आयकर अपीलीय अधिकरण,"जी" खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL,MUMBAI-"G",BENCH

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/Sh.Joginder Singh,Judicial Member & Rajendra,Accountant Member

आयकर अपील सं/.**ITA/4540/Mum/2011**,निर्धारण वर्ष/Assessment Year: 2005-06

Godrej & Boyce Mfg. Co.Ltd. Pirojshah Nagar,Vikhroli Mumbai-400 079. **PAN:AAACG 1395 D**	Vs.	ACIT-10(2) Aayakar Bhavan Mumbai-400 020.

आयकर अपील सं/. **ITA/4755/Mum/2011**,निर्धारण वर्ष/Assessment Year: 2005-06

DCIT-10(2) Aayakar Bhavan,Mumbai-400 020.	Vs.	Godrej & Boyce Mfg. Co.Ltd. Mumbai--400 079.

आयकर अपील सं/**.ITA/4541/Mum/2011**,निर्धारण वर्ष/Assessment Year: 2006-07

Godrej & Boyce Mfg. Co. Ltd. Mumbai--400 079.	Vs.	DCIT-10(2) Aayakar Bhavan,Mumbai-400 020.

आयकर अपील सं/**ITA/4756/Mum/2011**,निर्धारण वर्ष/Assessment Year: 2006-07

DCIT-10(2) Aayakar Bhavan,Mumbai-400 020.	Vs.	Godrej & Boyce Mfg. Co.Ltd. Mumbai--400 079.

आयकर अपील सं./ **ITA/4542/Mum/2011**,निर्धारण वर्ष/Assessment Year: 2007-08

Godrej & Boyce Mfg. Co. Ltd. Mumbai--400 079.	Vs.	DCIT-10(2) Aayakar Bhavan,Mumbai-400 020.

आयकर अपील सं. /**ITA/4757/Mum/2011**,निर्धारण वर्ष/Assessment Year: 2007-08

DCIT-10(2) Aayakar Bhavan,Mumbai-400 020.	Vs.	Godrej & Boyce Mfg. Co.Ltd. Mumbai--400 079.

(अपीलार्थी **/Appellant**) (प्रत्यर्थी / Respondent)

Revenue by: Ms. Amrita Misra (DR)

Assessee by: Shri Nitesh Josh & Ms. Sonalee Godbole(AR)

सुनवाई की तारीख **/ Date of Hearing: 06.04.2016**

घोषणा की तारीख **/ Date of Pronouncement: 13.04.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

<u>लेखा सदस्य राजेन्द्र के अनुसार PER Rajendra A.M.-</u>

Challenging the order of Cs.IT(A)the assessee and the Assessing Officers (AO.s) have filed cross-appeals for the above mentioned assessment years(AY.s.).As most of the issues involved in these appeals are common,so,we are adjudicating all the appeals by passing a single order.The details of dates of filing of return/assessed income etc. can be summarised as under :

A.Y.	ROI filed on	Returned Income(Rs.)	Assessment dt.	Assessed Income(Rs.)	Dt. of orders of CIT (A)
2005-06	27.10.2005	Loss 62,04,05,722/-	17.12.2007	(-)15,8199,522/-	21.03.2011
2006-07	25.10.2006	Nil	08.12.2008	NIL	22.03.2011
2007-08	16.10.2007	Nil	18.12.2009	87,05,00,935/-	23.03.2011

<u>ITA/4540/Mum/2011-AY.2005-06:</u>

2.Assessee is engaged in the business of manufacturing of locks,security equipments,washing machine and refrigerators etc.The effective Ground of appeal is about restricting the depreciation at Rs.38.98 crores as against Rs.53.27 crores,claimed by the assessee.

3.During the course of hearing before us,Authorised Representative(AR)and the Depart - mental Representative(DR)agreed that identical issue was decided by the Tribunal in the earlier years(ITA Nos.4538-39/Mum/11,AY.s 2003-04 and 2004-05).We find that except for the amount involved with regard to depreciation,the assessee had raised the identical grounds for two earlier AY.s.and the Tribunal had decide the issue as under :-

"17. We have considered the rival contentions and have also gone through the record. We have carefully gone through the relevant provisions i.e. explanation 2A and 2B to section 43(6) and have also considered the respective amendments brought out from time to time in the said provisions. We find that the explanations 2A and 2B were inserted by Finance Act, 1999 w.e.f. 01.04.2000. The relevant words under clause 2A were "written down value of the block of assets of the demerged company" whereas the corresponding relevant words under clause 2B were "the value of assets as appearing in the books of accounts". However, a subsequent amendment was made vide Finance Act, 2000 w.e.f. the same date i.e. 01.04.2000 vide which the words "the value of the assets as appearing in the books of account" were substituted with the words "written down value of the transferred assets as appearing in the books of account". Now we have to see whether any change was brought out with the amendment made vide Finance Act, 2000 into the relevant provisions? We find that at the time of insertion of the relevant provisions, the value of the assets of the demerged company was to be taken as its 'written down value' under clause 2A, whereas under clause 2B, the corresponding written down value of the assets of the resulting company was mentioned as the 'value of assets as appearing in the books of account'. However, immediately, before these provisions come into operation, an amendment was brought out in explanation 2B and the relevant words were substituted with 'written down value of the transferred assets'. However, the other relevant words "as appearing in the books of account" were not omitted. If we take the contention of the assessee as correct, then in that event there would not have been any impact or change in the interpretation of the relevant provisions even after the amendment made by Finance Act, 2000. If, as contended by the Ld. Counsel for the assessee, the intention of the legislature has been that the written down value as appearing in the books of account maintained under the Companies Act be adopted, then it will not be understandable as to what was the purpose of immediate amendment made vide Finance Act, 2000, subsequent to the insertion of the relevant provisions made vide Finance Act, 1999 both w.e.f. 01.04.2000.

17.1 When we read the relevant words prior to amendment made vide Finance Act, 2000 i.e. 'the value of assets as appearing in the books of account' and the words appearing after the amendment made vide Finance Act, 2000 i.e. 'the written down value of the assets as appearing in the books of account', and if the contention of the assessee is to be accepted, then, the words appearing before amendment and after amendment made vide Finance Act 2000, will give the same meaning, resulting to inference that the legislature has not made any amendment in the said section and the said amendment will become meaningless and rendered redundant. However, in our view, the Parliament has not made a futile exercise in amending the relevant provisions vide Finance Act, 2000. Hence, we agree with the view taken by the Ld. AO after referring to the memorandum explaining the provisions of Finance Bill, 1999 that provisions relating to the demerger of companies were introduced based on certain principles one of which was that the demergers should be tax neutral and should not attract any additional tax liability. The value of the assets of the demerged company should be the same when transferred to the resulting company. The amendment made by Finance Act, 2003 w.e.f. 01.04.2004, in our view, is curative and clarificatory in nature. The omission of the words "as appearing in the books of account" have neither taken away nor affected any rights of the assessee which were accrued to him before the said amendment. The amendment made vide Finance Act, 2003 has just removed the ambiguity. It has neither taken away any right of any assessee nor has given any new right to the Revenue.

18. We have gone through the order of the Tribunal in the case of "Godrej Industries Ltd." (supra) and we agree with the view taken by the Tribunal in the said case that the emphasis of

the legislature in explanation 2B after the amendment made vide Finance Act, 2000 was that the value of the block of assets in the case of resulting company shall be the written down value of the assets of the demerged company immediately before the demerger. Hence, we do not find any infirmity in the findings of the lower authorities that only the written down value of the transferred assets of the demerged company as per the accounts maintained under the Income Tax Act shall accordingly constitute the written down value of the block of assets of the resulting company.

19. Now coming to some important decisions relied upon by the Ld. counsel for the assessee as mentioned herein below:

1. CIT vs. Triveni Engineering & Industries Ltd. and Others (DOD:05.08.2010) (Delhi – HC);

2. CIT vs. Kerala Electric Lamp Workers Ltd. – 261 ITR 721 (Kerla – HC);

3. SEDCO Forex International Drill INC and Others – 279 ITR 310 (SC) ;

4. DCIT vs. Core Health Care Ltd. – 298 ITR 194 (SC);

5. CIT vs. Sree Senha Valli Textiles P. Ltd. – 259 ITR 77 (Mad. – HC);

6. CIT vs. Vatika Township Pvt. Ltd. and others – Civil appeal No.8750 of 2014 decided on September 5, 2014.

20.We have perused the aforesaid decisions and found that the Hon'ble High Courts and Hon'ble Supreme Court in the above said decisions are unanimous to hold that where a substantive right has been affected by the amendment, the amendment, if not so expressively provided under the relevant statute, will have to be taken prospectively. However, the above decisions cannot be applied to the facts and circumstances of the present case. In the present case, as observed above by us, the omission of the words "as appearing in the books of account" neither have in any way affected any substantive right already vested in the assessee nor has taken away any such right which was accruing to the assessee before such omission. In fact, the curative amendment was made by the Parliament vide Finance Act, 2000 and only the ambiguity has been removed vide Finance Act, 2003 so as to bring clarity. In our humble view, whatever rights had accrued to the assessee in view of the ambiguity in the provisions at the time of their insertion vide Finance Act, 1999, the same had been taken away/clarified immediately by removing the ambiguity through amendment made vide Finance Act, 2000. Hence, without going into the details of the facts of the various case laws, we have no hesitation to hold that the proposition laid therein cannot be applied to the facts and circumstances of the case in hand. These grounds are accordingly decided against the assessee."

Respectfully following the above,we decide the effective Ground of appeal (GOA,1-3)against the assessee.

4.The assessee had raised following additional grounds for the year under consideration:

"Both the lower authorities erred in holding that adhoc disallowance made u/s. 14A of the Act was also required to be added back for computing book profits u/s. 115JB of the Act."

5.During the course of hearing before us,the AR fairly conceded that additional Ground had to be decided against the assessee,that Hon'ble Bombay High Court had decided the issue against the assessee.We find that the Hon'ble Court had dismissed the appeal of the assessee with regard to adhoc disallowance made u/s. 14A of the Act for computing book profits u/s. 115JB of the Act (328ITR81).Respectfully following the judgment of the Hon'ble High Court additional ground no.1 is decided against the assessee.

6.Vide its letter,dated 22.02.2016,the assessee had filed further additional grounds of appeal for with a request to admit the same.In its letter the assessee had stated that during the year under consideration the assessee had earned dividend income,that it was claimed exempt u/s. 10(34) of the act,that it was contended that assessee had not incurred an expense toward income of dividend income, that no amount was required to be disallowed section 14A of the Act,that the AO had disallowed an amount of Rs. 18.03 crores u/s.14A, that the FAA had reduced the disallowance to Rs.48.33 lakhs, that the assessee had taken a ground before the

FAA in respect of non-applicability of provision of section 14 A to dividend subjected to tax under section 115-O/115-R of the Act, that the FAA did not adjudicate the said ground, that while filing the appeal before the Tribunal above ground was in inadvertently not taken, that during the year under appeal approximately 95% of the investments made by the assessee were in its group companies/subsidiaries.Referring to the order of the Tribunal in the case of the Garware Wall ropes Ltd (65SOT86),the assessee stated that above decision was rendered after the filing of the appeal, that the issue involved was legal one, that there was reasonable and sufficient cause for not raising the issue earlier.During the course of hearing before us,the AR made the same submission that are part of the letter of the assessee dated 22/02/2016.DR left the issue of admission of additional grounds to the discretion of the Bench.

7.After considering the material available on record,we are of the opinion that additional grounds raised by the assessee are legal in nature.Hence,same should admitted. We find that while deciding the appeal,the FAA had not adjudicated the issue raised by the assessee. Therefore, we are of the opinion,that in the interest of justice,matter should be restored back to the file of the FAA for fresh adjudication of the issue. He is directed to afford a reasonable opportunity of hearing to the assessee before deciding the matter. Both the additional grounds of appeal,raised by the assessee vide its letter dated 22/02/2016,are decided in its favour, in 0part.

ITA/4541&4542/Mum/2011-AY.s.2006-07& 2007-08:

8.The effective grounds of appeal for both the AY.s. are about computation of depreciation. Following our order for the earlier year Gs.OA 1-3 are decided against the assessee for the above mentioned assessment years.

9.Additional ground of appeal,filed by the assessee is decided against it,following our order for the earlier year.

10. Additional grounds, raised by the assessee vide its letters,dated 22/02/2016, for both the years are decided in favour of the assessee, in part,in pursuance of our order for the earlier year.

ITA/4755/Mum/2011,AY.2005-06:

11. The solitary ground of appeal,filed by the AO,is about restricting the disallowance in respect of managerial/administrative expenses to 1% of dividend income and deleting the disallowance of interest expenditure.During the assessmentt proceedings,the AO found that the assessee had earned dividend income of Rs. 4833.44 lakhs during the year and had claimed it as exempt.He asked the assessee as to why expenses attributable to earning of dividend income should not be disallowed.After considering the submission of the assessee,the AO made a disallowance of Rs.17.42 crores under the head interest expenditure,invoking the provisions of section 14A of the Act.He further held that exempt dividend income could not have been earned without incurring of indirect expenses i.e.administrative and managerial expenses.He made disallowance of 60.90 lakhs under the head indirect expenses.

12. Aggrieved by the order of the AO the aa preferred an appeal before the FAA and made detailed submission.After considering the assessment order and the submission of the assessee ,the FAA held that while completing the assessments for the AY.s 07-08 and 2008-09 the AO himself had stated that assessee had not used borrowed funds for making investment and that the assessee had made investment from his own funds,that the Tribunal while deciding the appeals for the AY.s 1998-99 to 2001-02 had held that Department could not establish nexus between the borrowing and the investment in the dividend earning shares, that the Tribunal had indirectly held that no investments were made out of borrowings, that no expenses could be attributed to earning of dividend income, that

prior to AY 98-99 the AO had not made such disallowance in any of the years, that in the AY.s 03-04 and 04-05 the AO had made disallowance of Rs.46.95 lakhs and 36.29 lakhs respectively being the interest expenditure and managerial/administrative expenses, that in those years the AO had made estimation of such expenses at the rate of 1% of dividend income,that there was no evidence that investments were made out of borrowed funds.Finally he deleted the addition of 17,42,14,000/-.With regard to disallowance made under the head managerial/administrative expenses the FAA held that in the case of Group Companies Godrej Agrovet Ltd. and Godrej Industries Ltd. the Tribunal had restricted the expense to the extent of 2-5% of the dividend income.Finally, he held that it would be sufficient and justified to attribute expenses equivalent to 1% of the dividend received as expenses attributable to earning of exempt income u/s.14A of the Act.

13. During the course of hearing before us,the DR left the issue to the discretion of the Bench.The AR supported the order of the FAA.After considering the available material we find that the Tribunal had ,while deciding the appeals for earlier years,given a finding that the assessee had not used borrowed funds to earn exempt income,that the FAA discussed the issue at length and held that there was no evidence to prove that the assessee had not used its own funds for earning exempt income.In these circumstances,we are of the opinion that there is no legal infirmity in the order passed by the FAA as far as interest expenditure is concerned. We further find that FAA had restricted the administrative/managerial disallowance@ 1%.The AO had not given any reason for making the disallowance.Therefoere, confirming the order of the FAA,we decide the effective GOA against the AO.

ITA/4756/Mum/2011,AY.2006-07:

14. The first GOA is identical to the ground raised by the AO for the earlier year. Following our order for that year Gr.No.1 is decide against the AO.

15. Next GOA is about deleting the addition made by the AO u/s. 41(1), being the difference between the sales tax liability and the net value paid under a scheme of Govt. of Maharashtra. During the course of hearing before us,representatives of both the sides agreed that similar issue was decided by the Tribunal,while deciding the appeal No.6867/Mum/2011 dtd.26.06. 2013.We would like to reproduce the relevant portion of the said order and same reads as under :-

> *2.The sum and substance of the grievance of the revenue relates to the deletion of loan under the sales tax deferral scheme u/s. 41(1) of the Act and also u/s. 28(i) and 28(iv) of the Act. During the year under consideration the assessee company has availed of the benefits of deferral of sales tax offered by the Government of Maharashtra as incentive for rapid industrialization of the developing regions of the State of Maharashtra and prepaid certain sales tax loans in respect of its plant at Shirwal near Pune, in accordance with the scheme providing for such prepayment and considered the gain on such prepayment as capital receipt. The assessee has credited an amount of Rs.9,92,92,718/- on account of gain on remission of sales tax deferral loans. However, while computing the business income, the assessee has reduced such gain with a remark of 'capital receipt' not liable to tax. During the course of scrutiny assessment proceedings, the assessee was asked to explain as to why the gain on remission of sales tax liability should not be considered as income as per the provisions of section 41(1) of the Act. The assessee simply stated that it is not covered under the provisions of section 41(1) of the Act. The submission of the assessee did not find any favour from the Assessing Officer, who was of the firm belief that the assessee has derived benefit in respect of payment of sales tax liability, which squarely covered the meaning of trading liability and, hence, the gain of such liability is nothing but deemed income of the assessee as per the provisions of section 41 of the Act and went on to make an addition of Rs.9,92,92,718/- . The assessee carried this matter before the CIT(A). The CIT(A) after considering the facts of the case was of the opinion that the issues under consideration are covered by the decision of the Special Bench of ITAT, Mumbai Benches, in the case of "Sulzer India Ltd. v. JCIT" 47 DTR 329 dated 10.11.2010. The CIT(A) followed the decision of the*

Special Bench and deleted the additions made by the Assessing Officer. Aggrieved by this finding of the CIT(A), the revenue is before us.

3.The learned DR strongly supported the findings of the Assessing Officer and contended that the facts of the case are squarely covered by the provisions of section 41(1) of the Act. It is the say of the counsel that what has been credited by the assessee is a trading liability allowed as deduction while computing the income. The DR strongly submitted that the remission of liability is taxable in the hands of the assessee. Per contra the counsel for the assessee submitted that the issue is squarely covered by the decision of the Tribunal Special Bench in the case of Sulzer India Ltd. (supra).

4.We have considered the rival submissions and carefully perused the orders of the lower authorities and the material evidences brought on record. It is not in dispute that the assessee has taken benefit of the scheme offered by the Government of Maharashtra. As provided in Circular No.496 dated 25.09.1987 and Circular No.674 dated 29.12.1993 issued by the CBDT, although the sales tax collected from the customers is a trading receipt, on account of deferral scheme, the same is deemed to have been paid. As a result, it amounts to discharge of the liability to pay sales tax. Once the liability is discharged the unpaid deferrals assumes a character of loan. In the light of the above Circulars of the CBDT, sales tax collected by the assessee, which is not paid into the Government Treasury yet deemed to have been paid is nothing but the loan granted by the Government to the assessee. Therefore, such a loan cannot be treated as a trading liability. Facts on record show that during the year under consideration the Government of Maharashtra introduced the Net Present Value (NPV) under Maharashtra Act No.XX of 2002 & Rule 31D of BST Rules 1959 notified vide Govt. Notification No.STR-12.02/CR-002/Taxation-1, dated 16.11.2002, where under the eligible undertaking was permitted to prepay the loan amount. Under the said scheme, the prepayment was allowed at the NPV of the loan repayable at the end of the loan period. The assessee availed the benefits of this scheme and got a remission in the aggregate loan liability amounting to Rs.9,92,92,718/- It is further seen that on 12.12.2002 the Government of Maharashtra announced a scheme of "Premature Repayment of the amount of deferred tax by the eligible units at NPV". The industries who had availed the incentives of the sales tax scheme were permitted to prematurely repay the deferred sales tax liability by arriving at NPV by applying a specific discount. The assessee availed the benefit of the scheme announced on 12.12.2002 as under:

Sales tax liability	*Rs.18,79,58,925/-*
Less : Premature repayment	*Rs. 8,86,66,207/-*
Surplus accrued on the above	*Rs. 9,92,92,718/-*

This surplus has been treated as capital receipt, which has been taxed by the Assessing Officer u/s 41(1) of the Act. Considering these facts, we find force in the contention of the counsel that the issues are squarely covered by the decision of the Special Bench of the Tribunal in the case of Sulzer India Ltd. (supra). The Tribunal has held as under:

"The assessee was liable to pay sales tax amounts collected from 1-11-1989 to 31-10-1996, payments of which were deferred under the scheme, and the amounts were payable after twelve years in six equal annual instalments commencing from 1-5-2003, which meant that the liability was payable in future. Later on, the State Government came out with a scheme by which it was provided that if some dealers opted, then they could pay the future liability at a discounted value or what one may call net present value immediately. Thus, in this situation, it could not be construed as remission of liability, because the State Government had not waived of any of the liability as given in the illustrations. Had the State Government accepted lesser amount after twelve years or reduced such instalments, then it could have been a case of remission or cessation. However, in the instant case the State Government had chosen to receive the money immediately which was receivable from 1-5-2003 to 1-5-2008. The amount of Rs.337.13 lakhs was actually paid to SICOM on 30-10-2002. Thus, it did not satisfy the condition of actual remission in praesenti. It was a simple case of collecting the amount at net present value which was due later on and even the formula for collecting the net present value was also given by the SICOM and the

amounts had been paid as per that formula. Therefore, such payment of net present value of a future liability could not be classified as remission or cessation of the liability so as to attract the provisions of section 41(1)(a) [Para 108] "

Considering facts in totality, in the light of the aforesaid decision of the Tribunal Special Bench, which has been rightly followed by the CIT(A), we do not find any reason to interfere with the findings of the CIT(A).

For the reasons stated above, it was to be held that the deferred sales tax liability being the difference between the payment of net present value against the future liability credited by the assessee under the capital reserve account in its books of account was a capital receipt and could not be termed as remission/cessation of liability and, consequently, no benefit would arise to the assessee in terms of section 41(1)(a) [Para 109]

The appeal filed by the revenue is accordingly dismissed.

5.Before parting, the DR has relied upon the decision of Jurisdictional High Court of Bombay in the case of Hindustan Foods Ltd 328 ITR 392. However we find that in that case the assessee company unilaterally transferred the unclaimed amount of the debenture redemptions to its general reserve without complying with the mandatory conditions of sec.205C of the Company Act, 1956 wherein it is provided that such unclaimed amount has to be transferred to 'Investor Education and Protection Fund'. Thus, the facts are clearly distinguishable and the reliance on the aforesaid judgment is misplaced."

Respectfully following the above order gr.No.2 is decided against the AO.

ITA/4757/Mum/2011,AY.2007-08:

16. The only ground raised by the AO is about restricting the disallowance of managerial /adminstrative expenses to 1% of dividend income and deleting the disallowance of interest expenditure. Following our orders for the earlier years we decide the effective GOA against the AO for the year under consideration.

As a result,appeals filed by the assessee are partly allowed and the appeals of the AO.s. stand dismissed.

फलतः निर्धारिती द्वारा दाखिल की गई अपीलें अंशतः मंजूर की जाती हैं और निर्धारिती अधिकारी की अपीलें नामंजूर की जाती हैं.

Order pronounced in the open court on 13th April, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 13 अप्रैल, 2016 को की गई।

Sd/-	Sd/-
जोगिन्दर सिंह /Joginder Singh)	**(राजेन्द्र / RAJENDRA)**
न्यायिक सदस्य **/ JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांकDated : 13.04.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "G" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि**,** खंडपीठ,आ.अ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार**/ BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण**,** मुंबई **/ITAT, Mumbai.**