IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI T R SENTHIL KUMAR, JUDICIAL MEMBER AND SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA Nos. 2281 & 2282/AHD/2025
Assessment Years: 2012-13 & 2013-14

Assistant Commissioner of Income Tax, Circle -1(1)(1), Vadodara - 390007	Vs.	**Gulbrandsen Pvt. Ltd**, On Coastal Highway, PO- Mujpur, Vadodara, Gujarat - 391440 **[PAN – AABCG0812A]**
(Appellant)		(Respondent)

Assessee by	Shri S. N. Soparkar, Sr. Advocate
Revenue by	Shri Sher Singh, CIT-DR
Date of Hearing	15.04.2026
Date of Pronouncement	10.06.2026

O R D E R

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

These two appeals are filed by the Revenue against separate orders of Commissioner of Income Tax (Appeals) – 13, Ahmedabad both dated 15.09.2025 for the Assessment Years (A.Y.) 2012-13 and 2013-14 respectively. As the issues involved in the two appeals were identical, both the matters were heard together and are being disposed of vide this common order for the sake of convenience.

ITA No. 2281/Ahd/2025, A.Y. 2012-13

2. We will first take up the appeal of the Revenue for the A.Y 2012-13. The grounds taken by the Revenue in this appeal are as under:

i. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the upward adjustment of Rs 1,50,04,178/-made by the TPO by re-computing the arm's length price of the international transactions of sale of finished goods to its AEs."*

ii. *"On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in rejecting TPO's approach of rejecting the TNMM as MAM and adopting the CUP method as the MAM which is contrary to the provisions of Rule 10C of Income Tax Rules?*

Iii. *"On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the TNMM over the CUP method as the MAM which is contrary to the provisions of section 92C and Rule 10B & 10C of Income Tax Rules?"*

iv. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing following appropriate adjustments claimed by the assessee for material differences in contractual terms, underlying commercial circumstances, functions, risk, and other economic factors between assessee's transactions with AEs vis-à-vis assessee's transactions with non AEs while applying the CUP method which is contrary to the provisions of section 920 and Rule 10B & 10C of Income Tax Rules*

1. Adjustment on account of bustness volumes differences.

2 Adjustment for marketing and selling expenses not required to be incurred for AE sales vis-à-vis non-AE sales.

3. Adjustment for credit risk not required to borne by assessee for AE sales vis-à-vis non-AE sales

4. Adjustment for interest free ECB loan received from AE

v. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the TPO's approach of price comparison in foreign currency value of international transaction without appreciating the fact that the price compared in foreign currency is actual value and the price determined in Indian Rupee have impact of currency conversion rate and there by the same is contrary to the provisions of Rule 10B of Income Tax Rules."*

vi. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the transaction of sale of TEAL chemical to Reliance Industries Ltd as comparable uncontrolled transactions for benchmarking the transaction of sale of teal chemical product by assessee to AES.*

vii. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the transaction of sale of DEAC chemical to Reliance Industries Ltd as comparable uncontrolled transaction for benchmarking the transaction of sale of teal chemical product by assessee to AES."

viii. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the adjustment of Rs. 2,13,41,842/ on account of "availing sales promotion and marketing services from AE(s)" relying solely on the decision of the Hon'ble ITAT for the earlier year AY 2009-10 without appreciating the TPO's finding that the assesee had failed to substantiate with conclusive evidence, that the AE(s) had actually incurred expenditure for rendering the services to the assesssee?"

ix. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the adjustment of Rs. 213,41,842/-on account of "availing sales promotion and marketing sevices from AE(s) ignoring the fact that the assessee had failed to benchmark the transaction with the AE as per law thereby failing to discharge the primary onus cast upon it by the Act?

x. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in accepting the ALP of the assessee determined by ignoring the guidelines laid down under the Income-tax Act and Rules and thereby violating the ratio laid down by the Hon'ble Supreme Court in the case of Sap Labs India Pvt. Ltd. vs. ITO"

xi. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the additional depreciation of Rs.1,63,73,591/ without appreciating the fact that mere changing of spare parts cannot be considered as installation of "new" plant and machinery"

xii. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to delete the addition jo Rs. 12,71,073/- made while computing book profit u/s 115JB without appreciating the fact that the assesee has claimed the said expense in its P&L account and thus has reduced its book profit."

xiii. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.1,34,2,7327/ made on account of Capitalization of Interest on Capital Work In Progress without appreciating the fact that the assesse failed to establish that borrowed loan was not used for capital purposes."

xiv. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee on the issue of disallowance of weighted deduction u/s 35(2AB) of the Act of Rs.3,76,026/ on R&D expenses not quantified/certified by DSIR in Form No.3CL.

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

Ground No. 1 to 10: TP Adjustments

3. Ground No. 1 to 10 taken by the Revenue pertain to upward adjustment made by the TPO by re-computing the arm's length price of the international transactions of the assessee.

4. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing of chemicals. The assessee was manufacturing and selling different kinds of chemicals which were aggregated for the purpose of determining the arm's length price (ALP) with respect to the sales made to the associated enterprises (AEs). The assessee had benchmarked the international transaction of sale of finished goods to its AEs by applying internal TNMM wherein the operating profit margin of cost earned by the assessee from the AE segment was compared with the operative profit margin on cost earned from the non-AE segment. The TPO had rejected the benchmarking ideology adopted by the assessee and had adopted CUP method to benchmark this international transaction and had accordingly made transfer pricing adjustment of Rs. 1,50,04,178/-.

5. Aggrieved with order of the AO/TPO, the assessee had preferred an appeal before the First Appellate Authority. The Ld. CIT(A) had deleted the upward adjustment made by the TPO/AO by observing that the ITAT in the own case of the assessee for the A.Y. 2007-08 to 2011-12 had directed to adopt the TNMM as the most appropriate method. Further, that

the Hon'ble Gujarat High Court had also upheld this view and dismissed the appeal of the Revenue for the A.Y. 2007-08.

6. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before us. The Ld. CIT-DR, contended that the assessee is engaged in manufacturing of different chemicals and, therefore, the same should not be aggregated for the purpose of determining the ALP. He, therefore, strongly supported the order of the AO/TPO.

7. Per Contra, Shri S.N. Soparkar, the Ld. Sr. Advocate appearing for the assessee submitted that the facts of the present case are identical to the facts of the case of the assessee in the earlier years wherein the ITAT had deleted the upward adjustment made by the TPO/AO. He, therefore, strongly supported the order of the Ld. CIT(A).

8. We have considered the rival submissions and the materials available on record. The TPO justified the adoption of the **Comparable Uncontrolled Price (CUP) Method** as the Most Appropriate Method (MAM) for benchmarking the assessee's international transactions, in preference to the **Transactional Net Margin Method (TNMM)**. The principal findings of the TPO/AO are as follows:

1. **Preference for CUP over TNMM**
    - The TPO relied upon the OECD Transfer Pricing Guidelines to contend that traditional transaction methods, particularly CUP, are generally preferred over profit-based methods such as TNMM because they provide the most direct measure of whether a controlled transaction is at arm's length.

- Where reliable comparable uncontrolled transactions are available, CUP is considered the most direct and reliable method for determining the Arm's Length Price (ALP).

2. **Burden on the Assessee**
   - Reliance was placed on the decision of the Ahmedabad Bench of the ITAT in the case of *Atul Ltd.*, wherein it was held that the assessee, being fully aware of the transactions and industry conditions, bears the onus of furnishing relevant comparable uncontrolled transactions and data necessary for a CUP analysis.
3. **Assessee's Objection Based on OECD 2010 Guidelines**
   - The assessee argued that the OECD's 2010 Guidelines abandoned the earlier hierarchy of methods and therefore CUP could not automatically be preferred over TNMM.
   - In response, the TPO referred to the decision of the Mumbai Tribunal in *Serdia Pharmaceuticals*, which clarified that although the OECD no longer prescribes a rigid hierarchy among methods, traditional transaction methods continue to enjoy preference where they and profit-based methods can be applied with equal reliability.
4. **Observations from Serdia Pharmaceuticals**
   - The Tribunal recognized that transactional profit methods may, in certain situations, be more suitable than traditional methods.
   - However, where both methods can be applied with comparable reliability, traditional transaction methods, and

especially CUP, remain preferable because they directly compare prices of controlled and uncontrolled transactions.

- Profit-based methods such as TNMM are considered less direct, as profitability may be influenced by several factors unrelated to the pricing of the international transaction.

5. **Conclusion Reached by the TPO**
   - Since internal comparable uncontrolled transactions were available and information regarding differences between controlled and uncontrolled transactions was also available, the TPO concluded that CUP could be applied reliably.
   - Accordingly, CUP was proposed as the most appropriate method for benchmarking the impugned transactions and determining the Arm's Length Price.

The core reasoning of the TPO was that availability of reliable internal comparables makes CUP the most direct and dependable method for determining ALP. Even after the OECD's 2010 revisions, CUP continues to be preferred over TNMM where both methods can be applied with equal reliability. Therefore, owing to the existence of internal comparable transactions and sufficient data to adjust differences, the TPO proposed adoption of the CUP method.

9. The Ld. CIT(A) found that the dispute regarding the appropriate method for benchmarking sales of finished goods was identical to the controversy adjudicated in the assessee's own cases for Assessment Years 2007-08 to 2011-12. The Ahmedabad Bench of the ITAT, in the assessee's cases for AYs 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12, had consistently held that **Internal TNMM** was the Most Appropriate

Method (MAM) for benchmarking the transactions. The Tribunal had further held that the **CUP method could not be reliably applied** because of significant economic differences between transactions with Associated Enterprises (AEs) and those with non-AEs. The decision of the Tribunal for AY 2007-08 was affirmed by the Gujarat High Court, which had dismissed the Revenue's appeal. For the year under consideration, the Ld. CIT(A) found that:

- the nature of transactions remained the same,
- the products involved remained the same,
- the Associated Enterprises remained the same, and
- the assessee continued to benchmark the transactions using Internal TNMM.

Since there was no material change in facts or in circumstances, the Ld. CIT(A) followed the binding precedents in the assessee's own case and applied the principle of consistency. Following the decisions of the ITAT for AYs 2007-08 to 2011-12 and the judgment of the Gujarat High Court for AY 2007-08, the Ld. CIT(A) held that **Internal TNMM is the appropriate benchmarking method and CUP is not reliably applicable in the facts of the case**.

10. The fact that the identical adjustment made by the Department in the earlier years was deleted by the Tribunal has not been disputed. The finding of the Tribunal given in the assesse's own case on this issue in A.Y. 2009-2010 and 2010-2011 vide *ITA No. 1230/Ahd/2017* and *ITA No. 1215 & 1216/Ahd/2017 dated 18.12.2019* is found to be as under:

> "11. We have duly considered rival submissions and gone through the record carefully. We find that identical chemicals were sold in the

immediately preceding year. The assessee has benchmarked its transaction by applying TNMM method that has been changed by the TPO and he determined ALP by following CUP method. This change of method did not meet approval of the Tribunal in the Asst. Year. 2008-09. The discussion made by the Tribunal reads as under:

> "8. *We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position. We have also perused the detailed written submissions filed by the learned DR.*
>
> *9. It is by now a reasonably well-established legal proposition that as long as it is reasonably possible to apply a direct method of ascertaining the arm's length price of a transaction, such a direct method will have an edge over application of indirect method of ascertaining the arm's length price. This principle has been reiterated in a large number of decisions of the coordinate benches, such as in the case of ACIT Vs MSS India Ltd [(2009) 32 SOT 132 (Pune) and Serdia Pharmaceuticals India Pvt Ltd VS ACIT [(2011) 44 SOT 391 (Mum)]. Going by this principle, all other things being equal, a direct method like Comparable Uncontrolled Price (CUP) method will have an edge over an indirect method like Transactional Net Margin Method (TNMM). That does not, and cannot, however mean that whatever be the fact situation, CUP is always a preferred method because of one of the essential prerequisite for application of any method of ascertaining the ALP is the inputs necessary for that purpose. Whatever may be inherent edge of the direct methods of determining arm's length price of an international transaction over indirect methods of determining the arm's length price of international transactions, selection of the most appropriate method for determining arm's length price under the transfer pricing provisions, in a particular fact situation, is not an academic exercise which can be decided de hors the peculiar facts of that situation, and, therefore, there cannot be any straight-jacket formulas holding application of a particular method in case of a particular type of product or service. While rule 10B(1) of the Income Tax Rules 1962, provides that arm's length price in relation to an international transaction shall be determined by any of the methods, "being the most appropriate method", set out therein, Rule 10 C(1) provides the mechanism for selecting the most appropriate method "which is best suited to the facts and circumstances of each particular transaction" and "which provides the most reliable measure of arm's length price of the international transaction". Rule 10C(2) further provides that in selecting the most appropriate method as specified in rule 10C(1), certain factors are to be taken into account: (a) the nature and class of the international transaction;*
>
> *(b) the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises; (c) the availability, coverage and reliability of data necessary for application of the method; (d) the degree of comparability existing between the international transaction and the uncontrolled*

transaction and between the enterprises entering into such transactions; (e) the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions; (f) the nature, extent and reliability of assumptions required to be made in application of a method [Emphasis, by underlining, supplied by us]

10 What is clear from the above analysis is that a method of determining arm's length price, to be held as a 'most appropriate method' (MAM), should be, as provided in rule 10C(1), a method "which is best suited to the facts and circumstances of each particular transaction" and a method and "which provides the most reliable measure of arm's length price of the international transaction". Under rule 10C(2)(c), "the availability, coverage and reliability of data necessary for application of the method" is one of the crucial factors determining suitability of a method of determination of arm's length price in a particular fact situation. Similarly, it is also important to determine whether accurate adjustments can be made for the differences between the international transactions and the comparable uncontrolled transactions, and unless such adjustments can be made the related method cannot be said to be most appropriate method. We have already seen as to how, in the CIT(A)'s analysis, suitable adjustments could not be made even though in his opening observations in the operative portion of the order, he stated that suitable adjustments can indeed be made. The inability to make suitable adjustments, therefore, does take the method outside the ambit of most appropriate method. Quite clearly, therefore, unless suitable reliable data inputs necessary for application of a particular method, as CUP in this case, are available, CUP method cannot be said to be most appropriate methods on the facts of this case. Let us, therefore, first examine whether sufficient inputs were indeed available.

11. At the outset, it is important to note that what has been relied upon by the TPO is Internal CUP data but then rather than taking the comparable uncontrolled price of the transaction, the TPO has compared average of intra-AE transactions and independent transactions. This approach, though in the case of application of Cost Plus Method, has been rejected by a coordinate bench of this Tribunal in the case of ACIT Vs Tara Ultimo Pvt Ltd [(2012) 143 TTJ 91 (Mum)], though the same reasoning will be equally applicable in respect of the CUP as well as the computation mechanism, in that respect, is materially similar. In this case, speaking through one of us (i.e. the Vice President), the coordinate bench had observed as follows:

The way this rule works, the benchmark gross profit is to be applied on each transaction with the AEs , while, for computing the benchmark, one could take into account a series of same or similar transactions. In other words, while setting the benchmark, one can take into account several transactions with unrelated enterprise on what can be termed as 'global basis', essentially in respect of same or similar property or services though, the benchmark so arrived at cannot be applied on the

global basis i.e. the average of gross profit earned from same or similar transactions with AEs. The application of CPM has to be on transaction basis rather than on global basis, and this fundamental scheme of cost plus method is also evident from the plain wordings of Rule 10 B as well. Any other view of the matter will result in incongruities. For example, if our average mark up to unrelated enterprises is 20 per cent. and we charge a mark-up of 2 per cent in one transaction with AE and 38 per cent in another transaction with the AE, both these transactions, by applying the mark up on global basis, will meet the test of ALP whereas in the first case, the mark up charged is certainly not a mark-up resulting in an ALP. In this particular case, for example, the normal mark up in transactions with has been computed at 16.31 per cent. and the average of mark up on sales to AEs having been taken at 17.08 per cent. entire sales to AEs has been taken at ALP, but, the mark up in the many cases is clearly less than benchmark. To give one example, at page 221 of the paper-book, margin of 14.15 per cent (4 invoices), 13.95 per cent. 13.81 per cent. 14 per cent (4 invoices), 14.14 per cent (2 invoices), and 14.16 per cent is given by assessee's own computation, and, on the same page, on one invoice, the assessee has shown a margin as high as 27 per cent. The cost plus method, therefore, has not been correctly applied. In any case, one of the most important input, i.e. diamond, has been imported at a price for which no ALP documentation is available and the price of imports have been taken into account in computation of costs as well. The costs of inputs have not been verified either. No efforts are made to show that the terms of sale to the AEs and all other relevant factors are materially similar vis-a-vis the transactions with independent enterprises. The CPM is applied by comparing gross profit on sales, whereas the method requires comparison of mark up on costs on transactions with AEs vis-a-vis mark up on costs on transactions with non AEs [Emphasis, by underlining, supplied by us now.

12. It is also important to note that the TPO has justified application of internal CUP on the basis of deviations in prices at which products are sold to different AEs and, by implication, using one intra AE price to bench the other intra AE price. That is wholly incorrect. It is well settled in law that it is only an uncontrolled price which can be compared with controlled price and used for any benchmarking. This position has been well summarized in a coordinate bench decision in the case of Sabic Innovative Plastic India (P.) Ltd. v. Dy. CIT [2013] 59 SOT 138/35 taxmann.com 177 (Ahd.), and we are in considered agreement with the same.

13. When comparing the prices of products sold in intra AE transactions vis-à-vis independent transactions, it is not sufficient to compare the prices de hors the economic circumstances in which the respective AE and non AE transactions take place. This principle is beyond any doubt or controversy. In the OECD Guidelines for Multinational Enterprises and Tax Administrators, it is clearly stated that application of CUP method "requires high degree of comparability not only in the products sold and services provided but also in the economic circumstances in which the respective AE and non AE transactions take place". In the UN Transfer Pricing Manual, it is

observed that "degree of comparability between controlled and uncontrolled transactions is typically determined on the basis of a number of attributes of the transactions or parties that could materially affect prices or profits and the adjustment that can be made to account for differences" and then it is observed that "these attributes, which are usually referred to as the five comparability factors, include: (i) Characteristics of the property or service transferred; (ii) Functions performed by the parties taking into account assets employed and risks assumed, in short referred to as the "functional analysis" (iii) Contractual terms; (iv) Economic circumstances; and (v) Business strategies pursued". Clearly, therefore, the significant variations in economic circumstances and contractual terms can take seemingly comparable transactions outside the ambit of comparability.

14. We have noted huge and crucial variations in payment terms of the transactions with the AEs vis-a-vi transactions with non AEs. The CIT(A) has rejected the adjustments in this respect on account of irrelevant factors such as assessee claiming only 8% adjustment in the financial year 2005-06, as against 20% adjustment sought in this year, even though the transactions were under the same agreement. That is immaterial. What is material is that there is huge difference in the payment terms. The CIT(A) has also noted the deviations in the advance payment terms of 120 days under the agreement and the actual advance payment of 17 months on average. He has also noted that in three invoices on non-AEs the credit period was 60 days but then he declines to treat these evidence as support for the claim that in all cases similar credits were given. However, what is clear that there is clearly significant variation in payment terms. As a matter of fact, at page 29, learned CIT(A) himself notes that "as per the agreement, advance payment was to facilitate appellant's purchases, working capital etc which, in turn, ensured uninterrupted supply to the AE". He does accept that he was given analysis sheet showing 17 months advance payment but rejects it as agreement refers to only 120 days advance payment. That does not belittle the fact that whatever may have been payment terms under the intra AE agreement, the payment was actually received substantially in advance. The question we must ask ourselves is that whether such substantial advance payments, which ensure availability of working capital to the assessee, can be compared with normal business transactions allowing, on the contrary, credit period to the customers. The answer is clearly in negative as the economic circumstances in which these two sets of transactions operate are substantially different. The very character of these transactions is different.

15. It is also important to bear in mind the undisputed fact that the AE had an obligation to buy at least 50% of its products and the assessee was reseller rather than an end user. These contractual terms and the difference in functions also seriously affect the comparability. The reasons given by the CIT(A) for rejecting these variations are wholly superficial and devoid of any legally sustainable merits. The variations in quantities between the AEs and the non AEs cannot be ignored either. There is no

dispute that there is huge variations in quantities sold to the AEs vis-à-vis the quantities sold to the non-AEs but the CIT(A) has rejected the plea on the basis that "there is no consistent pattern or correlation between the volume and sale prices" and that "there is no reference to any volume discount in the agreement". That is again a superficial approach. Whether there is a mention of the volume discount or not or whether there is always a direct relation between the prices and volumes, the fact remains that the transactions with such huge variations, as in this case, cannot be considered to be comparable transactions and that is the consistent approach in benchmarking analysis. The scale of transactions is an important economic factor affecting the comparability. We have also noted that the AEs have reimbursed R&D costs, with mark up, to the assessee. The AEs have also given interest free ECB loans. These are also equally important factors. When we take the transactions with the AEs in the light of these surrounding economic and contractual realities, in our considered view, the transactions with non AEs, on the facts of this case and as a whole, are not comparable at all. We cannot consider the price of the product in isolation with all these factors, and that is the reason why the comparability under CUP ceases to be relevant as these factors are clearly missing in non AE transactions. We have also noted that Rule10 B(1)(a)(ii) itself provides that "such price is adjusted to account for differences, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market" but then while CIT(A) uphold the application of CUP method on the ground that adjustments can indeed be made, he rejects the adjustments on merits. That is clearly incongruous. When he admits that no adjustments can be made on merits, the very foundation of his decision to uphold application of CUP method ceases to hold good. In any case, having perused the material on record, we are of the considered view that accurate adjustments cannot be made to nullify the impact of absolutely fundamental variations in the terms of the intra AE and non AE transactions, and since accurate adjustments cannot be made, for this reason alone, CUP method ceases to be workable on the facts of this case. The contradiction in the approach is also evident from the fact that the CIT(A) has upheld application of CUP method on the sole basis that accurate adjustments can be made to take care of variations in the intra AE and independent transactions but then one of the points made before us, in the written submissions, is that "if total adjustment of 36% claimed in those years was allowed, prices would come down to such unrealistic levels that one of the international transaction, including sales to non AEs, were made anywhere neat them". Clearly, there is no meeting ground between these diametrically opposed stands by the authorities. As regards the decision of coordinate bench in the case of Serdia Pharmaceuticals (supra), that was a case in which no dispute was raised with respect to the comparables cases except on account of quality for which suitable adjustment was allowed. This precedent, therefore, does not offer any help to the case of the revenue.

16. A lot of emphasis has been placed on the fact that the assessee on its own was using the Internal CUP method in past, and, there was, thus, no good reason to deviate from the same. It is for this main reason that the application of TNMM has been declined by the authorities below. Nothing, however, turns on this plea. What is before us is the question as to which method is most appropriate method for ascertaining the arm's length in the present year. We donot see how this question is to be adjudicated simply on the basis of what has been accepted by the assessee, on his own, as the most appropriate method in the earlier years. Such a choice of method in the earlier years, in our humble understanding, cannot act as an estoppel against the assessee. In our considered view, the decision as to what is the most appropriate method on the facts of this case is to be taken in the light of the facts and material on record before us in the present year. The past conduct of the assessee, with regard to the selection of the most appropriate method for ascertaining arm's length price for the present assessment year, is not really decisive. We, therefore, reject this plea of the revenue authorities as well.

17. As we do so, we may also add that one of the decisions relied upon by the assessee was in the case of DCIT Vs Dishman Pharmaceuticals & Chemicals Ltd and vice versa [(45 SOT 37 (2011)]. While dealing with a subsequent year's appeal, for the assessment year 2010-11, and reiterating the stand earlier taken by the Tribunal, vide order dated 31st December 2018, the Tribunal has, inter alia, observed as follows

> *…… the nature of trade relationship in the sense of its impact on the functions, asset and risks assumed by the AEs which will have the crucial bearing on the prices. Unless these vital factors are taken into account, and suitable adjustments are made in the available CUP inputs, the application of CUP has no usefulness. The variations in nature of relationship affecting the FAR analysis is not even disputed by the revenue and rule 10 B(1)(a)(ii) itself provides that "such price is adjusted to account for differences, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market". As regards the decision of coordinate bench in the case of Serdia Pharmaceuticals (supra), that was a case in which no dispute was raised with respect to the comparables cases except on account of quality for which suitable adjustment was allowed. This precedent, therefore, does not offer any help to the case of the revenue. All that has been relied upon is internal CUP and for the detailed reasons set out by the CIT(A), which meets our approval, these CUP inputs were not reliable enough. In any case, differences due to variations in FAR due to nature of trade relationship with AEs have not been accounted for and suitable adjusted. The external CUP inputs are not even referred to and relied upon by the TPO. There are no other independent comparable transactions brought to the analysis by the TPO or the learned Commissioner (DR). All these factors put together*

donot make out a case for application of CUP in this case. Not only that there is no justification, beyond vague generalities, for CUP in the present case and not only that that CUP method application mechanism is incorrect, we find that sufficient quantity of reliable CUP inputs are not available on the facts of this case. that In the light of these discussions, as also bearing in mind entirety of the case, we donot see legally sustainable merits in the case of the learned Commissioner (DR) and we reject his plea that on the facts and in the circumstances of this case, CUP method is required to be applied. In any case, the issue is squarely covered by the decision of the coordinate benches, in favour of the assessee, and having perused these decisions and material on record, we are not inclined to take any other view of the matter than the view so taken by the coordinate benches. We have also noted that Hon'ble High Court is already seized of the matter and it is only a matter of time that Their Lordships take a call on the matter. Given this situation, even if we had any reservations on the correctness of the coordinate bench decision, which we donot have anyway, the matter could not have been referred for the constitution of a special bench and this division bench could not have taken a different view of the matter. That is what is the settled legal position. In view of these discussions, as also bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) and decline interfere in the matter.

18. We see no reasons to take any other view of the matter in this case. The decisions of the coordinate benches in the above cases hold good in the present context as well.

19. In view of the above discussions and following the consistent view being taken by the coordinate benches, in our considered view, the application of CUP method was indeed not justified on the facts of the present case. The intra AE transactions, on the facts of this case, were so fundamentally different in character in economic circumstances and contractual terms, that these cannot be compared with the independent transactions entered into by the assessee. We, therefore, reject the stand of the authorities below on this issue.

20. We have noted that the assessee has applied TNMM by comparing the profits on transactions with AEs and the non AEs and no specific defects have been pointed out in the allocation of costs in the segmental accounts which are duly reconciled with entity level consolidated accounts. We have also noted that dealing with the Internal TNMM adopted by the assessee the TPO had expressed the view that the basis of allocating the overheads was not clear, in response to which it was explained by the assessee that revenue and expenses have been allocated on actual basis wherever these are directly allocable, and wherever these are not directly allocable, the allocation has been done on the basis of appropriate allocation key such as ration of sales quantity, sales revenue, total revenue. It was also explained that the segmental

details have been reconciled with entity level audited accounts. The assessee had further submitted that "in case if in your view there are any inappropriate cost allocations, we would appreciate if you can kindly let us know which cost allocations are not appropriate and why these are not appropriate so that we can accordingly clarify and explain on those aspects". We have noted that the TPO did not have any specific comment on this request and he simply rejected the explanation of assessee as "not accepted". In appeal also, no specific adjustments were suggested to the allocations made in the segmental accounts and the discussions were confined to generalities. In these circumstances, we see no reasons to disturb the internal TNMM adopted by the assessee.

5. There are some variations in this year, such as the advance payment in this year is for 13.97 months on an average, as evident from the calculations at pages 149-150 of the paper book, and such as the fact that there have no sales of certain products to non AEs at all and yet internal CUP mechanism has been adopted. These variations will, however, not have any impact on the conclusions arrived at by us. We, therefore, see no reasons to take any other view of the matter for this assessment year. In any case, that approach is not even disputed by the parties before us.

6. We, therefore, uphold the plea of the assessee and delete the impugned ALP adjustment which was made by adopting Internal CUP method and rejecting the TNMM adopted by the assessee for benchmarking the sales to AEs. Once we hold so, all other issues raised in the appeal are rendered infructuous calling for no adjudication by us."

12. Since there is no disparity on facts, more particularly, when the ld.CIT(A) has not made any detailed analysis except putting reliance upon the order of his predecessor in the Asstt.Year 2007-08 and 2008-09, therefore, we are of the view that the issue is squarely covered in favour of the assessee by the order of the Tribunal passed in the Asstt.Year 2008-09 (supra). Respectfully following the order of Co-ordinate Bench, we delete the impugned ALP adjustment of Rs.7,99,59,176/-. Since we have upheld the computation of ALP of international transaction of sale of finished goods according to TNMM method, consequently, ground no.1 and 2 of the Revenue's appeal would be redundant.

11. Before us no material has been placed by the Ld. CIT-DR to demonstrate that the decisions of the Tribunal that were followed by the Ld. CIT(A) have been set aside/stayed or overruled by the higher judicial authorities. On the other hand, the assessee has brought on record a copy

of the decision of Hon'ble Gujarat High Court in its own case in Tax Appeal No. 751 to 753 of 2019 for the A.Y. 2007-08 and 2008-09 whereby the decision of the Tribunal for A.Y. 2007-08 was upheld by the Hon'ble High Court. The finding of the Hon'ble High Court is reproduced below:

> "11. We are of the view that in view of above dictum of law the findings of fact recorded by the Tribunal in the impugned order cannot be termed as perverse or contrary to the evidence on The record. consideration taken Tribunal has voluminous the into documentary evidence on record for the purpose of coming to the conclusion of adoption of TNMM by the assessee as the Most Appropriate Method of arriving at ALP. The Delhi High Court in the case of **Make My Trip India (P.) Ltd. (supra**) has also held that difference of opinion as to the appropriateness of one or the other method cannot be gone into in the appeal under Section 260A of the Act, 1961 by observing as under:
>
> *"5. The Court is of the opinion that no substantial question of law arises. The difference of opinion between the CIT (A) and the TPO, as to the appropriateness of one or the other methods, cannot ground per se be a the for interference; appropriateness of the method unless shown to be contrary to the Rules specially Rules 10B and 10C, in the opinion of the issues that ought Court, are hardly to be gone into under Section 260A of the Income-tax*
>
> 12. In the overall view of the matter, convinced that the decision of the Tribunal is correct and requires no interference and no question of law much less any substantial question of law can be said to have arisen from the impugned order of the Tribunal. In the result, these appeals fail and are hereby dismissed, with no order as to costs.

12. In view of the above facts, we do not find any infirmity with the order of Ld. CIT(A). The Revenue has not brought any material on record to point out any distinguishing feature in the facts of the case in the year under consideration vis-a-vis that of the earlier years. The transfer pricing issue raised for AY 2012-13 is fully covered by the decisions in the assessee's own cases for earlier years, wherein the ITAT had consistently

accepted **Internal TNMM** as the most appropriate method and rejected **CUP** due to material economic differences between AE and non-AE transactions. Since the facts for AY 2012-13 are identical and the Gujarat High Court had already affirmed the Tribunal's view for AY 2007-08, the grounds taken by Revenue are **dismissed.**

13. The next adjustment in respect of international transaction of the assessee pertained to **adjustment of Rs. 2,13,41,842/-** on account of availing **sales promotions and marketing services from AEs.** The Ld. CIT(A) had deleted the addition by following the decisions of the Tribunal in assessee's own case in the A.Y. 2009-10 and also in A.Y. 2011-12.

14. We have heard the rival contentions and perused the materials available on record. The Ld. CIT(A) has deleted the upward adjustment made by the TPO/AO relying on the order of the Tribunal in assessee's own case in A.Y. 2009-10 and in A.Y. 2011-12. The relevant extract of the order of the ITAT for A.Y. 2011-12 in ITA No. 559/Ahd/2020 dated 11.05.2022 is reproduced below:

> "15. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that, the learned CIT-A has deleted the upward adjustment made by the TPO/AO after making the reference to the order of the ITAT as discussed above in the earlier years. The relevant extract of the order of the ITAT reads as under:
>
> *I have carefully considered the material facts and also the decision the Hon'ble ITAT. The issue is identical and the facts are also identical, The Hon'ble ITAT vide its order in ITA NO. 1215 & 1216/AHD/2017 for the AY 2009-10 and AY 2010-11 held that TNMM is the most appropriate method in the case of sales commission and granted relief accordingly. The relevant part of the order is reproduced as under:*
>
> *"20. We have duly considered rival submissions and gone through the record carefully. As far services and also to ascertain rendering of services. His*

jurisdiction is confined to quantification of ALP. We find that this aspect is squarely covered by the decisions referred by the Id. counsel for the assesses, more particularly, decision of Hon'ble Bombay High Court in the case of Delhi Hig Court in the case of CIT Vs. Cushitten (supra) ated (supra). Apart from the above, we find that the assessee has produced evidence in the shape of agreement between it and the AE showing that AE would charge commission at the rate of X% "Un non-AE export sales/for rendering these services. The assesses has not debited other expenditure for marketing and sales with regard sales made to non-AE. It is also pertinent to note that turnover of the assessee has increased with regard to non-AE sales a/so. Its export sales to non-AE have increased from Rs.9 crores approx. in F.Y.2005-06 to Rs, 44.56 crores in the F. Y.2008-09 Therefore, taking into consideration the complete details, we are of the view that no adjustment been made at the recommendation of the TPO on this issue because it was not in the jurisdiction of the TPO to question requirement of services, and also ascertain rendition of services, and on these two reasoning, he cannot benchmark the ALP of these services at NIL. It is also pertinent to observe that In A.Y.2010-11, assessee has paid Rs. 160,16,780/to its AE for these services and that transaction was referred to the TPO The Id TPO did not recommend any adjustment in A.Y.2010-11. Therefore, no adjustment is required in the Asstt. Year 2009-10. We allow this ground a/so, and delete adjustment recommended at Rs.2,24,01,998/

The decision being binding in nature, the same has been considered for disposing the ground raised by the appellant. Since, the facts in the present case are identical in the assessment year under consideration, hence, respectfully following the decision of the Hon'ble Tribunal, addition made on this count is deleted. The appellant succeeds on Ground No.2 and also sub grounds.

15.1. Before us, no material has been placed on record by the Id. DR to demonstrate that the decisions of Tribunal that were followed by the Ld.CIT(A) while dismissing the appeals of Revenue have been set aside / stayed or overruled by the higher Judicial Authorities. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of earlier years nor has placed any contrary binding decision in its support. In view of the above, we do not find any infirmity in the order of the learned CIT-A. Hence the ground of appeal of the revenue is hereby dismissed.

15. The Revenue has been unable to bring any material on record to distinguish the facts of the present case to that of the earlier years already

adjudicated by the Tribunal. The issue relating to the determination of the arm's length price of the international transaction of availing sales promotion and marketing services was found to be covered by the decision of the Hon'ble ITAT in the appellant's own case for A.Y. 2009-10. In that year, the Tribunal had held that the appellant had adequately demonstrated the actual rendition of services by its Associated Enterprises and had substantiated the arm's length nature of the sales commission paid. The disallowance made by the TPO in A.Y. 2012-13 was based on the same grounds, namely alleged lack of evidence regarding services rendered and the reasonableness of the commission rate, which had already been rejected by the Hon'ble ITAT. Similar additions made in A.Y. 2011-12 were also deleted by the appellate authorities following the earlier judicial precedents. As there were no distinguishing facts or contrary material brought on record for the year under consideration, the earlier decisions were followed by the Ld. CIT(A). Consequently, the transfer pricing adjustments of ₹2,10,33,968/- on account of adjustment relating to marketing services availed from the AE, was deleted. We do not find any infirmity with the order of the Ld. CIT(A) on this issue. Accordingly, the grounds taken by the Revenue are **dismissed.**

Ground No. 11: Additional Depreciation

16. The assessee had claimed additional depreciation on plant and machinery which was examined by the AO in the course of assessment. The AO did not allow claim for addition depreciation of Rs. 1,63,73,591/- on replacement of spares and parts as such replacement did not result into any new plant and machinery. The Ld. CIT(A) had, however, allowed

the claim of the assessee on the ground that the genuineness of the expenditure was not disputed.

17. The Ld. CIT-DR, submitted that the additional depreciation was admissible only in respect of new plant and machinery and not on the replacement of spares/parts of the existing machinery. Therefore, the claim of the assessee was rightly disallowed by the AO to the extent of Rs. 1,63,73,591/- which pertained to replacement of spares.

18. Per contra the Ld. Sr. Counsel submitted that merely on the basis of heading given in the accounts the AO had assumed that the addition was in the nature of replacement, which was not correct. He, therefore, supported the order of the Ld. CIT(A).

19. We have considered the rival submissions. As per the provisions of the Act, the additional depreciation is allowable on new machinery or plant acquired during the year. The additional depreciation cannot be allowed on the replacement of spares and parts of the existing plant & machinery. Therefore, the AO had rightly disallowed the claim for additional depreciation on replacement of parts and spares. The assessee has not brought any evidence on record to controvert the findings of the AO. The nomenclature as given in the accounts certainly depict the correct nature of the expense. The Ld. CIT(A) was not correct in deleting the addition on the ground that the genuineness of the expenditure was not disputed by the AO. The AO had given a categorical finding that the replacement of spares and parts did not result into any new plant and machinery and this fact was not controverted by the assessee. Therefore, the disallowance of additional depreciation of Rs. 1,63,73,591/- as made by the AO is upheld. The ground taken by the Revenue is **allowed**.

Ground No. 12 – Prior Period Expense

20. The AO had made addition of Rs. 12,71,037/- on account of prior period expense under the normal provision of Income Tax as well as with the book profit u/s. 115JB of the Act. The Ld. CIT(A) while upholding the addition under the normal computation had directed the AO to delete the addition for prior period expense while computing book profit u/s. 115JB of the Act.

21. We have heard the Ld. CIT-DR as well as the Ld. Sr. Counsel in respect of this ground. The issue of addition of prior period expense while computing the book profit u/s 115JB of the Act was considered by the Co-ordinate bench of Surat Tribunal in the case of *Gujarat Chemical Port Termianl Co. Ltd. in ITA No. 394/Srt/2018* dated 05.08.2022 wherein it was held that no addition on account of prior period expense can be made while computing the book profit u/s. 115JB of the Act. The relevant part of the said order is reproduced below:

> "15. Ground Nos. 2 & 3 of the Revenue's appeal for AY 2014-15 involve a common issue relating to the deletion by the learned CIT(A) of the addition of Rs. 31,26,316/- made by the Assessing Officer on account of prior period expenses while computing book profit under section 115JB of the Act.
>
> 16. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As agreed by the learned representatives of both the sides, this issue is squarely covered in favour of the assessee inter alia by the decision of Hon'ble Karnataka High Court in the case of CIT v GMR Industries Ltd., [2020] 425 ITR 504, wherein it was held that prior period expenses charged to profit and loss account cannot be deducted from the profit of the year for the purpose of computing book profit under Section 115JB of the Act as the same does not fall within the purview of Section 115JB of the Act. To the similar effect is the decision of Mumbai Bench of this Tribunal in the case of Shivshahi Punarvasan Prakalp Ltd. Vs. ITO, (2012) 135 ITD

> 51 (Mumbai), wherein it was held that there is no provision for any adjustment on account of prior period expenses in Explanation-1 to Section 115JB(2) of the Act and, therefore, any addition on account of disallowance of prior period expenses while computing book profit is not permitted. Respectfully following these judicial pronouncements, we uphold the impugned order of the learned CIT(A) deleting the addition of Rs 31,26,316/ made by the Assessing Officer on account of prior period expenses while computing the book profit of the assessee-company under Section 115JB of the Act. The appeal of the Revenue for AY 2014-15 is accordingly dismissed.

22. Respectfully following the decision of the Co-ordinate Bench of the Tribunal, the decision of the Ld. CIT(A) on this issue is upheld. The ground taken by the Revenue is **dismissed.**

Ground No. 13 – Capitalisation of Interest on CWIP

23. The AO noticed that the assessee had closing balance of capital work in progress (CWIP) of Rs. 25,55,80,096/- and had intangible assets under construction of Rs. 1,29,66,451/-. Further, the assessee had paid interest of Rs. 2,70,56,982/- during the year which included ECB loan interest of Rs. 1,01,29,002/-. According to the AO, the assessee had taken ECB loan for acquiring fixed assets and the amount of ECB loan was found to be higher than that total value of the CWIP. The interest expenditure incurred by the assessee on ECB loan was held by the AO to be deployed towards acquisition of fixed assets. Therefore, the AO had capitalised interest of Rs. 1,34,27,327/- at the rate of 5% on the ECB loan to the closing balance of CWIP. The Ld. CIT(A) had deleted the addition by holding that the adjustment made by the AO was based on mere presumption and without any valid nexus of the loan funds vis-à-vis CWIP.

24. We have heard the Ld. CIT-DR and Ld. Sr. Counsel on this issue. It is found that the ECB loan was taken by the assessee in the A.Ys. 2004-

05, 2011-12 and in 2012-13. According to the assessee, its own funds were sufficient to meet the investment required in the fixed assets. Further, no such addition was made by the Department in any of the earlier years. In the current year, the AO had made the disallowance for interest merely on presumption that ECB loan was utilised towards acquisition of fixed assets. No nexus of the utilisation of the ECB loan towards acquisition of the fixed assets was established by the AO. Under the circumstances, the addition for disallowance of interest was rightly deleted by the Ld. CIT(A). We do not find any infirmity in the order of the Ld. CIT(A). As rightly held by him, the addition was made by the AO on mere presumption and without establishing the nexus between ECB loan and CWIP. Therefore, the order of the Ld. CIT(A) on this issue is upheld. The ground taken by the Revenue is **dismissed**.

Ground No. 14- Disallowance u/s. 35(2AB) of the Act.

25. The AO had made disallowance of Rs. 3,76,026/- being excess deduction claimed u/s. 35(2AB) of the Act, on the basis of report of DSIR. According to the AO, since the DSIR did not allow the expenditure to this extent, the assessee was not eligible to claim the same as deduction u/s. 35(2AB) of the Act. The addition made by the AO was deleted by the Ld. CIT(A) following the decision of Co-ordinate bench of this Tribunal as well as the decision of the Hon'ble Gujarat High Court on this issue.

26. We have heard the Ld. CIT-DR and the Ld. Sr. Counsel. The provision of section 35(2AB) was amended w.e.f. 01.04.2016, whereby the quantum of eligible expenditure incurred on in-house R&D facilities was required to be quantified by DSIR. Prior to 01.04.2016, there was no such requirement for quantification of the eligible expenditure by the DSIR

for claiming the deduction u/s 35(2AB) of the Act. Therefore, the AO was not correct in restricting the claim of the assessee for deduction u/s. 35(2AB) of the Act in the current year on the basis of the report of the DSIR. Therefore, the decision of the Ld. CIT(A) on this issue is upheld. The ground taken by the Revenue is **dismissed**.

27. In the result, the appeal of the Revenue is **partly allowed**.

ITA 2282/Ahd/2022, A.Y. 2013-14

28. The Grounds taken by the Revenue in this appeal are as under:

i. *"Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the upward adjustment of Rs.2,86,12,315/- made by the TPO by re-computing the arm's length price of the international transactions of sale of finished goods to its AES."*

ii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in rejecting TPO's approach of rejecting the TNMM as MAM and adopting the CUP method as the MAM which is contrary to the provisions of Rule 10C of Income Tax Rules?

iii. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the TNMM over the CUP method as the MAM which is contrary to the provisions of section 92C and Rule 10B & 10C of Income Tax Rules?"

iv. "Whether on the facts and in the circumstances of the case and in law, the Ld. CITIA) was justified allowing following appropriate adjustments claimed by the assessee for material differences in contractual terms, underlying commercial circumstances, functions, risk, and other economic factors between assessee's transactions with AEs vis-à-vis assessee's transactions with non AEs while applying the CUP method which is contrary to the provisions of section 92C and Rule 10B & 10C of Income Tax Rules.

1 Adjustment on account of bustness volumes differences

2. Adjustment for marketing and selling expenses not required to be incurred for AE sales vis-à-vis non-AE sales.

3. Adjustment for credit risk not required to borne by assessee for AE sales vis-à-vis non-AE sales
4. Adjustment for interest free ECB loan received from AE

v. *Whether on the facts and in the circumstances of the case and in law, the LA. CIT(A) was justified rejecting the TPO's approach of price comparison in foreign currency value of international transaction without appreciating the fact that the price compared in foreign currency is actual value and the price determined in Indian Rupee have impact of currency conversion rate and there by the same is contrary to the provisions of Rule 10B of Income Tax Rules."*

vi. *Whether on the facts and in the circumstances of the case and in law, the Ld. CITIA) was justified allowing the transaction of sale of TEAL chemical to Reliance Industries Ltd as comparable uncontrolled transactions for benchmarking the transaction of sale of teal chemical product by assessee to AES.*

vii. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CITIA) was justified rejecting TPO's approach of increasing the sales realization from National Titanium Dioxide Company Limited by 20% on account of volume factor for establishing the comparability under CUP which is contrary to the provisions of Rule 10C of Income Tax Rules."*

viii. *Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in deleting the adjustment of Rs.2,10,33,968/- on account of "availing sales promotion and marketing services from AB(s) relying solely on the decision of the Hon'ble ITAT for the earlier AY 2009-10 without appreciating the TPO's finding that the assessee had failed to substantiate with conclusive evidence, that the AE(s) had actually incurred expenditure for rendering the services to the assessee?*

ix. *Whether in the facts of the case and in law, the Ld. CT(A) erred in deleting the adjustment of Rs.2.10.33,968/-on account of "availing sales promotion and marketing services from AE(s) ignoring the fact that the ausessee had failed to benchmark the transactions with its AE as per law thereby failing to discharge the primary onus cast upon it by the Act?*

x. *Whether on facts and in the circumstances of the cases and in law, Ld. CITIA) has erred in accepting the ALP of the assessee determined by ignoring the guidelines laid down under the Income-tax Act and Rules and thereby violating the ratio laid down by the Hon'ble Supreme Court in the case of Sap Labs India Pvt. Ltd. us. ITO.*

xi. *"On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs. 1,68,75,814/- made on account of Capitalization of Interest on Capital Work In Progress without*

appreciating the fact that the assesse failed to establish that borrowed loan was not used for capital purposes."

xii. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the additional depreciation of Rs.91,12,076/-without appreciating the fact that tanks are not eligible assets for claiming additional depreciation u/s 32(1)(iia) of the Act."

xiii. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee on the issue of disallowance of weighted deduction u/s 35(2AB) of the Act of Rs. 13,37,301/ on R&D expenses not quantified/certified by DSIR in Form No. 3CL.

xiv. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to delete the addition of Rs. 4,31,889/-made while computing book profit u/s 115JB without appreciating the fact that the assesee has claimed the said expense in its P&L account and thus has reduced its book profit."

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

29. All the grounds taken by the Revenue in this appeal, except ground no. 12, are identical to the grounds in ITA No. 2281/Ahd/2022. Therefore, the decision taken in *ITA No. 2281/Ahd/2022* is applicable *mutatis mutandis* to this year as well.

Ground No. 12 – Additional Depreciation

30. The assessee had claimed additional depreciation of Rs. 91,12,076/- on “Tanks” under the head plant and machinery which was used for storage purpose. According to the AO, the tanks did not qualify for additional depreciation as this did not result in a new plant and machinery. Further, the assessee also did not submit the complete bills and vouchers in respect of addition of Rs. 7,09,53,936/- made to Tank account. Therefore, the additional depreciation of Rs. 91,12,076/- made

in respect of the Tanks was disallowed by the AO. The Ld. CIT(A) had, however, allowed the claim for additional depreciation of tanks.

31. We have heard the Ld. CIT-DR and the Ld. Sr. Counsel on this issue. Though the AO has mentioned that the assessee did not produce the complete bills and vouchers, he did not disallow the claim for depreciation on tanks rather only the claim of additional depreciation was disallowed. Therefore, the non-production of bills and vouchers could not have been a valid reason to disallow the claim for additional deprecation. According to the AO, the tanks constructed by the assessee during the year was not a plant and machinery eligible for additional depreciation. As explained by the assessee, the tanks were constructed for the purpose of storage of raw materials as well as finish products, which were hazardous in nature. The tanks were thus part of the plant and machinery and there was no reason for the AO to treat the same as not integral part of the plant and machinery. The normal depreciation on tanks was allowed by treating the same as plant and machinery. Therefore, there was no reason to disallow the claim for additional depreciation on the new tanks constructed during the year, in accordance with the provision of section 32(a)(iia) of the Act. The decision of the Ld. CIT(A) on this issue is, therefore, upheld. The ground taken by the Revenue is **dismissed.**

32. In the result, the appeal of the Revenue is **partly allowed**.

Order pronounced in the Court on 10/06/2026 at Ahmedabad.

Sd/-	***Sd/-***
(T R SENTHIL KUMAR)	**(NARENDRA PRASAD SINHA)**
Judicial Member	Accountant Member

Dated – 10th June, 2026 ***(True Copy)***

Neelesh, Sr. PS

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

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

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad