

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI**

**BEFORE SH. G.D. AGRAWAL, PRESIDENT
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
ITA No. 4747/Del/2011
(Assessment Year: 2006-07)**

Usha International Ltd. (Earlier Known as The Jay Engineering Works Ltd.) 19, Kasturba Gandhi Marg New Delhi PAN : AA ACT0066A	Vs.	ACIT Circle-18(1) New Delhi
---	------------	-----------------------------------

**ITA No. 4903/Del/2011
(Assessment Year: 2006-07)**

ACIT Circle-18(1), Room No. 211A, C.R. Building New Delhi PAN : AA ACT0066A (Appellant)	Vs.	The Jay Engineering Works Ltd. (Now USHA International Ltd.) Surya Kiran Building, 19, K.G. Marg New Delhi (Respondent)
---	------------	---

Assessee by : Sh. V.P.Gupta, Sh. Anunav Kumar, Adv.
Revenue by : Sh. Vijay Varma, CIT(DR)

Date of hearing : 12.06.2018
Date of pronouncement : 27.06.2018

ORDER

PER BENCH :

ITA No. 4747/Del/2011 is preferred by the assessee against order dated 25.08.2011 passed by the Ld. CIT(A)-XXI, New

Delhi for assessment year 2006-07. ITA No. 4903/Del/2011 is the department's cross appeal for the same year.

2. The brief facts of the case are that during the year under consideration, the assessee was the registered trademark owner of USHA brand. It derived income from the business of manufacturing, contract manufacturing of fans and trading thereof under this brand name. The assessee was having its own manufacturing facilities and in addition thereto it procured manufactured fans duly packed from various manufacturers under the terms of individual written contracts. The return of income was filed declaring a loss of Rs. 2,60,67,206/-. After initially processing the return u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), the case was subsequently selected for scrutiny. The assessment was completed at a total income of Rs. 44,73,45,025/- after making the following disallowances/additions:

(i) Interest on advances taken from Usha India Ltd @ 13% was disallowed in the entirety u/s. 40A(2)(b) of the Act - Rs. 2,40,61,300/-

(ii) Cash discount given by the assessee for early payment and calculated @ 15% was disallowed u/s 40(a)(ia) of the Act - Rs. 2,02,97,475/-

(iii) Disallowance of publicity charges reimbursed to USHA India Ltd. amounting to Rs. 90,91,255/- and disallowed u/s 40A(2)(b) of the Act

(iv) Disallowance of 50% of commission paid to USHA India Ltd. amounting to Rs. 1,39,29,851/-

(v) Disallowance of the entire sales promotion expenses, discount/incentives allowed to customers and reimbursed to USHA India Ltd. amounting to Rs. 84,14,272/-

(vi) Disallowance of the entire amount of Rs. 23,96,717/- regarding Art work related expenses for new designs for packing boxes and advertisements reimbursed to USHA India Ltd

(vii) Disallowance of Rs. 3,98,97,893/- in respect of salary commission and other expenses reimbursed to USHA India Ltd

(viii) Disallowance of Rs. 39,52,663/- pertaining to bill discounting charges

(ix) Disallowance of Rs. 24,65,72,121/- u/s 40(a)(ia) of the Act and pertaining to cost of purchase of fans

(x) Disallowance of Rs. 12,73,93,965/- u/s 40(a)(ia) of the Act and pertaining to cost of import of fans from China

(xi) Disallowance of Rs. 1,14,72,083/- pertaining to Ocean freight charges

(xii) Disallowance of SGS charges amounting to Rs. 4,54,546/-

2.1 The AO also denied the assessee the benefit of set off of brought forward losses.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the disallowances. The Ld. CIT (A) partly allowed the assessee's appeal by holding as under:-

(i) With respect to disallowance u/s 40A(2)(b) of the Act, the Ld. CIT (A) upheld the disallowance in principle but reduced the rate of interest to 12% thereby giving a relief of Rs. 2,22,10,430/- and confirming the balance disallowance of Rs. 18,50,870/-

(ii) With respect to cash discount allowed to USHA India Ltd. @ 15%, the Ld. CIT (A) again gave relief by holding that 12% of cash discount was allowable. Thus, in principle the disallowance u/s 40A (2)(b) was upheld but the quantum was reduced. Amount of Rs. 1,62,37,980/- was held as allowable and the balance amount of Rs. 40,59,495/- was confirmed.

(iii) With respect to disallowance of publicity charges reimbursed to USHA India Ltd. amounting to Rs. 90,91,255/- and disallowed u/s 40A(2)(b) of the Act, the Ld. CIT(A) held that the provisions of this section were not attracted in reimbursement of expenses and directed that the assessee's claim was to be allowed fully.

(iv) With respect to disallowance of 50% of commission paid to USHA India Ltd. amounting to Rs. 1,39,29,851/-. The Ld. CIT (A), following the order of ITAT for assessment years 2001-02 and 2002-03, held that since the issue had been decided in favour of assessee, the assessee was to get relief of the entire amount of Rs. 1,39,29,851/-.

(v) With respect to sales promotion expenses, discount/incentives allowed to customers and reimbursed to USHA India Ltd. amounting to Rs. 84,14,272/-, the Ld. CIT (A) dismissed the assessee's ground challenging the disallowance and upheld the disallowance.

(vi) With respect to disallowance of Rs. 23,96,717/- regarding Art work related expenses for new designs for packing boxes and advertisements reimbursed of USHA India Ltd., the Ld. CIT(A) upheld the disallowance and dismissed the assessee's ground.

(vii) With respect to disallowance of Rs. 3,98,97,893/- in respect of salary commission and other expenses reimbursed to USHA India Ltd, the Ld. CIT(A) upheld the disallowance and dismissed the assessee's ground.

(viii) With respect to the disallowance of Rs. 39,52,663/- pertaining to bill discounting charges, the Ld. CIT(A) allowed the claim of the assessee subject to verification of the figures by the assessing officer.

(ix) With respect to disallowance of Rs. 24,65,72,121/- pertaining to cost of purchase of fans, the Ld. CIT(A) held that provisions of section 40(a)(ia) of the Act were not applicable and directed the deletion of the disallowance.

(x) With respect to disallowance of Rs. 12,73,93,965/- pertaining to cost of import of fans from China, the Ld. CIT(A) again held that provisions of section 40 (a)(ia) of the Act were not attracted and the disallowance was to be deleted.

(xi) With respect to disallowance of Rs. 1,14,72,083/- pertaining to Ocean freight charges, the Ld. CIT(A) allowed the assessee's claim and directed the disallowance to be deleted.

(xii) With respect to SGS charges amounting to Rs. 4,54,546/-, the Ld. CIT(A) decided the issue in favour of the assessee and directed the disallowance to be deleted.

(xiii) With respect to the assessee's claim of set off of brought forward, the Ld. CIT (A) directed the AO to allow the claim of the assessee after proper verification.

2.3 Aggrieved by the above findings of the Ld. CIT (A), now the department as well as the assessee has approached the ITAT in cross appeals and the grounds taken by the parties are as under :-

2.4 ITA No. 4747/Del/2011 (Assessee's Appeal)

"1. That CIT(A) erred in allowing payment of interest on advances from erstwhile Usha International Ltd. at the rate of 12% as against actual rate of 13%, without assigning any reason or the basis, whereas the appellant had submitted full justification for interest rate of 13% and thereby upholding disallowance to the extent of Rs. 18,50,870/-.

2. That the CIT (A) erred in upholding of disallowance on account of cash discount paid by the appellant company to erstwhile Usha International Ltd. on early payments of purchase bills to the extent of Rs. 40.59,495/- by holding that cash discount is allowable at the rate of 12% as against payment made by the appellant at the rate of 15% per annum, without giving any reason and the basis, whereas the

appellant had given full justification and documentary evidence in support of rate of 15%.

3. That the CIT(A) erred in upholding disallowance of Rs.84,14,272/- being the payments made by the appellant company to erstwhile M/s Usha International Limited on account of reimbursement of discount/incentive etc. allowed to dealers/customers for promotion of sales as per instruction of the appellant, without correctly appreciating the facts and past history' and also wrongly observing that entire marketing liabilities were to be discharged by the erstwhile UIL for which commission at the fixed rate was paid on sales.

4. That the CIT(A) erred in upholding disallowance of Rs.32,96,717/- being the payments made by the appellant company to erstwhile M/s Usha International Limited on account of reimbursement of art work got done on behalf of the Appellant Company for new designs etc. of packing boxes for packing of the product and of the advertisement for the print media without correctly appreciating the facts and past history and also wrongly holding that erstwhile UIL was in charge of marketing and was taking commission and therefore, this expenditure was not allowable.

5. That the CIT (A) erred in upholding disallowance of Rs.39,89,793/- being the payments made by the appellant company to erstwhile M/s Usha International Limited on account of reimbursement of salary of certain employees and also for certain other expenses incurred by erstwhile UIL on behalf of the Appellant by observing that there was no need for the appellant company to have marketing staff without correctly appreciating the facts, past history and also nature of expenses. He also failed to appreciate that reimbursement related to the salaries of the personnel and their travelling expenses for the personnel deputed by UIL and rents of the premises of UIL used by the Appellant Company.”

2.5 ITA No. 4903/Del/2011 (Department's Appeal):

"1. On the facts and circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 2,22,10,430/- disallowed by the AO on account of advance paid to M/s. Usha International Ltd.

2. On the facts and circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 1,62,37,980/- disallowed by the AO on account of early payment of bills.

3. On the facts and circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 90,91,255/- disallowed by the AO on account of advertisement.

4. On the facts and circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 1,39,29,851/- disallowed by the AO on account of commission paid.

5. On the facts and circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 44,38,853/- disallowed by the AO on account of bill discounting charges.

6. On the facts and circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 38,58,92,715/- disallowed by the AO u/s 40(a)(ia)."

3. The Ld. AR submitted that the company, namely, Jay Engineering Works Ltd. (JE) was a manufacturing company and was manufacturing fans, sewing machines etc. Usha International

Limited (UIL) was carrying on the activities of marketing of the products manufactured by JE. There were two agreements between the companies, called General Agreement (placed at pages 124 to 127 of the Paper Book - I) and Selling Agency Agreement (placed at Pages 128 to 130 of Paper Book -I).

3.1 With respect to the General Agreement, it was submitted the General Agreement was for sale of goods by JE to UIL on principal to principal basis. The maximum retail price was fixed by JE from time to time. UIL, however, was free to sell the goods at lower than the maximum price fixed by JE. The Ld. AR submitted that Clause 5(c) of the Agreement provided that in case JE advised any reduction in price, the same was to be reimbursed/allowed to UIL. It was further submitted that Clause 7 of the Agreement provided for credit period of 75 days and that it was also provided that in case payment is made before the credit period of 75 days, cash discount will be allowed to UIL for the period of early payment. The Ld. AR further submitted that Clause 9 provided that all advertising/sales promotion work in respect of products will be organized by UIL and all costs of such advertising/sales promotion work will be reimbursed by JE to UIL.

3.2 With respect to the Selling Agency Agreement it was submitted that it was for allowing commission on the bulk orders procured by UIL as agent of JE from the Government agencies/ other institutions and on export. It was further submitted that Clause 7 of this Agreement also provided that advertising/sales promotion work will be organized by UIL and the cost will be reimbursed by JE.

3.3 The Ld. AR submitted that these agreements/ arrangements have been going on between the two companies for a long period extending more than 40 years. Agreements were being renewed from time to time for a period of five years. It was submitted that the General Agreement for the year under appeal was entered into on 4th August, 2004 effective from 01.05.2004 and was for a period of five years up to 30.04.2009. The Selling Agency Agreement was dated 21.02.2004 and was effective from 01.05.2004 till 30.04.2009. It also had reference to the earlier agreement dated 29.04.1999 effective from 01.05.1999 to 30.04.2004.

3.4 The Ld. AR further submitted that the above mentioned two companies have been independent companies and they were not even related in terms of Section 40A(2) of the Income Tax Act. However, w.e.f. 25.03.2005 relevant to A.Y. 2005-06 UIL acquired the shares of JE and as a result became the related party in terms of Section 40A(2)(b) of the Income Tax Act. Subsequently, however, w.e.f. 01.04.2007 (Assessment Year 2008-09) UIL was amalgamated with JE and JE has been renamed as Usha International Limited w.e.f. 20.06.2008. It was further submitted that since the name of the company has been changed to Usha International Limited pursuant to amalgamation w.e.f. 01.04.2007 the appeals are in the name of Usha International Limited but the assessee/respondent company herein is Jay Engineering Works Ltd. The Ld. AR submitted that these facts have been duly recorded in the order of ITAT in assessee's own case passed in appeals for Assessment Years 2003-04 to 2005-06 in pars 2.1 to 8.4 on pages 2 to 11.

4. Advancing his arguments in support of the assessee's appeal, the Ld. Authorised Representative submitted that the

assessee's ground no. 1 in ITA no. 4747/Del/2011 challenging the interest paid to USHA International Ltd. and sustained to the extent of Rs. 18,54,361/- was identical to ground no. 1 of the assessee's appeal before the ITAT for assessment year 2005-06. It was also submitted that this ground of the assessee was related to ground no. 1 of the department's appeal bearing no. 4903/Del/2001 wherein the department was challenging the deletion of disallowance of Rs. 2,22,10,430/- by the Ld. CIT(A). The Ld. Authorised Representative submitted that the total interest paid @13% and amounting to Rs. 2,40,61,300/- was disallowed by the assessing officer whereas the Ld. CIT(A) had allowed payment @ 12% thereby deleting the disallowance of Rs. 2,22,10,430/-. It was submitted that this issue had come up before the ITAT in assessment year 2005-06 in ITA no. 2025/Del/2011 as well as ITA No. 1622/Del/2011 and the ITAT, vide order dated 25.04.2016, had set aside the issue to the file of the AO with the direction to verify the fact that interest paid was in respect of advances taken by the assessee company from USHA International Ltd. and also consider the details filed by the assessee in this regard. The Ld. Authorised Representative submitted that following the order of the Tribunal in

assessment year 2005-06 as aforementioned, this issue may also be restored to the file of the AO with similar directions as contained in Para 9.4 of the said order for Assessment Year 2005-06.

4.0.1 The Ld. CIT DR placed reliance on the concurrent findings of both the lower authorities on the issue.

4.1 With respect to ground no. 2 in the assessee's appeal with challenges the sustenance of disallowance of Rs. 40,59,495/- to USHA International Ltd. for early payment of the bills, the Ld. Authorised Representative submitted that this ground was also similar to ground no. 2 being raised by the department. It was submitted that the total disallowance was Rs. 2,02,97,475/- and the disallowance was restricted to Rs. 1,62,37,980/- by the Ld. CIT(A). It was further submitted that this issue had also come up before the ITAT assessment year 2005-06 and in the Cross Appeals by the assessee as well as the department, the ITAT had allowed the assessee's ground and had dismissed the ground raised by the department. It was submitted that this issue was covered in favour of the assessee and against the department by the order of the ITAT for assessment year 2005-06 in Para 9.4 and 10 and it was prayed that the facts being identical a similar adjudication be made.

4.1.1 The Ld. CIT DR placed reliance on the concurrent findings of both the lower authorities on the issue.

4.2 With respect to ground no. 3 of the assessee's appeal relating to disallowance of reimbursement of discount/incentives etc. to dealers and customers, the Ld. Authorised Representative submitted that this ground was also related to ground no. 3 of the department's appeal. The Ld. Authorised Representative submitted that the assessee had claimed an amount of Rs. 84,14,272/- on account of sales promotion expenses, discounts/incentives to dealers and customers reimbursed to USHA International Ltd. but the same was disallowed u/s 40A(2)(b) of the Act and the same was also upheld by the Ld. CIT(A). It was further submitted that this ground related to reimbursement of expenses and was also before the ITAT in appeal for assessment year 2005-06 wherein the ITAT, vide order dated 25.04.2016, had upheld the liability of reimbursement of expenses. It was further submitted that the Ld. CIT (A) had deleted a related addition of Rs. 90,91,255/- incurred and reimbursed on account of publicity/advertisement expenses. It was submitted that these expenses were also in the nature of reimbursement of expenses and were covered in favour of the

assessee by order of the ITAT in assessee's own case for assessment year 2005-06 (in Para 9.4 and 10). It was prayed that following the earlier year's order of the ITAT which was in favour of the assessee, this ground raised by the department be dismissed.

4.2.1 The Ld. CIT DR placed reliance on the concurrent findings of both the lower authorities on the issue.

4.3 The Ld. Authorised Representative submitted that ground no. 4 of assessee's appeal was challenging the disallowance of expenses which were in the nature of reimbursement of art work expenses incurred for new designs etc. It was submitted that the entire amount of Rs. 32,96,707/- was disallowed by the Ld. CIT(A) whereas this ground was also covered in favour of the assessee by the order of the ITAT in assessee's own case for assessment year 2005-06 wherein ITAT had held that publicity related expenses/ reimbursement of publicity related expenses was allowable.

4.3.1 The Ld. CIT DR placed reliance on the concurrent findings of both the lower authorities on the issue.

4.4 Coming to ground no. 5 of assessee's appeal, the Ld. Authorised Representative submitted that ground no. 5 challenged

the action of the Ld. CIT (A) in upholding the disallowance of Rs. 39,89,793/- on account of reimbursement of expenses on account of travelling, salary and rent incurred by USHA International Ltd. It was submitted that this ground was also covered in favour of the assessee by the order of ITAT in assessee's own case for assessment year 2005-06 wherein it had been held that reimbursement of expenses was allowable.

4.4.1 The Ld. CIT DR placed reliance on the concurrent findings of both the lower authorities on the issue.

5. Coming to the remaining grounds in the department's appeal the Ld. Authorised Representative submitted that Ground No. 3 of the department's appeal related to reimbursement of publicity expenses. It was submitted that in terms of Clause 9 of the General Agreement and Clause 7 of the Selling Agency Agreement, USHA International Ltd. was required to incur all advertising/sales promotion expenses and JE had to reimburse the cost incurred by USHA International Ltd. It was submitted that similar expenses had been reimbursed in the past and deduction of the same had been allowed by the AO. It was for the first time that

a disallowance was made in Assessment Year 2005-06 u/s 40A (2) of the Act which was deleted by the Ld. CIT (A) and the order of the Ld. CIT (A) was upheld by the ITAT in Assessment Year 2005-06 in Para 9.4 and 10 of the aforesaid order of the ITAT. It was prayed that on identical facts, the department's ground be dismissed.

5.0.1 The Ld. CIT DR placed reliance on the observations and findings of the AO in this regard.

5.1 With respect to ground no. 4 of the department's appeal challenging the action of the Ld. CIT (A) in deleting the addition of Rs. 1,39,29,851/- pertaining to commission, it was submitted by the Ld. AR that this ground was before the ITAT in assessment years 2003-04 and 2004-05 and the ITAT in those two years had affirmed the order of the Ld. CIT (A) directing the deletion of disallowance on identical facts. It was further submitted that a similar claim was allowed by the Ld. CIT (A) in assessment year 2005-06 against which the department had not raised any challenge before the ITAT.

5.1.1 The Ld. CIT DR placed reliance on the observations and findings of the AO in this regard.

5.2 With respect to ground no. 5 of the department's appeal, the Ld. Authorised Representative submitted that this ground challenged the action of the Ld. CIT(A) in deleting the disallowance related to bill discounting charges and this ground is identical to ground no. 4 of department's appeal before the ITAT for assessment year 2005-06. It was submitted that the ITAT, vide order dated 25.04.2016, had upheld the order of the Ld. CIT (A) and had dismissed the ground raised by department and, therefore, on identical facts this issue was covered in favour of the assessee.

5.2.1 The Ld. CIT DR placed reliance on the observations and findings of the AO in this regard.

5.3 Coming to ground no. 6 of the department's appeal, it was submitted by the Ld. Authorised Representative that this ground related to deletion of disallowance of Rs. 38,58,92,715/- made u/s 40(a)(ia) of the Act. It was submitted that a similar disallowance had been made in assessment year 2005-06 by the AO which was deleted by the Ld. CIT (A) and the department had not preferred any further appeal against the action of the Ld. CIT(A) in deleting this disallowance. It was also submitted that the issue is covered in favour of the assessee by the judgment of the Hon'ble

Apex Court in the case of CIT vs. Silver Oak Laboratories Ltd. in SLP No. 18012 of 2009. A copy of the said judgment was placed on record by the Ld. Authorised Representative.

5.3.1 The Ld. CIT DR placed reliance on the observations and findings of the AO in this regard.

6. We have heard the rival submissions and have also perused the material available on record. We now take up the grounds and adjudicate the same as under:-

ITA No. 4747/Del/2011 (Assessee's Appeal):

6.1 Ground no. 1 challenges the action of the Ld CIT (A) in allowing payment of interest on advances from USHA International Ltd. @ 12% as against the rate of 13% paid by the assessee. We find that this issue had come up before the ITAT in assessee's case for assessment year 2005-06 also and the ITAT had restored this issue to the file of the AO for verification. The AO was directed to verify that the interest paid by the assessee was in respect of the advance taken by the assessee. On similar facts, we restore ground no. 1 to the file of the AO for verifying that the interest being claimed as

paid is in respect of the advance taken from USHA International Ltd. The assessee will be at liberty to submit all necessary documents to support its claim before the AO. Thus, this ground stands allowed for statistical purposes.

6.2 Ground no. 2 of the assessee's appeal challenges the action of the Ld. CIT (A) in partly upholding the disallowance on account of cash discount paid by the assessee company to USHA International Ltd. on early payments of purchase bills to the extent of Rs. 40,59,495/- by holding that cash discounts was allowable @ 12% only as against the payment made by the assessee @15%. It is seen that this issue was also considered by the ITAT Delhi Bench in Assessee's own case in assessment year 2005-06 and ITAT Delhi Bench had deleted this addition by following the judgment of the Hon'ble Delhi High Court in the case of Hive Communication vs. CIT reported in 201 Taxman 99 (Del). The Hon'ble Delhi High Court had held that the legitimate business needs of the assessee must be examined from the viewpoint of the assessee itself and it was not for the assessing officer to dictate what the business needs of the company from the point of prudent businessman should be. It is seen that the Ld. CIT (A), while upholding a partial disallowance,

had followed his own order in assessment year 2005-06 but has not assigned any reason or basis for upholding the differential rate of 3% of cash discount. We are unable to concur with the findings of the Ld. CIT (A) as, although, he has accepted the cash discount as allowable in principle, he has not given any reasoning for confirming a partial disallowance. Further, in view of the order of the ITAT in assessee's own case of assessment year 2005-06 and also in view of the ratio of the judgment of the Hon'ble Delhi High Court in the case of Hive Communication vs. CIT (supra) we have no option but to delete the addition in respect of cash discount. Thus, this ground stands allowed.

6.3 Coming to ground no. 3 of the assessee's appeal which challenges the action of the Ld. CIT (A) in upholding disallowance of Rs. 84,14,272/- being payments made to M/s USHA International Ltd. on account of reimbursement of discount/incentives etc. allowed to dealers and customers for sales promotion, it is seen that it is the submission of the Ld. AR that the issue of reimbursement of discount/incentive was also before the ITAT in assessee's own case for assessment year 2005-06 and had been decided. However, a perusal of the order of the aforesaid order of the ITAT shows the

issue of reimbursement of discount/incentives was not specifically before the ITAT as has been averred by the Ld. AR. The AO, while making the impugned disallowance has observed that the payments were hit by the provisions of section 40A (2)(b) of the Act and further that the assessee could not prove the genuineness of the expenditure. The Ld. CIT (A) has upheld the observations of the AO but has not given any cogent reason for upholding the findings of the AO. In the proceedings before us, the Ld. AR has submitted that the issue was covered by the earlier order of the ITAT in AY 2005-06. However, this is not so. The issue of reimbursement of discounts and incentives was not specifically before the ITAT in 2005-06. Furthermore, the assessee is bound to demonstrate that the reimbursement was made strictly in terms of the General Agreement and the Selling Agency Agreement. The assessee has also to discharge the onus of demonstrating that the reimbursement was genuine and was not hit by provisions of section 40A(2)(b). In such a situation, interest of justice would be served if this issue is restored to the file of the Ld. CIT (A) to adjudicate the issue afresh after duly considering our observations in this regard and after providing proper opportunity to the

assessee to present its case. Accordingly, ground no. 3 stands allowed for statistical purposes.

6.4 Coming to ground no. 4 of the assessee's appeal which challenges the action of the Ld. CIT(A) in upholding disallowance of Rs. 32,96,717/- being payment made to USHA International Ltd. on account of reimbursement of art work etc. for new designs etc. for packing boxes and advertisement in the print media, it is seen that it is the submission of the Ld. AR that the issue of reimbursement in respect of artwork/designs is also covered by the order of the ITAT in assessee's own case for assessment year 2005-06. However, a perusal of the order of the aforesaid order of the ITAT shows the issue of reimbursement of pertaining to art work/designs was not specifically before the ITAT as has been averred by the Ld. AR. The AO, while making the impugned disallowance has observed that as the holding company was in charge of marketing and was also taking commission, the expenses on designs and art work had to be incurred by the holding company. The Ld. CIT (A) has upheld the observations of the AO but has not given any cogent reason for upholding the findings of the AO. In the proceedings before us, the Ld. AR has submitted that the issue was covered by the earlier

order of the ITAT in AY 2005-06. However, this is not so. The issue of reimbursement with respect to design and art work was not specifically before the ITAT in 2005-06. Furthermore, the assessee is bound to demonstrate that this reimbursement was made strictly in terms of the General Agreement and the Selling Agency Agreement. The assessee has also to discharge the onus of demonstrating that the reimbursement was genuine and it was not an attempt to reduce the expenses of the holding company. In such a situation, interest of justice would be served if this issue is restored to the file of the Ld. CIT (A) to adjudicate the issue afresh after duly considering our observations in this regard and after providing proper opportunity to the assessee to present its case. Accordingly, ground no. 4 stands allowed for statistical purposes.

6.5 Coming to ground no. 5 of the assessee's appeal which challenges the action of the Ld. CIT (A) in upholding of disallowance of Rs. 39,89,793/- with respect to the reimbursement of expenses on account of travelling, salary and rent to USHA International Ltd., it is seen that it is the submission of the Ld. AR that the issue of reimbursement in travelling, salary and rent is also covered by the order of the ITAT in assessee's own case for assessment year 2005-

06. However, a perusal of the order of the aforesaid order of the ITAT shows the issue of reimbursement of pertaining to travelling, salary and rent was not specifically before the ITAT as has been averred by the Ld. AR. The AO, while making the impugned disallowance has observed that as all the marketing activities were handled by the holding company, there was no need for the assessee to incur these expenses. The Ld. CIT (A) has upheld the observations of the AO but has not given any cogent reason for upholding the findings of the AO. In the proceedings before us, the Ld. AR has submitted that the issue was covered by the earlier order of the ITAT in AY 2005-06. However, this is not so. The issue of reimbursement with respect to salary, travelling and rent was not specifically before the ITAT in 2005-06. Furthermore, the assessee is bound to demonstrate that this reimbursement was made strictly in terms of the General Agreement and the Selling Agency Agreement. The assessee has also to discharge the onus of demonstrating that the reimbursement was genuine and that it was not an attempt to reduce the expenses of the holding company. In such a situation, interest of justice would be served if this issue is restored to the file of the Ld. CIT (A) to adjudicate the issue afresh

after duly considering our observations in this regard and after providing proper opportunity to the assessee to present its case.

Accordingly, ground no. 5 stands allowed for statistical purposes.

6.6 Ground No. 6 is general in nature and is not being adjudicated upon.

7. In the result the appeal of the assessee stands allowed in terms of our observations as contained in the preceding paragraphs.

ITA 4903/Del/2011 (Department's Appeal):

8. Ground no. 1 of the department's appeal relates to disallowance of interest paid to Usha India Ltd. This ground is similar to ground no. 1 of assessee's appeal which has already been decided in favour of the assessee in the preceding paragraphs of this order. In view of our findings contained therein, we dismiss ground no. 1 of the department's appeal.

8.1 Ground no. 2 challenges the action of the Ld. CIT (A) in deleting addition of Rs. 1,62,37,980/- pertaining to cash discount. This ground is similar to ground no. 2 of the assessee's appeal

which has already been decided in assessee's favour in the preceding parts of this order. Accordingly in view of our findings and adjudication of ground no. 2 in assessee's appeal, ground no. 2 of the department's appeal also stand dismissed.

8.2 Ground no. 3 of the department's appeal challenges the action of the Ld. CIT (A) appeals in deleting addition of Rs. 90,91,255/- pertaining to reimbursement of advertisement expenses. This ground is relating to reimbursement of publicity expenses. It is the submission of the assessee that this reimbursement is in terms of Clause 9 of General Agreement and Clause 7 of Selling Agency Agreement and Usha International Ltd was required to incur all advertising/sales promotion expenses and JE had to reimburse the cost incurred by UIL. Accordingly, publicity expenses incurred by UIL were reimbursed by JE. The Assessing Officer disallowed the expenses stating that since fixed percentage of commission was agreed to be paid to the holding company (UIL) the entire marketing liability was to be discharged by the holding company. It is also the AO's observation that the payment was been made with a view to understate the profit of the

assessee company (JE) to allow benefit to the holding company. We note that similar expenses have been allowed in the past and it was only in A.Y.2005-06 when UIL had become a related company under Section 40A(2) of the Act, the AO for the first time, disallowed the expenses. However, the Ld. CIT (A) allowed the deduction for these expenses and the order of the Ld. CIT(A), in appeal for A.Y.2005-06, was upheld by the ITAT and the deduction was duly allowed vide Para 9.4 and 10 of the said order of the Bench of ITAT. In respect of the year under appeal also, the Ld. CIT (A) has allowed the deduction. Accordingly, this ground is covered by the order of the ITAT in A.Y. 2005-06 in favour of the assessee and ground no. 3 stands dismissed.

8.3 Ground no. 4 relates to disallowance made by the Assessing Officer on an *ad hoc* basis to the extent of 50% of the commission paid. This ground is also covered in favour of the assessee company by the orders of the ITAT in appeals for Assessment Years 2002-03, 2001-02 and also 2003-04 and 2004-05. In Para 17 of the order of the ITAT in AY 2003-04 and 2004-05, reference has also been made to the order in appeal for A.Y.2002-03. It has further been noted by

the ITAT that similar disallowance made by the AO in A.Y. 2005-06 was deleted by the Ld. CIT (A) and the Department had not filed appeal against the same before the ITAT meaning thereby that the decision in respect of this particular issue had been accepted by the Department in A.Y.2005-06. Accordingly, this ground is covered in favour of the assessee and ground of the Department is dismissed.

8.4 Ground No. 5 relates to the bill discounting charges of Rs.39,52,663/- paid to various banks and this issue is also covered in favour of the assessee company. The ITAT in assessee's own case for AY 2005-06 in Para 11 and 12 has referred to the orders of the Tribunal for earlier years wherein similar deduction had been allowed by the Ld. CIT (A). We also note that identical grounds of the Department in assessment years 2003-04 and 2004-05 have also been dismissed by the ITAT vide. Accordingly, this ground also stands dismissed.

8.5 Ground No. 6 is regarding the disallowance of Rs. 38,58,92,715/- made by the Assessing Officer, being the cost of goods purchased/imported on the ground that the company had not deducted tax at source on these purchases. Similar

disallowance was made by the Assessing Officer in the immediately preceding assessment year i.e. A.Y.2005-06 and the Ld. CIT (A) had deleted the disallowance after referring to the amended section 194C of the Act and also by placing reliance on the decisions of the Hon'ble High Courts of Delhi and Bombay and also on the judgment of the Hon'ble Supreme Court in the case of CIT v. Silver Oak Laboratories P. Ltd., in SLP No. 18012/2009 decided on 17.08.2010. We also note that the Department has accepted the order of the Ld. CIT (A) in A.Y.2005-06 and no appeal against the same had been filed before the ITAT. In A.Y.2006-07 also the AO has made a similar disallowance and the Ld. CIT (A) has deleted the disallowance after referring to his order passed in appeal for A.Y.2005- 06 and also by noting the fact that the issue is covered by the decision of the Hon'ble Supreme Court in the case of CIT v. Silver Oak Laboratories P. Ltd. decided on 17.08.2010. The Ld. CIT (A) has also noted that no similar disallowance was made by the A.O. in A.Y.2008-09. He has also noted that all the items in respect of which Ground Nos. 12 to 15 have been taken were part of the aggregate expenditure of Rs. 43.38 crores deleted in appeal for A.Y.2005-06. We are in agreement with the averments of the Ld. AR

that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of CIT v. Silver Oak Laboratories P. Ltd., SLP No. 18012/2009 decided on 17.08.2010 on the basis of which the disallowance was deleted by the Ld. CIT (A) in A.Y.2005-06. We also note that the Assessing Officer, in none of the subsequent assessment years, has made a similar disallowance. This is evident from the copies of assessment orders placed before us and pertaining to subsequent assessment years 2008-09 to 2014-15. Accordingly, this ground also stands dismissed.

8.6 In the result, the appeal of the department stands dismissed.

9. In the final result, the appeal of the assessee stands allowed in terms of our directions and the appeal of the department stands dismissed.

(Order pronounced in the open court on 27th June, 2018).

Sd/-

(G.D.AGARWAL)

PRESIDENT

Date: 27 .06.2018

BR

Sd/-

(SUDHANSHU SRIVASTAVA)

JUDICIAL MEMBER

Copy of order to: -

- 1) The Appellant;
 - 2) The Respondent;
 - 3) The CIT;
 - 4) The CIT(A)-, New Delhi;
 - 5) The DR, I.T.A.T., New Delhi;
- True Copy

By Order

ITAT, New Delhi