

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"G" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 4753/MUM/2004 (A.Y. 2002-03)**

Grasim Industries Limited Corporate Finance Division Aditya Birla Centre "A" Wing 2 <sup>nd</sup> floor, S.K. Ahire Marg, Worli Mumbai-400025  <b>PAN: AAACG4464B</b>	v.	Addl. CIT, Range 6(3) 5 <sup>th</sup> floor, Room No. 505 Aayakar Bhavan Mumbai
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 5584/MUM/2004 (A.Y. 2002-03)**

Dy. CIT, Range 6(3), 5 <sup>th</sup> floor, Room No. 505, Aayakar Bhavan, Mumbai-20.	v.	Grasim Industries Limited, Corporate Finance Division, Aditya Birla Centre, "A" Wing, 2 <sup>nd</sup> floor, S.K. Ahire Marg Worli, Mumbai-400025  <b>PAN: AAACG4464B</b>
<b>Appellant</b>		<b>Respondent</b>

**Assessee by** : **Shri J.D. Mistry**  
**Revenue by** : **Shri Sandeep Raj &  
Shri Vijay Kumar Menon**

**Date of Hearing** : **17.09.2021**

**Date of pronouncement** : **14.12.2021**

**ORDER****PER S. RIFAUR RAHMAN (AM)**

1. These cross-appeals are filed by the assessee and Revenue against order of Learned Commissioner of Income Tax (Appeals)-26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 16.04.2004 for the A.Y. 2002-03 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the "Act").

**ITA No. 4753/MUM/2004 (A.Y. 2002-03) – Assessee Appeal**

2. Assessee has raised following grounds in its appeal: -

**1. Disallowance under section 43B:**

1.1 *The CIT (A) erred in not allowing the amounts paid or written back during the previous year amounting to Rs. 1,38,78,153/-, which had already been disallowed in the past under clause (c), (d) and (e) of section 43B, consistent with the Department's stand.*

1.2 *The CIT (A) ought to have held that in the event the Department's stand is accepted by the ITAT in earlier years, then deduction of amounts paid or written back amounting to Rs.1,38,78,153/- should be allowed in the previous year.*

**2. Provision for bad and doubtful debts**

2.1 *The CIT (A) erred in upholding the action of the AO in disallowing amount of Rs.1,20,11,696/- towards provision for bad and doubtful debts.*

2.2 The CIT (A) failed to appreciate that the provisions of Sec. 36(1)(vii) are not applicable since the amount of provision made represents identified bad and doubtful debts and is not on estimate basis.

3. **Disallowance of Club membership fees**

The CIT (A) erred in not allowing club membership fees of Rs.16,21,025/- paid to Cricket Club of India as deduction.

4. **Interest received from Income Tax Department:**

4.1 The CIT (A) erred in upholding the action of the AO in taxing interest of Rs. 25,07,53,088/- allowed by the Department.

4.2 The CIT (A) failed to appreciate that no income can be taxed until the entitlement is absolute or irretrievable. The CIT (A) ought to have held that interest allowed by the Department is not to be taxed till the matters are finally decided and the appellant is absolutely entitled to such interest.

5. **Deduction under section 80 HHC**

5.1. The CIT (A) erred in not directing the AO to allow deduction under section 80 HHC, as claimed by the appellant.

5.2 The CIT (A) ought to have held that no amount of interest received is to be reduced from profit of the business for the purpose of calculating deduction u/s. 80 HHC.

5.3 Without prejudice to the above, the CIT (A) failed to appreciate that interest paid during the previous year amounting to Rs. 190,25,43,479/- was higher than the amount of interest received amounting to Rs. 54,65,73,130/- resulting in net interest paid and therefore amount of interest received during the previous year cannot be reduced from the profit of the business.

5.4 The CIT(A) ought to have held that rent Rs 1,03,98,185/should not be reduced from the profit of the business, while calculating allowable deduction under section 80HHC.

5.5 The CIT(A) erred in not following the decisions of the Jurisdictional High Court in the cases of Bangalore Clothing Co. (260 ITR 371) and Alfa Laval India Ltd. (133 Taxman 740).

5.6 The CIT (A) erred in upholding the action of the AO in adjusting loss on export of traded goods against profit on export of manufactured goods, while calculating deduction under section 80 HHC.

6. **Appropriation of Head Office expenses**

6.1 The CIT (A) erred in confirming the AO's action in appropriating Head Office expenses and reducing the amount of allowable deduction u/s. 80 O.

6.2 The CIT (A) failed to appreciate that Head Office expenses cannot be reduced from the receipts while computing allowable deduction u/s. 80 O.

6.3 Without prejudice to the above, the CIT (A) failed to appreciate that even if head office expenses are to be reduced from gross receipts for computing allowable deduction u/s. 80 O, such expenses can only be a certain percentage of the gross receipts eligible for deduction u/s. 80 O and not the total turnover of the division.

7. **Deduction u/s 80 IA**

7.1 The CIT (A) erred in upholding the action of the AO in rejecting the claim for allowing deduction u/s. 80IA on gain arising on sale of machinery amounting to Rs. 4,34,17,852/-.

7.2 The CIT (A) erred in holding that the gain arising on sale of machinery is notional gain and is not actual profit directly originating from the main business of the appellant.

8. The appellant prays for the cost of this appeal in view of section 254 (2B) of the LT. Act."

The appellant craves leave to add to, alter, amplify or delete any of the above ground(s) before or at the time of hearing.

*The appellant respectfully prays that relief prayed for in the abovementioned grounds be granted and that the appellate order of the learned CIT (A) be modified accordingly.*

**3.** Assessee raised following additional ground in its appeal: -

*"1. On the facts and circumstances of the case and in law, the Appellant prays that the ("AO") be directed to*

*i) Exclude from taxable profits, the sales tax exemption benefit of Rs 69 crores, which is included in Sales and which is taxed in the assessment order as part of profits of the business; and*

*ii) To treat the same as capital receipt not chargeable to tax.*

**4.** Assessee further raised following additional ground in its appeal: -

*"1. The learned CIT (A) ought to have held that the sum of Rs.3,25,44,527/- being royalty was an allowable deduction when computing the assessee's income chargeable to tax and could not be disallowed by applying section 43B of the Act."*

**5.** At the outset, with regard to Ground No. 1 which is in respect of Alternate claim to allow deduction u/s. 43B clause (C), (d) and (e) and Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the assessee and against the department, the ITAT has dismissed the plea of the assessee as otiose in the earlier year, therefore it becomes infructuous. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

6. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

"2. *Rival contentions have been heard and perused the record. The assessee is engaged in manufacturing and sale various products. During the course of scrutiny assessment, the A.O. disallowed assessee's claim of deduction u/s 43-B of the Act in respect of liabilities disallowed in earlier years which are paid/written back in the current year. The A.O. found that in the computation of income an amount of Rs. 10.85 crores has been considered as disallowance u/s 43-B (a) of the Act by the assessee itself. However, an amount of Rs. 1.31 crores was not considered as disallowance u/s 43-B of the Act falling under clause (b) to (d). The contention of the assessee was that the amount of Rs. 1.31 crores which falls under clauses (b) to (d) of section 43-B of the Act which are not payable as on 31-3-2001 cannot be covered by the provisions of section 43-B of the Act. However, the A.O. did not agree with this explanation and made the disallowance. The Id. CIT(A) by his impugned order, confirmed the order of the A.O. and the assessee is in appeal before us.*

3. *At the outset, the Id. Counsel for the assessee contended that the issue is covered by the decision of the Tribunal in earlier years i.e assessment years 1993-94 to 1998-99 and 2000-01 in assessee's own case, copy of which was placed on record. We find that similar issue was considered by the Tribunal in A.Y. 2000-01 vide order dated 9-10-2013 wherein the ground taken by the assessee was dismissed as the same has become infructuous. It was found by Tribunal that it is an alternative plea which relates to A.Y. 1993-94 decided by the Tribunal in assessee's favour. The appeal filed by the Department has been dismissed by the Tribunal vide order dated 20-12-2001. As the facts and circumstances during the year under consideration are para materia wherein appeal of department in earlier year was dismissed by the Tribunal, therefore, ground taken by assessee for disallowance during the year has become*

*infructuous. The view taken by the Tribunal in A.Y. 2000-01 is respectfully followed, ground of the assessee becomes otiose and is accordingly dismissed.*

**7.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2000-01 is respectfully followed, ground raised by the assessee is accordingly dismissed.

**8.** With regard to Ground No. 2 which is in respect of Write off of Bad and Doubtful Debts, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the various courts in the following cases and decided in favour of the assessee viz., Vijaya Bank [323 ITR 166 (SC)], TRF Ltd [323 ITR 397 (SC)], Arrow Coated Products Ltd [136 ITD 315 (Mum)], Jwala Prasad Tiwari [24 ITR 537 (Bom)] and Vithaldas Dhanji Bhai [130 ITR 95 (Guj)] and requested the same be adopted in the case of assessee also. Ld.DR has relied on the orders of the lower authorities.

**8.1** Further, Ld AR submitted that in the instant case the assessee declared all details of debtors and bad debts claimed in the Profit and Loss Account, he brought to our notice the details, which he has filed in the paper book: -

Schedule 9		₹. In Crores Previous year
Sundry Debtors		
Exceeding Six Months	0.42	1.03
Good and secured	58.01	88.27
Good and unsecured	1.70	0.50
Doubtful and unsecured	<u>60.13</u>	<u>89.80</u>
	1.70	0.50
Less Provision for doubtful Debts	58.43	89.30
Others		
Good and secured	139.68	125.33
Good and unsecured	299.74	401.83
	439.42	<u>527.16</u>
	<u>497.85</u>	616.46

**9.** Considered the submissions and material placed on record, we observe from the record that on identical facts the Hon'ble Supreme Court in the case of Vijaya Bank (323 ITR 166) held that the assessee debits to Profit and Loss Account and reduces from debtors/loans and advances on the asset side of the balance sheet amounts to write off and deduction u/s. 36(i)(vii) is available, while holding so, Hon'ble Supreme Court held as under: -

*" Coming to the second question, we may reiterate that it is not in dispute that Section 36(1)(vii) of 1961 Act applies both to Banking and Non-Banking businesses. The manner in which the write off is to be carried out has been explained hereinabove. It is important to note that the assessee-Bank has not only been debiting the Profit*

*and Loss Account to the extent of the impugned bad debt, it is simultaneously reducing the amount of loans and advances or the debtors at the year-end, as stated hereinabove. In other words, the amount of loans and advances or the debtors at the year-end in the balance-sheet is shown as net of the provisions for impugned debt. However, what is being insisted upon by the Assessing Officer is that mere reduction of the amount of loans and advances or the debtors at the year-end would not suffice and, in the interest of transparency, it would be desirable for the assessee-Bank to close each and every individual account of loans and advances or debtors as a pre-condition for claiming deduction under Section 36(1)(vii) of 1961 Act. This view has been taken by the Assessing Officer because the Assessing Officer apprehended that the assessee-Bank might be taking the benefit of deduction under Section 36(1)(vii) of 1961 Act, twice over. [See Order of CIT (A) at Pages 66, 67 and 72 of the Paper Book, which refers to the apprehensions of the Assessing Officer]. In this context, it may be noted that there is no finding of the Assessing Officer that the assessee had unauthorisedly claimed the benefit of deduction under Section 36(1)(vii), twice over. The Order of the Assessing Officer is based on an apprehension that, if the assessee fails to close each and every individual account of its debtor, it may result in assessee claiming deduction twice over. In this case, we are concerned with the interpretation of Section 36(1)(vii) of 1961 Act. We cannot decide the matter on the basis of apprehensions/desirability. It is always open to the Assessing Officer to call for details of individual debtor's account if the Assessing Officer has reasonable grounds to believe that assessee has claimed deduction, twice over. In fact, that exercise has been undertaken in subsequent years. There is also a flip-side to the argument of the Department. Assessee has instituted recovery suits in Courts against its debtors. If individual accounts are to be closed, then the Debtor/Defendant in each of those suits would rely upon the Bank statement and contend that no amount is due and payable in which event the suit would be dismissed.*

*Before concluding, we may refer to an argument advanced on behalf of the Department. According to the Department, it is necessary to square off each individual account failing which there is likelihood of escapement of income from assessment. According to*

*the Department, in cases where a borrower's account is written off by debiting Profit and Loss Account and by crediting Loans and Advances or Debtors Accounts on the asset side of the Balance Sheet, then, as and when in the subsequent years if the borrower repays the loan, the assessee will credit the repaid amount to the Loans and Advances Account and not to the Profit and Loss Account which would result in escapement of income from assessment. On the other hand, if bad debt is written off by closing the borrower's account individually, then the repaid amount in subsequent years will be credited to the Profit and Loss Account on which the assessee-Bank has to pay tax. Although, prima facie, this argument of the Department appears to be valid, on a deeper consideration, it is not so for three reasons. Firstly, the Head Office Accounts clearly indicate, in the present case, that, on repayment in subsequent years, the amounts are duly offered for tax. Secondly, one has to keep in mind that, under the Accounting practice, the Accounts of the Rural Branches have to tally with the Accounts of the Head Office. If the repaid amount in subsequent years is not credited to the Profit and Loss Account of the Head Office, which is ultimately what matters, then, there would be a mis-match between the Rural Branch Accounts and the Head Office Accounts. Lastly, in any event, Section 41(4) of 1961 Act, inter alia, lays down that, where a deduction has been allowed in respect of a bad debt or a part thereof under Section 36(1)(vii) of 1961 Act, then, if the amount subsequently recovered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to be profits and gains of business and, accordingly, chargeable to income tax as the income of the previous year in which it is recovered. In the circumstances, we are of the view that the Assessing Officer is sufficiently empowered to tax such subsequent repayments under Section 41(4) of 1961 Act and, consequently, there is no merit in the contention that, if the assessee succeeds, then it would result in escapement of income from assessment."*

- 10.** Respectfully following the said decision, we notice that assessee has charged the unrecovered portion to the profit and loss account and reduced

the amount in the debtors balances, therefore the facts are exactly similar to the facts in the above case, accordingly, we allow the claim of the assessee. We order accordingly.

**11.** With regard to Ground No. 3 which is in respect of disallowance of club membership fees, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in ITA No 2944/M/1997. Ld. DR has fairly accepted the submissions of the Ld.AR.

**12.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1993-94. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 2944/Mum/1997 dated 31.01.2005 held as under: -

*"15. Ground No. 4 raised only in the assessment year 199-34 only reads as under:-*

*"On the facts and circumstances of the case and inlaw, the learned CIT(A) has erred in deleting the sum of ₹.6,183/- incurred in the Diners Club and ₹.17,350/- incurred in the Taj Hotel Membership fees for S.V. Birla disallowed by Assessing Officer on the reasoning that early hearing same is business expenditure.*

16. We have heard both the parties, we find that the aforesaid issue raised in the assessment year 1993-94 is covered in favour of the assessee by the decision of the jurisdictional High Court in *Otis Elevator CO. (India) Ltd., v. CIT 195 ITR 682 (Bom.)*. Respectfully following the same, we dismiss the ground raised by the department.

**13.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1993-94 is respectfully followed, accordingly, ground raised by the assessee is allowed.

**14.** With regard to Ground No. 4 which is in respect of interest received from the Income-tax Department, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this ITAT. Ld. DR has fairly accepted the submissions of the Ld.AR.

**15.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

"7. The assessee is also aggrieved for taxing of interest received from Income Tax Department amounting to Rs. 13,64,09,609/-. We find that similar issue has been dealt with by the Tribunal in A.Y. 1993-94 in ITA No. 1523/Mum/1997 vide para 62 as under:-

*"We have heard the parties and considered the rival submissions. These refunds have been granted to the assessee in the year under consideration and therefore they would partake the character of income of the assessee. If however, any refund has been found to be not refundable to the assessee and consequently the interest granted is withdrawn the same would not partake the character of income. We accordingly direct the Assessing Officer to reduce from the taxability of the aforesaid interest granted to the assessee, the amount which has been withdrawn subsequently. We direct accordingly."*

8. *It was argued by the Id. A.R. that benefit of interest so allowed by the department was subsequently withdrawn as a result of the appellate orders should be given to the assessee and the interest subsequently withdrawn should not be taxed and for this, reliance was placed on the decision of the Tribunal in the case of Avada Trading Co. (P.) Ltd. vs. ACIT (2006) 100 ITD 131.*

9. *We have considered the rival contentions. As far as the taxability of interest amounting to Rs. 13,64,09,609/- is concerned, the same is assessable in the year in which the refund has been granted alongwith interest. However, if in the subsequent year refund of interest is withdrawn, then the same should be reduced from the total income of the assessee. Accordingly, we direct the A.O. to tax interest income in terms of the order of the tribunal for A.Y. 1993-94 as reproduced above, keeping in view our above observation"*

**16.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal is respectfully followed, we order accordingly.

**17.** With regard to Ground No. 5.1, 5.2 & 5.3 which are in respect of CIT erred in not directing the Assessing Officer to allow deduction u/s. 80HHC as claimed, interest received cannot be reduced from business profits as interest paid is higher than interest received and Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this ITAT. Ld. DR has fairly accepted the submissions of the Ld.AR.

**18.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"14. The next grievance of the assessee relates to allowing deduction u/s 80HHC of the Act with respect to interest income. The issue under consideration is squarely covered by the decision of Hon'ble Supreme Court in the case of ACG Associated Capsules Pvt. Ltd., 343 ITR 89(SC) wherein it was held that net interest income is to be excluded from the eligible profit for computing deduction u/s 80HHC rather than gross interest.*

*15. An identical issue raised as additional grounds for the assessment year 1996-97 and 97-98 was considered and decided by this Tribunal in assessee's own case in paras 30 & 30.1 as under:*

*"30 As regards the additional ground no.1 pertaining to deduction u/s 80HH on gross interest the Sr Id counsel for the assessee has submitted that this issue has been decided by the Hon'ble Supreme Court in the case of ACG Associated Capsules vs CIT vide decision dated 8.2.2012; therefore, the deduction u/s 80HH should be allowed on the gross interest received.*

*30.1 Since this ground has been raised by the assessee first time in view of the decision of the Hon'ble Supreme Court; therefore, it requires verification and examination at the level of the AO. Accordingly, we remit this issue to the record of the AO to consider and decide the same as per law after considering the contention of the assessee and after giving reasonable opportunity of being heard to the assessee. "*

*16. In view of the decision of honourable Supreme Court in case of ACG Associated Capsules reported in 67 DTR (SC) 205, the Explanation to section 80 HHC to be applied on net interest and not on gross interest. Accordingly, we direct the AO to apply clause (baa) in respect of interest receipt by following the decision of honourable Supreme Court (supra). We accordingly direct the A.O. to exclude the excess of interest income over interest expenditure from the eligible profit of the company while computing deduction u/s 80HHC of the Act."*

**19.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly.

**20.** With regard to Ground No. 5.4 & 5.5 which are in respect of rent should not be reduced from the profits of business for computing deduction u/s.80HHC, Ld. AR of the assessee brought to our notice that the issue in

appeal has been considered by the Co-ordinate Bench of this tribunal. Ld.DR has fairly accepted the submissions of the Ld.AR.

**21.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"17. On the same proposition, the net rent expenditure and net commission expenditure is required to be reduced from eligible profit rather than the gross rent and gross commission for the computation of deduction u/s 80HHC of the Act. We direct accordingly."*

**22.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly.

**23.** With regard to Ground No. 5.6 which is in respect of loss on export of traded goods not to be adjusted against profit on export of manufactured goods, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this ITAT. Ld. DR has fairly accepted the submissions of the Ld.AR.

**24.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y.2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"21. The ld. Sr. counsel for the assessee fairly conceded that this issue is now settled by the Hon'ble Supreme Court against the assessee in the case of Ipca Laboratories, 266 ITR 521 (SC). Respectfully following the proposition laid down by the Hon'ble Supreme Court in the case of Ipca Laboratories (supra), we do not find any infirmity in the order of the lower authorities adjusting the loss on export of traded goods against profit on export of manufactured goods for computing deduction u/s 80HHC of the Act."*

**25.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we accordingly dismiss this ground.

**26.** With regard to Ground No. 6.1 and 6.2 which is in respect of Appropriation of HO expenses in computing deduction u/s. 80-O, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this ITAT. Ld. DR has fairly accepted the submissions of the Ld.AR.

**27.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y.2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"25. The assessee has taken additional ground with regard to appropriation of HO expenses in computing deduction u/s 80-O of the Act amounting to Rs. 3,18,000/-.*

*26. The issue has been decided in favour of the assessee by the Tribunal for the assessment years 1996-97, 1997-98, 1994-95 & 1995-96. It was further brought to our notice that no appeal has been filed by the Department against the decision of the Tribunal for allowing appropriation of HO expenses in computing deduction u/s 80-O of the Act.*

*27. For the assessment year 1996-97 and 1997-98, this Tribunal has considered and decided an identical issue in para 15.2 to 15.4 as under.*

*"15.2 We have heard the Sr Id Counsel for the assessee as well as the Id DR and considered the relevant material on record. A similar issue has been considered and decided by the Tribunal in assessee's own case for the AY 1995-96 in paras 29.1 & 29.2 as under:*

*29.1 On a similar issue the Tribunal in assessee's own case in AY 1994-95(supra) in paragraphs 25 to 25.2 has held as follows:-*

*'25. In grounds of appeal No. 32 to 35, the assessee has challenged the order of the CIT(A) in allocating head office expenses and thereby reducing the quantum of deduction available to the assessee under the following provisions:*

Section	Rs.
8OHH	14,20,000
801	5,54,600
80M	7,50,000
80-0	<u>3,50,000</u>
	<u>30,74,600</u>

25.1 Facts of the case, in brief, are that the AO estimated the expenses and allocated head office expense to the various units which had claimed benefits u/s. 8OHH, 801, 80M and 80-0 of the Act. Since the nexus between the head office and the individual units cannot be denied and since the assessee did not give details so as to give better allocation of these expenses to various units, the CIT(A) upheld the action of the AO. Aggrieved with such order of the CIT(A), the assessee is in appeal before us.

25.2 After hearing both the sides, we find the AO has only allocated the expenses but no income was allocated. We find the co-ordinate Bench of the Tribunal in the case of M/s. Procter & Gamble India Ltd. Vs. DCIT, vide ITA No. 5466/Mum/99 order dated 27th November, 2006 for the A.Y. 1990-91 has held that head office expense allocated to the units are not to be taken into consideration for computing the income of the assessee eligible for deduction u/s. 801 and also u/s 8OHH. Similarly we find the Bangalore bench of the ITAT in the case of Wipro GE Medical Systems Ltd. Vs. DCIT reported in 81 TTJ 455 has held that there is no need for allocation of any expenses when the expenses are directly connected with periods. Following the decision of the coordinate bench of the Tribunal and the decision of the Bangalore Bench of the Tribunal, we are of the considered opinion that there is no necessity for allocating the head office expenses to the units claiming deduction u/s. 8OHH, 801, 80M and 80-0. The order of the CIT(A) on this issue is accordingly set aside and the grounds raised by the assessee are allowed.

29.2 Respectfully following the aforesaid decision of the Tribunal, these grounds, namely 27 to 30 A, are allowed".

Respectfully following the earlier order of the Tribunal, we decide this issue in favour of the assessee."

**28.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly.

**29.** With regard to Ground No. 6.3 which is in respect of HO expenses can only be certain percentage of the gross receipts eligible for deduction u/s.80-O and not of the total turnover of the division, Ld. AR of the assessee submitted that this is an alternate plea, since we already allowed the issue raised by the assessee in ground nos 6.1 and 6.2, this becomes infructuous, accordingly not dealt with and kept open.

**30.** With regard to Ground No. 7 which is in respect of deduction u/s. 80-IA on gain arising on sale of machinery, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the following judicial pronouncements and decided in favour of the assessee CIT *v.* Eltek Sgs (P) Ltd., [300 ITR 6 (Del. HC) CIT *v.* Jagdishprasad M. Joshi [318 ITR 420 (Bom. HC)], CIT *v.* M/S Meghalaya Steels Ltd [317 ITR 259 (Gauhati)] and Shivansh buildcon Pvt. Ltd., *v.* ACIT [318 ITR (AT) 346 (Jaipur)] and requested the same be adopted in the case of assessee also.

**31.** Ld. DR vehemently supported the orders of the authorities below.

**32.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee by the Hon'ble Bombay High Court by relying on the decision of Hon'ble Delhi High Court in the case of CIT v. Eltek SGS P Ltd (supra), the relevant ratio is: -

*"4. However, Mr. Murlidhar, learned counsel appearing on behalf of the respondent, strongly relied on the judgment of the Delhi High Court in the case of CIT vs. Eltek Sgs (P) Ltd. (2008) 215 CTR (Del) 279 : (2008) 3 DTR (Del) 241 : (2008) 300 ITR 6 (Del) wherein the Delhi High Court has in fact considered the very same issue, and also the judgment relied upon by the Revenue and has clearly distinguished the language employed under ss. 80-IB and 80HH and has observed as under (pp. 9 and 10) :*

*"That apart, s. 80-IB of the Act does not use the expression 'profits and gains derived from an industrial undertaking' as used in s. 80HH of the Act but uses the expression 'profits and gains derived from any business referred to in sub-section' .....*

*A perusal of the above would show that there is a material difference between the language used in s. 80HH of the Act and s. 80-IB of the Act. While s. 80HH requires that the profits and gains should be derived from the industrial undertaking, s. 80-IB of the Act requires that the profits and gains should be derived from any business of the industrial undertaking. In other words, there need not necessarily be a direct nexus between the activity of an industrial undertaking and the profits and gains.*

*Learned counsel for the Revenue also drew our attention to Pandian Chemicals Ltd. vs. CIT (2003) 183 CTR (SC) 99 : (2003) 262 ITR 278 (SC). However, on a reading of the judgment we find that that also deals with s. 80HH of the Act and does not lay down any principle difference from CIT vs. Sterling Foods (1999) 153 CTR (SC) 439 : (1999) 237 ITR 579 (SC). In fact, in Pandian Chemicals Ltd. (supra) reliance has been placed on Cambay Electric Supply Industrial Co. Ltd. vs. CIT 1978 CTR (SC) 50 : (1978) 113 ITR 84 (SC) and the decision seems to suggest, as we have held above, that the expression 'derived from an industrial undertaking' is a step removed from the business of the industrial undertaking."*

*5. Having regard to the aforesaid judgments we are not inclined to entertain the above appeals, as there is no substantial question of law involved in both the appeals. In the result, both the appeals stand dismissed."*

**33.** Since the issue is similar, respectfully following the above ratio we are inclined to allow the ground raised by the assessee.

**34.** Coming to additional grounds, Ld. AR submitted that additional grounds raised by the assessee are purely legal issues, the facts there off were already on record. Failure to raise these grounds originally was neither deliberate or contumacious. It is submitted that since these additional grounds were purely legal issues, placing reliance on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd v. CIT [229 ITR 383] the same may be admitted for adjudication.

**35.** On hearing both sides, we are of the view that the issues are only legal issues and following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd v. CIT (supra), we admit the additional grounds for adjudication.

**36.** Coming to the additional ground in regard to sales tax exemption benefit being capital receipt not chargeable to tax, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this ITAT, after admission it was remitted to the file of AO for proper verification and consideration. Ld. DR has fairly accepted the submissions of the Ld.AR.

**37.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y.2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"28. In the additional ground, the assessee has also taken ground regarding sales tax exemption benefit being capital receipt not chargeable to tax. We find that a similar issue has been restored back by the Tribunal in A.Y. 2000-01 in assessee's own case to the file of the A.O. to decide after considering the decision of Special Bench in*

*the case of DCIT vs. Reliance Industries Ltd., 88 ITD 273 (Mum). Respectfully following the said decision of the Tribunal, we restore this issue back to the file of the A.O. for deciding the same in the light of the findings of the Tribunal in assessee's own case for A.Y. 1999-2000 in ITA No. 5631/Bom/2002, wherein the Tribunal at para No. 26.1 on page 11 has restored the issue back to the file of the A.O. to decide the issue afresh after considering the decision in the case of Special Bench of the Tribunal in the case of Reliance Industries Ltd. (supra). Respectfully following the same, the issue is restored back to the file of the A.O. for deciding the same afresh."*

**38.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02, we also remit this issue back to the file of AO for deciding the issue afresh after proper verification. It is needless to say that assessee may be given proper opportunity of being heard.

**39.** With regard to additional Ground No.2 which is in respect to Royalty and interest on royalty u/s. 43B of the Act, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this ITAT. Ld. DR has fairly accepted the submissions of the Ld.AR.

**40.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y.2001-02 in favour of the assessee. While deciding the issue in favour

of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"The next grievance relates to the disallowance of royalty and interest on royalty u/s 43B of the Act treating it as tax. The issue is now settled by various orders of the Tribunal in assessee's own case for assessment years 1995-96 to 2000-01. A similar issue was considered by the Tribunal in the assessee's own case in A.Y. 1999-2000 in ITA No. 5631/M/2002, wherein we find that the Tribunal has followed its earlier order in the assessee's own case in ITA No. 5630/Mum/02 for A.Y. 1998-99. In the absence of any contradictory facts brought on record by the Revenue, following the aforementioned decision, we decide this issue in favour of the assessee. Additional ground No. 2 is accordingly allowed."*

**41.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly.

### **ITA.No. 5584/MUM/2004 (A.Y. 2002-03) – Revenue Appeal**

**42.** Revenue has raised following grounds in its appeal: -

*"1. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs. 2,94,81,409/- made under clauses (b) to (f) of section 43B of the Income-tax Act, ignoring the provisions of section 43B of the Act as a whole and without taking into consideration a harmonious construction of various provisions of the said section. Further, the meaning of the word 'payable', as applicable to the provisions of section 43B(b), (c), (d), (e) & (f), was also ignored."*

2. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.12,75,197/- towards contribution to local organisations, relying upon the CIT(A)'s orders in the assessee's own case for the AYs, 1999-2000 & 2001-02 which have been contested by the department in further appeal before the ITAT."*

3. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of expenditure of Rs.55,81,093/- made by the Assessing Officer on estimate basis, being expenditure incurred for earning exempted income of dividend, relying upon the orders of the CIT(A) in the assessee's own case for the AYs. 1994-55, 1995-96, 1999-2000, 2000-01 & 2001-02 which have been contested by the department in further appeal before the ITAT."*

4. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.71,31,011/- made by the Assessing Officer on account of rural development expenses, relying upon the orders of the CIT(A) in the assessee's own case for the AYs. 1996-97 to 2001-02 which have been contested by the department in further appeal before the ITAT."*

5. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.2,19,82,299/- made on account of exchange rate fluctuation loss, relying upon the orders of the CIT(A) in the assessee's own case for the AYs.1998-99, 1999-2000, 2000-01 & 2001-02 which have been contested by the department in further appeal before the ITAT."*

6. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.2,88,46,944/- being interest expenditure claimed u/s.36(1)(iii) relying upon the orders of the CIT(A) in the assessee's own case for the AYs. 1995-96 to 2001-02 which have been contested by the department in further appeal before the ITAT."*

7. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of deduction of Rs.9,15,068/- on account of debenture issue expenses relying upon the CIT(A)'s orders in the assessee's own case for the AY's. 1998-99, 2000-01 & 2001-02 which have been contested by the department in further appeal before the ITAT."*

8. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow the deduction in respect of payments on account of PF/ESIC made after the due date but within the grace period without appreciating that the department has not accepted the decision of the Bombay High Court on this issue in the case of Maharashtra State Seeds Corporation Ltd. Vs. CIT, Nagpur and is contesting the same by way of SLP."*

9. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow the expenses of Rs.15 crores being the payment towards transfer of liability of the employees of the textile unit at Gwalior, as revenue expenditure without appreciating that no details in respect of valuation of the liability of Rs.15 crores was furnished and the assessee failed to establish the liability as a revenue expenditure before the Assessing Officer under the circumstances that there was transfer of assets and liabilities of the textile unit the consideration of which will generally fall under capital head only and, in view of the same same, the Assessing Officer rightly considered the expenses of Rs.15 crores as capital expenditure."*

10. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow the expenses of Rs.15 crores accepting the assessee's contention that the expenditure was not for the purpose of securing any assets or advantage of enduring nature but was for the purpose of removing difficulty in order to enable the assessee to carry on the business in a more beneficial manner and to get rid of a disadvantageous commercial relationship resulting from a large work force with low*

*productivity without appreciating that the Calcutta High Court has, in the case of Brook Bond India Ltd. (1983)(140 ITR 272), held that 'where the object of incurring an expenditure is to effect the capital restructure as a result of which certain incidental advantage flows, the expenditure will be of capital nature and it is not the acquisition of arise of a permanent character alone, the creation of which is a condition for the carrying on the business that could be rightly treated as an expenditure on the capital account.'*"

11. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow the expenses of Rs.15 crores accepting the assessee's contention that the expenditure was not for the purpose of securing any assets or advantage of enduring nature but was for the purpose of removing difficulty in order to enable the assessee to carry on the business in a more beneficial manner and to get rid of a disadvantageous commercial relationship resulting from a large work force with low productivity without appreciating that the Andhra Pradesh High Court has, in the case of Vazir Sultan Tobacco Co. Ltd. (174 ITR 689), observed that 'where the object of incurring an expenditure is to effect a capital restructure as a result of which certain incidental advantage flows, the expenditure will be of capital nature'."*

12. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.2,03,13,851/-, being expenses incurred for making advertisement film, relying upon the order of the CIT(A) in the assessee's own case for the AYr. 2001-02 which has been contested by the department in further appeal before the ITAT."*

13. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of professional fees of Rs.91,85,500/- paid in connection with software development and implementation of ERP accepting the assessee's contention that in the field of computer software new devices and user friendly concepts are introduced which are fast changing and no software could be of enduring nature without appreciating that the Rajasthan*

*High Court has, in the case of Arawali Constructions Co. P. Ltd. (259 ITR 30 ), held that expenditure incurred in the acquisition of computer software is a capital expenditure and, in view of the same, the Assessing Officer rightly treated software expenses of Rs.91,85,500/- as a capital expenditure and disallowed the same. "*

14. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to exclude the amount of sales tax and excise duty from the total turnover for the purpose of computation of deduction u/s.80HHC of the Act relying upon the decision of the Bombay High Court in the case of Sudarshan Chemicals Industries Ltd. (245 ITR 769) which has been contested by the department by way of SLP."*

15. *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to reduce the net interest, arrived at after reducing the amount of interest paid from the interest received in case the interest received is found to be linked with the business of the assessee, from the profits of the business for the purpose of computation of deduction u/s.80HHC, relying upon the order of the CIT(A) in the assessee's own case for the A.Y. 2001-02 which has been contested by the department by way of appeal to the ITAT.*

16. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in holding that no amount of head office expenses can be apportioned to the units eligible for deduction u/s. 80—IA, relying upon the order of the CIT(A) in the assessee's own case for the AYrs. 1996-97 to 2001-02, which have been contested by the department in further appeal before the ITAT.*

17. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow deduction u/s.80-IA in respect of Vikram Power Unit, relying upon the orders of the CIT(A) in the assessee's own case for the AYrs.1998-99 to*

*2001-02, which have been contested by the department in further appeal before the ITAT."*

*18. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the interest charged u/s.234D holding that at the time of passing order w/s.143(3) dtd. 16.2.2004, the Assessing Officer cannot legally charge interest from 23.5.2003 to 16.2.200. as on 16.2.2004 there was no existence of any refund and on 23.5.2003 (date of issue of refund section 234D was not in the statute and the same has been inserted w.e.f. 1.6.2003 ignoring the basic condition under the provision that once a regular assessment is completed on or after 1.6.2003, the provisions of section 234D become operative and interest becomes chargeable from the date of grant of refund u/s. 143(1) to the date of such regular assessment."*

*19. The appellant prays that the order of CIT(A) on the above grounds be set aside and that the Assessing Officer be restored.*

*20. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

**43.** At the time of hearing, Ld. AR submitted that all the grounds except ground Nos. 9 to 11 are covered and adjudicated by various courts and supported by the ITAT orders in assessee's own cases in earlier assessment years. Ld. AR submitted the principal of consistence may be adopted for this assessment year also.

**44.** On the other hand, Ld. DR not controverted with the submissions of the Ld. AR on all other grounds except ground nos 9 to 11. The relevant submissions of the Ld DR are dealt in the respective paras.

**45.** With regard to Ground No. 1, the brief facts, the Assessee contends that in view of the Explanation (2) to section 43B, liability falling under clauses (b) to (e) of section 43B, which was incurred during the previous year but was not payable within the previous year is not covered under section 43B of the Act. This contention of the Assessee has been accepted by the ITAT in the Assessee's own case in earlier years. Accordingly, the Assessee has not offered for disallowance liability incurred and accounted during the previous year, which remained unpaid as on 31.03.2002, amounting to Rs. 2,94,81,409/-, details as under: -

	Rs.
Clause (b) - Contribution to fund for welfare of employees	14,563
Clause (c) – Bonus	1,23,36,684
Clause (d) - Provision for leave salary	1,71,30,162
Total	2,94,81,409

**46.** During the course of assessment proceedings, Assessing Officer did not agree to the contention of the Assessee and disallowed amount of ₹.2,94,81,409/- u/s 43B on the ground that the Department has not

accepted the decision of the ITAT order in Assessee's case on this issue and has filed an appeal to Hon'ble High Court. [Discussion in this regard is in para no. 6.1 to 6.5 on page no. 5 of the assessment order]. Assessee preferred appeal before the Ld.CIT(A) and the Ld.CIT(A) allowed the claim of the Assessee and deleted the disallowance relying on the decision of ITAT as well as the decision of the Ld.CIT(A) in Assessee's own case of A.Y.1993-94 to A.Y. 2001-02. The CIT (A) has discussed this issue in para 1.1 to 1.6 on page 1 & 2 of the order.

**47.** Before us, the Ld. AR of the assessee brought to our notice that the decision of Co-ordinate Bench of this tribunal for the A.Y. 2001-02, wherein it considered the issue and has allowed the issue in favour of the assessee. Ld. DR fairly accepted the submissions of the assessee.

**48.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

"31. Ground No. 1 in Revenue's appeal relates to the disallowance u/s 43B of the Act which has been dealt with by the A.O. at para No. 9-9.5 of his order. The Id. CIT(A) dealt with this issue at page No. 2, para 5 of his order and deleted the disallowance by following the order of the Tribunal in earlier years. From the record, we found that the Tribunal has been consistently allowed the issue in favour of the assessee in assessment years 1990-91, 1993-94, 1994-95, 1996-97, 1997-98 & 1998-99. We further found that against the order of the Tribunal, the Department has not filed any appeal before the Hon'ble High Court in assessment years 1996-97, 1997-98, 1995-96 & 1994-95. As the matter has been settled and the Id. CIT(A) deleted the disallowance by following the order of the Tribunal, we do not find any reason to interfere with the order of the Id. CIT(A) deleting the disallowance made by the A.O. u/s 43-B of the Act."

**49.** Respectfully following the above decision, we sustain the order passed by the Ld.CIT(A) and dismiss the Ground No. 1 raised by the revenue.

**50.** With regard to Ground No. 2, the brief facts during the F.Y. 2001-02, the Assessee has made contribution of ₹.12,75,197/- to various organizations. Such contribution helps to carry out the business smoothly, ensure good relations, maintain good profile and secure benefit to the business and are allowable expenses. Details of such contribution was filed before the Assessing Officer and the Ld.CIT(A). During the assessment proceedings Assessing Officer disallowed contribution of ₹.12,75,197/- on the ground that such contributions, even though related to business considerations, are in the nature of donations. Discussion in this regard is in

para 7 on pages 5 and 6 of the assessment order. On appeal Ld.CIT(A) deleted the disallowance made by the Assessing Officer relying on the decision of the Ld.CIT(A) in the Assessee's own case in earlier years. The Ld.CIT(A) has discussed this issue in para 3.1 to 3.3 on page 2 & 3 of the order. Revenue preferred appeal before us.

**51.** Before us, the Ld.AR of the assessee brought to our notice that the decision of the Co-ordinate Bench of this tribunal, wherein it has allowed the above issue in favour of the assessee for the A.Y. 2001-02. Ld. DR fairly accepted the submissions of the Ld. AR.

**52.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"32. With regard to the contribution to the local organization, the issue has been dealt with by the A.O. at page 6 -7, para 10 of his order. The Id. CIT(A) deleted the addition/disallowance by dealing the issue at page 3, para 7 of his order wherein he has followed the order of the Tribunal in earlier years.*

33. We have considered the rival contentions and we found that the issue has been decided by the Tribunal consistently in favour of the assessee in the assessment years 1986-87 to 1989-90, 1994-95 & 1995-96 to 1997-98. In an appeal further filed by the Revenue before the Hon'ble High Court in assessment years 1988-89, 1994-95, 1995-96, the same has been decided in favour of the assessee. The order of the Tribunal for 2000-01 was not challenged by the Department before the Hon'ble High Court on this issue. Respectfully following the order of the Tribunal and Hon'ble High Court in assessee's own case, we do not find any reason to interfere with the order of the Id. CIT(A)."

**53.** Respectfully following the above decision, we sustain the order passed by the Ld.CIT(A) and dismiss the Ground No. 2 raised by the revenue. We order accordingly.

**54.** With regard to Ground No. 3, the brief facts are, during the relevant previous year, the Assessee received tax exempt dividend of ₹.9,58,17,268/- The investment in shares/securities, on which tax exempt dividend was received during the previous year, were made out of internal accruals and own funds. The Assessee always had sufficient capital and free reserves (non-interest bearing funds) for making investments, as under:

	Amount	
	As on 31.03.2001	As on 31.03.2002
Share Capital	91.69	91.69
Reserve & Surplus	3,001.66	2,622.51
Deferred Tax Balance	--	640.50
<b>Total</b>	<b>3,093.35</b>	<b>3,354.70</b>

No borrowing was made, specific or general, for the purpose of making these investments. During the relevant previous year, no expenses were incurred for earning tax exempt dividend income. Mere deposit of dividend warrants into the bank account does not entail any expenditure and the banks do not charge for crediting amount in Assessee's account. During the assessment proceedings the Assessing Officer disallowed interest expense of ₹.55,81,093/- on estimate basis treating the same as incurred for earning tax-free dividend. Discussion in this regard is in para 10 on page 7 of the assessment order. On appeal Ld. CIT(A) deleted the disallowance of interest made on estimate basis by the AO. The Ld.CIT(A) followed order of the ITAT in the Assessee's own case for A.Y. 1993- 94 wherein the ITAT held that there is no justification for allocation any expenditure to the earning of dividend income. The Ld.CIT(A) has discussed this issue in para 4.1 to 4.4 on page 3 of the order. Revenue preferred appeal before us against this order of the Ld.CIT(A).

**55.** Before us, the Ld. AR of the assessee brought to our notice that the decision of the Co-ordinate Bench of this tribunal, wherein it has allowed the

above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**56.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"37. We found that similar issue has been dealt with by the Tribunal in A.Y. 2000-01 wherein the disallowance was restricted to 1.5% of the exempt income. As the facts and circumstances during the year under consideration are same, we direct the A.O. to restrict the disallowance to 1.5% of the exempt income."*

**57.** Respectfully following the above decision, we direct the Assessing Officer to restrict the disallowance to 1.5% of the exempt income and partly allow the Ground No. 3 raised by the revenue.

**58.** With regard to Ground No. 4, the brief facts are, during the financial year 2001-02, the Assessee has incurred expenses of ₹.71,31,011/- towards family welfare activities, sewing centre, supply of seeds, teachers training, Agarbatti making, temple expenses, drama expenses, taxi hire for pulse

polio, well dipping expenses, electrification of Gram Panchayat, distribution of material to children and rural sports, leprosy camp expenses, medical camps, balwadis, carpet weaving training, farmers training programme etc. The beneficiaries of these expenses include employees and their dependents, ex-employees and their dependents, people residing nearby plant area and other people directly and indirectly connected with the business. Such expenses help to carry out the business smoothly and secure benefit to the business. Details of such expenses was filed before the AO. During the assessment proceedings, Assessing Officer has disallowed these expenses of ₹.71,31,011/- following his own order for the A.Y.2001-02. Detailed discussion in the regard is in para 11 on page 8 of the assessment order. On appeal the Ld.CIT(A) deleted the disallowance made by the Assessing Officer following his own order for AY 1996-97 to AY 2001-02. The CIT(A) has discussed this issue in para 5.1 to 5.5 on page 3 & 4 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**59.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**60.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"38. Ground No. 6 of Revenue's appeal relates to the disallowance of rural development expenses. The A.O. has dealt with this issue at page 9, para 15 and the Id. CIT(A) has dealt with this issue at page 4-5, para 11 of his order. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1998-99, 1999-00 & 2000-01. We further found that the Department on this ground is not in appeal before the Hon'ble High Court in these years. Respectfully following the order of the Tribunal, we do not find any reason to interfere with the order of the Id. CIT(A) for deleting the rural development expenses amounting to Rs. 66,08,937/-.*

**61.** Respectfully following the above decision, we sustain the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**62.** With regard to Ground No. 5, the brief facts are, during the previous year, the Assessee incurred exchange fluctuation loss of ₹.3,34,61,587/- and debited the same to Profit & Loss account. Break up of this loss is as under:

*a. On completed contracts / transactions - Rs.1,14,79,288/-*

*b. Conversion of trading assets and liabilities on Balance Sheet - Rs.2,19,82,299/-*

*Details of exchange loss were filed before the CIT(A) and the AO. A copy of the same is enclosed (Page No.029 to 054). This exchange fluctuation loss pertains to the business operations viz. import of raw materials and spare parts, export sale proceeds receivable etc.*

**63.** During the assessment proceedings, the Assessing Officer has disallowed exchange fluctuation loss of Rs.2,19,82,299/- relying on his own order for the AY 1998-99. Discussion in this regard is in para 13 on page no. 8 and 9 of the assessment order. On appeal Ld.CIT(A) deleted the disallowance made by the Assessing Officer following his order in the Assessee's own case for the AY 1998-99. The CIT(A) has discussed this issue in para 6.1 to 6.4 on page 4 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**64.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**65.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02. While deciding the issue in favour of the assessee the

Coordinate Bench of the Tribunal in ITA. No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"39. Ground No. 7 pertains to exchange rate fluctuation loss on conversion of trading assets and liabilities amounting to Rs. 2,00,03,443/-. The A.O. has dealt with this issue at page 9-10, para 16-16.6 and the Id. CIT(A) has dealt with this issue at page 5, para 12 of his order. The Id. CIT(A) has allowed the assessee's claim after having observed at para 12. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1998-99 to 2000-01. Furthermore, the Department is not in appeal on this ground before the Hon'ble High Court against the Tribunal order. The Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd., 312 ITR 254 (SC) has decided this issue in favour of the assessee. Accordingly, we do not find any reason to interfere with the order of the Id. CIT(A) deleting the disallowance made on account of exchange fluctuation loss on conversion of trading assets and liabilities on balance sheet date."*

**66.** Respectfully following the above decision, we sustain the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**67.** With regard to Ground No. 6, the brief facts are, during the previous year, the Assessee capitalized in its books of account debenture interest of Rs.2,88,46,944/- in respect of amount borrowed for setting up of grinding unit at Bhatinda. The Company was manufacturing and selling Cement since 1985 and expanded during the previous year cement business by setting up

a grinding unit at Bhatinda. The Unit at Bhatinda of the Assessee is inter-dependent, interconnected and inter-laced with other Units of the Assessee and there is common management, common control and common funds. The Bhatinda Unit is mere expansion of the existing business and is not a new business. The Assessee has claimed debenture interest as business expenditure under section 36(1)(iii) of the Act. During the assessment proceedings the Assessing Officer rejected claim of the Assessee following its own order for the AY 1998-99. Detailed discussion in this regard is in para 14 on page 9 and 10 of the assessment order. On appeal Ld.CIT(A) allowed the claim of the Assessee following his own order for the earlier years including for AY 1998-99 and also the order of ITAT in the Assessee's own case for the AY 1993-94. The CIT(A) has discussed this issue in para 7.1 to 7.5 on page 4 & 5 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**68.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**69.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"40. Ground No. 8 pertains to deleting of interest u/s 36(1)(iii) of the Act. The issue has been dealt with by the A.O. at page 10-11, para 18 of his order and the Id. CIT(A) deleted the same after having observed at page 5, para 13 of his order. From the record we found that the issue has been decided by the Tribunal consistently in favour of the assessee in assessment years 1993-94, 1994-95, 1996-97 to 1998-99 & 2000-01. We found that on this ground the Department is not in appeal before the Hon'ble High Court on this ground in assessment years 1996-97 to 1998-99. Respectfully following the order of the Tribunal, we do not find any reason to interfere with the order of the Id. CIT(A) deleting the disallowance of Rs. 1,45,77,507/- u/s 36(1)(iii) of the Act."*

**70.** Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**71.** With regard to Ground No. 7, the brief facts are that the Assessee company issued 10.75% XXVI series and 10.10% XXVIII series non-convertible debentures during the relevant previous year and incurred expenditure of Rs.9,15,068/- in this connection, as under:

Sl. No.	Particulars	Amount (₹)
1.	Interest on application money	3,04,385/-
2.	Underwriting fees to bank	3,00,000/-
3.	Credit rating fees to M/s CARE	2,03,727/-
4.	Debenture trustee remuneration	77,250/-
5.	Debenture trustee acceptance fees	3,000/-
6.	Finance Charges	26,707/-
	<b>Total</b>	<b>9,15,068/-</b>

**72.** Debenture issue expenses were capitalised in the books of account. However, in the return of income, the same were claimed as business expenditure relying on the decisions in the case of Premier Automobiles Ltd v. CIT (80 ITR 415) (Bom) and India Cement Limited Vs CIT (60 ITR 52) (SC). During the assessment proceedings the Assessing Officer rejected claim of the Assessee following its own order for AY 98-99. Detailed discussion in this regard is in para 14 on page 9 and 10 of the assessment. on appeal the Ld.CIT(A) allowed the claim of the Assessee following his own order for AY 1998-99, AY 2000-01 and AY 2001-02. The Ld.CIT(A) also followed order of the ITAT in Assessee's own case for AY 1986-87, AY 1990-91 to AY 1992-93. The CIT(A) has discussed this issue in para 8.1 to 8.5 on page 5 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**73.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**74.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"35. Ground No. 4 of Revenue's appeal relates to the debenture issue expenses by the assessee. The issue has been dealt with by the A.O. at page 10-11, para 18 of his order and the Id. CIT(A) has dealt with this issue at page 3-4, para 9 of his order and deleted the disallowance made in respect of debenture issue expenses. We found that the issue has been consistently . decided in favour of the Tribunal in assessee's own case in assessment years 1986-87 to 1989-90, 1998-99, 1999-00 & 2000-01. Respectfully following the order of the Tribunal in assessee's own case, we do not find any infirmity in the order of the Id. CIT(A) deleting the debenture issue expenses."*

**75.** Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**76.** With regard to Ground No. 8, the brief facts during the relevant previous year, the Assessee made payment of Rs. 47.86 lac towards PF and ESIS contribution after the normal due date but within the grace period allowed by the relevant Statute / Authorities. During the assessment proceedings Assessing Officer disallowed the delayed payment u/s 43B(b) of the Act on the ground that payment was made after due date. Discussion in this regard is in para 17 on page 11 of the assessment order. On appeal the CIT(A) deleted the disallowance and allowed the claim of the Assessee following the decision of Mumbai ITAT in the case of Fluid Air (India) Ltd. (63ITD 182). The CIT(A) has discussed this issue in para 10.1 to 10.4 on page 5 & 6 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**77.** Before us, the Ld. AR of the assessee brought to our notice various decisions which are in favour of the assessee viz., AIMIL Ltd., [321 ITR 508 (Del.)], Fluid Air (India) Ltd., [63 ITD 182 (Mum)], Vinay Cement, [ 213 ITR 268 (SC)], Bharati Shipyard [11 ITR (Tri) 599 (Mum)(SB)], CIT *v.* Jaipur Vidhyut Vitran Ltd [363 ITR 307 (Raj HC)] and CIT *v.* Ghatge Patil Transports

Ltd., [368 ITR 749 (Bom)] and requested the same be adopted in the case of assessee also.

**78.** Considered the submissions and material placed on record, we observe from the record the coordinate bench has already considered this issue and decided the issue in favour of the assessee in the case of Fluid Air (supra), the relevant findings are given below:

*"17. Considering all the facts and circumstances of the case as well as the decisions referred to above, we are of the opinion that as the assessee had paid all the amounts within a period from 9 to 22 days from the date of payment of wages/salary and therefore the submissions, regarding admissibility of benefits for having a bona fide belief entertained as a result of its advice by the tax advisors that the payment was to be made after 15 days from the date of payment of salaries and wages that the delay; otherwise had been due to financial difficulty as well as the submission that the delay was not intentional or was not to defraud the revenue because by delaying the payments by a few days the assessee was not to get any benefit rather was putting it to the risk of serious penal consequences, as envisaged in sections 43B, 2(24)(x) read with the provisions of section 36(1)(va) which no prudent person would like to do, have got force. We, therefore, are of the opinion that in the light of our decision for liberal interpretation of the provisions of the relevant sections, as observed earlier, by following the decision of the Hon'ble Supreme Court, the delay in depositing the amounts in question being under a bona fide belief and for want of funds can be said to be due to reasonable cause and, therefore, there was no justification in disallowing the assessee's claim for payments of contributions towards, EPF, EPPF, Administrative Charges, Insurance Fund and ESIS by invoking the provisions of section 43B and in making addition of contribution on account of employee's*

*contribution towards EPF, EFPF by treating the same as assessee's deemed income under section 2(24)(x) because the same should have been allowed as a deduction under section 36(1)(va) of the Act.*

*18. Before parting with the matter, we would like to record that a similar view has been taken by the Tribunal, Madras Bench, in the case of Madras Radiators & Pressings Ltd. (supra) where on the facts of that case it has been held that so long as the payments of PF and contribution to ESIS are made within the previous year, the same cannot be disallowed under section 43B and also cannot be considered as assessee's income under section 2(24)(x) read with section 36(1)(va). Further, in an unreported case the ITAT Calcutta Bench, in the case of Sudera Services (P.) Ltd. (supra), on which the ld. counsel relied on (copy is placed at page 65 of the paper-book), it has been held, on the facts of that case, that the provisions of section 43B should be construed in a liberal way keeping in view the Legislative intention so that absurdity and the interpretation which leads to injustice may be avoided.*

*19. In view of the decisions referred to in the foregoing paragraphs of this order, and the facts and circumstances of the present case, we are of the considered opinion that none of the payments in question were hit by the provisions of section 43B or section 2(24)(x) read with section 36(1)(va), as the case may be, and the additions made by invoking these provisions are hereby deleted."*

**79.** Respectfully following the above decision, on similar facts as the Hon'ble Jurisdictional High Court held that provisions of section 43B should be construed in a liberal way keeping in view the Legislative intention so that absurdity and the interpretation which leads to injustice may be avoided. Thus, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**80.** Coming to Ground No. 9 to 11, the brief facts are that the Assessee is inter alia engaged in manufacture of Fiber, Pulp, Chemicals, Cement, Fabric, Yarn and Sponge Iron. The Assessee had two facilities for manufacturing of fabrics, which were located at Gwalior, Madhya Pradesh and Bhiwani, Haryana. The textile sector as a whole was facing intense competition. There were number of players in this business and most of them were from unorganized sector. The Assessee was incurring huge losses in fabric business, which is evident from the summary of profit & loss account for last three years reproduced by the CIT(A) in his order.

**81.** It was submitted before us that there was tremendous pressure on the overall profitability of the Assessee Company. Profits earned in other products were wiped off due to losses in fabric manufacturing. The overall profitability of the Company was affected and outlook of the fabric sector was very weak. In order to reduce the salary and wages bill of the Units, the Assessee declared voluntary retirement scheme for the employees of the Textile Division at Gwalior in August 2000 and also in March 2001. Response to the voluntary retirement scheme was very poor and far below the desired level. In the financial year 2001-02 only 81 workers opted for voluntary

retirement and none of the staff member opted for voluntary retirement. The Assessee undertook extensive evaluation of its operations of fabric business and decided to restructure the operations and manufacture to gain economies of scale and operations. The Assessee accordingly sold certain assets of the manufacturing facility located at Gwalior to two unrelated companies:

- (a) M/s Takshila Textiles Private Limited,  
79 Mittal Chambers,  
Nariman Point, Mumbai
  
- (b) M/s Harshit Textile Private Limited,  
Swastik Chambers,  
Gandhi Nagar, Bhilwara

**82.** It was submitted before us that transaction for sale of the assets was approved by the Board of directors of the Assessee Company in their meeting held on 26.02.2002. The Assessee Company obtained necessary approvals for sale of the assets from shareholders, bankers, financial institutions. The assets were sold for Rs. 1 lakh and the amount of sale consideration has been appropriated to the sold assets in the proportion to the book value of the assets. As the sale was only sale of the assets and not sale of the

undertaking as a whole, the sale has not been treated as slump sale. In view of the intense competition in the industry mentioned above the Assessee found it difficult to find buyers at a high price for the assets being sold out. In order to further facilitate the sale and to avoid any implication thereto from inter alia its workers, the assessee also agreed for making payment of Rs. 15 cores to the purchasers of the assets of the Gwalior Unit for taking over the liabilities in respect of the employees and ensuring no obstruction thereto by them.

**83.** Further submitted that there were about 1185 employees employed at Gwalior on 31.03.02, liabilities in respect of which were transferred to the purchasers of the assets. The consideration for taking over the liabilities in respect of employees was arrived at based on the negotiations between the Assessee and the purchasers. The buyers provided continued employment to all transferred employees and assumed all the responsibilities in respect of such employees such as payment of salaries, wages, contribution to PF and other funds, allowances, gratuity, leave salary etc. The buyers agreed to pay to the transferred employees on their retirement, benefits for the period of service rendered by them to the Assessee company.

**84.** It was submitted that the purchaser companies announced voluntary retirement scheme on 15.01.2003. In response to the VR scheme, 542 employees opted for retirement and the buyer companies paid compensation, gratuity, leave salary and other benefits amounting to Rs. 15.53 crores. The assessee reiterates there was no "Slump Sale" of the Gwailor undertaking as a number of assets and liabilities (over 95% of liabilities) was retained by the Assessee. Further the Bhiwani undertaking continued its business of manufacturing Fabric.

**85.** It was submitted that during the assessment proceedings the Assessing Officer has accepted the treatment given by the Assessee with respect to the sale of the assets and has only disputed the allowability of the claim of Rs. 15 crores as deduction in computing the business income of the Assessee. Discussion in this regard is in para 18 on page 11 to 15 of the assessment order. The AO disallowed the claim of the Assessee on the grounds as under:

- (a) *Payment of Rs. 15 crores is not made for earning an income assessable during the year and is therefore not an allowable expenditure.*

- (b) *Payment is for acquiring advantage of enduring benefit and therefore not allowable as revenue expenditure u/s 37(1).*
- (c) *No payment is made in the year under consideration therefore the same is also not an allowable expenditure.*

**86.** On appeal Ld.CIT(A) deleted the disallowance made by the AO and allowed deduction for Rs 15 crore holding as under:

1. *The AO has not disputed that the financial position of the textile unit at Gwalior in the last three years were in bad shape as well as the projected position in the subsequent three years was also likely to be bad.*
2. *It is established that the Company is already incurring huge losses and is bound to incur heavy regular losses in coming years.*
3. *The assessee tried to float voluntary retirement scheme but the same did not get proper response from the employees and it failed.*
4. *The buyers of the assets actually floated the voluntary retirement scheme and paid Rs. 15.53 crore towards the same and therefore it is a fact that the amount of Rs. 15 crores was actually used for the purpose for which it was meant.*
5. *The observation of the AO in para no 18.11 of the assessment order is purely an assumption without any supporting evidence and is a hypothetical case.*
6. *The liability for the payment of Rs. 15 crore arose during the year and, therefore, the same is correctly allowable in the relevant year even though the same was not paid during the year. Reliance was placed on decision of the Supreme Court in the case of CIT Vs Swadeshi Cotton Clothes Mills Put Ltd (53 ITR 134).*
7. *The assessee continue to carry on the same business and therefore, the payment of Rs 15 crores is allowable as deduction as has been*

*held by the Supreme Court in the case of K. Ravindranathan Nair (247 ITR 178) and the jurisdictional High Court in the case of Western India Oil Distribution Co. Ltd. (77 ITR 140).*

The Ld.CIT(A) has discussed this issue in detail in para 11 on page 6 to 11 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**87.** Before us, the Ld. AR of the assessee brought to our notice various decisions which are in favour of the assessee viz., Ambala Cantt Electric Supply Corp. Ltd [133 ITR 343 (P&H), K. Ravindranath Nair [247 ITR 178 (SC)], Empire Jute Co. Ltd., [124 ITR 1 (SC)], Western India Oil Distribution Co. Ltd., [77 ITR 140 (Bom)], Simson & Company Ltd., [230 ITR 794 (Mad)], Health & Co. (P.) Ltd., [114 ITR 605, Single Tea & Agricultural Industries Ltd 250 ITR 274 (Cal.)] and Dalmia Dadri Cement Ltd., [77 ITR 410 P & H)] and requested the same be adopted in the case of assessee also.

**88.** Ld. DR vehemently supported the order of the Assessing Officer and submitted that the liabilities were not ascertained therefore, this cannot be allowed, by referring to the findings of Ld CIT(A) in page 14 of the order. He also relied on the case law relied by the AO.

**89.** Considered the submissions and material placed on record, we observe from the record that this aspect of the matter is elaborately considered by the Ld.CIT(A) by following various judicial pronouncements and held that the expenses incurred of ₹.15 Crores is to be allowed as revenue expenditure, while holding so the Ld.CIT(A) held as under: -

*11.2 In the appellant's case the liabilities for payment of Rs. 15 crores arose during this assessment year and therefore the claim during the current assessment year is held to be correctly made by the appellant.*

*11.22 Now the facts of the case shows that in order to get rid of Surmounting losses year after year which were definitely revenue in nature, and any payments made will also normally be revenue in nature. Moreover, the case laws quoted in the earlier paragraphs will further support this case.*

*11.23. It was also the fact that the appellant was already running the Same fabric business in both the units i.e. Bhiwani and Gwalior, and therefore the losses of the overall business were to a great extent set off or reduced, by the disposal of the huge liabilities of revenue nature incurring year after year. Therefore, the appellants claim of such payment u/s. 37(1) of the I.T. Act appears to be on a strong footing.*

*11.24 Moreover, as already mentioned by the Hon'ble Supreme Court in 247 ITR 178 in which it held that ten units run by the assessee constituted 'one single business. A few units were affected by the labor disputes and therefore the expenses incurred for reducing the number of units from ten to six were held to be revenue in nature.*

*11.25. Similar was the opinion of the Bombay High Court in 77 ITR 140. In which it was held that the expenditure incurred was for merely getting rid of a disadvantageous relationship for a smooth working of the companies business cannot be held to be an expenditure for acquiring any capital asset or for any enduring benefit.*

11.26. These case laws and other relied on by the appellant are found to be squarely applicable to its own case and therefore it is held that the expenses incurred of ₹.15 crores is to be allowed as revenue expenditure, for which the AO is directed to do so.

11.27. In result, this ground is allowed."

**90.** Further, we notice that the Hon'ble Jurisdictional High Court in the case of Western India Oil Distribution Co. Ltd., (supra) held as under: -

"Held, (1) that the Appellate Tribunal erred in rejecting the claim of the assessee-company to deduct the sum of Rs. 3 lakhs or any instalments thereof as were paid and the litigation expenses amounting to Rs. 69,645 in relation to its suit in the assessments of the assessee for the assessment years 1957-58 and 1958-59. The intent and the main purpose of the three agreements was to enable the assessee-company to carry on its business for its own profits. The goods had to be imported by the company and the company had to pay the price of the goods. In that connection the lenders agreed to make finances available. Though the goods were to remain in pledge with the lenders, the ownership of the goods Continued in the company and the company had to get the goods released from the pledge within four months of their receipt. The lenders were not concerned with the resale price of the goods. For the moneys advanced by the lenders, they were given, as and by way of security, several important rights, viz., that the lender's consent was necessary for the import of goods, that the goods were to under pledge with the lenders, that the company should not charter tankers without the lenders' consent, that the lenders were to be given an irrevocable power of attorney, etc. The rights reserved were only towards securing to the lenders payments of money agreed to be paid by the company under the agreements. The main intent and purpose of the agreements was to make available to the company finances to enable it to carry on its business. The provisions in the agreement, did not relate to the whole structure of the assessee's profit making apparatus and did not regulate the assessee's activities. Under the agreements, the company hag the heavy liability to pay interest at 6 per cent. on the entire amount of Rs. 19 lakhs whether any finance was borrowed by it or not, commission was to be paid in respect of all goods of import irrespective of the company

*having borrowed any finance under the agreements and the commission was payable even after the period of ten years so long as the company continued business. These were disadvantages of a trading nature which made it impossible for the company to make any profits. The agreement to pay damages in the sum of Rs. 3 lakhs was, therefore, an expenditure to be made for terminating the disadvantageous relationship between the parties and to remove difficulties in the smooth carrying on of the business. Removal of the obstructions and disadvantages which were the consequences of the three agreements were removal of liabilities rather than procurement of any enduring benefits. The commission and interest payable under the agreements would have been recurrent liabilities to be discharged from circulating capital. The loans advanced under the agreements were also liabilities to be discharged from circulating capital. These liabilities were made short-lived by the compromise made between the parties. The benefit which accrued to the assessee company by termination of the agreements was not a capital asset and the payment of Rs. 3 lakhs agreed to be made in that connection would not be a capital expenditure. In each of the relevant assessment years Rs. 60,000 only have been paid towards the liability in respect of this amount and the deduction could justifiably be allowed for Rs. 60,000 in each year and not for the sum of Rs. 3 lakhs."*

**91.** Respectfully following the above said decision and considering the fact that the issue is similar to the present case in the sense that the assessee has to let go the huge labour force and their huge liability of employee accumulation of their services, it has the option to settle directly to the employees or select the indirect settlement through the acquiring company. It is wrong to say that this liability is not ascertained, it is mutually agreed liability that the assessee will compensate certain amount of liability and accordingly, it has made provision to settle the liability. On a perusal of the Ld.CIT(A) order, we do not find any infirmity in the order of

the Ld.CIT(A) in allowing the claim of the assessee. Ground raised by the revenue are dismissed. We order accordingly.

**92.** With regard to ground No. 12, the brief facts are, during the previous year, the Assessee company incurred expenses of Rs.2,03,13,851/- on production of film to be used for advertisement purposes. Details of the expenditure were filed before the Assessing Officer and the CIT(A). During the assessment proceedings the Assessing Officer disallowed the expenditure on the ground that it is capital in nature resulting into benefit of enduring nature and also relied on decision of the Bombay High Court in the case of CIT Vs Patel International Films Limited (102 ITR 209). Detailed discussion in this regard is in para 22 on page 19 to 21 of the assessment order. On appeal the Ld.CIT(A) deleted the disallowance after discussing the detailed submissions made by the Assessee and held that the decision of the Bombay High Court in the case of CIT Vs Patel International Film Ltd. (Supra) is not applicable to the facts of the present case. In Patel International films case the business of the assessee had not started whereas in the present case the Assessee is already having running business. The CIT(A) has also followed his own decision for the AY 2001-02. The Hon'ble Mumbai ITAT in

the Assessee's own case for AY 1976-77 deleted the disallowance made by the AO towards expenditure incurred for installation for neon signs. The CIT(A) has discussed this ground in para 15.1 to 15.7 on page 17 & 18 of the order. Revenue preferred against this order of the Ld.CIT(A).

**93.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**94.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"47. The issue in ground No. 13 with regard to deleting the disallowance of expenses incurred for making advertisement films has been dealt with by the A.O. at page 15-16, para 26. The Id. CIT(A) deleted the same after having observed at page 12-13, para 21 of his order. We found that the issue has already been settled by the Tribunal in assessee's own case in A.Y. 1976-77 and no ground was taken by the Department before the Hon'ble High Court. Similar issue has been decided by the Hon'ble Supreme Court in the case of Empire Jute Co. Ltd., 124 ITR 1 (SC). Accordingly, we do not find any infirmity in the order of the Id. CIT(A) deleting the disallowance by observing that advertisement film was made only for*

*advertisement and its useful life is very short and such films do not add to the capital structure of the company."*

**95.** Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**96.** With regard to ground No. 13, during the previous year, the Assessee made payment to M/s Mahindra Consulting Limited of Rs.75,75,500/- and to M/s Birla Technology Limited of Rs. 16,10,000/- for implementation of software and ERP. This expense totaling to Rs.91,85,500/- was claimed as revenue expense. During the assessment proceedings the Assessing Officer did not allow the claim and disallowed the professional fees of Rs.91,85,500/- paid in connection with software treating the same as capital in nature. The AO has discussed the issue in para 24 on page 22 of the assessment order. On appeal the Ld.CIT(A) allowed the claim of the Assessee company relying on the various judicial pronouncements. The CIT(A) has discussed this ground in para 17.1 to 17.6 on page 18 & 19 of the order. Revenue preferred appeal against this order of the Ld.CIT(A).

**97.** Before us, the AR of the assessee brought to our notice various decisions which are in favour of the assessee viz., Raychem RPG Ltd. [346 ITR 138 (Bom. HC)], Kotak Securities Ltd., [346 ITR 349 (Bom. HC)], Asahi India Safety Glass Ltd. [TS-640-HC-2011 (Delhi HC)], Amway India Enterprises [346 ITR 341 (Delhi HC)], DCIT v. Lubi Electricals O. Ltd. (ITA No. 1163/Ahd/92), Amway India Enterprises [111 ITD 112 (Delhi SB)], Empire jute Co. Ltd [124 ITR 1 (SC)], Media Video Ltd [122 Taxman 28 (Delhi ITAT)] and Forbes Campbell & Co. Ltd in ITA No. 8489/Bom/88 (Mumbai ITAT) and requested the same be adopted in the case of assessee also.

**98.** Ld. DR vehemently supported the order of the Assessing Officer.

**99.** Considered the submissions and material placed on record, we observe that this issue is dealt by the Hon'ble Jurisdictional High Court in the case Raychem RPG Ltd. [346 ITR 138 (Bom. HC)] and held as under: -

*"1. Two questions of law raised by the Revenue in this appeal, which reads thus:*

*"(a) Whether on the facts and circumstance of the case and in law, the Hon'ble ITAT was justified in deleting the additions in respect of disallowance of software expenditure to the extent of Rs.23,62,368/- as capital expenditure as software used for the first time will have to be considered as capital in nature?"*

(b) *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in deleting the additions made in respect of the scrap sales as while computing the eligible deduction u/s 80HHC of the Act , any receipt credited to the profit & loss account should either be included in the total turnover or 90% of the same should be reduced while computing profit of the business.?"*

2. *As regards the first question, ITAT relying upon on its order in the assessee's own case relating to Assessment year 2001-02 held that the software expenditure was a revenue expenditure. The appeal filed by the Revenue for the assessment year 2001 and 2002 has been dismissed for want of removal of office objections and thus the order passed by the ITAT for the Assessment year 2001-2002 has attained finality. Moreover, the Tribunal in its order relating the assessment year 2001-02 has allowed expenditure as revenue expenditure by recording thus:*

*"7. When we apply this functional test suggested by the Special Bench of the Tribunal, we find that impugned software does not form part of the profit making apparatus of the assessee and hence the same is to be disallowed a revenue expenditure. We hold so because we find that the business of the assessee company is that of manufacturing of telecommunication and power cable accessories and trading in oil retracing system and other products and impugned software is an Enterprises Resources Planning (ERP) package and hence it facilitate the assessee's trading operations or enabling the management to conduct the assessee's business more efficiently or more profitably but it is not in the nature of profit making apparatus. We, therefore, decide this issue also in favour of the assessee and we hold that this expenditure of Rs.20.60 lakhs is of revenue expenditure. We hold so by following the judgment of the Special Bench of the Tribunal relied upon by the LD AR of the assessee."*

3. *In our view, no fault can be found in the aforesaid order of ITAT holding that software expenditure was allowable as revenue expenditure."*

**100.** Respectfully following the above said decision and on a perusal of the Ld.CIT(A) order, we do not find any infirmity in the order of the Ld.CIT(A) in allowing the claim of the assessee. Ground raised by the revenue are dismissed. We order accordingly.

**101.** With regard to ground No. 14 & 15, the brief facts are, in the return of income, the Assessee claimed deduction u/s 80HHC of Rs. 14,29,360/-. The AO allowed deduction to the extent of Rs.11,99,358/- only by restricting the deductions on the following grounds:

- a. Total turnover to be considered inclusive of sales tax and excise duty.
- b. Reduced 90% of interest income ignoring interest expenditure.

**102.** Assessing Officer made detailed discussion in this regard in para 27 on page 24 to 28 of the assessment order.

**103.** On appeal Ld.CIT(A) as regards excluding the excise duty and sales tax in the total turnover for computing the deduction s 80HHC, the CIT(A) allowed the contentions of the Assessee and directed the AO to exclude excise duty and sales tax from the total turnover for computing the deduction u/s. 80HHC. The CIT(A) has discussed this issue in para 19A.1 to 19A.3 on

page 20 of the Order. As regards reduction of 90% of interest income the CIT(A) has discussed this issue in Para 19B.1 to 19B.6 on page 20 & 21 of the order. The CIT(A) has dismissed both these claims of the assessee and upheld the order AO on this issue. Revenue is in appeal against this order of the Ld.CIT(A).

**104.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**105.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"51. Ground No. 16 pertains to the Id. CIT(A)'s action for excluding the amount of excise duty and sales tax from the total turnover for computing deduction u/s 80HHC of the Act. 52. This issue has been settled by the Hon'ble Supreme Court in the case of Lakshmi Machine Works, 290 ITR 667 (SC). Similar issue has been decided by the Tribunal in assessee's favour in assessment years 1986-87 to 1989-90, 1990-91, 1994-95 to 1998-99. Further we found that Revenue is not in appeal against this issue before the Hon'ble High Court in assessment years 1994-95, 1995-96, 1996-97 and 1997-98 & 1998-*

*99. In view of above, we do not find any infirmity in the order of the ld. CIT(A) in directing the A.O. to exclude the amount of excise duty and sales tax from the total turnover of the assessee while computing deduction u/s 80HHC of the Act.*

**106.** Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**107.** With regard to ground No. 16, the brief facts are, the AO appropriated gross expenses of Head Office on an estimate basis and reduced the amount of eligible deduction u/s 80IA by Rs.83,30,093/-. During the assessment proceedings Assessing Officer allocated the proportionate expenses of the Head Office (being the controlling unit) among Units claiming deduction u/s.80IA. The Assessing Officer discussed this issue in para no.28.3 on page 29 of the order. On appeal Ld.CIT(A) allowed the claim of the assessee company relying on the decision of the ITAT in the case of Assessee for the AY 1996-97 to AY 2001-02. The CIT(A) has discussed this issue in para no. 20.1 to 20.6 on page 21 & 22 of the order. Revenue is in appeal against this order of the Ld.CIT(A).

**108.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld. DR has fairly accepted the submissions of the Ld.AR.

**109.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"54. The issue in ground No. 18 pertains to the apportionment of head Office expenses while computing deduction u/s 80IA of the Act.*

*55. This issue has been dealt with by the Id. CIT(A) vide his order in page 15-16, para 23.5 & 23.6. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1994-95 to 1998-99 and the Department is not in appeal against the order of the Tribunal. Respectfully following the order of the Tribunal, we do not find any reason to interfere with the order of Id. CIT(A) on this issue.."*

**110.** Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**111.** With regard to ground No. 17, the brief facts are, the Assessee has setup an industrial undertaking at Salav near Alibagh in the State of Maharashtra for generation of electricity in FY 93-94. This unit is known as Vikram Power Unit. In AY 2002-03, the Assessee claimed deduction amounting to Rs.7,05,42,999/- u/s 80IA in respect of profit of Vikram Power Unit as per the provisions of section 80IA. The Assessee has claimed 80IA benefit in respect of the profit of this Unit right from AY 1994-95 onwards. In the regular scrutiny assessment, the AO has allowed deduction under section 80 IA on the profits of this Unit for AY 1994-95 to 1997-98. First time in AY 1998-99, the AO disputed eligibility of 80IA benefit for this Unit. During the assessment proceedings Assessing Officer rejected the claim on the ground that in AY 1998-99 it was held that this Unit is not a separate industrial unit and is not eligible for deduction u/s 80IA. The AO has discussed this issue in para 28.1 on page 28-29 of the order. On appeal Ld.CIT(A) allowed the claim of the Assessee following his order for the AY 1998-99 to AY 2001-02. The CIT(A) has taken note of the fact that the AO himself has allowed deduction u/s 80 IA from AY 1994-95 to AY 1997-98. The CIT(A) has discussed this issue in Para 21.1 to 21.6 on page 22-23 of the order. Revenue is in appeal against this order of the Ld.CIT(A).

**112.** Before us, the Ld. AR of the assessee brought to our notice that the Co-ordinate Bench of this tribunal has allowed the above issue in favour of the assessee. Ld.DR has fairly accepted the submissions of the Ld.AR.

**113.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

*"Ground No. 19 of Revenue's appeal pertains to deduction u/s 80-IA of the Act in respect of Vikram Power Unit amounting to Rs. 3,58,74,158/-.*

*57. The Id. CIT(A) has dealt with this issue at page 16-17, para 24 of his order. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1998-99 to 2000-01. Furthermore, the Department is not in appeal against the Tribunal order on this issue before the Hon'ble High Court for A.Y. 1998-99. Respectfully following the order of the Tribunal, we do not find any infirmity in the order of the Id. CIT(A) for allowing deduction u/s 80IA of the Act in respect of Vikram Unit amounting to Rs. 3,58,74,158/-."*

**114.** Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.

**115.** With regard to Ground No. 18, the brief facts are, provisions of section 234D were introduced from 01.6.2003 for levy of interest on refund issued in summary assessment. In this case, intimation of summary assessment u/s 143(1) for AY 02-03 was issued by the AO on 28.02.2003 granting refund to the Assessee. Regular assessment order was passed on 16.02.2004 and demand of Rs. 7.27 Cr was raised. The Assessing Officer levied interest u/s 234D of Rs. 40.06 lac. On appeal Ld.CIT(A) deleted the levy of interest. The CIT (A) discussed this issue in para 23B.1 to 23B.4 on page 24 of the order. Revenue is in appeal against this order of the Ld.CIT(A).

**116.** Before us, the Ld. AR of the assessee brought to our notice various decisions which are in favour of the assessee viz., Sardar Sarovar Narmada Nigam Ltd [93 TTJ 965 (AHD)], Glaxo Smithkline Asia (P.) Ltd., v. ACIT [97 TTJ 108 (Del), Glaxo Smithkline Asia (P.) Ltd. v. ACIT [6 SOT 113 (Del)], Jindal Steel & Power Ltd., v. ACIT [10 SOT 106 (Del)] and Ekta Promotors (P.) ltd., [113 ITD 719 (Del) and requested the same be adopted in the case of assessee also.

**117.** Ld. DR vehemently supported the order of the Assessing Officer.

**118.** Considered the submissions and material placed on record, we observe that this issue is considered by the Hon'ble jurisdictional high court and decided against the assessee. The relevant ratio of the decision is given below: -

*"27. In view of the above, we hold that the decision of the Tribunal in which has been followed in the impugned order by the Tribunal is not correct. One more aspect of the matter which must be borne in mind is that till such time as the assessment proceedings are completed in respect of any assessment year, the amendment made to the Act would be applicable even in case of pending proceedings. It is not the case of the respondent that the proceeding in regard to refund which has been granted under section-143(1) of the Act are concluded and final. The refund which has been granted under section 143(1) of the Act is provisional, to be finally determined when final assessment order is passed under section 143(3) of the Act. Explanation-2 to section 234D of the Act makes it clear that it would be applicable to pending proceedings i.e. where assessments in respect of such assessment year is not completed on 1/6/2003.*

*28. Mr. Suresh Kumar submitted that as an assessee is entitled to interest where there is any delay in making the refund, it is only fair that an assessee who has enjoyed the benefit of excess refund granted to it must refund the same along with interest from the date of receipt of refund to the date of final assessment. The Apex Court in Sandvik Asia Ltd. v. CIT [2006] 150 Taxman 591 granted interest on delayed payment of interest by the revenue to the assessee. Considering the view we have taken, it is not necessary to decide this question based on equitable grounds.*

*29. In view of the above, the question of law is answered in the negative i.e. in favour of the appellant-revenue and against the respondent-assessee."*

**119.** Respectfully following the above said decision, we allow the ground raised by the revenue. We Order accordingly.

**120.** In the result, appeal filed by the assessee and revenue are partly allowed.

Order pronounced on 14.12.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Mumbai / Dated 14/12/2021  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**