IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA Nos. and Assessment Years	Appellant	Respondent
235 to 238/Bang/2017 2007-08 to 2010-11	M/s. Rajesh Exports Ltd., No.4, Batavia Chambers, Kumara Part (East), Bengaluru-560001. **PAN : AABCR 7930 F**	The Deputy Commissioner of Income Tax, Circle 1(2), Bengaluru-560001.
442 and 443/Bang/2017 2009-10 to 2010-11	The Assistant Commissioner of Income Tax, Circle 1(2),Bengaluru.	M/s. Rajesh Exports Ltd., Bengaluru-560001. **PAN : AABCR 7930 F**
2308 & 2309/Bang/2016 2007-08 to 2008-09	The Assistant Commissioner of Income Tax, Circle 1(2),Bengaluru.	M/s. Rajesh Exports Ltd., Bengaluru-560001. **PAN : AABCR 7930 F**
	APPELLANT	RESPONDENT

Assessee by	:	Shri. S. Parthasarthi, Advocate
Revenue by	:	Shri. Muzaffar Hussain, CIT

Date of hearing	:	18.12.2017
Date of Pronouncement	:	09.03.2018

O R D E R

Per Bench:

These cross appeals are preferred by the assessee as well as the Revenue against the respective orders of CIT(A). Since common issues are involved in these appeals, these were heard together and are being disposed off through this consolidated order. We however prefer to adjudicate them one after the other.

2. ITA Nos. 235 and 2308/Bang/2017

These cross appeals are preferred against the order of the CIT(A) pertaining to the assessment year 2007-08. In the assessee's appeal, the solitary ground involved is with regard to disallowance of claim for Bad Debts to the tune of Rs.67,03,155/-. In this regard, the learned counsel for the assessee contended that the AO had disallowed the claim of bad debts after treating it to be the provision made for the doubtful debts. But in fact it was not a provision, it was rather a bad debt which was

duly written off in the books of accounts. Other requisite conditions of section 36(2) were also fulfilled. The learned Counsel for the assessee further contended that CIT(A) did not examine these aspects and relying upon the order of the AO has confirmed the disallowance.

The learned DR on the other hand has placed the reliance upon the order of the CIT(A).

3. Having carefully examined the orders of the CIT(A), we find that AO as well as the CIT(A) disallowed the claim of the bad debts on the ground that assessee has made a provision for bad and doubt debts. Whereas according to the assessee, facts are otherwise. The learned counsel for the assessee has emphatically argued that he has rather written off the bad debts in his books of accounts but the AO has wrongly taken it to be the provision for bad and doubt debts. The learned counsel for the assessee has also requested that the matter be restored to the AO for verification and t he assessee will file all the related evidences before him in support of his claim. From the carefully perusal of the order of the CIT(A) and the AO, we do not find any basis for disallowance for provision for bad and doubt debts. We however in the interest of the justice are of the view that let the matter be re-examined by the AO. If the assessee has actually written off the bad debts, the claim of the assessee be allowed. Accordingly, we set aside the order of the CIT(A) and restore the matter to the AO for adjudication of the issue after affording opportunity of being heard to the assessee.

4. The other ground in the assessee's appeal is on charging of interest under section 234B of the Act which is consequential in nature and needs no independent adjudication.

5. <u>ITA No. 2308/Bang/2017</u>

This appeal is preferred by the Revenue against the order of the CIT(A), *inter alia,* on various grounds which are as under:

1) Whether on facts and in circumstances of the case, the Ud CIT(A) erred in

deleting the disallowance of 10% of the wages paid both in the Main unit and the EOU unit, without appreciating the fact that, the disallowance has been made because the liability is not ascertained?

2) *Whether on facts and in circumstances of the case, the Ld CIT(A) erred in relying on the order of CIT(A) in ITA No 184/AC 12(4)/CIT(A)III/BNG/06-07 dated 03.07.2009 in the assessee's own case for AY 2006-07, wherein the AO had disallowed 10% of salary including remuneration of the Managing Director?*
3) *Whether on facts and in circumstances of the case, the Ld CIT(A) erred in relying on the order of CIT(A) for AY 2006-07 while deleting the disallowance without appreciating that the facts leading to the disallowance in AY 2006-07 were different from the facts leading to the disallowance in AY 2007-08, which was based on findings of survey?*
4) *Whether on facts and in circumstances of the case, the Ld CIT(A) erred in deleting the addition on account of interest attributable to interest free loan to Shri N Srinivasa, relying on the order of the ITAT for AY 2006-07?*
5) *Whether on facts and in circumstances of the case, the Ld CIT(A) failed to appreciate the findings of the CIT(A) for AY 2006-07 that the payments were made directly to the seller of the land and no such amount was paid to Shri N Srinivasa?*
6) *Whether on facts and in circumstances of the case, the Ld CIT(A) failed to appreciate that the facts leading to the disallowance in AY 2007-08 are entirely different and there is no finding of fact on similar grounds by AO or CIT(A) regarding payment to Shri N Srinivasa?*
7) *Any other ground that may arise at the time of hearing*

6. During the course of hearing, the learned counsel for the assessee has invited our attention that CIT(A) has adjudicated the issue following its earlier order for the assessment year 2005-06 and 2006-07 and in those years, the order of the CIT(A) was not challenged by the Revenue. Since the CIT(A) has adjudicated the issue following its earlier order which were not challenged by the department, no interference in his order is called for.

The learned DR however placed reliance upon the order of the AO.

7. Having carefully examined the order of the CIT(A), we find that CIT(A) has adjudicated the issue following its earlier order for the assessment year 2005-06 and 2006-07 and the finding of CIT(A) was not questioned by the Revenue before the Tribunal though the Revenue has filed the appeal on different issues. In the light of these facts, we find no infirmity in the order of the CIT(A) in view of rule of consistency. We however extract the relevant portion of the order of CIT(A) as under:

"The Assessing Officer has held that during the course of survey on 2nd July 2007 U/s 133A of the Income Tax Act, it was ascertained that the company was inflating wages and salaries to an extent of 10%. The Assessing Officer says that when the matter was brought to the notice of the Appellant Company, the Authorised Representative of the company had contended that they had retained 10% of the wages as a measure of security for a temporary period to retain the employees. The Assessing Officer has further held that the Appellant Company was asked to substantiate its statement and the Appellant Company was not able to substantiate its claim. The Assessing Officer has contended that the principal of accountancy laid down that the provision refers to charge against the profits of surpluses to meet any unknown liability, if no such unknown liability were to exist the same is to be added back to the total income of the Assessee. The Assessing Officer has opined that the contention to claim the 10% of salary which was held as not justifi8cable as Income Tax only recognizes Profit/Loss which is real/ascertained and not notional what is an admissible expenditure which may be allowed against an income, Section 37 is residuary in nature hence the expenditure of 10% of the wages is not allowable, due to which 10% of the wages paid both in the Main Unit and the EOU Unit were added back to the total income of the Appellant Company.

The appellant submitted that they had paid full salary to the employees of the manufacturing unit, 10% of the salary was held back to ensure the completion of the work assigned to the employees. This was a deterrent measure and the held back salary was paid back to the employee in the next month. There was no salary of any employee held back on a permanent basis and the employees were paid their full salaries, the holding back of 10% of the salary was only temporary in nature.

A remand report was called from the AO. She has submitted her Remand Report wherein she has confirmed that similar disallowances made by the AO in A.Ys. 2005-06 and 2006-07 which have been deleted by the CIT(A) were not contested further by the Department. In view of the same, explanation of the appellant is foundto be acceptable and this ground of the appellant is also ***ALLOWED."***

8. In this appeal, the other ground is also raised with regard to deletion of addition of interest attributable to interest free loan to Shri. N. Srinivasa. This ground was adjudicated by the CIT(A) following the order of the Tribunal in the assessee's own case for the assessment year 2006-07. Copy of the order of the Tribunal is placed on record and from its careful perusal, we find that CIT(A) has adjudicated the issue following the order of the Tribunal. Therefore, we find no infirmity in the order of the CIT(A). Relevant portion of the order of the CIT(A) is extracted hereunder for the sake of reference.

"The appellant argued that the amount paid to Mr. N. Srinivas was not a loan but was an advance given to Mr. N. Srinivas for the purchase of immovable property. It was submitted that the amount was provided to Mr. N. Srinivas under an agreement for buying immovable property which was agricultural in nature. As per the Land Reforms Act of Karnataka, the appellant is not allowed to purchase the immovable property without getting the same converted to other uses. For getting into an agreement with the seller and then apply for conversion. It is for this purpose that the appellant had provided an advance of Rs.2,68,97,584/- to Mr. N. Srinivas, with a deterrent clause that if Mr. N. Srinivas does not perform then he has to return back the advance with interest. It was further submitted that the Appellant had not received any interest from N. Srinivas as Mr. N. Srinivas had performed and sold the land to the appellant. It was further submitted that the land was required by the appellant for the purpose of setting up of it's manufacturing unit and hence, it was clearly a business transaction.

It was further submitted that the appellant had a Net Worth of much more than Rs.2,68,97,584 and the appellant had advanced the money from it's own funds and not from borrowed funds, even otherwise the funds were advanced for business purpose and since the appellant had not received any interest from N. Srinivas it was incorrect on the part of the learned Assessing Officer to calculate interest on the advance amount and add back the same to the total income of the appellant.

It was further submitted that similar addition was made during the previous year and the then CIT(A) had ruled the matter in favour of the appellant. The decision of CIT(A) was upheld by the Honourable ITAT in I.T.A. No's 858 & 859/Bang/2010 dated

31.05.2016. In paragraph No's. 42 to 47 of the order the Honourable Tribunal has clearly held that the advance extended to Mr. N. Srinivas was for purchase of property and was not interest bearing and had deleted the addition made by the Assessing Officer on the same matter.

I have perused the Assessment Order and heard the appellant. The relevant para of the ITAT order as mentioned is as under:

> *"We have perused the materials on record and heard the rival contentions. Nothing was brought on record to show that any amount of interest was actually received by the assessee. CIT(A) has given a clear finding that Shri Srinivas had confirmed having not paid any interest to the assessee. Based on a mere agreement addition ought not have been made. Accrual method of accounting income does not mean that a hypothetical or unreal income can be taxed. Assessee can be taxed only on real income. CIT(A) was justified in deleting the addition. Ground 7 of Revenue stands dismissed."*

Humbly following the order of the hon'ble ITAT, the addition made by the Assessing Officer is deleted. The ground of the appellant is ***ALLOWED."***

Since we do not find any infirmity in the order of the CIT(A), we confirm his order.

9. <u>ITA Nos. 236 and 2309/Bang/2017</u>

These cross appeals are preferred against the order of the CIT(A) for the assessment year 2008-09. In the Revenue's appeal, the solitary ground raised is with regard to computation of deduction under section 10AA of the Act and in this regard it was submitted that this ground is squarely covered by the judgment of the jurisdictional High Court in the case of CIT Vs. Tata Elxsi Ltd., 349 ITR 98 in which it has been held that wherever any expenditure is required to be reduced from the export turnover it should also be reduced from the total turnover while computing the deduction under section 10AA of the Act. Since the CIT(A) has adjudicated the issue following the

judgment of the jurisdictional High Court, no interference in his order is called for and accordingly we confirm the order of the CIT(A).

10. In the assessee's appeal, assessee has assailed the order of CIT(A), *inter alia,* on following grounds:

1. *On the facts and in the circumstances of the case, the impugned additions and disallowances as made are opposed to law and liable to be deleted.*
2. *The learned Commissioner (A) erred in not considering the VAT expenses of Rs.3 lakhs in full and holding that the VAT payments on capital goods cannot be claimed as expenditure and that the VAT incurred on capital goods should be added to the value of the capital goods and should not be debited to the profit and loss account.*
3. *The learned Commissioner (A) ought to have allowed the expenditure of Rs.3,96,81,390/- in full incurred towards foreign currency convertible bonds was essentially a foreign currency loan for the purpose of business and as the expenditure was revenue in nature, the same was liable to be allowed as revenue expenditure in full.*
4. *The learned Commissioner (A) erred in further confirming that the expenses incurred towards foreign currency convertible bonds should be proportionately disallowed in the ratio of amount converted into share capital as to the amount of bond raised.*
5. *The learned Commissioner (A) ought to have refrained from apportioning Rs.35,23,855/- out of rates and taxes to the EOU Unit and SEZ Unit.*
6. *The learned Commissioner (A) ought to have appreciated that the expenditure towards Rates and Taxes of Rs.35,23,855 was correctly claimed by the appellant in the main unit and there was no need to apportion the same to the other units.*
7. *Without prejudice the additions are excessive, arbitrary and unreasonable and liable to be deleted in full.*
8. *The learned Commissioner (A) erred in confirming the interest charged u/s.234B & 234D of the Act.*
9. *For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.*

11. Apropos ground No. 1 is general in nature and needs no independent adjudication.

12. Apropos ground No. 2, it is noticed that AO has disallowed a sum of Rs. 3,00,000/- from the expenditure of rates and taxes holding on the ground that this payment was made towards VAT on the capital goods. Assessee preferred an appeal before the CIT(A) with the submission that payment was made for business purposes and therefore the same is a revenue expenditure. CIT(A) was not convinced with the contentions of the assessee and he confirmed the additions. Though the assessee

has disputed the findings of the CIT(A), but he has not placed sufficient evidence that VAT of Rs.3,00,000/- was spent for business purposes and not on capital goods. The onus is upon the assessee to establish that the VAT was not paid on capital goods. If it is paid on capital goods, it would be added to the cost of the capital asset and cannot be allowed as a revenue expenditure. But from the order of the lower authorities, it is not clear as to for what purpose the VAT was paid, whether it was paid on acquisition of capital asset or for different purposes. Thus it requires verification by the AO. Accordingly we set aside the order of the CIT(A) in this regard and restore the matter to the AO with a direction to verify whether this VAT was paid for acquisition of capital asset or for business purpose.

13. Next ground in assessee's appeal relate to addition of Rs. 3,96,81,390/- on account of disallowance of expenditure incurred towards foreign currency convertible bonds (FCCB) which was essentially a foreign currency loan for the purpose of business. In this regard, the facts borne out from the record are that the AO has made a disallowance of Rs.3,96,81,390/-, 20% of total expenditure incurred towards FCCB having held that expenditure incurred is in the nature of capital expenditure as it was incurred for the purpose of increasing the capital employed in the concern.

14. Assessee preferred an appeal before the CIT(A) with the submission that assessee company had raised a loan in foreign currency by issuing FCCB and for issuing these bonds, the assessee company had incurred a total expenditure of Rs. 19,84,06,950/-. This loan was a period of 5 years hence the assessee company apportioned the expenditure to 5 years and debited that to the expenditure account by Rs.3,96,81,390/-. It was further contended before the CIT(A) that the expenditure was incurred for raising loan and not for raising any fresh capital. The bonds would become a capital only if they are converted in equity shares and till they are not converted, they will remain as a loan which was to be repaid back by the assessee company. Therefore, the expenditure incurred for raising a loan is of revenue in nature. The CIT(A) re-examined the issue and being partly convinced with the explanations of the assessee, directed the AO to make proportionate disallowance in the ratio of amount converted into share capital as to the amount of loan raised.

15. Aggrieved, the assessee preferred an appeal before the Tribunal with the submission that though the CIT(A) has partly accepted the contentions of the assessee that the expenditure incurred for raising loan is of revenue in nature but he has restored the matter to the AO to make proportionate disallowances in the ratio of amount converted into share capital as to the amount of bond raised. This direction is not proper as in some of the assessment years there was no conversion into share capital, therefore the entire expenditure incurred deserves to be allowed in that year. It was further contended that in other years, the entire FCCB were not converted into share capital. Some part of it was converted into capital. Therefore, the expenditure incurred in relation to rising of loan through FCCB are to be allowed as revenue expenditure till the date of its conversion in the share capital. For doing so, the AO is required to examine the details of investments and its conversion into share capital. The learned counsel for the assessee has also invited our attention to the issue of FCCB raised on 10.02.2012 for 5 years.

The learned DR placed reliance upon the order of the CIT(A).

16. Having carefully examined the order of the lower authorities in the light of rival submissions and the contents of the issue raised for FCCB, we find that assessee has issued FCCB and while issuing it assessee has incurred total expenditure of Rs. 19,84,06,950/-. Undisputedly, the bonds were issued for raising a loan. The bonds were converted into share capital after certain period of time. It is also an undisputed fact that the entire bonds were not converted into share capital. Till the bonds are not converted into share capital, assessee has a liability to repay the loan to the applicants. The CIT(A) in his order has also prepared a chart in which he has mentioned that in different assessment years conversion of FCCB is different and not uniform. For the sake of reference, we extract the chart reproduced in the order of the CIT(A) as under:

Sl. No.	**AY**	**Expenses claimed**	**Amount converted**
1	2007-08	3,96,81,390	Nil
2	2008-09	3,96,81,390	280,66,36,773
3	2009-10	3,96,81,390	55,12,73,011
4	2010-11	3,96,81,390	67,08,40,915
5	2011-12	3,96,81,390	224,28,11,413
	TOTAL	**19,84,06,950**	**625,15,62,112**

17. From the perusal of chart we find that in 2007-08, there was no conversion of FCCB into share capital but in assessment year 2008-09 to 2011-12, there was conversion of certain FCCBs into share capital. The FCCB was issued in January 2007 and the bonds were convertible at any time after 19.02.2007 and upto to the close of business on 10.02.2012 by the holders of the bond into newly issued equity shares of Rs.2/- each of the issuer (shares) on the terms described herein at the option of the bond holder at initial conversion price of Rs.5.75/- per share with a fixed rate of exchange on conversion of Rs.44.09/- - US dollar. Meaning thereby though the FCCB can be converted into share capital during the financial year 2007-08 also but no conversion took place even after assessment year 2007-08. In the absence of any conversion into share capital the entire FCCB remain as a loan on assessee. Therefore no expenditures incurred in issuing the FCCB can be termed to be capital expenditure. Thus the 20% of expenditure claimed in that year deserves to be allowed in toto as a revenue expenditure. The Revenue has not made a disallowance in that year also. But in the assessment year 2008-09 to 2011-12 certain FCCB was converted but details are not available on record. The CIT(A) restored the matter to the AO to make a proportionate disallowance in the ratio of amount converted into share capital as to the amount of bond raised. In the light of the discussion we are of the view that the expenditure relating to those FCCBs which were converted into share capitals deserves to be disallowed. In the light of these facts, we find no infirmity in the direction of CIT(A) to the AO to make proportionate disallowance in the ratio of amount converted into share capital as to amount of bond raised. Accordingly, we confirm the same.

18. Apropos ground No.5 and 6 relate to apportionment of Rs.35,23,855/- out of rates and taxes to the EOU Unit and SEZ Unit. Facts in this regard borne out from the record are that the total expenditure of rates and taxes during the year has been claimed at Rs. 54,98,347/-. Out of this total expense, the expense under rates and taxes for Main Unit has been Rs.1,71,917/- in EOU Unit it has been Rs.28,60,148/- and in the SEZ Unit it has been Rs.24,66,282/-. The expenses have been debited unit wise as they have been incurred in those units. During the course of assessment proceedings, the AO has examined the expenses but was not convinced with regard to the expenses of Rs.35,23,855/- and thereafter he apportioned the expenses of

Rs. 35,23,855/- between the 3 units on the basis of a turnover resulting into disallowance of the expenditure in respect of certain units. The assessee preferred an appeal before the CIT(A) with the submission that the AO has suggested an expense of Rs.18,47,558/- in the EOU Unit, where the actual expense incurred has been Rs.28,60,148/-. Similarly in the SEZ unit the expense suggested by the AO is Rs.15,82,915/- whereas the actual expense incurred has been Rs.26,66,282/-. Therefore, the actual expense incurred and debited in the respective books of accounts of EOU and SEZ Units have been more than what has been suggested by the learned AO. Though the CIT(A) has called for a remand report but was not convinced with it and he confirmed the disallowance. Now the assessee is before the Tribunal and has invited our attention to the disallowance made towards rate and taxes made under different heads of the unit. Since it was direct expense it has to be debited in the respective units. Only indirect expenditure can be apportioned among the different units.

The learned DR placed reliance upon the order of the CIT(A).

19. Having heard the rival submissions and from the careful perusal of the record we find that assessee has incurred certain direct expenditure towards the rate and taxes. The expenditure incurred under this head are identifiable and it cannot be said that these are indirect expenses which cannot be identified as to under which head these expenses were incurred. During the course of hearing, the learned counsel for the assessee invited our attention to schedule “O” of the balance sheet under which rate of expenditure under different heads i.e., Main Unit, EOU Unit and SEZ Units were mentioned. Under the Main head, the expenses were incurred at Rs.1,71,917/-, in EOU Unit it has been Rs.28,60,148 and similarly in SEZ Unit it has been 24,66,282/-. Since there is no confusion or ambiguity with regard to expenses towards rates and taxes incurred under different heads, we do not agree with the findings of the CIT(A) with regard to the apportionment of the total expense under 3 heads on the basis of the respective turnover. Since the expenses have been incurred on actual basis, no apportionment is permissible. We accordingly set aside the order of the CIT(A) and direct the AO to admit the expenditure incurred as shown by the assessee in schedule “O” of its balance sheet. Accordingly, the addition made in this is hereby deleted.

20. Apropos ground No. 8 is consequential in nature and needs no independent adjudication.

21. In ITA No.2309/Bang/2017, the solitary issue was raised with regard to computation of deduction under section 10B and 10A of the Act. The CIT(A) while computing the deductions has followed the judgment of jurisdictional High Court in the case of Tata Elxsi Ltd., (349 ITR 98) in which it has been held that whatever expenditure was reduced from the export turnover it should be reduced from the total turnover. Since the CIT(A) has followed the judgment of the jurisdictional High Court, we find no infirmity in his order. Accordingly, we confirm the same.

22. ITA Nos. 237 and 442/Bang/2017

These are cross appeals preferred by the Revenue as well as the assessee for the assessment year 2009-10. In the assessee's appeal, the main ground raised is with regard to the disallowance of expenditure incurred towards FCCB. This issue has already been adjudicated in the foregoing appeals in which we have approved the order of the CIT(A). Therefore, it needs no further adjudication. Other ground is with regard to chargeability of interest under section 234B and 234D. Since this ground is consequential in nature, it needs no independent adjudication.

23. In ITA No.442/Bang/2017, the Revenue has assailed the order of the CIT(A) on solitary ground with regard to computation of deduction under section 10A of the Act. This ground was adjudicated by the CIT(A) following the judgment of the jurisdictional High Court in the case of Tata Elxsi Ltd., (349 ITR 98). This ground has already been adjudicated by us in the foregoing appeals in which we have confirmed the order of the CIT(A). Accordingly the order of the CIT(A) is confirmed.

24. ITA Nos. 238 & 443/Bang/2017

These are cross appeals preferred by the assessee as well as the Revenue against the order of the CIT(A) pertaining to the assessment year 2010-11. In the assessee's appeal, the order of the CIT(A) has been assailed on following grounds:

1. On the facts and in the circumstances of the case, the impugned additions and disallowances as made are opposed to law and liable to be deleted.

2. The learned Commissioner (A) ought to have allowed the expenditure of Rs.3,96,81,390/- in full incurred towards foreign currency convertible bonds which was essentially a foreign currency loan for the purpose of business and as the expenditure was revenue in nature, the same was liable to be allowed as revenue expenditure in full.

3. The learned Commissioner (A) erred in further confirming that the expenses incurred towards foreign currency convertible bonds should be proportionately disallowed in the ratio of amount converted into share capital as to the amount of bond raised.

4. The learned Commissioner (A) erred in not allowing the VAT expenditure of Rs.3,52,844by holding that this expense was a prior period expenditure.

5. The learned Commissioner (A) erred in not allowing an amount of Rs.50,00,000/- lakhs as bad debt by holding that the amount was a capital loss.

6. The learned Commissioner (A) erred in not allowing an amount of Rs.14,00,00,000/- as bad debt by holding that the appellant had not adduced sufficient evidence to show the effective follow up measures taken by it for recovery of this amount. The learned Commissioner (A) has erred in holding that the appellant had not satisfied the conditions laid down in sub-section (2) of sec.36 of the Act.

7. Without prejudice the additions are excessive, arbitrary and unreasonable and liable to be deleted in full.

8 The learned Commissioner (A) erred in confirming the interest charged u/s.234B 86 234D of the Act.

9. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.

25. Ground No. 2 relate to the disallowance of expenditure incurred towards FCCB. This ground has already been adjudicated by us in the foregoing appeals in which we have confirmed the order of the CIT(A). Following the same, this ground is disposed off and the order of the CIT(A) is confirmed.

26. Similarly, ground No. 4 relate to the disallowance of VAT expenditure of Rs.3,52,844/- which is already adjudicated by us in the foregoing appeals. Following the same, we set aside the order of the CIT(A) and restore the matter to the AO for readjudication of the issue after affording opportunity of being heard to the assessee.

27. Apropos ground Nos. 5 and 6, facts borne out from the record are that AO has disallowed an amount of Rs.50,00,000/- claimed as bad debts having held that this

amount was a capital loss. Similarly, the AO has also disallowed an amount of Rs.14,00,00,000/- claimed as bad debts having held that assessee has not adduced sufficient evidence to show the effective follow up measures taken by it for recovery of the amount. During the course of assessment proceedings, AO noticed that assessee has debited an amount of Rs.19,49,53,380/- towards bad debts. He further noted that amount of Rs.50,00,000/- was paid to M/s. Maloo Polymers for the purpose of setting up of Advanced Technology Plant for recovery of Gold at the Manufacturing Unit of the assessee. Since it was given in advance it was not a revenue expenditure and AO disallowed the same having held that it was a capital expenditure. The AO has also noted that assessee has given 14,00,00,000/- in assessment year 2008-09 and 2009-10 to Mr. Mahaveer Implex Private Limited, Ahmedabad for the purpose of procurement of Gold Import Licence. The AO disallowed the claim of bad debts for an amount of Rs.14,00,00,000/- in the absence of any evidence to show that the effective follow up measure was taken up by the assessee.

28. Assessee preferred an appeal before the CIT(A) with the submission that he has written off Rs.50,00,000/- as bad debts as the same was not recoverable from M/s. Maloo Polymers. Similarly, Rs.14,00,00,000/- was also written off as a bad debt on the ground that the same was not recoverable from M/s. Mahaveer Implex Private Ltd., to whom the amount was paid for procuring gold importing licence for importing gold in its main unit for the purpose of manufacturing jewellery and selling the same in the domestic market. The CIT(A) re-examined the claim of the assessee in the light of the remand reports obtained from the AO and came to the conclusion that since the conditions laid down under section 36(2) that the amount written off should have been offered as income in the previous year is not fulfilled, the claim of bad debt was disallowed as it was an advance to the parties and was never taken in P & L account in earlier years.

29. Aggrieved, the assessee preferred an appeal before the Tribunal with the submission that the assessee has given the advance during the course of its business activities and also for the purpose of business. Therefore, the loss suffered by the assessee should be business loss and should be allowed as expenditure.

The learned DR placed reliance upon the order of the CIT(A).

30. Having carefully examined the orders of the authorities below in the light of rival submissions, we find that undisputedly assessee has given advance of Rs.50,00,000/- to M/s. Maloo Polymers for the purpose of setting up of Advanced Technology Plant recovery of Gold at the manufacturing unit of the assessee. A sum of Rs.14,00,00,000/- was also given to M/s. Mahaveer Implex Private Ltd., for importing gold in its main unit for the purpose of manufacturing jewellery and selling the same in the domestic market. This amount was not recovered by the assessee and he claimed it to be bad debt. For claiming the bad debt under section 36(i)(vii), the assessee is required to fulfill the condition prescribed in section 36(2) of the Act according to which the amount written off should have been offered as income in the previous year. Since the advance was given, it cannot be offered as income in the previous years therefore it cannot be termed to be bad debt but in any case the assessee has suffered business loss and is allowable to be a revenue expenditure. Mere writing off the amount as bad debt would not serve the purpose. For claiming the business loss, assessee is required to establish that despite of his best efforts he could not recover the amount. In order to demonstrate these facts, all evidences are required to be placed on record as to what efforts are made by the assessee to recover the amount. Therefore, we set aside the order of the CIT(A) and restore the matter to the AO with a direction to examine the claim of the assessee afresh and if the assessee succeeds in establishing that he has made a sincere effort to recover the aforesaid amount, deduction of the same may be allowed as a revenue expenditure on account of business loss suffered by the assessee.

31. In ITA No.443/Bang/2017, the Revenue has raised the following grounds:

1. *Whether, on the facts and circumstances of the case and in Law, the Ld. CIT(A) erred in allowing relief to the assessee on the issue of disallowances of expenses incurred under freight, telecommunication and insurance of Rs.3,32,61,918/- from the Export turnover of SEZ Unit for the purpose of computation of deduction u/s 10AA of the Act, relying on the Hon'ble ITAT's decision in assessee's own case for the A.Y. 2005-06, vide order dated 31.05.2016, which in turn has been judged by the*

Hon'ble ITAT based on the judgement of the Hon'ble High Court of Karnataka in the case of CIT Vs. Tata Elxsi Ltd. (349 ITR 98).

2. *Whereas, the Ld. CIT(A) has erred in ignoring the fact that the case of CIT Vs. Tata Elxsi Ltd. has not reached finality in view of the departmental appeal pending before the Hon'ble Supreme Court?*

3. *Whether on facts and in circumstances of the case, the Ld CIT(A) erred in deleting the addition on account of interest attributable to interest free loan, to Shri N Srinivasa, relying on the remand report of the Assessing Officer for AY 2008-09 without appreciating the fact of diversion of interest bearing funds for non-business purpose?*

32. Ground No. 1 and 2 relate to deduction under section 10AA of the Act. This ground was adjudicated by CIT(A) following the judgment of Tata Elxsi Ltd. This issue has already been adjudicated by us in the foregoing appeals in favour of the assessee. We find no infirmity in the order of the CIT(A).

33. Ground No. 3 relate to deletion of addition on account of interest attributable to interest free loan to Shri. N. Srinivasa. In this regard, it is noticed that the assessee has advanced interest free loan of Rs.3,97,64,179/- to Mr. N. Srinivasa for the purpose of advance to property. Since it was interest free advance, the AO has disallowed the explanation on interest against which the assessee preferred an appeal before the CIT(A) and the CIT(A) relied upon its earlier order for the assessment year 2008-09, deleted the addition on the basis of the remand report. Now the revenue is in appeal before the Tribunal against the deletion of addition. The learned counsel for the assessee has contended that assessee has furnished the sufficient evidence in the form of copies of agreements of the properties, in support of its claim that advances were made for properties to be acquired for the business purposes. In remand reports, the AO has reported that on test check of the details of the interest free advance, balance available with the assessee company on the day of advance were paid by it, assessee has surplus fund of loan for payment of advance. Since the CIT(A) has followed its earlier order which was not reversed by the Tribunal, the order of the CIT(A) deserves to upheld.

The learned DR placed reliance upon the order of the AO.

34. Having carefully examined the orders of the authorities below in the light of rival submissions, we find that in the remand report, AO had admitted that there was sufficient interest free funds available with the assessee out of which the advances were made. Moreover, the CIT(A) has followed its earlier order for assessment year 2008-09 which has not been reversed so far by the appellate authorities. Under these circumstances, we find no infirmity in the order of the CIT(A). Accordingly, we confirm the same.

35. In the result, appeals of the assessee are allowed for statistical purposes and appeals of the Revenue are dismissed.

Pronounced in the open court on 9th March, 2018.

Sd/-	**Sd/-**
(JASON P BOAZ)	**(SUNIL KUMAR YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore.
Dated: 9th March, 2018.
/NS/*

Copy to:

1. Appellants 2. Respondent 3. DR
4. CIT 5. Guard file

By order

Sr. Private Secretary,
ITAT, Bangalore.