissions. The contention of the Revenue that this relief doesn't emanate from the assessment order is not found correct. The AO had given a categorical finding in the assessment order that the assessee had suo motto disallowed Rs.2,82,07,492/- in the computation of income. Therefore, only addition of net amount of Rs.72,74,923/- was made by the AO. When the disallowance under Section 14A of the Act has been restricted to Rs.5,208/- only, the addition of Rs.2,82,07,492/- as made by the assessee in the computation of income was not justified and, therefore, the Ld. CIT(A) had rightly allowed the claim of the assessee. We don't find anything wrong with the direction of the ld. CIT(A). In view of these facts, the ground taken by the Revenue is rejected.

14. Ground Number- 14: Disallowance u/s 40a(ia):

14.1 Ground No.14 pertains to disallowance of Rs.94,25,132/- under Section 40(a)(ia) of the Act. The AO found that assessee had made following payments to non-residents, which was in the nature of fees for technical services (FTS) and on which TDS was not deducted under Section 195 of the Act.

Payment	***Amount (In)***
Legal Fees (International)	*11,52,259/-*
Legal Fees (Chemicals)	*43,43,345/-*
Legal Fees (Formulation)	*37,41,683/-*
Consultancy Exp (Chemicals)	*1,87,845/-*
Total	***94,25,132/-***

The AO held that the above payments made to non-residents was FTS which was liable to TDS and accordingly he disallowed the entire amount under Section 40(a)(ia) of the Act. The Ld. CIT(A) held that these payment to non-residents were in the nature of lodging and boarding expenses, technical services and reimbursement of out of pocket expenses and that such reimbursement will not be subject to withholding as per the Act or the DTAA. He also considered the fact that the services cannot be considered as FTS as the 'make available' clause of the DTAA was not satisfied in this case. Considering these facts, the Ld. CIT(A) deleted the addition. The Ld. CIT-DR submitted that the CIT(A) had deleted the addition without properly appreciating the facts of the case. On the other hand, the Ld. AR submitted that this issue was also involved in the A.Y. 2008-09 and the Ld. ITAT had granted relief on this ground.

14.2 We have considered rival submissions. It is found that identical issue was involved in the assessee's own case in A.Y. 2008-09 and the Co-ordinate Bench of this Tribunal in ITA No.73/Ahd/2020 dated 17.04.2024 had given the following finding:

> *"54. A bare perusal of the above would reveal that the disallowance was deleted by the ld.CIT(A), noting that the services rendered by the afore-noted entities all based in USA were characterized by the AO to be in the nature of fee for technical services, and further noting that the DTAA with USA restricted the scope of*

taxability of FTS in the source country only with respect to such services, which made available "any technical knowledge, skill or know-how". The ld. CIT(A) noted that the assessee having obtained legal or professional services towards registration of products in foreign country, it did not involve any technical knowledge, skill or know- how, and therefore, the same is not liable to tax in India. The ld. DR was unable controvert any of the findings of the ld. CIT(A) as above, both with respect to the fact of services rendered not involving any transfer of technical knowledge, skill or know-how etc. as also with respect to Article 12 of the DTAA between India and USA restricting the scope of FTS such services which made available technical knowledge, skill or know-how etc.

55. In view of the same, we see no reason to interfere in the order of the ld. CIT(A) deleting the disallowance made under section 40(a)(i) of the Act to the tune of Rs.30,68,538/- pertaining to legal and professional services rendered from entities based in USA."

14.3 It is found that the issue involved in the current year is identical. Therefore, following the decision of the Co-ordinate Bench as referred above, we do not find any reason to interfere with the order of the Ld. CIT(A) on this issue. The ground taken by the Revenue is dismissed.

15. Ground Number- 15: Foreign Currency Loss:

15.1 Ground No.15 pertains to deletion of foreign currency loss of Rs.29,22,90,000/-, which was treated as speculation loss in the assessment order. The Ld. CIT(A) had allowed the relief to the assessee following the decision of ITAT in assessee's own case for A.Y. 2011-12 in ITA No.848/Ahd/2016. The Ld. CIT-DR submitted that facts of the case were not correctly appreciated in the earlier order for A.Y. 2011-12. In this regard, he has made following submissions vide letter dated 19.06.2024:

"Brief Note on the ground of foreign currency loss of Rs. 29.22,90,000/-
The AO made an addition with respect to foreign currency loss amounting to Rs. 29,22,90,000/- on account of it being a speculative loss which was deleted by Ld. CIT(A) based on decisions of Hon'ble ITAT in previous assessment years in Assessee's own case.

The assessee has cited few case laws in support of it's argument that the said loss is not a speculative loss rather a business loss which are as follows:

1) D. Chetan & Co. [2016] 75 taxmann.com 300 (Bombay)

In this case Asssessee was engaged in the business of import and export wherein it undertook forward contracts for the purpose of hedging in course of its normal business activities to cover up losses on account of difference is exchange valuations. It was held that this would not amount to be a speculative activity but instead business activity.

2) Friends and Friends Shipping (P) Ltd - [2013] 35 taxmann.com 553 (Gui)

In this case Assessee was an exporter who had entered into foreign exchange contracts to hedge against loss arising due to fluctuation where in some cases exports could not be executed and assessee had to pay certain charges to banks. It was held that where forward contracts were incidental to assessee's business, loss could not be called speculative in nature.

3). Boderadas Gauridu (P) Ltd [2004] 134 taxman 376 (Bombay)

In this case Assessee was an exporter who had booked foreign exchange in forward market with bank in order to hedge against losses but some contracts failed due to which it had to pay a certain amount which was debited from its P & I account and was claimed as business loss. It was held that such claim was entitled to be deducted in respect of loss suffered by assessee as a business loss.

4) Ssoraimall Nagarmull [1981] 5 taxman 289 (Calcutta)

In this case Assessee was an exporter who had entered into foreign exchange contract for 1 lakhs pounds but could utilize the same for only 55,000 pounds and thereby paid damges representing exchange difference and interest. It was held tat such loss was not speculative but incidental to carrying business and hence business loss.

The facts of the cases cited by assessee are with respect to forward contracts undertaken with banks for losses incurred on export contracts due to either its failure in execution or performance and thus it being incidental to the business of assessee and thereby is considered as a business loss and not a speculative loss.

Whereas, in the present case the currency contract undertaken by the assessee with the State Bank of India (SBI) is on the overall export turnover of the assessee company and not related to any specific sale or purchase transactions. Moreover the assessee company had already made an arrangement with two different banks (Bank of Baroda and Corporation Banki besides SBI to cover the foreign

exchange fluctuation risk on sales and purchase i.e. each and every export bill was booked at the forward rate of exchange for the maturity due date of export documents, whereby the bank credited the amount as per the prevailing rate in the account of assessee as per Exchange Earners Foreign Currency (EEFC) and remitted according to the gain/loss as on date of remittance, this covered the risk to the extent of 200 Crores. Thus, the contract of assessee company with SBI is not based on any export contracts but rather on the total turnover and in addition to such it has already safeguarded the risk of export contracts with the other two banks. Thus, the loss incurred on the total turnover cannot be said to be incidental to the business of the assessee and hence are not business loss but rather speculative loss wherein the contract is settled without actual delivery or transfer of any commodity/scrips.

Moreover, the nature of forward contract as described by AO in Para 9 of his order is in nature of betting rather than hedging. There are conditions laid in the contract on whose fulfilment assessee gets benefit in multiple of I million USD and on failure to fulfil it suffers loss in multiple of 2 million USD. This shows that the contract does not stand on equal footing; it seems that rather to save itself from loss it is indulging into it. It is also found that as per the terms and conditions of the contract transactions regarding foreign exchange were to be settled on a particular day of month on basis of underline exposure which was 4 Million USD per month and when converted into INR it works out to be 200 Crores a year which is more or less equivalent to its total turnover exposure, thus assessee was not to produce documents related to actual exports but instead base on total turnover. An exposure of 200Crs a year would bring the monthly exports to around 16Crores at the same time it can safely be assumed that not all exports remain without payment or incur losses. Even if the payment is made for only half i.e. exports worth around 8 crores the exposure should have been to cover the remaining half i.e. around 8 crores INR monthly. However, here the monthly cover is taken almost twice to what could be the actual exports. In addition to this it is also pertinent to mention that the dollar rate over the year fluctuates hardly on the lines of 1 or 2 INR for which even the bank would charge minuscule interest. Thus, exposure of over 200 crores (ie. the total export turnover), in addition to the parallel arrangement with 2 other banks with a hedging contract which does not stand on equal footing, is a complete and apparent speculative in nature.

The Assessee has not contended before any lower authority that his out standings against exports made by him were protected through hedge contracts and not submitted the monthly outstanding export receivables. This aspect also does not support the case of Assessee. It is also pertinent to state that Hon'ble Gujarat High Court has observed in Pankaj Oil Mills[AIR 1978 GUJARAT 226), that in a genuine hedging contract, the total transaction does not exceed the total stock of raw materials or merchandise on hand. The said para is reproduced below:

> *23. Our conclusions are, therefore, as under*

> *(1) X*
>
> *(2) X*
>
> *(3)* ***In order to be genuine and valid hedging contracts of sales, the total of such transactions should not exceed the total stocks of the raw materials or the merchandise on hand which would include existing stocks as well as the stocks acquired under the firm contracts of purchases.***

Thus, it can be clearly seen that the hedge contract undertaken by Assessee company is on the total turnover rather than that of the sales/purchases or outstanding receivable from exports because of which such contract cannot be termed as genuine hedge contract in the light of Pankaj Oil Mill case and the loss thereby incurred, too, cannot be verified as business loss.

Hence, due to all these reasons it can safely be said that the said loss is a speculative loss and not a genuine business loss and the cases cited by Assessee do not resonate with the facts of the present case and are thus not applicable.

In view of the above, department pleads before your honour to consider above facts which have not been considered in the earlier order passed by the Hon'ble ITAT in Assessee own case for A.Y 2011-12.

15.2 The Ld. AR, on the other hand, reiterated that the issue involved was identical to A.Y. 2011-12 which was decided in favour of the assessee in the A.Y. 2011-12 by the Ld. ITAT and the decision of the ITAT was also confirmed by the Hon'ble Gujarat High Court in Tax Appeal No.200/2018 dated 04.04.2018.

15.3 We have carefully considered the rival submissions. The Co-ordinate Bench of this Tribunal had given the following finding on this issue in assessee's own case in A.Y. 2011-12:

> *"26. We have heard rival submissions. The assessee's case throughout has been that it had entered into a forex contract with the State Bank of India on the basis of its foreign currency exposure in import/export transactions with public sector banks to cover fluctuation risk upto Rs.200crores. One of the bank namely Bank of Baroda is stated to have issued a certificate dated 12.02.2015 claiming*

realization of Rs.123,71,57,417/- which could be realized to the tune of Rs.111,72,18,092/- as on 31.03.2011. Its SBI contract enabled it to book losses against the above unrealized bills. Lower authorities as well as learned Departmental Representative do not rebut this factual position. The assessee claims to have been inter alia recording its sales to overseas clients on the day of transaction in its books in Indian currency at the rate prevailing on the very day, it would lodge conversion claim upon payment of its consideration money by said customers, this currency settlement took time after lodgment to be realized resulting in fluctuation loss as is the case herein. We notice in this backdrop that hon'ble jurisdictional high court's decision in CIT vs. Friends & Friends Shipping Pvt. Ltd. (2013) 35 taxmann.com 553 (Guj) holds losses arising from similar foreign exchange contracts to be business losses than speculative ones. Their lordships conclude that such exchange transactions are hedging transactions instead of being speculative transactions in nature. Next comes hon'ble Bombay high court's decision in CIT vs. D. Chetan & Co. (2016) 75 taxmann.com 300 (Bom.) holding that forward contracts in the nature of hedging transactions in course of normal import export activities to cover up losses on account of foreign exchange valuation difference results in business losses and not speculative one. We find that hon'ble jurisdictional high court's decision in Pankaj Oil Mills vs. CIT (1978) 115 ITR 824 (Guj) (Full Bench) also holds inter alia that hedging contracts; in order to be out of speculative transactions, must be in respect of raw materials only in manufacturers' cases though they could be both with regard to sales and purchases, such hedging contracts need not succeed the contract for sale and actual delivery of goods manufactured, but the latter could be subsequently entered into within reasonable time not exceeding the relevant assessment year in normal circumstances and such transactions should not exceed the total stock of the raw material or merchandise on hand including existing stocks as well as that acquired under the firms contract of purchases in order to be genuine and valid hedging contract of sales; respectively. Learned Departmental Representative fails to indicate any distinction therein vis-à-vis those involved in the instant adjudication. We therefore direct the Assessing Officer to delete the impugned disallowance."

15.4 The nature of transactions in the current year was exactly similar to the nature of transaction as considered in the A.Y. 2011-12. Therefore, the contention of the Revenue that there was a difference in the material fact cannot be accepted. Since, the findings of the Co-ordinate Bench of this Tribunal in A.Y. 2011-12 has been upheld by the Hon'ble High Court, we do not find any reason to interfere with the order of the Ld. CIT(A) on this issue. Therefore, the ground taken by the Revenue is dismissed.

16. Ground Number- 16: Adjustment u/s 115JB:

16.1 Ground No. 16 pertains to deletion of adjustment of Rs.3,54,82,415/- made under Section 115JB of the Act. This adjustment was pursuant to addition as made by the AO under Section 14A of the Act. Since, the addition under Section 14A of the Act has been deleted as discussed earlier, there cannot be any question of adjustment under Section 115JB of the Act. The Ld. CIT. DR also did not press this ground in the course of hearing. Hence, the Ground No.16 taken by the Revenue is dismissed.

17. In the result, Revenue's appeal is allowed in part.

18. In the end result, both the assessee's as well as Revenue's appeal are partly allowed.

Order pronounced in the open court on 01-07-2024

Sd/-	**Sd/-**
(TR SENTHIL KUMAR)	**(NARENDRA PRASAD SINHA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 01/07/2024 *True Copy*

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