

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI, BENCH "J"  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &  
SHRI M BALAGANESH, ACCOUNTANT MEMBER  
(VIRTUAL HEARING)  
ITA No. 1448/Mum/2016  
Assessment Year : 2005 – 2006

Mahindra & Mahindra Ltd., Mahindra Towers, Worli, Mumbai 400 018 PAN AAACM3025E	Vs	Addl CIT Circle 2(2)(2), Mumbai
(Appellant)		(Respondent)

ITA No. 4647/Mum/2016  
Assessment Year : 2005 – 2006

Addl CIT Circle 2(2)(2), Mumbai	Vs	Mahindra & Mahindra Ltd., Mahindra Towers, Worli, Mumbai 400 018 PAN AAACM3025E
(Appellant)		(Respondent)

For the assessee : Shri Harish Mahajan -AR  
For the Revenue : Shri A Mohan CIT-DR

Date of Hearing : 23.06.2020	Date of Pronouncement : 29.06.2020
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**ORDER**

**Per Pawan Singh, Judicial Member:**

1. These cross appeal are directed against the order of learned Commissioner of Income tax-57, Mumbai (Ld CIT), dated 29.12.2015 for assessment year 2005-06.
2. The Revenue in its appeal in ITA No. 4647/Mum/2016 has raised the following grounds of appeal:

*"1. The order of the CIT(A) is opposed to law and facts of the case.  
2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition of Rs 33,99,000/- made by the Assessing Officer being the provision for pending labour demand without appreciating*

that the same was contingent in nature and only an estimated liability regarding incremental wages before the final agreement was entered into.

3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing prorata premium of Rs.13.03 crores payable on redemption of Foreign Currency Convertible Bonds (FCCB) without appreciating that these bonds are fully convertible into equity shares of the company and therefore, such expenses are to be treated as capital expenditure,

4. On the facts and in the circumstances of the case and in law, the QT(A) has erred in allowing expenditure of Rs.3.77 crores incurred by the assessee company in relation to issue of Foreign currency bond which are fully convertible into the equity shares of the company and therefore, such expenses are to be treated as capital expenditure as such expenditure leads to enhancement of the capital structure of the company,

5. On the facts and circumstances of the case the CIT(A) has erred in allowing the discount on issue of Employee Stock Option Scheme in accordance with the principle laid down by the Bangalore Special Bench in the case of Biocon Ltd (ITA NO.248, 368 to 371 & 1206/Ban/2010), when the decision has not been accepted and further appeal has been filed before the Karnataka High Court on this issue.”

3. The assessee in its Cross appeal in ITA No. 1448/Mum/2016 has raised the following grounds of appeal:

**Grounds of Appeal**

Being aggrieved by the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] 57, Mumbai the appellant submits - following grounds of appeal for your sympathetic consideration :

**1. Adjustment u/s 92CAf3) Arm's Length Price of International Transactions - Interest on delayed receivable - Adjustment of Rs. 36.89,8607-**

On the facts and in the circumstances of the case and in law, the Appellant contends that CIT(A) erred in confirming the adjustment of Rs. 36,89,860 made to the aggregate value of international transactions by the Transfer Pricing Officer as per order made u/s 92CA of the Act on account of delayed recovery of trade receivables of international transactions with an Associated Enterprises.

The addition be deleted.

Without prejudice, the learned CIT(A) ought to have applied the rate of 2 % being rate of borrowing under Export Packing Credit or any other lower rate of interest instead of the rate of 6.75% applied by the TPO being the average cost of capital to the Appellant.

**2. Disallowance U/s. 40Af9) - Rs. 5,62,886 representing the actual expenses incurred and Rs. 13,01,000/- being contribution to Mahindra Academy**

a) On the facts and in the circumstances of the case and in law the Appellant contends that the learned CIT(A) erred in confirming disallowance of deduction

of Rs. 5,62,886/-, being the actual expenditure incurred during the year on employee welfare.

b) On the facts and in the circumstances of the case and in law the Appellant contends that the learned CIT(A) erred in confirming disallowance of a sum of Rs 13,01,000/- representing amount paid to Mahindra Academy. The Appellant contends that the school run by Mahindra Academy was for the benefit of not only for company's employees but for other local residents also.

Provisions of section 40A(9) are not applicable to either of the above payments.

**3. Provision for Warranties - Rs. 37,41,07,000**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming disallowance of provision for warranties as on 31 -03-2005 as being in the nature of a contingent liability rejecting the contention of the Appellant that the provision was made on a scientific basis and was hence allowable.

**4. Expenditure debited to profit & loss account -Rs. 6.03,65,475/-**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of ACIT in disallowing the following sums treating the same as capital expenditure

- a) Expenditure of Rs. 87,06,882/- related to Joint Venture with Renault
- b) Expenditure of Rs. 3,89,82,596/- related to Joint Venture with Jiangling tractors
- c) Professional fee paid Rs. 58,00,000/- towards Project "Alpha/Delta"
- d) Travel expenses of Rs. 64,10,529/- in relation to mergers and acquisitions
- e) Project expenses written off - Rs. 4,65,468/-

**5. Euro IV project Expenses - Rs. 59,12,167 ( disallowance net of Depreciation Rs. 44,34,126/-)**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of ACIT in not allowing full deduction in respect of expenditure of Rs. 59,12,167 incurred in respect of technical assistance agreement entered into with AVL List GMBH treating the same as being capital in nature thereby allowing only depreciation u/s. 32 of the Act.

Without prejudice to above, the CIT (A) ought to have allowed the above sum as a deduction u/s.35 of the Act.

**6. Development Expenses - Horizon III & IV Project Tractors - Rs. 1.56.20.605 disallowance net of Depreciation Rs. 1,36,68.030/-)**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of the ACIT in not allowing deduction for development expenses of Rs. 1,56,20,605/- and instead allowing only depreciation u/s. 32 of the Act.

Without prejudice to above, the CIT (A) ought to have allowed the above sum in its entirety as a deduction u/s. 35 of the Act.

Without prejudice to the above. The Appellant further contends that, in any event, the CIT (A) erred in confirming disallowance of Rs. 94,92,5477- included in the abovementioned amount being expenditure incurred by the Appellant by way of personnel cost in respect of company's own personnel working for the project and certain other expenditure like material cost and other overheads relating to the project.

**7. Expenses on Project management of Cylindrical Block - Rs. 9,00,000 (disallowance net of Depreciation being Rs. 7,87,500/-**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of ACIT in not allowing deduction as revenue expenditure in respect of Expenses on Project management of Cylindrical Block of Rs. 9,00,000 and thereby allowing only depreciation u7s. 32 of the Act.

**8. Waiver of liability on prepayment of SICOM Loan Rs. 21,25,12,643/-**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of ACIT in bringing to tax an amount of Rs. 21,25,12,6437- being the sum which was waived on prepayment of SICOM loan, treating the same as revenue income .

The learned CIT(A) erred in not applying the ratio of the decision of the Special Bench of the Tribunal in the case of DCITvs. Sulzer India Ltd. 42 SOT 457 (2010),134 TTJ 385 (Mum SB) as confirmed by the Bombay High Court vide order dated 5<sup>th</sup> December.2014 which is squarely applicable to the facts of the case.

The contention of the Appellant that the amount in question was a capital receipt not exigible to tax be accepted.

**9. Special Pension - Rs. 52,85,600/-**

On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in confirming the action of the ACIT of disallowing Rs. 52,85,6007- [total expenditure of Rs. 66,06,8787- less allowed Rs. 13,21,4007- (being 175th of 66,06,8787-) U7s. 35DDA] rejecting the contentions of the Appellant that the liability so determined by actuarial valuation was fully allowable in the year under appeal.

**10. Interest on Income-tax refund Rs. 100,80,000/-**

On the facts and in the circumstances of the case and in law the Appellant contends that the CIT(A) erred in upholding the action of the ACIT and thereby not accepting its contention that interest on income tax refund arising out of intimation passed u7s 143(1) was not taxable in the year of issue of intimation as such interest was provisional in nature and loses its identity once a final refund 7 demand gets determined based on the assessment order passed under section 143(3) of the Act.

**11. Disallowance of deduction under section 80IC-Rs. 6,47,00,000/-**

*On the facts and in the circumstances of the case and in law the Appellant contends that the CIT (A) erred in confirming action of the ACIT in restricting the deduction u/s 80-IC to Rs. 7.35 crores as against Rs. 13.82 crores claimed by the Appellant.*

*Without prejudice to the above the CIT (A) erred in confirming the disallowance by observing that the Appellant has failed to 'show that substantial expansion had happened when in fact, that was not reason for the partial disallowance by the AO. In any event the said observation is factually incorrect.*

**12. Disallowance of capital loss on sale of R&D assets of Rs. 73.42,5167-**

*On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming disallowance of claim for deduction of capital loss on sale of R&D assets of Rs. 73,42,516 and thereby not accepting the Appellant's contention that such loss was correctly claimed under the provisions of Act.*

4. Brief facts of the case as gathered from the orders of lower authorities that the assessee is engaged in the business of manufacturing and sale of on-road automobiles, agricultural tractor, implements, engine parts and accessories of motor vehicle, rendering services, property development activity, financing, investment and transport solutions, filed its return of income for the relevant assessment year on 28 October 2005, declaring the total income of ₹ 545,57,72,052/-. The return of income was accompanied by Audit report in Form 3CEB, reporting international transaction with its associated enterprises, as required under section 92E. On reporting international transaction beyond the prescribed limit, the assessing officer made reference to the transfer pricing officer (TPO) for computation of arms length price (ALP). The TPO vide its order dated 31 January 2008 suggested adjustment of ₹ 36,89,860/- on account of the late payment of recovery of cost of capital from associated

enterprises(AE). On receipt of order of TPO the assessing officer passed draft assessment order by making various other additions and disallowances on corporate issues.

5. The assessee instead of filing objection before Dispute Resolution Panel (DRP), exercised its option for filing appeal before Commissioner of income tax (Appeals) {CIT(A)}. The learned CIT(A) granted partial relief to the assessee with regard to addition on account of pending labour demand, allowed prorata premium on deduction of Foreign Currency Convertible Bonds (FCCB), allowed expenditure on FCCB and also allowed discount on issue of employee stock option scheme (ESOP), however the addition on account of transfer pricing adjustment and other additions/disallowance is were upheld. Thus, further aggrieved the assessee has filed its appeal, the revenue also filed it cross appeal against deleting the various additions/ disallowances.
6. We have heard the submission of learned authorized representative (AR) for the assessee and the learned departmental representative (DR) for the revenue and carefully gone through the orders of authorities below.
7. At the outset of hearing the learned authorized representative (ld AR) for the assessee submits that all the grounds of appeal raised by the revenue in their appeal are covered in favour of the assessee and against the revenue by the orders of the Tribunal in assessee's own case or the orders of the Higher Courts. The ld. AR for the assessee further submits that in

assessee's appeal most of the grounds of appeal are covered either in favour of the assessee or against the assessee. The assessee has already filed short written notes narrating the various grounds of appeal and the reference of the orders of Tribunal or the Higher Courts, by which the various grounds of appeal are covered. The ld. DR for the revenue accepted that he has already received the short written notes furnished by the assessee. In view of the aforesaid background, firstly, we shall discuss the various ground of appeal raised by revenue in its appeal.

**ITA No. 4647/M/2016 by Revenue.**

8. Ground No-1 is general and need no adjudication. Ground No. 2 relates to deleting the addition of Rs 33,99,000/- being the provision for pending labour demand. The ld AR for the assessee submits that this ground of appeal is covered by the decision of Tribunal in assessee's own case for AY 2006-07, in ITA No.8597/Mum/2010, wherein the similar relief was allowed by the Tribunal.
9. On the other hand the ld. DR for the revenue supported the order of the lower authorities.
10. We have considered the submissions of both the parties and have gone through the orders of the lower authorities. The assessing officer made the disallowance of Rs. 33,99,000/- by taking view that it is contingent in nature. The ld CIT(A) allowed relief to the assessee by following the decisions of Tribunal 1992-93 to 1998-99. We have seen that the

coordinate bench of Tribunal in assessee's own case for AY 2006-07 in ITA No. 8597/Mum/2010, on similar set of facts passed the following order;

10. Ground number 10 is about the provision for pending labour demand amounting to Rupees 78.45 lakhs. As per the AO provision for labour demand was under negotiation at certain locations of the company and ultimate settlement was contingent on the conclusion of the negotiations. As per the AO in the annual general body meeting said liability was accepted as contingent in nature. Relying upon the case of Indian molasses Co. Pvt. Ltd he disallowed the said amount.

10.1. The AR submitted that tribunal had decided the issue in its favour for the assessment years. 1992-93 to 1996-1997. He also referred to the decision of the Hon'ble, High Court of Bombay in the case of United motors. DR supported the order of the AO.

From the records, it is clear that the issue in question has already been decided in favour of the assessee in earlier years. For the AY 1996-97 Mumbai Tribunal decided the issue of provision for pending labour demand as under :

*"...that the deduction is allowable in respect of the estimated liability regarding incremental wages before the final agreement was entered in to."*

While deciding the said issue Tribunal relied upon the judgment of United Motors and the appellate orders. for earlier years of the assessee.

10.2. Respectfully following the orders of the earlier years in assessee's own case and the principles enumerated by the Hon'ble High Court of Bombay we decide the issue in favour of the assessee.

11. Considering the decision of Tribunal in assessee's own case, wherein the similar relief is allowed to the assessee, thus, respectfully following the same we do not find any illegality and infirmity in the order passed by learned CIT(A). In the result this ground of appeal is dismissed.

12. Ground No. 3 relates to deleting the addition of Rs 13,03,51,586/- being prorate premium payable on redemption of foreign currency convertible bond (FCCB). The Id AR for the assessee submits that this ground of appeal is covered by the decision of Tribunal in assessee's own case for AY 2006-07, in ITA No.8597/Mum/2010, wherein the similar relief was allowed by the Tribunal.
13. On the other hand the Id. DR for the revenue supported the order of the lower authorities.
14. We have considered the submissions of both the parties and have gone through the orders of the lower authorities. The assessing officer disallowed the premium paid on FCCB holding that being capital and contingent. The learned CIT(A) allow relief to the assessee by following the decision of tribunal in earlier years. We have seen that the coordinate bench of Tribunal in assessee's own case for AY 2006-07 in ITA No. 8597/Mum/2010, on similar set of facts passed the following order;

"5. Next ground of appeal is about disallowance of pro rata premium of Rs.5.39 crores payable on redemption of 'Foreign Currency Convertible Bonds'(FCCB). As per the AO the bonds were convertible into shares and, therefore, could not be construed as a borrowing, that they increased capital base of the company and that the expenditure incurred was capital in nature. The AR submitted that FCCB were a form of borrowing that they were shown in the balance- sheet under loans that premium payable on redemption was cost of borrowing, that option of conversion of bonds into shares was only with the bond holders, that conversion was a subsequent event which did not change the initial character of the bonds of a debt, that

in the event of redemption payment of premium was mandatory, that premium being a cost of borrowing was allowable on time, that premium was neither capital nor contingent in nature, that issue of FCCB had been held to be revenue in appellant is own case for the assessment year 1997-98 (ITA/7845/M/2004).DR supported the order of the AO. In the matter of Crane software International Ltd. (ITA /741 and 742 Bangalore / 2010) issue of FCCB have been discussed as under –

"...the expenses were incurred in connection with the issue of FCCB. As the bonds were convertible, the assessing authority treated the bond proceeds as increased to capital. Accordingly, he treated the expenditure of Rs.6.63 crores. As capital in nature is, it was incurred for raising the capital of the assessee company. The said expenditure was disallowed. Assessee claimed the expenses is deductible as the expenses were incurred to raise loan finance. The assessing authority held that the bond holders at the option to convert the bonds to equity shares, and therefore, the collection of funds for the issue of bonds needs to be treated as to increase the capital and, therefore, the connected expenses would be capital in nature and hands disallowed. We agree with the view of the CIT (A) that the expenses are not capital in nature. As on 31.03.2006, the previous year ending for the assessment year 2006-07, the funds collected by the assessee company through the issue of the foreign currency convertible bonds, were in the nature of liability. The assessee company was bound to discharge is the bonds new dates. The assessee was paying interest is to bond holders. It is clear that the bond finance was in the nature of loan finance. It becomes the capital of the company on leave in the bond holders. and exercise their option at the appropriate time in future. That conversion is only a future event, that may or may not happen, depending on the option exercised by the bond holders. Therefore, the possible equity character of the funds ITA No. 8597/Mum/2010 was contingent on the assessed whether bonds would be converted or not, in a future date. The nature of a present-day loan fund cannot be held equity fund on the basis of such contingency. As far

as the nature of the funds for the assessment year 2006 - 07 is concerned, it was a liability in the nature of loan, that too interest-bearing loan. If the funds are dated as equity capital for the assessment year 2006 - 07 how the payment of bond interest would be justified in law, is law does not permit payment of interest on a company's equity capital."

In the case of Secure metres Ltd.(321 ITR 61)Hon'ble Rajasthan HC has held –

*"Admittedly, the debentures, when a shoot is a loan, and, therefore, whether it is convertible, or nonconvertible, does not militate against the nature of the debenture, being loan, and, therefore, the expenditure incurred would be admissible as revenue expenditure." Following the above decision of the Rajasthan High Court, the Hon'ble Karnataka High Court in the case of ITC Hotels Ltd.(334 ITR 109) held that even if the debenture is to be converted into a share at a later date,the expenditure so incurred for collection of debenture is to be treated as an expenditure of revenue nature.*

5.1 Respectfully following the decisions of the above referred Hon'ble courts we hold that expenses incurred in connection with the issue of FCCB were revenue in nature."

15.Considering the decision of Tribunal in assessee's own case, wherein the similar relief is allowed to the assessee, thus, respectfully following the same we do not find any illegality and infirmity in the order passed by learned CIT(A). In the result this ground of appeal is dismissed.

16.Ground No. 4 relates to deleting the addition of expenses of Rs 3,77,69,799/- on FCCB. The ld AR for the assessee submits that this ground of appeal is also covered by the decision of Tribunal in assessee's own case for AY 2006-07, in ITA No.8597/Mum/2010, wherein the similar relief was allowed by the Tribunal.

17. On the other hand the ld. DR for the revenue supported the order of the lower authorities.

18. We have considered the submissions of both the parties and have gone through the orders of the lower authorities. The assessing officer disallowed the expenses on FCCB holding it as capital. The learned CIT(A) allow relief to the assessee by following the decision of tribunal. We have seen that the coordinate bench of Tribunal in assessee's own case for AY 2006-07 in ITA No. 8597/Mum/2010, on similar set of facts passed the following order;

"2.6. Ground 1.E.deals with expenditure incurred for issue of Foreign Currency Convertible Bonds(FCCB).AR submitted that the same issue had arisen in the assessment year 1997-98 and that the tribunal vide its order dated 29.10.2009 ITA/ 7845/Mum/2004 had decided the matter in appellant's favorite. Respectfully following the said decision,we hold that the expenditure incurred with regard to FCCB is revenue in nature."

19. Considering the decision of Tribunal in assessee's own case, wherein the similar relief is allowed to the assessee, the CIT(A) while granting relief to the assessee followed order of the Tribunal, thus, respectfully following the same we do not find any illegality and infirmity in the order passed by learned CIT(A). No contrary facts or law is brought to our notice. In the result this ground of appeal is dismissed

20. Ground No. 5 relates to allowing discount on employee stock ownership plan (ESOP) of Rs. 852,376/-. The ld AR for the assessee submits that this ground of appeal is covered by the decision of Special Bench of

Bangalore Tribunal in BICON Ltd (ITA No. 248/Mum/368 to 1206/Bang/2010, the ld CIT(A) granted relief to the assessee by following the decision of Special Bench. Further in assessee's own case for AY 2011-12 to 2013-14 in ITA(s) No. 7382/Mum/2017, 719/Mum/ & 1449/Mum/2016, the coordinate bench of Tribunal in assessee's own case also allowed similar relief to the assessee.

21. On the other hand the ld. DR for the revenue supported the order of the lower authorities.

22. We have considered the submissions of both the parties and have gone through the orders of the lower authorities. The assessing officer disallowed the claim by treating it as capital. The ld CIT(A) allowed relief to the assessee by following the decision of Special Bench of Tribunal in BICON Ltd (supra). We have seen that the coordinate bench of Tribunal in assessee's own case for AY 2011-12 to 2013-14 in ITA(s) No. 7382/Mum/2017, 719/Mum/ & 1449/Mum/2016 also allowed similar relief by passing the following order ;

"13.1. We have heard rival submissions and perused the materials available on record. We find that during the Financial Year 2012-13 pertaining to assessment year 2013-14, the company has claimed deduction towards ESOP expenditure of Rs. 47,03,67,525/- on the basis of options exercised. Options granted under ESOP scheme vest in 5 equal installments from date of the grant. During the year under consideration, options exercised was for 6,46,308 shares out of options granted on 28th January, 2011 and 14th December, 2011. The exercise price of options granted on 28th January 2011 and 14th December 2011 was Rs. 5/- per share and market

price per share was Rs. 733.05 on 28th January, 2011 and 729.90 on 14th December 2011. ESOP cost working for the year under consideration is as under:

ITA No.1449/Mum/2016 and other appeals Mahindra and Mahindra Limited

Sr	Grant Date	Market price	Exercise No of options	ESOP cost No on grant
1	28.01.2011	733.05	5	590,113
2	14.12.2011	729.90	5	56,195
Total				646,308
Price exercised date (B) (C) (D) (A) [(B-C)*d]				47,03,67,525

13.2. This sum of Rs.47,03,67,525/- was claimed as deduction by the assessee in the return of income, which was sought to be disallowed by the Id. AO in the assessment on the ground that the said expenditure was incurred for increasing share capital of the assessee company. The Id. AO also observed that employees stock option will give enduring benefit to the assessee company from the employees who have availed the scheme.

The Id. AO by placing reliance on the decision of Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd., reported in 225 ITR 792 and Brooke Bond India Ltd., reported in 225 ITR 798 held that the said expenditure would be capital in nature. This action was upheld by the Id. DRP. We find that this issue is now settled by the Special Bench of the Bangalore Tribunal in the case of Biocon Ltd., in favour of the assessee, wherein it has been held that the deduction is to be allowed for the difference between the exercise price of the option and the market price at the time of exercise of the option. We find that in the return of income, the assessee had claimed deduction for the difference between the exercise price and the market price on the date of grant of option. This Tribunal while rendering the decision for the A.Y.2009-10 in assessee's own case had restored this issue to the file of the Id. AO to consider the claim of deduction in the light of the Special Bench decision in the case of Biocon Ltd., We find that the Id. AR fairly submitted that in ITA No.1449/Mum/2016 and other appeals Mahindra and Mahindra Limited principle, this issue is decided in favour of the assessee by the Special Bench in the case of Biocon Ltd., but still in the interest of justice, a specific direction need to be given to the Id. AO to allow deduction in respect of all options exercised during the year equal to the difference between the exercise price and the market price at the time of exercise of the option, as held in the case of Biocon Ltd, instead of the market price at the time of grant of option. We find lot of force in the said argument of the Id. AR and direct the Id. AO accordingly. Accordingly, the concise ground No.11 raised by the assessee is allowed for statistical purposes.

23.Considering the decision of Tribunal in assessee's own case, the ground of appeal raised by the revenue is dismissed. However, we direct the

assessing officer to follow order of the Tribunal in assessee's own case for AY 2011-12 to 2013-14 in ITA(s) No. 7382/Mum/2017, 719/Mum/ & 1449/Mum/2016 dated 19.06.2020 and determine the amount of deduction.

24. In the result the appeal of the revenue is dismissed.

**ITA No. 1448/Mum/2016 by assessee.**

25. Ground No. 1 relates to TP adjustment of Rs. 36,89,860/- being notional interest on delayed collection of receivable amount from AE. The ld. AR of the assessee submits that this ground of appeal is covered by the decision of Tribunal in assessee's own case for A.Y. 2004-05 in ITA No. 6360/Mum/2013. The ld. AR of the assessee further submits that the delay collection of accounts receivable does not constitute an independent international transaction has not been accepted by the Tribunal, however, relief has been allowed with respect of rate of interest to be charged.

26. On the other hand, the ld. DR for the revenue relied upon the order of TPO/ld. CIT(A).

27. We have considered the rival contention of the parties and perused the material available on record. The TPO proposed adjustment on account of interest of Rs. 36,89,860/- due to delay in collection of receivable from assessee's Associate Enterprises by taking view that such extended credit period should have been entailed interest cost as per normal business

practice and the assessee failed to recover such cost. The TPO applied interest rate of 6.75%, which was the average cost of capital for the assessee during the year.

28. On appeal before the Id. CIT(A), the action of TPO was confirmed by following the order for A.Y. 2004-05. We have noted that in assessee's appeal for A.Y. 2004-05, the Tribunal allowed part relief to the assessee. The submission of assessee that interest on such delay payment does not constitute international transaction was rejected. The Tribunal restricted the addition on account of delay receivable calculated on the basis of export package credit @ 1.92%, instead of cost of capital rate as proposed by TPO. During the year under consideration, we have noted that export package credit rate furnished by assessee before the TPO at 2%. Therefore, considering the ratio of the decision of Tribunal in assessee's own case for A.Y. 2004-05 in ITA No. 6360/Mum/2013, we direct the AO to re-compute the TP Adjustment by adopting the rate of 2% in place of 6.75%. In the result, this ground of appeal is partly allowed.

29. Ground No.2 relates to disallowance under section 40A(9). This ground of appeal comprises two amounts, (i) Rs. 5,62,886/- being expenditure incurred on employee welfare and (ii) Rs. 13,01,000/- being payment made to Mahindra Academy, which runs educational institution, where children of assessee's employee and others take education, the Id.AR of

the assessee submits that first amount of Rs. 5.62 lakhs covered by the decision of Tribunal in assessee's case for A.Y. 1996-97 in ITA No. 3659/Mum/2012 wherein the Tribunal allowed the relief for deduction on such actual expenditure. The Id. AR of the assessee submits that similar order was followed in A.Y. 2000-01 and again in A.Y. 2002-03, 2003-04 & 2004-05. As far as second amount is concerned, similar issue in A.Y. 2006-07 in ITA No. 8597/Mum/2010, the Tribunal set-aside the issue to the file of AO, wherein the Id. CIT(A) allowed relief to the assessee in its order dated 03.11.2015 in Appeal IT-35/14-15, further similar relief was allowed in A.Y. 2007-08 by Id. CIT(A) vide order dated 06.10.2016. The Id. AR of the assessee further submits that the DRP in claim for A.Y. 2011-12 allowed the objection in respect of these two expenses. The Id. AR of the assessee also relied upon the decision of Tribunal in State Bank of India (SBI) in ITA No. 4736/Mum/2010.

30. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

31. We have considered the submission of both the parties and perused the record carefully. The AO disallowed both the claims by taking view that these claims are hit by proviso of section 40A(9). The Id. CIT(A) affirmed the action of AO that the DRP for A.Y. 2006-07, 2007-08 and 2009-10 treated the same as hit by proviso of section 40A(9).

32. For the first component, we have noted that in appeal for A.Y. 2004-05, the assessee was allowed relief on similar claimed. We have further noted that similar relief was granted by Tribunal in appeal for A.Y. 2002-03, 2003-04 & 2004-05. We have further noted that so far as second amount is concerned, the similar issued (claim) was restored by Tribunal to the file of AY in AY 2006-07. However, the second round of litigation, the ld. CIT(A) has allowed the same claim of assessee vide order dated 03.11.2015, copy of which is available on record. Further, similar relief was granted by ld. CIT(A) for A.Y. 2007-08 vide order dated 06.10.2016. We have noted that the assessee has been allowed relief on similar claim, consistently either by Tribunal or by ld. CIT(A), therefore, following the principle of consistency, the AO is directed to allow both the claim. In the result, this ground of appeal is allowed.
33. Ground No.3 relates to provision for warranty. The ld. AR of the assessee submits that this ground of appeal is also covered by the decision of Tribunal in assessee's case in appeal for A.Y. 2004-05. The ld. AR of the assessee further submits that balance is as on 31.03.2004 in the provision account was Rs. 33.83 crore, while utilization during the year was Rs. 24.21 crore being 72%. The AO disallowed the same by taking view as a contingent liability. The ld. AR of the assessee submits that utilization of 72% is reasonable, especially in view of continuous sale of vehicles on a daily basis and incurrence of expenditure on warranty on a daily basis.

The Id. AR of the assessee fairly submits in earlier years, the Tribunal set-aside the issue to the file of AO for fresh adjudication. However, for A.Y. 1997-98, the issue was decided by Tribunal in favour of assessee and the appeal of revenue was dismissed by Hon'ble High Court in ITA No. 901/2011 dated 15.04.2014. Following the order of Hon'ble High Court, the AO in assessment for A.Y. 2015-16 allowed the claim of warranty vide assessment order under section 14(3) dated 31.10.2019. The Id. AR of the assessee further submits that in a recent decision by Tribunal for A.Y. 2011-12 & 2013-14 in ITAs No. 7383/Mum/2017, 719/Mum/2017 & 1449/Mum/2016, the Tribunal allowed the provision of warranty in favour of assessee. Accordingly, the Id. AR of the assessee submits that after the decision of Hon'ble High Court, which is accepted by revenue by allowing similar claim of warranty in assessment for A.Y. 2015-16, the issue is now settled in favour of assessee.

34. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

35. We have considered the submission of both the parties and perused the record carefully. We have noted that the Hon'ble High Court in appeal for A.Y. 1997-98 affirmed the order of Tribunal vide order dated 15.04.2014. We have further noted that AO in assessment for A.Y. 2015-16 vide order passed under section 143(3) dated 31.10.2019 allowed the claim of warranty. We have further noted that in a recent decision dated

19.06.2020 in appeal for A.Y. 2011-12 & 2013-14 , the same relief was allowed by considering the decision of Hon'ble High Court for A.Y. 1997-98. Considering the aforesaid decision of co-ordinate bench, we direct the AO to delete the entire addition on account of provision for warranty.

36. Ground No.4 relates to expenditure debited to Profit & Loss Account.

We have noted that this ground of appeal consist of five claims i.e. (a) Expenditure relating to Joint Venture with Renault of Rs. 87,06,882/- (b) Expenditure related to Joint Venture with Jiangling Tractors of Rs. 3,89,82,596/- (c) Professional fees towards project Alpha / Delta of Rs. 58,00,000/- (d) Travel expenses of Rs. 64,10,529/- in relation to mergers and acquisitions and (e) Project expenses written off of Rs. 4,65,468/-.

37. The Id AR for the assessee submits that so far as expenditure relating to Joint Venture with Renault of Rs. 87,06,882/- is concerned, the similar claims in AY 2011-12 to 2012-13 was treated as capital expenditure and confirmed the same as to be a part of cost of improvement in order dated 19.06.2020. On the other hand the Id DR supported the order of lower authorities.

38. We have considered the submissions of the parties and perused the order of lower authorities and find the assessing officer treated the expenditure relating to Joint Venture with Renault as capital in nature as discussed in para 4.1 of his order. The Id CIT(A) affirmed the order of assessing

officer by following the order of Tribunal in AY 2006-07 for as discussed in para 9.4 of the impugned order. We have noted that the Tribunal in recent decision for AY 2011-12 to 2012-13 has treated the similar expenditure as capital expenditure and confirmed the same as to be a part of cost of improvement in order dated 19.06.2020. Considering the decision of Tribunal, we direct the assessing officer to follow the order of Tribunal for AY 2011-12 to 2012-13.

39. For expenditure relating to Joint Venture with Jiangling Tractors of Rs. 3,89,82,569/- is concerned, the ld AR for the assessee submits that the similar claims in AY 2011-12 to 2012-13 was treated as capital expenditure and confirmed the same as to be a part of cost of improvement in order dated 19.06.2020. On the other hand the ld. DR supported the order of lower authorities.

40. We have considered the submissions of the parties and perused the order of lower authorities and find the assessing officer treated the expenditure relating to Joint Venture with Jiangling Tractor as capital in nature as discussed in para 4.2 of his order. The ld CIT(A) affirmed the order of assessing officer by following the order of Tribunal in AY 2006-07, as discussed in para 9.4 of the impugned order. We have noted that the Tribunal in recent decision for AY 2011-12 to 2012-13 has treated the similar expenditure as capital expenditure and confirmed the same as to be a part of cost of improvement in order dated 19.06.2020. Considering

the decision of Tribunal, we direct the assessing officer to follow the order of Tribunal for AY 2011-12 to 2012-13.

41. For expenditure of professional fee towards project Alpha/Delta of Rs. 58,00,000/-, the Id AR for the assessee submits that the assessee paid professional fee to various consultants, legal documentation fee etc, in connection with acquisition of entities who are in similar business. The assessing officer disallowed the same by treating as capital in nature. The Id CIT(A) affirmed the action of assessing officer by following the order of Tribunal in AY 2006-07. The Id AR for the assessee submits that out of total expenses of Rs. 58,00,000/-, Rs. 52,00,000/- was in relation to acquisition which did not materialized. And expenses of Rs. 6,00,000/- the Id AR for the assessee submits it should be treated as part of investment as held by Tribunal in AY 2011-12 to 2012-13 in order dated 19.06.2020. The Id. AR for the assessee submits that so far as expenses of Rs. 52Lakhs are concerned, as no acquisition was materialized and not resulted in any capital asset and it should be allowed as revenue expenses. On similar issue in appeal for AY 1999-2000, similar claim was allowed as revenue expenses and on appeal before Tribunal in ITA No. 2344/Mum/2009 the assessee was allowed relief as revenue expenditure. The revenue filed appeal before High Court vide ITA No. 450 of 2017, and the same was dismissed. On the other hand the Id. DR supported the order of lower authorities.

42. We have considered the submissions of the parties and have gone through the orders of the lower authorities. So far as the expenses of Rs. 6.00 lakhs are concerned, we are in agreement with the submissions of the Id AR for the assessee it should be treated as part of investment as held by Tribunal in AY 2011-12 to 2012-13 in order dated 19.06.2020. However, with regard to expenses of Rs. 52 lakhs we have noted that the lower authorities have not disputed the expenses. We have further noted that in AY 1999-2000, the assessee claimed expenses on account of foundry, which was later on abandoned by the assessee being not found viable. The assessing officer treated the same as capital expenditure, the Id CIT(A) affirmed the action of assessing officer. However, on appeal before Tribunal the same was allowed as revenue expenditure in ITA No. 2344/Mum/2009 dated 24.07.2015. The revenue filed appeal against allowance of such claim as revenue expenses, the appeal of the revenue was dismissed vide ITA No. 450 of 2017 dated 10 June 2019. Considering the decision of Tribunal for AY 1999-2000, which was affirmed by Bombay High Court, thus, on similar principles the expenses of professional fee of Rs. 52 lakhs are allowed as revenue expenses.
43. Next component of expenses of Rs. 64,10,529/- relates to Travel expenses related with mergers and acquisitions. The Id AR for the assessee submits that the assessee incurred expenses on travelling for mergers and acquisition of entities engaged in similar business. The

assessing officer disallowed the same by taking view that the mergers and acquisition of entities are not the business of the assessee and thus it was not for the purpose of the business. The Id CIT(A) affirmed the action of the assessing officer by following the order of Tribunal for AY 2006-07. The Id AR for the assessee submits that the similar claims in AY 2011-12 to 2012-13 was treated as capital expenditure and confirmed the same as to be a part of cost of improvement in order dated 19.06.2020. On the other hand the Id. DR supported the order of lower authorities.

44. We have considered the submissions of the parties and perused the order of lower authorities and find the assessing officer treated the expenditure as capital in nature as discussed in para 4.3 of his order. The Id CIT(A) affirmed the order of assessing officer by following the order of Tribunal in AY 2006-07, as discussed in para 9.4 of the impugned order. We have noted that the Tribunal in recent decision for AY 2011-12 to 2012-13 has treated the similar expenditure as capital expenditure and confirmed the same as to be a part of cost of improvement in order dated 19.06.2020. Considering the decision of Tribunal, we direct the assessing officer to follow the order of Tribunal for AY 2011-12 to 2012-13.

45. Next component of expenses written off of Rs. 4,65,468/-. The Id AR for the assessee submits that the assessee incurred certain expenses relating to development of three wheeler vehicles, since the project was not

metalized, the expenses was written off. The assessing officer treated the same as capital in nature. The ld CIT(A) affirmed the action of the assessing officer. The ld AR for the assessee submits that this claim is similar to the second part of third claim under this ground of appeal and as such no new asset was created for deriving enduring nature of benefit, thus, expenditure may be allowed as revenue expenditure. On the other hand the ld. DR supported the order of lower authorities.

46. We have considered the submissions of the parties and perused the order of lower authorities and find the assessing officer treated the expenditure as capital in nature as discussed in para 4.2 of his order. The ld CIT(A) affirmed the order of assessing officer as discussed in para 9.4 of the impugned order. Considering the decision of Tribunal for AY 1999-2000 (on the issue of expenditure of acquisition which could not materialized), which was affirmed by Bombay High Court, thus, on similar principles, when no new asset is created for deriving enduring benefits, the expenses of written off of Rs. 4,65,468/- are allowed as revenue expenses. In the result this ground of appeal is partly allowed.

47. Ground No.5 relates to Euro IV Project expenses. The ld. AR of the assessee submits that this expenditure represents the payment for technical consultants to upgrades the engines to make normally of emission as also to make vehicles an eco-friendly. The AO treated the said expenditure as capital in nature. The ld. CIT(A) confirmed the

treatment as capital expenditure by following the order of Tribunal for A.Y. 2006-07. The Id. AR of the assessee submits that the Tribunal in its order held that such capital expenditure is capital in nature and assessee is entitled to depreciation thereon. The Id. AR of the assessee submits that order of A.Y. 2006-07 was followed in A.Y. 2001-02 and in A.Y. 2002-03.

48. Per contra, the Id. DR for the revenue supported the order of lower authorities.

49. We have considered the submission of both the parties and perused the records. We have noted that the AO treated the expenses incurred on Euro IV Project as capital in nature. The Id. CIT(A) affirmed the action of AO by following the order of Tribunal for A.Y. 2006-07. However, we have noted that the Tribunal while treating the expenses as capital in nature allowed the depreciation to the assessee in para 3-4 of the order; similar order was followed in A.Y. 2001-02 & 2002-03. Therefore, we direct the AO to allow the depreciation by following the order of Tribunal for A.Y. 2006-07 in ITA No. 8597/Mum/2010. In the result, this ground of appeal is partly allowed.

50. Ground No.6 relates to Development Expenses and Horizon III & IV project expenses. The Id. AR of the assessee submits that expenditure represents the payment to various consultants for developing new range of tractors and also upgradation of existing range of tractors. The work

involved suggestions, modifications and reviewing in respect of certain technical aspects in the development of range of tractors.

51. In alternative submission, the Id. AR of the assessee submits that it was a pure recurring revenue expenditure and should be allowed under section 37(1). The Id. AR of the assessee explained that these expenses consist of two components i.e. (i) Consultancy fees of Rs. 61.28 lakhs and staff cost of Rs. 94.92 lakhs (total Rs. 156.20 lakhs). The AO treated the said entire expenditure as capital in nature. The Id. CIT(A) confirmed the action of AO by following the order of Tribunal for A.Y. 2006-07. The Id. AR for the assessee explained that so far as Consultancy fees are concerned, the Tribunal in A.Y. 2006-07 held that such expenses are capital in nature and the assessee is entitled for depreciation. So far as expenses of Staff cost, the claim was treated as revenue expenditure and was allowed to the assessee. The order for A.Y. 2006-07 was followed in A.Y. 2000-01 & 2002-03.

52. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

53. We have considered the submission of both the parties and perused the record. We have noted that the AO treated both the claim i.e. Consultancy fees and Staff cost as capital in nature. We have noted that Consultancy fees was treated as capital in nature in appeal for A.Y. 2006-07 and allowed depreciation. So far as expenses of Staff cost, similar

claim was treated as revenue expenditure, therefore, by following the order of Tribunal for AY 2006-7, we direct the AO to treat the Consultancy fees as capital in nature and allowed the depreciation. So far as expenses of Staff cost is concerned, the similar claim was allowed as revenue expenditure by Tribunal in appeal for A.Y. 2006-07. Therefore, we direct the AO to allow the Staff cost as a revenue expenditure to the assessee. In the result, this ground of appeal is partly allowed.

54. Ground No.7 relates to expenses on project management of Cylindrical Block. The Id. AR of the assessee submits that he is not pressing this ground of appeal. Considering the submission of assessee, this ground of appeal is dismissed as not pressed.

55. Ground No.8 relates to waiver of liability on Prepayment of SICOM loan of Rs. 21.25 crore. The Id. AR of the assessee submits that the Package Scheme of Incentives introduced by the Government of Maharashtra from time to time, provide for deferral of sales tax for 10 years in respect of Nasik unit. Payment of sales tax collected on sales, was deferred to provide for more cash in the hands of company. Such deferred taxes are payable in 5 equal annual installments (EAI) starting from 11<sup>th</sup> year, the amount of deferred tax converted into loan and reflected as such in the financial statement. The Government of Maharashtra due to paucity of fund with it, vide Trade Circular dated 12<sup>th</sup> December 2002, came out with a scheme which permitted tax payers to

pre-pay such loan liability at its Net Present Value (NPV). Arithmetically, NPV is always lower than the full amount and the gap between the two is more when the duration of the payment is long. In assessee's case, the loan liability of Rs. 34.61 crore relating to F.Y. 2001-02 which was to be paid on and from F.Y. 2012-13, was prepaid in F.Y. 2004-05 at an amount of Rs. 13.36 crore. The ld. AR of the assessee submits that the difference between the gross amount of liability and the amount presented discounted value is a capital receipt. The AO rejected the claim on account of sale tax is revenue expenditure and waiver is of sales tax and not of loan. The AO further held that this is a case of a benefit arising from the exercise of business, thus, chargeable under section 28(iv). The ld. CIT(A) affirmed the order of AO.

56. The ld. AR of the assessee submits that the similar issue for A.Y. 2004-05 was restored back to the file of AO to examine the scheme and decide the issue. The AO while giving effect to the order of AO after examining the scheme allowed the claim to the assessee by following the decision of Hon'ble Supreme Court in case of Balakrishna Industries (CA No. 19587 of 2017). Thus, the issue is settled in favour of the assessee at the level of assessing officer itself. It was explained that the similar issue of taxability of gain arising on prepayment of such sales tax loan under 1983 Package Scheme of incentive was examined by Special Bench of Tribunal in Sulzer India Limited (ITA No. 2944/Mum/2007) ( 44DTR

329) and it was held that it was capital receipt and could not be termed as remission or cessation of liability.

57. In support of his submission, the ld. AR of the assessee also relied upon the decision of Hon'ble Karnataka High Court in CIT vs. McDowell & Co. Ltd. [2014] 52 taxmann.com 15 (Karnataka High Court), Grindwell Norton Limited in ITA No. 528/Mum/2012 & 5800/Mum/2013), General Electrodes & Equipments Ltd. (155 ITR 787), CIT vs. Bhavnagar Bone and Fertilizer Ltd. (166 ITR 316), D.P. Sandu Brothers Chamber (P) Ltd. (273 ITR 1) & Alchemic P. Ltd. (130 ITR 168) (Guj.).

58. On the other hand, the ld. DR for the revenue supported the order of lower authorities.

59. We have considered the rival submission of both the parties and perused the material available on record. The AO rejected the claim of assessee on the ground that sale tax is revenue expenditure and not of loan. The AO also held that this is a case of benefit arising from the exercise of business, hence, chargeable to tax under section 28(iv). The ld. CIT(A) confirmed the order of AO. We have noted that similar issue in A.Y. 2004-05 was restored to the file of AO with the direction to consider the scheme and to decide the issue afresh. The assessee has placed on record the copy of decision of Hon'ble Supreme Court in case of Balakrishna Industries (supra).

60. We have noted that the Special Bench of Tribunal in Sulzer India Limited in ITA No. 2944/Mum/2007, it was held that it was a capital receipt and could not be termed as a remission or cessation of liability. The order of Special Bench was upheld by Hon'ble Bombay High Court in case reported in 369 ITR 717. The Special Bench in Sulzer India Ltd. (supra) held that premature re-payment of loan at present discounted value does not result in waiver or cessation of liability. The said amount being capital in nature, provision of section 28 & 41 would not apply. The Hon'ble Supreme Court affirmed the order of Hon'ble Bombay High Court in Sulzer India Ltd. (supra) reported in 93 taxmann.com 32 (SC). Thus, considering the decision of Special Bench affirmed by Hon'ble Bombay High Court, the amount in question is capital in nature and the provision of section 28 & 41 is not applicable. Even otherwise the assessing officer for AY 2004-05 has already accepted the stand (claim) of the assessee, while giving effect to the order of Tribunal. Therefore, this ground of appeal raised by assessee is allowed.

61. Ground No. 9 relates to Special Pension based on actuarial Valuation. The ld. AR of the assessee submits that he is not pressing this ground of appeal. Considering the submission of ld. AR of the assessee, this ground of appeal is dismissed.

62. Ground No.10 relates to interest on Income Tax Refund. The ld. AR of the assessee submits that the refund and the interest granted by revenue is

only provisional in nature as the same are subject to variation on completion of regular assessment and it lose their identity once final tax liability is determined on completion of regular assessment. The AO in para-11 of the assessment order held that income received in A.Y. 2005-06 is taxable in the same year. The Id. CIT(A) confirmed the action of AO by following the order of A.Y. 2003-04 & 2004-05. The Id. AR of the assessee fairly submits that this ground of appeal was decided against the assessee in A.Y. 2004-05. Considering the admission of assessee that similar ground of appeal was held against the assessee in A.Y. 2004-05, therefore, this ground of appeal is dismissed.

63. Ground No.11 relates to Part disallowance of deduction under section 80IC. The Id. AR of the assessee submits that the assessee claimed deduction of Rs. 13.82 crore in respect of existing tractor manufacturing unit at Rudrapur in the State of Uttaranchal, representing 100% of the profits of the undertaking for F.Y. 2004-05 (April 2004 to March 2005). The Id. AR further submits that the said unit was set-up somewhere in F.Y. 1999-2000. No incentive deduction was claimed in respect thereof at any time in the past. During the period under consideration, the undertaking undertook 'substantial expansion' which got completed at the end of December 2004. Thus, the assessee claimed deduction under section 80IC in view of expansion. The Id. AR of the assessee further explained that the AO while accepting the claim of assessee restricted the

deduction of claim under section 80IC to the profit derived for the period from January 2005 to March 2005 (as expansion was completed in December 2004 to March 2005). The AO took his view that profit earned after substantial expansion was completed can be said to be eligible for the benefit of the said period and not the profit of full year. The Id. CIT(A) affirmed the action of AO by taking view that assessee has not demonstrated substantial expenses.

64. The Id. AR of the assessee submits that deduction allowed in section 80IC(1), read with 80IC(2)(a)(ii) read with 80IC(3)(ii) is of profit derived by under taking as whole. The Id AR of the assessee further explained that initial AY is defined in section 80IC(8)(v). The Id. AR of the assessee would submit that the close reading 80IC(1), 80IC(2)(a)(ii), 80IC(3)(ii) and 80IC(8)(iv) clearly explained that deduction is allowable in respect of profit derived by an industrial undertaking when it qualifies manufactures or produce or any article after substantial expansion during the year in which expansion is completed. The deduction is allowable from the assessment relevant to the previous year in which undertaking completes substantial expansion.

65. The Id. AR of the assessee emphasized that scheme of the section does not envisage two undertaking, one the original and the other substantial expansion thereof. It speaks of only one undertaking and the profits derived therefrom and deduction in respect thereof. The section does not

provide for deduction of profits derived after substantial expansion but profits of existing undertaking. In support of his submission, the Id. AR of the assessee relied upon the decision of Aarham Softronics (102 taxmann.com 343) and Mahabir Industries (256 Taxman 201).

66. To buttress his submissions the Id. AR of the assessee also made reliance on the decision of Hon'ble Bombay High Court in Godrej Soaps Pvt. Ltd. (169 ITR 537), rendered in the context of the erstwhile section 80J, which allowed for an incentive deduction at the rate of 6% of the capital employed in the eligible undertaking, wherein it was held that the 6% deduction was to be allowed without having regard to the period for which the industrial undertaking worked. Accordingly, the Id. AR of the assessee submits that the ratio of decision would also apply in his case that the deduction under section 80IC is allowable from the initial A.Y. on the profit of the whole of the initial assessment year. The Id. AR of the assessee prayed that the claim is allowable with reference to the full years of profit from the undertaking, though substantial undertaking was completed on 20<sup>th</sup> December 2004.

67. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

68. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the AO restricted the claim of assessee by taking view that the only profit earned

after substantial expansion can be said to be eligible for the benefit under the said section and not the profit of the full year. The Id. CIT(A) upheld the action of AO and also held that the assessee has not demonstrated the substantial expenses. For appreciation of section 80IC the relevant sub-sections and clauses of section 80IC are read as under:

**S 80-IC(1)**

(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3).

**S 80-IC(2)(a)(ii)**

(ii) On the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified<sup>36</sup> by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal;

**S. 80-IC(3)(ii)**

(ii) in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the, assessee is a company) of the profits and gains.

**80-IC(8)(v)**

(v) "Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion;

69. A close reading of the aforesaid provision shows that the assessee would be entitled for a deduction for the whole of the profit derived by existing undertaking; on its expansion, there is no provision for splitting the profit for entitlement of profit in a part of the year.

70. The Hon'ble Supreme Court in *Aarham Softronics (supra)* held that Section 80-IC makes special provisions in respect of certain undertakings or enterprises in certain special category States. Section 80-IC was inserted by the Finance Act, 2003 with effect from 1-4-2004. As per this provision, certain undertakings or enterprises in certain special category States are allowed deduction from such profits and gains, as specified in section 80-IC(3). The provisions of section 80-IC provided deduction to manufacturing units situated in the State of Sikkim, Himachal Pradesh and Uttaranchal and North-Eastern States. The deduction was provided to new units established in the aforesaid States, and also to existing units in those States if substantial expansion was carried out. The deduction was available at the rate of 100 per cent for ten assessment years for the units located in North-Eastern and in the State of Sikkim and for the units located in Himachal Pradesh, the deduction was available at the rate of 100 per cent for five years and at the rate of 25 per cent for next five years. The Hon'ble Supreme Court followed its earlier decision in *Mahabir Industries (supra)*.
71. Considering the aforesaid decision, we are of the view that the deduction is eligible on the basis of annual profit and not for any split/broken period. We are also in the agreement with the contention of Id. AR of the assessee on the ratio of decision of Hon'ble Bombay High Court *Godrej Soaps Pvt. Ltd.(supra)*, which is based on erstwhile section 80J wherein

incentive deduction was allowed @ 6% of capital employed in the eligible undertaking with regard to the period for which undertaking worked. In view of the aforesaid deduction, we direct the AO to allow the deduction for whole of the year. In the result, this ground of appeal is allowed.

72. Ground No.12 relates to disallowance of capital loss on sale of R&D assets. The ld. AR of the assessee submits that assessee claimed deduction under section 35(1)(iv) in respect of capital expenditure on research and development activity. Capital assets are continued to be held by the assessee in normal course of its business and not claiming any depreciation under section 32. Thus, whenever any capital assets held for R&D is transferred; the gain or loss has to be computed under section 48 of the Act. The AO held that sale of R&D assets has to be treated as per the special provisions of section 41(3). The ld. CIT(A) confirmed the action of AO by following the order of Tribunal for A.Y. 2006-07. The ld. AR of the assessee fairly considered that the similar issue was decided against the assessee in A.Y. 2006-07 in ITA No. 8597/Mum/2010. Considering the submission of ld. AR of the assessee that similar addition/disallowance was held against the assessee by Tribunal in assessee's own case for A.Y. 2006-07, thus, the ground of appeal raised by assessee is dismissed.

73. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29/06/2020

**Sd/-**

(M Balaganesh)

**ACCOUNTANT MEMBER**

Mumbai; Dated: 29/06/2020

SK

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'J' Bench, ITAT, Mumbai

**Sd/-**

(Pawan Singh)

**JUDICIAL MEMBER**

BY ORDER,

Assistant Registrar

Income Tax Appellate Tribunal, Mumbai