

आयकर अपीलुीय अधलकरण, 'डी' नुयायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

शुी एन.आर.एस. गणेशन, नुयायलक सदसुय एवं
शुी रमित कुओर, लेखा सदसुय के समकुष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.937/Chny/2008

नुधररण वरुष / **Assessment Year: 2003-04**

M/s. Southern Petrochemical
Industries Corporation Ltd.,
C/o M/s. Subbarayar Aiyar
Padmanabhan & Ramamani
Advocates,
New No.75A (Old No.105A),
Dr. Radhakirshnan Salai,
Mylapore, Chennai -600004.
[PAN: AAACS4668K]

v. The Commissioner of
Income-tax,
Chennai-III
Chennai-

(अपीलार्थी / **Appellant**)

(प्रतुयर्थी / **Respondent**)

अपीलार्थी कुी ओर से/ Appellant by

: Mr. R.Vijayaraghavan, Adv.

प्रतुयर्थी कुी ओर से /Respondent by

: Mr. M.Srinivasa Rao, CIT

सुनवाई कुी तारीख/Date of Hearing

: 16.09.2019

घुषणा कुी तारीख /Date of Pronouncement

: 12.12.2019

आदेश / ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee in ITA no. 937/Chny/2008 for ay:
2003-04 is directed against revisionary order dated 05.02.2008 passed
by learned Commissioner of Income Tax, Chennai-III, Chennai
(hereinafter called "the CIT"), in C.No.3033/35/III/2006-07 for
assessment Year (ay) 2003-04 u/s 263 of the Income-tax Act, 1961(
hereinafter called "the Act") wherein assessment order dated 30.03.2006

passed by learned Assessing Officer u/s 143(3) of the 1961 Act was held by learned CIT to be erroneous so far as prejudicial to the interest of Revenue on as many as six grounds/issues .

2. The assessee on the directions of the tribunal has filed concise grounds of appeal with Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal"), which concise grounds of appeal read as under:-

"1. The order of The Commissioner of Income Tax is contrary to law, facts and circumstances of the case.

1.1. The Commissioner of Income Tax erred in assuming jurisdiction under Section 263 to revise the assessment order and treating the assessment order as erroneous and prejudicial to the interest of revenue.

2. The Commissioner of Income Tax erred in holding that the Appellant is not entitled to deduction in respect of interest and exchange fluctuation loss outstanding on Floating Rate Notes (FRN) amounting to Rs. 11627.84 lakhs.

2.1. The Commissioner of Income Tax ought to have appreciated that all the material facts were placed by the Appellants before the assessing officer at the time of assessment and the assessing officer after considering the same has formed a view that the said expenditure charged of by the Appellants in the Books of Account is a revenue expenditure and accordingly allowed the deduction in his assessment order dated 30.3.2006.

3. The Commissioner of Income Tax erred in holding that the Appellant is not entitled to deduction of a sum of Rs.202.42 lakhs written off, representing the WDV of the crankshaft attached to the Diesel generator set at their Pharmaceutical Division, Cuddalore, after setting off the insurance claim received amounting to Rs.88.57 lakhs.

4. The Commissioner of Income Tax also erred in directing the assessing officer to disallow the proportionate interest on the interest credit of Rs.139.96 lakhs and Rs.16.78 crores given to an Associate Company, viz. SPEL Semi Conductor Ltd. in the light of the law laid down by the Apex Court in the case of S.A. Builders vs. CIT and others (288 ITR 1 (SC)).

4.1. The Commissioner of Income Tax has erred in directing the assessing officer to examine the fact whether the Inter Corporate Deposit (ICD) of Rs.675 Lakhs made by the Appellants during the year 1999 were made out of their own funds or borrowed funds and decide the question of

allowability of interest on such ICDs. This will amount to revision / reopening of earlier year's assessment.

4.2. Without prejudice, the Commissioner of Income Tax ought to have considered the fact that the Appellants have sufficient general reserve during the relevant period of investment. The Commissioner of Income Tax ought to have further considered that the Appellants have reported a profit of Rs.2837.26 lakhs for the assessment year 2000-2001 (Financial year 1999-2000) and also carried forward a general reserve of Rs.23924.42 lakhs as on 31.3.2000. As per the cash flow statement for the year ended 31.3.2000 annexed to the Annual Report for the year 1999-2000, the net cash available from operating activities amounts to Rs.159.78 crores.

5. The Commissioner of Income Tax erred in holding that the interest relief of Rs.883.98 lakhs out of Rs.1827.88 lakhs availed by the Appellants in respect of borrowings from various Banks and Financial Institutions pertaining to the assessment year 2002-03 under Corporate Restructuring Programme (CDR) has to be subjected to tax in the relevant assessment year.

5.1. The Commissioner of Income Tax ought to have considered the submissions made by the Appellants during the assessment as well as the Reversionary proceedings and the observations of the statutory auditors of the Company vide Item 14 to the Notes on Accounts annexed to the audited Annual Report for the assessment year 2003-2004 and upheld that the said disclosure was made only for statistical purposes and to highlight the non-receipt of confirmation on the reduction in interest rate from two secured lenders.

5.2. The Commissioner of Income Tax ought to have considered that the Appellants have actually accounted the interest expenditure only at reduced rates as per the CDR and the amount disclosed in the Annual Report was neither claimed by the Appellants in their return nor allowed by the assessing officer at the time of assessment and therefore, will not form part of any benefit or perquisite as per Sec.28 (iv) of the Income Tax Act 1961.

5.3. The Commissioner of Income tax ought to have appreciated that there was no reduction/remission of liability which has been claimed and allowed pertaining to the earlier years. Hence the reliefs granted by the banks are not chargeable under Section 41(1).

5.4. The Appellant craves leave to file additional grounds at the time of hearing."

3. The brief facts of case are that the assessee is engaged in the business of Fertilizers, Pharma , Bio-tech and Engineering Services. The AO observed in its assessment order that the assessee is dealing in :-

- a) Tuticorn Factory- Manufacturing and sale of Urea , DAP , Aluminum and Fluoride.
- b) SMO, EHVT Division- Execution of turnkey projects and execution of electrification works contract.
- c) Pharma Division- Manufacture of bulk drugs and formulations including PEN-G ; and
- d) Bio-tech Division- Production of tissue culture plants, enzymes and export of cut flowers.

3.2 The assessee filed its return of income with Revenue for impugned assessment year viz. ay: 2003-04 on 23.10.2003 declaring loss of Rs. 403,84,01,506/-. The said return of income was processed by Revenue u/s 143(1) of the 1961 Act on 12.03.2004. The assessee also filed revised return of income on 30.03.2004 declaring loss of Rs. 298,10,70,500/- . In this revised return of income filed on 30.03.2004 , the assessee offered interest income of Rs. 105.73 crores. The case of the assessee was selected for framing scrutiny assessment by AO u/s 143(3) read with Section 143(2) of the 1961 Act. The AO issued statutory notices u/s 143(2) and 142(1) of the 1961 Act to the assessee and finally scrutiny assessment was framed by AO u/s 143(3) of the 1961 Act, vide assessment order dated 30.03.2006 passed by AO u/s 143(3) of the 1961 Act , assessing loss of the assessee at Rs. 342,32,81,858/-.

4. The Commissioner of Income-tax , Chennai-III, Chennai in exercise of its revisionary powers u/s 263 of the 1961 Act on perusal of the records for ay: 2003-04 observed that assessment framed by the AO u/s 143(3) vide assessment order dated 30.03.2006 is erroneous so far as is prejudicial to the interest of Revenue which led learned CIT to issue SCN dated 24.10.2007 to the assessee u/s 263 of the 1961 Act on as many as six issues/grounds show causing assessee as to why assessment order dated 30.03.2006 passed by AO u/s 143(3) of the 1961 Act be not treated as erroneous so far as is prejudicial to the interest of Revenue within meaning of Section 263 of the 1961 Act.

4.2 The aforesaid SCN dated 24.10.2007 issued by learned CIT u/s 263 of the 1961 Act is reproduced as hereunder:-

"C.No.3033/35/III/06-07

Dated: 24.10.2007

To
The Principal Officer,
M/s SPIC Ltd.,
SPIC House,
88, Mount Road,
Guindy,
Chennai-600032.

Sir,

*Sub: Revision of assessment in the case of the
company - Asst. Year 2003-04 - notice u/s 263 reg.*

On perusal of the records for the Asst. Year 2003-04 it is noticed that the assessment has been completed on 30.3.2006 u/s 143(3) of the IT Act in

your case which is erroneous in so far as it is prejudicial to the interest of revenue for the following reasons:

It is seen from the Annual Report, notes on accounts, Item No.16, you have raised US Dollars 120 Millions as unsecured floating rate notes(FRN) in 1996 for financing the import of capital goods for its operations and projects and for general corporate purposes. Interest and exchange fluctuations incurred up to 31.3.2002 part of the loan has been carried forward in capital work in progress as it was expected to be adjusted to proposed projects/schemes. As no such proposed projects are envisaged during the current year, interest of Rs.7760.49 exchange fluctuation (Net) of Rs.3867.35 lakhs being capital work in progress have been charged to P&L account and was allowed by the AO, while completing the assessment which is erroneous.

You have claimed write off in respect of Diesel Generator Set amounting to Rs.202.42 lakhs and AO has allowed in the assessment. The DG set (Pharma Division) had already been included in the Block of assets and insurance amount of Rs.88,57,620/- had been deducted from the (block Plant & Machinery) opening WDV and still closing WDV remains to be carried forward. The sum of Rs.202.42 lakhs representing loss of depreciable assets was only capital in nature and could not be allowed as revenue expenditure.

It is seen from the annual account 2002-03 Schedule 14, interest income & financial charges that income on deposits etc. amounting to Rs.139.96 lakhs has been set off against the total interest payment of Rs.17942.64 lakhs and net interest payment of Rs.17802.62 lakhs. While completing the disallowance of interest on borrowed funds a sum of Rs.17802.62 lakhs have been adopted as against Rs. 17942.64 lakhs which represents interest liability towards secured/unsecured loans and disallowance requires rectification.

You have invested sum in equity granted loans and advances to its subsidiary/ associate companies and that interest and other recoverable that are due from M/s Tuticorin Alkalies & Petro Chemicals, MPL, SPEL Semiconductor Ltd., In the Schedule to Notes on Accounts it has been stated that entire amount of unsecured loans from promoters was due to you and that no provision has been made for interest on Rs.16.78 crores brought in by the promoters. While computing the disallowance of proportionate interest on borrowed capital the amount of RS.16.78 crores given by you to your associate SPEL had not been taken into account.

In the Notes on account 13(a) it is seen that Rs. 672 lakhs had been placed as inter corporate deposits on which no interest had been received. This aspect was not considered by the AO while computing the disallowance of proportionate interest on borrowed funds.

In the notes on account item 14, consequent to debt restructuring Rs.4110.36 lakhs for the year ending 31.3.2003 has been considered as interest relief in the accounts. In the annual report for Asst. Year 2004-05 interest relief availed from various banks and financial institutions included Rs.1827.88 lakhs (including Rs.943.90 lakhs for the year 2003-04). The balance of Rs.883.98 lakhs pertained to earlier year 2002-03 (AY 2003-04). This sum had been omitted to be considered and was required to be brought to tax for the Asst. Year 2003-04.

The above aspect was not considered by the AO while completing the asst order which resulted in the escapement of income. Hence I consider the order of the assessment passed by the AO on 30.3.2006 for the AY 2003-04 as erroneous in so far as it is prejudicial to the interest of revenue and therefore propose to direct the AO to revise the assessment passed u/s 143(3) dated 30.3.2006.

In this connection, you are hereby given show cause notice as to why directions should not be given to revise the impugned order u/s 263 of the IT Act in the above issue. If no reply is received, it will be presumed that you have no objection in revising the assessment for the Asst. Year 2003-04 on the proposed lines.

In this regard, you are requested to appear before me on 06.11.2007 at 11.00 a.m. in my office in the IV Floor of Main Building, 121 Nungambakkam High Road, Chennai-34 either in person or through a duly authorised representative along with the written submissions, if any, in the above matter.

4.3 The assessee in response to aforesaid SCN dated 24.10.2017 issued by learned CIT proposing to revise assessment by invoking its revisionary powers u/s 263 of the 1961 Act, submitted its reply before learned CIT during revisionary proceedings held by learned CIT, which reply filed by assessee is reproduced hereunder

"WRITTEN SUBMISSION TO THE NOTICE DATED 24.10.2007 ISSUED BY THE COMMISSIONER OF INCOME TAX U/S 263 OF THE INCOME TAX ACT 1961

With reference to the Revision Notice dated 24.10.2007 issued by the Learned Commissioner of Income Tax-Chennai-III, u/s 263 of the Income Tax Act 1961, our written submissions are as follows:

1. Interest and Exchange fluctuations on Floating Rate Notes (FRNs) -Rs.116.28 crores

It has been observed by the Learned Commissioner of Income Tax, Chennai-III in the Revision Notice that the interest of Rs.7760.49 lakhs and an exchange fluctuations (net) of Rs.3867.35 lakhs charged off to the Profit and Loss account during the relevant assessment year was erroneously allowed by the assessing officer while completing the assessment. In this connection, it is informed that the assessee Company borrowed 120 million US\$ against unsecured Floating Rate Notes (FRNs) during the year 1996 towards financing the import of capital goods for its operations and projects in which it was involved and for general corporate purposes. A copy of the offer document dated 11.1.96 along with full details of the above revenue expenditure was filed before the assessing officer vide our letter dated 5.7.2006.

As seen from Page No.20 of the Offer document, the net proceeds of the issue was expected around US\$ 118.06 million after expenses and the same will be applied by the assessee Company towards financing the import of capital goods for its operations and projects in which it is involved and for general corporate purposes permitted by Govt. of India.

The funds mobilised through FRNs were utilised by the Company for the modernisation of its fertiliser plant at Tuticorin and purchase of capital goods for its other Divisions and such assets were utilised by the Company for the purpose of its business. The allocation of FRN funds to various Divisions of SPIC was based on the application of funds for the purpose of acquiring the capital assets. The unallocated portion of the funds was in the Company's system with an ultimate objective of purchase of capital goods in the future. Since the borrowal through FRNs was made in foreign currency (i.e. US\$), the loan liability was valued at the end of each Financial Year and the loan liability restated by the Company in the balance sheet of the respective years. The difference between the loan liability of the previous and current year (either gain or loss) was treated as exchange fluctuation and the same was allocated/adjusted on the cost of assets based on the application of funds on these assets.

During the assessment years 1997-1998 to 2000-2001, the total exchange loss incurred by the Company was Rs.15128.07 lakhs. Out of Rs.15128.07 lakhs, exchange loss capitalised based on the allocation of funds for capital expenditure was Rs.7235.26 lakhs. The exchange fluctuation charged to Profit and Loss account during the relevant assessment years was Rs.2753.64 lakhs. The balance exchange fluctuation amounting to Rs.5139.17 lakhs was carried in the capital work in progress account for the purpose of capitalisation

as and when FRN funds were utilised for the purpose of purchase of capital goods/expansion schemes.

Out of Rs.5139.17 lakhs, the Company had capitalised the exchange loss of Rs.74.63 lakhs during the assessment year 2002-2003 and the balance exchange loss of Rs.5064.54 lakhs was carried in the capital work in progress account. During the assessment year 2003-2004, an exchange gain of Rs. 1008.55 lakhs was adjusted against the carried forward exchange loss of Rs.5064.54 lakhs and a sum of Rs. 188.64 lakhs was further capitalised out of the balance, by which unallocated foreign exchange fluctuation carried in the capital work in progress account was reduced to Rs.3867.35 lakhs as at the end of the assessment year 2003-2004.

Likewise, the total interest paid by the Company on the above unsecured loan during the assessment years 1997-1998 to 2000-2001 was Rs.20905.10 lakhs. Out of the above, interest amounting to Rs.3195.63 lakhs was capitalised during the relevant assessment years and interest amounting to Rs.9948.98 lakhs was charged to Profit and Loss account. The balance interest of Rs.7760.49 lakhs was carried in the capital work in progress account in order to capitalise the same in the future projects/expansion schemes.

The Company envisaged certain future projects and desired to capitalise the interest and exchange fluctuation carried in the capital work in progress account. The total amount carried by the Company in the capital work in progress account at the end of the assessment year 2003-2004 was Rs. 11627.84 lakhs (Interest Rs.7760.49 lakhs + Exchange fluctuation Rs.3867.35 lakhs), which related to the assessment years 1997-98 to 2000-2001.

As no further expansion schemes were undertaken or envisaged by the Company, the Company had charged off the entire amount of Rs.11627.84 lakhs to the Profit and Loss account in the assessment year 2003-2004, as it represented the interest and exchange fluctuations incurred by the Company on the loan funds utilised by it towards working capital and general corporate purposes. This had been duly certified and disclosed by the statutory auditors of the Company vide Item 16 to the Notes on Accounts annexed to the audited Annual Report of the assessment year 2003-2004 and the observations of the statutory auditors are as follows:

'The Company had raised USD 120 million as unsecured Floating Rate Notes (FRN) in 1996 for financing the import of Capital Goods for Its operations and projects and for general corporate purposes. Interest and exchange fluctuation incurred up to 31 March 2000 on part of the loan was being

carried forward in capital work in progress as it was expected to be adjusted to proposed projects / schemes. As no such proposed projects are now envisaged during the current year interest of Ks.7760,49 lakhs and exchange fluctuation (net) of Rs.3867.35 lakhs lying in capital work in progress have been charged to profit and loss account".

A statement containing the overall movement of allocated/unallocated FRN fund; interest and exchange fluctuation thereon capitalised, charged to Profit and Loss account and carried on in the capital work in progress account for the assessment years 1997-98 to 2003-2004 are enclosed as Annexure-I, II and III, for your kind perusal.

The relevant details were already furnished to the assessing officer by the assessee Company during the assessment proceedings vide its letter dated 5.7.2006. The assessing officer after examining all the materials facts on record has come to the conclusion that the amount of Rs. 11627.84 lakhs represents the cost of projects given up by the assessee Company and allowed the expenditure since it consists of only interest and exchange fluctuation. The assessing officer has come to this above conclusion in line with the decision of the Madras High Court in the case of P. Nagireddy Vs Commissioner of Income Tax reported in 199 1TR - Page 451 wherein it was held that the cost of project given up is an allowable expenditure. In the above circumstances, the view taken by the assessing officer is in accordance with the principle laid by the Madras High Court and cannot be considered by the Learned Commissioner of Income Tax as erroneous. Therefore, no revision is warranted in this connection.

2) **Assets Written off - Rs.202.42 lakhs**

The asset written off amounting to Rs.202.42 lakhs represents the Written Down Value (WDV) of the crank shaft attached with the DG set maintained by the Pharmaceutical Division of the assessee Company, which was used for the purpose of manufacture of pharmaceutical products. The WDV of the crank shaft as on 31.3.2003 as per Books of Account was Rs.290.99 lakhs. After setting of the insurance claim received amounting to Rs.88.57 lakhs, the net value written off by the assessee Company was Rs.202.42 lakhs. The same was claimed as business loss as per Sec. 32(1) (iii) of the Income Tax Act, 1961.

3) **Interest Disallowance**

The disallowance of interest of Rs.3151.15 lakhs made by the assessing officer vide Para 6.3 of the assessment order dated 30.3.2006 has been challenged by the assessee Company before

CIT(A) and the appeal is still pending. The interest disallowance of Rs.3151.15 lakhs was computed by the assessing officer on the advances made by the assessee Company to its Subsidiary and Group companies and pending as at the end of the relevant assessment year. The details of business nexus of the assessee Company with such subsidiary/group companies are furnished in Annexure-IV. As seen from the above annexure, the business nexus between the assessee company and SPIC Petrochemicals Ltd. and SPIC Fertilizers and Chemicals, FZE, Dubai, has already been upheld by the Tribunal and the Hon'ble ITAT vide its order No. ITA-2252/Mds/2003 dt. 20.10.2004 for the assessment year 2000-01 and the common order No.640/Mds/2002, 123 and 124/Mds/2004 dated 3.8.2005 for the assessment years 1997-98, 1998-99 and 1999-00 has held that the interest on such advances is a business expenditure.

In this connection, we also wish to point out that the Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals) and others reported in 288 ITR-1 had held that the interest expenditure incurred by the assessee on the amount borrowed by it for advancing the same to its sister concerns is a business expenditure and therefore allowable u/s 36(1)[iii] of the Income Tax Act since such advances were made only out of commercial expediency. Applying the ratio of the above judgment of the Apex Court, the entire interest expenditure of Rs.3151.15 lakhs on the advances made by the assessee Company to its subsidiary/group companies may be allowed as a business expenditure, since such advances were made by the assessee Company only out of commercial expediency.

The above submissions are made by the assessee Company against your proposal to add Rs. 139.96 lakhs being the set off claimed by the Assessee Company towards interest income and the disallowance of proportionate interest on borrowed capital of Rs. 16.78 crores given to the associate company, viz. SPEL Semi Conductor Ltd. Since the entire interest on the advances given to subsidiary/ group companies is an allowable expenditure, the question of disallowance of prorated interest on the interest credit of Rs. 139.96 lakhs and disallowance of interest on borrowed capital of Rs. 16.78 crores given to the associate company, viz. SPEL, Semi Conductor Ltd. does not arise.

Further, we request you to furnish the schedule reference number of the audited annual report wherein, the borrowed capital of Rs.16.78 crores was referred to, for our reference and suitable comments.

4) Proportionate disallowance on Inter Corporate Deposit of Rs.675 lakhs made by the assessee Company

As seen from Item 13(a) of the Notes on Accounts annexed with the audited annual report of the assessee Company for the year 2002-03 (assessment year 2003-04), Rs.675 lakhs had been placed as Inter Corporate Deposit (ICD) on certain companies. The above ICDs were placed by the assessee Company during the year 1999-2000. As seen from the audited Annual Report for the year 1999-2000 (Assessment year 2000-01), the Company has reported a profit of Rs.2837.26 lakhs and carried a general reserve of Rs.23924.42 lakhs as at 31.3.2000. It is evident that the above ICDs were placed by the assessee company only from its own funds and no borrowed funds were utilised for the said purpose. Therefore, the question of disallowance of any interest on such ICDs does not arise.

5) Interest relief of Rs.4110.36 lakhs given by the Bankers to the Company

The statutory auditors of the Company vide Item No.14 of the Notes on Accounts annexed with the audited annual report for the year 2002-03 have observed¹ as follows;

"The CDR cell approved the package vide its letter dated 19th March 2003, giving certain terms and conditions for the business and financial restructuring including sharing of security among lenders. The forty participating lenders will now be taking necessary steps to obtain approvals from respective authorities to effectuate the package at the earliest.

Pending execution of necessary documents and compliance with certain special and general conditions of the CDR which has been agreed to by the Company and the Promoters, the interest relief of Rs.4110.36 lakhs for the year ending 31 March 2003 has been considered in these accounts. The balances of loans / interest pending implementation of CDR are subject to confirmation and resultant adjustments, if any, would be made after the implementation of the package".

Further, the assessing officer at the time of scrutiny assessment was also informed by the assessee Company vide letter dated 20.2.2006 that the Company had accounted interest expenditure only at the reduced rate in the Books of Account and therefore, the relief of Rs.4110.36 lakhs was disclosed in the Notes on Accounts only for statistical purpose. The workings relating to the interest savings of Rs.4110.36 lakhs for the purpose of disclosure in the Notes on Accounts is also enclosed vide Annexure-V for your kind perusal.

Further, the statutory auditors of the assessee Company vide Item No. 12 of Notes on accounts annexed with the audited accounts for

the year 2003-04 (assessment year 2004-05) have also observed as follows:

'The restructuring of the Debt Portfolio under the Corporate Debt Restructuring Mechanism [CDR) has been implemented during the year. Consequent to this, interest relief availed from various Banks and Financial institutions under the CDR Scheme or otherwise includes Rs. 1827.88 lakhs (including Rs.943.90 lakhs for the year) availed from two lenders who are yet to confirm their consent for reduction in the interest rate. The balances of loans/interest accrued to some of the lenders are also subject to confirmation".

This disclosure was also made only for statistical purpose, since the interest expenditure of the relevant assessment year was accounted in the Books of Account of the assessee Company only at the reduced rate of interest.

Out of Rs.1827,88 lakhs, the relief of Rs.943.90 lakhs pertains to the year 2003-04 (assessment year 2004-05) and Rs.883.98 lakhs pertains to the year 2002-03 (assessment year 2003-04) which was already included in the total relief of Rs.4110.36 lakhs disclosed in the Notes on Accounts of the previous assessment year (i.e. 2003-04). Had the assessee Company accounted interest expenditure at normal rates, it would have claimed more interest expenditure since the interest cost would have been higher to the extent of Rs.883.98 lakhs pertaining to the assessment year 2003-04. Since the assessee Company had accounted the interest expenditure only at the reduced rate of interest, the above amount has been disclosed as savings availed by the assessee Company, subject to the approval of two lenders. Therefore, your proposal to consider the amount of interest relief of Rs.883.98 lakhs pertaining to the financial year 2002-03 (assessment year 2003-04) as income, does not arise in this case.

6) **Final Prayer**

In view of the foregoing reasons, the assessment done by the assessing officer vide his order dated 30.3.2006 u/s 143(3) of Income Tax Act 1961, is in order and no; revision is required by the learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961. Therefore, it is prayed that further proceedings on account / of the above Notice dated 24.10.2007 may kindly be dropped."

4.4 Before we delve on the revisionary order of learned CIT , dated 05.02.2008 passed u/s 263 of the 1961 Act, it is pertinent to mention here that AO did made enquiry at the time of framing of scrutiny assessment u/s 143(3) on the issue of write off capital work in progress consisting of interest on FRN as well foreign exchange fluctuation loss on FRN of earlier years which stood debited to capital work-in-progress in earlier years prior to impugned ay: 2003-04 and the same was charged off as Revenue Expenses in Profit and Loss Account during the impugned year under consideration before us viz. ay: 2003-04 and the assessee during the course of original assessment proceedings held by the AO u/s 143(3) read with Section 143(2) of the 1961 Act vide submissions 05.07.2006(page 51-53/paper book) replied before the AO , which reply is reproduced hereunder:-

"July 5, 2006

Asst. Commissioner of Income Tax,
Company Circle - V(1),
Aayakkar Bhavan,
121 Nungambakkam High Road,
CHENNAI-600 034
Dear Sir,

Sub: SPIC Ltd. - Income Tax assessment for the year 2003-04 - interest and Foreign Exchange fluctuations of Rs.11627.84 lakhs (Interest Rs.7760.50 lakhs + Rs.3867.35 lakhs) - Certain further particulars called for.

We solicit kind reference to our letter dated 9.3.2006 wherein the details relating to the borrowal of US\$ 120 million against unsecured Floating Rate Notes (FRNs) during the year 1996 and interest and exchange fluctuation's amounting to Rs.116.28 crores charged to the Profit and Loss Account during the assessment year 2003-2004 were furnished.

As desired by your goodself, a copy of the offer document dated 11.1.96 (Annexure-I) is enclosed for your kind perusal. As seen from Page No.20 of the Offer document, the net proceeds of the issue was expected around US\$ 118.06 million after expenses and the same will be applied by the assessee company towards financing the import of capital goods for its operations and projects in which it is involved and for general corporate purposes permitted by Govt. of India.

The funds mobilised through FRNs were predominantly utilised by the Company for the modernisation of its fertiliser plant at Tuticorin and purchase of capital goods for its other Divisions and such assets were utilised by the Company for the purpose of its business. The allocation of FRN funds to various Divisions of SPIC was based on the application of funds for the purpose of acquiring the capital assets. The unallocated portion of the funds was in the Company's system with an ultimate objective of purchase of capital goods in the future. Since the borrowal through FRNs was made in foreign currency (i.e. US\$), the loan liability was valued at the end of each Financial Year and the loan liability restated by the Company in the balance sheet in the respective years. The difference between the loan liability of the previous and current year (either gain or loss) was treated as exchange fluctuation and the same was allocated/adjusted on the cost of assets based on the application of funds on these assets.

During the assessment years 1997-1998 to 2000-2001, the total exchange loss incurred by the Company was Rs.15128.07 lakhs. Out of Rs.15128.07 lakhs, exchange loss capitalised based on the allocation of funds for capital expenditure purpose was Rs.7235.26 lakhs. The exchange fluctuation charged to Profit and Loss account during the relevant assessment years was Rs.2753.64 lakhs. The balance exchange fluctuation amounting to Rs.5139.17 lakhs was carried in the capital work in progress account for the purpose of capitalisation as and when FRN funds were utilised for the purpose of purchase of capital goods/expansion schemes.

Out of Rs.5139.17 lakhs, the Company had capitalised the exchange loss of Rs.74.63 lakhs during the assessment year 2002-2003 and the balance exchange loss of Rs.5064.54 lakhs was carried in the capital work in progress account. During the assessment year 2003-2004, an exchange gain of Rs. 1008.55 lakhs was adjusted against the carried forward exchange loss of Rs.5064.54 lakhs and a sum of Rs. 188.64 lakhs was further capitalised out of the above balance, by which unallocated foreign exchange fluctuation carried in the capital work in progress account was reduced to Rs.3867.35 lakhs as at the end of the assessment year 2003-2004.

Likewise, the total interest paid by the Company on the above unsecured loan during the assessment years 1997-1998 to 2000-2001 was Rs.20905.10 lakhs. Out of the above, interest amounting to Rs.3195.63 lakhs was capitalised during the relevant assessment years and interest amounting to Rs.9948.98 lakhs was charged to Profit and Loss account. The balance interest of Rs.7760.49 lakhs was carried in the capital work in

progress account, in order to capitalise the same in the future projects/expansion schemes.

The Company envisaged certain future projects and desired to capitalise the interest and exchange fluctuation carried in the capital work in progress account. The total amount carried by the Company in the capital work in progress account at the end of the assessment year 2003-2004 was Rs.11627.35 lakhs (Interest Rs.7760.50 lakhs + Exchange fluctuation Rs.3867.35 lakhs), which related to the assessment years 1997-98 to 2000-2001.

As no further expansion schemes were undertaken or envisaged by the Company, the Company had charged of the entire amount of Rs.11627.85 lakhs to the Profit and Loss account in the assessment year 2003-2004, as it represented the interest and exchange fluctuations incurred by the Company on the loan funds utilised by it towards working capital and general corporate purposes. This had been duly certified and disclosed by the statutory auditors of the Company vide Item 16 to the Notes on Accounts annexed to the audited Annual Report for the assessment year 2003-2004.

In view of the above reasons, the Company had claimed the same as Revenue Expenditure in its Regular Income Tax return for the assessment year 2003-2004.

A statement containing the overall movement of allocated/unallocated FRN funds, interest and exchange fluctuation thereon capitalised, charged to Profit and Loss account and carried on in the capital work in progress account for the assessment years 1997-98 to 2003-2004 are enclosed as Annexure-II, III and IV, for your kind perusal.

The receipt of this letter along with the enclosures may kindly be acknowledged."

The aforesaid reply was accepted by the AO and no additions were made to the income of the assessee while framing assessment u/s 143(3) of the 1961 Act.

4.4.2 The AO while framing original assessment also made enquiries as to write off written down value of Rs. 202.42 lacs of DG Set during assessment proceedings and the assessee vide reply dated 09.03.2006 (page 57/pb), replied as under:

"III. ASSETS WRITTEN OFF

Pharmaceutical Division - Rs.202.42 lakhs

As desired by your goodself, we are enclosing a statement (Annexure-VII) containing the details of the historical cost of DG set scrapped and its Written Down Value as on 31.3.2003. As seen from the above statement, we have adjusted the insurance claim received by us amounting to Rs.88,57,620/- and the balance alone was claimed as Revenue expenditure in the Income Tax Return. A copy of the insurance claim settled by the New India Assurance Company is enclosed (Annexure-VIII) for your kind perusal. As the write off, of the above asset was in line with the provisions of Sec. 32(1) (iii), we request your goodself to allow the same as revenue expenditure."

The aforesaid reply was accepted by the AO and no additions were made to the income of the assessee while framing assessment u/s 143(3) of the 1961 Act.

4.5 The learned CIT after considering replies of the assessee filed in response to the SCN issued by learned CIT u/s 263 of the 1961 Act during the course of revisionary proceedings u/s 263 of the 1961 Act and on perusal of the records rejected the contentions of the assessee and held that assessment order dated 30.03.2006 passed by AO as erroneous so far as prejudicial to the interest of Revenue, by holding as under vide revisionary order dated 05.02.2008 passed by learned CIT u/s 263 of the 1961 Act (issue wise decision of learned CIT in its revisionary order dated 05.02.2008 is reproduced hereunder):

I) Claim of Write off of Interest and Foreign Exchange Fluctuation Loss on FRN of US \$ 120 Millions issued by assessee in the year 1996-Decision of learned CIT u/s 263 of the 1961 Act

"2.2 On careful consideration of the above submissions and perusal of the records and report of the AO, I find that even though all the materials delineated above were placed before the AO at the time of assessment on being called for, the AO had not taken any specific view on the matter of deducibility of the expenditure to the tune of Rs.11627.84 lakhs under consideration. The AO had not embarked upon any critical examination of the material in the light of the significant fact that the expenditure did not relate to the year of account. It is clear that the AO without due application of mind and proper consideration of the facts in the correct perspective had allowed the same as deduction. Hence in the light of the ratio of decision of the Supreme Court in *Malabar Industrial Company Ltd., Vs CIT (243 ITR 83)*, the twin conditions of Section 263 are duly satisfied in this regard.

The Apex Court had held in the case of *Kedaranath Jute Manufacturing Company Ltd., Vs CIT(82 ITR 363)* that only such expenditure that accrues in a year under mercantile system of accounting is allowable as a deduction from the profits of that year. This ratio was again confirmed by the Supreme Court in the case of *CIT Vs M/s Kalinga Tubes Ltd.,(218 ITR 164)*. Thus any expenditure not being capital in nature laid out expanded wholly and exclusively for the purpose of business during the accounting year is only allowable as a deduction which the Supreme Court had upheld in various decisions. The interest paid on loans and exchange fluctuation loss thereon has already been capitalised in the books by the assessee. The relevant expenditure obviously related to the earlier years upto the previous year ended 31.3.2000. When this is so, the assessee cannot bring it back from the capital work in progress account and charge it off as revenue expenditure in the current year. It has been held by the Supreme Court that the accounting practice cannot override the mandatory provisions of the Income Tax Act vide *Tuticorin Alkali Chemicals and Fertilizers LTd., Vs CIT (227 ITR 172)*, Hence the deduction of expenditure of RS.11627.84 lakhs is not in order. The decision in the case of *B.form Vs CIT(199 ITR 451)* relied upon by the assessee related to the case of an assessee engaged in production of films. He started production of two films and incurred an expenditure of Rs.14,000/- therein and subsequently abandoned the" project. The High Court considered that when the assessee found that the project was not likely to be profitable he gave it up in order that he was freed from his efforts from the production of two films and the assessee can concentrate on making of better and more profitable ventures in film making. The High

Court therefore allowed it as revenue expenditure. Thus, the facts and circumstances of the case relied on are quite different from the facts in the instant case and therefore this decision is of no help to the assessee being clearly distinguishable. Hence, in view of the above reasons, I hereby direct the AO to modify the assessment by disallowing the interest-and exchange fluctuation loss of Rs.11627.84 lakhs in question."

II) Claim of Write off of Rs. 202.42 lacs of DG Set-Decision of learned CIT u/s 263 of the 1961 Act

"3.2 I have carefully considered the above submissions. As per section 32(1)(iii) if any machinery or plant on which depreciation had been allowed is destroyed in the previous year then the amount by which the insurance payable falls short of the WDV thereof shall be allowed as a deduction provided such deficiency is actually written off in the books of accounts. It is seen from the Annexure 5 to IT depreciation schedule giving details of deletion of plant and machinery that the amount realised on account of the deletions of generator set under consideration has been given as Rs.88,57,620/-. It is clear from the records that: the DG set under consideration had already been included in the block of assets (plant and machinery) for claiming IT depreciation. The insurance amount received on the DG set of Rs.88.57 lakhs had already been duly deducted from the opening WDV of that block and that even after such deduction and allowance of depreciation as per rules, the closing WDV of the block still remains namely Rs.182.77 crores as on 31.3.2003. As per Sec. 50 of the Act in respect; of depreciation of the assets, after the realisable value is deducted from the WDV of the relevant block of assets only short term capital loss would arise subject to the condition that the block assets concerned ceases to exist or the moneys payable exceed the WDV of that block. In the instant case since the closing WDV of the block still exists no other term likes would arise. The fact that the loss of this asset had been treated differently in the books of accounts would not alter this statutory position. Therefore, a sum of Rs.202.42 lakhs representing write off in the honks of depreciable assets was only a capital loss in nature and could not be allowed as a revenue expenditure for IT purposes. While completing the assessment by order dated 30.3.2006, the AO failed to apply his mind to this claim for deduction. Hence, the assessment order is rendered erroneous and

prejudicial to the interest of revenue. I therefore direct the AO to carry out a fresh examination of the claim as preferred by the assessee."

III & IV) Disallowance of Interest with respect to advances to Associated Concern – SPEL Semi Conductor Limited & Set off of interest received against interest expenses while making disallowance of Interest Expenses-Decision of learned CIT u/s 263 of the 1961 Act

"4.2 I have carefully gone through the objections raised by the assessee. I hereby direct the AO to examine the above two items namely the question of

a) disallowance of prorated interest on the interest credit of Rs.139.96 lakhs and

b) disallowance of interest on borrowed capital of Rs.16.78 crores given by the assessee to its associated company in the light of the law laid down by the Apex Court in the case of S.A.Builders Ltd., referred to above. In other words the AO should examine whether the amounts were advanced to the sister concerns by the assessee as a measure of commercial expediency or not and decide the issue accordingly.

5. The next issue is regarding the interest income on deposits, etc. Amounting to Rs.139.96 lakhs that has been set off against the gross interest payment of RS.17942.66 lakhs and whether the disallowance of proportionate interest on loan to sister concern should not be based on the gross interest liability. This issue has been covered in the previous paragraph and the directions given therein hold good."

V) Interest Disallowance on ICD of Rs. 675 lacs and decision of learned CIT u/s 263 of the 1961 Act

"6. Regarding the proportionate interest disallowance on inter corporate deposits of Rs.675 lakhs made by the assessee, the assessee stated that these deposits were placed by the assessee during the year 1999-2000 and that as seen from the audited annual report for the Asst. Year 2000-01 the company had reported a profit of Rs.2837.26 lakhs and also carried a general reserve of Rs.23924.42 lakhs as on 31.3.2000. The assessee stated that it was evident from the

above that the ICDs were placed by the assessee only from its own funds and no borrowed funds were utilised for the said purpose and therefore the question of disallowance of any interest on such ICDs does not arise.

6.2 I hereby direct the AO to examine whether the ICDs had been placed from the internal accruals of the assessee as contended. If the AO finds that a part of the interest bearing borrowed funds had been utilised for making ICDs, he is directed to apply the litmus test of the ratio of SA Builders Ltd., case cited above and decide the issue accordingly."

VI) Interest Waiver of Rs. 883.93 lacs in CDR-Decision of learned CIT u/s 263 of the 1961 Act

"7.2 I find that the AO while completing the assessment by order dated 30.3.2006 had not considered the above issue in its proper perspective with due application of mind. I therefore direct the AO to examine the issue afresh in the light of the assessee's reply extracted above and decide the matter in accordance with law. The A.O. will of course be entitled to call for further evidence for this purpose as may be required and to examine the same. No doubt before passing any such fresh assessment order, the assessee should be given reasonable opportunity of being heard."

5. Aggrieved by decision of learned CIT treating assessment order dated 30.03.2006 passed by AO u/s 143(3) of the 1961 Act as erroneous so far as prejudicial to the interest of Revenue vide revisionary order dated 05.02.2008 passed by learned CIT u/s 263 of the 1961 Act , the assessee has filed an appeal with tribunal challenging the revisionary order dated 05.02.2008 passed by learned CIT u/s 263 of the 1961 Act . The learned counsel for the assessee opened arguments before the Bench and submitted that ground number 1 and 1.1 raised by assessee in concise ground of appeal filed with tribunal are general in nature. With respect to

first effective ground number 2 , it was submitted that the assessee borrowed money in 1996 by issuing Floating Rate Notes(FRN) which was for acquisition of capital assets/projects and for working capital purposes . The assessee has added interest paid and foreign exchange loss on the date of Balance Sheet to Capital Assets in those cases where funds were applied for acquisition of capital assets/projects and in case if the funds are applied for working capital , then the said interest / foreign exchange losses were charged to Profit and Loss Account as Revenue Expenses. It was submitted that so far as unallocated funds are concerned, the interest and foreign exchange fluctuation loss on these FRN were debited to capital work in progress from year to year until ay: 2002-03 and in this year under consideration before the Bench viz. ay: 2003-04 as it was envisaged that no project is to be undertaken , entire outstanding balance in capital work in progress was charged to P & L account as Revenue Expenses. Thus , capital work in progress accumulated since 1996 onwards until ay: 2002-03 wrt to unappropriated funds were charged off to P & L Account in the year under consideration viz. ay: 2003-04 . It was stated that projects envisaged to be set up were shelved and amount standing in capital work in progress was written off to Profit and Loss as Revenue Expenses. Our attention was drawn to page 70-73/paper book filed with tribunal , which is offering circular/document issued by assessee for raising Floating Rate Note(FRN) of US \$ 120 Million due for maturity in 2003. In this document it written that net proceeds of FRN after meeting issue expenses will be used for the purposes of financing imports into

India of capital goods for its operations and projects it is involved and for general corporate purposes permitted by GOI. It is stated that these projects which the assessee was contemplating to set up were shelved . The assessee's counsel would rely on the decision of Hon'ble Delhi High Court in the case of Indo Rama Synthetic (India) Limited v. CIT reported in (2010) 228 CTR 0278(Del.) and decision of Hon'ble High Court of Jharkhand in the case of CIT v. Tata Robins Fraser Limited reported in (2012) 211 Taxman 257(Jharkhand) to support its contentions and to submit that the AO has rightly allowed the said expenses as Revenue expenses while framing original assessment order passed u/s 143(3) of the 1961 Act and the said order cannot be said to be erroneous so far as prejudicial to the interest of Revenue.

5.1.2. On the next effective ground it was stated by learned counsel for the assessee that the assessee has claimed asset written off amounting to Rs. 202.42 lacs representing written down value of the crank shaft attached with DG Set maintained by Pharma division of the assessee, which was used for manufacture of pharmaceutical products. The learned counsel for the assessee submitted that said amount represents w.d.v. of the said cranks shaft after adjusting insurance claim received by it , while balance amount is written off and charged to P&L account by invoking provisions of Section 32(1)(iii) of the 1961 Act.

5.1.3 On the next effective ground of disallowance , it was submitted by learned counsel for the assessee that earlier AO has disallowed interest

expenses to the tune of Rs. 3151.15 lacs which was allowed by learned CIT(A). It was submitted that learned CIT invoked revisionary powers to direct AO to look into disallowance of interest with respect to advances made to another group concern namely SPEL Semiconductor Limited to the tune of Rs. 16.78 crores , which was not the matter of disallowance by AO while framing regular assessment u/s 143(3) of the 1961 Act , as advances made to this company namely SPEL Semiconductor Limited was not brought within in ambit of disallowance by the AO and it is only for the first time learned CIT brought this associate company of the assessee namely SPEL Semiconductors Limited within ambit of disallowance by invoking revisionary powers u/s 263 of the 1961 Act with respect to interest free advances made to the said associate/group company. It was fairly admitted that issue before learned CIT(A) was not with respect to advances made by assessee to its associate/group company namely SPEL Semi Conductors Limited and learned CIT(A) was seized of other advances made by assessee to other group company for which interest was disallowed by the AO which later was allowed by learned CIT(A). It was submitted that later this advance to SPEL Semi Conductor Limited was converted into equity. It was claimed that these advances were made owing to commercial expediency .

5.1.4 With respect to next effective issue of ICD placed to the tune of Rs. 675 lacs on which no income was received, it was submitted by learned counsel for the assessee that the assessee has its own funds which are

sufficient to advance these ICD's and presumption should be drawn that the assessee advanced these ICD's out of its own available funds.

5.1.5 With respect to interest waiver on CDR , it was claimed that there was no waiver of interest by FI's/Banks finalized as it was subject to approvals by FI's/Banks. Our attention was drawn to page 12 of the revisionary order of learned CIT , wherein the learned CIT has directed AO to examine this issue.

5.2 The learned CIT-DR would submitted in rebuttal that learned CIT has rightly exercised its revisionary powers u/s 263 of the 1961 Act as assessment order originally passed by the AO u/s 143(3) of the 1961 Act on 30.03.2006 was erroneous so far as prejudicial to the interest of Revenue. It was submitted that foreign exchange fluctuation loess on FRN was incurred which was capital loss. The assessee has claimed to have abandoned these projects and these could not be said to be Revenue expenses which the assessee has charged to P&L account in this year as Revenue Expenses. It was submitted by learned CIT-DR that change in accounting policy is not permissible. Our attention was drawn to revisionary order passed by learned CIT u/s 263 of the 1961 Act and prayers are made to uphold the same. Regarding second effective ground, it was submitted that crank shaft was attached to DG Set of whose wdv value after netting with the insurance claim received was written off in books of accounts in P & L account as Revenue expenses and by stretch of no imagination, it could be said that crank shaft attached to DG set is an

undertaking and the assessee erred in relying on provisions of Section 32(1)(iii) of the 1961 Act. It was submitted that said crank shaft attached to DG Set was part of Block of Asset and the said block of Asset has not ceased to exist as the end of the previous year and hence Section 50 of the 1961 Act is applicable. The prayers were made to sustain the revisionary order passed by learned CIT u/s 263 of the 1961 Act. Regarding next issue , it was submitted that so far as ICD are concerned wherein claim is made that the assessee has own funds which are sufficient to make these ICD, the learned CIT has only directed AO to look into the merits of the contentions of the assessee. Similarly, it was stated by learned CIT-DR that on other issue no prejudice is caused to assessee as learned CIT directed AO to look into the issues and examine the same on merits. Thus , in nutshell , the learned CIT DR would pray for confirming and sustaining the revisionary order dated 05.02.2008 passed by learned CIT u/s 263 of the 1961 Act .

5.3 In rejoinder, the learned counsel for the assessee submitted that DG set can be an separate undertaking .

6. We have considered rival contentions and perused the material on record including orders of authorities below and cited case laws. We have observed that the assessee is engaged in the business of Fertilizers, Pharma , Bio-tech and Engineering Services. It is observed that the assessee is dealing in :-

- a) Tuticorn Factory- Manufacturing and sale of Urea , DAP , Aluminum and Fluoride.
- b) SMO, EHVT Division- Execution of turnkey projects and execution of electrification works contract.
- c) Pharma Division- Manufacture of bulk drugs and formulations including PEN-G ; and
- d) Bio-tech Division- Production of tissue culture plants, enzymes and export of cut flowers.

The assessee had filed its return of income with Revenue for impugned assessment year ay: 2003-04 on 23.10.2003 declaring loss of Rs. 403,84,01,506/-. The said return of income was processed by Revenue u/s 143(1) of the 1961 Act on 12.03.2004. The assessee filed revised return of income with Revenue on 30.03.2004 declaring loss of Rs. 298,10,70,500/- . In this revised return of income filed on 30.03.2004 by assessee with Revenue, the assessee had offered an interest income of Rs. 105.73 crores. Later scrutiny assessment was framed by AO vide assessment order dated 30.03.2006 passed u/s 143(3) of the 1961 Act , assessing loss of the assessee at Rs. 342,32,81,858/-. Thereafter, learned CIT invoked its revisionary powers u/s 263 of the 1961 Act and issued show cause notice dated 24.10.2007 to assessee as to why the assessment order of the AO be not held as erroneous so far as prejudicial to the interest of Revenue within provisions of Section 263 of the 1961 Act, on as many as six issues/grounds which we have enumerated in detail in preceding para's of this order. The said SCN dated 24.10.2007 issued by learned CIT u/s 263 of the 1961 Act is reproduced by us in this

order at para 4.2. The assessee duly replied to the said show cause notice issued by learned CIT u/s 263 of the 1961 Act explaining its stand on each of the issue's raised by learned CIT in its SCN , submitting that assessment order passed by the AO is neither erroneous nor prejudicial to the interest of Revenue within the meaning of Section 263 of the 1961 Act. We have duly extracted said reply filed by assessee in preceding para 4.3 of this order. The learned CIT then proceeded to pass revisionary orders u/s 263 of the 1961 Act, dated 05.02.2008 holding that assessment order dated 30.03.2006 passed by AO u/s 143(3) of the 1961 Act is erroneous so far as is prejudicial to the interest of Revenue within meaning of Section 263 of the 1961 Act on all the six issues/grounds raised by learned CIT in its SCN and accordingly necessary directions were given by learned CIT in its order. We have also enumerated decision of learned CIT vide revisionary order dated 05.02.2008 passed u/s 263 of the 1961 Act on all the six issues in preceding para 4.6 of this this order. The assessee being aggrieved has come in appeal before us and contentions are raised by both the rival parties to support their stand. We have carefully heard both the parties and perused entire material on record including orders of authorities below and cited case laws before us. We will now proceed to adjudicate all the six issues/grounds which led learned CIT to invoke its extraordinary powers as are contained in Section 263 of the 1961 Act to declare assessment order passed by AO u/s 143(3) of the 1961 Act to be erroneous so far as prejudicial to the interest of Revenue . The factual matrix of the case before us is undisputed and only

it is to be tested whether decision of learned CIT in invoking revisionary powers u/s 263 of the 1961 Act on undisputed facts before us was valid and sustainable in the eyes of law keeping in view powers vested in learned CIT by virtue of Section 263 of the 1961 Act. We will now proceed issue wise taking one by one all the six issues/grounds which led learned CIT to invoke its extraordinary revisionary powers u/s 263 of the 1961 Act:-

I) Claim of Write off of Interest and Foreign Exchange Fluctuation Loss on FRN of US \$ 120 Millions issued by assessee in the year 1996:-

The assessee raised Floating Rate Note(FRN) to the tune of US\$ 120 Millions in the year 1996. The said borrowings are denominated in foreign currency. These FRN's are due for repayment/maturity in 2003. The offer document dated 11.01.1996 issued by assessee for raising these FRN to the tune of US \$ 120 Million is filed by assessee and is placed on record in file. The net proceed stated to be expected from issue of FRN is around US \$ 118.06 Million , after meeting issue expenses. These FRN's issued by assessee are denominated in foreign currency and liability of the assessee to pay interest and repayment of principal is also denominated in foreign currency. It is stated in the said offer document that proceeds of FRN will be utilized for financing the import into India of capital goods for its operations and projects in which the assessee is involved and for general corporate purposes permitted by

Government of India. Thus, these FRN's were issued in the year 1996 and were due for maturity /repayment in 2003. Since its issue and receipt of proceeds by the assessee in 1996, the assessee was charging off interest and foreign exchange fluctuation loss to the Capital Assets wherein the proceeds of FRN's were utilized for acquiring capital assets. The assessee has stated that the proceeds of the FRN were , inter-alia, utilized by the assessee for modernization of its fertilizer plant at Tuticorin and purchase of capital assets for other divisions of the assessee and such capital assets were utilized for the purposes of the business of the assessee. So far there is no difficulty as this issue is not before us for adjudication . Then, the assessee also , inter-alia, used proceeds of FRN issued in 1996 for working capital purposes and the interest on FRN and foreign exchange fluctuation loss was charged off to Profit and Loss Account as Revenue expenses from year to year . Again, there is no difficulty for us as this issue is not before us for adjudication . The assessee has clarified that the funds which are used by it for acquisition of capital assets as well for working capital purposes were allocated funds out of proceeds of FRN issued by assessee . The difficulty has arisen so far as unallocated funds out of proceeds of FRN received by assessee as far as back in 1996, which had remained unallocated since 1996 till the end of previous year ending on 31.03.2003. The assessee raised FRN in 1996 which are due for maturity/redemption in 2003 and we are seized of

previous year 2002-03 relevant to ay: 2003-04 ,and 2003 is the year of maturity and repayment of these FRN as these FRN's are due for repayment in 2003. The assessee has claimed that it has unallocated funds remaining out of proceeds of FRN raised in 1996 which are so far not allocated for any usages. The assessee has debited interest as well foreign exchange fluctuation loss on these unallocated funds out of FRN raised in 1996 to capital work-in-progress from year to year since 1996 till the end of preceding ay: 2002-03 and no claim of deduction of Revenue Expenses or by way of benefit of Depreciation is claimed till ay: 2002-03 on this capital work in progress was claimed by assessee from Revenue. Thus, no prejudice was caused to Revenue until ay: 2002-03 as no benefit of any deduction/expenses either by way of Revenue Expenses or Depreciation was claimed by assessee until ay: 2002-03 on these un-allocable funds out of proceeds of FRN raised in as far as back in 1996 while computing income chargeable to income-tax , but in the year under consideration viz. previous year relevant to ay: 2003-04, the assessee has claimed that it is decided that the company does not intend to undertake or envisaged any further expansion and hence the entire outstanding amount as was appearing in the aforesaid capital work in progress account until ay: 2002-03 representing interest on un-allocated funds out of proceedings of FRN and foreign exchange loss on restatement of loan liability denominated in foreign currency as at year end from year to year

since 1996 until ay: 2002-03 was charged off as Revenue Expense in Profit and Loss Account. There is no whisper by assessee company as to how these unallocated funds out of proceeds of FRN were utilized/applied by assessee since 1996 until ay: 2003-04, i.e. whether these unallocated funds were continued to be held in escrow account with banks or with current account maintained with bank, FDR's , government securities etc. or were diverted out to other entities etc.. It is to be noted that proceeds of these FRN's could only be utilized for the purposes permitted by GOI and it could not be diverted for any other purposes as per policy of GOI. The purpose for raising these FRN was for financing the import into India of capital goods for its operations and projects in which the assessee is involved and for general corporate purposes permitted by Government of India. The onus was entirely on the assessee to demonstrate that it utilized the proceeds of FRN for the permitted purposes and unallocated FRN issued as far as back in 1996 was either kept in escrow account maintained with bank or bank accounts or in FDR's or government securities or other permitted purposes etc. and there is no diversion of said funds . There is also no explanation coming forth from the assessee as to what projects were envisaged to be undertaken which are now stated to be abandoned, what are the steps taken for undertaking these abandoned projects and status of the said projects which were envisaged to be implemented , their nexus of these projects with

business of the assessee and reasons for their abandonment. There is no explanation/evidences forthcoming from the assessee on the same and only bald statements are made that the assessee does not envisage to undertake any further projects and hence it is decided to write off the entire capital work in progress which was existing upto ay: 2002-03 in the year under consideration viz. ay: 2003-04 as Revenue Expenses. Thus, no details at all were submitted before AO during assessment proceedings, learned CIT during revisionary proceedings u/s 263 and even before us. The assessee has relied upon certain judicial precedents which we have cited in contentions of the assessee at para 5 of this order but we are afraid whence no details are forthcoming from the assessee as detailed above, we fail to understand how these judgments can be applied to the benefit of the assessee. The learned AO merely accepted the contention of the assessee that projects are abandoned or it is no more envisaged that any projects will be undertaken and the entire capital work in progress as was accumulated since 1996 until ay: 2002-03 was allowed by AO as Revenue Expenses while computing income of the assessee for ay: 2003-04. The assessee has completely failed to discharge its onus and the AO clearly erred in accepting the bald statement made by the assessee without conducting any enquiry and certainly the action of the AO in accepting these capital work in progress accumulated over years as Revenue expenses in the year under consideration while computing income of the assessee

chargeable to tax without making any enquiry which was certainly warranted based on facts and circumstances of this case before allowing entire capital work in progress existing upto ay: 2002-03 as Revenue expenses in this year viz. ay: 2003-04 is clearly erroneous and prejudicial to the interest of Revenue and learned CIT rightly interfered by invoking his revisionary powers u/s 263 of the 1961 Act. It is pertinent that 2003 is the year when these FRN's were due for repayments and the assessee is claiming that for entire duration of FRN running from 1996 when the same was raised till its maturity , proceeds were unallocated . The onus was heavy on assessee to prove that not only the funds were unallocated for projects or working capital, but the same was kept in escrow account maintained with bank or in a bank account/ FDR's , government securities etc or other permitted purposes as there were restrictions imposed by GOI on end use of foreign currency borrowings made through FRN's as the funds cannot be allowed to be diverted for purposes other than permitted usages. The evidences which could be produced but are not produced , the presumption will be drawn against the person who is in position to produce these evidences but did not produce the same. In our considered view, the learned CIT rightly interfered by invoking its revisionary provisions u/s 263 of the 1961 Act and we are not inclined to interfere with the well reasoned decision taken by learned

CIT u/s 263 of the 1961 Act, for the aforesaid reasons. We order accordingly.

II) Claim of Write off of Rs. 202.42 lacs of DG Set:-

We have observed that the assessee has claimed write off of written down value of crankshaft attached to DG Set after netting off with insurance claim , to the tune of Rs. 202.42 lacs as Revenue expenses while computing income of the assessee. The AO made enquiry with respect to the said write off and the assessee filed its reply stating that this claim is covered by provisions of Section 32(1)(iii) of the 1961 Act and hence allowable as deduction , vide letter dated 09.03.2006(page 57/pb) . The said reply of the assessee is reproduced by us at para 4.4.2 in the order. The AO simply accepted the contentions of the assessee without making any further enquiry and without looking into the fact whether the said asset was part of block of asset and applicability of Section 32(1)(ii) and 50 of the 1961 Act. The learned CIT invoked revisionary powers u/s 263 of the 1961 Act and directions were issued by learned CIT to AO to carry out fresh examination of the aforesaid claim preferred by assessee. It was observed by learned CIT that crankshaft was part of the DG Set and the said wdv of crankshaft was part of the Block of Asset and the block has not ceased to exist even after taking into effect insurance claim received by the assessee, as the end of the previous year . The impugned ay: 2003-04 is before us

and there is a concept of Block of Asset for providing depreciation u/s 32 of the 1961 Act which was applicable for impugned ay under consideration and Section 50 will come into play under the specified circumstances mentioned in Section 50 . In this case, there is an observation by learned CIT that the block of asset has not ceased to exist and there is a balance in the Block of Asset even at year end after adjusting the insurance claim received by assessee on crank shaft. Block of Asset is defined u/s 2(11) of the 1961 Act . There is no doubt that there is a different scheme of providing deprecation on undertaking engaged in generation or generation and distribution of power u/s 32(1)(i) read with Section 32(1)(iii) of the 1961 Act. These are matter of enquiry while we have observed that the AO simply accepted the claim of assessee during the course of assessment proceedings without making further enquiries as were necessarily warranted in the factual matrix of the case. The AO did not verify whether the write off Rs. 202.42 lacs on account of written down value net of insurance claim with respect to crank shaft which formed part of DG Set is to be governed by concept of Block Asset as the block of asset did not cease to exist even at year end or else it will be governed as in the case of undertaking engaged in generation of power u/s 32(1)(i) of the 1961 Act read with Section 32(1)(iii) of the 1961 Act. These are fact finding exercise which AO was obligated necessarily to undertake before allowing or disallowing the claim of the assessee but in the instant case, the AO

did not made any enquiry whatsoever before allowing the claim of the assessee. Under these circumstances, the learned CIT exercise its revisionary powers u/s 263 of the 1961 Act and directions were issued by learned CIT to AO to carry out fresh examination of the claim preferred by assessee. We are not inclined to interfere with revisionary powers exercised by learned CIT u/s 263 of the 1961 Act as in our considered view there was lack of enquiry by the AO and hence the assessment order was rightly held to be erroneous so far as prejudicial to the interest of Revenue by learned CIT and directions were rightly issued by learned CIT to the AO to examine this issue , which decision of learned CIT, we uphold. We order accordingly.

III & IV) Disallowance of Interest with respect to advances to Associated Concern – SPEL Semi Conductor Limited & Set off of interest received against interest expenses while making disallowance of Interest Expenses:-

We have observed that the AO did not examine this issue of disallowance of proportionate interest with respect to the interest free advances made by assessee to the tune of Rs. 16.78 crores to SPEL Semi Conductor Limited . The AO did disallow proportionate interest with respect to interest free advances made by assessee to other associated/group companies but interest free advances made by assessee to this concern namely SPEL Semi Conductor Limited was not enquired/examined by AO while framing assessment and no disallowance was made by the AO. Thus, there was complete lack

of enquiry by the AO with respect to these interest free advances made by assessee to its associated/group concern SPEL Semi conductor Limited. The assessee has pleaded before learned CIT , commercial expediency in granting of these interest free advances to SPEL Semi Conductor Limited and reliance was placed on decision of Hon'ble Supreme Court in the case of S.A.Builders Limited(supra). The learned CIT in exercise of its revisionary powers has only directed AO to examine the claim as to commercial expediency in grant of these interest free advances to said associated/group company namely SPEL Semi Conductor Limited. The assessee on its part is claiming huge interest expenditure on borrowings, thus it was incumbent on the AO to see whether the interest bearing funds are utilized for business purposes keeping in view commercial expediency before allowing these expenses as business expenses and there is no diversion of funds for non-business purposes. Since there was complete lack of enquiry by AO wrt to interest free advance of Rs. 16.78 crores made by assessee to SPEL Semi Conductor Limited , the learned CIT rightly held the assessment order passed by AO as erroneous so far as prejudicial to the interest of Revenue within provisions of Section 263 of the 1961 Act. In any case, directions are issued by learned CIT to AO to examine the claim of the assessee that these advances are made owing to commercial expediency. We are not inclined to interfere with the revisionary order passed by learned CIT u/s 263 on this issue. While

upholding the decision of learned CIT u/s 263 of the 1961 Act, we also note that the AO has disallowed proportionate interest expenses on interest free advances made by assessee to other group entities, while no enquiry was made by AO with respect to proportionate disallowance of interest expenses on interest free advances made to this group entity namely SPEL Semi Conductor Limited. The AO did not made any additions on disallowance of proportionate disallowance of interest expenses on interest free advances made by assessee to its group entity namely SPEL Semi Conductor Limited , while other disallowance of proportionate interest expenses on interest free advances made to other group entity was made which was subject matter of challenge by assessee before learned CIT(A) . The doctrine of merger will not be applicable in view of Explanation 1(c) to Section 263(1) of the 1961 Act . Similar view is taken by co-ordinate Benches of Chennai-tribunal in assessee's own case in ITA no. 961 & 962/Mds/2011 vide common order dated 09.02.2017 at para 11 at page 18 wherein revisionary order of learned CIT passed u/s 263 of the 1961 Act was upheld by tribunal for ay: 2005-06 and 2006-07, by holding as under:

"11. Before us, Id.A.R submitted that interest disallowance by the Ld. CIT was a subject matter of the appeal. In this connection, it is to be noted that the entire assessment order cannot be said to have merged with appellate order. In view of Explanation-C to Sec.263(1) of the Act whereas the assessee had preferred an appeal only on certain points; CIT can revise the assessment order on the other points. The reliance was placed on the judgements of jurisdictional High Court in the

case of CIT Vs. Farida Prime Tannery in [2000] 244 ITR 465 (Mad) and in the case of Seshasayee Paper And Boards Limited in [1999] 238 ITR 683 (Mad) and in the case of Soft Beverages P. Ltd. in [2001] 249 ITR 552 (Mad). Hence, in our opinion, the concept of merger with the appellate order cannot be applied; therefore, Ld. CIT is well within his power in exercising revisional jurisdiction on this issue. This ground of assessee is rejected."

With respect to the netting off of interest income earned by assessee with interest expenses incurred and considering of net interest expenses for disallowance of proportionate interest expenses , we have observed that net interest expenses were considered for disallowance of interest expenses after adjusting interest income received by assessee with interest expenses. We have observed that Chennai-tribunal in assessee's own case in ITA no. 961 & 962/Mds/2011 for ay: 2005-06 and 2006-07 , vide common order dated 09.02.2017 at para 10 page 17 , has held as as under:

"10. We have heard both the parties and perused the material on record. Admittedly the interest paid by the assessee on borrowings used for the purpose of the business to be allowed as deduction while computing the income of assessee. The interest received by the assessee cannot be set off against the interest paid by the assessee. The interest paid and claimed as a deduction in the computation of profits and gains of the business, cannot be set off against interest received under the head "income from other sources". So that while computing the disallowance of interest on money advanced to group concern, the gross interest to be considered and proportionate interest disallowance to be worked out, being so, the CIT justified in giving the direction to the AO accordingly."

We are in agreement with afore-said decision of co-ordinate benches of the Chennai-tribunal and we affirm decision of learned CIT passed u/s 263 of the 1961 Act for impugned ay: 2003-04 . We order accordingly.

V) Interest Disallowance on ICD of Rs. 675 lacs and decision of learned CIT u/s 263 of the 1961 Act:-

It was observed by learned CIT from notes to accounts to Balance Sheet that the assessee has placed funds in interest free ICD to the tune of Rs. 675 lacs . The learned AO did not made any enquiry as to the interest free funds placed by assessee with ICD. The said funds were claimed by assessee to have been deployed in the year 1999-00 and the assessee placed audited financial statements before the learned CIT stating that it has earned profits of Rs. 2837.26 lacs during the year under consideration and it had a carried general reserves to the tune of Rs. 23924.42 lacs as on 31.03.2000. The assessee thus stated that it has invested these ICD out of its own funds and borrowed funds were utilized for other purposes and no disallowance of proportionate interest can be made. The learned CIT directed AO to examine whether the ICDs have been placed by assessee out of internal accruals and whether any interest bearing borrowed funds were used for the purposes of making these interest free iCD's and in case interest bearing borrowed funds were used then directions were issued by learned CIT to follow decision of Hon'ble Supreme Court in the case of

S.A.Builders(supra). We are of the considered view, that there was complete lack of enquiry by the AO as the AO did not raise any query regarding interest free ICD granted by assessee while on the other hand the assessee is incurring huge interest expenses on borrowings made by it, which is claimed as business deduction. We are not inclined to interfere with revisionary order passed by learned CIT. In any case, learned CIT has directed to examine the claim of the assessee that these ICD's were placed out of internal accrual and in case interest bearing borrowings were used, then principles of commercial expediency be applied as laid down by Hon'ble Supreme Court in the case of S.A.Builders(Supra) and then to allow or disallow the claim of the assessee. We uphold revisionary order passed by learned CIT . We order accordingly.

VI) Interest Waiver of Rs. 883.93 lacs in CDR:-

The learned CIT observed from notes to accounts forming part of the audited financial statement that consequent to Corporate Debt Restructuring (CDR) undertaken by Banks/FI of the assessee, an amount of Rs.4110.36 lacs has been considered as interest relief for the year ending 31.03.2003. The learned CIT observed that in the annual report for ay: 2004-05 , interest relief availed from various banks and financial institutions included Rs. 1827.88 lacs (including Rs. 943.90 lacs for the year 2003-04) . Thus , balance amount of Rs. 883.98 lacs pertained to earlier year 2002-03 (ay: 2003-04)

which has been omitted to be brought to tax for ay: 2003-04. The learned CIT observed that the AO did not consider this aspect while framing assessment u/s 143(3) of the 1961 Act and hence the assessment order was held to be erroneous and prejudicial to the interest of Revenue u/s 263 of the 1961 Act. The auditors stated in the notes to accounts that CDR cell approved package on 19.03.2003 giving certain terms and conditions for business and financial restructuring including sharing of security amongst lenders, which is pending final approval by the lenders. It was submitted that interest relief to the tune of Rs. 4110.36 lacs for the year ending 31.03.2003 has been considered in these accounts , which is pending execution of necessary documents and compliances with certain special and general conditions. The assessee submitted that the AO was informed during assessment proceedings that company has accounted for interest expenses only at reduced rate of interest in books of accounts and therefore the interest relief of Rs. 4110.36 lacs was disclosed in notes to accounts only for statistical purposes. The learned CIT observed that the AO has not considered the above issue in proper perspective and direction were issued to the AO to examine the issue in proper perspective after considering submissions of the assessee in accordance with law and the AO shall be entitled to call for fresh evidences , if so required and to examine the same. The assessee has availed loans/borrowings from forty lenders and CDR package is stated to be approved on 19.03.2003,

subject to final approval by lenders. The assessee has over a period of time admittedly availed benefit of deduction of interest expenses while computing income for past several ay's. Now , interest relief and other concessions were granted by these lenders and it was incumbent on the AO to have looked into in details as to CDR package approved by the lenders and whether any income chargeable to income-tax with in contemplation of Section 41(1) or Section 28(iv) or any other applicable provisions of the 1961 Act is required to be brought to tax for any benefit, concession etc granted in interest relief or waiver of loan liability etc by these lenders . The decision of Hon'ble Madras High Court in the case of CIT v. Ramaniyam Homes Private Limited reported in (2016) 68 taxmann.com 289(Mad.) is relevant. In any case the learned CIT has directed AO to examine the issue again as there was no proper enquiry conducted by the AO which he ought to have conducted owing to interest relief and other relief's granted by lenders i.e. banks/FI's to the assessee under CDR package which was approved on 19.03.2003 and their taxability in the year under consideration . We are concerned with ay: 2003-04. The AO simply accepted the contentions of the assessee that the assessee has made claim of deduction of lower interest but has not directed its enquiry as to whether any benefit or cessation or remission of liability has taken place which is required to be brought to tax u/s 41(1) or Section 28(iv) or any other relevant section of the 1961 Act. Thus, under

these circumstances, the assessment order passed by AO is erroneous so far as is prejudicial to the interest of Revenue and the learned CIT rightly invoked its revisionary powers u/s 263 of the 1961 Act, which action of learned CIT we upheld/confirms. We order accordingly.

7. In the result, the appeal filed by the assessee in ITA No.937/Chny/2008 for ay: 2003-04 is dismissed.

Order pronounced on the 12th day of December, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 12th December, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF