IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI
BEFORE SHRI DT GARASIA, JM AND SHRI RAJESH KUMAR, AM

ITA NOS. 2910/Mum/2011, 5360/Mum/2011 & 6531/Mum/2012 & 9198/Mum/2010

A.Ys 2005-06 to 2008-09

M/s Firmenich Aromatics (I) P. Ltd. 74/II C Cross RD., MIDC Andheri (E), Mumbai 400093	Vs.	The ADDL CIT RG 4(2) R.No. 642, Aayakar Bhavan, M.K. RD, Mumbai
PAN No. AAACF1621M		
(Appellant)	:	**(Respondent)**

ITA Nos. 549/Mum/2011, 3744/Mum/2011 & 7428/Mum/2012
A.Ys 2006-07 to 2008-09

The ACIT Circle 4(2), Room No. 612, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400020	Vs.	M/s Firmenich Aromatics (I) P. Ltd. 74/II C Cross RD., MIDC Andheri (E), Mumbai 400093
PAN No. AAACF1621M		
(Appellant)	:	**(Respondent)**

Appellant by	:	Shri Vipul Joshi
Respondent by	:	Mrs. Puja Swaroop

Date of Hearing	:	13/02/2017
Date of Pronouncement	:	24 /04/2017

O R D E R

PER D. T. GARASIA, JM:

The above appeals relate to Assessment Year 2005-06 to 2008-09. Four appeals are by the assessee and two appeals are by the Department.

The following grounds are raised by the assessee in his appeal and following grounds are raised by the Department:

Ground No. 1

This ground is against the action of the Assessing Officer ["A.O."] in rejecting the accounts / book result of the Assessee by invoking the provisions of section 145 (3) of the Income - tax Act, 1961 ["the Act"].

Ground No. 2

This ground is against the action of the A.O. in estimating the gross profit, after rejecting the book result as above, by adopting 18% to the turnover. The addition made was Rs. 1,51,58,000/-. In appeal, the CIT (A) reduced the addition to Rs. 10,29,890/-. The assessee has challenged this confirmed addition.

Ground No. 3

This ground is against the action of the A.O. in disallowing the claim of deduction of interest, paid to M/s. M. C. Dawar Aromatics P. Ltd., by invoking section 40A (2) (b) of the Act, by holding the same is excessive and unreasonable. The CIT (A) has confirmed this disallowance. The amount of disallowance [Rs. 28,75,000/-]

Ground No. 4

This ground is against the action of the A.O. in disallowing, a part of the repairs and maintenance

expenses claimed by the assessee by way of deduction, by holding the same as capital expenditure in nature. The amount of disallowance - Rs. 1,54,470/-. The CIT (A) has confirmed the disallowance.

2. These all bunch of appeals filed by the assessee and the department from AY 2005-06, 2006-07, 2007-08 and 2008-09. All these appeals relate to the same assessee therefore, disposed off this common order.

3. These all appeals are arising out of order of CIT (A)-10, Mumbai dated 23-02-2011 for Assessment Year 2005-06, 2006-07, 2007-08 and 2008-09 respectively.

ITA No. 2910/M/2011 & ITA No. 744/M/2011

4. Now, we will deal with the assessee's appeal for AY 2005-06. The following grounds are raised in AY 2005-06 which are as under:

5. The short facts of the case which reads as under:

6. The assessee has opening worth of Rs. 35,72,24,000/- and closing stock of Rs. 37,32,35,000/- The purchases were shown at Rs. 132,64,67,000/- and sale of Rs. 157,85,09,000/-. The assessee was asked to produce the stock register for relevant financial year, a technical note of production process giving the details of proportion of raw material mixed, finished product produced wastage generated, yield % achieved and gross profit rate for the last three years. The assessee had in reply to show cause notice has submitted the general detail of production process but not produce the correct figures of raw material which were used for manufacture if particular product. Moreover, the assessee did not produce stock register containing day to day recording of consumption or production but only produce monthly detail of

stock raw material and finish product. The assessee has given the chart of finished product however no delivery challan were produced. Therefore, the AO, who was not able to verify the requirement of particular orange flavour by production unit, the assessee finished detail of sale but stock register was not complete and day to day production records have not been available. Therefore, the assessee was given show cause notice and the assessee replied that the required detail cannot be produced to AO on the ground that it is a secrete Intellectual Property Rights. Therefore, after considering the reply as no bills vouchers were produced, therefore, correctness of the income of the assessee could not be ascertained. Therefore, relying upon the various judgements the AO has rejected the book result by invoking Section 145(3) of the IT Act. The matter carried to CIT(A) and CIT(A) has dismissed the appeal of the Assessee.

7. Ld. AR submitted that the assessee has submitted the detail of raw material used for production process that the assessee has maintained stock register on production-wise. The assessee's production process is based on the formulation which is a closely guarded secret as it is a proprietary product and also has intellectual property rights. The assessee has submitted stock register the assessee's books of accounts are audited by independent Statutory Auditors, Internal Auditors and Tax Auditors from time to time. The assessee's books of account including stock register have been approved by Government Authorities such as Excise Department, Sales Tax etc. Therefore, there is no reason for rejection of books of accounts. The Ld. AR submitted that the production process is based on formulation which is closely guarded secret as it is a proprietary product and it has intellectual property rights which is developed by huge investment and research and development and also by investment in the efforts of Perfumers, for a few more application laboratories,

fragrance developments managers, market research etc. Therefore it is most valuable asset of the company. Therefore, formulation is completely guarded and kept secret. Therefore, the assessee has not able to provide the detail of different raw material used a manufacturing product. Therefore, the Ld. AR submitted that the assessee is in business since so many years but assessee's books of account where never rejected by the department only in this order the department has rejected the books of account and that two flimsy grounds.

On the other hand Ld. DR relied upon the AO order of Revenue Authority.

8. We have heard the rival contention of both the parties looking to the facts and circumstances of the case we find that the stock record of raw materials and finish goods were prepared on day to day basis. Apart from that as per the Excise Rules the assessee made has maintained RG-I for Finished Goods, RG- 23A part one for raw material and the same were provided to the Ld. AO on monthly basis and product wise prepared from day to day register. The assessee has not given the technical detail as the assessee's production process is based on formulation which is closely guarded secret and as it is proprietary product and also intellectual property rights. We find that in favour and flavour Fragrance Industry, formulation is a intellectual property of the organization, which is developed by huge investments for Research and Development and also by investment in the efforts of Perfumers, Application laboratories, Fragrance Development managers, Market Research etc. Thus it is a most valuable asset of the company. We find that the assessee makes a product which is unique in the eyes of our customers. Therefore, this formulation was completely guarded and kept secret. This formulae known to

very few and select group of people who are bound by confidentiality agreement. Therefore, use in manufacturing product. The assessee has submitted all the bills and entire income were submitted to AO. Therefore, in our opinion the AO and CIT(A) is not justified in rejecting the book result of the assessee. The Assessing Officer has relied upon the decision of Punjab Trading Company vs. CIT (1964) 53 ITR 335 (Punj) in that case stock was not maintained hence the books result was rejected whereas in the case of the assessee stock register is maintain but also submitted to AO for verification. In the case of Kishan Chand Chellaram vs. CIT (1978) 114 ITR 671 (Bom) in absence of stock tallies and sales were not recorded with identifiable details. Therefore, books were rejected in the case of the assessee no defect was found by the AO stock register. Similarly in the case of Ratanlal Omprakash v/s CIT(1981) 132 ITR 640 (Ori). The stock register was not maintained whereas in the case of the assessee the stock register maintain. Similarly in case of Narbada Steel Ltd v/s ACIT (2007) 108 TTJ 741 (Asr). Wherein, in that case the tax auditors had not given the detail of about yield finished products, percentage of yield. Therefore, the books were rejected in the assessee's case tax auditor has specifically note that in view of various raw material used it at different stages and in different mix it is impracticable to work out yield finished goods. In case of Jagan Nath Gurbachan Singh v/s ITO (2001) 73 TTJ 878 (Asr). The AO has relied upon the data of Cotton Corporation of India while in assessee's case no such data has been considered. Our view is supported by the decision of Delhi High Court in case of CIT vs. Gasjak Elegance Export 324 ITR 95 Delhi wherein it is held that no provision either in the Act in the Rules regarding assessee carrying business of this nature to maintain Stock Register, as part of its accounts has been brought to our notice. As regards non-production of Stock Register, the assessee has given an explanation which has been accepted not

only by the Commissioner of Income Tax (Appeals) but also by the Tribunal and both of them have given a concurrent finding of fact that maintain Stock Register was not feasible considering the nature of the business being run by the assessee which was engaged in the business of manufacturing readymade garments by purchasing fabric which was then subjected to embroidery, dying and finishing and then converted into readymade garments by stitching. Section 145(3) of the Act therefore, could not have been applied by the Assessing officer to the present case. We respectfully following the decision we found that in the assessee's case assessee has maintain all the books of account but assessee has not produce the stock register containing day to day recording of consumption and production but only produce the monthly detail of raw material and finished goods the reason for not giving the detail that assessee production based on formula which is closely guarded secret as it proprietary product and also intellectual property rights. Therefore, we are of the view that assessee has given the reason for not giving the Stock Register for day to day consumption. Therefore, we are of the view that Revenue Authorities are not justified in rejecting the book result. We also get the supports from decision of CIT vs. Poonam Rani 326 ITR 223 Delhi, Ashoka Refractories vs. CIT 279 ITR 547, CIT vs. Bhavani Industries 65 Taxmann Rajasthan and ACIT vs. Cementation of India 146 ITD 59 Mumbai. Therefore, considering the facts of this case we are of the view that the AO and the CIT(A) is not justified in rejecting the same and we reverse the finding of the CIT(A) and we allow the appeal of the assessee on this ground. In the result appeal is allowed.

9. Second grounds relates to confirming the disallowance of excise interest of Rs.28,75,000/- u/s 40A(2)(b) of the Act. The AO noted that the assessee has taken loan of Rs. 11,50,00,000/- from its sister concern viz M/s M C Dawar

Aromatics Pvt. Ltd. which are covered u/s 40A(2)(b) on which interest @ 14.5% has been paid which far exceeds the prevailing market rate of 12%. The assessee's explanation that loan is long term loan and rate was fixed on the day of acceptance of loan and same was based on Citi bank s PLR rate at the time of acceptance. The AO after considering the reply has disallow the interest in excess of 12% as unreasonable u/s 40A (2) (b) of the IT Act. The CIT(A) has confirmed.

10. We have heard the rival contention of both the parties looking to the facts and circumstances of the case we find that the assessee has paid interest of long term unsecured loan from parties covered u/s 40A(2)(b). Namely, Firmenich Aromatics P. Ltd. @14.5% from the date of acceptance. The assessee has taken the loan from this party on the ground that if the assessee take unsecured loan from bank that to against provide securities, hypothecation some of stock and debtors who were etc. who were above mental pressure of stringent bank norms and regulations apart from hidden cost involved by the bank finance. The assessee has taken the nominal @ 14.5%. We find that the assessee has taken the loan have paid the interest @ 14.5% which is as per Citi bank PLR rate at the time of acceptance therefore, in our opinion the AO and CIT(A) is not justified disallowing the same our view is supported by the decision of Chandigarh Bench in case of Gopal Kishan v/s ITO (111 Taxman 42). Our view is supported by the decision of Hon'ble Punjab and Haryana High Court. In case of Shri Yash Pal Gupta vs. Commissioner of Income Tax Punjab and Haryana High Court. Similarly we also get the support from decision of Manisha dying and printing work vs. CIT in ITA No. 3600/Ahmadabad/2007 wherein 18% @ held to be reasonable. In the result the appeal of the assessee is allowed.

11. The ground is relating to confirming the capitalization of repairs and maintain of Rs. 1,54,417/- being a renovation list hold premises at Mumbai. The short facts of the case that the AO noted that the assessee has debated sum of Rs. 3,61,200/- in support of various repairs and maintenance expenses under the head which are capital in nature. The AO found that 1,54,470/- was capital in nature and same was disallowed and on which depreciation was allowed as per applicable rates.

12. We have heard the rival contention of both the parties the assessee's contention that the assessee has carried out various work done at Mumbai office like demolition of existing plaster repairing of strome water drain, repairing of exiting compound wall, which are revenue in nature but we do not agree on the ground that the assessee has incurred the expenditure which are capital in nature pertaining to manager repairing work. The expenditure incurred was enduring nature hence it was capital nature. It was held that replacement of old machine with a new one amounts to brining in to a new asset and it also gives enduring benefit to the assessee, hence such expenditure cannot be considered as revenue expenditure. So the expenditure is incurred for preserving and cost of replacement of part therefore, it is a capital expenditure. Therefore, we confirmed the same in the result the assessee's appeal is dismissed on this ground.

13. In department's appeal is first ground is deleting the disallowance of Rs. 1,51,58,000/- on account of low gross profit.

14. The AO found that the assessee for AY 2005-06 the GP was 17.04% whereas in AY 2003-04 it was 19.3%. Therefore, the assessee was asked to give the reason for declaring GP the assessee contended that the rate of margin rate for flavours was 58.31% whereas in the same for fragrance was 13.49%

but however of the view that when the assessee has not finished the detail of raw material used in flavours and fragrance this cannot treated as reasonable. Therefore, he applied the GP @ 18% and made the addition of Rs. 1,51,58,000/- matter carried to CIT(A) and CIT(A) has allowed the appeal by observing as under:

15. I have considered the facts. It is an admitted fact that G.P. for the year under consideration at 17.04% whereas it was 14.99% in the immediately preceding year i.e. AY 2004-05 and 19.30% for AY 2003-04. Thus, the G.P. rate is higher than the immediately preceding year but it is lower as compared to AY 2003-04. The AR has contended that there has been drastic fall in volume of Flavour sales from 26% to 6% due to discontinuation of the order of some of their products. It is also established that Flavour products are more profitable as compared to Fragrance products as can be observed from the working given by the appellant in its written submission from which it is ascertainable that gross margin in Flavour is 58.31% whereas gross margin in Fragrance is 13.49%. Therefore, this contention of the AR has some fore in his submission that the G.P. rate is low on account of change in the composition of sales in terms of flavours/fragrances sales to total sales as compares to AY 2003-04. However, at the same time as discussed in the ground no. 1 above, the books of accounts produced before the AO cannot be treated as fully authentic and reliable for the reasons discussed in the above ground. Therefore, the G.P. rate shown at 17.04% in the assessment year under consideration cannot be accepted as fully reflected the profitability of the appellant. However, on the other hand the comparison of G.P. rate with AY 2003-04 as done by the AO cannot be fully considered as correct and reasonable. In the case of G.P. addition one has to compare the G.P. rate for the last years or the average G.P. rate for the period of last three years i.e. AY 2003-04 to 2005-06 which comes to 17.11% as

against the G.P. rate of 17.04% disclosed by the appellant. In view of these facts and considering the fact that there is change in ration of production of the profit margin in flavour is 58.31% as compared to 13.49% which led to reduction in G.P. rate, it would therefore be reasonable and appropriate to apply the average G.P. rate for the last three years which comes to 17.11%. The total sales of the appellant during the year are Rs. 157,85,09,000/- on which applying G.P. rate of 17.11% estimated G.P. comes Rs. 27,00,82,889/- as against the declared G.P. of Rs. 26,90,53,000/-. Accordingly, the total G.P. addition is worked out to Rs. 10,29,890/- as against the G.P. addition of Rs. 1,51,58,000/- made by the AO. Therefore, the addition of Rs. 1,41,28,110/- i.e. (1,51,58,000 – 10,29,890) is deleted and addition of Rs. 10,29,890/- is confirmed. This ground of appeal is therefore partly allowed.

16. We have heard the rival contention of both the parties during the course of hearing Ld. DR submitted that the CIT(A) has granted the relief on the ground that he has applied the average GP rate for three years but the GP for three years cannot be based because in AY 2004-05 the GP was 19.30% . The Ld. AR supports the view of Commissioner on the ground that he was fair and reasonable to applied the GP @ 17.11% therefore, we are of the view that the CIT(A) is justified. For the sake of gravity we reproduce the GP rate for three years :

Particulars	AY 05-06	AY 04-05	AY 03-04
Working of Gross profit			
Sales	15,78,509/-	15,00,549/-	12,08,699/-
Less : Cost of Materials	13,09,456/-	12,75,585/-	9,75,422/-
Gross Profit	**2,69,053/-**	**2,24,964/-**	**2,33,277/-**
Gross Profit(%)	**17.04%**	14.99%	**19.30%**

17. In the result department appeal is dismissed on this ground.

18. The second ground in the department appeal is disallowing of Foreign Exchange loss of Rs. 3,87,110/-.

19. The AO has found that the assessee has debited net exchange loss of Rs. 45,37,000/-. The AO observed that foreign fluctuation on the last date of accounting year is only contingent and notional liability, hence not allowable as deduction. The matter carried to CIT(A) and CIT(A) is allowed the claim by observing as under:

> *"I have considered the facts. I find that this issue is squarely covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Woodward Governor India Pvt. Ltd. (294 ITR 451) wherein it was held that the liability arising out of contracts had already stood accrued the minute the contract was entered into and the mere postponement of the payment of such liability to a future date would not extinguish the same so as to render it notional or contingent. It was also held that any increase in such liability as a result of fluctuation in the value of foreign currency in relation to Indian currency thus was & fate-accompli and such increase in liability as per the exchange rate prevailing on the last date of the financial year was allowable as deduction being not notional or contingent. This decision is also approved by the Hon'ble Supreme Court in Woodward Governor India Pvt. Ltd. (2009)21 DTR 106 (SC). Respectfully following the judgment of Hon'ble Apex Court, the disallowance of notional loss on account of foreign fluctuation is deleted. Appellant's appeal on this ground is allowed."*

20. We have heard the rival contention of both the parties we are of the view that issue is controversy is covered by the decision of Delhi High Court in the case of CIT(A) v/s Woodward Governor India Pvt. Ltd. (294 ITR 451). We respectfully following the same we dismiss the department appeal.

Ground No. 3

21. The ground relates to deleting the addition made u/s 80IB of the Act Rs. 32,31,533/-. This deduction was allowed by CIT (A) in ITA No. 3744/M/2011, AY 2005-06, ITA No. 549/M/2011, AY 2006-07 and ITA NO. 6531/M/2012, AY 2008-09. Therefore, we dispose of this grounds by common order.

22. The assessee has claimed a deduction of Rs. 3,23,15,333/- u/s 80IB. However, it was seen from assessment order or A.Y. 2000-2001 that Assessing Officer held that AY 00-01 was the sixth year for the purpose of 80IB and not the fifth year as claimed by the assessee. The issue is under litigation. In view of assessment year 00/01 10 year was completed in AY 2004-05 and no deduction u/s 80IB is allowable to the assessee in the AY 05-06. Therefore, the claim deduction of Rs. 3,23,15,333 u/s 80IB was disallowed.

23. Matter carried to CIT (A) and CIT (A) has allowed the claim by observing as under:

> *"I have considered the facts and perused the material on record. I have gone though the order of CIT(A) wherein in Para 3.2 the CIT(A) has observed that the appellant has made claim for deduction U/S 80IB in AY 98-99 which was rejected on account, that unit in question has not commenced its business . When the business commenced and the claim was made in AY 2003-04 @ 100% treating claim as fifth year, the AO claim for 100% is only for 5 year and only 5 years were completed. This was totally contravention of the Scheme. In the light of these fact, the CIT (A) has held that AY 03-04 is the fifth year of claim and the appellant is entitled to deduction @ l00% and not 30% allowed by the Assessing Officer. Thus it is seen that the appellant has not completed 10 year of claim for the year under consideration, therefore, it is entitled to deduction @ 30% u/s.80IB of the Act. The AO, is therefore directed to allow deduction u/s.80IB accordingly. This ground of appeal is therefore allowed in favour of the appellant."*

24. The department is in appeal against the deduction allowed in AY 2005-06, 2006-07 and AY 2008-09. The Department is in appeal for all this year. The Ld. DR has given written submission before us in respect of ITA No. 3744/M/2011, AY 2005-06, ITA No. 549/M/2011, AY 2006-07 and ITA NO. 6531/M/2012, AY 2008-09.

25. The Ld. DR has given written submission before us and in the written submission the Ld. DR has submitted the written submission reads as under:

> *"In this context it is submitted that during the course of hearing on 13/02/2017, the undersigned, being Sr. AR for this case, had submitted a working of deduction u/s 80IB of the Act claimable by the Assessee, before the Hon'ble Bench. The same is reproduced hereunder for your kind reference. It was brought to the knowledge of the Hon'ble Bench that during FY 1997-98 (AY 1998-99), the Assessee had acquired an existing unit, referred to as Unit - I, from its sister concern M/s MC Davar Aromatics Ltd. on 24/04/1997 and had set up a new unit, referred to as Unit - II, on 27/03/1998, as per the Certificates of Chief of Inspector of Factories, for the respective units. During the course of assessment proceedings for AY 1998-99, it was established by the Assessing Officer and admitted by the Assessee that Unit - II did not commence its business during the year AY 1998-99 but in the subsequent year, AY 1999-00. Hence, Unit - II was eligible for deduction u/s 801A of the Act from AY 1999-00 onwards.* ***Reference is invited to Para 15, 16 of assessment order for AY 1998-99, Para 10 of AY 1999-00 and Para 7 of AY 2000-01. Copies of assessment orders for AY 1998-99, 1999-00 and 2000-01 were also submitted before the Hon'ble Bench during the***

course of hearing today, on 13/02/2017:

AY	UNIT-I	DEDUCTION AVAILABLE U/S 80IB	UNIT-II	DEDUCTION AVAILABLE U/S 80IB	REMARKS
1998-99	4th year	100%			Refer para 15, 16 of asmt order submitted
1999-00	5th year			100%	Refer para 10 of asmt order submitted
2000-01	6th	30%	2nd year		Refer para 7 of asmt order submitted
2001-02	7th year		3rd		
2002-03	8th year		4th		
2003-04	9th year		5th		
2004-05	10th year		6th	30%	
2005-06	11th year	NIL	7th		Current appeal
2006-07	12th year		8th		Current appeal
2007-08	13th year		9th		Current appeal
2008-09	14th year		10th		Current appeal

3. *The Assessing Officer in AY 2005-06 had held that since 10th, year was completed in AY 2004-05, therefore, it was 11th, year in AY 2005-06 and hence deduction u/s 80IB of the Act was denied to the Assessee. The CIT(A) held that it was 5th year in AY 2003-04 therefore, it was 7th, year in AY 2005-06 and hence, the Assessee was eligible for 30% deduction u/s 80IB of the Act. The CIT(A) maintained that the Assessee was eligible for 30% deduction u/s 80IB of the Act for all AYs from 2005-06 to 2008-09 while the AO had denied such deduction for the said AYs.*

4. *It is apparent from the above chart that both the AO and the CIT(A) were partly correct in their respective ways.* ***It was 11th, year for Unit - I while it was 7th, year for Unit - II in AY 2005-06. This means that Assessee was eligible for deduction for Unit - I and for 30% deduction for Unit - II in AY 2005-06.***

5. ***This also means that the Assessee was eligible for no deduction for Unit - I and for 30% deduction for Unit - II for AYs 2005-06, 2006-07, 2007-08 and 2008-09, which was the 10th year for Unit- II,***

6. *Thus, it is apparent that both the AO and the CIT(A) did not distinguish the claim of Section 80IB of the Act between the two units, Unit - I and Unit - II, for AY 2005-06 to AY 2008-09.*

7. *It is pertinent to note that though the Assessee is eligible for claim of 30% deduction u/s 80IB of the Act, as held by the CIT(A),* ***there is a need to verify that this claim did not include the profits from Unit - I. The claim of deduction of 30% u/s 80IB of the Act for AYs 2005-06 to 2008-09 was allowable only on profits from Unit - II because 10th, year for Unit - I was completed in AY 2004-05 itself.***

8. ***In view of the above facts and circumstances of the case, it is humbly prayed that the issue of claim u/s 80IB of the Act may be set aside to the file of the AO in order to verify that the profits claimed for deduction @30% u/s 80IB of the Act should include profits only from Unit - II and not from Unit - I.***

9. *Submitted for kind consideration. It is humbly prayed that an opportunity of being heard may kindly be accorded to the Department, in case of any disparity with respect to the aforementioned facts and circumstances of the case."*

26. The Ld. AR submitted that in AY 2000-01 and 2003-04 presume that the AY 2000-01 was the six year claim of the deduction. In AY 2003-04 it was disputed that AY 2003-04 is the six year claim of deduction under 80IB and not

the fifth year and this issued is settled by Commissioner in his order and in the AY 2005-06 assessee is eligible for 30% deduction u/s 80IB and he relied upon the following chart:-

ASSESSMENT YEAR	YEAR OF CLAIM AS PER ASSESSEE	YEAR OF CLAIM AS PER ASSESSMENT ORDER
1998-1999	N.A.	As per Assessment order for A.Y. 1998-1999
1999-2000	FIRST	As per Assessment order for A.Y. 1999-2000,it is First yera and 100% deduction allowed.
2000-2001	SECOND	As per Assessment order for A.Y. 2000-2001, it is Second year and 100% deductions allowed.
2001-2002	THIRD	As per Assessment order for A.Y. 2001-2002, it is Third year and 100% deductions allowed.
2002-2003	FOURTH	As per Assessment order for A.Y. 2002-2003, it is Fourth year and 100% deductions allowed.
2003-2004	FIFTH	As per Assessment order for A.Y. 2003-2004, it is Sixth year and therefore, 30% deductions allowed in assessment order.
2004-2005	SIXTH	As per Assessment order for A.Y. 2003-2004, it is Sixth year in that case A.Y. 2004-2005 would be Seventh year and therefore, 30% deductions should be allowed in assessment year.
2005-2006	***SEVENTH***	***As per Assessment order for A.Y. 2003-2004, it is Sixth year in that case A.Y. 2005-2006 would be Eight year and therefore 30% deductions should be allowed in assessment year.***

27. We have gone through the chart submitted by the DR and the chart submitted by the AR. It is admitted fact on record that assessee was entitled for deduction u/s 80IB for Assessment Year from 2005-06 to 2008-09. As regarding unit No. 1 the assessee was entitled for deduction @ 30% and as per

the AO it was 11th year but CIT(A) has corrected that 11th year was for unit No. I while it was 7th year for unit No. 2 in AY 2005-06. Therefore, this all requires verification at the end of AO level. The assessee has also submitted the chart. Therefore, we restore this issue back to the file of AO only for limited purpose that is assessee is entitled for deduction u/s 80IB @ 30% in the AY 2005-06 for unit no. 1 or 2. The Assessing Officer is directed to verify the record and decide the year of the claims of all the year.

28. In the result the all the Departmental appeal is partly allowed as indicated above.

ITA No. 9198/M/2010 for AY 2006-07.

29. Ground No. 1 relates to disallowance of excess interest of Rs. 21,76,555/- u/s 40A (2) (b) of the Act.

30. This issue has been already allowed by us in ITA No. 2910/M/2011. Therefore, respectfully following the same we allow the appeal on this ground.

In the result appeal of the assessee is allowed.

31. Ground No. 2 relates to capitalization of repairs and maintenance expenses of Rs. 25,47,746/-.

32. This issue has been already allowed by us in ITA No. 2910/M/2011. Therefore, respectfully following the same we dismiss the appeal on this ground.

33. In the result appeal of the assessee is allowed.

34. Ground No. 3 regarding disallowance of bad debt.

35. The Assessing Officer has verified the detail of records and it was found that assessee has claimed bad debt of Rs. 24,54,942/- in respect of firmenich and CIA. The assessee was asked to prove the identity of the party and genuineness of the transaction and the reason for claim of bed depth. Assessee submitted that this bad debt is in respect of amount not recoverable since Central Bank of USA has denied permission to Firmenich to remit this amount to India due to the assessee. In view of the facts the amount is not recoverable, however, the Assessing Officer denied to treat at debt as bad. The Commissioner has dismissed the appeal of the assessee.

36. The Ld. AR submitted that the issue and controversy is covered by the decision of Supreme Court in case of TRF Ltd. Vs. CIT and the decision of Special Bench in case of Dy. Commissioner of Income Tax Vs. Oman International Bank 100 ITD 285.

37. We have heard the rival contention of both the parties looking to the facts and circumstances of the case we find that the issue and controversy is covered by the decision of Hon'ble Supreme Court in case of TRF Ltd. Vs. CIT. The Supreme Court has held that it is not necessary for the assessee to establish that the debt in fact has become irrevocable. It is enough if the bad death is a written off as irrevocable as the account of the assessee. We find that as per the amended provisions of Section 36 (1) (vii) provides that a claim of bed depth is to be allowed in the year in which such bad debt has been written off as irrevocable as the account of the assessee. Therefore, we restore this issue back to the file of AO to decide the issue as per the decision of TRF Ltd. Vs. CIT 323 ITR 397 Supreme Court.

38. In the result, appeal is allowed for statistical purpose.

ITA No. 6531/M/2012

39. Ground No. 1 relates to disallowance of excess interest of Rs. 4,36,490/- u/s 40A (2) (b) of the Act.

40. This issue has been already allowed by us in ITA No. 2910/M/2011. Therefore, respectfully following the same we allow the appeal on this ground.

41. In the result appeal of the assessee is allowed.

ITA No. 5630/M/2011

42. Ground No. 1 relates to disallowance of excess interest of Rs. 19,72,445/- u/s 40A (2) (b) of the Act.

43. This issue has been already allowed by us in ITA No. 2910/M/2011. Therefore, respectfully following the same we allow the appeal on this ground.

44. In the result appeal of the assessee is allowed.

ITA No. 748/M/2012

45. The first issue relating to allowing expenses allowances of capital nature as revenue expenditure. The short facts of the case are as under:

46. The Assessing Officer has verified the P&L Account and found that assessee has debited a sum of Rs. 1,70,53,000/- in respect of repairs and maintenance under the various heads of accounts. The scrutiny of the details from the books of accounts reveal that certain expenses which are of capital nature has been debited under this head. The assessee has taken the contention that all these expenses for repairs therefore they are revenue in nature but assessing officer was of a view that 10% of such expenditure is

capital in nature. He has made the addition and allowed the depreciation. Matter carried to CIT (A) and CIT (A) has allowed the appeal.

47. We have heard the rival contention both the parties we find that the similar issue had come up in AY 2005-06, wherein we have dealt this issue in detail and we have confirmed the Revenue authorities therefore respectfully following the same we allow the appeal of the Department in AY 2008-09.

48. In the result, departmental ground no. 1 is allowed.

Ground No. 2

49. This ground relates to withdrawal of deduction of 80IB of Rs. 44485345/- of the Income Tax Act.

50. The Assessing Officer has disallowed the deduction under 80IB on the ground that AY 1998-99 was the first year for the purpose of 80IB therefore 10th year was completed in AY 2007-08 and not in AY 2008-09 therefore withdrew the claim of 80IB.

51. Matter carried to CIT (A) has allowed the claim.

52. We have gone through the chart submitted by the DR and the chart submitted by the AR. It is admitted fact on record that assessee was entitled for deduction u/s 80IB for Assessment Year from 2005-06 to 2008-09. As regarding unit No. 1 the assessee was entitled for deduction @ 30% and as per the AO it was 11th year but CIT(A) has corrected that 11th year was for unit No. I while it was 7th year for unit No. 2 in AY 2005-06. Therefore, this all requires clarification at the end of AO level. The assessee has also submitted the chart. Therefore, we restore this issue back to the file of AO only for limited purpose that is assessee is entitled for deduction u/s 80IB was 10th year or 11th year.

The Assessing Officer is directed to verify the record and decide the year of the claims of all the year.

53. In the result the all the Departmental appeal is partly allowed to verify the year of liability from the assessment record and decide the matter accordingly.

54. In the result, the appeal is allowed for statistical purpose.

Judgment pronounced in open court on 24TH April 2017.

Sd/-	Sd/-
(RAJESH KUMAR)	(D.T. GARASIA)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 24TH April, 2017

Rahul Sharma

Copy to:

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, "F" Bench, Mumbai
6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai