आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND
SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 1033/PUN/2013
निर्धारण वर्ष / Assessment Year : 2005-06

Thermax Limited,
14, Mumbai Pune Road,
Wakdewadi,
Pune-411 003.
PAN : AAACT3910D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-10, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1289/PUN/2013
निर्धारण वर्ष / Assessment Year : 2005-06

The Deputy Commissioner of Income Tax,
Circle-10, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Thermax Limited,
Thermax House
14, Bombay-Pune Road,
Wakdewadi,
Pune-411 003.
PAN : AAACT3910D

.....प्रत्यर्थी / Respondent

Assessee by : Shri H.P Mahajani
Revenue by : Mrs. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 24.06.2019
घोषणा की तारीख / Date of Pronouncement : 31.07.2019

आदेश / ORDER

PER VIKAS AWASTHY, JM

These cross appeals by the assessee and the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-V, Pune dated 25.03.2013 for the assessment year 2005-06.

2. The facts of the case as emanating from records are: The assessee is engaged in the business of manufacturing and selling of steam boilers, heat exchangers, water treatment plants, water treatment resins, water treatment chemicals, etc. The assessee filed return of income for the impugned assessment year on 31.10.2005 declaring total income of Rs.74,17,29,816/-. In scrutiny assessment proceedings, the Assessing Officer inter alia made additions/ disallowances on following counts:

Sr. No.	*Addition/ disallowances*	*Amount*
1.	*Addition on account of negative CIP*	*Rs.1,25,53,000/-*
2.	*Prior period expenses*	*Rs.10,77,994/-*
3.	*Liquidated damages*	*Rs.3,67,02,426/-*
4.	*Depreciation*	*Rs.2,82,62,389/-*
5.	*Disallowance u/s.14A*	*Rs.75,00,500/-*
6.	*Provision for warranty*	*Rs,2,39,35,670/-*
7.	*Legal and professional expenses paid to Mckinsey & Company*	*Rs.9,02,00,000/-*
8.	*Commission paid on Sales*	*Rs.13,45,000/-*
9.	*Adhoc disallowances in respect of vehicle expenses, telephone expenses, miscellaneous foreign travel expenses, public relation expenses*	

3. Aggrieved against the assessment order dated 30.12.2008, the assessee filed appeal before the Commissioner of Income Tax(Appeals). In First Appellate Proceedings, the Commissioner of Income Tax(Appeals) granted part relief to the assessee by deleting some of the additions in full. In the case of some of the disallowances/ additions, the Commissioner of Income Tax (Appeals) gave partial relief.

4. Against the findings of the Commissioner of Income Tax (Appeals), both, assessee and the Revenue are in appeal before the Tribunal. For the sake of convenience, we would first take the appeal of the assessee.

ITA No.1033/PUN/2013 (By Assessee)
A.Y. 2005-06

5. The assessee has impugned the findings of the Commissioner of Income Tax (Appeals) by raising following grounds in appeal:

> "*1. Revenue Recognition:*
>
> *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining addition under this head to the extent of Rs. 18.10 lacs by holding that the adjustment made by the learned AO in respect of freight was justified.*
>
> *The learned CIT(A) ought to have accepted the contention of the Appellant that freight paid by the Appellant and freight recovered from the customer were not relevant for determining the stage of completion of any project and were therefore rightly not considered by the Appellant for this purpose.*
>
> *The addition sustained by the learned CIT(A) be deleted.*
>
> *2. Prior period expenses :*
>
> *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming disallowance of 'prior period expenses' of Rs. 10,77,994/-.*
>
> *3. Liquidated Damages :*
>
> *On the facts and in the circumstances of the case and in law the learned CIT(A), erred in directing the AO to allow deduction for liquidated damages only to the extent the amounts debited are found supported by the 'clause for liquidated damages' instead of allowing the claim in its entirety.*

The claim of the Appellant be directed to be allowed in full either as liquidated damages or as bad debts or as a business loss.

4. <u>Depreciation :</u>

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the AO of rejecting the contention of the Appellant that it was entitled to claim depreciation @80% in respect of certain items of plant and machinery which were so entitled in accordance with Appendix to Income Tax Rules, 1962 and instead allowing depreciation @25%.

The learned CIT(A) erred in mechanically following the order of his predecessor for AY 2003-04 while rejecting the facts of the case and also losing sight of the fact that in earlier years similar claim of the Appellant was allowed.

The claim of the Appellant for further depreciation of Rs.2,82,62,389/- be directed to be allowed.

5. <u>Disallowance u/s.14A</u>

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining addition under this head to the extent of Rs.24.45 lacs being 2.5% of exempt income.

The addition sustained by the learned CIT(A) be deleted.

6. <u>Provision for warranty :</u>

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining disallowance under this head to the extent of Rs.59,83,918/- being 25% of warranty provision rejecting the contention of the Appellant that the provision made by the Appellant was on a consistent and sensible basis and was allowable as such.

The disallowance sustained by the learned CIT(A) be deleted.

7. <u>Legal and Professional Expenses- fees paid to Mckinsey & Company :</u>

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in treating the fees paid to Mckinsey & Company as deferred revenue expenditure and allowing deduction there for only to the extent of 1/5th thereof and the balance over the next four years rejecting the contention of the Appellant that the whole of the expenditure was allowable in the year of incurrence thereof.

The disallowance sustained by the learned CIT(A) to the extent of Rs.7,21,60,000/-.

Your applicant reserves the right to add to, amend or delete the above grounds of appeal."

6. Shri H.P Mahajani appearing on behalf of the assessee submitted at the outset that majority of the grounds raised in present appeal by the assessee have already been considered by the Tribunal in assessee's own case

in ITA No.1765/PUN/2012 for assessment year 2004-05 decided on 24.05.2019. The ld. AR further submitted that facts and the nature of transactions in assessment year under appeal are parameteria to the transactions in assessment year 2004-05. Therefore, findings given by the Tribunal in assessment year 2004-05 would squarely cover the issues raised in the present appeal by the assessee.

6.1 The ld. AR submitted that in ground No.1 of the appeal, the assessee has assailed rejection of income recognition method followed by the assessee from contract activity. The assessee has been consistently recognizing revenue by percentage completion method, as per Accounting Standard 7. Actual cost/estimated cost is the basis for determining such percentage. In assessment year 2004-05, the Assessing Officer disturbed with the numerator and denominator. The Assessing Officer among other items included freight cost as part of estimated costs and considered freight recovery as part of consideration for the order value. Whereas, the assessee directly accounts freight cost and recovery thereof in P & L account. The ld. AR pointed that Revenue in its appeal in ground No. 1(a), 1(b) and 1(c) has raised ground on the same issue. The ld. AR submitted that addition in respect of income recognition method followed by the assessee was made by the Assessing Officer in assessment year 2004-05, in identical set of facts. The matter travelled up to the Tribunal. The Tribunal in ITA No.1765/PUN/2012 (supra.) has decided this issue in favour of the assessee. The ld. AR furnished a copy of order of Tribunal in assessee's own case for assessment year 2004-05.

6.2 In respect of ground No.2, the ld. AR fairly admitted that the Tribunal in assessee's appeal for assessment year 2004-05 had decided this issue against the assessee.

6.3. In respect of ground No.3 of the appeal relating to liquidated damages, the ld. AR pointed that the assessee had to compensate its customers for delay in delivery of consignment beyond contractual period. The Co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2004-05 has decided this issue in favour of the assessee by allowing full deduction in respect of liquidated damages.

6.4 The ground No.4 of the appeal is relating to assessee's claim on depreciation @80% on plant & machinery used in manufacture of air/gas/fluid heating systems being renewable energy devices. The ld. AR submitted that the assessee is manufacturing renewable energy devices. According to Appendix-I of Income Tax Rules, 1962, plant and machinery used in the manufacture of renewable energy device is eligible for deduction @80%. This issue was raised for the first time in assessment year 1998-99. The same was decided in favour of the assessee holding that air/gas/fluid heating systems were renewable energy devices and the plant and machinery need to be exclusively used for the manufacture thereof. Only additions to machinery & plant exclusively used in the manufacture of heat pumps were held not eligible for higher rate of depreciation. Similar disallowance of depreciation was made in assessment year 2004-05. The Tribunal following its earlier decision on the issue granted relief to the assessee.

6.5 In respect of ground No.5 of appeal relating to disallowance u/s.14A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the ld. AR submitted that the assessee has earned dividend income of Rs.9.78 Crores. The Assessing Officer made disallowance of 2.5% of the exempt income i.e. Rs.24,45,000/-. The Tribunal in assessment years 2000-01, 2001-02 and 2004-05, has upheld the findings of Assessing Officer in making disallowance @ 2.5%. Thus, this issue was decided against the assessee by the Tribunal.

6.6. The ld. AR pointed that inadvertently in seriatim of grounds of appeal, ground No.6 was mentioned as ground No.7. In respect of ground No.7 relating provision for warranty, the ld. AR submitted that the assessee has made provision on scientific basis in line with the decision of Hon'ble Apex Court in the case of Rotork Controls India P. Ltd Vs. CIT reported as 314 ITR 62 (SC). The Assessing Officer has disallowed the provision for warranty holding the same to be contingent liability. The Tribunal has been consistently allowing assessee's claim for provision for warranty in toto from assessment year 1993-94 to 2001-02. There was no such ground before the Tribunal in assessment year 2002-03 to assessment year 2004-05 as no incremental provision was made and there was reversal of provision.

6.7. In respect of ground No.8 relating to payment of legal and professional charges to Mckinsey & Company. The ld. AR submitted that the assessee had paid Rs.9.02 crores to Mckinsey & Company as legal and professional charges for providing consultancy services. The Assessing Officer disallowed entire expenditure on the ground that consultancy was provided for business re-structuring and hence, the expenditure is capital in nature. In First Appellate Proceedings, the Commissioner of Income Tax (Appeals) held legal and professional expenditure to be in the nature of deferred revenue and allowed deduction @ 1/5th thereof in the impugned assessment year and the balance to be allowable over the next four years. The ld. AR submitted that the expenditure is entirely revenue in nature as no new asset had come into existence. In support of his contentions, the ld. AR placed reliance on the following decisions:

i. *Taparia Tools Ltd. Vs. JCIT, 372 ITR 605 (SC);*

ii. *CIT Vs. Carborandum Universal Ltd.(2009) 177 Taxman.347 (Madras);*

iii. CIT Vs. Crompton Engineering Co. Ltd. (2001) 117 Taxman 705 (Mad.);

iv. Indo Rama Synthetics (I) Ltd. Vs. CIT (2009) 185 Taxman 277 (Delhi).

7. Mrs. Nandita Kanchan representing the Department vehemently defended the assessment order. The ld. DR submitted that the Revenue in cross appeal has raised grounds corresponding to grounds No.1, 2, 5, 7 and 8 of the appeal by assessee. The ld. DR fairly admitted that all the issues raised in the appeal by assessee, except payment of legal and professional fees to Mckinsey & Company, have been considered by the Tribunal in immediately preceding assessment year in assessee's own case.

7.1 In respect of ground No.8, the ld. DR submitted that the assessee has claimed expenditure to the tune of Rs.9.02 Crores towards payment of fees to Mckinsey & Company. The Assessing Officer after considering the fact that the assessee has got advantage in the form of improvement in profit making apparatus of the company, disallowed assessee's claim of expenditure as revenue and held the same to be on capital account. To come to such conclusion the Assessing Officer relied on Delhi Tribunal - Special Bench decision in the case of Amway India Enterprises, SQL Star International Limited Vs. DCIT reported as 111 ITD 112. In First Appellate Proceedings, the Commissioner of Income Tax (Appeals) reversed the findings of the Assessing Officer in holding the expenditure as capital. However, the Ld. CIT(Appeals) concluded that the expenditure is in the nature of "deferred revenue" to be equally allowed over the period of 5 years.

8. We have heard the submissions made by representatives of rival sides and perused the orders of Authorities below. We have considered the decisions on which both the sides have placed reliance in support of their respective claims. Both the sides are unanimous in stating that substantial

issues raised in the appeal by assessee were subject matter for adjudication before the Co-ordinate Bench of the Tribunal in ITA No.1765/PUN/2012 (supra.). In the backdrop of this fact, we proceed to take up the grounds raised in the appeal by the assessee.

8.1 The **Ground No.1** of appeal is against the findings of Commissioner of Income Tax (Appeals) on the issue of revenue recognition. The assessee is following percentage completion method in line with Accounting Standard 7. The Authorities below rejected revenue recognition method of the assessee. We find that similar issue had come up before the Tribunal in assessee's own case for assessment year 2004-05 wherein, the Authorities below were in disagreement with the assessee on the revenue recognition policy. The Tribunal accepted assessee's method of recognition of profit by observing as under:

> "*21. On hearing both the sides, we find in the appeal of the assessee and in the appeal of the Revenue, the issue for adjudication relates to the correctness of the adjustments made to the estimated cost qua the* ***"freight outward"*** *to the tune of Rs.26.55 lakhs. The details and the facts are already narrated in the preceding paragraphs of this order. Perusing the order of the Tribunal for the assessment year 2003-04 (supra), we find, in principle, the income recognition method stands approved by the order of the Tribunal in favour of the assessee. The discussion at para 11 to 13 of the order of the Tribunal is relevant in this regard and the same are extracted as under :-*
>
> > *"11. Ground No.2 is with respect to addition made to the contract income.*
> >
> > *AO noticed that assessee is a manufacturer of industrial boilers and heat transfer equipments and undertakes the projects on contract basis and the contract normally runs over a period of more than one year. The assessee was accounting for income on such projects by following the "Projection Completion method" and was raising invoices as per the scheduled payments agreed with the clients but at the same time had created provision towards "Contribution Equalization Provision" to adjust excess billing. During the year, the provision of contribution equalization debited to the Profit and Loss account was Rs.4,53,93,679/-. AO noticed that the excess amount realized as per the invoices was not offered as revenue receipts and to that extent profit was not offered as income. AO was of the view that since the invoices was raised as per the agreed schedule; the invoice value should be treated as revenue receipts. He further noticed that identical issue arose in A.Y. 1997-98 wherein it was held that the value reflected in invoices raised as per agreed schedule with the clients was to be treated as revenue receipts. AO therefore held that the provision of Rs.4,53,93,679/- cannot be allowed. He accordingly disallowed the same and made its addition. Aggrieved by the order of AO, assessee carried the matter before CIT(A), who granted partial relief to the Assessee by holding as under :*

"7.2. I find that the issue has elaborately been dealt with by my predecessor in appellant's case in appeal for A.Y. 2002-03, wherein it was held by him that although, in principle, the appellant cannot be found fault with for having followed Accounting Standard-7 in the matter of revenue recognition and accordingly, making provisions for equalization, its actual working is not above scrutiny. He held that the appellant was not justified in omitting to recognize revenue wherever completion was less than 33% of the total project or where the contracts were less than Rs.25 lacs. The Ld.CIT(A) also disapproved the appellant's act of further scaling down towards contingencies/unforeseeable losses. The facts of the case during this year are identical to those in A.Y. 2002-03 and I find no reason to form a view other than that of my predecessor. Accordingly, the Assessing Officer is directed to work out the excess provision in the light of the observation made by Ld.CIT(A) in A.Y.2002-03 and restrict the disallowance to that extent. Decided accordingly."

Aggrieved by the order of Ld.CIT(A) assessee is now in appeal before us. Revenue is also aggrieved by order of CIT(A) to the extent of relief granted by him and has therefore raised ground No.2 in its appeal. Since the grounds raised by assessee and Revenue are inter-connected, both are considered together.

12. Before us, Ld. AR submitted that identical issue arose before Tribunal in assessee's appeal for A.Y. 2002-03 and the issue was decided by the Co-ordinate Bench of the Tribunal in assessee's favour by following the Tribunal order in A.Ys.1997-98 to 2002-03. He placed on record the order of Tribunal for A.Ys. 2000-01 to 2002-03 and pointed to the relevant findings of the Tribunal. He submitted that since there are no change in the facts of the case for the year under consideration, therefore following the order of the Tribunal in Assessee's own case for earlier years, the issue be decided in favour of the assessee. Ld. DR did not controvert the submissions made by the Ld. AR but however supported the order of AO.

13. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to increasing the income to the extent of provision for profit equalization. We find that identical issue of increase in the contract income arose in assessee's own case in A.Ys.2000-01 to 2002-03 and the coordinate Bench of the Tribunal decided the issue in assessee's favour by following the Tribunal order for A.Ys. 1997-98 to 2000-01, by holding as under:

"18. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to increasing the income to the extent of provision for profit equalization. We find that identical issue of increase in the contract income arose in assessee's own case in A.Y.2000-01 and 2001-02 and the coordinate Bench of the Tribunal decided the issue in assessee's favour by following the Tribunal order for A.Yrs. 1997-98, 1998-99 and 1999-2000, by holding as under:

> *9. The third ground raised by the assessee in appeal relates to income recognition from contract in accordance with Accounting Standard 7 of the Institute of Chartered Accountants of India (ICAI). The Revenue in cross appeal for assessment year 2000-01 has also raised this issue as ground No.1. The assessee is manufacturing boilers and heat transfer equipments on contract basis. These contracts are spread over a period of more than one year. The*

assessee is recognizing income of the projects, on project completion method. The assessee raises invoice on the client as per schedule of payments. The bills raised are always more than the revenue that should be recognized on the basis of project completion method. The adjustment is required to be made to adjust excess billing. The adjustment is made in accordance with AS 7 by creating a provision 'Contribution Equalization Provision'. The Assessing Officer rejected this method of making adjustment by the assessee. In the first appeal, the Commissioner of Income Tax (Appeals) partly accepted the claim of the assessee. Against the finding of the Commissioner of Income Tax (Appeals), both, the assessee and the Revenue have come in appeal.

9.1 We observe that similar issue had come up in the appeal of the assessee and the Revenue for assessment years 1998-99 and 1999-2000. The Co-ordinate Bench decided the issue in favour of the assessee. The relevant extract of the order of the Tribunal reads as under:-

22. On this aspect, it was a common ground between the parties that in assessment year 1997-98, the Tribunal vide its order dated 03.09.2014 (supra.) in the assessee's own case has upheld the stand of the assessee by following the decision of the Pune Bench of the Tribunal on a similar issue in the case of Thermax Babcock & Wilcox Ltd. vs. DCIT vide ITA Nos.157 & 158/PN/1995 dated 11.05.2001 for assessment years 1990- 91& 1991-92. The Tribunal in its order dated 03.09.2014 (supra) noted that in the case of Thermax Babcock & Wilcox Ltd. (supra) which was a group company of the assessee, the Tribunal upheld the allowability of provision for profit equalization while recognizing incomes on application of percentage of completion method in the case of long term contracts in the light of the AS-7 issued by the ICAI. In view of the decision of the Tribunal in the assessee's own case in the preceding assessment year, we do not deal with the issue any further except directing the Assessing Officer to implement the order of the Tribunal dated 03.09.2014 (supra) on this Ground too. As a consequence, whereas Ground of Appeal of the assessee is allowed that of the Revenue is dismissed."

There has been no change in the facts and circumstances in the present year, nor there is any change in the accounting treatment given by the assessee. We do not find any reason to deviate from the view taken by the Co-ordinate Bench in assessment years 1998-99 and 1999-2000. Accordingly, this ground in the appeal of the assessee is accepted and the ground raised by the Revenue in its appeal is dismissed.

19. Before us, since both the parties have admitted that the facts of the case in the present ground are identical to that of earlier years and since in earlier years, the issue has been decided by Co-ordinate Bench of the Tribunal in assessee's favour, we therefore following the decision of the coordinate Bench of the Tribunal in assessee's own case for earlier years and for similar reasons, allow the ground of assessee and thus, the assessee's ground No.4 is allowed and Revenue's ground No.2 is dismissed.

14. Before us, since both the parties have admitted that the facts of the case in the present grounds are identical to that of earlier years and since in earlier years, the issue has been decided by Co-ordinate Bench of the Tribunal in assessee's favour, we therefore following the reasoning of the decision of the Co-ordinate Bench of the Tribunal in assessee's

own case for earlier years and for similar reasons, allow the ground of assessee and thus the assessee's ground No.2 is allowed and Revenue's ground No.2 is dismissed."

22. From the above discussion and the arguments made out by the ld. Counsel for the assessee, we find the AS-7 which existed prior to letter dated 01st April, 2003 continues to remain the same; but for minor changes. There are minor changes in relation to the computational issues. However, there is no change so far as "cost based" percentage completion method in concerned. Therefore, the computation of "recognition income" is concerned, the order of the CIT(A) is fair and reasonable and the same does not call for any interference. Accordingly, relevant grounds stand allowed in favour of the assessee.

23. Further, so far as adjustments made by the Assessing Officer to the estimated cost is concerned, the CIT(A) already granted part relief to the assessee. ***With reference to the freight outward to be included*** *in the estimated total cost, we find it is a case of reimbursement of the actual cost incurred by the assessee. The inclusion in the total estimated cost when the same is returned has no effect on the income aspect. Therefore, being the case of reimbursement, there is no profit element. Consequently, recognition income of such reimbursement is not appropriate. Therefore, the order of the CIT(A) on this issue requires to be reversed. Accordingly, assessee is entitled to get relief on this issue also. Thus,* ***ground no.2 of the assessee is allowed and the ground no.1(a) and 1(b) of the Revenue is dismissed."***

Since, the facts in the present assessment year are parameteria to assessment year 2004-05, we find no reason to take a different view. Accordingly, **ground No.1 of the appeal by assessee is allowed for the reasons given by the Tribunal in assessee's own case for assessment year 2004.05**.

8.2 The **Ground No.2** of the appeal is on assessee's claim of "Prior period expenses". The ld. AR fairly admitted that the assessee had claimed "prior period expenses" in assessment year 2004-05 as well. The assessee carried the issue in appeal before the Tribunal. The Tribunal rejected assessee's claim and upheld the addition. The assessee in the impugned assessment year has claimed "prior period expenses" of Rs.10,77,994/-. We observe that in the past as well the assessee has been claiming "prior period expenditure". After being unsuccessful before the Commissioner of Income Tax (Appeals), the assessee carried the issue in appeal before the Tribunal. The Tribunal adjudicated this issue in favour of the Revenue. The Tribunal has been

taking a consistent view in rejecting assessee's claim of prior period expenses in the past. For the sake of brevity, we are not reproducing the findings of the Tribunal for assessment year 2004-05. Thus, following the order of Tribunal in assessee's own case in ITA No.1765/PUN/2012 (supra.), the assessee's claim of "prior period expenses" is rejected. Thus, **ground No.2 raised in appeal by the assessee is dismissed**.

8.3 The **Ground No.3** in appeal by the assessee relates to liquidated damages. The assessee has been claiming penalty paid to customers for delay in delivery of consignment as "liquidated damages". We find this issue is recurring in the past several assessment years. The Co-ordinate Bench in appeal of assessee for assessment year 2004-05 decided the issue in favour of the assessee by placing reliance on assessee's own case in ITA No.1055 & 1056/PUN/2009 for the assessment year 2003-04 decided on 12.03.2019 and concluded as under:

> *"31. ..... From the above, it is evident that the Pune Bench of the Tribunal has decided this issue in favour of the assessee. Now, it is a settled law that such expenditure is allowable as business expenditure if it is incurred on the grounds of "commercial expediency". Commercial expediency is a term of wide import and has been held to include such expenditure as a prudent businessman incurs for the purpose of business. The expenditure incurred though not under any legal obligation but still it is allowable as a business expenditure if incurred on the grounds of commercial expediency and the method of recognition is followed from year to year. Before us, no material has been placed by the Revenue that the expenditure is not a genuine expenditure or has been incurred to benefit any group concerns. Considering the totality of the facts we are of the view that the expenditure is allowable. Hence,* ***ground No.4 raised in appeal by the assessee is allowed."***

The Revenue has not brought before us any material/case law to controvert the findings of the Tribunal on the issue. Respectfully following the decision of Co-ordinate Bench, the assessee's claim of liquidated damages is allowed in toto. **Accordingly, ground No.3 raised in appeal by the assessee is allowed**.

9. In **ground No.4** of the appeal, the assessee has assailed disallowance of depreciation claimed at 80% on plant and machinery used for manufacturing of air/gas/fluid heating systems being renewable energy devices.

9.1 We find that similar disallowance of depreciation on plant and machinery for manufacturing renewable energy devices was made by the Assessing Officer and Commissioner of Income Tax (Appeals) in assessment year 2004-05 and even in the earlier assessment years. The assessee carried the issue in appeal before the Tribunal for assessment year 2004-05 in ITA No.1765/PUN/2012 (supra.). The Co-ordinate Bench of the Tribunal following the order of Tribunal in assessee's own case in ITA No.1055 & 1056/PUN/2009 for assessment year 2002-03 and 2003-04 held that the assessee is eligible for depreciation @80% with respect to plant and machinery used in Plant No. 4 and 8. Whereas, assessee's claim of depreciation @80% on plant and machinery used in Plant No.11 was denied. For the sake of completeness, the relevant extract of the findings of Tribunal in assessment year 2004-05 are reproduced herein below:

> "*35. We have heard both the sides and perused Para 26 to 29 of the Tribunal's order wherein the Pune Bench of the Tribunal has decided the issue by observing as under :*
>
> > ***"26. Ground No.6 is with respect to disallowance of higher depreciation.***
> >
> > *26.1. On perusing the depreciation chart, AO noticed that assessee had claimed depreciation at higher* ***rate of 80% depreciation*** *on plant Nos.4 and 8 and 11 wherein it was manufacturing* ***shell type boilers*** *and* ***absorption cooling devices****. It was Assessee's contention that these items of plant and machinery were used in the manufacture of renewable energy devises and therefore it was eligible for higher rate of depreciation of 80%. The submissions of the Assessee were not found acceptable to AO. AO was of the view that due to the type of equipments that were manufactured by the assessee with the aforesaid machines, the aforesaid machines per se did not qualify for higher depreciation as those machineries could be used for manufacturing of other types of machinery as well and that it cannot be said that the machineries were used wholly and exclusively for manufacturing the energy saving machineries. He accordingly held that Assessee was only* ***eligible for normal depreciation of 25% on such machineries****. He accordingly disallowed the claim of additional depreciation of Rs.17,25,103/-. Aggrieved by the order of AO, assessee carried the matter before Ld*

CIT(A), who following the order of his predecessor for A.Y 2002-03, upheld the order of AO by observing as under :

> *"12.3 This issue has elaborately been dealt with by my predecessor who while adjudicating upon this issue in assessee's appeal for AY. 2002-03 observed as follows:*
>
> *I have carefully considered the ground raised by the appellant and the arguments of the Ld. Authorized Representative.*
>
> *First coming to plant No.11 i.e., absorption cooling division, which manufactures heat pumps, the stand taken by the Assessing Officer will have to be confirmed. Entry No. 3(iii)(C)(c) specifically deals with heat pumps. It provides for depreciation on heat pumps at the rate of 100%. This entry will not apply to the appellant as the appellant does not own / use the heat pumps. Instead, it manufactures them. This entry also does not cover the plants and machineries manufacturing heat pumps. Hence plant No.11 would fall outside the purview of entry No. 3(iii)(C)(c). It is the appellant's argument that heat pumps would come under entry 3(xii)(e) i.e., air / gas / fluid heating systems. Nothing has been adduced to establish that the heat pumps manufactured by the appellant are in the nature of such heating systems. Further, even while it has been submitted that a heat pump is also a renewal energy device, no evidences have been adduced in this regard apart from stating that it is a waste heat recovery equipment. If the heat pump is a waste heat recovery equipment the same will come under entry No. 3(iii)(C)(c) in which case the appellant would not be eligible for depreciation at the rate of 100% since it is not the owner user of the heat pumps. It also needs to be mentioned that by the appellant's own submission the heat pumps require minimum electricity for running the compressor, hence the same cannot be regarded as renewal energy devices. For these reasons, the action of the Assessing Officer in rejecting the appellant's claim of depreciation on the machineries in plant No.11 at the rate of 100% and in restricting the admissible depreciation to a rate of 25% is hereby confirmed.*
>
> *Coming to the remaining plants and machineries under discussion i.e., plants no.4 and 8, the appellant's arguments have been already noted. The Assessing Officer was certainly not justified in holding that entry 3(xii)(e) applies only to solar heating system. There is nothing in this entry enabling such a conclusion. In the absence of any prefix such as 'solar' any renewal energy device being in the nature of an air / gas / fluid heating system will be covered by this entry. However, the crucial questions is if the products manufactured by the appellant are renewal energy devices as distinguished from energy saving devices which are covered by entry no.3(iii). During the course of the appeal proceedings, the appellant was asked to obtain and furnish certificate from experts to the effect that the multitherms, shellmax, fluidpacs and bi-drum boilers are in the nature of renewal energy devices. The appellant was also asked to submit copies of brochures, pamphlets as may be available with regard to the specifications and functioning of these products. The details / evidences thus called for have not been furnished. In the circumstances, I have to hold that the appellant has not been able to substantiate that these products are in the nature of renewal energy devices being air/gas/fluid heating systems. It is also clear from entry 3(xiii) that all the sub-items figuring in this entry, including sub-entry (r), have to be in the nature of renewal energy devices. The starting words viz. 'renewal energy devices being' qualify all the sub-items including (r). This would indicate that*

even the 'machinery and plant used in the manufacture of any of the above sub-items' will themselves have to be in the nature of renewal energy devices. Or else, (r) would have come as a separate entry and not as a sub-item in entry No.3(xiii). Nothing has been adduced to show that the plants and machineries in respect of which depreciation at the higher rate has been claimed are in the nature of renewal energy devices. For these reasons, I do not see any valid reason for interfering with the stand taken by the Assessing Officer i.e., in rejecting the appellant's claim of depreciation on the plants and machineries in question @100% and in allowing depreciation on the said plants and machineries @ 25% only. Consequently, the resultant disallowance made by the Assessing Officer is hereby confirmed and the ground raised by the appellant against such disallowance dismissed."

Aggrieved by the order of Ld.CIT(A) assessee is now in appeal before us.

27. Before us, Ld. AR reiterated the submissions made before lower authorities and fairly admitted that identical issue arose in assessee's appeal before Hon'ble ITAT in A.Ys. 2000-01 to 2002-03. The Tribunal while deciding the appeals for AY 2002-03, has decided the issue with respect to claim of additional depreciation on Plant Nos.4 and 8 in favour of the assessee and Plant No.11 against the assessee. Ld.DR did not controvert the submissions made by the Ld. AR but however supported the order of AO.

28. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to allowing higher rate of depreciation on certain machineries. We find that identical issue of disallowance of higher depreciation arose in assessee's own case in A.Ys. 2002-03. The Co-ordinate Bench of the Tribunal while deciding the appeal in ITA Nos.259 & 276/PUN/2006 order dated 30.11.2017 decided the issue partly in favour of assessee by holding as under :

"26. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to allowing higher rate of depreciation on certain machineries. We find that identical issue of disallowance of high depreciation arose in assessee's own case in A.Yrs. 2000-01 and 2001-02. The coordinate Bench of the Tribunal while deciding the appeal in ITA Nos. 1247 & 1248/PN/2005 decided the issue partly in favour of assessee by holding as under:

"11. The fifth ground in appeal of the assessee is with respect to claim of 100% depreciation on plant and machinery. The Revenue has also impugned the findings of the Commissioner of Income Tax (Appeals) on this issue as ground No.2 in its appeal.

11.1 The assessee had claimed 100% depreciation on its plant and machinery in Plant No.3, Plant No.4, Plant No.8, Plant No.10 and Plant No.11. In the first appeal, the Commissioner of Income Tax (Appeals) accepted the contentions of the assessee in respect of all the plants except Plant No.11. The assessee has come in second appeal with respect to the claim of depreciation @ 100% in respect of item of Plant No.11. Whereas, the Revenue in its appeal has assailed the findings of the Commissioner of Income Ta the Commissioner of Income Tax (Appeals) in respect of all the plants except Plant No.11.

11.2 Similar claims were made by the assessee in respect of Plant No. 11 and the Revenue in respect of other plants (excluding Plant No. 11). The issue was decided by the Tribunal in assessee's own case for assessment years 1998-99 and 1999-2000 as under :-

"35. Now, we may first take-up assessee's claim for depreciation 100% with respect to the plant & machinery used in the manufacture of air/gas/fluid heating systems. In this context, it is clear noted that having regard to the entry 3(xiii)(r) read with 3(xiii)(e) of the Depreciation Table annexed to the Rules, plant & machinery used for the manufacture of air/gas/fluid heating systems is eligible for depreciation @ 100%. The plea of the Assessing Officer that other items in Entry in 3(xiii) contain a reference to 'solar' and therefore item (e) of Entry 3(xiii) should also be read to be referring to solar air/gas/fluid heating systems, in our view, is not justified. The Assessing Officer has attempted to read into the statute a word which is conspicuous by its absence. Therefore, in our view, having regard to the item (r) read with item (e) of Entry 3(xiii) of the Depreciation Table, the claim of the assessee has been rightly allowed by the CIT(A) and we find no force in the Ground of Appeal raised by the Revenue.

36. Now, with regard to assessee's claim for allowance of depreciation @ 100% in respect of plant & machinery used in the manufacture of heat pumps is concerned, the same has been appropriately denied by the lower authorities. The CIT(A) has rightly pointed out that machinery & plant used in the manufacture of heat pumps is not eligible for depreciation @ 100% as it does not find a place in any of the items in the Depreciation Table which is entitled for depreciation @ 100%. On this aspect, the order of the CIT(A) is hereby affirmed. Thus, Ground of Appeal No.8 of the assessee as well as the Grounds of Appeal Nos.8.1 & 8.2 of the Revenue are dismissed."

The issue raised by both the sides are identical to the one already adjudicated by the Tribunal. Both the sides have not been able to controvert the findings of the Tribunal in earlier assessment years. We find no reason to take a contrary view. Accordingly, the ground with respect to claim of depreciation in assessee's appeal and the appeal of Revenue is dismissed."

27. Before us, since both the parties have admitted that the facts of the case in the present ground are identical to that of earlier years, we therefore following the decision of the coordinate Bench of the Tribunal in assessee's own case of earlier years and for similar reasons hold that assessee is eligible to claim depreciation @ 100% with respect to plant and machinery used in the manufacture of air / gas / fluid systems but is not eligible for 100% depreciation in respect of plant and machinery used in the manufacture of heat pumps. ***Thus the ground of assessee is partly allowed."***

29. *Before us, since both the parties have admitted that the facts of the case in the present ground are identical to that of earlier years, we therefore following the decision of the Co-*

ordinate Bench of the Tribunal in assessee's own case for A.Y 2002-03 and for similar reasons hold that ***assessee is eligible to claim depreciation @ 80% with respect to plant and machinery used Plant Nos.4*** *and 8 in the manufacture of air / gas / fluid systems* ***but is not eligible for 100% depreciation in respect of plant and machinery*** *used in the manufacture of heat pumps.* ***Thus, the ground of assessee is partly allowed.***

From the above, it is evident that the claim of depreciation with respect to impugned Plant & Machinery is allowable protonto. Considering the commonness of the facts as well as the settled legal proposition, we are of the opinion that the Assessing Officer needs to be directed to follow the said order of the Tribunal (supra). Accordingly, ***ground No.5 raised in appeal by the assessee is partly allowed."***

The Revenue has not placed before us any material controverting the findings of the Co-ordinate Bench in assessee's own case in assessment year 2004-05. For the parity of reasons, **ground No.4 of the appeal by assessee is allowed**.

10. In **ground No.5** of the appeal, the assessee has assailed disallowance made u/s.14A in respect of exempt income earned. Undisputedly, the assessee has earned dividend income of Rs.9.78 Crores on the total investment of Rs.316.16 Crores. No suo-moto disallowance for earning exempt income was made by the assessee in the impugned assessment year. The Assessing Officer made disallowance @2.5% of exempt income earned. The Ld.AR fairly admitted that in preceding assessment year i.e. assessment years 2002-03, 2004-05, the Tribunal has upheld the disallowance made by the Assessing Officer @ 2.5%. We find no reason to deviate from the view taken by the Co-ordinate Bench of the Tribunal in confirming disallowance @2.5% of the exempt income. Accordingly, **ground No.5 raised in appeal by the assessee is dismissed being devoid of any merit**.

11. There is no **ground No.6** in the appeal by the assessee.

12. The **Ground No. 7** of the appeal is in respect of disallowance of provision for warranty. The assessee has created provision of Rs.2,39,35,670/- on account of provision for warranty. The assessee provides warranty for a period of 1-2 years on the products manufactured by it. In case of manufacturing defects, the assessee is under obligation to replace the product or repair the product free of cost. The Assessing Officer had disallowed assessee's claim in respect of provision for warranty in full. In First Appellate Proceedings, the Commissioner of Income Tax (Appeals) after considering the decision of Hon'ble Apex Court in the case of Rotork Controls India P. Ltd Vs. CIT(supra.) granted partial relief to the assessee by restricting assessee's claim to 75% of the provision created by the assessee.

12.1 We observe that assessee's claim for 'Provision for Warranty' is being consistently disallowed by the Assessing Officer right from the year 1993-94 to 2001-02. The assessee carried the issue in appeal before the Tribunal. The Tribunal allowed assessee's claim on provision for warranty in full. The observations of the Co-ordinate Bench on this issue in ITA No.1247 & 1248/PN/2005 for assessment years 2000-01 and 2001-02 decided on 30.06.2015 are as under:

> *"7.2. After perusal of the order of Co-ordinate Bench dated 15.12.2014 in assessee's own case for assessment years 1998-99 and 1999-2000 we find that this issue has been decided in favour of the assessee. The findings of the Co-ordinate Bench on the issue are as under :-*
>
> > *"12. In this context, relevant facts are that the assessee made a provision of Rs.3,45,59,744/- on account of provision for warranty with respect to the products sold. Considering the opening balance of provision of Rs.2,95,97,441/-the differential amount of provision amounting to Rs.49,62,303/- was debited to the Profit & Loss Account of the year under consideration. The said provision was made by the assessee on account of the fact that it is under an obligation to provide warranty for a period of one to two years on the products sold by it on account of any manufacturing defect found later. In such a situation, assessee was obliged to replace the product or repair the product free of cost during the period of warranty. The Assessing Officer as well as the CIT(A) disallowed the deduction on the ground that the Provision for warranty was only a contingent liability. This stand of the income-tax authorities is similar to their stand in the assessee's own case in the earlier assessment years.*

13. Before us, the Ld. Representative for the assessee submitted that in the past years the said issue has been decided in favour of the assessee. In-particular, a reference was made to the decision of the Pune Bench of the Tribunal in the assessee's own case for assessment year 1997-98 vide ITA No.970/PN/2001 dated 03.09.2014 wherein the earlier decision of the Tribunal in the case of the assessee for assessment years 1994-95 and 1995-96 was followed and issue was allowed in favour of the assessee. Following the aforesaid precedents, which continue to hold the field, we direct the Assessing Officer to give effect to the aforesaid precedents, and the assessee accordingly succeeds on this Ground.

Since there has been no change in the facts and circumstances in the assessment year under consideration, we respectfully follow the decision of the Co-ordinate Bench. This ground of appeal is accordingly decided in favour of the assessee in the same terms."

The ld. AR has pointed that no disallowance in respect of warranty provision was made in assessment years 2002-03 to 2004-05 as no incremental provision was made by the assessee. Rather there was reversal of provision during the aforesaid assessment years. The ld. DR has failed to controvert the findings of the Tribunal on this issue. Thus, respectfully following the decision of the Co-ordinate Bench, we allow assessee's claim in entirety. Thus, **ground No.7 raised in appeal by the assessee is allowed.**

13. The **Ground No. 8** of the appeal by assessee is on disallowance of legal and professional expenditure amounting to Rs.7,21,60,000/- paid to Mckinsey & Co.

13.1 The assessee has claimed legal charges to be on revenue account whereas, the Department is of the view that consultancy and legal fees paid by the assessee to Mckinsey & Co. is capital in nature, as the assessee has acquired intangible asset that has resulted in enduring advantage to the assessee. The question whether the expenditure is revenue or capital in nature is a mixed question of fact and law. In the present case, we observe assessee had hired service of Mckinsey & Co. to suggest and recommend the business strategies for improving profitability and growth of the company.

Indeed, there was substantial improvement in the turnover as well as profit of the company after business strategy formulated by Mckinsey & Co., were implemented. Mere fact that the assessee has earned some enduring benefit from the strategies would not be decisive to determine the character of expenditure. It would be relevant to mention here that the assessee had hired services of Mckinsey & Co. to formulate strategy in the existing line of business of the assessee. The assessee had not diversified in the new line of business. Since consultancy and legal charges were paid for improvement in the existing line of business, the expenditure on payment of constants and legal fees charges are 'revenue in nature'.

13.2 The Hon'ble Madras High Court in the case of **CIT Vs. Crompton Engg. Co. Ltd. (supra.)** where the assessee had hired consultants with the intention to bring improvement in the business held that the expenditure incurred in obtaining report from consultants was 'revenue in nature'. The relevant extract of the aforesaid judgment is reproduced herein below:

> *"5. In the circumstances of the case, the expenditure incurred by the assessee in obtaining that report was clearly an expenditure of revenue character. It is not only permissible but is also necessary for any business to update its own knowledge and adopt better ways or organizing its business if it is to survive in the market. The expenditure incurred for such purpose cannot be regarded as capital expenditure and is only revenue expenditure. The question, therefore, referred to us is answered in favour of the assessee and against the revenue. The assessee shall be entitled to costs in the sum of Rs.1,000 (rupees one thousand only)."*

13.3 In the case of **CIT Vs. Carborandum Universal Ltd. (supra.),** the substantial question of law before the Hon'ble Madras High Court was :

> "*1.Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition in respect of payments made to M/s. Mckinsey & Co., management consultant and the same should be allowed as revenue expenditure is valid in law."*

The Hon'ble High Court answered this question in affirmative relying on Commissioner of Income Tax Vs. Crompton Engg. Co. Ltd. (supra) and held as under:

> "*5.It is well-settled that it is not only permissible, but is also necessary for any business to update its own knowledge and adopt better ways of organising its business, if it is to survive in the market. The expenditure incurred for such purpose cannot be regarded as capital expenditure and it is only a revenue expenditure. The assessee, with an intention of bringing about improvements in the way it did its business, had sought for and obtained reports of the consultant for assessment of market attractiveness in terms of gaining global market, reputise on dealing with global markets, evaluation of assessee's business ability to compete, analysis of the future growth trend of the business, development of detailed business strategies for the assessee to grow in the dynamic business environment. The fees paid to the consultant was disallowed by the revenue officials as capital expenditure on the premise that the benefits derived from such consultancies would enure to the future years also. According to the learned counsel for the assessee, this question of law is covered against the revenue by the decision of this Court in the case of CIT v. Crompton Engineering Co. Ltd. [2000] 242 ITR 317 (Mad.), in which it was held as follows:*
>
> > *"Merely obtaining a report from the management consultant and paying the fees therefore, could not be regarded as capital expenditure as such report was not obtained as part of documentation packages, but was obtained in a contract covering comprehensive restructuring of the business involved. No new line of business was started on the strength of the report of the consultants. The report was not regarded as essential part for any new business that the assessee commenced thereafter. In the circumstances of the case, the expenditure incurred by the assessee, in obtaining that report was clearly an expenditure of the revenue in character."*
>
> *Hence, the first question of law is covered against the assessee (sic- revenue)."*

13.4 The Hon'ble Delhi High Court in the case of **Indo Rama Synthetics (I) Ltd. Vs. CIT (supra.)** while dealing with the issue of consultancy fees paid to the consultants for carrying out detailed operational efficiency and profitability study has held that payments made to the professionals were on revenue account. One of the substantial question of law before the Hon'ble High Court was :

> "*(2) Whether on the fact and in the circumstances of the case, the Tribunal erred in law in holding that consultancy fee paid by the appellant to Mckinsey & Co. for carrying out detailed operational efficiency and profitability study was capital in nature solely on the ground that the said assignment was terminated before the conclusion of the study."*

The Hon'ble High Court after analyzing the facts and various decisions on the issue answered the question in favour of the assessee. The relevant extract of the aforesaid judgment is reproduced herein below:

> *"12. Insofar as the second question is concerned, the facts leading to the said question are recapitulated below.*
>
> *13. The appellant company had engaged the services of McKinsey & Co., an international firm of consultants for carrying out a detailed study on the various aspects relating to the operations of the appellant company and to suggest measures for improving the operational efficiency and profitability of the appellant company. Based on a review of the cost-benefit analysis, the said assignment for carrying out the detailed operational efficiency and profitability study was, however, terminated shortly after the mandate had been given. In respect of the work already done by the said McKinsey & Co. until the date of the termination of the mandate, a sum of Rs. 74,04,128 was paid by the appellant to the said McKinsey & Co. In the previous year relevant to the asst. yr. 2000-01, the said payment was claimed deduction by the appellant.*
>
> *14. Vide order dt. 31st Dec., 2002 passed by the AO under s. 143(3) of the Act, the AO, being of the view that the appellant had failed to establish that the payment made to M/s McKinsey & Co. was revenue in nature and that since the appellant itself had treated the said expenditure as deferred revenue expenditure, disallowed the said expenditure of Rs. 74,04,128 holding the same to be capital expenditure.*
>
> *15. Appeals preferred by the appellant before the CIT(A) as well as the Tribunal were dismissed and this is how the appellant has filed the present appeal under s. 260A of the Act raising the aforesaid question of law.*
>
> *16. The argument of the appellant before the Tribunal, and before us, was that the purpose of the said operational efficiency and profitability study was to improve and enhance the nature and profits of the appellant company. It was also submitted that the said expenditure was not incurred with a view to acquiring any capital asset or enduring advantage in the capital field. The Tribunal, however, rejected this submission of the appellant on the ground that there was no written agreement between the appellant and M/s McKinsey & Co. based on which the Tribunal could have ascertained the scope of the study and that it was only in a situation where the assignment had actually been completed and put in practice that the Tribunal could have determined whether the said study, in fact, resulted in enhancing the productivity and profitability of the company. Since the assignment was, in fact, never completed and put into practice, the Tribunal came to the conclusion that the appellant had not been able to prove that the payment of consultancy fee was for enhancing productivity and profitability of the appellant company. The Tribunal, accordingly, concluded that the aforesaid expenditure in respect of consultancy fee paid to M/s McKinsey & Co. could not be treated as revenue expenditure.*
>
> *17. This approach of the Tribunal is not correct in law. Interestingly, the Tribunal has accepted the fact that even when there was no formal written agreement with M/s McKinsey & Co., the report was submitted by the said company for the task assigned. This report was produced before the AO/CIT(A).*

The Tribunal noted that as per the assessee, the perusal of the report clearly indicated that the engagement was for the purpose of improving the operational efficiencies of the assessee and enhance the profitability of the existing business. In these circumstances, not much importance could be attached to the fact that there was no written agreement with the said consultants to ascertain the scope of the study when such scope of study could very well be discerned from the report submitted by the consultants. To remove any doubts, learned counsel for the appellant produced the report given by the said consultants for our perusal as well and reading thereof confirms the contention of the appellant.

18. The helplessness shown by the Tribunal, for want of written agreement, was, therefore, clearly inappropriate. Once it is accepted as a fact that the assignment given to the said consultants was for the purpose of improving operational efficiencies and was not to incur any enduring benefit in capital field but to carry on the existing business more efficiently and profitably, the irresistible conclusion which follows is that such expenditure was allowable as business expenditure. [see CIT vs. Praga Tools Ltd. (1985) 49 CTR (AP) 269 : (1986) 157 ITR 282 (AP) and CIT vs. Crompton Engineering Co. Ltd. (2000) 242 ITR 317 (Mad)]. Therefore, this question has also to be answered in favour of the assessee and against the Revenue."

Thus, in view of the facts of the present case and the various decisions discussed above, we are of the considered view, consultancy charges paid by assessee to Mckinsey & Co. for enhancing efficiency, efficacy, profitability and market penetration is 'revenue in nature'. The Commissioner of Income Tax (Appeals) has rightly reversed the findings of Assessing Officer and has held that the expenditure is not capital in nature. We are in agreement with the observation of the First Appellate Authority that no intangible asset has come in existence and hence, expenditure is allowable as revenue. However, we do not subscribe to the observation of the First Appellate Authority that the expenditure is allowable as 'deferred revenue expenditure'. In the light of the judgments discussed above, we hold the expenditure is on revenue account and hence, entirely allowable in the impugned assessment year. Thus, **the assessee succeeds on ground No.8 of the appeal**.

14. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

ITA No.1289/PUN/2013 (By Revenue)
A.Y. 2005-06

15. In **ground No.1** of the appeal, the Revenue has assailed the findings of the Commissioner of Income Tax (Appeals) on revenue recognition method. This ground of appeal by Revenue is corresponding to ground No.1 of appeal by the assessee. Since we have allowed assessee's claim in full, **ground No.1 of the Revenue's appeal is dismissed**.

16. In **ground No.2** of the appeal, the Revenue has assailed the findings of Commissioner of Income Tax (Appeals) in partly allowing liquidated damages. The assessee in its appeal has raised this issue in restricting relief of liquidated damages. Since we have allowed assessee's claim with respect to liquidated damages in entirety in ground No.3 of appeal by the assessee, corresponding **ground No.2 in appeal by the Revenue is liable to be dismissed. We hold accordingly**.

17. In **ground No.3** of appeal, the Revenue has assailed the deletion of ad-hoc disallowance of expenditures viz. miscellaneous expenses, vehicle expenses, foreign travel expenses and telephone expenses etc. The assessee had claimed miscellaneous expenses of Rs.92,88,931/-, vehicle expenses of Rs.2,63,14,541/-, telephone expenses of Rs.1,83,57,648/-, public relation expenses of Rs.4,12,457/-. The Assessing Officer made ad-hoc disallowance of 5% of the aforesaid expenditure. The Commissioner of Income Tax (Appeals) deleted the ad-hoc disallowances made by the Assessing Officer by following order for assessment year 2004-05. The ld. AR pointed that the Revenue carried the issue in appeal before the Tribunal in ITA No.1803/PUN/2012 for assessment year 2004-05 and the Tribunal decided the issue in favour of the assessee.

17.1 We observe that in assessment year 2004-05, the Revenue in ground No.5 of the appeal has assailed deleting of ad-hoc disallowances of various expenditures viz. public relation expenses, telephone expenses, vehicles expenses and public relation expenses, etc. and the Tribunal upheld the findings of the Commissioner of Income Tax (Appeals) by following its earlier order in ITA No.1055 & 1056/PUN/2009 for assessment year 2002-03 and 2003-04. Since head of expenses for which disallowance has been made in the impugned assessment year are same and ad-hoc disallowance has been made for similar reasons, we find no reason to deviate from the view already taken by the Co-ordinate Bench in assessee's own case. Hence, **ground No.3 of appeal by the Revenue is dismissed being devoid of any merit.**

18. In **ground No.4** of appeal, the Revenue has assailed the findings of the Commissioner of Income Tax (Appeals) in deleting the addition of Rs.50.58 Lakhs u/s.14A of the Act being proportionate interest attributable to the exempt income earned. The ld. AR pointed that own funds of the assessee comprising of share capital and reserves are to the tune of Rs.410.09 Crores and the investment made is to the tune of Rs.316.16 Crores. Own funds of the assessee are sufficient to cover the investments made, hence, no disallowance on account of interest expenditure should be made. In support of his submissions, the ld. AR has drawn our attention to the Balance Sheet of the assessee as on 31.03.2005 at Page 48 of the 24th Annual Report for the Financial Year 2004-05. The ld. AR further pointed that in the past, Tribunal has upheld the findings of Assessing Officer in confirming disallowance @ 2.5 % of the exempt income earned.

18.1 The ground No.4 of appeal by the Revenue is corresponding to ground No.5 of the appeal by assessee. While adjudicating ground No.5 of appeal by assessee, we have upheld disallowance u/s. 14A of the Act @ 2.5% of the

exempt income earned. As regards interest expenditure is concerned, the assessee has demonstrated that own funds of the assessee are much more than the investments made. It is a well settle law that where the assessee is having both, own funds and borrowed funds, it shall be presumed that investments have been made by assessee utilizing its own funds. Thus, in view of the settled law, we find no reason to interfere with the findings of the Commissioner of Income Tax (Appeal). Hence, **ground No.4 of appeal by the Revenue is dismissed.**

19. The **ground No.5** of appeal by the Revenue is in respect of sales commission Rs.13,45,000/-. The ld. AR submitted that the assessee has paid sales commission to M/s. MCC Resources, Kolkata amounting to Rs.8,50,000/- and M/s. Ayushi Abhiyanta, Kolkata amounting to Rs.4,95,000/-. The aforesaid two companies have been instrumentally in procuring orders for the assessee and thereafter, getting payments released from its customers. The ld. AR submitted that Assessing Officer in assessment year 2004-05, had made disallowance of payment of commission for the similar services rendered by these very two parties on the ground that the services are not proved. The Co-ordinate Bench of the Tribunal upheld the findings of Assessing Officer and disallowed the payment of commission.

20. We have heard both the sides. The ld. AR has fairly admitted that payment of commission to M/s. MCC Resources, Kolkata and M/s. Ayushi Abhiyanta, Kolkata were disallowed by the Tribunal in the immediately preceding assessment year. The facts in the impugned assessment year are similar and the nature of services for which commission is paid is also similar. We find that the Co-ordinate Bench of the Tribunal has rejected assessee's claim for the reasons that the assessee has not been able to substantiate rendering of services by aforesaid two parties despite providing

reasonable opportunity. For the sake of completeness, the relevant Para of the Tribunal's order on this issue is reproduced herein below:

> "*80. We have perused the case record and heard the rival contentions. We observe that during assessment proceedings, as required by the Assessing Officer, parties failed to submit proof of rendering of services while they are in constant touch with the respective parties in subsequent years. Despite sufficient and reasonable opportunities, the said five parties have not been in a position to furnish requisite documentary evidences to demonstrate that the services were actually rendered by them to the assessee. It is also apparent from the order of the Ld. CIT(A) during First Appellate proceedings that the parties were not able to provide any proof of rendering of services. Therefore, it is evident from the assessment order as well as appellate order that the said five parties have not rendered any services to the assessee. Regarding rendering of services by the said five parties, the order of the Ld. CIT(A) is very silent and does not deal with the issue in proper perspective. Therefore, we are of the considered view that with regard to this issue, the order of the Ld. CIT(A) is not considered as well reasoned. Hence, the impugned order is set aside and* ***ground No.11 raised in appeal by the Revenue is allowed****."*

In the impugned assessment year fact are similar. The assessee has not furnished cogent evidence to substantiate rendering of services by the aforementioned two parties. For the parity of reasons, we reverse the findings of Commissioner of Income Tax (Appeals) on this issue. Hence, **ground No.5 raised in appeal by Revenue is allowed**.

21. The **ground No.6** of appeal by the Revenue is with regard to provision for warranty. The Assessing Officer had disallowed assessee's claim of provision for warranty in toto. The Commissioner of Income Tax (Appeals) restricted the disallowance of provision for warranty to 25%. The assessee in its appeal has raised the issue of provision for warranty in ground No.7. While adjudicating this issue in the appeal by assessee, we have allowed assessee's claim in full. Consequently, **ground No.6 of appeal by Revenue is dismissed**.

22. **Ground No.7** of the appeal by Revenue is in respect of Legal Fee paid to Mckinsy & Co. The Department has assailed the findings of Commissioner of Income Tax (Appeals) in holding the expenditure as deferred Revenue. The

issue of Legal and Professional Fee paid to Mckinsy & Co. has been dealt in detail while adjudicating ground No. 8 of the appeal by assessee. The expenditure has been held to be revenue in nature. For the detailed reasons given earlier while deciding the appeal of assessee, the ground No. 7 of the Department appeal is dismissed.

23. In the result, the appeal of Revenue is partly allowed.

24. To sum up, the appeals of assessee as well as Revenue are partly allowed.

Order pronounced on Wednesday, the 31st day of July, 2019.

Sd/-	Sd/-
R. S. SYAL	**VIKAS AWASTHY**
VICE-PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 31st July, 2019.
SB/RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-V, Pune.
4. The CIT-V, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.