IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)

I.T.A. No.2421/Mum/2014
(Assessment Year: 2008-09)

The Dy.CIT 10 (3), Mumbai	vs	M/s Aarti Industries Ltd 71, Udyog Kshetra, 2nd Floor Mulund Goregaon Link Road Mulund (W), Mumbai-80
		PAN : AABCA2787L
(Appellant)		(Respondent)

I.T.A. No.2633/Mum/2014
(Assessment Year: 2008-09)

M/s Aarti Industries Ltd 71, Udyog Kshetra, 2nd Floor Mulund Goregaon Link Road Mulund (W), Mumbai-80	vs	The Dy.CIT, Range 10 (3), Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Anuj Kisnadwala
Respondent by	Shri Rajesh Kumar Yadav

Date of hearing : 07-12-2016
Date of order : 21 -12-2016

O R D E R

Per ASHWANI TANEJA, AM:

These cross appeals have been filed against the order of Commissioner of Income-tax (Appeals)-22, Mumbai [in short CIT(A)] dated

17-01-2014 passed against the assessment order u/s 143(3) dated 28-12-2011 for A.Y. 2008-09.

2. First, we shall take up appeal filed by the assessee on the following grounds:-

"The Appellant submits the following grounds, which are without prejudice to one another:
1. Re: Disallowance u/s. 14A of Rs. 1,24,28,099/-

1.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding disallowing expenses attributable to earning the dividend income u/ s. 14A by invoking Rule 8D without satisfying or establishing as to why the disallowance carried out by the Appellant amounting to Rs.4,67 ,021/ - was not satisfactory.
1.2 The learned CIT(A) ought to have considered that the Appellant had sufficient own / interest free funds and an investment made ought to have been considered as made out of own interest free funds in absence of direct nexus between funds employed and investments made.
1.3 Without prejudice to the above, the Assessing Officer grossly erred in computing disallowance under rule 8D.
1.4 Without prejudice to the above, the disallowance u/s. 14A ought to be substantially reduced.
2. Re: Reducing disallowance made u/s. 14A while computing 115JB:
2.1 On the facts and in the circumstances of the case and in law, the learned CTT(A) ought to have considered that no disallowance u/s 14A is warranted while computing book profit u/s 115.JB.

2.2 Without prejudice to the above, the learned CIT(A) erred in upholding disallowing expenses attributable to earning the dividend income u/s. 14A by invoking Rule SD without satisfying or establishing as to why the disallowance carried out by the Appellant amounting to Rs.4,67 ,021/- was not satisfactory.
2.3 Without prejudice to the above, the learned CIT(A) ought to have considered that the Appellant had sufficient own / interest

free funds and an investment made ought to have been considered as made out of own interest free funds in absence of direct nexus between funds employed and investments made.
2.4 Without prejudice to the above, the Assessing Officer grossly erred in computing disallowance under rule 8D.
2.5 Without prejudice to the above, the disallowance u/s. 14A ought to be substantially reduced.
3. Re: Disallowance of Depreciation on assets purchased from Pravin 1etal Corporation Rs.22,057/-
3.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in disallowing the depreciation of Rs, 22,057/- on the assets purchased from M/s Pravin Metal Corporation.
4. Re: Disallowance u/ s.40A(2) in case of goods purchased from M/ s. Ganesh Polychem Limited of Rs.4,75,200/-:
4.1 The learned CIT(A) erred in upholding the disallowance made by Assessing Officer in respect of goods purchased from M/ s. Ganesh Polychem by stating that the said expenditure is excessive or unreasonable having regard to the fair market value of the goods.
4.2 The learned CIT(A) relied on the preliminary analyses done by Assessing Officer of comparison of rates of other vendors for same goods and held that the said purchases were not at arms length. The learned CIT(A) failed to consider that the facts and circumstances of the case were different and thus the expenditure incurred was fair and reasonable.
5. Addition on account of difference in account of Rashtriya Chemicals and Fertilizers Limited and Amarjyot Chemicals Pvt Ltd -Rs.5,68,558/-:
5.1 The learned CIT(A) grossly erred in upholding addition to income of an amount of Rs.5,68,5S8/- on account of difference in the accounts of Rashtriya Chemicals and Fertilizers Limited and Amarjyot Chemicals Pvt. Ltd."

3. Ground 1: This ground is against the disallowance u/s 14A. The brief background is that during the course of assessment proceedings it was noted by the AO that assessee had received dividend income of Rs.96,70,037 and claimed it as exempt. He invoked provisions of section

14A and made disallowance aggregating to Rs.1,28,95,120/- (i.e. Rs.1,16,01,605/- on account of interest and Rs.12,93,515/- on account of administrative expenses @ 0.5% of average investment). It was also noted by the AO that voluntary disallowance was made by the assessee of Rs.4,67,021/- therefore, no disallowance of Rs.1,24,28,099/- was made by him. In the appeal before the Ld. CIT(A), detailed submissions were made. It was *inter-alia* submitted by the assessee that assessee has got interest free sufficient funds. Therefore, no disallowance was called for on account of interest. Further, with regard to the expenses incurred it was submitted that assessee had already made voluntary disallowances of Rs.4,67,021/- therefore, no further disallowance was required to be made. But, the Ld. CIT(A) did not accept the submissions of the assessee and confirmed the disallowance made by the AO with following observations:-

> *"6.3 I have carefully considered the finding of the AO in the impugned assessment order and the above submission of the appellant. It is the claim of the appellant that interest bearing funds were not utilized for the, purpose of investments in shares. Since funds are mixed and both interest bearing as well as non-interest bearing funds goes to the common kitty and as the appellant did not furnish any evidence to show that the investment in shares which earned exempt income was exclusively out of non interest bearing funds. I do not agree with the claim of the appellant. Rule 8(2) is squarely applicable to the facts and once it is applied there is no discretion left to the AO, he had to follow the formula. Hence, I find the disallowance made by the AO is in order. This ground of appeal is dismissed."*

4. During the course of hearing before us, it was submitted by the Ld. Counsel that no disallowance is required to be made on account of interest since own funds of the assessee are far more than the amount of

investment made in tax free securities; in view of the following judgements:

No interest disallowance can be made u/s 14A of the Act since own funds are sufficient to cover up the value of investments

- CIT v. Reliance Utilities Ltd [313 ITR 340 (Bom)]
- CIT vs. HDFC Bank Ltd [366 ITR 505 (Bom)]
- Alchemic Financial Services v Addl.CIT (ITA No. 6349/Mum/2011)
- Paresh K Shah v. Dy.CIT (ITA No. 8214/Mum/2011)

5. With regard to the expenses disallowed @0.5% u/r 8D(2)(iii), it was submitted that no satisfaction was recorded by the AO, therefore, AO wrongly applied the said rule to make the impugned disallowance. It was also submitted that investments made in subsidiary / group companies were made for the purpose of strategic reasons and acquiring control and not for the purposes of earning exempt income, therefore, this should be excluded while computing disallowance u/s 14A in view of the following judgments:-

1. Cheminvest Ltd vs CIT 378 ITR 33 (Del)
2. Garware Wall Ropes Ltd vs Addl CIT (ITA No. 5408/Mum/2012
3. M/s JM Financial Ltd vs Addl. CIT (ITA No.4521/Mum/2012)
4. CIT vs. Oriental Structural Engineers Pvt Ltd (Delhi High Court)

6. Per contra, the Ld. DR relied upon the order of the AO as well as the order of the CIT(A) and requested for upholding the disallowance.

7. We have gone through the orders passed by the lower authorities. It is noted from the perusal of the table reproduced by the Ld. CIT(A) in his order on page 12 that net worth of the assessee company comprising of share capital and reserves aggregated to Rs.284.27 crores, whereas the aggregate amount of investments was merely to the tune of Rs.26.19 crores. Thus, 'own funds' of the assessee were apparently far more than the amount of investments in tax free securities. Under these

circumstances, no disallowance can be made on account of interest in view of judgements of Hon'ble Bombay High Court in the case of CIT vs Reliance Utilities Ltd vs CIT (supra) and HDFC Bank Ltd (supra). Therefore, disallowance on account of interest of Rs.1,16,01,605 is hereby directed to be deleted.

8. With regard to the disallowance of administrative expenses made by the AO of Rs.12,93,515 computed @0.5% of average value of investment by invoking rule 8D(2)(iii), it is noted that though the assessee had made voluntary disallowance in the return filed by it, but before invoking the above said rule, the AO recorded following findings in the assessment order :-

> *"11.2 The above submissions are considered carefully. With the introduction of section 14A of the Act, no expenditure incurred in relation to earning of income not forming part of total income, is allowable as deduction. The administrative and other expenses incurred by the Assessee Company facilitate earning of all incomes including the exempt income. The funds of business are a mix of own as well as borrowed funds. Hence, the incurring of interest income in relation to earning of exempt income cannot be ruled out. These are valid inferences based on the facts of the case. In this connection, reliance is placed on the following decisions/ judgments.*
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> *1. Distributors (Baroda) Pvt. Ltd. (155 ITR 120) (SC)*
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> *11. Magganlal Chagganlal Pvt. Ltd. (236 ITR 456) (Born)*
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> *11.3 The submission of the assessee company that no effort was required for maintaining the investment is not born out of the records. The investments made by the assessee have gone up during the year. The assessee had debited huge expenditure in the Profit & Loss account like interest expenditure, administrative expenditure etc. Moreover, no separate books of accounts are maintained for the purpose of earning exempt*

income and taxable income. The accounts are mixed. The common fund is employed for earning exempted income as well as taxable income. Therefore, I am not satisfied with the claim of the assessee that no expenditure has been incurred for earning exempt income."

9. Thus, from the above, it would be noted that the AO has clearly stated in the assessment order that from the books of account of the assessee it was not possible to work out the exact amount of expenses incurred by it in earning the exempt income. Under these circumstances, it would be difficult to hold that the aforesaid rule has been invoked by the AO without recording any satisfaction. Thus, this argument of the assessee is rejected.

10. However, the Ld. Counsel also stated that investment in the subsidiary / group companies should be excluded while working out the average amount of investments since investment in these companies have been made not for the purpose of earning exempt income but for acquiring control and for strategic reasons. We find force in the argument of the Ld. Counsel in view of the judgments relied upon in support of his arguments as have been mentioned above, viz. Cheminvest Ltd (supra), CIT vs Oriental Structural Engineers Pvt Ltd (supra), Garware Wall Ropes Ltd (supra) and JM Financial Ltd vs Addl CIT (supra). Therefore, the AO is directed to exclude the amount of investment made in the group companies for strategic reasons. For this limited purpose, this issue is sent back to the file of the AO, who shall decide this issue afresh after giving adequate opportunity of hearing to the assessee to furnish required details of investments made in the group companies. The disallowance shall be made by the AO after excluding the amount of investment in group / subsidiary companies for working out the average value of

investments. For the purpose of rule 8D(2)(iii). As a result, ground 1 is partly allowed.

11. Ground 2 is stated to be consequential to ground 1, therefore, it is dismissed.

12. Ground 3: This ground is with regard to the disallowance of depreciation on assets purchased from M/s Pravin Metal Corporation of Rs.22,057/-. During the course of hearing it was brought to our notice that this issue has been set aside to the file of the AO vide order of the Tribunal for A.Ys 2005-06 to 2007-08 dated 06-02-2015.

13. We have gone through the order passed by the Tribunal for earlier years and noted that this issue has been sent back to the file of the AO to be decided in the light of directions contained in the earlier order of the Tribunal. We find it appropriate to send this issue back to the file of the AO to be decided afresh by the AO in the light of the directions given in the aforesaid order of the Tribunal. This ground may be treated as allowed, for statistical purpose.

14. Ground 4 : In this ground, the assessee has challenged the action of lower authorities for making disallowance of Rs. 4,75,200/- by applying provisions of section 40A(2) with regard to the goods purchased from M/s Ganesh Polychem Ltd.

15. During the course of assessment proceedings it was noted by the AO that assessee had purchased methanol from M/s Ganesh Polychem Ltd which is one of the sister concerns of the assessee @ 30.89 per kg whereas same material was purchased @ Rs.15.40 to Rs.15.80 per kg from independent concerns, viz. M/s Sony Chemicals and M/s Deepak

Fertilizers & Petrochemicals. The AO found the same to be excessive and, therefore, he disallowed 50% of the total purchases for Rs.7,20,000/- was disallowed. In the appeal before the Ld. CIT(A), it was submitted by the assessee that rates of methanol have fluctuated all around the year. The purchases from Ganesh Polychem Ltd were made in April, 2007 whereas the purchases from the other concerns were made in June, 2007. Therefore, the purchases of two different parties should not be compared. It was also submitted that the credit terms and lead time for delivery taken by Ganesh Polychem Ltd was better in comparison to other concerns and that is why higher rate was paid. The Ld. CIT(A) was not fully satisfied with the submissions of the assessee and, therefore, he upheld the disallowance in principle, but re-computed the amount of disallowance in view of correct facts. The following are the findings of the Ld. CIT(A):-

> *"9.3 I have carefully considered the finding of the AO in the impugned assessment order and the above submission of the appellant. The contention of the appellant that there were material differences in the both the purchases on account of the factors like different dates of purchase, favourable credit terms, etc. cannot be accepted. The purchase from M/s.Ganesh Polychem Ltd. was made in the month of March,2007 and the rate per kg. is Rs.25.50. In support of this, two invoices raised by M/s.Ganesh Polychem Ltd. were furnished along with the submission. I have perused both the invoices and found that after inclusion of excise duty and other cess and CST, the rate works out to Rs.30.89. The copy of the invoice for purchases from M/s.Urmi Chemicals and M/s. Deepak Fertilizers and Petrochemicals was also filed along with the submission which shows that the rate per kg. was Rs.15.37 and 15.69 exclusive of excise duty and other levies. Hence, to this extent, I find the contention of the appellant that the AO has erred in adopting the rate inclusive of taxes in the case of sister concern is acceptable. However, with regard to the different dates of*

purchases as contended by the appellant, I find the purchase from M/s.Ganesh Polychem Ltd. was in March, 2007 and with other two concerns it was in July, 2007.1_ feel there cannot be a great variation in rate within 3 months and purchase at different dates should not have a great impact on the rate of purchase. Further, the appellant did not bring any evidence to show that a favourable credit terms have been extended by the sister concern because of which, a higher rate was charged. In view of this, I am satisfied that the rate per kg. from M/s.Ganesh Polychem Ltd. should be adopted at Rs.25.50 as against Rs.30.89 adopted by the AO which has resulted in a difference of RS.5.39 per kg. which works out to 17%. To this extent, the which has resulted in a difference of RS.5.39 per kg. which works out to 17%. To this extent, the AO had made an excess disallowance of 17%. In view of this, I direct the AO to adopt disallowance at 33% (50-17) as against 50% adopted. *The appellant gets relief of the balance. This ground of appeal is partly allowed."*

16. During the course of hearing before us, the Ld. Counsel vehemently argued that since purchases were made from different parties at two different points of time, the purchases cannot be compared.

17. We have considered the submissions made before us as well as the orders passed by lower authorities. It is noted that the AO has rightly brought out the facts that the rates charged by the sister concerns were exorbitant in comparison to other independent concerns. It is noted that the rates charged by M/s.Ganesh Polychem Ltd were almost double the uncontrolled rates. Therefore, under these circumstances, there was heavy burden upon the shoulder of the assessee to show that when the purchases were made from M/s.Ganesh Polychem Ltd in March / April, 2007, then at that time, the rates in the open market were equivalent to the price charged by the sister concern. No such evidence was brought on record by the assessee. Under these circumstances, it would be very difficult to believe that within two months period, the rates were reduced

to half in the open market. In any case, no such evidence was brought on record by the assessee. It is also noted that the Ld. CIT(A) has already given appropriate relief by re-working the amount of disallowance at correct rates. We do not find any need for making any further interference in the order of the Ld. CIT(A) on this issue and, therefore, the same is hereby upheld. This ground is dismissed.

18. Ground 5: This ground deals with the action of lower authorities in making addition on account of difference in the balance shown in the account of Rashtriya Chemicals & Fertilizers Ltd (RCF, hereinafter) and M/s. Amarjyot Chemicals Pvt Ltd (ACP) for an amount of Rs.5,68,558/-. The brief background is that the AO issued notices u/s 133(6) to two parties, viz. RCF and M/s. Amarjyot Chemicals Pvt Ltd. This issue was raised in detail before the Ld. CIT(A), but submission of the assessee was rejected and disallowance made by the AO was confirmed. During the course of hearing before us it was vehemently argued by the Ld. Counsel that admittedly, there was a difference, but reconciliation was submitted by the AO while making the disallowance. Ld. CIT did not consider even this argument that impugned difference did not lead to any kind of suppression of income.

19. Per contra, the Ld. DR relied upon the orders of the lower authorities. It is noted by us that the assessee had submitted before the Ld. CIT(A) appropriate reconciliation wherein the reason was given for the difference and the same was duly reconciled. But, Ld. CIT(A) simply rejected the submission of the assessee by stating that he was not convinced with the submissions of the assessee. Thus, order passed by Ld. CIT(A) is neither properly speaking nor well reasoned. Under these

circumstances, we find it appropriate to send this issue back to the file of the AO where the assessee shall get adequate opportunity of hearing to submit the reconciliation statement and other required details and evidences. The AO shall also consider all the arguments of the assessee including the arguments that the impugned difference is not leading to suppression of income, and therefore, no addition could be made on account of impugned difference. With these directions, this ground is send back to the file of the AO for deciding it afresh after giving adequate opportunity of hearing to the assessee. As a result, this ground may be treated as allowed, for statistical purposes.

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

21. Now we shall take up Revenue's appeal filed on the following grounds:-

> *"1. On the facts and in the circumstances of the case and in law, the Ld.CIT{A) erred in allowing the depreciation Rs. 32,82,7.26/- claimed by the assessee on the basis of letter of approval dated 10/10/2010 received much later than the date of filing of Return of Income without considering Rule 5(2)(ii) for claim of such depreciation.*
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> *2. On the facts and in the circumstances of the case and in law, the Ld.ClT(A) erred in allowing the appeal and deleting the disallowance of Rs.64,22,951/- without analysing the provisions of section 35(2AB)(3) of the Act.*
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> *"2. On the facts and in the circumstances of the case and in law, the Ld.ClT(A) erred in allowing the interest u/s 36(1)(iii) of Rs. 2,37,16,415/- on loans advanced to the subsidiary companies viz M/s Aarti Healthcare Ltd and M/s Avinash Drugs Ltd. without appreciating the fact that the assessee failed to establish that it served the business Interest of the assessee.*

3. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the interest u/s 36(1)(iii) of Rs.2,37,16,415/- on loans advanced to the subsidiary companies viz. M/s Aarti Healthcare Ltd and M/s Avinash Drugs Ltd without appreciating the fact that the assessee failed to establish that it served the business interest of the assessee.

4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee on the ground that the interest and finance charges should be allocated on the basis of CWIP, instead on the basis of turnover as provided u/s 10B(4) of the Act."

5. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 1,14,700/- holding that the expenditure as not debited to the P&L Account whereas the same represents undisclosed expenditure of the assessee as assessee failed to reconcile the same with proper documentary evidences at the assessment proceedings."

22. Ground 1: In this ground, the Revenue has challenged the action of Ld. CIT(A) in allowing depreciation of Rs.32,87,726/- which was claimed by the assessee on the basis of letter of approval dated 10-10-2010.

23. The brief background is that during the course of assessment proceedings it was found by the AO that assessee had claimed 40% depreciation on plant and machinery under Rule 5(2) of Income-tax Rules on scrutiny of Annexure-6 to form NO.3CD. Since the assessee failed to furnish details connected to the approval and certificate given by Department of Scientific and Industrial Research (DSIR) in respect of using any technology or other know-how developed in-house, the AO rejected the claim of the assessee. The AO made a mention that similar claims made during earlier year was also rejected.

24. In the appeal before Ld. CIT(A), the assessee submitted in detail that required approval from DSIR was received by the assessee and the same

was produced before Ld. CIT(A). Submissions of the assessee made before Ld. CIT(A) are reproduced below

"The submission of the appellant is as under:-

*"**At the outset, we would like to state that the approval from DSIR as required by the under rule 5(2) has been received by the Appellant and same is enclosed herewith at page no. 30 to page no. 32 of the paper book.***

Thus the very basis of disallowance, being non-receipt of approval from DSIR has been received by the Appellant, hence the disallowance done by the Assessing Officer should be deleted.

*1. **The Appellant in A. Y. 2005-06 and A. Y. 2006-07 had claimed depreciation @ 40% under rule 5(2) on plant / machinery put to use for commercializing the technology developed in-house. The said claim was disallowed in the respective assessment years as the DSIR had not accorded the approval to claim under rule 5(2).** (We enclose herewith depreciation schedule for A. Y. 2005-06 at page no. 33 and A. Y. 2006-07 at page no. 36 to page no. 37 of the paper book, and the relevant extract of the Assessment Order u/s. 143 (3) for A. Y. 2005-06 at page no. 34 to page no. 35 and A. Y. 2006-07 at page no. 38 to page no. 39 of the paper book) .*

2. The DSIR vide letter dated 10th October. 2010 has approved the claim of the Appellant.

Based on above we submit that the depreciation as claimed by the Appellaznt @40% for A.Y. 2008-09 in respect of the plant / machinery installed in A.Y. 2005-06 and ASSESSMENT YEAR 2006-07 in block of 40% ought to be allowed."

25. Ld. CIT(A) examined the copy of certificate provided by the assessee and allowed the relief with following observations:-

"3.3 I have carefully considered the finding of the AO in the impugned assessment order and the above submission of the appellant. The DSIR vide letter dated 10.10.2010 has approved the claim of accelerated depreciation allowance under Rule 5(2) of the I.T.Act Rules for F.Y.2004-05 and 2005-06. I find the AO had followed the decision taken by the predecessors for A.Y.2005-06 and 2006-07 when no approval was available, while

completing the assessments. Since the approval is now granted, I find the claim of the appellant needs to be allowed. However, I direct the AO to allow the depreciation on the corrected W.D.V. after giving effect to the claim of depreciation for A.Y.2005-06 to A.Y.2007-08. Subject to this direction, this ground is partly allowed."

26. During the course of hearing before us, it has been stated by the Ld. Counsel that since required certificate has been provided by the assessee which has been examined by the Ld. CIT(A), and only thereafter relief has been provided by him in line with earlier years' orders which have been confirmed by the Tribunal. Ld. DR could not point out anything incorrect or wrong in the factual finding of the Ld. CIT(A). Under these circumstances, we do not find any justification to interfere in the order of the Ld. CIT(A) on this issue. Thus, ground 1 raised by the Revenue is hereby dismissed.

27. Ground 2 : In this ground, the Revenue has challenged the action of Ld.CIT(A) in deleting the disallowance made by the AO of claim of weighted deduction of Rs.64,22,951/- u/s 35(2AB)(3) of the Act.

28. Brief background is that during the course of assessment proceedings it was noted by the AO that assessee had furnished only a certificate received from the Chartered Accountant and certain correspondence with Ministry of Science and Technology to claim the weighted deduction u/s 35(2AB). He was of the opinion that the assessee has not fulfilled the necessary conditions laid down in clause (i) to (v) of the above section and since no evidences were brought before him to show that the assessee had entered into an agreement with the prescribed authority, the claim of the assessee was rejected by the AO. He has also mentioned that the relevant portion was left blank in Form

No.3CL and hence, the report is incomplete. The AO had allowed Rs.1,28,45,902/- which is the actual cost incurred (includes both revenue expenditure u/s 35(1)(i) and capital expenditure u/s 35(21)(iv) as against the claim of Rs.1,92,68,853/- by the assessee and added Rs.64,22,951/-. In the appeal before Ld.CIT(A), it was brought to the notice of the Ld.CIT(A) that assessee had subsequently received approval in Form 3CM and the same was shown, and therefore, there was no reason to continue with the disallowance. After examining the evidence, Ld. CIT(A) allowed the relief with following observations :-

> *"4.3 I have carefully considered the finding of the AO in the impugned assessment order and the above submission of the appellant. As brought out by the appellant in the submission, a prescribed agreement duly signed by the Managing Director of the company is filed alongwith form NO.3CK before the DSIR. Once the DSIR gives an approval, it automatically means that the agreement is given effect to. The AO had never doubted the genuineness of this claim. He was convinced that all conditions lay down in section 35(2AB) was satisfied except clause (iv). There cannot be a doubt that the appellant is having in-house R&D facility and as discussed in par 3.3 above in ground of appeal No.2, the DSIR has given due approval for the in-house research facility set up. Further, as a standard procedure, the agreement signed by the Managing Director is filed along with Form NO.3CM which was very much produced before the AO and it was also produced before me. The appellant had complied with all the conditions laid down in Section 35(2AB). Signing of the agreement by DSIR is only a technical formality. As mentioned above the appellant had complied with the formality by submitting the same before the authority. Hence the appellant cannot be blamed.*
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> *4.4 Before me, the appellant had strongly relied on the decision of the ITAT in its own case for A.Y.2003-04. A clear finding to the effect that once the appellant gets the formal approval from DSIR in Form No.3CM, the appellant is entitled for deduction u/s.35(2AB) was given by the ITAT.*

4.5 Further a finding was also given to the effect that even if the agreement is not signed by DSIR, it will not make a difference and the deduction has to be allowed. Since there is no change in the facts and circumstances during the year, respectfully following the decision of the Hon'ble ITAT, I direct the AO to allow the weighted deduction of 150%. The decisions relied on by the appellant also supports its case. This ground of appeal is allowed."

29. During the course of hearing before us, Ld. Counsel stated that this issue is covered in favour of the assessee by the decisions of the Tribunal for earlier years. Though in the earlier years, this issue was sent back to the file of the AO for the limited purpose of verification of order of approval in form 3CM, but in the year under appeal, the said approval in form 3CM was filed before the lower authorities, and Ld.CIT(A) had granted relief after verifying the same. Therefore, no purpose would be served in sending the matter back to the file of lower authorities especially when nothing wrong has been pointed out in the findings of Ld. CIT(A).

30. Per contra, the Ld. DR did not make any serious objection to the proposition. Under these circumstances, we find that the relief has been granted by the Ld. CIT(A) after verifying the requisite approval in proper form. Nothing wrong or contradictory has been brought before us by the Ld. DR. Thus, we do not find any need or justification to interfere in the order of the Ld. CIT(A). Therefore, the order of the Ld. CIT(A) is upheld. Thus, ground of the Revenue is dismissed.

31. Ground 3 : In this ground, the Revenue is aggrieved with the action of Ld.CIT(A) in deleting the disallowance made by the AO on account of interest u/s 36(1)(iii) on loans advanced to subsidiary companies, viz. M/s Aarti Healthcare Ltd & M/s Avinash Drugs Ltd.

32. The brief background is that during the course of assessment proceedings it was noted by the AO that the interest bearing funds were not utilized for advancing loan to the sister concern, the AO disallowed the claim u/s 36(1)(iii). The claim of the assessee that there is business expediency relying on the decision of SA Builders, was also not accepted by the AO. Further, since the assessee failed to discharge the onus and did not satisfactorily demonstrate that only interest free funds were advanced as loans to sister concern, the AO disallowed proportionate interest @12% on the interest free loans advanced amounting to Rs.2,37,16,415/-. In the appeal before Ld. CIT(A), detailed submissions were made by the assessee wherein it was *inter-alia* submitted that the assessee had sufficient funds to give these loans and in any case, these amounts were given for the purpose of business of the assessee.

33. After considering the submissions of the assessee, Ld. CIT(A) decided this issue in favour of the assessee and deleted the disallowance made by the AO with the following observations:-

> *"5.3 I have carefully considered the finding of the AO in the impugned assessment order and the above submission of the appellant. The AO did not bring any evidence on record to show that the interest bearing funds have been advanced to the sister concern as interest free loans. Moreover, as per the decision of the jurisdictional ITAT in the case of Reliance Utilities and Power Ltd., if the appellant had enough interest free funds to cover the interest free advances then it should be considered as its own fund and the decisions relied on by the appellant also supports its case.*
>
> *5.4 Identical issue was adjudicated by my predecessor in earlier years and in A.Y.2007-08 and relief has been granted to the appellant. The relevant portion of the finding in para 7.3 of the order for A.Y.2007-08 is reproduced hereunder :-*

"The appellant has mentioned before the AO that loan was advanced to the subsidiary company for purpose of strengthening financial condition and thereby improving business since it was holding 51% of shares of Aarti Healthcare Ltd. and 86% shares of Avinash Drugs Ltd. Relying upon several judgements, the appellant further stated before AO that since interest free advances to subsidiary company have been given for the purpose of business of commercial expediency, disallowance cannot be made. It was also stated that the assessee has huge interest free funds and accumulated reserves. Detailed submissions have also been made wherein the commercial expediency has been explained. Identical issue had come up before my Ld. Predecessor in A.Y.2003-04 & 2004-05 and also undersigned for A.Y.2005-06 and 2006-07 wherein this ground of appeal was allowed relying on several judgements including that of SA Builders Ltd. 288 ITR 1. The facts of the case are identical and hence following these judgements, the AO is directed to allow claim of appellant of interest u/d.36(1)(iii) of the I.T.Act."

5.5 Since there is no change in the facts and circumstances, following my predecessor's decision, I direct the AO to delete the addition made in this regard. This ground of appeal is Allowed.

34. During the course of hearing before us, it was submitted by the Ld. Counsel of the assessee that this issue has been decided in favour of the assessee by the Ld. CIT(A) following the order of the Tribunal for A.Y. 2007-08 .

35. Per contra, the Ld. DR could not point out any distinction between the facts of A.Y. 2007-08 and the impugned year. Thus, in view of the order of the Tribunal for AY 2007-08, we find that the order of Ld. CIT(A) deserves to be upheld. Therefore, this ground is dismissed.

36. Ground 4 : In this ground, the Revenue is aggrieved with the action of the Ld.CIT(A) in allowing the appeal of the assessee on the ground that

interest and finance charges should be allocated on the basis of CWIP as against on the basis turnover as was done by the AO.

37. The brief background is that during the course of assessment proceedings it was noted by the AO that the assessee has both the units, i.e. unit eligible for deduction u/s 10B as well as unit eligible for deduction u/s 10B. The assessee itself had allocated office and administration expenses in the ratio of turnover between both 10B and non-10B units. However, with regard to interest and finance charges, allocation was on the basis of capital work-in-progress. The AO found that the turnover of 108 unit was 7.71 % while that of non-10B unit was 92.29%. He was of the opinion that the allocation needs to be made based only on the turnover as per provisions of section 10A(4) and 10B(4), and accordingly applied the turnover ratio to interest and finance charges; thereby allocated Rs.2.79 crores as against claim of the assessee Rs.2.03 crores. The difference was reduced from the profit eligible for deduction u/s 10B which has resulted in reduction of benefit to the extent of Rs.55,75,927/-.

38. During the course of hearing before the Ld.CIT(A), it was submitted in detail by the assessee that the aforesaid method was followed in earlier years also whereby interest and finance charges are allocated on the basis of fixed assets and the same was accepted by the AO while computing deduction u/s 10B. It was submitted that all the loans and other funds are finally held up in fixed assets. Further, since no substantial working capital is required by the units eligible for deduction u/s 10B, therefore, no substantial interest is required to be allocated to the said unit. The Ld. CIT(A) was satisfied with the submissions of the assessee, and therefore, he accepted the claim of the assessee and reversed the order of the AO on

this issue by observing that allocation of interest should not be made on the basis of turnover by the AO.

39. During the course of hearing before us, the Ld. DR submitted that the basis adopted by the assessee and the Ld.CIT(A) were not rational for apportionment of interest and finance expenses. Under these circumstances, the Ld. Counsel was instructed by us to furnish the break-up of interest expenses as well as break up of asset base of both the units. In response, Ld. Counsel submitted the break-up of interest as under:-

Sr.No.	Particulars	Total
1	Interest paid on Unsecured Loans	3,60,32,974
2	Interest paid on Working Capital Loans	25,61,18,560
3	Interest on Term Loans	7,05,53,202
	Total interest	**36,27,04,736**

Further, with regard to break-up of assets employed, following particulars were submitted by the assessee:-

Particulars	Total	10B	Non 10B	% of 10B unit to total	% of Non 10B unit to total
Gross block (A) (including capital (WIP)	5,18,27,73,230	29,03,02,610	4,89,24,70,620	5.60%	94.40%
Current Assets	5,68,58,64,106	41,99,16,440	5,26,59,47,666	-	-
Current Liabilities	1,58,79,97,787	18,19,68,151	1,40,60,29,636		
Net current assets (B)	4,09,78,66,319	23,79,48,289	3,856,99,18,030	5.81%	94.19%
Capital employed (A+B)	9,28,06,39,549	52,82,50,899	8,75,23,88,650	5.69%	94.31%

In view of the above particulars, it was alternatively submitted by the Ld. Counsel that apportionment can be done in the ratio of net current assets which would be more logical than the apportionment made on the basis of turnover, since turnover is not the sole criteria.

40. We have gone through the orders passed by the lower authorities and facts and circumstances of the case and details submitted before us. It is noted from the Balance Sheet details that 10B units as well as non-10B units are having fixed assets as well as current assets. Under these circumstances, it will not be appropriate to apportion the interest entirely on the basis of fixed assets. Similarly allocation on the basis of turnover may also not be a proper criteria for the purpose of allocation of interest keeping in view the peculiar facts and circumstances of the case. Therefore, in our considered opinion, as far as interest on unsecured loans (i.e. Rs.3,60,32,974) and term loans (i.e. Rs.7,05,53,202) is concerned, the same should be apportioned on the basis of fixed assets held under the gross block, i.e. 5.60% of such interest cost should be allocated to 10B unit and 94.40% should be allocated to non 10B unit. However, interest paid on working capital loans amounting to Rs.25,61,18,560 should be apportioned in the ratio of net current assets, i.e. 5.81% of such interest should be allocated to 10B unit and 94.19% should be allocated to non-10B units. The disallowance should be recomputed by the AO accordingly. As a result, this ground is partly allowed.

41. Ground 5: In this ground, the revenue is aggrieved by the action of Ld. CIT(A) in deleting the addition of Rs.1,14,700 by holding that the impugned expenditure was not debited to the P & L Account by the assessee.

42. The brief background is that during the course of assessment proceedings, it was noted by the AO that assessee had made payment through credit card using American Express Bank Card aggregating to Rs.16,77,803 but the assessee could explain the details for an expense upto Rs.15,66,104. Thus, the remaining amount of Rs.1,14,700 remained unexplained, and therefore the same was treated as expenses incurred for non-business purposes and was disallowed by the AO.

43. During the course of appeal before Ld.CIT(A), it was *inter-alia* submitted that assessee had debited expenses in the P&L Account to the tune of Rs.15,66,105 only and thus, the amount of Rs.1,14,700 was not debited to the P&L Account, therefore, disallowance has been wrongly made. After considering the submission of the assessee, Ld. CIT(A) allowed the relief to the assessee by observing as under:-

> *"13.3 I have carefully considered the finding of the AO in the impugned assessment order and the above submission of the appellant. I find from the claim of the appellant that only a sum of Rs.15,66,104/- was debited to the P&L account and the balance expense of Rs.1,14,700/- was not debited at all is in order. It is the contention of the appellant that the balance being personal expense of the director, the same was not debited to the P&L account. Since the difference in expenditure was not claimed as a business expense and not debited to the P&L account, the addition made by the AO is hereby deleted. This ground of appeal is allowed."*

44. During the course of hearing, nothing wrong in the above findings was brought to our notice by Ld. DR. The Ld. Counsel stated that the disallowance has been rightly deleted by Ld. CIT(A) as the same was not debited to the P&L Account by the assessee. Under these circumstances, the disallowance was wrongly made.

45. We have gone through the orders passed by the lower authorities and submissions made before us. Since the impugned amount was not debited by the assessee in the P&L Account, the disallowance made by the AO has been rightly deleted by Ld. CIT(A). No interference is called for in his order. Ground 5 of the Revenue is dismissed.

46. As a result, appeal of the Revenue is partly allowed.

47. In the result, appeal filed by the assessee is partly allowed and the appeal filed by the revenue is also partly allowed.

Order was pronounced in the open court at the conclusion of the hearing.

Sd/-	Sd/-
(MAHAVIR SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 21st December, 2016

Pk/-

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, A-Bench

(True copy) By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES