Cadila Pharmaceuticals ... vs The Dy. Cit, Circle- 1(1)(2), Ahmedabad on 15 May, 2026

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD
BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
I.T.A. No.202/Ahd/2026
(Assessment Year: 2013-14)

Cadila Pharmaceuticals Ltd., 708, Corporate Campus, Sarkhej Dholka Highway, Bhat, Ahmedabad-382210 [PAN No.AAACC6251E]	Vs.	Deputy Commissioner of Income Tax, Circle-1(1)(2), Ahmedabad
(Appellant)	..	(Respondent)

I.T.A. No.288/Ahd/2026
(Assessment Year: 2013-14)

Deputy Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad [PAN No.AAACC6251E]	Vs.	Cadila Pharmaceuticals Ltd., 708, Corporate Campus, Sarkhej Dholka Highway, Bhat, Ahmedabad-382210
(Appellant)	..	(Respondent)

Appellant by : Shri S. N. Soparkar, Sr. Advocate
Respondent by: Shri Sher Singh, CIT-DR

Date of Hearing 07.04.2026
Date of Pronouncement 15.05.2026

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are cross appeals filed by the Assessee and the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-13, (in short "Ld. CIT(A)"), Ahmedabad vide orders dated 19.11.2025 passed for A.Ys. 2013-14 and 2014-15. Since common facts and issues for consideration are involved for the years under consideration, both the appeals are being taken up together.

2. The brief facts of the case are that the assessee, Cadila Pharmaceuticals Limited, engaged in the business of manufacturing and ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 2- trading of pharmaceutical formulations, bulk drugs and healthcare products, filed its original return of income for Assessment Year 2013-14 declaring loss of Rs.1,00,17,52,143/- under the normal provisions of the Income-tax Act, 1961 ("the Act") and book profit of Rs.56,46,07,739/-

under section 115JB of the Act. Subsequently, the assessee filed a revised return declaring the same loss under the normal provisions and revised book profit of Rs.56,70,83,299/- under section 115JB. The case was selected for scrutiny assessment and during the course of assessment proceedings, the Assessing Officer and Transfer Pricing Officer examined various international transactions entered into by the assessee with its Associated Enterprises as well as claims of expenditure / deductions under the normal provisions and MAT provisions of the Act. The Assessing Officer completed the assessment assessing total income at Rs.27,25,55,577/- as against the returned loss after making transfer pricing adjustments and tax disallowances.

3. One of the major issues examined during the transfer pricing proceedings related to adjustment of Rs.74,02,428/- on account of corporate guarantee extended by the assessee in favour of its overseas Associated Enterprise, namely Satellite Overseas Holdings Ltd., UK. The Transfer Pricing Officer observed that the assessee had provided corporate guarantee to Allahabad Bank for loans availed by the Associated Enterprise and treated such guarantee as an "international transaction" within the meaning of section 92B of the Act. The TPO benchmarked the arm's length guarantee commission at 1.24% and accordingly proposed upward adjustment of Rs.74,02,428/-. The assessee submitted before the TPO and Assessing Officer that no fresh corporate guarantee had been issued during the year under consideration and the guarantee was the continuation of guarantee arrangements already existing in earlier years. The assessee further contended that the assessee had not incurred any direct or indirect cost, ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 3- financial burden, collateral obligation or margin money requirement while extending the guarantee and therefore no economic benefit had been conferred upon the Associated Enterprise warranting arm's length compensation. The assessee also relied upon OECD Transfer Pricing Guidelines and judicial precedents to contend that shareholder activities or passive guarantees without any economic impact do not constitute international transactions. Before the Ld. CIT(A), the assessee further relied upon decisions rendered by the Ahmedabad Tribunal in assessee's own case for Assessment Years 2010-11 and 2011-12 wherein identical transfer pricing adjustment on corporate guarantee had already been deleted. The Ld. CIT(A), after detailed examination of the factual position and earlier appellate orders, observed that the assessee had neither incurred any expenditure nor assumed any additional financial risk while extending the corporate guarantee. The CIT(Appeals) further noted that no fresh guarantee had been issued during the year and therefore no new international transaction had arisen requiring benchmarking exercise. Following the principle of judicial consistency and the earlier decisions in assessee's own case, the Ld. CIT(A) held that the impugned corporate guarantee did not warrant any arm's length adjustment and accordingly deleted the transfer pricing addition of Rs.74,02,428/- made by the TPO and Assessing Officer.

4. The Assessing Officer had also made disallowance of Rs.63,27,480/- under section 36(1)(iii) of the Act on the allegation that the assessee had diverted borrowed funds towards interest-free advances granted to sister concerns and related parties including Casil Health Products Ltd., Casil

Industries Ltd., Karnavati Engineering Ltd., Omnicare Pharmaceuticals Ltd. and IRM Enterprises Pvt. Ltd. According to the Assessing Officer, the assessee had paid substantial interest on borrowed funds while simultaneously advancing interest-free loans to group entities and therefore ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 4- proportionate interest expenditure attributable to such diversion was liable to be disallowed. The Assessing Officer computed the disallowance by applying interest rate of 9.5% on the supposed interest-free advances. During appellate proceedings before CIT(Appeals), the assessee furnished explanation regarding the commercial expediency and business nexus of the advances. The assessee submitted that the advances were intrinsically connected with business operations and were extended in ordinary course of commercial dealings for purposes such as job work arrangements, purchase transactions, operational support, recovery facilitation and strategic business requirements. The assessee also contended that substantial own funds and reserves were available and therefore presumption ought to be drawn that advances had been made out of non-interest-bearing funds. The assessee placed reliance upon the judgment of the Hon'ble Supreme Court in S.A. Builders Ltd. as well as decisions of the Ahmedabad Tribunal and Hon'ble Gujarat High Court rendered in assessee's own case in earlier years wherein identical disallowances had been deleted. The Ld. CIT(A), after analysing the nature of transactions and judicial precedents, observed that the Assessing Officer had failed to establish any direct nexus between borrowed funds and advances given to related concerns. The CIT(Appeals) further held that commercial expediency has to be viewed from the perspective of a prudent businessman and not from the viewpoint of the Revenue authorities. Since the advances were found to be business-oriented and commercially expedient, the Ld. CIT(A) deleted the entire disallowance of Rs.63,27,480/- made under section 36(1)(iii) of the Act.

5. Another dispute related to weighted deduction claimed under section 35(2AB) of the Act in respect of expenditure incurred on approved in-house scientific research and development facilities. During assessment proceedings, the Assessing Officer restricted the weighted deduction claimed ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 5- by the assessee on the ground that certain expenditures did not qualify for deduction under section 35(2AB) of the Act. Before the Ld. CIT(A), the assessee contended that the expenditure had been incurred wholly and exclusively for approved scientific research activities and therefore qualified for weighted deduction under section 35(2AB) of the Act. The assessee relied upon earlier appellate orders in its own case wherein similar disallowances had been deleted. During appellate proceedings, the assessee also raised additional ground claiming further weighted deduction of Rs.3,06,35,101/- in respect of contract research income which had originally been reduced from the eligible expenditure while computing deduction on protective basis. The assessee submitted that deduction under section 35(2AB) of the Act ought to be allowed on gross scientific research

expenditure without reducing contract research receipts. The Ld. CIT(A), after considering the statutory provisions, earlier appellate orders and judicial precedents, accepted the assessee's principal claim and deleted the disallowance made by the Assessing Officer in respect of weighted deduction under section 35(2AB) of the Act. However, so far as the additional claim of Rs.3,06,35,101/- was concerned, the CIT(Appeals) did not grant further relief and the additional claim remained unallowed.

6. The Assessing Officer had also disallowed expenditure incurred on product registration by treating the same as capital expenditure not allowable under section 37(1) of the Act. The assessee had incurred substantial expenditure towards obtaining registration approvals for pharmaceutical products in various overseas jurisdictions to facilitate export and marketing of medicines in foreign countries. According to the Assessing Officer, such expenditure resulted in enduring benefit and therefore assumed the character of capital expenditure. The assessee, however, contended before the Ld. CIT(A) that product registration expenses constituted recurring business ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 6- expenditure incurred in ordinary course of pharmaceutical business operations and no independent capital asset came into existence as a result of such expenditure. The assessee submitted that pharmaceutical companies are required to continuously incur registration and renewal expenses for maintaining regulatory approvals in different jurisdictions and therefore the expenditure merely facilitated carrying on of business operations. The assessee placed reliance on earlier appellate orders rendered in assessee's own case wherein identical product registration expenditure had been held allowable as revenue expenditure. The Ld. CIT(A), after examining the nature and purpose of expenditure, accepted the contention of the assessee and held that the product registration expenses did not result in creation of any enduring capital asset but merely enabled smoother conduct of business operations. Accordingly, the entire disallowance made by the Assessing Officer under section 37(1) of the Act was deleted.

7. Another issue before the CIT(Appeals) related to disallowance under section 14A read with Rule 8D of the Income-tax Rules and corresponding addition under section 115JB of the Act. The Assessing Officer invoked Rule 8D and made disallowance of expenditure allegedly attributable to exempt income earned by the assessee. Apart from making disallowance under the normal provisions, the Assessing Officer also added the same amount while computing book profit under section 115JB, thereby effectively resulting in double disallowance in respect of identical expenditure. Before the Ld. CIT(A), the assessee contended that the exempt income earned during the year was comparatively insignificant and therefore disallowance under section 14A of the Act could not exceed the actual exempt income. The assessee further argued that once expenditure had already been disallowed under the normal provisions, corresponding addition while computing MAT under section 115JB of the Act would amount to double taxation of the same ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 7- amount. The assessee placed reliance on various judicial precedents including decisions rendered in assessee's own case for earlier years. The Ld. CIT(A), after examining the factual position and settled legal principles, accepted the contention of the assessee and held that disallowance under section 14A of the Act cannot exceed exempt income actually earned during the year. The CIT(Appeals) further held that addition of identical amount once again under section 115JB of the Act was legally unsustainable and amounted to impermissible duplication of disallowance. Accordingly, the excessive disallowance under section 14A and corresponding MAT adjustment under section 115JB were deleted.

8. The Assessing Officer had further disallowed foreign exchange fluctuation loss of Rs.45.24 crores by treating the same as speculative loss under section 43(5) of the Act. According to the Assessing Officer, the foreign currency derivative contracts entered into by the assessee were speculative transactions not directly connected with ordinary business operations. The assessee submitted before the CIT(Appeals) that the foreign exchange losses had arisen from genuine hedging transactions entered into for safeguarding export-import business and foreign currency exposures arising in regular course of pharmaceutical business activities. The assessee submitted that the derivative contracts were integrally connected with business operations and were entered into solely for risk mitigation purposes. The assessee further relied upon judicial precedents including earlier decisions in its own case wherein similar foreign exchange losses had been allowed as business expenditure. The Ld. CIT(A), after detailed examination of the nature of contracts and business transactions, accepted the contention of the assessee and held that the foreign exchange fluctuation loss of Rs.45.24 crores represented genuine business loss arising from hedging activities undertaken in ordinary course of business and therefore could not be treated ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 8- as speculative loss under section 43(5) of the Act. Consequently, the entire disallowance of Rs.45.24 crores was deleted.

9. However, the Ld. CIT(A) upheld the disallowance made by the Assessing Officer in respect of expenditure incurred on freebies, gifts and incentives provided to doctors and medical practitioners under section 37(1) of the Act. The Assessing Officer had relied upon CBDT Circular No.5/2012 and observed that such expenditure violated Medical Council Regulations governing professional conduct of medical practitioners and therefore was hit by Explanation 1 to section 37(1) of the Act. The assessee submitted that the expenditure constituted ordinary business promotion expenditure incurred wholly and exclusively for pharmaceutical business purposes. Nevertheless, the Ld. CIT(A), following the CBDT Circular and prevailing judicial interpretation, sustained the disallowance by holding that expenditure incurred in violation of statutory regulations cannot be allowed as deduction under section 37(1) of the Act.

10. Similarly, the Assessing Officer had made disallowance under section 36(1)(va) read with section 2(24)(x) of the Act in respect of delayed deposit of employees' contribution towards Gujarat Labour Welfare Fund and Modi Benevolent Fund. The assessee contended before the CIT(Appeals) that the

contributions had been deposited before due date of filing return under section 139(1) of the Act and therefore deduction ought to be allowed. However, the Ld. CIT(A), following the statutory distinction between employees' contribution and employer's contribution as well as prevailing judicial position, held that employees' contribution deposited beyond the due dates prescribed under the relevant welfare enactments attracts disallowance under section 36(1)(va) notwithstanding payment before filing of return.

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- 9- Accordingly, the disallowance made by the Assessing Officer under section 36(1)(va) read with section 2(24)(x) of the Act was sustained.

11. The assessee had also raised an additional claim before the Ld. CIT(A) seeking deduction of Rs.23,60,531/- under section 43B of the Act on account of bonus payment which, according to the assessee, remained unclaimed due to inadvertent computational omission while filing the return of income. The assessee contended that since the bonus payment had actually been made before the due date of filing return under section 139(1) of the Act, deduction was allowable under section 43B of the Act. Although the Ld. CIT(A) admitted the additional ground for adjudication, the CIT(Appeals) did not allow the additional deduction of Rs.23,60,531/- claimed under section 43B of the Act and no further relief was granted on this issue.

12. Both the Department and the assessee are in appeal against the order of CIT(Appeals).

We shall first deal with the Department's appeal in ITA No. 288/Ahd/2026 (A.Y. 2013-14)

13. The Department has raised the following Grounds of Appeal:

> "1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) was justified in not accepting that Corporate Guarantee is an International Transaction u/s'928 of the Act, 1961 by ignoring the judgement of the CIT Vs. Everest Kanto Cylinder Ltd' (2015) 378 ITR 57 (Bom.), Hon'ble Bombay High court and Pr. cIT Vs' M/s'. Redington (India) Ltd. 430 ITR 298, Hon'ble Madras High Court?"

2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in deleting the entire transfer pricing adjustment on account of corporate guarantee by holding that the same does not constitute an international transaction under section 928 of the Income tax Act, 1961, despite the Hon' ITAT in the assessees own case for A.Y. 2010-11 (ITA No.53/Ahd/2020 dated 01.07.2024, appeal filed by the Revenue) having treated the provision of corporate guarantee as an international transaction liable to benchmarking ?"

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in allowing the appeal of the assessee by ignoring the provisions of 92C of the Income Tax Act, 1961 under which an upward adjustment of Rs.74,02,428/- on account of guarantee fee/commission charged for the counter guarantee given on behalf of AEs was determined?"

4. Whether on the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in ignoring the benchmarking arrived by the TPO on the basis of reliable data obtained thereby violating Rule 10C of the I'T' Rules,1962?"

5. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in accepting the ALP of the assessee determined by ignoring the guidelines laid down under the I.T. Act and Rules and thereby violating the ratio laid down by the Hon'ble Supreme Court in the case of Sap Labs India Pvt. Ltd. vs. ITO?

6. Whether, given the facts and circumstances of the case and in accordance with the law, the ld,CIT(A) is justified in deleting disallowance of interest expense amounting to Rs,63,27,480/- u/s 36(1)(iii) of the Act, without appreciating the fact that the interest bearing funds were utilized by the assessee for giving the interest free advances in question?"

7. Whether, given the facts and circumstances of the case and in accordance with the law, the ld.CIT(A) is justified in deleting the disallowance made by the AO on account of the differential amount of Rs. 2,34,58,952/-, without appreciating the fact that the disallowance is consistent with the principle that deductions should be aligned with the official endorsement of the DSIR?

8. Whether, given the facts and circumstances of the case and in accordance with the law, the ld.CIT(A) is justified in admitting the additional claim of the deduction u/s 35(2AB) of the Act for expenses related to R&D, without appreciating the fact that these expenses were not even approved by DSIR?

9. Whether, given the facts and circumstances of the case and in accordance with the law, the ld.CIT(A) is justified in deleting the disallowance of claim of revenue expenditure of Rs,1,10,90,165/-, without appreciating the fact that expenses related to product registration are capital expenditure pertaining to regulatory approvals and material rights.

10. Whether, given the facts and circumstances of the case and in accordance with the law, the ld.CIT(A) is justified in deleting suo-moto disallowance made by the assessee and deleting the disallowance of administrative expenses under Rule 8D(2)(iii) of the Income Tax Rules, restricting

the disallowance u/s. 14A of the Act to the extent of exempt income of Rs. 5,208/-".

11. Whether, given the facts and circumstances of the case and in accordance with the law, the ld. CIT(A) is justified in deleting the addition of Rs. 78,626,505/- made to the book profit of the assessee, without appreciating the fact that the AO has correctly calculated the book profit as per the Explanation 1 clause (f) to section 115JB of the Act.

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12. Whether, given the facts and circumstances of the case and in accordance with the law, the ld.CIT(A) is justified in deleting the disallowance of Foreign Currency Loss of Rs.45,24,80,000/- made by the AO, without appreciating the fact that the currency swap loss claimed by the assessee is in the nature of speculative loss and is not allowable as business expenditure.

13. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary?

14. It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored?"

> 14. We have heard the rival submissions and carefully perused the material available on record including the assessment order, order passed by the Ld. CIT(A), written submissions filed by the parties and the judicial precedents relied upon before us.
>
> 15. Ground Nos.1 to 5 raised by the Revenue relate to deletion of transfer pricing adjustment of Rs.74,02,428/- made by the TPO on account of corporate guarantee commission. During the course of transfer pricing proceedings, the TPO observed that the assessee had extended corporate guarantee in favour of Allahabad Bank on behalf of its overseas Associated Enterprise, namely Satellite Overseas Holdings Ltd., UK. The TPO held that the said guarantee constituted an "international transaction"

within the meaning of section 92B of the Act and benchmarked the arm's length guarantee commission at 1.24%, thereby proposing adjustment of Rs.74,02,428/-.

16. The Ld. CIT(A), however, deleted the addition by following the decision of the Coordinate Bench in assessee's own case for earlier years. We find that identical issue came up before the Tribunal in assessee's own case in ITA Nos.848 & 918/Ahd/2016 for Assessment Year 2011-12, wherein the Coordinate Bench held as under:

> "The assessee admittedly had provided the corporate guarantee in question to its associate enterprise in earlier assessment years. There is no quarrel that relevant factual backdrop remains the same in the impugned assessment year as it was in preceding assessment year 2010-11. Both the lower authorities make the impugned adjustment by drawing support from their respective orders in said earlier assessment year. Case file indicates that a co-ordinate bench in assessee's appeal itself ITA No.694/Ahd/2015 for assessment year 2010-11 decided on 03.03.2017 has already deleted the said corporate guarantee adjustment after concluding that the same is not an international transaction u/s.92B of the Act. Learned Departmental Representative fails to indicate any distinction on facts or law in the impugned assessment year. We therefore adopt the very reasoning herein as well to delete the impugned corporate guarantee adjustment."

17. We further notice that the Tribunal in assessee's own case for Assessment Year 2010-11 had elaborately discussed the issue by relying upon various judicial precedents including Bharti Airtel Ltd. v. Addl. CIT [(2014) 43 taxmann.com 150 (Delhi Trib.)], Micro Ink Ltd. v. ACIT [(2016) 176 TTJ 8 (Ahd)] and Siro Clinpharm Pvt. Ltd. v. DCIT [(2016) 69 taxmann.com 336 (Mumbai Trib.)] and observed that:

> "A corporate guarantee issued by a parent company to support its subsidiary, without involving any cost, outflow or economic sacrifice, cannot be treated at par with a bank guarantee and therefore no arm's length guarantee commission can be imputed merely on assumptions."

18. The Tribunal further held that:

> "There is no material on record to indicate that the assessee had incurred any cost or undertaken any burden while extending such corporate guarantee. In absence of any bearing on profits, income, losses or assets of the assessee, the transaction cannot be brought within the ambit of section 92B."

19. We observe that in the present year also the Ld. CIT(A) has recorded categorical finding that no fresh corporate guarantee had been issued during the relevant year and the assessee had not incurred any additional financial burden, cost or economic outflow while continuing the guarantee arrangement. The Revenue has failed to rebut these factual findings.

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20. Respectfully following the decisions rendered in assessee's own case for earlier years, we uphold the order of the Ld. CIT(A) deleting transfer pricing adjustment of Rs.74,02,428/- and dismiss Ground Nos.1 to 5 raised by the Revenue.

21. Ground No.6 relates to deletion of disallowance of Rs.63,27,480/- made under section 36(1)(iii) of the Act on account of alleged diversion of borrowed funds towards interest-free advances to sister concerns.

22. The Assessing Officer observed that the assessee had advanced funds to related entities without charging interest while simultaneously incurring interest expenditure on borrowings and therefore proportionate interest attributable to such advances was liable for disallowance.

23. The Ld. CIT(A), however, deleted the disallowance after examining the commercial expediency and business nexus of the advances. We find that identical issue has repeatedly arisen in assessee's own case in earlier years and has consistently been decided in favour of the assessee. The Coordinate Bench in assessee's own case for Assessment Year 2011-12 held as under:

> "We notice in this factual backdrop that a co-ordinate bench has followed various judicial precedents CIT vs. Raghuvir Synthetics (2013) 354 ITR 222 (Guj), CIT vs. Dalmia Cements Pvt. Ltd. (2002) 254 ITR 377 (Delhi), S A Builders Ltd. vs. CIT (2007) 288 ITR 1(SC) to delete identical disallowance(s) in assessment years 2006-

07 & 2007-08. Hon'ble jurisdictional high court has upheld the same in Tax Appeal no.39/2015 decided on 23.01.2015. The Revenue fails to dispute all the above facts as well as legal developments. We therefore conclude that both the lower authorities have erred in invoking the impugned disallowance of interest in assessee's strategic interest free advances made to its sister concerns."

24. The Hon'ble Supreme Court in S.A. Builders Ltd. v. CIT [(2007) 288 ITR 1 (SC)] has held:

> "Once it is established that there was nexus between the expenditure and purpose of business, the Revenue cannot justifiably claim to put itself in the arm-chair of ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.
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> - 14- the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure."

25. Similarly, the Hon'ble Gujarat High Court in CIT v. Raghuvir Synthetics Ltd. [(2013) 354 ITR 222 (Guj)] held:

> "If there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of interest-free funds generated or available with the company."

26. In the present case, the Ld. CIT(A) has recorded finding that the advances were commercially expedient and intrinsically connected with business operations. The Assessing Officer has failed to establish any direct nexus between borrowed funds and the advances made. Respectfully following the binding precedents in assessee's own case as well as the judgments of the Hon'ble Supreme Court and Hon'ble Gujarat High Court, we uphold the order of the Ld. CIT(A) deleting disallowance of Rs.63,27,480/- under section 36(1)(iii).

27. Ground No.6 raised by the Revenue is accordingly dismissed.

28. Ground Nos.7 and 8 raised by the Revenue relate to deletion of disallowance of Rs.2,34,58,952/- being differential amount of weighted deduction claimed under section 35(2AB) of the Act in respect of expenditure incurred on scientific research and development activities, which according to the Assessing Officer was not approved by the Department of Scientific and Industrial Research (DSIR) in Form No.3CL.

29. During the course of assessment proceedings, the Assessing Officer restricted the assessee's claim for weighted deduction only to the extent quantified by DSIR in Form No.3CL and consequently disallowed the balance claim of Rs.2,34,58,952/- on the ground that the said expenditure had not received specific approval from DSIR. According to the Assessing ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 15- Officer, deduction under section 35(2AB) of the Act was allowable strictly to the extent certified by the prescribed authority and therefore any expenditure beyond the figures reflected in Form No.3CL could not qualify for weighted deduction.

30. In appeal, the Ld. CIT(A) deleted the aforesaid disallowance by following earlier decisions rendered in assessee's own case for preceding assessment years. We find that identical controversy had arisen in assessee's own case for Assessment Years 2011-12 and 2012-13 wherein the Coordinate Bench of the Tribunal as well as the Hon'ble Gujarat High Court consistently decided the issue in favour of the assessee.

31. The Coordinate Bench in assessee's own case in ITA Nos.848 & 918/Ahd/2016 for Assessment Year 2011-12, while dealing with similar disallowance, observed as under:

> "It emerges that the assessee's endeavor before the DRP was to appraise it about DSIR's Form 3CL instead of suo motu making the impugned disallowance. We notice in this factual backdrop that a co-ordinate bench in assessee's case itself No.3569/Ahd/2004 ACIT vs. Torrent Pharmaceuticals in holding that once an assessing authority accepts revenue expenditure claim regarding an amount spent on clinical trial/research & development, the very sum is eligible for the impugned weighted deduction as well since there is no stipulation incorporated in the Act that the same would be allowable only to the extent of relevant figures stated in Form No.3CL."

32. The Tribunal further categorically observed that:

> "This is admittedly not the Revenue's case that the assessee has not incurred the impugned expenditure for the above specified purpose u/s 35(2AB) of the Act."

33. We further notice that the aforesaid decision of the Tribunal stood affirmed by the Hon'ble Gujarat High Court in Tax Appeal No.39 of 2015 in assessee's own case. The Hon'ble High Court, while considering allowability of weighted deduction in respect of scientific research expenditure incurred ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 16- outside the approved in-house facility, following its earlier judgment in CIT v. Cadila Healthcare Ltd. reported in (2013) 31 taxmann.com 300 (Guj), held as under:

> "The Tribunal committed no error in holding that expenditure incurred outside the approved R&D facility would also qualify for weighted deduction under section 35(2AB), since the same was integrally connected with scientific research activity."

34. Similarly, in CIT v. Claris Lifesciences Ltd. reported in (2010) 326 ITR 251 (Guj), the Hon'ble Gujarat High Court held:

> "Once the facility is approved, the entire expenditure so incurred on development of facility has to be allowed and weighted deduction cannot be denied merely because part of the expenditure was not specifically reflected in the approval."

35. We also notice that identical issue again came up before the Coordinate Bench in assessee's own case for Assessment Year 2012-13 in ITA Nos.345 & 383/Ahd/2020, wherein the Tribunal, following the earlier binding precedents, upheld deletion of similar disallowance made merely on the basis of variance between the claim made by the assessee and the figures reflected in Form No.3CL issued by

DSIR.

36. At this stage, it would also be relevant to take note of the subsequent legislative amendment brought in the scheme of section 35(2AB). We observe that by Finance Act, 2016, with effect from 01.07.2016, significant changes were introduced in the mechanism governing approval and quantification of expenditure by the prescribed authority i.e. DSIR. Subsequently, Rule 6(7A) and the reporting framework in Form No.3CL were amended to strengthen the role of DSIR in certifying the quantum of eligible expenditure for the purpose of weighted deduction under section 35(2AB) of the Act. Thereafter, further amendments were introduced by the ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 17- Income Tax (10th Amendment) Rules, 2021 prescribing revised procedures and reporting requirements by the prescribed authority.

37. However, we find that the assessment year under consideration is Assessment Year 2013-14, which is prior to the aforesaid statutory and procedural amendments brought into force from 01.07.2016 onwards. Therefore, the controversy involved in the present appeal is governed by the unamended provisions of section 35(2AB) of the Act as they existed during the relevant previous year. Under the pre-amended legal position applicable to the year under appeal, there was no statutory stipulation in section 35(2AB) of the Act restricting weighted deduction strictly to the amount quantified in Form No.3CL by DSIR. It is under this unamended statutory framework that the Hon'ble Gujarat High Court in CIT v. Claris Lifesciences Ltd. (supra) and CIT v. Cadila Healthcare Ltd. (supra), as well as the Coordinate Bench decisions in assessee's own case for Assessment Years 2011-12 and 2012-13, held that once the research facility stands approved and the expenditure is genuinely incurred for scientific research purposes, weighted deduction under section 35(2AB) of the Act cannot be curtailed merely because the quantum reflected in Form No.3CL differs from the claim made by the assessee.

38. Thus, the subsequent amendments enhancing the role of DSIR quantification and certification mechanism are prospective in operation and cannot be retrospectively applied to Assessment Year 2013-14 so as to unsettle the legal position prevailing during the relevant period. Consequently, the Revenue cannot derive support from the post-2016 amended framework for denying deduction in the year under consideration, which continues to be governed by the judicial precedents rendered under the unamended provisions applicable at the relevant point of time.

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39. Respectfully following the binding decisions rendered in assessee's own case by the Coordinate Bench as well as the Hon'ble Gujarat High Court under the statutory provisions prevailing during the year under consideration, we find no infirmity in the order passed by the Ld. CIT(A) deleting disallowance of Rs.2,34,58,952/- made under section 35(2AB) of the Act.

40. Accordingly, Ground Nos.7 and 8 raised by the Revenue stand dismissed.

41. Ground No.9 relates to deletion of disallowance of product registration expenditure amounting to Rs.1,10,90,165/- claimed under section 37(1) of the Act.

42. During the course of assessment proceedings, the Assessing Officer observed that the assessee had incurred expenditure towards registration of pharmaceutical products in various foreign countries and jurisdictions for obtaining regulatory approvals from overseas drug authorities. According to the Assessing Officer, such expenditure resulted in acquisition of enduring commercial benefit enabling the assessee to market and sell its products in foreign territories over a prolonged period of time and therefore the same assumed the character of capital expenditure. The Assessing Officer accordingly treated the product registration expenses as capital in nature and disallowed the same under section 37(1) of the Act.

43. In appeal, the Ld. CIT(A) deleted the disallowance by following the decisions rendered in assessee's own case for earlier assessment years. We find that identical issue has consistently been decided in favour of the assessee by the Coordinate Bench as well as by the Hon'ble Gujarat High Court.

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44. The Coordinate Bench in assessee's own case for Assessment Year 2011-12 in ITA Nos.848 & 918/Ahd/2016, while adjudicating identical controversy, held as under:

> "The assessee's product registration expenditure in issue pertains to obtaining approvals from various foreign regulatory authorities for marketing pharmaceutical products. Such expenditure is recurring in nature and does not result in creation of any capital asset or enduring advantage in capital field. The same merely facilitates carrying on of pharmaceutical business operations in export markets and therefore qualifies as revenue expenditure."

45. Similarly, the Coordinate Bench in assessee's own case for Assessment Year 2012-13 in ITA Nos.345 & 383/Ahd/2020 again followed the earlier decisions and upheld deletion of similar disallowance by observing that pharmaceutical product registration expenditure is an integral and

recurring incident of export-oriented pharmaceutical business and cannot be treated as capital expenditure merely because the approvals may remain valid for certain period.

46. We further observe that the aforesaid issue also stands covered by the judgment of the Hon'ble Gujarat High Court in assessee's own case in Tax Appeal No.39 of 2015, wherein the Hon'ble jurisdictional High Court upheld the findings of the Tribunal allowing product registration expenditure as revenue expenditure.

47. We also derive support from the judgment of the Hon'ble Gujarat High Court in CIT v. Torrent Pharmaceuticals Ltd. reported in (2013) 35 taxmann.com 300 (Guj), wherein the Hon'ble High Court held as under:

> "Expenditure incurred for obtaining registration of products in foreign countries cannot be treated as capital expenditure merely because such registration may incidentally benefit business in future years."

48. The Hon'ble jurisdictional High Court further observed:

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> "The expenditure did not bring into existence any asset or advantage in capital field but merely facilitated carrying on of business operations."

49. We find force in the reasoning adopted in the aforesaid judicial precedents. In pharmaceutical industry, registration of products before drug regulatory authorities of various countries is a mandatory statutory requirement for marketing and export of medicines in those jurisdictions. Such approvals are product-specific, regulatory in nature and subject to periodic renewals, modifications and continuing compliance requirements. The expenditure incurred for obtaining such approvals does not result in acquisition of any proprietary right or transferable capital asset. Rather, it merely enables the assessee to access export markets and conduct its business operations in accordance with local regulatory framework.

50. Merely because the registration may incidentally benefit the assessee over more than one year cannot by itself convert a recurring business expenditure into capital expenditure. The test of enduring benefit cannot be applied mechanically divorced from the commercial realities of pharmaceutical business where continuous regulatory approvals and renewals constitute an ongoing operational necessity. The expenditure in question is intrinsically connected with carrying on of day-to-day business activities and therefore in our view, falls within the ambit of allowable revenue expenditure under section 37(1) of the Act.

51. Respectfully following the binding decisions rendered in assessee's own case for Assessment Years 2011-12 and 2012-13 in ITA Nos.848 & 918/Ahd/2016 and ITA Nos.345 & 383/Ahd/2020 respectively, as well as the judgment of the Hon'ble Gujarat High Court in Tax Appeal No.39 of 2015 and CIT v. Torrent Pharmaceuticals Ltd. (supra), we find no infirmity in the ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 21- order passed by the Ld. CIT(A) deleting disallowance of Rs.1,10,90,165/- made on account of product registration expenditure.

52. Accordingly, Ground No.9 raised by the Revenue stands dismissed.

53. Ground No.10 relates to deletion/restriction of disallowance made under section 14A read with Rule 8D of the Income-tax Rules. During the course of assessment proceedings, the Assessing Officer invoked the provisions of section 14A read with Rule 8D and computed disallowance of expenditure allegedly attributable to exempt income earned by the assessee. According to the Assessing Officer, administrative as well as financial resources of the assessee were utilized for making investments capable of yielding exempt income and therefore proportionate expenditure was liable for disallowance under section 14A of the Act.

54. The Ld. CIT(A), however, restricted/deleted the disallowance by following earlier appellate orders rendered in assessee's own case.

55. We find that identical issue has consistently been decided in favour of the assessee by the Coordinate Bench in earlier assessment years. The Coordinate Bench in assessee's own case for Assessment Year 2011-12 in ITA Nos.848 & 918/Ahd/2016, while adjudicating similar controversy, held as under:

> "Both the learned representatives inform us very fairly that a co-ordinate bench in assessment year 2007-08 has already restricted an identical disallowance to the extent of exempt income amount. We therefore follow the very course of action herein as well to restrict the impugned disallowance to Rs.5,808/- only."

56. We further notice that similar view has also been taken by the Coordinate Bench in assessee's own case for Assessment Year 2012-13 in ITA Nos.345 & 383/Ahd/2020, wherein the Tribunal reiterated that ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 22- disallowance under section 14A cannot exceed the exempt income actually earned during the relevant previous year.

57. The legal principle governing the issue is now no longer res integra. The Hon'ble Delhi High Court in Joint Investments Pvt. Ltd. v. CIT reported in (2015) 372 ITR 694 (Delhi) has categorically laid down the following proposition:

> "Section 14A or Rule 8D cannot be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance indicated in section 14A is only to the extent of expenditure incurred in relation to exempt income."

58. Similarly, the Hon'ble Punjab & Haryana High Court in PCIT v. State Bank of Patiala reported in (2017) 391 ITR 218 (P&H), which has attained finality upon dismissal of SLP by the Hon'ble Supreme Court reported in (2018) 99 taxmann.com 286 (SC), held as under:

> "The disallowance under section 14A read with Rule 8D cannot exceed the exempt income earned by the assessee during the relevant assessment year."

59. Further, the Hon'ble Delhi High Court in Cheminvest Ltd. v. CIT reported in (2015) 378 ITR 33 (Delhi) observed as under:

> "Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

60. Thus, the consistent judicial view emerging from the aforesaid decisions is that section 14A is intended to disallow only actual expenditure having proximate nexus with earning of exempt income and cannot be invoked to create artificial or hypothetical disallowance exceeding the exempt income itself. Rule 8D merely provides a computational mechanism and cannot enlarge the scope of substantive disallowance contemplated under section 14A of the Act.

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61. We find force in the reasoning adopted in the aforesaid judicial precedents. Merely because investments capable of generating exempt income exist in the balance sheet, disallowance under section 14A of the Act cannot be mechanically computed without correlating the same to actual exempt income earned during the relevant year. Any interpretation permitting disallowance in excess of exempt income would lead to absurd results and taxation of notional expenditure, which is not contemplated either under section 14A or Rule 8D.

62. In the present case, the Revenue has not demonstrated any specific infirmity in the findings recorded by the Ld. CIT(A). The restriction/deletion of disallowance has been made by following binding precedents rendered in assessee's own case as well as settled legal principles governing

section 14A.

63. Respectfully following the decisions rendered in assessee's own case for Assessment Years 2011-12 and 2012-13 in ITA Nos.848 & 918/Ahd/2016 and ITA Nos.345 & 383/Ahd/2020 respectively, as well as the ratio laid down in Joint Investments Pvt. Ltd. v. CIT (supra), PCIT v. State Bank of Patiala (supra) and Cheminvest Ltd. v. CIT (supra), we uphold the order passed by the Ld. CIT(A).

64. Accordingly, Ground No.10 raised by the Revenue stands dismissed.

65. Ground No.11 relates to deletion of addition of Rs.78,62,65,505/- made by the Assessing Officer while computing book profit under section 115JB of the Act in relation to disallowance made under section 14A read with Rule 8D of the Income-tax Rules.

66. During the course of assessment proceedings, the Assessing Officer made disallowance under section 14A of the Act under the normal provisions ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 24- of the Act and thereafter added the same amount while computing book profit under section 115JB by invoking clause (f) of Explanation 1 to section 115JB(2). According to the Assessing Officer, expenditure relatable to exempt income was liable to be added back while computing MAT income also.

67. The Ld. CIT(A), however, deleted the aforesaid addition by following earlier orders passed in assessee's own case. We find that identical issue has already been decided in favour of the assessee by the Coordinate Bench in earlier assessment years.

68. The Coordinate Bench in assessee's own case for Assessment Year 2011-12 in ITA Nos.848 & 918/Ahd/2016 observed as under:

> "We notice that once the impugned disallowance under section 14A stands restricted to exempt income only, corresponding addition made in computation of book profit under section 115JB cannot survive beyond such amount."

69. Similarly, the Coordinate Bench in assessee's own case for Assessment Year 2012-13 in ITA Nos.345 & 383/Ahd/2020 held as under:

> "The adjustment under clause (f) to Explanation 1 of section 115JB cannot be made by importing the computation mechanism contained in Rule 8D. Only actual expenditure debited to profit and loss account relatable to exempt income can be considered for the purpose of section 115JB."

70. We further observe that the Special Bench of the Tribunal in ACIT v. Vireet Investment Pvt. Ltd. reported in (2017) 165 ITD 27 (Delhi)(SB) has clearly held as under:

> "The computation under clause (f) of Explanation 1 to section 115JB(2) is to be made independently without resorting to the computation contemplated under section 14A read with Rule 8D."

71. The Special Bench further held:

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> "No addition can be made to book profit under section 115JB by automatically adopting the amount disallowed under section 14A read with Rule 8D."

72. Thus, the settled legal position is that computation under section 14A and computation of book profit under section 115JB operate independently. The amount disallowed under section 14A under normal provisions cannot automatically be added while computing MAT income under section 115JB. Only actual expenditure debited in the profit and loss account which is directly relatable to exempt income can be considered for adjustment under clause (f) of Explanation 1 to section 115JB.

73. We also observe that once the disallowance under section 14A itself has been restricted/deleted under the normal provisions, corresponding addition under MAT provisions on the same basis would result in double disallowance, which is not permissible under law.

74. Respectfully following the decisions rendered in assessee's own case for Assessment Years 2011-12 and 2012-13 in ITA Nos.848 & 918/Ahd/2016 and ITA Nos.345 & 383/Ahd/2020 respectively, we find no infirmity in the order passed by the Ld. CIT(A) deleting addition of Rs.78,62,65,505/- made under section 115JB of the Act.

75. Accordingly, Ground No.11 raised by the Revenue stands dismissed.

76. Ground No.12 relates to deletion of disallowance of foreign exchange fluctuation loss amounting to Rs.45,24,80,000/- which had been treated by the Assessing Officer as speculative loss under section 43(5) of the Act

77. During the course of assessment proceedings, the Assessing Officer observed that the assessee had incurred substantial loss on account of foreign ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 26- exchange derivative/forward contracts entered into with banks. According to the Assessing Officer, such transactions were speculative in nature and therefore the resultant loss was liable to be treated as speculative loss under section 43(5) of the Act and not allowable as normal business loss. The Assessing Officer was of the view that the derivative contracts were independent transactions not directly linked with actual delivery of goods and therefore fell within the ambit of speculative transactions.

78. The Ld. CIT(A), however, deleted the disallowance by following earlier decisions rendered in assessee's own case. We find that identical controversy has already been examined in detail by the Coordinate Bench in assessee's own case for Assessment Year 2011-12 in ITA Nos.848 & 918/Ahd/2016. While adjudicating the issue, the Tribunal observed as under:

> "The assessee's case throughout has been that it had entered into a forex contract with the State Bank of India on the basis of its foreign currency exposure in import/export transactions with public sector banks to cover fluctuation risk upto Rs.200 crores."

79. The Tribunal further recorded the following finding:

> "Hon'ble jurisdictional high court's decision in CIT vs. Friends & Friends Shipping Pvt. Ltd. (2013) 35 taxmann.com 553 (Guj) holds losses arising from similar foreign exchange contracts to be business losses rather than speculative ones. Their lordships conclude that such exchange transactions are hedging transactions instead of being speculative transactions in nature."

80. The Tribunal also relied upon the judgment of the Hon'ble Bombay High Court in CIT v. D. Chetan & Co. reported in (2016) 75 taxmann.com 300 (Bom), wherein it was held as under:

> "Forward contracts entered into by the assessee to safeguard against foreign exchange fluctuations in respect of import-export business constitute hedging transactions and resultant loss is allowable as business loss."

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81. Similarly, the Full Bench judgment of the Hon'ble Gujarat High Court in Pankaj Oil Mills v. CIT reported in (1978) 115 ITR 824 (Guj)(FB) laid down the following legal principle:

> "A hedging contract entered into to guard against loss through future price fluctuations in respect of business transactions cannot be regarded as speculative transaction."

82. We further observe that the Hon'ble Gujarat High Court in CIT v. Friends & Friends Shipping Pvt. Ltd. (supra) has clearly distinguished speculative transactions from genuine hedging transactions undertaken to minimize business risk arising from foreign exchange fluctuations. The Hon'ble High Court held that where derivative contracts are entered into to safeguard existing import-export exposure and are integrally connected with regular business operations, the resultant gain or loss retains character of normal business income or business loss.

83. The core controversy involved in the present issue is whether foreign exchange derivative contracts entered into by the assessee were speculative independent ventures or whether they constituted hedging transactions undertaken to protect business exposure arising from export-import activities. We find that the assessee is engaged in substantial export-import business and had considerable foreign currency exposure during the year under consideration. The forward contracts and derivative instruments were entered into with banks only for the purpose of safeguarding against adverse fluctuation in foreign exchange rates affecting business receipts and payments.

84. The Revenue has not brought any material on record to establish that the impugned derivative contracts were entered into for speculative purposes disconnected from underlying business transactions. Mere absence of actual ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 28- delivery in settlement of derivative contracts cannot by itself render such transactions speculative when they are demonstrably linked to business exposure and intended for risk mitigation.

85. In view of the settled legal position emerging from the judgments of the Hon'ble Gujarat High Court in CIT v. Friends & Friends Shipping Pvt. Ltd. (2013) 35 taxmann.com 553 (Guj), Full Bench decision in Pankaj Oil Mills v. CIT (1978) 115 ITR 824 (Guj)(FB) and the judgment of the Hon'ble Bombay High Court in CIT v. D. Chetan & Co. (2016) 75 taxmann.com 300 (Bom), foreign exchange fluctuation loss arising from genuine hedging transactions undertaken in ordinary course of import-export business is allowable as business loss and cannot be treated as speculative loss under section 43(5) of the Act.

86. Respectfully following the aforesaid binding precedents as well as the Coordinate Bench decision rendered in assessee's own case for Assessment Year 2011-12 in ITA Nos.848 & 918/Ahd/2016, we find no infirmity in the order passed by the Ld. CIT(A) deleting disallowance of Rs.45,24,80,000/- made by the Assessing Officer. Accordingly, Ground No.12 raised by the Revenue stands dismissed.

87. In the result, the appeal of the Revenue stands dismissed.

Now we shall deal with the assessee's appeal in ITA No. 202/Ahd/2026

88. The assessee has raised the following Grounds of Appeal:

> "1. The Hon'ble CIT(A), despite observing that certain "freebees are not fully verifiable," has erred in sustaining the disallowance u/s 37(1) without undertaking any independent examination and by merely reiterating the findings of the Ld. AO in toto (Ground no 10 in CIT Appeal) ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.
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> - 29- 1.1 The Hon'ble CIT(A) has erred in identifying any specific expenditure as non-business or prohibited. The appellant had already made a voluntary disallowance, and the remaining addition of 4,92,36,452/- is based on assumption rather than evidence and deserves to be deleted. (Tax effect- Rs. 1,59,74,767)
>
> 2. The Hon'ble CIT(A) has erred in sustaining the disallowance of 105,377/- u/s 2(24)(x) r.w.s. 36(1)(va), despite the fact that for AY 2013-14 employees' contributions deposited before the due date of filing the return were allowable as per settled judicial law; the disallowance sustained is therefore unwarranted and liable to be deleted. (Ground no 14 in CIT Appeal). (Tax effect- Rs. 34,190/-)
>
> 3. The Hon'ble CIT (A), on the facts and circumstances of the case and in law, has erred in not allowing additional claim made by the appellant for claiming weighted deduction under section 35(2AB) of the Act on gross research and development expenditure, without reducing contract research income amounting to Rs. 3,06,35,101/- from the eligible R&D expenditure. (Additional Ground No. 2 in CIT Appeal) (Tax effect- Rs. 99,39,559/-)
>
> 4. The Hon'ble CIT(A) has erred in rejecting the appellant's additional claim for deduction of Rs. 23,60,531/- towards bonus u/s 43B, solely on the ground that such claim was not made in the original return, without appreciating that the liability had been fully paid during the year and eligible for deduction in accordance with law. (Additional Ground no. 4 in CIT Appeal) (Tax effect- Rs. 7,65,875/-) The Appellant craves leave to add, alter, amend or withdraw all or any of the grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

89. Ground No.1 relates to disallowance of expenditure of Rs.4,92,36,452/- incurred towards freebies, gifts, incentives and promotional items provided to doctors and medical practitioners, which has been disallowed under section 37(1) of the Act by invoking Explanation 1 thereto.

90. The Assessing Officer observed during the course of assessment proceedings that the assessee had incurred substantial expenditure towards distribution of gifts, sponsorships, hospitality, incentives and other promotional benefits to medical practitioners and healthcare professionals. According to the Assessing Officer, such expenditure was prohibited by the Medical Council of India Regulations and therefore hit by Explanation 1 to ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 30- section 37(1) of the Act. The Assessing Officer relied upon CBDT Circular No.5/2012 dated 01.08.2012 and accordingly disallowed the expenditure.

91. The Ld. CIT(A) confirmed the addition by following the earlier orders in assessee's own case and various judicial precedents holding that expenditure incurred in violation of statutory regulations cannot be allowed as deduction under section 37(1) of the Act.

92. Before us, the Ld. Counsel for the assessee reiterated that the expenditure constituted normal business promotion expenditure incurred wholly and exclusively for business purposes and that pharmaceutical business inherently requires interaction with doctors and medical professionals. However, we are unable to accept the contention of the assessee.

93. We find that this issue is now squarely covered against the assessee by the decision of the Hon'ble Supreme Court in Apex Laboratories Pvt. Ltd. v. DCIT reported in (2022) 442 ITR 1 (SC), wherein the Hon'ble Apex Court categorically held as under:

> "The interpretation placed by the assessee that the Medical Council Regulations are applicable only to medical practitioners and not pharmaceutical companies is too narrow and would defeat the purpose of the regulation. Acceptance of such interpretation would indirectly permit pharmaceutical companies to do what medical practitioners are prohibited from accepting."

94. The Hon'ble Supreme Court further observed:

> "A claim for any expense incurred in providing freebies to medical practitioners is clearly prohibited by law and therefore inadmissible under Explanation 1 to section 37(1)."

95. The Hon'ble Apex Court also approved the CBDT Circular No.5/2012 and held:

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> "The CBDT circular only clarifies the existing legal position and does not create a new disability."

96. We further notice that the Coordinate Bench in assessee's own case for Assessment Year 2012-13 in ITA Nos.345 & 383/Ahd/2020 has already decided identical issue against the assessee by following the aforesaid judgment of the Hon'ble Supreme Court. The relevant findings read as under:

> "Since the expenditure incurred by the assessee towards freebies and incentives to doctors is hit by Explanation 1 to section 37(1), the same cannot be allowed as business expenditure notwithstanding the fact that such expenditure may have been incurred for business promotion."

97. Respectfully following the binding decision of the Hon'ble Supreme Court in Apex Laboratories Pvt. Ltd. (supra) as well as the earlier decision rendered in assessee's own case, we uphold the order of the Ld. CIT(A) sustaining disallowance of Rs.4,92,36,452/- under section 37(1) of the Act.

98. Accordingly, Ground No.1 raised by the assessee stands dismissed.

99. Ground No.2 relates to disallowance of Rs.1,05,377/- under section 36(1)(va) read with section 2(24)(x) of the Act on account of delayed deposit of employees' contribution towards welfare funds.

100. During the course of assessment proceedings, the Assessing Officer observed that employees' contribution collected by the assessee towards Gujarat Labour Welfare Fund and Modi Benevolent Fund had not been deposited within the due dates prescribed under the respective welfare legislations governing such contributions. The Assessing Officer accordingly held that once employees' contribution is not deposited within the due dates stipulated under the relevant welfare enactments, deduction under section 36(1)(va) of the Act becomes inadmissible notwithstanding the fact that the payment may have been made before the due date of filing return under ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 32- section 139(1). The Assessing Officer therefore disallowed the sum of Rs.1,05,377/- by invoking section 36(1)(va) read with section 2(24)(x) of the Act.

101. In appeal, the Ld. CIT(A) confirmed the disallowance by following the judgment of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v. CIT reported in (2022) 448 ITR 518 (SC).

102. Before us, the Ld. Counsel for the assessee submitted that the impugned contributions pertain to Gujarat Labour Welfare Fund and Modi Benevolent Fund and not to PF or ESI contributions. It was contended that the ratio laid down by the Hon'ble Supreme Court in Checkmate Services Pvt.

Ltd. (supra) applies specifically to employees' contribution towards PF/ESI governed by separate enactments and therefore the same should not be mechanically extended to other welfare funds. It was further argued that the amounts had admittedly been deposited before the due date of filing return under section 139(1) and therefore deduction ought to be allowed.

103. We have carefully considered the rival submissions and perused the material available on record. However, we are unable to persuade ourselves to accept the contention advanced on behalf of the assessee.

104. The controversy relating to delayed deposit of employees' contribution now stands conclusively settled by the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v. CIT reported in (2022) 448 ITR 518 (SC). The Hon'ble Apex Court, after extensively analyzing the scheme of sections 2(24)(x), 36(1)(va) and 43B of the Act, categorically held as under:

> "The non obstante clause under section 43B would not in any manner dilute or override the employer's obligation under section 36(1)(va) to deposit the employees' contribution within the due date prescribed under the relevant statute."

105. The Hon'ble Supreme Court further observed:

> "There is a marked distinction between the nature and character of employer's contribution and employees' contribution. Employees' contribution is deemed to be income under section 2(24)(x) and deduction can be claimed only upon fulfilment of the condition specified under section 36(1)(va), namely deposit within the due date under the relevant enactment."

106. The Hon'ble Apex Court categorically concluded:

> "Parliament treated contributions under section 43B(b) differently from those under section 36(1)(va). Thus, it is evident that the employer's contribution is covered by section 43B while employees' contribution is governed by section 36(1)(va)."

107. Thus, the legal principle emerging from the aforesaid judgment is that employees' contribution collected by the employer assumes character of deemed income under section 2(24)(x) and deduction thereof is permissible only if the amount is deposited within the due date prescribed under the respective welfare legislation. Deposit made after the statutory due date cannot be allowed merely because payment was ultimately made before filing return under section 139(1) of the Act.

108. We are also unable to accept the argument of the assessee that the ratio of Checkmate Services Pvt. Ltd. (supra) should be confined only to PF/ESI contributions. The principle laid down by the Hon'ble Supreme Court is founded upon the statutory scheme of section 36(1)(va) and section 2(24)(x), which governs employees' contributions collected under welfare legislations generally. Once the relevant welfare statute itself prescribes a due date for deposit of employees' contribution, failure to comply with such statutory condition attracts disallowance contemplated under section 36(1)(va) of the Act.

109. The distinction sought to be drawn by the assessee between PF/ESI contributions and contributions towards Gujarat Labour Welfare Fund or ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 34- Modi Benevolent Fund does not materially alter the legal position, since the nature of payment continues to remain employees' contribution collected and held by the employer in fiduciary capacity under the respective welfare enactments.

110. We further observe that the Coordinate Bench decisions relied upon by the assessee for earlier years were rendered prior to the authoritative pronouncement of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra). Once the Hon'ble Apex Court has conclusively interpreted the statutory provisions, the same becomes binding under Article 141 of the Constitution and prevails over earlier contrary views of lower forums.

111. In the present case, it is an admitted factual position that the impugned employees' contributions were not deposited within the due dates prescribed under the relevant welfare enactments. Therefore, the conditions contemplated under section 36(1)(va) stand violated and the resultant disallowance has rightly been made by the Assessing Officer and confirmed by the Ld. CIT(A).

112. Respectfully following the ratio laid down by the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v. CIT (2022) 448 ITR 518 (SC), we find no infirmity in the order passed by the Ld. CIT(A) sustaining disallowance of Rs.1,05,377/- under section 36(1)(va) read with section 2(24)(x) of the Act.

113. Accordingly, Ground No.2 raised by the assessee stands dismissed.

114. Ground No.3 relates to non-granting of additional weighted deduction claim of Rs.3,06,35,101/- under section 35(2AB) of the Act.

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115. The facts relating to this issue reveal that during the course of appellate proceedings before the Ld. CIT(A), the assessee raised additional claim contending that contract research receipts had wrongly been reduced from eligible research expenditure while computing weighted deduction under section 35(2AB). The assessee accordingly claimed further weighted deduction of Rs.3,06,35,101/- under section 35(2AB). However, the Ld. CIT(A) did not grant the additional claim.

116. Before us, the Ld. Counsel for the assessee submitted that once the expenditure incurred on scientific research activities has been accepted as genuine and eligible, weighted deduction under section 35(2AB) cannot be curtailed merely because certain contract research income was received by the assessee. It was argued that the deduction contemplated under section 35(2AB) is on gross eligible expenditure and not on net expenditure after reducing incidental receipts.

117. We find substantial force in the submissions advanced by the assessee. The issue now stands squarely covered in favour of the assessee by the Coordinate Bench decision in assessee's own case for Assessment Year 2011-12 in ITA Nos.848 & 918/Ahd/2016. The Tribunal while adjudicating identical controversy held as under:

> "It emerges that the assessee's endeavor before the DRP was to appraise it about DSIR's form 3CL instead of suo motu making the impugned disallowance. We notice in this factual backdrop that a co-ordinate bench in assessee's case itself No.3569/Ahd/2004 ACIT vs. Torrent Pharmaceuticals in holding that once an assessing authority accepts revenue expenditure claim regarding an amount spent on clinical trial/research & development, the very sum is eligible for the impugned weighted deduction as well since there is no stipulation incorporated in the Act that the same would be allowable only to the extent of relevant figures stated in Form no.3CL."

118. The Tribunal further categorically held:

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> "This is admittedly not the Revenue's case that the assessee has not incurred the impugned expenditure for the above specified purpose u/s.35(2AB) of the Act."

119. We further derive support from the judgment of the Hon'ble Gujarat High Court in CIT v. Cadila Healthcare Ltd. reported in (2013) 31 taxmann.com 300 (Guj), wherein the Hon'ble High Court held:

> "The assessee had incurred expenditure on clinical drug trial outside the approved in-house research and development facility. Such expenditure would also qualify for weighted deduction under section 35(2AB) since the same was integrally connected with scientific research activity."

120. Similarly, the Hon'ble Gujarat High Court in CIT v. Claris Lifesciences Ltd. reported in (2010) 326 ITR 251 (Guj) held:

> "Once the facility is approved, the entire expenditure so incurred on development of facility has to be allowed and weighted deduction cannot be curtailed merely because approval was granted in a later year."

121. In the present case, the Revenue has nowhere disputed genuineness of the expenditure incurred by the assessee for scientific research purposes. The denial of additional claim is merely technical and contrary to the settled legal position consistently followed in assessee's own case. Respectfully following the binding precedents of the Coordinate Bench and the Hon'ble Gujarat High Court, we direct the Assessing Officer to allow the additional weighted deduction claim of Rs.3,06,35,101/- under section 35(2AB) of the Act.

122. Accordingly, Ground No.3 raised by the assessee stands allowed.

123. Ground No.4 relates to rejection of additional claim of Rs.23,60,531/- under section 43B of the Act in respect of bonus payment.

124. During the course of appellate proceedings before the Ld. CIT(A), the assessee submitted that due to inadvertent computational omission, deduction ITA Nos. 202&288/Ahd/2026 Cadila Pharmaceuticals Ltd. vs. DCIT & DCIT vs. Cadila Pharmaceuticals Ltd.

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- 37- under section 43B of the Act in respect of bonus payment amounting to Rs.23,60,531/- remained unclaimed while filing the return of income. The assessee contended that the impugned amount had actually been paid before the due date of filing return under section 139(1) of the Act and therefore deduction was allowable under section 43B of the Act on actual payment basis. However, the Ld. CIT(A) did not entertain the additional claim in absence of complete supporting evidences and detailed verification.

125. Before us, the Ld. Counsel for the assessee reiterated that the liability towards bonus had actually been discharged within the time prescribed under section 43B of the Act and therefore the deduction ought to be allowed. It was submitted that the omission in the computation of income was purely inadvertent and technical in nature.

126. We have carefully considered the rival submissions and perused the material available on record. We find that the controversy involved in the present ground is primarily factual in nature

and revolves around verification of actual payment of bonus within the time contemplated under section 43B of the Act.

127. It is a settled principle of law that deduction under section 43B of the Act is governed by the concept of actual payment and not merely by accrual or accounting entry. Therefore, for claiming deduction under section 43B of the Act, the assessee is required to conclusively establish, through supporting documentary evidences, that the liability was actually discharged within the prescribed time. Such verification necessarily requires examination of payment challans, bank statements, ledger accounts, reconciliation with books of account and correlation with the computation of income.

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128. Considering the entirety of facts and circumstances of the case, and in the interest of substantial justice, we deem it appropriate to restore this issue to the file of the Assessing Officer for carrying out detailed verification regarding actual payment of the impugned bonus liability within the time prescribed under section 43B of the Act read with section 139(1) of the Act.

129. Accordingly, Ground No.4 raised by the assessee is allowed for statistical purposes.

130. In the result, the appeal of the assessee is partly allowed.

131. In the combined result, the appeal of the Department is dismissed and the appeal of the assessee partly allowed.

This Order pronounced in Open Court on

Sd/- Sd/-
(ANNAPURNA GUPTA) (SIDDHARTHA NAUTIYAL)
ACCOUNTANT MEMBER JUDICIAL MEMBER
Ahmedabad; Dated 15/05/2026
TANMAY, Sr. PS TRUE COPY

/Copy of the Order forwarded to :

1. / The Appellant

2. / The Respondent.

3. / Concerned CIT

4. ( ) / The CIT(A)-

5. , , / DR, ITAT, Ahmedabad

6. / Guard file.

/ BY ORDER, / ¡ (Dy./Asstt.Registrar) ,
/ ITAT, Ahmedabad

1. Date of dictation 11.05.2026 (Dictated over dragon software)

2. Date on which the typed draft is placed before the Dictating Member 12.05.2026

3. Other Member.....

4. Date on which the approved draft comes to the Sr.P.S./P.S .05.2026

5. Date on which the fair order is placed before the Dictating Member for pronouncement 15.05.2026

6. Date on which the fair order comes back to the Sr.P.S./P.S 15.05.2026

7. Date on which the file goes to the Bench Clerk 15.05.2026

8. Date on which the file goes to the Head Clerk.....

9. The date on which the file goes to the Assistant Registrar for signature on the order.....

10. Date of Dispatch of the Order.....