

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.1787/Ahd/2017
Assessment Year: 2012-13**

Intas Pharmaceuticals Limited, 203, Chinubhai Center, Off Nehru Bridge, Ashram Road, Ahmedabad – 380 006. [PAN – AAACI 5120 L]	Vs.	The Assistant Commissioner of Income Tax, Circle – 2(1)(1), Ahmedabad.
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**ITA No.2128/Ahd/2017
Assessment Year: 2012-13**

The Assistant Commissioner of Income Tax, Circle – 2(1)(1), Ahmedabad.	Vs.	Intas Pharmaceuticals Limited, 203, Chinubhai Center, Off Nehru Bridge, Ashram Road, Ahmedabad – 380 006. [PAN – AAACI 5120 L]
(Appellants)		(Respondents)
Assessee by	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR.	
Revenue by	Dr. Darsi Suman Ratnam, CIT(DR)	
Date of Hearing	07.03.2024	
Date of Pronouncement	15.05.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

These are cross appeals filed by the Assessee & Revenue against order dated 05.06.2017 passed by the CIT(A)-2, Ahmedabad for the Assessment Year 2012-13.

2. The assessee in ITA No.1787/Ahd/2017 has raised the following grounds of appeal :

- “1. a) *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the upward adjustment of Rs.1,08,78,100/- made by AO/TPO towards charging of notional interest for 19 days excess credit period for realization of export sale proceeds of finished pharmaceutical products from AEs (199 days average credit period to AEs as compared to average credit period of 180 days in case of receivables from non AEs)*
- (b) *That in the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that international transaction of export of finished goods was benchmarked using Transaction Net Margin Method (TNMM) with a profit level indicator of operating profit by operating cost, wherein appellant company's margin was 48.31% as compared to comparable entities having margin of 17.71%.*
- (c) *That in the facts and circumstances of the case and in law, the learned CIT(A) ought to have appreciated that realization of sale proceeds is not a separate transaction but it is incidental to transaction of sale of finished goods and when the sale transaction is held as at arm's length price, it is deemed to cover all the elements and consequences of sale transaction.*
- (d) *That in the facts and circumstances of the case and in law, the learned CIT(A) ought to have appreciated that working capital adjustment was factored by the appellant company while fixing the sale price and hence it takes into account the impact of outstanding trade receivable on profitability.*
- (e) *That in the facts and circumstances of the case and in law, the learned CIT(A) wholly erred while confirming upward adjustment carried out by AO/TPO by re-characterization of outstanding trade receivables as unsecured loans advanced by the appellant company to its AEs which is not permissible under the Act.*
- (f) *That in the facts and circumstances of the case, the learned CIT(A) has failed to appreciate that the appellant company follows a policy of non-charging of interest on overdue balances of trade receivables from both AEs (who are the key customers considering the volume of export sale) and non-AES.*
2. *In the facts and circumstances of the case, the learned CIT(A) has erred in disallowing claim of deduction amounting to Rs.11,92,27,438/- under section 35(2AB) of the I.T. Act towards weighted portion relating to expenditure on exhibit batches and*

certain other expenses (Rs.599.90 Lacs towards exhibit batches + Rs.27.10 Lacs other expense + Rs.63.66 Lacs towards other expenses + Rs.501.62 Lacs towards expenses incurred at R&D Center at Plot 191/218P which was recognized in A.Y. 2012-13 but approval in Form 3CM was issued in A.Y. 2013-14).

3. a) *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming disallowance to the extent of Rs.40,49,19,184/- by rejecting books of accounts and on the grounds that the appellant company failed to fully controvert the justification for lower gross profit rate (GP rate) and net profit rate (NP rate) as compared to GP rate and NP rate of Sikkim unit of M/s Intas Pharmaceuticals (partnership firm).*
- (b) *That in the facts and circumstances of the case and in law, the learned CIT(A) has further erred in confirming disallowance of Rs 40,49,19,184/- even after observing that the appellant company made a gross profit of 48% on products purchases for trading from partnership as compared to gross profit of 46% on trading of products purchased from third party, which negates the allegation of the AO that some expense has been shifted from the hands of the firm to the hands of the appellant company.*
- (c) *That in the facts and circumstances of the case and in law, the learned CIT(A) has further erred in not appreciating that in the case of appellant company NP rate calculated on the basis of return on capital employed, return on assets employed or net profit as percentage of sale is equal or higher than the NP rate of comparable entities having similar profile.*
- (d) *That on facts and circumstances of the case and in law, the learned CT(A) has erred in not appreciating and understanding the FAR as well as business models of the appellant and partnership firm (Sikkim unit) and thereby further erred in observing that broadly the functions performed, the activities carried out, assets employed and risk deployed by the appellant company and firm in relation to manufacturing of various products are similar.*
- (e) *That in the facts and circumstances of case and in law, the learned CIT(A) has failed to appreciate that though the appellant company and IP firm are closely connected, the AO made arbitrary and ad-hoc disallowance without specifically proving that the (1) the transaction between IP firm and appellant were arranged (ii) the higher profit in Sikkim unit is because of such arrangement IP firm and appellant and (iii)*

without taking into consideration that the higher or lower profit of a business is result of cumulative effect of various factors.

4. a) *in the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the AO's action who rejected the claim of Rs.5,73,96,033/- under section 35(1)(iv) of the ground that the claim has been made by appellatant company during the course of assessment proceedings and not in the Return of Income.*
 - (b) *that in the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that Article 265 of the Constitution of India lays down that no tax shall be levied except by authority of law. Hence only legitimate tax can be recovered and even a concession by a tax-payer does not give authority to the tax collector to recover more than what is due from him under the law.*
 - (c) *That in the facts and circumstances of the case and in law, the learned CIT(A) ought to have appreciated that vide Circular No.14 (XL-35) dated April 11, 1955, the CBDT has directed its Officers that "Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing relief and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him".*
5. a) *In the facts and circumstances of the case and in law, the learned CIT(A) erred in mechanically confirming the addition of Rs.67,39.814/- made on account of disallowance of commission expenses to non-resident agents under section 40(a)(i) of the Act, without properly appreciating the facts of the case and material on record.*
 - (b) *That in the facts and circumstances of the case and in law, the learned CIT(A) wholly erred in concluding that the appellatant company during the course of assessment proceedings failed to submit basic details of foreign commission payment and also failed to prove foreign agents did not have any PE in India without appreciating that all basic details were submitted by the appellatant company during the course of assessment proceedings as evident from para 11.1 of the assessment order wherein AO has stated that assessee was asked to submit the party wise details of commission payment, details of services rendered by all such person to whom the commission was paid and proof of*

services rendered by them. In response, the assessee submitted details vide reply dated 12.02.2016 as per annexure 14 and also informed that it was paid to parties operating outside India and not having any PE in India.

- (c) *That in the facts and circumstances of the case and in law, the learned CIT(A) further erred in not appreciating that even AO has never disputed the fact that non-resident agents have rendered services outside India and also received commission outside India. But, the AO made disallowances under section 40(a)(i) by noting that as per section 5(2)(b) the all income of non-resident that accrue or arise in India is taxable in India and in his view, income of non-resident agents accrued/arose in India under section 9(1)(i) of the Act as right to commission arose in India, for the simple reason that the orders were executed in India*
- (d) *That in the facts and circumstances of the case and in law, the learned CT(A) failed to appreciate that when no operations of the business of commission agent is carried on in India, the Explanation 1 to Section 9(1)(i) takes the entire commission income from outside the ambit of deeming fiction under section 9(1)(i) and, in effect, outside the ambit of income 'deemed to accrue or arise in India' for the purpose of Section 5(2)(b) as held by Ahmedabad ITAT in case of Excel Chemicals India Ltd. Vs. ITO Ward 2(1)(1) [2016 72 taxmann.com 284/2017- 184 TTJ 114], Mumbai ITAT in the case of Gujarat Reclaim & Rubber Products Ltd. vs. Additional Commissioner of Income-tax, 35 Taxmann.com 587 and Supreme Court decision in Shoorji Vallabhdas & Co. (39 ITR 775).*
6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
7. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming action of the Id. AO in initiating penalty u/s.271(1)(c) of the Act.*

Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal.”

2.1 The Revenue in ITA No.2128/Ahd/2017 has raised the following grounds of appeal :-

- “1 The Ld. CIT(A) had erred in law and on facts in deleting the upward adjustment of Rs.3,57,58,057/- made in respect of interest on loans and advances to Accord Healthcare Ltd. Newzealand, Accord Healthcare Ltd. UK and Accord Healthcare, Canada.
- 1.1 The Ld. CIT(A) has erred in law and on facts in not appreciating that all international transactions with AEs had to be benchmarked @ALP.
- 2 The Ld. CIT(A) has erred in law and on facts in deleting the disallowance u/s. 14A of the IT Act.
- 2.1 The Ld. CIT(A) has failed to appreciate that for making disallowance u/s. 14A, actual earning of exempt income during the year is not required.
- 2.2 The Ld. CIT(A) has failed to appreciate that since the onus lies on the assessee to demonstrate that it has interest free funds available with it for making such investment and not other way around.
- 2.3 The Ld. CIT(A) has failed to appreciate that as per Section 166 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him.
- 3 The Ld. CIT(A) had erred in law and on facts in allowing Weighted Deduction claim of the assessee u/s.35(2AB) in excess of that allowed by the DSIR in Form 3CL.
- 3.1 The Ld. CIT(A) erred in law and on facts by not appreciating that many of the reprocess claimed by the assessee on account of R&D expenses were merely expenses on account of data collection/collation for regulatory approval, quality and efficiency check and therefore could not partake the character of R&D expenses
- 3.2 The Ld. CIT(A) has erred in passing the order mechanically, without going into the facts and without application of mind and therefore, such order is liable to be set aside.

- 4 The Ld. CIT(A) has erred in law in deleting the disallowance of Rs.5,53,07,808/ u/s. 36(1)(iii) of the IT Act
- 4.1 The Ld. CIT(A) has failed to appreciate that as per its own admission, the assessee has huge term loan which are being withheld for capital expenditure hence the presumption is that the interest paid on said term loan has to be attributed to the cost of the capital assets
- 4.2 In any case, in view of Section 106 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him.
- 5 The Ld. CIT(A) has erred in law and on facts in deleting the disallowance u/s. 40A(2)(b) of the IT Act amounting to Rs.1,35,19,424/-
- 5.1 The Ld. CIT(A) has failed to appreciate that the assertion of the assessee as regards the effective tax rate of the assessee company and that of Lambda Therapeutic Research Ltd. was same during the year is patently false as during the year, Lambda Therapeutic Research Ltd, had claimed 100% exemption us 80IB(8A) of the Act.
- 5.2 The Ld. CIT(A) has failed to appreciate that clinical-Research as carried out by Lambda Therapeutic Research Ltd. and Astron Research Limited were general in nature and the comparative data of service charges paid by other companies could have been provided.
- 5.3 In any case in view of Section 106 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him.
- 6 The Ld. CIT(A) has erred in law and on facts in deleting the disallowance u/s 37 of the IT Act amounting to Rs.95,08,02,542/-.
- 6.1 The Ld. CIT(A) has failed to appreciate that the issue at hand was not that of higher GP or lower GP or NP earned by the assessee company but an issue of part of expenses incurred by the assessee company which were incurred not wholly and exclusively for the purpose of business of the assessee company but had been spent for the purpose of the associate firms
- 6.2 The Ld. CIT(A) has failed to appreciate that the associate firm was merely a contract manufacturer where all the R&D and Brands belonged to the assessee company and therefore, the net profit in the hands of the firm should be much less that is commensurate with the risk taken by the contract manufacturer and not that of a Brand owner or the risk taker of R&D and marketing.

7. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.”

3. The assessee company is engaged in the business of manufacturing of pharmaceutical products. The return of income was filed by the assessee on 30.11.2012 declaring total income of Rs.147,86,89,385/- under anormal provisions of the Income Tax Act, 1961 and income of Rs.272,16,04,548/- under Section 115JB of the Act. The case was selected for scrutiny. Notice under Section 143(2) of the Act was issued on 09.08.2013 and was duly served upon the assessee. Thereafter, notice under Section 142(1) of the Act was issued on 02.03.2015 which was duly served on the assessee. In response, Sr. General Manager (Taxation) and the Authorised Representative of the assessee company attended the proceedings and submitted the details. As the assessee has entered into international transactions covered under Section 92CA of the Act, a reference was made to Transfer Pricing Officer (TPO). The TPO vide order dated 29.01.2016 made total upward adjustment of Rs.1,08,78,100/- as well as Rs.4,66,36,157/- on account of determining the Arm's Length Price (ALP) of the International Transaction of advancing loan/advance and receivables to the Associated Enterprises (AEs). The adjustment of Rs.1,08,78,100/- was in respect of interest rate i.e. 3.71% to total sales to AE for 19 days excess credit period. The Assessing Officer, after taking into account the adjustments, made addition of upward adjustment of Rs.4,66,36,157/-. The Assessing Officer also made disallowance under Section 14A read with Rule 8D amounting to Rs.9,83,15,239/-, disallowance of deduction under Section 35(2AB) amounting to Rs.50,67,99,443/-, addition of Rs.5,53,07,808/- towards capitalisation of interest to CWIT under Section 36(1)(iii) of the Act. The Assessing Officer made disallowance under Section 40A(2)(b) of the Act amounting to Rs.1,35,19,424/- and disallowance of sales/business/products promotion expenses under Section 37 of the Act amounting to Rs.28,24,15,000/-. The Assessing Officer further made disallowance of commission paid to non-resident amounting to Rs.67,39,814/- and disallowance of expenses under Section 37 of the Act amounting to Rs.95,08,02,542/-. Thus, the Assessing Officer assessed the total income at Rs.344,58,43,400/- and in view of the MAT income under Section 45JB calculated the total income at Rs.281,99,19,779/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. Firstly, we are taking up ITA No.1787/Ahd/2017 filed by the assessee. The Ld. AR submitted that as regards ground no.1(a), the CIT(A) erred in confirming the upward adjustment of Rs.1,08,78,100/- towards charging of notional interest for 19 days excess credit period for realisation of export sale proceeds of finished pharmaceutical products from AEs (199 days average credit period to AEs as compared to average credit period of 180 days in case of receivables from non-AEs).

6. As regards ground nos.1(b) to 1(f) of the assessee's appeal which is related to international transaction of export of finished goods which was benchmarked using Transaction Net Margin Method (TNMM) with a profit level indicator of operating profit by operating cost, wherein the assessee company's margin was 48.31% as compared to comparable entities having margin of 17.71%. The Ld. AR submitted that this factual aspect was not at all considered by the CIT(A). The Ld. AR submitted that due to the financial benefit to AE notional interest was added and the assessee has given a margin of 48.31% but the comparable entities which has been taken into account was having margin of 17.71%. The assessee in the Transfer Pricing report set out that since the assessee's operating margin of 48.13% on operating cost is higher than the arithmetic means of the margins of the comparable companies of 17.71%, the export of FDFs transaction between the assessee and its AEs should have been considered to be at Arm's length from an Indian transfer pricing perspective. But, the Assessing Officer/TPO failed to do so. The assessee's export profit margin having transaction with AE. The Ld. AR submitted that the assessee is relying on the decision of Hon'ble High Court of Delhi in the case of PCIT vs. Kusum Health Care (P.) Limited, [2018] 99 taxmann.com 431 (Delhi).

7. The Ld. DR submitted that the assessee has not proved about the working capital margin and why there is a huge profit margin in respect of export margin working capital. The CIT(A) has categorically mentioned in paragraph no.2.7 that the Assessing Officer/TPO has made further upward adjustment in respect of

excess credit period granted to the AEs and there was no arrangement to grant such excess credit period for the outstanding receivables in respect of export/sales. The Ld. DR further pointed out that to the AEs the assessee has company has granted credit period of 199 days while to the non-AEs the credit period was of 180 days. Thus, there was excess credit period of 19 days to the AEs and, therefore, the transactions with the AEs were not on ALP. Thus, for the excess credit period, the Assessing Officer/TPO has worked out the interest at the prevalent rates which came to Rs.1,08,78,100/-

8. We have heard both the parties and perused all the relevant material available on record. The working capital adjustment given by the assessee company while fixing the sale price and which has an impact of outstanding trade receivable on profitability while having sale proceeds realisation which is incidental to transaction of sale of finished goods as per the submission of the Ld. AR appears to be not verified by the AO/TPO and in fact the international transaction of export of finished goods which was benchmarked using Transaction Net Margin Method with profit indicator of operating profit by operating cost, wherein assessee company's margin was 48.31% as compared to comparable entities having margin of 17.71% has to be looked into the export profit margin and this aspect needs to be verified. Therefore, we are remanding back this matter to the file of the TPO for proper adjudication and verification of the issue in consonance with the charging of notional interest for 19 days excess credit period for realisation of export sales proceeds of finished pharmaceutical products from AEs whether has an impact on the profitability of the assessee company and whether the other comparable capitalising the same which was not indicated by the TPO in its order. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Hence, ground nos. no.1(a) to 1(f) of assessee's appeal are partly allowed for statistical purpose.

9. As regards ground no.2 of the assessee's appeal, the Ld. AR submitted that the CIT(A) erred in disallowing the claim of deduction of Rs.11,92,27,438/- (Rs.409.55 Lakhs + Rs.95.01 Lakhs) under Section 35(2AB) of the Act towards weighted portion relating to expenditure on exhibit batches and certain other

expenses (Rs.599.90 Lakhs towards exhibit batches + Rs.27.10 Lakhs other expenses + Rs.63.66 Lakhs towards other expenses + Rs.501.62 Lakhs towards expenses incurred at R&D Centre which was recognised in A.Y. 2012-13 but approval in Form 3CD was issued in A.Y. 2013-14. The Ld. AR submitted that this issue was partly allowed in favour of the assessee by the Tribunal in ITA No.1644/Ahd/2017 in assessee's own case for A.Y. 2009-10. As regards the expenses related to exhibit batches amounting to Rs.599.90 Lakhs, the assessee has lost this issue before the Tribunal. As regards expenses incurred at R&D Centre amounting to Rs.501.62 Lakhs, it is a recognised expense. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in the case of CIT vs. Claris Lifesciences Limited, [2008] 174 Taxman 113 (Gujarat).

10. The Ld. DR submitted that the organisations carrying outside in respect of R&D whether the approval was granted should have been looked into and verified. The CIT(A) has only commented/observed that he confirmed the addition to the extent of expenditure in the nature of exhibit batches at Rs.599.90 Lakhs and in fact the R&D expenses should have been also been disallowed by the CIT(A) in respect of Rs.501.62 Lakhs.

11. We have heard both the parties and perused all the relevant material available on record. From the perusal of A.Y. 2009-10 order passed by the Tribunal, it can be seen that the aspect of expenditure in nature of Exhibit Batches was not allowed and, therefore, this aspect is settled and hence the same is dismissed.

12. As regards to the aspect of expenses incurred at R&D Center, from the perusal of the Paper Book at page no.81 the approval was granted upto 31.03.2012 and, therefore, the assessee has demonstrated before us that the expenses incurred at R&D Center which was recognised and approved should have been considered by the CIT(A). Hence, as regards expenses amounting to Rs.501.62 lakhs incurred at R&D Centre recognised in A.Y. 2012-13 are deleted. Ground no.2 of the assessee's appeal is thus partly allowed.

13. As regards ground no.3(a) to 3(e) of the assessee's appeal, the Ld. AR submitted that the CIT(A) erred in confirming the disallowance to the extent of Rs.40,49,19,184/- by rejecting books of account and on the ground that the assessee company failed to fully controvert the justification for lower Gross Profit rate (GP rate) and Net Profit rate (NP rate) as compared to GP rate and NP rate of Sikkim Unit of Intas Pharmaceuticals which is a partnership firm. The Ld. AR submitted that the Tribunal in ITA No.1334/Ahd/2017 for A.Y. 2009-10 has decided this issue in favour of the assessee.

14. The Ld. DR submitted that 80IC deduction related to profit of the sister entity was not demonstrated by the assessee and in fact the expenses were not demonstrated before the Revenue Authorities. The Ld. DR further submitted that 67% of profit is an exorbitant profit and the assessee failed to substantiate the profit at such a higher level. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

15. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that for the three consecutive Assessment Years the assessee has shown that the assessee has not incurred any expenditure due to the policy making and the business models in certain categories and in fact the assessee company calculated the NP rate on the basis of return on capital employee return of asset employee or NP as percentage of sales is equal to or higher than the NP rate of comparable entity of having similar profile. In fact, the CIT(A) has observed that the assessee company made a GP of 48% on the products purchased for trading from partnership as compared to GP of 46% on trading of products purchased from third party. Thus, the observation of the Assessing Officer that some expenses were shifted from the hands of the firm to the hands of the assessee company are not justifiable from the perusal of the records. Hence, ground nos.3(a) to 3(e) of the assessee's appeal are allowed.

16. As regards ground nos.4(a) to 4(c) of the assessee's appeal, the Ld. AR submitted that the CIT(A) erred in rejecting the claim of Rs.5,73,96,033/- under

Section 35(1)(iv) relating to expenditure incurred during the year on intangibles and accounted under capital work in progress on which no depreciation has been claimed later on. The Ld. AR submitted that this needs verification as in earlier year the same has been taken into consideration.

17. The Ld. DR relied upon the Assessment Order and the Order of the CIT(A).

18. We have heard both the parties and perused all the relevant material available on record. From the perusal of the records, it can be seen that the CIT(A) has followed AY 2011-12 and in ITA No.1336/Ahd/2017 the Tribunal has set aside this issue to the file of the Assessing Officer. The facts are identical in the present A.Y. and, therefore, the matter is remanded back to the file of the Assessing Officer for proper verification and adjudication of the issues in respect of expenditure incurred during the year on intangibles and accounted under capital work in progress on which no depreciation has been claimed later on in the context of Income Tax Statute. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, ground nos.4(a) to 4(c) of the assessee's appeal are partly allowed for statistical purpose.

19. As regards ground nos.5(a) to 5(d) of the assessee's appeal, the Ld. AR submitted that the CIT(A) erred in mechanically confirming the addition of Rs.67,39,814/- on account of disallowance of commission expenses to non-resident agents under Section 40(a)(i) of the Act. The Ld. AR submitted that this issue was also set aside by the Tribunal in ITA No.1336/Ahd/2017 to the file of the Assessing Officer for A.Y. 2011-12.

20. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

21. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that this issue related to the commission expenses to non-resident agents under Section 40(a)(i) of the Act has not been categorically verified in the context of non-resident agents and the resident agents and needs further verification. Therefore, we are remanding back this issue to the

file of the Assessing Officer for proper verification and adjudication of the said issue. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, ground nos.5(a) to 5(d) of the assessee's appeal are partly allowed for statistical purpose.

22. Ground no.6 is general in nature and hence not adjudicated at this juncture.

23. Ground no.7 is consequential and, therefore, the same needs no adjudication.

24. Thus, appeal of the assessee being ITA No.1787/Ahd/2017 is partly allowed for statistical purpose.

25. Now, coming to the Revenue's appeal being ITA No.2128/Ahd/2017, in respect of ground nos.1 & 1.1, the Ld. DR submitted that the CIT(A) erred in deleting the upward adjustment of Rs.3,57,58,057/- made in respect of interest on loans and advances to Accord Healthcare Limited, Newzealand, Accord Healthcare Limited, UK and Accord Healthcare, Canada. The Ld. DR submitted that the Tribunal in ITA No.1334 and 1644/Ahd/2017 for A.Y. 2009-10 has set aside the issue to the file of the Assessing Officer for proper verification and adjudication of the same.

26. The Ld. AR submitted that as regards the same, the matter may be remanded back as only the interest calculation is required and the issue is held against the assessee.

27. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that this issue is decided against the assessee but the interest quantification/calculation has to be done, therefore, for the limited purpose the issue is remanded back to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, ground nos.1 & 1.1 of the Revenue's appeal are partly allowed for statistical purpose.

28. As regards ground nos.2 to 2.3 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the disallowance under Section 14A of the Act of Rs.9,83,15,239/-. The Ld. DR relied upon the order of the Assessing Officer.

29. The Ld. AR submitted that the assessee has given quantification as to how much interest has been earned during the relevant A.Y. and in fact no exempt income earned during the year and the assessee has *suo moto* disallowed more than the amount required and, therefore, the CIT(A) has rightly deleted the same.

30. We have heard both the parties and perused all the relevant material available on record. From the perusal of records, no exempt income earned during the year. The Ld. DR also has not pointed out that any exempt income was earned. In fact, the assessee has made *suo moto* disallowance and the CIT(A) has given a categorical finding to that extent. This issue was also decided in favour of the assessee for the A.Y. 2011-12 in ITA No.1646/Ahd/2017. Hence, ground nos.2.to 2.3 of the Revenue's appeal are dismissed.

31. As regards ground nos.3 to 3.2 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in allowing the weighted deduction claim of the assessee under Section 35(2AB) in excess of that allowed by the DSIR in Form 3CL. The Ld. DR submitted that the argument for ground no.2 of the assessee's appeal should be taken into account.

32. The Ld. AR submitted that his argument for ground no.2 in assessee's appeal should be taken into account.

33. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that though this issue has been decided against the Revenue in ITA No.1646/Ahd/2017 as per the Chart given by the assessee, it appears that the same requires verification and, therefore, the matter is remanded back to the file of the Assessing Officer for proper adjudication.

Hence, ground nos.3 to 3.2 of the Revenue's appeal are partly allowed for statistical purpose.

34. As regards ground nos.4 to 4.2 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the disallowance of Rs.5,53,07,808/- under Section 36(1)(iii) of the Act.

35. The Ld. AR submitted that the CIT(A) has rightly followed the A.Y. 2011-12 which was decided by the Tribunal in assessee's favour in ITA No.1646/Ahd/2017.

36. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the contention of the Ld. DR that the funds were not used for business appears to be not justifiable from the perusal of the records. Identical situation has been decided by the Tribunal in A.Y. 2011-12 and there is no further discrepancies or distinguishing facts were pointed out by the Ld. DR. Hence, ground nos.4 to 4.2 of the Revenue's appeal are dismissed.

37. As regards ground nos.5 to 5.3 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the disallowance under Section 40A(2)(b) of the Act amounting to Rs.1,35,19,424/- as the CIT(A) has failed to appreciate that the assertion of the assessee as regards the effective tax rate of the assessee company and that of Lambda Therapeutic Research Limited was same during the year is patently false as during the year Lambda Therapeutic Research Limited had claimed 100% exemption under Section 80IB(8A) of the Act. .

38. The Ld. AR submitted that the CIT(A) as well as the Tribunal for A.Y. 2011-12 has decided this issue in favour of the assessee.

39.. We have heard both the parties and perused all the relevant material available on record. From the perusal of the records, it can be seen that the findings given by the Tribunal in A.Y. 2011-12 is identical to the facts of the present A.Y. and no discrepancy has been pointed out except stating that the

assessee has failed to prove the related party's transactions. Therefore, ground nos.5 to 5.3 of the Revenue's appeal are dismissed.

40. As regards ground nos.6 to 6.2 of the Revenue's appeal, the Ld. DR submitted that the CIT(A) erred in deleting the disallowance under Section 37 of the Act amounting to Rs.95,08,02,542/-. The Ld. DR further submitted that the CIT(A) failed to appreciate that the issue at hand was not that of higher GP or Lower GP or NP earned by the assessee but an issue of part of expenses incurred by the assessee company which were incurred not wholly and exclusively for the purpose of business of the assessee company but had been spent for purpose of associate firms.

41. The Ld. AR submitted that this issue is covered in favour of the assessee in ITA No.1334/Ahd/2017 for A.Y. 2009-10.

42. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that observations made in assessee's appeal ground nos.3(a) to 3(e) are identical to this ground i.e. ground nos.6 to 6.2 of Department's appeal and the same may be taken into account. Thus, ground nos.6 to 6.2 of the Revenue's appeal are partly allowed for statistical purpose.

43. Thus, appeal of the Revenue being ITA No.2128/Ahd/2017 is partly allowed for statistical purpose.

44. In the result, both the appeals filed by the Assessee as well as Revenue are partly allowed for statistical purpose.

Order pronounced in the open Court on this 15th May, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th day of May, 2024

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*