आयकर अपीलीय अधिकरण, अहमदाबाद पीठें, अहमदाबाद
INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD BENCHES, AHMEDABAD
BENCH: D

BEFORE DR. BRR KUMAR, VICE PRESIDENT
AND SHRI SANJAY KUMAR, JUDICIAL MEMBER

1. ITA 366/AHD/2020
(**निर्धारण वर्ष**/Assessment Year: **2009-10**)

Sun Pharma Advance Research Co. Ltd Sparc, Akota Road, Akota, Vadodara-390020, Gujarat **अपीलार्थी Appellant**	**Vs.**	**The DCIT, Circle-2(1)(1)** 4th Flor, Aayakar Bhavan Vadodara-390007, GUJARAT प्रत्यर्थी **Respondent**

PAN of Assessee: **AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by:	**Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri R.V.Aroon Prasaad,CIT-DR**

2. ITA 2593/AHD/2025
(**निर्धारण वर्ष**/Assessment Year: **2017-18**)

Deputy Commissioner Of Income Tax, Circle-2(1)(1), Vadodara Aayakar Bhavan, Race Course Circle, Vadodara, Vadodara-390007, Gujarat **अपीलार्थी Appellant**	**Vs.**	**Sun Pharma Advanced Research Company Limited** Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat प्रत्यर्थी **Respondent**

PAN of Assessee: **AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by:	**Shri R.V.Aroon Prasaad,CIT-DR**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

3. ITA 2594/AHD/2025
(**निर्धारण वर्ष**/Assessment Year: **2018-19**)

Deputy Commissioner Of Income Tax, Circle-2(1)(1), Vadodara Aayakar Bhavan, Race Course Circle, Vadodara, Vadodara-390007, Gujarat	**Vs.**	**Sun Pharma Advanced Research Company Limited** Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee: **AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by:	**Shri R.V.Aroon Prasaad,CIT-DR**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

4. ITA 765/AHD/2025
(**निर्धारण वर्ष**/Assessment Year: **2012-13**)

Sun Pharma Advanced Research Company Limited Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat	**Vs.**	**The ACIT, Circle-2(1)(1)** Room No. 403, 4th Floor, Aaykar Bhavan, Race Course Circle Vadodara-390007, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee: **AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by:	**Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri R.V.Aroon Prasaad,CIT-DR**

5. ITA 766/AHD/2025
(**निर्धारण वर्ष**/Assessment Year: **2013-14**)

Sun Pharma Advanced Research Company Limited Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat	**Vs.**	**The DY.CIT, Circle-2(1)(1)** Room No. 403, 4th Floor, Aaykar Bhavan, Race Course Circle Vadodara-390007, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee: **AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by: **Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

प्रत्यर्थी द्वारा/Respondent represented by: **Shri R.V.Aroon Prasaad,CIT-DR**

6. ITA 767/AHD/2025

(**निर्धारण वर्ष**/Assessment Year: **2014-15**)

Sun Pharma Advanced Research Company Limited Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat	**Vs.**	**The DY.CIT, Circle-2(1)(1)** Room No. 403, 4th Floor, Aaykar Bhavan, Race Course Circle Vadodara-390007, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee**: AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by: **Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

प्रत्यर्थी द्वारा/Respondent represented by: **Shri R.V.Aroon Prasaad,CIT-DR**

7. ITA 768/AHD/2025

(**निर्धारण वर्ष**/Assessment Year: **2015-16**)

Sun Pharma Advanced Research Company Limited Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat	**Vs.**	**The ACIT, Circle-2(1)(1)** Room No. 403, 4th Floor, Aaykar Bhavan, Race Course Circle Vadodara-390007, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee**: AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by: **Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

प्रत्यर्थी द्वारा/Respondent represented by: **Shri R.V.Aroon Prasaad,CIT-DR**

8. ITA 931/AHD/2025

(**निर्धारण वर्ष**/Assessment Year: **2014-15**)

DCIT, Circle 2(1)(1), Vadodara	**Vs.**	**Sun Pharma Advanced**

Race Course Circle,, Vadodara-390007, Gujarat	**Research Company Limited** Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat
अपीलार्थी Appellant	प्रत्यर्थी **Respondent**

PAN of Assessee**: AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by:	**Shri R.V.Aroon Prasaad,CIT-DR**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

9. ITA 932/AHD/2025
(**निर्धारण वर्ष**/Assessment Year: **2015-16**)

Deputy Commissioner Of Income Tax, Circle 2(1)(1) Race Course Circle, Vadodara-390007, Gujarat	**Vs.**	**Sun Pharma Advanced Research Company Limited** Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee**: AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by:	**Shri R.V.Aroon Prasaad,CIT-DR**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

10. ITA 933/AHD/2025
(**निर्धारण वर्ष**/Assessment Year: **2013-14**)

Deputy Commissioner of Income Tax, Circle 2(1)(1), Vadodara Race Course Circle,, Vadodara-390007, Gujarat	**Vs.**	**Sun Pharma Advanced Research Company Limited** Plot No. 5 And 6/1,Savli Gidc Estatemanjusar,Vadodara Vadodara-391775, Gujarat
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**

PAN of Assessee**: AAJCS8340R**

अपीलार्थी द्वारा/Appellant represented by: **Shri R.V.Aroon Prasaad,CIT-DR**

प्रत्यर्थी द्वारा/Respondent represented by: **Shri S N Soparkar, Sr Advocate & MS Urvashi Sodhan, ARs**

सुनवाई की तारीख / Date of conclusion of hearing: **07.08.2026**

घोषणा की तारीख / Date of pronouncement: **15.10.2026**

आदेश / ORDER

PER SANJAY KUMAR, JUDICIAL MEMBER

The above appeals are directed against separate orders of the learned CIT(A)-National Faceless Assessment Centre, Delhi (hereinafter referred to as '**Ld. CIT (A)**'), tabulated hereinbelow. Since the appeals pertains to the same Assessee and common issues are involved in all these appeals therefore, for the sake of convenience, these appeals are being disposed of together by way of common order.

ITA 366/AHD/2020 (AY: 2009-10)	Ld. The CIT (A)-2 Vadodara vide order dated 16.03.2020.
ITA 2593/AHD/2025 (AY: 2017-18)	Ld. Commissioner of Income-tax (Appeals) vide order dated 24.12.2025.
ITA 2594/AHD/2025 (AY: 2018-19)	Ld. Commissioner of Income-tax (Appeals) vide order dated 24.12.2025.
ITA 765/AHD/2025 (AY: 2012-13)	Ld. CIT(A)-13, Ahmedabad vide order dated 15.02.2025.
ITA 766/AHD/2025 (AY: 2013-14)	Ld. CIT(A)-13, Ahmedeabad vide order dated 15.02.2025.
ITA 767/AHD/2025 (AY: 2014-15)	Ld. CIT(A)-13, Ahmedabad vide order dated 15.02.2025.
ITA 768/AHD/2025 (AY: 2015-16)	Ld. CIT(A)-13, Ahmedabad vide order dated 15.02.2025.
ITA 931/AHD/2025 (AY: 2014-15)	Ld. CIT(A) vide order dated 14.02.2025.
ITA 932/AHD/2025 (AY: 2015-16)	Ld. CIT(A) vide order dated 15.02.2025.

ITA 933/AHD/2025 (AY: 2013-14)	Ld. CIT(A) vide order dated 29.04.2025.

ITA No. 366/AHD/2020 for AY 2009-10:-

2. First, we will take ITA No. 366/Ahd/2020:-

2.1 The grounds taken by the Assessee in the present appeal i.e. is reproduced as under:

> *"The Appellant raises the following grounds, which are mutually exclusive, independent of and without prejudice to one another:*
>
> *1. On the facts and in the circumstances of the case and in law, the order passed by the Learned Commissioner of Income-tax (Appeals) [the 'Ld. CIT(A)'] erroneously affirming the findings of the Assessing Officer [the 'AO'] is bad in law and on facts.*
>
> ***1. Re: Non-Applicability of Transfer Pricing Provisions to the transactions with Sun Pharma Global Inc. ('SPG BVI') and Sun Pharma Global FZE ('SPG FZE'):***
>
> > *1.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in upholding the treatment carried out by AO/TPO by applying transfer pricing provisions under Chapter X and treating the Appellant and SPG BVI and SPG FZE as Associated Enterprises ('AEs').*
> >
> > *1.2 The Ld. CIT(A) has grossly erred in holding that section 92A(2) and section 92A(1) are two independent sub-sections and can be applied on fulfillment of any conditions in any sub-section.*
> >
> > *1.3 The Ld. CIT(A) failed to appreciate that the AO/TPI did not give adequate opportunity of being heard to the Appellant.*
>
> ***2. Re: Order of Transfer Pricing Officer upheld by the Assessing Officer is bad-in-law, ought to be quashed:***

2.1 The Ld. CIT(A) has grossly erred in upholding the order of Assessing Officer ('AO') /Transfer Pricing Officer ('TPO') which is bad in law as it violates the principle of natural justice.

2.2 The Ld. CIT(A) has grossly erred in concluding that the AO was satisfied with regard to the applicability of Chapter X and only on satisfaction referred the matter to the TPO, after providing reasonable opportunity to the Appellant.

2.3 The Ld. CIT(A) has grossly erred in upholding the transfer pricing order wherein the TPO has failed to select and apply any method as stipulated in section 92C(1)(a) to (e) of the Act as the most appropriate method while computing the arm's length price.

2.4 The Ld. CIT(A) has failed to appreciate that the TPO is not an expert to carry out the valuation of the technology and did not refer the matter to the Departmental Valuation Officer for the purpose of valuing the technology.

2.5 The CIT(A) has erroneously failed to admit the valuation report as additional evidence submitted by the Appellant in the remand proceedings, without giving any cogent reasons.

3. Re: Transfer Pricing addition of Rs. 17,91,66,000/- on account of transactions with SPG BVI and SPG FZE:

3.1 The Ld. CIT(A) has grossly erred in upholding the additions made by AO/ TPO who has rejected the Transfer Pricing Study of the Appellant without appreciating the facts of the transactions and the submissions made by the Appellant.

3.2 The Ld. CIT(A) has grossly erred in upholding the order of the AO / TPO who has disregarded the Valuation Report of an Independent Government Approved Valuer based on which the Appellant has transferred the technology to SPG BVI and SPG FZE.

3.3 The Ld. CIT(A) has grossly erred in upholding the adhoc method adopted by TPO in deriving the Valuation of ANDAs by cherry picking certain portion from the valuation report

submitted by the Appellant and has altered the workings of the said report basis his whims and fancies.

3.4 The Ld. CIT(A) has grossly erred in disregarding the valuation report obtained by the purchaser (SPG BVI) and submitted by the Appellant pursuant to Rule 46A in order to support the fact that the said transaction is at arms-length price.

3.5 The Ld. CIT(A)/Ld. AO/Ld. TPO has failed to appreciate that the appellant is under 100% tax holiday under section 801B(BA) and all the profits are exempt and there can be no motive/ objective to circumvent or avoid any taxes in India.

4. Re: Charging section 4 read with section 5 fails in case of Transfer Pricing additions

The Ld. CIT(A)/Ld. AO grossly erred in adding to the income of the appellant. difference in valuation of technology transferred without appreciating that the transfer pricing provisions under Chapter X read with section 4 and section 5 cannot bring to charge notional income which is not chargeable to income-tax under the heads of income

5. Ground No. 5: Disallowance of deduction claimed u/s 35(1)(iv) - Rs. 6,04,22,359/-.

5.1. On the facts and in the circumstances of the case and in law, the disallowance of deduction claimed u/s. 35(1)(iv) of the Income-tax Act, 1961 ('the Act') confirmed by the Ld. CIT(A) is bad in law and on facts.

5.2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in confirming the disallowance of deduction u/s 35(1)(iv) amounting to Rs. 3,72,70,274/- without appreciating the fact that the Appellant had already submitted documentary evidences on sample basis in respect of additions made to Capital Work in Progress (CWIP).

5.3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the disallowance of deduction claimed u/s. 35(1)(iv) on balance Rs. 2,31,52,084/-

which was made by the AO by relying on the information submitted by the Appellant in the Annual Return filed with the Department of Scientific and Industrial Research ('DSIR') without appreciating that the amount reported to DSIR represented only the additions made to Laboratory Equipment and that the capital expenditure on other assets of R&D are not required to be reported to the DSIR.

5.4. Without prejudice to the above, the Ld. CIT(A) grossly erred in confirming disallowance by simply alleging that the Appellant has not produced documentary evidences for CWIP without appreciating that the additions made to fixed assets is duly reflected in the Financial Statements of the Appellant Company which has been audited by the independent statutory auditors and approved by the shareholders.

5.5. Without prejudice to the above, depreciation under section 32 of the Act ought to have been allowed.

6. Ground No 6: Disallowance of provision for leave encashment under section 43B -Rs. 41,03,714/-

6.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in confirming the disallowance of provision for leave encashment amounting to Rs. 41,03,714/-.

6.2 The Ld. CIT(A) has grossly erred in confirming the disallowance of provision for leave encashment without appreciating the fact that the issue is to be decided afresh in light of decision of Hon'ble Supreme Court in the case of Exide Industries Limited [SLP No. 12060 of 2008].

6.3 Without prejudice to the above, the Ld. CIT(A) grossly erred in not allowing deduction for an amount paid before the date of filing return of income.

The Appellant craves leave to add to, alter, amend or withdraw all or any of the foregoing grounds of appeal at or before the hearing of this appeal."

3. The grounds raised by the Assessee refer and relate to following three additions made by the AO:

> **"(A.) Transfer pricing addition of Rs. 17,91,61,000/- on the ground of transactions with SPG BVI & SPG FZE,** [Ground Nos.1 to 4].
>
> **(B.) Disallowance of deduction claimed u/s 35(1)(iv) amounting to Rs. 6,04,22,359/-** [Ground No.5].
>
> **and,**
>
> **(C.) Disallowance of provision for leave encashment u/s 43B amounting to Rs. 41,03,174/-.** [Ground No.6]."

4. We have heard Shri S.N. Soparkar, learned Senior Advocate for the appellant and Shri R.V. Aroon Prasaad, learned CIT DR for the Revenue at some length and perused the material available on the record. We now proceed to adjudicate the issues addition wise and first we take addition No. A as mentioned hereinabove.

A. Transfer pricing addition of Rs. 17,91,61,000/- on the ground of transactions with SPG BVI & SPG FZE:-

5. Brief facts regarding in the present addition are that during the proceedings, before the TPO, it was noted by the TPO that the appellant has income from sale of technology/know how amounting to Rs.32.30 crores and fees/service charges amounting to Rs.2.82 crores on which the company has incurred a loss due to higher expenses. The major expenses include R&D material consumption, salaries and professional charges. The company vide its submission dated 12.10.2011 given the details of international transactions entered into with two Non Resident Entities i.e.

BVI and FZE. During the year, the appellant company received Rs.4,60,36,100/- and Rs.27,69,77,675/-towards sale of technology from BVI and FZE respectively. The appellant has not filed 3CEB report contending that there is no dealing with related parties and the above said two companies do not fall within the definition of Associate Enterprise (AE). Ld. AO had observed that SPG BVI is a 100% owned subsidiary of Sun Pharmaceutical and SPG FZE is a 100% owned subsidiary of SPG BVI. The AO recorded that Shri Dilip S. Sanghvi indirectly held 46.81% and 45.89% of the shares of the Assessee and SPIL, respectively.

6.1 The SPG BVI and SPG FZE (i.e., SPIL), being 100% step-down subsidiaries of Sun Pharma Industries Limited in which Mr. Dilip Sanghvi held more than the threshold percentage of 26% share, were Associated Enterprises, as Shri Dilip Sanghvi held 46% shares of the Assessee also. He accordingly referred the transactions to ld. TPO for determination of Arms' Length Price (ALP) after taking approval from the Commissioner of Income Tax.

6.2 The TPO noticed that the appellant entered into an agreement on 28.10.2007 with reference to sale of technology of certain drugs and it has submitted details of transfer pricing study with the AE stating that products being technology sold are unique intangibles. and the said technology has been transferred at the price determined by the independent valuer. It was also contended that there is no comparable data available and hence, methods prescribed under Rule 10B was not adopted as the same could not be applied to the facts of the present case. The appellant submitted valuation report on which the payment for this

Abbreviated New Drug Application (in short, "**ANDA**") and technology was based. The TPO noticed that valuation of the products did not appear to be uniform, in some cases, ANDA for the drugs with higher global sales had been valued at lower rates and vice versa. There was no correlation between the nature of ANDA and the price fixed. Generic drugs command much lesser price than the patented drugs. The competitors were estimated without any basis. The appellant did not have comparable hence relied on raw material usage as the basis. Cost of drugs was only estimation but not taken the actual cost from the appellant company. The estimation did not factor the total sale of drugs in the market at the time of valuation. Further deficiencies and shortcoming were noted in the category of drugs. Considering the reply, the TPO arrived at the value of each product and finally held that the appellant sold the products at US $ 48.045 million as against US$ 100.726 million for both US and European markets. The TPO and finally suggested upward adjustment of Rs. 17,91,66,000/-.

6.3 On receipt of the report from the TPO, the AO passed the assessment order after seeking objection from the Assessee and ultimately assessment order was passed by incorporating the upward adjustment determined by the TPO. The AO also made addition relating to the claim of assessee u/s 35(1)(iv) of the Act. Further, an addition in respect of provision for leave encashment amounting to Rs. 41,03,714/- which was not paid and still not added back in the computation of income u/s 43B of the Act.

6.4 Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A), who vide the impugned order dismissed the appeal of the assessee.

6.5 Now, the Assessee is before us against the impugned order passed by the Ld. CIT(A).

7. Mr. Soparkar, Ld. Senior Advocate appearing for the appellant, submitted that the provisions of Chapter X do not apply to the transactions in question, as the Assessee and SPG BVI and SPG FZE were not associated enterprises in terms of the provisions of Section 92A. He stressed that the impugned order is erroneous inasmuch as it reads Section 92A(1) and Section 92A(2) to be independent sub-sections and came to the conclusion that the provisions of Section 92A would apply on the fulfilment of any condition in any sub-section. He submitted that sub-section (1) of Section 92A provides for some nexus in respect of management or control or capital of the other enterprises, whereas sub-section (2) enlists 13 instances wherein the two entities can be treated as associated enterprises of each other. It is emphasized by Mr. Soparkar that in order to hold the entities as associated enterprises under Section 92A, both the sub-sections 92A(1) and 92A(2) are required to be satisfied simultaneously.

7.1 He submitted that though in the facts of the present case, clause (b) to sub-section (2) of Section 92A is satisfied, as Shri Dilip Shanghvi holds more than the threshold 26% of the voting power in each enterprise indirectly. He, however, submitted that the Revenue has not even made any effort to hold these entities to be associated enterprises in terms of the provisions of Section 92A(1). In other words, he submits that the Revenue

has not alleged any direct or indirect involvement of the Assessee in the management or control or capital of the other enterprises in substance, and it has relied heavily upon the provisions of Section 92A(2)(b) based on the shareholding of Mr. Dilip Shanghvi to hold the three parties as associated enterprises.

7.2 He further submitted that, in the facts of the present case, the TPO/AO had not selected any of the methods as stipulated u/s 92C(1)(a) to (e) of the Act as the most appropriate method while computing the arm's length price, rendering the entire exercise to be void. For this purpose, he relied upon the judgment of the Hon'ble Bombay High Court in the case of **Commissioner of Income Tax v. Kodak India Pvt. Ltd.**, reported as **[2017] 79 taxmann.com 362 (Bombay)**, and the said judgment was also followed by the Coordinate Bench of the Tribunal in the case of **Wartsila India Limited v. Assistant Commissioner of Income Tax**, reported as **[2019] 102 taxmann.com 564 (Bombay - Trib.)**.

7.3 He accordingly submitted that the addition arising out of the determination of ALP by the TPO/AO is therefore required to be deleted for non-selection of one of the five methods prescribed u/s 92C(1).

7.4 Mr. Soparkar also contended that the TPO/AO failed to adhere to the principles of natural justice, both while making a reference to the TPO as well as during the process of determination of ALP, and the AO/TPO failed to provide reasonable opportunity to the appellant Assessee.

8. Per contra, Shri R.V.Aroon Prasaad, Ld. CIT-DR, supported the orders of the authorities below. He contended that the moment any of the

sub-clauses (a) to (m) of Section 92A(2) is satisfied, the parties are deemed to be associated enterprises in terms of Section 92A of the Act. Resultantly, the transactions between them are international transactions in terms of Section 92B(1) of the Act, and any income arising out of the same is required to be computed having regard to the arm's length price in terms of Section 92 of the Act. As regards non-selection of the most appropriate method in terms of Section 92C, he submits that the Assessee in this case did not disclose the transactions to be international transactions and did not even file Form No. 3CEB, violating the mandate of Section 92E of the Act bestowed upon it, either before the AO or before the TPO, and therefore the Assessee cannot complain of non-selection of the most appropriate method in terms of Section 92C(1).

9. He also submitted that Chapter X provides for computation of the arm's length price; however, it does not change the head of income under which the said income falls. The charge of income continues to be u/s 4 and 5 of the Income Tax Act only and, therefore, there is no lacking of charging provisions so far as transactions requiring determination of value in terms of Chapter X provisions are concerned. As regards non-affording of opportunity, Ld. CIT-DR relied upon the observations of Ld. CIT(A) in the impugned order and submitted that more than adequate and fair opportunities were made available by the AO/TPO during the proceedings.

10. We have given our thoughtful consideration and perused the records. The core controversy relating to the present addition is whether the Assessee, i.e., Sun Pharma Advanced Research Company Limited, and SPG BVI and SPG FZE are associated enterprises in terms of Section 92A of the

Act. Before moving further, it is beneficial to have a look at all the relevant provisions involved in the present case, which are reproduced herein below:

> *"**Computation of income from international transaction having regard to arm's length price.***
>
> ***92. (1)** Any income arising from an international transaction shall be computed having regard to the arm's length price.*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.*
>
> *(2) Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.*
>
> *(2A) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.*
>
> *(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.*
>
> ***Meaning of associated enterprise**.*

92A. *(1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, "associated enterprise", in relation to another enterprise, means an enterprise—*

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) ***For the purposes of sub-section (1)****, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—*

(a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

(b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

...

Meaning of international transaction.

92B. *(1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a*

benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) ...

Computation of arm's length price.
***92C**. (1) The arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe 63, namely :—*

(a) comparable uncontrolled price method;
(b) resale price method;
(c) cost plus method;
(d) profit split method;
(e) transactional net margin method;
(f) such other method as may be prescribed 63 by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed 64 :
Provided that ...

Reference to Transfer Pricing Officer.
***92CA.** (1) Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Principal Commissioner or Commissioner, refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under section 92C to the Transfer Pricing Officer:*

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction referred to in sub-section (1)....

> ***92E**. Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.*

11. A bare perusal of the Section 92A(2)(b) would manifestly indicate that if any person is holding more than 26% of shares in the Assessee as well as the entities with which it has transacted, the same would be treated as Associated Enterprises in terms of Section 92A(2)(b) of the Act. By virtue of Finance Act, 2002 w.e.f. 01.04.2002, Section 92A(2) was substituted with "For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year-" for "two enterprises shall be deemed to be associated enterprises if any time during the previous year-". The use of the term "For the purposes of Sub-Section (1)" leaves no ambiguity that if any of the clause of sub-section (2) is satisfied, the entities in question shall be deemed to be associated enterprise. The use of word "shall" leaves no discretion and such deeming fiction is to be necessarily applied. In other words, if the case falls in any of the clauses of Section 92A(2), the subjective satisfaction of participation in management control or capital of other enterprise in terms of sub-section (1) of Section 92A shall be necessarily presumed.

12. We find that in the facts of the present case, Shri Dilip Sanghvi was having more than 26% of shares in the Assessee i.e., M/s. Sun Pharma Advanced Research Company Limited, as well as in Sun Pharma Industries Ltd. (SPIL); and SPG BVI and SPG FZE, being 100% step-

down owned subsidiaries of SPIL, would merit being Associated Enterprises of the Assessee in terms of clause (b) of Section 92A(2) of the Act. We note that before the Ld. CIT(A) also, Ld. AR himself confirmed the shareholding of Shri Dilip Sanghvi in the Assessee as well as SPIL to be more than 26%. This fact was not disputed by Mr. Soparkar even before us. That being the case, we have no hesitation in holding that the Assessee, and SPG BVI, SPG FZE were Associated Enterprises of the Assessee, i.e., Sun Pharma Advanced Research Company Limited, in terms of Section 92A(2)(b) of the Act.

13. The second contention raised by Mr. Soparkar, Ld. Senior Advocate, on this issue is that the AO had not passed a speaking order dealing with the objections raised by the Assessee for referring the issue to the TPO, and that the AO had not recorded his satisfaction before referring the international transaction to the TPO.

14. Ld. CIT(A), while dealing with this objection, held that the AO in this case, after hearing the objections of the appellant, satisfied himself that the transactions of the Assessee with SPG BVI and SPG FZE were in the nature of transactions with Associated Enterprises in terms of Section 92A(2)(b). It was observed by Ld. CIT(A) that there is no statutory requirement of recording satisfaction. The satisfaction should be discernible from the facts of the case. The Ld. CIT(A) observed that the satisfaction of the AO is discernible from the letters written to the CIT and the TPO, and also the Assessment Order. Ld. CIT(A) therefore rejected the contention of the Assessee on this count.

15. We do not find any infirmity in the view taken by the Ld. CIT(A) on this issue. The fact that the AO has recorded that Mr. Dilip Sanghvi owns 46.81% and 45.89% of the shares of the Assessee and SPIL goes to establish that the AO had proper satisfaction that SPG BVI & SPG FZE were Associated Enterprises of the Assessee, and the transactions of the Assessee with these two entities were required to be referred to the TPO for determination of arm's length price. This plea of the Assessee is accordingly dismissed.

16. The next contention raised by Mr. Soparkar, Ld. Senior Advocate, was that transfer pricing provisions under Chapter X cannot bring to charge notional income which is not chargeable to income tax under any head of income. It was submitted that the TP provisions are merely a mechanism to compute ALP, and therefore, the same cannot be treated as charging provisions. Once the charging provisions u/s 4 and Section 5 of the Act fail, the machinery provision of Section 92 of the Act cannot be relied upon to tax the notional income.

17. The aforesaid plea is entirely misconceived. Chapter X provides for computation of arm's length price in respect of transactions entered into by Associated Enterprises; it does not change the head of income under which the said income falls. It is only a machinery provision to compute the value of the transaction. The fact that Chapter X provisions have been applied to a particular transaction does not entail the transaction change the head of income or the nature of income itself. In this case, the transactions entered into by the Assessee with the AE fall under the head "Income from Business or Profession", which remains the

same even after it has undergone transfer pricing. The plea raised by the Assessee is accordingly found misconceived and is dismissed accordingly.

18. The next contention raised by Mr. Soparkar, Ld. Senior Advocate, is that the TPO, while arriving at the arm's length price (ALP), had not selected any of the methods stipulated in Section 92C(1)(a) to (e) of the Act. He further submitted that the TPO cannot take shelter even of clause (f) of Section 92C(1), which prescribes, "such other method as may be prescribed by the Board", as the method adopted by the AO/TPO has never been permitted by the Board. For this purpose, he relied upon the judgment of the Hon'ble Bombay High Court in the case of **Commissioner of Income Tax v. Kodak India Pvt. Ltd.**, reported as **[2017] 79 taxmann.com 362 (Bombay)**, and the said judgment was also followed by the Coordinate Bench of the Tribunal in the case of **Wartsila India Limited v. Assistant Commissioner of Income Tax**, reported as **[2019] 102 taxmann.com 564 (Bombay - Trib.).**

19. Going through the judgment of the Hon'ble Bombay High Court in **Kodak India Private Limited (supra)**, we find that the Revenue preferred the following questions of law in the said case. Para No. 2 of the judgment is reproduced herein below:

> *"2. Being aggrieved by the impugned order of the Tribunal, the Revenue has preferred the present appeal raising the following two questions for our consideration: -*
>
> *(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was in error in not appreciating the fact that the provisions of Section 92B(2) are applicable to the sale transaction between the two*

domestic companies since the provisions of sub-section (1) and sub-section (2) are independent of each other?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal failed to appreciate that the sale of the imaging business from the Assessee to the Associated Enterprise foreign company in India was not the normal 'International Transaction' falling within the precincts of Section 92B(1); but was a transaction within the precincts of Section 92B(2), being a transaction between unrelated parties, where there exists a prior agreement between the Associate Enterprises and such unrelated party in relation to a relevant transaction OR the terms of the relevant transaction are determined in substance between such other person and the Associated Enterprise, thus qualifying to be a deemed International Transaction?"

20. The Hon'ble Bombay High Court observed and held in Para Nos. 10 and 11 of the said judgment, as under:

"10. We must also record the fact that the ALP was arrived at by the Transfer Pricing Officer (TPO) by not adopting any of the methods prescribed under section 92C of the Act. The method to determine the ALP adopted was not one of the prescribed methods for computing the ALP. It was not even any method prescribed by the Board. At the relevant time, i.e. for A.Y. 2008- 09 Section 92C of the Act did not provide for other method as provided in Section 92C(1)(f) of the Act. The impugned order of the Tribunal holds that the method adopted by the Revenue to determine the ALP was alien to the methods prescribed under Section 92C of the Act. In the above circumstances, the Tribunal declined to restore the issue to the Assessing Officer for re-determining the ALP by adopting one of the methods as listed out in Section 92C of the Act. This finding of the Tribunal has also not been challenged by the Revenue.

11. In view of the fact that the Revenue has accepted the order of the Tribunal on its findings on facts on the two issues as pointed out hereinabove as well as the refusal of the Tribunal to restore the issue of determination of ALP to the TPO by following one of the methods prescribed under the issue of determination of ALP to the TPO by following one of the methods prescribed under Section 92C of the Act. ***Thus, the question as formulated for our consideration even if***

answered in favour of the Revenue would become academic in the present facts. Thus, we see no reason to Assessment Year: 2012-13 entertain this appeal. However, we make it clear that the issues of law which has been raised in the present appeal are left open for consideration in an appropriate case."

Emphasis supplied.

21. The question before the Hon'ble Bombay High Court was not whether in the absence of the TPO adopting any of the prescribed methods u/s 92C, the addition made has to be necessarily deleted. Evidently, the Hon'ble Bombay High Court upheld the view that the TPO necessarily has to adopt one of the methods stipulated u/s 92C(1) of the Act. We are in respectful agreement with the dictum laid down by the Hon'ble High Court. However, the Hon'ble High Court in the aforesaid case did not hold that non-compliance of Section 92C(1) would necessarily result in deletion of the addition made on account of ALP determination. The relief was granted because Revenue chose not to contest the issue of refusal of remand by the Tribunal and therefore in the Appeal before the Hon'ble Court, the question urged had become academic resultantly, the Hon'ble High Court refrained from answering the question urged in the appeal leaving the question of law open for consideration in appropriate case.

22. Section 92 of the Act mandates any income arising from international transaction has to be mandatorily computed having regard to the ALP. This is the admitted position that in the present case, neither the assessee determined the value having regard to ALP nor the ALP arrived at by the TPO/AO can be sustained having faulted on the

selection of Most Appropriate Method in terms of Section 92C of the Act.

23. It is a matter of record that the Assessee in the present case has not filed Form No. 3CEB report in respect of transactions between the Assessee and SPG BVI and SPG FZE, claiming that they were not Associated Enterprises in terms of Section 92A of the Act. Section 92CA(2) as well as Section 92E mandates the Assessee to furnish its computation of ALP before TPO/AO. The assessee has failed to discharge its obligation bestowed on it u/s 92CA(2) and 92E. In view thereof, we are of the considered view that the matter be remanded back to the file of the AO/TPO for de novo determination of ALP in terms of Chapter X provisions. We accordingly remand the matter back to the file of the AO/TPO.

24. In view of our decision to remand the matter back to the AO/TPO for de novo determination of ALP, the challenge to the addition on account of transfer pricing on merits has been rendered infructuous as having become academic, and therefore, we are not adjudicating the same.

B. Disallowance of deduction claimed u/s 35(1)(iv) amounting to Rs. 6,04,22,359/-:

25. The AO made the above addition by disallowing the deduction u/s 35(1)(iv) of the Act amounting to Rs. 6,04,22,359/- on account of non-submission of necessary documents and non-verification of the reliability of its claims. The Ld. CIT(A) decided the ground as under:

"During the appellate proceedings, the appellant filed details of the total expenditure incurred at Rs.26,14,55,418/- giving the bifurca tion of the claim of other assets and CWIP at Rs.20,10,33,059/-, Rs.2,31,52,084/- and Rs.3,72,70,274/- respectively. The appellant has reconciled the CWIP and claimed that additions/acquired during the year as per schedule 5 of the Balance Sheet at Rs.22,41,85,144/- and the CWIP of Rs.4,43,75,807/-includes advances on capital account and reduced CWIP already claimed in the return of income for the A.Y. 2008-09 at Rs.47,11,940/- and the appellant also reduced advance on capital account at Rs.23,93,593/- thereby CWIP in the year worked out to Rs.3,72,70,274/- and claimed that the same was claimed as deduction along with additions and assets acquired as mentioned above.

The appellant made submission as above but reconciliation was not supported by any documentary evidences. As per Schedule-5 of Balance Sheet, the CWIP is Rs.4,43,75,807/- only. The appellant has not proved that CWIP was claimed in A.Y. 2008-09 to certain extent. Hence, the submission without evidence cannot be considered for giving any relief. Moreover, the AO was very clear that the appellant has not produced documentary evidence for capital work in progress and hence the disallowance made by the AO is hereby confirmed and the ground raised by the appellant is dismissed."

25.1 Evidently, the Assessee did not support its claim with documentary evidence either before Ld. AO or Ld. CIT(A) and consequently, the claim of Assessee u/s 35(1)(iv) of the Act was disallowed by AO and upheld by Ld. CIT(A). In that view of the matter, the present issue deserves to be remanded back to Ld. AO to provide Assessee another chance to substantiate its claim. However, elsewhere in the present order, we have given our finding on the admissibility of the claim of Assessee for a later Assessment Year 2012-13 in ITA No. 765/AHD/2025 and we have held that the Assessee is not entitled to claim deduction u/s 35(1)(iv) of the Act in view of the fact that the research should be related to business of Assessee in terms of mandate of Section 35(1)(iv) of the

Act. Following that decision, we uphold the disallowance made by the AO on this issue. The ground raised by the Assessee is, accordingly dismissed.

C. Disallowance of provision for leave encashment u/s 43B amounting to Rs. 41,03,714/-:

26. The AO made the addition on the ground that in Form 3CD, the provision for leave encashment amounting to Rs. 41,03,714/- was shown as not paid. However, the same was not disallowed in the computation of income according to the provisions of Section 43B of the Act. The AO observed that the Assessee had not paid the provision made for leave encashment till the filing of the return u/s 139 of the Act, and therefore, in terms of Section 43B of the Act, the AO made the said addition.

26.1 The Assessee before the Ld. CIT(A) relied upon the judgment of the Hon'ble Calcutta High Court in the case of **Exide Industries Ltd.**, which has been stayed by the Hon'ble Supreme Court [425 ITR 1 (SC)]. In that view of the matter, the Ld. CIT(A) held that since the amount in question was not paid before the due date of filing the return, it cannot be allowed as a deduction in terms of Section 43B of the Act. We do not find any infirmity in the finding of the Ld. CIT(A), and hence, **the present ground raised on this count is dismissed**.

27. In the result, the appeal i.e ITA No. 366/AHD/2020 for Assessment year 2009-10 filed by the Assessee is partly allowed for statistical purposes.

ITA No. 765/AHD/2025 for AY 2012-13:-

28. Ground No. 1 to 4 of this appeal relates to the transfer pricing addition. Both the parties agreed that there is no change in circumstances of the case and, therefore, our decision in ITA No. 366/AHD/2025 on the aforesaid issues will apply mutatis mutandis to the grounds raised against the aforesaid addition in the present appeal as well.

29. Ground No. 5 relates to disallowance of deduction claimed u/s 35(1)(iv) of the Act. The Assessee had claimed deduction on account or addition to fixed assets. The AO was of the opinion that deduction u/s 35(1)(iv) of the Act is available only if the Assessee incurs any expenditure of capital nature on scientific research related to the business carried out by the Assessee. The AO noted that the Assessee has sold technologies to its sister concerns. The AO also observed that the Assessee engaged in pharmaceutical scientific research and the sale of technology mainly for the benefit of its associated enterprise research Sun Pharma Global FZE, UAE. The AO accordingly disallowed the claim of deduction u/s 35(1)(iv) of the Act. The findings of AO is reproduced hereinbelow:

> *"4.3 The submission dated 31.08.2015 of the assessee was considered but is not found tenable, in view of the discussion made hereunder:-*
>
> *4.3.1 As per provisions of the I. T. Act, deduction u/s 35(1)(iv) of the Act is available to the assessee only if it incurs any expenditure of capital nature on scientific research related to the business carried on by the assessee. Provisions of Section 35 of the Act are as under-*
>
> *1) In respect of expenditure on scientific research, the following deductions all be allowed-*

(iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provision of sub section (2).

4.3.2 It is observed from the submission of the assessee that it is engaged in carrying out business of development of pharmaceutical products and new chemical entities, drug delivery systems and all types of pharmaceuticals research and development activities.

4.3.3 It is also observed from the Memorandum and Articles of Association of the assessee company that object of the company are:-

> *"To undertake and carry on all types of scientific and technical research experiments process development, product development toxicity studies, clinical trials, efficacy trials bio equivalency studies, analytical methods study, developing New Chemical Entities (NCE's) and Novel Drug Delivery Systems (NDDS) and test/study trial of all kinds including such work for others, to conduct and carry on research on NCR's to find a lead molecule, optimization, biological assay systems, animal disease models, toxicology studies, to conduct and carry on research on NDDS to have new product with potential advantages, to conduct study and/or develop methods, technologies, systems for delivery devices, instruments, software and any other matters/mediums and to sell, license, lease and otherwise transfer studies and research both scientific and technical investigation, process and product development and invention including innovative in pharmaceutical, and other companies and other persons and to establish ,provide, maintain, license and conduct or otherwise subsidies research and development laboratories or facilities and experimental workshops for scientific and technical research."*

4.3.4 It is also observed from the details submitted by the assessee, vide letter dated 24.08.2015, that it sold technologies to its sister concern, as per details given hereunder:-

Details of sale of technology for the financial year 2011-12

Sr.No.	*Name of the party*	*Particulars*	*Amount*
1.	*Unimed Technologies Ltd*	*Sale of technology*	*2,24,94,000*

2.	*Sun Pharma Global FZE, Dubai, UAE*	*Sale of technology*	*15,65,11,390*
3.	*MSD Sun FZ LLC*	*Sale of technology*	*39.32.445*
	TOTAL		*18,29,37,835*

4.3.5 The above submission of the assessee clearly reflects that the assessee company is engaged in pharmaceutical scientific research and the sale of technology is mainly done to the associated enterprise M/s Sun Pharma Global FZE, UAE.

4.3.6 The provisions related to the deductions under section 35(1)(iv) of the Act on account of capital expenditure on scientific research were intended for the purpose of encouraging the research activities with regard to the business carried on by the assessee whereas, in the case of the assessee, research activities were for a marketable product and the research was not related to the business carried on by the assessee.

4.3.7 After considering the provisions of section35(1)(iv) and considering the definition provided in section 43(4)(iii)(a), it is observed that the deduction is admissible under section 35(2) if-

(1) expenditure incurred is capital in nature;
(ii) capital expenditure is incurred on the scientific research;
(iii) scientific research must be related to the business of the assessee; and
(iv) business must have been carried on by the assessee.

4.3.8 In view of the above, case of the assessee needs to be examined to verify as to whether the following conditions have been satisfied:

i. Expenditure is CAPITAL is nature?
ii. Capital expenditure is incurred on Scientific Research and is related to the business of the assessee

4.3.9 Whether the expenditure is CAPITAL in nature?

From the clause 15 of the Tax Audit Report, it is observed that the assessee has claimed deduction u/s 35(1)(iv) in respect of expenses of Rs. 4,00,77,918/, relating to the acquisition of fixed assets, and also expenses of Rs. 10,47,349/- categorized under capital work in progress on R & D building & electric

fittings. Since aforesaid both the expenditure were incurred for acquisition of capital assets/fixed assets, the same held as capital in nature.

4.3.10. Capital expenditure incurred on Scientific Research?

The definition of Scientific Research as provided u/s 43(4), is reproduced hereunder:

(i) "Scientific research" means any activities for the extension of knowledge in the field of natural or applied science including agriculture, animal husbandry or fisheries;

(ii) References to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure Incurred in the acquisition of rights in, or arising out of, scientific research;

(iii) References to scientific research related to a business or class of business include -

(a) Any scientific research which may lead to or facilitate an extension of that business or, as the case maybe, all businesses of that class;

(b) Any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;

4.3.11 Section 43(4) (iii) clearly amplifies to include all development expenditure in development of a new product by specific reference to the words"... which may lead to or facilitate an extension of that business...". It is also noted that in house Research and development facilities have also been recognized by the Government of India though such recognition is subject to the condition that the assessee has to claim the deduction as per the provisions of Income-tax Act, 1961. However, this fact of recognition by itself means that assessee is carrying out certain R&D activities. Now, coming to the definition of scientific research as provided under section 43(4) of the Act, it is seen that the activities carried on by the assessee have certainly resulted into expansion of knowledge in the field of applied sciences, hence, the expenditure incurred by the assessee can certainly be termed as expenditure incurred on 'scientific research. As regards the presentation of the same as the capital expenditure, in the books of account by the assessee, it is a settled

principle that the treatment given in the books of account is not conclusive to determine the deductibility or otherwise of an expenditure, hence, such treatment in the books of account is not relevant for the purpose of allowability of the expenditure. It is further observed that R&D activities carried on by the assessee resulted into product development, process development, indigenization, product support and these activities have been carried on by the assessee in a continuous manner for years together.

4.3.12 Reliance is also placed on the decision of Mumbai Tribunal in the case of Enem Nostrum Remedies (P.) Ltd Vs Assistant Commissioner of Income-tax, Circle 8(1), Mumbai (2009) 119 ITD 427 (MUM.), wherein the definition of Scientific Research u/s 43(4) was analysed and the relevant paragraphs of the judgment are as follows:

> *"Section 43(4) defines the meaning of 'scientific research'. So, in order to avail, deduction under section35, the activity of the assessee should first fall within the meaning of 'scientific research' as per section 43(4), and then the conditions of respective clauses of section35 should be fulfilled. [Para 10] Primarily there is difference in the language of clause(iv) of section 35(1) and section 43(4)(iii)(a) because the reference in the former section is to 'scientific research related to the business carried on by the assessee' and in the definition clause of section 43, the language used is 'scientific research related to a business or class of business' to include 'any scientific research which may lead to or facilitate an extension of that business or as the case may be, all businesses of that class'. The harmonious construction of these provisions clearly indicate that there should be a business carried on by the assessee' and the scientific research should relate to that business which is carried on by the assessee. It nowhere suggests that the 'business of carrying on scientific research' is covered within the ambit of this provision. Again, the reference to the 'extension of that business' in section 43(4)(iii) clearly divulges that the scientific research so done by the assessee should contribute to the extension of business carried on by it. It is not akin to the extension of the business of scientific research. For example, a pharmaceutical company may be selling a particular tablet meant for curing headache within an hour from its consumption. When it undertakes scientific research and invents a formula by which the new tablet would cure the headache within 10 minutes, the scientific research leading to the invention of such new tablet, would certainly lead to or facilitate in the extension of the business of the sale of medicine of curing headache. It*

is that type of research that would be covered within the ambit of Section 43(4)(iii)(a). Nowhere it is contemplated that scientific Search should lead to the growth of the business of scientific research itself in terms of more orders for research and development. In the instant case, the assessee is engaged in the development of formulation as per the orders placed by its parent company/ other group concerns or clients. It meant that the assessee had to keep on trying various permutations and combinations till the desired result was achieved and formula so developed accorded with the requirements of the parent company. It was obvious that nothing more or less than the order given by the parent company/other group concerns or clients would be acceptable as the end product of the assessee's research in the form of the new formulation which must necessarily match with the order placed. The formula so developed by the assessee, was, thereafter, utilized by its clients for the extension of their business. The assessee's activity was facilitating the extension of business of its clients and not that of its own. The situation would have been otherwise if the assessee had been engaged in the pharmaceutical business and had utilized the scientific research carried out by it in its business of producing tablets, etc., in which case it would have been qualified for deduction within four corners of said clause.

The above facts clearly proves that the claim of the assessee "that scientific research was carried on by the assessee" does not fall within the meaning of scientific research as provided in section 43(4) of the act.

4.3.13 Whether the scientific research is related to the business carried on by the assessee?

As may be noted that provisions of Section 35(1)(iv) lays emphasis that (a) business must be carried on by the assessee; and (b) carrying out of scientific research relates to the said business of the assessee. Thus both these conditions must be satisfied with reference to the each other. The word 'carried on by the assessee' used in the said clause shall mean 'to continue by the assessee' or 'to engage in the activity' by the assessee. Therefore effectively, these words indicate the engagement of the assessee in the business. 'Scientific research related to a business' when read in conjunction with the cl.(iv) of s. 35(1), the words 'carried on by the assessee assume importance. Consequently, the scientific research related to a business carried on by the assessee should be read to restrict the scope of the deductions. Consequently, the deduction is not available when the scientific

research relates to a business not carried on by the assessee. The nexus between the scientific research on one side and its relationship with the business carried on by the assessee on the other side assumes great significance. The reference to 'scientific research related to a business' in Sec 43(4)iii(a) is defined to include the cases of scientific research. which may lead to or to facilitate an extension of that business' and the words 'that business' refer to the business of the assessee. Further, an assessee may be engaged in a particular business and may also undertake the scientific research activity relating to that business and incur capital expenditure on such research. Alternatively, an assessee, may be engaged in the scientific research activity as its business and by that activity, assessee may be catering to the said research needs of the business carried on by the other assessees. To resolve the issue of deduction under s. 35 in all these cases, the Board's Circular No. 281, dt. 22nd September, 1980, para 10.2 in particular, mentions that the s. 35(1)(iv) provides for the deduction in respect of capital expenditure incurred on scientific research related to the assessee's business. Para 42 of the other Departmental Circular dated 9th October, 1967 is also categorical in stating that the said deductions are aimed at providing the incentives for encouraging the scientific research in India and the assessees who needs the outputs of the scientific research for their business. Thus, the claim of the said capital expenditure on account of scientific research has to be in connection with the assessee's business. The said provisions of sec.35(1)(iv) are unambiguous in matters of their language meaning and intention and there is no need to supply additional words. In other words, the deduction under 5.35 is not intended to the assessee, who does not undertake the in-house scientific research activities. Further, the presence of specific reference to related to business carried on by the assessee' in the provisions and the inclusive definition given to the same in 5.43(4)(iii)(a), convey that it is not a case of casus omissus too.

4.3.14 In view of the above, it is held that the expenditure claimed by the assessee for deduction is not covered with in the ambit of "expenditure on scientific research related to the business carried on by the assessee and that the said expenditure was incurred for setting up of facilities for commercial production/research of a new product.

4.3.15 Accordingly, the assessee, cannot be held to have incurred expenditure with reference to the scientific research activity related to the business carried on by the assessee. It is also not the case of the assessee that its claim of scientific research is covered by sec.43(4)(iii)(a) i.e. the cases of scientific research which may lead to or to facilitate an extension of that business'.

Thus, by incurring the aforesaid expenditure the assessee has been able to create a marketable product or stock-in-trade. Thus it is held that the said claim of expenditure on scientific research does not relates to the business carried on by the assessee, meaning thereby that the deduction u/s 35(1)(iv) is not available to the assessee as it has failed to satisfy the conditions, mentioned and enumerated here under:-

(i) Capital expenditure is incurred on the scientific research,
(ii) Scientific resnarch is related to the business; and
(iii) The business was carried on by the assessee.

Thus, it is held that the provisions of s.35(1)(iv) have no application to assessee's case and accordingly the deduction claimed by the assessee is disallowed and added to the total income of the assessee.

4.3.16 It is observed that, in the computation of income, the assessee has reserved its right to claim, deduction u/s Bo(IB)(8A). However for claiming the said deduction u/s. 80(IB)(8A), one of the conditions is that the main object of the company shall be the scientific and industrial research and development. In view of the fact that assessee has no positive income out of the industrial undertaking, assessee is not entitled to claim deduction u/s BoIB(BA).

In view of the above, it is held that the assessee is not eligible for the deduction u/s 35(1)(iv) and hence claim of deduction u/s 35(1)(iv) of Rs 4,11,25,267/- is being disallowed and added to the total income of the assessee. I am satisfied that the assessee had furnished inaccurate particulars by claiming deduction u/s 35(1)(iv) of the Act, therefore this is a fit case for initiation of Penal proceedings u/s 271(1)(c) of the Act separately.

[Addition: Rs.4,11,25,267/-]"

29.1 Ld. CIT(A) concurred with findings of the AO and dismissed the ground raised by the Assessee by observing as under:

"8.4 The submission made by the appellant has been carefully considered along with the facts of the case. The provision related to the deduction under section 35(i)(iv) of the Act on account of capital expenditure incurred on scientific research is intended for the purpose of encouraging

the research activities with regard to the business carried on the assessee whereas, in case of appellant, research activities were for marketable product and the research was not related to the business carried on the appellant 8.5 Further, it is held that the expenditure claimed by the appellant for deduction is not covered within the ambit of "expenditure incurred on scientific research related to the business carried on by the assessee" and that the said expenditure was incurred for setting up of facilities for commercial production / research of a new product.

8.6 Accordingly, the appellant cannot be held to have incurred expenditure with reference to the scientific research activity related to the business carried by the appellant. It is also not covered within the meaning of scientific research as provided in section 43(4) of the act as the Appellant activity was facilitating the extension of business of its group concerns and not that of its own. Thus, by incurring the capital expenditure, the appellant has not been able to create a marketable product or stock in trade, which was related to its business. Thus, it is held that the said claim of expenditure on scientific research does not relates the business carried on by the appellant, meaning thereby that the deduction u/s. 35(i)(iv) is not available to the appellant as it has failed to satisfy the condition, mentioned and enumerated here under.-

i. Capital expenditure is incurred on the scientific research,

ii. Scientific research is related to the business, and

iii. The business was carried on by the assessee.

8.7 The AO had rightly disallowed the claim after verifying the facts and ensuring compliance with statutory provisions. Since the appellant failed to satisfy the conditions as enumerated as above, the disallowance stands justified. Reliance is placed on the judicial pronouncement made By Hon'ble ITAT, Mumbai in the case of Enem Nostrum Remedies (P.) Ltd Vs Assistant Commissioner of Income-tax, Circle 8(1), Mumbai (2009) 119 ITD 427 (MUM.), wherein Hon'ble Tribunal has analyzed the definition of Scientific Research u/s 43(4) as under:

> *"Section 43(4) defines the meaning of 'scientific research. So, in order to avail, deduction under sections, the activity of the assessee should first fall within the meaning of 'scientific research' as per section 43(4), and then the conditions of respective clauses of section35 should be fulfilled. [Para io JPrimarily there is difference in the language of clause(iv) of section 35(1) and section 43(4)(iii)(a) because the reference in the former section is to 'scientific research related to the business carried on by the assessee' and in the definition clause of section 43, the language used is 'scientific esearch related to a business or class of business'*

to include 'any scientific research which may lead to or facilitate an extension of that business or as the case may be, all businesses of that class. The harmonious construction of these provisions clearly indicate that there should be a business carried on by the assessee' and the scientific research should relate to that business which is carried on by the assessee. It nowhere suggests that the 'business of carrying on scientific research is covered within the ambit of this provision. Again, the reference to the 'extension of that business' in section 43(4)(iii) clearly divulges that the scientific research so done by the assessee should contribute to the extension of business carried on by it. It is not akin to the extension of the business of scientific research. For example, a pharmaceutical company may be selling a particular tablet meant for curing headache within an hour from its consumption. When it undertakes scientific research and invents a formula by which the new tablet would cure the headache within 10 minutes, the scientific research leading to the invention of such new tablet, would certainly lead to or facilitate in the extension of the business of the sale of medicine of curing headache. It is that type of research that would be covered Within the ambit of section 43(4)(iii) (a). Nowhere it is contemplated that scientific research should lead to the growth of the business of scientific research itself in terms of more orders for research and development. In the instant case, the assessee is engaged in the development of formulation as per the orders placed by its parent company/ other group concens or clients. It meant that the assessee had to keep on trying various permutations and combinations till the desired result was achieved and formula so developed accorded with the requirements of the parent company. It was obvious that nothing more or less than the order given by the parent company other group concerns or clients would be acceptable as the end product of the assessee's research in the form of the new formulation which must necessarily match with the order placed. The formula so developed by the assessee, was, thereafter, utilized by its clients for the extension of their business. The assessee's activity was facilitating the extension of business of its clients and not that of its own. The situation would have been otherwise if the assessee had been engaged in the pharmaceutical business and had utilized the scientific research carried out by it in its business of producing tablets, etc., in which case it would have been qualified for deduction within four comers of said clause.

8.8 Considering the facts of the case and analysis made supra, it is held that the deduction claimed by the appellant under section 35(i) (iv) of Rs.4,11,25,267/- is not allowable. Accordingly, the appeal is dismissed and the disallowance made by the Assessing officer is confirmed."

29.2 Section 35(1)(iv) of the Act reads as under:

> *"Section 35(1):- In respect of expenditure on scientific research, the following deductions shall be allowed ...*
>
> *(iv) in respect of* ***any expenditure of a capital nature on scientific research related to the business carried on by the assesse****e, such deduction as may be admissible under the provisions of sub-section (2)*

29.3 A bare perusal of the aforesaid provision would show that for claiming deduction under the aforesaid provision, the prime requirement is that the expenditure should be in the nature of capital expenditure and the research should be related to the business of Assessee itself. The concurrent finding of fact recorded by the AO and ld. CIT(A) is that the Assessee in this case though was incurring capital expenditure for research but the same was being done by the Assessee for the benefit of its associated enterprise/sister concern. Thus, the prime requirement of Section 35(1)(iv) of the research related to the business carried on by the Assessee is not met. Accordingly, we find no infirmity in the findings of the ld. CIT(A) upholding the addition made by the AO.

29.4 Co-ordinate Bench of this Tribunal in the case of **SI Group India Ltd. Vs. Commissioner of Income tax (LTU), Mumbai** reported in **[2017] 85 taxmann.com 307 (Mumbai – Trib.)** has held that if the Assessee could not establish that scientific research in relation to which capital expenditure was incurred for its own business, the same could not be allowed deduction u/s 35(1)(iv) of the Act. Following the said decision, this ground raised by the Assessee in the present Appeal is dismissed.

30. Ground No. 6 of the present appeal is directed against the disallowance of software expense of Rs 26,75,560/-. The said ground reads as under:

> ***"6. Ground No. 06: Disallowance of software expense Rs 26,75,560/-***
>
> *6.1. The Ld. CIT(A) has grossly erred in not allowing deduction of the software expenditure incurred by the Appellant.*
>
> *6.2. Ld. CIT(A) has grossly erred in disallowing deduction for software expenditure on the ground that it is capital in nature without appreciating that the said expenses were routine expenditure incurred for regular updation of existing software, for better functioning of existing software and the same did not bring into existence any new asset or an advantage of enduring nature in the capital field.*
>
> *6.3. On the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in treating the expense as capital in nature solely on the ground that it leads to enduring benefit to the Appellant without appreciating that the same is not the only factor. The Ld. CIT(A) failed to appreciate that:*
>
> *6.3.1. It did not lead to creation of new profit earning apparatus of the Appellant Company*
>
> *6.3.2. Expenditure was incurred on maintenance and upgradation of existing software.*
>
> *6.3.3. There is no concept of deferred revenue expenditure under the Act. A revenue expenditure the benefit of which can be enjoyed over the years cannot be characterized as capital expenditure.*
>
> *6.4. Ld. CIT(A) erred in treating software expenses as capital merely on the assumption of enduring benefits, without considering that an expenditure, even if it provides lasting advantages, should be classified as revenue if it enhances operational efficiency without creating a new asset or impacting the fixed capital structure.*

6.5. Without prejudice to the above, even if the said expenditure were to be treated as capital expenditure, the Ld. CIT(A) erred in not allowing deduction for the same u/s 35(1)(iv) on all capital expenditure incurred for the purpose of scientific research.

The Appellant craves leave to add to, alter, amend or withdraw all or any of the foregoing grounds of appeal at or before the hearing of this appeal."

30.1 The AO disallowed the software expenses incurred by the Assessee holding the same to be capital in nature as the software was made for uses for the longer period. The AO observed that though the software was being used on day to day basis, however, such expenditure is single time expenditure and was intended to be used for an unlimited period and, therefore, the Assessee was getting enduring benefit out of the software expenditure. Ld. CIT(A) concurred with the decision of the AO and dismissed the ground taken by the Assessee.

30.2 We find that the software in question was intended for use over the years by the Assessee and, therefore, the expenditure as such was clearly the capital expenditure. The appellant before us has argued that the software was revenue in nature on the ground that the said expenditure was incurred to upgrade the existing software. We don't find any merit in the said argument as replacement of a capital expenditure by another capital expenditure would not change the nature of expenditure itself. It is not the case of the Assessee that the said software were having any determined shelf life. Upgradation of technology / software by the Assessee is a business choice of the Assessee and it would not impact the nature of expenditure made by it, which in the present case will remain capital as the expenditure provides benefits of enduring nature.

30.3 The alternate ground raised by the Assessee reads as under:

> *"6.5 Without prejudice to the above, even if the said expenditure were to be treated as capital expenditure, the Ld. CIT(A) erred in not allowing deduction for the same u/s 35(1)(iv) on all capital expenditure incurred for the purpose of scientific research."*

30.4 We have elsewhere in the present order already adjudicated that Assessee in the present case was not entitled to deduction u/s 35(1)(iv) of the Act. Accordingly, the present alternate ground is rendered infructuous.

30.5 Hence, the addition made by AO on account of software expenditure is upheld and grounds raised by the Assessee in this regard are dismissed.

31. In the result, the appeal i.e ITA No. 765/AHD/2025 for Assessment year 2012-13 filed by the Assessee is partly allowed for statistical purposes.

ITA No. 766/AHD/2025 for AY 2013-14:-

32. Ground No. 1 to 4 of this appeal relates to the transfer pricing addition and is covered by our decision in ITA No. 366/AHD/2025 while Ground No. 5 relates to disallowance of deduction claimed u/s 35(1)(iv), which is covered by our decision in ITA No. 765/AHD/2025. Both the parties agreed that there is no change in circumstances of the case and,

therefore, our decision in on the aforesaid issues will apply mutatis mutandis to the grounds raised against the aforesaid addition in the present appeal as well.

33. Ground No. 6 of the present appeal against the Levy of Interest u/s 234B. The said ground is consequential in nature and, therefore, requires no adjudication.

34. In the result, the appeal i.e ITA No. 766/AHD/2025 for Assessment year 2013-14 filed by the Assessee is partly allowed for statistical purposes.

ITA No. 767/AHD/2025 for AY 2014-15:-

35. Ground No. 1 to 4 of this appeal relates to the transfer pricing addition and is covered by our decision in ITA No. 366/AHD/2025 while Ground No. 5 relates to disallowance of deduction claimed u/s 35(1)(iv), which is covered by our decision in ITA No. 765/AHD/2025. Both the parties agreed that there is no change in circumstances of the case and, therefore, our decision in on the aforesaid issues will apply mutatis mutandis to the grounds raised against the aforesaid addition in the present appeal as well.

36. This leaves us with ground No. 6 of the present appeal against the disallowance of business expenditure treating it as freebies given to doctors of Rs. 1,74,533/-. The said ground reads as under:

"6 Ground No 06: Disallowance of business expenditure treating it as freebies given to doctors-Rs. 1,74,533/-

6.1. Ld. CIT(A) has grossly erred in not allowing deduction of business expenditure incurred in furtherance of business objectives

6.2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to consider that handy cams are not in the nature of freebies or gifts provided to doctors, rather it is requisite for the doctor to efficiently discharge its duties.

6.3. On the facts and circumstances of the case in law, the Ld. CIT(A) has grossly erred in applying Apex Laboratories Pvt. Ltd. [2022] 135 taxmann.com 286 (SC) to the Appellant's case without considering that:

6.3.1. The said expenditure is incurred for the purpose of recording high resolution clinical trials which are required for its R&D activities and no personal benefit is passed on to the doctors directly or indirectly.

6.4. Without prejudice to the above, the Ld. CIT(A) erred in not allowing deduction for the same u/s 35(1)(iv) on all capital expenditure incurred for the purpose of scientific research.

The Appellant craves leave to add to, alter, amend or withdraw all or any of the foregoing grounds of appeal at or before the hearing of this appeal."

36.1 Ld. CIT(A) relying upon the judgment of Hon'ble Supreme Court in the case of Apex Laboratories Private Ltd. Vs. CIT reported in 422 ITR 1 (SC) upheld in the expenditure of Rs. 1,74,533/- incurred on purchase of Sony handy cam. The claim of Assessee that the said handy cams were provided for recording clinical trials to facilitate research and development activities of the Assessee, is not palatable. Handy cam is a product used for capturing moments of life and the same cannot be used

for medical purposes let alone for R & D purposes. We, therefore, find no infirmity in disallowance made by AO and upheld by Ld. CIT(A). The ground is dismissed.

37. In the result, the appeal i.e ITA No. 767/AHD/2025 for Assessment year 2014-15 filed by the Assessee is partly allowed for statistical purposes.

ITA No. 768/Ahd/2025 for AY 2015-16:-

38. Ground No. 1 to 4 of this appeal relates to the transfer pricing addition and is covered by our decision in ITA No. 366/AHD/2025 while Ground No. 5 relates to disallowance of deduction claimed u/s 35(1)(iv), which is covered by our decision in ITA No. 765/AHD/2025. Both the parties agreed that there is no change in circumstances of the case and, therefore, our decision in on the aforesaid issues will apply mutatis mutandis to the grounds raised against the aforesaid addition in the present appeal as well.

39. In the result, the appeal i.e ITA No. 768/AHD/2025 for Assessment year 2015-16 filed by the Assessee is partly allowed for statistical purposes.

40. Now, we will take up the appeals filed by the Revenue.

ITA No. 931/Ahd/2025 for AY 2014-15:

41. The Revenue before us in ITA No. 931/Ahd/2025 for AY 2014-15 raised following grounds of appeal, which is as follows:

> *"1. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in* ***deleting the disallowance of software expenses of Rs. 19,63,583/-****without appreciating the fact that the software has enduring benefits and hence, the expenditure incurred on the same is capital in nature.*
>
> *2. On facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of research and development expenditure under section 37 of the Act of Rs.23,30,42,981/- without appreciating the fact that the research activities are capital in nature which result into development of intangible assets."*

41.1 Ld. CIT(A) vide the impugned order has clearly recorded that software in question had a limited validity of one year and, therefore, no benefit of enduring nature spanning through multiple years accrues to the Assesssee. The benefit of the expenditure being limited to one year fails the test of "benefit of enduring nature". Accordingly, the same cannot be held a capital expenditure. We are mindful of our decision on the issue of disallowance of software expenses in Appeal Nos. 765/AHD/2025 for AY 2012-13 wherein, we have upheld the disallowance of software expenses holding the same to be capital expenditure. In that assessment year, unlike the present assessment year, the benefit of the expenses was not limited to one year. The software expense in the present assessment year does not provide benefit of enduring nature as its usages are limited to one year only. Ground No.1 of the Revenue Appeal for assessment year 2014-15 is, therefore, dismissed.

41.2 As regards ground No.2, we find that in absence of details, the AO has bifurcated capital expenditure and the revenue expenditure in the ratio of income from sale of products and income from lease rent/royalty

of these products. Ld. CIT(A) relying upon the unpredictable outcome of developing particular product/technology, held that the research activities of the Assessee not necessarily result into development of intangible assets and, therefore, held the expenditure incurred in research activities to be business expenditure incurred regularly during the course of the business.

41.3 We are not impressed by the reasoning of ld. CIT(A). The nature of expenditure does not depend upon the outcome of the activity undertaken. Just because any expenditure incurred for research activities does not result in a successful product/technology will not change the nature of expenditure. If an expenditure has been incurred with the intent of getting long term benefit of enduring nature, the same shall be in the nature of capital expenditure. R & D in any product or technology, by the very nature of it, is intended to have future and long term benefit. The nature of expenditure will not change if the expenditure incurred does not bring about the desired results.

41.4 In view of the above, and since the Assessee has not provided the bifurcation of expenditure incurred on inventions of products from which lease rent/royalty was credited in the P/L account, we deem it appropriate to restore the issue to the file of AO for making de novo adjudication of the issue after giving the Assessee the opportunity to file its reply/evidences in support of its claim.

42. In the result, the appeal i.e ITA No. 931/AHD/2025 for Assessment year 2014-15 filed by the Revenue is partly allowed for statistical purposes.

ITA No. 932/Ahd/2025 for AY 2015-16:

43. The Revenue before us in ITA No. 932/Ahd/2025 raised following grounds of appeal, which is as follows:

> *"1. On facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of research and development expenditure under section 37 of the Act of Rs.3,70,81,000/- without appreciating the fact that the research activities are capital in nature which result into development of intangible assets."*

43.1 The sole ground urged by the Revenue is covered by our decision in ITA No. 931/Ahd/2025 for AY 2014-15. Both the parties agreed that there is no change in circumstances of the case and, therefore, our decision in on the aforesaid issues will apply mutatis mutandis to the grounds raised against the aforesaid addition in the present appeal as well.

44. In the result, the appeal i.e ITA No. 932/AHD/2025 for Assessment year 2015-16 filed by the Revenue is allowed for statistical purposes.

ITA No. 933/AHD/2025 for AY 2013-14:

45. The Revenue before us in ITA No. 933/Ahd/2025 raised following grounds of appeal, which is as follows:

*"**1(i) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.4,28,000/- proposed by the TPO on account of product development services to AES.***

1(ii) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the findings of the TPO's approach of determining the arm's length price adopting TNM Method instead of cost-plus method by taking external companies engaged in manufacturing of formulation.

1(iii) On the facts and circumstances of the cases and in law, the Ld.CIT(A) has erred in accepting the ALP of the assessee determined by ignoring the guidelines laid down under the I.T. Act and Rules and thereby violating the ratio laid down by the Hon'ble Supreme Court in the case SAP Labs India Pvt. Ltd. vs. ITO.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of software expenses of Rs. 11,56,346/- without appreciating the fact that the software has enduring benefits and the same is capital in nature.

3. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing to delete the disallowance of research and development expenditure under section 37 of the Act of Rs.91,42,65,926/- made by the AO, without appreciating the fact that the research activities are capital in nature as it results into development of intangible assets.

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

45.1 Ground No.1 is with regard to addition of Rs.4,28,000/- proposed by the TPO on account of product development services to AES. Ld. CIT(A), allowed the ground relying upon the decision of this Tribunal in ITA No. 1463/AHD/2018 order dated 24.08.2022, wherein in the case of Sun Pharmaceutical Industries Ltd. in the similar set of facts, this

Tribunal has allowed the ground of the Assessee. In view thereof, the ground No.1 urged by the Revenue is dismissed.

45.2 Ground No. 2 and 3 corresponds to the Ground No.1 and 2 of ITA No. 931/Ahd/2025 for AY 2014-15. Both the parties agreed that there is no change in circumstances of the case and, therefore, our decision in on the aforesaid issues in ITA No. 931/Ahd/2025 for AY 2014-15 will apply mutatis mutandis to the grounds raised against the aforesaid addition in the present appeal as well.

46. In the result, the appeal i.e ITA No. 933/AHD/2025 for AY 2013-14 filed by the Revenue is partly allowed for statistical purposes.

ITA No. 2593/Ahd/2025 for AY 2017-18:

47. The Revenue before us in ITA No. 2593/Ahd/2025 raised following grounds of appeal, which are as follows:

> *(i) "On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in **deleting the disallowance of Rs.7,18,01,217/- made u/s 35(1)(iv) of the Act** without appreciating the fact that the assessee fails to fullfill the condition mentioned is section 35(1)(iv) as the assesse is not involved in any business which utilises the developed technology on account of the R&D carried out by the assessee.*
>
> *(ii) On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.7,18,01,217/- made u/s 35(1)(iv) of the Act without appreciating the fact that the assessee is engaged in the business of marketing the scientific research as a product to its group companies.*
>
> *(iii) The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."*

48. Following our decision in ITA No. 765/AHD/2025 for AY 2012-13, the grounds raised by the Revenue and consequently, the appeal filed by the Revenue is allowed.

ITA No. 2594/AHD/2025 for AY 2018-19:

49. The Revenue before us in ITA No. 2594/AHD/2025 raised following grounds of appeal, which are as follows:

> *"1) On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the* ***disallowance of Rs. 6,65,76,987/- made u/s 35(1)(iv) of the Act*** *without appreciating the fact that the assessee fails to fullfill the condition mentioned is section 35(1)(iv) as the assesse is not involved in any business which utilises the developed technology on account of the R&D carried out by the assessee.*
>
> *(ii) On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs. 6,65,76,987/ made u/s 35(1)(iv) of the Act without appreciating the fact that the assessee is engaged in the business of marketing the scientific research as a product to its group companies.*
>
> *(ii) The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."*

50. Following our decision in ITA No. 765/AHD/2025 for AY 2012-13, the grounds raised by the Revenue and consequently, the appeal filed by the Revenue is allowed.

51. In conclusion, the appeals decided by the present order are determined as under:

Sr.No.	ITA Number	Filed by	Assessment Year	Result

1.	366/AHD/2020	Assessee	2009-10	Partly allowed for statistical purposes.
2.	765/AHD/2025	Assessee	2012-13	Partly allowed for statistical purposes.
3.	766/AHD/2025	Assessee	2013-14	Partly allowed for statistical purposes.
4.	767/AHD/2025	Assessee	2014-15	Partly allowed for statistical purposes
5.	768/AHD/2025	Assessee	2015-16	Partly allowed for statistical purposes.
6.	931/AHD/2025	Revenue	2014-15	Partly allowed for statistical purposes.
7.	932/AHD/2025	Revenue	2015-16	Allowed for statistical purposes.
8.	933/AHD/2025	Revenue	2013-14	Partly allowed for statistical purposes.
9.	2593/AHD/2025	Revenue	2017-18	Allowed
10.	2594/AHD/2025	Revenue	2018-19	Allowed

The order pronounced on 15.10.2026.

Sd/-
(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Sd/-
(SANJAY KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 15.10.2026
DS, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) /The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

True Copy

सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad