

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1280/Mum./2013
(Assessment Year : 2006-07)

ITA no.1281/Mum./2013
(Assessment Year : 2007-08)

Dy. Commissioner of Income Tax
Circle-7(1), Mumbai

..... Appellant

v/s

Nicholas Piramal Enterprises Ltd.
(Earlier known as "*Piramal Healthcare Ltd.*")
(Previously known as Nicholas Piramal India Ltd.)
Nicholas Piramal Tower, Ganpatrao Kadam Marg
Lower Parel, Mumbai 400 013 PAN-AAACN4538P

.....Respondent

ITA no.1332/Mum./2013
(Assessment Year : 2006-07)

ITA no.1333/Mum./2013
(Assessment Year : 2007-08)

M/s. Piramal Enterprises Ltd.
(Earlier known as "*Piramal Healthcare Ltd.*")
(Previously known as "*Nicholas Piramal India Ltd.*")
Piramal Tower, Ganpatrao Kadam Marg
Lower Parel, Mumbai 400 013 PAN-AAACN4538P

..... Appellant

v/s

Dy. Commissioner of Income Tax
Range-8(2)(1), Mumbai

.....Respondent

Assessee by : Shri Ronak Doshi a/w
Shri Priyank Gala
Revenue by : Shri H.K. Bhatt

Date of Hearing – 16/01/2024

Date of Order – 19/02/2024

ORDER

PER BENCH

The present cross appeals have been filed by the assessee and the Revenue challenging the separate impugned orders dated 20/11/2012 and 23/11/2012 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals)-12, Mumbai ["learned CIT(A)"] for the assessment years 2006-07 and 2007-08, respectively.

2. Since the present cross-appeals involve common issues arising out of a similar factual matrix, therefore these cross-appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the cross-appeal for the assessment year 2006-07 is taken up as the lead case and the decision rendered therein shall apply *mutatis mutandis* to the cross-appeal for the assessment year 2007-08.

ITA no.1332/Mum./2013 **Assessee's Appeal – A.Y. 2006–07**

3. In its appeal, the assessee has raised the following grounds:–

"GROUND 1:

Disallowance of payments made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) u/s 40 A (2) (b): Rs.3,12,66,000/-

1. On the facts and in the circumstances of the case and in law, the CIT (A) erred in following his predecessor's order for AY 2005-06 by directing the AO to allow payments made to PEL for consultancy fees and directing the basis that if comparative payments made by Appellant are more than the payments made by other group companies. No the excess should be disallowed and turnover may be adopted as the basis for determining excessiveness.

2. The Appellant, prays that entire payment made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) be allowed as deductible expense u/s 37(1) of the Act and disallowance made u/s 40A(2)(b) be deleted.

Ground II:

Disallowance of legal and professional charges incurred for system development: Rs.45,49,911/-

1. On the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO of disallowing legal and professional charges incurred for "system development" amounting to Rs.45,49,911/- (being 50% of Rs.90,99,822/-) debited under the head Legal and Professional fee on the alleged ground that the said expenditure gives enduring benefit and hence is a capital expenditure.

2. The Appellant prays it be held that the aforesaid expenses are of revenue in nature and hence allowable u/s 37(1) of the Act.

Ground III:

Disallowance of advertising and business promotion expenses: Rs.11,76,41,050/-

1. On the facts and in the circumstances of the Case and in law, the CIT (A) erred in upholding the action of AO in disallowing Rs.11,76,41,050/- being 50% of Rs. 23,52,82,100/- relating to advertising and business promotion expenses on the alleged ground that all expenditure cannot be substantiated as incurred wholly and exclusively for the purpose of business and also there is violation of the explanation to section 37(1) as expenses incurred in contrary to the provisions of law.

2. He further erred in alleging that above payment made would be termed as illegal payment under prevention of corruption Act, 1988 and IPC and also erred in confirming the action of the AO in remand report by disallowing the expenditure as it is not allowable as per the CBDT Circular No. 5 of 2012.

3. He failed to appreciate and ought to have held that the payment are not illegal payment under prevention of corruption Act, 1988 and IPC and circular relied upon cannot be considered as it is issued after the date of completion of assessment proceedings.

4. The Appellant, therefore, prays it be held that the aforesaid expenses are not ineligible payment and infact are allowable u/s 37(1) of the Act.

Ground IV:

Disallowance of deduction u/s 35(2AB) in respect of Chennai-Ennore unit: Rs.4,05,78,000/-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in following his predecessor's order for AY 2005-06, by confirming the action of the AO of disallowing weighted deduction u/s. 35(2AB) in respect of R & D (Revenue and Capital) expenses related to Chennai-Ennore unit amounting to Rs.4,05,78,000/- as deduction claimed on the alleged ground that appellant had not provided any such formal approval in Form 3CM.

2. The Appellant prays that once approval is obtained through not in prescribed form, the Appellant is entitled to weighted deduction u/s 35(2AB) of the Act.

3. Without prejudice, the Appellant prays that the disallowance should be restricted to "weighted portion" of deduction u/s 35(2AB) to Rs.1,35,26,000/- instead of entire claim of Rs.4,05,78,000/-related to Chennai-Ennore unit.

Ground V:

Disallowance of excess claim of R & D Revenue Expenditure: Rs.9,63,000/-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in directing the AO to look into the computation of the disallowance.

2. The Appellant prays that the computation was correctly done by the Appellant and hence the disallowance should be restricted to the amount computed by the Appellant.

GROUND VI:

Disallowance of depreciation on opening WDV of computer software: Rs.10,49,204/-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the action of the AO of disallowing depreciation on opening WDV of computers of Rs. 10,49,204/- on the basis of the order of the CIT (A) for A.Y. 2004-05 and 2005-06.

2. He failed to appreciate and ought to have held that software was for upgrading the computers and for using computers with latest technology and hence the software was correctly shown under the head computers and depreciation @ 60% was allowable on the same.

3. The Appellant pray that the AO be directed to treat computer and computer software under one block namely 'computers' and, after which there will not be any cessation of block and accordingly the depreciation claimed by the Appellant be allowed.

Ground VII:

Disallowance of depreciation on additions to computer software: Rs.96,51,854/-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO of recalculating depreciation on computer software @ 25% instead of @ 60% as claimed by the Appellant and thereby disallowing excess depreciation of Rs.96,51,854/- on the alleged ground that software purchased separately and independent from computer purchases amounts to "intangible assets".

2. The Appellant therefore prays that, depreciation on computer software is allowed @ 60% as claimed by the Appellant.

GROUND VIII:

Addition on account of increase in the value of closing stock (Net): Rs.1,34,21,000/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of AO in invoking section 145A of the Act and upholding the addition of Rs.1,34,21,000/-.

2. The Appellant prays that the aforesaid addition be deleted as there is no effect in profits of the Appellant as per detailed working in clause 12(b) of tax audit report.

3. Without Prejudice, the addition u/s 145A of the Act be appropriately reduced.

GROUND IX:

Deduction u/s 80G amounting to Rs.44,22,974/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in dismissing the ground as not maintainable and directed AO to decide the case the basis facts before him in disposing the application filed u/s 154 by Appellant.

2. The Appellant prays that the AO be directed to allow deduction u/s 80G of the Act as per law.

GROUND X:

The Appellant craves leaves to add to, alter and/or delete the above ground of appeal."

4. The issue arising in ground no. 1, raised in assessee's appeal, pertains to the disallowance of payments made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) u/s 40A(2)(b) of the Act.

5. The facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the manufacturing and sale of pharmaceuticals. It deals in prescription and OTC products as well as bulk drugs, chemicals, and skincare products. For the year under consideration, the assessee filed its return of income on 31/10/2006 declaring a total income of Rs. Nil. The assessee declared book profit at Rs. 154,09,13,385 under section 115 JB of the Act. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings,

from the Tax Audit Report, it was observed that a no. of associated companies have been paid under different heads which are covered under section 40A(2)(b) of the Act. It was further observed that the assessee made payments of Rs. 381 lakh to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) towards services and consultancy charges. After considering the submissions of the assessee, the Assessing Officer ("AO") vide order dated 31/12/2008 passed under section 143(3) of the Act held that various services stated to be rendered by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) like taxation matters, fund management, accounts and finance, legal matters, secretarial matters, corporate matters, information technology, etc. are general in nature and payments made to the company is not supported by any one-to-one nexus with the specific services provided. It was further held that the assessee cannot justify the payment of such a huge amount to the sister concern and pass through the rigours of section 40A(2)(b) of the Act. It was also held that the consideration paid by the assessee @0.5% of its turnover towards Royalty has no specific basis to justify its quantum. Further, there is no material to prove the role played by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) to boost the sale of the assessee so as to justify the payment of Royalty. It was also held that the agreement between the assessee and Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) is too general in nature and has been created only as a legal instrument authorising payment to the sister concern as per its demand/debit notes raised on the assessee according to its discretion. The AO held that the aforesaid payment is nothing but a colourable way to divert taxable income under the

garb of professional and consultancy services to the sister concern, which remains unsupported by any evidence to justify such payment. Accordingly, the AO held that the payment of Royalty @0.5% of turnover and further payments in the name of miscellaneous professional and consultancy services to the extent of Rs. 381 lakh does not meet the basic requirements of evidence or justification to decide the reasonableness with reference to the prevailing market rates of payments under similar circumstances by other sister concerns. The AO, in view of the aforementioned findings, restricted the payment of Royalty to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) from 0.5% to 0.3% of the turnover by disallowing 0.2% of the Royalty. Further, the AO disallowed 25% of the payment made towards consultancy and professional charges. Accordingly, the AO made total disallowance of Rs. 3,12,66,000 under section 40A(2)(b) of the Act in respect of payment made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd).

6. The learned CIT(A), vide impugned order, following the order passed by its predecessor in assessee's own case for the assessment year 2005-06, directed the AO to verify the fair market value of services rendered by the sister concern for which the payment has been made by the assessee and restrict the addition to the extent the payment is found to be excessive. Being aggrieved, both the assessee as well as the Revenue are in appeal before us on this issue.

7. We have considered the submissions of both sides and perused the material available on record. On 29/04/1995, the assessee (earlier known as

Nicholas Piramal India Ltd) entered into an agreement with Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd). Under the aforesaid agreement, Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) agreed to provide services, such as taxation matters, fund management and treasury, accountant and finance, legal matters, secretarial matters, corporate affairs, information technology, and labour law. For carrying out obligation under the aforesaid agreement, Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd), agreed to employ requisite executives and staff and also agreed to enter into arrangements and agreements with other consultants, and advisers in various fields apart from making appropriate arrangements for achieving the overall objective of furthering the image of "*Piramal Enterprises*" group. It was also agreed that Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) shall maintain a fully staffed legal and secretarial department which shall be in a position to carry out the secretarial functions required by the companies and which shall be responsible for providing assistance and advice in all legal and secretarial matters related to the group companies. Under the agreement, the assessee agreed to act in accordance with the advice and assistance provided by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd). As a consideration, the assessee agreed to pay a Royalty at the rate of not exceeding 0.5% of the turnover of goods manufactured and traded by it. Further, the assessee agreed to contribute an appropriate proportion of the expenses incurred by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) in fulfilling its obligations under this agreement. During the year under consideration, the assessee made a payment of Rs. 381

lakh under the aforesaid agreement, which comprised of payment of Royalty of Rs. 84 lakh and corporate service charges of Rs. 266 lakh.

8. In the present case, admittedly Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) is a related party within the meaning of section 40A(2)(b) of the Act. As evident from the record, the AO considered the payment of Royalty @0.5% of turnover as excessive and accordingly restricted the payment of Royalty to 0.3% of the turnover by disallowing 0.2% of Royalty payment. We find that the coordinate bench of the Tribunal in assessee's own case in M/s Piramal Enterprises Ltd. V/s Addl.CIT, in ITA No. 5471/Mum./2017, vide order dated 30/07/2018 for the assessment year 2008-09, deleted the disallowance made under section 40A(2)(b) of the Act in respect of payment of Royalty under the aforesaid agreement, by observing as under:-

"21. We have considered rival submissions and perused materials on record. On a reading of the agreement dated 29th April 1995 with PEL a copy of which is at Page-859 of the paper book, it is noticed that in addition to the reimbursement of expenses incurred by PEL on behalf of the assessee, the assessee was also required to pay to PEL royalty @ not exceeding 0.5% of his turnover of goods manufacture and traded. Thus, it is evident that the payment made of ₹ 822 crore to PEL constitutes both reimbursement of expenses and royalty. This fact is also clear from the working of reimbursement of expenses and royalty at Page-237 of the paper book, which indicates that an amount of ₹ 6.75 crore was for reimbursement of expenses and ₹1.47 crore towards royalty. From the assessment order, prima-facie, it appears that the Assessing Officer while concluding that PEL has charged more to the assessee towards reimbursement of expenses than what is contemplated in the agreement is under a misconception of fact. However, in the order giving effect to the direction of the Commissioner (Appeals), the Assessing Officer has allowed the payment made towards expenditure fully and disallowed the amount of ₹ 1.47 crore towards royalty. When the terms of the agreement specifically provide for payment of royalty and royalty was paid in compliance to such term, there is no justification for disallowance of royalty payment. Disallowance made is deleted."

9. Further, from the working of corporate service charges for the financial year 2005-06, on page 182 of the paper book, we find that in the present

case, the assessee paid a Royalty of Rs. 84 lakh, which is 0.05% of the turnover of Rs. 1449.40 crore and is even less than 0.3% of the turnover considered reasonable by the AO. Therefore, in view of the above and respectfully following the aforesaid decision of the coordinate bench of the Tribunal, we find no basis in the disallowance of Royalty payment made by the AO and accordingly, the same is directed to be deleted.

10. It is the plea of the assessee that both the assessee as well as Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) are assessable under the provisions of MAT under section 115 JB of the Act and therefore, fall under the same tax bracket. In this regard, during the hearing, the learned Authorised Representative ("*learned AR*") placed reliance on the computation of the total income of Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) for the assessment year 2006-07, forming part of the paper book from pages 185-188, wherein the gross total income of the company under the normal provisions of the Act was computed at Rs. Nil after set off of brought forward losses of preceding years. Further, the company computed the book profit under section 115 JB of the Act. The learned AR submitted that the Hon'ble jurisdictional High Court in CIT v/s V.S. Dempo Pvt. Ltd., [2010] 8 taxmann.com 159 (Bom.) held that when the companies are in the same tax bracket and pay the same rate of tax, then there is no question of tax evasion. Accordingly, it was submitted that payment of consultancy and professional charges is neither in any manner device to circumvent the provisions of tax laws nor is a colourable device of diverting taxable income to the sister concern. During the hearing, reliance was also placed upon CBDT Circular No. 6P dated 07/06/1968. We find that

the aforesaid aspect has not been examined by the lower authorities. Therefore, we deem it appropriate to restore this issue to the file of the AO limited to examination of the aforesaid submission of the assessee. If upon examination it is found that both the companies are in the same tax bracket, then the addition on account of payment of consultancy and professional charges be deleted in the light of the aforesaid decision.

11. We further agree with the submissions of the learned Departmental Representative ("*learned DR*") that setting aside the matter to the file of the AO does not come within the purview of powers of the learned CIT(A) under section 251 of the Act. However, for examination of the aforesaid aspect, the issue of part disallowance of payment of consultancy and professional charges is restored to the file of the AO. With these directions, the impugned order is set aside, and ground No. 1 raised in assessee's appeal is allowed for statistical purposes.

12. The issue arising in ground No. 2, raised in assessee's appeal, pertains to the disallowance of legal and professional charges incurred for system development.

13. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the details submitted by the assessee, it was observed that the assessee has incurred Rs. 91 lakh towards professional charges for system development. Accordingly, the assessee was asked to show cause as to why these expenses be not treated as giving an enduring benefit because of the nature being for system development. In response thereto, the assessee submitted that these

expenses are made generally towards maintenance charges on various modules of the SAP running all over India location, maintenance charges on running Lotus Notes, maintenance charges on lease application module, computer hardware maintenance, etc. The assessee submitted that these expenses are in the nature of routine expenses incurred on a year-to-year basis. The AO vide order passed under section 143(3) of the Act held that there are no. of items relating to the purchase of software which definitely cannot pass off as revenue expenditure in view of the enduring quality and long-term benefit involved in them. The AO further held that there are three big credit notes dated 30/09/2005 totalling Rs. 41,33,614 in respect of which no proper details have been furnished. Accordingly, the AO disallowed 50% of the aforesaid expenditure, i.e. Rs. 45,49,911, and held it to be capital in nature. The AO further directed a grant of depreciation at 15% on this amount.

14. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee has not been able to establish that the total amount of expenses that have been incurred are in respect of the routine business application and not for the creation of a new asset. The learned CIT(A) further held that it is for the assessee who has made the claim before the AO to establish that the expenses incurred under the head legal and professional charges are incurred for system development and are revenue in nature. The learned CIT(A) further held that the AO has very fairly given the benefit of revenue expenses to the assessee in respect of 50% of the total expenses taking into consideration the fact that some expenses of software will relate to day-to-day maintenance work/routine expenses.

15. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR reiterated the submissions made before the lower authorities and submitted that these expenses are incurred in relation to software support expenses and are in no way related to the purchase of software. It was further submitted that these expenses mainly include support and maintenance of different software like SAP, Lotus Notes at its different locations, and customisation of SAP as per the requirement of the assessee. It was also submitted that these expenses are incurred every year and are revenue in nature. The learned AR by placing reliance upon the decision of the coordinate bench in assessee's own case for the assessment year 2009-10 submitted that the expenses incurred for the purchase of software were held to be revenue expenditure. From the perusal of the order dated 07/05/2019 passed by the coordinate bench in assessee's own case for the assessment year 2009-10 in ITA No.1257/Mum/2014, we find that the expenditure incurred for the purchase of Lotus Notes web access license, purchase of antivirus software, purchase and implementation of Sapphire software, etc. was held to be revenue in nature by the coordinate bench.

16. We are of the considered view that it is for the assessee to prove that the expenditure incurred is for maintenance of the software already in use at its various locations and in this regard, the nature of services rendered by the vendor is also required to be established. In support of its submission that these expenses are for software support and not for the purchase of new software, the assessee has placed on record various invoices, forming part of the paper book from pages 196-227. The assessee has also placed on record

the contract notes with Thundercloud Technologies alongwith certain invoices. However, we find that the nature of services rendered under these contract notes has not been examined by the lower authorities. We are of the view that the nature and scope of services rendered in respect of each invoice are required to be examined in order to come to the conclusion that the expenditure is for the maintenance of software. Therefore, in view of the above, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication. The assessee is directed to furnish all the details in support of its claim, including the information regarding the nature and scope of services availed by it. If upon examination it is found that the expenditure was incurred by the assessee for the maintenance of software then the AO is directed to allow the expenditure to that extent. We further direct that to the extent the expenditure is found to be of enduring nature, the AO is directed to allow depreciation @60% to the assessee on the same. As a result, ground no. 2 raised in assessee's appeal is allowed for statistical purposes.

17. The issue arising in ground no.3, raised in assessee's appeal, pertains to the disallowance of Advertising and Business Promotion expenses.

18. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee has claimed a total expenditure of Rs. 49,11,53,310 on account of Advertising and Business Promotion expenses. During the assessment proceedings, the assessee filed a letter giving the list of sub-heads of the said expenditure along with the amount involved. The AO directed the assessee to furnish the details regarding the breakup of expenses incurred for business promotion by way of payments

to doctors, chemists, distributors, dealers under the head "*business promotion*". In response thereto, the assessee submitted a soft copy of ledger extract as the Advertisement and Business Promotion expenses incurred at all its locations in India and transactions involved are voluminous in quantity. The AO vide order passed under section 143(3) of the Act noted that the said soft copy is only showing no. of spreadsheets all under the same caption "*Advertisement and Business Promotion*" and there is no separate breakup of the expenditure, as required, has been made available. Accordingly, in view of the above, the AO considered the information available in respect of the FBT proceedings for deciding on the Advertisement and Business Promotion expenses. On the basis of the aforesaid information, the AO categorise the expenditure as under:-

<i>Sl No.</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
1.	<i>Business promotion expenses</i>	6,07,95,906
2.	<i>Key account manager expenses</i>	3,44,75,882
3.	<i>Customer Relation Management</i>	2,74,75,699
4.	<i>Gift articles</i>	10,46,54,178
5.	<i>Conference and meeting expenses</i>	78,80,515
	<i>Total</i>	23,52,82,100

19. After considering the submissions of the assessee, the AO came to the conclusion that the aforesaid expenditure is not incurred wholly and exclusively for the purpose of the business. On an estimated basis, the AO disallowed 50% of the aforesaid expenses at Rs. 11,76,41,050 out of the total Advertisement and Sales Promotion expenses of Rs. 49,11,53,310 debited by the assessee.

20. In the appellate proceedings before the learned CIT(A), the assessee submitted that the Advertisement and Business Promotion expenses are recurring expenditures incurred during the normal course of the business

exclusively for the purpose of business. It was further submitted that since the AO has not called for any specific details, it was not possible for the assessee to submit details and supporting documents for expenses amounting to Rs. 23.52 crores. It was also submitted that AO never informed the assessee about his observations or required information. Taking into consideration the submission of the assessee along with the observation of the AO, the learned CIT(A) called for a remand report from the AO. The learned CIT(A) directed the AO to identify the exact expenses which are not verifiable vis-à-vis the beneficiaries and not supported by relevant vouchers. The AO vide letter dated 25/10/2012 submitted its report stating that the gifts and other benefits given to the doctors are in violation of the regulation issued by the Medical Council of India ("MCI") and therefore inadmissible under section 37(1) of the Act being an expenditure prohibited by law. Accordingly, the AO justifies the disallowance at the rate of 50% made vide order passed under section 143(3) of the Act.

21. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee has not been able to give any explanation or the details of expenditure it has claimed in the Profit and Loss Account on Advertisement and Business Promotion expenditure. It was further held that in many cases it is not known as to who the beneficiary of the amount was and what the benefits that were accorded are. The learned CIT(A) also upheld the disallowance under section 37(1) of the Act on the basis that the expenditure is in violation of the Circular issued by the MCI. Being aggrieved, the assessee is in appeal before us.

22. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee claimed a total of Rs. 49,11,53,310 on account of Advertising and Business Promotion expenses. It is evident from the record that in the absence of complete information from the assessee regarding the particulars of these expenditures, the AO proceeded to place reliance upon the information available in the FBT proceedings and restricted the disallowance to 50% of the total expenditure of Rs. 23,52,82,100, as per the aforesaid information. We find that considering the submissions of the assessee that the AO did not call for any specific details or supporting documents for expenses amounting to Rs. 23.52 crore, the learned CIT(A) sought the remand report from the AO. Vide letter dated 25/10/2012, the AO submitted its report, which is reproduced as under:-

"Sub : Remand report in the case of M/s. Nicholas Piramal India Ltd- 2006-07-reg:-

Ref : CIT(A)-13/Report/2011-12 dated 11-07-2011.

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Kindly refer to the above.*

2) In this case, during the course of assessment proceedings, the AD made a disallowance of Rs.11,76,41,050/- on account advertising and business promotion expenses. It was noticed that expenditure of Rs. 23,52,82,100/- was routed through CRM or KAM personnel on which there was no control of the assessee so as to ensure that the same is allowable u/s.37(1) of the Act. As the assessee was not able to substantiate the claim, the AO made an addition of Rs.11,76,41,050/-.

3) At the appellate stage, the assessee requested for one more opportunity to be given to verify his claim. In this regard, assessee was given an opportunity to file detail regarding the above claim.

4) Vide order sheet noting dated 01-08-2012, 10-08-2012 and 24-08-2012, assessee filed details of expenses, voucher, etc to substantiate its claim. The same were examined and verified on test check basis.

It is seen from the details furnished that the expense under the head CRM/KAM are incurred by field staff for giving various gifts, travel facility etc to the doctors for promoting their products. In this regard it is stated that the above gift & other benefits given to doctors are in violation of the regulation

issued by Medical Council of India. Thus the claim of any expense incurred in providing above mentioned or similar freebies in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics.) Regulations, 2002 is inadmissible under section 37(1) of the income Tax Act being an expense prohibited by the law" in this regard it is stated that the Circular No.5 of 2012 issued by CBDT clearly directs that the above disallowance shall be made in the hands of such Pharmaceutical Company.

5) *Therefore the disallowance made by the AD @ 50% is justified. Considering the voluminous data which was verified on test check basis.*

6) *Submitted for your kind consideration."*

23. From the perusal of the aforesaid report, we find that the assessee filed the details of expenses, vouchers, etc. to substantiate its claim. Further, the AO after examination and verification of these details on a test check basis stated that the expenses are incurred by field staff for giving various gifts, travel facilities, etc. to doctors for promoting the products of the assessee. Finding the same to be in violation of the regulation issued by the MCI, the AO supported the conclusion of the disallowance of 50% of the aforesaid expenditure. Therefore, it is not now in dispute that the supporting evidence and documents were furnished by the assessee to substantiate its claim. There is also no dispute regarding the submission of the AO in the remand report that the expenditure was incurred for giving various gifts, travel facilities, etc. to the doctors for the promotion of assessee's products.

24. Thus, the only issue which survives for adjudication is whether the expenditure incurred by the assessee is in violation of the guidelines issued by the MCI and consequently, whether the expenditure is not allowable under section 37(1), in view of the Circular No.5 of 2012. In this regard, the learned AR submitted that the amended guidelines of the MCI were published vide notification dated 14/12/2009 and therefore are applicable only with effect

from the said date. Thus, it was submitted that the said guidelines are not applicable to the year under consideration, i.e. assessment year 2006-07.

25. We find that this issue came up for consideration before the coordinate bench of the Tribunal in Wockhardt Ltd v/s DCIT, in ITA No. 2633/Mum./2015. Vide order dated 10/02/2023, the coordinate bench after considering the decision of the Hon'ble Supreme Court in Apex Laboratories Pvt. Ltd. v/s DCIT, [2022] 442 ITR 1 (SC), came to the conclusion that the MCI Regulations as amended with effect from 14/12/2009, whereby Regulation 6.8 was inserted prohibiting Medical Practitioners to accept freebies, gifts, etc. from pharmaceutical companies, is effective only from 14/12/2009 and therefore, the expenditure incurred prior to that date would be allowable. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

"9.4 We have heard the submissions made by rival sides on the issue. The assessee has given freebies to the medical practitioners amounting to Rs.70,89,934/- in the period relevant to AY under appeal and has claimed the same as business expenditure u/s 37(1) of the Act. The AO/CIT(A) disallowed the same holding that freebies to the medical practitioners cannot be allowed as expenditure as it is prohibited by CBDT Circular (supra) and MCI Guidelines.

9.5 Before deciding this issue in the instant case, it would be relevant to refer to the facts and decision in the case of Apex Laboratories (P) Ltd. (supra). In the said case the AO disallowed expenses claimed by assessee under the head "Sales Promotion Expenses" and "Other Selling Expenses" on the ground that the same were in the nature of gifts/freebies to the Medical Practitioners and the same were against the Medical Council Act, 1956 and amended MCI Regulations. The CIT(A) granted part relief to the assessee on the ground that the amendment to MCI Regulations is effective from 14/12/2009, therefore till 14/12/2009, the gifts/freebies to the Doctors and Medical Practitioners did not fall within the purview of Explanation to Section 37(1) of the Act. In other words the CIT(A) in AY 2010-11 allowed the claim of assessee from 01/04/2009 to 13/12/2009 and rejected the claim of assessee from 14/12/2009 (i.e. from the date of publication of amendment in Official Gazette) to 31/03/2010. Against the said findings of CIT(A), the assessee in ITA No. 1153/Madras/2014 and the Revenue in ITA No. 1343/Madras/2014 carried the issue in appeal before the Tribunal. The Tribunal after considering the decision of Hon'ble Himachal Pradesh High Court in the case of Confederation of India

Pharmaceutical Industry (SSI) Vs. CBDT reported as 353 ITR 288 (HP) upheld the findings of CIT(A) and dismissed both the appeals vide order dated 29/01/2018.

The assessee carried the issue further in appeal before the Hon'ble Madras high Court in Tax Case Appeal No. 723 of 2018. The Hon'ble High Court dismissed the appeal of assessee vide judgment dated 18/03/2019. The assessee further agitated the issue before Hon'ble Supreme Court of India. The Hon'ble Apex Court affirming the decision of High Court inter alia held:

- CBDT Circular 5/2012 dated 01/08/2012 is clarificatory in nature, and effective from the date of implementation of Regulation 6.8 of the 2002 Regulations, i.e. from 14/12/2009.*
- The Pharmaceutical companies gifting freebies to doctors etc. is clearly "prohibited by law" and not allowed to be claimed as a deduction u/s 37(1) of the Act.*

Thus, to sum up, view taken by the CIT(A) was approved by the Hon'ble Supreme Court of India.

9.6 Now, reverting to the facts of present case, the assessment year under appeal is 2009-10 relevant FY 2008-09. MCI Regulations were amended w.e.f. 14/12/2009, whereby Regulation 6.8 was inserted prohibiting Medical Practitioners to accept freebies, gifts etc. from pharmaceutical companies. The period in the instant appeal is prior to the amendment. The Hon'ble Supreme Court in the case of Apex Laboratories Ltd. (supra) has held that CBDT Circular 5/2012 being clarificatory would apply retrospectively from the date of amendment to MCI Regulations i.e. w.e.f. 14/12/2009. Thus, from the decision rendered in the case of Apex Laboratories (P) Ltd., it is unambiguously clear that the amended MCI Regulations would not apply to the AY 2009-10. Hence, for the impugned AY the assessee's claim of deduction of freebies to the Medical Practitioners would be allowable u/s 37(1) of the Act as amendment to MCI Regulations is a subsequent event, effective from 14/12/2009. Ergo, the assessee succeeds on ground no. 4 of appeal on primary contention. The other propositions mooted by the AR of assessee have become academic at this stage."

26. Since the year under consideration is the assessment year 2006-07, therefore respectfully following the aforesaid decision, we are of the considered view that the expenditure incurred by the assessee on providing freebies, i.e. various gifts, travel facilities, etc., to the doctors is allowable under section 37(1) of the Act as the amendment to MCI Regulations is effective from 14/12/2009. Accordingly, the disallowance of Rs. 11,76,41,050

is directed to be deleted. As a result, ground no. 3 raised in assessee's appeal is allowed.

27. The issue arising in ground no. 4, raised in assessee's appeal, pertains to the disallowance of weighted deduction under section 35(2AB) of the Act in respect of the Chennai-Ennore Unit.

28. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee claimed a weighted deduction of Rs. 4,05,78,000 under section 35(2AB) of the Act in respect of Chennai-Ennore Unit. During the assessment proceedings, the assessee was asked to furnish the approval granted under section 35(2AB) of the Act in respect of the aforesaid unit. In response thereto, the assessee submitted that the details of the claim made under section 35(2AB) of the Act for research and development revenue and capital expenditure has been submitted to the Department of Science and Industrial Research ("DSIR") in Form No.3CL with annexures, auditors certificate. In the absence of formal approval from the prescribed authority, the AO vide order passed under section 143(3) of the Act held that the assessee has not established its lawful entitlement to the said deduction as per section 35(2AB) of the Act. Accordingly, the AO disallowed the weighted deduction of Rs. 4,05,78,000 claimed by the assessee under section 35(2AB) of the Act.

29. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the action of the AO cannot be held as incorrect regarding the disallowance made in respect of deduction claimed under section 35(2AB) of the Act. In line with the finding of its predecessor in

assessee's own case for the assessment year 2005-06, the learned CIT(A) held that the statutory Form no.3CM is a mandatory Form and the claim for deduction under the above section can only be granted if the Form is submitted before the AO. Accordingly, the action of the AO in denying the weighted deduction claimed under section 35(2AB) of the Act was upheld. The learned CIT(A) further directed the AO that the claim of deduction may be allowed to the assessee if the approval in Form No.3CM, which is a mandatory requirement, is submitted by the assessee. Being aggrieved, the assessee is in appeal before us.

30. We have considered the submissions of both sides and perused the material available on record. The assessee has two Research and Development (R&D) units, one at Mulund/Goregaon Unit, Mumbai, and other at Ennore Unit, Chennai. For the year under consideration, the assessee claimed weighted deduction under section 35(2AB) of the Act in respect of the revenue and capital expenditure incurred in the aforesaid two R&D units. As is evident from the record, the AO denied the deduction claimed under section 35(2AB) of the Act as the assessee failed to furnish the requisite approval in Form No. 3CM. As per the assessee, it made an application to the DSIR for recognition of in-house R&D at Ennore Unit, Chennai on 25/06/2004. It was submitted that DSIR vide letter dated 23/02/2005 granted in principle recognition to the in-house R&D unit of the assessee at Ennore Unit, Chennai up to 31/03/2007. However, the assessee is yet to receive Form No.3CM for the Ennore Unit, Chennai. During the hearing, the learned AR submitted that in this regard., the assessee has filed various reminder letters before the DSIR on 18/05/2009, 24/12/2012, 01/04/2013, and 24/01/2014 requesting for issuance of Form No.

3CM. It is the plea of the assessee that once the approval is granted then a weighted deduction under section 35(2AB) of the Act is allowable. The learned AR further submitted that merely on the ground of technical difficulties from the DSIR, weighted deduction cannot be disallowed since the assessee has filed every Form and also filed repeated reminders regarding the issuance of Form No. 3CM.

31. Before proceeding further, it is pertinent to analyse certain provisions of the Act and the Rules, which are relevant for the adjudication of this issue. Section 35(2AB)(1) of the Act, as it stood in the relevant year, reads as under:-

"(1) Where a company engaged in the business of bio-technology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred."

32. The relevant rules in so far as it concerns deduction under section 35(2AB) of the Act are provided in Sub-Rule (1B), (4), and (5A) of Rule 6 of the Rules. These rules read as follows:

"(1B) For the purposes of sub-section (2AB) of section 35, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research.";

"(4) The application required to be furnished by a company under sub-section(2AB) of section 35 shall be in Form No.3CK.";

"(5A) The prescribed authority shall, if he is satisfied that the conditions provided in this rule and in sub-section (2AB) of section 35 of the Act are fulfilled, pass an order in writing in Form No. 3CM:"

Provided that a reasonable opportunity of being heard shall be granted to the company before rejecting an application."

33. Therefore, from the aforesaid provisions, it is sufficiently evident that in order to claim weighted deduction under section 35(2AB) of the Act, the in-house R&D facility is required to be approved by the prescribed authority, which as per Rule 6 is the Secretary, DSIR. Further, for seeking the aforesaid approval, the assessee is required to furnish an application in Form No.3CK and once the prescribed authority is satisfied that the conditions of Rule 6 and section 35(2AB) of the Act are fulfilled, the order is to be passed by the prescribed authority in Form No. 3CM. Undisputedly, in the present case, the assessee has filed the application before the DSIR seeking approval from the prescribed authority, which is still pending. However, DSIR, Ministry of Science and Technology vide letter dated 23/02/2005 accorded recognition to the in-house R&D unit of the assessee at Ennore, Chennai. From the perusal of the said letter, forming part of the paper book from pages 386-387, we find that the said recognition is not issued under Form No.3CM which is a mandatory requirement for claiming deduction under section 35(2AB) of the Act. Further, we find that the said letter has been signed by Scientist-'G'. However, as noted above the prescribed authority under section 35(2AB) of the Act read with the relevant Rules is Secretary, DSIR. Therefore, we are of the considered view that the recognition granted to the in-house R&D unit of the assessee at Ennore, Chennai vide letter dated 23/02/2005 cannot under any circumstances be considered equivalent to Form No.3CM.

34. During the hearing, the learned AR placed reliance upon the decision of the Hon'ble Gujarat High Court in CIT v/s Claris Lifestyles Ltd, [2008] 326 ITR

251 (Guj.), in order to support the submission that once the approval is granted then weighted deduction under section 35(2AB) of the Act is to be allowed. From the perusal of the aforesaid decision, we, at the outset, find that the existence of approval in Form No. 3CM was not in dispute, and the only issue under consideration before the Hon'ble High Court was regarding the significance of the date of approval. By answering the issue in favour of the taxpayer, the Hon'ble High Court held that the provisions of section 35(2AB) of the Act nowhere suggest or imply that date of approval only will be the cut-off date for eligibility of weighted deduction on expenses incurred from that date and thus the entire expenditure so incurred on the development of R&D facility has to be allowed for weighted deduction under section 35(2AB) of the Act.

35. We find that a similar issue was under consideration before the Hon'ble Gujarat High Court in Banco Products (India) Ltd v/s DCIT, [2018] 405 ITR 318 (Guj.). The Hon'ble High Court decided the issue in favour of taxpayer following the decision in Claris Lifesciences Ltd (supra). Further, from the perusal of all the decisions relied upon by the assessee, we find that approval in Form No. 3CM was furnished by the taxpayers. Further even in the case of DCIT v/s Meco Instruments (P) Ltd, [2010] 7 taxmann.com 24 (Mum.) we, from para-5 of the order, find that the prescribed authority, viz. Government of India, Ministry of Science and Technology, DSIR granted the approval in Form No. 3CM. However, in the present case, undisputedly the said approval by the prescribed authority in Form No.3CM is not available on the record. Therefore, we find the decisions relied upon by the assessee to be factually distinguishable.

36. We find that while deciding a similar issue in assessee's own case in Piramal Enterprises Ltd. (supra), for the assessment year 2008-09, the coordinate bench of the Tribunal vide order dated 30/07/2018, observed as under:-

"27. We have considered rival submissions and perused materials on record. It is an undisputed fact that there is no approval by the competent authority in Form no.3CM in respect of the expenditure incurred towards the R&D facility. Section 35(2AB) of the Act mandates furnishing of approval in Form no.3CM for the purpose of availing deduction. It is the contention of the assessee that though, it has made application seeking approval in Form no.3CM, however, it is still awaited. As held by the Tribunal, Mumbai Bench, in case of PCP Chemicals Pvt. Ltd. (supra), approval by the competent authority in Form no.3CM is mandatory for claiming deduction under section 35(2AB) of the Act. The same view has also been expressed in Vivimed Labs Ltd. (supra). However, considering the contention of the learned Sr. Counsel that the assessee has applied for approval in Form no.3CM which is still pending, we are inclined to restore the issue to the Assessing Officer for providing an opportunity to the assessee to furnish the approval of the competent authority in the prescribed manner for claiming deduction under section 35(2AB) of the Act. This ground is allowed for statistical purposes."

37. Since, in the present case, the assessee has also applied for approval before the DSIR, we deem it appropriate to restore this issue to the file of the AO to provide an opportunity to the assessee to furnish the approval of the prescribed authority in the prescribed manner for claiming deduction under section 35(2AB) of the Act. With the above directions, ground no. 4 raised in assessee's appeal is allowed for statistical purposes.

38. Ground No. 5 raised in assessee's appeal was not pressed during the hearing. Accordingly the same is dismissed as not pressed.

39. Grounds No. 6 and 7 raised in assessee's appeal pertain to the disallowance of depreciation on computer software.

40. We have considered the submissions of both sides and perused the material available on record. The AO disallowed the depreciation claimed by the assessee on opening WDV of computer software by following the approach adopted in the assessment year 2004-05. Further, the AO has restricted the claim of depreciation on software to 25% as against 60% claimed by the assessee. We find that the coordinate bench of the Tribunal in assessee's own case for the assessment year 2004-05, vide order dated 20/06/2022, in ITA No. 769/Mum./2008, directed the AO to allow the depreciation at 60% and also directed the AO to consider computer and computer software as one block. Since the year under consideration is the third year of the claim of depreciation and the computation of depreciation in the current year is consequential to the preceding year, therefore we restore this issue to the file of the AO to compute the depreciation by considering the closing WDV of the preceding year as the opening WDV of the current year. Further, the AO is directed to allow depreciation on computer software at 60% in line with the directions of the coordinate bench in the preceding year. As a result, grounds No. 6 and 7 raised in assessee's appeal are allowed for statistical purposes.

41. The issue arising in ground No. 8, raised in assessee's appeal, pertains to the addition on account of increase in the value of closing stock in relation to net unutilised MODVAT credit.

42. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, upon perusal of the Tax Audit Report, the AO noted that the assessee follows the non-inclusive method of accounting for MODVAT credit with regard to inventory,

purchases, and consumption. The AO held that in terms of the amended provisions of section 145A of the Act, irrespective of the method adopted by the assessee for the valuation of raw materials, inventory, and closing stock for the purpose of determining the profits arising during the year, such valuation shall not be accepted for the purpose of under the Act if they are not adjusted in accordance with section 145A of the Act. The AO held that it is not mandatory on the part of the assessee to adopt the inclusion method of valuation for the specific purpose of section 145A of the Act. Following the approach adopted in the preceding year, the AO held that by not following the provisions of section 145A of the Act the determination of the profit will be impacted adversely, unlike the claim of the assessee. Accordingly, the unutilised MODVAT credit balance of Rs.1,34,21,000 was added as an adjustment under section 145A of the Act. The learned CIT(A), vide impugned order, upheld the action of the AO.

43. We find that the coordinate bench of the Tribunal in assessee's own case in M/s Piramal Enterprises Ltd v/s ACIT, in ITA No.3927/Mum./2006, vide order dated 20/02/2020, for the assessment year 2002-03 observed as under:-

"5.1. We have heard rival submissions. We find that the Id. AO had recorded in the assessment order that in the tax audit report, the Tax Auditor mentioned that assessee is following EXCLUSIVE method of accounting for MODVAT with regard to inventory, purchases and consumption. The assessee vide letter dated 29/11/2004 had also M/s. Piramal Enterprises Ltd., contended that the aforesaid treatment had no impact on the profit at all. The Id. AO observed that unutilised balance of MODVAT credit on stock in trade is reflected in the balance sheet as an asset amounting to Rs.152.83 lakhs and as per the proviso of Section 145A of the Act, the unutilised MODVAT needs to be included in the value of closing stock. During the course of assessment proceedings, the assessee, without prejudice, claimed that the amount which was added to the closing stock in A.Y.2001-02 on similar lines as above i.e. Rs.86.56 lakhs should be allowed as part of the opening stock in A.Y.2002-03. This claim of the

assessee was allowed by the Id. AO by increasing the opening stock to the extent of Rs.86.56 lakhs and the net addition on account of unutilised MODVAT credit was made by the Id. AO at Rs.66,27,443/-. This action of the Id. AO was upheld by the Id. CIT(A). We find that this issue was the subject matter of adjudication by this Tribunal in assessee's own case for A.Y.2009-10 in ITA Nos.1257/Mum/2014 & 1486/Mum/2014 dated 07/05/2019 wherein it was held as under:-

"Adjustment of Inventory as per Sec. 145A : Rs. 1,16,08,088 21. We shall now advert to the contention of the Id. A.R that the A.O/DRP had erred in re-computing the value of the "closing stock. at Rs. 15,982.73 lacs as against Rs. 14,834 lacs and "opening stock. at Rs. 14,367.65 lacs as against Rs. 13,335 lacs, on the ground that the assessee is following exclusive method of accounting for MODVAT with regards to its inventory. It is the claim of the Id. A.R that irrespective of whether the assessee follows Inclusive or Exclusive method of valuation of stock, the amount of unutilized MODVAT shall have no bearing on the profits of the assessee. We find that the assessee had before the lower authorities objected to the aforesaid addition as was sought to be made by the A.O on three counts viz. (i) that requirement of valuing the purchases, sales and inventories for the purpose of determining the income under the head "Profits and gains of business or profession" was contrary to the accounting principles laid down by Accounting Standard-2 (for short "AS- 2"); (ii). that the ICAI had issued "Guidance Note on Tax Audit under Section 44AB of the I-T Act", which specifically requires the formats in which information as regards the valuation of purchases, sales and inventories under both inclusive and exclusive method are to be presented, M/s. Piramal Enterprises Ltd., and the same provides that irrespective of the methods being followed, the net impact on the profit and loss will be nil; and (iii) that irrespective of whether the assessee follows Inclusive or Exclusive method of valuation of stock, the amount of unutilized MODVAT credit will have no impact on the profits of the assessee. Apart there from, the assessee had also objected to the calculation of the "closing stock. and „opening stock. by the A.O by multiplying the stock value by the ratio of purchases (including excise) and purchases (net of excise). It is further averred by the Id. A.R that insofar the valuation of inventories as per Sec. 145A was concerned, the raw material, packing material, stores and works-in-progress as valued at cost, while for the finished goods were valued at cost or net realisable value, whichever was lower. In fact, it is the claim of the assessee that the „cost. has consistently been taken at net of MODVAT credit. On the basis of the aforesaid facts, it is stated by the assessee that the element of MODVAT was neither included in the consumption nor into cost for valuation of „closing stock. As such, it is the claim of the assessee that as it has debited its „profit & loss a/c. with purchases of raw material net of MODVAT Excise duty, therefore, the valuation of closing stock of raw material was also made at cost net of such excise duty. In sum and substance, it is the claim of the assessee that the costs which have not been debited to the profit and loss account at all, cannot be used for valuation of closing stock. On the basis of its aforesaid submissions, it is the claim of the assessee that the deviation on the profit of the year on account of method of valuation prescribed under Sec. 145A is Rs. Nil, which formed part of the tax audit report as "Annexure B.. 22. We have deliberated at length on the issue under consideration and find that the assessee for the purpose of its statutory accounts had followed the AS-2 on Valuation of Inventories, and the Guidance Note on Accounting Treatment of MODVAT/CENVAT issued by the ICAI. Accordingly, the assessee had followed the exclusive method for accounting purposes. However, for the purposes of income-tax it had worked out the impact of grossing up of tax, duty, cess etc. by restating the values of purchases and inventories by including inter alia the CENVAT credit. The adjustment required u/s 145A of the I.T Act was reflected in Clause 12(b) of the tax audit report of the assessee. As per Clause 12(b) the adjustment u/s 145A worked out at Nil. It is the claim of the assessee that the

amount reflected in Clause 12(b) of the tax Audit report shall be treated as the adjustment required u/s 145A, and in support thereof had relied on the order of the ITAT, Mumbai in the case of Hawkins Cookers Ltd. Vs. ITO (2008) 14 DTR 206 (Mum). We have perused Clause 12(b) (Page 61 of „APB.) of the Tax Audit report of the assessee and find that it is the claim of the assessee that the impact of grossing up of tax, duty, cess etc. by restating the values of purchases and inventories by inter alia including the effect of CENVAT credit will be Nil, subject to Sec. 43B that the duty, taxes, cess etc. is paid before the due date. Of filing of the return of income. As the Id. D.R had submitted that the aforesaid working of the assessee would require to be verified, we M/s. Piramal Enterprises Ltd., therefore, in all fairness restore the matter to the file of the A.O for readjudication. Needless to say, the A.O shall in the course of the set aside proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its claim before him. The Ground of appeal No. V is allowed for statistical purposes."

5.2. Respectfully following the same, we deem it fit and appropriate, to remand this issue to the file of the Id. AO to decide the same in the light of directions issued by the Tribunal for the A.Y. 2009-10. Accordingly, the Ground No. II raised by the assessee is allowed for statistical purposes."

44. Since in the year under consideration the working of the assessee is required to be verified, therefore, respectfully following the judicial precedents in assessee's own case, we deem it appropriate to restore this issue to the file of the AO to decide in the light of the directions as rendered by the Tribunal in the preceding year. Accordingly, ground no. 8 raised in assessee's appeal is allowed for statistical purposes.

45. Vide application dated 16/01/2024, the assessee raised the following additional ground of appeal:-

"ADDITIONAL GROUND NO. I: DEDUCTION U/S 80G OF THE ACT AMOUNTING TO RS. 44,22,974/-:

1. On the facts and circumstances of the case and in law, the Id. AO erred in not granting deduction u/s 80G of the Act amounting to Rs. 44,22,974/- as against donations made amounting to Rs. 88,45,947/- which are eligible for deduction u/s 80G of the Act.

2. The Appellant prays that the AO be directed to allow deduction u/s 80G of the Act amounting to Rs. 44,22,974/- as per the law.

3. Alternatively, the Appellant prays that the AO be issued necessary directions to dispose off the application u/s 154 in a time bound manner.

The Appellant craves leaves to add to, alter and/or delete the above ground of appeal.

46. In the aforesaid application, the assessee submitted that in relation to several grounds raised by the assessee in its appeal, it was realised that the same were dismissed by the learned CIT(A) on the basis that the same are not emanating from the assessment order. Further, pending the disposal of assessee's rectification application under section 154 of the Act, the learned CIT(A) has also directed the assessee to take up these issues before the AO in rectification proceedings. It was submitted that ground no. 9 which pertains to the denial of deduction under section 80G of the Act is one such issue. Accordingly, the assessee seeks admission of the aforesaid additional ground of appeal. Since the basic facts for deciding this issue are available on record, the prayer of the assessee vide aforesaid application is accepted.

47. The brief facts of the case pertaining to this issue are that the assessee made payments amounting to Rs. 88,45,947 to various parties as donations. Accordingly, it made a claim of deduction of Rs. 44,22,974 (i.e. 50%) under section 80G of the Act. However, the AO while passing the assessment order did not grant the deduction as claimed by the assessee under section 80G of the Act in its return of income. Subsequently, the assessee filed a rectification application under section 154 of the Act on this issue and furnished copies of receipts of donations. The AO vide order dated 09/02/2009, inter-alia, rejected the rectification application filed by the assessee on this issue on the basis that the assessee has not furnished the original receipts of the said donation. The assessee filed another rectification application under section 154 of the Act on 25/02/2009 furnishing the original donation receipts aggregating to Rs.

88,45,087 along with copy of exemption certificates under section 80G of all the parties. It is evident from the record that the learned CIT(A) dismissed this issue on the basis that the aforesaid disallowance does not emanate from the assessment order, as there is no discussion regarding this issue.

48. We have considered the submissions of both sides and perused the material available on record. Since the rectification application filed by the assessee is already pending consideration before the AO and the assessee has also furnished the original donation receipts along with the exemption certificates of all the parties, we direct the AO to consider the plea of the assessee regarding the grant of deduction under section 80G of the Act as per law after necessary verification of all the details so furnished by the assessee. Accordingly, additional ground raised by the assessee is allowed for statistical purposes, while grounds no. 9 raised in the present appeal is dismissed as infructuous.

49. In the result, the appeal by the assessee for the assessment year 2006-07 is partly allowed for statistical purposes.

ITA no.1280/Mum./2013
Revenue's Appeal – A.Y. 2006-07

50. In its appeal, the Revenue has raised the following grounds:–

"i. The Learned CIT(A) has erred on the facts and in Law in directing the AO to verify the reply payments and consultancy and professional charges to Piramal Enterprises Ltd by ker group companies of the assessee and to compare with those made by the assessee. wakout properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer.

ii. The Learned CITA) has erred on the facts and in Law in practically setting aside the issue of disallowance of Rs. 3,12,66,000/- under section 40A(2)(b) to

the file of the AO as the setting aside of the issues to the file of the AO does not come within the powers of CIT(A).

iii. The Learned CIT(A) has erred on the facts and in Law in directing the AO to calculate the excessive payments (out of the royalty and consultancy and professional charges paid) on the basis of turnover without looking into the reasonableness of the payments.

iv. The Learned CIT(A) has erred on the facts and in Law in directing the Assessing Officer that the depreciation not claimed by M/s. Boehringer Mannheim India Ltd and M/s. Piramal Holdings Ltd, should not be considered for the purpose of working out the written downvalue, to allow the depreciation thereof.

v. The Learned CIT(A) has erred on the facts and in Law in deleting the disallowance made by the AO in respect of deduction of Rs. 24285714/- claimed u/s. 35A in respect of the acquisition of the trade mark by M/s. Sarabhai Piramal Pharmaceuticals Ltd. (since merged with the assessee company)".

vi) The Learned CIT(A) has erred on the facts and in Law in deciding that the deduction u/s. 80HHC for the purpose of section 115JB is to be worked out on the basis of adjusted book profit following the decision of Mumbai ITAT in the case of Syncome Formulations India Ltd reported in 108 TTJ 105 (SB) without appreciating that the ITAT's decision has been overruled by the Bombay High Court in the case Ajanta Pharma Ltd 180 Taxmann 494."

51. In view of our findings rendered in assessee's appeal on the issue of disallowance under section 40A(2)(b) of the Act, grounds no. (i), (ii), and (iii) raised in Revenue's appeal are partly allowed for statistical purposes.

52. The issue arising in ground no. (iv), raised in Revenue's appeal, pertains to the allowance of depreciation in respect of assets transferred pursuant to the merger.

53. The brief facts of the case pertaining to this issue, as emanating from the record, are: In the earlier assessment, it was noted by the AO that Boehringer Mannheim India Ltd ("BMIL") was merged with the assessee as per the scheme of amalgamation with effect from 01/04/1996. The assessee has claimed depreciation on assets taken over as part of the merger on the WDV without adjusting for depreciation allowable for the assessment years 1995-96

and 1996-97 in the hands of the erstwhile BMIL, as the erstwhile BMIL did not opt to claim depreciation for the assessment years 1995-96 and 1996-97 although of the assets have been used in the business carried on by BMIL during these years. Further, in respect of the Pharma Division taken over from Piramal Holdings Ltd, the assessee claimed depreciation on the basis of WDV without adjusting foregone depreciation for the assessment year 1996-97. The AO vide order passed under section 143(3) of the Act, following the approach adopted in the assessment year 1999-00, held that the WDV of the assets for the purpose of depreciation is to be calculated after adjustment of the foregone depreciation. The learned CIT(A), vide impugned order, noted that the issue is a recurring one and following the orders of his predecessors directed the AO to allow the depreciation on the basis of the computation made by the assessee and not to reduce the WDV on the basis of the notional amount of depreciation. Being aggrieved, the Revenue is in appeal before us.

54. We have considered the submissions of both sides and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Piramal Enterprises Ltd v/s Addl. CIT, in ITA No. 1754/Mum./2015, vide order dated 15/01/2020, for the assessment year 2010-11 decided the issue in favour of the assessee by following the earlier decision of the Tribunal in assessee's own case for the assessment year 2009-10. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

"19. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that this issue was subject matter of deliberations by the co-ordinate bench of ITAT, Mumbai 'J' bench in assessee's own case for AY 2009-10, where under identical set of

facts, the Tribunal allowed claim of depreciation. The relevant findings of the Tribunal are as under:-

18. Insofar the disallowance of the claim of depreciation pertaining to BMIL is concerned, we find that the same being a recurring issue is covered by the order of the Tribunal in the assessee's own case for A.Y. 2008-09 in favour of the assessee. We find that the Tribunal while disposing off the appeal of the assessee for A.Y. 2008-09, had observed that it was an admitted fact that BMIL before its merger had not claimed depreciation on the assets in the A.Y. 1995-96 & A.Y. 1996-97. In fact, the assessee had claimed depreciation for the first time on the assets taken over from BMIL. It was observed by the Tribunal that as per the provisions of Sec. 32 of the I-T Act applicable to the relevant assessment year, the assessee was free to either claim or not claim depreciation, as per its own option. On the basis of the aforesaid deliberations, it was concluded by the Tribunal that the A.O. was not justified in notionally reducing the depreciation for A.Y. 1995-96 & A.Y. 1996-97 from the WDV of the assets of BMIL while quantifying the depreciation in the hands of the assessee. As a matter of fact, the Tribunal while concluding as hereinabove had relied on a similar view taken by a coordinate bench in the assessee's own case viz. Additional CIT Vs. Nicholas Piramal India Ltd. (2012) 150 TTJ 1 (Mum). In the said case the Tribunal drawing support from the judgment of the Hon'ble Supreme Court in the case of CIT VS. Mahendra Mills (2000) 159 CTR (SC) 381, had concluded that in the absence of a claim of depreciation by the assessee, the same could not have been thrust upon it even if the particulars were available with the AO. We have perused the order of the Tribunal for A.Y. 2008-09 and finding no reason to take a different view, respectfully follow the same. Apart there from, we are also in agreement with the Id. A.R. that now when the DRP while disposing off the objections filed by the assessee had specifically directed the A.O. to allow claim of depreciation as was raised by the assessee in respect of BMIL, therefore, there was no reason for the A.O. to have not followed such directions while passing the final assessment order u/s 143(3) r.w.s 144C (13), dated 28.01.2014. In terms of our aforesaid observations, we direct the A.O. to allow the assessee's claim of depreciation insofar the assets of BMIL are concerned.

19. As regards the claim of depreciation raised by the assessee on the assets of PHL which w.e.f 01.06.1996 were taken over by the assessee under a scheme of arrangement duly sanctioned by the Hon'ble High Court of Bombay, vide its order dated 14.08.1997, we find that the assessee subsequent to the takeover had taken the WDV on the basis of the Income Tax records of PHL. As is discernible from the orders of the lower authorities and admitted by the assessee in its objections raised before the DRP, though PHL had not claimed depreciation on its assets, however, the A.O. while framing the assessment in its hands for A.Y. 1996-97 had allowed the same. Apart there from, the assessee had during the year relevant to A.Y. 1999-2000 sold its two divisions viz. (i). Glass Division (GGL); and (ii). Bulk Drug Division (BDD) on a slump sale basis. As such, the assessee company in A.Y. 1999-2000 while computing the depreciation had dropped the WDV of the aforesaid two undertakings from the respective block of assets" on the date of such slump sale. As observed hereinabove, the A.O. declined to accept the claim of the assessee that it was a "slump sale" transaction and considered the same

as an itemised sale of assets. On the basis of his aforesaid observations, the A.O worked out the WDV of the block of assets" by taking the values of the assets as were recorded in the books of accounts of the purchasing company, as the sale value, and reduced the same from the different block of assets". In the backdrop of his aforesaid reworking of the WDV the A.O scaled down the assessee's claim of depreciation in respect of assets of PHL.

20. On a perusal of the records, we find that it is the claim of the assessee that the CIT(A) while disposing off its appeal for A.Y 1999-2000 had observed that the sale of two divisions viz. (i). Glass Division (GGL); and (ii). Bulk Drug Division (BDD) by the assessee was rightly claimed as „slump sale" transaction. However, as is discernible from the order of the DRP, the issue as to whether the sale of the aforesaid two divisions was to be construed as itemized sale of assets or slump sale is pending before the ITAT in the preceding years of the assessee. Accordingly, the DRP had directed the A.O to allow depreciation to the assessee on the basis of the outcome of the main appeal regarding slump sale vs. itemized sale. In the backdrop of the aforesaid fact situation, now when the matter as to whether the sale of the aforesaid two divisions by the assessee is to be treated as an itemized sale or a slump sale is pending in the case of the assessee for the preceding years, therefore, we find no infirmity in the order of the DRP who had rightly directed the A.O to allow depreciation to the assessee on the basis of the outcome of the main appeal. In terms of our aforesaid observations the Ground of appeal No. IV raised by the assessee is partly allowed.

20. In this view of the matter and consistent with view taken by the co-ordinate bench, we direct the Ld. AO to allowed depreciation as claimed by the assessee on BMIL and PHL units."

55. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedents in assessee's own case cited *supra*, ground no. (iv) raised in Revenue's appeal is dismissed.

56. The issue arising in ground no. (v), raised in Revenue's appeal, pertains to restricting the disallowance under section 35A of the Act in respect of the acquisition of trademark.

57. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee made a claim of Rs. 2,42,85,714 in the computation under section 35A of the Act in respect of acquisition of certain patents/trademark. The AO vide order passed under section 143(3) of the Act after noting the fact that the issue is a recurring dispute and the Revenue is before the Hon'ble High Court on the question of allowability, followed the approach adopted in the assessment year 2005-06 and disallowed the claim of the assessee. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue following the order passed by the coordinate bench of the Tribunal in assessee's own case for the assessment year 2005-06. Being aggrieved, the Revenue is in appeal before us.

58. We have considered the submissions of both sides and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case, for the assessment year 2010-11, vide order dated 15/01/2020 (cited supra) decided this issue in favour of the assessee following the earlier decisions of the coordinate bench. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

"49. We have heard both the parties and perused the material available on record. We find that an identical issue had been considered by the co-ordinate bench of ITAT, in assessee own case for AY 2008-09 and 2009-10 and after considering relevant facts has deleted additions made by the Ld. AO towards disallowances of amortization of expenses on account of trade marks. The relevant findings of the Tribunal are as under:-

27. We have perused the observations of the lower authorities and deliberated on the contentions advanced by the authorised representatives for both the parties before us. Admittedly, the issue as regards allowability of the assessee's claim of deduction u/s 35A in respect of "trademarks" under consideration, had come up before the ITAT,

Mumbai in the assesses own case for the immediately preceding year viz A.Y 2008-09. It was observed by the Tribunal that "SPPL" had paid an amount of Rs. 34 crore towards purchase of trademark from "ASE", as per agreement dated 03.10.1997. After making the said payment, SPPL and thereafter the assessee had amortized the expenditure and claimed deduction of 1/14th of Rs. 34 crores paid, in each subsequent year, which was allowed by the CIT(A) and the Tribunal in the said preceding years. It was noticed by the Tribunal that despite the fact that the A.O had accepted that in the preceding years CIT(A) and the Tribunal had allowed the assesses claim for deduction u/s 35A, however, he had disallowed the claim of deduction for the year before him i.e A.Y 2008-09 by following the view taken by his predecessor in the said earlier years. Apart there from, it was noticed by the Tribunal that as was discernible from the order of the Hon'ble High Court of Bombay while deciding the Revenue's appeal on the said issue in the case of "SPPL" for A.Y 1998-99, the Tribunal had allowed the appeal of the assessee on the said issue on two grounds viz. (i). that as trade mark is not alien to patent right as there is a direct link between patent right and trade mark, thus the assessee was eligible to claim deduction u/s 35A; and (ii). Alternatively, that if the claim of deduction u/s 35A was not allowable, still the deduction has to be allowed u/s 37 of the I-T Act in view of the judgment of the Hon'ble Apex Court in Alembic Chemicals Works Co. Ltd. Vs. CIT (1988) 177 ITR 377 (SC). It was observed by the Tribunal that the revenue in its aforesaid appeal before the Hon'ble Jurisdictional High Court in the case of "SPPL" for A.Y 1998-99, being conscious of the fact that if it succeeded on the ground of entitlement of the assessee towards deduction u/s 35A on the trade marks, then the deduction of the entire expenditure of Rs. 34 crore in terms of the observations of the tribunal had to be allowed in one go u/s 37 of the I-T Act, which would thus put it in a much more disadvantageous position, had thus for the said reason not pressed its appeal before the High Court on the issue of allowability of claim of deduction u/s 35A of the I.T Act. In the backdrop of the aforesaid facts, the Tribunal while disposing off the appeal of the assessee for the preceding year ie A.Y 2008-09 observed that as the claim of the assessee for deduction u/s 35A was allowed in the preceding years, thus applying the rule of consistency allowed the same during the year before them. We have given a thoughtful consideration and are of the considered view that as the assesses claim of deduction u/s 35A had consistently been allowed by the Tribunal in the preceding years, therefore, respectfully following the view taken by the Tribunal while disposing off the appeal of the assessee for A.Y 2008-09, the disallowance made by the A.O/DRP u/s 35A of Rs. 2,42,85,714/- during the year under consideration viz. A.Y 2009-10 is vacated. The Ground of appeal No. VII is allowed.

50. In this view of the matter and consistent with view taken by the co-ordinate bench in assessee's own case for earlier years, we are of the considered view that the Ld. CIT(A) was right in deletion of additions made by the Ld. AO towards disallowances of amortization of expenses on account of trademarks u/s 35A of the I.T.Act, 1961. Hence, we are inclined to uphold the order of the Ld.CIT(A) and dismissed appeal filed by the revenue."

59. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedents in assessee's own case cited supra, ground no.(v) raised in Revenue's appeal is dismissed.

60. The issue arising in ground no. (vi), raised in Revenue's appeal, pertains to the allowance of deduction under section 80 HHC for the purpose of section 115 JB of the Act.

61. During the hearing, the learned AR, in all fairness, submitted that in view of the retrospective amendment in section 115 JB of the Act, vide Finance Act 2011, with retrospective effect from 01/04/2005, this ground of the Revenue be allowed even though during the course of assessment proceedings the assessee made a claim on the basis of the decision of the Special Bench of Tribunal in DCIT v/s Sincome Formulations (India) Ltd., [2007] 168 ITD 193, which was subsequently affirmed by the Hon'ble Supreme Court in CIT v/s Bhari Information Technology Systems (P) Ltd, [2012] 340 ITR 593. Therefore, in view of the aforesaid amendment, whereby clause (iv) to Explanation-1 to section 115 JB of the Act was omitted, ground no. (vi) raised in Revenue's appeal is allowed.

62. In the result, the appeal by the Revenue for the assessment year 2006-07 is partly allowed for statistical purposes.

ITA no.1333/Mum./2013
Assessee's Appeal – A.Y. 2007–08

63. In its appeal, the assessee has raised the following grounds:–

"Ground I:

Disallowance of payments made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd): Rs.4,16,25,000/-

1. On the facts and in the circumstances of the case and in law, the CIT (A) erred in following his predecessor's order for AY 2005-06 by directing the AO to allow payments made to PEL for consultancy fees and corporate service charges on the basis that if comparative payments made by Appellant are more than the payments made by other group companies, the excess should be disallowed and turnover may be adopted as the basis for determining excessiveness.

2. The CIT(A) further erred in holding that AO had invoked section 40A(2)(b) indirectly by taking into account agreement clauses and holding that excessive payment has been made, ignoring the fact that AO had specifically not invoked section 40A(2)(b) of the Act.

3. The Appellant prays that entire payment made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) be allowed as deductible expenses u/s 37(1) of the Act.

Ground II:

Disallowance of Software expenses amounting to: Rs.50,55,271/-

1. On the facts and in the circumstances of the case and in law, the CIT (A) erred in following his predecessor's order for AY 2005-06, by upholding the action of the AO of disallowing software expenses amounting to Rs.50,55,271/- on the alleged ground that the said expenditure gives enduring benefit and hence is a capital expenditure by treating the same as Intangibles assets..

2. The Appellant, therefore, prays it be held that the aforesaid expenses are of revenue in nature and allowable u/s 37(1) of the Act and depreciation if any shall be allowed @ 60%.

3. Without prejudice, if the expenditure are held to be of enduring nature then the AO be directed to allow depreciation @ 60%.

Ground III:

Disallowance of deduction u/s 35(2AB) in respect of Ennore Unit & Goregaon Unit: Rs.46,76,39,032/-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in following his predecessor's order for AY 2005-06, by confirming the action of the AO of disallowing weighted deduction u/s. 35(2AB) in respect of R & D

(Revenue and Capital) expenses related to Ennore Unit & Goregaon Unit amounting to Rs.46,76,39,032/- on the alleged ground that Appellant had not provided any such formal approval in Form No. 3CM.

2. The Appellant prays that once the approval is obtained though not in prescribed forms, the Appellant is entitled to weighted deduction u/s 35(2AB) of the Act.

Ground IV:

Disallowance of depreciation on additions to computer software: Rs.26,05,104/-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO of recalculating depreciation on computer software @ 25% instead of @ 60% as claimed by the Appellant and thereby disallowing excess depreciation of Rs.26,05,104/- on the alleged ground that software purchased separately and independent from computer purchases amounts to "intangible assets".

2. The Appellant therefore prays that, depreciation on computer software is allowed @ 60% as correctly claimed by the Appellant.

GROUND V:

Addition on account of increase in the value of closing stock: Rs.2,06,26,000/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of AO in invoking section 145A of the Act and upholding the addition of Rs.2,06,26,000/-

2. The Appellate prays that the aforesaid addition be deleted as there is no effect in profits of the Appellant as per detailed working in clause 12(b) of tax audit report.

3. Without Prejudice, the addition u/s 145A of the Act be appropriately reduced.

GROUND VI:

Depreciation on Goods Capitalized in Assessment Year: 2002-03/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in stating that the issue relates to AY 2002-03 and not for the assessment year under appeal i.e. AY 2007-08.

2. The Appellant prays that the aforesaid claim was allowed by the AO in AY 2006-07 on filing of rectification by the Appellant u/s. 154 of the Act and hence should be allowed.

GROUND VII:

Depreciation on Items Capitalized in Assessment Year: 2005-06/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in stating that the issue relates to AY 2005-06 and not for the assessment year under appeal i.e. AY 2007-08.

2. The Appellant prays that the aforesaid claim was allowed by the AO in AY 2006-07 on filing of rectification by the Appellant u/s. 154 of the Act and hence should be allowed.

GROUND VIII:

Depreciation on Technical Knowhow Capitalized in Assessment Year: 2003-04/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in stating that the issue relates to AY 2003-04 and not for the assessment year under appeal i.e. AY 2007-08.

2. The Appellant prays that the aforesaid claim was allowed by the AO in AY 2006-07 on filing of rectification by the Appellant u/s. 154 of the Act and hence should be allowed.

GROUND IX:

Deduction u/s 35DD allowed in Assessment Year: 2003-04/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in stating that the issue relates to AY 2003-04 and not for the assessment year under appeal i.e. AY 2007-08.

2. The Appellant prays that the aforesaid claim was allowed by the AO in AY 2006-07 on filing of rectification by the Appellant u/s. 154 of the Act and hence should be allowed.

GROUND X:

Deduction u/s 80G amounting to Rs.39,53,500/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in dismissing the ground as not maintainable and directed AO to decide the case on the basis facts before him in disposing the application filed u/s 154 by Appellant.

2. The Appellant prays that the AO be directed to allow deduction u/s 80G of the Act as per law.

GROUND XI:

The Appellant craves leaves to add to, alter and/or delete the above grounds of appeal.

GROUND VIII:

Depreciation on Technical Knowhow Capitalized in Assessment Year: 2003-04/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in stating that the issue relates to AY 2003-04 and not for the assessment year under appeal i.e. AY 2007-08.

2. The Appellant prays that the aforesaid claim was allowed by the AO in AY 2006-07 on filing of rectification by the Appellant u/s. 154 of the Act and hence should be allowed.

GROUND IX:

Deduction u/s 35DD allowed in Assessment Year: 2003-04/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in stating that the issue relates to AY 2003-04 and not for the assessment year under appeal i.e. AY 2007-08.

2. The Appellant prays that the aforesaid claim was allowed by the AO in AY 2006-07 on filing of rectification by the Appellant u/s. 154 of the Act and hence should be allowed.

GROUND X:

Deduction u/s 80G amounting to Rs.39,53,500/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in dismissing the ground as not maintainable and directed AO to decide the case on the basis facts before him in disposing the application filed u/s 154 by Appellant.

2. The Appellant prays that the AO be directed to allow deduction u/s 80G of the Act as per law.

GROUND XI:

The Appellant craves leaves to add to, alter and/or delete the above grounds of appeal."

64. The issue arising in ground no. 1, raised in assessee's appeal, pertains to the disallowance of payments made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd).

65. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the perusal of the Tax Audit Report it was observed that a no. of associated enterprises have been paid under different heads which are covered under section 40A(2)(b) of the Act. It was further noted that the amount of Rs. 979.64 lakh has been shown to have been paid to Piramal Corporate Services Ltd (formerly known as

Piramal Enterprises Ltd) towards various services, such as taxation matters, fund management, account and finance, legal matters, secretarial matters, corporate matters, information technology, etc. The AO noted that the services claimed to have been received from Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) are quite general in nature and the payments made to the aforesaid company is not supported by any one-to-one nexus with the specific services provided. Accordingly, the assessee was asked to justify the nature of payments made as well as the quantum and also specify how these payments were wholly and exclusively for the purpose of business. In response thereto, the assessee submitted a copy of the agreement dated 29/04/1995 entered with Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd). The assessee also furnished debit notes raised by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) and the breakup of the expenditure actually incurred and apportionment amongst the group companies. The AO vide order dated 18/12/2000 passed under section 143(3) of the Act, after considering the submissions of the assessee, observed that against an actual expenditure incurred of Rs. 830 lakh by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) towards common services to various group companies, it charged Rs. 1348 lakh for services rendered. The AO further held that since the actual expenditure incurred is only Rs. 830 lakh, therefore apportionment between the group members is to be restricted to Rs. 830 lakh out of which the share of the assessee will be in the same ratio as the original apportionment of Rs. 1348 lakh. Accordingly, the AO computed Rs. 563.39 lakh as the share of the assessee as per the terms of the agreement and

disallowed the balance amount of Rs. 416.25 lakh paid to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd). The AO further clarified that it is not interfering with the quantum of expenditure under section 40A(2)(b) of the Act and only implementing the terms of the agreement.

66. The learned CIT(A), vide impugned order, agreed with the findings of the AO in disallowing the expenditure, however, ultimately following the order passed by its predecessor in assessee's own case for the assessment year 2005-06, directed the AO to verify the fair market value of services rendered by the sister concern for which the payment has been made by the assessee and restrict the addition to the extent the payment is found to be excessive. Being aggrieved, both the assessee as well as the Revenue are in appeal before us on this issue.

67. We have considered the submissions of both sides and perused the material available on record. As per the assessee, the AO has computed the disallowance on the alleged basis of implementing the terms mentioned in the agreement, and the AO neither invoked section 40A(2)(b) of the Act nor doubted the genuineness of the payments made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd). It is further the submission of the assessee that even if it is accepted that the payments were not made in terms of the agreement, there is no restriction under the Act which prohibits the assessee from making the payment in excess of the agreed terms and allowability of the same is to be determined in light of the commercial expediency.

68. It is evident from the record that the impugned addition by the AO is not under section 40A(2)(b) of the Act and merely on the basis of implementing the agreement dated 29/04/1995, the AO disallowed the excess payment. Therefore, since the very basis for making the addition is not section 40A(2)(b) of the Act, we do not find any merits in the directions of the learned CIT(A) in restoring the matter to the file of AO following the approach adopted in the assessment year 2005-06, which was based on computing disallowance as per section 40A(2)(b) of the Act. In any case, in this appeal also, we agree with the submissions of the learned DR that setting aside the matter to the file of the AO does not come within the purview of powers of the learned CIT(A) under section 251 of the Act. Since the addition made by the AO is based on the implementation of the terms of the agreement, we will analyse the issue from that perspective.

69. As per clause 5 of the aforesaid agreement dated 29/04/1995, the assessee agreed to pay, as a consideration, a Royalty at the rate of not exceeding 0.5% of the turnover of goods manufactured and traded by it. Further, the assessee agreed to contribute an appropriate proportion of the expenses incurred by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) in fulfilling its obligations under this agreement.

70. As noted above, the coordinate bench of the Tribunal in assessee's own case for the assessment year 2008-09, vide order dated 30/07/2018 (cited supra) found the payment of Royalty by the assessee to be in compliance of the terms of the aforesaid agreement and accordingly deleted the same. Further, in the year under consideration, we find that the assessee paid

Royalty @0.05% of the turnover which is even less than the rate of 0.5% agreed under the agreement. Thus, it is evident that Royalty paid by the assessee is not in excess of the terms agreed amongst the parties. Therefore, in view of the above and respectfully following the aforesaid decision of the coordinate bench of the Tribunal, we find no basis in the disallowance of Royalty payment made by the AO and accordingly, the same is directed to be deleted.

71. We find that the assessee made the following submissions before the learned CIT(A) explaining the apportionment of corporate service charges by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd):-

"During the year under consideration, PEL has incurred total corporate service charges amounting to Rs.830 lakhs which comprises of Employee Cost, Administrative Expenses, Depreciation and Interest. This total corporate service charges incurred by PEL has been apportioned between group companies on the basis of various services rendered to them monthly by various departments. Hence, that portion of the corporate service charges rendered by PEL on behalf of the Appellant amounts to Rs.789 lakhs. Further, in addition to this, the Appellant is also entitled to pay royalty at the rate not exceeding 0.5% of turnover of goods manufactured and/or traded. For the said year, the Appellant Company has paid royalty to PEL @ 0.05% of the turnover which amounts to Rs.126 lakhs. Hence, the total consideration payable by the Appellant Company to PEL comes to Rs.915 lakhs (789 lakhs + 126 lakhs). The said amount is not disputed by the AO. However, the AO has alleged that that total consideration receivable by PEL is Rs. 1348 lakhs instead of Rs.830 lakhs. He has failed to consider that the royalty charged by PEL to various group companies is not included in the total corporate service charges apportioned by PEL to the various group companies. The working of the corporate service charges incurred by PEL clearly indicates that PEL has incurred expenses towards service charges amounting to Rs.1147 lakhs and the amount recovered towards royalty from group companies comes to Rs.198 lakhs. Hence the total corporate service charges of PEL for F.Y. 06-07 amounts to Rs.1348 lakhs (net of service tax). Further, out of the total corporate service charges incurred, PEL has apportioned Rs.915 lakhs (net of service tax) to the Appellant Company. Thus, the total amount claimed by the Appellant (i.e. 915 net of service tax) comprises of the service charges apportioned amounting to Rs.789 lakhs and the amount of royalty which amounts to Rs. 126 lakhs."

72. It is evident from the record that the learned CIT(A), without examining the submissions of the assessee, merely upheld the findings of the AO regarding the part disallowance of the payment made by the assessee. Thus, in the present case, the calculation of apportionment of expenses by Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) is only in dispute. As per the AO, Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd) has been paid more than the actual expenses incurred by it which is to be apportioned as per clause 5(b) of the agreement. While it is the plea of the assessee that the consideration paid by the assessee is as per the agreement and the assessee has only paid its share of allocated expenses. Since the calculation of actual expenses incurred, which is to be apportioned, needs to be reconciled with the payment made by the assessee, we deem it appropriate to restore the issue of allowance of corporate service charges to the file of the AO for *de novo* adjudication after necessary verification of all the details. Since the matter is restored to the AO for fresh consideration, the assessee shall be at liberty to submit all the details in support of its claim along with the necessary supporting documentation to justify that the amount paid by the assessee towards corporate service charges is based on the proper allocation of expenses amongst the group companies. We further direct that if upon examination it is found that the assessee has only paid its share of allocated expenses as per the agreement then to that extent relief be granted to the assessee.

73. During the hearing, the assessee submitted that there is no restriction under the Act which prohibits the assessee from making the payment in excess of the agreed terms, and allowability of the same is to be determined in light

of the commercial expediency. At the outset, it needs to be appreciated that the disallowance is not made under section 40A(2)(b) of the Act, and therefore for allowance of any expenditure it needs to be established that the payment if any made in excess of the agreed terms is wholly and exclusively for the purpose of business. Unless the aforesaid is proved with sufficient material/basis, the disallowance of excess payment is completely justified, more so in view of the fact that the payment as per the agreement has already been directed to be allowed since the validity of the agreement is not in dispute in the present case. With these directions, the impugned order is set aside, and ground No. 1 raised in assessee's appeal is allowed for statistical purposes.

74. The issue arising in ground no. 2, raised in assessee's appeal, pertains to disallowance of software expenses. Since a similar issue has already been decided in assessee's appeal for the assessment year 2006-07, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, with similar directions as rendered in assessee's appeal for the assessment year 2006-07, this issue is restored to the file of the AO for *de novo* adjudication. As a result, ground no. 2 raised in assessee's appeal is allowed for statistical purposes.

75. The issue arising in ground no. 3, raised in assessee's appeal, pertains to the disallowance of weighted deduction under section 35(2AB) of the Act in respect of the Chennai-Ennore Unit and the Goregaon Unit. In the year under consideration also it is an admitted fact that for both the aforesaid units the assessee has not received approval under Form No.3CM from DSIR and its

application is pending before the DSIR despite various reminder letters. Since a similar issue has already been decided in assessee's appeal for the assessment year 2006-07, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, we deem it appropriate to restore this issue to the file of the AO to provide an opportunity to the assessee to furnish the approval of the prescribed authority in the prescribed manner for claiming deduction under section 35(2AB) of the Act. With the above directions, ground no. 3 raised in assessee's appeal is allowed for statistical purposes.

76. Grounds no. 4 raised in assessee's appeal pertain to the disallowance of depreciation on computer software. Since a similar issue has already been decided in assessee's appeal for the assessment year 2006-07, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, the AO is directed to allow depreciation on computer software at 60% in line with the directions of the coordinate bench in the preceding year. As a result, grounds no. 4 raised in assessee's appeal is allowed.

77. The issue arising in ground no. 5, raised in assessee's appeal, pertains to the addition on account of increase in the value of closing stock in relation to net unutilised MODVAT credit. Since a similar issue has already been decided in assessee's appeal for the assessment year 2006-07, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Since in the year under consideration also the working of the assessee is required to be verified, therefore, we deem it appropriate to restore this issue to the file of the AO to decide in the light of the directions as rendered by the Tribunal in

the preceding year. Accordingly, ground no. 5 raised in assessee's appeal is allowed for statistical purposes.

78. The issue arising in ground no. 9, raised in assessee's appeal, pertains to the claim of deduction under section 35DD of the Act. During the hearing, the learned AR submitted that the coordinate bench of the Tribunal in assessee's own case for the assessment year 2003-04 has allowed the deduction under section 37(1) of the Act. Therefore, in view of the above, ground no. 9 raised in assessee's appeal is dismissed as infructuous.

79. Vide application dated 16/01/2024, the assessee has raised the following additional grounds of appeal:-

"ADDITIONAL GROUND NO. I: DEDUCTION U/S 80G OF THE ACT AMOUNTING TO RS. 39,53,500/-:

- 1. On the facts and circumstances of the case and in law, the Id. AO erred in not granting deduction u/s 80G of the Act amounting to Rs. 39,53,500/- as against donations made amounting to Rs. 79,07,000/- which are eligible for deduction u/s 80G of the Act.*
- 2. The Appellant prays that the AO be directed to allow deduction u/s 80G of the Act amounting to Rs. 39,53,500/- as per the law.*
- 3. Alternatively, the Appellant prays that the AO be issued necessary directions to dispose off the application u/s 154 in a time bound manner.*

ADDITIONAL GROUND NO. II: DEPRECIATION AMOUNTING TO RS. 61,174/- ON GOODS CAPITALIZED IN AY 2002-03:

- 1. On the facts and circumstances of the case and in law, the Id. AO erred in not calculating depreciation @25% on goods capitalized in AY 2002-03 amounting to Rs. 10,31,152/- which were originally claimed as a revenue expenditure under the head "Business Promotion Expenses" in the return of income.*
- 2. The Appellant prays that the AO be directed to allow depreciation @25% amounting to Rs. 61,174/- for the year under consideration, on the opening WDV of the aforesaid goods capitalized.*
- 3. Alternatively, the Appellant prays that the AO be issued necessary directions to dispose off the application u/s 154 in a time bound manner.*

ADDITIONAL GROUND NO. III: DEPRECIATION AMOUNTING TO RS. 1,24,510/- ON ITEMS CAPITALIZED IN AY 2005-06:

1. On the facts and circumstances of the case and in law, the Id. AO erred in not calculating depreciation on items capitalized in AY 2005-06 amounting to Rs. 8,85,400/- for purchase of software, which were originally claimed as a revenue expenditure under the head "Legal and Professional Fees" in the return of income.
2. The Appellant prays that the AO be directed to allow depreciation @25% amounting to Rs. 1,24,510/- for the year under consideration, on the opening WDV of aforesaid items capitalized.
3. Alternatively, the Appellant prays that the AO be issued necessary directions to dispose off the application u/s 154 in a time bound manner.

ADDITIONAL GROUND NO. IV: DEPRECIATION AMOUNTING TO RS. 70,22,900/- ON TECHNICAL KNOWHOW CAPITALIZED IN AY 2003-04:

1. On the facts and circumstances of the case and in law, the Id. AO erred in not calculating depreciation @25% on amounts capitalized in AY 2003-04 paid to Danisco USA. Inc for acquiring technical know-how amounting to Rs. 7.61 crores.
2. The Appellant prays that the AO be directed to allow depreciation @25% amounting to Rs. 70,22,900/- for the year under consideration, on the opening WDV of aforesaid technical knowhow capitalized.
3. Alternatively, the Appellant prays that the AO be issued necessary directions to dispose off the application u/s 154 in a time bound manner.

The Appellant craves leaves to add to, alter and / or delete the above grounds of appeal."

80. The assessee has made a similar submission as in its application for the assessment year 2006-07. Since the basic facts for deciding these issues are available on record, the prayer of the assessee vide aforesaid application is accepted.

81. The issue arising in additional ground no. 1 pertains to deduction under section 80G of the Act. Since a similar issue has already been decided in assessee's appeal for the assessment year 2006-07, therefore our findings / conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, we direct the AO to consider the plea of the assessee regarding the grant of

deduction under section 80G of the Act as per law after necessary verification of all the details so furnished by the assessee. As a result, additional ground no.1 raised by the assessee is allowed for statistical purposes, while grounds no. 10 raised in the present appeal is dismissed as infructuous.

82. The issue arising in additional ground no.2 pertains to depreciation on goods capitalised in the assessment year 2002-03.

83. The brief facts of the case pertaining to this issue are that in the assessment year 2002-03, it has debited an amount of Rs. 10,31,152 under the head business promotion expenses and claimed the same as a revenue expenditure. However, in the assessment year 2002-03, the AO rejected the claim of the assessee on the basis that said expenses were incurred for the purchase of projectors, and thus the expenditure is capital nature. The AO further directed that the depreciation be allowed @25% on the same. In further appeal, the learned CIT(A) upheld the said disallowance and no further appeal was preferred by the assessee against the aforesaid addition. Accordingly, in the year under consideration, the assessee made a claim for allowance of depreciation @25% on the goods capitalised in the assessment year 2002-03. However, the AO did not render any finding on the aforesaid claim of the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue on the basis that the same does not emanate from any action of the AO as taken in the assessment order for the assessment year 2007-08. The assessee submitted that similar ground has been allowed in its favour in the assessment year 2006-07 vide rectification order dated 09/02/2009. However, in the year under consideration, its

rectification application filed under section 154 of the Act is still pending disposal before the AO.

84. We have considered the submissions of both sides and perused the material available on record. Since the rectification application filed by the assessee is already pending consideration before the AO, we direct the AO to consider the plea of the assessee regarding the claim of depreciation on goods capitalised as per law after necessary verification of all the details. Accordingly, additional ground no.2 raised by the assessee is allowed for statistical purposes, while grounds no. 6 raised in the present appeal is dismissed as infructuous.

85. The issue arising in additional ground no.3 pertains to depreciation on items capitalised in the assessment year 2005-06.

86. The brief facts of the case pertaining to this issue are that in the assessment year 2005-06, the assessee debited an amount of Rs. 8,85,400 under the head legal and professional fees and claimed the same as a revenue expenditure. However, in the assessment year 2005-06, the AO disallowed the claim of the assessee on the basis that the said expenses are incurred for the purchase of software and thus are capital in nature. The AO further directed that the depreciation be allowed @25% on the same. In further appeal, the learned CIT(A) directed the AO to verify the expenses and allow the same if they are in the nature of maintenance expenses, otherwise be treated as capital. Accordingly, in the year under consideration, the assessee made a claim for allowance of depreciation on the items capitalised in the assessment year 2005-06. However, the AO did not render any finding on the aforesaid

claim of the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue on the basis that the same does not emanate from any action of the AO as taken in the assessment order for the assessment year 2007-08. The assessee submitted that similar ground has been allowed in its favour in the assessment year 2006-07 vide rectification order dated 09/02/2009. However, in the year under consideration, its rectification application filed under section 154 of the Act is still pending disposal before the AO.

87. We have considered the submissions of both sides and perused the material available on record. Since the rectification application filed by the assessee is already pending consideration before the AO, we direct the AO to consider the plea of the assessee regarding the claim of depreciation on items capitalised as per law after necessary verification of all the details. Accordingly, additional ground no.3 raised by the assessee is allowed for statistical purposes, while grounds no. 7 raised in the present appeal is dismissed as infructuous.

88. The issue arising in additional ground no.4 pertains to depreciation on technical know-how capitalised in the assessment year 2003-04.

89. The brief facts of the case pertaining to this issue are that in the assessment year 2003-04, the assessee paid an amount of Rs. 7,61,00,000 to Danisco USA Inc. for settlement of the dispute. However, in the assessment year 2003-04, the AO disallowed the amount on the basis that the said payment being capital in nature. In further appeal, the learned CIT(A) upheld the said disallowance and directed the AO to allow depreciation on the same in

accordance with the provisions of the Act. The assessee did not press this ground in its appeal before the Tribunal. Accordingly, in the year under consideration, the assessee made a claim for allowance of depreciation @25% on the amount capitalised in the assessment year 2003-04. However, the AO did not render any finding on the aforesaid claim of the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue on the basis that the same does not emanate from any action of the AO as taken in the assessment order for the assessment year 2007-08. The assessee submitted that similar ground has been allowed in its favour in the assessment year 2006-07 vide rectification order dated 09/02/2009. However, in the year under consideration, its rectification application filed under section 154 of the Act is still pending disposal before the AO.

90. We have considered the submissions of both sides and perused the material available on record. Since the rectification application filed by the assessee is already pending consideration before the AO, we direct the AO to consider the plea of the assessee regarding the claim of depreciation on technical know-how capitalised as per law after necessary verification of all the details. Accordingly, additional ground no.4 raised by the assessee is allowed for statistical purposes, while grounds no. 8 raised in the present appeal is dismissed as infructuous.

91. In the result, the appeal by the assessee for the assessment year 2007-08 is partly allowed for statistical purposes.

92. In its appeal, the Revenue has raised the following grounds:–

"i. The learned CIT(A) has erred on the facts and in law in directing the AO to verify the royalty payments and consultancy and professional charges to Piramal Enterprises Ltd by other group companies of the assessee and to compare with those made by the assessee. without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer.

ii. "The Learned CIT(A) has erred on the facts and in Law in practically setting aside the issue of disallowance of Rs. 4,16,25,000 under section 40A(2)(b) to the file of the Assessing Officer as the setting aside of the issues to the file of the AO does not come within the powers of CIT(A).

iii. The Learned CIT(A) has erred on the facts and in Law in directing the AO to calculate the excessive payments (out of the royalty and consultancy and professional charges paid) on the basis of turnover without looking into the reasonableness of the payments.

iv. The Learned CIT(A) has erred on the facts and in Law in directing the AO that the depreciation not claimed by M/s. Boehringer Mannheim India Ltd and M/s. Piramal Holdings Ltd. should not be considered for the purpose of working out the written down value, to allow the depreciation thereon.

V. The Learned CIT(A) has erred on the facts and in Law in deleting the disallowance made by the AO in respect of deduction of Rs. 24285714/- claimed u/s. 35A in respect of the acquisition of the trade mark by M/s. Sarubhai Piramal Pharmaceuticals Ltd. (since merged with the assessee company).

vi. The Learned CIT(A) has erred on facts and in law in holding that the disallowance made under section 14A is not covered for computing of Book Profit under section 115JB of the Income tax Act, relying on the decision of Delhi Tribunal in Quippo Telecom Infrastructure Ltd Vs. ACIT (ITA 4931/D/2010), without appreciating the fact that the said disallowance is covered in clause (f) of explanation Lin section 115JB."

93. In view of our findings rendered in respect of ground no.1 raised in assessee's appeal, pertaining to the disallowance of payments made to Piramal Corporate Services Ltd (formerly known as Piramal Enterprises Ltd), grounds no. (i), (ii), and (iii) raised in Revenue's appeal are partly allowed for statistical purposes.

94. The issue arising in ground no. (iv), raised in Revenue's appeal, pertains to the allowance of depreciation in respect of assets transferred pursuant to

the merger. Since a similar issue has already been decided in Revenue's appeal for the assessment year 2006-07, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, ground no. (iv) raised in Revenue's appeal is dismissed.

95. The issue arising in ground no. (v), raised in Revenue's appeal, pertains to restricting the disallowance under section 35A of the Act in respect of the acquisition of trademark. Since a similar issue has already been decided in Revenue's appeal for the assessment year 2006-07, therefore our findings / conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, ground no. (v) raised in Revenue's appeal is dismissed.

96. The issue arising in ground no. (vi), raised in Revenue's appeal, pertains to disallowance under section 14A of the Act while calculating the profits under the provisions of section 115 JB of the Act.

97. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee earned dividend from Indian companies of Rs. 1,89,46,800, which was claimed as exempt under section 10(34) of the Act. The assessee contended that section 14A is not attracted in this case and therefore no disallowance is called for. However, the AO vide order passed under section 143(3) of the Act by applying the provisions of Rule 8D computed the disallowance of Rs. 1,21,92,000 under section 14A of the Act. The AO also added the aforesaid disallowance while computing the book profits under section 115 JB of the Act.

98. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue and held that the disallowance computed in the

hands of the assessee under the provisions of section 14A of the Act is not covered under the Explanation-1 to section 115 JB of the Act. Accordingly, the learned CIT(A) deleted the addition made by the AO by making an addition of the expenses disallowed under section 14A while computing the book profit of the assessee under section 115 JB of the Act. Being aggrieved, the Revenue is in appeal before us.

99. Having considered the submissions of both sides and perused the material available on record, we find that the Special Bench of Tribunal in ACIT v/s Vireet Investment (P) Ltd.: [2017] 58 ITR(T) 313 (Delhi - Trib.) (SB) held that computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A read with Rule 8D of the Income-tax Rules, 1962. Accordingly, we do not find any infirmity in the order passed by the learned CIT(A) on this issue. As a result, ground no. (vi) raised in Revenue's appeal is dismissed.

100. In the result, the appeal by the Revenue for the assessment year 2007-08 is partly allowed for statistical purposes.

101. To sum up, both the cross-appeals are partly allowed for statistical purposes.

Order pronounced in the open Court on 19/02/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 19/02/2024

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.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai