आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली
INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES, NEW DELHI

BENCH: I

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER AND SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA Nos. 8009/DEL/2018, 8968/Del/2019, 521/Del/2021, 1952 & 1953/Del/2022, 405/Del/2023, 3786/Del/2024 and 88/Del/2026 (**निर्धारण वर्ष**/Assessment Years: **2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 , 2022-23**)		
MARUTI SUZUKI INDIA LTD. PLOT NO. 1, NELSON MANDELA ROAD,, VASANT KUNJ, NEW DELHI-110070, DELHI	**Vs.**	**DCIT, CIRCLE-16(1)** ROOM NO. 312, C.R. BUILDING NEW DELHI-110002, DELHI
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AAACM0829Q**
अपीलार्थी द्वारा/Appellant represented by:		**Shri Ajay Vohra, Sr. Adv.** **Shri Neeraj Jain, Adv.** **Shri Rohit Jain, Adv.** **Ms. Somya Jain, CA** **Shri Ramit Katyal, CA &** **Shri Dhruv Seth, Adv.**
प्रत्यर्थी द्वारा/Respondent represented by:		**Shri Mahesh Kumar, CIT(DR)**

सुनवाई की तारीख / Date of conclusion of hearing:	**21-Jul-2026**
घोषणा की तारीख / Date of pronouncement:	**07-Oct-2026**

आदेश / ORDER

PER BENCH:

1. The Assessee Maruti Suzuki India Ltd (hereinafter referred to as 'assessee) by filing the present appeal sought to set aside the impugned assessment order dated 29.11.2018 passed by the Assessing Officer (AO) u/s 143(3) r.w.s. 144C(1) of the Income Tax Act, 1961 (for short 'the Act')

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inconsonance with the order passed by the Dispute Resolution Panel (DRP)-1, New Delhi dated 24.09.2018 u/s 144C(5) and order dated 19.11.2018 of Transfer Pricing Officer-2, New Delhi. Most of the issues involved in all these appeals are identical and hence they are taken up together and disposed of by this common order for the sake of convenience.

ITA No. 8009/Del/2018– Asst Year 2014-15 – Assessee Appeal

2. The Ground Nos. 1 to 2 raised by the assessee are general in nature.

3. The Ground Nos. 3 to 3.9. raised by the assessee are challenging the confirmation of disallowance of deduction claimed under section 43B of the Act.

3.1. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of manufacture, purchase and sale of automobiles. The other activities of the company comprise facilitation of pre-owned car sales, insurance, fleet management, car financing and trading in shares / securities. The return of income for the assessment year 2014-15 was filed by the assessee company on 29-11-2014 declaring total income of Rs. 1885,11,21,090. This return was revised on 30-3-2016 declaring total income of Rs. 1879,25,40,254.

3.2. During the year under consideration, the assessee claimed deduction of Rs. 218,94,15,652 under section 43B of the Act as under:-

Item No.	Item Particulars	Amount (Rs.)
1	PLA Balance on (i) Excise duty on Vehicles and (ii) R&D Cess on Vehicles	69,83,565/-
2	Customs Duty Paid on import of components for Exports purposes for which export had been made	-
3 and 4	Excise duty on inputs balance in RG23A, Part-II (including NCCD paid to be adjusted against Excise Duty payable on finished products i.e. balance of RG23A Part-II	100,96,27,820/-

	amounting to Rs. 1,02,171/-)	
5a	CVD (Modvat) paid on Goods in Transit to be adjusted against excise duty payable on finished products-Components	30,36,97,025/-
5b	CVD (Modvat) paid on Goods in Transit to be adjusted against excise duty payable on finished products-Steel Coils	46,26,40,778/-
6	Customs Duty on Goods in Transit/ under inspection	10,84,91,371/-
7	Customs Duty included in Closing Stock	27,91,25,849/-
8	Custom Duty paid under protest	66,486/-
9	Excise Duty paid under protest	1,87,82,759/-
	Total	218,94,15,653/-

3.3. This sum was sought to be disallowed by the learned AO in the draft assessment, which was confirmed by the learned DRP. Accordingly, the same addition was made in the final assessment order framed by the learned AO.

3.4. With regard to PLA Balance on Excise duty on Vehicles & R&D Cess on Vehicles of Rs 69,83,565 ; excise duty on inputs balance in RG23A, Part –II of Rs 100,96,27,820 ; Counterveiling duty paid on goods in transit to be adjusted against excise duty payable on finished products-components , the Learned AR before us fairly stated that this issue is covered against the assessee by the decision of Hon'ble Supreme Court in its own case for Assessment Years 1999-2000 and 2000-01 in CA Nos. 11923 & 11924 of 2018 dated 07.02.2020. Respectfully following the same, the Ground Nos. 3.3. to 3.4. raised by the assessee are dismissed.

3.5. With regard to customs duty paid to be adjusted against excise duty payable on finished goods of Rs 76,63,37,803 (30,36,97,025 + 46,26,40,778) and customs duty on goods in transit / under inspection of Rs 10,84,91,371, the said issue is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Samtel Color Ltd wherein the Hon'ble Court while dismissing the SLP Civil Appeal No. 6449/2012 filed by the revenue against the

order of the Hon'ble Delhi High Court reported in 184 taxman 120 (Del) , had held that customs duty paid is allowable as deduction under section 43B of the Act. The orders passed by the Hon'ble High Court for Assessment Years 1999-2000 to 2001-02 , 2005-06 & 2006-07 have been subsequently confirmed by the Hon'ble Supreme Court vide order dated 27.03.2025. Respectfully following the same, the Ground Nos. 3.5. to 3.6. raised by the assessee are allowed.

3.6. With regard to customs duty included in closing inventory of Rs 27,91,25,849, the same is covered in favour of the assessee by the decision of the Hon'ble Jurisdictional Delhi High Court in assessee's own case for the Assessment Years 1999-2000 to 2001-02, 2005-06 & 2006-07 which have been subsequently confirmed by the Hon'ble Supreme Court vide order dated 27.03.2025. Respectfully following the same, the Ground No. 3.7. raised by the assessee is allowed.

3.7. With regard to customs duty paid under protest of Rs 66,486 and excise duty paid under protest of Rs 1,87,82,759, the same is covered in favour of the assessee by the judgement of Hon'ble Jurisdictional Delhi High Court in assesseee's own case for the Assessment Year 1999-2000 in ITA No. 250/2005. Either way, the same is claimed by the assessee only on payment basis and hence allowable as deduction under section 43B of the Act. Accordingly, the Ground Nos. 3.8. and 3.9. raised by the assessee are allowed.

3.8. The Ground Nos. 3.1., 3.2. and 3.10. raised by the assessee are interconnected to the aforesaid Ground Nos. 3.3. to 3.9.

4. The Ground No. 4 raised by the assessee is challenging the action of the learned AO in not allowing the claim for withdrawal of add back of Rs 251,65,29,951 made by the assessee under section 43B of the Act while computing the total income.

4.1. We have heard the rival submissions and perused the materials available on record. The learned AR before us submitted that this issue is already covered in favour of the assessee by the earlier years orders passed by this tribunal in assessee's own case. It was pointed out that the revenue appeal for assessment year 2004-05 on this issue was not admitted by the Hon'ble Delhi High Court vide order dated 28-01-2010. Similar claim made in assessment year 2010-11 was set aside by the tribunal to the learned AO and the learned AO while passing the appeal effect order allowed the said deduction to the assessee.

4.2. In view of the above, the Ground No. 4 raised by the assessee is hereby allowed.

5. The Ground Nos. 5 to 5.3 raised by the assessee are challenging the disallowance under section 14A of the Act read with Rule 8D(2) of the Income Tax Rules.

5.1. We have heard the rival submissions and perused the materials available on record. It is not in dispute that assessee earned dividend income amounting to Rs 54,50,66,560 which was claimed as exempt in the return of income. The assessee claimed that no expenditure was incurred for earning such exempt income but however, on a conservative basis, the assessee made suo moto disallowance of Rs 3,55,13,224 by disallowing salary and administrative expenditure related to the finance and treasury department on a proportionate basis. The workings of suo moto disallowance made by the assessee are reproduced in page 24 of the draft assessment order. The suo moto disallowance made by the assessee was rejected by the learned AO and the learned AO proceeded directly to apply the computation mechanism provided in 2nd and 3rd limb of Rule 8D(2) of the Rules and made disallowance of Rs 14,12,80,047.

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5.2. On perusal of observations made by the learned AO in Para 4.7.1. to 4.7.6 of the draft assessment order, we find that the learned AO had not recorded any objective satisfaction with cogent reasons having regard to the accounts of the assessee that the suo moto disallowance made by the assessee is incorrect. This is the mandate of the provisions of section 14A(2) of the Act read with Rule 8D(1) of the Rules. The learned AO instead of recording objective satisfaction having regard to the accounts of the assessee, had only resorted to make general observations that assessee had incurred more administrative expenditure, more interest expenditure without bringing on record the proximate nexus between the earning of exempt income and the expenditure incurred thereon.

5.3. At the outset, we find that the assessee company is having sufficient interest free funds in its kitty which are higher than the investments made by the assessee. The details in this regard are enclosed in Page 13 of the draft assessment order. Since the interest free funds are sufficiently available with the assessee company, in view of the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd reported in 438 ITR 1 (SC), the disallowance of interest under Rule 8D(2)(ii) of the Rules is hereby deleted.

5.4. With regard to disallowance of indirect expenses under Rule 8D(2)(iii) of the Rules, the law is now very well settled that only those investments which had actually yielded exempt income are to be considered for the purpose of third limb of Rule 8D(2) of the Rules. We direct accordingly. The Learned AO is directed to recompute the disallowance in these directions and from that reduce the figure already disallowed by the assessee in the computation of income. Accordingly, the disallowance under Rule 8D(2)(iii) of the Rules alone is restored to the file of learned AO to recompute the disallowance in the aforementioned terms.

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5.3. Respectfully following the same, the Ground Nos. 5 to 5.3 raised by the assessee are allowed for statistical purposes.

6. The Ground Nos. 6 to 6.5 raised by the assessee are with regard to confirmation of disallowance of deduction claimed on account of expenditure on scientific research under section 35(2AB) of the Act.

6.1. We have heard the rival submissions and perused the materials available on record. The assessee during the year under consideration claimed deduction at the rate of 200% in respect of scientific research expenditure of Rs 656,46,79,438 incurred at its approved in-house facility in Gurgaon and Rohtak as under:-

Particulars	Gurgaon	Rohtak	Total
Capital Expenditure (Other than building net of sales consideration for assets disposed off)	34,96,73,679	363,62,50,120	398,59,23,799
Revenue Expenditure	256,21,36,104	1,66,19,535	257,87,55,639
Gross R&D expenditure eligible for deduction u/s 35 (2AB) excluding land & building	291,18,09,783	365,28,69,655	656,46,79,438

6.2. The assessee accordingly claimed weighted deduction of Rs 1312,93,58,876 in the income tax return. The Learned AO disallowed the deduction claimed under section 35(2AB) of the Act as the approval of expenses in Form 3 CL was not received from Department for Scientific and Industrial Research (DSIR). The assessee subsequently received the approval of expenses in Form 3CL dated 14-08-2020 wherein the expenditure to the extent of Rs 284.37 crores alone were approved as against actual expenditure of Rs 656.47

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Case Citation: (2026) taxcode.in 118 ITAT

crores incurred on scientific research. The following expenses were not approved by the DSIR:-

((a)	Short approval granted for: Revenue Expenditure	1.68 cr
(b)	Short approval granted for: Capital Expenditure	7.89 cr
(c)	Test Track Expenses 2	84.37 cr
(d)	Others :	48.98 cr
	Total :	372.10 cr

6.3. The Learned AR submitted that approval / non-approval of expenses by DSIR in Form 3CL has no relevance at all for the purpose of grant of weighted deduction under section 35(2AB) of the Act to the assessee. It was submitted that once the assessee has incurred expenditure on scientific research in a research and development facility and such facility has been approved by DSIR, the assessee would be entitled for weighted deduction under section 35(2AB) of the Act dehors the approval of expenses in Form 3CL by DSIR. The Learned AR placed reliance on the decision of Hon'ble Delhi High Court rendered in assessee's own case reported in 397 ITR 728 (Del) wherein it was held that if a R&D centre is not recognized, it is not entitled to deduction, but if it is recognized, it is entitled to the benefit. Further, the Learned AR placed reliance on the following decisions of various tribunals wherein it was held that Form 3CL issued by DSIR is of no consequence for the purpose of claiming weighted deduction under section 35(2AB) of the Act:-

- ACIT v. Torrent Pharmaceuticals: IT Appeal No. 3569/Ahd/2004 (Ahd Trib.)
- Coromandel International Ltd vs. ADIT: ITA No. 101/Hyd/2012 (Hyd Trib.)
- Sun Pharmaceutical Industries Ltd. vs. PCIT: 162 ITD 484 (Ahd. Trib.)
- ACIT vs. Mahindra & Mahindra Ltd.: ITA No. 3599 & 3806/Mum/2015 (Mum. Trib.)

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- Minilec India (P.) Ltd. vs. ACIT: ITA No. 690/Pun/2015 (Pune Trib.)
- Texmaco Rail & Engineering Ltd. vs. Pr. CIT: 191 TTJ 9 (Kol. Trib.) (URO)
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6.4. In view of the above, we hold that assessee would be entitled for weighted deduction of Rs 1312,93,58,876 being 200% of Rs 656.47 crores in respect of expenditure incurred for carrying on R&D activities at approved research facility under section 35(2AB) of the Act. Accordingly, the Ground Nos. 6 to 6.5. raised by the assessee are allowed.

7. The Ground Nos. 7 to 7.1. raised by the assessee are challenging the disallowance of royalty paid by the assessee company. The Ground Nos. 8 to 8.1. raised by the assessee are challenging the disallowance of R&D Cess royalty paid by the assessee company.

7.1. We have heard the rival submissions and perused the materials available on record. The assessee paid total royalty of Rs 2543,60,71,859 to Suzuki Motor Corporation (SMC) in this year and the breakup of the same are as under:-

Lump sum royalty	- Rs	57,46,00,000
Running royalty -	- Rs	2401,69,32,711
Running royalty - spares and others	- Rs	84,45,39,148
Total Royalty Expenditure	- Rs	2543,60,71,859

7.2. Apart from this , the assessee company had claimed a net deduction of Rs 116,26,02,467 on account of R&D Cess on Royalty, which was paid to the Government within the time limit prescribed under section 43B of the Act.

7.3. The Learned AO on perusal of the royalty agreement noted that the royalty payment has given enduring benefit to the assessee in the capital field and hence the same is required to be treated as capital expenditure and granted depreciation under section 32 of the Act. Same was the treatment given by the Learned AO for R&D Cess on royalty also.

7.4. The Learned AR submitted that this issue is already covered in favour of the assessee by the orders of this tribunal in assessee's own case for assessment year 2006-07 to 2013-14. The revenue preferred an appeal before the Hon'ble High Court for assessment year 2006-07 wherein the question of law on this particular issue was not even admitted by the Hon'ble Delhi High Court in ITA No. 381 / 2016 and against the said order of the Hon'ble Delhi High Court, the revenue did not prefer any further appeal to Hon'ble Supreme Court on this issue. Similarly for assessment years 2007-08 to 2009-10, this issue was not even admitted in the revenue's appeal by the Hon'ble Delhi High Court. For assessment year 2010-11, the revenue while filing the appeal before the Hon'ble High Court, did not even contest this issue before the Hon'ble High Court.

7.5. In view of the aforesaid situation, we hold that the issue stands covered in favour of the assessee and accordingly we hold that the royalty expenditure would be allowable as a revenue expenditure. The Ground Nos. 7 to 7.1 raised by the assessee are hereby allowed.

7.6. The Ground numbers 8 to 8.1 raised by the assessee are challenging the disallowance of R &D Cess paid on royalty. We find that this is exactly similar to Ground Nos. 7 to 7.1 raised supra and the decision rendered by us for Ground Nos. 7 to 7.1 supra shall apply mutatis mutandis for Ground Nos. 8 to 8.1 also. Accordingly Ground Nos. 8 to 8.1 raised by the assessee are hereby allowed.

8. The Ground Nos. 9 to 9.2 raised by the assessee are with regard to disallowance on account of provisional liability of expenditure on account of FPI-OE components.

8.1. We have heard the rival submissions and perused the materials available on record. The assessee has debited provisional liabilities of Rs. 73,86,87,806 in the

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profit and loss account. The learned AO observed that since these were only provisions, the same ought to have been added back by the assessee in the computation of total income which was not done. Hence, a query was raised to that effect during the course of assessment proceedings. The assessee submitted that it is engaged in the business of manufacture and sale of passenger cars and parts thereof. For the manufacture of passenger cars, the assessee depends on suppliers for supply of components required for the manufacture of final product. At the end of the accounting year, the assessee had approximately 300 suppliers of components and raw materials purchased indigenously. The cost of components and raw materials constitute approximately 70% of the net sales of the company. In this business model, the assessee company cannot simply afford any interruption whatsoever in the supplies of inputs and materials, for any reason whatsoever, such as disputes or difficulties regarding prices. The components purchased by the assessee company from indigenous suppliers are made from various raw materials such as steel, aluminum, lead, etc. The prices of these commodities vary frequently as would be noted from the price trend in the past few years. Because of the long-term relationship between suppliers and the assessee company, the assessee company follows a system of placing orders at the last fixed price. There is a clear and specific understanding between the parties that prices will be varied in case there is any change in the input cost for the suppliers, which also could be claimed by them after detailed discussions and negotiations. On the basis of analysis of the impact of such change in the input cost, the assessee company agrees to increase the price of the components from time to time. Such change in price of components takes place retrospectively to give effect to increase in the input cost of supplies. This system followed by the assessee give comfort level to the suppliers who continue uninterrupted supply of the components even when their cost of production had increased. By the year end, if the change in component price has not been quantified, the

assessee company makes a scientific analysis of increasing the price of the components due to change in the input cost to the suppliers. Accordingly, an estimate is made with regard to the additional amount payable to the suppliers on a scientific basis based on past trends and corresponding debit is made to the profit and loss account to that extent under the head consumption of components and raw materials.

8.2. The learned AO observed that assessee had given similar reply in the earlier years and in the earlier years, the said provision was added back in the assessment pursuant to the directions of the learned DRP. Accordingly, in this year also, the learned AO made an addition of Rs 73,86,87,806 on this account.

8.3. We find that this is a recurring issue and the issue in dispute is already covered in favour of the assessee by the orders passed by this tribunal for assessment years 2007-08 to 2013-14 in assessee's own case. Against the orders passed by the tribunal for assessment years 2007-08 to 2010-11, the revenue preferred appeals before the Hon'ble Delhi High Court, wherein the question of law on this issue was not even admitted. Hence, the tribunal order in this regard had attained finality. Respectively following the same, the Ground Nos. 9 to 9.2 raised by the assessee are hereby allowed.

9. The Ground Nos. 10 to 10.3 raised by the assessee are with regard to disallowance of deduction claimed for provision for warranty.

9.1. We have heard the rival submissions and perused the materials available on record. The assessee has debited Rs 31,38,71,882 on account of warranty provision in the profit and loss account. The assessee submitted detailed justification for the above provision vide submissions dated 29-11-2017 before the learned AO. The assessee submitted that the products ie. cars are sold with warranty for specific periods and during the relevant previous year, the assessee company had debited a net sum of Rs 31,38,71,882 to the profit and

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loss account towards towards provision for warranty claim on accrual basis in respect of sales made during the year. The details submitted by the assessee in this regard are as under :-

Total warranty / product recall expenses debited to the profit and loss account	- Rs 65,09,72,273
Less: Net provision of warranty / recall debited to profit and Loss account	Rs 31,38,71,882
Balance warranty / product recall actually paid during the year	Rs 3,71,00,391

9.2. The assessee submitted that provision for warranty had been made as per mercantile system of accounting and has been made scientifically in respect of unexpired portion of warranty. Also, against the provision so made, actual claims of Rs 33,71,00,391 were lodged against the assessee. A sum of Rs 1,72,56,326 on account of product recall provision has already been disallowed in clause 21 (g) of the income tax return. The balance amount on account of warranty calls for being considered as allowable expense on account of provision made on consistent scientific basis. The assessee also placed reliance on the decision of Hon'ble Supreme Court in the case of Rotork Controls India Pvt Limited reported in 314 ITR 62 (SC) in support of its contentions.

9.3. The Learned AO observed that these are only mere provisions and hence not allowable as deduction and proceeded to disallow the same in the assessment.

9.4. We find that this is a recurring issue and the same is covered in favour of the assessee by the order of this tribunal for assessment year 2010-11. It is pertinent to note that against the order passed by the tribunal, the revenue preferred an appeal before the Hon'ble High Court and this issue was not even challenged by them before the Hon'ble High Court. Hence, the tribunal order

had attained finality. Respectively, following the same, the Ground Nos. 10 to 10.3 raised by the assessee are hereby allowed.

10. The Ground Nos. 11 to 11.2 raised by the assessee are with regard to disallowance of expenditure incurred on corporate social responsibility of Rs 23,28,00,000.

10.1. We have heard the rival submissions and perused the materials available on record. The assessee had incurred expenditure of Rs 23.28 crores on various activities like maintenance of children's park, community development etc., as corporate social responsibility (CSR) expenditure . The assessee was asked to explain the allowability of the same. The assessee submitted the very same submissions that were made in the earlier years and stated that the said expenditures were incurred wholly and exclusively for the purpose of business of the assessee. The Learned AO noted that this issue was subject matter of disallowance in the earlier years and accordingly he proceeded to disallow the same for this year also by applying the provisions of Explanation 2 to section 37(1) of the Act stating that the said explanation is clarificatory in nature. Accordingly, a disallowance of Rs 23,28,00,000 was made in the assessment.

10.2. We find that this is a recurring issue and the same has been already decided by the orders of this tribunal in assessee's own case for assessment years 2009-10 to 2013-14 in favour of the assessee. It is pertinent to note that against the appeals preferred by the revenue for assessment years 2009-10 and 2010-11, the Hon'ble High Court had not even admitted the question of law on this issue. Hence, the tribunal order had attained finality. We find that the revenue had applied the provisions of Explanation 2 to section 37(1) of the Act. But we find on reading of the said provision, the same would be effective only from 1-4-2015 and hence cannot be made applicable for the year under consideration. The said amendment would have only prospective application as is evident from the Explanatory Memorandum to the Finance Bill issued by the

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CBDT. Respectively following the orders of the tribunal in assessee's own case, the Ground Nos. 11 to 11.2 raised by the assessee are hereby allowed.

11. The Ground Nos. 12 to 12.2 raised by the assessee is challenging the taxability of sales tax subsidy of Rs 10,09,39,734.

11.1. We have heard the rival submissions and perused the materials available on record. It is not in dispute that assessee has received sales tax incentives / subsidy of Rs 10,09,39,734 under Rule 28 C of the Haryana General Sales Tax Rules 1975. The said receipt was treated as capital receipt by the assessee. The assessee was asked to furnish the nature of subsidy received from Haryana Government and explain as to why the said subsidy should not be treated as revenue receipt. The assessee submitted detailed justification vide letter dated 27,09,2017. The assessee submitted that the said subsidy was received from the State Government for the purpose of meeting the objectives of Industrial Policy, 1999 viz. to attract new investment and to ensure growth of existing industries so that they can generate employment in industrial and allied sector by 20%. Since the subsidy is received for setting up of the industry, the purpose test need to be applied and accordingly the subsidy received is to be construed as capital receipt. The Learned AO observed that the said subsidy has been received by the assessee after the setting up of the plant and hence the principle laid down by the Hon'ble Supreme Court in the case of Sahney Steel and Press works Private Limited vs CIT reported in 228 ITR 253 (SC) would apply and accordingly proceeded to treat the said subsidy as a revenue receipt. This action of the Learned AO was carried out in tune with the action taken by the revenue in the earlier years.

11.2. At the outset, we find that this is a recurring issue and the issue is already adjudicated by this tribunal for assessment years 2011-12 to 2013-14 in favour of the assessee. Further the Hon'ble Delhi High Court for assessment years 2005-06, 2006-07, 2008-09, 2009-10 and 2013-14 had already decided

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the very same issue in favour of the assessee. Further the Hon'ble Supreme Court for assessment years 2005-06 and 2006-07 in assessee's own case vide its order dated 27-03-2025 had decided the very same issue in favour of the assessee by treating the sales tax subsidy as a capital receipt not chargeable to tax. Respectfully following the same, the Ground Nos. 12 to 12.2 raised by the assessee are hereby allowed.

12. The Ground Nos. 13 to 13.3 raised by the assessee are challenging the action of the revenue in treating the income from redemption of mutual funds as business income as against capital gains reported by the assessee.

12.1. We have heard the rival submissions and perused the materials available on record. It is not in dispute that assessee had invested in mutual funds and they had redeemed certain mutual funds during the year. The assessee had reported short-term capital gains on mutual funds and the long-term capital loss on redemption of mutual funds in the return of income. The various transactions carried out in the mutual funds both investment as well as the redemption thereon are tabulated in pages 97 to 129 of the draft assessment order by the Learned AO. The Learned AO based on frequency of transactions carried out by the assessee construed that it is a systematic activity carried out in an organized manner by the assessee and hence the same is to be construed as activity carried out in the nature of trade and accordingly treated the gains arising therefrom as business income. While doing so, the Learned AO converted the short-term capital gains reported by the assessee as business income and disallowed the long-term capital loss claimed by the assessee in the return on the very same transactions .

12.2. We find that this is a recurring issue and the same has already been adjudicated by this tribunal in assessee's own case for assessment years 2011-12 to 2013-14. The tribunal had observed that the Learned AO in the earlier years had agreed with the fact that the investment in mutual funds made by

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the assessee were for the purpose of investment. When those mutual funds were redeemed, the Learned AO had shifted the stand by converting the gains from short-term capital gains to business income. It was noted that the investments were made by the assessee in mutual funds out of surplus funds available thereon with the intention to maximize the return on investments in the mutual funds . The tribunal by placing reliance on the activity carried out by the assessee ; by placing reliance on the CBDT Circular No. 6/2016 dated 29.02.2016 ; the decision rendered by the Hon'ble Jurisdictional Delhi High Court in the case of WIG investments reported in 461 ITR 117 (Del) and the decision of Hon'ble Calcutta High Court in the case of CIT vs Merlin Holding Private Limited reported in 375 ITR 118 (Cal) proceeded to allow the entire grounds raised by the assessee on this issue and held that the gains received on redemption of mutual funds are to be construed as capital gains instead of business income. Respectfully following the same, the Ground Nos. 13 to 13.3 raised by the assessee are hereby allowed.

13. The Ground Nos. 14 to 14.9 raised by the assessee are challenging the disallowance of purchases made by the assessee from M/s Suzuki Motor Corporation (SMC) on account of non-deduction of tax amounting to Rs. 151,30,62,257.

13.1. We have heard the rival submissions and perused the materials available on record. The assessee during the year under consideration made payment segregating to Rs. 151,30,62,257 to SMC on account of purchase of goods outside India on FOB basis. The Learned AO during the course of assessment proceedings required the assessee to show cause as to why the payments made to SMC for purchase of goods should not be disallowed under section 40(a)(i) of the Act for non-deduction of tax at source there from. The assessee vide reply dated 16-11-2017 submitted that all purchases made by the assessee from SMC are on FOB basis and the property therein stood transferred to the assessee

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outside India . Further such purchases are at arm's length. In the absence of any Permanent Establishment (PE) of SMC in India, the income arising to SMC in relation to sale of goods to the assessee is not liable to tax in India and therefore the question of deducting tax at source by the assessee from payments made thereon does not arise. Further without prejudice, the TDS provisions are not applicable in respect of payments of purchase price in view of the non-discrimination provisions contained in Article 24 of the India-Japan Double Taxation Avoidance Agreement (DTAA). The Learned AO in the draft assessment order disallowed Rs 151,30,62,257 under section 40(a)(i) of the Act for failure to withhold tax on purchase price paid by the assessee to SMC on the ground that the Japanese directors nominated by SMC and senior management personnel who are Japanese nationals who are deputed to India constituted place of management of SMC in India ; dependent agent PE and service PE of SMC under Article 5 of the DTAA and income arising to SMC from sale of goods to assessee was attributable to such PE and was liable to tax in India.

13.2. The Learned AR before us submitted that the issue is already adjudicated by this tribunal in assessee's own case for assessment years 2011-12 to 2013-14. Per contra, the Learned DR submitted that whether PE is present in India or not was never adjudicated by the tribunal in assessment years 2011-12 to 2013-14. The Learned DR argued that whether key senior persons who are deputed from Japan to India are taking decisions for import of goods and the pricing of the product was not looked into by the Learned TPO while accepting the transactions to be at arm's length price. Hence the Learned AO had to look into the same. Since senior people from Japan SMC were deputed to India and they were influencing the entire decision making of assessee company thereby proving the existence of PE in India and accordingly the payments made for purchase of goods outside India would had to be subjected to withholding tax by the assessee.

Case Citation: (2026) taxcode.in 118 ITAT

13.3. At the outset, we find that assessee had purchased goods outside India. Hence it is a case of offshore purchases. The goods were delivered to the assessee outside India and risk, title and rewards incidental to the transfer of goods were transferred outside India. We find that the tribunal in assessee's own case for assessment years 2011-12 to 2013-14 vide order dated 08.10.2025 had an occasion to adjudicate this issue. For the sake of convenience, the relevant observations of the tribunal are reproduced below:-

> *"40. Considered the rival submissions and material placed on record. We observed that the AO had disallowed the payment made by the assessee against the purchases made from the SMC which is the parent company of the assessee. The AO invoked the provisions of section 40(a)(i) r.w.s 195 of the Act. From the facts submitted before us clearly establishes that the payment made by the assessee was only against the purchases and materials supplied by SMC from Japan. It is established fact on record and also both the parties agree with the above facts on record, we noticed that the AO had invoked the above provisions on the basis of non-deduction of tax at the time of payments. First let us discuss the taxability of the above transactions under section 40(a)(i) and section 195 of the Act. In our considered view, it is settled position of law that any payment to a non-resident, tax has to be deducted only upon the transaction or payment which is chargeable to tax under Income Tax Act, as held in the case of GE India Technology Centre (P) Ltd. vs CIT:327 ITR 456 (SC), Engineering Analysis Centre of Excellence Pvt Ltd vs. CIT: 125 taxmann.com 42 (SC)].It is precondition that the AO had to establish that the payments made are chargeable to tax under the provisions of Income Tax. In the given case, the disallowances were made on the significant payments towards purchases to the SMC, Japan Which is the parent company. The issue is whether the provisions of with holding tax applicable to the purchases?. In our view, the provisions are outside the scope of payments towards purchases. It is fact on record that the manufacturing of the goods imported by the assessee are made outside the territory of India. In our view, the above transaction has to be evaluated on the basis of related party transactions involving International Transaction on the basis of transfer pricing. From the facts brought on record, the provisions of section 40(a)(i) r.w.s 195 is not applicable to the present transaction, the additions proposed are not valid.*
>
> *41. The revenue argued that any payment made to the non-resident has to be subjected to TDS, even if the tax is not payable, the assessee should have made application before AO or obtained a certificate as per the rule prescribed u/s 195 (3) and (6) of the Act. These rules are applicable particularly when the payments are made with concessional rate or payments are made subject to tax. When the persons making the payment aware of the fact that the transaction is not taxable in the territory of India, there is no requirement of deduction of tax.*

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42. At the same time, we observed that the assessee had declared the above purchases from SMC as international transaction before the TPO, which is reproduced at page 2 of the TPO order. The TPO had accepted the above purchases and not proposed any TP adjustment, it is also fact on record that the above components and consumables were utilized by the assessee in the manufacturing in their plant. It is the domain of the TPO to verify the purchases as part of the transfer pricing and if there is any SMC interest in terms of Permanent Establishment or not had to be analyzed by him considering the same as special domain. Once the Purchases are accepted as proper in the TP study, there is no room for the AO not make any addition at the time of making payments. In our view, the purchases are made from the related concern having impact on the functions and manufacturing carried on by the assessee having direct impact on the Indian Market, therefore, this is the domain of the TPO, the AO instead of applying section 195 on the payment to the SMC, he should have referred this issue back to the TPO, there is not domain of the assessing officer particularly he is aware of the fact that the transaction involving import of material or components from the AE. We observe that for the issue of payments towards purchases, several issues relating to PE and all the relevant issues raised in this appeal relating to Permanent Establishment involving permanent or fixed place of business, service PE, controlling of subsidiary by employing deputed directors, whether in the pay roll of the assessee company or not, whether there can be any place of management issue, issue of dependent agent PE has to be analyzed at the back drop of analyzing the international transaction with the related concern. This is not domain of the assessing officer; it is the domain of technical units like TPO. Therefore, in our considered view, TPO had already considered the issues involving the transfer pricing at the reference of the AO, the same cannot be revisited with the wrong additions proposed by the AO. The additions proposed by the AO have no legs to stand.

43. With regard to article 24 non-discrimination clause of the treaty, we have already held that the payment for purchases are not subjected to the TDS provisions, it falls under the Article 5 and 7 of the treaty, this has to be evaluated under the transfer pricing. The article 24 has direct implication when the tax authorities impose TDS provisions differently for domestic and foreign entities. In the domestic transactions, the TDS provisions are not applicable in the case of purchases, similar treatment has to be extended to the nonresidents involving similar purchases, only difference is it should be evaluated by applying Transfer Pricing provisions. There are specific provisions applicable with regard to import of goods from AEs. Therefore, we are inclined to delete the additions made u/s 40(a)(i) of the Act."

13.4. Further, we find that the Hon'ble Delhi High Court in its Full Bench judgment in the case of CIT vs Mitsubishi Corporation India Pvt Ltd reported in

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463 ITR 335 (Del) (FB) had an occasion to consider the non-discrimination article vide Article 24(3) of the DTAA between India and Japan wherein it was held that there could be no disallowance under section 40(a)(i) of the Act on account of non-deduction of tax at source out of payments made to the overseas enterprise for purchase of goods by the India payer entity, inter alia, for the reason that there was no provision similar to section 195 of the Act warranting deduction of tax at source out of payment for payment of consideration for purchase of goods to a resident supplier. In view of the Full Bench judgement of the Hon'ble Delhi High Court, the non-discrimination clause in Article 24(3) of the India-Japan DTAA would equally apply with regard to payment for purchases made by the Indian payer assessee to the Japanese supplier. The Hon'ble Delhi High Court dismissed the appeal filed by the revenue and held that the non-discrimination clause under India-Japan tax treaty was in pari materia with non-discrimination clause under India-US tax treaty and thus the propositions laid down in the case of CIT vs Herbal Life International Private Limited by the Hon'ble Delhi High Court reported in 384 ITR 276 (Del) would equally apply to India-Japan tax treaty also.

13.5. In view of the aforesaid observations and respectfully following the decision of this tribunal in assessee's own case and the decisions of Hon'ble Delhi High Court referred supra, the Ground Nos. 14 to 14.9 raised by the assessee are hereby allowed.

14. Ground Nos. 15 to 15.19 raised by the assessee are challenging the transfer pricing adjustment on account of royalty of Rs. 942,66,08,231/-.

14.1 We have heard the rival submissions and perused the materials available on record. During the year under consideration, the assessee company incurred royalty expenditure of Rs. 2543,60,71,859/- which includes lump sum royalty of Rs. 57,46,00,000/- though capitalised in the books of account but claimed as

deduction in the return of income. The break up of the royalty expenditure is as under:-

a.	lump sum royalty	Rs. 57,46,00,000
b.	running royalty-vehicles	Rs. 2401,69,32,711/-
c.	running royalty- spares and other	Rs. 84,45,39,148/-
Total royalty expenditure		Rs. 2453,60,71,859/-

14.2 The ld AO in the draft assessment order held that royalty paid by the assessee was capital in nature and consequently the entire royalty payment was disallowed on the ground that it was giving enduring benefit to the assessee in the capital field. This decision was primarily taken based on the premise that the life cycle of a car could be 5 years and the license agreement entered into by the assessee is for 10 years which is extendable by 5 years.

14.3 The ld AR submitted this issue is already decided in favour of the assessee in its own case by the Hon'ble Delhi High Court for AYs 2005-06, 2007-08, 2008-09 and 2009-10 vide consolidated order dated 03.02.2025. The revenue was not able to place on record any contrary evidence to prove that the said decision has been reversed by Hon'ble Supreme Court. Considering the same, the Ground Nos. 15 to 15.19 raised by the assessee are allowed.

15. Ground No. 16 raised by the assessee is seeking credit for TDS of Rs. 1,23,53,378/-. This matter requires factual verification by the ld AO and ld AO is hereby directed to examine the allowability of credit of TDS as per law. Accordingly, Ground No. 16 raised by the assessee is allowed for statistical purposes.

16. The Ground No. 17 raised by the assessee is challenging the ad hoc addition of Rs. 3 crores made to be business income.

16.1 We have heard the rival submissions and perused the materials available on record. We find that the ld AO without having any discussion in the assessment order directly added a sum of Rs. 3 crores on adhoc basis to the business income of the assessee in the computation sheet. The assessee preferred rectification application in this regard before the ld AO u/s 154 of the Act which according to the ld AR was not disposed of by the ld AO. The ld AO is hereby directed to dispose of the said rectification application. Accordingly, Ground No. 17 raised by the assessee is allowed for statistical purposes.

17. Ground No. 18 raised by the assessee is challenging the interest u/s 234A of the Act. The ld AO is directed to verify whether the return of income for the year under consideration has been filed within the due date or such other date as extended from time to time if any, basis which the chargeability of interest u/s 234A of the Act is to be decided. Accordingly, the Ground No. 18 raised by the assessee is allowed for statistical purposes.

18. Ground Nos. 19 to 19.1 raised by the assessee are challenging the levy of interest u/s 234B of the Act which are consequential in nature.

19. The assessee has raised Additional Ground No. I seeking refund of excess dividend distribution of tax paid by it.

19.1 We have heard the rival submissions and perused the materials available on record. This issue was decided against the assessee by Special Bench of Mumbai Tribunal in the case of DCIT Vs. Total Oil India Pvt. Ltd reported in 149 taxmann.com 332 [Mumbai ITAT (SB)], wherein assessee had also joined as one of the aggrieved parties. So effectively in assessee's own case, Special Bench has decided the issue in favour of the revenue. Later the Hon'ble Bombay High Court in the case of Colorcon Asia Pvt. Ltd Vs. DCIT reported in 181 taxmnann.com 301 had decided the issue in favour of the assessee. The decision against the Hon'ble Bombay High Court order is challenged by the

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revenue before the Hon'ble Supreme Court and the same is pending. Since, the assessee itself was one of the parties before the Special bench wherein, the issue was decided in favour of the revenue, we deem it fit and appropriate to restore this issue to the file of the ld AO to decide the same based on the final outcome of the judgement of Hon'ble Supreme Court in the case of Colorcon Asia Pvt. Ltd. With these observations, Additional Ground No. I being legal issue, is hereby admitted and restored to the file of the ld AO. The Additional Ground No. I is allowed for statistical purposes.

20. The Additional Ground No. II raised by the assessee was on account of claiming deduction for education cess which was stated to be not pressed by the ld AR and accordingly, dismissed as not pressed.

21. Ground No. 1.1 raised by the assessee challenging the assessment to be barred by limitation in the light of decision of the Hon'ble Madras High Court in the case of CIT Vs. M/s. Roca Bathroom Products Pvt. Ltd. Reported in 445 ITR 537 (Mad) was already withdrawn by the assessee. Hence, the same is hereby dismissed as withdrawn.

22. In the result, the appeal of the assessee in ITA No. 8009/Del/2018 for AY 2014-15 is partly allowed for statistical purposes.

ITA No. 8968/Del/2019 for AY 2015-16

23. The Ground No. 1, 1.2, 1.3 and 2 raised by the assessee are general in nature.

24. The Ground No. 1.1 raised by the assessee challenging the assessment to be barred by limitation was withdrawn by the assessee. Hence dismissed as withdrawn.

25. The following grounds are identical with those raised in assessment year 2014-15 and hence the decision rendered by us hereinabove for AY 2014-15

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shall apply mutatis mutandis for the respective grounds in AY 2015-16 also except with variance in figures:-

Grounds in AY 2015-16	Identical grounds in AY 2014-15
3 to 3.2	3 to 3.2
3.3 to 3.4	3.3 to 3.4
3.5 to 3.6	3.5 to 3.6
3.7	3.7
3.8 to 3.9	3.8 to 3.9
4 to 4.1	4 to 4.1
5 to 5.3	5 to 5.3
6 to 6.5	6 to 6.5
7 to 7.1	7 to 7.1
8 to 8.1	8 to 8.1
9 to 9.2	9 to 9.2
11 to 11.2	12 to 12.2
12 to 12.3	13 to 13.3
13 to 13.9	14 to 14.9
14 to 14.19	15 to 15.19
15	16
17 to 17.1	18 to 19.1
18	Addl Ground No. I
Addl. Ground No. I	Addl. Ground No. II

26. The Ground Nos. 10 to 10.2 raised by the assessee are challenging the disallowance of expenditure incurred on Corporate Social Responsibility (CSR) of Rs. 21,53,80,371/-.

26.1 We have heard the rival submissions and perused the material available on record. During the year, the assessee company incurred expenditure of Rs. 39,54,90,607/- on CSR activities, out of which only sum of Rs. 37,82,90,607 qualified as CSR expenditure. The said CSR expenditure was incurred on activities broadly relating to 4 categories namely Road Safety, Community Development, Skill Development and Contribution to Prime Minister National Relief Fund. The details of expenses incurred are as under:-

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Case Citation: (2026) taxcode.in 118 ITAT

Project	Amount spent
Road Safety	15,16,64,283
Skill development/ ITI project	6,06,92,154
Community Development and Employee Volunteering	15,56,35,800.
Contribution to Prime Minister National Relief Fund	1,02,98,370.
Total	37,82,90,607

26.2 Out of the aforesaid the assessee suo motto disallowed expenditure amounting to Rs. 15,56,35,800 being activities in the nature of community development not allowable as deduction in terms of Explanation 2 to Section 37(2) of the Act inserted by Finance Act (2), 2014 with effect from 01.04.2015. The contribution to Prime Minister National Relief Fund was claimed as deduction u/s 80G of the Act. The remaining expenditure of Rs. 21,23,56,437 (15,16,64,283 plus 6,06,92,154) was claimed as allowable deduction u/s 37(1) of the Act in the return by the assessee company. The ld AO proceeded to disallow this claim of the assessee on the ground that the same had not been incurred wholly and exclusively for the purpose of the business. In addition the ld AO also alleged that the expenditure incurred by the assessee resulted in enduring benefit to the assessee and was therefore, capital in nature. The ld AR before us submitted that expenditure on road safety and skill development incurred by the assessee was meant wholly and exclusively for the purpose of business of the assessee and the same, though categorised as CSR expenditure for the purpose of Companies Act, would not be hit by the amended provisions of Explanation 2 to Section 37(1) of the Act. The ld AO submitted the details of expenditure incurred on account of road safety project and skill development project by explaining as under:-

> ***"Skill Development Programs:***
> *Skilled manpower is an essential requirement to drive economic growth. While on the one hand there is unemployment and under-employment, on the other hand, the industry is constantly on the lookout for skilled manpower. While the country has large number of technical training institutes run by Government and private organizations, the quality of training infrastructure and level of teaching require*

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significant upgradation to meet the skilled manpower requirements of the industry. Bridging this gap is possible only through proper skill training. In India, while there is a large pool of workmen, their skill levels are far from the industry requirements.

The government has identified upgradation of ITIs in the country to meet the future requirement of skilled manpower as per industry requirements.

The assessee company has become a part of this effort by undertaking to upgrade select ITIs across the country. The assessee is working towards improving the quality of training by upgrading infrastructure, facilitating overall development of students and staff, providing industry exposure to students and staff and offering industry-oriented add-on courses in Government Industrial Training Institutes (ITIs) to make students industry-ready.

The Company, was during the year under consideration, upgrading 27 ITI's in 8 states. The programme aims at fine-tuning with the current and future business requirements and to groom the candidates studying in ITIs. Through this programme over 9500 students and over 800 teachers were trained in 2014-15.

As a part of its affirmative action programme, Maruti Suzuki has deliberately chosen to work with the ITIs at Elathur, Kerala, which specifically caters to the Scheduled Caste and Scheduled Tribe (SC/ST) community and the women's ITIs at Gurgaon and Jhajjar. Students from these ITIs were employed in service workshops of the company's dealers. A large number of students passing out of these ITIs secure employment at the dealer workshops. This initiative helps in meeting the manpower requirement of service workshops at the same time helping students in getting gainful employment.

In 2014-15, the Company took this initiative to the next level by committing to setup Automobile Skill Enhancement Centres (ASEC) at 45 Industrial Training Institutes across the country in a phased manner. Each of these centres will be equipped with a model service workshop to provide practical training. The Company has appointed full time trainers, provided tools, and equipment and forged partnerships with local Maruti Suzuki service workshops to upgrade skills of ITI students and make them job-ready.

The aforesaid program is also, it is submitted, directly linked to the business of the assessee, viz., manufacture of automobiles inasmuch as it enables the company to identify and recruit much needed skilled workforce. That apart, there is another benefit from such programs inasmuch as it generates enormous amount of goodwill, reputation and brand image amongst the existing and the prospective customers. There is, thus, direct linkage of the aforesaid expenditure with the business of the assessee.

Road Safety:

Over one lakh road accident fatalities occur in India every year. This is the highest in the world. Studies show that the driver's fault is the principal reason for road accidents and fatalities. This reinforces the need for driving training and road safety awareness. In the absence of a proper driving training infrastructure in the country, people drive without proper training, leading to road accidents and fatalities.

The assessee runs a large nationwide road safety programme that focuses on providing scientific driving training and generating awareness amongst masses on safe driving. The Company works on several road safety initiatives:

- ***Institutes of Driving and Traffic Research (IDTRs):*** *Established in partnership with the Government, IDTRs offer training for passenger car and commercial vehicle drivers.*

- ***Road Safety Knowledge Centres (RSKC):*** *The Company has setup RSKC in partnership with Haryana Traffic Police to promote road safety in cities.*

- ***Maruti Driving Schools:*** *Opened in association with Maruti Suzuki's dealer network, Maruti Driving School (MDS) offers classroom as well as attitudinal training. Advanced simulators create on-road driving situations, so learners get a first-hand feel of the road before they actually drive.*

- ***Train the Trainer Programme:*** *The key objective of the programme is to develop high quality, dedicated road safety professionals for its driving schools and standardize training delivery across India. Updating trainers on latest technologies and standardized training delivery modules helps strengthen their level of dedication and expertise. These inputs play an important part in positioning them as a new generation of driving training professionals who in turn are responsible for providing state-of-the-art lessons to drivers of light and heavy motor vehicles.*

- ***Minority Communities:*** *The Company has signed an MoU with National Minorities Development and Finance Corporation (NSFDC) to train economically weaker youth belonging to minority communities.*

- ***Road Safety for Truck Drivers:*** *As a community, truck drivers remain underserved. The Company works with truck drivers throughout the year. They rovide driving training facilities that have been specially customised to suit their needs with a flexible curriculum and relevant course material. Organized special week-long road safety campaign for truck drivers, which includes competitions, mock sessions, guest lectures, quizzes and*

interactive activities that reinforce safe driving, provide information on basic traffic rules and ignis and bolster self-esteem of truckers. Health and eye check-ups along with confidential testing for HIV/AIDS are also part of campaign. Every year, the programme sees a new value addition.

- ***Road Safety Education:*** *The Company promotes road safety among people through various campaigns in partnership with traffic police.*

Here, it is pertinent to note that the aforesaid is not in principle a range of additional activities that the company adopts; rather it is a way of carrying out the core activity which recognizes the company's responsibility towards society as part of the business environment. It thus follows, that CSR considerations are integrated into the company's business strategy and core processes.

Road safety program, it is submitted, is directly linked to the business of the assessee, viz., manufacture of automobiles. These kind of programs, it is submitted, generates enormous amount of goodwill, reputation and brand image amongst the existing and the prospective customers/drivers. There is direct linkage of the aforesaid expenditure with the business of the assessee."

26.3 From the above explanation offered by the ld AR, prima facie it appears that the expenditure has been incurred wholly and exclusively for the purpose of business of the assessee only. But the very same expenditure has been categorized by the assessee as CSR expenditure for the purpose of Section 135 of the Companies Act 2013. The Explanation 2 to Section 37(1) of the Act has been inserted with effect from AY 2015-16 which reads as under:-

"Explanation 2- For the removal of doubts, it is hereby declared that for the purposes of sub-section 1, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purpose of the business or profession."

26.4 Hence by deeming fiction, the aforesaid expenditure which has been categorized as CSR expenditure for the purpose of Section 135 of the Companies Act 2013, would squarely get hit by Explanation 2 to Section 37(1) of the Act. As stated supra, even though, the said expenditure is closely linked with

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the business of the assessee, since the same has been categorized as CSR expenditure for the purpose of Section 135 of the Companies Act 2013, the said expenditure shall be liable for disallowance in terms of Explanation 2 to Section 37(1) of the Act by applying deeming fiction. The various case laws relied upon by the ld AR in the written submissions of various High Courts and Tribunals (including the Tribunal decision in assessee's own case for AY 2009-10 and 2010-11) were rendered prior to this amendment effective from AY 2015-16 and hence not applicable to the facts of the case.

26.5. The ld AR vehemently contended that since the proximate nexus of the incurrence of the aforesaid CSR expenditure with the business of the assessee stands established by the assessee, then the same would have to be construed as incurred wholly and exclusively for the purpose of the business of the assessee and accordingly allowable as deduction under section 37 of the Act. If this contention of the ld AR is accepted, then the amendment brought in Explanation 2 to section 37(1) of the Act would become otiose and would never become applicable. In this regard, we would like to bring a small variation between items that get covered under Explanation 2 to section 37(1) of the Act and items falling under Chapter VIA of the Act. With regard to deduction claimed under section 80G of the Act and allowed by the ld AO for contribution to PM National Relief Fund, the same is only a deduction from the Gross Total Income, whereas the deduction of expenditure under section 37 of the Act is an item charged as expenditure for computing the 'income from business'. The business income is to be computed as per Chapter IVD under sections 28 to 44D of the Act. Along with the said business income, the other heads of income are to be added so as to arrive at the Gross Total Income. From that arrived Gross Total Income, deduction under Chapter VIA (read section 80G of the Act in the instant case) is granted. Hence deduction under section 80G of the Act stand on a different footing with other items of CSR expenditure covered under Explanation 2 to section 37(1) of the Act.

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Case Citation: (2026) taxcode.in 118 ITAT

26.6. In view of the aforesaid observations, the Ground Nos. 10 to 10.2 raised by the assessee are dismissed.

27. The Ground No. 16 raised by the assessee is challenging the action of the ld AO in not allowing Foreign Tax Credit of Rs. 4,63,78,202.

27.1. We have heard the rival submissions and perused the materials available on record. The assessee had certain foreign tax credit but the same was not claimed in the return of income. This claim was made by the assessee during the course of assessment proceedings. The relevant statutory form in this regard was filed by the assessee during the course of assessment proceedings before the ld AO as the said TDS certificates were not received till the time of filing of return of income. The foreign income was duly offered to tax in the return of income and hence, relief was sought u/s 90/90A of the Act during the course of assessment proceedings. The ld AO denied the same in the assessment proceedings. This issue is already decided in assessee's own case for AY 2013-14 by this Tribunal. Accordingly, the Ground No. 16 is restored to the file of ld AO to allow the same after due verification.

28. In the result, the appeal of the assessee in ITA No. 8968/DEL/2019 for AY 2015-16 is partly allowed for statistical purposes.

ITA No. 521/Del/2021 for AY 2016-17

29. The following grounds are identical with those raised in AY 2015-16 and hence the decision rendered by us herein above for AY 2015-16 shall apply mutatis mutandis for the respective grounds in AY 2016-17 except with variance in figures:-

Grounds in assessment year 2016-17	Identical to grounds in assessment year 2015-16
1.3 and 3	1 to 2
5 to 5.4	6 to 6.5
6 to 6.10	3 to 3.10

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7 to 7.3	5 to 5.3
8 to 8.1	7 to 7.1
9 to 9.1	8 to 8.1
10 to 10.2	9 to 9.2
11 to 11.2	10 to 10.2
12 to 12.1	12 to 12.3
13 to 13.10	13 to 13.9
14 to 14.1	18
15 to 15.1	Additional Ground No. I
16 to 16.20	14 to 14.19
18	15
19	16
20 & 21	17 to 17.1

30. The Ground No. 17 raised by the assessee is challenging the action of the ld AO to have given lesser deduction under Chapter VIA of the Act while computing the taxable income. The ld AR submitted that this error has been rectified by the ld AO in the rectification order passed under section 154 of the act dated 15.05.2026 and hence withdrawn by the assessee. Accordingly, the Ground No. 17 is hereby dismissed as withdrawn.

31. No arguments were advanced in support of Ground Nos. 2 to 2.2 raised by the assessee and hence dismissed as not pressed.

32. The Ground Nos. 4 to 4.8 raised by the assessee are challenging the disallowance of deduction for Engineering Support Services Fees (ESS) u/s 35(2AB) of the Act amounting to Rs. 226,70,84,000/-.

32.1 We have heard the rival submissions and perused the materials available on record. During the year under consideration, the assessee had made payment of Rs. 113,35,42,000 to Suzuki Motor Company, Japan (SMC) on account of "Engineering Support Services" (ESS) and had claimed weighted deduction of Rs. 226,70,84,000 with respect to the said amount at the rate of 200% under Section 35(2AB) of the Act. The Learned AO disallowed the deduction under Section 35(2AB) of the Act on the ground that :-

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a) The contention of the assessee that new car model viz. Brezza was developed by the assessee based on its own research and development using SMC's base technology and engineering support from SMC since 2012, is lieu of which ESS fee is paid is allegedly not correct ;

b) Functions for which royalty was paid by the assessee to SMC and services in lieu of which ESS fee is paid to SMC are not independent and separate;

c) The agreement for payment of ESS fee entered on 26-03-2016 and covering services rendered since 2012 cannot be taken as base to allow expenditure incurred in earlier years;

d) Since ESS fee was not approved by DSIR in Form 3CL, the same is not allowable as deduction ;

e) ESS fee paid to SMC was merely in the nature of testing charges and is not eligible for deduction in terms of Rule 6(7) of the Income Tax Rules, 1962 read with Section 35(2AB) of the Act.

32.2. It is the case of the assessee that the aforesaid observations were made by the Learned AO without considering the documentary evidences placed on record before the lower authorities. The assessee along with the SMC had jointly developed / launched a new product / motor vehicle called Brezza, which was the result of continuous effort undertaken by the assessee from the year 2012 onwards. The said product was developed by the assessee based on its own Research and Development (R&D) while using SMC's base technology and with the engineering support of SMC beginning with the year 2012. The said R&D was carried out by the assessee at its in-house R&D facility. SMC at various stages during the above period provided its valuable engineering support / approval, recommend modifications / changes etc to the assessee as and when required. Briefly engineering support services provided by SMC to the assessee can be categorized on the following basis:-

www.taxcode.in

Case Citation: (2026) taxcode.in 118 ITAT

S.No.	Nature of support provided by SMC	Brief description of the support extended by SMC
1.	Provision of data/information	SMC shall provide basic domain knowledge/information relating to designs, etc, for manufacturing of automobiles. The same would be utilized for designing and development of BREZZA by the appellant in its R&D facility in India.
2.	Allowing the appellant the use of SMC manufacturing facility in Japan	The appellant has been allowed to test parts, conduct interim tests, etc, in the manufacturing facility of SMC in Japan. Subsequent to the above testing in Japan, the appellant further conducts various in-house tests/developments in India on the said products to localize/innovate as per India requirements.
3.	Prescribing standards	SMC prescribes specifications for quality standards which should be adhered by the appellant for manufacturing of BREZZA in India. Aforesaid support is incidental to the provision of data/information.
4.	Providing logistics support	SMC shall also provide logistic support to the appellant. Aforesaid support by SMC is incidental to allowing the use of its manufacturing facility by SMC to the appellant for testing of products.
5.	Use and modification in SMC system	The appellant obtains basic domain knowledge which it further utilizes to conduct R&D in India. No modifications in drawings etc is permitted. However, the appellant when using the said knowledge in India, is required to update certain details in the software system of SMC. SMC provides support to the appellant in updating those details in the software. This is integral part of the research being conducted in India.
6.	Providing manpower support	Manpower support shall be provided by SMC, if required for providing of any of the earlier mentioned support services by SMC to the appellant. Aforesaid support is completely incidental to earlier mentioned support services.

32.3. The details of various documentary evidences submitted by the assessee before the lower authorities to prove the fact that R&D in respect of Brezza was conducted by the assessee with assistance from SMC ; role of SMC in manufacture and development of Brezza and that engineering support was received from SMC since 2012 are as under:-

www.taxcode.in

Case Citation: (2026) taxcode.in 118 ITAT

a) nature and brief description of services in lieu of which ESS fee is paid in detail;

b) Pertinently, support has been provided by SMC to the assessee for approximately 72 activities;

c) reports issued by SMC were physically shown and submitted with the learned AO;

d) Two emails dated 17-06-2015 and 23-06-2015 on sample basis, evidencing that services were rendered by SMC throughout financial year 2015-16 and not towards the fag end of the year only;

e) technical note on development process involved in development of a car /automobile as adopted by the assessee for its various models, vis-a-vis, that adopted under the Brezza model project along with functions performed by the assessee and SMC. The said note clearly demonstrates that additional R&D activities done by the assessee in conceptualization of Brezza model vis-a-vis other car models;

f) another note on the process of development of Brezza car model by the assessee and support received from SMC for the same in lieu of which ESS fee is paid by the assessee to SMC.

In the said note, it was comprehensively explained that SMC has provided engineering support in various fields relating to conceptualization and designing of the product Brezza by the assessee company such as Concept, Styling and Package ; Construction Designing ; Calculation and Simulation ; and Testing of the product.

32.4. The assessee's engineers participated at SMC facility to take part in few tests. The evidences with regard to assessee's employees visiting SMC Japan for these activities were filed before the lower authorities. It was submitted that various tests were done to validate the design prototype at SMC and these included - Wind Tunnel Resistant Test , Narrow Band Noise Test in Wind Tunnel, ABS performance test and suspension related tests etc. The copy of these test reports which were conducted in SMC Japan were submitted on

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sample basis. These test reports were then shared by SMC with assessee's R&D team and wherever required design was further improvised. The assessee also furnished the copy of invoices and airway bills on sample basis evidencing physical delivery of prototype testing vehicles developed by assessee to SMC in Japan for testing support. The assessee submitted few evidences in the form of request letters, airline tickets and hotel bills of employees of the assessee visiting SMC Japan for various activities. The assessee also furnished the copy of emails on sample basis sent by assessee to SMC Japan seeking technical assistance from the latter along with relevant form for such requisition. The assessee furnished the letter of intent dated 15-11-2013 written by assessee to SMC for sharing of certain technical control specifications, design specifications etc. for the Brezza project. It was submitted that these documents prove that research and development in relation to Brezza model were being conducted by the assessee and engineering support services rendered by SMC to the assessee for the Brezza project for which payment has been made by the assessee to SMC during the year under consideration.

32.5. The ld AR before us sought to justify the payment of ESS fees to SMC Japan in addition to payment of royalty and brought out the distinction between the two. The assessee operates as a licensed manufacturer of four-wheeler vehicles in India. The manufacturing license has been granted by SMC to the assessee vide various license agreements which are specific for a model vehicle. In accordance with the terms of the license agreements, SMC is responsible to undertake design and development of vehicles. It was submitted that the model for a vehicle is first conceptualized and thereafter it is developed and then the design prototype is prepared for testing and trial. Once the same is complete, prototypes are prepared for production, trial and mass trial; once the trials are successful, the production of a particular vehicle starts. Since SMC is responsible for design and development of various vehicles, it is engaged in significant research and development activities. Hence, SMC is responsible for

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the first four stages of vehicle model development, i.e. (i) conceptualization ; (ii) model development ; (iii) design prototype trial and (iv) production prototype trial. The assessee gets involved in the process only at the stage of mass production trial and start of production process. The production trials are combined responsibility of SMC and the assessee. Thereafter vide license agreement dated 22-3-2016 entered between SMC and the assessee, rights are granted to the assessee for manufacturing of vehicles. Pursuant to the terms of license agreement, SMC also provides technical information including know-how, trade secrets and other data to the assessee. In consideration thereof, royalty is at the rate of 5% of sales paid by the assessee to SMC. The payment of royalty is a consolidated payment for grant of manufacturing license, provision of technical information and the license of trademarks. Hence, the technical information supplied by SMC under the royalty agreement to the assessee pertains to the manufacturing of vehicles in respect of which license has already been granted.

32.6. With regard to payment for engineering support services, the same has been paid during the year for stages of design and development of the new product i.e. for Brezza vehicle, whereas royalty relates to technology and data provided for mass production of the product / vehicle. Being so, it was submitted that the two payments are completely independent and separate. It was submitted that for the Brezza vehicle model, since the assessee has done part design and development activities, it has received benefit of lower rate of royalty payment to SMC. As per the royalty agreement dated 22-03-2016, the assessee is required to pay only 3% royalty on the parts of the Brezza vehicle model developed and designed by it, while it is required to pay 5% royalty on the parts of the Brezza vehicle model which have been completely designed by SMC (critical components of the vehicle such as platform, powertrain, etc.,) have been designed by SMC. Considering the respective portion of development activities done by SMC and assessee, a 3.9% royalty was eventually determined

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to be paid by assessee to SMC for its contribution in the development activities. Accordingly, it was submitted that engagement of the assessee in research and development activities, particularly designing of new product with engineering support from SMC, against which impugned engineering support fee is paid, has lead to significant saving of royalty payments to be made by the assessee to SMC. It was reiterated that engineering support services have been paid by the assessee to SMC for services rendered at the stage of designing of the new product / vehicle, while the royalty is paid for use of base technology provided by SMC for vehicle manufacturing and use of the intellectual property in the parts designed by the assessee with support of SMC. Owing to designing of parts of the new product Brezza by itself, with the help of engineering support from SMC, benefit of reduced royalty at the rate of 3.9% (average basis) is enjoyed by the assessee. Thus it was submitted that both ESS fee payment and payment of royalty are separate and independent.

32.7. The engineering support service agreement was signed on 26-03-2016 with effective date from 01-08-2012. The Learned AO had observed that the agreement signed in 2016 cannot be applicable for services rendered since 2012. In this regard, it was submitted that the Learned AO had not appreciated the fact that while the engineering support services were rendered since earlier period from 2012 onwards, it was mutually agreed between the parties i.e. assessee and SMC to charge fee for the engineering support services when the Brezza project appears to come to fructification. The agreement crystallized into an enforceable debt on the signing of the engineering support agreement on 26-03-2016. It was submitted that the liability for making the payment for engineering support services received from SMC accordingly crystallized in financial year 2015-16 i.e. the year under consideration. Consequently, the invoices were raised by SMC with respect to engineering support services during the year under consideration and payment for the same were made by the assessee on 25-04-2016. Further, the assessee has placed on record the

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documents such as emails, test reports, etc. to substantiate the receipt of services from SMC right since 2012. Further, the assessee has also placed on record a letter of intent dated 15-11-2013 written by assessee to SMC for sharing of certain technical (control specifications, design specifications, etc) for the Brezza project. The said letter further substantiates that services / support was continuously sought and received by the assessee from SMC from 2012 onwards i.e. when the project planning started. It was submitted that the assessee had deducted and deposited the tax at source on payment of engineering support service fees to SMC during the year under consideration.

32.8. Further, with respect to weighted deduction for the said payment of engineering support service fee claimed under section 35(2AB) of the Act, it was submitted that the said expenditure was incurred on the R&D facility which is duly approved by DSIR. Brezza was a new product offered by the assessee based on assessee's own R&D and with engineering support of SMC. The said R&D was carried out by the assessee at its in-house R&D facility which has been approved by DSIR.

32.9. We find that the assessee had also furnished additional evidences before the learned DRP enclosing the following documents:-

a) Note on the process of development of Brezza car model by the assessee and support received from SMC Japan for the same, in view of which engineering support fee is paid by the assessee to SMC - enclosed in pages 3289 to 3293 of the paper book volume VII

b) List of representative activities in respect whereof support was taken by the assessee from SMC for Brezza project - enclosed in page 3294 of the paper book volume VII

www.taxcode.in

Case Citation: (2026) taxcode.in 118 ITAT

c) Copy of invoices and airway bills on sample basis evidencing physical delivery of prototype testing vehicles developed by assessee to SMC in Japan for testing support - enclosed in pages 3295 to 3300 of the paper book volume VII

d) Evidences in the form of request letters, air tickets and hotel bills of employees of the assessee visiting SMC Japan for various activities connected with the Brezza project, together with the purpose of the visit of the employees - enclosed in pages 3301 to 3321 of the paper book volume VII

e) Copy of various reports on sample basis for tests conducted by SMC - enclosed in pages 3322 to 3361 of the paper book volume VII

f) Copy of e-mail on sample basis sent by assessee to SMC seeking technical assistance from the latter along with relevant form for such requisition - enclosed in pages 3362 to 3363 of the paper book volume VII

g) Copy of comprehensive note describing automotive model development process - enclosed in pages 3364 to 3369 of the paper book volume VII

h) Copy of letter of intent dated 15-11-2013 written by assessee to SMC for sharing of certain technical (control specifications, design specifications etc.) for the Brezza project - enclosed in page 3370 of the paper book volume VII

The aforesaid additional evidences were duly admitted and a remand report was sought by the learned DRP from the learned AO. The learned AO furnished the remand report which are enclosed in pages 3419 to 3424 of the paper book volume VII. The assessee filed rejoinder to the said remand report which are enclosed in pages 3425 to 3440 of the paper book volume VII.

32.10. At the behest of the Bench, the Learned AR also furnished the documents :-

a) Copy of Engineering Support Service Agreement along with detailed scope of work - enclosed in pages 3441 to 3457 of the paper book volume VIII

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b) Copy of certificate dated 21-01-2016 issued by International Centre for Automotive Technology duly certifying that Brezza vehicle was compliant with the Central Motor Vehicle Rules, 1986 - enclosed in pages 3458 to 3467 of the paper book volume VIII

c) Copy of press release dated 08-03-2016 for launch of Brezza model – enclosed in pages 3468 to 3472 of the paper book volume VIII

d) Copy of press release dated 25-03-2016 notifying the start of delivery for Brezza - enclosed in pages 3473 to 3474 of the paper book volume VIII

e) Copy of TDS certificate in Form 16A for the quarter ended 31-03-2016 evidencing deduction of tax at source on ESS fee paid by the assessee to SMC - enclosed in pages 3475 to 3479 of the paper book volume VIII

f) Copy of bank statement evidencing payments made to SMC towards ESS fee - enclosed in pages 3480 to 3482 of the paper book volume VIII

g) Copy of relevant extracts of annual report for the year ended 31-03-2016 informing about the in-house role played by the assessee in development of Brezza from the relevant extract of the Directors' Report - enclosed in pages 3483 to 3484 of the paper book volume VIII

h) Copy of minutes of Audit Committee dated 28-01-2016 approving the payment of ESS fee for the Brezza Project - enclosed in page 3485 of the paper book volume VIII

32.11. The ld AR submitted that SMC Japan had also offered to tax in India the ESS fee received from assessee and had paid due taxes thereon. This also proves the rendition of engineering support services by SMC Japan to assessee. We find that the rendition of services by SMC is not even doubted by the ld TPO while benchmarking the said transaction. From the various evidences placed on record, it could be seen that engineering support services were indeed rendered

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by SMC to the assessee right from the conception of the Brezza project in the year 2012 and that only the formal agreement is deduced in writing on 26-03-2016 and since the services were received by the assessee from 1-8-2012, the agreement was made effective from 1-8-2012. We do not find any infirmity in the same. Further, the in-house R&D facility of assessee for the Brezza project had been duly approved by DSIR and only the quantification has not been done by DSIR. We have already held in earlier part of this order that once the R&D facility is approved by DSIR, the assessee would be eligible for weighted deduction under section 35(2AB) of the Act dehors the non-quantification of expenditure by DSIR. The said observations would be squarely applicable to this ground also here.

32.12. In view of the above observations, the Ground Nos. 4 to 4.8. raised by the assessee are hereby allowed.

33. In the result, the appeal of the assessee in ITA No. 521/Del/2021 for Assessment Year 2016-17 is partly allowed for statistical purposes.

ITA No. 1952/Del/2022– Asst Year 2017-18 – Assessee Appeal

34. The following grounds are identical with those raised in AY 2015-16 and hence the decision rendered by us herein above for AY 2015-16 shall apply mutatis mutandis for the respective grounds in AY 2017-18 except with variance in figures:-

Grounds in assessment year 2017-18	Identical to grounds in assessment year 2015-16
1, 1.5. and 3	1 to 2
5 to 5.10	3 to 3.10
6	4 to 4.1.
7 to 7.5.	5 to 5.3
8 to 8.1	7 to 7.1
9 to 9.1	8 to 8.1
10 to 10.2	9 to 9.2

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11 to 11.2	10 to 10.2
12 to 12.1	12 to 12.3
13 to 13.10	13 to 13.9
14 to 14.1	18
15 to 17.18	14 to 14.19
20	16
21	15
23	17 to 17.1

35. No arguments were advanced in support of Ground Nos. 1.1. to 1.3. raised by the assessee and hence dismissed as not pressed.

36. The Ground No. 1.4. raised by the assessee challenging the assessment to be barred by limitation was withdrawn by the assessee. Hence dismissed as withdrawn.

37. The Ground No. 13A raised by the assessee is only seeking MAT credit of Rs 8,35,77,160. This is a matter requiring factual verification by the learned AO and hence the learned AO is directed to examine this claim of the assessee in accordance with law and grant credit for the same is found eligible. Accordingly, the Ground No. 13A raised by the assessee is allowed for statistical purposes.

38. The Ground No. 22 raised by the assessee is only seeking credit for correct amount of advance tax. This is a matter requiring factual verification by the learned AO and hence the learned AO is directed to examine this claim of the assessee in accordance with law and grant credit for the same is found eligible. Accordingly, the Ground No. 22 raised by the assessee is allowed for statistical purposes.

39. The Ground Nos. 2 to 2.7. raised by the assessee are challenging the action of the lower authorities in importing of adjustments made in intimation

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under section 143(1) of the Act in the final assessment order framed under section 143(3) of the Act.

39.1. We have heard the rival submissions and perused the materials on record. The return was processed by the CPC under section 143(1) of the Act, whereby certain additions were made to the returned income. The case was thereafter selected for scrutiny and the assessment was framed under section 143(3) of the Act. In the computation forming part of the assessment order, the learned AO did not commence from the returned income and instead he adopted as his starting point the income as determined in the intimation under section 143(1) of the Act. The assessee did not separately challenge the intimation by way of an appeal. The question is whether the additions made in the intimation under section 143(1) of the Act are open to challenge in the present appeal arising out of the order under section 143(3) of the Act. In this regard, the learned DR vehemently argued that the items that were subject matter of additions in section 143(1) of the Act proceedings cannot be challenged in appeal against section 143(3) proceedings. He relied on the coordinate bench decision of Delhi Tribunal in the case of Orient Craft Ltd vs DCIT reported in 158 taxmann.com 1124 (Del Trib) and Marmo Home P Ltd vs DCIT reported in 187 taxmann.com 452 (Del Trib) in support of his contentions. We find that the facts prevailing in Orient Craft are totally different. In that case, against the additions made in section 143(1) of the Act, an appeal was preferred before the learned CITA, which was subsequently withdrawn by the assessee in view of the fact that scrutiny proceedings were on for that assessee. Hence that assessee thought that the additions made in section 143(1) of the Act could be explained in detail before the AO during scrutiny proceedings. The AO framed section 143(3) assessment order without making the additions that were subject matter in intimation under section 143(1) of the Act. That assessee thought that intimation under section 143(1) of the Act stood merged with section 143(3) order and since no addition was made in section 143(3) order, it withdrew the

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appeal filed before the learned CITA. It was submitted in that case, since the additions were not made in section 143(3) order, the AO was convinced with the explanations given by the assessee in the scrutiny assessment proceedings, Hence reliance placed on this decision would not advance the case of the revenue as it is factually distinguishable. In the instant case before us, the assessee (i.e. Maruti Suzuki India Ltd) on its part had duly furnished the entire details and explanations before the learned AO in the scrutiny proceedings which are enclosed in Page 4170 of the Paper Book. Despite these details and explanations, the learned AO did not resort to look into the same and modify the income of the assessee accordingly.

39.2. With regard to yet another decision relied upon by the learned DR in the case of Marmo Home P Ltd supra, it was mentioned that an independent appeal to CITA would lie against the intimation under section 143(1) or scrutiny order passed under section 143(3) or 144 of the Act and hence the doctrine of merger would not apply. In that case, the Bench proceeded on the footing that no grievance arose from the order under section 143(3) of the Act. In our considered opinion, in the instant case before us (ie. Maruti Suzuki India Ltd) , there is a specific discussion by the learned AO in the assessment order regarding the adjustments made in the intimation under section 143(1) of the Act , thereby establishing the grievance of the assessee beyond reasonable doubt. Since the grievance of the assessee stood established beyond reasonable doubt in the order under section 143(3) of the Act, the assessee is at liberty to raise the objections before the learned DRP. In any event, we are unable to comprehend ourselves to accept to this proposition as assessee is duly entitled to contest the issues that were subject matter of intimation under section 143(1) of the Act, on merits in the scrutiny assessment proceedings under section 143(3) of the Act. Infact the same could also be contested for the first time in an appeal against the section 143(3) of the Act order on merits and not on the validity of framing those additions in intimation proceedings under

www.taxcode.in

Case Citation: (2026) taxcode.in 118 ITAT

section 143(1) of the Act. Hence on merits, the lower authorities ought to have adjudicated this issue.

39.3. Moreover, once the case is selected for scrutiny by issuance of notice under section 143(2) of the Act, there need not be any issuance of intimation under section 143(1) of the Act. In the instant case, the notice under section 143(2) of the Act was issued on 27.09.2019 and intimation under section 143(1) of the Act is dated 21.3.2021. This is clearly provided in section 143(1D) of the Act itself. Reliance also has been rightly placed by the learned AR on the decision of the Hon'ble Supreme Court in the case of CIT vs Gujarat Electricity Board reported in 260 ITR 84 (SC). Hence the action of the revenue in making certain additions in the intimation under section 143(1) of the Act on 21.3.2021 itself is bad in law as already notice under section 143(2) of the Act has been issued on 27.09.2019 itself. Be that as it may, the issues on merits could be contested by the assessee at any point of the proceedings. Moreover, the theory of merger would indeed apply and intimation under section 143(1) of the Act stands merged with section 143(3) order. There can be only one operative determination of the total income for an assessment year; once a regular assessment is framed pursuant to notice under section 143(2) of the Act, the summary determination under section 143(1) of the Act loses its independent existence. By adopting the income determined in the intimation as the very base of his computation, the learned AO has consciously incorporated the adjustments made by the CPC into the assessment, and those additions form part and parcel of the income assessed under section 143(3) of the Act. On identical facts where the Assessing Officer "started his computation of income from the income determined by the CPC under section 143(1)" the Co-ordinate Bench of Delhi Tribunal in the case of Jubilant Ingrevia Ltd. v. ACIT in ITA No. 5851/Del/2024 dated 11.03.2026, held that the intimation under section 143(1) of the Act stood merged with the assessment order under section 143(3) of the Act. Similar view was taken by the Co-ordinate Bench of Mumbai Tribunal in the

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case of Maker Tower 'F' Premises Co-op. Society Ltd. vs. DCIT in ITA No. 1360/Mum/2024 dated 25.07.2024 and Co-ordinate Bench of Delhi Tribunal in the case of DCIT v. Denso Haryana (P.) Ltd. reported in 186 taxmann.com 311 (Delhi-Trib.) and South India Club v. ITO reported in 163 taxmann.com 479 (Delhi-Trib.).

39.4. The issue in dispute could be looked into yet another angle. For the additions that were subject matter of intimation under section 143(1) of the Act, will the learned AO not initiate penalty proceedings under section 271(1)(c) of the Act, eventhough the penalty gets initiated only after framing of assessment under section 143(3) of the Act. This argument strengthens the theory of merger propounded by us hereinabove and in the aforesaid decisions which were relied upon by us. We accordingly hold that the intimation under section 143(1) of the Act stood subsumed in the assessment order under section 143(3) of the Act and the additions made therein are open for adjudication in the present appeal. Following the ratio laid down by Delhi Tribunal in the case of Jubilant Ingrevia (supra), each such addition shall be adjudicated on merits, after duly considering the explanations and evidences of the assessee, in accordance with law. Since no examination has been made on merits of the additions, we deem it fit and appropriate to restore those additions to the file of learned AO for denovo adjudication in accordance with law. Accordingly, the Ground Nos. 2 to 2.7. raised by the assessee are allowed for statistical purposes.

40. The Ground Nos. 4 to 4.6. raised by the assessee are challenging the confirmation of disallowance of weighted deduction on account of expenditure on scientific research under section 35(2AB) of the Act.

40.1. We have heard the rival submissions and perused the materials available on record. Though this issue has been elaborately dealt by us hereinabove in Ground Nos. 6 to 6.5. in Assessment Year 2014-15, the allowability of quantum

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of weighted deduction during the year (i.e. AY 2017-18) would have to be looked into in the context of provisions of Rule 6(7A) of the Income Tax Rules duly amended with effect from 1-7-2016. At the outset, there is no dispute that the assessee maintains an in-house Research and Development (R&D) facility which stands approved by the prescribed authority, namely the Department of Scientific and Industrial Research ("DSIR"), in Form No. 3CM. There is no dispute with regard to the approval of the facility, which is one of the mandatory conditions for the grant of the weighted deduction. The dispute pertains only to the quantum of the deduction. We find that the DSIR in Form No. 3CL had quantified a lesser amount of expenditure and the weighted deduction has been granted by the learned AO accordingly as per amended Rule 6(7A) of the IT Rules. Accordingly, a sum of Rs 532,15,30,000 stood disallowed by the learned AO in the assessment. The substituted provisions of Rule 6(7A) of the Rules with effect from 1.7.2016 (applicable from Assessment Year 2017-18) onwards are reproduced hereunder:-

> *"(7A) Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely :—*
>
> *(a) The facility should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;*
>
> *(b) The prescribed authority shall furnish electronically its report,—*
>
> *(i) in relation to the approval of in-house research and development facility in Part A of Form No. 3CL;*
>
> *(ii) quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form No. 3CL;*
>
> *(ba) The report in Form No. 3CL referred to in clause (b) shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General*

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of Income-tax having jurisdiction over such company within one hundred and twenty days,—

(i) of the grant of the approval, in a case referred to in sub-clause (i) of clause (b);

(ii) of the submission of the audit report, in a case referred to in sub-clause (ii) of clause (b);

(c) The company shall maintain a separate account for each approved facility; which shall be audited annually and a report of audit in Form No. 3CLA shall be furnished electronically to the Secretary, Department of Scientific and Industrial Research on or before the due date specified in Explanation 2 to sub-section (1) of section 139 of the Act for furnishing the return of income, for each succeeding year.

Explanation : For the purposes of this sub-rule the expression "audited" means the audit of accounts by an accountant, as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961;

(d) Assets acquired in respect of development of scientific research and development facility shall not be disposed of without the approval of the Secretary, Department of Scientific and Industrial Research."

40.2. The learned AR assailed the disallowance by raising the following legal issues, which we summarise before setting out his submissions on each of them:-

(i) on the plain language of section 35(2AB) of the Act, the weighted deduction is allowable on the entire "expenditure so incurred" and the words "as approved by the prescribed authority" qualify the facility and not the expenditure;

(ii) Rule 6(7A) of the Income Tax Rules (hereinafter referred to as the Rules) , being subordinate legislation, cannot curtail or whittle down the deduction conferred by the section;

(iii) the internal scheme of section 35 of the Act itself demonstrates that, wherever the Legislature intended the certification by the prescribed authority to be the measure of the deduction, it has expressly said so in the Act;

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(iv) the legal position prevailing prior to the amendment of Rule 6(7A) of the Rules has not changed in the absence of a corresponding amendment to the Act;

(v) the issue stands covered in favour of the assessee by the judicial precedents, including a post-amendment decision of the Co-ordinate Bench of Benguluru Tribunal.

40.3. We deem it fit to deal with each of the aforesaid arguments advanced by the learned AR. On the first issue, the learned AR submitted that section 35(2AB) of the Act allows the weighted deduction with reference to the entire amount of the expenditure incurred by the assessee. The provisions of section 35(2AB) of the Act are reproduced hereunder for the sake of convenience:-

"Section 35(2AB)- (1) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred:

Provided that where such expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility is incurred in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the expenditure so incurred.

Explanation.—For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970)."

……

40.4. It was submitted that the provisions of the section very clearly allow the weighted deduction on the entire amount of the "expenditure incurred"; the requirement of approval by the prescribed authority attaches to the in-house

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research and development facility and not to the quantum of the expenditure; and once the facility is approved and the expenditure is in fact incurred on such facility, the section itself places no ceiling by reference to any quantification by the DSIR. On the second issue, the learned AR submitted that what is allowed by the section cannot be curtailed or limited by a rule; Rule 6(7A), in seeking to do so, oversteps the provisions of the section, which is not permissible since the rules are subservient to the Act. In support, he relies on the judgement of the Hon'ble Supreme Court in the case of CIT vs Taj Mahal Hotel reported in 82 ITR 44 (SC), wherein the Hon'ble Court observed as under:

> *"It has been rightly observed that the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect. If the assessee had claimed higher depreciation allowance that would not detract from the meaning of the word 'plant' in clause (vib) of section 10(2)."*

40.5. The learned AR also relied on the judgement of the Hon'ble Delhi High Court in the case of Chamber of Tax Consultants vs Union of India reported in 400 ITR 178 (Del), wherein the notification of the Income Computation and Disclosure Standards (ICDS in short) was challenged and the Hon'ble Court struck down the standards to the extent the same were found to be ultra vires the Act, reiterating the principle that delegated legislation cannot override or modify the provisions of the parent statute. On the same issue, the learned AR further relied on the following text of the judgement of the Hon'ble Gujarat High Court in the case of CIT vs Claris Lifesciences Ltd reported in 174 Taxman 113 (Gujarat):

> *"7. The Tribunal has considered the submissions made on behalf of the assessee and took the view that section speaks of (i) development of facility; (ii) incurring of expenditure by the assessee for development of such facility; (iii) approval of the facility by the prescribed authority, which is 'DSIR'; and (iv) allowance of weighted deduction on the expenditure so incurred by the assessee. The provisions nowhere suggest*

Case Citation: (2026) taxcode.in 118 ITAT

or imply that 'R & D' facility is to be approved from a particular date and in other words, it is nowhere suggested that date of approval only will be cut-off date for eligibility of weighted deduction on the expenses incurred from that date onwards. A plain reading clearly manifests that the assessee has to develop facility, which presupposes incurring expenditure in this behalf, application to the prescribed authority, who after following proper procedure will approve the facility or otherwise and the assessee will be entitled to weighted deduction of any and all expenditure so incurred. The Tribunal has, therefore, come to the conclusion that on plain reading of section itself, the assessee is entitled to weighted deduction on expenditure so incurred by the assessee for development of facility. The Tribunal has also considered rule 6(5A) and Form No. 3CM and come to the conclusion that a plain and harmonious reading of rule and Form clearly suggests that once facility is approved, the entire expenditure so incurred on development of 'R & D' facility has to be allowed for weighted deduction as provided by section 35(2AB). The Tribunal has also considered the legislative intention behind above enactment and observed that to boost up R & D facility in India, the Legislature has provided this provision to encourage the development of the facility by providing deduction of weighted expenditure. Since what is stated to be promoted was development of facility, intention of the Legislature by making above amendment is very clear that the entire expenditure incurred by the assessee on development of facility, if approved, has to be allowed for the purpose of weighted deduction.

8. We are in full agreement with the reasoning given by the Tribunal and we are of the view that there is no scope for any other interpretation and since the approval is granted during the previous year relevant to the assessment year in question, we are of the view that the assessee is entitled to claim weighted deduction in respect of the entire expenditure incurred under section 35(2AB) of the Act by the assessee."

40.6. Per Contra, the learned DR submitted that Rule 6(7A) of the Rules duly amended from 1.7.2016 oversteps the section and that the rules are subservient to the Act. He submitted that that it is only the Hon'ble High Courts, in exercise of their writ jurisdiction, which can hold a rule to be ultra vires; the Tribunal, cannot examine the validity of the Rules, and any such action by the Tribunal is beyond the purview of its powers. So long as Rule 6(7A) of the Rules stands in the statute book, it binds the authorities functioning under the Act, and the learned AO was therefore justified in restricting the weighted deduction to the

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amount quantified by the DSIR in Part B of Form No. 3CL. On the same reasoning, he submitted that the judicial precedents relied upon by the learned AR on the primacy of the Act over the Rules do not advance the case of the assessee before this forum. As regards the submissions on the plain language of the section and its internal scheme, the learned DR submits that section 35(2AB) itself prescribes that the expenditure as well as the facility are to be approved by the DSIR, since the relevant part of the provision reads "any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred". On this reading, the amendment to Rule 6(7A) of the Rules merely operationalises what the section itself requires and does not overstep the provisions of the Act; consequently, the quantification of the eligible expenditure by the DSIR in Part B of Form No. 3CL is determinative of the quantum of the deduction.

40.7. We find at the outset that the lower authorities had not doubted the genuineness of the expenditure incurred in excess of the amount certified by the DSIR nor has any documentary evidence furnished in support of such expenditure been controverted. The disallowance rests solely on the quantification in Form No. 3CL. We find that the language of the section Section 35(2AB)(1) of the Act allows a deduction of one and one-half times of the expenditure where a company "incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority". On a plain grammatical reading, the words "as approved by the prescribed authority" qualify the "facility" and not the "expenditure". What the statute commits to the DSIR is the approval of the facility; the measure of the deduction is "the expenditure so incurred". The provision is thus facility-centric, and to read into it a further requirement that the quantum of the expenditure

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must also be approved or certified by the DSIR would amount to reading more into the law than what is expressly provided. This is also the construction adopted by the Hon'ble Gujarat High Court in Claris Lifesciences (supra), which affirmed the view of the Tribunal that, on a plain reading of the section itself, once the facility is approved, the assessee is entitled to the weighted deduction on the entire expenditure so incurred. For the very same reason, we are unable to accept the submission of the learned DR that the section contemplates the approval of the expenditure as well; had that been the legislative intention, nothing prevented the Legislature from employing the language of certification of expenditure, which, as noticed hereinafter, it has consciously employed elsewhere in the very same section. In this regard, we may gainfully refer to the provisions of section 35(2B) of the Act wherein it is specifically mentioned in the section itself that weighted deduction shall be restricted to the amount quantified by the prescribed authority. Hence wherever the legislature in its wisdom thought it fit to specify the restriction of allowability of weighted deduction to the extent of amount quantified by the prescribed authority, it had specifically said so. The conscious omission of such language from section 35 (2AB) of the Act is significant; the Legislature, in its wisdom, has taken a conscious call not to provide in section 35(2AB) of the Act a restriction of the kind found in section 35(2B) of the Act and no such restriction can be introduced through the Rules. Further, clause (4) of section 35(2AB) of the Act requires the prescribed authority to submit "its report in relation to the approval of the said facility" in such form and within such time as may be prescribed. The rule-making power is thus confined to the form and the time of a report on the approval of the facility; it does not extend to converting such report into the measure of the deduction. But when such restriction is not provided in the Act but instead provided only in the Rules, then the question arises whether the Rules could go against the provisions of the Act and whittle down the benefit provided to the assessee in the Act. In this regard, it would be relevant to

address the inter play between the section and the Rule. When section 35(2AB) of the Act and Rule 6(7A) of the Rules are read harmoniously, the position which emerges is as follows:-

> *"(i) Rule 6(7A)(b) of the Act is addressed to the prescribed authority and not to the assessee; it casts a reporting obligation on the DSIR. The obligations cast on the assessee viz. the application in Form No. 3CK, the agreement with the DSIR, the maintenance of separate audited accounts and the furnishing of the audit report in Form No. 3CLA, admittedly stand discharged in the present case; and*
>
> *(ii) the measure enacted by the section, i.e. "the expenditure so incurred", was not amended when the rule was substituted. As held by the Hon'ble Supreme Court in Taj Mahal Hotel (supra), the Rules are meant only for the purpose of carrying out the provisions of the Act and they cannot take away what is conferred by the Act or whittle down its effect. Subordinate legislation may supplement the machinery of the Act, but it cannot curtail the measure of a deduction granted by the substantive provision.*
>
> ***(emphasis supplied)"***

40.8. We have merely construed the Rule harmoniously with the section here which is an exercise well within the powers of the Tribunal and does not involve any adjudication on the validity of the Rule. So construed, the quantification by the DSIR in Part B of Form No. 3CL is a report furnished by the prescribed authority to the Department; it is neither an estoppel against the assessee nor a fetter on the duty of the learned AO to compute the deduction in accordance with the mandate of the section. We may gainfully refer to the decision of the Hon'ble Delhi High Court in the case of Chamber of Tax Consultants vs Union of India reported in 400 ITR 178 (Del), wherein the notification of the Income Computation and Disclosure Standards (ICDS in short) was challenged and the Hon'ble Court struck down the standards to the extent the same were found to be ultra vires the Act, reiterating the principle that delegated legislation cannot override or modify the provisions of the parent statute. Later the provisions of section 145(2) of the Act with effect from 29.9.2016 and further the provisions of section 145A(i) of the Act was amended by the Finance Act 2018 with retrospective effect from 1.4.2017 to make ICDS mandatory. Hence the

legislature in its wisdom whenever it had felt the need to correspondingly amend the provisions of the Act, it had expressly done so.

40.9. On the yet another issue submitted by the learned AR that even before the amendment to Rule 6(7A) of the Rules, the DSIR had been quantifying and certifying the expenditure in Form No. 3CL, and such quantification was consistently held by the courts and the tribunals to be of no consequence to the quantum of the deduction because there was no mandate to that effect in the section. This position had not changed pursuant to the amendment of the Rule in the absence of a corresponding amendment brought in the Act.

40.10. We find that the issue in dispute is already adjudicated by the *Co-ordinate Bench of Benguluru Tribunal in the case of Edgeverse Systems Limited vs ACIT reported in 183 taxmann.com 364* which has considered the very scenario after the amendment to Rule 6(7A) of the Rules. The relevant operative portion of the said decision is reproduced below:-

> *"55.3 We now examine the legal position. Section 35(2AB) of the Act grants weighted deduction on expenditure incurred on approved in-house research and development facilities. The section itself does not use the expression 'expenditure certified by the prescribed authority.' It only mandates approval of the facility by the prescribed authority. The requirement of quantification of expenditure by DSIR has been introduced by way of amendment to Rule 6(7A) of the Income-tax Rules with effect from 01.07.2016. Thus, the quantification requirement flows from the Rules and not directly from the substantive provision of the Act.*
>
> *55.4 It is a settled principle of law that Rules framed under the Act cannot override or curtail the scope of the substantive provisions of the Act. If there is any conflict between the Act and the Rules, the Act must prevail. In the present case, section 35(2AB) of the Act does not restrict the allowance of weighted deduction only to the amount quantified by DSIR. Unlike section 35(2B) of the Act, where the statute expressly limits the deduction to the amount 'certified' by the prescribed authority, no such restrictive language is found in section 35(2AB) of the Act. Therefore, the Rule cannot be interpreted in a manner so as to read into the section a limitation which the legislature itself has consciously not provided.*

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55.5 We further note that the assessee has complied with all substantive conditions prescribed under section 35(2AB) of the Act, namely maintaining separate books of accounts for the R&D facility, getting such accounts audited, and furnishing the audit report to DSIR in Form No. 3CLA. The delay or partial quantification by DSIR is an event over which the assessee has no control. The assessee cannot be made to suffer for administrative or procedural lapses on the part of the prescribed authority.

……….

55.7 As regards the portion of expenditure of Rs.2,16,00,776 which was not quantified by DSIR, we are of the considered view that mere non-quantification by DSIR cannot automatically render such expenditure ineligible for weighted deduction under section 35(2AB) of the Act, when the facility itself is approved and the expenditure is otherwise found to be incurred on in-house R&D activities. There is nothing on record to show that this expenditure falls outside the scope of approved R&D activities or is of a nature specifically excluded under the Act.

……….

55.9 Considering the object of section 35(2AB) of the Act, which is to encourage and promote in-house research and development, we are of the view that a hyper-technical interpretation which denies weighted deduction on genuine R&D expenditure would defeat the legislative intent. Incentive provisions should be construed liberally, so long as the basic conditions prescribed by law are fulfilled. In view of the above discussion, we hold that the assessee is entitled to weighted deduction under section 35(2AB) of the Act on the entire eligible expenditure incurred on its approved in-house R&D facility. … Accordingly, the disallowance sustained by the learned CIT(A) is set aside. The Assessing Officer is directed to grant appropriate relief in accordance with law. The ground raised by the assessee is allowed."

40.11. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that the assessee would be entitled for weighted deduction under section 35(2AB) of the Act dehors the amount quantified by the DSIR even after the amendment to Rule 6(7A) of the Rules with effect from 1.7.2016 in the absence of corresponding amendment in the Act and on the general jurisprudence that Rules cannot override the provisions of the Act. Accordingly, the Ground Nos. 4 to 4.6. raised by the assessee are allowed.

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41. The Ground Nos. 18 to 18.5 raised by the assessee are challenging the transfer pricing adjustment on account of transfer of power and steam by the eligible undertaking to non-eligible undertaking.

41.1. We have heard the rival submissions and perused the materials available on record. The assessee's manufacturing facility is located at Manesar, Haryana. The said facility requires an uninterrupted round-the-clock power supply at a constant voltage. For this purpose, the assessee established its own plant for the generation and supply of electricity, (0:39) which is treated as a captive power plant. Further, it was submitted that the captive power plant supplies electricity to meet the assessee's internal requirements as well as those of its business partners, including domestic related parties. Accordingly, in the transfer pricing documentation for the year under consideration, captive power plant, which is an eligible undertaking for claiming tax holiday, was characterized as a service provider engaged in generation and power supply of power to assessee's non-tax holiday unit and domestic related parties i.e. taxable undertakings. Considering the nature of aforesaid international transactions and the same being closely and inextricably connected, the assessee benchmarked the same applying Transactional Net Margin Method (TNMM) with the operating profit to operating cost (OP / OC) as the Profit Level Indicator (PLI). The assessee company selected the following companies as comparables for benchmarking the aforesaid specified domestic transaction:-

Name of the Comparable	OP /OC
Sarda Energy and Minerals Limited	(-) 3.25%
Orient Abrasives Limited	36.67%
Muthoot Finance Limited	128.98%
Lloyds Metals and Energy Limited	216.62%
MEAN	94.76%

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41.2. Since the PLI of the captive power plant was 9.18% which was lower than that of the mean operating margin of the comparable companies, the transaction of transfer of power was considered to be at arm's length by the assessee in the transfer pricing documentation. The assessee submitted that before the learned TPO that it had supplied power to unrelated parties at the same rate at which it has supplied power to related parties and in that view of the matter, the specific domestic transaction of transfer of power ought to be considered at arm's length even applying the Comparable Uncontrolled Price (CUP method). It was submitted that captive power plant had supplied power to the manufacturing unit at the rate of Rs 14 per unit and to unrelated parties at the rate of Rs 14.14 per unit. The learned TPO however disregarded the benchmarking conducted by the assessee and applied CUP method by merely stating that CUP being a direct method had to be given preference over other methods and thereafter required the assessee to show cause as to why the transaction of transfer of power by the captive power plant to the manufacturing unit of the assessee not be benchmarked on the basis of rates at which power is traded at IEX. The assessee filed detailed objections for adoption of IEX rates before the learned TPO.

41.3. The learned TPO however, vide order dated 30.1.2021, without applying any of the prescribed methods provided in the Rules and in violation of the show-cause notice issued by him, held that the profit earned by the captive power plant was excessive and should be made reasonable. The learned AO thereafter determined that the entire profit earned by the captive power plant amounting to Rs. 30.20 crores was excessive and reduced the same to Rs. Nil. Accordingly, an adjustment of Rs. 30.20 crores was made by the learned AO in respect of specified domestic transaction relating to the transfer of power by the captive power plant to the assessee's manufacturing unit.

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41.4. The learned TPO further held that since steam is a by-product, no separate cost could be attributed to it.

41.5. The learned DRP upheld the adjustment made by the learned AO and held no infirmity in the order of the learned AO. It would be relevant to reproduce the findings of the learned DRP in this regard:-

> *"The AO has rejected the TP approach of assessee which has taken TNMM as the MAM. A detailed reason in this regard has been given in the order of the TPO. Further, TPO benchmarked the transfer of power between eligible and ineligible units taking the average rate of Indian Energy Exchange in Haryana, which is suitable CUP. There is no infirmity in the order of the AO in this regard."*

41.6. We find that the lower authorities having stated in their respective orders that they apply CUP method to benchmark the specified domestic transaction of the assessee, did not bring in any actual comparable transaction and had merely reached the conclusion that the profit earned by the captive power plant was excessive on the basis of surmise and conjecture. The learned TPO or learned AO does not even apply IEX rates as mentioned in the show cause notice. Simply the Learned AO had adopted the ALP of the specified domestic transaction at Rs NIL. Hence it is established beyond doubt that the learned AO/TPO had not even applied CUP method in the instant case. In this regard, reliance was rightly placed by the learned AR on the decision of the Hon'ble Bombay High Court in the case of CIT vs Johnson and Johnson in ITA No. 1291 of 2014 wherein it was held as under:-

> *"(ii) The TPO is obliged under the law to determine the ALP by following any one of the prescribed methods of determining the ALP as detailed in section 92C(1) of the Act. In this case, there is nothing on record to indicate that the TPO had applied any one of the prescribed methods in section 92C(1) of the Act to determine the ALP before disallowing the payment of Rs 200.82 lakhs incurred by the Respondent on account of publicity and sales management as being excessive and / or payable by its parent, M/s Johnson and Johnson, USA.*
> *(iii) The impugned order holds the transfer pricing adjustment done by disallowing the payment, on the basis of an assumption that it is excessive, is an*

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Case Citation: (2026) taxcode.in 118 ITAT

action completely dehors the provisions of transfer pricing adjustment found in Chapter X of the Act. The determination of the ALP has to be done only by following one of the methods prescribed under the Act.
(iv) In view of the above, as the revenue has not acted in accordance with the clear mandate of law, the questions as proposed does not give rise to any substantial question of law. Thus, not entertained."

41.7. We find that the Learned TPO had rejected the TNMM adopted by the assessee for benchmarking the subject mentioned transaction. The mandate of the law is that the Learned TPO is supposed to provide reasons as to why the particular method is better suited to the facts of the case and why the method adopted by the assessee is not suitable to the facts of the case. It would be gainful to reproduce the relevant operative portion of the judgement of the Hon'ble Delhi High Court in this regard in the case of Li and Fung India Pvt Ltd in ITA 306/2012 :-

"48. The TPO after taking into account all relevant facts and data available to him has to determine arm's length price and pass a speaking order after obtaining the approval of the Department of Income Tax (Transfer Pricing). The order should contain details of data used, reasons for arriving at a certain price, applicability of methods, subject to judicial scrutiny. The order of the TPO, in the instant case, has not provided any substantive reasons for disregarding the TNM method as applied by LFIL."

41.8. Further we find that the learned TPO / learned AO had not made any transfer pricing adjustment in Assessment Years 2011-12 to 2016-17 in the hands of the assessee for the very same transaction of transfer of power and steam. Hence applying the rule of consistency also, no transfer pricing adjustment is warranted for the year under consideration on the subject mentioned transaction.

41.9. Further we find that the Hon'ble Delhi High Court in the case of PCIT vs DCM Shriram Ltd in ITA No. 566/2023 had held that the transactions of sale and

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Case Citation: (2026) taxcode.in 118 ITAT

purchase of power on Indian Energy Exchange (IEX) is not comparable to regular supply of power by State Electricity Board (SEB) or power distribution companies and thus IEX rates for electricity could not be used as an External Comparable Uncontrolled Price (External CUP) , rates at which electricity was supplied by SEB to industrial consumers was to be accepted as being market value of said supplies by assessee. The relevant operative portion of the said judgement is reproduced below:-

> *"50. It is also contended by the Assessee that the rates quoted on IEX are in respect of power supplied and not the power that is consumed and therefore, there is a material difference between the power that is purchased from IEX and the power which is supplied by the SEBs or power distribution companies. The said submission is also not controverted. The Assessee claims that it had on occasions purchased power from IEX.*
>
> *51. We find considerable merit in the Assessee's contention that the transactions of sale and purchase of power on the IEX is not comparable to the regular supply of power by the SEB or the power distribution companies. Undisputedly, IEX is not a source for uninterrupted power on the basis of which any power consumer can set up its unit. It is also not disputed that there is a wide fluctuation in the IEX rates. The Revenue has also not controverted the assertion that rates for power quoted on IEX are for power purchased and not for power consumed. Thus, if an entity bids for certain quantity of power on IEX and is successful, it is required to pay for the same. However, the electricity supplied by power distribution companies is charged on the basis of the power consumed, which is recorded in the metering devices."*

Hence in any event, IEX rates could not have been applied by the learned TPO/learned AO for the subject mentioned transaction.

41.10. With regard to transfer of steam, it was submitted that steam forms an important part of the whole manufacturing process and that the steam had not been transferred by the eligible unit to the shop floor, the manufacturing facility would have to burn natural gas to generate the equivalent energy. It was submitted that since steam is required by the assessee for the purpose of its business of manufacturing cars, in the absence of supply of steam from the

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captive power plant, the assessee would have to procure steam from third-party suppliers or generate it internally. Accordingly, it was submitted that the contention of the learned TPO that steam has no value is completely devoid of merit and contrary to the facts of the case. It was also submitted that steam was not a by-product entirely as alleged by the learned TPO, since there is dedicated effort by the assessee to generate such steam for the purpose of its business of manufacture of cars. The assessee has installed a heat steam generator to generate steam from flue gases. Further supplementary gases are also pushed to generate steam. In that view of the matter, it is evident that there is conscious effort by the assessee to generate the steam given its value and alternative uses in form of generation of electricity and use in the shop floors. It was submitted that steam has separate commercial value for the shop floors. It was submitted that the assessee has the capacity to utilize the entire steam for the generation of electricity through steam turbine. It was submitted that under the arm's length circumstances, no rational person would transfer anything of value without consideration. In this regard, the reliance was rightly placed on the coordinate bench decision of Delhi Tribunal in the case of DCM Shriram Limited vs Additional Commissioner of Income Tax in ITA No. 7362/Del/2022, wherein the tribunal deleted the transfer pricing adjustment made on account of transfer of steam. The relevant observations in that regard are as under:-

> *"47. In view of above facts, we are of the view that learned revenue authorities erred in holding that the steam does not have any cost and therefore, steam transferred by assessee's eligible units to non-eligible units at cost, which is determined by Cost Accountants and Other Professional, has the arm's length price of Rs nil instead of cost of Rs 10,37,45275. Therefore, we allow ground number 3 of the appeal and direct the learned transfer- pricing officer to delete the addition of Rs 1,035,745,275, which was made determining the arm's length price of transfer of steam from eligible unit to non-eligible unit by considering the cost of production of the steam at Rs Nil."*

It is pertinent to note that the said decision of the tribunal was not even challenged by the revenue before the Hon'ble Delhi High Court.

41.11. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, the Ground Nos. 18 to 18.5. raised by the assessee are allowed.

42. The Ground No. 19 raised by the assessee is challenging the confirmation of disallowance of deduction under section 80JJAA of the Act.

42.1. We have heard the rival submissions and perused the materials available on record. We find that without making any observations in the body of the assessment order, the learned AO had directly disallowed the claim of deduction under section 80JJAA of the Act only in the computation sheet. The learned AR stated that a rectification application has already been filed before the learned AO in this regard which is pending disposal. Since no reasoning has been given by the learned AO with regard to this claim of deduction, we deem it fit and appropriate, in the interest of justice and fair play, to direct the learned AO to dispose of the rectification application in accordance with law. Accordingly, the Ground No. 19 raised by the assessee is allowed for statistical purposes.

43. In the result, the appeal of the assessee for Assessment Year 2017-18 in ITA No. 1952 /Del/ 2022 is partly allowed for statistical purposes.

ITA No. 1953/Del/2022– Asst Year 2018-19 – Assessee Appeal

44. The Learned AR submitted that all the grounds raised in Assessment Year 2018-19 are identical with those raised in Assessment Year 2017-18 and hence the decision rendered in Assessment Year 2017-18 shall apply mutatis mutandis to grounds raised in Assessment Year 2018-19 also except with variance in figures.

Case Citation: (2026) taxcode.in 118 ITAT

45. In the result, the appeal of the assessee for Assessment Year 2018-19 in ITA No. 1953 /Del/ 2022 is partly allowed for statistical purposes.

ITA No. 405/Del/2023– Asst Year 2019-20 – Assessee Appeal

46. The Learned AR submitted that all the grounds raised in Assessment Year 2019-20 are identical with those raised in Assessment Year 2017-18 except Ground Nos. 12 to 12.1. raised in Assessment Year 2019-20 seeking refund of excess dividend distribution tax wherein assessee is seeking different relief. Hence the decision rendered in Assessment Year 2017-18 shall apply mutatis mutandis to common grounds raised in Assessment Year 2019-20 also except with variance in figures.

47. With regard to Ground Nos. 12 to 12.1. raised by the assessee seeking refund of excess dividend distribution tax, the learned AR fairly submitted that assessee was one of the parties before the Hon'ble Special Bench of Mumbai Tribunal in the case of Total Oil Company and assessment years involved therein were from AYs 2011-12 to 2018-19. Hence the said issue was decided against the assessee in the light of decision of the Hon'ble Special Bench. However, it was submitted that the decision of the Hon'ble Special Bench was reversed by the Hon'ble Bombay High Court in the case of Colorcon Asia Pvt Ltd vs DCIT reported in 486 ITR 476 (Bom). The revenue's appeal against this decision is pending before the Hon'ble Supreme Court. Accordingly, for the Assessment Year 2019-20 and onwards, we deem it fit to restore this issue to the file of the learned AO to decide the same based on the final outcome of the judgement of the Hon'ble Supreme Court in the case of Colorcon Asia referred supra. Accordingly, the Ground Nos. 12 to 12.1. raised by the assessee for Assessment Year 2019-20 are allowed for statistical purposes.

48. In the result, the appeal of the assessee for Assessment Year 2019-20 in ITA No. 405 /Del/ 2023 is partly allowed for statistical purposes.

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ITA No. 3786/Del/2024– Asst Year 2020-21 – Assessee Appeal

49. . We find that majority of the grounds raised in Assessment Year 2020-21 are identical with grounds raised in Assessment Year 2019-20 and hence the decision rendered by us hereinabove for those identical grounds in Assessment Year 2019-20 shall apply mutatis mutandis for Assessment Year 2020-21 also except with variance in figures.

50. The new grounds in Assessment Year 2020-21 that require adjudication are as under:-

> *"a) Ground Nos 3 to 3.4. challenging the addition made under section 41(1) of the Act ;*
>
> *b) Ground Nos. 12 to 12.2. challenging the disallowance under section 80G of the Act ; and*
>
> *c) Ground Nos. 15 to 15.21 challenging the transfer pricing adjustment for payment of royalty."*

51. The Ground Nos. 3 to 3.4. raised by the assessee are challenging the addition made under section 41(1) of the Act.

51.1. We have heard the rival submissions and perused the materials available on record. In the draft assessment order, the Learned AO proposed an addition of Rs. 1,11,77,307 on account of liabilities written off by the creditors of the assessee. In fact, this proposal was made based on the enquiries carried out by the Learned AO that 21 parties actually had written off the balances payable to the assessee in their books. But this fact was not at all confronted to the assessee. Accordingly, the assessee sought for the details from the Learned AO to provide the invoice wise details / breakup of the amount stated to be written off and copy of confirmations received by the Learned AO from the concerned

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parties. Without furnishing the said details, the Learned AO in the draft assessment order made an addition of Rs. 1,11,77,307 by invoking the provisions of section 41(1) of the Act on the ground of cessation of liabilities of those sundry creditors. This addition got reduced to Rs. 86,35,322 in the final assessment order.

51.2. At the outset, the confirmations were received by the Learned AO from the 21 sundry creditors parties behind the back of the assessee. The confirmations so obtained revealed that the concerned sundry creditors had written off the balances due to the assessee in their books as no longer recoverable. Accordingly, the Learned AO without confronting the said fact with the assessee directly proceeded to treat the said liabilities as cessation of liability and invoked the provisions of section 41(1) of the Act and made an addition. The assessee had sought for details of the confirmations obtained by the Learned AO from the concerned creditors which was not even provided. The assessee submitted a party wise chart and explanation in respect of each of the party as under:-

S.No.	Party Name	Amount	Remarks
1.	Koyo Bearings India Pvt Ltd ('Koyo')	43,57,613	Koyo is engaged in the business of production of bearings and other components used in manufacture of automobiles. The assessee company, on a regular basis, purchases components from Koyo. The appellant, as a practice, places orders for components at the prevailing price. However, it sometimes happens that subsequent to the placing of order, the prices of the components fall / reduce. In such an event, the assessee company, based on negotiations with the suppliers, recognizes the liability payable by it for components on the reduced price. In this background, it is submitted that in respect of supplies procured from Koyo, there was reduction in price of certain components purchased by the assessee from Koyo. Accordingly, the assessee recognized the liability in respect of such components at the reduced price; however, Koyo recognized the sale at the order

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			price. It is the aforesaid excess sale recognized by Koyo that was written off by it in its books of accounts. In this regard, it will be appreciated that the assessee did not recognize the liability in respect of Rs.43,57,613 in its books of account inasmuch as the same represented the increased price which was not payable by the assessee. The assessee recognized the liability at the reduced price (refer statement showing revision in rates for the relevant period in Paper book. In view of the aforesaid, since the liability was not recorded in the books, the provisions of section 41 of the Act are not applicable.
2.	Ram Prakash Dhawan	11,62,841	The appellant had purchased certain goods from RR Enterprises, Prop. Ram Prakash Dhawan, which however, were rejected for quality issues/ disputed specifications and were not recorded in the books by the assessee. To demonstrate the same, the appellant has filed the ageing account of the party reflecting that the only dues pertaining to this party as on 31.03.2024 stands to Rs. 12,880.
3.	Centre for Fire Safety Management & Training ('CFSMT')	4,08,690	In the show cause notice issued by the AO, it was stated that CFSMT has written off an amount aggregating to Rs.4,08,690 in its books of accounts at debts payable by the assessee to it. In this regard, on a request made by the appellant, CFSMT has provided the assessee with an invoice wise list which have been written off by it as bad debts in its books. It is, however, submitted that such invoices were not recognized as payable by the appellant in its books of accounts on account of dispute / quality rejection. Copy of the ledger of CFSMT maintained in the books of the appellant for FY 2016-17 to 2019-20 demonstrating the same is enclosed in PB. On a perusal of the aforesaid, it will be appreciated that the sum of Rs.4,08,690 in respect of the invoices written off by CFSMT was never recognized by the assessee as payable in its books of accounts

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4.	Anarock Property Consultants Private Limited	1,54,580	These amounts represent one-time transactions undertaken with various old/ small vendors which are no longer associated with the appellant company and having transaction value of less than five lakh rupees. The assessee company, as a standard practice explained supra, has not recorded such amounts as liability in its books due to disputes / quality rejections.
5.	Continental Carriers Private Limited	3,05,603	
6.	Iac International Automotive India Private Limited	74,872	
7.	Ingersoll-Rand Technologies And Services Private Limited	4,12,480	However, considering that the company is not associated with the aforesaid parties, the appellant has been unable to obtain invoice-wise break up/ any confirmation from the aforesaid vendors for the amounts written off by them. Be that as it may, to demonstrate that the aforesaid amounts were not recorded by the appellant in its books as liability, the appellant has placed on record ledger account / balance confirmation of such small vendors, as appearing in its books of account as on 31.03.2024. On perusal of the aforesaid, it will be appreciated that no amount was payable by the appellant to such parties. In that view of the matter, when no amount was payable to such parties, the provisions of section 41(1) were not attracted.
8.	Kashi Electronics	36,216	
9.	Marposs India Private Limited	1,61,000	
10.	Micro Pneumatics Private Limited	1,06,950	
11.	Millward Brown Market Research Services India Private Limited	34,875	
12.	Nidec Mobility India Private Limited	2,50,000	
13.	Perfect Rfid Technologies Private Limited	2,61,075	
14.	Piolax India Privatelimited	3,87,740	
15.	Rahat A Bhatia	1,25,706	
16.	Surender Kumar	2,83,700	
17.	Uma Motors Private Limited	1,11,381	
	Total	**86,35,322**	

51.3. In view of the aforesaid explanation, in the interest of justice and fair play, we deem it fit and appropriate, to restore this issue to the file of Learned AO for de novo adjudication in accordance with law. The Learned AO is directed to

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examine whether any deduction has been claimed by the assessee in earlier years in respect of transactions with these parties. The Learned AO also is directed to examine the subsequent payments details of these creditors from the assessee. Merely because the concerned parties had written off the dues in their books, that would not amount to automatic cessation of liability in the hands of the assessee to invoke the provisions of section 41(1) of the Act. As long as the assessee had continued to show the balances as amounts payable in its balance sheet, there cannot be any cessation of liability and there cannot be invocation of provisions of section 41(1) of the Act. All these facts are to be examined for each party in the light of these legal principles by the Learned AO. Accordingly, the Ground Nos. 3 to 3.4 raised by the assessee are restored to the file of Learned AO and allowed for statistical purposes.

52. The Ground Nos. 12 to 12.2. raised by the assessee are challenging the disallowance of deduction under section 80G of the Act.

52.1. We have heard the rival submissions and perused the materials available on record. During the year under consideration, the assessee incurred expenditure aggregating to Rs. 168.20 crores on Corporate Social Responsibility (CSR) activities. Out of the aforesaid, expenditure aggregating to Rs. 145,50,00,000 was incurred in the form of donations given to entities registered under section 80G of the Act and deduction aggregating to Rs. 73,25,00,000 was claimed in respect of such donations. The learned AO denied the benefit of deduction claimed under section 80G of the Act to the extent of Rs. 71,93,00,000 by holding that the donations have been made to meet the statutory requirement of the provisions of Companies Act, 2013 and were accordingly not 'voluntary' donation to be allowable under section 80G of the Act. We find that the issue in dispute is already adjudicated by the Coordinate Bench of this Delhi Tribunal in the case of InterGlobe Technology Quotient Private Limited vs ACIT reported in 207 ITD 360 wherein the tribunal held that

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the donations made as part of CSR expenditure are eligible for deduction under section 80G of the Act in as much as CSR donations are made without any reciprocal commitment from the beneficiary which endorses that such donations are voluntary in nature. The tribunal also noted that making donations to institutions that are engaged in undertaking CSR activities is also a recognized way for qualifying the companies to meet their CSR obligation. Further after taking note of the legislative intent of the Parliament in introducing the Explanation to section 37(1) of the Act and Circular issued by the Ministry of Corporate Affairs on CSR expenditure under Companies Act , 2013, the tribunal held that CSR expenditure represents application of income and will be allowable under Chapter VIA of the Act. The relevant operative portion of the tribunal order is reproduced below:-

> ***"6.*** *Ld. Counsel has submitted that the appellant suo-motu disallowed the expenditure incurred as part of CSR Activities in accordance with provisions of section 37(1) of the Act. However, for the purpose of claiming deduction under section 80G of the Act, the donations made as part of CSR expenditure were considered. It was submitted that law in this regard is now quite settled. Ld. Counsel submitted that disallowance of deduction claimed under section 80G of the Act will result in double disallowance, which is not provided for by the Legislature. He has placed reliance on Bangalore Bench of the Tribunal judgment in the case of Allegis services (India) Pvt Ltd v. ACIT Bangalore: ITA No.1693/Bang/2019, dated29-4-2020. Relevant extracts of the decision, as relied by him, are reproduced hereunder:*
>
> > *"14. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head 'Income from Business or Profession", whereas monies spend under section 80G are claimed while computing "Total Taxable Income" in the hands of appellant. The point of claim under these provisions are different*
> >
> > *15. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 of the Act, for computing income under the head "Income from Business or Profession".*

www.taxcode.in

Case Citation: (2026) taxcode.in 118 ITAT

16. For claiming benefit under section 80G, deductions are considered at the stage of computing "Total Taxable Income". Even if any payment under section 80G forms part of CSR payment (Keeping in mind ineligible deduction expressly provided u/s 80G), the same would already stand excluded while computing, Income under the head "Income from Business or Profession", The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to appellant under Chapter VIA for computing "Total Taxable Income" cannot be denied to appellant, subject to fulfilment of necessary conditions therein.

17. We therefore do not agree with the arguments advanced by Ld Sr DR.

18. In our view, appellant cannot be denied the benefit of claim under chapter VIA, which is considered for computing "Total Taxable Income". If appellant is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of legislature. Accordingly, ground raised by appellant stands allowed. "(emphasis supplied)

***6.1** Ld. Counsel has relied judgment in Goldman Sachs Services Pvt Ltd v. Jt. CIT ITA No.2355/Bang/2019, dated 14-06-2020 of the Bangalore Bench of the Tribunal to submit that that deduction under section 80G cannot be denied in respect of CSR expenditure incurred under section 135(5) of the Companies Act, 2013. He submitted that the Tribunal while allowing the deduction under section 80G, has also considered clauses (iiihk) & (iiihl) of section 80G(2) to hold that contribution made under section 135(5) of the Companies Act, 2013 other than to "Swachh Bharat Kosh" and "Clean Ganga Fund" shall be eligible for deduction under section 80G of the Act. The relevant extracts of the decision, as relied by him, are as under:*

"16. . . . . We find that the CSR expenses are required to be incurred by companies as per Section 135 of the Companies Act and the deduction u/s. 37(1) of the Act, is not available from Assessment Year 2015-16 as per the Explanation 2 to Section 37(1) of the Act inserted by the Finance Act No.2. 2014. Whereas, the appellant company has made a claim for deduction of CSR expenses w/s. 80G of the Income Tax Act, 1961. But the assessing officer has rejected the assesses claim without verifying the nature of contributions and observed that it is not a donation, and was not spent voluntarily for the eligibility of claim u/s.80G of the Act but due to legal obligation prescribed w/s. 135 r.w. Schedule VII of Companies Act, 2013. We find that the A.O has allowed eduction n/s.80G of the Act in respect of contribution made to PM Relief Fund which is not disputed. We are of the opinion that the A.O. has not made his observations clear that no CSR expenses are eligible for deduction m/s. 80G of the Act. We consider it appropriate to refer to the Clauses (link) & (d) of sub section 2 of Section 80G of the Act which are read as under:

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"(iihk) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the appellant in pursuance of Corporate Social Responsibility under sub-section (3) of Section 135 of the Companies Act, 2013 (18 of 2013): or

(iihl) the Clean Ganga Fund, set up by the Central Government, where such appellant is a resident and such sum is other than the sum spent by the appellant in pursuance of Corporate Social Responsibility under sub-section (5) of Section 135 of the Companies Act, 2013) (18 of 2013)"

Where these two exceptions are provided in Section 80G of the Act, it can be inferred that the other contributions made us. 135(5) of the Companies Act are also eligible for deduction u/s 80G of Income Tax Act subject to appellant satisfying the requisite conditions prescribed for deduction u/s 80G of the Act. In the present case the A.O. has not dealt on these aspects, prima facie, considered the contributions as not voluntary but a legal obligation and has accepted the genuineness of the contributions. We are of the opinion that the matter has to be considered for examination and verification of facts subject to the appellant satisfying the requirements of claim u/s 80G of the Act. Accordingly, we restore the entire disputed issues to the file of A.O. for fresh examination and verification as discussed above and the appellant should be provided adequate opportunity of hearing and shall co-operate in submitting the information and we allow the ground of appeal of the appellant for statistical purposes." (emphasis supplied)

6.2 *Ld. Counsel has then relied a co-ordinate Delhi bench of Tribunal decision in the case of Honda Motorcycle and Scooter India Pvt Ltd v. ACIT ITA No. 1523/Del/2022 vide order dated 22.08.2023 in [2023] 153 taxmann.com 567 where relying on the decision of Bangalore bench of the Tribunal in the case Goldman Sachs (supra), the Coordinate bench has held that there is no restriction in the Act that expenditure when disallowed for CSR cannot be considered under section 80G of the Act. The said donation also formed part of CSR expenditure of the assessee, though the assessee disallowed the said expenditure under section 37(1) of the Act. The Tribunal, however, remitted the issue to the file of the assessing officer with the directions to allow deduction under section 80G of the Act subject to verification that the payments qualified as donation under that section. The relevant extracts of the decision, as relied by him, are as under;*

"18. We have heard both the parties and perused the records. We find that ITAT, Bangalore Bench in the case of Goldman Sachs Services (P.) Lad.

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(supra) has held that the other contributions made under section 135 (5) of the Companies Act are also eligible for deduction's 80G of the Act ITA No. 1523/Del./2022 subject to satisfying the requisite conditions prescribed for deduction w/s 80G of the Act. For this purpose, the issue is remanded to the file of AO to examine the same whether the payments satisfy the claim of donation's 80G of the Act. We find that the case law is fully applicable to the facts of the case. There is no restriction in the Act that expenditure when disallowed for CSR cannot be considered w/s 80G of the Act, Hence, we remit the issue to the file of AO to verify whether these payments were qualified as donations u/s 80G of the Act or not, if they qualify as donation u/s 80G of the Act then the requisite amount deserves to be allowed." (emphasis supplied)

***6.3** Ld. Counsel also relied judgment in case of Teradata India Pvt Ltd v. DCIT ITA 1248/Del/2022, dated 13-10-2023 the co-ordinate Delhi Bench of the Tribunal, where in the bench allowed the deduction claimed under section 80G of the Act in respect of donations made to eligible institutions as part of CSR Expenditure, holding as under:*

"16. It is not in dispute that contributions made by the assessee are made to eligible institutions which are enjoying exemption u/s 80G of the Act. The fact that those contributions were made only to eligible institutions are not in dispute before us. We find that all the institutions listed in the tabulation are enjoying exemption u/s 80G of the Act and accordingly, assessee would be entitled for deduction u/s 80G of the Act thereon, irrespective of the fact that it is made as part of CSR obligations. The assessee in the instant case had duly complied the provisions of Companies Act, 2013 read with CSR rules thereon and as per the provisions of the Income Tax Act had also voluntarily disallowed the CSR expenditure while computing the taxable income. Since, the donee institutions are eligible institutions enjoying exemption u/s 80G of the Act, the assessee has claimed deduction u/s 80G of the Act which is also provided in the statute itself to the assessee. Hence, denial of deduction u/s 80G of the Act to the assessee would result in gross injustice. We direct the ld AO to grant deduction u/s 80G of the Act to the assessee. Accordingly, the ground No. 6 to 6.6 raised by the assessee are allowed." (emphasis supplied)

***6.4** He has also made reference to Hyderabad Bench of the Tribunal decision in the case of Optum Global Solutions (India) (P) Ltd v. DCIT: [2023] 154 taxmann.com 651/203 ITD 14 that where assessee satisfied conditions of section 80G, the assessee shall be eligible to claim deduction under the said section in respect of such donations, even if the same formed part of spends towards CSR. The relevant extracts of the decision, as relied by him, are as under:*

Case Citation: (2026) taxcode.in 118 ITAT

"13. After computing the business income, while computing the total income of the assessee, the assessee is invoking the benefit under chapter-VIA by claiming deduction of the sums under section 80G of the Act. According to the Revenue, when once such sum went to satisfy the requirement of section 135 of the Companies Act, the benefit gets exhausted and such an amount is no more available for the purpose of claiming deduction under section 80G of the Act.

14. Coming to the Income-tax Act, 1961, there is no express provision to support the contention of Revenue. On the other hand, section 80G(2)(iiihk) and (iiihl) of the Act expressly provide that such sums donated for Swatch Bharath Kosh and Clean Ganga Fund shall be the amounts other than the sums spent by the assessee in pursuance of CSR, meaning thereby the donations made towards Swatch Bharath Kosh and Clean Ganga Fund spent as apart of CSR are not qualified for deduction under section 80G of the Act. Out of so many entries under section 80G(2) of the Act, only donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a restriction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iiihk) and (iiihl) of the Act. As stated above, clue can be had from the restrictions by way of section 80G(2)(iiihk) and (iiihl) of the Act.

15. This aspect has been dealt with by successive Co-ordinate Benches in the cases relied upon by the assessee. While elaborately discussing this issue in the case of JMS Mining (P.) Ltd. . . . . .

16. We are in agreement with such observations and findings of the Coordinate Bench of the Tribunal and while respectfully following the same, we hold that inasmuch as the assessee satisfied the conditions of section 80G of the Act, the assessee is entitled to claim deduction under section 80G of the Act in respect of such donations which formed part of the spend towards CSR. Accordingly, we hold Ground No. 2 in favour of the assessee." (emphasis supplied)

***6.5** Reliance was also placed on the decision of Mumbai Bench of the Tribunal in the case of Synergia Lifesciences Pvt Ltd v. DCIT: ITA No. 938/Mum/2023 (Mum Trib), which has relied on the decision of Bangalore bench of the Tribunal in the case of Allegis (supra) and held that "the claim for deduction under section 80G of the Act in respect of CSR expenses cannot be denied". The Tribunal, however, remitted the issue to the file of the assessing officer with the directions to allow deduction under section 80G of the Act is the conditions specified therein are satisfied. He also cited the following decisions for the same proposition of law.*

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- *FNF India Private Limited v. Asstt. CIT [2021] 133 taxmann.com 251 (Bangalore - Trib.)*
- *Infinera India (P.) Ltd v. Jt. CIT [2022] 137 taxmann.com 197/194 ITD 463 (Bangalore - Trib.)*
- *First American (India) Private Limited v. Asstt. CIT [IT Appeal No. 1762/Bang/2019, dated 29-4-2020] (Bang. Trib)*
- *Sling Media (P) Ltd v. Dy. CIT [2022] 135 taxmann.com 164/194 ITD 1 (Bangalore - Trib.)*
- *JMS Mining (P.) Ltd v. Pr. CIT [2021] 130 taxmann.com 118/190 ITD 702/91 ITR(T) 80 (Kolkata - Trib.)*
- *Dy. CIT v. Peerless General Finance & Investment Co Ltd [2019] 112 taxmann.com 410 (Kolkata - Trib.)*
- *Diamond Beverages Private Limited v. PCIT [IT Appeal No. 208/Kol/2022, , dated 6-7-2022] (Kol Trib.)*
- *Power Mech Projects Ltd v. DCIT [IT Appael No. 155/Hyd/2023 (Hyd Trib.) in [2023] 156 taxmann.com 575 (Hyd.- Trib.)*
- *Supreme Buildestates Pvt Ltd v. DCIT [IT Appeal No. 495/Jpr/2023, dated 30-10-2023]*
- *Naik Seafoods Pvt Ltd v. PCIT [IT Appeal 490/Mum/2021, dated 26-11-2021]*
- *Societe Generale Securities India Pvt Ltd v. Pr. CIT ITA 1921/Mum/2023 in [2023] 157 taxmann.com 533/[2024] 204 ITD 796 (Mum.- Trib.)*

7. *Learned DR has failed to bring forth any decision to the contrary. Thus, we accept the plea of learned counsel on the basis of case law cited, denial of CSR expenditure u/s 37(1) of the Act is not embargo to claim deduction u/s 80G of the Act.*

7.1 *Further, we like to observe that as a matter of fact as per Section 135 of the Companies Act, 2013 ('CA 2013), the qualifying Companies as mentioned therein are required to spend certain percentage of profits of last three years on activities pertaining to Corporate Social Responsibility (CSR). The expenditure on CSR, could be by way of expenditure on projects directly undertaken by said companies, such as setting up and running schools, social business projects, etc. Such expenditure would include expenditure otherwise falling for consideration under section 37(1) of the Act. On the other hand, companies, instead of undertaking or participating directly in a project, may choose to give donations to institutions that are engaged in undertaking such projects, which is also a recognized way of compliance of CSR obligation.*

www.taxcode.in

Case Citation: (2026) taxcode.in 118 ITAT

7.2 *The assessing officer and CIT(A) have relied upon General Circular 14/2021 dated 25.08.2021 issued by MCA and "Explanatory Notes to the provisions of the Finance (No.2) Act, 2014" to hold that donations made as part of CSR expenditure are not allowable as deduction. The foundation of their reasoning being that the donation is voluntary in nature, while CSR expenditures are under statutory obligations.*

7.3 *As we take notice of the fact that Parliament legislated that CSR expenses would not be eligible for deduction as business expenditure under section 37 of the Act by inserting Explanation 2 to section 37(1) vide the Finance (No.2) Act, 2014 (applicable from the assessment year 2015-16), which provided that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the CA 2013, shall not be deemed to be an expenditure incurred by an assessee for the purpose of business or profession and shall not be allowed as deduction under section 37(1) of the IT Act. The intent of Parliament in bringing the aforesaid provision is given in the Explanatory Memorandum to the Finance (No.2) Bill, 2014 and is reproduced as under ;*

> *"CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business, As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for .computing the taxable income of the company, Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure." (emphasis supplied)*

7.4 *The aforesaid explanatory memorandum categorically expresses the legislative intent and the rationale of disallowance of CSR expenditure referred to in section 135 of the Companies Act, that such expenditure is application of income and not incurred for the purposes of business. We are of considered view that this in itself justifies the grant of deduction u/s 80G. As CSR expenditure is application of income of the assessee under the Income Tax Act, that means it continues to form part of the Total income of the assessee. Section 80G(1) of the Act provides that in computing the total income of an assessee, there shall be deducted, in accordance with the provisions of this section, such sum paid by the assessee in the previous year as a donation. Further, section 80G(2) lists down the sums on which deduction shall be allowed to the assessee. Section 80G falls in Chapter VIA, which comes into play only after the gross total income has been computed by applying the computation provisions under various heads of income, including the Explanation 2 to section 37(1) of the Act. Thus, there is no correlation between suo-moto disallowance in section 37(1) and claim of deduction under section 80G of the Act.*

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Case Citation: (2026) taxcode.in 118 ITAT

7.5 *As with regard to the reasoning that CSR expenditure are not voluntary but mandatory in nature due to penal consequences, we are of considered view that voluntary nature of donation is by nature of fact that it is not on the basis of any reciprocal promise of donee. The CSR expenditures are also without any reciprocal commitment from beneficiary being philanthropic in nature. The Act permits deduction of donations as per Section 80G of the Act, even though, assessee is not gaining any benefit out of any reciprocity from donee. Similar is the case of CSR expenditure. Thus the reasoning of learned Tax Authority, the CSR expenditure is mandatory, does not justify disallowance of these expenditures u/s 80G, if other conditions of section 80G are fulfilled. There is no allegation of Revenue that other conditions of Section 80G are not fulfilled. We, thus sustain the ground."*

52.2. Respectfully following the aforesaid decision, the Ground Nos. 12 to 12.2. raised by the assessee are partly allowed.

53. The Ground Nos. 15 to 15.21. raised by the assessee are challenging the transfer pricing adjustment on account of payment of royalty.

53.1. We have heard the rival submissions and perused the materials available on record. The assessee company manufactures various models of motor vehicles using the technology and know-how provided by the associated enterprises (AE). Under the license agreement, the AE has also granted to the assessee to the right to use the trademark owned by the AE. During the year under consideration, the international transaction of payment of royalty was benchmarked by the assessee applying the Transactional Net Margin Method (TNMM) and since the operating margin of the assessee at 5.01% was higher than that of the comparable companies at 1.16%, the international transaction of payment of royalty was considered to be at arm's length. The Learned TPO however, held that the assessee is undertaking in-house Research & Development (R&D) activity and the know-how provided by the AE could have been implemented in India and converted to marketable sale of cars only because of R&D work being carried out by the assessee. The Learned TPO

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further held that a car has to be successful in Indian conditions and in this regard the role of Indian R&D is very crucial. The Learned TPO accordingly held that the assessee should not have paid royalty on sales allegedly attributable to the R&D undertaken by the assessee. The Learned TPO consequently computed the royalty on sales attributable to R&D undertaken by the assessee at Rs. 105.05 crores as under:-

Particulars	**Amount (in INR Crores)**
Total R & D expenses on MSIL (A)	763
Less: R & D expenses (Capital Expenditure)	-405
Net R&D expenses (B)	358
Total R & D expenses of SMC on consolidated basis (C)	8,900
Total R & D expenses of MSIL as percentage of total R & D expenses of SMC on consolidated basis (D= B/C)	4.03%
Total Sales of MSIL (E)	71,690
Total sales of MSIL on which royalty should not be allowed (F= D* E)	2,886
Royalty Rate provided by assessee (G)	5.46%
Royalty rate for technical know how (66.61% of royalty rate representing 2/3rd component) (H)	3.64%
Royalty on total sales which should not be allowed for transfer pricing purposes (F*H)	**105.05**

53.2. The Learned AR submitted that assessee is engaged in the manufacture of passenger cars in India and is at present the subsidiary of overseas group company Suzuki Motor Corporation (SMC). The assessee started its business in 1982 as a Government of India owned entity. SMC was selected as the business partner independently by assessee in the year 1982. The co-branded trademark

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"Maruti Suzuki" is being used since inception of the company. The assessee entered into its first license agreement with SMC in October 1982 for its models M 800, Omni and Gypsy wherein it was decided to use the co-branded trademark "Maruti Suzuki" on the vehicles. The assessee used the co-branded logo "Maruti Suzuki" even on the cars manufactured by it in 1982. At the time of entering the said agreement, the assessee was a Government of India owned entity. The same decision was carried forward in subsequent license agreements including the 1992 license agreements. The royalty paid by the assessee was agreed in 1982 wherein SMC was a third party. Since the agreement entered into between the assessee and SMC was between two third parties, the said license agreement ought to be considered uncontrolled license agreement and be used as a Comparable Uncontrolled Price (CUP) to benchmark the royalty rate.

53.3. In view of the aforesaid, it was submitted that since the initial agreement was negotiated between the assessee and SMC as independent parties, the rates and terms agreed therein are even otherwise at arm's length. It was submitted that the decision to continue the joint trademark was taken in assessee's business interest. Prior to 1992 and thereafter, several other agreements were entered into between the assessee and Suzuki for the manufacture of other car models / variants. The said agreements also had the same terms or conditions regarding use of the co-branded name / logo of the assessee and Suzuki. The assessee has entered into license agreement for manufacture of the various models of motor cars on similar terms and conditions as that of first license agreement entered into in 1982 for Maruti 800, Omni and Gypsy.

53.4. The Learned AR placed reliance on the coordinate bench decision of this Delhi tribunal in assessee's own case for assessment year 2005-06 in ITA No. 5237 /Del / 2011, wherein similar claim of payment of royalty to be not at arm's

length was rejected by the revenue authorities. The tribunal held that the entire business model of the assessee is based on license from SMC Japan for which royalty has been paid. The agreement was negotiated between independent entities and without such technology supply the assessee's business will cease to exist and that its entire operations would come to a halt. Following the said order for assessment year 2005-06, the tribunal for assessment year 2006-07 in ITA No. 5120 /Del / 2010; for assessment year 2007-08 in ITA No. 5720 / Del / 2011 ; for assessment year 2008-09 in ITA No. 6021 / Del / 2012 ; for assessment year 2009-10 in ITA No. 467 / Del / 2014 ; for assessment year 2011-12 in ITA No. 287 / Del / 2016; for assessment year 2012-13 in ITA No. 901 / Del / 2017 and for assessment year 2013-14 in ITA No. 6949 / Del / 2017 deleted the similar adjustment made by the learned TPO on account of payment of royalty. Further, the Hon'ble Delhi High Court vide consolidated order dated 03-02-2025 passed for assessment years 2005-06, 2007-08, 2008-09 and 2009-10 had decided the very same issue in favour of the assessee. The appeal filed by the revenue on this issue before against the tribunal order for assessment year 2010-11 was not admitted by the Hon'ble High Court.

53.5. The learned DR vehemently argued that the assessee is engaged itself in R&D activities and indigenization is positively impacting the sales in India. Hence there is no need to make payment of royalty to AE by the assessee. The learned DR relied on the orders of the lower authorities.

53.6. We find that the learned TPO in his order had stated that the assessee has contributed to its sales by undertaking in house R&D expenditure and no royalty should have been paid on such component by an independent party. To buttress this argument, it was submitted that the learned TPO had lost sight of the fact that the core technology for manufacture of motor vehicles, including vehicle designs and drawings are provided by the AE to the assessee. The core technology has been developed by the AE over many years of advanced

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engineering and R&D. The in-house R&D activity undertaken by the assessee is not related to development of new models, but relates to localization and homologation of vehicles manufactured using the technology provided by the AEs. It was submitted that such functions are performed by the assessee for the purpose of efficiently exploiting the technology provided by the AE and not for the purpose of development or improvement of core technology. It was submitted that such routine functions are performed by every licensee of technology in order to exploit / use the technical know-how provided by the licensor. The licensor cannot be expected to compensate the licensee for the performance of such routine functions which in any case are the responsibility of the licensee. Reliance in this regard was placed on the coordinate bench decision of Chennai Tribunal in the case of Hyundai Motors India Ltd vs DCIT in ITA No.2157/Mds/2011, wherein the tribunal held that expenditure incurred for the purpose of exploiting the intangibles cannot be regarded as provision of services to the licensor.

53.7. It was submitted that even the learned TPO had accepted the fact that assessee is not engaged in development of new models of cars and only engaged in performing R&D for localization and homologation of vehicles.It was submitted that assessee undertakes in-house R&D activities to ensure that the vehicles manufactured using the technology provided by the AE complies with the necessary technical and regulatory / legal requirements so that the vehicle is deemed roadworthy and safe for public use. The said requirements encompass a wide range of aspects including safety features, emission performance and engineering standards. Further, the said activities include local part design improvements, quality assurance as per Suzuki's engineering standards, undertaking testing activities such as crash testing, performance testing, safety testing, etc., which in turn ensures that the vehicle meets the prescribed regulations and are fit for use in the Indian territory. It was submitted that assessee also evaluates / validates supplier design and confirms their reliability

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and durability through thoroughly using testing standards provided by AE. The R&D expenditure facilitates the assessee to promote indigenization and localization of parts using Suzuki's core technology, platform and engine designs. Prototype parts and vehicles built during the localization phase are tested and evaluated using Suzuki test and quality standards. The test and quality standards are Suzuki's know-how, which have been built over decades of experience and judgment in development of parts and vehicles. Given know-how is also based on the field issues, durability and reliability of Suzuki's products in various countries. The vehicles are tested in passive safety lab, vehicle dynamic lab, emission lab, braking and structural durability lab, etc., built based on Suzuki's know-how and experience. The key functions performed by the assessee in relation to R&D activities include continuous routine functional improvement, inner part localization for suppliers, value analysis, testing local road conditions, local fuel related parameters, heat testing, checking other safety related measures, etc., to ensure reliability of vehicles on Indian roads. The said expenditure enables the assessee to comply with local market regulations. As per the license agreement between the assessee and the AE, the licensed information is made available to the assessee, which, as and when properly used by the assessee, will be sufficient and complete for the engineering, design, manufacturing, testing, quality control, sale and after sales of vehicles. Such evaluation / validation and improvements is essential for obtaining homologation approval, without which vehicles cannot be registered in the Indian market. The vehicles can be sold in the Indian market once homologation is obtained. Also, homologation is not a one-time activity, but an ongoing process. In addition to the initial approval, manufacturers may be required to undergo periodic conformity of production testing to ensure that the vehicles manufactured continue to meet the prescribed standards.

53.8. It was submitted that from the aforesaid description of the R&D activity undertaken by the assessee, it could be appreciated that the in house R&D

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activity facilitates the assessee to undertake evaluation / validation of vehicles as per Indian conditions and making necessary improvements for meeting Indian Central Motor Vehicles Rules (CMVR) requirements in vehicle design and technology provided by Suzuki. Accordingly, it was submitted that the contention of the learned TPO that sales of the assessee can be apportioned in the ratio of R&D expenses incurred by the assessee vis-a-vis the R&D expenses incurred by the AE is totally flawed in as much as the core technology for manufacture of motor vehicles, which drives the revenue / turnover of the assessee, is provided by the AE and the expenditure on R&D incurred by the assessee is only for the purpose of efficient exploitation of the license granted by the AE and for the purpose of ensuring that the vehicles manufactured using the technology provided by the AE meets the local regulations and requirements of the Indian markets. Accordingly, the adjustment made by the learned TPO by apportioning the turnover of the assessee in the ratio of R&D expenses was not in accordance with the facts of the case and contrary to the provisions of the Act.

53.9. The learned AR also submitted that assessee has been benefited from the in-house R&D activity in the form of lower cost. However, the learned TPO arbitrarily and without providing any basis went on to hold that this increase in profit due to decreased cost because of R&D had remained unrewarded. It was submitted that having accepted the fact that assessee has benefited from the R&D activity, the learned TPO erred in proceeding to hold that the efforts of the assessee have remained unrewarded. It was submitted that in terms of the license agreement entered into between the assessee and the AE, in conservation for rights provided under the license agreement, the assessee is under obligation to pay royalty on entire sales of a particular model of motor vehicle in respect of which the license has been granted by the AE. The learned TPO by holding that the assessee should not have paid royalty on sales allegedly attributable to expenditure on R&D undertaken by the assessee, is only seeking

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to rewrite the international transaction of payment of royalty undertaken by the assessee. The law is very well settled that the tax authorities have no mandate to rewrite the bona fide transactions undertaken within the frameworks of law.

53.10. We find that none of the aforesaid technical submissions made by the learned AR duly mentioning the purpose of carrying out the in house R&D activity could be controverted by the revenue before us. Moreover, we find that the learned TPO while rejecting the contentions of the assessee arbitrarily determined the sum of Rs 2886 crores as sales on which no royalty should have been paid by it and accordingly reduced the arm's length price of royalty by Rs 105.05 crores. For doing so, the learned TPO did not resort to application of any of the prescribed methods in the Income Tax Rules. The learned TPO had not placed on record any data with respect to Comparable Uncontrolled transactions and had arbitrarily held that the assessee should not have paid royalty on sales allegedly attributable to the R&D expenditure incurred by the assessee. Non-application of the prescribed method for benchmarking a particular transaction would be in gross violation of the Rules and deprecated in the judgement of Hon'ble Bombay High Court in the case of CIT vs Johnson and Johnson limited in ITA No. 1291 of 2014 which has already been dealt elsewhere in this order. On this count also, in addition to merits, the transfer pricing adjustment made by the learned TPO deserves to be deleted. Further we find that the transaction of payment of royalty has been accepted by this tribunal in assessee's own case up to assessment year 2013-14 by deleting the transfer pricing adjustment on payment of royalty. Hence even applying the principle of consistency, the transfer pricing adjustment made by the learned TPO would have no legs to stand in the eyes of law. Accordingly the Ground Nos. 15 to 15.21 raised by the assessee are hereby allowed.

54. In the result, the appeal of the assessee in ITA No. 3786 / Del / 2024 for assessment year 2020-21 is partly allowed for statistical purposes.

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Case Citation: (2026) taxcode.in 118 ITAT

ITA No. 88/Del/2026– Asst Year 2022-23 – Assessee Appeal

55. We find that majority of the grounds raised in Assessment Year 2022-23 are identical with grounds raised in Assessment Year 2020-21 and 2019-20 and hence the decision rendered by us hereinabove for those identical grounds in Assessment Year 2020-21 and 2019-20 shall apply mutatis mutandis for Assessment Year 2022-23 also except with variance in figures. Only Ground Nos. 10 to 10.5. raised by the assessee are new grounds that require adjudication for the year under consideration.

56. The Ground Nos. 10 to 10.5. raised by the assessee were stated to be not pressed by the learned AR at the time of hearing as necessary relief is already granted by the learned AO in that regard in the rectification proceedings dated 13.3.2026. Accordingly, the Ground Nos. 10 to 10.5. raised by the assessee are hereby dismissed as not pressed.

57. In the result, the appeal of the assessee in ITA No. 88 / Del / 2026 for assessment year 2022-23 is partly allowed for statistical purposes.

58. To sum up, all the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 07-Oct-2026.

-Sd/-	-Sd/-
VIMAL KUMAR	**M BALAGANESH**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Delhi
Dated: 07 /10/2026
AK Keot

Copy to:

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