IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI RAVISH SOOD, JM

आयकर अपील सं./ I.T.A. No.4396/Mum/2013
(**निर्धारण वर्ष /** Assessment Year: 2009-10)

DCIT 3(2) R. NHO, 674 6th Floor, Aayakar Bhavan, M.K. RD. Mumbai 400020	**बनाम**/ Vs.	LML Ltd. 714, Raheja Chambers, Nariman Point Mumbai 400021
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AAACL0141N
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से/**Appellant by**	:	Shri M.C. Omi Ningshen(Sr.DR)
प्रत्यर्थी की ओर से/ **Respondent by**	:	Shri Sunil Nahta Shri Mayank Chauhan

सुनवाई की तारीख/ **Date of Hearing**	:	17/02/2017
घोषणा की तारीख / **Date of Pronouncement**	:	31/03/2017

आदेश / O R D E R

PER RAVISH SOOD, JM:

The present appeal filed by the department arises from the order passed by the CIT(A)-4, Mumbai, dated 08.03.2013, which in itself arises from the assessment order passed by the A.O.under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'),dated 19.12.2011, therein raising the following grounds of appeal.

1. *"Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in allowing a sum of Rs.1,09,46,590/- on account of late payment of Provident Fund and ESIC contribution by the company without appreciating the fact that the decision of the Hon'ble Supreme Court in the case of CIT vs Allied Motors Pvt. Ltd is not applicable to the facts of the case."*

2. *"Whether on the facts and circumstances of the case and in law, the ld. CT (A) was justified in deleting corresponding Notional interest of Rs.1,81,81,940/- on loans due from VCCL Ltd without appreciating the fact that the advances to subsidiary companies cannot be construed as for the purpose of the business within the meaning of section 36(i)(iii) of the Act and the assessee has huge borrowed funds on which interest liability has been claimed as against interest free loan advanced."*

3. *"Whether on the facts and circumstances of the case and in law, the ld. CIT (A) was justified in deleting Notional interest on debts due from Esslon Synthetics Ltd of Rs.1,13,40,000/- without appreciating the fact that the interest is due on receivable from Esslon Synthetics Ltd."*

4. *"The appellant prays that the order of CIT (A) on the above ground be set aside and that of the Assessing Officer be restored."*

5. *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of manufacturing and sale of two wheelers had e-filed its return of income on 30.09.2009 declaring loss of Rs.39,49,11,854/-,which was processed as such under Sec. 143(1) of the 'Act'. The case of the assessee was thereafter taken up for scrutiny proceedings under Sec. 143(2).That during the course of the assessment proceedings the A.O after deliberating on the facts of the case in the backdrop of the submissions made by the assessee, therein made certain additions/disallowances to the latters returned income, which to the extent relevant to the present case are briefly culled out as under:-

Sr. No.	Particulars	Amount
1.	Addition under Sec. 36(1)(va) r.w.s. 2(24)(x), for late payment of PF and ESIC.	Rs.1,09,46,590/-
2.	Disallowance of interest under Sec. 36(1)(iii) on amounts advanced to M/s VCCL Ltd.	Rs.1,81,81,920/-
3.	Disallowance of interest under Sec. 36(1)(iii) on'debit balance' of M/s ESSLON Synthetic Ltd.	Rs.1,13,40,000/-

,andassessed the loss of the assessee company at Rs.35,43,25,366/-.

3. The assessee being aggrieved with the assessment order therein carried the matter in appeal before the CIT(A). That during the course of the appellate proceedings the assessee assailed the various additions made by the A.O before the CIT(A), as under:-

(A) ADDITION U/S 36(1)(VA) R.W.S 2(24)(X) OF LATE PAYMENT OF PF AND ESIC:-

4. The assessee referring to the aforesaid addition/disallowance of a sum of Rs.1,09,46,590/- made by the A.O on account of delay in deposit of theemployees contributions towards PF and ESIC, therein submitted before the CIT(A) that as the aforesaid amounts were deposited before the 'due date'for filing of the return of income under Sec. 139(1), therefore in light of the post-amended provisions of Section 43B, no disallowance was called for in its hands. The assessee in support of its aforesaid contention relied on the following judicial pronouncements-

(i) Allied Motors Pvt. Ltd. Vs. CIT 224 ITR 677 (SC).
(ii) Alom Extrusions Ltd. (2009) 319 ITR 306 (SC).
(iii) Aimil Ltd. Vs. CIT 321 ITR 508 (Del).

The CIT(A) finding favor with the aforesaid contention of the assessee ,therein observed that as the assessee had deposited the aforesaid amounts before the 'due date' of filing of itsreturn of income u/s 139(1), therefore, no disallowance under Sec. 43B was called for in its hands. The CIT(A) however in all fairness in order

to facilitate the verification of the facts so averred by the assessee, therein restored the matter to the file of the A.O with a direction that in case if the claim of the assessee was found in order, then the addition be deleted.

5. That aggrieved with the aforesaid order of the CIT(A), wherein the latter had ordered deletion of the addition/disallowance of Rs. 1,09,46,590/-,subject to verification of the facts so averred by the assesee, the department had carried the matter in appeal before us. That at the very outset of the hearing of the appeal the ld. Departmental Representative (for short 'D.R') submitted that as per the clear mandate of law, under the income-tax act, the statutory provisions regulating the employees contribution to PF account and ESIC were differently placed, as against the employers contribution towards the said respective funds. It was averred by the ld. D.R that though the employers contributions are scrutinized under Sec. 43B, the employees contributions remain under the exclusive domain of Sec. 36(1)(va) of the 'Act'. It was thus submitted by the Ld. D.R that as both of the aforesaid statutory provisions were separate and distinct, therefore the satisfaction of the conditions contemplated under Section 43B could not be transposed and as such read into Sec. 36(1)(va). The Ld. D.R in order to drive home his aforesaid contentions therein heavily relied on the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT-II Vs. Gujarat State Road Transport Corporation (2014) 41 taxmann.com 100(Gujarat).** That on the other hand the Ld. Authorized Representative (for short A.R) for the assessee rebutting the aforesaid contention of the Ld. D.R, therein submitted that though the deposit of the employee's contribution towards PF and

ESIC by the assessee involved a delay in the backdrop of the dates prescribed under the respective statutes, but as the same had been deposited before the 'due date' of filing of the return of income by the assessee company under Sec. 139(1) of the 'Act', therefore the CIT(A) appreciating the facts in the light of the settled position of law had rightly concluded that no disallowance was called for in the hands of the assessee. The ld. A.R in support of his aforesaid contention placed reliance on the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT-4, Mumbai Vs. Hindustan Organic Chemicals Ltd. (2014) 48 taxmann.com 421(Bombay).**

6. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities as well as the material placed before us. We have given a thoughtful consideration to the facts of the case and are of the considered view that with effect from 01.04.2004 two changes had been made in Section 43B, viz. omission of the *second proviso* of Section 43B, along with a consequential amendment in the *first proviso*. The result of the aforesaid changes brought in by the Finance Act, 2003, had therein put at par the benefit of deduction of tax, duty, cess, and fees on the one hand, and the contributions to various employee's welfare funds on the other. We find that the *second proviso* of Sec. 43B was struck of from the statute w.e.f from 01.04.2004, and simultaneously the *first proviso* was also amended, therein bringing about a uniformity as regards the deductions towards tax, duty, cess on the one hand, and contributions of the employers towards PF, superannuation fund , gratuity and other welfare funds on the other hand. We are of the considered view that as a fall out of the amendment made to

Section 43B vide the Finance Act, 2003, which came into force with effect from 1st April 2004, and as such was applicable to the case of the assessee for the year under consideration, now when the assessee is found to have deposited the employees contribution towards PF and other labour funds, though beyond the stipulated time period, but prior to the 'due date' of filing of its return of income under Sec. 139(1), therein no disallowance with respect to the said amount would be called for in the hands of the assessee. That our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC)** which had been followed by the **Hon'ble High Court of Bombay** in case of **CIT-4, Mumbai Vs. Hindustan Organic Chemicals Ltd.**, wherein the **Hon'ble jurisdictional High Court** dealing with the issue as regards the scope of disallowance under Sec. 43B with respect to the delay in deposit by the assessee of the employee's contributions towards PF, had therein held as under-

5. *"We find no merit in the aforestated contention. Section 43B of the Income Tax Act 1961 was inserted in the Act with effect from 1st April 1984 by which the mercantile system of accounting with regard to tax, duty and contribution to welfare funds stood discontinued and under Section 43B of the Act, it became mandatory for the Assessee to account for the aforestated items not on a mercantile basis but on a cash basis. This situation continued between 1st April 1984 and 1stApril 1988 when Parliament again amended section 43B and inserted the first proviso thereto which inter alia laid down that in the context of any sum payable by the Assessee by way of*

tax, duty, cess or fee, if paid by the Assessee even after the closing of the accounting year but before the date of filing of the return of income, the Assessee would be entitled to the deduction under section 43B on actual payment basis and such deduction would be admissible for that accounting year. This proviso however did not apply to contributions made by the Assesses to the Labour Welfare Funds. In view thereof, by the Finance Act 1988, the second proviso came to be inserted which read as under:-

> *"Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid during the previous year on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36."*

Thereafter, the said second proviso was further amended vide Finance Act 1989 with effect from 1st April 1989, which read as under:-

> *"Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realised within fifteen days from the due date."*

6. On a plain reading of the above provisos, it became ex-facie clear that the Assessee's employers were entitled to deductions only if the contributions to any fund for the welfare of the employees stood credited on or before the due date given in the relevant Act.

7 However, the second proviso once again created further difficulties for the Assesses employers. Therefore, Industry once again made representations to the Ministry of Finance who, after taking cognizance of the difficulties, inserted an amendment vide Finance Act, 2003 which came into force with effect from 1st April 2004. In other words, with effect from 1st April 2004, two changes were made in section 43B viz. deletion of the second proviso to section 43B and further amendment in the first proviso which reads as under:-

> *"Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee alone with such return."*

Therefore, the amendments introduced by the Finance Act. 2003 put on par the benefit of deductions of tax, duty, cess and fee on the one hand with contributions to various Employee's Welfare Funds on the other.

8. The Section referred to above, viz. section 43B and the amendments thereto came up for consideration before the Hon'ble Supreme Court in the case of CIT v. AlomEntruions Ltd [2009]319 ITR 306/185 Taxman 416 when the Supreme Court inter alia held that the amendments to the said section brought about by the Finance Act, 2003 with effect from 1st April 2004 were retrospective in nature and would operate from 1st April 1988. The ITAT, relying upon the aforesaid judgment of the Supreme Court, has dismissed the Revenue's Appeal and confirmed the order passed by the CIT (Appeals). In this view of the matter and in view of the fact that the Supreme Court has expressly held that the amendments to section 43B that were brought about by the Finance Act, 2003 are retrospective in nature, we find that the 1TAT was fully justified in deleting the addition of Rs.1,82,77,138/- on account of delayed payment of Provident Fund of employees' contribution. We therefore find that no substantial question of law arises on this count as sought to be contended by Mr. Malhotra on behalf of the Revenue.

9. *Even otherwise, we fail to understand how this deduction could havebeen disallowed to the Assessee - Admittedly, the Assessment Year in question is 2006-07. The second proviso to section 43B quoted above was deleted with effect from 1st April 2004 and simultaneously the first proviso was also amended bringing about a uniformity in deductions claimed towards tax, duty, cess and fee on the one hand and contribution to the employees' provident fund, superannuation fund, and other welfare funds on the other. These deductions being claimed in*

the return of income filed for the Assessment Year 2006-07, the amendments to Section 43B which came into force with effect from 1st April 2004 would have clearly applied to the Assessee's case. In this view of the matter also, we find that the ITAT was fully justified in deleting the addition of Rs.1,82,77,138/- on account of delayed payment of provident fund of employees' contribution."

Thus in light of our aforesaid observations, we are of the considered view that the issue involved in the present appeal is squarely covered by the aforesaid judgment of the **Hon'ble High Court of Bombay** in the case of **Hindustan Organic Chemical Ltd. (supra)**, pursuant whereto no disallowance/addition of Rs.1,09,46,590/- as regards the delay in deposit by the assessee of the employees contributions towards PF and ESIC was liable to be made. We thus finding no reason to take a view different from that arrived at by the CIT(A), thus uphold his well reasoned order, wherein in all fairness the matter hadbeen restored to the A.O for the purpose of making necessary verifications as to whether the aforesaid amounts had been deposited by the assessee before the 'due date' of filing of the return of income under Sec. 139(1).The **Ground of appeal no. 1** raised by the department before us is dismissed.

(B). DISALLOWANCE OF INTEREST U/S 36(1)(iii) ON OUTSTANDING DEBTS/ADVANCE DUE FROM VCCL LTD.

7. That as regards the disallowance of interest under Sec. 36(1)(iii) of Rs.1,81,81,920/- with respect to outstanding debts/advance (Net) due from VCCL Ltd. as on 31.03.2009, it was

submitted before the CIT(A) that the assessee was a promoter of VCCL Ltd., which was promoted as a joint venture company to produce scooters in collaboration with Piaggio&CSpa. The assessee submitted before the CIT(A) that as per the latest available audited accounts, the net worth of VCCL Ltd. was negative and its manufacturing operations continued to be suspended, as in the past. That in the backdrop of the aforesaid facts it was further submitted by the assessee that the management was pursuing the matter of recovery of above dues from VCCL Ltd., inter alia, by way of use/acquisition/disposal of its assets, and adjustment for loss if any, which may arise in respect of the said outstanding would be made on its determination.

8. The assessee referring to the outstanding debts/advances (Net) of Rs. 1,515.16 crores due from VCCL Ltd. as on 31.03.2009,therein submitted that the A.O flatly applying interest rate of 12% on the said amount, had therein summarily carried out a disallowance/addition of Rs.1,81,81,920/-. It was submitted by the assessee that no disallowance was made for earlier years i.e. A.Ys. 1992-93 to 1996-97 on amount of loans/advances given by the assessee to VCCL Ltd. in course of its ordinary business. It was submitted by the assessee that for A.Ys. 1997-98 to 1999-2000 the disallowance was made by the A.O only in respect of payments made by the assessee for funding the 'One Time Settlement' obligation (OTS) of Rs.11,41,81,000/- of VCCL Ltd.with its banks and financial institutions, and no disallowance was made in respect of the other loans/advances made by the assessee to VCCL Ltd. It was submitted by the assessee that the A.O while framing assessment in the aforesaid preceding years, had worked out the

disallowance by linking the funding of the aforesaid OTS payment with the cash credit account maintained by the assessee with its banker, without considering the subsequent internal accruals by which the 'debit balance' in the cash credit account was converted into 'credit balance' in the said 'Cash credit a/c'. The assessee further submitted before the CIT(A) that the aforesaid factual position was appreciated on appeal by the CIT(A) in the appeals filed by the assessee for A.Ys: 1997-98, 1998-99 and 1999-2000, as a result whereof the disallowance of interest was substantially deleted, as under:-

A.Y	As per A.O	As per CIT(A)'s directives
1997-98	1,23,886/-	1,06,814/-
1998-99	43,55,815/-	3,90,265/-
1999-2000	1,66,86,012/-	28,310/-

It was further brought to the notice of the CIT(A) that in the year 1990-2000 VCCL Ltd. had re-paid the sum of Rs.13.55 crores to the assessee, which was adjusted against the trade advances given by the assessee company. Thus in the backdrop of the aforesaid factual matrix, it was submitted before the CIT(A) that the disallowance on the identical ground made by the A.O in the hands of the assessee in A.Y. 2000-01 was deleted on appeal by his predecessor. The assessee thus submitted before the CIT(A) that now when keeping in view the source of the OTS funding of VCCL Ltd., the disallowance of interest had already been deleted by his predecessor in the hands of the assessee in the preceding years, therefore on the said count itself the disallowance of interest as

regards the same could not be sustained, and as such was liable to be vacated. That still further, as regards the other outstanding amounts from VCCL Ltd., it was submitted by the assessee that as already a sum of Rs. 13.55 crores had been received by the assessee, therefore no disallowance of interest as regards such amounts was also called for during the year under consideration. It was thus submitted by the assessee that in view of the earlier yearsorders of the CIT(A) and the factualposition of the current year, coupled with the fact that the advances made were in ordinary course of business and not in nature of loan,no notional disallowance of interest was called for in the hands of the assessee. The assessee further to drive home his aforesaid contention therein relied on a host of judicial pronouncements.

9. The CIT(A) after perusing the contention of the assessee therein observed that the A.O had carried out disallowance of interest under Sec. 36(1)(iii) of Rs.1,81,81,920/- with respect to outstanding debts/advance (Net) due from VCCL Ltd. as on 31.03.2009, merely on the basis of the disallowances carried out by his predecessor while framing the assessments in the case of the assessee for A.Ys. 2000-01 and 2001-02,without assigning anynew reasons, and absolutely loosing sight of the fact that the said disallowance had already been deleted in appeal.The CIT(A) further observed that on similar basis the said disallowance had also been deleted by him while disposing of the appeal of the assessee for A.Y. 2001-02 to 2005-06, 2007-08, and 2008-09. The CIT(A) further concluding that the assessee had advanced the aforesaid amount to its associate company which was in the business of manufacturing scooters only, and was prompted for a business

purpose, therefore no disallowance on the said count was called for in the hands of the assessee company. The CIT(A) while so concluding relied upon the order passed by his predecessortaking a similar view in the case of the assessee company for A.Y. 2000-01 and 2006-07, as well as fortified his view on the basis of the judgment of the **Hon'ble Supreme Court** in the case of **S.A. Builders Vs. CIT(A) (2007) 288 ITR 1 (SC)**. The CIT(A) thus, on the aforesaid basis deleted the aforesaid addition of Rs.1,81,81,940/-.

10. The revenue being aggrieved with the order of the CIT(A) therein deleting the disallowance of Rs.1,81,81,940/- made under Sec. 36(1)(iii), had carried the matter in appeal before us. The ld. D.R. assailing the order of the CIT(A), therein submitted that the disallowance of interest of Rs.1,81,81,940/-(supra) so made by the AO in respect of interest free loans advanced by the assessee company to VCCL Ltd. had wrongly been deleted by the CIT(A) for the reason that the same was only supported by the fact that the similar disallowance had been deleted by his predecessor in A.Y. 2000-01, which thereafter was followed by the successor CIT(A) while disposing of the appeal of the assessee for A.Y. 2006-07, coupled with the fact that the said disallowance had also been deleted by him while disposing of the appeals of the assessee company for A.Y.2001-02, 2005-06, 2007-08, and 2008-09. It was vehemently submitted by the Ld. D.R. that as res-judicata is not applicable to Income Tax proceedings, therefore the aforesaid view of the CIT(A) was not sustainable in the eyes of law. That on the other hand the Ld. A.R. strongly supported the order of the CIT(A)

and therein submitted that the addition/disallowance had rightly been deleted by the CIT(A).

11. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material produced before us. We have given a thoughtful consideration to the facts of the case and are of the considered view that though we find ourselves to be in agreement with the contention of the Ld. D.R. that res-judicata is not applicable to Income Tax proceedings, but then now when it remains as a matter of fact that the facts involved in the case as regards the issue under consideration are the same, as against those which were involved in the case of the assessee for the aforesaid preceding years ,viz. A.Y. 2000-01, 2001-02 to 2005-06, 2006-07, 2007-08 and 2008-09, and nothing had either been brought on record of the lower authorities, nor before us, which could go to persuade us to conclude that the facts or the issue involved during the year under consideration was distinguishable as against those involved in the aforesaid preceding years, we therefore are unable to subscribe to the contention of the ld. D.R that despite there being no shift from the facts which were involved in the said preceding years, the CIT(A) is to be held as being in error for adopting a consistent view. We are of the considered view that the approach of the CIT(A) in adopting a view which is consistent with that arrived at by him in the preceding years, in the backdrop of no change of facts as were so involved in the case of the assessee for the said earlier years,is found to be in conformity with the judgment of the **Hon'ble Supreme Court** in the case of **Radhasoami Satsang vs.**

Commissioner Of Income Tax(1992) 193 ITR 321 (SC), wherein the **Hon'ble Apex Court** had held as under:-

> ***"****9. We are aware of the fact that, strictly speaking, res judicata does not apply to IT proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter—and, if there was no change, it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the CIT in the earlier proceedings, a different and contradictory stand should have been taken."*

Thus in the backdrop of the very fact that the contention of the Ld. D.R as observed by us hereinabove is found to militate against the settled position of law so laid down by the **Hon'ble Supreme Court,** we thus are of the considered view that the same being absolutely devoid and bereft of any force of law, is rejected. We have given a thoughtful consideration to the order of the CIT(A) on the aforesaid issue under consideration, and finding that the same is a well reasoned order, are thus of the considered view that the CIT(A) by way of a well reasoned order had rightly deleted the addition/disallowance of Rs.1,81,81,940/-. Thus the order of the

CIT(A) to the said extent is upheld. The **Ground of appeal no. 2** raised by the department is dismissed.

(C).DISALLOWANCE OF INTEREST U/S 36(1)(iii) ON AMOUNT OUTSTANDING FROM ESSION SYNTHETIC LTD.

12. That as regards the disallowance of interest of Rs.1,13,40,000/-pertaining to the amount receivable by theassesseefrom its wholly owned subsidiary company (for short 'WOS'), viz- ESSION Synthetic Ltd.,the assessee submitted before the CIT(A) thatthe A.O had carried out disallowance @12% on the 'debit balance' of Rs.945 1acdue from its 'WOS', viz. ESSLON Synthetic Ltd., and had made an addition of Rs.113.40 lac u/s 36(1)(iii) in the hands of the assessee during the year under consideration. The assessee for the better understanding of the issue under consideration, therein at length took the CIT(A) to the material facts which therein had led to generation of the aforesaid 'debit balance' as regards the aforesaid WOS, viz. ESSLON Synthetic Ltd. The assessee submitted before the CIT(A) that the sum of Rs.9.45 crores has been shown as amount recoverable from M/s Esslon Synthetics Ltd. (formerly known as LML Fibre Ltd) based on the guarantee given by Saraswati Trading Co. Ltd. (Vaduz), and the genesis of the same was not any amount advanced to the said WOS, viz. M/s Esslon Synthetic Ltd., but rather emerged from the sale of an undertaking.

13. The CIT(A) after perusing the submissions of the assessee and taking cognizance of very fact that the A.O. had made the disallowance in the backdrop of a similar disallowance made in the

hands of the assessee in A.Y. 2000-01, had however lost sightof the fact that the said disallowance had thereafter been knocked down in appeal by the CIT(A) vide his order dated 06.02.2004 for A.Y. 2000-01, which thereafter was followed by the latter while deleting similar disallowance/addition made in the hands of the assessee in A.Y. 2006.07. The CIT(A) duly appreciating that there was no change in the facts for the year under consideration as against those which were involved in the aforesaid preceding years, therefore, followed the orders of his predecessor for A.Y.2000-01 and deleted the addition of Rs.1,13,40,000/- in the hands of the assessee.

14. The Revenue being aggrieved with the order of the CIT(A) therein deleting the addition of Rs. 1,13,40,000/-, had thus carried the matter in appeal before us. That at the very outset it was submitted by the ld. A.R that the issue was squarely covered in favor of the assessee by the order passed by the CIT(A), dated 06.02.2004 for A.Y.2000-01, which thereafter had been followed by the successor CIT(A) while disposing of the appeal of the assessee company for A.Y. 2006-07. It was submitted by the ld. A.R that as the facts pertaining to the issue under consideration had not witnessed any change, therefore the CIT(A)while disposing of the present appeal had rightly deleted the addition. That on the other hand the ld. D.R very fairly conceded that the aforesaid issue was covered in favor of the assessee.

15. We have heard the Ld. Representatives of both the parties, perused the orders of the lower authorities and the material placed on record. We are of the considered view that as the issue

pertaining to the disallowance of interest of Rs.1,13,40,000/- as regards the debts due to the assessee company from M/s. ESSLON Synthetics Ltd., as averred by the Ld. A.R and conceded by the Ld. D.R, is covered in favor of the assessee in the backdrop of the earlier orders passed by the CIT(A) in the case of the assessee company,we therefore upholdthe deletion of theaddition/disallowance of interest of Rs.1,13,40,000/- pertaining to the debts due from ESSLON Synthetics Ltd. Thus, the order of the CIT(A)on the aforesaid issue under consideration is upheld as such. The**Ground of appeal No. 3**of the revenue before us is dismissed.

16. That as no averment in context of **Grounds of appeal No. 4 and 5** had been raised before us by the Ld. D.R, therefore the same are dismissed as not pressed.

17. The appeal of the revenue is dismissed.

Order pronounced in the open Court on 31/03/2017

Sd/-	Sd/-
(R.C. Sharma)	(Ravish Sood)
लेखा सदस्य /Accountant Member	न्यायिक सदस्य /Judicial Member

मुंबईMumbai; दिनांकDated : 31.03.2017
PS Rohit Kumar

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT– concerned

5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल /Guard File

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार(Dy./Asstt.Registrar)

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