आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई

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

सर्वश्री सक्तिजीत डे, न्यायिक सदस्य एवं राजेश कुमार, लेखा सदस्य

BEFORE SHRI SAKTIJIT DEY, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./ **I.T.A. No.4234/Mum/2014**

(**निर्धारण वर्ष /** Assessment Year :2010-11)

M/s Rallis India Ltd, 156/157 Nariman Bhavan, Nariman Point, Mumbai-400001	बनाम/ Vs.	Addl.Commissioner of Income Tax-Circle 3(3), Room No.609, 6th floor, Aayakar Bhavan, M K Road, Mumbai-400020

(अपीलार्थी /**Appellant**)	(प्रत्यर्थी / **Respondent**)

आयकर अपील सं./ **I.T.A. No.4316/Mum/2014**

(**निर्धारण वर्ष /** Assessment Year :2010-11)

Dy.Commissioner of Income Tax-Circle 3(3), Room No.609, 6th floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s Rallis India Ltd, 156/157 Nariman Bhavan, Nariman Point, Mumbai-400001

(अपीलार्थी /**Appellant**)	(प्रत्यर्थी / **Respondent**)

PAN: AABCR2657N

अपीलार्थी की ओर से / Assessee by	:	S/Shri Jitendra Jain, H.Jemshethji and Darshit Naik
प्रत्यर्थी की ओर से/Respondent by	:	Shri Purishottam Kumar

सुनवाई की तारीख /Date of Hearing	:	9.8.2017
घोषणा की तारीख /Date of Pronouncement	:	8.11.2017

आदेश / O R D E R

PER RAJESH KUMAR, A. M:

These cross-appeals are directed against the order dated 25.3.2014 passed by the ld. CIT(A)-7, Mumbai which relate to assessment year 2010-11.

2. First we shall take up the appeal of the assessee bearing ITA No.4234/Mum/2014.

3. Grounds of appeal raised by the assessee are as under :

"This Appeal is against the Order of the Commissioner of Income-tax (Appeals)-7, Mumbai and to the Assessment year 2010-2011.

1. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of Rs.63.98 lakhs under Section 14A r.w. Rule 8D(2)(iii).

2. Without prejudice to ground No. 1 above, the Appellant submits that the disallowance under Section 14A is highly excessive and arbitrary, and requires to be reduced substantially.

3. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of the claim of the Appellant for deduction under Section 80IA in respect of its power generation plant Rs.71,69,109/-.

4. The learned Commissioner of Income Tax (Appeals) failed to consider that the case of the Appellant was one of "captive consumption", which is permissible, and recognized within Section 80IA itself. "

4. The common issue raised in grounds no.1 and 2 is against the confirmation of disallowance of Rs.63.98 lakhs u/s 14A of the Act r.w.rule 8D(2)(iii) by the ld. CIT(A).

5. The facts in brief are that the assessee during the year earned a dividend income to the tune of Rs.4,45,56,700/- and claimed the same as exempt under section 10(34) of the Act. In the tax audit report filed along with return, the tax auditors have quantified the disallowance u/s 14A of the Act at Rs.14,973/-. However the AO calculated the disallowance as per provisions of section 14A of the Act read with rule 8D at Rs.1,04,82,000/- comprising the disallowance under rule 8D(2)(ii) at Rs. 40.84 lakhs and Rs. 63.98 lakhs u/s rule 8D(2)(iii). In the appellate proceedings, the ld. CIT(A) deleted the disallowance under rule 8D(2)(ii) on the ground that the own funds of the assessee were more than the double of investments by following the decision of the Hon'ble Jurisdictional High Court in the case of CIT V/s Reliance Utilities and Power Ltd reported in 313 ITR 340(Bom) while disallowance under rule 8D(2)(iii) was sustained by the ld.CIT(A) by observing that the expenses connected to the exempt income have to be disallowed under section 14A regardless of whether they are direct or indirect, fixed or variable and managerial or financial in accordance with law.

6. We have carefully considered the rival submissions and gone through the relevant material placed before us. We find that identical issue was also involved in the assessment years 2008-09 and 2009-10 in which the co-ordinate Bench has held that the disallowance at the rate of 2% of the dividend income would be reasoanble. For the sake of convenience, the operative part of the decision in assessee's own case in ITA No.401/Mum/2013(AY-2009-10) dated 16.12.2016 are reproduced below :

> *"21. We have considered the submissions of the parties and perused the material available on record in the light of the decisions relied upon. It is evident, before the first appellate authority assessee had specifically taken a plea that it has own interest free fund of ` 348.67 crore to make the investment of Rs.127 crore. However, the aforesaid contention of the assessee did not find favour with the learned Commissioner (Appeals). The fact that assessee was having substantial interest free funds available with it to take care of the exempt income yielding investment has not been disputed by the Departmental Authorities. Therefore, applying ratio laid down by the Hon'ble Jurisdictional High Court in HDFC Bank Ltd. v/s DCIT, [2016] 383 ITR 529 (Bom.) and CIT v/s HDFC Bank Ltd. v/s DCIT, [2014] 366 ITR 505 (Bom.), we hold that no disallowance of interest expenditure under rule 8D(2)(ii) can be made. As far as disallowance of administrative expenditure under rule 8D(2)(iii) is concerned, it is the contention of the assessee that one of the employee is looking after the investment activity. Therefore, the salary cost of the employee has already been disallowed by the assessee. We have noted, in assessment year 2007–08, the Tribunal in assessee's own case has held 2% of the dividend income earned by the assessee to be a reasonable disallowance under section 14A. Applying the same principle, we direct the Assessing Officer to disallow 2% of the dividend income under section 14A. These grounds are partly allowed."*

Taking a consistent view with the earlier years Tribunal order, we direct the AO to disallow 2% of the dividend income u/s 14A of the Act. Accordingly, these grounds are partly allowed.

7. Grounds of appeal no.3 and 4 are against the confirmation of disallowance of the claim of the appellant u/s 80IA of the Act in respect of its power generation plant amounting to Rs.71,69,109/- by the ld. CIT(A).

8. Facts in brief are that the AO during the course of assessment proceedings, noticed that the assessee has claimed deduction u/s 80IA the Act to the tune of Rs.71,69,109 on account of captive consumption of plant at Ankeleshwar, Gujarat. The AO further observed that in the profit and loss account pertaining to the said power plant the assessee has credited Rs.3,65,09,794/- as savings from captive power plant by the assessee. The said credit in the profit and loss account has been taken for calculating the profit from the undertaking of Rs.69,55,542/-. The assessee filed audit report in Form No.10CCB, wherein at point no.27 pertaining to total sales of the undertaking, Rs.3,65,09,794/- was mentioned. At sr. No.28, it the audit report, it was stated that "No other transaction other than transmitting of power to other plants of the assessee was undertaken. According to the AO, the said claim of the assessee was wrong as being not as per the provisions of the Act and accordingly, he issued show cause notice on

13.9.2012 calling upon the assessee to show cause as to why the claim of the assessee should not be disallowed. In reply to the said notice, the assessee vide letter dated 28.11.2011 submitted that savings from captive power plant is nothing but sales revenue. By referring to the provisions of section 80IA(8) of the Act, which deals with the captive consumption of power, the assessee submitted that the sales revenue from the captive consumption of electricity was Rs.3,15,10,892/- while captive consumption of by-product steam from waste heat recovery Boiler and by-product chilled water from vapour absorption machine were Rs.34,35,849/- and Rs.15,63,054/- respectively. AO after considering the submissions of the assessee rejected the same by holding that such arrangement is not permissible under the Act as the saving cannot be construed as sale of the same undertaking and as a result rejected the claim of the assessee of Rs.71,69,109/-. While the ld. CIT(A) affirmed the order of the AO on this issue by holding that the savings cannot be considered as sales of undertaking and accordingly, the profit shown in the profit and loss account attached with form 10CCB are not eligible for deduction u/s 80IA of the Act.

9. The ld. AR vehemently submitted before us that the assessee has set up a captive power generation plant at its Ankeleshwar factory. The power generated in the said plant was supplied by the assessee to its own other

units as the requirement of power was far more than the quantum of power generated in the said unit and thus the entire power generated was consumed captively and no power was sold to the third party. The ld. AR while referring to the provisions of section 80IA(8) of the Act submitted that the section itself provides for a situation of captive consumption. The ld. AR further contended that even at the time of contemplation by the legislature, the explanation of captive consumption was specifically provided in the section itself. The ld. AR further stated that during year the total electricity generated by the said plant was 51,65,720/- units. The ld. AR also took us through the various documents to prove payment of the excise duty to Gujarat Electricity Board at the rate of 40Ps per unit and thus total power duty was worked out to Rs.20,66,288/-. The ld. AR in defense of his argument relied upon the following case laws:

(a) Tamil Nadu Petro Products Ltd. v. ACIT - 338 ITR 643 (Mad.)
(b) CIT v. M/s. Orient Abrasive Ltd. - 49 taxmann.com 174 (Del. HC)
(c) Dismissal of SLP (C) No. 18537 of 2009 filed by the revenue - 319 ITR (St) 8
(d) West Coast Paper Mills Ltd. v. ACIT – 28 61TR (AT) 252 (Mum)
(e) Assessee's own case for Assessment Year 2009-10 (ITA No.401/M/13 and 489/M/13 dated 16.12.2016.

10. The ld. DR on the other hand, relied upon the orders of authorities below and submitted that the claim of the assessee was rightly rejected by the lower authorities as the assessee can not be said to have made any profit

from electricity which is used captively and prayed that the ground raised by the assessee should be dismissed.

11. We have heard the rival submissions and perused the material placed before us including the impugned order and case laws relied upon by the parties. The undisputed facts are that the assessee has set up a power generation plant at Ankleshwar factory and the power being generated in the said unit was supplied to the various projects owned by the assessee, thus, it is a case of captive consumption of power without any sale to any outside party. The assessee calculated the savings from captive consumption at Rs.3,65,09,794/- from the captive power plant and credited the same in the profit and loss account and the net profit from the said unit was worked out at Rs.69,55,542/- as per the profit and loss account. The assessee also filed audit report in form no. No.10CCB in support of its claim with the return of income. Now, the issue before us whether the assessee is entitled to captive consumption of power or not. In the case of Tamil Nadu Petro Products Ltd. (supra), the Hon'ble Madras High Court has held as under (para 8 and 9):

> ***8.*** *In our considered opinion, the said contention can have no application to the case on hand. Inasmuch as we dealt with the issue in the light of section 80-IA and in particular sub-clause (iv) of the said section which provides for the benefit even in respect of electricity generation plant established by the assessee and the income derived from such enterprise of the assessee, it will have to be held that the assessee fully complied with the requirements prescribed under section 80-IA in order to avail the benefits provided therein. Therefore, the*

contention based on the interpretation of the expression 'derived from' can have no application to the case where the provisions of section 80-IA get attracted.

9. *Therefore, we do not find any scope to deviate from what was held by this Court in the decision dated 7-6-2010 in Tax Case (Appeal) Nos. 68 to 70 of 2010. The questions of law are therefore, answered in favour of the appellant. The appeals stand allowed and the impugned orders are set aside. Consequently, connected miscellaneous petitions are closed. No costs*."

11.1. Similarly in the case of M/s. Orient Abrasive Ltd (supra), it has been held that the profit derived from the power generation unit would be eligible for deduction u/s 80IA as separate undertaking u/s 80IA where the power consumption of electricity was made by the assessee without selling to third party.

11.2. In the case of West Coast Paper Mills Ltd.(supra) it has been held that *the assessee is eligible to claim deduction under section 80-IA with regard to unit-6 also as a standalone power generating undertaking.*

11.3. Even in the assessee's own case the issue decided in favour of the assessee for the assessment year 2009-10 vide order dated 16.12.2013 the relevant para 7 of ITA No.401/Mum/2013 (AY-2009-10) is reproduced below:

"7. We have considered the submissions of the parties and perused the material available on record. As far as eligibility to claim deduction under section 80IA, for the electricity generation unit at Ankleshwar is concerned, we agree with the learned Commissioner (Appeals) that

keeping in view the provisions of section 80IA(8) electricity consumed M/s. Rallis India Ltd.

by the other business of the assessee has to be construed as sales of electricity by eligible undertaking. As rightly observed by the learned Commissioner (Appeals), the Assessing Officer has not doubted that Ankleshwar plant is otherwise eligible for deduction under section 80IA. He has denied assessee's claim of deduction under section 80IA only for the reason that electricity generated by the Ankleshwar Unit was used for captive consumption in other businesses of the assessee. Therefore, we uphold the order of the learned Commissioner (Appeals) on the issue thereby dismissing the ground raised by the Department."

11.4. In view of the foregoing discussions, and following the ratio laid down by the various Courts and Tribunals including assessee's own case for the AY 2009-10, we set aside the order of the ld. CIT(A) and direct the AO to allow deduction u/s 80IA of the Act in respect of captive consumption of power. The ground raised by the assessee is allowed.

ITA No.4316/Mum/2014

The grounds raised by the revenue are as under:-

"1. "Whether on the facts & circumstances of the case and in law, the Id CIT(A) has erred in deleting the proportionate interest of Rs. 40,84,000/- out of the total disallowance u/s 14A of Rs. 1,04,82,000/- without appreciating the fact that the disallowance was worked out as per Rule 8D read with section 14A of the Income Tax Act and is squarely covered by the jurisdictional ITAT's order in the case of M/s RBK Share Broking Pvt. Ltd (ITA No.7546/Mum/2011 and ITA No.6678/Mum/2011)."

2. "Whether on the facts & circumstances of the case and in law, the Id CIT(A) has erred in deleting the disallowance of Rs. 59,97,000/-in respect of provision for slow and non moving stock without

appreciating the fact notwithstanding the method of accounting or valuation of stock, unascertainable expenditure is not allowable under the provisions of sec 28-44 of the IT Act.

3. "Whether on the facts & circumstances of the case and in law, the Id CIT(A) has erred in directing the Assessing Officer to treat the expenditure on account of implementing "Project Disha" as revenue expenditure without appreciating the fact that implementation of the said project has enduring benefit to the assessee and deserves to be treated as capital expenditure."

4. "Whether on the facts & circumstances of the case and in law, the Id CIT(A) has erred in directing the Assessing Officer to treat the expenditure on account of implementing "Project Eagle" as revenue expenditure without appreciating the fact that implementation of the said project has enduring benefit to the assessee and deserves to be treated as capital expenditure."

12. The issue raised in ground no.1 is in respect of deletion of disallowance u/s 14A of the Act rule 8D(2)(ii) of Rs. 40,84,000/- by the ld. CIT(A).

13. The facts in brief of the issue have already been stated in para 5 of this order.

14. We have considered the rival submissions and perused the material placed before us. In this case, we find that the ld.CIT(A) partly allowed the ground of the assessee by deleting the addition of Rs.40,84,000/- on account of interest under rule 8D(2)(ii) by considering the facts that the assessee's own funds in the business of assessee were far more than the investments from which tax free dividend income was earned to the tune of Rs.422.79 crores *following the decision in the case of* HDFC Bank Ltd. V.

DCIT (383 ITR 529) (Born HC) and also the decision in assessee's own case for the assessment years 2008-09 and 2009-10. In our considered view, the issue is squarely covered by the ratio in favour of the assessee and therefore we are inclined to dismiss the ground taken by the revenue.

15. The issue raised in the grounds of appeal no.3 is against the deletion of disallowance of Rs.59,97,000/- in respect of provision for slow and non moving stock by the ld. CIT(A) without appreciating the fact that notwithstanding the method of accounting or valuation of stock , the unascertainable expenditure is not allowed under the provisions of sections 28-44 of the IT Act.

16. The facts in brief are that the AO noticed upon perusal of the balance sheet that the closing balance in the provisions for slow and non –moving stock as on 31.3.2010 was Rs.340.92 lakhs, whereas the opening stock was Rs.280.95 lakhs and thus the provision of Rs.59,97,000/- was charged to the profit and loss account during the year. Accordingly, the AO issued show cause notice which was replied by the assessee submitting that the assessee is a manufacturer of critical chemicals, powders and pesticides, which are highly toxic having limited life and during the year 650 items of stock were slow-moving ,obsolete or damaged. The assessee submitted that the stocks are in the form of powder, liquid and is prone to easily

evaporated or susceptible to damage. Besides, the ld. AR submitted that the assessee has been following the accounting method consistently and full and adequate disclosure have also been made by the assessee as per Schedule-20-Notes to the Accounts. The inventory are valued on lower of the cost and net realizable value whichever is less. The ld. Counsel of the assessee also referred to accounting standard –II issued by Institute of Chartered Accountants of India which is mandatory . The contentions and submissions of the assessee did not find favor with assessing officer and ultimately he rejected the same resulting into addition of Rs.59,97,000/- to the total income of the assessee by observing as under:

> *"6.2 The contention of the assessee is examined and is not acceptable for the simple reason that the assessee himself states that there are 650 items of stock which are slow moving , obsolete or damages. The contention of the assessee that these are wastages in stock due to evaporation and reduced efficacy is mere general statement backed up by no evidence whatsoever. In fact all evaporation and wastage losses during the manufacturing process would ipso facto be accounted for the consumption of raw-material in the manufacturing process. This submission of the assessee goes against the very grain of creating provision for slow and non-moving stock."*

In the appellate proceedings, the ld.CIT(A) deleted the addition after taking into consideration the various contentions and submissions of the assessee by observing and holding as under :

"11. GROUND NOS. 6 to 8 - DISALLOWANCE ON ACCOUNT OF PROVISION FOR SLOW AND NON-MOVING STOCK:

The appellant during the year under consideration has made provision for slow, non-moving and damaged stocks of Rs.59,97,000/-. It was stated that the appellant follows AS-2 whereby stores/inventories are valued at cost or market value whichever is lower. This principle has also been upheld by the Hon'ble Supreme Court on numerous occasions, one of them being its judgment in the case of CIT vs. Hindustan Zinc. Ltd (2007) (291 ITR 391). He also referred to section 145A and stated that as per the principle of stock valuation upheld by the apex court, the method of valuation regularly adopted by the appellant is a recognized method and therefore, the same cannot be rejected. The items written down to the net realizable value are items of raw materials and stores. In paragraph 6.3 the Assessing Officer has wrongly presumed that these are finished goods. The Assessing Officer is in error when he says that the appellant has not been able to demonstrate that the stock is obsolete or slow-moving. The appellant has drawn attention to several items of stock which have not moved for several years and it is only for that reason that the appellant has considered that the stock is slow-moving. The Assessing officer also failed to consider that the provision made for writing down the stock is Rs.59.97 lakhs, as compared to the total stock of the appellant of Rs.148.24 crores, which is a paltry 0.4% to the total stock. He relied on the decision in the case of CIT v. Hughes Communication India Ltd. (Del) (ITA 383 and 385 of 2012); CIT v. Hotline Teletube & Components Ltd. (Del) (ITA 694/2008); CIT v. Wolkem India Ltd. (315 ITR 211 (Raj); IAC v. Consolidated Pneumatic Tool Co. India Ltd. (15 ITD 564) (Born); A.L.A. Firm v. CIT (189 ITR 285) (SC); Alfa Laval India Ltd. v. DCIT (266 ITR 418) (Born); DCIT v. Indroyal Fumiture Co. P. Ltd. (2 ITR (Trib) 628) (Cochin). It was stated that first two judgments specifically deal with the issue of provision for diminution in the value of stock. It was thus stated that the disallowance be deleted."

17. The ld. DR vehemently submitted before us that the order of ld.CIT(A) was against the provisions of the Act and against the facts on records and

also order was passed in a cryptic manner. The ld. DR submitted by referring to the provisions made for non movable and damaged items of stock material and packing material filed at placed at pages 45 to 83 of the assessee's paper book to point out that three items viz clause 11 of schedule 20 at pages 61 of the annual report, consumption of raw materials, packing materials and stores and spare parts included provision of Rs.340.92 lakhs. The ld. DR also submitted that it is not clear from the facts whether the assessee claimed the said loss after evaluating the same by Technical Committee or done in summary manner. Finally, the ld.DR prayed that such depreciation are not admissible under the Act and therefore should not be allowed. The ld. DR relied on the decision of the Hon'ble Delhi High Court in the case of CIT V/s Hughes communication India Ltd reported in (2013) 215 Taxman 0136 beside relying on the following case laws:

a) CIT v. Hotline Teletube & Components Ltd. -175 Taxman 286 (Del. HC)
b) CIT v. Hughes Communication India Ltd.- 33 taxmann.com 95 (Del HC)
c) CIT v. IBM India Ltd. - 55 taxmann.com 515 (Kar.)
d) CIT v. Indian Rare Earths Ltd. - 375 ITR 276 jBom.)
e) Alfa Laval India Ltd. v. DCIT - 2661TR 418 {80m.)
f) IAC v. Consolidated Pneumatic Tool Co. (ind). Ltd.-15 ITD 564 Mum

Finally, the ld.DR prayed before us that by following the ratio laid down in the aforementioned decisions, the order of the ld.CIT(A) be set aside and that of AO be upheld.

18. The ld.AR relied heavily on the order of ld.CIT(A) by submitting that the assessee is a manufacturer of critical chemicals, powders and pesticides which are highly toxic and the raw materials used are in the form of liquids and powders of various which are highly vaporable and susceptible to damage and are not fit to be used in the manufacturing of the chemicals . The ld. AR took us through pages 198 to 199 of the paper book referring the Insecticides Rules, 1971(GSR 1650, Dt.9.10.1971. Para 10A of the said Rules provides that after expiry of stock the same shall be marked as not for sale, not for use or not for manufacturing, and shall be kept by the licensee in a separate place specifically demarcated for the purposes with a declaration " date expired insecticide" to be exhibited on the conspicuous part of the place. All such stocks then shall be disposed of in an environment friendly manner as may be specified from time to time by the by the Central Government in consultation with the Central Insecticides Board and shall not be used for manufacturing. The ld. AR also took us through the SC-7 and SC-13 of 62, Annual Report 2009-10 and submitted that these were actually stocks written off due to damage and expiry and not the provisions as alleged and observed by the AO. The ld. AR also took us through

schedule-18 of the Annual Report under the head "Operative Expenses" wherein stores and Spares Consumed were shown at Rs. 402.80 lacs.

19. We have heard the rival submissions and perused the material placed before us. We find that during the year the assessee has written off stock of slow moving and expired items which are not fit for consumption in the manufacturing processes. The assessee itself has duly disclosed all the facts qua stock written off during the year in its audited accounts. Moreover, the stock register was prepared and maintained as per the Accounting Standard followed by the assessee regularly which also duly disclosed all stock in the accounts. Since the assessee is engaged in the manufacturing of chemical ,pesticides and powder which are easily evaporable or are susceptible to damage and cannot be used in the finished goods. Besides, the ld. AR submitted that the assessee has been following the accounting method regularly which is also duly disclosed in the audited financial statements. Since, the assessee is engaged in the manufacturing of chemicals and pesticides using inputs in the form of chemical powder and liquid which are evaporative and damageable. After considering the submissions of the rival parties and considering the facts of case, we do not find any infirmity in the order of ld.CIT(A). The case laws relied by the revenue have been examined

and found to be not applicable to the present facts. Accordingly, we affirm his order and reject the ground taken by the Revenue.

20. The grounds of appeal No.3 and 4 are in respect of directing the AO by the ld.CIT(A) to treat the expenditure on account of implementing "Project Disha" as revenue expenditure without appreciating the fact that implementation of the said project has enduring benefit to the assessee and deserves to be treated as capital expenditure.

21. Facts in brief are that the assessee incurred an expenditure of Rs.1,06,52,800/- on account of legal and professional fee incurred for increasing the business operation efficiency and the same were shown under the head "Project Disha" (Driving Innovative Solution for Hyper Achievements). This project was carried out with the help of an external consultant Ernst and Young to whom this amount was paid. The said project was undertaken to bring in several improvements in the operations of business which were divided into three phases:

Phase I:Improving area of manufacturing and procurement;

Phase II:-Improving areas of Sales and Marketing and ;

Phase III: Optimizing the fixed costs and operating expenses.

The said project was like remodeling or revamping the whole business of the assessee thereby effecting the improvement and optimizing the areas of

manufacturing sales and marketing and thus the expenditure so incurred was towards the improving the business of the assessee. Accordingly, the AO brushed aside the contention of the assessee that the expenses were incurred for assessee business improvement and to increase efficacy and has long term and enduring benefit to the entire business of the assessee over the future years. The AO treated the entire expenditure as capital in nature and allowed 25% thereof resulting into disallowance of Rs.79,89,600/-. In the appellate proceedings, the ld. CIT(A) allowed the appeal of the assessee after considering the various contentions and submissions as made during the appellate proceedings by observing and holding as under:

"5.4 Ground No.9 to 10:

The above grounds are taken together as they address a common issue I find that the appellant during the year under consideration has incurred expenditure amounting to Rs.1,06,52,800/ - on account of legal; and professional fees for increasing the efficiency of business operations. The Same was under a project titled "Project DISHA" (Driving Innovation Solution forHyper Achievements). In Alembic Chemical Works Vs.CIT 177 ITR 377 (SC), Hon'ble Supreme Court held:

> *"The improvisation in the process and technology in some 'areas of the enterprise was supplemental to the existing business and there was no material to hold that it amounted to a new or fresh venture. The further circumstance that the agreement pertained to a product already in the line of the assessee's established business not to a new product indicates that what was stipulated was an improvement in the operations of the existing business and its efficiency and, profitability not removed*

from area of the day-to-day business of the assessee's established enterprise."

In view of the above decision and the ratio laid down in the case of Indo Rama Synthetics India Ltd, V/s CIT (333 ITR 18) (Delhi); CIT v. Praga Tool Ltd (157 ITR 282) (AP); CIT vs. Crompton Engineering Co. Ltd. (242 ITR 317) (Mad)' CIT V/s JCT Electronics Ltd (P&H) (ITA 676 of 2009); CIT V/s Abbott Laboratories (I) P Ltd (202 ITR 819) Bom; EL Forge Ltd V.s DCIT (2013) 216 Taxman 114 (Mad); CIT V/s Carborandum Universal Ltd (2008) 219 CTR 202 (Mad), the AO is directed to treat the expenditure on account of legal and professional fees amounting to Rs.1,06,52,800/-"

22. The ld. DR vehemently submitted before us that the order of ld.CIT(A) is apparently wrong in deleting the addition of expenses of capital nature incurred on the project to increase efficiency of business operations which was of a long term nature resulting into benefits of enduring nature and the benefit were going to last over longer period of time than one year. Thus, the expenditure incurred by the assessee was of capital nature and the AO has rightly disallowed 75% by allowing 25% of the said expenditure to be written off in the current year and proposing to allow it in the next three years the remaining amount. The ld. DR relied on the decision of AO and stated that the ld.CIT(A) has wrongly followed the decision of the Hon'ble Supreme Court rendered in the case of In Alembic Chemical Works Vs.CIT 177 ITR 377 (SC) without any discussion. The ld.DR finally prayed that the order of the AO be restored and that of ld.CIT(A) be set aside.

23. On the other hand, the ld.AR submitted that the expenditure incurred by the assessee by way of payment on account of professional and legal fees in connection with a project purported to be undertaken for increasing the efficiency of business operation in the existing business of the assessee under the title 'DISHA" which stood for (Driving Innovative Solution for Hyper Achievements). The ld.AR for the assessee submitted that this major innovative drive undertaken in the year 2007-08. The said project was carried out with the help of outside agencies in three phases i.e. Phase I:Improving area of manufacturing and procurement; Phase II:-Improving areas of Sales and Marketing and ; Phase III: Optimizing the fixed costs and operating expenses. The ld. Counsel submitted that the expenditure incurred on the said project was purely of revenue in nature as it has not resulted into any benefit of enduring nature or resulted in the creation any new assets and thus the assessee has rightly claimed the expenditure as revenue. The assessee relied upon the series of decisions in defense of his arguments :

a) CIT v. Crompton Engineering Co. Ltd. - 242 ITR 317.(Mad.)-
b) CIT v. M/s. JCT Electronics Ltd. - 188 Taxman 191 (P&H) -
c) Indo Rama Synthetics India Ltd. v. CIT - 333 ITR 18 (Del HC)
d) CIT v Abbott Laboratories (I) Pvt. Ltd. - 202 ITR 818.(80m.)
e) CIT v. Praga Tools Ltd. - 1571TR 282 (AP)
f) CIT v, Carborandum Universal Ltd. - 177 Taxman 347 (Mad.)

Finally, the ld.AR prayed before us that considering the ratio laid down in the various decisions, the appeal of the revenue should be dismissed on this ground by confirming the order of the ld.CIT(A).

24. We have carefully considered the rival submissions and perused the material placed before us including the impugned order and case laws cited by the parties. We find that the assessee has incurred an expenditure of Rs.1,06,52,800/- on project "DISHA" which was undertaken to bring about overall efficiency and improvement in the business of the assessee and the project was carried out with the help of outside agency. After considering the submissions of both the parties and on perusal of the facts on records and the decisions as relied upon by the parties, we are of the considered view that the expenditure incurred by the assessee to an external consultant Ernst and Young as legal and professional charges for "DISHA" cannot be treated as capital expenditure as the same was incurred to bring overall efficiency and improvement in the existing business of the assessee by undertaking special campaign in the phased manner during the year. In our opinion, the expenditure incurred by the assessee is of purely revenue in nature and cannot be treated as capital nature as has been done by the AO. We, therefore, are in agreement with the findings of the ld.CIT(A) and

inclined to uphold the same and the order of ld.CIT(A) does not suffer from any infirmity.

25. In the result, the appeal of the revenue is dismissed.

26. In the result, the appeal of the assessee is partly allowed and the appeal of revenue is dismissed.

Order pronounced in the open court on 8th Nov, 2010, 2017

Sd sd

(SAKTIJIT DEY) (**RAJESH KUMAR**)
JUDICIAL MEMBER ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :8.11.2017
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

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