

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

<b>ITA Nos. and Assessment Year</b>	<b>Appellant</b>	<b>Respondent</b>
1232/Bang/2005 2002-03	DCIT, Circle - 1, Gulbarga.	The Official Liquidator, High Court of Karnataka, Corporate Bhavan, No.26-27, 12 <sup>th</sup> Floor Raheja Towers, M.G.Road, Bangalore-560001. (in the case of M/s. Jupiter Bioscience Limited, Plot No.24, Kolhar Indl. Area, Bidar, Karnataka. <b>PAN : AAACJ 5643 H</b>
627/Bang/2009 628/Bang/2009 2003-04 & 2004-05 950/Bang/2009 2005-06	DCIT, Circle - 1, Gulbarga.	-do-
951/Bang/2009 2006-07	-do-	-do-
990/Bang/2008 2002-03	-do-	-do-

<b>C.O. Nos. and Assessment Year</b>	<b>Appellant</b>	<b>Respondent</b>
06/Bang/2021 (in ITA No.1232/Bang/2005) 2002-03	The Official Liquidator, High Court of Karnataka, Corporate Bhavan, No.26-27, 12 <sup>th</sup> Floor Raheja Towers, M.G.Road, Bangalore-560001. (in the case of M/s. Jupiter Bioscience Limited, Plot No.24, Kolhar Indl. Area, Bidar, Karnataka. <b>PAN : AAACJ 5643 H</b>	ACIT, Circle - 1, Gulbarga.
07/Bang/2021 (in ITA No.627/Bang/2009) 2003-04	-do-  -do-	ACIT, Circle - 1, Gulbarga.

08/Bang/2021 (in ITA No.628/Bang/2009) 2004-05	-do-	ACIT, Circle - 1, Gulbarga.
09/Bang/2021 (in ITA No.950/Bang/2009) 2005-06	-do-	ACIT, Circle - 1, Gulbarga.
10/Bang/2021 (in ITA No.951/Bang/2009) 2006-07	-do-	ACIT, Circle - 1, Gulbarga.

Assessee by	:	None
Revenue by	:	Shri. Sumeer Kumar Singh, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	28.12.2021
Date of Pronouncement	:	05.01.2022

## **ORDER**

### **PER BENCH:**

ITA No.1232/Bang/2005, 627 & 628/Bang/2009, 950 & 951/Bang/2009 are appeals by the Revenue against orders of CIT(A) for AY 2002-03 to 2005-06 respectively and CO 6 to 10/Bang/2021 are cross objections by the Assessee in those appeals. ITA No.90/Bang/2008 is an appeal by the Revenue against the order of CIT(A) for AY 2002-03 whereby the CIT(A) cancelled the order of the AO imposing penalty on the Assessee u/s.271(1)(c) of the Income Tax Act, 1961 (Act). All these appeals involve common issues and hence were taken together for hearing. We deem it convenient and proper to pass a common order.

2. First we shall take up for consideration ITA No. 1232/Bang/2005 as a lead case and this appeal by the Revenue against the order dated 31.5.2005 of CIT(A), Gulbarga, relating to AY 2002-03.

3. The issues that needs to be adjudicated in this appeal are as to whether the CIT(A) was justified in deleting the addition made by the AO by disallowing deduction of Capital Expenditure u/Section 35(1)(iv) read with section 35(2) of the Income Tax Act, 1961 (Act) of a sum of Rs.10,13,29,425/- and whether the CIT(A) was justified in deleting the addition of Rs.22,92,940/- towards depreciation on assets purchased during the relevant previous year. The Tribunal vide it's order dated 30.11.2009 reversed the order of the CIT(A) and restored the disallowance made by the AO. On appeal by the Assessee against the said order, the Hon'ble High Court of Karnataka in ITA No.140 of 2010 by order dated 1.10.2010 set aside the order of the Tribunal and remanded the issue for fresh consideration in accordance with law. After order of remand by the High Court, the company went into liquidation and the Official liquidator, High Court of Karnataka represents the Assessee. The notice of hearing was duly served for the hearing on 28.12.2021 in this appeal and other connected appeals which were all listed for hearing for being heard together as common issues were involved. M/s.N.Tatia & Associates, Chartered Accountants claiming to be Authorized representative of the Official Liquidator has filed cross objections and those cross objections are purely supportive of the order of the CIT(A). In any event, the cross objections filed through Chartered Accountants N.Tatia & Associates, is liable to dismissed for the reason that it is purely supportive of the impugned orders of the CIT(A), not duly authorized by the Official Liquidator and not maintainable in view of the fact that these are proceedings pursuant to remand by the Hon'ble Karnataka High Court (ITA

No.1232/Bang/2009). The Cross objections being CO 6 to 10 of 2021 are accordingly dismissed.

4. The Assessee is a company engaged in the business of manufacturing and sale of drug intermediates, specialty chemicals and bulk drugs. In computing total income for AY 2002-03, the Assessee claimed deduction of Capital Expenditure u/s.Section 35(1)(iv) read with section 35(2) of the Income Tax Act, 1961 (Act) of a sum of Rs.10,13,29,425/-. Under the aforesaid provisions, deduction is allowed on all capital expenses (excepting expenditure on acquisition of land) incurred on scientific research related to the business of the Assessee in the year in which they are incurred. The requirement of the aforesaid provisions is that the Assessee should incur expenditure of a capital nature on scientific research and there is no requirement that such an expenditure should be capitalized in its books of account.

5. The AO called for the details of capital expenditure incurred by the Assessee. The Assessee filed details of invoices and bills for purchase of plant & machinery and lab equipments. The name of the firm and the amount purchases from each of them was as follows:

1. M/S.Sparco Engineering Works	Rs. 90,18,125
2. M/S.Hema Engineering Industries	Rs. 1,13,98,125
3. M/S.Vision Metals	Rs. 89,92,500
4. M/S.SCS Petro Products	Rs. 84,92,500
5. M/S.Saradhi Engineering	Rs. 98,44,562
6. M/s.Hi-Watt Power Systems	Rs, 98,21,750
7. M/S.Sangram Castings	Rs. 97,39,738
8. M/S.Sri Mythili Enterprises	Rs. 1,00,40,000
9. M/S.Reliable Engineering Co.	Rs, 1,35,37,500
10. M/S.Srinivas Industries	<u>Rs. 1,07,00,000</u>

Rs.10,15,19,425

6. To verify the genuineness of the bills/invoices furnished by the Assessee in respect of capital expenditure incurred for R& D Purposes, the AO sent letters to 7 parties to confirm the purchase bills/invoices and also to file the ledger extract of the company. In response to the above letter confirmation letters were received from the 7 persons. Similar letters were sent by the Assessee to the remaining 3 parties also and out of the 3 two persons Srinivasa Industries and Mythili Enterprises did not send any reply.

7. The AO on verification of the Bills and invoices produced by the Assessee found some anomalies therein and therefore to verify the genuineness of the R& D activities carried on by the Assessee, a Survey u/s.133A of the Act was carried out on 24.2.2005 in the following business premises of the Assessee, viz., (i) Factory premises at Kolhar Industrial Area, Bidar; (ii) Factory premises at Cheriya Village, Sanga Reddy Mandal, AP and (iii) Corporate Office at Secunderabad, AP.

8. In the course of Survey at the Factory premises at Kolhar Industrial Area, Bidar, the sworn statement of one P.S.Kutty, in-charge of Plant & Machinery was recorded. He in his statement confirmed that for the last 10 to 12 months no activities in the factory is carried out and also no production is done. Statement of one Shri.Anil Kumar, Chemist was recorded and he also admitted that no R& D work is done in the factory. On verification, the Officer conducting the Survey did not find any plant & Machinery or lab equipment installed in the factory for R& D purpose.

9. In the course of Survey at the factory premises at Cheriya Village, Sanga Reddy Mandal, AP, the statement of one T.V.Narasa Reddy, Vice-President (Production) was recorded. He in his statement stated that Plant & Machinery and raw material are purchased by the Corporate Office and delivered at the

factory premises and after checking an entry is made in the stock register in stores department and after that the machinery is used by the R&D department. He gave a list of Plant and Machinery found in the R&D department. On verification, the Survey Officer found that none of the machinery stated to have been purchased during the relevant previous year on which deduction was claimed u/s.35(2)(ia) of the Act was found or installed in the R & D Department. The Officer conducting the Survey showed the bills and invoices for purchase of Plant and Machinery from 10 different parties and he was asked to verify and confirm whether all the above mentioned plant and machinery were received in the factory and are installed in the R & D Department. He confirmed after perusal of the bills and invoices that no machinery or plant found in the bills and invoices was received or installed in the R& D Department of any of the factories. There was a R & D Block in this factory premises. It consisted of 2 blocks viz., R & D Block and One Kilo Block. R & D Block was a hall measuring 15ft. x 20ft. while the Kilo Block measured 10ft. x 20ft. Going by the smallness of the R & D Block, the Survey team concluded that it is impossible to install Plant & Machinery claimed to have been purchased and used by the Assessee in carrying out scientific research.

10. In the Survey at the Corporate Office at Secundrabad, AP, the Chairman and MD Shri.Venkat R.Kaluvakolanu was not available but Vice-President (Finance) one Mr.P.Veerabhadra Rao was available. He was confronted regarding purchase of Plant & Machinery for scientific research on which deduction was claimed u/s.35(2)(ia) of the Act. He admitted that the entire transactions shown under the head R & D expenditure are bogus and the parties from whom Plant & Machinery was claimed to have been purchased do not

exist. He admitted to have made bogus claim for deduction as above and that the bills are all fabricated.

11. There were also admission that the entities which purported to supply machineries to the Assessee were floated by the Assessee in the name of its employees and payments for purchase of plant and machinery were routed through bank account of employees of the Assessee and returned to the Assessee through such accounts either in cash or through bank.

12. In the course of Survey, verification of the suppliers of Plant and Machinery at the address given in the bills and invoices was also carried out and the result of such verification yielded following results:

1.	M/s Vision Metal: Plot No.11, Phase-IV IDa Jeedimetis Hyderabad	It is ascertained that there is no such concern with that name exists in this address. A firm by name millennium Industries is running some business which deals in machinery for pharma and bulk drug industries. It is ascertained that there is no firm in the above name exists at the given address. The said flat is residential apartment. Sri Rajesh Raj, who is staying there is not connected to the firm mentioned.
2.	Saradhi Engineering Flat No.201, Panchavati-A Apartment, Bhagyanagar colony, Kukatpally, Hyderabad	It is ascertained that no such firm exist at this given address. A company by name Srikant Optic System Ltd. is running business in telecom cable etc.
3.	Sparco Engineering Works Plot No.119& 120 Aleap Indl. Estate, Opp.JNTU Kukatpally, Hyderabad	It is ascertained that one of the Director of Sri DVS Suryanarayana Raju one of the directors of M/s Srikant Optic System Ltd., Sri Raju replied that he has no idea of the bills and the firm, in which he was a partner. SCS Petro Products has never supplied any material to the JBS company
4.	SCS Petro Products Flat NO.404, Suryateja Apartments, Dharmareddy Colony, Ph-1, KPH13 colony, Hyderabad	

5.	Sangram Castings Plot No.12, Phase-IV, IDA Jeedimetla, Hyderabad	Both the firms are in same address  It is ascertained that in given address, the above firms premises are not found. But there 3 is some other concerns like Ultra Batteries and M/s Hi-Watt Power Systems P Ltd. are running there respective businesses. Sri Suryanarayana Raju, partner of SCS Petro Products and Director of Hi-Watt Power System P. Ltd has disowned that he had any contacts with the said firms.
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13. The AO in page-13 paragraph-13 & 14 of the order of assessment highlighted as to how R.Venkat Kalavakolanu the Chairman and MD was avoiding summons for his examination by the AO. He has however filed an explanation before the AO in which he claimed that the claim made by him for deduction u/s.35(2)(ia) of the Act was genuine and that the statement of P.Veerabhadra Rao, was recorded under pressure.

14. The AO finally issued a show cause notice dated 17.3.2005 pointing out that the following expenditure claimed as deduction u/s.35(2)(ia) of the Act for the AY 2001-02 to 2004-05 are bogus and the Assessee was asked to file his explanation by 24.3.2005.

A.Y. 2002-03	Capital expenditure	101 329,425	As per Annexure-5
	Revenue expenditure	32,446,250	As per Annexure-6
A.Y.2003-04	Capital expenditure	16,238,646	As per Annexure-7
	Revenue expenditure	28,693,750	As per Annexure-8
A.Y. 2004-05	R&D expenses	65 181,550	As per Annexure-9
A.Y. 2001-02	Capital expenditure P&M equipment purchase Meganet Engineering	35,231,412	As per Annexure-10
	ESSEM Equiptech	29,787,282	Asper Annexure-10
	Total	308,908,315	

15. Another letter dated 18.3.2005 calling for explanation was also issued. Mr.R.Venkat Kalavakolanu, Chairman & MD sent a reply dated 25.3.2005 to the AO stating that the time allowed for compliance was too short and wanted another week's time to file a reply. The AO rejected the plea for grant of time and proceeded to hold that the expenditure claimed as deduction u/s.35(2)(ia) of the Act cannot be allowed, with the following observations:

“The above letter received from Sri.Venkat. R.K are rejected on the following rounds:

I. The sworn statement recorded from Shri T.V.Narasa Reddy, Vice President (Proj.) is in the normal course and no pressure is used against him. He has given the details about the working of the R&D and the inventory of the plant and machinery found at the factory itself is a proof that they have not invested Crores of rupees in capital expenditure for R&D purpose and hence no equipment is purchased and installed in R&D Department and there is no question of raw material requirement for R&D purpose.

II.Regarding the sworn statement of P.Veerabhadra Rao, Vice President (Fin.) the sworn statement is not recorded under any pressure from the department. He himself has admitted that entire transaction of plant and machinery and raw materials purchased for all the years from F.Y. 2000-01 to 2004-05 is fabricated and bogus bills . To prove that these payments are paid to bogus concerns and to their bank accounts standing in the names of the employees of the company he has also furnished the chart of payment like bill No., date of payment, amount, to which concern it is payment, from which bank it is paid for all the above years. The main evidence to the dept. is bogus bills which are verified and found out that all the bills are fictitious and false in nature i.e., such firms are not at all existing . The payments are paid to their own bogus concerns. In view of the above strong evidence is with the Department like Bank account, copies of all the bogus concerns, the objection letter filed by Shri Venkat R.K. is not acceptable, hence the same is being rejected.

Transportation charges: The company has purchased during the year P&M and lab equipment of Rs.10,13,29,425/- and raw materials (chemicals) of Rs.3,24,46,250/-for research and development work and additions of new assets worth Rs.1,17,10,931/-. As seen from the above details nearly Rs.14 crores worth of goods were purchased. These goods should have been transported from place of purchase to the factory premises, which is located out of the Hyderabad district. To transport crores of worth of goods, the company should have spent huge amount for transportation charges, which has to be paid to

transport agencies. As seen from the profit and loss account furnished by the company in schedule-E, manufacturing, administrative and selling expenses.

The company has claimed expenditure for carriage inwards of Rs.9,68,0571-. These expenses are claimed for the entire year for goods purchased including supply of materials for production of drugs. As seen from the ledger extract of the inward expenses, it is seen that transport expenses for purchase of P&M and raw materials are not reflected in the books of accounts separately. Neither the goods are purchased nor received at the factory, hence the transport expenses are not claimed in the books of accounts.

After verifying all the details, bills / invoices, bank accounts, sworn statement of the employees and bogus confirmation letters it is found out that the entire claim of R&D expenses is false. The CMD and Shri P.Veerabhadra Rao, Vice President (Fin.) have knowingly planned in such a way to manipulate the accounts of the company and to defraud the revenue to avoid the taxes by claiming false expenditure for R&D purpose. The bills furnished when cross verified it is found out that they are non-existing firms, bills are fabricated according to their convenience and the payments are being paid not to the names mentioned in the bills but to their own bogus concerns and to their bank accounts. During the cross verification of bills and vouchers we have received some of the confirmation letters from the bogus parties. This also proves that the confirmation letters are received from non-existing firms which is also fabricated by Sri.P.Veerabhadra Rao himself. After summing up all the evidences collected to prove that the assessee has claimed false expenditure for R&D purpose and also the sworn statement of P.Veerabhadra Rao, Smt. V.K.Saipriya, Vice President (Mktg.) and T.V.Narasa Reddy, Vice President (Proj.), the entire capital expenditure u/s.35(2)(ia) on scientific research for purchase of plant and machinery including lab equipment worth of Rs.10,13,29,425/- and revenue expenditure (raw material) for research and development of Rs.3,24,46,250/- are disallowed for the above detailed reasons mentioned and added back to the income.”

16. Similarly, the Assessee had claimed depreciation on fixed assets purchased during the previous year totaling Rs.91,71,754/-. On enquiry by the AO, the persons who is stated to have supplied machineries on which depreciation was claimed could not be traced and therefore the depreciation claim on the addition to fixed assets to the extent of Rs.22,92,940/- was disallowed and added to the total income of the Assessee.

17. The Assessee aggrieved by the order of the AO filed appeal before CIT(A).

The contentions of the Assessee before the CIT(A) were as follows:

1. Survey action was conducted on 24.2.2005, which was 35 days before limitation time limit for completing the order of assessment. The statement recorded at the time of Survey were given only on 30.3.2005. The Assessee therefore was not afforded fair opportunity of being heard and there has been a violation of the principles of natural justice.
2. The statement against the Assessee recorded at the time of Survey were obtained under intimidation and of no legal effect. The Survey action that took place on 24.2.2005 cannot be the basis to draw conclusions for the previous year relevant to AY 2002-03 i.e., the period from 1.4.2001 to 31.3.2002. At best the findings of the Survey can be valid only for AY 2005-06.
3. The identification of equipments used for scientific research at the time of survey by the employees was incorrect as they were not aware of the technical name of the equipment and could not identify the equipments found in the bills and invoice.
4. Survey warrant issued by the AO who had jurisdiction only over Gulbarga and Bidar Districts of Karnataka, to carry out survey at AP was legally not valid as he did not have territorial jurisdiction.
5. The Assessee gave details of the dates on which the various documents used against the Assessee were given by the AO, which were as follows:

	Item of information / document used	Date of receipt
1.	Statement recorded on oath of Sri T.V.Narasa Reddy	30.3.2005
2.	Statement recorded on oath of	30.3.2005
3.	Statement recorded on oath of Smt.	30.3.2005
4.	Response of postal dept. in respect of service of letter on Srinivasa Ind.	Through DCIT letter dt
5.	Response to postal department in respect of service of letter on Reliable Engg.	18.3.2005, served on C&MD on 24.3.2005
6.	Response of postal Department in respect of service of letter on Mythili Enterp.	(on hospital bed).
7.	Response of postal department in respect of service of letter on Hi-tech Electr	
8.	Response of postal department in respect of service of letter on Raghavendra Enterpr.	

9.	Response of postal Department in respect of service of letter on Pionner Ind. Pr.	
10.	Response of postal department in respect of service of letter on Sindhu Traders	
11.	Statement recorded on oath of Sri P.S.Kutty	30.3.2050
12.	Statement recorded on oath of Anil Kumar	30.3.2005
13.	Response of postal dept. in respect of service of letter on Mecmain Engg	Through DCIT letter dt. 18.3.2005 served on C&MD on 24.3.2005 (on hospital bed)
14.	Response of postal dept. in respect of service of letter on Winmax Glass Tech	
15.	Enquiry report of Inspector on purchase of P&M from Meemain Engg., Winmax Glass Tech. And Glvder Glass works.	--

6. The Assessee filed affidavit of P.Veerabhadra Rao, (dated 2.5.2005), withdrawing the statement given at the time of Survey as it is contrary to facts and obtained by exercising pressure.
7. There is a reference to the research being highly technical nature and general remarks about drug industry, fine chemical industry etc. and stages of product development. There is no reference about what research the Assessee did, nothing about the whereabouts the supplier of the plant and machinery, existence of the plant and machinery supposed to have been used for scientific research, what is the nature of scientific research. There is however a vague reference to equipments, research etc., in the 3<sup>rd</sup> written submission (final submission) which is as follows:

*“We also would like to bring to your notice that Research & Development acitivity in any company is highly confidential in nature and it is same in our company also. Late Sri K. S. Sarma Founder of the company and his colleagues took the research and development activity till year 2004 and these time there is very little knowledge available to the other persons on the subject. Research and Development activity is conducted in research block, kilo block and trail runs are undertaken in the main production block.*

*Research and Development activity is undertaken by us from gram scale to multi kilo scale at the trail level. However to clarify the position of*

*the company related to research and development and on the physical existent of the equipment are hereby confirmed the following:*

*Equipment like Glass Set apparatus, Analytical Balance, Lyophilizers, Cold Chamber and Clear rooms, Analytical Instruments and Lab Equipments and Glassware does not have life more than one year, after continuous operations. Hence, they have to be discarded for the lack of further utility.*

*Equipments like Condensers, Dryers, Centrifuges, Reactors etc., are being re-modified after taking some Research and Development trials. These equipment have been designed in such a way to cater to the company's future developments in small volumes, after research and development trials. Hence, these equipment are modified for as higher capacities where controls, service fittings, fines for the equipment changing all the tubes, pipe fittings for condensers. Hence, higher batches of Research and Development small volume production can be taken.*

*Vice President (Prod.) is incharge of day to day production activities of the Company and has very negligible knowledge of the Research and Development activities undertaken by the Company which are highly confidential.*

*The company is in to Research and Development for the last 10 years and developed many products earlier years also the company has claimed the research expenses and those assessments are already completed.*

*During the assessment period we repeatedly informed to the assessing officer that these equipment are fabricated equipment, suppliers procure the required parts of the equipment in the market and they assemble the unit and delivery / install at the factory premises.*

*Ours is a one of the only company in Asia to have consistently conducting research and development and introducing products based on peptide chemistry and advanced organic chemistry since the last 10 years.*

*During the last 10 years the company has developed following products.*

1.	Acetyl Phenyl Alanine Methyl Ester (Pure)
2.	L-AlanineBenzyl Ester PTSA (Pure)
3.	Fmoc-Tyr-OtBu-OH
4.	Acetyl Phenyl Alanine Methyl Ester (Stage 1)
5.	N-Acetyl DL-Phenyl Alanine (Stage 2)
6.	Acetyl Phenyl Alanine Methyl Ester (Stage 3)
7.	DL-Glutamic Acid (Stage 1)
8.	DL-Glutamic Acid (Stage 1)
9.	Trifluoro Acetyl Lysine
10.	Ethyl Trifluoro Acetate
11.	Z-L-Glutamic Acid
12.	Absolute Alcohol
13.	Fmoc-Serine-OtBu-OH
14.	Phloretic Acid
15.	Z-s-Benzyl-L-Cysteine
16.	L-Serine-OtBu-Ome PTSA Salt
17.	Ethyl-B-Benzyl Acelate (Enalapril Stage-2)
18.	Lys-Boc-Cu complex
19.	L-AlanineBenzyl Ester PTSA (Stage 3)
20.	L-Serine-Ome-Hydrochloride
21.	Enalapril Stage-4
22.	D-Alanine

*During the last 10 years the company has developed process to improve the yields of production and profitability:*

1.	DL-Glutamic Acid
2.	DL-Glutamic acid Stage-1
3.	DL-Glutamic acid stage-2
4.	Enalapril Stage-1
5.	Enalapril Stage-2
6.	Enalapril Stage-3
7.	Lys-BOC-Cu-Complex
8.	L-Serine-OtBu-Ome PTSA salt

*Our research capabilities have resulted in an agreement with a multinational company CLARIANT and we have received a trial order from multinational company AVENTIS, Germany.*

*As the fabricator is not the sole manufacturer of the entire equipment, the equipment will not have any brand and all these equipment are made according to our requirements.*

*We are herewith enclosing the list of Plant and Machinery on which the company has claimed capital expenditure on scientific research u/s 35(1) of the Income Tax Act along with the photographs of the equipment physically available at our factory premises.”*

18. The AO has filed remand reports on all the submissions of the Assessee and the Assessee has also filed a rejoinder the remand report of the AO. These are discussed upto page 36 of the impugned order of the CIT(A). Thereafter the CIT(A) gave his conclusions which can be summarized as given below;

1. At page 41, the CIT(A) concluded that the charge of the Assessee adopting delaying tactics as made by the AO in the order of assessment is unsubstantiated.
2. At page-42 of his order, the CIT(A) has agreed with the submission of the Assessee that all equipments purchased during FY 2001-02 were installed in R & D block of the Assessee and after a lapse of more than 3 years, it would not be possible to exactly match the R & D assets with the bills/invoices furnished during the assessment proceedings.
3. He also agreed with the submission of the Assessee that some equipments are condemned in the process due to failure. He held that the AO has not pointed out as to precisely which equipment purchased during FY 01-02 for R & D were not available in R & D Block at the time of Survey nor such a list of equipments not found at the time of survey was ever given to the Assessee. He held that the survey conducted on 24.2.2005 cannot be the basis to conclude regarding physical presence of Plant and Machinery in R & D department in FY 2001-02.
4. That the AO has failed to understand the complicated nature of R & D carried out by the Assessee. The observations of the CIT(A) in this regard were as follows:

*“It is quite apparent that the A.O. has been completely oblivious of various relevant facts arising out of highly technical nature of research activities eg. the technical name of the asset as mentioned in the purchase bill / invoice may not always tally with its common name or regular usage name adopted by the workers. In industry , it is not uncommon to call a distillation column as evaporator / seperator or a heat exchanger as condenser. Similarly a purchase bill may describe an item as autoclave but it may still be called commonly as a reactor. In his submission dated 9.5.2005 ate CMD of i7ippellint co. has confirmed that equipments like glass set apparatus, analytical balances, Lyophilizers, cold chamber and clear rooms, analytical instruments, lab equipments and glassware do not normally have life more than 1 year, after continuous operations and hence are discarded for lack of further*

*utility. Similarly after taking some R&D trials equipments like condensers, dryers, centrifuges, reactors etc. are modified as these are designed in such a way that they cater to the company's future developments in small volumes after R&D trials are over. Thus according to information given by appellant company these equipments are modified for higher capacities so that higher batches of R&D / or small volume production can be taken. In brief, the A.O. does not appear to have appreciated the complex nature of technical terminology utilized while ordering highly confidential research equipments. In these circumstances, there is an element of substance and truth when the learned counsel pleads that the A.O. being ignorant about highly technical aspects involveci has embarked upon the exercise of misinterpreting the information I data available with him, that too on the basis of inadequate investigation carried out after lapse of 4 years . It is worth noting that the present A.O. has not offered any comments. on the issue of technical competence of his predecessor.*

5. He held that the statement of T.V.Narasa Reddy recorded at the time of Survey has to be disregarded as incorrect for the following reasons:

*A glance through the case records of the appellant maintained by the A.O. himself would reveal that the company is in R&D for last 10 years and has developed as many as 22 products and 8 processes in pharmacological area of peptide chemistry and advanced organic chemistry. The appellant company due to its research abilities has hit upon the international scene by securing an agreement with a multinational co. CLARIENT & by obtaining a trial order from another multinational AVENTIS, Germany. When the appellant company has such extensive background of research activities of highly confidential nature involving complex pharmacological process. it is indeed a folly to obtain a sworn statement from a production in-charge of company who had hardly spent 3 years with the company. And to rely upon such a statement for effecting huge additions running in crores without examining all the technical aspects of the matter is indeed a further blunder. In these circumstances, one has no choice but to hold that the learned counsel is correct when he argues that such*

*a sworn statement from a person having no role in R&D cannot have any material bearing on the company and cannot vitiate the claims made by the appellant in respect of capital expenditure and revenue expenditure on R&D activities.*

6. On the comments of the AO regarding the size of the R & D Building, the CIT(A) held that the value of machinery and the smallness of the building has no correlation.
  7. He accepted that the statements obtained at the time of survey were obtained in very inhospitable conditions and were therefore not reliable. He also held that whatever be the deficiency in the statement like the person in charge of the affairs not knowing the name of suppliers or about machinery used for R & D etc., have to be ignored because the statements were obtained by exercising pressure. He accepted the retraction of the statement in the form of affidavit of the person who made statement at the time of survey retracting the same. He also held that the AO should have re examined all the persons in the course of assessment proceedings also.
  8. Regarding the results of enquiry by the AO about the non existence of the suppliers of the plant and machinery, the CIT(A) held that the enquiries made by the AO were incoherent and inconclusive and therefore the inference drawn by the AO against the Assessee regarding the non existence of suppliers who did not respond to the query letter of the AO cannot be sustained. In this regard the CIT(A) also accepted the plea of the Assessee that the Assessee placed orders to main suppliers and they might have sub contracted to smaller suppliers who operate from time to time and that it is common that such small suppliers shift from one place to another and therefore the small suppliers who supplied machiners in FY 2001-02 were not available when inspection was done in the year 2005.
  9. The CIT(A) gave a clean chit to the Chairman & MD for not attending summons of the AO and he vacated the findings contained in paragraph 13 of the order of assessment for the reason that he was unwell and justed returned from tour of Australia.
19. The final conclusion of the CIT(A) were as follows:

*“I do appreciate that most of the instances quoted as above by the appellant co\_ do indicate denial of proper and adequate opportunity to the appellant co. as well as some unjustified and unfair acts on part of AO. But I am unable to appreciate the charge of conspiracy being*

*hatched against the appellant by revenue officials. I cannot fathom out any specific reason for revenue for hatching the conspiracy against the appellant. Ofcourse, these are a number of instances which have lead to the miscarriage of justice in the assessment proceedings and hence there is definitely some merit in the stand of appellant's counsel that the noble principles of natural justice, equity and fair play have been denied natural justice as shown by a few instances and acts on part of A.O. during assessment proceedings, I am unable to concede the demand of quashing of the assessment itself especially since on facts of the case, I have already held that the massive additions made by the A.O. in respect of R&D capital expenditure claimed at Rs.10,13,29,425/- and R&D revenue expenditure claimed at Rs.3,24,46,250/- and also the disallowance of depreciation at Rs.22,92,940/- cannot be justified on merits of the facts. The only addition that has been sustained in the instant case is the disallowance of depreciation at Rs.1,56,470/- made by the A.O. rightly on the ground of non-production of bills/invoices in the assessment proceedings in respect of new additions made to fixed assets. To sum up, the findings of A.O. that the appellant co. had claimed fraudulently a) false capital expenditure on R&D at Rs.10,13,29,425/- on purchase of plant and machinery b) bogus revenue expenditure on R&D for purchase of raw materials / chemicals at Rs.3,24,46,250/- and c) depreciation at Rs. 22,92,940/- on the basis of bogus bills / invoices have been rejected on facts of the case after having due regard to the merits of the issues involved. And hence I do not consider it necessary to quash the entire assessment order even when there are certain glaring instances of denial of natural justice to the appellant company. All the five grounds of appeal are answered in favour of appellant company. The A.O. is accordingly directed\_ to grant suitable relief to the appellant company and after taking due note of the disallowance sustained at Rs. 1,56,470/-.”*

On identical reasoning the disallowance of depreciation was also deleted.

20. Aggrieved by the order of the CIT(A), the revenue has preferred the present appeal before the Tribunal. As already stated the issues that was remanded for fresh consideration by the Hon'ble High Court is as to whether the CIT(A) was justified in deleting the addition made by the AO by disallowing deduction of Capital Expenditure u/s. Section 35(1)(iv) read with section 35(2) of the Income

Tax Act, 1961 (Act) of a sum of Rs.10,13,29,425/ and disallowance of depreciation of Rs.22,92,940/-. The Official Liquidator through one N.Tatia & Associates, CA filed CO's in which they have reiterated the stand as reflected in the impugned order of CIT(A) deleting the addition made by the AO. We have already held that the CO's are not maintainable and dismissed the same. As already stated none appeared when the appeals were called for hearing, despite service of notice of hearing. We therefore proceed to decide the issue in the appeal after considering the material on record and the submissions of the learned DR.

21. The Learned DR submitted that on almost identical facts identical issue arose for consideration in Assessee's case for AY 2001-02 and the Hon'ble Karnataka High Court in ITA No.2611/2005 order dated 1.8.2008 was pleased to uphold identical order of the AO. In that year also claimed deduction u/s.35(2)(ia) of the Act in a sum of Rs.6,47,18,694/- on purchase of machinery for R & D from Magnet Engineering and Essem Equitech. The AO made enquiries from the suppliers of the machineries and in the absence of any information from them called upon the Assessee to show cause as to why the claim for deduction should not be disallowed. The Assessee did not give the necessary particulars and sought adjournments. The AO therefore denied the claim of the Assessee for deduction. The CIT(A) deleted the addition made by the AO on identical grounds i.e., incomplete enquiries made by the AO. The Tribunal confirmed the order of the CIT(A). On further appeal by the Revenue, the Hon'ble Karnataka High Court allowed the appeal of the Revenue. He highlighted the findings of the Hon'ble Karnataka High Court, which according to him will squarely apply to the facts of the case for AY 2002-03 also. The following were the relevant findings of the Hon'ble Karnataka High Court, highlighted by the learned DR:

*“We have carefully examined the finding of fact recorded by the Assessing Officer, in his order with reference to the documents available in the original records produced by the Assessee before us, which is voluminous. We have gone through each one of the documents with reference to the rival legal submissions made by the learned counsels for the parties to find out the correctness of the same. The Assessing Officer in his assessment order has made certain observations after carefully verifying the documents in the course of the proceedings, he has directed the Assessing Officer obtained details from the Auditor, who has represented the Assessee before me in the proceedings and considered the details regarding the mode of payment, cheque number, name of bank, branch and date of payment by serving a letter dated.21.1.2004 to furnish the particulars in whose name the cheque was issued in respect of the machineries alleged to have been purchased from the suppliers situated in Secunderabad. Again by another letter dated 25.2.2004, he has specifically directed the assessee to furnish the details regarding the mode of payment made to the suppliers in respect of machineries, on 4.3.2004, personal appearance was made by Sri Srinath and Sri P.V. Rao on behalf of the assessee. No details were furnished by them as directed by the Assessing Officer. Even on 12.3.2004 they appeared and did not produce evidence regarding machineries purchased but he did not furnish the details regarding mode of payment, date of payment and bank details and further. Therefore, the Assessing Officer has addressed a letter to the two companies from whom the machineries alleged to have been purchased by the assessee to confirm the sale made to the payment, date of delivery and also the very complete nature and description of the machineries. As no confirmation came from the two companies, calling upon them to furnish the details another reminder letter dated 12.3.2004 was sent by the above said companies. Those two letters are unserved on the above two companies and the endorsement made by the postal authorities which is extracted by the Assessing Authorities which reads thus:*

*"Party not available incomplete address' and no such address on this road"*

*11. The first letter issued to the above two companies were returned unserved as no such address on this road'. In respect of Magnet*

*Engineering and Essem Equitech sent Incomplete address'. Thereafter, the Assessing Officer sent the Second letter after obtaining the address from the assessee, they were also returned unserved with the same remarks in both the cases. "party not available" and further, he has received a letter dated 23.6.2004 and a fax message on 26.3.2004 from the authorized representative of the assessee stating that the details would be submitted to him within four or five days. He has sent the fax message to the Authorised Representative to appear before him on 30.3.2004 and also produce of transportation goods. Except filing a letter indicating the date of payment he did not furnish the particulars regarding branch of Bank through whom the amount paid by means of two cheques were encashed by the suppliers and they did not produce the bank pass book in support of its claim by the Assessee that the cheques issued were in order and the same are encashed by the concerned sellers, further it is noticed by the Assessing Officer that the letter dt. 12.3.2004 though bears letters pads of the two concerns who have alleged to have supplied machineries to the assessee, no phone numbers or nature of proprietorship who signed the letter were available. It is further noticed by the O.A. that when such a large amount of machineries were purchased, the company being a public limited company has to pass through many officers for approving the same and also for getting quotations from various parties, this has not been done by the assessee company. Further it is rightly observed by the Assessing Officer regarding the details of invoices that they are only quotations obtained by the assessee from the suppliers and nowhere they have mentioned the nature or date of payment. numbers that supplied the machineries etc except saying that the matter relating to R & D is most confidential and cannot be divulged to anybody. The Assessing Officer has further observed that only particulars of the person incharge of R & D who made a request for purchase if necessary equipment and the details of the suppliers for supplying the machineries were needed and he was not interest in the formula or any other thing.*

*13. The Assessing Officer after appreciation of facts & material evidence on record produced by the assessee, he came to the right conclusion and held that the purchase of R & D machineries, they were required to be transported from Secunderabad, which is in Andhra Pradesh to the Karnataka State of Bidar. The provisions under Section 28A, 28AA, and 28B*

*for transport of machineries are applicable for the check post entries,, payment of sale tax entry of the inter state sales tax paid by the Assessee and copy delivered to the check post. The above statutory documents certainly were required to be obtained by the Assessee. In addition to that, the particulars regarding documents in relation to the transit of goods by road to the State and issue of transit costs and check post and registration of transporter, the mode of transport and registration by the Transporter, furnishing those documents by the assessee to substantiate its claim. Without producing the above important particulars and documents by the assessee, except producing the invoices, letter correspondence made with the sellers regarding confirmation of supply of goods to its R & D Department and proceedings of the Annual General Body Meeting no other documents were furnished to prove the fact that the assessee has acquired the machineries and it is entitled for exemption as claimed under the provisions of the I.T. Act.*

*14. To find out whether the claim made by the assessee to get the relief of 100% allowance under Section 35(2)(ia) of the Act for having purchased the machineries to its R & D Department. The learned counsel for the Revenue has rightly placed reliance upon the unreported judgment referred to supra in support of his legal submissions that the claim of the assessee for having acquired machineries which is a movable property runs about more than Rs.6.00 crores and it must be supported by acceptable documentary evidence which documents are not produced by the assessee before the Assessing Officer. The Assessing Officer being a fact finding authority on appreciation of facts and legal evidence on record has recorded a finding of fact holding that non production of the material documents, details as called for by him in justification of its claim, not furnishing the relevant material information that of which bank the . cheques were issued to the sellers by it for having purchased the machineries from them and who has encashed would have been reflected in the pass book if issuance of cheques to the sellers is a fact, the same is not produced by the assessee, therefore, the Assessing Officer has held that the assessee has not proved its claim as required in law as the burden of proof is upon it to justify the claims. Therefore, the finding of fact recorded by the Assessing Officer on the confirmation letters said to have been issued by the suppliers which is referred to by him in his order at page No.10 produced as Annexure-C before us, the same reads as under.*

*“The above two companies who have supplied machineries to my assessee runs into crores of rupees. If a sales worth crores are made to a single company, it must be a big enough to supply the equipments to other companies also. It is surprising to note that a company who is carrying on such a big volume of business is not traceable.*

*I have also asked the assessee company itself to file the confirmation, if any, obtained from the companies who have sold The machineries to them. This has also not been done. The assessee was told about the returning of letters of two concerns from whom they purchased machineries and asked to furnish the correct address and also proper confirmations. The letters filed by the assessee on 12.3.2004 though bears letter pads of the two concerns, it is interesting to note that even no telephone number or nature of the proprietorship who signed the letter was available. In this background returns of letters by postal authorities give rise to a reasonable finding that the transactions are not normal and the assessee wants to hide the real facts.*

*15. The finding of fact recorded by the Assessing Officer in this order is after proper appreciation of legal evidence on record by assigning proper and cogent reasons holding that the purchase of machineries and plant by the assessee from the vendor situated at Secunderabad, Hyderabad is not proved by it by producing valid documents of ownership to claim exemption under the provisions of the Act, which finding of fact of the Assessing Officer is found fault with by the Appellate Authorities stating that the same is erroneous finding, therefore, they have set aside the finding of fact recorded by the Assessing Officer which is not based on material documentary evidence available on record. Therefore, the findings of the Appellate Authorities are erroneous in law for non consideration of the material evidence in justification of the findings of the Assessing Officer in rejecting the claim of the assessee.*

*16. The request made by the learned counsel Sri Amit Kumar Deshpande on behalf of Sri A. Shankar is for remand of the matter to the Assessing Officer, as he has not considered the material evidence on record. In view of our foregoing reasons on the substantial question in favour of the revenue, there is no need*

*for us to remand the case to the Assessing Officer for his re-consideration.*

*17. For the aforesaid reasons the substantial question of law would arise and the same is answered in favour of the revenue. We allow the appeal by setting aside the impugned order passed by the Appellate Authorities and restore the order of the Assessing Officer.*

22. He highlighted the relevant findings of the AO and as to how the CIT(A) without any valid evidence that the machineries existed and that R & D was carried out by the Assessee, merely allowed the claim of the Assessee on the basis of a finding that incomplete enquiries were made by the AO. He submitted that not a shred of evidence has been filed by the Assessee even before CIT(A). According to him it was for the Assessee to establish with cogent evidence as to how the conclusions of the AO based on outcome of Survey proceedings and enquiries from the purchasers and their whereabouts were not correct. Without such evidence, the CIT(A) ought not to have deleted the addition made by the AO. The CIT(A) has wrongly placed the burden of proving that the Assessee did not carry out R & D on the Revenue, when it was on the Assessee to prove its case. He submitted that it was the Assessee to prove its case and it cannot pick holes in the insignificant procedural lapses, if any, on the part of the AO and seek to make a claim for deduction. It was also highlighted by him that in the later order of the Hon'ble Karnataka High Court by which this appeal was remanded to the Tribunal for consideration, this earlier order of the Hon'ble Karnataka High Court was not brought to its notice. He therefore submitted that the appeal of the revenue has to be allowed on the two issues remanded for consideration by the Tribunal.

23. We have considered the submissions and the material on record. The sequence of events in the course of assessment needs to be examined to find

out whether the case made out by the AO can be sustained on the basis of probabilities. The Assessee did not file return of income voluntarily. A notice u/s.142(1) of the Act was issued by the AO on 6.3.2003 calling upon the Assessee to file return of income. The Assessee filed the return of income on 25.2.2004. The return was processed u/s.143(1) of the Act on 21.7.2004. Thereafter the case was selected for scrutiny and notice u/s.142(1) was issued on 21.7.20104 calling for books of accounts and another notice dated 17.11.2004 was issued u/s.143(2) calling for details. The AO issued notice u/s.133(6) of the Act between December, 2004 to January, 2005 calling for confirmation from the persons from whom the Assessee claimed that it had purchased machineries for R & D purposes. The AO on verification of bills and invoices furnished by the Assessee for purchase of machineries for R & D purposes noticed some anomalies and these are set out in para 10 of the order of assessment. The main defect noticed was that most of bills sales tax was not charged. He therefore proceeded to conduct a survey at the various factory and corporate office of the Assessee. Statement recorded from the persons in-charge of the concerned premises confirmed that no machineries were purchased no R & D activities are carried on. One of the statement (of P.Veerabadra RaoV.P.Finance) was to the effect that entire arrangement made by the Assessee to create fabricated invoices, creating bogus concerns in the names of various employees and diversion of funds through bogus bank accounts for tax evasion. The Survey proceedings were conducted on 24.2.2005. The absence of proper place where R & D could have been carried out was also a circumstance taken note of by the AO. The verification of the vendors of the machineries carried out simultaneously on 24.2.2005 also revealed that the vendors of the machineries were non-existent. When these facts were confronted to the Assessee there was no response. The Chairman & MD evaded summons issued by the AO. The Assessment was getting time

barred on 31.3.2005. In these circumstance, the AO concluded that the claim for deduction made by the Assessee cannot be allowed.

24. The CIT(A) proceeded to accept the plea of the Assessee only on the basis of lack of proper opportunity having been afforded to the Assessee by the AO. Even assuming this allegation is true, (though on the facts of the case and sequence of dates given above the allegation cannot be true) the CIT(A) in exercise of his co-extensive powers as that of the AO ought to have afforded the necessary opportunity to the Assessee with a view to dispel the material and conclusions drawn by the AO. On the contrary the CIT(A) deleted the addition made purely on the basis that the AO did incomplete enquiry. There was no material whatsoever produced by the Assessee to disprove the conclusions drawn by the AO and positively prove that it purchased machineries in question for R & D and that it carried out R & D activities. In such circumstances, the CIT(A) in our view fell into an error in deleting the addition made by the AO. Perusal of the order of the CIT(A) reveals that the CIT(A) has made observations that the AO could have adopted a better course than what he did, but does not go further and call upon the Assessee to produce evidence to substantiate its case. We therefore find force in the contention of the learned DR that the CIT(A) without any valid evidence that the machineries existed and that R & D was carried out by the Assessee, merely allowed the claim of the Assessee on the basis of a finding that incomplete enquiries were made by the AO. As rightly submitted by him there was not a shred of evidence filed by the Assessee even before CIT(A) to establish with cogent evidence as to how the conclusions of the AO based on outcome of Survey proceedings and enquiries from the purchasers and their whereabouts were not correct. Without such evidence, the CIT(A) ought not to have deleted the addition made by the AO. The reference to invoices and description of machineries mentioned therein is

of no avail because the invoices were found to be bogus and the machineries found not existing at the time of survey. The CIT(A) has wrongly placed the burden of proving that the Assessee did not carry out R & D on the Revenue, when it was on the Assessee to prove its case. We agree with the submission that the order of the Hon'ble Karnataka High Court rendered on identical facts for AY 2001-02 is squarely applicable for AY 2002-03. We also find that in the later order of the Hon'ble High Court by which this appeal was remanded to the Tribunal for consideration, this earlier order of the Hon'ble Karnataka High Court was not brought to its notice. In the given facts and circumstances of the case, we are of the view that the order of the CIT(A) is not sustainable and the same is reversed and the order of the AO is restored on this issue. The reasoning for restoring the addition made by the AO disallowing deduction u/s.35(2)(ia) of the Act will equally apply to the disallowance of depreciation also and that addition is also restored.

25. In the result, appeal of the revenue is allowed in respect of the two issues remanded by the Hon'ble High Court.

**ITA No.627/Bang/2009:**

26. This appeal by the revenue is against the order of the CIT(A), Hubli, dated 28.2.2009 in relation to AY 2003-04.

27. As far as AY 2003-04 is concerned, the facts are almost identical to AY 2002-03. In this year also there was a disallowance of deduction claimed by the Assessee u/s.35(2)(ia) of the Act of a sum of Rs.1,62,38,940/- being Machinery & Plant claimed to have been acquired and used for Scientific research. Besides the aforesaid deduction the Assessee claimed deduction of a sum of Rs.2,86,93,750/- as deduction u/s.35(1) (i) of the Act which provides

for deduction in respect of expenditure on scientific research, being any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business. This section allows deduction on account of revenue expenditure incurred in Scientific Research while Sec.35(2)(ia) of the Act allows deduction on account of capital expenditure. The AO also disallowed depreciation claimed on said assets which were claimed to have been addition to the fixed assets to the extent of Rs.16,20,85,711/- during the relevant previous year by the Assessee. The AO made enquiries found that the claim of having purchased fixed assets was fictitious and hence he disallowed claim of the Assessee for depreciation of a sum of Rs.3,10,16,050/-. In AY 2002-03, the Assessee claimed to have purchased assets during the relevant previous year and such purchase to the extent of Rs.96,08,994/- was found to be bogus and therefore the AO disallowed 25% depreciation resulting in a disallowance of Rs.24,02,248/- as depreciation in AY 2002-03. The opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2003-04 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs. 18,01,687 being 25% of Rs.72,06,746/- was disallowed by the AO. The CIT(A) allowed the claim of the Assessee for deduction and hence the appeal by the revenue before the Tribunal, raising the following grounds of appeal:

- 1. The Order of CIT(A) is opposed to Law and the facts of the case as brought out by the AO on various issues dealt by him in the Assessment Order after causing enquiries wherever possible.*
- 2. The decision of CIT(A) in deleting the addition of Rs.62,38,940 /- made by the AO out of Capital Expenditure claimed u/s35(2)(ia) for R&D activities, Rs. 2,86,93,750 /- under Revenue Expenditure for R&D activities, disallowance of depreciation on assets for non-*

*production of receipts of Rs. 3,10,16,050 /- and disallowance of excess claim of depreciation of Rs.19,76,778 /- are opposed to Law and facts of the case.*

3. *The CIT(A) has heavily relied upon the written submissions made by the assessee at the time of hearing without considering the ground facts as gathered and subsequently verified independently by AO at the time of assessment proceedings, since the assessee did not cooperate with the AO in furnishing the full information as called for. This has been given a go-by by the CIT(A).*
4. *The CIT(A) erred in accepting the submission of the assessee that the company was to incur various unexplainable and secret purchases which are of heavy price without appreciating the fact that even such various unexplainable and secret purchase will have to be explained to the satisfaction of the Revenue and the same cannot be ignored to maintain the secrecy of the assessee's trade as otherwise such suppliers if really exists goes scot-free. In fact, the enquiries made reveal that this claim of the assessee is only a cover to hide the bogus purchases of P & M, Equipments on which revenue & capital expenditure was claimed along with Depreciation.*
5. *The CIT(A) erred in accepting the submission of the assessee that the AO expects the assessee after a lapse of 3 years to explain things with the help of original and genuine expenditure, when the Books of Accounts are in the custody of the AO, without noticing that mere entries in the Books of Account are not the conclusive evidences but the AO has to go beyond it, to know the truth. In fact, the CIT(A) failed to appreciate that the assessee took a very long time to procure Bills to suit its convenience and did not furnish the specific information required by the A.O.*
6. *The CIT(A) has erred in holding that the AO has given a conclusion that the entire activity of the Assessee is bogus and made additions without appreciating the correctness of the submission made by the assessee before the CIT(A) that the Research Work was not going on for the reasons explained therein. In fact, the reasons given for not carrying on the Research Work are only self-serving. The CIT(A) ought to have appreciated the fact of admission by the assessee that no Research Work was done by the Company coupled with the facts*

*established by the AO that the purchase invoices are bogus, which goes against the assessee.*

7. *The CIT(A) has erred in coming to a finding that the AO after collecting information has not given opportunity to the assessee without appreciating the fact that an opportunity was provided by the AO which was not made use of fully by the assessee and only two of the trusted employees-cum-vice presidents, who were faithful to the master were produced for re-verification and not other parities.*
8. *The CIT(A) has erred in allowing relief after giving a finding that investigation of the matter is at the half-investigated level. Before giving such a finding the CIT (A) using his inherent powers could have caused enquires/ investigations through the A.O.obtaining a remand report.*
9. *The CIT(A) has failed to appreciate the fact that summons u/s131 could not have been issued by the AO to the parties from whom P&M and other equipments were purchased for examination for want of correct and complete address as the letters sent for verification were returned and independent enquiries caused reveal that the parties did not exist at the given address.*
10. *The appellant craves leave to add, alter, amend or delete any of the grounds on or before the hearing of appeal.*

28. In AY 2002-03, the revenue expenditure claimed by the Assessee u/s.35(1)(i) was allowed by the ITAT in it's order dated 30.11.2009 prior to the order of the Hon'ble Karnataka High Court dated 1.10.2010 remanding the issue of deduction u/s.35(2)(ia) of the Act to the tribunal pursuant to which we have rendered decision in the earlier part of this order. In the said order the Tribunal held that the revenue expenditure was incurred in the regular course of business and irrespective of the finding by the AO for the other capital expenditure, has to be allowed after due verification by the AO. This order of the Tribunal was not disturbed by the Hon'ble High Court in its order dated

1.10.2010. Therefore the deduction in so far as revenue expenditure incurred by the Assessee is concerned, the facts being identical to AY 2002-03, we direct the AO to verify the nature of expenditure to ensure no capital expenditure is claimed as deduction.

29. In so far as the claim for deduction u/s.35(2)(ia) of the Act and deduction on account of depreciation on new assets acquired during the relevant previous year is concerned, the findings of the AO are identical to the findings of the AO in AY 2002-03. The list of machineries and the persons from whom they were purchased in AY 2003-04 was as follows:

S. No.	Description of item	Quantity	Amount in Rs.
1	<b>M.S. Glasslined Jacketee</b>		
	Reactor		
	Capacity - 250 litres	2 nos.	24,50,000
	Capacity - 100 litres	2 nos.	18,40,000
2	M.S. Glasslined Condensor		
	Capacity - 4 M.Sq Capacity - 2 M.Sq	2 nos. 2 nos.	9,60,000 7,80,000
3	S.S. 316 Reactor		
	Capacity - 630 litres Capacity - 250 litres	2 nos. 4 nos.	12,80,000 21,60,000
4	Autoclave		
	Capacity - 100 litres Capacity - 25 litres	2 nos. 2 nos.	13,80,000 9,60,000
5	S.S. 316 Distillation Unit		
	Capacity - 250 litres	1 no.	11,55,000
6	S.S. Extractor		
	Capacity - 250 litres	1 no.	3,80,000
7	Vacuum Tray Dryer		
	Capacity - 12 trays	1 no.	4,80,000
8	S.S. 316 Centrifuge		
	Capacity - 12 inches	1 no.	3,80,000
9	Pumps for process, vacuum, services		5,00,000

10	Lab Reaction Set, Ups All Glass for Q.C. and		7,50,000
11	Process Control Instruments etc.		7,83,640
	<b>Total</b>		<b>16,238,640</b>

30. The enquires done by the AO and the result of such enquiry on the whereabouts of the aforesaid vendors was as follows:

S. No.	Name and full addresses of party as per the bills furnished	Details of outcome after making the enquiries
1.	M/s. Swati Engineering, Plot No.75/3, Phase VI, Industrial Development Area, Jeedimetla, Hyderabad-500 055 Tel No. 23099449	Detail enquiries were made to locate such firm and its address but it could not be found. Enquiries with nearby residents to trace out the party also did not yield any fruitful result. The inmates of the said address could not identify any such party or any firm with such name. However, the phone number given by the assessee was found to be of a small time STD booth owner who over phone informed that some people about 3-4 years back have sought their phone number for which he consented but he informed that he is now not in touch with those people. When the enquiry team visited his office, he was not available as he has gone for taking some orders for soaps and chemicals which is his side business other than running the STD booth. Therefore it is clear that no such firm/agency ever functioned in the said address and that the assessee has fabricated bogus bills. Enquiries revealed that no such firm/agency ever functioned in the said address and that the assessee had fabricated bogus bills.

2.	M/s Galaxy Techno Controls, Plot No.D-237, Phase-I, Shapur Nagar, Hyderabad Tel No.23092225	Enquiries revealed that no such address is found. However, as found in case of the above enquiry the phone number given was found to be of one Shri M. Phani Kumar who is working as Quality Control Manager in M/s Hetero Drugs Limited. Over phone the residence of Shri M. Phani Kumar who is residing at LIG-120, APIIC Colony, Jeedimetla, Hyderabad was obtained and a sworn statement was recorded from him. Shri M. Phani Kumar categorically denied that he has ever heard any such firm/agency in the name of M/s Galaxy Techno Control and he has no dealings with such firm. He surprised as to how his phone number found a place in the said bill. He informed that the said phone number was allotted to him directly by the BSNL, Hyderabad in the year 1997 and he has never let or gave the said number to any one for any <u>purposes.</u>
3.	M/s Meganet Engineering Plot No.3, Swagraha Apartment, Block-A, Kukatpally, Hyderabad	No name board or any such firm was found in the said premises. The said address i.e., the plot no.3 belongs to Shri M.S. Naidu who happens to be the senior vice president of the assessee. However, Shri M.S. Naidu himself is not residing in the said house and has been let out to one Shri Hidayatulla Aga who is working as a scientist in APL Research Centre, Hyderabad, He has orally denied that he has ever heard of such firm with the name of M/s Meganet Engineering.

31. The other facts with regard to findings during Survey u/s.133A of the Act are same as in AY 2002-03. The AO therefore concluded that the deduction claimed u/s.35(2)(ia) of the Act was bogus and cannot be allowed.

32. The AO found that the Assessee had claimed depreciation on additions to fixed assets to the extent of Rs.16,20,85,711/-. The details of the persons from whom the Assessee purchased the items of Plant & Machinery were as follows:

S. No.	Name of the seller	Description of machine purchased	Date of purchase	Amount in Rs.
1	Supreme Corporation No.253, Mahaveer Dham Society Part-II	Glass Liner assembly	11-04-02	4,932,000
2	Same as above	S.S. Reactor of 500 & 1000 litres	17-05-02	5,283,000
3	Same as above	Stainless Steel Reaction Unit	21-07-02	3,870,000
4	Same as above	Same	12-09-02	3,375,000
5	Same as above	Same	09-10-02	3,924,000
6	Same as above	Ultra Centrifuge	11-12-02	4,080,000
7	Same as above	Stainless Steel Reaction Unit	28-01-03	5,068,800
8	Same as above	Lab Instruments	15-03-03	6,853,125
9	Royal Engineering Corporation 4 Hari Bhavan, Sivaram Lalwani Road, Behind Jain Mandir, Mulund,	Quality Control Instruments and Quality Assurance Instruments	16-06-02	5,304,000

10	Same as above	S.S. Membrane Filters and Crystallisers	22-08-02	3,456,000
11	Same as above	S.S. Heat  Distillation Unit etc.	Exchange,  13-10-02	5,035,200
12	Same as above	Lyophilizer and laminar flow cabinets	21-12-02	5,670,900
13	Same as above	Fluid Heaters and MS	07-01-03	2,448,000
14	Panama Enterprises, G- 3, Dev Hira Complex, Near Telephone Exchange Road,	Brine Chiller and Ultra Purification Water System equipments etc.	16-05-02	4,198,500
15	Same as above	S.S. Condenser including pipeline processor	12-06-02	5,736,000
16	Same as above	Sodium Block Equipments like glasslined reactor etc.	19-09-02	6,335,000
17	Same as above	Pilot scale lab infrastructure and modulars	01-12-02	6,340,000
18	Same as above	Glass Assembly Unit for vacuum Distillation	19-01-03	1,806,500

19	Same as above	Reaction cum distillation unit	23-02-03	4,052,230
20	M/s Deep Engineering Works, 19, Nararaj Chambers, Sadan Street,	Digital Polarimeter with detailed specifications	07-04-02	4,017,960
21	Same as above	S.S. Condencers with different capacities	02-06-02	2,580,000
22	Same as above	Advances Flow Control Gas Chromatograph system	13-07-02	4,728,000
23	Same as above	Tray Dryer in 48 nos.	07-08-02	3,168,000
24	Same as above	GMP Water Chiller and S.S. 316 Centrifuge	03-09-02	6,187,680
25	Same as above	UIV Visable Spectrophotometer and DM Water Plant	28-11-02	6,252,000
26	Same as above	Rubber Lined Centrifuge with different capacities	10-02-03	3,768,000
27	Same as above	Hot Oil System & Cooling Tower etc.	14-02-03	3,030,000
28	Same as above	S.S. Auto Claves with 1500 lts capacity	07-03-03	3,030,000

29	Dream Enterprises, Shriram Park, Aastha Lane No.2, Kuvavda Road Near Ashram,	Vacuum Dryler of 24 trays and Tray Dryer in 12 Trays with different specifications	03-04-02	3,120,000
30	Same as above	Pollution Control Equipment and Treatment System	28-05-02	3,030,000
31	Same as above	Fluid Bed Dryer like flame proof board, starters etdc.	17-07-02	3,030,000
32	Same as above	Preparative High Pressure Liquid Chromatograph	08-08-02	6,078,800
33	Same as above	Glass Assembly Units with electrical fittings	12-11-02	1,908,000
34	Same as above	S.S. Reactor Complete assembly unit	27-11-02	3,350,000
35	Same as above	Advanced HPCL System and production scale purge valve etc.	04-12-02	6,325,000
36	Same as above	L.C.M.S. Systems with several specifications	13-02-03	6,330,000
37	Same as above	Lab Benches for laboratory specifications	23-03-03	3,374,880

38	All other miscellaneous bills from different	All types of electrical equipments	Different dates	1,062,180
	Total bills			162,138,755

33. The bills had defects like figures being in round sum etc. The Assessee failed to produce parties for examination by the AO. The AO made enquires on his own and the outcome of such enquiry has been tabulated as follows by the AO in the order of Assessment:

**DETAILS OF OUTCOME OF THE ENQUIRY IN RESPECT OF  
PURCHASES OF PLANT AND MACHINERY FOR RS.16,20,85,711/-.**

S. No.	Name and address of seller	Amount in Rs.	Outcome of the enquiry conducted
1	M/s Deep Engineering Works, No.19, Nataraj Chambers, Bardan Street, Dane Pith, Rajkot	36,761,640	The enquiries revealed that no such firm is functioning in the said address. The name board were showing some other firms in the names of M/s Deep Traders, 2) M/s Dream Enterprises and 3) M/s Master Sales Net Work. Enquiries revealed that the shop is owned by one Shri Jayesh Bhai who is doing mainly the business of sale of biscuits and other bakery products. So, it is clear that no firm dealing in sale of plant and machinery is existing at such an address and never existed.

2	M/s Dream Enterprises, Sri Ram Park, Lane No.2, Kuvadva Road, Near Aashram, Rajkot	36,546,680	This address was found to be of a residential house outside the city limits. At the time of visit of enquiry team, no male member was present in the house. The lady informed that her husband Shri Jayesh Bhai is a small scale wholeseller in biscuits and confectioneries. Therefore as on date no such firm is existing and it never existed in the said remises.
3	M/s Supreme Corporation, Mahaveer Dham Society, Part-11, Nava Poshad Road, Amroi, Surat	37,385,925	No such firm was found at the given address. In fact this is a residential house situated outside the city limits. The house is occupied by one Shri Bhavesh Dani, a small time businessman dealing in wholesale supply of local made namkeens. It has also come to know that he is residing in the said premises since 4-5 years at a rent of Rs.1,500/- per month. The inmate could not identify any such firm after seeing the bills.

4	M/s Pharma Enterprises, C-3, Dev Hira Complex, Near Telephone Exchange Road, GIDC, Char Rasta, Vapi, Guarat	28,468,230	Enquiries revealed that no such firm is existing at the said address and never existed. The complex is situated in ground floor and 1st floor. The address such as C-3 does not exist in the said complex. Shri Om Sai Infocom is running office at the complex. Shri Rajkumar infomred that he has never heard of any such firm.
5	Royal Engineering Corporation, No.4, Hari Bhavan, Shivram Lalyani Road, Behind Jain Mandir, Mulund, Mum	21,914,100	No such firm was found at the above address and no such firm ever existed in suchaddress. One concern namely M/s Urmi Travels is functioning at the address since 5-6 years. Shri Gitesh Gandhi, proprietor informed that he has never heard of any such concern.
6	Bhuta Enterprises, Nagardas Mansion, Ground Floor, Bhagat Singh Road, Vile Pahe, Mumbai	125,757	The enquiry team could not locate any such address.

7	Uniscan Power System, No.10-1-5, Sunrise Suite, Ground Floor, Adjacent to Kasturba Women's College, West Marredpally, Secunderabad	141,920	Enquiry revealed that no such firm or agency is functioning at the given address and it never existed in the said address. However, a beauty parlous shop in the name of M/s Honey Bee was functioning in the said premises since <u>last 2 years</u> .
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34. The AO confronted the Assessee with the results of the enquiry and asked to show cause why the claim of depreciation on the addition to fixed assets during the previous year should not be disallowed. Since there was no response, the depreciation claim to the extent of Rs.3,10,16,050/- was disallowed by the AO.

35. In AY 2002-03, the Assessee claimed to have purchased assets during the relevant previous year and such purchase to the extent of Rs.96,08,994/- was found to be bogus and therefore the AO disallowed 25% depreciation resulting in a disallowance of Rs.24,02,248/- as depreciation in AY 2002-03. The opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2003-04 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs. 18,01,687 being 25% of Rs.72,06,746/- was disallowed by the AO.

36. The aforesaid four additions were deleted by the CIT(A) for identical reasons given by the CIT(A) in the appellate order for AY 2002-03 and by

following the said order, which we have elaborately discussed while deciding the appeal of the Assessee for AY 2002-03.

37. The arguments advanced are identical to the one's advanced in the appeal for AY 2002-03. We have considered the same and are of the view that the conclusions arrived at in AY 2002-03 on identical issue will apply to the present AY 2003-04 also. For the reasons stated therein, we allow the grounds of the revenue with regard disallowance of deduction claimed by the Assessee u/s.35(2)(ia) of the Act of a sum of Rs.1,62,38,940/- being Machinery & Plant claimed to have been acquired and used for Scientific research by restoring the order of the AO. The claim for deduction of a sum of Rs.2,86,93,750/- as deduction u/s.35(1) (i) of the Act which provides for deduction in respect of expenditure on scientific research, being any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business is remanded to the AO for fresh consideration as was done by the Tribunal in AY 2002-03. The disallowance of depreciation claimed on said assets which were claimed to have been addition to the fixed assets to the extent of Rs.16,20,85,711/- during the relevant previous year by the Assessee of a sum of Rs.3,10,16,050/- is upheld and the order of the AO is restored. The addition of depreciation on account of opening wdv being revised owing to findings in AY 2002-02 that purchase of fixed assets to the extent of Rs.96,08,994/- was bogus and therefore the opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2003-04 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs. 18,01,687 being 25% of Rs.72,06,746/- was disallowed by the AO is also restored.

38. In the result, appeal of the Revenue is partly allowed.

**ITA No.628/Bang/2009:**

39. This is an appeal by the Assessee against the order dated 28.2.2009 of CIT(A)-Hubli, relating to AY 2004-05:

40. As far as AY 2004-05 is concerned, the facts are almost identical to 2003-04. In this year also there was no disallowance of deduction claimed by the Assessee u/s.35(2)(ia) of the Act. The Assessee claimed deduction of a sum of Rs.10,44,64,408/- u/s.35(1) (i) of the Act which provides for deduction in respect of expenditure on scientific research, being any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business, which was disallowed by the AO. The AO also disallowed depreciation claimed assets which were claimed to have been addition to the fixed assets to the extent of Rs.14,90,64,625/- during the relevant previous year by the Assessee. The AO made enquiries found that the claim of having purchased fixed assets was fictitious and hence he disallowed claim of the Assessee for depreciation of a sum of Rs.2,20,06,294/-. In AY 2002-03 & 2003-04, the Assessee claimed to have purchased assets during the relevant previous year and such purchase partly were found to be bogus and therefore the AO disallowed 25% depreciation resulting disallowance of depreciation in AY 2002-03 & 2003-04. The opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2002-03 & 2003-04 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs.13,51,265 and 3,27,58,414 for AY 2002-03 & 2003-04 had to be disallowed by the AO. The CIT(A) allowed the claim of the Assessee for deduction as he held that the purchases were genuine and hence the appeal by the revenue before the Tribunal, raising the following grounds of appeal:

- 1. The Order of CIT(A) is opposed to Law and the facts of the case as brought out by the AO on various issues dealt by him in the Assessment Order after causing enquiries wherever possible.*

2. *The decision of CIT(A) in deleting the addition of Rs. 10,44,64.408/- under Revenue Expenditure for R&D activities, disallowance of depreciation on assets for non-production of receipts of Rs. 2,20,06,294 /-, disallowance of excess claim of depreciation of Rs.13,51,265 /- and disallowance excess claim of depreciation due to adoption of wrong opening WDV are opposed to Law and facts of the case.*
3. *The CIT(A) has heavily relied upon the written submissions made by the assessee at the time of hearing without considering the ground facts as gathered and subsequently verified independently by AO at the time of assessment proceedings, since the assessee did not co-operate with the AO in furnishing the full information as called for. This has been given a go by the CIT(A).*
4. *The CIT(A) erred in accepting the submission of the assessee that the company was to incur various unexplainable and secret purchases which are of heavy price without appreciating the fact that even such various unexplainable and secret purchase will have to be explained to the satisfaction of the Revenue and the same cannot be ignored to maintain the secrecy of the assessee's trade as otherwise such suppliers if really exists goes scot-free. In fact, the enquiries made reveal that this claim of the assessee is only a cover to hide the bogus purchases of P& M, Equipments on which revenue expenditure was claimed along with Depreciation.*
5. *The CIT(A) erred in accepting the submission of the assessee that the AO expects the assessee after a lapse of 3 years to explain things with the help of original and genuine expenditure, when the Books of Accounts are in the custody of the AO, without noticing that mere entries in the Books of Account are not the conclusive evidences but the AO has to go beyond it, to know the truth. In fact, the CIT(A) failed to appreciate that the assessee took a very long time to procure Bills to suit it's conviniance and did not furnish the specific information required by the A.O. Moreover this a case where action U/s 147 was taken for failure to file the Return within the time allowed U/s 139(1) and the return in response to the notice U/s 148 was filed only on 08-52006 inspite of the fact the audit report U/s 44AB was filed on 01-11-2004.*
6. *The CIT(A) has erred in holding that the AO has given a conclusion that the entire activity of the Assessee is bogus and made additions without appreciating the correctness of the submission made by the assessee*

*before the CIT(A) that the Research Work was not going on for the reasons explained therein. Infact, the reasons given for not carrying on the Research Work are only self-serving. The CIT(A) ought to have appreciated the fact of admission by the assessee that no Research Work was done by the Company coupled with the facts established by the AO that the purchase invoices are bogus, which goes against the assessee.*

*7.The CIT(A) has erred in coming to a finding that the AO after collecting information has not given opportunity to the assessee without appreciating the fact that an opportunity was provided by the AO which was not made use of fully by the assessee and only two of the trusted employees-cum-vice presidents, who were faithful to the master were produced for re-verification and not other parities.*

*8.The CIT(A) has erred in allowing relief after giving a finding that investigation of the matter is at the half-investigated level. Before coming to such a finding, the CIT (A) using his inherent powers could have caused enquires/ investigations through the A.O. by obtaining pa remand report.*

*9. The CIT(A) has failed to appreciate the fact that summons u/s131 could not have been issued by the AO to the parties from whom P&M and other equipments were purchased for examination for want of correct and complete address as the letters sent for verification were returned and independent enquiries caused reveal that the parties did not exist at the given address.*

*10. The appellant craves leave to add, alter, amend or delete any of the grounds on or before the hearing of appeal.*

41. In AY 2002-03, the revenue expenditure claimed by the Assessee u/s.35(1)(i) was allowed by the ITAT in it's order dated 30.11.2009 prior to the order of the Hon'ble Karnataka High Court dated 1.10.2010 remanding the issue of deduction u/s.35(2)(ia) of the Act to the tribunal pursuant to which we have rendered decision in the earlier part of this order. In the said order the Tribunal held that the revenue expenditure was incurred in the regular course of business and irrespective of the finding by the AO for the other capital expenditure, has to be allowed after due verification by the AO. This order of the Tribunal was not disturbed by the Hon'ble High Court in its order dated

1.10.2010. Therefore the deduction in so far as revenue expenditure incurred by the Assessee is concerned, the facts being identical to AY 2002-03, we direct the AO to verify the nature of expenditure to ensure no capital expenditure is claimed as deduction.

42. In so far as the claim for deduction on account of depreciation on new assets acquired during the relevant previous year is concerned, the findings of the AO are identical to the findings of the AO in AY 2002-03. The list of persons from whom they were purchased in AY 2004-05 and the enquiries made by the AO and result of such enquiry was as follows:

S. No.	Name of the supplier	Amount claimed in	Findings of the ITI
1	M/s Bipico Industries, No.748/2, Gujarat Industrial Development Corporation, Vapi, Gujarat	30,728,050	The ITI has reported that despite his best efforts he could not locate any such party in the given address. The ITI also took the help from O/o GIDC, Vapi. It was found that a concern with the name and style as "M/s Vico Forge Private Limited" is functioning at the above mentioned plot number. The assistants working in the O/o GIDC, Vapi have confirmed that no such supplier/concern ever functioned in the given address. The ITI also tried to obtain details from the phone number printed in the bill and it was found that the phone belongs to some residential house. Therefore it is clearly established once again that no such supplier/concern is existing and it has never existed and the claim of the assessee is <u>bogus</u> .

2	M/s Prosol Scientific Instruments, No.1455, Phase IV, GIDC Industrial Area, Vatva Ahmedabad	28,037,200	The ITI could not find any such supplier. As no such supplier was found, efforts were made to locate by obtaining help from Office of Deputy Superintendent, GIDC, Vatva. On going through the address given in the bill, he informed that no such concern is functioning in the entire industrial area. After going through the area and site map of the entire industrial area, no such address such as plot number 1455 in Phase IV was found. As per the records available in the office of GIDC, Vatva Ahmedabad, the Phase-IV of the industrial area starts with plot number 4000. Therefore it is proved that the assessee has furnished a bogus bill with bogus plot number which never existed. Further here also the telephone number printed in the bill was found to be of a residential house. Therefore it is clearly proved that no such supplier is existing and ever existed.
3	M/s Labindia Instruments, Plot No.,.1611, GIDC, Umbergaon, Gujarat	33,792,250	The ITI could not locate any such supplier in spite of making best efforts. With great difficulty, he could reach the plot number 1611. However it was found that no such supplier is existing in this plot. The entire plot no.1611 in GIDC, Umbergaon is a vacant plot and is not in occupation of any concern. Further on contacting the office of GIDC Umbergaon it was revealed that no such supplier is existing in Umbergaon industrial area. Here the phone number given in the bill was found to be out of order. Therefore it is proved that no such supplier ever existed.

3	Chemtron Tech Devices, No.445, Industrial Area, Cuncolim, Goa	26,593,125	<p>The address could not be located. On visiting the office of Goa Industrial Development Corporation, Cuncolim, it was found that no such concern is existing in that place. Further the plot no.445 given was found to be wrong. As per the information obtained from the office, the plot numbers are allotted as per the size of the industry such as for small scale industry the plot number starts from S-1 onwards and for middle scale industry the plot number starts from M and for large scale industry the plot number starts from L. There is no plot number such as 445. The ITI also took the help of the post office who has got the jurisdiction over such place. It was also revealed by them that they have not seen any such supplier. Further the phone number given in the bill was found to be not in service. Therefore it is clearly established that no such supplier ever existed.</p>
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5	Saltzar Techtrol Systems, No.371, S.V. Lane, Andheri Kuria Road, Mumbai	29,471,000	In spite of best efforts made, the ITI could not locate any such supplier. It was informed by him that the Andheri-Kurla Road is stretched around 18 kilometres long. In spite of spending nearly about 4 hours he could not find any such supplier. The ITI took the help of the Andheri Post Office and they also could not locate any such address or concern. Further the phone number given in the bill was found to be of a residential house. It is therefore clearly established that no such supplier/concern existed <sup>5</sup> and the claim is false.
6	M/s Puissance DE DPK, No.167/10, Bashyam Nagar, Cuddalore-607 001	443,000	The ITI could not found any such supplier in the said address. He could locate the address. It was found that the office of Deputy Inspector General of Registration, Cuddalore Zone, Cuddalore was functioning in that place. The assistants working in that office have revealed that that office is functioning in the said address sinch a long time and no concern with such name has functioned there. The IT1 took the help of post office having jurisdiction over the area and came to know that the post office has not come across any such concern. It was therefore again proved that there is no such supplier and claim of the assessee is bogus.

43. The AO confronted the Assessee with the results of the enquiry and asked to show cause why the claim of depreciation on the addition to fixed assets during the previous

year should not be disallowed. Since there was no response, the depreciation claim to the extent of Rs.2,20,06,294/- was disallowed by the AO.

44. In AY 2002-03 & 2003-04, the Assessee claimed to have purchased assets during the relevant previous year and such purchase was found to be bogus and therefore the AO disallowed depreciation resulting in a disallowance of depreciation in AY 2002-03 & 2003-04. The opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2004-05 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs.13,51,265/- and Rs.3,27,58,414/- was disallowed by the AO.

45. The aforesaid additions were deleted by the CIT(A) for identical reasons given by the CIT(A) in the appellate order for AY 2002-03 and by following the said order, which we have elaborately discussed while deciding the appeal of the Assessee for AY 2002-03.

46. The arguments advanced are identical to the one's advanced in the appeal for AY 2002-03. We have considered the same and are of the view that the conclusions arrived at in AY 2002-03 on identical issue will apply to the present AY 2004-05 also. For the reasons stated therein, we allow the grounds of the revenue with regard disallowance of depreciation claimed on assets which were claimed to have been addition to the fixed assets during the relevant previous year by the Assessee of a sum of Rs.2,20,06,294/- and upheld and restore the order of the AO. The addition of depreciation on account of opening wdv being revised owing to findings in AY 2002-03 & 2003-04 that purchase of fixed assets to the extent was bogus and therefore the opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2004-05 on the same item of machinery had to be reduced and as a consequence

the depreciation of a sum of Rs. 13,51,265 & Rs.3,27,58,414 for AY 2002-03 & 2003-04 respectively disallowed by the AO is also restored.

47. In the result, appeal of the Revenue is partly allowed.

**ITA No.950/Bang/2009:**

48. This is an appeal by the Assessee against the order dated 18.5.2009 of CIT(A)-Hubli, relating to AY 2005-06:

49. As far as AY 2005-06 is concerned, the facts are almost identical to 2004-05. In this year also there was no disallowance of deduction claimed by the Assessee u/s.35(2)(ia) of the Act. The Assessee claimed deduction of a sum of Rs.10,04,70,753/- u/s.35(1) (i) of the Act which provides for deduction in respect of expenditure on scientific research, being any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business, which was disallowed by the AO. The AO also disallowed depreciation claimed assets which were claimed to have been addition to the fixed assets to the extent of Rs.17,49,64,543/- during the relevant previous year by the Assessee. The AO made enquiries found that the claim of having purchased fixed assets was fictitious and hence he disallowed claim of the Assessee for depreciation of a sum of Rs.2,14,68,445/-. In AY 2002-03 & 2003-04 & 2004-05, the Assessee claimed to have purchased assets during the relevant previous year and such purchase partly were found to be bogus and therefore the AO disallowed 25% depreciation resulting disallowance of depreciation in AY 2002-03 & 2003-04 & 2004-05. The opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2002-03 & 2003-04 & 2004-05 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs.10,13,449,

Rs.2,45,68,811 and Rs.3,17,86,843 for AY 2002-03 & 2003-04 & 2004-05 respectively had to be disallowed by the AO. The CIT(A) allowed the claim of the Assessee for deduction as he held that the purchases were genuine and hence the appeal by the revenue before the Tribunal, raising the following grounds of appeal:

- 1) *The order of CIT(A) Hubli is opposed to law and facts of the case brought out by A.O. on various issues.*
- 2) *The decision of the CIT(A) in deleting the addition of Rs. 10,04,70,753 towards Revenue expenditure U/S 35(1)(i) of the Act for R&D activities, Depn. on Assets for non-production of receipts of Rs. 2,14,68,445 excess depn. Claimed due to adoption of wrong WDV for A.Y. 2002-2003, 2003-2004, 2004-2005 of Rs. 5,73,69,103.*
- 3) *The CIT(A) has accepted the written submission made by the Assessee company and totally ignored the independent verification done by the A.O, at the time of completion of Assessment, even though the assessee company was not forth coming in providing information at the time of assessment.*
- 4) *The CIT(A) has erred in accepting return submission of various expenditure for secret purchases of plant and machinery and other equipments, which was just an eyewash, to cover up and hide the bogus purchases and claim depreciation. However, secret it may be, there is no provision in the IT Act, that those things should not be divulged at the time of scrutiny proceedings.*
- 5) *The CIT(A) has erred in holding that the AO has given a conclusion that the entire activity of the assessee is bogus and made additions without appreciating the correctness of the submission made by the assessee before the CIT(A) and that the research work was not going on for the reasons explained therein. In fact the reasons given for not carrying on the Research work are only self-serving. The CIT(A) ought to have appreciated the fact of admission by the assessee that no Research work was done by the company coupled with the facts established by the AO that the purchase invoices are bogus, which goes against the assessee.*

- 6) *The CIT(A) has erred in giving a finding that the investigation made by AO is at the half investigated level. However nothing prevented the CIT(A) to complete the investigation, as appeal proceeding is continuation of assessment proceedings.*
- 7) *The CIT(A) has erred in coming to a conclusion, that AO after gathering information has not given opportunity to the assessee company, but the fact is that the opportunity given by the AO, which was not fully utilized by the assessee and only two of the trusted employees, supposed to be vice presidents, Who were faithful to the master were produced for reverification and not other parties.*
- 8) *CIT(A) has failed to appreciate the fact, that the summons u/s 131 issued to parties for supply of plant and machinery and other equipments was not correct, this was done as a last resort as the independent enquiry and verification done at the given address did not exist.*
- 9) *It is very important to note here that the honourable high court of Karnataka, has upheld the decision of the A.O., for the Asst. year 2001-02, on similar issues decided the appeal in favour of Revenue.*
- 10) *The appellant craves to leave, add, alter, amend or delete any of the Grounds on or before hearing of Appeal.*

50. In AY 2002-03, the revenue expenditure claimed by the Assessee u/s.35(1)(i) was allowed by the ITAT in it's order dated 30.11.2009 prior to the order of the Hon'ble Karnataka High Court dated 1.10.2010 remanding the issue of deduction u/s.35(2)(ia) of the Act to the tribunal pursuant to which we have rendered decision in the earlier part of this order. In the said order the Tribunal held that the revenue expenditure was incurred in the regular course of business and irrespective of the finding by the AO for the other capital expenditure, has to be allowed after due verification by the AO. This order of the Tribunal was not disturbed by the Hon'ble High Court in its order dated 1.10.2010. Therefore the deduction in so far as revenue expenditure incurred by the Assessee is concerned, the facts being identical to AY 2002-03, we direct

the AO to verify the nature of expenditure to ensure no capital expenditure is claimed as deduction.

51. In so far as the claim for deduction on account of depreciation on new assets acquired during the relevant previous year is concerned, the findings of the AO are as follows:

**NEW ADDITIONS TOWARDS PLANT AND MACHINERY :-**

The depreciation schedule enclosed to the audit report reveals that following new additions have been made in the financial year under consideration :-

S. No.	Type of equipment/asset	Addition upto 30-09-04	Addition after 30-09-04	Total addition during the year	Total depreciation claimed
1	Building	Nil	14,587,800	14,587,800	729,390
2	Furniture & Fixtures	42,181	21,204	63,385	5,278
3	Plant and Machinery	3,584,167	155,608,110	159,192,277	20,347,056
4	Office Equipments	262,765	230,516	493,281	94,506
5	Computers	346,250	281,550	627,800	292,215
	Total			174,964,543	21,468,445

*As mentioned in detail in the earlier pages the assessee was requested' on several occasions to furnish the evidences i.e bills for such purchases. The assessee has miserably failed to furnish the bills and evidence for such purchases. The primary conditions for allowing any claim of depreciation on new additions are acquisition of new asset and actual put into use of this asset for the purposes of assessee business. In view of absolute failure on the part of the assessee in furnishing the evidence in spite of being given jumbo of opportunities, the claim of new purchases as mentioned in S.No.1,2,4 & 5 have not been proved. Further in the preceding assessment years*

*also the assessee could furnish only a part of the bills and accordingly proportionate disallowances were made. In the assessment year under consideration no details and evidence whatsoever is filed. It is the assessee company who is making the claims of having constructed building and purchased equipments during the financial year under consideration and therefore the onus of proving its transactions also lies on the assessee. Therefore in the show cause letter a proposal was issued to disallow the claim of depreciation. As no information has been furnished, I proceed to disallow the claim of depreciation of these 4 items total amounting to Rs.11,21,389/- and add to the income available. This amount of addition prima facie appears to be satisfying to the conditions requiring initiation of penalty proceedings u/s 271(1)(c).*

*As regards the claim of depreciation of Rs.2,03,47,056/-is concerned, it has been elaborately discussed that the claims of new additions for plant and machinery have been immensely proved bogus in all preceding assessment years. Further the survey proceedings u/s 133A which is very much relevant for the financial year under consideration has also clearly proved that the assessee has not purchased any major plant and machinery. The assessee is having 2 factories at Bidar and in Village Cheriyal. If any plant and machinery is really purchased, the same can be installed either in factory situated at Bidar or in village Cheriyal. The factory incharge at Bidar Shri P.S. Kutty has admitted in his sworn statement that there is no production activity at all in this factory since last more than 10 months. The production manager of the factory at village Cheriyal Shri T.V. Narsareddy clearly admitted in his sworn statement during the survey that the quantum of claim of purchase of plant and machinery are highly exaggerated. During the course of survey Shri T.V. Narsa Reddy was shown various bills towards purchases of plant and machinery. After careful observation he admitted that these plants and machinery were never installed in the factory. Further the survey was conducted on 25-02-2004 i.e almost at the fag end of the relevant financial year. The production manager who is the overall incharge of the factory is admitting in his sworn statement that no plant and machineries were purchased and installed. The plant and machinery henceforth P&M were not in existence during the physical verification of the assessing officer as on 25-02-2004 and in all likelihood there is no possibility of any acquisition from 25-02-2004 to 31-03-2005 and actually putting into use for making*

*any claim of depreciation. Even if the assessee has made any purchases of P&M subsequent to the survey, the onus of proving their acquisition and its actual put into use, wholly lies on the assessee which it has miserably failed to fulfill. Considering the elaborate discussion as stated above and also considering the valuable evidence gathered during the survey and also considering the absolute failure of the assessee to furnish the bills and evidence for such purchases, I come to a conclusion that the claim of depreciation of Rs.2,03,47,056/- need not be considered and the same is to be disallowed. Accordingly the said amount of Rs.2,03,47,056/- is added to the income available. This amount of addition also, prima facie appears to be satisfying to the conditions requiring initiation of penalty proceedings u/s 271(1)(c).*

52. In AY 2002-03 & 2003-04 & 2004-05, the Assessee claimed to have purchased assets during the relevant previous year and such purchase was found to be bogus and therefore the AO disallowed depreciation resulting in a disallowance of depreciation in AY 2002-03 & 2003-04 & 2004-05. The opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2005-06 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs.10,13,449/-, Rs.2,45,68,811 and Rs.3,17,86,843/- for AY 2002-03, 2003-04 and 2004-05 was disallowed by the AO.

53. The aforesaid additions were deleted by the CIT(A) for identical reasons given by the CIT(A) in the appellate order for AY 2002-03 and by following the said order, which we have elaborately discussed while deciding the appeal of the Assessee for AY 2002-03.

54. The arguments advanced are identical to the one's advanced in the appeal for AY 2002-03. We have considered the same and are of the view that the conclusions arrived at in AY 2002-03 on identical issue will apply to the present

AY 2005-06 also. For the reasons stated therein, we allow the grounds of the revenue with regard disallowance of depreciation claimed on assets which were claimed to have been addition to the fixed assets during the relevant previous year by the Assessee of a sum of Rs.2,14,68,445/- and upheld and restore the order of the AO. The addition of depreciation on account of opening wdv being revised owing to findings in AY 2002-03 & 2003-04 & 2004-05 that purchase of fixed assets to the extent was bogus and therefore the opening written down value (wdv) of the assets on which depreciation was claimed by the Assessee in AY 2005-06 on the same item of machinery had to be reduced and as a consequence the depreciation of a sum of Rs. 10,13,449, Rs.2,45,68,811 and Rs.3,17,86,843 for AY 2002-03 & 2003-04 & 2004-05 respectively disallowed by the AO is also restored.

55. In the result, appeal of the Revenue is partly allowed.

56. ITA No.951/Bang/2009: This is an appeal by the Revenue against the order dated 18.5.2009 of CIT(A), Hubli, relating to AY 2006-07.

57. In so far as this appeal is concerned, it is sufficient if Ground No.4 is decided and in this ground the revenue has raised the issue that the CIT(A) ought not to have admitted the appeal for adjudication because the Assessee had not paid the tax due on the income admitted in the return of income and therefore in terms of Sec.249(4)(a) of the Act, the CIT(A) ought not to have admitted the appeal itself for adjudication. After considering the rival submissions, we are of the considered view that the assessee has failed to comply with the mandatory requirement of section 249(4) of the Act. In the instant case, Id CIT(A) has categorically observed that the Assessee had not paid the entire tax due on the income returned at the time of filing or before the filing of appeal or even at the time when appeal was in heard. Yet he proceeded to decide the appeal on merits

accepting the plea of the Assessee that he would pay the remaining taxes due on returned income in installments. As per the requirements of section 249(4)(a) of the Act, paying of tax due on income returned at the time of filing was not complied with by the assessee and, therefore, the Id CIT(A) ought to have refused to admit the appeal of the assessee as per the provisions of section 249(4) of the Act. Hon'ble Karnataka High Court in the case of D. Komalakshi v. Dy. CIT [2007] 292 ITR 99/162 Taxman 16, wherein, it has been held that section 249(4) of the Act makes it clear that admission of an appeal before the Id CIT(A) is subject to payment of tax due on the income returned. In the case of CIT v. Manoj Kumar Beriwal [2009] 316 ITR 218 (Bom.), the Hon'ble Bombay High Court held that for the purpose of section 249(4) of the Act, the deposit of admitted tax is condition precedent for entertainment of appeal before the Id CIT(A). In the instant case, the view taken by the Id CIT(A) deserves to be reversed keeping in view the judgment of Hon'ble Karnataka High Court in the case of D. Komalakshi(supra), wherein, the Hon'ble High Court held as under:

'After hearing, we have carefully perused the material on record.

Both the appellants have filed the return after the search and seizure in terms of the material on record. The returns were considered by the Assessing Officer and thereafter, adverse orders were passed by him. When the same were challenged before the Appellate Commissioner, the Appellate Commissioner by a detailed order, has chosen to hold that the appeals filed by the assesseees are not maintainable in terms of section 249(4) of the Act. When the same was challenged before the Tribunal, the Tribunal has accepted the order passed by the Commissioner.

Thus, we have to see as to whether the order of the Commissioner, confirmed in the appeal before the Tribunal is sustainable or not in terms of the material placed before us or in terms of the submission made by learned counsel for the assesseees.

Section 249 of the Act provides for "Form of appeal and limitation". Section 249(4) of the Act would provide for payment of the tax due on

the income returned by him for the purpose of admission of the appeal. The said section would read as under:

"249.(4) No. appeal under this Chapter shall be admitted unless at the time of filing of the appeal -(a) Where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him :

Provided that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause."

10. A reading of this section makes it very clear to us that admission of an appeal is subject to payment tax due on the income returned and the same has been introduced, probably in the larger interest of the revenue collection by way of payment of admitted tax for the purpose of appeal. It is clear to us that the Commissioner (Appeals), after noticing the material aspects of the matter, has come to the conclusion that the appeal is not maintainable and therefore, did not admit the appeal as per the provisions of section 249(4) of the Act.

11. When the order passed by the Commissioner (Appeals) was challenged before the Tribunal, the Tribunal has accepted the order of the Commissioner. From a reading of the order of the Commissioner and the Tribunal, it is clear to us that tax due at the time of filing of appeal was not made over in terms of section 249(4) of the Act. It is also to be noticed at this stage by us that the appellants, in terms of the material on record have chosen to say in unmistakable terms that they did not have any source to raise funds to make good the tax due at the time of filing the appeal. They have further stated in their statement of objections that in terms of section 249(4) of the Act, the appeal cannot be admitted in the absence of tax on the admitted income. This very statement of the appellants before the authority would go with the mandatory requirement of section 249(4) of the Act. Under the facts of the case and in the given circumstances, we are satisfied that there exist no legal errors either in the order of the Commissioner or in the order of the Tribunal. The orders are therefore, accepted by us in the case on hand, particularly, in the light of the admitted facts in terms of the return and in terms of the submission as we see from the material on record. Under the circumstances, we hold

that both the appeals are liable to be rejected by answering the questions of law against the assesseees."'

58. In our considered view, the decision of the Hon'ble High Court, referred to above, is squarely applicable to the facts of the present case. In the said case, the Id CIT(A) had admitted the appeals despite the fact admitted taxes on income returned was not paid and therefore the said appeal was not maintainable in the light of section 249(4) of the Act. We therefore quash the order of the CIT(A) and allow the appeal of the Revenue and restore the order of the AO. The other grounds of appeal does not require any adjudication in view of the decision regarding maintainability of appeal before CIT(A).

59. In the result, appeal by the Revenue is allowed.

**ITA No. 990/Bang/2008:**

60. This is an appeal by the Revenue against the order dated 11.3.2008 of CIT(A), Hubli, deleting the penalty imposed on the Assessee u/s.271(1) ( c) of the Act, in relation to AY 2002-03.

61. We have already seen the additions made in AY 2002-03 while dealing with the quantum appeal for AY 2002-03. In respect of the additions so made, the AO initiated penalty proceedings u/s.271(1)( c) of the Act vide notice dated 30.3.2005. All the additions made by the AO were deleted by the CIT(A) but the revenue had filed appeal against the order of CIT(A) in the quantum proceedings. The AO issued another show cause notice dated 15.2.2007. The Assessee vide its reply dated 27.2.2007 submitted that since the additions in respect of penalty was sought to be levied had already been deleted by the CIT(A) in the quantum appeal, the Assessee submitted that penalty cannot be levied. The AO however proceeded to impose penalty after referring to the false claim made by the Assessee and as to how in respect of such claim, the revenue made enquires and made those additions. The AO therefore proceeded to

impose penalty u/s.271(1)(c) of the Act in respect of the four additions made in the order of assessment viz., disallowance of deduction u/s.35(2)(ia) of Rs.10,13,29,425/-; disallowance of deduction u/s.35(1)(i) of Rs.3,24,46,250/-; Disallowance of depreciation of Rs.22,92,940/- and disallowance of depreciation of Rs.1,56,470/-.

62. On appeal by the Assessee CIT(A) cancelled the order of the AO imposing penalty for the reason that there is nothing conclusive to prove beyond doubt that the Assessee attempted to conceal income.

63. Aggrieved by the order of CIT(A), the revenue is in appeal before the Tribunal. We have heard the submissions of the learned DR who submitted that the facts brought out in the order of assessment and the ultimate result in the quantum proceedings will be sufficient to impose penalty on the Assessee. We have considered his submission and find that out of the four additions only two additions viz., disallowance of deduction u/s.35(2)(ia) of Rs.10,13,29,425/- and Disallowance of depreciation of Rs.22,92,940/- survive after the order of ITAT and Hon'ble High Court order in the quantum proceedings. The circumstances under which the additions were made clearly show that the Assessee had concealed particulars of income especially in the light of Explanation-1 to Sec.271(1) of the Act. The Assessee has not discharged his onus that lay on him in law. The CIT(A) is not right in holding that concealment has to be proved beyond doubt before imposing penalty u/s.271(1)(c) of the Act. In the circumstances, we restore the order imposing penalty in respect of the aforesaid two additions that survive after the quantum proceedings.

64. In the result, appeal by the revenue is partly allowed.

65. In the combined result, ITA No.1232/Bang/2005 is allowed to the extent remanded by the Hon'ble High Court and other appeals by the revenue are partly allowed. The CO's by the Assessee are dismissed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(B. R. BASKARAN)**  
**Accountant Member**

Bangalore.

Dated: 05.01.2022.

/NS/\*

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Copy to:

- |               |               |
|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.