

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH, AHMEDABAD****BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER****ITA No.1035/Ahd/2016
Assessment Year: 2012-13**

Intas Biopharmaceuticals Ltd., Plot 423/P/A, Sarkhej Bavla Highway, Moraiya, Sanand, Ahmedabad – 382 213. [PAN – AABCI 4722 M]	Vs.	The Deputy Commissioner of Income Tax, R-2 (1)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Bandish Soparkar, AR & Shri Parin Shah, AR	
Revenue by	Shri Prathviraj Meena, CIT-DR	
Date of Hearing	08.01.2025 and 10.10.2024	
Date of Pronouncement	12.02.2025	

ORDER**PER SUCHITRA KAMBLE, JUDICIAL MEMBER:**

This appeal is filed by the Assessee against order dated 15.02.2016 passed by the CIT(A)-2, Ahmedabad for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1 *In law and in the facts and circumstances of the appellant’s case, the impugned Assessment Order 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 erred in confirming in making addition on account of computation of 14A addition and applying Rule 8D for the same. There should be no addition u/s.14A and Rule-8D is not applicable in the case of the assessee company as explained.*

3. *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 erred in confirming in making further disallowance of Rs.31,40,536/- on account of Sec.43B disallowables; the same should be duly allowed to the appellant company.*
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 erred in confirming in disallowing claim u/s.35 to the extent of Rs.337,73,000/- on flawed base that such expenditure is not incurred by the assessee company, whereas, as identified by the assessee company - the relevant expenditure recorded by the assessee company, having been netted by merger entries of excess of assets over liabilities representing reserves and surplus of erstwhile Indus Biotherapeutics Ltd. The claim u/s.35 of the assessee company be allowed as claimed.*
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 erred in confirming in the alleged excess deduction u/s.35(2AB) by Rs.87,66,984/- 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 erred in confirming in computing the quantum of disallowance at 200% i.e. Rs.87,66,984/-, even when as per the provisions of Indian Income Tax Act u/Sec.35 - the same is eligible for atleast 100% allowance at Rs.43,83,492/-

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 erred in confirming in making addition of Rs.13,05,000/- being the signing amount of Grant received, and been treated by the assessee company as liability, being not spent during the year. The same should be considered as income or outstanding as and when and according to the proper accounting treatment thereof*
7. *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.3,44,20,356/- considering the same to be of capitalized on account Tangible Assets Capital WIP of the assessee company.*

Further, without prejudice, the quantum of the same should be net of the quantum of amount of Rs.90 Lacs, identified by the assessee company as interest debit during the year in P/L account and not availed deduction

Further, without prejudice, the quantum of the same should be based on net interest debited to the P/L account and also while attributing the quantum of interest to the said Capital WIP, application of own funds towards should be duly considered.

Also, without prejudice, the appellant company submits 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.

8. *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 exchange fluctuation debit to the extent of Rs.86,27,682/- considering the same to be of capitalized on account Capital WIP/Assets of the assessee company.*

Also, without prejudice, the appellant company submits 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.

9. *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 erred in confirming in the alleged foreign commission expenditure of Rs.90.39 lacs as ineligible expenditure under the provisions of the Section 40, when the appellant company has duly brought out that the said remittances did not attract TDS/WHT provisions of Sec. 195 of the IT Act. The same commission expenditure should be duly allowed to the appellant company*
10. *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 erred in confirming in denying deduction, which was made based on valid claim during the assessment proceedings, towards bad Debts expenses of Rs.1,16,47,500/- being debts w/off during the year out of provision, both while computing normal income as well as book profit. The same should be duly allowed to the appellant company.*
11. *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 erred in confirming in making addition on account of Sec.14A addition made in the assessment to the book profit u/s.115JB, when no such addition can be made.*

12. *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 erred in confirming in working out the income liable to MAT.*
13. *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 erred in confirming in giving short credit, under the favourable provisions of the income tax act and/or DTAA for the foreign tax incidence.*
14. *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 erred in confirming in giving short credit, under the provisions of Income Tax Act for TDS and taxes paid.*
15. *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 erred in confirming in giving direction to charge interest u/s.234A; 2348; 234C and 234D when no such interest is chargeable.*
16. *In law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in and the Ld. CIT A has erred in confirming determining a Nil Refund, when there is actually huge refund eligible to the appellant company.*

Your appellant reserves the right to add, alter, amend and/or withdraw any of the above ground/(s) either before or at the time of hearing of the appeal."

3. The assessee company is engaged in the business of manufacturing and marketing of Bio-Pharmaceutical Products. The return of income was filed by the assessee on 28.09.2012 declaring total loss of (-) Rs.13,27,82,931/- under the normal provisions of the Income Tax Act, 1961 and income of Rs.6,19,59,740/- under Section 115JB of the Act. The case was selected for scrutiny. Notice under Section 143(2) of the Act was issued on 06.08.2013 and duly served on the assessee. Thereafter, notices under Section 142(1) of the Act were issued on 06.08.2013 and 21.08.2014 which were duly served on the assessee.

3.1 The Assessing Officer observed that the assessee has made huge investments in shares of subsidiaries and other companies. The opening balance of investment was at Rs.1020.98 Lakhs as on 01.04.2011 whereas the closing balance of investment as on 31.03.2012 was reported at Rs.1029.96 Lakhs. Vide notice

under Section 142(1) dated 21.08.2014, the assessee was asked to furnish the details of investment in shares/securities with an explanation as to whether any expenses have been claimed in respect of exempt income, which is disallowable under Section 14A read with Rule 8D. In response to the same, the assessee filed reply on 21.11.2014. After taking the same into consideration, the Assessing Officer observed that as per the Circular No.5/2014 dated 11.02.2014, even where taxpayer in a particular year has not earned any exempt income, the provisions of Rule 8D read with Section 14A of the Act are applicable. The Assessing Officer observed that the assessee has given only general explanation that it has not incurred any expenses related to exempt income. The assessee has not given/submitted any proof of specific explanation other than this and, therefore, the Assessing Officer held that the assessee failed to prove that no interest-bearing funds were diverted for making any investment in the shares on which the income is exempt and, therefore, the disallowance under Section 14A read with rule 8D was made to the extent of Rs.28,36,029/-.

3.2 The Assessing Officer further observed that the details of payment covered under Section 43B of the Act, the assessee has not filed any information related to the payment covered under Section 43B of the Act. The assessee did not file any details. The Assessing Officer made disallowance of Rs.2,014 in respect of payment of Gratuity under Section 43B of the Act. The Assessing Officer further asked the assessee to furnish detailed computation of income certifying that all the contents in the audit report having incorporated. The assessee did not furnish any reply and therefore, the Assessing Officer made addition to the extent of Rs.31,38,522/- under Section 43B of the Act in respect of disallowance of expenditure in earlier years and claimed in the STI during the year.

3.3 The Assessing Officer further made observation that the assessee claimed deduction of Rs.10,98,75,057/- under Section 35(2AB) of the Act alongwith certificate in support of claim of deduction under Section 35(2AB) of the Act. In response to the query, the assessee furnished Form 3CL report issued by the Department of Scientific and Industrial Research (DSIR) vide letter dated 15.12.2014

wherein the details of expenditure incurred by the assessee and approved by the DSIR was given. The Assessing Officer made disallowance of Rs.87,66,984/- being at 200% of the amount of Rs.43,83,492/- which was not approved by the DSIR.

3.4 The Assessing Officer also made disallowance under Section 35 of the Act relating to the excess claim on account of capital expenditure including CWIP amounting to Rs.3,37,73,000/-. The Assessing Officer also made addition of Rs.3,44,20,356/- towards the expenses in relation to capitalized towards CWIT under Section 36(1)(iii) of the Act. The Assessing Officer further observed that the grant given by the DSIR is not in the nature of capital receipt and is as income from business or profession in the spirit of Section 28(iv) of the Act. Thus, the Assessing Officer made addition of Rs.13,05,000/- which was received as grant from DSIR, Government of India. The Assessing Officer further made disallowance under Section 40A(2)(b) of the Act amounting to Rs.5,61,34,515/- in respect of purchases made from related parties which comes to Rs.14,03,363/- and added the same thereby mentioning that it is excessive and unreasonable under Section 40A(2)(b) of the Act. The Assessing Officer also made disallowance of Foreign Exchange loss on capital assets amounting to Rs.86,27,682/- as per the provisions of Section 37(1) of the Act. The Assessing Officer made disallowance of sales promotion amounting to Rs.81,23,963/- under Section 37(1) of the Act. The Assessing Officer further made disallowance of commission paid to non-resident amounting to Rs.90,39,000/- under Section 40(a)(ia) of the Act. The Assessing Officer also made disallowance of claim of write off of debts amounting to Rs.1,18,15,926/- which was claimed as provision of bad debts. The Assessing Officer also made disallowance of tax credit wherein the assessee claimed foreign tax credit of Rs.1,59,00,000/- less Rs.21,43,693/- and thus disallowed the tax credit which was excessively claimed by the assessee amounting to Rs.1,37,56,307/- Thus, the total assessed income was (-) Rs.2,13,47,020/-.

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

5. As regards to Ground No. 2 relating to addition on account of computation under Section 14A and applying Rule 8D, the Ld. AR submitted that the investment being specific and strategic there was no question of considering the same would attract the provisions of Rule 8D. The Ld. AR further submitted that the assessee company itself have it's own interest free funds that of Rs. 350 crores. Investments are only Rs. 24.5 crores. The Ld. AR submitted that the Assessing Officer only presumed that the investment is from non-bearing funds. The assessee did not receive Dividend in this year. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in case of Dipesh Lalchand Shah (2022) 143 taxmann.com 419 (Guj.) and the decision of Hon'ble Madhya Pradesh High Court in case of Ketu Construction Ltd. (2024) 162 taxmann.com 278 (MP).

6. The Ld. DR submits that the assessee company has not submitted any day to day fund flow and in absence of the same, the assessee's claim that no interest bearing funds were diverted for investment in shares remained unsubstantiated. The opening and closing investments were to the tune of Rs. 10,29,98,000/- and Rs. 10,29,96,000/-. The assessee company did not submit any details and evidences to prove its contention that there were sufficient owned funds in the books of accounts of the assessee which would have been used in investing into the various securities held by the assessee. Thus, the Ld. DR relied upon the order of the CIT(A) and Assessment Order.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the contention of the Ld. AR that the investments being specific, strategic, did not receive any dividend as well and assessee only invested Rs. 24.5 crores out of its own interest free funds (Rs. 350 crores), these aspect though stated, has not been demonstrated clearly by the assessee before the Assessing Officer as well as before the CIT(A). The contention of the Ld. DR that opening and closing investments was to the tune of Rs. 10,20,98,000/- and Rs. 10,29,96,000/- respectively does not indicate which component is interest bearing fund utilized for investment and what was the specific and strategic component for investing the same. All these aspects needs verification,

hence this issue is remanded back to the file of the Assessing Officer. Besides this whether any expenditure relating to administrative expenditure incurred or not by the assessee also needs verification. Thus, the issue is remanded back to the file of the Assessing Officer for proper verification and adjudication as per the evidences and submissions of the assessee. Assessee be given opportunity of hearing by following principles of natural justice. Ground No. 2 is partly allowed for statistical purpose.

8. As regards to Ground No. 3 relating to disallowance of Rs. 34,40,536/- on account of Section 43B disallowance, the Ld. AR submitted that the amount of Rs. 2014/- represent short payment out of amount of interest provided in respect of DBT Soft Loan 2 is accepted by the assessee while the residual amount of Rs. 31,38,522/- represents amount of disallowances of A.Y. 2011-12 being offered as disallowances of unpaid interest as under:

Interest on Buyer's credit : Rs. 1,56,402/-

Interest on DBT Soft Loan 1 : Rs. 9,00,000/-

Interest on DBT Soft Loan 2 : Rs. 1,65,411/- Rs. 12,21,813/-

Out of Bonus payable (Rs. 21,02,913/-) Rs. 19,16,709/- i.e. Rs. 31,38,522/-

Since, the assessee counted the entire unpaid amount including Rs. 41.58 lacs past years outstanding being disallowed, the said adjustment is to avoid double disallowance, therefore, relief of Rs. 31.38 lacs should have been given by the CIT(A). The Ld. AR submitted that the Assessing Officer and the CIT(A) failed to understand that while auditor has certified net amount of payment and net amount of remaining to be paid brought forward from earlier years, in the return of income and that has been again disallowed the said brought forward of earlier year by the assessee. Therefore, claiming allowance also of the same amount on gross basis. In return of income it is reflected that the assessee has already disallowed Rs. 31,38,522/- and at this juncture it becomes double disallowance.

9. The Ld. DR submitted that as per the statement of income of the assessee, the assessee claimed Bonus payment (current year) Rs. 19,16,709/- and payment allowable as per Clause 21(i)(A)(a) of Tax Audit Rs. 12,21,813/-. The assessee did not furnish any proof with regard to payments to the Assessing Officer as well as

before the CIT(A). Thus, non payment of the bonus payment and gratuity within due date u/s 139(1) of the Act was rightly disallowed by the Assessing Officer u/s 43B of the Act.

10. We have heard both the parties and perused all the relevant material available on record. The Ld. AR submitted that in the return of income it is already disallowed Rs. 31,38,522/-. The auditor has certified net amount of payment and the remaining amount was to be paid, the same was brought forward from earlier years and this will amount to double disallowance. This fact and contentions of the assessee needs verification as that has not been dealt by the Assessing Officer or by the CIT(A). Hence, the said issue is remanded back to the file of the Assessing Officer for proper verification and adjudication. The assessee be given opportunity of hearing by following principles of natural justice. Ground No. 3 is partly allowed for statistical purpose.

11. As regards Ground No. 4, the Ld. AR submitted that the CIT(A) has erred in confirming in disallowing claim u/s.35 to the extent of Rs.337,73,000/- on flawed base that such expenditure is not incurred by the assessee company, whereas, as identified by the assessee company - the relevant expenditure recorded by the assessee company, having been netted by merger entries of excess of assets over liabilities representing reserves and surplus of erstwhile Indus Biotherapeutics Ltd. The claim u/s.35 of the assessee company be allowed as claimed. The Ld. AR submitted that the assessee claimed deduction under Section 35 that of Rs. 16.73 crores. In fact, the Assessing Officer and the CIT(A) has not taken cognisance that the base taken of Rs. 18.84 crores from Director's report is not enough as in this year Indus Biotherapeutics is merged into the assessee company. This merger resulted into negative goodwill which has reduced the value of intangibles. That is why the value seen is Rs. 18.84 crores but in fact R & D is Rs. 20.10 crores. The Ld. AR pointed out the reconciliation at pg. 210 of the paper book.

12. The Ld. DR submitted that the Ld. AR is filing reconciliation at this juncture which was not before the CIT(A) as well as before the Assessing Officer. The Ld. DR relied upon the assessment order and the order of the CIT(A).

13. We have heard both the parties and perused all the relevant material available on record. Since the assessee is filing reconciliation at this juncture and the contentions taken before us needs verification, we remand back this issue to the file of the Assessing Officer for proper verification of reconciliation and the submissions of the assessee as per the evidence and adjudicate the same as per the Income Tax Act. Assessee be given opportunity of hearing. Ground No. 4 is partly allowed for statistical purpose.

14. As regards to Ground No. 5, the Ld. AR submitted that the CIT(A) has erred in confirming in the alleged excess deduction u/s.35(2AB) by Rs.87,66,984/- considered @ 200% of the amount of expenditure on clinical trials etc. laid out for the in-house R&D. This amount was disallowed only due to the difference in the 3CL and this issue is decided in favour of the assessee in assessee's own case in ITA No. 400/Ahd/2018 for A.Y. 2013-14. In A.Y. 2011-12 the matter is send back for verification for peculiar circumstances which is not identical in the present assessment year.

The Ld. AR further submitted without prejudice that the learned Assessing Officer has grossly erred and the CIT(A) has erred in confirming in computing the quantum of disallowance at 200% i.e. Rs.87,66,984/-, even when as per the provisions of Indian Income Tax Act u/Sec.35 - the same is eligible for at least 100% allowance at Rs.43,83,492/-

15. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR submitted that as per provisions of Section 35(2AB) of the Act, all the conditions mentioned have to be fulfilled for making claim of deduction u/s 35(2AB) and have to be approved by the prescribed authority under the law. The claim of

deduction was not approved by DSIR and therefore, the Assessing Officer and the CIT(A) rightly disallowed the said claim.

16. We have heard both the parties and perused all the relevant material available on record. Since this issue was remanded back in A.Y. 2011-12, but allowed in A.Y. 2013-14 by the Tribunal, whether DSIR has given the approval and if so whether other conditions as per requirement of Section 35(2AB) was fulfilled by the assessee, needs to be verified thoroughly by the Assessing Officer. This issue is remanded back to the file of the Assessing Officer for proper verification and adjudication and if satisfied as per Section 35(2AB) be allowed. Assessee be given opportunity of hearing. Ground No. 5 is partly allowed for statistical purpose.

17. As regards to Ground No. 6, the Ld. AR submitted that the CIT(A) has erred in confirming in making addition of Rs.13,05,000/- being the signing amount of Grant received, and been treated by the assessee company as liability, being not spent during the year. The same should be considered as income or outstanding as and when and according to the proper accounting treatment thereof. The Ld. AR submitted that matching concept will apply and it is a liability until specific project is executed.

18. The Ld. DR relied upon the assessment order and the order of the CIT(A).

19. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that it is signing amount for grant received and the contention of the Ld. AR that unless and until project is fully executed and delivered, the assessee is a custodian of that grant otherwise it has to be remitted back if the project is not executed which is a liability. This appears to be justifiable. Hence, Ground No. 6 is allowed.

20. As regards to Ground No. 7, the Ld. AR submitted that the CIT(A) has erred in confirming in disallowing interest expenses to the extent of Rs.3,44,20,356/- considering the same to be of capitalized on account Tangible Assets Capital WIP of

the assessee company. The CIT(A) has followed A.Y. 2011-12 and the Tribunal has allowed this ground in A.Y. 2011-12.

The Ld. AR further submitted without prejudice that the quantum of the same should be net of the quantum of amount of Rs.90 Lacs, identified by the assessee company as interest debit during the year in P/L account and not availed deduction

The Ld. AR further submitted without prejudice that the quantum of the same should be based on net interest debited to the P/L account and also while attributing the quantum of interest to the said Capital WIP, application of own funds towards should be duly considered.

The Ld. AR also submitted without prejudice 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.

21. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). The Ld. DR submitted that the assessee has not established any nexus for utilization of own funds for CWIP other than R & D. Had the assessee not utilized borrowed funds for the purpose of CWIP, there would not have been any need for taking secured loans to the extent of the amount utilized for CWIP other than R & D. Thus, the interest paid on secured loans are directly attributable to and related to CWIP other than R & D. Hence, interest to the extent of borrowed funds utilized for the purpose of CWIP other than R & D has to be capitalized u/s 36(1)(iii) of the Act. About depreciation this issue does not arise in the present assessment year.

22. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has categorically mentioned that the assessee did not furnish any evidence to prove that any amount of interest was capitalized to CWIP with supporting evidence. Though the Ld. AR submitted that this issue was allowed in A.Y. 2011-12, but the supporting documents was not seen by the CIT(A)

in this year, therefore, we are remanding back this issue to the file of the Assessing Officer for verification and adjudication as per the evidence and decide the same accordingly. The assessee be given opportunity of hearing. Ground No. 7 is partly allowed for statistical purpose.

23. As regards to Ground No. 8, the Ld. AR submitted that the CIT(A) has erred in confirming in disallowing exchange fluctuation debit to the extent of Rs.86,27,682/- considering the same to be of capitalized on account Capital WIP/Assets of the assessee company. The Ld. AR relied upon the decision of the Tribunal in case of Cooper Corporation (P) Ltd. (2016) 69 taxmann.com 244 (Pune Tri.).

The Ld. AR further submitted without prejudice 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. The Ld. AR relied upon the judgment of the Hon'ble Karnataka High Court in case of Bangalore International Airport Ltd. 459 ITR 158.

24. The Ld. DR relied upon the order of the CIT(A) and the Assessment Order. The Ld. DR submitted that the claim of foreign exchange loss was not the ascertained liability and it was just the notional loss worked out by the assessee as on 31.03.2012. As per Section 43A of the Act, the loss could have been worked out on the date of actual settlement of payment which did not happen and also did not fall in year under consideration.

25. We have considered the submissions of both parties and examined the material on record. The finding of the CIT(A) that the exchange fluctuation loss claimed by the assessee was merely a notional loss is not correct. As per the applicable Accounting Standards, a liability arising on account of foreign exchange fluctuation is recognized as an accrued liability and not a contingent one. The Tribunal in the case of Cooper Corporation (P) Ltd. [(2016) 69 taxmann.com 244 (Pune Tribunal)] has held that where the liability for foreign exchange fluctuation has actually accrued, it should be treated as part of the cost of the asset and allowed in accordance with the provisions

of Section 43A of the Act. Section 43A provides that any increase or decrease in liability due to foreign exchange fluctuation in respect of the acquisition of a capital asset is to be adjusted to the actual cost of the asset and depreciation shall be allowed from the year in which the asset is put to use, subject to actual settlement of the liability. Since the expenditure is of capital nature, it requires verification as to whether it pertains to Work-in-Progress (WIP) or an asset that has been put to use. Accordingly, the matter is restored to the file of the Assessing Officer (AO) for verification and adjudication in accordance with the provisions of Section 43A. The AO shall examine whether the fluctuation loss pertains to an asset that has been put to use, in which case depreciation shall be allowed from the date of put to use, or if it remains as WIP, in which case no depreciation shall be admissible. The assessee be given an opportunity of hearing before the AO. Consequently, Ground No. 8 is partly allowed for statistical purposes.

26. As regards to Ground No. 9, the Ld. AR submitted that the CIT(A) has erred in confirming in the alleged foreign commission expenditure of Rs.90.39 lacs as ineligible expenditure under the provisions of the Section 40, when the assessee company has duly brought out that the said remittances did not attract TDS/WHT provisions of Sec. 195 of the IT Act. The same commission expenditure should be duly allowed to the assessee company. The Ld. AR submitted that payment was made outside India for services outside India, therefore, no TDS is required to be deducted. This issue is now covered by assessee's own case in favour of the assessee being ITA No. 400/Ahd/2018 for A.Y. 2013-14.

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

28. We have heard both the parties and perused all the relevant material available on record. The finding of the CIT(A) that the assessee failed to adduce necessary evidences appears to be not correct as the assessee has dealt with these non-resident and rendered service outside India in A.Y. 2013-14, there was no distinguishing facts established by the Revenue that the services was rendered in India by the non-residents. Hence, following the decision of the Tribunal in

assessee's own case for A.Y. 2013-14, this issue is allowed in favour of the assessee. Ground No. 9 is allowed.

29. As regards to Ground No. 10, the Ld. AR submitted that the CIT(A) has erred in confirming in denying deduction, which was made based on valid claim during the assessment proceedings, towards bad Debts expenses of Rs.1,16,47,500/- being debts written off during the year out of provision, both while computing normal income as well as book profit. The same should be duly allowed to the assessee company. This year the assessee has written off the reserve against debts. In fact, claims have been made in A.Y. 2011-12 and was not allowed. The Ld. AR submitted that the Misc. Application has been filed in A.Y. 2011-12 before the Tribunal.

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

31. We have heard both the parties and perused all the relevant material available on record. Since the assessee has written off the reserve against debts in this year, yet has claimed the same in A.Y. 2011-12, which was rejected. The issue needs verification before the Assessing Officer and same should be considered by the Assessing Officer in this year if applicable or not after verifying the same as per provisions of Income Tax Act. Thus, the issue is remanded back to the file of the Assessing Officer for this specific direction. Assessee be given opportunity of hearing. Ground No. 10 is partly allowed for statistical purpose.

32. As regards to Ground No. 11, the Ld. AR submitted that the CIT(A) has erred in confirming in making addition on account of Sec.14A addition made in the assessment to the book profit u/s.115JB, when no such addition can be made. The Ld. AR relied upon the decision of Special Bench of Tribunal in case of Vireet Investment 165 ITD 27 (SB).

33. The Ld. DR relied upon the Assessing Officer and the order of the CIT(A).

34. We have heard both the parties and perused all the relevant material available on record. In light of the decisions of the Special Bench in case of Vireet Investment (supra) and the decisions of the various High Courts and Hon'ble Apex Court, this issue is decided in favour of the assessee as no distinguishing facts were pointed out by the Ld. DR. Ground No. 11 is allowed.

35. As relates to Ground No. 12, the Ld. AR submitted that the CIT(A) has erred in confirming in working out the income liable to MAT and this issue is connected to Ground No. 10.

36. The Ld. DR relied upon the assessment order and the order of the CIT(A).

37. We have heard both the parties and perused all the relevant material available on record. Since, Ground No. 10 is remanded back for verification and adjudication, it will be appropriate to remand back this issue for adjudication as well to the file of the Assessing Officer. The assessee be given opportunity of hearing by following principles of natural justice. Ground No. 12 is partly allowed for statistical purpose.

38. As regards to Ground No. 13, the Ld. AR submitted that the CIT(A) has erred in confirming in giving short credit, under the favourable provisions of the income tax act and/or DTAA for the foreign tax incidence. The Ld. AR submitted that income of Rs. 15.93 crores earned outside India is already included in the income offered. Tax of Rs. 1.53 crore is paid on it outside India. The Ld. AR submitted that the tax authorities have not examined whether Section 90 of the Act will apply or Section 91 of the Act or Rule 128 of the Rules. Therefore, Ld. AR requested that this needs to be remanded back to the file of the Assessing Officer.

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

40. We have heard both the parties and perused all the relevant material available on record. Since, both the parties agree that this issue needs verification

and examination, the issue is remanded back to the file of the Assessing Officer for proper examination and adjudication as per Income Tax Act and Rules. Ground No. 13 is partly allowed for statistical purpose.

41. As regards to Ground No. 14, the Ld. AR submitted that the CIT(A) has erred in confirming in giving short credit, under the provisions of Income Tax Act for TDS and taxes paid. Since this ground is general, the Ld. AR submitted that this is not pressed.

42. The Ld. DR relied upon the Assessing Officer and the order of the CIT(A).

43. We have heard both the parties and perused all the relevant material available on record. Since this ground is not pressed and general, hence Ground No. 14 is dismissed.

44. As regards to Ground No. 15, the Ld. AR submitted that the CIT(A) has erred in confirming in giving direction to charge interest u/s.234A; 2348; 234C and 234D when no such interest is chargeable.

45. The Ld. DR relied upon the assessment order and the order of the CIT(A).

46. We have heard both the parties and perused all the relevant material available on record. This is consequential issue hence, not adjudicated at this juncture.

47. As regards to Ground No. 16, the Ld. AR submitted that the CIT(A) has erred in confirming determining a Nil Refund, when there is actually huge refund eligible to the assessee company.

48. The Ld. DR relied upon the assessment order and the order of the CIT(A).

49. We have heard both the parties and perused all the relevant material available on record. It is noted that this is general ground hence not adjudicated at this juncture.

50. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 12 th February, 2025.

Sd/-
(MAKARAND VASANT MAHADEOKAR)
Accountant Member
Ahmedabad, the 12th February, 2025
PBN/*

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Copies to:

(1)	<i>The appellant</i>
(2)	<i>The respondent</i>
(3)	<i>CIT</i>
(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>
(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad