

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1236/MUM/2016
(Assessment Year: 2011-12)

ITA No.7393/MUM/2017
(Assessment Year: 2013-14)

ITA No.577/MUM/2017
(Assessment Year: 2012-13)

ITA No.7294/MUM/2018
(Assessment Year: 2014-15)

Thermo Fisher Scientific India Pvt. Ltd.

403, 404, B Wing Delphi,
Hiranandani Business Park,
Mumbai - 400076
PAN : AABCT3207A

..... Appellant

v/s

Deputy Commissioner of Income Tax
Circle - 15(3)(1)

Mumbai

..... Respondent

Assessee by : Shri Dhanesh Bafna, Shri Anmol Mahajan
Ms. Hinal Shah

Revenue by : Shri Pravin Salunkhe, Sr.DR

Date of Hearing – 09/12/2025

Date of Order - 02/01/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate final assessment order passed under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 ("*the Act*") pursuant to the directions issued by the learned Dispute Resolution Panel - 2, Mumbai [*"learned DRP"*], under section

144C(5) of the Act, for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15.

2. Since all the appeals pertain to the same assessee, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2011-12 is considered as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to other appeals.

ITA No.1236/Mum/2016
Assessee's Appeal (A.Y. 2011-12)

3. In this appeal, the assessee has raised the following grounds: -

"Ground 1 – General

On the facts and in the circumstances of the case and in law, the directions of the Hon'ble Dispute Resolution Panel- II (DRP') and the final assessment order passed by the learned Deputy Commissioner of Income-tax - 15(3)(1), Mumbai (DCIT) are bad in law and merit to be set aside.

Ground 2 - Depreciation on contracts - Acquisition from Glaxosmithkline Pharmaceuticals Ltd ('GSK') in AY 2008-09

2.1 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 7,54,46,294 on the written down value of business or commercial rights being the manufacturing contracts as on 1 April 2010 under section 32(1) r.w.s 2(11) of the IT Act.

2.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 1,81,98,807 on the written down value of business or commercial rights being the supply contracts as on 1 April 2010 under section 32(1) r.w.s 2(11) of the IT Act.

2.3 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of manufacturing and supply contracts based on the following observations which are incorrect on facts:

- Manufacturing and supply contracts are not self-generated by GSK and have not been transferred to the Appellant
- Manufacturing and supply contracts are not an intangible asset as per Accounting Standard ('AS')-26 issued by the Institute of Chartered Accountants of India

2.4 Without prejudice to para 2.1 and 2.3 above, the learned DCIT and Hon'ble DRP erred in not considering the value of manufacturing contracts as goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s 2(11) of the IT Act.

2.5 Without prejudice to para 2.2 and 2.3 above the above, the learned DCIT and Hon'ble DRP erred in not considering the value of supply contracts as goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s 2(11) of the IT Act.

3. Ground 3 - Depreciation on contracts - Acquisition from Chemito Technologies Private Limited ('CTPL') in AY 2009-10

3.1 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 36,61,868 on the written down value of business or commercial rights being the maintenance contracts as on 1 April 2010 under section 32(1) r.w.s 2(11) of the IT Act.

3.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of maintenance contracts based on the following observations which are incorrect on facts:

- Maintenance contracts are not self-generated by CTPL and have not been transferred to the Appellant
- Maintenance contracts are not an intangible asset as per AS-26 issued by the Institute of Chartered Accountants of India

3.3 Without prejudice to the above, the learned DCIT and Hon'ble DRP erred in not considering the value of maintenance contracts as goodwill acquired from CTPL, which is an intangible asset eligible for depreciation under section 32(1) r.w.s 2(11) of the IT Act.

4. Ground 4 - Consequential depreciation on software expenses capitalised in AY 2007-08

On the facts and in the circumstances of the case and in law, the learned DCIT has erred in not following the directions of the Hon'ble DRP for granting consequential depreciation of Rs. 16,790 on the written down value of software expenses considered to be depreciable capital expenditure in completed assessment proceedings of AY 2007-08.

5. Ground 5 - Allowance of brought forward unabsorbed depreciation of AY 2008-09

5.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs. 23,42,932 as per return of income.

5.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs. 18,73,52,790 on goodwill purchased from GSK.

5.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 262,345 relating to depreciation on software expenses treated as capital expenditure in AY 2007-08.

6. Ground 6 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2009-10

6.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2009-10 of Rs. 17,82,24,085 as per the original return of income.

6.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2009-10 of Rs. 14,05,14,593 on the written down value of goodwill purchased from GSK as on 1 April 2008.

6.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2009-10 of Rs. 7,23,12,099 on goodwill purchased from CTPL.

6.4. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 104,938 relating to depreciation on software expenses treated as capital expenditure in AY 2007-08.

7. Ground 7 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2010-11

7.1. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2010-11 of Rs. 20,63,13,710 as per return of income.

7.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2010-11 of Rs. 10,53,85,945 on the written down value of goodwill purchased from GSK as on 1 April 2009.

7.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2010-11 of Rs. 5,42,34,074 on goodwill purchased from CTPL as on 1 April 2009.

7.4 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 41,975 relating to depreciation on software expenses treated as capital expenditure in AY 2007-08.

Ground 8 - Transfer pricing (TP") adjustment relating to purchase of finished goods (Rs. 2,90,74,384)

The Appellant most respectfully submits before Your Honours that this Ground of Appeal is subject to learned DCIT disposing the rectification application filed by the Appellant under Sec 154 of the IT Act on 09 February 2016. In this application, it was brought to the notice of learned DCIT that the learned TPO has incorrectly granted relief by deleting the entire TP adjustment in relation to purchase of finished goods amounting to Rs. 13,44.35,683 while giving effect to the directions of the Hon'ble DRP i.e. accepting Advanced Micronic Devices Ltd. and Frontline Electro Medical Ltd. as comparables for the purpose of computing the revised arm's length gross profit margin. In view of this, the revised TP adjustment stands at Rs. 2,90,74.384 instead of Rs. Nil as confirmed by Learned TPO.

On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming the upward adjustment of Rs. 2,90,74-384 to the income of the Appellant in relation to the international transaction of purchase of finished goods; and in doing so the learned DCIT and Hon'ble DRP grossly erred in agreeing with the learned TPO's

- a. rejecting the economic analysis in the TP documentation maintained by the Appellant;
- b. rejecting (i) Sataytej Commercial Company Ltd. and (ii) Remi Sales and Engineering Ltd. from the economic analysis, which are comparable to the Appellant's distribution activity in terms of functions, asset base and risk profile.

Ground 9 - TP adjustment relating to receipt of indenting commission (Rs. 4.27.53,174)

On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming the upward adjustment of Rs. 4,27.53.174 to the income of the Appellant in relation to the international transaction of receipt of indenting commission; and in doing so the learned DCIT and Hon'ble DRP grossly erred in agreeing with the learned TPO's action of –

- a. rejecting the economic analysis in the TP documentation maintained by the Appellant;
- b. rejecting commission agreements (i) Smith & Nephew Inc. S&N and Harry Kraus; (ii) VipMed and Fulfilment Services Inc.; and (iii) Cincinnati Sub-Zero Products, Inc. and Dimension Distributing Inc. from the economic

analysis, which are comparable to the Appellant's indenting activity in terms of functions, asset base and risk profile.

Ground 10 - TP adjustment relating to purchase of analysers (Rs. 6,90,51,774)

The Appellant most respectfully submits before Your Honours that this Ground of Appeal is subject to learned DCIT disposing the rectification application filed by the Appellant under Sec 154 of the IT Act on 09 February 2016. In this application, it was brought to the notice of learned DCIT that the learned TPO has not granted any relief instead of Rs. 1,47.30,693 in relation to purchase of analysers while giving effect to the directions of the Hon'ble DRP i.e. accepting Advanced Micronic Devices Ltd. and Frontline Electro Medical Ltd. as comparables for the purpose of computing the revised arm's length gross profit margin. In view of this, the revised TP adjustment stands at Rs. 6,90,51,774 instead of Rs. 8,37,82,467 as confirmed by Learned TPO.

On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming the upward adjustment of Rs. 6,90,51,774 to the income of the Appellant in relation to the international transaction of purchase of analysers; and in doing so the learned DCIT and Hon'ble DRP grossly erred in agreeing with the learned TPO's action of –

- a. rejecting the economic analysis in the TP documentation maintained by the Appellant;*
- b. rejecting the comparable uncontrolled price analysis of the Appellant for purchase from Associated Enterprises ('AEs) amounting to Rs. 2,26,13,896; and*
- c. rejecting (i) Sataytej Commercial Company Ltd. and (ii) Remi Sales and Engineering Ltd. from the economic analysis for the balance purchases from AEs amounting to Rs. 4,49,43,913, which are comparable to the Appellant's assembling activity in terms of functions, asset base and risk profile; and*
- d. not granting proportionate adjustment in the ratio of AE and non AE purchases.*

Ground 11 -No TP adjustment of Rs. 2,21,66,890 in respect of reimbursement of expenses in view of voluntary disallowance under section 40(a)(ia)

On the facts and in the circumstances of the case and in law, the Learned DCIT and Hon'ble DRP erred in conforming the upward adjustment to the income of the Appellant in respect of the international transaction of reimbursement of expenses amounting to Rs. 2,21,66,890, although the said expenses were already disallowed by the Assessee Company in its return of income under section 40(a)(ia) of the IT Act and such action of the learned DCIT has resulted in a double disallowance.

Ground 12 - TP adjustment of Rs. 6,43.65.504 relating to reimbursement expenses

On the facts and in the circumstances of the case and in law, the Hon'ble DRP and learned DCIT erred in confirming the learned TPO's action of determining the arm's length price of the appellant's international transaction of reimbursement of expenses (in the nature of employee expenses, inter-connectivity charges, SAP related cost, professional expenses and administrative expenses) as Nil (instead of Rs. 6,43,65.504) and in doing so the Hon'ble DRP failed to take cognizance of the third party supporting documentation maintained by the Appellant and the fact that these expenses are essential to the business of the Appellant.

Ground 13 - Interest levied under section 234C of the IT Act

On the facts and circumstances of the case and in law, the Learned DCIT has erred in levying interest of Rs. 49,041 under section 234C of the IT Act.

Ground 14 - Interest under section 244A of the IT Act recovered back

On the facts and circumstances of the case and in law, the Learned DCIT has erred in recovering alleged excess interest Rs. 3,78,055 on refund under section 244A of the IT Act despite the fact that the Appellant was not in receipt of any excess interest on refund.

Ground 15 - Interest levied under section 234D of the IT Act

On the facts and circumstances of the case and in law, the Learned DCIT has erred in levying consequential interest of Rs. 86,446 under section 234D of the IT.

Ground 16 - Penalty proceedings

On the facts and in the circumstances of the case and in law, the learned DCIT erred in initiating penalty proceedings under section 271(1)(c) of the IT Act."

4. Ground No.1 is general in nature, and therefore, the same needs no specific adjudication.
5. Grounds No.2 and 3, raised in assessee's appeal, pertain to the claim of depreciation on manufacturing contracts, supply and maintenance contracts acquired by the assessee pursuant to the acquisition of two undertakings under slump sale arrangements in earlier years.

6. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee is engaged in the business of manufacturing, installation and sale (including trading) of scientific/medical laboratory equipment and chemicals. For the year under consideration, the assessee e-filed its return of income on 30.11.2011, which was subsequently revised on 22.03.2013, declaring a total loss of Rs. 65,44,74,379/-. During the assessment proceedings, upon perusal of the details of depreciation claimed by the assessee, it was observed that the assessee has claimed depreciation on manufacturing contracts and supply/maintenance contracts of Rs. 9,36,45,101/- and Rs. 36,61,868/-, respectively, based on the acquisition of "Qualigens Fine Chemical Division" from M/s. GlaxoSmithklinePharma Limited ("GSK Pharma Ltd.") and "Analytical Technologies and Environmental Instrumentation Division" from M/s. Chemito Technologies Pvt. Ltd., during the assessment years 2008-09 and 2009-10, respectively, on a slump sale basis. Accordingly, the assessee was asked to justify the allowability of the claim of depreciation on manufacturing contracts and supply/maintenance contracts. In its response, the assessee placed reliance on Business Transfer Agreements, the Valuation Report of Bansi S. Mehta & Co., Chartered Accountants, and some judicial rulings. The Assessing Officer ("AO"), vide draft assessment order dated 26.03.2015 passed under section 143(3) read with section 144C(1) of the Act, disagreed with the submission of the assessee on the following basis:-

- (a) No such intangible assets, such as manufacturing contracts, and supply/maintenance contracts have been transferred to the assessee company in a slump sale.

(b) No evidence of these intangible assets being self-generated, and the same were transferred to the assessee in a slump sale.

(c) Manufacturing contract, and supply/maintenance contracts are not akin to the assets identified under the provision of section 32(1)(ii) of the Act.

(d) From the valuation report, "*future economic benefits*" and "*cost measurement*" cannot be measured reliably.

(e) Regarding the manufacturing contracts purchased from GSK Pharma Ltd, it is seen from the Valuation Report that the future economic benefits could not be measured reliably because the same is altogether dependent on market conditions and demand and supply conditions and measurement of cost of the contracts is not based on any scientific and logical formulae, but the same is based on mere surmises. Thus, the purchased "*manufacturing contracts*" do not satisfy the criteria of "*cost measurement*" and "*future economic benefits*" for an asset to be recognised as an intangible asset as per Accounting Standards - 26.

(f) Regarding the maintenance contracts purchased from Chemito Technologies Pvt. Ltd., from the Valuation Report, it is evident that the "*future economic benefits*" cannot be measured reliably. Thus, the "*maintenance contracts*" do not satisfy the definition of an asset to be recognised as an intangible asset as per Accounting Standard- 26.

7. Accordingly, the AO, vide draft assessment order, disallowed the depreciation claimed by the assessee in respect of manufacturing contracts and supply/maintenance contracts and added the same to the total income of the assessee.

8. The learned DRP, vide its direction dated 14.12.2015 issued under section 144C(5) of the Act, rejected the objections filed by the assessee on this issue following the approach adopted in the assessee's own case in preceding years, wherein depreciation on manufacturing contracts and supply/maintenance contracts was disallowed. Accordingly, the action of the AO in not entertaining the claim of the assessee was upheld. In conformity, the AO passed the impugned final assessment order dated 09.01.2016 under section 144(3) read with section 144C(13) of the Act on this issue. Being aggrieved, the assessee is in appeal before us.

9. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the claim of depreciation in respect of manufacturing contracts and supply/maintenance contracts was allowed by the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11.

10. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities on this issue.

11. Having considered the submissions of both sides and perused the material available on record, we find that while deciding a similar issue in favour of the assessee, the Co-ordinate Bench of the Tribunal in Thermo Fisher Scientific India Private Limited vs. DCIT in ITA No.2458/Mum/2015 for the assessment year 2010-11, vide order dated 16.07.2025 allowed the depreciation claimed by the assessee on the manufacturing contracts and

supply/maintenance contracts acquired by the assessee under the aforementioned slump sale acquisitions, by observing as follows: -

"10. We have considered the submissions of both sides and perused the material available on record. During the assessment year 2008-09, the assessee acquired by way of slump sale on a going concern basis the Qualigens Fine Chemicals Division from GSK Pharma Ltd. Further, during the assessment year 2009-10, the assessee acquired on a slump sale basis the Analytical Technologies and Environmental Instrumentation Division from Chemito Technologies Pvt. Ltd. As per the assessee, amongst various other assets acquired as part of the above-mentioned slump sale acquisitions, the assessee, inter-alia, acquired certain business/commercial rights in the form of certain manufacturing contracts, supply contracts and maintenance contracts, which were recognised by the assessee as intangible assets in the financial statements of the concerned year in accordance with the asset recognition criteria as stipulated under Accounting Standard-26. Further, the assessee treated the difference between the purchase consideration paid and the value of all assets (tangible and intangible assets) acquired in the slump sale as goodwill in its financial statements. In support of the submission that the impugned contracts qualify as intangible assets as per the Accounting Standard-26 and were accordingly recorded in the assessee's books of accounts as separate intangible assets, the assessee placed reliance upon the valuation reports from Banshi S. Mehta and Company, Chartered Accountants for acquisition of undertakings from GSK Pharma Ltd and Chemito Technologies Pvt. Ltd. During the hearing, reliance was also placed on the response to comments of the AO by Banshi S. Mehta and Company and additional opinion on the valuation report from M/s Anmol Sekhri Consultants Private Limited. Without prejudice to the aforesaid submission, the learned AR, inter-alia, submitted that even assuming without accepting that the consideration paid for these contracts does not constitute a separate intangible asset, the same would be liable to be considered as goodwill, i.e. the difference between the purchase consideration and the net assets value, and the depreciation is allowable on goodwill being an intangible asset.

11. On the contrary, the learned Departmental Representative ("learned DR") submitted that as per the provisions of the Accounting Standard-26, manufacturing contracts, supply contracts and maintenance contracts acquired by the assessee pursuant to the above-mentioned slump sale acquisitions cannot be recognised as intangible assets. The learned DR further submitted that the Accounting Standard-26 specifically requires the capacity of an enterprise to control future economic benefits from an intangible asset. However, in the present case, the assessee has not been able to demonstrate its capacity to control future economic benefits from the contracts, which are only for the duration of 1 year, 2 years or 5 years. It was further submitted that the cost of these contracts cannot be measured reliably. Thus, the learned DR submitted that these contracts cannot be recognised as intangible assets in view of the provisions of the Accounting Standard-26.

12. *In his rebuttal, the learned Authorised Representative ("learned AR") submitted that the manufacturing contracts related to toll manufacturing sites are engaged in exclusive manufacturing of Qualigens chemicals based on specifications provided by the assessee and the said toll manufacturers were identified in 1997 by GSK Pharma Ltd and have been associated with them for the past 10 years and have developed significant manufacturing efficiencies and better capacity utilisation leading to considerable cost advantages. Thus, the learned AR submitted that the same is likely to continue in the future. As regards the supply contracts, the learned AR submitted that the Qualigens business enjoys a leadership position with about 30% market share in the speciality chemicals market, and thus, even though supply contracts entered into on an annual basis, majority of these relationships with customers/distributors date back to 30 to 40 years and thus expected to be renewed and continued on year-on-year basis. Further, as regards the maintenance contracts, the learned AR submitted that these contracts were entered into with customers for annual maintenance of the products sold by Chemito Technologies Pvt. Ltd. business and were entered on the expiry of the warranty period of the products, normally for a period of 5 years. Thus, it was submitted that the maintenance contracts that were unexpired on the date of transfer of business were transferred to the assessee and have been valued on the basis of the discounted net contribution arising from the maintenance contracts. Further, the learned AR by referring to the sample copy of these contracts submitted that these contracts continued between the parties and the assessee beyond the period mentioned in the Business Transfer Agreements, which clearly demonstrates that the future economic benefits have flowed to the assessee from the impugned contracts.*

13. *From the perusal of the details of manufacturing contracts, supply contracts and maintenance contracts acquired by the assessee pursuant to the above-mentioned slump sale acquisitions, forming part of the paper book from pages 73-83 and pages 214-220, we find that only few of these contracts continued in the year under consideration. Further, the maintenance contracts were all entered into on a yearly basis. However, as noted above, as per the assessee, the relationship with the manufacturer/customers/distributors has continued for many years, and these contracts are likely to continue in future. Further, as noted above, it is the plea of the assessee that these are specialty chemicals that enjoy a leadership position and due to continuing long-standing relationships, the assessee continued to enjoy future economic benefits.*

14. *In any case, it is pertinent to note that in the present case, the total consideration paid by the assessee for the afore-mentioned slump sale acquisitions from GSK Pharma Ltd and Chemito Technologies Pvt. Ltd. includes consideration paid for manufacturing contracts, supply contracts and maintenance contracts acquired by the assessee. Thus, even if it is assumed that these contracts are not separate intangible assets under section 32(1)(ii) of the Act, it cannot be disputed that the consideration paid also covered the consideration for these contracts, and the said consideration was over and above the net asset value of other recognised tangible and intangible assets. We find that the coordinate bench of the Tribunal in assessee's own case in Thermo Fisher Scientific India Pvt. Ltd.*

v/s DCIT, in ITA No. 769/Mum/2023, for the assessment year 2009-10, vide order dated 31/07/2023 held that the consideration paid over and above the fair value of the assets and liabilities acquired by way of slump sale from GSK Pharma Ltd and Chemito Technologies Pvt. Ltd. is attributable to goodwill. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: -

"5.18 We have heard rival submission of parties. The issue in dispute is claim of depreciation on Goodwill recognised by the assessee in two transaction of acquisition of two units. The assessee claimed that those acquisitions are for purchase of unit for lumpsum consideration, as going concerns in the nature of slump sale, which is subject to capital gain tax us 50B in the hand of seller. Whereas the according the Assessing officer the acquisitions are in the nature of amalgamation. Before us, the learned counsel has referred to various clauses of business transfer agreement (BTA) in respect of units acquired from GSK and CTPL respectively. On perusal of relevant clauses referred, we find that transaction in both the cases are of slump sale and not, amalgamation as stated by the Assessing Officer.

5.19 The learned Assessing Officer has further relied on the Explanation 7 to section 43(1) of the Act, to hold that assessee is not entitled for depreciation on the Goodwill recognised. For ready reference, the relevant explanation is reproduced as under:

"Explanation 7.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

Explanation 7A.—Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business :

Provided that such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company."

5.20 On perusal of the above Explanation, we find that same is in relation to transactions of amalgamation and not related to slump sale transactions, which is the case of the assessee.

5.21 The learned Assessing Officer has further relied Explanation-2 to section 43(6) of the Act, which reads as under:

"Explanation 2.—Where in any previous year, any block of assets is transferred,—

(a) by a holding company to its subsidiary company or by a subsidiary company to its holding company and the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied; or

(b) by the amalgamating company to the amalgamated company in a

scheme of amalgamation, and the amalgamated company is an Indian company, then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the transferee-company or amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.

5.22 *On perusal of above Explanation, we find that it is in relation to acquisition of a subsidiary company by its holding company or vice versa and in relation to transactions of amalgamation and not in respect of slump sale.*

5.23 *The learned Assessing Officer has further relied on fifth proviso (now sixth proviso) to section 32(1)(ii) of the Act, which is reproduced for ready reference:*

"Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii), clause (xiiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them."

5.24 *On plain reading of the above proviso, it is clear that same is in relation to allocation of the depreciation on the asset between predecessor and successor entities, whereas in the instant case goodwill was not in existence as intangible asset in the case of predecessor companies from whom the assessee has acquired corresponding units under slump sale. Therefore, the said provision is also not applicable of the facts of the instant case.*

5.25 *The ratio is in the case of United Breweries (supra) is also not applicable over the facts of case as in the said case there was amalgamation of the three wholly owned subsidiaries whereas in the instant case there is a acquisition of units of third parties by way of slump sale.*

5.26 *The learned DR before us submitted that allocation of values to the fixed asset acquired has been on lower side for creating goodwill as intangible asset. But in our opinion, if the quantum of goodwill is reduced, the valuation of the fixed asset will increase, which are also eligible for depreciation and thus in the exercise of reallocation of values among the goodwill and other fixed asset, will be a revenue neutral exercise.*

5.27 *In view of the above discussion, we concur with the arguments of the learned counsel of the assessee that goodwill arising from transactions of acquisition of units of GSK and CTPL, is eligible for depreciation under the provisions of the Act. As far as claim of the assessee for allowing depreciation*

on said goodwill corresponding to assessment year 2008-09, we are of the opinion that claim with respect to depreciation for assessment years 2008-09, cannot be allowed in the appeal for assessment year 2009-10. It is for the assessee to explore necessary remedy under the provisions of the Act or any other legal remedy as advised. The ground No.2 (two) of the appeal of the assessee is accordingly allowed."

15. Therefore, we are of the considered view that the entire exercise of determining the nature of manufacturing contracts, supply contracts and maintenance contracts acquired by the assessee from the afore-mentioned slump sale acquisitions is merely academic, as even if these contracts are not considered as separate intangible assets as per the provisions of Accounting Standard-26, even then the excess consideration paid over and above the fair value of the recognised assets and liabilities acquired by way of slump sale transactions has been held to be goodwill in nature and the assessee was allowed depreciation on the same under the provisions of the Act by the coordinate bench of the Tribunal. Accordingly, accepting the alternative plea of the assessee and respectfully following the decision of the coordinate bench of the Tribunal rendered in assessee's own case, we direct the AO to treat the excess of consideration paid over and above the fair value of the assets and liabilities as goodwill and allow the depreciation on same to the assessee under the provisions of the Act. On similar lines, the depreciation on goodwill amounting to INR 15,96,20,019 claimed by the assessee in the year under consideration is also allowed. As a result, grounds no.2-5, raised in assessee's appeal, are allowed. In view of our aforesaid findings, additional ground no.15 needs no separate adjudication."

12. Further, in the assessee's own case for the assessment year 2015-16, following the aforesaid decision rendered in assessment year 2010-11, the Co-ordinate Bench of the Tribunal vide its order dated 31.07.2025 passed in ITA No.7845/Mum/2019 allowed a similar claim of depreciation by the assessee. The Revenue could not bring any material on record to deviate from the decision so rendered by the Tribunal on this issue. Therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal rendered in assessee's own case cited supra, we direct the AO to allow the depreciation claimed by the assessee on similar lines. As a result, Grounds No. 2 and 3 raised in assessee's appeal are allowed.

13. The issue arising in Grounds No.4 – 7, raised in assessee's appeal, pertains to the claim of brought forward and unabsorbed depreciation for the assessment years 2008-09 to 2010-11.

14. We have considered the submissions of both sides and perused the material available on record. As per the assessee, the AO has not allowed brought forward and unabsorbed depreciation on account of disallowance of depreciation on intangible assets in several preceding years and the allowance of depreciation on software as well as allowance on brought forward and unabsorbed depreciation for the assessment years 2008-09 to 2010-11 during the present year is linked to the outcome of the previous years. Thus, as per the assessee, this issue is consequential and depends on the outcome of the preceding years. We find that while considering a similar issue, the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2015-16, cited supra, observed as follows: -

"6.2. On perusal of record we find that the Assessing Officer did not allow Assessee's claim of brought forward unabsorbed depreciation on account of disallowances made in the preceding years. Since the allowance of unabsorbed depreciation is linked to the outcome of the appeals for the Assessment Years 2008-2009 to 2014-2015, we deem it appropriate to direct the Assessing Officer to consider the claim of the Assessee in respect of unabsorbed depreciation as per the orders passed by the Tribunal in the appeals for each of the preceding assessment years (i.e. Assessment Years 2008-2009 to 2014-2015). In terms of the aforesaid directions Ground No.4 to 10 raised by the Assessee are treated as allowed for statistical purposes."

15. Therefore, respectfully following the decision of the Co-ordinate Bench cited supra, we restore this issue to the file of the AO with similar directions. Accordingly, Grounds No.4-7 raised in the assessee's appeal are allowed for statistical purposes.

16. Ground No.8, raised in assessee's appeal, pertains to the transfer pricing adjustment in respect of the international transaction of the purchase of finished goods.

17. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee, *inter alia*, was engaged in trading in laboratory equipment and related products from the associated enterprises and selling them to pharmaceutical companies, hospitals and clinically designated labs, etc. For benchmarking the said international transaction of purchase of finished goods, the assessee adopted the Resale Price Method ("*RPM*") as the most appropriate method. By considering itself the tested party, the assessee identified the following five comparable companies with an arithmetic mean gross margin, i.e., gross profit by sales, of 23.06%: -

S.No.	Name of the Company	GP/Sales%
1	Hicks Thermometers (India) Ltd.	43.92
2	Frontline Electro Medical Ltd.	26.02
3	Advanced Micronic Devices Ltd. Healthcare	14.42
4	Sataytej Commercial Company Ltd.	12.86
5	Remi Sales & Engg. Ltd.	18.10
	Mean	23.06%

18. Since the assessee's margin at a segmental level was 9.67%, the assessee made *suo motu* adjustment of Rs.9,39,75,175/-, based on which the assessee's margin was reworked to 23.76% and therefore claimed to be at arms' length. The TPO, vide order dated 12.01.2015 passed under section 92CA(3) of the Act, rejected four companies considered as comparable by the

assessee in its transfer pricing study report and basis the remaining one company, i.e., Hicks Thermometer (India) Ltd., considered as a sole comparable having margin of 43.92%, computed the transfer pricing adjustment of Rs.13,44,35,683/- in respect of international transaction of purchase of finished products, over and above the *suo motu* voluntary adjustment of Rs.9,39,75,175/- made by the assessee.

19. The learned DRP, vide its direction, partly accepted the objections filed by the assessee and directed the TPO/AO to include two companies, i.e., Advanced Micronics Devices Limited and Frontline Elector Medical Limited, as comparable. Thus, the same resulted in partial relief to the assessee in respect of international transaction of purchase of finished products, vide final assessment order. Being aggrieved by the balance transfer pricing adjustment, the assessee is in appeal before us.

20. During the hearing, the learned AR submitted that if only one company, i.e., Satyatej Commercial Co. Ltd., is directed to be included as the comparable, then the assessee's margin would fall within the arm's length margin range. As regards the inclusion of Satyatej Commercial Co. Ltd., the learned AR submitted that it is in a similar line of business as that of the assessee and is engaged in the trading of surgical and medical instruments, which is similar to the trading of laboratory equipment undertaken by the assessee. Thus, it was submitted that this company is comparable to the assessee for benchmarking the international transaction by adopting RPM as the most appropriate method. In this regard, the learned AR submitted that

this company was directed to be included as comparable by the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11.

21. On the other hand, learned DR vehemently relied upon the order passed by the lower authorities on this issue.

22. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the profile of the assessee, which was engaged in importing laboratory equipment and related products from its associated enterprises and selling the same to the Indian customers. Further, the transfer pricing benchmarking analysis undertaken by the assessee by adopting RPM as the most appropriate method has also not been disputed by the lower authorities. In the present case, the only dispute is regarding the selection of comparable companies for benchmarking the international transaction of the import of finished goods.

23. During the hearing, the assessee has sought inclusion of only one company, i.e., Satyatej Commercial Co. Ltd., which was excluded by the TPO on the basis that this company is also into trading of disposables and from the annual report, one cannot separate the figures of disposables and surgical goods. The TPO further noted that there was no purchase in foreign currency, whereas the assessee's total purchase in foreign currency is more than Rs. 54 crore.

24. We find that while considering the inclusion of Satyatej Commercial Co. Ltd. as a comparable for benchmarking the international transaction of purchase of finished goods, the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11, cited supra, observed as follows: -

"36. From the perusal of the record, we find that the TPO excluded Satyatej Commercial Co. Ltd. on the basis that this company is also into the trading of disposables and from the Annual Report, one cannot separate the figures of disposables and surgical goods. The TPO further noted that out of total purchases of INR 3.53 crore made by this company, only INR 51 lakh was purchased in foreign currency, whereas the assessee's total purchase in foreign currency is more than INR 51 crore. The TPO also noted that for working margin, this company has taken freight and forwarding, customs duty as part of operating cost, while in the assessee's working, these items were not taken as part of operating cost. Accordingly, the TPO directed the exclusion of Satyatej Commercial Co. Ltd. as the same is not comparable to the assessee. The learned DRP, vide its directions, upheld the exclusion of this company on the basis that the goods dealt with by this company are different from the goods traded by the assessee.

37. Therefore, from the record, it is evident that one of the factors for excluding this company as a comparable by the lower authorities is product dissimilarity, as Satyatej Commercial Co. Ltd. is dealing in surgical, medical goods and disposables. On the other hand, the assessee is importing laboratory equipment and related products from its Associated Enterprises. We find that while analysing the relevance of product similarity for benchmarking the international transactions by adopting the RPM as the most appropriate method, the coordinate bench of the Tribunal in its recent decision in Troy Chemicals India Pvt. Ltd. v/s CIT, in ITA No. 5933/Mum./2024, vide order dated 30/05/2025, observed as follows: -

"13. Therefore, in the present case, before proceeding further, it is pertinent to analyse the relevance of product similarity for benchmarking the international transactions by applying the RPM as the most appropriate method. The RPM has been prescribed as one of the methods under Rule 10B(1)(b) of the Income Tax Rules ("the Rules") for the determination of arm's length price under section 92C of the Act. Rule 10B(1)(b) of the Rules reads as follows: -

"Section 10B(1)(b) in Income Tax Rules, 1962

(b) resale price method, by which,-

(i) the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;

(ii) such resale price is reduced by the amount of a normal gross profit margin

accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;

(iii) the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;

(iv) the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;

(v) the adjusted price arrived at under sub-clause (iv) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise;"

14. From a plain reading of the provisions of Rule 10B(1)(b) of the Rules, it is evident that in RPM the gross sale margin realised by an enterprise from a control transaction are compared with gross margins realised by the enterprise or an unrelated party from comparable uncontrolled transaction of purchase and resale of the "same or similar" property or from obtaining and providing the "same or similar" services. Thus, it is evident that Rule 10B(1)(b) of the Rules, which prescribes the RPM as one of the methods for the determination of arm's length price, also does not require strict product similarity for benchmarking the international transaction. We find that while analysing this aspect of the matter, i.e., the relevance of product similarity for benchmarking the international transaction by adopting the RPM as most appropriate method, the Co-ordinate Bench of the Tribunal in the case of Mattel Toys (I) (P) Ltd. vs. DCIT, reported in (2014) 30 ITR(T) 283 (Mumbai), observed as follows:-

"38. Thus, the RPM method identifies the price at which the product purchased from the A.E. is resold to a unrelated party. Such price is reduced by normal gross profit margin i.e., the gross profit margin accruing in a comparable controlled transaction on resale of same or similar property or services. The RPM is mostly applied in a situation in which the reseller purchases tangible property or obtain services from an A.E. and reseller does not physically alter the tangible goods and services or use any intangible assets to add substantial value to the property or services i.e., resale is made without any value addition having been made. Since in RPM only margins are seen with reference to items purchased and sold or earned by an independent enterprise in comparable uncontrolled transactions vis-a-vis the one in the controlled transactions, therefore, in such a situation, the nature of products has not much relevance though their closer comparable may produce a better result. The focus is more on same or similar nature of properties or services rather than similarity of products. In RPM other attributes of comparabilities than the product itself can produce a reliable measure of arm's length conditions. The main reason is that the product differentiation does not materially effect the gross profit margin as it represents gross compensation after the cost of sales for specific function performed. The functional attribute is more important while undertaking the comparability analysis under this method. Thus, in our opinion, under the RPM, products similarity is not a vital aspect for carrying out comparability analysis but operational comparability is to be seen. Since the gross profit margin is the main

criteria while evaluating the transactions in the RPM wherein price is identified at which property or services are resold and normal gross profit margin is derived at by the enterprise which is deducted from the resale price of such property or service in comparable uncontrolled transactions. The gross profit margin earned by the independent enterprise in comparable uncontrolled transactions is served as a guidance factor. This is also what happens in the case of a distributor wherein the property and service are purchased from the A.E. and are resold to other independent entities, without any value additions. The gross profit margin earned in such transactions becomes the determination factor to see the gross compensation after the cost of sales. In the instant case, the assessee is a distributor of Mattel toys and gets the finished goods from its A.E. and resells the same to independent parties without any value addition. In such a situation, RPM can be the best method to evaluate the transactions whether they are at ALP."

15. We find that similar findings have been rendered by the Co-ordinate Benches of the Tribunal in the following decisions:-

- *ACIT vs. Kobelco Construction Equipment India Ltd., (2017) 81 taxmann.com 31 (Delhi – Trib.)*
- *Pepperl & Fuchs (India) (P.) Ltd. vs. DCIT, (2019) 105 taxmann.com 29 (Bangalore – Trib.)*

16. Thus, we find that it has been consistently held by the Co-ordinate Benches of the Tribunal that under the RPM, the focus is more on same or similar nature of properties or services rather than the similarity of products, and therefore, the functional attribute is a primary factor while undertaking the comparability analysis under the RPM."

38 Thus, in the aforesaid decision, the coordinate bench arrived at the conclusion that for benchmarking under the RPM, functional attribute is a primary factor rather than the similarity of the products. Therefore, respectfully following the aforesaid decision, we do not find any merit in the findings of the lower authorities in excluding Satyatej Commercial Co. Ltd. as a comparable on the basis that it is dealing in different products.

39. As regards the finding of the TPO that this company has purchases in foreign currency only amounting to INR 51 lakh out of the total purchases of INR 3.53 crore, as compared to total purchases in foreign currency of the assessee amounting to INR 51 crore, we are of the considered view that purchase in foreign currency will not have any impact on the gross sales margin which are compared under RPM, and thus the fact that the major part of the products were procured by this company locally is of no relevance. Further, as regards the freight and forwarding cost forming part of the operating cost, we find that before the learned DRP, the assessee agreed that the same could be excluded from the cost of goods sold for the purpose of benchmarking. Accordingly, in view of the aforesaid findings, we direct the TPO/AO to consider Satyatej Commercial Co. Ltd. as a comparable to the assessee and exclude freight and forwarding costs while computing the margin of this company. As regards the other company which was excluded by the TPO, we are not expressing any findings in light of the submission of the learned AR as noted above, and objections, if any, against the same are

kept open for adjudication if it arises in the assessee's case in future. As a result, ground no.10 raised in assessee's appeal is allowed."

25. Thus, from the perusal of the aforesaid decision rendered in assessee's own case, it is evident that similar contentions of the Revenue were dealt with in detail by the Co-ordinate Bench and Satyatej Commercial Co. Ltd. was directed to be included as a comparable for benchmarking the international transaction of purchase of finished goods. Since Satyatej Commercial Co. Ltd. continues to have similar functional attributes as in the preceding year, we respectfully follow the aforesaid decision and direct the TPO/AO to consider Satyatej Commercial Co. Ltd. as comparable to the assessee for benchmarking the international transaction of purchase of finished goods. As a result, Ground No.8 raised in assessee's appeal is allowed.

26. Ground No.9, raised in assessee's appeal, pertains to the transfer pricing adjustment in respect of the international transaction of receipt of indenting commission.

27. The brief facts of the case pertaining to this issue as emanating from the record are: During the year under consideration, the assessee provided indenting services to its associated enterprises for direct sales made by the associated enterprises in India, which include promoting and extending sales of the associated enterprises' products throughout the territory of India. For benchmarking the said international transaction, the assessee adopted the Comparable Uncontrolled Price ("CUP") method as the most appropriate method. By considering itself as a tested party, the assessee selected the

following comparable companies by conducting a search on Royaltystat database: -

Sr. No.	Contractors	Commission rate %
1	<i>Hand Innovations. Inc.</i>	22.00
2	<i>Smith & Nephew, Inc (S&N)</i>	9.00
3	<i>Vip Med</i>	3.38
4	<i>Mentor Medical Inc.</i>	11.40
5	<i>Cincinnati Sub-Zero Products, Inc.</i>	9.00
6	<i>Servomex Company</i>	13.25
7	<i>RG Medical Diagnostics</i>	17.50
8	<i>J.T. Posey Co. Inc.</i>	15.00

28. As the mean of the commission rates of the said comparable companies was 12.57%, which was less than the commission rate charged by the assessee of 12.90% from its associated enterprises, the assessee claimed that the international transaction of receipt of indenting commission is at arm's length.

29. During the transfer pricing adjustment proceedings, it was observed that some of the companies selected by the assessee from the Royaltystat database were not comparable due to the difference in FAR. Accordingly, the TPO vide order passed under section 92CA(3) of the Act, excluded the following three companies for benchmarking the international transaction of receipt of indenting commission: -

<i>Contractor</i>	<i>Sales Agent</i>
<i>Smith & Nephew, Inc (S&N)</i>	<i>Harry Kraus</i>
<i>VipMed</i>	<i>Fulfillment Services, Inc.</i>
<i>Cincinnati Sub-Zero Products, Inc.</i>	<i>Dimension Distributing Inc.</i>

30. As the mean of the remaining five comparable companies was 15.83%, the TPO made the transfer pricing adjustment of Rs. 4,27,53,174/- in respect of the international transaction of receipt of indenting commission.

31. The learned DRP, vide its direction, affirmed the impugned transfer pricing adjustment made by the TPO. In conformity, the AO passed the impugned final assessment order on this issue. Being aggrieved, the assessee is in appeal before us.

32. During the hearing, the learned AR submitted that the TPO has adopted an inconsistent stand vis-à-vis the comparable companies selected. It was submitted that the TPO has excluded certain companies engaged in particular product profiles, even though other companies with similar product profiles have been accepted for benchmarking. The learned AR submitted that Smith & Nephew, Inc., excluded by the TPO, has a similar product profile to Hand Innovations Inc. Further, it was submitted that, similarly, Cincinnati Sub-Zero Products Inc., excluded by the TPO, has a similar product profile to RG Medical Diagnostics. Thus, the learned AR sought the exclusion of Hand Innovations Inc. and RG Medical Diagnostics for benchmarking the international transaction of receipt of the indenting commission. In support of its contention, the learned AR placed reliance upon the decision of the Co-ordinate Bench in the assessee's own case for the assessment year 2010-11 and submitted that Hand Innovations Inc. and RG Medical Diagnostics were directed to be excluded by the Co-ordinate Bench, accepting a similar contention of the assessee.

33. On the other hand, the learned DR vehemently relied upon the order passed by the lower authorities on this issue.

34. Having considered the submissions of both sides and perused the material available on record, we are confining our findings only in respect of the exclusion of Hand Innovations Inc. and RG Medical Diagnostics as sought by the learned AR. Other objections, if any, against the TPO's findings on this adjustment are kept open for adjudication if they arise in the assessee's case in future.

35. We find that the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11, cited supra, after considering the Sales Representative Agreement entered into between Hand Innovations Inc. and Harry Kraus, as well as the Sales Representative Agreement entered into by RG Medical Diagnostics, found that these companies are having similar product profile as the companies which were excluded by the TPO. Accordingly, agreeing with the submissions of the assessee, the Co-ordinate Bench directed the TPO to exclude Hand Innovations Inc. and RG Medical Diagnostics for benchmarking the international transaction of receipt of indenting commission. The relevant findings of the Co-ordinate Bench of the Tribunal, vide aforesaid decision, are reproduced as follows: -

"49. From the perusal of the TPO's order, we find that Smith & Nephew, Inc., selected by the assessee, was excluded by the TPO on the basis that the same is into bone healing therapy for Fresh Closed Distal Radius Fractures. Thus, the TPO held the company to be functionally not comparable to the assessee. From the perusal of the Sales Representative Agreement entered into between Hand Innovations Inc. and Harry Kraus, forming part of the paper book from pages 1068-1072, we find that the product was Distal Radius Fractures Plate,

which is similar to the product profile of Smith & Nephew, Inc., excluded by the TPO. Further, it is also pertinent to note that both companies have similar Sales Representative Agent, i.e., Harry Kraus. Therefore, we concur with the submissions of the learned AR and direct the TPO to also exclude Hand Innovations Inc. for benchmarking the international transaction of receipt of the indenting commission.

50. *As regards Cincinnati Sub-Zero Products Inc., we find that the TPO excluded this company on the basis that it is operating in New Hampshire, Maine, Vermont, Connecticut, Rhode Island operating in India. Thus, the TPO held that this company is operating in a very small territory as compared to the assessee, which is operating in India, having a large population. Accordingly, the TPO held that this company is not comparable to the assessee and directed the exclusion of the same. The learned DRP upheld the exclusion of this company as a comparable on the basis that the products dealt with are different from the medical laboratory equipment distributed by the assessee. The learned DRP noted that most of the products dealt with are for the maintenance of room temperature, such as Hypo/Hypothermia Systems (Water), Convective Air Therapy System (Air) and Heater/Cooler System. Thus, the learned DRP held that this company is not comparable to the assessee as the products distributed are different. From the perusal of the Sales Representation Agreement entered into by RG Medical Diagnostics, forming part of the paper book from pages 1107-1110, we find that this company was also operating in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island and New York. Further, we find that the products dealt with by this company are in temperature monitoring. Therefore, it is evident that not only this company is having similar product line as that of Cincinnati Sub-Zero Products Inc. but this company is also operating in the territory similar to Cincinnati Sub-Zero Products Inc. Therefore, we agree with the submissions of the learned AR and direct the TPO to also exclude RG Medical Diagnostics for benchmarking the international transaction of receipt of the indenting commission. As a result, ground no.11 and additional ground no.16 raised in assessee's appeal are allowed."*

36. In the instant appeal, the learned AR raised similar submissions and sought the exclusion of Hand Innovations Inc. and RG Medical Diagnostics. However, since the relevant Sales Representative Agreements entered into by these two companies for the year under consideration are not forming part of the record, we deem it appropriate to restore this issue to the file of the TPO, with a direction to the assessee to produce these documents before the TPO. The TPO is further directed that if in this year also, after perusing the Sales Representative Agreement for the year under consideration entered into by

Hand Innovations Inc. and RG Medical Diagnostics, it is found that the functional profile is similar to the companies which have already been excluded, the TPO is directed to also exclude Hand Innovations Inc. and RG Medical Diagnostics in lines with the findings of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11. Therefore, with the above directions, the impugned transfer pricing adjustment on this issue is set aside, and Ground No.9, raised in the assessee's appeal, is allowed for statistical purposes.

37. Ground No.10, raised in assessee's appeal, pertains to the transfer pricing adjustment in respect of the international transaction of purchase of analysers.

38. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee commenced its commercial operation in the assembling division, wherein it was engaged in fitting the analysers and related components imported from the associated enterprises in a mobile van on an "as is" basis. These analysers were used in the mobile van for air quality testing and monitoring purposes. For benchmarking this transaction, the assessee adopted internal CUP as well as RPM as the most appropriate methods. In respect of import of analysers components of Rs.2,26,13,896/- out of the total import of analysers amounting to Rs.6,75,57,809/-, the assessee adopted internal CUP as the most appropriate method and compared the unit price charged by the associated enterprises to the assessee with respect to import of components

with the unit price charged by the associated enterprise to the third parties in India. For the remaining transactions amounting to Rs.4,49,43,913/-, since the CUP details were not available, the assessee adopted RPM as the most appropriate method by considering itself as a tested party. In this regard, the assessee selected the following five companies as comparable having a mean gross profit by sales margin of 23.06%: -

Sr. No.	Name of the Company	GP/Sales %
1	Hicks Thermometers (India) Ltd.	43.92
2	Frontline Electro Medical Ltd	26.02
3	Advanced Micronic Devices Ltd- Healthcare	14.42
4	Sataytej Commercial Company Ltd.	12.86
5	Remi Sales & Engg Ltd	18.10
	Mean	23.06%

39. Since the assessee's margin for the purpose of comparison under RPM was determined at 23.76%, after considering the voluntary transfer pricing adjustment of Rs.89,54,468/-, the international transaction was considered at arms' length.

40. The TPO, vide order passed under section 92CA(3) of the Act, rejected the CUP analysis provided by the assessee. However, the TPO accepted RPM as the most appropriate method for benchmarking the remaining transaction. The TPO rejected four companies considered as comparable by the assessee in its transfer pricing study report, and based on the remaining one company, i.e., Hicks Thermometers (India) Ltd., having a margin of 43.92%, made a transfer pricing adjustment of Rs.8,37,82,467/- in respect of the international transaction of purchase of analysers.

41. The learned DRP, vide its directions, granted partial relief to the assessee. In conformity, the AO passed the impugned final assessment order on this issue. Being aggrieved, the assessee is in appeal before us.

42. During the hearing, the learned AR prayed for the inclusion of only one company, i.e., Satyatej Commercial Co. Ltd. and a direction to compute the transfer pricing adjustment, restricting it to the international transaction undertaken by the assessee with its associated enterprises. The learned AR submitted that even after the grant of the aforesaid relief, there would still be some transfer pricing adjustment. However, the assessee is only pressing these two aspects in respect of the impugned transfer pricing adjustment. As regards the inclusion of Satyatej Commercial Co. Ltd., the learned AR submitted that it is in a similar line of business as that of the assessee. Thus, it was submitted that this company is also comparable to the assessee for benchmarking the international transaction by adopting RPM as the most appropriate method. In this regard, the learned AR placed reliance upon the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11. With respect to the transfer pricing adjustment being proportionate to the concerned international transaction undertaken by the assessee, the learned AR submitted that it is a well-settled proposition and has been decided in favour of the taxpayer by various judicial pronouncements.

43. On the other hand, the learned DR vehemently relied upon the orders passed by the lower authorities on this issue.

44. Having considered the submissions of both sides and perused the material available on record, we find that Satyatej Commercial Co. Ltd. has already been found to be comparable to the assessee in the foregoing paragraphs. Therefore, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the TPO/AO is directed to consider Satyatej Commercial Co. Ltd. as a comparable to the assessee for benchmarking the international transaction of purchase of analysers.

45. As regards the other contention of the assessee for computation of transfer pricing adjustment proportionate to the international transaction undertaken by the assessee, we find that in CIT v/s ALSTOM Projects India Ltd, the following question of law came up for consideration before the Hon'ble Jurisdictional High Court in ITA No. 362 of 2024: -

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the TPO has applied the transfer pricing adjustment to all transactions, i.e. entity level in the absence of actual segmental accounts being maintained on regular basis by the assessee?"

46. After considering the submissions of both sides, the Hon'ble Jurisdictional High Court upheld the view of the Tribunal that the transfer pricing adjustment has to be done only in respect of international transactions with the associated enterprises and not at an entity level. We find that the Hon'ble Jurisdictional High Court also concurred with the view taken by the Hon'ble Delhi High Court in CIT v/s Keihin Panalfa Ltd., in ITA No. 11 of 2015, reported in 381 ITR 407, wherein it was held that where segmental accounts are not available, then proportionate adjustments have to be made only in

respect of the international transactions with associated enterprises. The relevant findings of the Hon'ble Jurisdictional High Court in ALSTOM Projects India Ltd (supra) are reproduced as follows: -

"5. Be that as it may, Mr. Chhotaray, learned Counsel for the Revenue submits that identical question as raised herein had been admitted by this Court and in particular invited our attention to the following orders passed at the stage of admission :-

(a) Commissioner of Income Tax-15 Vs. M/s Super Diamonds, Income Tax Appeal No.298 of 2013; (Order dated 16 February 2015); and

(b) The Commissioner of Income Tax-8 Vs. Global Jewellery Pvt. Ltd., Income Tax Appeal No. 1395 of 2013. (Order dated 16 April 2015)

6. In both the above appeals we find that the question admitted was with regard to transfer pricing adjustment being done at the entity level and not restricted only to the transactions with Associated Enterprises. However, both the appeals were admitted without the Court having had benefit of submissions on behalf of the Respondent-assessee.

7. Thereafter this Court consequent to the above two orders had occasion to consider the issue of transfer pricing adjustments being done in respect of all transactions (entity level) or only in respect of transaction entered into with Associated Enterprises in the following cases: -

(i) The Commissioner of Income Tax-1, Mumbai Vs. M/s Hindustan Unilever Ltd., Income Tax Appeal No.1873 of 2013; (Order dated 26th July 2016)

(ii) CIT Vs. M/s Tara Jewellers Exports Pvt. Ltd. in Income Tax Appeal No. 1814 of 2013 rendered on 5th October 2015;

(iii) CIT Vs. Pedro Araldite Pvt. Ltd. Income Tax Appeal No. 1804 of 2013 rendered on 24th November 2015;

(iv) CIT Vs. M/s Thyssen Krupp Industries Pvt. Ltd, Income Tax Appeal No. 2201 of 2013 rendered on 2d December, 2015;

(v) CIT Vs, M/s. Summit Diamond (India) Pvt. Ltd. Income Tax Appeal No. 1647 of 2013 rendered on 11th July 2016.

In all above appeals, this Court after hearing both sides upheld the view of the Tribunal that the transfer pricing adjustment has to be done only in respect of International Transactions with Associated Enterprises and not at an entity level. It may be pointed out that during the course of all the above appeals, the fact that two appeals had been admitted on the above issue were not pointed out.

8. Nevertheless, the distinction sought to be made by the Revenue is that the issue of non-keeping of segmental accounts by the Assessee was not for consideration in the above cases which were dismissed, as in this case.

9. This very issue/question as raised herein was raised by the Revenue in *Pedro Araldite Pvt. Ltd. (Supra)*. The question raised therein was as "Whether on the facts and law the Tribunal was justified in directing AO/TPO to benchmark as AE transactions without appreciating (a) the Assessee itself in its transfer pricing study & report (TPSR) has chosen entity level PLI to benchmark the AE transactions; (b) the Assessee had itself failed to furnish audited segmental accounts and therefore, the TPO had rightly applied revised PLI at the entity level to determine the ALP?"

At the above hearing, the Revenue accepted that even in the absence of segmental accounts, the adjustment has to be done only in respect of the international transactions with Associated Enterprises. This is so recorded in the order dated 24 November 2015. Therefore, on the above ground itself, the question as proposed does not give rise to any substantial question of law.

10. We may once more note that the Income Tax Department within the jurisdiction of this Court must adopt a consistent view on issues of law. In this case, we find that the Revenue urges the absence of segmental accounts would warrant entity wise adjustment, when the Revenue had itself in *Pedro Araldite Pvt. Ltd. (Supra)* did not canvas the point, as even according to it the issue stood covered by the earlier orders of this Court in favour of the Assessee. The Revenue must apply the law equally to all and cannot take inconsistent position in law (*de hors the facts*) to apply different standards to different assessee. The administration of the tax laws should not degenerate into an arbitrary and inconsistent application of law dependent upon the Assessee concerned.

11. We also note that the Delhi High Court in *Commissioner of Income Tax Vs. Keihin Panalfa Ltd. (ITA No.11 of 2015)* decided on 9 September, 2015 has while dealing with transfer pricing adjustment in the absence of segmental accounts held that adjustments have to be restricted only to transactions with Associated Enterprises. It further held that where separate accounts are not available, then proportionate adjustments to be made only in respect of the international transactions with Associated Enterprises.

12. We are in respectful agreement with the view of the Delhi High Court in *Keihin Panalfa Ltd. (Supra)*. One must not loose sight of the fact that the transfer pricing adjustment is done under Chapter X of the Act. The mandate therein is only to redetermine the consideration received or given to arrive at income arising from for International Transactions with Associated Enterprises. This is particularly so as in respect of transaction with non-Associated Enterprises, Chapter X of the Act is not triggered to make adjustment to considerations received or paid unless they are Specified Domestic Transactions. The transaction with non-Associated Enterprises are presumed to be at arm's length as there is no relationship which is likely to influence the price. If the contention of the Revenue is accepted, it would lead to artificial increase in the profits of transactions entered into with non-Associated Enterprises by applying the margin at entity level which is not the object of Chapter X of the Act. Absence of segmental accounting is not an

insurmountable issue, as proportionate basis could be adopted as done by the Delhi High Court in Keihin Panalfa Ltd. (supra).

13. In the above view, no substantial question of law arises. Therefore, we do not entertain the present appeal."

47. Therefore, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court in ALSTOM Projects India Ltd (supra), we direct the TPO to compute the transfer pricing adjustment, restricting it to the international transactions undertaken by the assessee with its associated enterprises, after necessary verification.

48. Since only these two aspects were pressed before us regarding the transfer pricing adjustment in respect of the international transaction of purchase of analysers, we are not expressing any findings in respect of any other contention which the assessee may have and the same are kept open for adjudication if they arise in assessee's case in future. As a result, Ground No.10 raised in assessee's appeal is partly allowed.

49. Ground No.11, raised in assessee's appeal, pertains to double disallowance in respect of reimbursement of expenses already voluntarily disallowed by the assessee.

50. Having considered the submissions of both sides and perused the material on record, as per the assessee, it made *suo motu* disallowance to an extent of Rs.8,97,25,506/- under section 40(a)(ia) of the Act, which *inter alia* includes the reimbursement of communication expenses of Rs.2,08,30,427/- and reimbursement of professional expenses of Rs.13,36,463/-. As per the assessee, the TPO, vide its order passed under section 92CA(3) of the Act,

considered the arm's length price of the expenditure reimbursed by the assessee to its associated enterprises as Rs.Nil, and while doing so, the aforementioned reimbursement of communication expenses and reimbursement of professional expenses, which were *suo motu* disallowed by the assessee under section 40(a)(ia) of the Act, were again disallowed. We agree with the submissions of the assessee that no expenditure should be disallowed twice. Since this issue only requires factual verification, we restore this issue to the file of the jurisdictional AO to delete the double disallowance to the extent of the *suo motu* disallowance already made by the assessee in its return of income, after necessary verification of the facts. As a result, Ground No.11 raised in assessee's appeal is allowed for statistical purposes.

51. Ground No.12, raised in assessee's appeal, pertains to the transfer pricing adjustment relating to the reimbursement of expenses.

52. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee reimbursed certain expenditure to its associated enterprises, total amounting to Rs.6,43,65,503/- in the nature of SAP Development expenses, inter-connectivity expenses ("AT&T"), professional and administrative expenses and employee expenses (salary). Accordingly, during the transfer pricing assessment proceedings, the assessee was asked to show cause why the arm's length price of the international transaction of reimbursement of expenditure should not be considered as Rs.Nil. The TPO, vide order passed under section 92CA(3) of the Act, held that the assessee had failed to establish

that it was a requirement of the assessee and also failed to file evidence that established that the assessee had received the goods/services. The TPO further held that the assessee has not established how the allocation of cost has been done by the associated enterprises. Accordingly, the TPO treated the arms' length price of the international transaction of reimbursement of expenses as Rs. Nil.

53. The learned DRP, vide its direction, granted partial relief to the assessee, agreeing with the submission regarding reimbursement on sales promotion expenses, and directed to treat and determine the ALP of the international transaction of reimbursement of expenses total amounting to Rs.6,43,65,504/- at Rs.Nil. In conformity, the AO passed the impugned assessment order.

54. We have considered the submissions of both sides and perused the material on record. We find that the issue regarding the determination of arm's length price of the international transaction relating to reimbursement of SAP Development Expenses, inter-connectivity expenses ("AT&T"), professional and administrative expenses came up for consideration before the Co-ordinate Bench of the Tribunal in the assessee's own case for the assessment year 2010-11. While deciding the issue in favour of the assessee, the Co-ordinate Bench, vide aforesaid order, observed as follows: -

"54. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee reimbursed expenditures in the nature of SAP development expenses, Internet charges, professional expenses and administrative expenses to its Associated Enterprises for the cost incurred on behalf of the assessee. Such reimbursement was made by the assessee without paying

any markup on the cost. The TPO, as well as the learned DRP, treated the arm's length price of this transaction at NIL on the basis that the assessee has failed to justify/prove the rendition, necessity and benefit of this expenditure. We find that during the proceedings before the learned DRP, the assessee filed the details of reimbursement paid to the Associated Enterprises by way of additional evidence. As regards the SAP development expenses, the assessee furnished the invoice raised by Dell Perot Systems in respect of the India rollout project. As regards the Internet services received by the assessee, the assessee placed on record the invoices raised by AT&T relating to the assessment year 2011-12 on the basis that the invoices for the year under consideration are not available, as the data is very old. Further, as regards the reimbursement of professional expenses, the assessee placed on record the invoices raised by the legal consultant for various assignments in India. It is evident from the record that the TPO neither undertook any benchmarking analysis nor searched for any comparable transaction for considering the arm's length price at NIL. In this regard, it is relevant to note the following observations of the Hon'ble Delhi High Court in CIT v/s Cushman and Wakefield (India) Pvt. Ltd., reported in [2014] 367 ITR 730 (Del.): -

"35. The TPO's Report is, subsequent to the Finance Act, 2007, binding on the AO. Thus, it becomes all the more important to clarify the extent of the TPO's authority in this case, which is to determine the ALP for international transactions referred to him or her by the AO, rather than determining whether such services exist or benefits have accrued. That exercise - of factual verification is retained by the AO under Section 37 in this case. Indeed, this is not to say that the TPO cannot - after a consideration of the facts - state that the ALP is 'nil' given that an independent entity in a comparable transaction would not pay any amount. However, this is different from the TPO stating that the assessee did not benefit from these services, which amounts to disallowing expenditure."

55. As noted above, in the present case, no search was conducted to find out the independent entity in a comparable transaction, and the arm's length price of the international transaction was treated to be NIL. In the present case, no doubts about payments made by the assessee have been raised by the AO under section 37 of the Act. Further, accrual of benefit to the assessee or the commercial expediency of any expenditure incurred by the assessee cannot be the basis for disallowing the same, as held by the Hon'ble Delhi High Court in the case of CIT v/s EKL Appliances Ltd., reported in [2012] 345 ITR 241 (Del.).

56. We further find that the Hon'ble jurisdictional High Court in CIT v/s Lever India Exports Ltd., reported in [2017] 246 Taxmann 133 (Bombay), observed as follows: -

"7. We note that the Tribunal has recorded the fact that the respondent assessee has launched new products which involved huge advertisement expenditure. The sharing of such expenditure by the respondent assessee is a strategy to develop its business. This results in improving the brand image of the products, resulting in higher profit to the respondent assessee due to higher sales. Further, it must be emphasized that the TPO's jurisdiction was to only determine the ALP of an International Transaction. In the above view, the TPO has to examine whether or not the method adopted to determine the ALP

is the most appropriate and also whether the comparables selected are appropriate or not. It is not part of the TPO's jurisdiction to consider whether or not the expenditure which has been incurred by the respondent assessee passed the test of Section 37 of the Act and/or genuineness of the expenditure. This exercise has to be done, if at all, by the Assessing Officer in exercise of his jurisdiction to determine the income of the assessee in accordance with the Act. In the present case, the Assessing Officer has not disallowed the expenditure but only adopted the TPO's determination of ALP of the advertisement expenses. Therefore, the issue for examination in this appeal is only the issue of ALP as determined by the TPO in respect of advertisement expenses. The jurisdiction of the TPO is specific, and limited i.e. to determine the ALP of an International Transaction in terms of Chapter X of the Act read with Rule 10A to 10E of the Income Tax Rules. The determination of the ALP by the respondent assessee of its advertisement expenses has not been disputed on the parameters set out in Chapter X of the Act and the relevant Rules. In fact, as found both by the CIT (A) as well as the Tribunal that neither the method selected as the most appropriate method to determine the ALP is challenged nor the comparables taken by the respondent assessee is challenged by the TPO. Therefore, the ad-hoc determination of ALP by the TPO de hors Section 92C of the Act cannot be sustained."

57. In view of the above, we are of the considered opinion that TPO, as well as learned DRP, were not justified in treating the value of the international transaction of reimbursement of expenses to be NIL, in the present case. Accordingly, ground no.12 raised in assessee's appeal is allowed."

55. As regards the reimbursement of employee expenses, we find that the learned DRP vide its direction in the assessee's own case for the assessment year 2010-11 accepted the contentions of the assessee, and the said directions have not been disputed further. There is no dispute regarding the fact that these are year-on-year recurring expenses which are reimbursed by the assessee. Since similar expenses have already been allowed in assessee's own case, on similar lines, we are of the considered view that the TPO as well as the learned DRP were not justified in treating the value of the international transaction of reimbursement of expenses as Rs.Nil in the instant case. Accordingly, Ground No.12 raised in assessee's appeal is allowed.

56. Grounds No.13-15, raised in assessee's appeal, pertain to the levy of interest under section 234C, 234D and 244A of the Act, which are consequential in nature. Therefore, the same need no separate adjudication.
57. Ground No.16 raised in assessee's appeal pertains to the initiation of penalty proceedings under section 271(1)(c) of the Act, which is premature in nature. Therefore, the said ground is dismissed.
58. In the result, the appeal by the assessee for the assessment year 2011-12 is partly allowed for statistical purposes.

ITA No.577/Mum/2017
Assessee's Appeal (A.Y. 2012-13)

59. In this appeal, the assessee has raised the following grounds: -

"1. Ground 1 – General

On the facts and in the circumstances of the case and in law, the directions of the Hon'ble Dispute Resolution Panel- 2 ('DRP') and the final assessment order passed by the learned Deputy Commissioner of Income-tax - 15(3)(1), Mumbai ('DCIT') are bad in law and merit to be set aside.

2. Ground 2 - Depreciation on contracts - Acquisition from Glaxosmithkline Pharmaceuticals Ltd ('GSK') in AY 2008-09

2.1 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 5,65,84,720 on the written down value of business or commercial rights being the manufacturing contracts as on 1 April 2011 under section 32(1) r.w.s. 2(11) of the IT Act.

2.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 1,36,49,105 on the written down value of business or commercial rights being the supply contracts as on 1 April 2011 under section 32(1) r.w.s. 2(11) of the IT Act.

2.3 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of manufacturing and supply contracts based on the following observations which are incorrect on facts:

- *Manufacturing and supply contracts are not self-generated by GSK and have not been transferred to the Appellant*
- *Manufacturing and supply contracts are not an intangible asset as per Accounting Standard ('AS')-26 issued by the Institute of Chartered Accountants of India*

2.4 *Without prejudice to para 2.1 and 2.3 above, the learned DCIT and Hon'ble DRP erred in not considering the value of manufacturing contracts as Goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.*

2.5 *Without prejudice to para 2.2 and 2.3 above the above, the learned DCIT and Hon'ble DRP erred in not considering the value of supply contracts as Goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.*

3. Ground 3 - Depreciation on contracts - Acquisition from Chemito Technologies Private Limited (*CTPL') in AX 2009-10

3.1 *On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 27,46,401 on the written down value of business or commercial rights being the maintenance contracts as on 1 April 2011 under section 32(1) r.w.s 2(11) of the IT Act.*

3.2 *On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of maintenance contracts based on the following observations which are incorrect on facts:*

- *Maintenance contracts are not self-generated by CTPL and have not been transferred to the Appellant*
- *Maintenance contracts are not an intangible asset as per AS-26 issued by the Institute of Chartered Accountants of India*

3.3 *Without prejudice to the above, the learned DCIT and Hon'ble DRP erred in not considering the value of maintenance contracts as Goodwill acquired from CTPL, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.*

Ground 4 - Consequential depreciation on software expenses capitalised in AY 2007-08

On the facts and in the circumstances of the case and in law, the learned DCIT has erred in not following the directions of the Hon'ble DRP for granting consequential depreciation of Rs. 6,716 on the written down value of software expenses considered to be depreciable capital expenditure in completed assessment proceedings of AY 2007-08.

5. Ground 5 - Allowance of brought forward unabsorbed depreciation of AY 2008-09

5.1. *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs. 23,42,932 as per return of income.*

5.2 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs. 18,73.52,790 on Goodwill purchased from GSK.*

5.3 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of Rs. 262,345 relating to software expenses treated as capital expenditure in AY 2007-08.*

Ground 6 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2009-10

6.1 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2009-10 of Rs. 17,82,24,085 as per the original return of income.*

6.2 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2009-10 of Rs. 14,05,14,593 on the written down value of Goodwill purchased from GSK as on 1 April 2008.*

6.3 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2009-10 of Rs. 7,23,12,099 on Goodwill purchased from CTPL.*

6.4 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of Rs. 104,938 relating to software expenses treated as capital expenditure in AY 2007-08.*

Ground 7 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2010-11

7.1 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2010-11 of Rs. 20,63,13,710 as per return of income.*

7.2 *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2010-11 of Rs. 10,53,85,945 on the written down value of Goodwill purchased from GSK as on 1 April 2009.*

7.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2010-11 of Rs. 5,42,34,074 on Goodwill purchased from CTPL as on 1 April 2009.

7.4 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 41,975 relating to software expenses treated as capital expenditure in AY 2007-08.

Ground 8 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2011-12

8.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2011-12 of Rs. 32,60,75,657 as per return of income.

8.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 16,790 relating to software expenses treated as capital expenditure in AY 2007-08.

Ground 9 - Transfer pricing (TP') adjustment relating to purchase and sale of finished goods (Rs, 8,79,59,642)

9. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming to the extent of Rs. 8,79,59,642 the income of the Appellant in relation to the international transaction of purchase and sale of finished goods; and in doing so the learned DCIT and Hon'ble DRP grossly erred in agreeing with the learned Transfer Pricing Officer's (TPO's) action of –

a. rejecting the economic analysis in the TP documentation maintained by the Appellant; and

b. rejecting (i) Sataytej Commercial Company Ltd. and (ii) Remi Sales and Engineering Ltd. from the economic analysis, which are comparable to the Appellant's distribution activity in terms of functions, asset base and risk profile.

10. The Appellant therefore prays that the adjustment upheld by the learned DCIT and Hon'ble DRP of Rs. 8,79,59,642 under Section 143(3) r.w.s. 144(C) of the IT Act on the basis of the order passed by the learned TPO under section 92CA(3) of the IT Act be deleted.

Ground 10 - TP adjustment in relation to purchase and sale of finished goods (Rs. 19,63.43,226)

10.1 On the facts and circumstances of the case and in law, the learned DCIT erred in adding Rs. 28,43,02,868 to the total income of the Appellant when the DRP had upheld an adjustment of only Rs. 8,79.59,642.

Ground 11 - TP adjustment relating to purchase of analysers (Rs. 3.01,05,086)

11.1 *On the facts and circumstances of the case and in law, the learned DCIT erred in adding Rs. 3,01,05,086 to the total income of the Appellant when the DRP had deleted the adjustment made by the learned TPO.*

Ground 12 -No TP adjustment of Rs. 1,24,97,382 in respect of reimbursement of expenses in view of voluntary disallowance under section 40(a)(ia)

12.1 *On the facts and in the circumstances of the case and in law, the learned DCIT erred in confirming the upward adjustment to the income of the Appellant in respect of the international transaction of reimbursement of expenses amounting to Rs. 1,24,97,382, although the said expenses were already disallowed by the Assessee Company in its return of income under section 40(a)(ia) of the IT Act and such action of the learned DCIT has resulted in a double disallowance; and further, Hon'ble DRP had directed that the disallowance having been suo motu added, ought to be deleted subject to verification.*

Ground 13 - TP adjustment of Rs. 79,19,536 relating to reimbursement expenses

13.1. *On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming the learned TPO's action of determining the arm's length price of the appellant's international transaction of reimbursement of expenses [in the nature of communication expenses (inter-connectivity charges), professional expenses, employee expenses and travel expenses] as Nil (instead of Rs. 79,19,536) and in doing so the learned DCIT and Hon'ble DRP failed to take cognizance of the third party supporting documentation maintained by the Appellant and the fact that these expenses are essential to the business of the Appellant.*

The Appellant therefore prays that the addition made by the learned DCIT and Hon'ble DRP of Rs. 79,19,536 under Section 143(3) r.w.s. 144(C) of the IT Act on the basis of the order passed by the learned TPO under Section 92CA(3) of the IT Act be deleted.

14. Ground 14 - Interest under section 244A of IT Act

14.1. *On the facts and circumstances of the case and in law, the Learned DCIT has erred in allowing consequential amount of interest under section 244A of IT Act.*

15. Ground 15 - Penalty proceeding

15.1. *On the facts and in the circumstances of the case and in law, the learned DCIT erred in initiating penalty proceeding under section 271(1)(c) of the IT Act.*

60. Ground No.1 is general in nature. Therefore, the same needs no specific adjudication.

61. Grounds No.2 and 3, raised in assessee's appeal, pertain to the claim of depreciation on manufacturing contracts, supply and maintenance contracts acquired by the assessee pursuant to the acquisition of two undertakings under slump sale arrangements in earlier years. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, respectfully following the decision of the Co-ordinate Bench of the Tribunal rendered in assessee's own case for the assessment year 2010-11 cited supra, we direct the AO to allow the depreciation claimed by the assessee on similar lines. As a result, Grounds No. 2 and 3 raised in assessee's appeal are allowed.

62. The issue arising in Grounds No.4-8, raised in assessee's appeal, pertains to the claim of brought forward and unabsorbed depreciation of the preceding assessment years. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, with similar directions, this issue is restored to the file of the AO. As a result, Grounds No.4-8 raised in the assessee's appeal are allowed for statistical purposes.

63. Grounds No.9-10, raised in assessee's appeal, pertain to the transfer pricing adjustment in respect of the international transaction of the purchase of finished goods.

64. Insofar as this ground is concerned, the assessee's arguments are two-fold. *Firstly*, the learned AR prayed for a direction to the TPO/AO to comply with the learned DRP's directions, whereby partial relief was granted to the assessee and two companies was directed to be included as a comparable resulting in reduction of transfer pricing adjustment from Rs.28,43,02,868/- to Rs. 8,79,59,642/-, and *secondly*, during the hearing, the learned AR sought inclusion of only one company as a comparable, i.e. Satyatej Commercial Co. Ltd., for benchmarking this international transaction.

65. On the other hand, the learned DR vehemently relied upon the order passed by the lower authorities on this issue.

66. Having considered the submissions of both sides and perused the material available on record, we find that, as regards the first relief sought by the assessee, it is well settled that, as per section 144C(13) of the Act, the AO has to pass the final assessment order in conformity with the directions issued by the learned DRP. Accordingly, we direct the TPO/AO to comply with the statutory provisions and follow the learned DRP's directions on this issue.

67. As regards the second relief, we find that Satyatej Commercial Co. Ltd. has already been found to be comparable to the assessee in the foregoing paragraphs. Therefore, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the TPO/AO is directed to consider Satyatej Commercial Co. Ltd. as a comparable to the assessee for benchmarking the international transaction of the purchase of finished goods.

As a result, Grounds No.9-10 raised in assessee's appeal are allowed for statistical purposes.

68. Ground No.11, raised in assessee's appeal, pertains to the transfer pricing adjustment in respect of the international transaction of purchase of analysers. As per the assessee, the learned DRP granted complete relief to the assessee and directed the inclusion of two companies as comparable, thereby resulting in the deletion of the entire transfer pricing adjustment of Rs. 3,01,05,086/- made by the TPO. It was submitted that, however, the TPO/AO failed to give effect to the learned DRP's directions and retained the original adjustment.

69. Having considered the submissions and perused the material available on record, we restore this issue to the file of the AO with a direction to give effect to the directions issued by the learned DRP on this issue. Accordingly, Ground no.11 raised in assessee's appeal is allowed for statistical purposes.

70. Ground No.12, raised in assessee's appeal, pertains to double disallowance in respect of reimbursement of expenses already voluntarily disallowed by the assessee.

71. Having considered the submissions of both sides and perused the material on record, since this issue only requires factual verification, we restore this issue to the file of the jurisdictional AO to delete the double disallowance to the extent of *suo motu* disallowance already made by the assessee in its return of income, after necessary verification of the facts. As

a result, Ground No.12 raised in assessee's appeal is allowed for statistical purposes.

72. Ground No.13, raised in assessee's appeal, pertains to the transfer pricing adjustment relating to the reimbursement of expenses. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's own case in the preceding year, in the absence of any contention of change in facts or law in the year under consideration, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, we are of the considered view that the TPO as well as the learned DRP were not justified in treating the value of the international transaction of reimbursement of expenses as Rs.Nil in the instant case. Accordingly, Ground No.13 raised in assessee's appeal is allowed.

73. Grounds No.14, raised in assessee's appeal, pertains to the levy of interest under 244A of the Act, which is consequential in nature. Therefore, the same needs no separate adjudication.

74. Ground No.15 raised in assessee's appeal pertains to the initiation of penalty proceedings under section 271(1)(c) of the Act, which is premature in nature. Therefore, the said ground is dismissed.

75. In the result, the appeal by the assessee for the assessment year 2012-13 is partly allowed for statistical purposes.

ITA No.7393/Mum/2017
Assessee's Appeal (A.Y. 2013-14)

76. In this appeal, the assessee has raised the following grounds: -

"Ground 1 – General

On the facts and in the circumstances of the case and in law, the directions of the Hon'ble Dispute Resolution Panel- 2 (DRP) and the final assessment order passed by the learned Deputy Commissioner of Income-tax - 15(3)(1), Mumbai (DCIT) are bad in law and merit to be set aside.

2. Ground 2 - Depreciation on contracts - Acquisition from Glaxosmithkline Pharmaceuticals Ltd (GSK) in AY 2008-09

2.1 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 4,24,38,540 on the written down value of business or commercial rights being the manufacturing contracts as on 1 April 2012 under section 32(1) r.w.S. 2(11) of the IT Act.

2.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 1,02,36,829 on the written down value of business or commercial rights being the supply contracts as on 1 April 2011 under section 32(1) r.w.s. 2(11) of the IT Act.

2.3 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of manufacturing and supply contracts based on the following observations which are incorrect on facts:

- *Manufacturing and supply contracts are not self-generated by GSK and have not been transferred to the Appellant*
- *Manufacturing and supply contracts are not an intangible asset as per Accounting Standard (AS)-26 issued by the Institute of Chartered Accountants of India*

2.4 Without prejudice to para 2.1 and 2.3 above, the learned DCIT and Hon'ble DRP erred in not considering the value of manufacturing contracts as Goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.

2.5 Without prejudice to para 2.2 and 2.3 above, the learned DCIT and Hon'ble DRP erred in not considering the value of supply contracts as Goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.

3. Ground 3 - Depreciation on contracts - Acquisition from Chemito Technologies Private Limited (CTPL) in AY 2009-10

3.1 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 20,59,801 on the written down value of business or commercial rights being the maintenance contracts as on 1 April 2012 under section 32(1) r.w.s 2(11) of the IT Act.

3.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of maintenance contracts based on the following observations which are incorrect on facts:

- Maintenance contracts are not self-generated by CTPL and have not been transferred to the Appellant
- Maintenance contracts are not an intangible asset as per AS-26 issued by the Institute of Chartered Accountants of India

3.3 Without prejudice to the above, the learned DCIT and Hon'ble DRP erred in not considering the value of maintenance contracts as Goodwill acquired from CTPL, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.

4. Ground 4 - Deduction for employee's contribution to Provident Fund (PF) and Employees State Insurance Corporation (ESIC)

On the facts and in the circumstances of the case and in law, the Hon'ble DRP and learned DCIT erred in disallowing payment towards employees contribution to PF and ESIC aggregating to Rs. 7,29,418 without appreciating that the amount was paid before the due date of filing the original return of income.

5. Ground 5 - Allowance of brought forward unabsorbed depreciation of AY 2008-09

5.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs.23,42,60,932 as per return of income.

5.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs.18,73.52,790 on Goodwill purchased from GSK.

5.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of Rs. 262,345 relating to software expenses treated as capital expenditure in AY 2007-08.

6. Ground 6 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2009-10

6.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2009-10 of Rs. 17,82,24,085 as per the original return of income.

6.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2009-10 of Rs. 14,05,14.593 on the written down value of Goodwill purchased from GSK as on 1 April 2008.

6.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2009-10 of Rs. 7,23,12,099 on Goodwill purchased from CTPL.

6.4 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of Rs. 104,938 relating to software expenses treated as capital expenditure in AY 2007-08.

7. Ground 7 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2010-11

7.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2010-11 of Rs. 20,63,13,710 as per return of income.

7.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2010-11 of Rs. 10,53,85,945 on the written down value of Goodwill purchased from GSK as on 1 April 2009.

7.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2010-11 of Rs. 5,42,34,074 on Goodwill purchased from CTPL as on 1 April 2009.

7.4 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 41,975 relating to software expenses treated as capital expenditure in AY 2007-08.

Ground 8 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2011-12

8.1. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2011-12 of Rs. 32,60,75,657 as per return of income.

8.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 16,790 relating to software expenses treated as capital expenditure in AY 2007-08.

9. Ground 9 - Allowance of brought forward unabsorbed depreciation pertaining. to AY 2012-13

9.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2012-13 of Rs. 26,32,11,490 as per return of income.

9.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 6,716 relating to software expenses treated as capital expenditure in AY 2007-08.

10. Ground 10 - Transfer Pricing (TP) adjustment relating to receipt of indenting commission (Rs. 1,58,06,479)

10. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming to the extent of Rs. 1,58,06,479 to the income of the Appellant in relation to the international transaction of receipt of indenting commission; and in doing so the learned DCIT and Hon'ble DRP grossly erred in agreeing with the learned TP Officer's (TPO's) action of -

a. rejecting the economic analysis in the TP documentation maintained by the Appellant; and

b. rejecting commission agreements (i) Smith & Nephew, Inc. (S&N) and Harry Kraus; (ii) VipMed and Fulfilment Services, Inc.; and (iii) Cincinnati Sub-Zero Products, Inc. and Dimension Distributing, Inc. from the economic analysis, which are comparable to the Appellant's indenting activity in terms of functions, asset base and risk profile.

10.2. The Appellant therefore prays that the adjustment upheld by the learned DCIT and Hon'ble DRP of Rs. 1,58,06,479 under Section 143(3) r.w.s. 144(C) of the IT Act on the basis of the order passed by the learned TPO under section 92CA(3) of the IT Act be deleted.

11. Ground 11 - Failure to grant credit of tax deducted at source (TDS) of the merged entities

11.1. On the facts and circumstances of the case and in law, the learned DCIT has erred in not granting credit for TDS of Rs. 92,28,780 claimed by the appellant in its return of income pertaining following merged entities in accordance with section 199 of the IT Act read with Rule 37BA of Income-tax Rules, 1962 (IT Rules).

Sr. No.	Name of the entities	TDS
1	Dionex India Private Limited	15,44,349
2	Thermo Electron India Private Limited	74,95,478
3	Phadia India Private Limited	14,099
4	Kendro Laboratory Products India Private Limited	4,77,254
	Total	92,28,780

12. Ground 12 - Failure to grant credit of TDS and tax collected as source (TCS) pertaining to the Appellant

12.1. On the facts and circumstances of the case and in law, the learned DCIT has erred in not granting credit for TDS of Rs. 81,97,129 and TCS credit of Rs. 745 pertaining to the appellant as claimed in its return of income.

13. Ground 13 - Failure to grant credit of advance tax of merged entities

13.1. On the facts and circumstances of the case and in law, the learned DCIT has erred in not granting credit for advance tax of Rs. 6,27,40,000 claimed by the appellant in its return of income in accordance with section 199 of the IT Act read with Rule 37BA of IT Rules which was paid by the following merged entities.

Sr. No.	Name of the entities	Advance tax
1	Dionex India Private Limited	3,21,70,000
2	Thermo Electron India Private Limited	2,79,00,000
3	Phadia India Private Limited	26,70,000
	Total	6,27,40,000

14. Ground 14 - Penalty proceeding

14.1. On the facts and in the circumstances of the case and in law, the learned DCIT erred in initiating penalty proceeding under section 271(1)(c) of the IT Act."

77. In the appeal, the assessee also raised the following additional ground of appeal, vide letter dated 03.09.2025: -

"Ground No. 15:

On the facts and circumstances of the case and in law, the Ld. TPO/Ld. DRP/Ld. AO erred in not excluding certain companies which are not functionally comparable to the Appellant's international transaction of provision of indenting services from the final set of comparables."

78. Since the issue raised by way of additional ground can be decided on the basis of the material available on record, the same is admitted for adjudication.

79. Ground No.1 is general in nature. Therefore, the same needs no specific adjudication.

80. Grounds No.2 and 3, raised in assessee's appeal, pertain to the claim of depreciation on manufacturing contracts, supply and maintenance contracts acquired by the assessee pursuant to the acquisition of two undertakings under slump sale arrangements in earlier years. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, respectfully following the decision of the Co-ordinate Bench of the Tribunal rendered in assessee's own case for the assessment year 2010-11 cited supra, we direct the AO to allow the depreciation claimed by the assessee on similar lines. As a result, Grounds No. 2 and 3 raised in assessee's appeal are allowed.

81. Ground No.4, raised in assessee's appeal, pertaining to the disallowance of payment towards employees' contribution to Provident Fund and Employees' State Insurance Corporation, was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

82. The issue arising in Grounds No.5-9, raised in assessee's appeal, pertains to the claim of brought forward and unabsorbed depreciation of the preceding assessment years. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, with similar directions, this

issue is restored to the file of the AO. As a result, Grounds No.5-9 raised in the assessee's appeal are allowed for statistical purposes.

83. The issue arising in Ground No.10 and additional ground No.15, raised by the assessee, pertains to the transfer pricing adjustment in respect of the international transaction of receipt of indenting commission.

84. During the hearing, the learned AR submitted that the TPO has adopted an inconsistent stand vis-à-vis the comparable companies selected for benchmarking this transaction. It was submitted that the TPO has excluded certain companies engaged in particular product profiles, even though other companies with similar product profiles have been accepted for benchmarking. The learned AR submitted that Smith & Nephew, Inc., excluded by the TPO, has a similar product profile to Hand Innovations Inc. Thus, the learned AR sought the exclusion of only one company, i.e. Hand Innovations Inc., for benchmarking the international transaction of receipt of the indenting commission. In support of its contention, the learned AR placed reliance upon the decision of the Co-ordinate Bench in the assessee's own case for the assessment year 2010-11 and submitted that Hand Innovations Inc. was directed to be excluded by the Co-ordinate Bench, accepting a similar contention of the assessee.

85. On the other hand, the learned DR vehemently relied upon the order passed by the lower authorities on this issue.

86. Having considered the submissions of both sides and perused the material available on record, we are confining our findings only in respect of the exclusion of Hand Innovations Inc. as sought by the learned AR. Other objections, if any, against the TPO's findings on this adjustment are kept open for adjudication if they arise in the assessee's case in future.

87. We find that the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11, cited supra, after considering the Sales Representative Agreement entered into between Hand Innovations Inc. and Harry Kraus, found that this company had a similar product profile as the companies which were excluded by the TPO. Accordingly, agreeing with the submissions of the assessee, the Co-ordinate Bench directed the TPO to exclude Hand Innovations Inc. for benchmarking the international transaction of receipt of indenting commission. The relevant findings of the Co-ordinate Bench of the Tribunal for the exclusion of this company, vide aforesaid decision, are noted in the foregoing paragraphs.

88. In the instant appeal, the learned AR raised similar submissions and sought the exclusion of only Hand Innovations Inc. However, since the relevant Sales Representative Agreement entered into by this company for the year under consideration is not forming part of the record, we deem it appropriate to restore this issue to the file of the TPO, with a direction to the assessee to produce the relevant document before the TPO. The TPO is further directed that if in this year also, after perusing the Sales Representative Agreement for the year under consideration entered into by Hand Innovations

Inc., it is found that the functional profile is similar to the companies which have already been excluded, the TPO is directed to also exclude Hand Innovations Inc. in lines with the findings of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11. Therefore, with the above directions, the impugned transfer pricing adjustment on this issue is set aside, and Ground No.10 and additional Ground no.15, raised in the assessee's appeal, are allowed for statistical purposes.

89. Grounds No.11-13, raised in assessee's appeal, pertain to the grant of credit of TDS/TCS/advance tax of the assessee and/or the merged entities.

90. We have considered the submissions of both sides and perused the material available on record. As per the assessee, TDS, TCS, and advance tax credit were not granted for certain entities that have merged into the assessee. Further, as per the assessee, all the credits are duly reflected in Form 26AS for the year under consideration, and the corresponding income has been offered to tax in its entirety during the year under consideration.

91. We find that a similar issue also came up for consideration in assessee's own case for the assessment 2015-16, wherein the Co-ordinate Bench of the Tribunal issued the following directions: -

"7. Ground No.11 raised by the Assessee pertains to the short grant of credit of Tax Deducted at Source (TDS). The Assessee had claimed TDS Credit of INR.2,10,45,439/- which was reflected in Form 26AS of the Assessee-Company and the merged entities for the year Assessment Year 2015-2016. It has been contended on behalf of the Assessee that the income corresponding to the TDS Credit claimed by the Assessee was offered to tax during the relevant previous year and therefore, the Assessee was entitled to claim TDS Credit of INR.2,10,45,439/- and that the Assessing Officer has erred in non-grant of TDS Credit amounting to INR.10,75,900/-. In order to redress the grievance of the Assessee, we deem it appropriate to direct the Assessing

Officer to verify the records. In case on verification it is found that the income corresponding to the differential TDS Credit of INR.10,75,900/- claimed by the Assessee has been offered to tax, and the said TDS Credit is reflected in Form 26AS for the Assessment Year 2015-2016 of the Assessee Company and/or the merged entities, the Assessing Officer is directed to allow Credit for the TDS Credit. In terms of the aforesaid, Ground No.11 raised by the Assessee is allowed for statistical purposes."

92. Since a similar claim has been made by the assessee in the instant case, we restore this issue to the file of the AO with similar directions. Accordingly, Grounds No.11-13 raised in assessee's appeal are allowed for statistical purposes.

93. Ground No.14, raised in assessee's appeal, pertains to the initiation of penalty proceedings under section 271(1)(c) of the Act, which is premature in nature. Therefore, the said ground is dismissed.

94. In the result, the appeal by the assessee for the assessment year 2013-14 is partly allowed for statistical purposes.

ITA No.7294/Mum/2018
Assessee's Appeal (A.Y. 2014-15)

95. In this appeal, the assessee has raised the following grounds: -

"1. Ground 1 – General

On the facts and in the circumstances of the case and in law, the directions of the Hon'ble Dispute Resolution Panel- 2 (DRP) and the final assessment order passed by the learned Deputy Commissioner of Income-tax - 15(3)(1), Mumbai (DCIT) are bad in law and merit to be set aside.

Ground 2 - Depreciation on contracts - Acquisition from Glaxosmithkline Pharmaceuticals Ltd ("GSK') in AY 2008-09

2.1 *On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 3,18,28,905 on the written down value of business or commercial rights being*

the manufacturing contracts as on 1 April 2013 under section 32(1) r.w.s. 2(11) of the IT Act.

2.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 76,77,622 on the written down value of business or commercial rights being the supply contracts as on 1 April 2012 under section 32(1) r.w.s. 2(11) of the IT Act.

2.3 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of manufacturing and supply contracts based on the following observations which are incorrect on facts:

- Manufacturing and supply contracts are not self-generated by GSK and have not been transferred to the Appellant*
- Manufacturing and supply contracts are not an intangible asset as per Accounting Standard (AS)-26 issued by the Institute of Chartered Accountants of India*

2.4 Without prejudice to para 2.1 and 2.3 above, the learned DCIT and Hon'ble DRP erred in not considering the value of manufacturing contracts as Goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.

2.5 Without prejudice to para 2.2 and 2.3 above, the learned DCIT and Hon'ble-DRP erred in not considering the value of supply contracts as Goodwill acquired from GSK, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.

3. Ground 3 - Depreciation on contracts - Acquisition from Chemito Technologies Private Limited (CTPL) in AY 2009-10

3.1 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation of Rs. 15,44,850 on the written down value of business or commercial rights being the maintenance contracts as on 1 April 2013 under section 32(1) r.w.s 2(11) of the IT Act.

3.2 On the facts and in the circumstances of the case and in law, the learned DCIT and the Hon'ble DRP erred in not granting depreciation on the written down value of maintenance contracts based on the following observations which are incorrect on facts:

- Maintenance contracts are not self-generated by CTPL and have not been transferred to the Appellant*
- Maintenance contracts are not an intangible asset as per AS-26 issued by the Institute of Chartered Accountants of India*

3.3 Without prejudice to the above, the learned DCIT and Hon'ble DRP erred in not considering the value of maintenance contracts as Goodwill acquired

from CTPL, which is an intangible asset eligible for depreciation under section 32(1) r.w.s. 2(11) of the IT Act.

Ground 4 - Allowance of brought forward unabsorbed depreciation of AY 2008-09

4.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs. 23,42,60,932 as per return of income.

4.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2008-09 of Rs.18,73,52,790 on Goodwill purchased from GSK.

4.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of Rs. 262,345 relating to software expenses treated as capital expenditure in AY 2007-08.

5. Ground 5 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2009-10

5.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2009-10 of Rs. 17,82,24,085 as per the original return of income.

5.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2009-10 of Rs. 14,05,14,593 on the written down value of Goodwill purchased from GSK as on 1 April 2008.

5.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2009-10 of Rs. 7,23,12,099 on Goodwill purchased from CTPL.

5.4 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of Rs. 104,938 relating to software expenses treated as capital expenditure in AY 2007-08.

Ground 6 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2010-11

6.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2010-11 of Rs. 20,63,13,710 as per return of income.

6.2. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed

depreciation of AY 2010-11 of Rs. 10,53,85,945 on the written down value of Goodwill purchased from GSK as on 1 April 2009.

6.3 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward of the unabsorbed depreciation of AY 2010-11 of Rs. 5,42,34,074 on Goodwill purchased from CTPL as on 1 April 2009.

6.4. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 41,975 relating to software expenses treated as capital expenditure in AY 2007-08.

7. Ground 7 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2011-12

7.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2011-12 of Rs. 32,60,75,657 as per return of income.

7.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 16,790 relating to software expenses treated as capital expenditure in AY 2007-08.

Ground 8 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2012-13

8.1. On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2012-13 of Rs. 26,32,,11,490 as per return of income.

8.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 6,716 relating to software expenses treated as capital expenditure in AY 2007-08.

9. Ground 9 - Allowance of brought forward unabsorbed depreciation pertaining to AY 2013-14

9.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing brought forward unabsorbed depreciation of AY 2013-14 of Rs. 16,66,17,345 as per return of income.

9.2 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in not allowing depreciation of Rs. 2,686 relating to software expenses treated as capital expenditure in AY 2007-08.

10. Ground 10 - Transfer pricing (TP') adjustment relating to purchase of finished goods (Rs. 5,60,52,674)

10.1 On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming the upward adjustment of Rs. 5,60,52,674 to the income of the Appellant in relation to the international transaction of purchase of finished goods; and in doing so the learned DCIT

and Hon'ble DRP grossly erred in agreeing with the learned Transfer Pricing Officer's (TPO's) action of –

a. rejecting the economic analysis in the TP documentation maintained by the Appellant; and

b. rejecting (i) Sataytej Commercial Company Ltd. and (ii) Remi Sales and Engineering Ltd. from the economic analysis, which are comparable to the Appellant's distribution activity in terms of functions, asset base and risk profile.

The Appellant therefore prays that the adjustment made by the learned DCIT and Hon'ble DRP of Rs. 5,60,52,674 under Section 143(3) r.w.s. 144(C) of the IT Act on the basis of the order passed by the learned TO under section 92CA(3) of the IT Act be deleted.

Ground 11 - TP adjustment relating to receipt of indenting commission (Rs. 5,93,65,507)

On the facts and in the circumstances of the case and in law, the learned DCIT and Hon'ble DRP erred in confirming to the upward adjustment of Rs. 5,93,65,507 to the income of the Appellant in relation to the international transaction of receipt of indenting commission; and in doing so the learned DCIT and Hon'ble DRP grossly erred in agreeing with the learned TP Officer's (TPOS) action of –

a. rejecting the economic analysis in the TP documentation maintained by the Appellant; and

b. rejecting commission agreements (i) Smith & Nephew, Inc. (S&N) and Harry Kraus; and (ii) VipMed and Fulfilment Services, Inc. from the economic analysis, which are comparable to the Appellant's indenting activity in terms of functions, asset base and risk profile.

The Appellant therefore prays that the adjustment upheld by the learned DCIT and Hon'ble DRP of Rs. 5,93,65,507 under Section 143(3) r.w.s 144(C) of the IT Act on the basis of the order passed by the learned TPO under Section 92CA(3) of the IT Act be deleted.

12. Ground 12 - Failure to grant credit of tax deducted at source (TDS) and tax collected as source (TCS) of the merged entities

12.1 On the facts and circumstances of the case and in law, the learned DCIT has erred in not granting credit for TDS of Rs. 86,63,797 and TCS of Rs. 3,788 pertaining to following merged entities in accordance with section 199 of the IT Act read with Rule 37BA of Income-tax Rules, 1962 (IT Rules).

Sr. No.	Name of the entities	TDS	TCS
1	Dionex India Private Limited	20,60,756	3,788
2	Thermo Electron India Private Limited	62,87,177	-

3	Kendro Laboratory Products India Private Limited	3,24,864	-
	Total	86,63,797	3,788

13. Ground 13 - Failure to grant partial credit of TDS and TCS pertaining to the Appellant

13.1 On the facts and circumstances of the case and in law, the learned DCIT has erred in not granting partial credit for TDS of Rs. 1,64,041 and TCS credit of Rs. 648 pertaining to the appellant.

Ground 14 - Failure to grant credit of advance tax of merged entity

14.1. On the facts and circumstances of the case and in law, the learned DCIT has erred in not granting credit for advance tax of Rs. 8,00,000 claimed by the appellant in its return of income in accordance with section 199 of the IT Act read with Rule 37BA of IT Rules which was paid by Phadia India Private Limited.

Ground 15 - Penalty proceeding

On the facts and in the circumstances of the case and in law, the learned DCIT erred in initiating penalty proceeding under section 271(1)(c) of the IT Act."

96. In the appeal, the assessee also raised the following additional ground of appeal, vide letter dated 03.09.2025: -

"Ground No. 16:

On the facts and circumstances of the case and in law, the Ld. TPO/Ld. DRP/Ld. AO erred in not excluding certain companies which are not functionally comparable to the Appellant's international transaction of provision of indenting services from the final set of comparables."

97. Since the issue raised by way of additional ground can be decided on the basis of the material available on record, the same is admitted for adjudication.

98. Ground No.1 is general in nature. Therefore, the same needs no specific adjudication.

99. Grounds No.2 and 3, raised in assessee's appeal, pertain to the claim of depreciation on manufacturing contracts, supply and maintenance contracts acquired by the assessee pursuant to the acquisition of two undertakings under slump sale arrangements in earlier years. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, respectfully following the decision of the Co-ordinate Bench of the Tribunal rendered in assessee's own case for the assessment year 2010-11 cited supra, we direct the AO to allow the depreciation claimed by the assessee on similar lines. As a result, Grounds No. 2 and 3 raised in assessee's appeal are allowed.

100. The issue arising in Grounds No.4-9, raised in assessee's appeal, pertains to the claim of brought forward and unabsorbed depreciation of the preceding assessment years. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, with similar directions, this issue is restored to the file of the AO. As a result, Grounds No.4-9 raised in the assessee's appeal are allowed for statistical purposes.

101. Ground No.10, raised in assessee's appeal, pertains to the transfer pricing adjustment in respect of the international transaction of the purchase of finished goods.

102. Insofar as this ground is concerned, during the hearing, the learned AR sought inclusion of only one company as a comparable, i.e. Satyatej Commercial Co. Ltd., for benchmarking this international transaction,

103. On the other hand, the learned DR vehemently relied upon the order passed by the lower authorities on this issue.

104. Having considered the submissions of both sides and perused the material available on record, we find that Satyatej Commercial Co. Ltd. has already been found to be comparable to the assessee in the foregoing paragraphs. Therefore, our findings rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, the TPO/AO is directed to consider Satyatej Commercial Co. Ltd. as a comparable to the assessee for benchmarking the international transaction of the purchase of finished goods. As a result, Ground No.10 raised in assessee's appeal is allowed.

105. The issue arising in Ground No.11 and additional ground no.16, raised by the assessee, pertains to the transfer pricing adjustment in respect of the international transaction of receipt of indenting commission.

106. Having considered the submissions of both sides and perused the material available on record, we are confining our findings only in respect of the exclusion of Hand Innovations Inc. as sought by the learned AR. Other objections, if any, against the TPO's findings on this adjustment are kept open for adjudication if they arise in the assessee's case in future.

107. We find that the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11, cited supra, after considering the Sales Representative Agreement entered into between Hand Innovations Inc. and Harry Kraus, found that this company had a similar product profile as the companies which were excluded by the TPO. Accordingly, agreeing with the submissions of the assessee, the Co-ordinate Bench directed the TPO to exclude Hand Innovations Inc. for benchmarking the international transaction of receipt of indenting commission. The relevant findings of the Co-ordinate Bench of the Tribunal for the exclusion of this company, vide aforesaid decision, are noted in the foregoing paragraphs.

108. In the instant appeal, the learned AR raised similar submissions and sought the exclusion of only Hand Innovations Inc. However, since the relevant Sales Representative Agreement entered into by this company for the year under consideration is not forming part of the record, we deem it appropriate to restore this issue to the file of the TPO, with a direction to the assessee to produce the relevant document before the TPO. The TPO is further directed that if in this year also, after perusing the Sales Representative Agreement for the year under consideration entered into by Hand Innovations Inc., it is found that the functional profile is similar to the companies which have already been excluded, the TPO is directed to also exclude Hand Innovations Inc. in lines with the findings of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11. Therefore, with the above directions, the impugned transfer pricing adjustment on this

issue is set aside, and Ground No.11 and additional Ground no.16, raised in the assessee's appeal, are allowed for statistical purposes.

109. Grounds No.12-14, raised in assessee's appeal, pertain to the grant of credit of TDS/TCS/advance tax of the assessee and/or the merged entities.

110. Since a similar issue has already been adjudicated in the foregoing paragraphs in the assessee's appeal for the preceding year, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this ground. Accordingly, we restore this issue to the file of the AO with similar directions. Accordingly, Grounds No.12-14 raised in assessee's appeal are allowed for statistical purposes.

111. Ground No.15, raised in assessee's appeal, pertains to the initiation of penalty proceedings under section 271(1)(c) of the Act, which is premature in nature. Therefore, the said ground is dismissed.

112. In the result, the appeal by the assessee for the assessment year 2014-15 is partly allowed for statistical purposes.

113. To sum up, all the assessee's appeals before us are partly allowed for statistical purposes.

Order pronounced in the open Court on 02/01/2026

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 02/01/2026
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai