

**आयकर अपीलिय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लष्कसदस्य कासमक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.4024/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं./ I.T.A. No.4027/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>DCIT-CC-7(1)</b> 653, Aaykar Bhawan M.K.Road Mumbai – 400 020	<b>बनाम/ Vs.</b>	<b>M/s Maneesh Pharmaceuticals Ltd.</b> 2 <sup>nd</sup> Floor, Kalpatru Court Dr. Chotiram Gidwani Marg Chembur, Mumbai – 400 074
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAACM-3635-Q</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकर अपील सं./ I.T.A. No.4185/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>M/s Maneesh Pharmaceuticals Ltd.</b> 2 <sup>nd</sup> Floor, Kalpatru Court Dr. Chotiram Gidwani Marg Chembur, Mumbai – 400 074	<b>बनाम/ Vs.</b>	<b>DCIT-CC-7(1)</b> 653, Aaykar Bhawan M.K.Road Mumbai – 400 020
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAACM-3635-Q</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri J.P.Bairagra-Ld. AR
<b>Revenue by</b>	:	Shri Sunil Jha – Ld.CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	27/05/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	17/06/2021

## **आदेश / ORDER**

### **Manoj Kumar Aggarwal (Accountant Member)**

1. The revenue is in appeal for Assessment Years (AY) 2011-12 & 2012-13 whereas the assessee is in appeal before us for AY 2012-13. However, the facts as well issues were common and therefore, the appeals were consolidated and disposed-off by way of this common order for the sake of convenience & brevity.
2. The registry has noted a minor delay of 3 days in assessee's appeal. Keeping in view the minor delay, we are inclined to condone the delay and proceed with adjudication of the appeal on merits.
3. Both the sides advanced arguments and filed written submissions along with supporting case laws. We have carefully considered the orders of lower authorities as well as submissions made before us. Our adjudication to the subject matter of appeals would be as given in succeeding paragraphs.
4. The assessee being resident corporate assessee is stated to be engaged in manufacturing and distribution of pharmaceutical products. An assessment was framed for AY 2011-12 u/s 143(3) r.w.s. 153A on 31/03/2016 in view of the fact that the assessee group was subjected to search action by the department on 29/08/2011. In response to notice u/s 153(1)(a), the assessee filed return of income on 07/06/2013 declaring loss of Rs.37.19 Crores.
5. From the perusal of records, it could be gathered that the assessee had appointed a Chartered Accountant firm M/s Grant Thornton with respect to inventories and receivables. A copy of the compilation report is on record. The scope of work included compilation of closing position

of receivables and inventories based on accounts as on 31/03/2011. The report has made assessment of provision of doubtful receivables as well as provision required for old / obsolete stock based on ageing analysis. This report assume importance since on the basis of this report, the assessee has written-off debtors and inventories during AYs 2011-12 & 2012-13 and the same are subject matter of dispute before us.

## **6. Revenue's Appeal for AY 2011-12**

6.1 The sole subject matter of revenue's appeal is disallowance of expired-goods written-off. The assessee claimed this loss by submitting that the expired goods were written-off as per norms of Food & Drug Administration (FDA), Maharashtra. The assessee took stock of expired goods from stockiest, C&F agents and others parties and destroyed the same which as written-off in the books of accounts. However, in the absence of requisite details forthcoming from the assessee during assessment proceedings, Ld. AO denied the deduction of the same.

6.2 During appellate proceedings, the assessee furnished complete details and requisite documentary evidences relating to amounts written-off which were subjected to remand proceedings before Ld. AO. The assessee submitted that it was marketing the pharmaceutical products through the network of clearing & forwarding agents, consignment agents and stockiest etc. It was the responsibility of the assessee to realize sales proceeds from the ultimate customers. Further, the assessee was required to comply with norms laid down by Food & Drug Administration (FDA) with respect to expiry of products and obliged to destroy the expired goods from time to time. The assessee had old inventories which reached the expiry dates and accordingly, the same were identified and destroyed. To assess the real value of inventories

and debtors, the assessee appointed reputed firm of Chartered Accountants M/s Grant Thornton during June, 2011 to evaluate the status of debtors and inventories especially keeping in view the verification and assessment of the saleable inventories. During the course of physical verification, the assessee identified the expired stocks and accordingly wrote-off the same in the books of accounts. In support, the assessee also filed item-wise details of stock written-off giving quantity, rate and value. It also furnished copies of purchases invoices / excisable invoices, as applicable, with respect to the inventories which were destroyed. The attention was drawn to the fact that most of the expired goods were purchased during financial years 2008-08 and 2009-10 and had already reached expiry dates and therefore, the same were destroyed.

6.3 The Ld. CIT(A), after considering remand report dated 26/03/2019 as furnished by Ld. AO, observed that the fact of expiry of goods was not under dispute. The only contention of Ld. AO was that some of the goods expired prior to AY 2011-12. The same stood explained by the fact that the assessee undertook thorough checking of inventories during AYs 2011-12 & 2012-13 only. Further, the claim was in accordance with report furnished by M/s Grant Thornton.

6.4 The other objection of Ld. AO was that the assessee failed to furnish reconciliation of description of goods written-off and goods handed over to waste disposal entity namely M/s Trans Thane Creek Waste Management Association. The same stood explained by the fact that the waste goods were taken by the waste disposal entity by weight only. Upon enquiry by Ld. AO, that entity confirmed collection and disposal of goods from the assessee. More-so, the assessee had

furnished item-wise details along with sample bills before Ld. AO which were not under dispute. Therefore, the claim was duly substantiated and the deduction of the amounts written-off was allowed to the assessee. Aggrieved, the revenue is in further appeal before us.

7. Upon careful consideration of impugned order, it is quite evident that the assessee has furnished complete item-wise details of stock written-off along with quantity, rate and value. The write-off was duly supported by report of M/s Grant Thornton who had physically verified the expired goods. The fact of expiry of goods was not under dispute. The waste disposal entity confirmed collection and disposal of waste goods from the assessee. Therefore, the claim, in our opinion, was well substantiated and there would be no reason to deny the deduction of the same to the assessee. Hence, finding no infirmity in the impugned order, we dismiss the revenue's appeal for AY 2011-12.

## **8. Cross-Appeals for AY 2012-13**

8.1 In this year, an assessment has been framed u/s 143(3) on 31/03/2016 wherein certain additions/ disallowances were made. The Ld. CIT(A) granted partial relief to the assessee which has given rise to cross-appeals before us.

8.2 The subject matter of revenue's appeal are (i) Inventories written-off; (ii) Bad Debts written-off; & (iii) Investments written-off. The subject matter of assessee's appeal is investments written-off as disallowed by Ld. AO and confirmed by Ld. CIT(A) in the impugned order.

### **8.3 Inventories written-off**

8.3.1 This claim was denied by Ld. AO on more or less similar lines as in AY 2011-12 since the assessee could not furnish item-wise details during assessment proceedings.

8.3.2 During appellate proceedings, the assessee furnished additional evidences on similar lines as in AY 2011-12 in support of the claim. The item-wise details of stock written-off along with purchase invoices etc. were furnished to Ld. AO. The additional evidences furnished by the assessee were subject matter of remand proceedings before Ld. AO who observed that no evidence could be furnished by the assessee with regard to expiry of the goods. However, the assessee, in the rejoinder, submitted that sufficient documentary evidences were submitted and the amounts written-off were in accordance with the report of M/s Grant Thornton with respect to inventories. The assessee reiterated that the expired goods could not be sold as per FDA guidelines and there was no option except to destroy the same.

8.3.3 The Ld. CIT(A), after considering assessee's documents / submissions as well as remand report, similarly observed that there was no dispute that the stock had already expired and the claim was backed by sufficient documentary evidences. The waste disposal management company confirmed collection of expired goods from the assessee. The expired pharmaceuticals products could not even be sold as scrap and they have to be destroyed as per FDA guidelines. Therefore, the claim was justified. Aggrieved, the revenue is in further appeal before us.

8.3.4 We find that fact as well as issue is quite identical to issue in AY 2011-12. The assessee, in our considered opinion, was successful in substantiating its claim of write-off of inventories. Following our adjudication in AY 2011-12, we dismiss this ground of revenue's appeal.

#### 8.4 Bad Debts written-off

8.4.1 The assessee wrote-off bad debts and claimed the deduction of the same u/s 36(1)(vii). It was explained that the assessee had

appointed C&F agents who were selling goods to numerous stockiest across India. Due to various problems in the marketing divisions, the realization from debtors was very low and the debtors were outstanding since long period of time. The debtors, which in the opinion of management were not recoverable, were identified and written-off in the books of accounts. The list of debtors so written-off was furnished to Ld. AO. However, the assessee, in the opinion of Ld. AO, could not furnish the adequate details in support of claim and accordingly, denied deduction of the same.

8.4.2 During appellate proceedings, the assessee furnished additional evidences in support of the claim. These evidences were in the shape of details of sundry debtors written-off, copy of sale invoices pertaining to these debtors, ledgers accounts indicating sales to these debtors in earlier years etc. The assessee also furnished ageing report of M/s Grant Thornton which recommended creation of provision for doubtful debts. However, Ld. AO pointing out that the report recommended such provisions for AY 2011-12, termed the claim as suspicious and non-genuine. Further, the assessee failed to demonstrate as to how the debts had actually become bad and also failed to demonstrate the efforts made by the assessee for recovery of bad-debts. The assessee controverted the same by pointing out that M/s Grant Thornton, in its report dated 22/11/2011, recommended write-off of debts after doing aging analysis. On the basis of said report coupled with past experience of the management, the quantum was determined and written-off during the year. The assessee also drew attention to the documentary evidences furnished by it in support of the claim. On the basis of these submissions, it was claimed that the conditions of Sec.

36(1)(vii) r.w.s. 36(2) were duly fulfilled and the claim was in accordance with law. Reliance was placed on CBDT Circular No.12/2016 dated 30/05/2016 which, after considering Hon'ble Apex Court's decision in **TRF Limited (323 ITR 397; 09/02/2010)**, clarified that after 01/04/1989, for allowing deduction for the amount of any bad-debt or part thereof u/s 36(1)(vii), it would not be necessary for assessee to establish that the debt, in fact, has become irrecoverable. It was enough if the debts were written-off as irrecoverable in the books of account.

8.4.3 The Ld. CIT(A) concurred with assessee's submissions that it was not required to prove the efforts made to recover the bad debts. What is required is to establish the fact that the debts written-off were taken into account in relevant previous year or earlier previous years while computing the income of the assessee. Since the assessee furnished the details of debts written-off along with copies of sales invoices, the said fact was established and therefore, the claim could not be denied. Aggrieved, the revenue is in further appeal before us.

8.4.4 We find that this issue has been clinched in correct perspective in the impugned order. The assessee had filed complete list of debtors along with the copies of sales invoices which established that the conditions of Sec.36(2) were duly fulfilled by the assessee to make a valid claim u/s 36(1)(vii). Undisputedly, the debts have been written-off by the assessee in the books of accounts. Therefore, the conditions of Sec. 36(1)(vii) r.w.s. 36(2) were duly fulfilled and the claim was allowable in terms of CBDT Circular No.12/2016 dated 30/05/2016 which has been issued after considering Hon'ble Apex Court's decision in **TRF Limited (323 ITR 397; 09/02/2010)**. Therefore finding no infirmity in impugned order on this issue, we dismiss this ground of revenue's appeal.

## 8.5 Investments written-off

8.5.1 It transpired that the assessee had made investment in two overseas subsidiaries entities – (i) M/s Svizera Holdings B.V. Netherlands (SHBV); & (ii) M/s Lasa Industria Farmaceutica, Brazil (LASA). During the year, the assessee wrote-off these investments by submitting that investments were long-term investments. Due to consistent uncertain market conditions, the subsidiaries could not achieve the targets and accumulated heavy losses over a period of time which ultimately wiped off their respective net worth. Accordingly, the investments were written-off and claimed as ‘business loss’. In support, the assessee furnished audited financial statements of the two entities. However, treating the same as capital investments which would be chargeable under the head capital gains, Ld. AO denied the deduction of the same u/s 37(1). Reliance was placed on the decision of Ahmadabad Tribunal in APS Stare Industries Limited V/s DCIT (86 ITD 182) to support the said conclusion.

8.5.2 During appellate proceedings, the assessee submitted that it had enough installed capacity for manufacturing various pharmaceutical products of wide range. There was a need to push the sales in the international market so as to achieve optimum utilization of manufacturing facilities. Accordingly, to expand business in overseas markets especially in Europe and Africa and to establish business connections in these markets, the assessee had set up various subsidiaries as well as acquired various companies. These investments were with a view to gain access to foreign markets. As a foreign company, it was difficult for assessee to comply with various regulatory requirements of European Countries and the creation of subsidiaries in

these market would yield better marketing benefits. Further, the investments were necessary keeping in mind the stringent FDA rules in Europe as well as in USA which were otherwise very difficult to comply with. These entities would play vital role in obtaining export orders so that the assessee could fully utilize the manufacturing facilities available at its disposal in India. In fact, the assessee received various profitable marketing contracts through these foreign subsidiaries. Pertinently, M/s SHBV and its further step-down subsidiaries had world recognized certifications from WHO, USFDA etc. which enabled the assessee to manufacture and market its pharmaceuticals products worldwide to establish its strong foothold in the foreign market leading to increased export revenues. The same was evident from the fact that the assessee made export sales of over Rs.422 Crores during Financial Years 2006-07 to 2012-13 to M/s SHBV and its step-down subsidiaries. Similarly, it earned interest income and foreign exchange gains aggregating to more than Rs.143 Crores from M/s SHBV group during Financial Years 2006-07 to 2009-10 which was already offered to tax. The financial statements of M/s SHBV were furnished in support of the claim that its net-worth had been eroded to a great extent which necessitated writing-off of the said investments. The write-off were stated to be made after reducing the estimated net realizable value of the investments based on intrinsic worth of the investments. It was also submitted that the liquidation proceedings were initiated against M/s SHBV and official liquidator was appointed to carry out further proceedings for liquidating M/s SHBV. The relevant documents were furnished in support. Another fact brought to the notice of Ld. CIT(A) was that the remaining investments were written

off during AY 2015-16, the deduction of which was allowed by Ld. AO to the assessee during scrutiny assessment proceedings u/s 143(3).

Regarding investments in LASA, it was submitted that this entity had packing units in Brazil and was pioneer in pouch packing in Brazil. The goods sold by the assessee to LASA were repacked and relabeled in Brazil by LASA. Due to numerous changes in the process of manufacturing as well as selling norms, its working was effected and ultimately this entity had to be liquidated. The attention was drawn to the fact that the assessee made export sales of over Rs.3.73 Crores to this entity during Financial Years 2006-07 to 2008-09. Therefore, the write-offs were allowable as 'business loss'.

In the above background, the assessee justified its claim of investments written-off by submitting that the main purpose of investment was not to acquire any manufacturing capacity or any infrastructural capacity but the investments were made mainly for the purpose of boosting its sales. These investments were not in the capital field but revenue in nature since the same were meant to improve the top line of the business by way of higher revenue profits. The case law of Ahmadabad Tribunal was stated to be factually distinguishable. Rather reliance was placed on plethora of decisions of higher judicial authorities which have already been tabulated on page nos. 43 & 44 of the impugned order. The gist of all these case laws was also filed by the assessee in its written submissions which have already been extracted in the impugned order. Notable amongst these decisions are the decisions of Hon'ble Apex Court in **Patnaik & Co. Ltd. V/s CIT (161 ITR 365)**; Hon'ble Bombay High Court in **CIT V/s Colgate Palmolive India Ltd. (370 ITR 728)**; & Mumbai Tribunal in **Camlin India Private Ltd. (ITA No.928/Mum/88)**.

8.5.3 The Ld. CIT(A) concurred with assessee's submissions and noted the decision of Hon'ble Karnataka High Court in **United Breweries Ltd. V/s ACIT (ITA No.879 of 2007; 54 Taxmann.com 8)** which held that deduction is allowable if there was a direct business nexus between the assessee and the business for which the money was lent. Further, if there was clear business purpose, the investment could not be held to be capital investment as per the decision of Hon'ble Bombay High Court in **M/s Colgate Palmolive India Ltd. (supra)**. The assessee made investments in M/s SHBV exclusively for the purpose of marketing its products. The assessee had set up enough manufacturing facility and it required presence in foreign market. For the same, it made the investments in the subsidiaries. This being so, the loss incurred therein could not be held to be capital loss but an allowable revenue loss. The conditions as stated in the cited decisions were fulfilled in case of investments made in M/s SHBV and accordingly, the write-off would be an allowable deduction.

However, with respect to investment made in LASA, Ld. CIT(A) noted that it was an existing company having its own manufacturing and packing units and therefore, the investments were not exclusively for the business of the assessee. Once the investments were made, it was for the investee company to utilize the same according to its own need. There being no proximate direct nexus between the investment made by the assessee and the business of the assessee, the write-off for this entity could not be allowed as deduction.

Aggrieved, the revenue as well as the assessee are in further appeal before us.

9. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, we find that the claim of the assessee hinges on the argument that the investments were made in the subsidiaries in furtherance of business objectives and with a view to earn more revenues. The investments in the two entities were guided by commercial expediency in view of the fact that the assessee had enough installed capacity for manufacturing various pharmaceutical products of wide range. There was a need to push the sales in the international market so as to achieve optimum utilization of manufacturing facilities. Hence, with a view to expand business in overseas markets especially in Europe and Africa and to establish business connections in these markets, the assessee had set up various subsidiaries as well as acquired various companies. These investments had enabled the assessee to gain access to foreign markets. Undisputedly, as a foreign entity, it would be difficult for assessee to comply with various regulatory requirements of FDA in foreign countries and creation of subsidiaries in these markets would have enabled the assessee to have better regulatory as well as marketing benefits. These entities had all the worldwide certifications from WHO, USFDA etc. The creation of these entities has enabled the assessee to get more export orders which has ultimately enabled the assessee to fully utilize the manufacturing facilities available at its disposal in India. The same is evident from the fact that the assessee earned good export revenues, interest income, other gains etc. from M/s SHBV and its step-down subsidiaries in earlier years which was offered to tax. Similarly, the second entity i.e. M/s LASA enabled the assessee to have better packing facilities for its products in foreign market which ultimately has benefitted the assessee in marketing

its products in those markets. The assessee has similarly earned export revenue from this entity in earlier years. All these facts would lead to a conclusion that the investments were in furtherance of business interest of the assessee and were made out of commercial expediency. The main purpose of investment was not to acquire any manufacturing capacity or any infrastructural capacity but the main purpose was to boost assessee's sales. Therefore, the investments could not be said to be in capital field rather the same were meant to improve the top line of the business by way of higher revenue profits. We also find that the net worth of investee entities had been eroded to a greater extent which was supported by their financial statements as supplied by the assessee during appellate proceedings. The given factual matrix would support the assessee's claim that the investments had direct nexus with assessee's business and any loss arising therefrom would be an allowable deduction.

The Hon'ble Supreme Court in **Patnaik & Co. Ltd. V/s CIT (161 ITR 365)** held that where the government bonds or securities were purchased by the assessee with a view to increase its business, the loss incurred on the sale of such bonds or securities was allowable as 'business loss'.

Relying upon this decision as well as its earlier decision in **CIT V/s Investa Industrial Corp. Ltd. (9 ITR 380)**, Hon'ble Bombay High Court in **CIT V/s Colgate Palmolive India Ltd. (370 ITR 728)** held that loss in investment out of commercial expediency would be an allowable deduction. This decision has been followed by Delhi Tribunal in **Sahara Global Vision Pvt. Ltd. V/s ACIT (ITA No.2514/Del/2014)** to hold that

the loss of investments in furtherance of business objects would be an allowable loss.

Recently, this decision of Hon'ble Bombay High Court has been followed by Hon'ble Karnataka High Court in **ACE Designers Ltd. V/s ADIT (120 Taxmann.com 321)** wherein the assessee was engaged in the business of manufacture and export of computerized numerical controlled machines. It made investment in equity of its wholly owned subsidiary company situated in USA. However, the said subsidiary could not perform and was wound up. The loss so suffered was claimed as 'business loss' on the ground that investment was made for purpose of business. The Hon'ble Court held that since the investment was made for enhancement of business activity of assessee in global market which primarily related to business operation of assessee and the investment was not made with a view to create capital asset in the form of holding shares, the said loss would be a business loss allowable u/s 28(i). The adjudication of Hon'ble Court was as under: -

5. We have considered the submissions made by learned counsel for the parties and have perused the record. The core issue, which arises for consideration in this appeal is with regard to disallowance of business loss written off on account of loss arising out of business investment from WOS in USA. It is well settled legal proposition that while deciding the question whether a receipt is a capital or income, it is not possible to lay down any single test as infallible or any single criteria as decisive. The question must ultimately depend on fact of particular case and authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. It has further been held that for determining the question of capital and incomes, trading profit or non trading profit are questions do involve a question of law to be drawn from the facts. [*CIT v. Rai Bahadur Jairam Valji* [1959] 35 ITR 148 (SC), *P.H. Divecha v. CIT* [1963] 48 ITR 222 (SC), *Kettlewell Bullen & Co. Ltd. v. CIT* [1964] 53 ITR 261 (SC), *Gillanders Arbuthnot & Co. Ltd. v. CIT* [1964] 53 ITR 283 (SC) and *CIT v. BEST and Co. (P.) Ltd.* [1966] 60 ITR 11 (SC) The aforesaid tests laid down by the Supreme Court in the aforesaid decisions were referred to with approval in '*Karamchand Thapper And Bros. (P.) Ltd. and Oberoi Hotel (P) Ltd.(supra)*.

6. The Bombay High Court dealt with the issue viz., where an assessee made an investment in its 100% subsidiary for business purpose, the loss on sale of

investment would be treated as business loss. The aforesaid issue was answered in the affirmative by the Bombay High Court in *Colgate Palm Olive (India) Ltd. (supra)* and it was held that investment was made for commercial expediency. The aforesaid decision has been upheld by the Supreme Court as has been noted by Income-tax Appellate Tribunal, New Delhi Bench in its order dated 31-12-2018 in *Cosmos Industries Ltd. (supra)* In *Patnaik & co. Ltd. (supra)*, it was held that the assessee did not hold on the investment the loan indefinitely and there was no enduring advantage and the investment did not bring in an asset of a capital in nature and the loss suffered by the assessee was a revenue loss and not a capital loss. In *Investa Industrial Coporation Ltd.,(supra)*, the division Bench of the High court dealt with a question whether the finances made by the assessee to manage the company were part of or incidental to carrying on a business by the assessee a and since, the managed company went into liquidation the advances became irrecoverable, the loss sustained by the assessee shall be regarded as trading loss.

7. In the backdrop of aforesaid well settled legal position, the facts of the case in hand may be adverted to. From the perusal of the note annexed to the income filed before the assessing officer, it is evident that assessee had set up an establishment in USA during Financial Year 1992-93 for the exclusive purpose of marketing assessee's products and for promoting its business in US and Latin America. It has further been stated in the note that looking to the stringent norms of product liability in US market, the assessee decided to have a separate Wholly Owned Entity in the US having limited liability. The approval for aforesaid purpose was obtained from the Reserve Bank of India. The assessee therefore, invested funds in equity for meeting the revenue expenses of Wholly Owned Subsidiary Company's balance sheet. However, WOS could not perform upto company's expectations and therefore, it was decided to wind up WOS operations in USA. While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss of Rs.3,41,23,200/- as revenue expenses allowable under the provisions of the Act.

8. Thus, from perusal of the aforesaid facts, it is evident that the issue involved in this appeal is covered by decision of Bombay High Court in *Colgate Palm Olive (India) Ltd. (supra)*, which has been upheld by the Supreme Court. The ratio of aforesaid decision is where the assessee makes investment in its 100% subsidiary for business purpose, loss or sale of investment has to be treated as business loss of the assessee. In the instant case, the assessee made investment in the shares of WOS for the business purpose *i.e.*, for the enhancement of business activity of the assessee in global market which primarily related to business operation of the assessee. The WOS suffered losses and therefore the assessee wrote off the assessment of Rs. 3,41,23,200/- as business loss. The investment was made for the purpose of extension of business activity and not with a view to creating capital asset in the form of holding shares. It is also pertinent to note that the assessee never acquired any capital asset or expenditure of enduring benefits to WOS and there is no relinquishment or transfer of capital asset to any third party. In view of preceding analysis, the first substantial question of law is answered in the negative and in favour of the assessee.

Similar is the decision of Mumbai Tribunal in **Camlin India Pvt. Ltd. (ITA No.928/Mum/1988)** which held that the loss arising out of investment in joint venture during the course of carrying on of business would be an allowable business loss. The other case laws as enumerated in the impugned order also support the claim of the assessee.

The Ld. CIT-DR has relied on the order of this Tribunal in **CIT V/s Siemens Nixdorf Information Systems Gmbh (ITA No.3833/Mum/2011 dated 31/03/2016)** for the submission that investment so made would constitute capital assets and accordingly, the write-off of the same could not be allowed as 'business loss'. However, after going through the order, we find that this decision deal with a situation wherein a foreign entity has granted loan to its subsidiaries which were subsequently sold and the question arose whether the loan would constitute capital asset u/s 2(14) of the Act or not. Hence, this decision is factually different since in the matter before us, the investments were made out of commercial expediency and in furtherance of assessee's business.

Finally, considering the fact that since the investments were made out of commercial expediency and in furtherance of assessee's business, any losses arising therefrom would be an allowable 'business loss'. We order so. Resultantly, the stand of Ld. CIT(A) with respect to investment made in M/s SHBV stand confirmed whereas the confirmation of disallowance of investment loss of M/s LASA stand reversed. This ground of revenue's appeal stand dismissed whereas this ground of assessee's appeal stand allowed.

## 10. Advances Written-off

10.1 The remaining ground in assessee's appeal is advances written-off. It transpired that the assessee made certain advances to an entity namely M/s Lilac Medicine Private Ltd. (LMPL) and wrote-off the outstanding amount during the year which was claimed as deduction. Since the assessee could not sufficiently explain the same during assessment proceedings, the same was disallowed by Ld. AO in terms of Section 36(1)(vii) r.w.s 36(2).

10.2 During appellate proceedings, the assessee explained that it entered into an understanding with M/s LMPL to obtain technical know-how for manufacturing of six drug formulations. For the same, the assessee advanced certain sum pursuant to an understanding, the receipt of which was duly acknowledged by the supplier. M/s LMPL handed over six product dossier containing technical information about the entire production process including introduction, reaction scheme, process, flow chart, list of raw materials, specification of key raw material, specification and method of analysis of finished products, storage conditions of finished products, material safety data sheet, solubility details, disposal of waste generated and handling of hazardous raw material etc. The copy of all these documents were furnished to Ld. CIT(A) during appellate proceedings. It was further submitted that LMPL was also required to help the assessee to set up its production line for the six drug formulations and for manufacturing these formulations as per FDA guidelines. They were also required to assist the assessee in marketing of these products in various regions. Unfortunately, LMPL did not fulfil its promise and did not issue any invoice for supply of product dossier. Left with no option, these advances were written-off as

irrecoverable in the books of accounts. The same being in the course of business, were an allowable deduction.

10.3 However, not convinced, Ld. CIT(A), treating the advances as non-trade advance, confirmed the action of Ld. AO. Aggrieved, the assessee is in further appeal before us.

10.4 Upon careful consideration of factual matrix, we find that the assessee had given certain advance to M/s LMPL pursuant to an understanding in normal course of its business so as to acquire limited right to use and exploit the know-how for manufacturing of six drug formulations. However, the assessee was already in the business of manufacturing pharmaceutical products and the technical know-how was only in respect of six drug formulations and to get technical information which would have enabled the assessee to set up new product lines to the existing business. Nevertheless, no new manufacturing unit would have come into existence and no new asset was proposed to be acquired by the assessee. The advances were given in the normal course of business out of commercial expediency which would have improved the profit-making apparatus without disturbing the capital set-up of the assessee. There is no dispute that the said advances became irrecoverable and accordingly, the same were written-off in the books of accounts. Further, it could be seen that the claim has been examined by Ld. AO only in terms of Section 36(1)(vii) r.w.s. 36(2) whereas the assessee's claim fall under Section 37(1) as well as under Section 28(i) of the Act.

The Hon'ble Apex Court in **Assam Bengal Cement Co. Ltd. V/s CIT (27 ITR 34)** held that it would be the aim and object of the expenditure which would determine its true character. If the expenditure was made for

running the business with a view to produce profits, it would be revenue in nature. On the other hand, if the expenditure was made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it would be in the capital field. The source as well as manner of payment would be immaterial. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure.

The Hon'ble Bombay High Court in **CIT V/s Kirloskar Tractors Ltd. (231 ITR 849)** held that the assessee had only a right to use know-how but it could not assign, encumber, let or sub-lease the same and the know-how continued to be the property of the supplier. Therefore, since the assessee did not acquire the know-how, the expenditure incurred in this respect was allowable as revenue expenditure.

Similarly, the Hon'ble Calcutta High Court in **Binani Cement Ltd. V/s CIT (380 ITR 116)** held that cost of construction / acquisition of new facility which was abandoned at work-in-progress stage would be an allowable expenditure.

The Delhi Tribunal in **DCIT V/s Honda Cars India Ltd. (180 ITD 235; 112 Taxmann.com 164)** held that where the assessee was already engaged in manufacturing of vehicles, the payments made towards royalty / technical know-how were not towards setting up of manufacturing facility and therefore, the payment would be revenue in nature.

Similarly, Delhi Tribunal in **Hero Honda Motors Ltd. (95 TTJ 782)** held that payment made only to secure use of technical know-how without ownership of any property, would be an expenditure allowable u/s 37(1).

The Mumbai Tribunal in **Pik Pen Private Ltd. V/s ITO (ITA No.6847/Mum/2008)**, following the ratio of decision of Hon'ble Rajasthan High Court in **CIT V/s Anjani Kumar Co. Ltd. (259 ITR 114)**, held that the advances written-off for purchase of machinery which was not supplied, would be revenue expenditure. Similar is the decision of Mumbai Tribunal in **Jackie Shroff V/s ACIT (174 ITD 770)** which held that money advanced out of commercial expediency would be an allowable deduction.

The ratio of all the stated decisions support the conclusion that advances lost during the course of business would be business losses and hence, an allowable deduction. Respectfully following the same, we direct Ld. AO to grant the deduction of amount so written-off by the assessee. This ground of assessee's appeal stands allowed.

### Conclusion

11. The appeal of the revenue for AYs 2011-12 & 2012-13 stand dismissed. The appeal of the assessee for AY 2012-13 stand allowed.

*Order pronounced on 17<sup>th</sup> June, 2021*

**Sd/-**

**(Mahavir Singh)**

उपाध्यक्ष / **Vice President**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/06/2021

*Sr.PS, Jaisy Varghese*

### आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.