



आयकर अपीलीय अधिकरण "एल" न्यायपीठ मुंबई में
**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L", MUMBAI**

श्री जी.एस. पन्नू, लेखा सदस्य एवं
श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI G S PANNU, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 3668/Mum/2004

(Assessment year: 2000-01)

Asst. Commissioner of Income Tax, Range-3(2), Mumbai	Vs	M/s LML Ltd, 714, Raheja Chambers, 213, Nariman Point, Mumbai -400 021
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)

ITA No. : 3540/Mum/2004

(Assessment year: 2000-01)

M/s LML Ltd, 714, Raheja Chambers, 213, Nariman Point, Mumbai -400 021 स्थयी लेखा सं. PAN: AACCBL 0141 N	Vs	Asst. Commissioner of Income Tax, Range-3(2), Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)

ITA No. : 3666/Mum/2011

(Assessment year:2006-07)

Dy. Commissioner of Income Tax, Range-3(2), Room No.608, 6 th Floor, Aayakar Bhavan, Mumbai -400 020	Vs	M/s LML Ltd, 714, Raheja Chambers, 213, Nariman Point, Mumbai -400 021
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Assessee by	:	श्री एच जी बूच Shri H G Buch मिस मोनिका अगरवाल Miss Monica Agarwal
Revenue by	:	श्री जसबीर चौहान Shri Jasbir Chouhan

सुनवाई की तारीख /Date of Hearing : 23-03-2016

घोषणा की तारीख /Date of Pronouncement : 21-06-2016

आदेश
ORDER

श्री अमित शुक्ला, न्या सः

PER AMIT SHUKLA, JM:

The first two appeals have been filed by the revenue as well as by the assessee against the impugned order dated 6th February, 2004, passed by Ld. CIT(Appeals) -3, Mumbai for the quantum of assessment passed under section 143(3) for the assessment year 2000-01. We will first take-up revenue's appeal being ITA 3668/Mum/2004, vide which following grounds have been raised:-

“1(a) On the facts and circumstances of the case the learned CIT(A) erred in offering a treatment of capital receipt to the compensation received by the assessee on termination of Joint Venture Agreement with M/s Piaggio.

1(b) On the facts and circumstances of the case the learned CIT(A) erred in not holding the compensation received on termination of joint venture agreement with M/s Piaggio as revenue receipts, as the agreement was entered into in the ordinary course of business and the line of business of the assessee continued even after termination of the joint venture.

1(c) On the facts and circumstances of the case the learned CIT(A) erred in not bringing to tax the compensation received amounting to Rs.23,88,65,000/- received on termination of joint venture agreement which is a benefit directly springing from regular business activities of the assessee.

- 2(a) *On the facts and circumstances of the case the learned CIT(A) erred in holding the forfeiture of advance share application money received from M/s Piaggio CSPA, amounting to Rs.8,80,00,000, as a capital receipt and thereby deleting the addition made on that account.*
- 2(b) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating that on the cessation of liability on termination of joint venture agreement with M/s Piaggio CSPA the advance share application money takes the character of revenue receipt received in the normal course of business.*
- 2(c) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating that the advance share application money received from M/s Piaggio CSPA had not taken the colour of share capital for want of issuance of shares against the service of share application money by the assessee's own conduct as evidenced in the manner of accounting for such contributions.*
- 3(a) *On the facts and circumstances of the case and law, the learned CIT(A) erred in deleting the disallowance of Rs.574.96 lakhs incurred by the assessee as legal expenses to defend itself in legal suits filed by M/s Piaggio.*
- 3(b) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating the fact that the legal expenses have not been incurred to safeguard the interest of the company.*

- 3(c) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating the fact that the legal expenses have been incurred to settle the dispute between the two faction of promoters of the company and to preserve only interest and right of the promoters.*
- 4(a) *On the facts and circumstances of the case the learned CIT(A) erred in deleting disallowance of interest of Rs.2.03 crores attributable to the interest free advance to associated concern, VCCL Ltd., without appreciating that the assessee company had incurred huge interest on borrowed funds.*
- 4(b) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating the fact that the assessee company had borrowed interest bearing funds to the extent of Rs.13.55 crores which have been used for the purpose otherwise than for its business by making non-interest bearing advance to VCCL Ltd., a company promoted by the assessee group.*
- 4(c) *On the facts and circumstances of the case the learned CIT(A) erred in taking into account payments received by the assessee from VCCL Ltd after the end of the previous year relevant to assessment year under consideration, which is of no significance while deciding the issue for the year under consideration.*
- 5(a) *On the facts and circumstances of the case and law, the learned CIT(A) erred in directing the Assessing Officer to delete Rs.4,05,75,000/- the disallowance of interest on account of dues from M/s Esslon Synthetics Ltd.*

- 5(b) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating the fact that M/s Esslon Synthetics Ltd., is an associate concern of the assessee firm whom it has not recovered outstanding dues to the tune of Rs.27.05 crores though the assessee company itself faced a financial crunch and the company bore liability of interest on borrowed funds.*
- 5(c) *On the facts and circumstances of the case the learned CIT(A) erred in not appreciating the fact that the same sister concern is beneficiary of assignment of loan debts of M/s Perfect Polycon Co. Ltd., for a consideration of Re.1 only indicating contrived accommodation of group concerns at the cost of assessee company's interest bearing borrowed funds.*
6. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in directing the allowance on account of technical know-how fees paid to M/s AVL Austria has not be disallowed u/s 40(a)(i) in the assessment order without appreciating that no disallowance has been made by the Assessing Officer on this account in the assessment order.*
7. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance made u/s 49A(9) in respect of contribution to LML Executive Cub, LML Officers Club, LML Ladies Club and Workers Benevolent Fund aggregating to Rs.5,81,936/-.*
8. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance made by the Assessing Officer on account of pre-*

operative expenses amounting to Rs.3,76,81,000/- claimed as revenue expenditure.

9. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in not treating the expenditure incurred on obtaining ISO 9002 Certificate and World Class Manufacture of Rs.11,30,912/- and Rs.6,23,380/- respectively as capital expenditure ignoring the fact that these expenses have fetched the assessee the benefit of enduring nature.*
- 10(a) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in directing the Assessing Officer to allow the amount of Rs.17.59 crores as bad debt in lieu of assessee's claim of loss under the head Capital Gain ignoring the fact that this was not a genuine commercial transaction but a contrived one intended to manufacture loss.*
- 10(b) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in directing to allow bad debts of Rs.17.59 crores which are not generated out of trading transaction, ignoring the fact that such debts do not fall within the provisions of Section 36(1)(vii) of the I.T. Act.*
11. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*
12. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary”.*

2. Brief facts *qua* the issue raised in ground nos. 1(a) to 1(c), as culled out from the impugned orders are that, the assessee company (LML) was incorporated in the year 1972 as a private limited company and was then engaged mainly into engineering, business of manufacturing of textile machinery, etc. Later on, it diversified its business activities in the year 1984, when it started the manufacturing of two wheelers mainly 'Scooters' in technical collaboration and under License Agreement with Piaggio Company of Italy who were the inventors of the scooters and were also the largest two wheeler producers in Europe having more than 50% of the European market not only in two wheelers but also in three wheelers. Piaggio had a global presence through various joint venture collaborations, franchises and license agreements for manufacturing and distribution of the products in and around 130 countries through various subsidiaries, licensees and distributors. The assessee company had entered into a joint venture agreement with the Piaggio group in the year 1990 which has also led to entering of various other agreements and arrangements with Piaggio including licensing agreements, exclusivity agreements, Engineering Agreements and MoUs in which there were two or more parties out of Indian promoters and its affiliates LML, VCCL. Besides there were also business dealings and transactions between Piaggio and LML and VCCL including transactions relating to purchase, sale, supply of components, assemblies of vehicles, etc. This Joint Venture was renewed again in the year 1995 and was valid till 30th December, 2005. Later on, serious differences and disputes arose between promoters of LML and promoters of Piaggio which led to the initiation of arbitration proceedings by filing

claims and counter claims against each other and also filing of civil suit by Piaggio, in which assessee was also made party. It was later desired to resolve through 'out of court settlement' all their disputes and differences outstanding amongst them and to terminate all past subsisting agreements between various parties and to have a clean break in the relationship between the parties and as a part of such settlement certain rights and obligations of parties were drawn/imposed. As a result of such an understanding and negotiations, on 15th November, 1999, a "Settlement and Clean Break Agreement" (SCB) was entered between the Indian promoters; LML, Vespa Car Company Ltd and M/s Piaggio CSpa and Piaggio Vespa BV. The important terms in the settlement agreement were as under:-

- (1) *Piaggio BV shall sell all its shares in LML to Indian promoters their nominees @ 14.06 per share;*
- (2) *Piaggio & CSpa shall pay to LML Ltd. Five Million, Five hundred thousand US dollars (\$5,500,000 US) in consideration of termination of all contracts and of the final settlement arrived at including cessation of non competition obligation assumed by Piaggio and rights of LML.*
- (3) *LML shall be entitled to manufacture, market, sell, distribute, service, repair and maintain only in India the vehicles presently known as ET4 and not export the same directly or indirectly, at any time before December 31, 2007.*
- (4) *LML will not undertake manufacture of Piaggio Motorcycle.*
- (5) *Piaggio shall be entitled to undertake manufacture in India and/or marketing of all kinds of two wheelers*

and any business activity in India save and except not before December 31, 2007 sublicense, manufacture, marketing, sale and distribution of two wheelers powered by a lateral engine as defined in the agreement.

- (6) LML and VCCL shall cease usage and shall cause their dealers to undertake to cease usage of all Piaggio Trade Marks worldwide.*
- (7) All contractual and business relations shall be deemed terminated by mutual agreement of the parties save and except as otherwise expressly provided this agreement.*
- (8) All contracts shall stand terminated in all respects, without any party thereto having any surviving rights, obligations or liabilities towards any other party thereto. In particular and without limitation but subject to the terms of this settlement agreement, all exclusively which may have been granted to the Indian promoters, LML and/or VCCL under the contract shall cease and non competition obligations assumed by Piaggio shall also cease. Piaggio may freely compete in India except in regard to lateral Engine and Piaggio Motor cycle up to 31.3.2007.*
- (9) The payment by P to LMLL of 5.5 million dollars has been made in consideration of total discharge by Piaggio of any obligation as a co-promoter of VCCL/LML for any debtors of VCCL towards any third party, as well as in consideration of other rights and waivers and release in favour of Piaggio in full and final settlement of the dispute and litigations referred to in the settlement agreement.*
- (10) Indian promoters, LML and VCCL shall be deemed to indemnify protect and hold harmless, and release and*

waive in favour of Piaggio and CSPA its affiliate etc. from or against any cause of action, claims, losses, liabilities, costs and expenses arising under or relating to any claim of breach, non performance, frauds, libel, slander, defamation, contempt of court or any improper action or inaction relating to any contracts or arising out of or relating to business and affairs of LML, VCCL etc. or out of or relating to licensing or supply of Technology assistance by Piaggio etc to LML etc under the contracts or out of or relating to share holding of Piaggio BV in LML or VCCL including all claims made or which could be made in any legal proceedings and/or on account of exercise of any rights under Powers of Attorney whether based on contract, tort, statue or other theories of law. ML shall not grant any sub license (for products covered under the contracts) to any 100% LML subsidiary for any facility located in Europe, Indonesia, Thailand, Taiwan or China. LML and VCCL shall have right to continue to produce two wheelers including current products or other products using Piaggio technology or technical information.

(11) LML shall (i) use technology relating to ET4 only in India and (ii) not export outside India up to 31.12.2007 and also not to grant sub=licensing rights to third parties”.

3. In pursuance of the said agreement, the assessee received a payment of USD \$5.5 million which in terms of INR was Rs.2388.65 lakhs (Rs.23.89 crores approx) towards termination of Joint Venture Agreement and consequential termination of other Engineering and License Agreement as well as cessation of non-compete obligation of Joint Venture partner. In the financial statement for the year ending 31st

March 2000, the assessee put a 'Note no. 13' in Notes on Account forming part of the Balance Sheet stating as under:-

"13. Various disputes and differences had arising during the previous period among Piaggio & CSpA, Piaggio Vespa BV, Indian Promoters, the Company which resulted in proceedings in several legal forums. On 15th November, 1999, a Settlement and Clear Break Agreement was entered into between M/s Piaggio & CSpA, Piaggio Vespa BV, Indian Promoters, the Company and VCCL Limited (formerly known as Vespa Car Company Limited) to effect a full and final settlement of all their disputes & differences, to terminate all past subsisting agreements and to have a clean break in relationship as per the terms contained therein.

In pursuance of the above said agreement:

- (a) The Company has received a sum of US\$ 55 lakhs (equivalent to Rs.2388.65 lakhs) from Piaggio & CSpA towards termination of all agreements and of final settlement therein recorded including cessation of non competition obligations assumed by Piaggio and rights of the Company.*
- (b) The amount of Rs.880 lakhs received from Piaggio Vespa BV in an earlier period as an advance against Share Application Money, no longer refundable, has been forfeited. The Company has obtained legal advice about the accounting and tax treatment of the above amounts. Accordingly, the Company has treated the said amounts as capital receipts and directly credited to capital reserve in respect of which no provision for Income tax is considered necessary".*

Thus, the amount received from Piaggio was treated as capital receipt not liable for taxation.

4. Before the AO, the assessee in response to the show cause notice as to why it shall not be treated as revenue receipts, highlighted the main features of 'Settlement Agreement' and also the approval of the said agreement by the Board of Directors (which has been incorporated by AO in pages 5 and 6 of the assessment order) and contented that the amount received as compensation was for loss on account of imposition of several negative covenants qua the assessee, hence it was a capital receipts. The Ld. AO after considering the assessee's arguments and material on record observed that the collaboration with Piaggio by the assessee has immensely helped the assessee in diversifying its operation from its traditional business of dealing in yarn to highly technical field of manufacturing of scooters and two wheelers and spare parts in India. This agreement had given assessee good amount of business in India and abroad resulting into huge profits. In fact, at the relevant point of time, this collaboration has put the assessee company in number 2 position of two wheeler manufacturing in India after Bajaj Auto Limited. Had this collaboration continued assessee would have reaped huge dividend. He also noted that, post settlement and clean break agreement (SCB) dated 15.11.1999, various restrictions and embargos were imposed upon the assessee wherein;

- i) The assessee was not allowed to use Brand names of Piaggio henceforth;
- ii) The up gradation of new technology from Piaggio was stopped;

- iii) Piaggio was allowed to enter into collaboration agreements with other parties in India to manufacture and compete with LML;
- iv) All these factors had the effect of reducing the future profitability of LML tremendously;
- v) In lieu of various restrictive covenants having effect on business of the LML, Piaggio paid LML a sum of Rs.23,88,65,000/- (equivalent to US \$5.5 million) and Rs.8,80,00,000/-.

After inviting the assessee's submission with regard to taxability of compensation of Rs.23,88,65,000/- and despite his above observations, the AO came to the conclusion that the said receipt is not a capital receipt but a revenue receipt. Sum and substance of his conclusion and reasoning are as under:-

- i) The assessee company and its collaborator have mutually agreed upon to pre-maturely end to this collaboration arrangement and such a premature ending of the agreement resulted in the receipt of the amount and if assessee would have continued with the collaboration un till 30th December, 2005, then the assessee definitely would not have entitled itself for such a lump-sum amount. The amount is not on account of relinquishment of any other tangible or intangible assets or closure of business. Thus, the receipt is neither for any sale of capital asset nor for sale of any business activity;
- ii) The amount received by the assessee is nothing but compensation for various benefits that it would have

derived, had the agreement with Piaggio would have remained in force. What the assessee had lost is substantial technological advantage as well as market advantages vis-à-vis its competitors on account of premature termination of business collaboration agreement. It was under these circumstances and as a matter of business prudence the assessee was suitably compensated for such a colossal loss. However, it does not mean it had any ill-effect towards the present as well as future profits;

- iii) From the period 1990 to 15.11.1999, that is, a period during which collaboration agreement existed, the assessee had already stabilized its production as well as market in the two wheeler industry. Severance of the agreement has not affected the normal day-to-day business activity and production activity of the assessee company. By virtue of the termination, the assessee's manufacturing activity has not stopped nor has been asked not to use the technology that it already received/acquired from Piaggio over the period of time.

In this background, he held that the amount of Rs.23,88,65,000/- is a revenue receipt which has to be taxed as business income of the assessee.

5. Before the CIT(A), assessee again placed all the relevant material facts to highlight the terms and conditions of the agreement and the settlement in which assessee had received compensation of Rs.23.88 crores. The restrictive covenants attached to the receipts flowing from SCB was highlighted before the CIT(A) in the following manner:-

“(1) *The Joint Venture premature termination has resulted in adverse business consequences by foreclosing business opportunities for the for the next 5 years (i.e. up to 31.12.2005 as the JV was agreed upon up to this date)*

(2) *The agreement concerning termination of the relationship has resulted in the following further adverse effects for LML namely:-*

(i) *LML’s market has struck as it has been restricted only to India in respect of claims like ET4 and its right to export the product directly or indirectly has been totally curtailed till 31.12.2007 leading to stoppage of an avenue of income. Further there is also the restriction that in respect of ET4 LML will not grant sub license to any one;*

(ii) *Restriction has been placed in the matter of manufacture of Piaggio Motor Cycle by LML. This too is in the nature of closing of source of business activity permanently affecting the vital structure concerning LML’s business;*

(iii) *After 31.12.2007, ‘P’ would be entitled to compete with LML in India through manufacture, sale, marketing and distribution agreements concerning the two wheelers powered by a lateral engine.*

(iv) *Use of Piaggio name trade mark under which business was hitherto done has been prohibited. This will affect the overall business strategy of LML;*

(v) *There would be ceasure of all relationship by termination of all contracts which would affect the entire business set up of LML;*

(vi) *Any liability relatable to Piaggio and its group companies having dealing with LML henceforth will be of LML;*

(vii) *Piaggio and its associates will no longer be bound by non-compete agreements and would be fully entitled to compete with LML;*

(viii) *Designs, technology etc. concerning Piaggio motor cycle will not be disclosed or transferred to anybody.*

(3) *Substantial sum expected to be received from Piaggio as capital contribution towards the proposed diversification-cum-expansion programme of Rs.204 crores has fallen through because of termination of relationship affecting the future business structure which would have earned substantial business gains to LML”.*

6. Ld. CIT(A) after considering the entire material placed on record and also the reasoning of the AO and submissions made by the assessee, held that the amount received by the assessee is to be treated as capital receipts not liable for taxation either as a business income or as a capital gain. First of all, he observed that, the issue regarding the taxation of aforesaid sum needs to be examined from following angle:-

- (i) Whether receipt could be considered to be a receipt of a casual and non-recurring nature and hence taxable in terms of section 10(3) of the I.T. Act.?
- (ii) Whether it could be taxed as compensation in terms of section 28(ii) of the Act?
- (iii) Whether it could be considered income apart from the two provisions mentioned at (i) and (ii) above? and
- (iv) Whether it could be considered as capital gain taxable in terms of section 45?

On the first part, he held that the said receipt was a non-recurring nature and is not likely to recur again and therefore, neither it is income of a casual nature nor of a non-recurring nature. In support, he relied upon a decision of: - i) P H Divecha v CIT [1963] 48 ITR 222 (SC); and ii) CIT v M Rama Lakshmi Reddy [1981] 131 ITR 415(Mad);

On the second part, whether it is a compensation under section 28(ii), he held that the said payment do not fall in any of the sub-clauses of clause (ii) of section 28, therefore it is beyond ambit of section 28 also.

On the third part, he held that the settlement agreement specifically sterilized the profit earning apparatus of the assessee and business of the assessee, therefore, it is on capital field. In support of his conclusion, he relied upon following decisions:

S. No	Case Law	Citation
1	CIT v South India Flour Mills P Ltd.	[1970] 75 ITR 147 (Mad)
2	Kettlewell Bullen & Co. Ltd. v CIT	[1964] 53 ITR 261 (SC)
3	Gillanders Arbuthnot & Co. (P) Ltd v CIT	[1964] 53 ITR 283 (SC)
4	CIT v Sheshasayee Bros (P) Ltd.	[1999] 239 ITR 471 (Mad)
5	CIT v Prabhu Dayal	[1971] 82 ITR 804(SC)
6	CIT v Baaji Chitra Mandir	[1985] 154 ITR 777 (AP)
7	Break, Inspector of taxes v Robson	[1942] 25 Tax case 33(HL)
8	CIT v Best & Co. (P) Ltd.	[1966] 60 ITR 11 (SC)
9	Genboig Union Fireclay Co Ltd v Commissioner of Inland Revenue	[1922] 12 TC 427 (HL)

After referring to these decisions, the Ld. CIT(A) came to the conclusion on the facts that it cannot be a case of considering the said amount of compensation as business income.

Lastly, on the issue of capital gain also, he held that, since there is no cost of acquisition which can be attributed to the rights surrendered by the SCB can be arrived at, therefore, in view of the decision of Hon'ble Supreme Court in the case of CIT vs B.C. Srinivasa Shetty, reported in [1981] 128 ITR 294, no capital gain is liable to be taxed. Thus, on these grounds, he deleted the addition made by the AO.

7. Before us, the Ld. Counsel for the assessee after explaining the entire facts which has been succinctly discussed above by us, he submitted that here in this case, by virtue of termination of the JV agreement the entire business of the assessee has been impaired and the adverse affect of such termination can be seen in the profits of the LML for year 31st March, 2000 itself and in later years the assessee ran into heavy losses. The production of the assessee fell down almost by 45% in this year as compared to the previous period and also the installed capacity used was only 61% which earlier was 110%. This effect was there in the

immediately first year of the dispute and later on the position had become worst in later years in as much as LML became sick company in the assessment year 2006-07 and is before the BIFR for its revival till date. It is solely because of this termination of Joint Venture, the entire brand value and business of LML has been finished. Thus, the whole profit making apparatus and business has been paralyzed post this termination of agreement, therefore compensation awarded is to be treated as capital receipt. On the various allegation of the AO, he gave point-wise rebuttal and reiterated that the restricted covenant put in 'SCB' has caused huge loss to assessee from which assessee could not revive till date. He submitted that, not only the LML was barred from manufacturing of Piaggio two wheelers but also export was restricted for the period of 7 years and it could not use Piaggio trademark. Not only that, Piaggio was given right to compete in India, which impaired assessee's business. Thus, the whole profit making apparatus was sterilized due to various negative covenants. He also distinguished the decisions relied upon by the AO, that is, CIT v Shamsheer Printing Press, reported in [1960] 39 ITR 90, in the case of Blue Star Ltd vs CIT, reported in [1995] 217 ITR 514 on the ground that, in the first decision the compensation was paid for compulsory vacation of premise and assessee had shifted its business place without impairing the business at all because assessee continued its business later on and there was no loss of actual profit making apparatus. In the second decision, the compensation was paid for loss of agency during the course of normal course of business. It did not affect the trading, structure nor deprived assessee from its source of income. Here in this case he submitted that whole profit

making apparatus got impaired. In support he also gave data for down fall of the production and sales in the later years and also how SCB had affected its business. Lastly, Ld. Counsel relied on the following decisions:-

i	Vazir Sultan & Sons	[1959]	36 ITR 175(SC)
ii	PH Divecha	[1963]	48 ITR 222(SC)
iii	Gilanders Arbuthnot & Co Ltd	[1964]	53 ITR 283 (SC)
iv	Kettlewell Bullen & Co. Ltd.	[1964]	53 ITR 261 (SC)
v	Prabhu Dayal	[1971]	82 ITR 804 (SC)
vi	Best and Co. (Private) Ltd.	[1966]	60 ITR 11 (SC)
vii	Oberoi Hotel (P) Ltd	[1999]	236 ITR 902(SC)
viii	Automobile Products of India	[1981]	7 Taxman 327(Bom)
ix	South India Flour Mills (P) Ltd	[1970]	75 ITR 147 (Mad)
x	Seshasayee Bros (P) Ltd	[1999]	239 ITR 471 (Mad)
xi	Ghaziabad Eng. Co. (P.) Ltd.	[1984]	7 ITD 289 (Del)
xii	Guffic Chem (P.) Ltd. v CIT	[2011]	322 ITR 602 (SC)
xiii	Bisleri Sales Ltd.	[2013]	115 TTJ 285 (Mumbai ITAT)

8. On the other hand, Ld. DR strongly relied upon the order of the AO and submitted that the assessee was in the business prior to Piaggio agreement and also continued to do the same business post-termination of the agreement. There is no loss on account of source of revenue, which continued albeit on a lesser scale. The compensation paid was on breach of an agreement during the normal course of the business, hence is on revenue account. Even otherwise also, any sum received under an agreement either for not carrying out any activity or for not sharing of any technical know-how etc, such an amount is to be treated as business income only. In support he strongly referred to section 28(v)(a) which though has come in the statute w.e.f. AY 2003-04 however, he submitted that the same spirit of the law should be applied for the earlier years also. He further submitted that, here it is not a case of losing the source of income but a termination of an agreement by which certain restrictions were put to the assessee, therefore, any compensation received in lieu of such

restrictions is nothing but on revenue account and not on account of any capital field. Thus, he submitted that the entire compensation received was rightly taxed as business income by the AO.

9. We have heard the rival submissions and perused the relevant facts and material discussed in the impugned orders. It is a trite law that under the Income Tax Act all the receipts in the hands of an assessee would not necessarily be income or deemed to be income for the purpose of income tax, because it will depend upon the nature of the receipt and the true scope and effect of the relevant taxing provisions. The Hon'ble Supreme Court in *Kettlewell Bullen & Co. Ltd* (supra) have laid down that, where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what is substance of his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade the receipt is revenue. However, whereby the cancellation results into loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt. This fundamental principle needs to be examined on case to case basis depending upon the facts of each case. A distinction has to be drawn, where a payment is made for a breach of any agreement during the course of a business and a compensation for termination of income producing assets or impairing the profit making apparatus. The former may not lose its revenue nature but later being a payment on account

of destruction of a capital asset has to be reckoned as capital receipt. If we analyze the facts of the present case, as discussed above, it is ostensibly evident that the payment which has been received by the assessee is mainly on account of compensation attributable to negative/restrictive covenants imposed upon the assessee, adversely affecting the business of assessee and profitability. The assessee was enjoying the technical know-how and the brand name of "Piaggio" in manufacturing and selling its various models of scooters which was purely from the technological collaboration and various kind of assistance from Piaggio. The joint venture agreement has facilitated the assessee to carry out its business in large scale not only in India but also across the world. As admitted by the AO also, the assessee was reckoned as number two in the country as far as production and sale of two wheelers are concerned. This collaboration has led to large sales and resultantly huge profitability to the assessee. Now by termination of such an agreement, various restrictive covenants were attached which can be highlighted as under:-

- (i) Manufacture and sale of scooters restricted to India only and also no sub-license in respect of the same can be granted;
- (ii) Export restricted till December 31, 2007, which impaired assessee's sale and profit;
- (iii) LML shall not undertake manufacture of Piaggio motorcycle;
- (iv) Piaggio would be entitled to compete with LML in India through manufacture, sale, marketing and distribution agreement concerning the 2-wheelers except those vehicles which are powered by lateral

engine for which they can compete after 31st December, 2007;

- (v) Piaggio can undertake any other business activity in India;
- (vi) LML shall cease the usage and dealing with the dealers of all Piaggio companies henceforth the date of SCB.
- (vii) Any liability relatable to Piaggio and its group companies having dealing with LML henceforth SCB, would be of LML;
- (viii) Piaggio and its associates will no longer be bound by the non-compete agreements and would be fully entitled to compete.

10. As a result of these restrictive covenants, as pointed out by the Ld. Counsel not only the production and sales went down but also entire business of the assessee got impaired and later on the assessee company became insignificant player and non entity in the field of two wheelers as a result of this 'SCB'. In the first year itself, the production as well as the sales went down by half and later on, the assessee got wiped out from the market completely. Thus, the entire profit making apparatus and business which was in the form of technical-collaboration, brand and various arrangements with Piaggio got severely paralyzed. From the terms of the settlement agreement and the restrictive covenants as highlighted above, it is seen that the compensation was purely for restraining the assessee to carry out its business without any aid of license or brand from Piaggio. The exports were restricted and Piaggio itself was empowered to compete with LML in India in two wheelers. Thus, the entire trading

structure of the assessee's business which was a potential of source of income to the assessee in future was adversely affected and, therefore, we agree with the conclusion of the CIT(A) that such a compensation will fall within the realm of capital receipt. Here in this case, by virtue of negative covenants not only the profit making apparatus got impaired but slowly swallowed the source of income of the assessee which proved to be fatal in the subsequent years. The Hon'ble Supreme Court, later on in the case of Oberoi Hotels Pvt. Ltd. vs CIT (supra) applying the guiding principle of Kettlewell Bullen & Co.Ltd (supra) as well as the decision of Karamchand Thapar, reported in [1971] 80 ITR 167(SC) held that, if the enduring benefit was reflected on the capital of the assessee and giving up the contractual right on the basis of principal agreement which had resulted into loss and source of assessee's income, the receipt in hands of the assessee is a capital receipt.

11. Now coming to the argument of Ld. DR that provision of section 28(v)(a) which had been brought in the statute w.e.f. 2003-04 should be held to be applicable in the present assessment year also, we find that such an argument cannot be accepted, because, the provision of section 28(v)(a) was brought specifically into the Act to treat the payment received on non-compete fee under a negative covenant to be taxable as business income under section 28 and such a provision was brought by the Finance Act, 2002 w.e.f. 01.04.2003, therefore it cannot be applied retrospectively for the assessment year 2000-01. This precise issue had come up for consideration before the Hon'ble Supreme Court in the case of Guffichem vs. CIT, reported in [2011] 332 ITR 602, wherein,

the Hon'ble Supreme Court has answered the exact question in the following manner:-

“5. *The position in law is clear and well-settled. There is a dichotomy between receipt of compensation by an assessee for the loss of agency and receipt of compensation attributable to the negative/restrictive covenant. The compensation received for the loss of agency is a revenue receipt whereas the compensation attributable to a negative/restrictive covenant is a capital receipt.*

6. *The above dichotomy is clearly spelt out in the judgment of this Court in Gillanders' case (supra) in which the facts were as follows. The assessee in that case carried on business in diverse fields besides acting as managing agents, shipping agents, purchasing agents and secretaries. The assessee also acted as importers and distributors on behalf of foreign principals and bought and sold on its own account. Under an agreement which was terminable at will assessee acted as a sole agent of explosives manufactured by Imperial Chemical Industries (Export) Ltd. That agency was terminated and by way of compensation the Imperial Chemical Industries (Export) Ltd. paid for first three years after the termination of the agency two-fifths of the commission accrued on its sales in the territory of the agency of the appellant and in addition in the third year full commission was paid for the sales in that year. The Imperial Chemical Industries (Export) Ltd. took a formal undertaking from the assessee to refrain from selling or accepting any agency for explosives.*

7. *Two questions arose for determination, namely, whether the amounts received by the appellant for loss of agency was in normal course of business and therefore whether they constituted revenue receipt? The second*

question which arose before this Court was whether the amount received by the assessee (compensation) on the condition not to carry on a competitive business was in the nature of capital receipt ? It was held that the compensation received by the assessee for loss of agency was a revenue receipt whereas compensation received for refraining from carrying on competitive business was a capital receipt. This dichotomy has not been appreciated by the High Court in its impugned judgment. The High Court has misinterpreted the judgment of this Court in Gillanders' case (*supra*). In the present case, the Department has not impugned the genuineness of the transaction. In the present case, we are of the view that the High Court has erred in interfering with the concurrent findings of fact recorded by the CIT(A) and the Tribunal. One more aspect needs to be highlighted. Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till the asst. yr. 2003-04. It is only vide Finance Act, 2002 w.e.f. 1st April, 2003 that the said capital receipt is now made taxable [see: s. 28(va)]. The Finance Act, 2002 itself indicates that during the relevant assessment year compensation received by the assessee under non-competition agreement was a capital receipt, not taxable under the 1961 Act. It became taxable only w.e.f. 1st April, 2003. It is well-settled that a liability cannot be created retrospectively. In the present case, compensation received under non-competition agreement became taxable as a capital receipt and not as a revenue receipt by specific legislative mandate vide s. 28(va) and that too w.e.f. 1st April, 2003. Hence, the said s. 28 (va) is amendatory and not clarificatory. Lastly, in *CIT vs. Rai Bahadur Jairam Valji & Ors.* (1959) 35 ITR 148 (SC) it was held by this Court that if a contract is entered into in the ordinary course of business, any compensation received for its termination (loss of agency)

would be a revenue receipt. In the present case, both CIT(A) as well as the Tribunal, came to the conclusion that the agreement entered into by the assessee with Ranbaxy led to loss of source of business; that payment was received under the negative covenant and therefore the receipt of Rs. 50 lakhs by the assessee from Ranbaxy was in the nature of capital receipt. In fact, in order to put an end to the litigation, Parliament stepped in to specifically tax such receipts under non-competition agreement w.e.f. 1st April, 2003”.

The aforesaid judgment and ratio of the Hon'ble Supreme Court makes it amply clear that, firstly, the compensation received by the assessee which is attributable to negative/restrictive covenant is a capital receipt; and secondly, the provision of section 28(va) brought w.e.f. 01.04.2003 in the Act will apply only from AY 2003-04. Thus, the aforesaid decision of the Hon'ble Apex Court clearly clinches the issue in hand and respectively following the aforesaid principles, we hold that the amount of receipt of compensation received by the assessee on termination of an agreement and for consideration attributable to negative and restrictive covenants is to be treated as capital receipt and not business income or revenue receipt. Thus, ground no.1 is allowed in favour of the assessee and revenue's ground no. 1(a), 1(b) and 1(c) are dismissed.

12. The issue involved in the second ground is that, the revenue has challenged the deletion of amount of Rs.8,80,00,000/- by CIT(A) on account of forfeiture of advance share application money by treating it as a capital receipt.

13. The facts in brief are that, the assessee company had received a sum of Rs.8.80 crores by way of advance share application money from M/s Piaggio CSpa Italy in accordance with the approval received from the RBI in the year 1995. The inward remittance certificate also indicates that the said amount was received as a share capital amount. This amount was brought as per conditions laid down by the financial institutions who have funded the expansion-cum-diversification project of the assessee, that promoters have to infuse 20% of the funds. In the wake of “settlement and clean break agreement” dated 15.11.1999, the assessee in continuation of the amount received by way of compensation of Rs.23.89 crores, also meted out its liability of Rs.8.8 crores which was received in the earlier years in share capital. In other words, after termination of the agreement, the assessee company has absolved itself from repayment of its liability to M/s Piaggio and credited the amount to capital reserve fund. In response to the show cause notice, the assessee’s submission has reproduced by the AO at page 15 was as under:

“Forfeiture of Share Application Money Rs.880 lakhs:

In support of our claim for sum of Rs.880 lakhs received by us as Share Application Money we enclose the copy of communication received by our managing Director, Mr. D K Singhanla on 1st December, 1995 with regard to a sum of Rs.88 millions sent to the company (Annexure : C)

From the said communication it is established that, the relevant amount was sent towards subscription money for equity shares to be issued on a right basis.

The company could not make either right issue or preferential issue in respect of its equity shares to finance the diversification and expansion program undertaken by it.

In terms of final settlement and clean break agreement executed on 15th November, 1999 the company has forfeited the relevant amount of Rs.8.80 crores and credited the same to Capital Reserve Account.

Submissions:

The issue of shares by a limited company is not a trading transaction at all. Therefore receipt of advance share application money cannot be treated as trading transaction. These amounts are obviously not profits or gains of the trade, and they are not liable to be brought into the accounts for income-tax.

... Thus from the aforesaid tests, it can be considered that the amount received from Piaggio as share Application Money was of capital nature – not a revenue receipt”.

The AO rejected the assessee's contention after giving detail reasoning. In sum and substance he held that, firstly, the amount of Rs.8.8 crores was shown under the head “unsecured loan” in the Balance sheet as on 31st March, 1999 and 31st March, 2000 and not as share capital or share application money; secondly, LML did not follow the stipulated time frame for allotting of shares as prescribed by SEBI and under the provisions of the Company's Act, which is evident that money was lying for 4 years; thirdly, had the shares were allotted Piaggio would have enjoyed dividend and participation in management and other benefits; and lastly, the impugned sum can only be interpreted as advance from the Piaggio received for the setting-up of business and for day-to-day business activities and forfeiture of the amount is nothing but revenue receipts in the hands of the assessee. He taxed the amount finally under section 41(1). The detail reasoning given by the AO has been incorporated at pages 18 to 22 of the assessment order.

14. The Ld. CIT(A) deleted the said addition after observing and holding as under:-

“3.2 Considering the rival submissions on the subject I am of the view that, the allegations made by Assessing Officer about non-compliance of provisions of companies Act regulatory authorities like SEBI and Stock Exchange have not been supported by any evidence brought on record by him in support of his claim, whereas other observations are purely out of surmise and conjecture.

3.2.1 Whereas the Appellant has brought on record the primary evidence like communication from Piaggio to its managing Director accompanied by Inward Remittance Certificate which establishes beyond doubt that, the relevant amount was received as a contribution towards Share Capital, there is nothing brought on record by Assessing Officer which says otherwise.

3.2.2 Now coming to the issue of forfeiting and transferring the above referred amount to a Capital Reserve, it is the submission of the Appellant that it has relevance as far as nature of receipt is concerned.

3.2.3 Alternatively it is contended by the learned AR that, even if it is treated as a loan as held by the Assessing Officer the same cannot be taxed in view of jurisdictional High Court Judgment in case of Mahindra & Mahindra vs CIT (261 ITR 501) wherein it has been held that, the loan in respect of which waiver has been made cannot be assessed either u/s 28(iv) or 41(1) of the Income-tax Act, 1961.

3.2.4 Considering the evidence laid down by the learned AR it is not in doubt that, the relevant amount was received towards capital contribution to be raised by the Appellant to

finance its diversification cum expansion programme in 1995 and since no shares have been allotted against the said amount the relevant forfeiture by the Appellant would not be taxable as Revenue Receipt”.

15. Before us, the Ld. DR submitted that, first of all, it can be seen that, assessee in the Balance-sheet for the year ending 31st March, 1999 and 31st March, 2000 has itself treated it as ‘unsecured loans’. The amount was received in the year 1995 and till 1999, the assessee’s had not allotted the shares and it was never capitalized by the assessee company. Had it been the capital share application money, the assessee would have allotted the shares within the timeframe which is the requirement as per the SEBI as held by the AO; Secondly, the forfeiture of an advance from the foreign collaborator which assessee itself has treated in the form of loans and advance therefore, forfeiture of this amount is nothing but revenue receipt. The Ld. DR also relied upon the decision Hon’ble Supreme Court in the case of T. V. Sundram Iyengar & Sons Ltd, reported in [1996] 88 Taxman 429 (SC) and Bombay High Court decision in the case of Solid Containers Limited. Vs. Deputy vs DCIT, reported in [2009] 308 ITR 417.

16. Before us, the Ld. Counsel submitted that, it cannot be disputed that the money was received as share application money to finance the expansion of the project. This is evident from the inward remittance certificate by the bank and approval of the RBI. The treatment of the amount in the books of account cannot be the determinative factor for taxability under the Act. The amount was forfeited in

pursuance of “SCB” and was never claimed as expenditure either in this year or in the earlier year; therefore, same cannot be taxed as relinquishment of business liability under section 41(1) as held by the AO. In support, he strongly relied upon the decision of Hon’ble Delhi High Court in the case of CIT vs. Shivali Constructions P Ltd, reported in [2013] 355 ITR 218. He further relied upon the decision of ITAT, Mumbai in the case of Impsat (P) Ltd v ITO, reported in [2004] 91 ITD 254 wherein, the application money for issue of share to a foreign collaborator could not be refunded due to heavy financial losses was held to be in capital field. Thus, he submitted that the receipt in question was for share application money and not for any kind of advance during the course of any trading or business. Further, disclosure as unsecured loan cannot be the decisive factor for treating it as capital or revenue receipt. Relying upon the decision of Hon’ble Supreme Court in the case of Chowringhee Sales Bureau P Ltd v CIT, reported in [1973] 87 ITR 542, he submitted that true nature and quality of receipts is to be looked into and not under which head it has entered in the book of accounts.

17. We have heard the rival submissions and perused the relevant finding given in the impugned orders. The assessee had undertaken expansion-cum-diversification of its scooter business and for that purpose financial institution agreed to grant loan on a condition that promoters LML and Piaggio will contribute or infuse 20% of funds. In pursuance thereof, on 1st December, 1995, Piaggio confirmed that it shall remit the sum of Rs.8.8 crores by 7th January, 1996 as advanced share application money. On 8th January, 1996, LML

received Rs.8.8 crores from Piaggio as share application money in its bank account. Approval was sought from Reserve Bank of India for inward remittance of share application money. Bank issued the certificate certifying the foreign inward remittance certifying that receipt of Rs.8.8 crores is towards share capital. Not only that the RBI also gave approval on the account of share application money only. It is also an admitted fact that, assessee could not be allot the shares in period of 4 years. Accordingly, when there was settlement-break-agreement on 15.11.1999, the assessee forfeited this amount as per one of the terms agreed between the parties and has taken it towards its capital reserve fund. Under article 2(f) of "SCB", there was a clear cut clause that sum of Rs.8.8 crores which was advance as share application money on account of promoters' contribution towards expansion-cum-diversification of project will remain with the assessee. The AO has relied heavily on the point that, firstly, the assessee had shown the said amount under the head "unsecured loans" and secondly, non-allocation of shares is in violation of SEBI guidelines and under the Companies Act; and lastly, the revenues case before us is that, same is to be taxed under section 41(1).

18. First of all, it is quite trite that nature and quality of receipt is the substratum of taxing an income under the Income-tax Act and not the head under which it has entered into the books of account. Entry in the books of account is not a decisive and determinative factor of income, albeit the nature and source of receipts. This proposition is well settled by the Hon'ble apex Court in several cases, including as referred to above by the ld. counsel. At the time of receiving of

the receipt in the year 1996 from Piaggio, the same was on account of capital, that is, towards share application money. The receipt received as share application towards equity which is capital in nature cannot be treated as loan or advance simply because one of the parties agreed that it is to be treated as an advance or loan in his books. Even otherwise the capital receipt cannot be converted into revenue receipt by efflux of time because the quality and nature of the receipt should be adjudged at the time of its receipt and such quality cannot be affected or altered subsequently by act of the parties, of course when both the parties clearly mandate or agree to the same for such a conversion. Once, the money which has come from foreign collaborator towards share application money duly approved by Regulatory Authority, then same cannot be treated as a "loan" even though it was recorded as loan by assessee in its books of account or can be in any manner reckoned as revenue receipt at the time of forfeiture; Secondly, the allegation of the AO that non-allotment of share was in violation of SEBI guidelines and under the Company's Act, the same is not relevant and also it has not been shown to us which provision has been violated. In our opinion, what is required to be looked into is, whether under the provisions of the Income-tax Act, if a receipt which was on account of a capital can be treated as on revenue account or not; and lastly, the addition has been made finally by the AO after invoking provision of section 41(1). The first and foremost condition which needs to be examined before invoking the provisions of section 41(1) is that, whether an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee or not; which is clearly absent in the

present case. Thus, the share application money received by the assessee, in any manner does not fall within the ambit and scope of section 41(1). The decision of Hon'ble Supreme Court in the case of T V Sundram Iyengar & Sons Ltd (supra) as relied upon by the ld. DR is not applicable because in that case it was a case of a trade deposit received in the course of carrying on the business and such unclaimed deposits were written back by the assessee and transferred to the P&L Account. It was in this background that the Hon'ble Apex Court held that it was income of the assessee. In the case of Solid Containers (supra) the relevant fact was that the money was received by the assessee in course of carrying on his business. Although it was treated as deposit and was of capital nature at the point of time it was received, however by efflux of time the money has become the assessee's own money, because of unclaimed by the customers. What remains after adjustment of the deposits has not been claimed by the customers; hence the claims of the customers have become barred by limitation. The assessee itself has treated the money as its own money and taken the amount to its profit and loss account. There was no explanation from the assessee why the surplus money was taken to its profit and loss account even if it was somebody else's money. It was in light of these facts and background the Hon'ble Bombay High Court held that it was the income of the assessee. Here in present case no deposits have received from customers nor it is a loan taken for trading activity and neither has it been transferred to P&L Account, *albeit* here the share application money has been forfeited due to settlement by the share applicant and the assessee and the money has been transferred to capital reserve fund. Thus, such an amount

cannot be taxed in either way under section 41(1). Accordingly, the finding of the Ld. CIT(A) on this score is confirmed and impugned issue raised by the revenue in ground no. 2 is treated as dismissed.

19. In ground no.3, the revenue has challenged the deletion of disallowance of Rs.574.96 lakhs incurred by the assessee as legal expenses to defend itself in legal suits filed by M/s Piaggio CSpa.

20. The assessee has debited a sum of Rs.574.96 lakhs towards legal expenses to defend itself in legal suits and arbitrations filed by M/s Piaggio Companies. The assessee's case before the AO was that, it was one of the defendants in the suits filed by Piaggio in India and further the Piaggio Company had applied to International Chamber of Commerce for arbitration where they have made claims against the company for damages for alleged breach of agreements. They had also filed a petition before the Company Law Board under section 397 and 398 of the Companies Act against the assessee, its promoters and its management for alleged oppression and mismanagement. The Indian promoters have incurred significant expenses on litigation which was far more than the amount spent by the assessee in such disputes. The AO held that the dispute was between the two promoters of the company and not with the assessee company. In sum and substance, the AO's reasoning for rejecting the claim was that:

(i) *Firstly*, the dispute was between the two promoters of the assessee company with Piaggio and suit was filed for

oppression and mismanagement by the promoters against each other and not against the assessee;

(ii) *Secondly*, the assessee company was only party to the extent that it was defending before the Company Law Board against any probable liquidation order that might have been passed because of dispute between the promoters;

(iii) *Thirdly*, such litigation amongst the promoters is no way related to the business activity of the company and it does not contribute to the normal revenue generation of the company and hence it has not been incurred during the course of carrying out business;

(iv) *Fourthly*, the company is a separate artificial legal entity and, therefore, litigation between two group of promoters cannot be the responsibility of the company; and

(v) *Lastly*, the LML was compelled to incur the expenditure to enable the existing promoters to continue to hold and cling upon the management affairs of the LML.

21. The Ld. CIT (A), allowed the claim on the ground that, though the dispute and the entire litigation was between the promoters, however, it would be hazardous for the corporate citizen not to defend the said suit in which it is made party and not to spent any money on such kind of litigation, only because it does not generate any revenue. It may not be for earning of income but it has certainly been incurred wholly and exclusively for the purpose of business. A corporate body has to consider the interest of the company as a whole that is, of its stake holders namely, shareholders. When Financial institutions and banks who have lent the money to a assessee company will expect that it will defend any action initiated against it by its shareholders, who have dual capacity as a

shareholders as well as Principal Technology Provider or in-charge of day-to-day management of the company and also for various business relationship with them other than as a shareholders. Thus, he held that the legal expenses incurred by the assessee were for its business purpose and the same needs to be allowed.

22. Before us, the Ld. DR strongly relied upon the order of the AO and submitted that, once there is litigation between the promoters amongst themselves, then company has no business to spend the amount for litigation and secondly, the expenditure incurred does not relate to business of the company.

23. On the other hand, the Ld. Counsel submitted that, the litigation between the promoters had a wide impact on the LML, as the arbitration proceedings were in the nature of claim for damages for breach of contracts and if not defended, LML would have jeopardized its interest. Further, he clarified that, LML has incurred expenditure only its own part of the legal expenditure and Indian promoters have incurred there part of the litigation cost. Thus, it cannot be held that entire expenditure was incurred by the assessee only. LML had several stake shareholders and Indian public own more than 51% of the capital including its lenders, banks and financial institutions, employees and ancillaries whose stake and existence is dependent on the assessee. In support, various decisions have been relied upon by Ld. Counsel which for the sake of convenience is reproduced herein below:

Sr. No.	Case Law	Citation
1	Bilasraijharmal (HUF) v CIT	9 taxman179 (Bom)
2	CIT v Indo Burmah Petroleum Co Ltd.	142 ITR 141 (Ca)
3	Rampur Distillery & Chemicals Co. Ltd	140 ITR 725 (All.)
4	CIT v Muir Mills Co Ltd	148 ITR 418 (All.)
5	CIT v O P N Arunachalla Nadar	141 ITR 620 (Mad)
6	CIT v Card Board Products	96 taxman282 (Pat)

24. We have heard the rival submissions and perused the relevant finding given in the impugned orders. The main reason for not allowing the assessee's claim for legal expenses debited to the P&L account by the AO is that, *firstly*, these legal expenses pertain to dispute between Indian Promoters and foreign promoters and the suits/arbitration proceedings filed amongst them cannot be said to be related to the business activity of the LML; *secondly*, it did not contribute to any revenue generation to the assessee; and *lastly*, the assessee was compelled to incur the expenditure to enable the existing promoters to continue their hold and control of management affairs of the LML so that, the management does not slip to Piaggio. It is an undisputed fact that, the assessee was also one of the defendants in the suit and also in the arbitration proceedings initiated by the Piaggio. Certain claims for damages were also made against the assessee for alleged breach of agreements. A petition was also filed against the assessee company and its promoters before Company Law Board for winding off. Thus, the assessee company was directly affected by such legal proceedings. Once the Joint Venture Agreement (JVA) between the Indian promoters and Piaggio was jeopardized, various triggering events followed which lead to many proceedings against the promoters including that of the assessee company. It is not disputed by the AO that, assessee was made party in several proceedings

and claim was made against the assessee company. Once that is so, then, the assessee had to defend its position and stake and also to save its business. It has already been brought on record before the AO that amount of more than Rs.4.03 crores was spent by the promoters separately for the litigation expenses and the amount spent by the assessee was separate and was only to defend itself in all the proceedings initiated by the Piaggio. The true test in respect of allowing the litigation/legal expenses is, whether the litigation was initiated while carrying on the business or during the conduct of the business or not. If litigation in any manner affects the working of the company or the source of its income or its day-to-day running or management, then such expenses has to be reckoned as incurred or expended for the purpose of the business. The test of immediate benefit or revenue is not criteria for allowing expenditure under section 37(1), *albeit* it has to seen, whether it has been incurred for the purposes of the assessee's business or not. The expression "*for the purpose of business*" has a very wide import and covers a situation where it affects the overall business of the assessee and commercial expediency. It has to be seen from this angle also, if the assessee would not have been dragged into such litigation and proceedings before the Company Law Board, then there would not have been any requirement for the assessee to incur such expenditure. Assessee got involved only because it was made one of the respondent and defendant in the suit and in order to save its business from possible liquidation the assessee had to incur the legal expenses. Thus, in our opinion, such expenditure on legal expenses is wholly and exclusively incurred for the purpose of the business and accordingly, same needs to be allowed.

Accordingly, ground no.3 of the revenue's appeal stands dismissed.

25. In ground No.4, revenue has challenged the deletion of disallowance of interest of Rs.2.03 crores attributable to the interest free advance to the associated concern, VCCL Ltd.

26. The facts in brief are that there were outstanding debt and advances due from VCCL Ltd. which stood at Rs.1514.65 lakhs as on 31st March, 2000, as against the due amount of Rs.2,785.71 lakhs as on 31st March, 1999. It was declared in the notes to the account in the financial statement that net worth of VCCL Ltd. is negative and company's manufacturing operations continued to be suspended as in the past. The management is pursuing for recovery of above due amount from VCCL Ltd by way of acquisition or disposal of its assets. Adjustment for loss which might arise in respect of the said outstanding will be made on its determination. Admittedly on the said dues, LML did not receive any interest income. The AO noted that pursuant to "SCB", VCCL had received sum of Rs.1355 lakhs from Piaggio. The LML could not recover the said amount from VCCL and if recovery from VCCL of Rs.1355 lakhs would have been made, then assessee would have saved the interest component on that amount. He further noted that the amount advanced to VCCL Ltd is 14% of the total amount borrowed by the LML, on which it is paying interest. Thus, the AO imputed interest rate of 15% of Rs.13.55 crores and held that it should be disallowed, which worked out to Rs.2,03,25,000/-.

26. The Ld. CIT(A) deleted the said disallowance on the ground that, now the VCCL Ltd. has paid the amount of

Rs.1355 lakhs to the LML, therefore, the entire basis of making disallowance by the AO no longer stands.

27. After hearing the parties and on perusal of the material placed on record, we find that the entire premise of the AO for disallowing the interest is that, on one hand, assessee had shown amount due from VCCL Ltd as on 31st March, 2000 at Rs.1,514.65 lakhs, which it finds it difficult to recover and on the other hand when the VCCL had received an amount of Rs.1355 lakhs from the Piaggio under the "SCB", assessee is not recovering the amount from VCCL. If this amount would have been given to the LML then due amount could have been reduced and also the consequent interest to LML. On this premise he has made the disallowance of interest on the amount of Rs.13.55 crores. Now, admittedly, it has been shown by the assessee before the CIT(A), which has not been disputed by the revenue before us that, VCCL Ltd has paid the amount of Rs.13.55 crores to the assessee for which the necessary evidences were also filed before the CIT(A) and Xerox copy of the cheque is also appearing in the paper book. Thus, the entire premise on which the disallowance was made by the AO has no legs to stand. Hence, the ground raised by the revenue has been rendered baseless and without any basis or support from any material on record and accordingly, the same is dismissed.

28. In ground No.5, the revenue has challenged the deletion of Rs.4,05,75,000/- on account of disallowance of interest on dues from M/s Esslon Synthetics Ltd.

29. The brief facts are that, in the notes of the accounts in

the Balance-sheet, vide note No.11, the assessee has reported that, sum of Rs.2709 lakhs out of total sum of Rs.7103 lakhs was recoverable from M/s Esslon Synthetics Ltd (ESL) against the sale consideration for transfer of undertakings and other debts for which no payment has been received by the assessee. This amount represents the unpaid sale consideration in respect of its 'Fibre Business' transferred to M/s ESL in the year 1987. In the year 1990, the relevant approval of financial institutions/banks were received and the price was reworked and in terms of the agreement the purchase consideration of Rs.71.03 crores was paid by ESL, by taking over liability of the institutions/banks to the extent of Rs.29.99 crores and down payment of Rs.14 crores. The amount of Rs.9.45 crores was payable on or before 31st March 1992 and a sum of Rs.17.59 crores was payable in 28 equal installments beginning from 1st April, 1991. In respect of Rs. 9.45 crores, there was no provision for payment of interest in case of delay and the said amount was guaranteed by Saraswat Trading Co. Ltd who was holding equity shares of LML Ltd. To enforce the above referred payment, suit was filed in Hon'ble Delhi High Court and pending disposal, the said amount of Rs.9.45 crores has been shown by the assessee as recoverable. In respect of sum of Rs.17.59 crores which was unsecured, the provision was made in the books of account for the year ending 31st March, 1997. Since the company was ordered to be wound up by Hon'ble Allahabad High Court and there was no possibility of realizing anything. However, later on the said sum was finally assigned to its subsidiary company, M/s Perfect Polycons Ltd. for token consideration of Re 1/-. Simultaneously, the assessee has also written off the bad debts in its books of account by

debiting the provision for doubtful debts and crediting to the parties account. The AO, in his show cause notice to the assessee required as to why interest rate of 18% on the amount of Rs.27.05 crores (17.59 + 9.45) should not be made, which comes to Rs.4.87 crores and add the same by way of interest accrued on outstanding amount. In response, the assessee after stating the entire background of the transaction stated that, ESL has been declared sick unit by BIFR and there was no possibility of realizing anything from the assessee company and, therefore, there is no scope for addition on account of notional interest. The AO observed in his order that the assessee was not keen to recover the amount of Rs.27.04 crores from its sister concern ESL and as per the terms of sale of business, the assessee was to recover the total consideration in a phased manner over a period time. It could recover only a part amount and balance amount of Rs.27.05 crores is still outstanding. He further observed that, M/s Saraswat Trading Co. was guarantor for these dues which held the major chunk of shares of LML and, therefore, assessee could have easily recovered its dues from the guarantor. Instead, it had assigned the entire amount of loan to M/s Perfect Polycon Co. Ltd. for a consideration of Re. 1/-. Thus, the entire nature of transaction shows that assessee did not had any intention to recover its amount due inspite that amount was shown as recoverable. The assessee has chosen to assign the entire amount of loan for a consideration of Re 1/- to another sister concern, which is not justified under normal business prudence but it is a case of generous charity towards its sister concern. Accordingly, he held that 15% disallowance should be made on the amount recoverable, that is on Rs.27.05 crores which works out to

Rs.4,05,75,000/-.

30. Before the CIT(A), the assessee submitted that, out of the said amount of Rs.27.05 crores, Rs.17.59 crores represents the surplus of undertaking which was credited to the profit and loss account and for tax purpose the said amount was partly offered as long-term-capital-gain whereas part of the amount was credited to the various block of assets and thereby reduce the written down value of those assets. Thus, no addition was required to be made on sum of Rs.17.59 crores so much so that there could be any notional disallowance of interest in respect of sum receivable from the company. It was further pointed out that, even the relevant sum has been written off in the books of account and as such there is no question of disallowing any notional interest since there is nothing receivable from the said party. As regards the balance sum of Rs.9.45 crores, it was submitted that the sale agreement does not contain any provision with regard to the charging of interest in case of delay, therefore, no interest could be disallowed on this amount also. Lastly, it was submitted that AO has not established any nexus between the amount receivable and amount borrowed while computing the disallowance.

31. The Ld. CIT(A) after appreciating the facts in the light of the submissions made and materials placed on record, held that, no case has been made out by the AO for disallowance and accordingly he directed the AO to delete the said disallowance.

32. Before us, the Ld. DR submitted that, AO had given a

detailed reason as to why the interest should be disallowed on the amount which was recoverable from ESL. AO has also brought out how the said amount of loan has been assigned to another sister concern Re 1/-, therefore, the finding of the AO for making the disallowance needs to be upheld. The Ld. CIT(A) has not given any reasoning for deleting the said disallowance.

33. Before us, the Ld. Counsel submitted that the amount outstanding of Rs.27.05 crores was part of sale consideration receivable from ESL for transfer of Fabric business and was in the nature of any sum or money advanced, therefore, there is no question of any interest bearing funds diverted for non-business purposes. No notional disallowance can be made any such case, because AO has not made out any case for the interest bearing funds have been diverted for advancing interest free loans for non-genuine or non-business purpose. Otherwise also, it is an admitted fact that ESL has been ordered to be wound up by Hon'ble Allahabad High Court and LML could not have recovered anything. Thus, there is no real income which can be said to have been brought to tax.

34. We have considered the relevant facts as culled out in the impugned orders as well as submissions made by the parties. As discussed above, a sum of Rs.27.05 crores was receivable to the assessee as part of sale consideration from ESL for transfer of Fibre Business in the year 1987. The assessee was to receive Rs.9.45 crores up till March, 1992 and balance amount of Rs.17.59 crores in 28 equal installments starting from 1st April, 1991. As brought out by the assessee before the CIT(A), Rs.17.59 crores represent the

surplus on sale of undertaking which was credited to the P&L Account and was offered as long-term-capital gain/loss whereas, the part of the amount was credited to the various block-of-assets and thereby reduce the WDV of those assets. Thus, there was no occasion for disallowance of any interest on the amount of Rs.17.51 crores. Further, it is undisputed that the sum of Rs.9.45 crores is a part of a sale consideration receivable from ESL from the transfer of Fiber Business, then how it can be reckoned as money advanced by the assessee to its AE or sister concern out of interest bearing funds. A disallowance of interest in such cases can only be when the department/revenue makes out a case that interest bearing funds have been diverted to the sister concerns without any business purpose and without charging any interest. Ostensibly it is not the case here that any interest bearing funds have been diverted to the sister concern *albeit* certain sum was to be received by the assessee as part of sale consideration and in such a case how the interest component can be imputed for making any disallowance is not understandable. Not only that, it has been brought on record that ESL has been ordered to be wound up by the Hon'ble Allahabad High Court and once the amount itself is doubtful of recovery then how any amount of interest and that to be on the notional basis can be imputed for making the disallowance. The entire exercise done by the AO is very arbitrarily and we do not find any reason to deviate from the conclusion of the CIT(A) in deleting the said disallowance. Accordingly, the ground No.5 as raised by the revenue is dismissed.

35. In ground No.6, the revenue has challenged the deletion

of disallowance made by the AO under section 40(a)(i) on account of technical know-how fees paid to M/s AVL Austria.

36. The brief facts of the case, as discussed in the impugned order are that, in the return of income, the assessee has claimed the deduction of Rs.2,83,44,224/- in respect of technical know-how fees which included an amount of Rs.3,80,20,015/- paid to M/s AVL Austria towards technical know-how fees. The AO held that, since assessee has not deducted TDS in respect of such a payment, therefore, the same is disallowable under section 40(a)(i) and accordingly, he made the disallowance. The assessee's case before the CIT(A) was that, it relate to the payment of services rendered outside India and according to Article 7 of India-Austria DTAA, the same cannot be subject to withholding of tax in India and in support, the assessee had relied upon the decision of ITAT Chennai Bench in the case of TVS Suzuki Ltd. vs ITO, reported in 73 ITD 91 which rendered on similar kind of facts. Thus, it was contended that in the terms of said Article 7, the technical know-how fees paid on technical services rendered outside India and money was paid in Austria, then withholding tax is not applicable. The Ld. CIT(A) following the decision of the Chennai ITAT held that there cannot be any disallowance under section 40(a)(i).

37. After hearing both the parties and on perusal on relevant finding given in the impugned orders, we find that, the disallowance had been made by the AO on the ground and on the footing that the payment of technical know-how fees to AVL Austria is taxable in India even if it has been rendered outside India and since, assessee has not deducted

TDS on such payments, therefore, disallowance under section 40(a)(i) should be made. Admittedly, here in this case, the old DTAA provision of 1963 between India and Austria which existed up till September, 2001 would be applicable. The old Article 7 read as under:-

“Amounts paid by an enterprise of one of the territories for technical services furnished by an enterprise of the other territory shall not be subject to tax by the first-mentioned territory except in so far as such amounts are attributable to activities actually performed in the first-mentioned territory. In computing the income so subject to tax, there shall be allowed as deductions the expenses incurred in the first-mentioned territory in connection with the activities performed in that territory.”

From the above, it is clear that if the amount is paid by an Indian enterprise for technical services furnished by enterprise in Austria then same shall not be subject to tax in India except in so far as such amount is attributable to the activities actually performed in India. This article is different from the new Article 7 applicable post September 2001 and, therefore, the benefit of old article has to be given to the assessee in the AY 2000-01. Here in this case admittedly, the activity of rendering of technical services has been performed by the Austrian Company in Austria and the amount has been paid by the Indian enterprise in Austria, therefore, by virtue of Article 7 of DTAA (as was prevalent prior to September, 2001), the amount was not taxable in India and consequently the assessee was not required to deduct TDS on payment. Thus, no disallowance

under section 40(a)(i) can be made in the present case. In the result, ground No.6 as raised by the revenue is dismissed.

38. In ground No.7, the revenue has challenged the disallowance u/s 40A(9) in respect of following expenditures:-

S.No.	Particulars	Amount
1	LML Executive Club	48,000
2	LML Officer's Club	2,80,000
3	LML Ladies Club	2,20,000
4	Employer's Contribution to Workers Benevolent Fund	33,936
	Total	5,81,936

39. The AO has disallowed the said amounts on the ground that, similar disallowance was made in the earlier years. The Ld. CIT(A) has also deleted the said addition after following the appellate orders for the earlier years. Before us, it has been admitted by both the parties that the Tribunal in assessee's own case for the AYs 1997-98, 1998-99 and 1999-00 in the appeal filed by the revenue has confirmed the similar disallowance made under section 40A(9). Accordingly, following the earlier year precedence which is applicable in this year also, this issue is decided against the assessee and in favour of the revenue. Thus, ground No.7 raised by the Department is allowed.

40. In ground No.8, the revenue has challenged the deletion of disallowance on account of pre-operative expenses amounting to Rs.3,76,81,000/- claimed as revenue expenditure.

41. The AO noted that, assessee has reduced the pre-

operative expenses by sum of Rs.3,76,81,000/- which was claimed as revenue expenditure. He had also noted the fact that assessee has reduced amount of Rs.376.18 lakhs from total pre-operative expenditure of Rs.1038.20 lakhs debited in the profit & loss account. The assessee's case was that, during the year the interest on borrowings and other incidental expenses incurred in relation to the expansion project under implementation have been capitalized and carried forward as pre-operative expenditure pending allocation under the fixed assets. The amount of Rs.1038.20 lakhs was capitalized in the books, however, in the return of income the net pre-operative expenditure of Rs.661.39 lakhs was claimed as revenue expenditure. The AO held that, interest income of Rs.376.81 lakhs is to be taxed as income from other sources based on the decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172 (SC) and also the jurisdictional High Court in the case of Ravi Ratna Exports Co. Ltd., 246 ITR 443 and host of other decisions. The Ld. CIT(A) reversed the action of the AO, following the decision of Tata Chemicals Ltd vs DCIT, reported in 72 ITD 1.

42. Before us, the contention of the Ld. Counsel has been that, these pre-operative expenditure was part of ongoing expansion and in any case, there is no requirement to go on to the merits because the amount of Rs.376.81 lakhs, which has been taxed by the AO amounts to double taxation, because the said amount was already reduced by the assessee from the profit and loss account as the same was netted off. He pointed out that the pre-operative expenditure was Rs.1038.20 lakhs which included the

interest and other income of Rs.376.81 lakhs was already reduced and net operative expenditure was claimed, that is, Rs.661.39 lakhs. Thus, the disallowance made by the AO was an arithmetical fallacy. Ld. DR submitted that AO may verify and give consequential relief.

43. After considering the aforesaid submission of the Ld. Counsel, we agree with him that we need not to go into merits of the issue, because already assessee had reduced the said amount of Rs.376.18 lakhs from the pre-operative expenditure which has been added by the AO separately. This is evident from the fact that total pre-operative expenditure was Rs.1038.20 lakhs, out of which interest and other income of Rs.376.81 lakhs has already been reduced and only Rs.661.39 lakhs have been claimed in the P&L A/c. Thus, there was no requirement by the AO to disallow once again the interest and other income of Rs.376.81 lakhs. AO is accordingly is directed to rectify this mistake after verification that if the assessee has already reduced the said amount from the total pre-operative expenditure as stated before us, then no addition should be made. In the result, ground No.8 is treated as allowed in the manner indicated above.

44. In ground No.9, the revenue has challenged the order of the CIT(A) in not treating the expenditure incurred on obtaining "ISO 9002" and "World Class Manufacture Certificate" of Rs.11,30,912/- and Rs.6,23,380/- as capital expenditure. LML had obtained the certificate of "ISO 9002" for which it has paid Rs.11,30,912/- and has also paid Rs.6,23,380/- for obtaining certificate for "world class

manufacturing facility”. The said amount has been claimed as revenue expenditure by the assessee which has been disallowed by the AO as capital expenditure on the ground that these are in the nature of trademark expenditure and had a benefit of enduring nature. The Ld. CIT(A) has deleted the said additions on the ground that the said expenditure was incurred wholly and exclusively for the purpose of business and not in the nature of capital expenditure.

45. After hearing both the parties and on perusal of the impugned order, we find that the payment for obtaining certificate of “ISO 9002”, and “World Class Manufacture Facility”; only conveys that the LML products were manufactured by adhering the international quality and best manufacturing practices. It does not give any vested right to the assessee or assign any special or exclusive right in the nature of trademark as held by the AO, because, it only gives recognition of the product that it was made of good quality and standard. There is no enduring benefit to the assessee giving any impetus to its profit making apparatus. These certificates give value to the products and help the assessee to fairly compete in the market and boost its sale. The benefit if at all is on revenue account. The Ld. Counsel before us has relied upon the decision of Hon’ble P&H High Court in the case of CIT vs Upper India Steel Mfg. and Engineering Co Ltd, reported in [2014] 50 taxman.com 345, wherein the Hon’ble High Court has allowed the expenditure incurred for “ISO 9002” certificate as revenue expenditure. Thus, we do not find any merits in the contention of the AO that payment for getting such certificates for quality products or World Class

Manufacturing Facility is in the nature of trademark and hence is capital in nature. We, thus, confirm the order of the CIT(A) that such an expenditure is revenue expenditure and is allowable under section 37(1). Accordingly we dismiss the ground raised by the revenue.

46. In ground No.10, the revenue has challenged the allowance of Rs.17.59 crores as bad debt by ld. CIT(A).

47. The facts on this issue have already been discussed while adjudicating ground No.5 as above. The Ld. CIT(A) in the impugned order has noted down the following facts:-

“10.1 In the year 1987 the Appellant company had hived off its manmade Fiber business to its wholly owned subsidiary, M/s LML Fiber Ltd. (formerly known as Kanpur Synthetics Ltd) and now known as M/s Esslon Synthetics Ltd. the said business was transferred at book value aggregating to Rs.5356.39 lakhs on a going concern basis and the said transfer was subject to the approval of financial institutions/banks who were the lender to the company. In the year 1990 the approval from financial institutions was received under which the said subsidiary was to be dealing from the Appellant Company and new shareholders or h is nominee were to inject a fresh capital of Rs.14 crores. The said fiber business was valued at Rs.7109 lakhs. The difference between the book value and the revalued price at which the said undertaking was transferred was credited to Profit Loss Account and as far as Computation of Taxable Income was concerned the profit realized on sale of land was offered for tax whereas the surplus amount was credited to the block of assets like building, plant and

machinery, electrical installation as required by the provisions of Income-tax Act, 1961. The company had received upfront payment of Rs.14 crores against the sale of fiber division and balance amount of Rs.27.04 crores was to be received within stipulated period. The sum of Rs.9.45 crores is guaranteed by M/s Saraswati Trading Company, Vaduz where as a sum of Rs.17.59 crores was unsecured. The said M/s Esslon Synthetics Ltd became a sick company under the provisions of SICA and thereafter it was ordered to be wound up by Allahabad High Court vide its Order dated 27.03.1996”.

20.1.1 The Appellant had made a provision in its Books of Account for a sum of Rs.17.59 crores in the F.Y. 1997-98 by way of provision for doubtful debts and the claim was not pursued in view of retrospective amendment made to the Income-tax Act by virtue of which the bad debt was to be allowed only being written off and not upon provision. During the year the Appellant assigned the said debt for a consideration of Re.1/- to its subsidiary M/s Perfect Polycons Ltd and claimed a Long Term Capital Loss by indexing the said sum of Rs.17.59 crores”.

48. The assessee’s case before the CIT(A) to rebut the finding of the AO was that, the part of the amount which is recoverable by virtue of guarantee being written off has no relevance to the issue of allowability of Rs.17.59 crores. The fact that the said amount has been assigned for a price of Re.1/- to a subsidiary company also has no relevance. The impugned issue is to be examined from the angle, whether any outsider would have got more than the sum of Re.1/- on facts of the case when nothing was recoverable. The assessee

had also relied upon the valuation report filed at the assessment stage in respect of such debt and reiterated that the same is a capital asset. Alternatively, it was contended that AO himself has admitted that relevant amount is nothing but a sundry debt which has been written off during the year, then same should be allowed as bad debt. The Ld. CIT(A) after perusing the relevant material and fact observed that, the assessee's claim for long-term-capital-loss is not tenable, however, the assessee is entitled to claim of bad debt and directed the AO to allow the same in case it has been actually written off in the previous year relevant to the assessment year under appeal.

49. Before us, the Ld. Counsel submitted that, this is similar to ground No.12 to the assessee's appeal, wherein, assessee had contended that, it should be allowed as capital-loss.

50. After considering the rival submissions and on perusal of the impugned order, it would be relevant to reiterate the fact that, in the year 1987, LML had transferred its Fibre business to its wholly owned subsidiary M/s Esslon Synthetics Ltd. The book value of the assets was Rs.53.56 crores. The business was transferred as a going concern which was subject to approval from the lenders. The approval of lenders was obtained in August, 30th 1990 and the assets of the Fibre business were valued at Rs.71.03 crores. A difference of Rs.17.59 (71.03 - 53.56) was credited to the Profit & Loss Account for the year ending 31st March, 1991. The total sale consideration which was to be charged from the Esslon was as under:-

Takeover of loan liability due to lenders	Rs.2,999 lacs
Payment on execution of Deed of Conveyance	Rs.1,400 lacs
Payment before March 31, 1992 (Guaranteed by Saraswati Trading Co Ltd).	Rs. 945 lacs
Payment in cash in 28 equal quarterly Installments beginning from April 1, 1991	<u>Rs.1,759 lacs</u>
Total	Rs.7,103 lacs =====

The receivables were shown as loans and advances. Later on, the ESL became a sick company and thereafter, order of winding up was passed by the Hon'ble Allahabad High Court. In pursuance of such an order, a 'provision for bad and doubtful debt' of Rs.17.59 crores was made in the books of account in the financial year 1997-98. The LML later on has assigned the debt of Rs.17.59 crores to M/s Perfect Polycon for a token consideration of Re.1/-, accordingly, the 'provision for bad and doubtful debt' was adjusted against the parties account. LML claimed the loss on assignment as long-term-capital-loss after indexation of Rs.17.59 crores which worked out to Rs.37 crores (approx.). The AO had disallowed the claim on the ground that it was sundry debt, which was outstanding since 1987 and the same was never treated as capital asset by showing either under the head "investment" or "fixed assets". The assignment of such debt had Re.1/- is not genuine. The Ld. CIT(A) held that, it is not the case of long-term-capital-loss *albeit* the assessee is entitled for claim of a bad debt as assessee has written off the debts in the aforesaid manner.

51. We agree with the finding of the CIT(A), *firstly*, that it cannot be a capital asset, because it was money receivable by

the assessee from ESL towards sale consideration. The assessee had treated as a bad and doubtful debt in its books of account in the earlier year which has been written off in this year by way of adjustment against the parties account, because it was assigned to M/s Perfect Polycon which has been taken on a consideration of Re.1/-. *Secondly*, the AO himself had admitted that, it is a sundry debt which is outstanding since 1987. *Lastly*, it is also not disputed that the said amount was receivable and was treated as loans and advances in the books of account which has been written off in the aforesaid manner. Thus, it has rightly been held that the same will be allowable as bad debt. Once the provision for doubtful debt has been debited to the P&L Account and the corresponding provision has been reduced from the debtors account in the Balance-sheet then this would amount to writing off the debt and thus all the conditions laid down in section 36(1)(vii) r.w.s. 36(2) clearly gets fulfilled. This issue has been settled by the Hon'ble Supreme Court in the case of Vijaya Bank Ltd. vs CIT, reported in [2010] 323 ITR 166 which has been followed by the Hon'ble Bombay High Court in the case of CIT vs Tainwalla Chemicals and Plastics LH, reported in [2013] 215 taxman. 153. Thus the said amount would be allowed as a bad debt written off by the assessee and not as a long-term capital loss. Accordingly, we affirm the order of CIT(A) on this score. In the result ground No.10 as raised by the revenue is dismissed.

52. In the result, appeal of the revenue stands partly allowed.

53. Now, we will take-up assessee's appeal in ITA No.3540 of 2004 for AY 2009-10; in various grounds of appeal, the assessee has raised following grounds:-

- Ground No.1: Addition on account of assessable value of goods imported for job work and re-export;
- Ground No.2: Addition of Rs.82,88,848/- written off in the account;
- Ground No.3: Provision for bad and doubtful debts of Rs.63,96,704/- and provision for doubtful advances of Rs.8,86,000/- on the basis of retrospective amendment;
- Ground No.4: Debit balances written off amounting to Rs.27,20,800/-;
- Ground No.5: Disallowance of payment on account of royalty and Technical Know-how Fees disallowed under section 40(a)(i);
- Ground No.6: Disallowance under section 14A of Rs.50,000/-;
- Ground No.7: Disallowance of payment made to clubs of Rs.60,971/-;
- Ground No.8: Disallowance of prior period expenses of Rs.26.27 lacs;
- Ground No.9: Disallowance of amount incurred of Rs.19,90,486/- in respect of expenditure incurred towards purchase of sundry equipment;
- Ground no.10: Disallowance of expenditure incurred towards purchase of Equipment and Tools for Training Centre of Rs.6,29,617/-;

Ground No.11: Addition of Rs.7,46,139/- being 10% of Rs.74,61,398/- on account of gifts to company's Guests and Employees on various occasions; and

Ground No.12: Long term capital loss on assignment of Debt of Rs.37,59,62,087/-.

54. At the outset, the Ld. Counsel submitted that, ground no.2, ground No.6, ground No.7, ground No.9 and ground No.10 are not pressed. Accordingly, these grounds are dismissed as not pressed.

55. Brief facts *qua* the ground No.1 are that, the assessee used to import certain components free of cost from M/s Piaggio BV, the collaborator for performing job work and thereafter such components were exported. As per the arrangement the assessee had to pay the import duty on behalf of the Piaggio and then same was debited to Piaggio account as and when such components were re-exported and refund of custom duty was credited to the Piaggio account. In the year under consideration, LML had paid custom duty of Rs.71.76 lakhs in respect of components imported from Piaggio which were to be re-exported. However, due to the execution of "settlement and clean break agreement", LML was not required to re-export these components and as a consequence the components became the property of LML without any cost. The custom duty recoverable was written off and was claimed as such. The components were used in the business of the LML, that is, for manufacturing of its product.

The relevant facts noted by the AO *qua* this issue and his finding are reproduced hereunder:-

- “ii) The assessee has paid Rs.71,76,026/- as customs duty on account of import of various components meant for re-export to Piaggio. However, due to dispute the products were no more exported and further due to “Settlement and Clean Break Agreement” dated 15th September, 1999, the assessee was neither required to send back the components in the shape of “re-export” nor it could recover customs duty paid on behalf of Piaggio. However, the assessee has claimed that the component was subsequently consumed by it for its own manufacturing activity but in this regard, the assessee did not produce any documentary evidence in support of its contention. Hence in absence of any proper evidence the amount of customs duty paid cannot be allowed as deductible expense to the assessee. It is also worth mentioning that by importing such components with the rider to re-export the same, the assessee has committed an infringement of Customs Law as it has consumed the same for domestic production instead of fulfilling its export obligation. Hence such a sum of Rs.71,76,026/- paid by assessee towards the import of components from M/s Piaggio BV for re-export, which was subsequently consumed by the assessee in its domestic market and this amount written off subsequently from the account of M/s Piaggio BV is nothing but a relinquishment of a business obligation, is added to the income of the assessee, in the light of discussions held in the earlier paragraphs.*
- iv) In continuation to the above, the assessee was asked to furnish a copy of Bill of Entry giving the value of components which has been imported, on which the above referred duty was paid. The same were filed vide letter dtd. 4.3.2003. The*

assessable value as declared for Custom purpose works out as under:

Import Dept. Sr.No.	Date	Amount (Assessable Value of goods imported)
'009398	17/02/99	630,668
'014332	25/02/99	203,361
'007840	04/12/99	507,882
'007239	13/12/96	943,956
'000110	03/02/97	4,825,828
'009403	15/03/97	209,193
'007309	13/06/97	151,096
'019109	31/03/97	619,249
'019110	31/03/97	65,105
'002952	27/05/97	3,936,842
		12,093,180

In this regard this is further to state that on these imported components no purchase consideration has been paid by the assessee to M/s Piaggio as the same were to be exported back to M/s Piaggio. Thus, it can be seen that since the amount of Customs Duty paid as discussed in Point No.(ii) above, could not be recovered as the goods imported were never re-exported. In view of this it is natural that the assessee company consumed imported components for its own purpose and since assessee did not pay any amount towards principal cost of components to Piaggio and further in view of the Settlement & Clean Break Agreement dated 15/11/99, these goods are no more required to be exported back to M/s Piaggio, the liability of assessee to re-export these goods stands extinguished. Hence, the assessee is liable to pay tax on such extinguished business liability. Hence, a sum of Rs.1,20,93,180/- being cost (as assessed by the Customs Department) of goods imported for which no consideration has been paid) and meant for re-export is added to the taxable income of the assessee”

56. Ld. CIT(A) held that custom duty of Rs.71.76 lakhs is allowable because it was in the course of business and the same has been fastened on the assessee on account of execution of Clean Break and Final Settlement Agreement and same is admissible as deduction. However, on the taxing of Rs.1,20,93,180/- being the benefit derived by the assessee by virtue of the relinquishment of the liability, he held that, the value of the goods received free of cost and used in the assessee's business has rightly been subject to the tax by the AO. He rejected the assessee's plea that, since no liability was recorded in the books of account and claimed as deduction, therefore, no notional addition can be made, because the same is misconceived and misplaced. It is an admitted fact that goods in question was used in assessee's business which have been received free of cost to the assessee and as such there was no basis to record any liability in the books of account much less to claim any deduction.

57. Before us, the Ld. Counsel submitted that, as regards the allowance of excise duty of Rs.71.76 lakhs is concerned, the revenue is not in appeal, therefore, the action of the CIT(A) to this extent stands confirmed. On the issue of Rs.1,20,93,180/- being assessable value of components imported, he submitted that components were imported free of cost, therefore, there was no liability towards Piaggio. Accordingly, there is no question of extinguishment of any liability. Even otherwise also, the said sum was never claimed as deduction either in the earlier year or in the year under consideration; therefore, section 41(1) as invoked by the AO cannot be upheld.

58. On the other hand, Ld. DR strongly relied upon the order of the CIT(A) and submitted that, the assessee has derived the benefit by virtue of relinquishment by the Piaggio in wake of "SCB" and, therefore, same has rightly been taxed.

59. We have considered the rival submissions and also perused the relevant finding given in the impugned order. From the facts as discussed above, it is clear that the assessee used to import certain components free-of-cost from Piaggio BV for performing the job work and re-export the same after completion of the job. As per the arrangement the LML used to pay the import duty on behalf of Piaggio and when such components were re-exported, the refund of custom duty was credited to the Piaggio's account. The assessee had paid sum of Rs.71.76 lakhs as a custom duty on components imported which was to re-exported to Piaggio. This allowance of excise duty has been deleted by the CIT(A) which has not been challenged by the revenue. In the wake of execution of "Settlement and Clean Break Agreement", now the LML was not required to re-export the said components and accordingly, the components imported from Piaggio had become the property of the assessee which was used in the manufacturing of the assessee. So far as the assessee is concerned, no cost was incurred by the assessee for such component and it was never claimed as deduction either in this year or in the earlier years. As admitted by the AO, no purchase consideration has been paid by the assessee for the components. If any component has become free of cost which has been used in the manufacturing then it only goes to reduce the cost of the purchase or manufacturing cost and enhance the profit of the manufactured product on sale. We

are unable to appreciate as to how such a value of component can be brought to tax in the hands of the assessee, because to the extent assessee gets the benefit on the cost, it will be reflected in the price of the manufactured product and thereby giving a higher profit on the sale of the said product. There is no liability towards Piaggio and accordingly, it cannot be held that there is any extinguishment of any liability which needs to be taxed in this year. The Ld. CIT(A) has held that the components received without any purchase price constitutes the income cannot be upheld, because the income or profit will result only if the said component is used in the manufacturing of the product and when the product is ultimately sold. The profit imbedded on account of such free component would only be determined at the time of sale of the product and then profit would be taxed and not when the said component (free of cost) has been used, that is, at the time of the purchase itself. Thus, in our opinion, such an addition is not called and same is directed to be deleted. Resultantly ground No. 1 as raised by the assessee is treated as allowed.

60. In ground No.3, the assessee has challenged the disallowance of provision for doubtful debts of Rs.63,96,704/- and provision for Doubtful Advance of Rs.8,86,000/-.

61. The AO held that the provisions made for doubtful debt are not crystallized liabilities. The amount has not been actually written off in the books of accounts, therefore, assessee could not have claimed these expenses and in the computation of income also such an amount has not been

added back by the assessee. Accordingly, disallowed and added back the same to the income of the assessee.

62. The Ld. CIT(A) too has confirmed the action of the AO on the ground that in view of amendment made in the provision of the Act, such a provision for doubtful debts.

63. Ld. Counsel's submission before us has been that, LML has debited the individual account of the debtors with the provision for doubtful debts and provisions for doubtful loans and advances. In support, he referred to the relevant pages in paper-book-II at pages 449 to 451. He further submitted that, if a provision for doubtful debt is debited to the profit and loss account with simultaneously reduction from the debtors account is made then; it would be allowable as deduction. In support, he strongly relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs Tainwalla Chemicals and Plastics, reported in [2013] 215 taxman. 153 and catena of other decisions including that of the Hon'ble Supreme Court in the case of Vijaya Bank (*supra*) and TRF Ltd vs CIT, reported in [2010] 190 taxman.391. On the other hand, Ld. DR strongly relied upon the order of the CIT(A).

64. After considering the relevant submissions of the assessee and on perusal of the impugned orders, we agree with the contention of the Ld. Counsel that if a provision for doubtful debt is debited to the P&L account and simultaneous reduction from the debtors account is made, then same amounts to writing off in the books of account and should be allowed as deduction under section 36(1)(vii). This principle has been reiterated by the Hon'ble Bombay Court in

the case Tainwalla Chemicals and Plastics (*supra*). However neither the AO nor the CIT(A) has discussed this issue in detail, accordingly, we direct the AO to examine the issue on merits and in the light of principle laid down by the Hon'ble Bombay High Court and Hon'ble Apex Court and decide the same after giving opportunity to the assessee to present its case. With this direction, the issue raised by the assessee in ground No.3 is treated as allowed for statistical purposes.

65. In ground no.4, the assessee has challenged various bad debts written off aggregating to Rs.27,20,806/-, which consists of three amounts, viz., Rs. 21,37,200/- paid to M/s Modern Trading Co.; Rs. 3,48,874/- paid as custom duty for import; and Rs. 2,34,732/- consisting of various debit balances.

66. The facts in brief are that the assessee has written off sum of Rs.21,32,700/- paid to M/s Modern Trading Company for procurement of license of Rs.4.11 crores for which assessee could not established as to for which purpose licenses were purchased, whether for the capital or revenue and why the desired import on these licenses could not be affected. Further, the assessee has paid custom duty of Rs.3,48,874/- for import of certain scooters for the purpose of exhibiting the same in the Indian market and thereafter re-exporting the same. However, in this case, the assessee did not export the scooters since it was used in the Indian market and custom duty paid could not be recovered, which was written off. Regarding write off of debit balances aggregating to Rs.2,34,732/-, the AO noted that the LML could not justify the reason to write off nor could establish the genuineness for

such write off. The Ld. CIT(A) has confirmed all the disallowance on the ground that nothing has been brought on record with regard to substantiate the write off of debit balances.

67. Before us, the Ld. Counsel submitted that, details of party-wise write off were submitted during the course of assessment proceedings along with the reasons to why these were written back and under which circumstances. Otherwise also, he submitted that the same can be allowed as business loss.

68. On the other hand, Ld. DR strongly relied upon the order of the CIT(A) and AO.

69. After considering the submissions of the parties and the finding given in the impugned orders, we find that, so far as sundry balance written off for the amount of Rs.21,37,200/- receivable from M/s Modern Trading Company, it is not clear for what purpose license of Rs.4.11 crores was procured, whether for trading purpose or for acquisition of capital asset. The assessee could not establish or bring any proof, under what circumstances, the assessee could not use the license and for what purpose it was purchased and why the desired import on these licenses could not be affected. For any claim of business expenditure or claim of write off or a business loss, the onus is on the assessee as to how it related to his business and also has to give genuine reasons with evidence for incurring the expenses and why it has been written off. In our opinion, without there being any material on record and any satisfactory explanation, we agree with the finding of the

lower authorities that to the extent of amount written off of Rs.21,37,200/- there is no material to substantiate the assessee's claim and onus cast upon the assessee has not been discharged therefore, it has rightly been disallowed.

70. As regards the various debit balances totaling to Rs.2,34,274/- also, we find that assessee could not establish the reason for writing off and could not establish the genuineness of the entire transaction. Thus, on this score also, the order of the CIT(A) is confirmed.

71. However, with respect of Rs.3,48,874/- being custom duty written off on export of certain scooters for exhibiting the same in Indian market, we find that assessee could not re-export the scooters as it was used in the Indian market and as such excise duty could not be recovered. Thus, custom duty which was paid by the assessee in the course of its business and once it was not recovered; then the same has to be allowed as deduction or loss while computing the income from profits and gains under section 28. The assessee had taken a business decision for importing of certain scooters for exhibiting the same in the Indian market for which it had to pay the custom duty. Thus, the said amount incurred was during the course of the business and write off of such amount which was not recoverable is to be allowed as deductible expense. Thus, the claim of Rs.3,48,874/- is clearly allowable and we order accordingly. Thus, ground no.4 is partly allowed.

72. In ground No.5, the assessee has challenged various payment made towards 'Royalty' and 'Technical Know-how'

which has been disallowed. The details of such payment are as under:-

Sl. No.	Party Name	Nature	Amount Rs.
1	M/s Daelim Motors Co. Ltd., Korea	Royalty	5,268
2	M/s China Terminal & Electrical Co. Ltd., Taiwan	Royalty	2,16,546
3	M/s Daelim Motors Co. Ltd. S. Korea	FTS	53,41,830
4	M/s Sun Electric Co, S. Korea	FTS	9,13,995
5	M/s Youngshin Industrial Corporation, S. Korea	FTS	9,89,470
6	Ricardo, UK	FTS	15,09,196

To the extent of payment royalty made to M/s Daelim Motors Co. Ltd, Korea and M/s China Terminal & Electrical Co Ltd., Taiwan, the same has not been pressed by the Ld. Counsel, therefore, disallowance of payment made to these two parties is confirmed.

73. As regards the payment on account of “fee for technical services” paid to various parties, the AO has disallowed the same on the ground that, assessee has failed to deduct TDS on such amount and same cannot be allowed as deduction. This has been confirmed by the CIT(A) also.

74. Before us the Ld. Counsel submitted that, as per the terms of certain agreement which has been placed in the paper book, all these services have been rendered by non-residents outside India and, therefore, the payment made to the non- resident entities for services rendered outside India cannot be held to be taxable in India. In support, he referred to the documents placed in the Paper-book-III on pages 508 to 512. Thus, no disallowance can be made on ground that no TDS has been deducted.

75. Before us, Ld. DR submitted that, now in wake of *Explanation* to section 9(1)(vii) brought by the Finance Act, 2010 with retrospective effect from 01.06.1976, even if the non-resident has provided services outside India then also same shall be treated as taxable in India as if the services has been given in India. Thus, in view of this *Explanation*, now it cannot be held that assessee was not liable to deduct TDS because law has been amended retrospectively. On the query raised by the Bench, whether any make available of technology or technical know-how under the respective articles of DTAA has been made, Ld. DR submitted that, matter can be restored back to the file of the AO to examine this aspect.

76. After considering the rival submissions and on perusal of the impugned orders, we find that, it has not been disputed that the payment made for “fee for technical services” has been made on the services which has been provided or rendered outside India. These are evident from the service agreements which have been placed in the paper-book. Before us, Ld. DR has heavily relied upon the *Explanation* inserted by the Finance Act 2010, w.r.e.f. 01.04.1976. However, at the time of making the payment, there was no such provision under the Act by which a non-resident was liable to be taxed in India even when the services were rendered outside India, therefore, it was impossible to hold that assessee should have withhold the tax at the time of making the payments. It is an admitted position that in wake of decision of Hon’ble Supreme Court, in the case of Ishikawajima-Harima Heavy Industries Ltd. v. DIT, reported in [2007] 288 ITR 408 the position of law was that, if the services which are source of income, which is

sought to be taxed in India have to be rendered in India as well as utilized in India so as to be held to be taxable in India. Both the conditions have to be satisfied, that is, the services that the source of income should be in India and services have been rendered in India. However, if the services have been rendered outside India then same was held to be outside the purview of taxable in India. Once this is the admitted position, then it is very difficult to hold that, assessee should have deducted TDS on such a payment when there was no law that the payment is taxable in India. Here, the maxim of "*lex non cogit ad impossibilia*, that is, the law of the possibly compelling a person to do something which is impossible, that is, when there is no provision for taxing an amount in India then how it can be expected that a tax should be deducted on such a payment. This view has been upheld by in catena of decisions wherein, it has been held that, assessee cannot held to be liable for deducting TDS in view of the retrospective amendment which has come at a much later date. Thus, without going into the aspect of 'FTS' clause in DTAA's, we hold that, at the relevant time while making the payment, assessee was not liable to deduct TDS under the domestic law. Accordingly, disallowance under section 40(a)(i) could not have been made by the AO.

77. In ground No.8, assessee has challenged the disallowance of prior period expenses of Rs.26.27 lacs.

78. The assessee's claim before the AO was that, this income has been crystallized in the impugned year; however, the AO disbelieved the contention of the assessee on the ground that assessee could not provide any documentary evidences and could not provide details of prior period expenses and break-up of prior period expenses and also did not establish as to why these expenses were not debited to

the profit and loss account in the relevant assessment year. Thus in absence of any detail he disallowed the claim. The Ld. CIT(A) too has confirmed the action of the AO on this footing only.

79. Before us, the Ld. Counsel submitted that, assessee did give detailed justification as to how the amount of expenses got crystallized during the year and in support of the same referred to the relevant documents placed in the Paper-book-II at pages 453 and 545. He submitted the said expenses crystallized during the year only on the basis of the communication of the parties; therefore, question of claim in the earlier years does not arise. Now, in view of the decision of Hon'ble Supreme Court in the case of Taparia Tools Ltd Vs. JCIT, reported in [2015] 55 taxmann.com 361, the same needs to be allowed. In the said case, the assessee issued debentures and offered the investors an option to get one time upfront discounted interest. The interest so paid was treated as deferred revenue expenditure in the books of account, but it was claimed fully for income tax purposes. The claim of the assessee was held to be allowable by Hon'ble Supreme Court.

80. After considering the material placed on record it is seen that the details of prior period expenses have given in the paper book at page 453, on perusal of the same it is seen that the expenses are on account of insurance expenses of Rs.70,389/-; raw material components purchase of Rs.7,79,229/-; amount of Rs.12,86,478/- for contract of paint given to the Asian Paints Ltd; amount of Rs.5,07,215/- relating to Modi Rubber Factory; interest to others, etc. The assessee has given the reasons as to why these liabilities have

been crystallized in this year. However, neither the AO nor the CIT(A) have discussed this issue in proper perspective, therefore, we are of the opinion that matter should be restored back to the AO to examine this issue afresh after considering assessee's submission and also in the light of the decision laid down by the Hon'ble Supreme Court in the case of Taparia Tools Ltd (*supra*). Accordingly, ground No.8 is allowed for statistical purposes.

81. In ground No.11, the assessee has challenged the addition on account of gift to various employees on various occasions. The AO has disallowed 10% of the expenses amounting to Rs.7.46 lakhs which has been confirmed by the AO on ad-hoc basis. The assessee's submission has been that the same is based on surmises, conjectures and no proper reasoning has been given for adhoc disallowance.

82. After considering the rival submission it has been seen that, the expenses of Rs.74,61,398/- have been debited to P&L Account towards giving gifts to company's guests and company's employees. The AO has made the adhoc disallowance @10% on the ground that these expenses cannot be held to be incurred wholly for the business purpose. Such an addition has been confirmed by the first appellate authority also on estimate basis @10% of Rs.74,61,398/-. Though there is some degree of adhocism in such a disallowance, however, the onus was on the assessee to show that entire expenditure debited is wholly and exclusively for the purpose of business and there is no element of non-business-purpose or for any personal nature expenditure. In case of the company though there cannot be any expenses of

personal nature, however, in the present case assessee has mainly stated that the gifts have been given to the guests but why such an expensive gifts were given to the guests has not been specified. Thus, the element of non-business purpose is inherent in such an explanation, therefore, we do not find any reason to deviate from the disallowance as confirmed by the CIT(A). Accordingly, ground no.11 is dismissed.

83. So far as the issue raised in ground No.12, we have already decided this issue while adjudicating ground No.10 of the revenue's appeal for AY 2000-01, wherein, we have already held that it is not case of Long Term Capital loss *albeit* it is a case of bad debt written off which has been allowed in favour of the assessee. Accordingly, ground No.12 is dismissed.

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

85. Now, we shall deal with revenue's appeal being ITA No3666/Mum/2011 for AY 2006-07, vide which following grounds have been raised:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance of interest of Rs.1,76,12,640/- attributable to the interest free advance to associated concern, VCCL Ltd. amounting to Rs.1467.72 lacs without appreciating that the assessee company had incurred huge interest on borrowed funds.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to delete Rs.113.4 lakhs the disallowance of interest on account of dues from M/s Ession Synthetics Ltd.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in appreciating the fact that M/s Ession Synthetic Ltd is an associate concern of the assessee

from whom it has not recovered outstanding deleting disallowance of interest of Rs.945 lakhs attributable to the interest free advance to associated concern, VCCL Ltd. without appreciating that the assessee company had incurred huge interest on borrowed funds”.

86. It has been admitted by both the parties that, ground no. 1 & 2 are similar to revenue’s grounds No.4 and 5 for the assessment year 2000-01. Accordingly, our finding given therein will apply *mutatis mutandis* on the impugned issues as similar facts are permeating in this year also, therefore, following the our conclusion in the said appeal both the grounds raised by the revenue are treated as dismissed.

87. As regards to ground No.3, it has been admitted by both the parties that the same is not arising out of CIT(A)’s order and, therefore, same is dismissed as infructuous.

88. In the result, appeal of the revenue stands dismissed.

To sum-up:

Revenue’s appeal as well as Assessee’s appeal for AY 2000-01 stands partly allowed and revenue’s appeal for AY 2006-07 stands dismissed.

Order pronounced in the open court on 21st June, 2016

Sd/-
 (जी.एस. पन्नू)
 लेखा सदस्य
 (G S PANNU)
ACCOUNTANT MEMBER

Sd/-
 (अमित शुक्ला)
 न्याईक सदस्य
 (AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 21st June, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -III/ Concerned____, Mumbai.
 - 4) The CIT -3/ Concerned____, Mumbai.
 - 5) विभागीय प्रतिनिधि "एल", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "L" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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

*चव्हान व.नि.स

*Chavan, Sr.PS