

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.3822/M/03 & 3823/M/03  
Assessment Year: 1996-97 & 1997-98**

M/s Hindoostan Spinning & Weaving Mills Ltd., Sir Vithaldas Chambers 16, Mumbai Samachar Marg Fort, Mumbai 400 001 <b>PAN : AACT 4057 F</b>	Vs.	Dy. Commissioner of Income Tax, Circle 2(1) Aayakar Bhavan, M.K.Road, Mumbai 400020
(Appellant)		(Respondent)

**ITA Nos.3622/M/03 & 3623/M/03  
Assessment Year: 1996-97 & 1997-98**

Dy. Commissioner of Income Tax, Circle 2(1) Aayakar Bhavan, M.K.Road, Mumbai 400020	Vs.	M/s Hindoostan Spinning & Weaving Mills Ltd Sir Vithaldas Chambers 16, Mumbai Samachar Marg Fort, Mumbai 400 001 <b>PAN : AACT 4057 F</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri K. K. Ved, A.R.  
Revenue by : Shri S. Senthil Kumar, D.R.

Date of Hearing : 06.06.2016  
Date of Pronouncement : 30.06.2016

**ORDER**

**Per Bench:**

These set of four cross appeals, two each by the assessee and the Revenue, have been filed for Assessment Year 1996-97 & 1997-98 against the separate orders of Commissioner of Income Tax-XXXII [hereinafter referred to as CIT(A)] Mumbai for Assessment Year 1996-97 and 1997-1998 dated 25.02.2003 and 05.03.2003 respectively. Since, the issues involved are common and overlapping, the same are being disposed-off by passing single consolidated order.

2. Brief facts of the case are that the assessee is a Public Limited Company engaged in textile business. It has filed its Return of Income for the Assessment Year 1996-1997 on 30.11.1996 declaring a total loss of Rs. 10,26,84,493/-. The case of the assessee was taken up for scrutiny and assessment u/s 143(3) was completed by Assessing Officer (hereinafter referred to as 'AO') vide its order dated 20.01.1999 wherein certain claims were disallowed thereby reducing the assessed loss to Rs. 7,85,36,585/-. The assessee preferred an appeal u/s 246 against the said order to CIT(A) vide appeal no CIT(A)XXXII/IT/99-00. The appeal was disposed-off by CIT(A) vide its order dated 25.02.2003 partly allowing the claims and submissions of the assessee. Similarly, the assessee filed its return of income for Assessment Year 1997-98 disclosing net loss of Rs.8,58,87,283 on 28.11.1997 the assessment of which was also completed u/s 143(3) vide AO's order dated 21.02.2000. Certain adjustments and disallowance were made by the AO in the said order. Consequently, the income of the assessee was assessed at Rs. 4,83,44,099/-. The assessee carried the matter in appeal before CIT(A) who disposed-off the same vide its order dated 05.02.2003 partly allowing the claim of the assessee. Aggrieved by the above orders, both department and the assessee are in appeal before us on various grounds which we take up one by one.

**Department's Appeal ITA No. 3622/M/03 for Assessment Year 1996-1997:**

Now, we take up the grounds one by one.

**Ground No. 1**

3. The first ground raised by the Revenue is as follows:-

“On the facts and in circumstances of the case and in law, the Id. CIT (A) has erred in directing the A.O. to tax the compensation received by assessee for surrender of tenancy rights u/s 45 as capital gain and not as “Income from other sources.”

4. The assessee was in possession of premises admeasuring 2400 Sq. Ft. in the 'Kaisar' at Ballard Estate, Mumbai which was not being used by him for years and the landlord had filed eviction suit against him on this account. A compromise agreement in relation to the said premises was reached upon between the assessee and one Mr. Kamal S Malik & Associates, a partnership firm, vide agreement dated 16<sup>th</sup> August, 1995 wherein the assessee agreed in principal to allow Malik to approach the landlord of the said premises to let the premises to Malik. Malik, in turn, agreed to provide alternate accommodation to the assessee. As Malik was not in a position to offer an alternate accommodation to the assessee, he agreed to pay a sum of Rs. 1 crore to the assessee. As the amount was received from a third party who had no obvious connection with the assessee, AO treated the same as casual and non recurring receipts u/s 10(3). CIT(A) found that in view of the specific amendment to Section 55 w.e.f. 01.04.1995, the sums received for surrender of tenancy rights have been made taxable as income from capital gains. Further, relying upon the judgment of Bombay High Court in the case of 'Cadell Weaving and Spinning Mills Ltd.' 249 ITR 265, CIT(A) came to a conclusion that such receipts are not taxable as casual and non recurring receipts u/s 10(3) and accordingly directed the same to be taxed under the head Capital Gains. The Department, thus, has come in appeal before us on this issue.

5. A copy of the relevant agreement has been furnished to us. The DR supported the order of AO whereas the AR relied on the Bombay High Court judgment in the case of 'Cadell weaving and Spinning Mills Ltd.' (supra). We have gone through the agreement and find that an amount of Rs. 1.00 crores has been received by the assessee from M/s Kamal S. Malik & associates as per the agreement between the parties. Clause No 1 & 2 of the agreement reads as under-

"1.Malik hereby agrees upon demand by Hindoostan to pay to Hindoostan the sum of Rs. 1 Crore (Rupees One crore Only) by a Banker's Pay Order drawn in favour of

Hindoostan on a scheduled Bank in Bombay to enable Hindoostan to obtain suitable alternate accommodation of its own choice at such place and on such terms as it may deem fit.

2.Simultaneously against the receipt of the aforesaid amount of Rs. 1 Crore (Rupees One crore only) as above, *Hindoostan shall handover to Malik a letter addressed by Hindoostan to the landlord of the said premises Shi Mahendra Papatlal Shah (HUF) surrendering its tenancy and handing over vacant possession of the said premises with immediate effect.*”

6. We have heard the rival contentions and also perused the material on record. The assessee has received the said payment from a third party. The terms of the agreement clearly shows that the assessee has given up its right of tenancy in favor of the third party by accepting a certain sum of money. The possession of the premises has been parted away and the transaction is being recognized by the landlord. Hence, the assessee has surrendered the tenancy rights against certain sum of money, no matter whether the payment is directly paid by the landlord or paid by a third party on behalf of the landlord. Such tenancy rights in the building are capital asset as per the definition of Capital asset u/s 2(14) and hence rightly found taxable under the head Capital Gains by the learned CIT(A). The cost of acquisition of the same has been correctly taken as Nil as per Section 55(2)(a)(ii). We, therefore, do not find any infirmity in the order of the Ld. CIT(A) on this issue.

### **Ground No. 2:**

7. Ground No.2 reads as under:

“On the facts and in circumstances of the case and in law, the Id. CT(A) has erred in holding that the disallowance made by the A.O. in respect of VRS expenditure is unwarranted and further erred in deleting the same.”

8. The facts are that the assessee has paid retrenchment compensation of Rs.1,13,15,798/- to the employees during the year and claimed the same as revenue expenditure. The Assessee has debited only 20% of this expenditure to the Profit & Loss Account. However the same has been claimed in full while computing its taxable income for the said year. The AO noted that the assessee

himself has debited only a portion of the said expenditure in its books of account thereby treating the same as deferred revenue expenditure whereas it has claimed the full amount while calculating the taxable income. The AO has relied on various court judgments in this regard and noted that a large reduction in manpower confers on the assessee a long standing advantage which is likely to be experience over the years. With these reasoning, AO disallowed that portion of these expenses which were not debited to Profit & Loss Account. Accordingly, he made an addition of Rs. 90,52,638/- under this head.

9. In first appeal, the assessee contended before CIT(A) that accounting entries are not relevant for the purpose of determining the taxable income and besides, Income Tax act does not recognize the concept of deferred revenue expenditure. The assessee cited number of judgments in support of his contention. After evaluating number of these judgments, the learned CIT(A) reached a conclusion that such expenditure are, in fact, revenue in nature and allowable in the year of payment. Accordingly, he deleted the addition on this account. Aggrieved by the order of CIT(A), the Revenue has contested the same before us.

10. Various arguments have been made before us. The Id. DR has supported the stand taken by the AO and on the other hand, the assessee has supported the view of the CIT(A) and relies on the judgment in the case of 'CIT V Bhor Industries Ltd.' (2003) 264 ITR 180 (Bombay). We have heard the contention of both the sides and the perused case law cited before us. We hereby quote the relevant portion of ratio of decision in the case of "CIT v Bhor Industries Ltd." (supra) delivered by jurisdictional Bombay High Court:-

"It is well settled that, ordinarily, revenue expenditure, which is incurred wholly and exclusively for the purposes of business, must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years even though the assessee has written it off in its books over a period of years. It is only in cases of special type of assets that the spread over is warranted. In the case of [Empire](#)

[Jute Co. Ltd. v. CIT](#), it has been held by the Supreme Court that there are cases where the test of enduring benefit may break down. In that case, expenditure was incurred to remove certain restrictions on the number of working hours so that the assessee could increase its profits. The company was a member of Indian Jute Mills Association which was floated to protect the trade. The members of the association had undertaken to work their looms for limited hours every week. The "loom hours" were bought by the assessee from another member to increase the profits. The question which arose before the Supreme Court was whether the purchase price paid constituted revenue expenditure. It was held by the Supreme Court that purchase of "additional loom hours" did not add to the fixed capital of the assessee and nor did it make any addition to the existing profit-making apparatus. It was held by the Supreme Court that in certain cases, the test of enduring benefit may not apply. In our view, in this case on facts, the Judgment of the Supreme Court in Empire Jute Mills' case (supra) would apply."

11. Further, the following observation of Apex court in the case of Taparia Tools Ltd 372 ITR 605 is worth noting:

"18. What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the IT Department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied, which up-to now has been restricted to the cases of debentures.

19. In the instant case, as noticed above, the assessee did not want spread over of this expenditure over a period of five years as in the return filed by it, it had claimed the entire interest paid upfront as deductible expenditure in the same year. In such a situation, when this course of action was permissible in law to the assessee as it was in consonance with the provisions of the Act which permit the assessee to claim the expenditure in the year in which it was incurred, merely because a different treatment was given in the books of account cannot be a factor which would deprive the assessee from claiming the entire expenditure as a deduction. It has been held repeatedly by this Court that entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act"

12. Though, the assessee had debited only a portion of the said expenditure in the books of account yet, claimed the same in full in computation sheet. As held by the Hon'ble Supreme Court that such course of action is permissible under law as the assessee has claimed the expenditure in the year in which these were incurred, hence, respectfully following the above judicial pronouncements, we affirm the view of the CIT(A) in this regard.

**Ground No.3**

13. Ground No.3 relates to the claim of depreciation allowance. An amount of Rs.13,90,752/- was disallowed by the AO during the course of proceedings u/s 143(1)(a) by way of prima facie adjustment and applying the same logic, AO disallowed the same. In the appeal filed against the said intimation passed u/s 143(1)(a) and after giving opportunity of being heard to the assessee, the CIT(A) deleted the same. The stand of the CIT(A) has been contested by the Revenue.

14. We have been informed that this issue has already been decided in favor of the assessee by ITAT Mumbai in ITA No. 286/Mum/2003. The claim of the assessee has been found to be correct as per the decision of Tribunal in this case. Hence, this issue is already settled in favor of the assessee and no interference is called for.

**Ground No. 4**

15. Ground No.4 reads as under:

“On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of expenses on account of amortized lease hold land premium.”

16. An amount of Rs.64,302/- has been disallowed by the AO treating the payment made towards amortized leasehold land premium, as capital expenditure. The nature of the expenses has not been elaborated by the A.O. The same were deleted by CIT (A) on the ground that the true nature of these expenses has not been elaborated and they have been disallowed in an arbitrary manner. Moreover, he relied upon the decision of apex High court in the case of Madras Industrial Investment Corporation Ltd. 255 ITR 802. The DR supported AO's stand and relied on Delhi High Court judgment in the case of Krishank Bharti Cooperative Ltd. V Deputy Commissioner of Income Tax 350

ITR 24. On the other hand AR relied on the decision of Gujarat High Court in the case of DCIT V Sun Pharmaceuticals India Ltd 2009 24 DTR 262.

17. We have heard the arguments and noticed the following relevant portion of the Gujarat High Court judgment cited by the assessee in the case of “DCIT vs. Sun Pharmaceuticals India Ltd.” 2009 24 DTR 262.

“...Thus, by this payment the assets of the assessee company had not been increased because the land continued to be the Land of GIDC. The benefit the assessee gets is only of an advantage of carrying on the business more profitably by paying nominal rent on the land. The issue can be considered in another angle. It cannot be disputed that if the land is not obtained by the assessee, it would not be possible for it to carry on the business.....”

Moreover, the deduction of these expenses has been allowed to assessee in earlier years. The assessee has not become owner of the property in question. Based on this reasoning and relying upon above judgments, we affirm the stand taken by CIT(A) and accordingly, rule in favor of the assessee.

### **Ground No. 5**

18. Ground No.5 reads as under:

“On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in law deleting the disallowance of Rs. 5.00 Lacs made by the AO out of travelling expenses.”

19. The assessee incurred an amount of Rs.58826.19 towards hotel / other charges and claimed the same under travelling expenses. The detail of expenses incurred formed part of the Audit Report and assessee made suo moto disallowances to the extent of Rs. 9432.30 in the same. The A.O. disallowed a further sum of Rs. 5 Lakhs under the head travelling expenses on the presumption that some incidental expenses have been incurred during travelling. The relevant portion of AO order reads as follows:

“10. In working out disallowance on travelling the assessee has not considered the following points-

- A) incidental expenses while travelling
- B) Travelling expenses on non residents

In my opinion, there I see no reason why both these items should not be considered in travelling expenses. Since, details of these expenses are not available, I estimate the expenditure at Rs.5,00,000/- and add back the same.”

20. The Ld. CIT(A) deleted the same on the ground that the adequate details of the same were already available in the return of income vide annexure 8 to the Tax audit report and the auditor have quantified the inadmissible expenses. The AO neither examined the same nor pointed out any discrepancy and made adhoc deduction. The DR contended that in view of the connectivity of this expenditure certain portion was definitely required to be disallowed and the AO has rightly done the same. On the other hand, AR contended that the complete details of the same were available. The Auditor quantified the inadmissible portion. A copy of the extract of Auditor report has been filed before us in support of the contention.

21. We have heard the rival arguments. The inadmissible expenditure was quantified by the tax auditor and complete details of these expenses were already available with the AO. The details of expenses formed part of Audit Report. The action of the AO in disallowing the said expenditure on assumptions and estimate basis is not justifiable. Hence, we are of the opinion that CIT(A) has rightly deleted the same.

### **Ground No. 6**

22. Ground No.6 relates with the claim of prior period expenses. An amount of Rs.85,239/- has been disallowed by AO treating these as prior period expenses which were deleted by CIT(A). We notice that similar issue has arisen in the case of the assessee for Assessment Year 1988-89 vide ITA No. 38/Mum/2003 and also in Assessment Year 1994-95 vide ITA No. 3621/Mum/2003 and the same has been decided in favor of assessee on the ground that although the expenses related with prior period but they became

crystallized and ascertained only during the relevant assessment years and hence allowable.

23. In view of the same, this ground of Revenue is dismissed.

**Assessee's Appeal No. ITA 3822/M/03 (for Assessment Year 1996-1997)**

**Ground No.1**

24. Ground No.1 relates with deduction of Technical fees paid by the assessee u/s 35AB. The assessee has paid Technical Fees of Rs. 20,20,980/- to M/s Tottal Project Management Systems, UK who in turn was required to provide technology support for production, planning quality control and related products. The assessee had debited 1/3<sup>rd</sup> of such expenditure in the books of accounts but claimed the same in full while filing the return of income of income. The AO treated the same as Technical Fees u/s 35AB and allowed only 1/6<sup>th</sup> of such expenditure as per the provision of the section. Before CIT(A), the assessee relied upon the Apex court's judgment in Alembic Chemical Works Pvt. Ltd V CIT 1989 177 ITR 377 and contended that one-time payment of technical knowhow fees for the better conduct and improvement of existing business is allowable as revenue expenditure and also book entries are not determinative of the income and expenditure to be taxed or allowed in the Income Tax Assessments. CIT(A) noted that the case law relied upon by the assessee pertained prior to introduction of Section 35AB and accordingly he supported the AO's action of allowing only 1/6<sup>th</sup> of said expenditure as per the provisions of Section 35AB. Before us, the assessee has assailed the order of CIT(A) in this regard and relied upon various case laws in support of his contention that such expenditure being revenue in nature should be allowed in full while computing the taxable income of the assessee. The DR supported the view of CIT(A) in this regard.

25. We have heard the rival contentions and gone through the following case laws as cited by the assessee:-

- Commissioner of Income Tax V TTG Industries Ltd 2012 24 taxmann.com 129 (Madras High Court)
- Indian Petrochemicals Corporation Ltd V Deputy commissioner of Income Tax 2002 81 ITD 263 (ITAT Ahm.)
- Deputy Commissioner of Income Tax V Metalman Auto (P) Ltd 78 ITD 327 ITAT Chandigarh.

26. In particular, the following observation in the case of Deputy Commissioner of Income Tax V Metalman Auto (P) Ltd (supra) is relevant:-

“The assessee’s right to have the payments made for obtaining the use of Technical know-how allowed as revenue expenditure remains unaffected by the new Section 35AB.

Section 35AB comes into play only when the consideration is paid for acquiring the know-how. Thus in this case, it was held that the assessee’s right to have deduction in respect of payments made for obtaining the use of technical know-how allowable as revenue expenditure under Section 37 remains unaffected by new Section 35AB introduced w.e.f. assessment year 1986-87. Section 35AB is enabling section and not disabling from descriptive one and, therefore, it could be applicable for that consideration paid for technical know-how which would be otherwise be disallowable as being on capital account. In the case under consideration, there is no material on record to shown that the expenditure incurred by the assessee was for acquiring the technical know-how and information, which was already available with the assessee. Therefore, the expenditure incurred by the assessee would not fall in the category of capital expenditure. The provisions of Section 35AB would be applicable only if the expenditure is held to be of capital nature. Therefore, we do not agree with the Id. Counsel for the assessee that the deduction under Section 35AB is to be allowed in this case.

27. We also note the following observation of Apex court in Commissioner of Income Tax vs. Swaraj Engines Ltd 171 Taxmann 495 is relevant to the issue under consideration :-

*“At the same time, it is important to note that even for the applicability of section 35AB, the nature of expenditure is required to be decided at the threshold because if the expenditure is found to be revenue in nature, then section 35AB may not apply. However, if it is found to be capital in nature, then the question of amortization and spread over, as contemplated by section 35AB, would certainly come into play.”*

28. In the light of the above, we find that the expenses incurred by the assessee are in the nature of payments made to avail technology support for production, planning, quality control and related products. These expenses are incurred only with a view to enlarge the profit making apparatus of the business and therefore, revenue in nature. Hence, the aforesaid expenditure being revenue in nature are allowed in full as per various judicial pronouncements as cited above. The same are allowable in full being revenue in nature and hence, the appeal is decided in favour of the assessee.

### **Ground No. 2**

29. Ground No.2 relates with disallowance u/s 43B in respect of Sales Tax. An amount of Rs.1,13,272/- was claimed by the assessee which remain unpaid by the stipulated date and accordingly, added to the income of the assessee by AO by invoking Section 43B which was affirmed by the CIT(A). During submissions, AR, in the alternative, prayed before us, to issue directions to AO to allow the same in the year of payment. The DR had no objection against the same. Accordingly, AO is directed to allow the same in the year of payment as per the request of the assessee.

### **Ground No. 3**

30. This issue relates with disallowance of Guest House Expenditure. An amount of Rs.28,004/- were claimed by the assessee and the same were found to be incurred on guest house. The AO added the same to the income of the assessee by following the stand taken in the earlier years. The same were affirmed by CIT (A) on the basis of judicial pronouncements. The Ld. AR submitted that the identical issue has been restored to the file of AO for fresh adjudication in assessee's own case for different assessment year ie. AY 1989-90 to 1994-95 vide different decisions of the Tribunal. The assessee has placed on the file the copies of the orders of the Tribunal in this respect. He, therefore has requested that on the same lines, the issue may be resorted back

to the file of AO for fresh adjudication. The DR had no objection to the same. Hence, the matter is remanded back to the file of AO for fresh adjudication in terms of the decision of the Tribunal in ITA No.8896/M/95 decided on 6.8.2009 for A.Y. 1992-93.

#### **Ground No.4**

31. This relates with disallowance of entertainment expenditure. An amount of Rs.4,95,179/- was claimed by the assessee under the head entertainment expenditure. These expenses were incurred by the assessee towards food and beverages cost for employees in hotel which was outside assessee's place of business. Therefore, the AO disallowed the same on the ground that these expenses were not incurred at assessee's place of business. Partial Relief to the extent of 75% was granted to the assessee by CIT(A). The AR has contended that that the ITAT has affirmed the action of CIT(A) and allowed deduction of 25% of these expenses in assessee's own case for different assessment year. Following the rule of consistency, 25% of the expenditure is allowed as deduction in computation of Income as allowed in earlier years.

#### **Ground No. 5**

32. This ground relates with exclusion of income from property development activity.

33. We have been informed that Ground No. 5 has become infructuous due to decision of ITAT in assessee's own case for Assessment Year 1994-1995. Accordingly, the same is not pressed for.

34. **Ground No.6** is of general nature.

Now, we turn to Department's Appeal for 1997-1998

#### **Department's Appeal ITA No. 3623/M/03**

35. The Department has raised the following three grounds of appeals:

1. *On the facts and in circumstances of the case and in law, the learned CIT(A) has erred in deleting the disallowance made by the A.O. in respect of VRS expenditure.*
2. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the disallowance made by the A.O. in respect of prior period expenses.*
3. *On the facts and in circumstances of the case and in law, the learned CIT(A) has erred in deleting the disallowance of expenses on account of amortized leased hold land.*

36. All these issues are identical issues which are raised by the department in Assessment Year 1996-1997. The same has already been adjudicated in preceding paragraphs and in view of our findings given in preceding paras of this order, this appeal of the Revenue is hereby dismissed.

**Assessee's Appeal ITA No. 3823/M/03 for Assessment Year 1997-1998**

**Ground No.1**

37. Ground No. 1 relates with disallowance of loss on damaged uninstalled machinery. The assessee had incurred a loss of Rs. 4,11,778/- on account of damage of machinery purchased in earlier years. The machinery was awaiting installation. The full cost of the machinery came to Rs. 32.51 Lacs against which the insurance amount received was set off and the balance was debited to Profit & Loss Account. The loss was sought to be set off by the assessee u/s 55 against the income from capital gain on sale of shares. The said adjustment was not permitted by the AO on the ground that there was no actual transfer of asset and therefore the same was not covered under the head capital gains. Resultantly, this loss was added back to the income of the assessee. CIT(A) held that definition of transfer clearly contemplates the extinguishment of rights in a capital asset which is not the present case. There is no extinguishment of any right and the assessee suffered a loss on account of damage to capital asset. The assessee has not received anything in return for the said damage. The sheer extinguishment of rights without receiving anything in lieu of such extinguishment does not come within the definition of

transfer. In the case of the assessee, there was simply a dent in the value of the capital assets on account of damage and the assessee received no compensation on account of said damage. The damage or destruction to an asset may entail the extinguishment of any rights therein to the extent of damage or destruction but unless there is corresponding return of compensation for such an extinguishment of rights, the same do not come with the preview of section 45. The mode of computation of capital gain as given in Section 48 contemplates the existence of sale consideration in return for the transfer of capital asset and unless there is a consideration received or receivable by the assessee in return for transfer, the computation of capital gains cannot proceed. With this reasoning, he confirmed the additions. The DR contented that since the Machinery is a part of block of assets, the loss arising there from shall be adjusted in block of assets only and the same is not assessable under the head capital gains. The AR on the other hand contended that compensation has been received against the said loss from the insurance company and there is extinguishment of a right therein by the assessee in favour of the insurance company. The AR has relied upon the case of CIT V Grace Collis 2001 248 ITR 323. Moreover, the machinery was awaiting installation and did not form part of the block of asset.

### **Ground Nos.2,3,4 & 6**

38. Ground No.2 relates with disallowance of Guest House Expenditure. Ground No. 3 relates with disallowance of entertainment expenditure. Ground No. 4 relates with disallowance u/s 43B in respect of sales tax. Ground No. 6 relates with disallowance of expenditure incurred in respect of gifts. All these issues are identical issues which have arisen in appeal of the assessee for Assessment Year 1996-1997. The same has already been adjudicated in the preceding paragraphs and applying the same ratio, these grounds are accordingly treated as decided.

**Ground No.5**

39. Ground No.5 relates with disallowance of expenditure in respect of gifts. An amount of Rs.51997/- has been disallowed by AO in his order treating the same as advertisement expenditure. The CIT(A) did not decided the issue. The AR contended that that this amount has already been disallowed *suo-moto* by the assessee while computing taxable income for the relevant assessment year. Separate disallowance by AO would amount to double disallowance. Hence, the matter is restored back to the file of AO for verification of the claim of assessee in this regard and if found correct, the AO to give relief to the assessee accordingly.

40. We have perused the arguments forwarded. The AO's order clearly spells out the fact that insurance claim has been received against the said damage and the machinery was awaiting installation. In such a scenario, the assessee's right in the assets has been extinguishment in the favour of the insurance company and since the machinery is uninstalled, the same has not entered the block of assets eligible for claiming depreciation. It is nothing but asset of the assessee awaiting to be entered in the block of assets. Hence, the loss arising there form has been rightly claimed under the head capital gains. Hence, the appeal of the assessee is allowed on this account.

41. Resultantly, the both the department's appeal are dismissed the assessee's appeal are partly allowed.

**Order pronounced in the open court on 30.06.2016.**

**Sd/-  
(G.S. Pannu)  
ACCOUNTANT MEMBER**

**Sd/-  
(Sanjay Garg)  
JUDICIAL MEMBER**

Mumbai, Dated: 30.06.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.