

Issue relevant to Pharmaceutical Industry

Expenditure on Scientific Research- Sec. 35(2AB) r.w. Rule 6 (100% from AY 2021-22 onwards)

Preferential treatment of incomes from licensing or asset disposal attributable to R&D or patents; accelerated depreciation of R&D capital expenditures, etc. Most countries either use a tax credit (e.g., Canada, Australia, France, Ireland) or tax allowance (Brazil, China, Netherlands, UK) while providing R&D tax incentives.

- Revenue Expenditure – 100% (35(1)(i))
- Sec. 35(1)(ii) - 100% of sum paid to a research association or to a university, college or other institution used for Scientific Research (from AY 2021-22 onwards)
- Sec. 35(1)(iii)- 100% of any sum paid to an Indian Registered company approved by DSIR for Scientific Research
- Sec. 35(1)(iii) – 100% of any sum paid to a Research Association, University, College or other specified Institution undertaking Research in Social Science or Statistical Research
- Capital Expenditure excluding land – 100% [Section 35(1)(iv) read with Section 35(ii)]

The Kolkata Tribunal following the decisions of CIT v. Claris Lifesciences Ltd. [2010] 326 ITR 251 and CIT v. Sadan Vikas (India) Ltd. [2011] 335 ITR 117 (Delhi) has held in the case of ***Texmaco Rail & Engineering Ltd v. PCIT (2017) 86 taxmann.com 50/167 ITD 118/59ITR (Trib) 326 (Kol)*** that once a research facility is approved, entire expenditure so incurred on development of R&D facility has to be allowed for weighted deduction as provided by section 35(2AB) [Pls also see *Maruti Suzuki India Ltd. v. Union of India & Anr. (2017) 397 ITR 728 (Del.)*, *DCIT v. STP Ltd. [2021] 187 ITD 538 (Kol Trib.)*, *Vivimed Labs Ltd. v. DCIT [2016] 66 taxmann.com 94 (Hyd)*, *ACIT v. Ranbaxy Laboratories Ltd. [2012] 20 taxmann.com 334 / (2011) 7 ITR (Trib) 161 Del*, *Sri Biotech Laboratories India Ltd. v. ACIT 36 ITR (T) 88 (Hyd.)*, *Sun Pharmaceutical Industries Ltd. v. PCIT (2017) 162 ITD 484 (Ahd. Trib.)*].

Can the assessee's claim under section 35(2AB) be disallowed in the absence of Form 3CL?
Prior to 1-7-2016, Form 3CL granting approval by prescribed authority in relation to quantification of weighted deduction under section 35 (2AB) had no legal sanctity and it was only with effect from 1-7-2016 with amendment to rule 6(7A)(b) that quantification of weighted deduction under section 35(2AB) has significance [*CIT v. Sun Pharmaceutical Industries Ltd. [2017] 85 taxmann.com 80/250 Taxman 270 (Guj.)*] [in principle approved the Ahmedabad Tribunal decision in the case of *Sun Pharmaceutical Industries Ltd. v. PCIT (2017) 77 taxmann.com 202/162 ITD 484*], *CIT v. TVS Electronics Ltd. (2019) 105 taxmann.com 36 (Mad)*, *Reliance Industries Ltd. v. ACIT [2022] 143 taxmann.com 194/[2023] 198 ITD 158 (Mum)*], [*Bharath Fritz Werner Ltd. v. DCIT [2023] 146 taxmann.com 198 ([2022] 95 ITR(T) 507 (Bangalore - Trib.)*); *Eicher Motors Limited v. ACIT (ITA Nos.133 & 8739/DEL/2019; AYs: 2013-14 & 2014-15; Aug. 08.2022)*] (*Del ITAT "B" Bench*), *DCIT v. Force Motors Ltd. [2021] 133 taxmann.com 71 / 91 ITR(T) 8 / [2022] 193 ITD 344 (Pune - Trib.)*; *DCIT v. STP Ltd [2021] 125 taxmann.com 97 / 187 ITD 538 (Kolkata - Trib.)*; *Provimi Animal Nutrition India Pvt. Ltd. v. PCIT [2021] 124 taxmann.com 73 / 187 ITD 214 (Bang.)*; *MAHLE Behr India (P.) Ltd. v. DCIT [2021] 130*

taxmann.com 7/92 ITR(T) 726/190 ITD 852 (Pune - Trib.); Provimi Animal Nutrition India Pvt. Ltd. [2021] 124 taxmann.com 73 (Bangalore Trib.), Natural Remedies Pvt. Ltd. v. ACIT [TS-36-ITAT-2021(Bang), ACIT v. Crompton Greaves Ltd [2019] 111 taxmann.com 338/[2020] 181 ITD 40 (Mumbai - Trib.); Omni Active Health Technologies Ltd v. ACIT (2020) 184 ITD 714 (Mum); Bharat Forge Ltd v. Addl. CIT (2018-TIOL-2341-ITAT-PUNE); Sri Biotech Laboratories India Ltd. v. DCIT [2016] 69 taxmann.com 361/[2014] 36 ITR(T) 88 (Hyderabad - Trib.); Indfrg Limited. v. ACIT [ITA No.98/Bang/2015 - order dated 30/07/2020]; Glenmark Pharmaceuticals Ltd. v. ACIT -LTU, Mumbai [ITA No 5651/Mum/2017 (AY 2013-14 date of order 21/08/2019)], Mahindra Electric Mobility Ltd. v. ACIT [IT Appeal No. 641 (Bang.) of 2017, dated 14-9-2018] and Inventia Health Care Pvt Ltd v. DCIT [ITA No 5350/Mum/2014 (AY 2010-11 date of order 26/08/2016), DCIT v. Famy Care Ltd. [2014] 52 taxmann.com 461/[2015] 67 SOT 85 (Mum. - Trib.) and Mahindra and Mahindra Ltd. v. Addl. CIT (2014) 29 ITR (Trib) 95 (Mum).

Where part of the claim for deduction u/s.35(2AB) of the Act was claimed supported by Form No. 3CL but part of it was not supported by Form No. 3CL

Cummins India Ltd. v. DCIT [2018] 96 taxmann.com 576 (Pune - Trib.), ACIT v. Torrent Pharmaceuticals (ITA No569/Ahd/2004 (Ahd. Trib.), ACIT v. Persistent Systems Ltd. (2021-TIOL-1124-ITAT-PUNE), Coromandel International Ltd. v. ADIT (ITA No.101/Hyd/2012) (Hyd. Trib.) and Cadila Pharmaceutical Ltd. v. DCIT (2017) 59 ITR (T) 68 (Ahm) (SCN) – there is no stipulation incorporated in the Act that the amount would be allowable only to the extent of relevant figures stated in Form 3CL.

Biological E Limited v. DCIT (ITA No. 1590/Hyd/2018; AY 2015-16; date of order 22/07/2022) (Hyd “B Bench”), Electronics Corpn. of India Ltd. Vs. ACIT [2012] 28 taxmann.com 280 (Hyd.), -the expenditure as approved by the DSIR in the certificate given by them in Form 3CL alone is to be granted weighted deduction, and this order dated 25/09/2012 was not brought to the notice of the Bench in the case of *Cummins India Ltd (supra)* and subsequent decisions following *Cummins India Ltd (supra)*.

DSIR statutorily bound to issue Form 3CL in 120 days as per Rule 6(7A)(ba) – **SRF Limited v. UOI (2022) 143 taxmann.com 332 (Del)**

Clinical and Analytical Charges incurred outside Recognised R & D center.

*Cadila Healthcare Ltd. v. Addl CIT (2012) 21 taxmann.com 483 (Ahd Trib) [approved in CIT v. Cadila Healthcare Ltd (2013) 214 Taxman 672 / 31 taxmann.com 300 (Guj HC)], Cadila Pharmaceuticals v. ACIT (2012) 53 SOT 356 / 25 taxmann.com 519 / 147 TTJ 49 (Ahd), Cadila Healthcare Ltd. v. Addl CIT (2013) 56 SOT 89 (URO) / 29 taxmann.com 229 (Ahd. Trib), ACIT v. Torrent Pharmaceuticals Ltd (2009) 28 CCH 783 (Ahd), Cadila Pharmaceutical Ltd. v. DCIT (2017) 59 ITR(T) 68(Ahm)(SN), DCIT v. Aurobindo Pharma Ltd (2018) (7) TMI 1867-Hyd-ITAT followed in DCIT v. Aurobindo Pharma Ltd. 2018 (12) TMI 813-Hyd-ITAT distinguished Concept Pharmaceuticals Ltd v. ACIT (2010) 8 taxmann.com 156 / (2011) 43 SOT 423 (Mum) and followed CIT v. Cadila Pharmaceuticals Ltd (2015) (1) TMI 1348) (TS -344-ITAT-2021-AHD], and *Wockhardt Ltd. v. ACIT [2022] 141 taxmann.com 189 (Pune)**

- Weighted deduction available for expenses which are covered under DSIR guidelines only – *CIT v. Microlabs Ltd. (2017) 79 taxmann.com 365 (Kar)*
- Claim for approval of expenditure cannot be reduced by DSIR without giving opportunity of hearing to the Company - *Bosch Limited v. Secretary, DSIR (2016) 69 taxmann.com 339 (Kar)*
- Deciding authority has to what and to what extent the activity constitute scientific research can along be decided by DSIR provided the question is refer by the CBDT – *DCIT v. Mastek Ltd. (2012) 25 taxmann.com 133 (Guj)*

Deduction of Gross Expenditure and Net Expenditure

DCIT v. Microlaps Ltd. (2015) 62 taxmann.com 60/39 ITR (T) 585 (Ban) – on Gross Expenditure

Patent Box Regime under Section 115BBF-10% tax rate

- Section 115BBF should cover under its ambit not only income from patent developed and registered in India, but also income (licensing and royalty income) in respect of patents filed or registered outside India originating from a priority of Indian patent application filed under section 7(1) of Indian Patent Act.
- As per Sec. 115BBF, only royalty income is eligible for patent box benefit. On a global platform, Patent Box benefit is very broad and includes sale of goods/services arising from patented products/services.
- Thus, it is recommended that entire stream of income in relation to a patent as mentioned below should be eligible for patent box benefit:
 - a) Royalty income from sale of products arising as a result of licensing of the patent;
 - b) Income from royalty for exploitation of Patent registered in India and outside India;
 - c) Income from damage claim against patent infringement, whether from India or outside India.
 - d) Income from sale of patented rights (including capital gain);
 - e) Income from sale of patented products.

IPR Transactions:

Whether the Intellectual Property sold is a capital asset?

The definition of “*capital asset*” in sec 2(14) and sec 2(11) of the Act refers to “*property of any kind held*” by an assessee, whether or not connected with his business or profession, except those specifically excluded like (i) stock-in-trade, consumables stores, or raw materials held for the business or profession; (ii) agricultural land; (iii) personal effects; and (iv) certain bonds. The term “*property of any kind*” is very wide in scope, and it is not only the thing which is subject matter of ownership but includes also the dominium or the right of ownership. Any right which could be called property has been brought within the ambit of the definition of “*capital asset.*” The word ‘property’ includes the

right and interest of a person in a particular asset [Pls. see *Ahmed G. H. Ariff v CWT 76 ITR 471 (SC)*].

The rights in the above patent applications are transferable and such rights are transferred to a third party for a consideration. In extinguishment of right [*CIT v. Mrs. Grace Collis 248 ITR 323 (SC)*], there is liability under the head “capital gains”.

The Authority for Advance Ruling in the case of *Foster's Australia Ltd (2008) 302 ITR 289(AAR)* has held that ‘Property of any kind’ undoubtedly includes intellectual property which is but a species of intangible property. Trademarks, brand, goodwill, technical know-how relating to the manufacture of goods would all qualify to be treated as capital assets within the meaning of section 2(14) of the ITA.

The Authority has taken a similar view in *Pfizer Corporation (2004) 271 ITR 101 (AAR)* wherein transfer of technical information in the form of a dossier was held to be transfer of a capital asset.

The rights, title and interest in the Drug Product, Application and all Intellectual Property in the Drug Product therefore qualify as property under sec 2(14) of the Act and when such a right is given up, there is relinquishment of right and hence a “transfer” within the meaning of sec 2(47) of the I T Act [pls see *CIT v. Tata Services Ltd 122 ITR 594 (Bom)*, *CIT v. Vijay Flexible Containers 186 ITR 693 (Bom)* [right to obtain conveyance of immovable property is a capital asset], *CIT v. Sterling Investment Corpn Ltd 123 ITR 441 (Bom)* [the contractual right of a purchaser to obtain title to immovable property for a price, which is assignable, can be considered as property and, therefore, a capital asset.], *CIT v. Daksha Ramanlal 197 ITR 123 (Guj)* [the word "property" does not mean merely physical property, but also means the right, title or interest in it- though rendered in a different context], *Bafna Charitable Trust v. CIT 230 ITR 864, 874 (Bom)* [property includes ownership, estate and interest in corporeal things and also rights in personam capable of transfer such as debts, and signifies a beneficial right to or thing considered as having a monetary value], *CIT v. Smt. Laxmidevi Ratani 296 ITR 363 (MP)* [giving up of right to claim specific performance of contract is a capital asset], *Maheshwar Prakash-2 Co-op Hsg Soc Ltd 313 ITR (AT) 103, 111 (Mum)* [right to construct additional stories on account of increase in FSI is a capital asset]].

Section 115 BAB- Tax on Income of New Manufacturing Domestic Company – 17% to Domestic Companies from AY 2020-21 set up and registered on or after 01.10.2019 from manufacturing operations before 31.03.2024.

Free samples to doctors

In *Galderma India Pvt. Ltd. (Formerly known as Nestle Skin Health India Pvt. Ltd.) v. ACIT [TS-169-ITAT-2023(Mum)]* the Mumbai Tribunal relying on the decisions in the case of *ACIT v. Dupen Laboratories Pvt. Ltd. [TS-730-ITAT-2015 (Mum) /2016-TIOL-53-ITAT-MUM]* and *M/s. Merk Limited v. DCIT (ITA No.1525/Mum/2016) (Mum. Trib.)* and after considering the Apex Laboratories ruling allowed the cost of free samples distributed to the doctors by holding that the same does not fall under MCI regulations. *DCIT v. Laboratories Griffon Pvt. Ltd. [2018] 65 ITR (Trib) 317 (Kol)*.

In the case of *Procter and Gamble Health Ltd v. ACIT (2022-TIOL-ITAT-Mum)* expenses incurred by pharmaceutical company in respect of free samples distributed to medical practitioners was allowed where the assessee had furnished details of free samples along with their quantity and cost, list of doctors/practitioners with their qualification, field of practice, their detailed address with PIN Code. Similarly, in the case of *Solvay Pharma India Ltd. v. PCIT* (now merged with Abbott India Ltd.) [2018] 62 ITR (Trib) 643 (ITAT Mum); *ACIT v. Solvay Pharma India Ltd. (2021-TIOL-1315-ITAT-Mum)* it was held that free sample of medicine is only to prove the efficacy and to establish the trust of the doctors on the quality of drugs. This cannot be reckoned as freebies given to the Doctors but for promotion of the drugs.

The Delhi Tribunal in the case of *Eli Lilly & Co. (India) (P.) Ltd v. ACIT (2016) 70 taxmann.com / 159 ITD 482 (Del -ITAT)*,, after referring to Regulation 6.8 of the MCI Guidelines, held that samples to doctors can be allowed as business expenditure under the Income tax Act provided the company's SOP state that samples would be distributed to the doctors / medical practitioners in pursuance of the specific request being made by them. In other words, samples should not be distributed voluntarily / suo moto to any doctor or medical practitioner in order to influence them for prescribes in the company's drugs to the patients.

In the case of *Merck Ltd v. ACIT [TS-49-ITAT-2020-21-Mum-TP]* restriction of disallowance of free samples cost to 2% was requested following the decision in the case of *Johnson & Johnson Ltd. v. CIT (2014) 150 ITD 377 (Mumbai)* as against disallowance of 70% made by the Assessing Officer out of expenditure incurred towards distribution of samples on the allegation that Assessee had failed to substantiate the expenses and taking note of the previous year disallowance. The Tribunal remanded the matter to the Assessing Officer for fresh examination.

The Mumbai Tribunal in *ACIT v. Liva Health Care Ltd. (2016-TIOL-1681-ITAT-MUM)* held that expenses incurred for distribution of free samples to doctors after introduction of medicine in the market, when its uses are established, would be treated as advertisement and sales promotion expenses. The aforesaid expenses for free samples would be disallowed in terms of explanation to Section 37 of the Act and also in terms of Regulation 6.4.1 of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.

In *AstraZeneca Pharma India Limited [TS-823-ITAT-2022(Bang)]* the allowability of free samples distributed to doctors was remitted to AO to examine whether distribution of free samples given to doctors was covered under MCI Regulations.

Circular No. 5/3/2009-PI-II issued by Ministry of Chemicals & Fertilizers, Department of Pharmaceuticals, dated 19.03.2012, in relation to Uniform Code of Pharmaceutical Marketing Ethics ("UCPMP") wherein also the distribution of free samples to a person qualified to prescribe such product subject to certain conditions is permitted.

Brand Reminders:

Himalaya Drug Co. v. DCIT (2021) 124 taxmann.com 252/188 ITD 201 (Bang - ITAT) and *Himalaya Wellness Company (formerly known as The Himalaya Drug Company) v. DCIT (TS - 361-ITAT-2022 Bang - TP) (Para 7.4).*

Advisory/ Consultancy Fee

Delhi ITAT upholds disallowance of expenditure incurred in respect of doctors/ medical practitioners. The assessee's stand that consultancy agreement was entered into with the Doctors for providing consultancy/ advisory services to the Assessee, by assisting Assessee in assessing and evaluating its latest methodologies and products, attend meetings specified by Assessee or organised domestic/ international lectures, trainings at seminars for Assessee's employees and/ or fellow healthcare professionals and due taxes were also deducted, merits to be rejected. TDS cannot legalize 'consultancy' payments to doctors where Apex Labs ruling contravened. payments made by the Assessee to the Doctors in a different form as training and consultancy is another form devised to camouflage the real purpose. The Tribunal has invoked Explanation 1 appended to the said Section, to uphold the disallowance of the expenses *Apex Laboratories Pvt. Ltd. v. DCIT (2022) 135 taxmann.com 286 (SC)*. [*Boston Scientific India Pvt. Ltd. v. DCIT [TS-111-ITAT-2023(DEL)*].

In *Galderma India Pvt. Ltd. (Formerly known as Nestle Skin Health India Pvt. Ltd.) v. ACIT [TS-169-ITAT-2023(Mum)]* the Mumbai Tribunal held although the Assessee was asked to provide details and ledger statements along with vouchers to determine whether the same have been incurred in violation of MCI regulations as explained in Apex Laboratories ruling, however, no such details were filed; Accordingly, in the interest of justice, remits back to Revenue to consider the voucher of all expenses and the payments made by Assessee to the medical practitioners and determine whether the same have been incurred in violation of MCI regulations as explained in Apex Laboratories ruling. In *Agio Pharmaceutical Ltd. v. DCIT 2022-TIOL-680-ITAT-MUM* the assessee claimed that advisory services were paid to doctors to obtain information regarding the acceptability of medicine and necessity for improvement in them and also to gain information on similar products of other companies which are being sold in the same market. However, assessee has not submitted any technical record, or any agreement entered with those doctors to carry out this kind of activities which can prove that these doctors have done or carried out certain services to the assessee. In the absence of any documentary evidence or cogent material in support of the assessee's claim, inclined to reject the same.

In the case of *Boston Scientific India Pvt. Ltd. v. CIT (2023-TIOL-694-HC-DEL-IT)* the broad issue for consideration was whether expenses incurred by the assessee, pursuant to consulting and proctorship agreements executed with various specialists/doctors, are allowable expenses under Section 37(1) of the Act. The Tribunal has invoked Explanation 1 to uphold the disallowance of the expenses. Cause 6.8.1(g) of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which was introduced by way of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) (Amendment) Regulations, 2009, with effect from 10.12.2009, is extracted below:

"(g) *Affiliation*: A medical practitioner may work for pharmaceutical and allied healthcare industries in advisory capacities, as consultants as researchers, as treating doctors or in any other professional capacity. In doing so, a medical practitioner shall always:

- (i) Ensure that his professional integrity and freedom are maintained;
- (ii) Ensure that patients' interest are not compromised in any way;
- (iii) Ensure that such affiliations are within the law;
- (iv) Ensure that such affiliations/employments are fully transparent and disclosed."

The Tribunal has concluded that the expenses incurred by the petitioner in consonance with the consulting and proctorship agreement was a camouflage, for extending freebies. The High Court observes that relevant evidence sought to be furnished by the assessee was not considered by the lower authorities. Hence the Court directs that notices be issued to the parties concerned for further hearing.

Whether Explanation 3 to Section 37 retrospective in application

the word "any law for the time being in force" as occurring in section 3(38) of the General Clauses Act, 1997 must be construed as "*any law for the time being in force*" in India alone [*Mylan Laboratories Ltd v. DCIT (2020) 113 taxmann.com 6/180 ITD 558 (Hyd)*, *CIT v. Desiccant Rotors International (P.) Ltd. [2012] 347 ITR 32 (Del)*, *Air India Ltd v. DCIT (2008) 114 TTJ 844 (Mum)* [in the context of S.43B- 43B does not apply to outstanding liability of foreign taxes (i.e., Ceylon turnover tax)], *Reliance Industries Ltd. v. CCE & ST Ltd. (2016) 72 taxmann.com 6 / 57 GST 84 (Mum - CESTAT)* and *Indo Aden Salt Mfg & Trading Co. (P.) v. ITO (1992) 41 ITD 486 (Bom)*.

The Legislature itself has consciously given prospective operation to *Explanation 3* to section 37 (1) by making it effective from 1/4/2022. Further, para 12.9 of the CBDT Circular No. 23/2022 [F. No. 370142f4812022 TPL], dated 03/11/2022, and the Memorandum explaining the provisions of the Finance Act, 2022, make it very clear that the amendment will take effect from 1st April 2022 and apply in relation to the assessment year 2022-23 and subsequent assessment year. The Notes on Clauses expressly states that the amendment is applicable from 01/04/2022. This, when viewed in comparison with the notes on clauses for section 35 and 40, give a clear implication that where the Legislature intended to give retrospective effect to the amendment, the same is clearly stated therein.

CIT v. Vatika Township (P.) Ltd. (2014) 367 ITR 466 (SC), *ACIT v. Bharat V. Patel (2018) 404 ITR 37/92 taxmann.com 386 (SC)*; *Snowtex Investment Ltd. v. PCIT (2019) 414 ITR 227/105 taxmann.com 282 (SC)* and *Vijay Industries v. CIT (2019) 412 ITR 1 /103 taxmann.com 454 (SC)*, *M.M. Aqua Technologies Ltd v. CIT [2021] 436 ITR 582 / 129 taxmann.com 148 (SC)*, following the principle laid down *Sedco Forex International Drill Inc. v. CIT (2005) 279 ITR 310 / 149 Taxman 352 (SC)*, [in the context of insertion of Explanation 3C to section 43B by the Finance Act, 2006] has held that the expression 'for the removal of doubts' cannot be presumed to be retrospective in nature, even when such language is used, if it alters or changes the law as it stood earlier.

Supreme Court in *K. Govindan and Sons v. CIT* [2001] 114 Taxman 94 (SC) explained that whether the Explanation has prospective or retrospective effect depends on how it is read as clarificatory or amendatory provision. Supreme Court in case of *CIT v. Podar Cement (P) Ltd.* [1997] 92 Taxman 541 (SC) laid down the principle that amendment brought in the Act to overcome the divergence of opinion amongst the High Court is clarificatory and declaratory in nature and consequently retrospective. In case of *Brij Mohan Laxman Das v. CIT* AIR 1997 SC 1651, the Supreme Court that amendment made in a circumstance where there are contrary views of the High Courts and there is no Supreme Court ruling, then Explanation inserted by the Parliament to clarify the legal position and to settle the controversy is clarificatory in nature. Further, to the above, the Supreme Court in the case of *CIT v. Patel Bors. & Co. Ltd.* (1995) 81 Taxman 156 (SC) for the purpose of section 37(2A) of the Act expressed that the relevant Explanation was to be applied prospectively and the use of the words “for the removal of doubt” are not decisive of the true meaning and scope of a section

Recently, Hon’ble Bangalore ITAT in the case of *Infosys Ltd v. JCIT* [2023-TII-117-ITAT - Bangalore] in the paras 138 to 142 of the Order had held that Explanation 3 inserted by the Finance Act 2022 is prospective and the same is applicable from AY 2022-23.

Damages for breach of copyright-If expenditure incurred for any purpose which is offence, or which is prohibited by any law for the time being enforced in India or outside India shall not be allowable. [*Diva Exports Pvt Ltd v. DCIT* [2023-TIOL-758-ITAT-MUM / Northern India Chemical Distributors Ltd. vs CIT (2001) 248 ITR 790(Del)- CIT v. Desiccant Rotors International (P.) Ltd. [2012] 347 ITR 32 (Del)-distinguished].

The Guwahati Tribunal in the case of *ACIT v. Williamson Financial Services Ltd.* [2022] 140 taxmann.com 164 (Guwahati - Trib.) [in the context of Explanation inserted to section 14A by the Finance Act 2022] and the Calcutta High Court in the case of *Peerless Hospitex Hospital and Research Center Ltd v. PCIT* (2022) 137 taxmann.com 359 (Cal - HC) have held that the Explanation 3 inserted to section 37(1) by the Finance Act 2022 is clarificatory in nature and thus has retrospective application. Again, these decisions are examples of judicial indiscipline.

International Transaction -

Customs Data

In case of import/export transactions of agri-commodities, customs data provide a more reliable CUP compared to prices published by industry associations and brokerages along with third party transactions since a gap could exist between contract date and actual contract realisation date and, consequently, prices of comparable products on their respective invoice/shipment date as considered in customs valuation would yield a more reliable result in absence of any differences

arising out of contract terms and product quality-*Louis Dreyfus Company India (P.) Ltd. v. DCIT* [2023] 150 *taxmann.com* 392 (Delhi - Trib.); *Coastal Energy (P.) Ltd. v. ACIT* [2011] 12 *taxmann.com* 355/46 SOT 286 (URO), *Rohm and Haas India (P.) Ltd. v. ACIT* [2019] 112 *taxmann.com* 90 (Mum. - Trib.)

Delhi Tribunal in the case of *Sinosteel India (P.) Ltd. v. DCIT* [2013] 40 *taxmann.com* 240/[2014] 147 ITD 313 (Delhi - Trib.) has held that bare quotation price cannot be accepted under the CUP method for the purposes of benchmarking under Rule IQBA(1)(a).

Corporate Guarantee

- not an 'International Transaction' *Micro Ink Ltd. v. ACIT* [2015] 63 *taxmann.com* 353/[2016] 157 ITD 132 (Ahd. - Trib.), *Bharti Airtel Ltd. v. Addl. CIT* [2017] 84 *taxmann.com* 22/166 ITD 179 (Delhi - Trib.), *ACIT v. Nimbus Communications Ltd.* [2013] 145 ITD 582/34 *taxmann.com* 298 (Mum. - Trib.), *Marico Ltd. v. ACIT* [2016] 70 *taxmann.com* 214 (Mum. - Trib.); *TVS Logistics Services Ltd. v. DCIT* [2016] 72 *taxmann.com* 89 (Chen - Trib.); *Manugraph India Ltd. v. DCIT* [2016] 69 *taxmann.com* 400 /TS-324-ITAT -2016 (Mum.)-TP; *Siro Clinpharm Pvt. Ltd. v. DCIT* [2017] 88 *taxmann.com* 338 (Mum. - Trib.); *Apollo Health Street Ltd. v. DCIT* [2014] 48 *taxmann.com* 111/[2015] 67 SOT 64 (Hyd. - Trib.); *ACIT. v. Bombay Dyeing & Mfg. Co. Ltd* [ITA NO. 557, 588 (MUM.) OF 2012, 6055 & 6131 (MUM.) OF 2014; DATED 2/4/2018) (MUM), *Siro Clinpharm Pvt. Ltd. v. DCIT* (2016) 134 DTR 1 (Mumbai), *Meghmani Organics Limited v. DCIT* TS-389-ITAT-2020(Ahd)-TP], *Britannia Industries Ltd. v. DCIT* [2019] 107 *taxmann.com* 138 (Kolkata - Trib.) *Spentex Industries Limited v. ACIT* [TS-1218-ITAT-2019(DEL)], and *Kiri Dyes & Chemicals Ltd v. ACIT* [TS-318-ITAT-2021(Ahd)-TP].
- in *PCIT v. Adani Enterprises Ltd.* [2016] 72 *taxmann.com* 285 (Guj.), *Bialkhia Holdings (P.) Ltd v. Addl. CIT* [2020] 115 *taxmann.com* 230 (Surat-Trib.), *ACIT v. Spentex Industries Ltd* [2020] 117 *taxmann.com* 782 / 184 ITD 695 (Del.) and *Adani Enterprise Limited* [TS-193-ITAT-2019(Ahd)] deleted TP-adjustment on corporate guarantee absent specific cost incurrence. The ITAT clarified that "the onus of demonstrating that the costs have been incurred can only be on the revenue authorities".
- **Interest saved approach ("IS approach") - Notional Interest Saved v/s actual Interest Saved Approach** *DSM Anti-Infectives India Limited v. Addl CIT* (2014) 50 *taxmann.com* 239 (Chd Trib), *DSM Anti-Infectives India Limited v. Addl CIT* (2015) 56 *taxmann.com* 321 (Chd), *Dabur India Ltd. v. ACIT* [ITA Nos. 3241, 3114, 6525 & 6256/Del/2014, date of Order - 18.02.2021], *Dabur India Ltd v. ACIT* [TS-585-ITAT-2021-DEL-TP] and *Dabur India Ltd. Vs ACIT* [TS-652-ITAT-2022 (DEL)-TP,
- ranging between 0.20% and 0.35% -
- *Reliance Industries Ltd v. ACIT* (I.T.A. No.4475/Mum/2007; AY 2003-04) (Mum) - 0.38% accepted.
- *Reliance Industries Ltd v. ACIT* (TS-588-ITAT-2020(Mum)) - 0.38% accepted.

- *Asian Paints Limited v. CIT (2014) 41 Taxmann.Com 71 (Mum Trib), KEC International v. DCIT (TS-489-ITAT-2020(Mum)-TP), KEC International v. DCIT (TS-139-ITAT-2021Mum-TP) - 0.20% accepted, SRF Ltd v. DCIT (TS-205-ITAT-2020(DEL)) and SRF Ltd v. ACIT [TS-623-ITAT-2021(DEL)-TP]- 0.25% accepted, Dabur India Ltd. v. ACIT [TS-585-ITAT-2021(DEL)-TP] - 0.30% accepted, Dabur India Ltd. v. ACIT [TS-652-ITAT-2022 (DEL)-TP], DCIT v. Sikka Ports & Terminals Ltd [TS-418-ITAT-2022Mum-TP], DCIT v. Berger Paints India Ltd [TS-491-ITAT-2022Kol-TP], Greatship (India) Ltd vs Addl. CIT [TS-885-ITAT-2022(Mum)-TP] - 0.35% accepted, DCIT v. Adani Enterprises Ltd [TS-541-ITAT-2022Ahd-TP] - 0.17% accepted, Everest Kanto Cylinder Ltd. v. DCIT (2013) 34 taxmann.com 19 (Mum) [approved CIT v. Everest Kanto Cylinders Ltd. [2015] 58 taxmann.com 254 /232 Taxman 307/ 378 ITR 57 (Bom)] guarantee fees of 0.50% is at arm's length*

Letter of comfort to LPI is not guarantee

Para 10.163 of the OECD guidelines, January 2022

Para 7.13 of the OECD guidelines, January 2022

Safe Harbour Rules - Rule 10 TA

"... (c) "corporate guarantee" means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short-term or long-term borrowing.

Explanation – For the purpose of this clause, explicit corporate guarantee does not include letter of comfort, implicit corporate guarantee, performance guarantee or any other guarantee of similar nature."

LOC issued by the assessee is outside the ambit of international transaction:

*Indian Hotels Company Ltd v. DCIT [2019] 112 taxmann.com 340 (Mum - Trib.), The Indian Hotels Company Ltd v. ACIT [TS-977-ITAT-2019(Mum)-TP] , United Breweries (Holdings) Ltd v. Karnataka State Industrial Investment and Development Corporation Ltd [M.F.A. No. 4243 of 2007 (SFC) dated 16/08/2011] where in it was held that "LoC" is not a guarantee and it is more in the nature of a recommendatory letter], *Lucent Technologies Inc. v. ICICI Bank Ltd & Ors.* [IA Nos. 2758/2005, 3134/2005 & 5838/2006 in CS(OS) No. 386/2005 dated 13/10/2009], *Tata International Ltd v. ACIT (TS-113-ITAT-2020 (Mum)-TP)*, *Asian Paints Ltd v. ACIT [TS-51-ITAT-2021Mum-TP]**

Rejection of CUP and reselection of TNMM as MAP

Rule 10C(1)- the method to be selected should satisfy two cumulative conditions:-

- (a) It should be the one best suited to the facts and circumstances of each international transaction or SDT; and
- (b) It provides the most reliable measure of the arm's length price.

According to Rule 10C(2), in selecting the most appropriate method (MAM), the following factors shall be taken into account:

- (a) the nature and class of international transaction or SDT;
- (b) the class/classes of AEs entering into the transaction and the functions performed by them taking into account asset employed / to be employed and risks involved;
- (c) the availability, coverage and reliability of data necessary for the application of method;
- (d) the degree of comparability between international transaction or SDT and the uncontrolled transaction and between the enterprises involved;
- (e) the extent to which accurate adjustments for differences can be made to make uncontrolled transaction comparable; and
- (f) the nature, extent and reliability of the assumptions involved in the method.

Rule 10B(3) of the Rules:

“An uncontrolled transaction shall be comparable to an international transaction [or a specified domestic transaction] if –

- (i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or
- (ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences

The above sub-rule states that, if reasonable accurate adjustments cannot be made then CUP method ought to be rejected.

OECD TP Guidelines - Para 2.75, para 3.28

UN TP manual “6.2.2.3., “6.2.2.4. “6.2.2.5., 6.2.2.7.

That there is a huge difference between the quantity consumed and quantity sold/purchased to 3rd party the Company wishes to submit to reject the CUP selected by the company and apply / adopt TNMM method as the most appropriate method.

- Lack of reliable data for volume discount adjustment
- Applying adhoc volume discount would not be appropriate.

PCIT v. Gulbrandsen Chemicals Pvt. Ltd. [2020] 119 taxmann.com 52 / 428 ITR 407 (Guj) [*Gulbrandsen Chemicals (P.) Ltd. v. DCIT* [2019] 104 taxmann.com 253 (Ahd. - Trib)] affirmed], ***Atlas Copco (India) Ltd. v. ACIT*** [2019] 112 taxmann.com 120 (Pune - Trib.), ***Atlas Copco (India) Limited v. DCIT*** [TS-89-ITAT-2021(PUN)-TP], ***DCIT v. Hero MotoCorp Ltd*** [TS-747-ITAT-2019(DEL)-TP], ***Hero MotoCorp Ltd v. Addl. CIT*** [TS-176-ITAT-2021(DEL)-TP], ***Perstorp Chemicals India Pvt Ltd v. ITO*** [2020-TII-280-ITAT-MUMTP], ***PCIT v. Amphenol Interconnect India (P.) Ltd.*** [2018] 91 taxmann.com 441 / [2019] 410 ITR 373 / (TS-56-HC2019(BOM)-TP), ***DCIT v. SI Group India Ltd*** [2019] 111 taxmann.com 515 / [TS-1024-ITAT-2019(Mum)-TP], ***Rhythm and Hues Studios India Pvt Ltd v. ITO*** [TS-1029-ITAT-2019(Mum)-TP], ***Aztech Software***

& Technology Services Ltd v. ACIT [2007] 107 ITD 141/15 SOT 49/162 Taxman 119 (Mag.) (Bang. -Trib.) (SB), ACIT v. Glenmark Pharmaceuticals Ltd. [2019] 102 taxmann.com 438 / (TS-465-ITAT-2019(Mum)-TP), Firmenich Aromatics Production (India) Pvt Ltd v. ITO [2018] 100 taxmann.com 279 / [TS-1214- ITAT-2018(Mum)-TP] (please also refer Firmenich Aromatics Production (India) Pvt Ltd v. ITO [2019] 103 taxmann.com 423 (Mum - Trib.), CIT v. Dufon Laboratories [2010] 39 SOT 59 (Mum Trib.),

However, the Kolkata Tribunal upheld TP adjustment in the case of inter-unit transfers of tea leaves by non-eligible units to eligible units for deduction u/s.80IE units but disapproved the action of TPO determining monthly/quarterly weighted price method to monthly average price method by observing that monthly average price for inter-unit tea transfer, not uniform: thus does not give correct picture

Assessee can change method at the time of assessment.

Missionpharma Logistics (India) (P) Ltd v. ACIT [2013] 33 taxmann.com 479 / 24 ITR(T) 310 (Ahd. - Trib), Mattel Toys (I) Pvt. Ltd., v. DCIT [2013] 34 taxmann.com 203 / [2014] 30 ITR(T) 283 / [TS-159-ITAT-2013(Mum)-TP]. Para No. 41

Provisions of Section 92(3) do not apply.

Section 92(3) of the Act is reproduced below:

*“(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A), **has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into**”*

No such entries are made in the books of accounts in respect of SDT which has the effect of reducing the income or increasing the loss. Accordingly, the Company submits that Section 92(3) will also not be applicable in the instant case for reduction in the Transfer Pricing ('TP') adjustment amount (by adopting TNMM method over CUP method) as the suo-moto adjustment has been made by the Company in its return of income and not in its books of account.

Delayed receivables from Associated Enterprises ('AEs')

The Ahmedabad Tribunal following the decision in the case of *Bisazza India (P.) Ltd v. DCIT (2018) 97 taxmann.com 432 (Ahd-Trib)* [Where assessee applied TNMM as MAM which takes care about all cost including notional interest on receivables, TPO could not apply CUP to determine notional interest to be charged from associated enterprise on outstanding unrealized sale amount], has in the case of *Gemstone Glass (P.) Ltd. v. DCIT (2018) 100 taxmann.com 5 (Ahd-Trib)* held that no addition of notional interest for delay in realization of debts from AEs could be made when international

transaction of exports of goods had been benchmarked on TNMM basis and the same was duly accepted by the TPO. Similarly, in the case of *Value Labs Technologies v. ACIT [2019] 108 taxmann.com 379 (Hyd - Trib.)* it was held that where the assessee's average collection period would be less than industrial average in which it was operating there would be no need to make transfer pricing adjustment on account of interest on delayed realization of trade receivables outstanding to assessee from related parties.

CIT v. Indo American Jewellery Ltd [2014] 44 taxmann.com 310 / 223 Taxman 8 (Bom)(MAG) - The Bombay HC held that if there is complete uniformity in the act of the taxpayer in not charging interest from both the AE and the non AE and the delay in realization of the export proceeds in both the scenarios is the same, then no notional interest should be charged on delayed receipts of the export proceeds. [followed in *Bausch & Lomb Eyecare (India) (P.) Ltd. v. Addl. CIT [2014] 32 ITR(T) 404 (Delhi - Trib.)*]- *S Vinodkumar Diamonds Pvt Ltd v. DCIT [2020- TII- 307-TP-MUM] / [2020] 118 taxmann.com 317 (Mum - Trib.)* & *S Vinodkumar Diamonds Pvt Ltd v. DCIT (2022-TII-474-ITAT-MUM-TP)*, *DCIT v. CCL Products (India) (P.) Ltd. (2019) 106 taxmann.com 11 (Visakha - ITAT)*, *Suashish Diamonds Ltd v. Addl. CIT (2019) 109 taxmann.com 400 (Mum - ITAT)*, *Parveen Industries (P.) Ltd. v. Addl. CIT (2019) 105 taxmann.com 231 (Delhi - ITAT)*, *Pepsico India Holdings (P.) Ltd. v. Addl. CIT (2018) 100 taxmann.com 159 (Delhi - ITAT)*, *Aricent Technologies (Holdings) Ltd. v. DCIT (2019) 109 taxmann.com 47 (Delhi - ITAT)*, *Addl. CIT v. WNS Global Services (P.) Ltd (2020) 116 taxmann.com 20 / 182 ITD (Mum-Trib)*, *Dania Oro Jewellery (P.) Ltd v. DCIT (2020) 118 taxmann.com 14 (Mum-Trib)*, *Motherson Sumi Infotech & Designs Ltd v. DCIT (2020) 117 taxmann.com 866 (Del-ITAT)*, *Integra Software Services P Ltd v. DCIT (TS-724-ITAT-2022-CHNY-TP)*, *Fujitsu Consulting India Pvt. Ltd v. ACIT (TS-697-ITAT-2022-DEL-TP)*; *Rockwell Automation India Pvt Ltd v. ACIT (TS-265-ITAT-2022-DEL-TP)*; *Peri (India) Pvt. Ltd. v. JCIT (TS-142-ITAT-2022-Mum-TP)*; *JCIT v. Reliance Life Sciences Pvt Ltd (2021-TII-324-ITAT-MUM-TP)*; *ACIT v. Mobileum India Pvt. Ltd (TS-698-ITAT-2019 (Mum)-TP)/ 2019-TII-465-ITAT-Mum-TP*, *Dinurje Jewellery Pvt. Ltd. v. ITO (2014) 51 taxmann.com 41 (Mum-Trib)*, *ACIT v. Gitanjali Exports Corporation Ltd (2017) 81 taxmann.com 452 (Mum-Trib)* [later followed in *S. Vinodkumar Diamonds (P.) Ltd v. DCIT (2020) 118 taxmann.com 317 (Mum-ITAT)*], *ACIT v. Avery Dennison (I) P. Ltd (TS-514-ITAT-2021-DEL-TP)* [confirmed by Hon'ble Delhi HC vide order dated 20.09.2022. (TS-660-HC-2022DEL-TP)], *Aricent Technologies (Holdings) Ltd v. DCIT (2019) 109 taxmann.com 47 (Del ITAT)*, *Gimpex Pvt. Ltd v. ACIT [TS-705-ITAT 2020(Chen)] / 105 taxmann.com 365 (Chen-Trib)*, *Global Logic India Ltd v. DCIT (2019) 102 taxmann.com 115 (Del ITAT)*, *Integra Software Services (P.) Ltd. v. DCIT [2022] 145 taxmann.com 460 (Chennai - Trib.)*

In case of *Bechtel India Pvt Ltd [TS-591-SC-2017-TP]* (date of order 27.07.2017), SC dismissed Revenue's SLP challenging Delhi HC decision in the case of Bechtel India for AY 2010-11. Delhi HC had confirmed ITAT order deleting interest adjustment on AE-receivables noting that assessee was a debt-free company.

If the margin of AE's is at arm's length, then no separate adjustment is required for delay receivables

Agilisys IT Services India (P.) Ltd. v. ITO [2016] 76 taxmann.com 134 and Agilisys IT Services India (P.) Ltd. v. ITO [2017] 77 taxmann.com 16 (Mum ITAT), CRM Services India Pvt. Ltd, v. ACIT (2020) 117 taxmann.com 102 (Del-Trib), Aricent Technologies (Holdings) Ltd v. DCIT (2019) 109 taxamann.com 47 (Del), Sony Pictures Networks India Pvt Ltd, (Formerly known as Multi Screen Media Pvt Ltd) [TS-483-ITAT-2022(Mum)-TP], Barco Electronic Systems (P.) Ltd. v. DCIT [2021] 123 taxmann.com 262/187 ITD 249 (Del - Trib.)

Working Capital Adjustment

Once working capital adjustment has already been factored in or granted, no separate adjustment on account of outstanding receivables is maintainable. [pls see *American Express (I) (P.) Ltd. v. DCIT (2019) 108 taxmann.com 305 (Delhi-Trib), Teradata India (P.) Ltd. v. ACIT (2019) 109 taxmann.com 296 (Delhi -Trib), Agilent Technologies (International) (P.) Ltd. v. ACIT (2019) 107 taxmann.com 183 (Delhi-ITAT), EPAM Systems India (P.) Ltd. v. ACIT (2018) 100 taxmann.com 335 (Hyd-Trib), Barco Electronic Systems (P.) Ltd. v. DCIT (2020) 116 taxmann.com 990 (Delhi), Devi Sea Foods Limited v. DCIT, TS-618-ITAT-2022-VIZ-TP/[2022] 143 taxmann.com 174 (Visakha- Trib.), DCIT v. IQOR India Services Pvt. Ltd (TS-380-ITAT-2022-DEL-TP); GE India Business Services v. DCIT (TS-319-ITAT-2022-DEL-TP); Orange Business Services India Solutions Pvt. Ltd v. DCIT (TS-286-ITAT-2022-DEL-TP); Vestas Technology R&D Chennai Private Limited v. ACIT (TS-195-ITAT-2022-CHNY-TP); Agilent Technologies India Pvt Ltd (TS-179-ITAT-2022-DEL-TP); Bharti Airtel Services Limited v. DCIT (TS-57-ITAT-2022-DEL-TP)*

Kusum Healthcare (P) Ltd v. ACIT (2015) 170 TTJ 411 / 62 taxmann.com 79 / 42 ITR (Trib) 77 (Del) (further confirmed by Delhi High Court in the case of PCIT v. Kusum Health Care (P.) Ltd (2017) 398 ITR 66 / (2018) 99 taxmann.com 431 (Del)), Global Logic India Ltd. v. DCIT (2019) 102 taxmann.com 115 (Delhi- ITAT), Hackett Group (India) Ltd. v. DCIT (2020) 116 taxmann.com 631 (Hyd -Trib) and Target Sourcing Services India (P.) Ltd. v. ACIT (2020) 114 taxmann.com 701 (Delhi-Trib) (pls also see Turner International India (P.) Ltd v. ACIT (2020) 115 taxmann.com 334 (Del-Trib), Redtech Network India (P.) Ltd. v. ACIT (2020) 113 taxmann.com 588 (Kol-Trib), DHR Holding India (P.) Ltd v. DCIT (2020) 117 taxmann.com 469 (Del -Trib), iQor India Services (P.) Ltd v. DCIT (2020) 118 taxmann.com 41 (Del-Trib) and American Express (I) (P.) Ltd v. DCIT (2020) 118 taxmann.com 485 (Del-Trib), Agilent Technologies Ltd v. DCIT (2021) 124 taxmann.com 561 / [2020-TII-421-DEL-TP]

Foreign Tax Credit to be allowed as business expenditure:

In the case of *Reliance Infrastructure Ltd v. CIT (2016) 76 taxmann.com 257 / (2017) 390 ITR 271 (Bom.)*, *Bank of India v. ACIT (2021) 125 taxmann.com 155 (Mum-ITAT)*, *Virmati Software & Telecommunications Ltd v. DCIT [TS-164-ITAT-2020(Ahd)]* and *DCIT v. Mastek Limited (2013) 36 taxmann.com 384 (Ahd.)* not creditable FTC was allowed as expenditure under section 37(1) of the Act.

Net loss under the head 'Income from Business or Profession' (which includes profit from unit eligible for deduction under section 80-IE of the Act); Income under the head 'Capital Gains' (which includes short term capital gain on redemption of Liquid / Debt Fund); and Income under the head 'Income from Other Sources'. *Reliance*

Energy Ltd (2022) 441 ITR 346 (SC), Maharashtra Hybrid Seeds Co. Ltd (2022) 440 ITR 75 (Bom HC) and Tridoss Laboratories Ltd (2010) 328 ITR 448 (Bom HC).

CSR Expenses vs 80G

80G of the Act do not contain any restriction for deduction of any donation related to CSR expenses except Clauses (iiihk) & (iiihl) of sub-section 2 of Section 80G of the Act which read as under:

(iiihk) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of Section 135 of the Companies Act, 2013 (18 of 2013); or

(iiihl) the Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of Section 135 of the Companies Act, 2013 (18 of 2013)."

First American (India) Pvt. Ltd. v. ACIT (2020) 80 ITR (Trib) 538 (Bang), Allegis Services (India) Pvt. Ltd. v. ACIT (2020) (ITA No. 1693/Bang/2019) (Bang Tribunal), FNF India P. Ltd. v. ACIT (2021) 133 taxmann.com 251 /TS-6-ITAT-2021 (Bang), JMS Mining (P.) Ltd. v. PCIT (2021) 130 taxmann.com 118 (Kol Tribunal), Goldman Sachs Services (P.) Ltd. v. JCIT [2020] 117 taxmann.com 535 (Bang. - Trib.), Infinera India Pvt. Ltd. v. JCIT (2022) 137 taxmann.com 197 (Bang ITAT), Naik Seafoods Pvt. Ltd. v. PCIT - 2 [ITA NO. 490/MUM/2021; date of Order 26.11.2021],

Addition of disallowance under section 14A while computing book profit under section 115JB of the Act

ACIT v. Vireet Investment Pvt Ltd (2017) 58 ITR(T) 313 / 82 taxmann.com 415 (Del)(SB), Beach Minerals Company (P.) Ltd v. CIT (2015) 64 taxmann.com 218 (Chen), CIT v. Tata Metalics Ltd (2016) 48 ITR (Trib) 272 / (2017) 81 taxmann.com 439 (Kol), CIT v. Reliance Natural Resources Ltd (2017) 85 taxmann.com 128 (Mum), L&T Finance Ltd v. DCIT (2018) 62 ITR (Trib) 298 (Mum), Bharat Petroleum Corporation Ltd v. ACIT (2018) 63 ITR (Trib) 244 (Mum), Af-Taab Investment Company Ltd v ACIT (2018-TIOL-101-ITAT-MUM), Cadila Health Cares Ltd vs DCIT (TS -344-ITAT-2021-AHD), ACIT vs Bhushan Energy Ltd (2021-TIOL-1254-ITAT-DEL) and M/s HBL Power System Ltd vs DCIT (TS-194-ITAT-2021-HYD-TP). Further, the Bombay High Court in the case of CIT v Essar Teleholdings Ltd [ITA No.438 of 2012; Date of order: 07/08/2014] [source: www.itatonline.org] and CIT v Bengal Finance and Investment Co [ITA No.337 of 2013; Date of order: 10/02/2015] [source: www.itatonline.org- an amount disallowed under sec 14A cannot be added to arrive at book profit for the purposes of section 115JB of the Act.

Addition of provision of doubtful debt (net) while computing booking profit under section 115JB of the Act

CIT v. Vodafone Essar Gujarat Ltd (2017) 397 ITR 55 [followed in Pr. CIT v Sun Pharmaceutical Ind Ltd (2017) 87 Taxmann.Com 215 (Guj)