

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4124/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2007-08)

DCIT Circle - 3(1), R. No. 607, 6 th floor, Aayakar Bhavan, Mumbai - 400 020.	बनाम/ v.	M/s Amforge Industries Ltd., 108 Reheja Chambers, Free Press Journal Marg, Nariman Point, Mumbai 400 021.
स्थायी लेखा सं./PAN : AAACA8756A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by	Ms. Kusum Bansal
Assessee by :	Shri B.V. Jhaveri

सुनवाई की तारीख / **Date of Hearing** : 29-6-2016

घोषणा की तारीख / **Date of Pronouncement** : 26-09-016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue, being ITA No. 4124/Mum/2014, is directed against the appellate order dated 20th March, 2014 passed by learned Commissioner of Income Tax (Appeals)- 5, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2007-08, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 30th December, 2009 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the Revenue in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s.14A of the Income-tax Act, 1961 to Rs.1,00,000/- as against Rs.2,93,198/- made by the AO without appreciating the fact that assessee has made substantial investment during the previous year resulting into earning of exempt income."

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance of Rs.1.99,00,801/- made by the A.O on account of provision for write off of the Dies without appreciating the fact that no actual sale or disposal of Dies has taken place during the year of the old Dies which has been shown as written off and whereas actually the amount written off is in the nature of provision only."

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of debit balance of creditors written off to the tune of Rs.69,55,477/- without appreciating the fact that the assessee failed to prove that the advances were given for the purpose of business and efforts were made for collection of the amounts advanced to the sundry creditors."

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made by the AO by disallowing the sundry balances written off without appreciating the fact that assessee has not been able to explain the nature of such receivable amount and the same shall be treated as the amount paid by the assessee for internal settlement in respect of valuation of various balance sheet items in the scheme of demerger."

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

3. The brief facts of the case are that the assessee company is stated to be engaged in the business of manufacturing of automobile forgings, automobile & auto parts.

4. It was observed by the A.O. that the assessee has shown dividend income amounting to Rs.10,19,208/- which was claimed as exempt income u/s 10(34) of the Act. However no disallowance was made by the assessee u/s 14A of the Act of expenditure incurred in relation to earning of exempt income. The assessee was asked as to why the expenditure incurred for earning of the exempt income should not be disallowed u/s 14A of the Act. In reply, the assessee submitted that the assessee has not incurred any specific expenditure for earning of the exempt income, however, the assessee has disallowed an amount of Rs. 10,000/- towards expenditure incurred in relation to the earning of the exempt income u/s. 14A of the Act. The contention of the assessee was rejected by the A.O. . As per the A.O., the expenditure incurred by the assessee in relation to earning of exempt income is to be disallowed u/s. 14A of the Act. The expenditure has been incurred for the day to day activities of the assessee company, a part of which is relatable to the earning of the dividend income of Rs. 10,19,208/- which had been claimed as exempt by the assessee u/s 10(34) of the Act. The A.O. relied on the decision of Special Bench of ITAT in the case of Daga Capital Management Ltd. (2009) 117 ITD 169(Mumbai)(SB), whereby it was held that Section 14A of the Act is a special provision which deals with disallowance of expenditure incurred by the assessee in relation to income which does not form part of total income. The expenses falling under any head or section which are otherwise deductible as business expenditure or under other respective heads would call for disallowance to the extent to which those expenses have been

incurred in relation to earning of income exempt from tax. Thus, the A.O. made the disallowance of expenses relying upon provisions of Section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 @ 0.5% of the average value of investments of Rs.5,86,39,500/- held by the assessee, which disallowance worked out to Rs. 2,93,198/- u/r 8D(2)(iii) of Income Tax Rules, 1962 and was disallowed by the AO while computing income of the assessee vide assessment order dated 30-12-2009 passed by the AO u/s. 143(3) of the Act.

5. Aggrieved by the assessment order dated 30-12-2009 passed by the A.O. u/s 143(3) of the Act, the assessee filed its first appeal before the Id. CIT(A) whereby the assessee reiterated the submissions made before the A.O. . The Id. CIT(A) observed that the assessee has made investments in mutual funds as well as invested in equity shares of four public limited companies listed on stock exchanges. The A.O. applied Rule 8D of Income Tax Rules,1962 read with Section 14A of the Act , and computed disallowance u/r 8D(2)(iii) of Income Tax Rules, 1962 @ 0.5% of the average value of investment at Rs. 2,93,198/- read with Section 14A of the Act and disallowed the same while computing income of the assessee. The Id. CIT(A) observed that the year under consideration is assessment year 2007-08. The assessee contended that as held by the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. CIT, (2010) 328 ITR 81(Bom.), Rule 8D of Income Tax Rules, 1962 is applicable from the assessment year 2008-09 and it cannot be applied for the current assessment year 2007-08 under appeal. It was submitted that the assessee has made a reasonable disallowance of Rs. 10,000/- u/s 14A of the Act and no further disallowance is called for. It was submitted that the assessee had made investments in mutual funds for which

a form is to be filled and a cheque is to be issued for making investment hence no further clerical exercise was required which entails expenditure. It was further submitted that investments in shares have been made through broker and the brokerage amount is not claimed as expenditure but it was treated as cost of the investment. Thus, it was submitted that the disallowance made by the A.O. u/s 14A of the Act of Rs. 2,93,198/- be deleted. The assessee filed additional evidences and the learned CIT(A) called for remand report from the AO. The AO in remand report justified the disallowance of Rs.2,98,198/- u/s 14A of the Act. It was submitted in remand report that the AO has recorded satisfaction in length to establish the justification of application of disallowance u/s 14A of the Act. Thus, it was submitted in remand report that the disallowance of Rs.2,98,198/- u/s 14A of the Act be confirmed.

The ld. CIT(A) observed that the assessee's contention that Rule 8D of the Income Tax Rules, 1962 is not applicable for the assessment year 2007-08 is correct. However, reasonable disallowance of expenditure incurred in relation to earning of exempt income has to be made u/s 14A of the Act. The assessee's investments as on first and last day of the previous year were Rs. 702.99 lacs and Rs. 469.80 lacs respectively and the assessee has earned exempt income by way of dividend of Rs. 10,19,208/-. The assessee has itself made disallowance of Rs. 10,000/- u/s 14A of the Act. No further expenses were claimed to have been incurred but no basis/ details have been given by the assessee to arrive at the disallowance of Rs.10000/- u/s 14A of the Act. The ld. CIT(A) held Rule 8D of Income Tax Rules, 1962 is not applicable prior to assessment year 2008-09 but that the said method provide basis to arrive at an average expense on proportionate basis related to exempt income even

for earlier years, the ld. CIT(A) restricted the disallowance of expenses incurred in relation to earning of exempt income , u/s 14A of the Act to Rs. 1 lac and directed the A.O. to give appeal effect after adjusting the disallowance of Rs. 10,000/- voluntarily disallowed by the assessee u/s 14A of the Act, thus confirming the addition to the tune of Rs.90,000/- , vide appellate order dated 20-03-2014 passed by learned CIT(A) .

6. Aggrieved by the appellate order dated 20-03-2014 passed by the ld. CIT(A), the Revenue is in appeal before the Tribunal.

7. The ld. D.R. submitted that the A.O. has made the disallowance of Rs. 2,93,198/- towards expenditure incurred in relation to earning of exempt income u/s 14A of the Act keeping in view that the assessee has earned dividend income of Rs.10,19,208/- which was claimed exempt u/s 10(34) of the Act , which is very reasonable disallowance keeping in view the investment portfolio of the assessee which is to the tune of Rs702.99 lacs as at 31-03-2006 and Rs.469.80 lacs as at 31-03-2007. The assessee has earned exempt income to the tune of Rs. 10,19,208/- by way of dividend which is claimed exempt u/s 10(34) of the Act. Further, the ld. D.R. supported the order of the A.O.

8. The ld. Counsel for the assessee, on the other hand, relied on the order of the ld. CIT(A) and submitted that the ld. CIT(A) has rightly restricted the disallowance u/s 14A of the Act to Rs. 1lac.

9. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee has received

dividend income of Rs. 10,19,208/- which income was claimed as exempt from tax u/s 10(34) of the Act. The assessee has made investment in mutual funds and in the shares of listed public limited companies. The assessee's investments as on first day of the previous year were Rs. 702.99 lacs and the last day of the previous year was Rs. 469.80 lacs. The A.O. has applied Rule 8D of the Income Tax Rules, 1962 while computing disallowance u/s 14A of the Act of the expenditure incurred in relation to earning of exempt income, however, as per the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. CIT, (2010) 328 ITR 81(Bom.) wherein it was held that Rule 8D of Income Tax Rules, 1962 cannot be applied for the assessment year 2007-08 and earlier years for computing disallowance u/s. 14A of the Act of the expenditure incurred in relation to earning of exempt income in view of decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited(supra). However, Reasonable disallowance has to be made in view of provisions of Section 14A of the Act to disallow expenditure incurred in relation to earning of exempt income having regard to the accounts of the assessee as per mandate of Section 14A of the Act. We have observed that the assessee has earned dividend income of Rs. 10,19,208/- which was claimed as exempt income u/s. 10(34) of the Act and the ld. CIT(A) has restricted the disallowance u/s 14A to Rs. 1 lac. In our considered view, the disallowance of Rs. 1 lac u/s 14A of the Act keeping in view factual matrix of the case is quite reasonable. The A.O. has not undertaken any exercise to work out the disallowance having regard to the accounts of the assessee and merely applied Rule 8D of Income Tax Rules, 1962 in a mechanical manner which cannot be applied for the assessment year 2007-08 and earlier years in view of Hon'ble Bombay High Court decision in the case of Godrej and Boyce Manufacturing Company

Limited(supra) . Keeping in view of the peculiar facts and circumstances of the case , the ground raised by the Revenue in this appeal w.r.t. computation of disallowance u/s 14A of the Act of the expenditure incurred by the assessee in relation to earning of exempt income lacks merit and is hereby dismissed and we confirm the disallowance u/s 14A of the Act to be at Rs 1 lacs for the assessment year 2007-08 as sustained by learned CIT(A). Thus, the order of the learned CIT(A) in this regard is upheld/sustained in which we donot find any infirmity in the order of learned CIT(A). This disposes of ground no1 raised by the Revenue. We order accordingly.

10. Ground No. 2 raised by Revenue in this appeal is with respect to the deletion of disallowance by learned CIT(A) of 1,99,00,801/- with respect to addition made by the A.O. on account of provision for write off of the dies without appreciating the fact that no actual sale or disposal of dies has taken place during the year of the old dies which has been shown as written off whereas actually the amount written off is in the nature of provision only.

11. The brief facts of the case are that the assessee has claimed deduction of Rs. 1,99,00,801/- on account of write off of old and obsolete dies. The A.O. asked the assessee to justify the allowability of the same with necessary evidences in respect of disposal, sale, etc., of the dies whereby the assessee submitted that it has written off the old and obsolete dies as per accounting policy. It was submitted that the write-off is difference in valuation of dies and the cost at which it is being carried in the Balance Sheet, as on 31-03-2007. The A.O. held that the claim of the assessee is not allowable as the amount written off was in the nature of provision only. The A.O. held that during the year, no actual sale or disposal of dies has taken place, which may give rise to

business loss. The amount written off cannot be claimed during the relevant year and it may be allowable only when actual event disposing off the dies takes place. Accordingly, the A.O. disallowed the deduction of Rs. 1,99,00,801/- claimed by the assessee on account of write off of dies vide assessment order dated 30-12-2009 passed by the AO u/s. 143(3) of the Act.

12. Aggrieved by the assessment order dated 30-12-2009 passed by the A.O. u/s. 143(3) of the Act, the assessee filed its first appeal before the Id. CIT(A).

13. Before the Id. CIT(A), the assessee contended that the assessee company is in the business of manufacturing automobile forging for which on regular basis the assessee company in-house manufactures dies and moulds. It was submitted that pursuant to the Scheme of Arrangement between the assessee and M/s Mahindra Forging Ltd.(hereinafter called "the MFL")(Earlier known as Mahindra Automotive Steels Private Limited), the Chakan Plant of the assessee was demerged from the assessee company and merged with MFL. Till the year ended 31st March, 2006 , the assessee company was having two plants at Chakan and Chinchwad both located at Maharashtra. The Chakan Plant was producing the forged articles all of which were suitable for four wheelers. The Chinchwad Plant was producing the forged articles all of which were mainly suitable for two wheelers. Since M/s. MFL took over the business of Chakan Plant, M/s MFL requested the assessee not to compete with them in the manufacture of forged articles similar to the ones produced at Chakan Plant and accordingly Non-Compete Agreement was entered into. It was submitted that it was the accounting practice of the assessee company to claim deduction of the dies manufactured and consumed during the year. Similarly obsolete dies were being written off from time to time. Attention was

invited to Schedule 21 to the Audited Account wherein accounting policies are given which is reproduced as under:-

“(iv) Inventories

Raw material & Components, Stores and Spares, Die Steel Blocks are valued at cost. Cost is reckoned on "FIFO" basis.

Work in Progress is valued at estimated cost.

Finished Goods are valued at lower cost or net realizable value.

Dies are valued at cost, less amortization/write offs based on expected life and usage till the year end.”

The assessee also drew the attention of the Id. CIT(A) with respect to the details of stock of obsolete dies for assessment years 2001-02 to 2012-13 and submitted that perusal of these charts will reveal that in between assessment years 2001-02 to 2009-10 the assessee company had manufactured new dies every year which were capitalized and at the same time the assessee company has claimed deduction of the dies consumed every year and in assessment years 2001-02, 2002-03, 2005-06 and 2006-07, the assessee company had written off the obsolete dies as per the method of accounting policy followed by it. The assessee company submitted that it has demerged its Chakan Plant which was manufacturing the forged articles suitable for four wheelers, therefore, all the dies which were being used in the Chakan Plant had become obsolete and of no use for the business of the assessee company. Hence, while inventorising the dies on the last day of the accounting year, as per the method of accounting policy followed the assessee company had written off the obsolete dies of Chakan Plant as well as the

obsolete and unusable dies of Chinchwad Plant lying with it. The obsolete and unusable dies were valued at the net realisable value based on expected life and usages of the said dies. The write off of Rs.199.01 lakhs is only the difference in valuation of dies and cost at which it was being carried in the Balance Sheet. The value was arrived at after taking the physical stock of dies at the end of the year i.e., on 31.3.2007 and the difference between the cost of the dies and their valuation as on 31.3.2007 was debited to the Profit and Loss account being diminution in the value of the dies used for the purpose of business of the assessee company. It was submitted that such decrease or diminution in the value of the dies is required to be allowed as business expenditure in the year under consideration. It was submitted that in assessment years 2001-02, 2002-03, 2005-06 and 2006-07, similarly the assessee had realized that the value of the dies carried in the Balance Sheet has diminished , the said reduction in the value of the dies has been written off by debiting to the Profit & Loss Account which was allowed to the assessee company in respective years by the Revenue. The A.O. rejected the claim of the assessee. The A.O. held that the amount written off cannot be claimed during the relevant year and it may be allowable only when the actual event of disposing of the dies takes place. The assessee submitted that the conclusion of the A.O. to the effect that the amount written off is in the nature of provision is incorrect and contrary to the method of accounting followed by the assessee and prescribed u/s. 145 of the Act. The write off amount of Rs. 1,99,00,801/- is nothing but the reduction in the value of the inventories of dies carried in the balance sheet of the assessee company from year to year. Secondly , as the assessee company had demerged its Chakan Plant, the dies required and used for the said plant had become obsolete and therefore, the assessee had revalued the said obsolete and unusable dies at

the end of the year. It was submitted that the A.O. failed to appreciate that the assessee company had revalued its inventories of dies whereby it was revealed that there were many dies which had become obsolete and unusable and, hence the value of such dies cannot be the cost of the dies reflected in the books of account and accordingly, such dies were valued at the net realisable value which has resulted into write off of the excess cost of dies reflected in the Balance Sheet of the assessee. It was submitted that as the cost of the dies was never claimed as revenue expenditure and the reduction in the value of such dies is required to be allowed as business expenditure or business loss irrespective of such dies were not sold or disposed of. The other reason given by the A.O. was the year of sale the amount realised from such obsolete and unusable dies is the income of the assessee company in that year. It was submitted that in the earlier years such claim of write off of the dies due to diminution in the value of such dies has been allowed. It was submitted that the obsolete and unusable dies were sold by the assessee company in the previous year relevant to assessment year 2012-13 for Rs. 99,93,400/- and the said amount is offered as income for taxation by the assessee company.

The learned CIT(A) called for remand report from the AO , wherein the AO in remand report justified the disallowance of Rs.1,99,00,801/- as no actual sale has taken place of old and obsolete dies and such write off is in the nature of provision only which as per the AO can be allowed in the year of actual sale.

The ld. CIT(A) after considering the submissions of the assessee, allowed the appeal of the assessee and directed the A.O. to delete the additions of Rs.1,99,00,801/- made on account of write off of old and obsolete dies being

the difference in the value at which the said dies were carried in the Balance Sheet as at 31-03-2007 and the value arrived at after taking physical stock of the dies as at 31-03-2007, vide appellate orders dated 20-03-2014 passed by learned CIT(A).

14. Aggrieved by the appellate order dated 20-03-2014 passed by the ld. CIT(A), the Revenue is in appeal before the Tribunal.

15. The ld. D.R. submitted that the assessee has written off an amount of Rs. 1,99,00,801/- on account of write off of dies. The ld. D.R. took us through the assessment order and submitted that write off is merely a provision and the said dies were not sold during the previous year relevant to the instant assessment year and it is merely a provision for reducing value of dies in the books and to reduce profits. The ld. D.R. relied upon the order of the A.O..

16. The ld. Counsel for the assessee submitted that pursuant to the Scheme of Arrangement/demerger, Chakan plant of the assessee was demerged and taken over by MFL. The assessee entered into agreement with MFL for demerger of Chakan Plant. In view of agreement with MFL pursuant to demerger of Chakan Plant, the assessee cannot produce the same items as per the agreement with MFL so as to compete with MFL which is not allowed in view of terms and condition of agreement . The ld. Counsel submitted that these dies have become obsolete and cannot be used. He drew our attention to page 46 of the paper book whereby the details have been given w.r.t dies for the year from 2001-02 to 2012-13. He submitted that these dies were sold in the assessment year 2012-13 for Rs. 99,93,400/- and the said amount is

offered as income of the assessee company for taxation in the assessment year 2012-13. The learned counsel submitted that the matter may be set aside to the file of the A.O. so that the assessee can produce all the relevant documents for verification before the AO and then the matter may be adjudicated by the AO on merits in accordance with law. Further, the Id. Counsel relied upon the order of the Id. CIT(A).

17. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee has two manufacturing plants, one at Chakan and another at Chinchwad. It is the contention of the assessee that the Chakan plant was demerged and taken over by MFL. It is the say of the assessee that the dies left with the assessee with respect to Chakan Plant cannot be used because of the various restrictions on the assessee due to the non-compete agreement clauses. It is the say of the assessee that now these dies cannot be used by the assessee and also have become obsolete because of the agreement with MFL whereby the assessee agreed not to compete with MFL in pursuant to demerger of Chakan Plant in favour of MFL and non compete-agreement with MFL. As per the assessee these dies were sold in the assessment year 2012-13 for a cost of Rs. 99.93 lacs which has been offered for taxation. All this above contentions of the assessee needs verification and examination both on facts and on legal grounds about the validity and legality of the allowability of the claim of the assessee with respect to write off of old and obsolete dies to the tune of Rs.1,99,00,801/- and in our considered view, the matter/issue needs to be set aside and restored to the file of the A.O. for necessary verification and examination, and de-novo determination of the issue by the AO on merits in accordance with law. The AO shall decide the issue on merits in accordance

with law uninfluenced by any of our observations in this order and shall be entitled to make all necessary and relevant enquiries, verifications and examinations etc. as may deem fit to adjudicate the above issue. The assessee shall be allowed by the AO to produce all necessary and relevant evidences and explanations before the AO which shall be admitted by the AO and the matter be adjudicated by the AO accordingly on merits in accordance with law. Needless to say that proper and sufficient opportunity of being heard be provided to the assessee by the AO in accordance with principles of natural justice in accordance with law. We order accordingly.

18. The next ground i.e. ground no. 3 raised by Revenue is with respect to the deletion by the learned CIT(A) of disallowance of debit balance of creditors written off to the tune of Rs. 69,55,477/- made by AO without appreciating that the assessee failed to prove that the advances were given for the purpose of business and efforts were made for collection of the amounts advanced to the sundry creditors. The last effective ground i.e. ground No. 4 raised by the Revenue is with respect to the deletion by the learned CIT(A) of addition of sundry balances written off of Rs.1,10,00,000/- made by the AO without appreciating the fact that assessee has not been able to explain the nature of such receivable amount and the same shall be treated as the amount paid by the assessee for internal settlement in respect of valuation of various balance sheet items in the scheme of demerger. Both the grounds are taken together.

19. The A.O. observed that the assessee company has written off debit balances of Rs.69,55,477/-. The assessee was asked to substantiate the allowability of such write off with necessary evidences. In reply, the assessee submitted that these are advances paid in earlier years and there were no

chances of any recovery and accordingly the same have been written off but, however, the assessee failed to give the party-wise details of advances made and also failed to prove that the advances given were for the purpose of business. The assessee also did not submitted any evidence regarding the efforts made for the recovery of these advances before the AO and hence claim of the assessee was rejected by the AO vide assessment order dated 30-12-2009 passed by the AO u/s 143(3) of the Act.

Similarly, the assessee has written off the sundry balances of Rs 110 lakhs which had arisen at the time of demerger of Chakan Plant and was to be received from MFL. The assessee was asked to substantiate the allowability of such deduction by producing necessary evidences in its support. In reply, the assessee submitted that these are old debit balances of its closed units which are not recoverable and hence written off. As regards internal claim settlement with MFL , the same has been reduced by MFL from the payments made by them to the assessee. It was submitted that the claim is pertaining to the difference between points taken in due diligence by MFL vis-a-vis representations made by the assessee. The claim is settled on 13th October 2006 and hence the claim has been made in this year. The above claim of assessee was not found acceptable to the AO. The A.O. observed that such amounts were to be received by the assessee as per the scheme of demerger from MFL. The assessee has not been able to explain the nature of such receivable amount. Hence, it was observed by the AO that the above claims of assessee cannot be considered and accordingly was rejected by the AO vide assessment order dated 30-12-2009 passed by the AO u/s 143(3) of the Act.

20..Aggrieved by the assessment order dated 30-12-2009 passed by the A.O. u/s 143(3) of the Act, the assessee filed first appeal before the Id. CIT(A).

21. Before the Id. CIT(A) the assessee reiterated the submissions what were made before the A.O. and submitted that during the year the assessee has written off Rs. 69.56 lacs as debit balances w.r.t. advances made in earlier years by the assessee. These were included in the list of creditors as there may have been earlier transactions with the same parties when the assessee owed them and later gave payments to them. This amount has been netted off against credit balance written back of Rs.22.22 lacs. The amount of Rs.43.05 lacs is pertaining to one of assessee's closed plant i. e., Faridabad. These amounts are written off as there may be no corresponding invoices received after the advance paid by the assessee. The assessee also filed statement giving party-wise details of debit balances in creditors accounts which amounts are written off in the year ended 31st March, 2007. It was submitted that these debit balances in the creditors account were carried forward prior to the accounting year ending on 31st March, 2003 and are reflected in the trial balance of the assessee for all the earlier years. The copies of trial balances reflecting the debit balances in the creditors account which are written off in the year under consideration which were reflected in the assessment years 2002-03 to 2006-07 were submitted. Similarly it was submitted that these advances were given as advance for supply of goods or services in the course of business but the said amount was not claimed as business expenditure in the respective years as the goods were not supplied or partly supplied or the services were not fully rendered and therefore, these amounts were shown as debit balances in the creditors' accounts in the books of the assessee company in the earlier years. In the year under consideration

the assessee company finally decided that these amounts are not recoverable from these parties and therefore, these debit balances in creditors' accounts were written off. It was submitted that the shareholders have vide their Resolution adopted the accounts and copy of the Resolution was submitted and claimed that the amount be allowed as deduction while computing income of the assessee.

Remand report was called for by learned CIT(A) wherein the AO justified the disallowance of Rs. 69,55,477/- being debit balance of creditors as the assessee did not give party wise details of advances given to creditors. The assessee also failed to prove that these advances were given for the purposes of business. The assessee also did not submit proof of efforts made for recovery of these amounts. It was also observed by the AO in remand report that the assessee did not furnish any evidence that the said amounts were offered for taxation by the assessee in the earlier years.

The learned CIT(A) observed that the assessee has provided party wise details of advances. These debit balances were carried forward prior to the accounting period ending 31-03-2003. It was observed by learned CIT(A) that these debit balances in the creditors' account were reflected in trial balance of the assessee for earlier years. It was observed by learned CIT(A) that these amounts were paid as advance to various parties for supply of goods or services in the course of business but the said amount was not claimed as expenditure in the respective years as the goods or services were not supplied or partly supplied and hence reflected as debit balance in creditors account in the books of accounts of the assessee. The learned CIT(A) referred to pages in paper book filed with him to hold that the details worked out to total of Rs.

69.56 lacs which was written off by the assessee and were old balances. It was held that the assessee wrote off the said balances and there is no need to show that the sufficient efforts were made by the assessee for recovery of these advances before writing off the said amount in books of accounts and hence the claim of the assessee was allowed by learned CIT(A) vide appellate order dated 20-03-2014 passed by learned CIT(A).

22. With respect to the disallowance of sundry balances written of Rs. 110 lacs, it was submitted by the assessee before the learned CIT(A) that the A.O. disallowed the amount on the ground that the assessee company could not explain the nature of such receivable amounts. The assessee submitted that the assessee had three plants; plant at Faridabad, plant at Chinchwad, Maharashtra and plant at Chakan, Maharashtra. In the year 2005, the assessee company demerged its Chakan Plant with MFL to sell the same to Mahindra Automotive Steels Private Limited (Now known as MFL) . To this effect, application was filed by the assessee with the Hon'ble Bombay High Court along with the Scheme of Demerger for the Chakan Plant with effect from 1st April, 2005 , which scheme of demerger was approved by the Hon'ble Bombay High Court on 27th March, 2006. During the course of the business, the assessee company had advanced various amounts from time to time to its Chakan Plant and accordingly in the books of the Chakan Plant for the year ended 31st March, 2006, the amounts were outstanding due and payable to the assessee. Similarly, in the books of the assessee there was ledger account known as Chakan Unit, for the year ended 31st March, 2006. As per the aforesaid ledger account the assessee company had to receive a sum of Rs. 3,91,46,732/- as on 31st March, 2006 from the Chakan Plant. As all the assets and liabilities of the Chakan Unit were demerged and transferred to

MFL the assessee company had to receive the aforesaid amount of Rs. 3.91 crores from MFL as the Chakan Plant was taken over by it. As per demerger, the Chakan Plant had sundry debtors as on 31st March, 2005 which were considered to be good of Rs.17.69 crores. On due diligence made by MFL., it was found that certain debtors of Chakan Plant were not good and hence MFL had refused to take the said debtors as part of the Chakan Plant. Similarly as per the Scheme of Demerger the inventory of raw-materials and components, work-in-progress, finished goods, stores and spares and dies which were aggregating to Rs.42.65 crores were not found to be correct by MFL and hence MFL reduced the value of the inventory by Rs. 1.78 crores. These facts were stated by MFL in its letter dated 13-10-2006 which was submitted before the learned CIT(A). Thus, after negotiations between the assessee company and MFL , it was decided that MFL will deduct a sum of Rs. 110 lacs from the amount payable by the Chakan Plant to the assessee company on account of bad debts as well as the reduction in the value of the inventories of the Chakan Plant taken over by MFL. While evaluating these sundry debtors and the inventories it was agreed by the assessee company that those sundry debtors as well as the inventories are bad and not recoverable to the extent of Rs. 110 lacs and hence the assessee company had written off those sundry debtors as well as the inventories in its books of account in the year under consideration and thereafter the balance sundry debtors as well as the inventories were transferred in the Scheme of Demerger to MFL. The assessee accordingly prayed that the said write off amount of Rs. 110 lacs being the sundry debtors and inventories by the assessee should be allowed as deduction while computing the income of the assessee company.

The learned CIT(A) called for remand report from the AO whereby it was observed by the AO that this amount of Rs.110 lacs represents internal claim adjustment as the valuation of MFL differs from that of valuation of sundry debtors and advances and the said amount cannot be claimed as sundry balance written off whereas the same has been paid by the assessee for internal settlement in respect of valuation of various balance sheet items in the scheme of demerger and hence it was requested by the AO to confirm the addition as made in assessment order.

The learned CIT(A) deleted the disallowance by holding that the sundry debtors and inventories were appearing in books of Chakan Plant which was demerged by the assessee and sold to MFL . The MFL has found that inventories and book debts are not good to the tune of Rs.1.78 crores which was stated by MFL in its letter dated 13-10-2006 and ultimately the amount was settled for Rs.1.10 crores and the balance debtors and inventories were taken over by MFL and this amount of Rs.110 lacs was written off by the assessee. Thus, the ld. CIT(A) accepted the contentions of the assessee and the disallowance of Rs. 110 lacs was deleted by learned CIT(A) vide appellate order dated 20-03-2014.

23. Aggrieved by the appellate order dated 20-03-2014 passed by the ld. CIT(A), the Revenue is in appeal before the Tribunal.

24. Before the Tribunal, the ld. D.R. submitted that the debit balance to the sundry creditors to the tune of Rs. 69.56 lacs were written off and similarly sundry debtors and inventories to the tune of Rs.110 lacs have been written off. Proper and complete details were not submitted by the assessee before

the AO in assessment proceedings nor in remand report proceedings . The ld. D.R. relied on the order of the A.O. and submitted that verification and examination of the both the claims of the assessee is required in this regard by the Revenue as to the legality and validity of the claims filed of the assessee.

25. The ld. Counsel for the assessee, on the other hand, submitted that complete details were given vide paper book pages 48,55 & 57. The ld. Counsel also invited our attention to paper book page 136-37 and 158 and contended that all the details were given to justify the bonafide of the claims made by the assessee. The ld. Counsel also drew our attention to the agreement entered into with MFL,(Earlier known as Mahindra Automotive Steels Private Limited) which is placed at paper book page No. 158-180 and contended that deduction should be allowed on merits.The learned counsel relied on orders of learned CIT(A).

26. We have heard the rival contentions and also perused the material available on record. We have observed that the assessee has written off of sundry advances to the tune of Rs. 69,55,477/- and also there was a claim of deduction by MFL of Rs. 1.78 crores in the scheme of demerger of Chakan Plant whereby there was a claim of diminution in the value of debtors and inventories by MFL from the assessee , which was settled for at Rs.1.10 crores between MFL and the assessee whereby MFL will deduct these amounts from the consideration payable to the assessee and the assessee wrote off the said amount in its books of accounts. The assessee submitted that all the details were given before the Revenue while revenue is disputing the same as complete details were not given nor justification for claiming as business loss

or business expenditure as per provisions and scheme of the Act was not given by the assessee with respect to advances of Rs. 69.55 lacs written off and also with respect to the other claim of Rs.110 lacs . In our considered view, the details submitted by the assessee requires verification and examination of both the claims by the AO on merits in accordance with law . We, accordingly, in the interest of justice based on facts and circumstances of the case are inclined to set aside and restore both the matters/issues back to the file of the A.O. for de-novo determination of the issues' on merits in accordance with law by the AO. The relevant and necessary explanations and the evidences submitted by the assessee before the AO be admitted by the A.O. before de-novo adjudication of the both the matters/issues' on merits in accordance with law and the assessee should be given proper and sufficient opportunity of being heard in accordance with principles of natural justice in accordance with law. We order accordingly.

27. In the result, appeal filed by the Revenue in ITA No. 4124/Mum/2014 for the assessment year 2007-08 is partly allowed as indicated above.

Order pronounced in the open court on 26th September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 26-09-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **26-09-2016**

I

व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिलिपि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai " A Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai