

THE INCOME TAX APPELLATE TRIBUNAL
“J” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 81/Mum/2017 (Assessment Year 2007-08)
I.T.A. No. 4590/Mum/2018 (Assessment Year 2008-09)
I.T.A. No. 4591/Mum/2018 (Assessment Year 2009-10)
I.T.A. No. 36/Mum/2019 (Assessment Year 2010-11)

DCIT, CC-7(1)/ JCIT(OSD),CC-7(1) Room No. 653 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Maneesh Pharmaceuticals Pvt. Ltd. 2 nd Floor, Block No. 21/24 Kalpataru Court Dr.Chotiram Gidwani Marg, Chembur Mumbai-400074. PAN : AAACM3635Q
(Appellant)		(Respondent)

Assessee by	Shri J.P. Bairagra
Department by	Shri Ajay Kumar
Date of Hearing	23.08.2021
Date of Pronouncement	25.10.2021

ORDER

Per Shamim Yahya (AM):-

These are appeals by the revenue against the respective orders of learned CIT appeals. Since some of the issues are common in the peaceful heard together these are consolidated and disposed off together by this, common order.

Assessment year 2007-08, 2008-09 & 2009-10

2. In these years a common ground raised by revenue learned CIT(appeals) has erred in deleting the addition by relying upon Bombay High Court decision in the case of All Cargo Global Logistics Ltd. (374 ITR 645).

3. It may be gainful to refer to the relevant part of learned CIT(appeals) order wherein he has deleted the addition holding that these additions are

made dehorse any incriminating material as these are non-abated assessments.

“A.Y. 2007-08

The A.O., while making the assessment order u/s.153A, has discussed the various additions made in para 4, 5, 6 and 7 of the assessment order. From the perusal of the above said paras, it is observed as under :-

(i) in para 4, addition of Rs.22,80,195/- has been made on the basis of the order of Addl. CIT (TP)-I(2), Mumbai dated 24.12.2014 making ALP adjustment of the said amount on interest charged on loans given to A.Es. On this issue, an addition of Rs. 28, 65,408/- was made to the total income of the appellant in light of the order of the TPO-II(2), Mumbai dated 31.05.2010. In the second order dated 24.12.2014, the TPO has worked out total adjustment on account of interest to be charged from Associated Enterprises at Rs.51,48,603/- and has computed the additional adjustment of Rs.22,80,195/- after considering the adjustment of Rs. 28,68,408/- on the basis of first TPO order dated 31.05.2010. The TPO and the A.O. have not referred to any incriminating material on the basis of which a higher adjustment on account of interest to be charged from Associated Enterprises at Rs,51,48,603/-has been worked out, as against the adjustment of Rs. 28,68,408/- on the basis of first TPO order dated 31.05.2010. In this regard, it is observed from the assessment record that a report has been sent by the Assessing Officer to the Addl. CIT, TP-I(3) on 21.1.2014 stating that there were no search documents which have bearing on transfer pricing proceedings pending for A.Y. 2007-08 to A.Y. 2012-13. Thus, it is apparent that the above said addition of Rs.22,80,195/- is not based on any incriminating material found as a result of search.

(ii) The addition on account of disallowance of deduction u/s.10B of Rs.3,07,34,644/-has been discussed in para 5 to 5.6 of the assessment order. The disallowance has been made on the ground that the appellant has not allocated all the expenses relating to the EOU unit and has claimed higher depletion u/s.10B of the Act. I find that an addition of Rs.70,13,776/- was made by the A.O. by disallowing deduction u/s.10B in the first assessment order u/s.143(3) dated 08.02.2011 by reallocating a part of expenses under certain heads like Directors Remuneration, R&D Clinical Expenses, Expenses in Foreign Currency. In the assessment order u/s.153A, the A.O. has considered certain more heads of expenses for making reallocation and disallowance u/s.10B but the same is based on the analysis of Profit and Loss Account of various units and not on any incriminating material found in the course of search.

(iii) The addition of Rs.4,76,210/- on account of sale of scrap has been discussed in para 6 to 6.4 of the assessment order. Although, the

same is worked out on the basis of loose papers as per Annexure A-1 to A-5, found in the course of survey u/s 133A at the Pune unit of appellant company, the same was conducted as part of the search operation and there is admission/confirmation of undisclosed income on this issue in the course of search. Accordingly, the contention of the appellant that this addition is not based on incriminating material is rejected and the merits of this addition would be considered while deciding ground No.4 raised by the appellant against this addition.

(iv) The addition of Rs.1,07,11,33,200/- under section 68 of the Act on account of unexplained share capital and premium amount received has been discussed in para 7 to 7.5 of the assessment order from which it is noted that the same is based on the details given in the Balance Sheet and not on any incriminating material found in the course of search.

From above discussion, I am of the considered opinion that except for the addition on account of scrap sale, the other three additions discussed above are not based on any incriminating material found in the course of search. Therefore, relying on the decision of the ITAT Mumbai Special Bench and the jurisdictional High Court in the case of All Cargo Global Logistics Ltd. (supra), it is held that the following additions, made in the order u/s.153A of the Act, are without jurisdiction and the same are deleted.

2008-09

The submissions of the Learned Counsel have been carefully considered. As already discussed the original return of income for AY 2008-09 was filed by the assessee on 25.06.2009 declaring total income of Rs.6,37,28,944/- and book profit of Rs.36,03,03,386/-. A search and seizure action u/s 132 of the IT Act was conducted on the group on 29.08.2011. Consequent to the search, notice u/s 153A was issued to the assessee on 30.04.2013. Assessment u/s 143(3) r.w.s. 153A of the IT Act was completed on 31.03.2016. The AO has confirmed that this is not an abated assessment. In case of an unabated assessment the Hon'ble ITAT Special Bench, Mumbai in the case of All Cargo Global Logistics Ltd. Vs. DCIT 33 CHH 0294 (Mum) held "*in respect of non-abated assessment the assessment will be made on the basis of books of accounts or other documents not produced in the case of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search. In affect it means the additions have to be based on the incriminating material found during the search*". This view was confirmed by the Hon'ble Bombay High Court in the case of CIT Vs. Continental Warehousing Ltd. 279 CTR 0389.

7.4 In view of the above judgments and judgments relied upon by the Learned Counsel for the assessee it is clear that in case of an unabated assessment the additions made without any incriminating material cannot be sustained.

(1) In this case the addition of Rs.19,53,522/- has been made on the basis of ALP adjustments made by the Addl. CIT(TP), no reference of any incriminating material has been made by the AO in the assessment order. Further in the Remand Report submitted by the AO he has clearly mentioned that the seized material does not have any incriminating material pertaining to AY 2008-09.

(2) Addition on account of disallowance of deduction u/s 10B to the tune of Rs.10,69,98,599/- by re-allocation of expenses. It is apparent that the AO made this disallowance on the basis of the return of income and the financials of the assessee and not on the basis of any incriminating material found during the search. The AO observed in the assessment order that he was doing the allocation in view of the facts that the assessee had shown exorbitant profit margin in the EOU unit and has not debited some of the common expenses. No reference, whatsoever, to any incriminating material is seen either in the assessment order or in the Remand Report.

(3) Disallowance of exceptional items of Rs.33,27,68,000/- also has no bearing to the search conducted or to any incriminating material found during the search. As could be seen from the assessment order this is based on the verification of the P&L Account filed by the assessee.

(4) The only item emanating from search is income from sale of unaccounted scrap to the tune of Rs.14,64,092/-. However, the AO did not make addition on this account as the assessee had offered the same in the return of income filed u/s 153A. As the other three additions which are additions on account of ALP adjustment, disallowance of deduction u/s. 10B and disallowance of exceptional items written off, are not based on any incriminating material found during the search, in view of the judgments of the jurisdictional ITAT and jurisdictional High Court referred to supra, the additions made by the AO cannot be sustained. The AO has directed to delete these additions.

2009-10

The submissions of the Learned Counsel have been carefully considered. As already discussed the original return of income for AY 2009-10 was filed by the assessee on 30.09.2009 declaring total income of Rs.9,13,41,226/- and book profit of Rs.30,28,01,935/-. A search and seizure action u/s 132 of the IT Act was conducted on the group on 29.08.2011. Consequent to the search, notice u/s 153A was issued to the assessee on 30.04.2013. Assessment u/s. 143(3) r.w.s. 153A of the IT Act was completed on 31.03.2016. The AO has confirmed that this is not an abated assessment. In case of an unabated assessment the Hon'ble ITAT Special Bench, Mumbai in the case of All Cargo Global Logistics Ltd. Vs DCIT 33 CHH 0294 (Mum) held *"in respect of non-abated assessment the assessment will be made on the basis of books of accounts or other documents not produced in the case of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search. In affect it means the additions have to be based on the incriminating material found during the*

search". This view was confirmed by the Hon'ble Bombay High Court in the case of CIT Vs. Continental Warehousing Ltd. 279 CTR 0389.

7.4 In view of the above judgments and judgments relied upon by the Learned Counsel for the assessee it is clear that in case of an unabated assessment the additions made without any incriminating material cannot be sustained.

(1) In this case the addition of Rs.5,60,427/- has been made on the basis of ALP adjustments made by the Addl. CIT(TP), no reference of any incriminating material has been made by the AO in the assessment order, Further in the Remand Report submitted by the AO he has clearly mentioned that the seized material does not have any incriminating material pertaining to AY 2009-10.

(2) Addition on account of disallowance of deduction u/s 10B to the tune of Rs.9,63,06,839/- by re-allocation of expenses. It is apparent that the AO made this disallowance on the basis of the return of income and the financials of the assessee and not on the basis of any incriminating material found during the search. The AO observed in the assessment order that he was doing the allocation in view of the facts that the assessee had shown exorbitant profit margin in the EOU unit and has not debited some of the common expenses. No reference, whatsoever, to any incriminating material is seen either in the assessment order or in the Remand Report.

(3) The AO observed in the assessment order that a perusal of the balance sheet during the assessment proceedings showed increase in share capital from Rs. 10, 10,47,000/- to Rs. 11,57,42,000/-. The AO called for the details from the assessee which was provided by the assessee. With regard to the share capital contribution made by RBC Trustees, the assessee had furnished to the AO the certificate of incorporation of the company, annual return filed by the company, correspondence made by the city bank with the assessee confirming the moneys received from the said entity. However, this was not acceptable to the AO who held that the identity and the creditworthiness of the company was not proved by the assessee and made an addition of Rs. 8,97,50,000/- u/s. 68 of the IT Act. It is seen that this addition has been made on the basis of the return filed by the assessee and has no relevance/connection to the search conducted or any incriminating material found during the search.

7.5 As all the three additions which are addition on account of ALP adjustment, disallowance of deduction u/s. 10B and disallowance of share capital written off, are not based on any incriminating material found during the search, in view of the judgments of the jurisdictional ITAT and jurisdictional High Court referred to supra, the additions made by the AO cannot be sustained. The AO is directed to delete these additions."

4. Against the above order the Revenue has filed appeal before us.

5. We have heard both the parties and perused the records. It is not disputed by the revenue that on the aforesaid items of addition, no incriminating material was found during search. Assessment order under section 143(3) was already passed for assessment year 2007-08 prior to the search and notice. The period for issuing notice under section 143(2) was also over for assessment year 2008-09 and 2009-10 by the time of search and notice. In such circumstances it is evident that these are not abated assessments. In such circumstances the decision of honourable Bombay High Court in the case of All Cargo Global Logistics Ltd. (supra) and Continental Warehousing Ltd. (supra) clearly mandate that the addition cannot be done under section 153A without any incrementing material found during search. The Revenue submits in grounds of appeal that they have not accepted the Hon'ble Bombay High Court decision and SLP has been filed before Hon'ble Supreme Court. This is no reason for us to not follow Hon'ble Jurisdictional High Court exposition. Hence in our considered opinion there is no infirmity in the order of learned CIT(appeals).

6. The Revenue has challenged other aspects of the merits of the case. These have not been adjudicated by the learned CIT(A) as he has deleted the addition on the reasoning that no incriminating material was found during search. In our considered opinion adjudication on merits of these additions is only of academic interest hence we are not dealing with the same.

Assessment year 2010-11

7. The grounds raised by the revenue read as under :-

(i) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the assessee to deduct as sum activity to Rs. 37,41,29,000/- as finished goods written off."

(ii) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of debtors written off amounting to Rs. 11,20,50,000/-, without appreciating the fact that, the assessee, during the assessment proceedings, failed to demonstrate with evidence before the AO as well as CIT(A) that the amounts written off as bad

debts have been taken into account in computing income of the assessee of a previous year."

8. The assessing officer has made addition in this case by observing as under :-

i) Finished goods written off :

The assessee has submitted that the company has started valuing the finished goods as per AS-2 from F.Y, 2009-10. Till 31.03.2009 the company was valuing its inventory of finished goods lying at marketing units at trade price (i.e. transfer price) minus estimated margins. During the year the company changed the method of valuation of products lying at marketing units and has valued the same at cost so as to include cost in accordance with AS-2. As the opening balance of inventory valuation as on 1st April, 2009 was at trade price less estimated margins, the impact thereof was in the current year's Profit & Loss a/c. However due to this change the company wanted to show this amount of extra ordinary expense in Profit & Loss account separately and the same was not recurring in nature, the company reduced the value of excess of cost and its Trade Price less margin valuation from the Opening Balance of inventory and the same was shown as exceptional item in the financial statements. There is no impact on profitability during the year as Rs. 3741.29 lacs were reduced from the current year's consumption and the same was shown as an exceptional item in the financial statements. Assessee has submitted the stock valuation statement as on 31.03.2009 in support of its claim.

Assessee's submission is considered but found to be not acceptable because there is no clarity in the explanation regarding the impact on revenue or profitability. It is inferred from the assessee's submission that due to the change of valuation of Stock during the year the value of opening stock had increased by Rs. 3741.29 lacs and the same was reduced from the current year's consumption. Further debiting the same amount in the P & L account under exceptional item has resulted in excess claim of expenses, thereby reducing the taxable profit to that extent. Moreover, except for the above explanation and statement, the assessee has submitted the item wise/quantity wise list, the year of purchase, the basis of valuing the stock of raw material and finished goods along with facts and figures to prove the over valuation of the opening stock in the earlier years. The adjustments made in the consumption during the year under consideration has also not been explained. The contention of the assessee that the change in the method of accounting does not affect the profit of the year is not at all clear as discussed above. In view of the above, assessee's claim of write off cannot be allowed. Therefore, the amount of Rs. 3741.29 lacs is added to the total income of the assessee.

ii) Debtors written off:

In this regard assessee has submitted that during the F.Y. 2007-08 the company had started a marketing division viz. Svizera Health Remedies

(SHR). The company appointed many C&F agents who were selling the products to various stockiest across the whole India. The C&F were delivering the goods to various stockiest on the basis of orders placed from the field staff of the company. The sales were booked by the company when the stock were sold to various stockiest. These debtors account were maintained in an online ERP system. Due to various problem in this marketing division the debtors realization was very slow and the auditors had commented on the same. Therefore, the debtors were outstanding for a long period which in the opinion of the management were not recoverable and hence, written off. The assessee has submitted a list of the debtors written off during the year under consideration. Further it is also to be mentioned here that during the course of assessment proceedings assessee has submitted details of investments made by the assessee in various companies in the F.Y. 2005-06 & 2006-07. The list also contains the information regarding the investments written off in subsequent years. It is observed that the assessee had written off investment of Rs. 12,00,000/- made in M/s Lyka Labs Ltd. during the year under consideration. Assessee's A.R. was asked to explain the same. Assessee in its submission dated 08.03.2016 has stated that M/s Lyka Labs was the debtor of the assessee. As they were not in a position to pay the amount due to the assessee, the debtors amount was converted into debentures. Finally the company did not pay any amount to the assessee as it became defunct. Due to this reason the assessee wrote off this investment from the books of accounts. Assessee has included the investment write off under the head debtors written off and debited it to the P & L account as exceptional item.

Assessee has not furnished any details regarding the names and addresses of the C&Fs and C&As, no details regarding when the materials were sent to them on consignment and in which year these sales were included in the income by the assessee. Assessee has also not furnished any details on what efforts were made to collect the amounts outstanding against these debtors. In absence of these basic details the assessee's claim of bad debt is not allowable as per Section 36(l)(vii) subject to section 36(2) of the I.T. Act. The relevant portion of the Section is as under:

"The deduction provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28 -Subject to the provisions of sub-section (2), the amount of [any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year]

Section 36(2)(i) says :

In making any deduction for a bad debt or part thereof, the following provisions shall apply -

"No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the

ordinary course of the business of banking or money lending which is carried on by the assessee. "

The explanation given by the assessee is considered but is not acceptable. The debentures allotted to the assessee were against the outstanding amount receivable from M/s Lyka Labs Ltd. Once the debenture was allotted to the assessee, M/s Lyka Labs Ltd. were no more a business debtor of the assessee. The debenture became a capital investment of the assessee and hence the same is not allowed to be written off in the P&L account. It is necessary that the assessee should have taken into account these debts in computing the total income of an earlier previous year. As the assessee has not furnished any details in this regard, assessee's claim of write off of bad debts of Rs. 1120.50 lakhs is disallowed and added to the total income. Hence, exceptional items of Rs. 4861.79 lacs written off is disallowed and added to the total income of the assessee. Penalty proceedings u/s 271(l)(c) of the Act are initiated separately for furnishing inaccurate particulars of income. [Addition: Rs. 48,61,79,000/-].

9. The learned CIT(appeals) has deleted the addition by observing as under:-

“The assessment order, submissions of the Learned Counsel, Remand Report and the assessee's Rejoinder have all been carefully considered. The AO seems to have made the addition merely for the reason that the names and addresses of the C&Fs and C&As were not furnished and the details of the consignments sent to them were not given. Also the efforts that were made to recover the debts have also not been established. However, during the appellate proceedings, the Learned Counsel for the appellant submitted all these details by way of additional evidences. He had given the names and addresses of the debtors along with the details of the invoices raised date wise and copies of the ledger accounts of all the debtors. In spite of all this, in the remand report the AO stated that the assessee has not submitted ledger accounts of the entities and also that the assessee failed to demonstrate how the deduction claimed as bad debts has actually become bad. It is clear that the ledger accounts and sales invoices along with a detailed chart has been furnished by the assessee which demonstrates that he debts have been offered as income in the earlier years. As for the AO's contention that the assessee has not demonstrated how the debts have become bad or efforts taken for recovery, it is clarified that the Income Tax Act does not mandate any such demonstration. It is for the assessee to decide whether that debt has become bad or not. The only condition is that the debt which was being written off should have been taken into account in computing the income of the assessee for any previous year. The CBDT circular No. 12/2016 dated 30.05.2016 states that *"the legislative intention behind the amendment was to eliminate litigation on the issue of the allow ability of the bad debts by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continuously for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide*

judgment dated 9.2.2010, has stated that the position of law is well settled, "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee." From the above, it is clear that the assessee need not prove or establish that the debt has in fact become irrecoverable. It is enough if bad debts are written off as irrecoverable in the books of accounts of the assessee. The assessee has written off an amount of Rs. 11,20,50,004/- in the books of accounts and these sums were already offered as sales in the relevant financial years. The AO, instead of verifying and commenting on the evidences filed by the assessee, has wrongly mentioned that the assessee has not submitted the ledger accounts of the entities. The AO, in the assessment order, has mentioned that the names and addresses of the C&Fs and C&As have not been furnished but this is of no relevance to the bad debts written off as the C&Fs have got nothing to do with the debtors. Therefore, the addition of Rs. 11,20,50,004/- made by the AO cannot be upheld.

11.6 With regard to the disallowance of Rs.37.41 crores, the AO seems to have made the addition because he was not clear about the explanation given by the assessee. The assessee company, till AY 2009-10 was valuing its inventory of finished goods lying on marketing units at trade price(-) estimated margins. During the relevant AY i.e. AY 2010-11, the assessee has changed to AS-2 Valuation of inventories issued by ICAI which prescribes that the inventories of finished goods should be valued at lower of cost or market value where the cost should comprise of cost of purchase, cost of completion and the other costs incurred in bringing the inventories to their present location and condition. Accordingly, for AY 2010-11, the assessee has valued its inventories as per AS-2. Due to this change, the valuation of closing stock as on 31.03,2010 was not on the same and comparable with the value of opening stock as on 01.04.2009; the concept of matching principle was violated. In order to bring out the effect of this change in the method of accounting, the assessee had reduced the effect which is Rs.37.41 crores from the consumption which would decrease valuation of opening stock and increase the profit. In order to negate this effect the assessee had debited the same amount i.e. Rs.37.41 crores to the P&L account as exceptional items written off. Thus there is no effect on the P&L account. The assessee had not tinkered with the opening stock. The assessee has reduced the value of opening stock by a sum of Rs.3741.29 Lakhs (which is a credit effect increasing the income) and has simultaneously debited the P&L account by the same amount as exceptional items written off to neutralize the effect. Therefore, there is no effect to the P&L account as could be seen from the Note No.4 given by the auditors in the Notes to accounts. The AO has not understood this working and for the reason that there is no clarity in the explanation, made the addition of Rs.37.41 crores which cannot be sustained. The exceptional items written off to the tune of Rs.37.41 crs has not affected the P&L account of the assessee in any way. The AO is directed to delete the addition of Rs.48,61,79,000/-."

10. We have heard both the parties and perused the records. Learned Counsel of the assessee has made a further written submission as under :-

“1. The assessee was following method of valuation of inventory of finished goods lying at marketing unit at trade price i.e. transfer price less estimated margin and not at cost in accordance with AS-2 issued by the ICAI till Assessment Year 2009-10.

2. During the year the assessee decided to value the closing stock of finished goods at cost as per AS-2 issued by the ICAI. The only change earlier was that there was estimation while arriving at valuation of inventory of Finished Goods as estimated margin were reduced from transfer price whereas in the revised method of valuation, the inventory was valued at cost in accordance with AS 2 issued by the ICAI and the impact of the same was removed from the stock valuation and shown under exceptional items having no impact on profit for the year.

3. During the year such closing stock of previous year became opening stock of the current year and the assessee corrected the valuation of stock as per AS-2 issued by the ICAI i.e. valuation at cost which was included in the Opening Stock of current year was removed from the value and was shown separately as exceptional item in the books.

4. There was no impact on the profit for the year as the reduction in opening stock would increase the profit for the year and debit to exceptional item would have the effect of reduction in profit of equivalent amount.

5. The entry passed is as per Schedule 16: Cost of Materials. The same is as under:

Decrease /(Increase) in Inventories	For the year ending	
	31-03-2010	31-03-2009
Opening Stock		
- Stock in Progress	158.64	945.92
- Finished Goods	9521.96	3884.47
Less: Valuation Difference as per AS-2	3741.29	-

6. Note no. 4 to Notes to accounts as per Page No. 31 of the Paper book is as under:

"During the year the Company has changed its accounting policy in respect of the following items:

a. Changed the method of valuation of finished goods lying at marketing units:

- i. Hitherto the company was valuing its inventory of finished goods lying at marketing units at Trade Price i.e. (Transfer Price) minus estimated margins.
- ii. During the year the company has changed the method of valuation of products lying at marketing units and has valued the same at cost so as to include cost in accordance with AS-2 issued by the ICAI.

The impact of the change of method of valuation of stock as per AS-2 of Rs.3741.29 lakhs has been shown under the head of exceptional items.”

11. We have carefully heard both the parties and perused the records.

Apropos issue of Sundry debtors written off :-

12. We note that learned CIT(A) has given a finding that the assessee has submitted additional evidence for which learned CIT(A) has duly asked for the remand report from Assessing Officer and assessee rejoinder also. Learned CIT(A) has noted that the names and addresses of the sundry debtors along with the details of the invoices raised, date wise, and copies of the ledger accounts of all the debtors were submitted. That despite all these submission in the remand report the AO stated that the assessee has not submitted ledger accounts of the entities and also that the assessee failed to demonstrate how the deduction claimed as bad debts has actually become bad. Learned CIT(A) has given finding that it is clear that the ledger accounts and sales invoices along with a detailed chart has been furnished by the assessee which demonstrates that the amount involved in the debts have been offered as income in the earlier years. Further learned CIT(A) has rightly rejected the Assessing Officer's plea that the assessee has not demonstrated how the debts have become bad or what efforts have been taken for recovery. As the said issue is duly covered by the decision of Hon'ble Supreme Court in the case of TRF Ltd. (supra) wherein it was held that after amendment in the Act write off in the account is sufficient for the claim of debts written off. Hence, in our considered opinion there is no infirmity in the order of learned CIT(A). Moreover, this ITAT in assessee's own case for A.Y. 2011-12 & 2012-13 in ITA No. 4024 & 4027/Mum/2019 on the issue of bad debts similarly raised, has

allowed the same in favour of the assessee vide order dated 17.6.2021 by concluding as under :-

“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.”

13. Accordingly in the background of the aforesaid decision and precedent, we do not find any infirmity in the order of learned CIT(A).

Apropos issue of finished goods written off :-

14. As detailed above in the order of learned CIT(A) as well as submission of the assessee there is an error on the part of the Assessing Officer in appreciating the facts. The assessee in order to bring out the opening stock valuation in accordance with change in the method for closing stock valuation has arrived at a figure Rs. 3741.29 crores. But the entry passed in this regard has not affected the profit computed by the assessee. Hence, the Assessing Officer has erred in tinkering with the figures here. The Assessing Officer has observed that he has not able to comprehend the assessee's explanation. According to his understanding due to change of valuation of stock during the year, the value of opening stock had increased by Rs. 3741.29 lakhs and the same was reduced from the current year's consumption. Hence, as per the Assessing Officer further debiting the same amount in the profit and loss account under exceptional item has resulted in excess claim of expenses thereby reducing the taxable profit to that extent. Further Assessing Officer stated that the adjustment made in the consumption has also not been explained. However, as per the facts narrated by learned CIT(A) and explanation given by the assessee, the change in the method of accounting

does not affect the profit by the amount of Rs. 3741.29 lacks. In order to bring out the effect of the change in the method of accounting the assessee had reduced the effect which is Rs.37.41 cores from the consumption which would decrease valuation of opening stock and increase the profit. Further in order to negate this effect the assessee had debited the same amount of Rs. 37.41 crores to the profit and loss account as exceptional items written off. Thus there is no effect on the profit and loss account and the assessee has not tinkered with the opening stock. To recapitulate, the assessee has reduced the value of opening stock by a sum of Rs. 37.41 crores which is a credit effect increasing the income and has simultaneously debited the profit and loss account by the same amount as exceptional items written off to neutralize the effect. Thus actually there is no effect and this has also been detailed in Note No. 4 given by the auditors in the notes to accounts. In this view of the matter in our considered opinion, we do not find any infirmity in the order of learned CIT(A). Moreover, we note that in the aforesaid order of the ITAT in assessee's own case as above, adverse observation and addition on account of stock valuation was deleted by the ITAT as under :-

“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.”

15. We find that though the above observation of the ITAT is with regard to the merits of the addition, we note that in the present case before us aforesaid amount added by the Assessing Officer is erroneous as assessee's adjustment has not affected to the profit and loss account. In this view of the matter we do not find any infirmity in the order of learned CIT(A). Hence, we uphold the same.

16. In the result, these appeals by the Revenue stand dismissed.

Pronounced in the open court on 25.10.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 25/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS