

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 865/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2011-12)

Intas Biopharmaceuticals Ltd. Plot 423/P/A, Sarkhej Bavla Highway, Moraiya, Sanand, Ahmedabad, Gujarat, 382213	बनाम/ Vs.	The Dy. Commissioner of Income Tax Circle-2(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCI4722M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Bandish Soparkar & Shri Parin Shah, ARs.
प्रत्यर्थी की ओर से/Respondent by :	Dr. Darsi Suman Ratnam, CIT. DR & Shri Ashish Rajesh Revar, Sr. DR

Date of Hearing	24/07/2024
Date of Pronouncement	07/08/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the Commissioner of Income-Tax (Appeals)-7, Ahmedabad (in short ‘the CIT(A)’) dated 20.01.2016 for the Assessment Year 2011-12.

2. The brief facts of the case are that the assessee company, M/s Intas Biopharmaceuticals Ltd., is engaged in the business of manufacturing and marketing of bio-pharmaceutical products. The return of income for assessment year 2011-12 was filed on 28/09/2012 declaring total loss of (-) Rs.22,42,39,525/-. The assessment was completed u/s 143(3) on 09/02/2015 at loss of (-) Rs.16,99,42,180/- by disallowing certain claims made by the Company in the return of income. The assessee had preferred an appeal before the CIT(A) which was decided vide the impugned order. Aggrieved with the order of the CIT(A), the assessee is now in appeal before us.

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

- “1. In law and in the facts and circumstances of the appellant's case, the impugned Assessment Order and confirming by the Ld. CIT A, is void and deserves to be cancelled and/or modified.
2. In law and in the facts and circumstances of the appellant's case, the learned assessing officer has grossly erred and the Ld. CIT A has grossly erred in confirming, in the alleged excess deduction u/s. 35(2AB) by Rs. 50,34,302/- considered @ 200% of the amount of expenditure on clinical trials etc. laid out for the in house R&D.

Without prejudice to the above, in law and in the facts and circumstances of the appellant's case, the learned assessing officer has grossly erred and the Ld CIT A has grossly erred in confirming the computation of the quantum of disallowance at 200% ie. Rs.50,34,302/-, even when as per the provisions of Indian income Tax Act u/sec. 35 the same is eligible for atleast 100% allowance at Rs.25, 17,151/-.

3. In law and in the facts and circumstances of the appellant's case, the learned assessing officer has erred and the Ld. CIT A has erred in confirming in disallowing interest expenses to the extent of Rs.212,94,836/- considering the same to be of capitalized on account Capital WIP of the assessee company.

Further, the Ld. AO has erred in determining and the Ld. CIT A has erred in confirming that the quantum of the same should be net of the quantum of amount already capitalised by the appellant company and duly identified by the assessee company as interest debit during the year in P/L account and not availed deduction.

Also, the Ld. AO has erred in determining and the Ld. CIT A has erred in confirming that, in the event, there is any amount finally determined to be of capital nature, the depreciation allowance in respect of the same be eligible to the assessee company commencing from the year of put to use of relevant assets.

- 4. In law and in the facts and circumstances of the appellant's case, the learned assessing officer has grossly erred and the Ld. CIT A has grossly erred in confirming in making further disallowance of Rs.16,35,331 on account of capital loss, while the same comprises a quantum of expenditure laid out on R&D which is eligible as allowance u/s 35 of the IT Act, the same should be duly allowed to the appellant company*
- 5. In law and in the facts and circumstances of the appellant's case, the learned assessing officer has grossly erred and the Ld. CIT A has grossly erred in confirming, in the sales commission to foreign agents expenditure of Rs. 11,47,701 as ineligible expenditure under the provisions of the sec. 40, when the appellant company has while furnishing the details as desired by the Learned Assessing officer, clarified that the expenditure was not disallowable.*
- 6. In law and in the facts and circumstances of the appellant's case, the learned assessing officer has grossly erred and the Ld. CIT A has grossly erred in confirming, in denying deduction, which was made based on valid claim during the assessment proceedings, towards bad Debts expenses of Rs.2,40,043/- (and w/off) and of Rs. 116,47,500/- (provided on account of the appellant's services provided, not yielding results) being debts w/off/provided during the year, The same should be duly allowed to the appellant company, if not to the full extent in the present assessment, should be allowed in the year of w/off.*
- 7. In law and in the facts and circumstances of the appellant's case, the learned Assessing officer has grossly erred and the Ld. CIT A has grossly erred in confirming to the extent of Rs.240043 as referred to in ground no. 6 above, in working out the income liable to MAT.”*

4. Ground No.1 is general in nature and does not require any adjudication.

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

5. Ground No.2 pertains to disallowance of Rs.50,34,302/- under Section 35(2AB) of the Income Tax Act, 1961 (in short 'the Act'). The assessee had claimed weighted deduction of Rs.6,66,06,663/- under Section 35(2AB) of the Act @ 200% of in-house Research and Development (R&D) expenses of Rs.3,26,90,222/- and further R&D expenses towards building of Rs.12,26,219/-. In the course of assessment, the assessee had filed the report of the Department of Scientific and Industrial Research (DSIR) in Form No.3CL and it was found that expenditure to the extent of Rs.313.99 lacs only was approved by the DSIR. It was explained by the assessee that the quantum of expenditure certified in Form No.3CL excluded clinical trial expenses, as the same were attributable to in-house R&D center. The AO held that the assessee was eligible to claim deduction under Section 35(2AB) of the Act only in respect of expenditure of Rs.3,13,99,290/- as approved by the DSIR. According to the AO, the assessee was not eligible for claim the weighted deduction @200% of R&D expenditure of Rs.25,17,151/-, which was not approved by the DSIR. Accordingly, he disallowed a sum of Rs.50,34,302/- (being 200% of the amount of Rs.25,17,151/- not approved by the DSIR) under Section 35(2AB)

of the Act. The disallowance as made by the AO was confirmed by the Ld. CIT(A).

6. Shri Bandish Soparkar, Ld. AR for the assessee submitted that there was no requirement under the provision of Section 35(2AB) of the Act that the expenditure has to be certified by the DSIR. Such amendment was brought on the statute w.e.f. 01.04.2016 only. Therefore, the AO was not correct in restricting the claim of the assessee on the basis of expenditure as certified by the DSIR. Per contra, Dr. Darsi Suman Ratnam the Ld. CIT-DR, supported the orders of the lower authorities. He submitted that the assessee had not properly explained the difference of Rs.25,17,151/-, which was not approved by the DSIR, as the clinical trial expenses incurred by the assessee was Rs.14,33,967/- only.

7. We have considered the rival submissions. The AO has held that the deduction under Section 35(2AB) of the Act was admissible only if the expenditure was approved by the DSIR. We find that at the relevant point of time there was no requirement of law that R&D expenditure should be approved by the DSIR. The provision of Section 35(2AB) of the Act was amended w.e.f. 01.04.2016 whereby the quantum of eligible expenditure incurred on in-house R&D facility was required to be quantified by the DSIR. Prior to 01/04/2016, there was no such requirement for quantification of the eligible expenditure by

the DSIR for claiming the deduction. Merely because DSIR had quantified the total R&D expenditure in the current year, which is prior to 01.04.2016, the same was not binding on the revenue authorities. Therefore, the Revenue was not correct in restricting the deduction u/s. 35(2AB) of the Act on the basis of the amount quantified by the DSIR in their approval. Rather, the AO should have examined the correctness of the R&D expense of the assessee than merely relying on the expenditure approved by DSIR.

8. It is found that the exact basis of claim of deduction under Section 35(2AB) of the Act at Rs.6,66,06,663/- was not properly explained by the assessee in the case of assessment proceedings. The assessee had filed the details of the R&D expenses in the course of assessment, as per which the total expenses was to the extent of Rs.3,39,16,441/-. If this figure is taken as correct, then the assessee should have claimed deduction of Rs.6,78,32,882/- @ 200% of the expenditure and not Rs.6,66,06,663/- as actually claimed. This indicates that the details of R&D expenditure as furnished was not correct. Further, the difference of Rs.25,07,151/- being expenditure not approved by the DSIR was also not properly explained by the assessee. Therefore, the matter is set aside to the file of the AO to correctly verify the expenditure incurred by the assessee on in-house R&D center and, thereafter, allow the deduction at the eligible rate, without taking into account the expenditure as certified by the DSIR. **The**

ground taken by the assessee is allowed for statistical purposes.

Ground Number-3: Disallowance of interest u/s 36(1)(iii):

9. The next ground pertains to disallowance of interest expenses of Rs.2,12,94,836/-. The AO noticed that assessee had made huge addition to the fixed assets/CWIP during the year. He, therefore, called for the working of capitalization of interest on CWIP. It was explained by the assessee that CWIP included an amount of Rs.1,43,41,166/- towards interest capitalization by the assessee itself. The AO, however, was not satisfied with the explanation of the assessee. He, therefore, considered the borrowed funds of the assessee vis-à-vis CWIP and proportionate interest disallowance on CWIP was worked out in the following manner:

<i>Borrowed Fund as on 01.04.2010</i>	1751152489	
<i>Borrowed Fund as on 31.03.2011</i>	906171525	
<i>Average Borrowed Fund (A)</i>	2657324014	1328662007
<i>Interest Paid during the year (B)</i>		112144011
<i>CWIP for the year as on 01.04.2010 (Other than R&D)</i>	343097237	
<i>CWIP for the year as on 31.03.2011 (Other than R&D)</i>	161497504	
<i>Average WIP (C)</i>	504594741	252297371

Proportionate disallowance (BXC/A)	Interest on CWIP		21294836
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Accordingly, out of total interest expenses debited in the P&L account, a sum of Rs.2,12,94,836/- was capitalized towards CWIP under Section 36(1)(iii) of the Act and added to the total income of the assessee. The addition as made by the AO was upheld by the Ld. CIT(A).

10. The Ld. AR explained that out of total interest expenditure of Rs.9.70 Crores, the assessee had itself capitalized Rs.3.02 Crores and interest of Rs.6.6 Crores only was claimed as deduction in the P&L account. Considering this fact, the proportionate disallowance of interest on CWIP as worked out by the AO was not correct. He submitted that identical issue was involved in the assessee's own case in the A.Y. 2013-14 which was decided in favour of the assessee by the Ld. ITAT in *ITA No. 400/Ahd/2018*. He further submitted that the interest free funds of the assessee were much more than interest free advances which were utilized towards CWIP. The Ld. CIT-DR, on the other hand, supported the order of the lower authorities.

11. We have considered the rival submissions. It is found that the AO has not given any reason for working out the proportionate interest disallowance on CWIP. It is found from Note-12 of the accounts that the assessee had itself capitalized

interest of Rs.14,341,166/- to CWIP-Tangibles and another interest amount of Rs.108,888,368/- to CWIP-Intangibles as on 31st March, 2011, which was duly certified by the auditor. Further, the AO has made the disallowance on the presumption that all the interest bearing funds were utilized towards CWIP, which was not correct. From the Schedule-B of balance sheet it is seen that the assessee had surplus reserve of Rs.3,392,038,627/- which also would have been deployed towards CWIP. In fact fresh share premium of Rs.2,356,380,318/- was received during the current year only. Considering this huge interest free funds available with the assessee the presumption of the AO that only the interest bearing funds were utilized towards CWIP, was not correct. Therefore, the disallowance as made by the AO which was based on wrong presumption, can't be held as correct. It is further found that the identical issue was involved in assessee's own case in A.Y. 2013-14 which was decided by the Co-ordinate Bench of this Tribunal in *ITA No. 400/Ahd/2018*. The finding as given in the said order is reproduced below:

“61. Ground No.3 raised by the Revenue reads as under:

“3. The Ld CIT(A) had erred in deleting the disallowance of u/s.36(1)(iii) of the IT Act. “

62. Briefly stated the AO noted substantial investment made by the assessee in capital work-in-progress (CWIP) increasing from Rs. 94.58 crs as at the beginning of the year to Rs.392.08 crs as at the end of the impugned year. He also found that the assessee had made huge payment of interest, to the tune of Rs.47.48 crs during the year. The assessee's explanation of investment in CWIP being made out of own funds was rejected by the AO since the assessee failed to establish nexus and establish that borrowed funds were utilized for giving capital advances

for the purpose of CWIP. Accordingly he held that borrowed funds had been used for investing in CWIP and computing the funds so allegedly deployed on CWIP on the average CWIP for the year he worked out the interest attributable to the same on proportionate basis amounting to Rs.15,11,66,895/-, which accordingly was disallowed in terms of section 36(1)(iii) of the Act.

63. The Id.CIT(A), however, noted that interest free funds owned by the assessee was much more than the interest free advances towards CWIP. He also noted, as a matter of fact, that the assessee company had earned sufficient profits for the purpose of making investment in CWIP during the year. Noting this fact and taking note of his decision rendered in the immediately preceding year in the case of the assessee for Asst.Year 2012-13, rendered in identical set of facts, he deleted the disallowance of interest made under section 36(1)(iii) of the Act.

64. Before us, the Id.DR was unable to controvert the factual finding of the Id.CIT(A) that the assessee's own interest free funds were much more than its investment made in CWIP during the year, as also the fact that even the profits earned during the year sufficed for the purpose of making investment in CWIP during the year. The Ld.CIT(A) 's factual finding in this regard are at para 7.5 of his order as under:

“7.5. It is apparent that the appellant had shown the CWIP advances of Rs.392,08,80,000/- while it had the interest free own funds of Rs.229,67,01,075/- as on 31/03/2013 and Rs. 13,11,19,51,186/- as on 31/03/2012. Thus, the interest free funds owned by the appellant were much more than the interest free advances towards CWIP. Thus, no interest bearing funds have been utilized for the purpose of CWIP advances. Even otherwise also the advances given towards CWIP were for the business purposes not for any other purposes. Further, during the year under consideration the appellant company had earned the profit after tax at Rs.547 crores during the year under consideration which was more than the total CWIP as on 31/03/2013.”

Also the judicial proposition in this regard also stands settled by the decision of the Hon'ble Apex Court in the case of CIT Vs. Reliance Industries Ltd., 410 ITR 466(SC) holding that where mixed funds are available and where sufficient interest free funds are there the presumption is that the same were used for the purpose of making interest free investments, calling for no disallowance under section 36(1)(iii) of the Act. The Ld.DR was unable to point out any subsequent decision of the Hon'ble apex court unsettling the said proposition of law.

65. Since the Ld.DR was unable to controvert the findings of the Ld.CIT(A) both on facts as well as law we see no reason to interfere in the order of the

Id.CIT(A) deleting the disallowance of interest amounting to Rs. 15,11,66,895/- made under section 36(1)(iii) of the Act.

Ground of appeal No.3 is dismissed.”

12. Respectfully following the decision of the Co-ordinate Bench as well as considering the facts as discussed earlier, the disallowance of interest of Rs.2,12,94,836/- as made by the AO is deleted. **The ground taken by the assessee is allowed.**

Ground Number-4: Disallowance of capital loss:

13. The next ground pertains to disallowance of capital loss of Rs.16,35,331/-. The reason for disallowance as given by the AO in the assessment order is found to be as under:

“6.1 From the perusal of the financial statement, it was noticed that there was Opening and Closing CWIP and addition to assets made during the year. During the course of the scrutiny vide point No. 7 of the notice u/s 142(1) the assessee was asked to furnish the detailed working of Loss on the sale of assets with an explanation as to whether it was added back to the total income or not. In response, the assessee submitted some details on this issue. As no clarity and conformity was noticed between the CWIP and addition to assets from the details submitted by the assessee, vide order sheet entry dated 09/01/2015, following specific query was raised:

"As per details provided vide annexure 16 letter dated 09/01/2015 in respect of CWIP total capitalization is shown at Rs. 427518218/- however as per Schedule E to the financial statement, the total addition to Fixed Assets during the year is reported at Rs.395400015/- only. Therefore, explain the reason of difference of Rs.32109303/ Also explain as to why the difference amount should not be added back."

6.2 In response, to the above specific query, the assessee filed a reconciliation showing opening balance of CWIP, addition,

deduction and closing balance of CWIP along with additions and deductions to the assets. For the sake of clarity the same is reproduced below:

"We wish to submit that the amount shown as deduction column in CWIP movement comprises of the credits toward amount capitalized to the Assets Block as well as amounts that are reduced from CWIP for reversal or adjustment of advances against CWIP expenditure booking. Also the amount of addition in Assets block comprises of capitalization of CWIP or direct booking of an addition in the assets block, thus there cannot be a scope of any inference that, unmatched amount should be added as income."

6.3 The above reply of the assessee and the reconciliation filed have been thoroughly perused. It is noticed that the assessee has been able to explain almost the major amount of difference vide its reconciliation chart showing internal transfer. However, the assessee failed to explain the difference amounting to Rs. 1635331/- (Rs.89609414-Rs.67974083) on account of addition to CWIP, Therefore, the AR of the assessee was again requested to explain where the difference amount of CWIP of Rs. 1635331/-has been accounted for. It was also asked as to why it should not be treated as capital items written off to the extent of the amount of Rs. 1635331/- and accordingly be treated as capital loss in absence of any explanation and evidences and be disallowed and added back to the total income of the assessee.

6.4 In response, the A.R. of the assessee did not offer any explanation and also was unable to explain the reason of the difference. Further, the A.R. of the assessee also failed to explain as to where this difference has been accounted for in the books of account. Thus, the assessee did not prove and justify the whereabouts of the accounting of the amount of CWIP of Rs. 1635331/-. Thus, the assessee failed to explain the difference amount of addition to CWIP of Rs.1635331/-. Thus, the differential amount of Rs. 1635331/- is considered as asset written off and treated as Capital Loss in absence of explanation and evidences and is disallowed and added back to the total income of the assessee. Penalty proceedings u/s.271(1)(c) is being initiated separately for furnishing inaccurate particulars of income."

The addition as made by the AO was confirmed by the Ld. CIT(A).

14. The Ld. AR submitted that AO was not correct in making disallowance of Rs.16,35,331/- on account of capital loss as the same comprised a quantum of expenditure laid down on R&D which was eligible for allowance under Section 35 of the Act. He further submitted that if not allowed as revenue expenses, then the capital loss as determined by the AO should be allowed to be carried forward. Per contra, the Ld. CIT-DR supported the order of the lower authorities. He submitted that the assessee had failed to explain the difference in the addition to CWIP and this was not an actual capital loss which can be allowed carry forward, as claimed by the assessee.

15. We have carefully considered the rival submissions. The assessee was unable to establish or reconcile the difference of an amount of Rs.16,35,331/- on account of addition to CWIP. The same was treated as asset written off by the AO and disallowed as capital loss. In essence, the assessee had failed to explain the difference amount of CWIP additions of Rs.16,35,331/- and its allocations towards capitalization and internal transfers. The details of this unreconciled CWIP was filed before the Ld. CIT(A) with a claim that same was eligible for deduction under Section 37 of the Act or alternatively as capital loss. The fact remains that the amount of Rs.16,35,331/- in respect of CWIP

additions remained unreconciled. As this claim was not on revenue account, but in respect of CWIP which was to be allocated to fixed assets, the claim was certainly not on revenue account and ineligible for deduction under Section 37 of the Act. As regards the claim of capital loss, in order to claim the carry forward of the loss, the same has to be first established. This is not the case where the assessee had incurred any capital loss. Rather the addition to CWIP was not fully justified by the assessee and the amount of Rs.16,35,331/- remained unreconciled which cannot be considered as actual capital loss. Therefore, we do not find anything wrong with the treatment as given by the AO. The decision of Ld. CIT(A) on this issue is, therefore, upheld and **the ground taken by the assessee is dismissed.**

Ground Number-4: Disallowance u/s 40(a)(ia):

16. Ground No.5 pertains to disallowance of Rs.11,47,701/- in respect of commission paid to non-residents under Section 40(a)(ia) of the Act. The AO found that no TDS was deducted by the assessee in respect of commission paid to the non-residents. It was contended by the assessee that non-residents to whom the commission was paid had rendered services outside India and that their income was not taxable in India. Accordingly, a request was made not to disallow the foreign commission merely because of non-deduction of TDS under Section 195 r.w.s. 40(a)(ia) of the Act. The AO, however, was of the opinion that the source of

income of the non-residents was in India and, therefore, their income was deemed to be accrued or arisen in India under Section 9(1)(i) of the Act. Accordingly, he rejected the contention of the assessee and disallowed the commission paid to the non-resident under Section 40(a)(ia) of the Act.

17. The Ld. AR submitted that this issue was not dealt by the Ld. CIT(A) and no finding has been given in this regard in his order. He, however, submitted that identical issue was involved in assessee's own case in A.Y. 2013-14 in *ITA No.400/Ahd/2018* and relief was granted to the assessee. The Ld. CIT.DR, on the other hand, relied upon the order of the AO.

18. We have carefully considered the rival submissions. It is found from the copy of the Form No.35 filed by the assessee that no specific ground was taken before the Ld. CIT(A) in respect of addition of Rs.11,47,701/- under Section 40(a)(ia) of the Act. Therefore, the Ld. CIT(A) cannot be faulted for not giving any finding on this issue, when the matter was not specifically raised before him. However, considering the fact that this issue was also involved in assessee's own case in A.Y. 2013-14 where the issue was decided in the favour of the assessee, we deem it proper to set aside the matter to the file of the Ld. CIT(A) to examine the matter on the merits of the case. The assessee is also directed to raise a specific ground in this regard before the Ld. CIT(A) in order to enable him to examine the matter on the merits, within a

reasonable period of time. **The ground of assessee is allowed for statistical purposes.**

Ground Number-5: Disallowance of provision of bad debt:

19. Ground Nos.6 & 7 pertain to disallowance of provision of bad debt of Rs.1,18,87,543/-. The AO noticed that the assessee had debited an amount of Rs.1,18,87,543/- on account of provision of bad debts in its P&L account. The same was disallowed by the AO for the reason that the bad debt was not actually written off by the assessee during the year under consideration and the addition as made by the AO was upheld by the Ld. CIT(A).

20. The Ld. AR submitted that the amount of Rs.1,18,87,543/- was offered by the assessee as income in the earlier years. He further explained that though the amount was shown as provision of bad debt in the current year, the same was reduced from debtor's account and was, therefore, eligible for deduction in the current year itself. In this regard, he placed reliance on the decision of Hon'ble Gujarat High Court in the case of *Vodafone Essar Gujarat Ltd.* 397 ITR 55 (Guj.).

21. Per contra, Ld. CIT.DR submitted that the nature of the claim was examined by the AO in the course of assessment proceedings and found to be in the nature of provision for bad

debt only. The AO had made specific query about the nature of this claim and as per the finding given by him the amount was not actually written off in the current year. Therefore, the claim being in the nature of provision for bad debt was rightly disallowed by the AO and accordingly the order of the Ld. CIT(A) on this issue was correct.

22. We have carefully considered the rival submissions. It is found from Schedule-S of the audited account that the assessee had claimed deduction of Rs.1,18,15,926/- on account of provision for bad debts. As per the provision of Section 36(1)(vii) of the Act, amount of any bad debt which is written off as irrecoverable in the accounts of the assessee can be allowed as deduction. Further, *Explanation 1* to Section 36(1)(vii) of the Act categorically stipulates that any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee. The deduction in respect of provision for bad and doubtful debt is admissible under Section 36(1)(viiia) of the Act, which is applicable to banking companies, financial institutions, non-banking financial company etc. and the said provision is not applicable in the case of present assessee. Therefore, we have to examine the claim for deduction of the assessee in accordance with the provision of Section 36(1)(vii) of the Act.

23. The basic requirement for claiming deduction under Section 36(1)(vii) of the Act is that the bad debt should be written off as irrecoverable in the accounts of the assessee for the previous year, in which the deduction is claimed. Further that, such claim should not be on account of any 'provision for bad and doubtful debts'. This aspect was examined by the AO in the course of assessment and he has given the following finding in this regard:

"4.2 Since the above reply of the assessee was not giving any clarity on this Issue and the assessee had not furnished any evidences to establish its contention that the provision for Bad Debts were actually Bad Debts Written Off, the assessee was afforded another opportunity to furnish justification and evidences in support of its claim. In response, again the assessee vide letter dated 16/01/2015 stated the very same reply which was filed by it vide letter dated 09/01/2015. It is relevant to mention that the details in summary supplied by the assessee of the parties also prove that it was a running account where opening and closing balances were running and it was not written off. Since the assessee repeatedly was not giving full details to justify its claim of provision for Bad Debts, vide order sheet entry dated 28/01/2015 the AR of the assessee was asked to explain as to why a sum of Rs. 11647500/- as shown by the assessee as foreign receivables towards services income not realized in its reply dated 09/01/2015 (reproduced above) which is a the major part of Bad Debts Provision of Rs. 11887543/- was added back by the assessee while calculating the book profit u/s. 115JB of IT Act If it was Bad Debt Written Off and not the Bad Debt Provision, the AR of the assessee failed to offer any explanation.

4.3 Thus, considering the facts and circumstances of the case it is evident that the claim of Bad Debt Provision of Rs. 11687543/- was patently a wrongly claim which is not allowable as per the provisions of the law. Accordingly, claim of Bad Debt Provision of Rs.11887543/- is disallowed and added back to the total income of the assessee. Further, an amount of Rs.240043/- is also liable for addition to the Book Profit u/s 115JB of IT Act."

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24. It is, thus, evident from the above facts that the provision for bad debt as claimed in the current year was not actually written off in this year. A copy of the letter dated 29.01.2015 filed by the assessee before the AO has been brought on record, which is reproduced below:

From:
M/s. Intas Biopharmaceuticals Limited
Plot No. 423/P/A,
Sarkhej-Bavla Highway,
Village: Moraiya, Taluka : Sanand,
Dist.: Ahmedabad -382213
PAN: AABCI4722M

Dated: 29th January, 2015

To:
Deputy Commissioner of Income-tax
Circle 4,
Room No.103, 1st Floor,
Navjivan Trust Building,
Ashram Road,
Ahmedabad-380014

Dear Sir,

Sub: Assessment proceeding u/s 143(3) of the Income tax Act, 1961 for AY2012-13
Ref.: Notice u/s 142(1) r.w.s. 143(2) dated 21.08.2014 and our various submissions.

With reference to above subject, and in furtherance of our earlier submissions, we claim as under :

The assessee company submits that a claim for W/off of debts in respect of foreign receivables from two parties – viz. M/s. Biogenerics Australia PTY Ltd. Rs.46,65,000/- and Scigen Ltd. Singapore Rs.69,82,500/- aggregate Rs.1,16,47,500/- is preferred in the AY2011-12;

The said amounts represent debts arising out of income from services, in respect of FY09-10 and FY07-08 and the said incomes are duly credited in the Revenue from operations and offered in the respective assessments of the assessee company.

In this regard, without prejudice, the assessee company states that in case any of the said aggregate amount is denied deduction in the AY2011-12, these amounts being w/off out of the amount provided in AY2011-12, be allowed to the assessee as Bad debts deduction in the AY2012-13, under normal as well as MAT provisions, please.

Thanking You,
Yours Faithfully,
For Intas Biopharmaceuticals Limited

Dr. Smit Arora
Authorised Signatory
(*Smit Arora*)

It is evident from the above reply of the assessee that the provision for bad debt as debited to the accounts of the current year was not actually written off in the current year. The assessee had itself submitted that these debts were actually written off in the next year and had accordingly requested the AO to allow the deduction for the bad debt in the A.Y. 2012-13. In view of these facts, we do not find anything wrong with the orders of the AO and the CIT(A) on this issue.

25. As regarding reliance of the assessee on the decision of Hon'ble Gujarat High Court in the case of *Vodafone Essar Gujarat Ltd. (supra)*, it is found that the ratio involved in that case was in respect of consideration of provision for bad and doubtful debt to work out the book profit for computation of MAT liability under Section 115JB of the Act. On the other hand, the issue before us is allowability of deduction in respect of provision for bad debt under Section 36(1)(vii) of the Act. In view of this material difference, the ratio of the decision of the Hon'ble Gujarat High Court in the case of *Vodafone Essar Gujarat Ltd. (supra)* cannot be imported to the facts of the present case.

26. In view of the above facts and discussions, we do not find any merit in the ground as taken by the assessee. The addition of

Rs.1,18,15,926/- on account of provision for bad debts is upheld and **the ground of the assessee is dismissed.**

27. In the result, appeal preferred by the assessee is allowed in part.

This Order pronounced on 07/08/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 07/08/2024
S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad