

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 2594/AHD/2008
Assessment Year: 1998-1999**

M/s Metrochem Industries Ltd.,
505-506, While House, Panchwati,
Ahmedabad-380 006.

Vs. Dy. Commissioner of Income
Tax, Circle-4,
112, 1st floor, Avjivan Trust
Bldg. Ashram Road,
Ahmedabad-14.

**PAN No. AABCM 8019 K
Appellant**

Respondent

**ITA No. 764/AHD/2005
Assessment Year: 2001-02**

Metrochem Industries Ltd.,
505/506, Suryarath, Nr.
Panchvati Ellisbridge,
Ahmedabad-380 006.

Vs. The Income Tax Officer Ward 4(2),
Ahmedabad.

**PAN No. AABCM 8019 K
Appellant**

Respondent

**ITA No. 1190/AHD/2005
Assessment Year: 2001-02**

The ACIT, Cir-4, Ahmedabad,
Navjivan Trust Bldg. Off. Ashram
Road,
Ahmedabad.

Vs. Metrochem Industries Ltd.,
505/506, Suryarath, Nr. Panchvati
Ellisbridge,
Ahmedabad.

Appellant

**PAN No. AABCM 8019 K
Respondent**

ITA No. 66/AHD/2007

Assessment Year: 2003-04

M/s Metrochem Industries Ltd.,
505-506, Surya Rath, Nr.
Panchwati, Ellisbridge,
Ahmedabad-380 006.

PAN No. AABCM 8019 K

Appellant

Vs. Dy. Commissioner of Income Tax,
Circle-4,
Ahmedabad.

Respondent

ITA No. 788/AHD/2007
Assessment Year: 2003-04

Dy. Commissioner of Income Tax,
Circle-4,
Navjivan Trust Bldg. Off. Ashram
Road,
Ahmedabad.

Appellant

Vs. M/s Metrochem Industries Ltd.,
505-506, Surya Rath, Nr.
Panchwati, Ellisbridge,
Ahmedabad-380 006.

PAN No. AABCM 8019 K

Respondent

ITA No. 87/AHD/2008
Assessment Year: 2004-05

Dy. Commissioner of Income Tax
Circle-4,
Navjeevan Building Ashram Road,
Ahmedabad.

Appellant

Vs. Metrochem Industries Ltd.,
505-506, Surya Rath Building, B/H,
White House, Panchwati,
Ambawati,
Ahmedabad.

PAN No. AABCM 8019 K

Respondent

CO No. 50/AHD/2008
(ITA No. 87/AHD/2008)
Assessment Year: 2004-05

Metrochem Industries Ltd.,
505-506, Surya Rath Building,
B/H, White House, Panchwati
Ellisbridge,
Ahmedabad-06

PAN No. AABCM 8019 K

Vs. Dy. Commissioner of Income Tax
Circle-4,
Navjeevan Building Ashram Road,
Ahmedabad.

Appellant

Respondent

ITA No. 2140/AHD/2008
Assessment Year: 2005-06

M/s Metrochem Industries Ltd.,
505-506, Surya Rath, Nr. Panchwati,
Ellisbridge,
Ahmedabad-380 006.

Vs. Dy. Commissioner of Income
Tax, Circle-4,
Navjivan Trust Bldg. Off.
Ashram Road,
Ahmedabad.

PAN No. AABCM 8019 K
Appellant

Respondent

ITA No. 606/AHD/2011
Assessment Year: 2006-07

M/s Metrochem Industries Ltd.,
508, Shilp Building, C.G. Road,
Navrangpura,
Ahmedabad.

Vs. The Asst. Commissioner of Income
Tax (OSD)-I, Range-4,
Navjivan Trust Bldg. Ashram Road,
Ahmedabad.

PAN No. AABCM 8019 K
Appellant

Respondent

ITA No. 1076/AHD/2011
Assessment Year: 2007-08

M/s Metrochem Industries Ltd.,
505-506, Surya Rath Building
Ahmedabad-380 009.

Vs. The Asst. Commissioner of Income
Tax (OSD)-I, Range-4,
Navjivan Trust Bldg. Ashram Road,
Ahmedabad.

PAN No. AABCM 8019 K
Appellant

Respondent

Assessee by : Mr. Bhadresh Dosi, AR
Revenue by : Mr. T. Shankar, DR

Date of Hearing : 07/03/2022
Date of pronouncement : 31/03/2022

ORDER

PER OM PRAKASH KANT, AM

Above appeals by the Revenue and appeals/cross objections by the assessee are directed against different orders passed by the Ld. First Appellate Authority. Being, common issues involved in these appeals and cross objections, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts. We are taking up these appeals and cross objection for adjudication in order of assessment year.

2. The assessment year 1998-99 being the oldest assessment year available before us, firstly we have taken appeal having ITA No. 2594/Ahd/2008 for adjudication.

3. The grounds raised in the appeal by the assessee are reproduced as under:

1.0 The order passed by the Commissioner of Income Tax (Appeals) is bad in law since it is contrary to the provisions of the law and the facts of your appellant's case. It is submitted that it be so held now.

2.0 The Commissioner of Income Tax (Appeals) erred in upholding computation of income made by the assessing officer. The assessing officer

had not computed income as per provisions of law and facts in case of appellant. It is submitted that it be so held and assessing officer be directed to compute income as per the provisions of law.

2.1 The appellant submits that the assessing officer ought to have adopted Rs. 4,75,79,417/- being deduction determined u/s 80HHC in computing the book profit and the taxable income as per section 115JA. It is submitted that it be so held now.

3.0 The assessing officer erred in not properly computing the refund in its case. The assessing officer ought to have allowed credit of tax deducted at source at Rs. 27,26,953/- as against Rs.27,19,334/-

4.0 The assessing officer erred in not properly computing interest u/s 244A. The assessing officer be directed to compute interest as per the provisions of law.

5.0 The assessing officer erred in adjusting refund of Rs. 15,38,690/- against demand for the assessment year 1996-97. The adjustment without complying with mandatory requirement of section 245 is bad in law. The adjustment be directed to be cancelled and the amount adjusted be directed to be refunded alongwith interest.

5.1 The appellant without prejudice to above further submits that there was no demand for the assessment year 1996-97 which required an adjustment and therefore the adjustment is bad in law. It is submitted that it be so held now and the assessing officer be directed to refund Rs.15,38,690/- alongwith interest u/s 244A thereon.

4. At the outset, the Ld. Counsel of the assessee submitted that the issue-in-dispute involved in the appeal relates to computation of book profit, for which the corresponding MAT credit has already been availed in subsequent

assessment years and therefore, the assessee wishes to withdraw the appeal. The learned Counsel filed a letter signed by the director of the assessee company seeking withdrawal of the appeal. The Ld. DR did not object to such withdrawal. Accordingly, in view of the prayer of the withdrawal by the assessee, the appeal filed by the assessee for assessment year 1998-1999 is dismissed.

5. Next, we take up the appeal of the assessee having ITA No. 764/Ahd/2005 and appeal of the Revenue having ITA No. 1190/Ahd/2005 for assessment year 2001-02.

6. The grounds raised by the assessee in its appeal are reproduced as under:

1. *The order passed by the Assessing Officer was bad in law since it is submitted that it be so held now and the order passed by the Assessing Officer be cancelled.*
2. *The Commissioner of Income Tax (Appeals) erred in not deleting disallowance of ₹1,19,456/- out of depreciation on the fixed assets. It is respectfully submitted that all the requirements of law stood fulfilled. The disallowance of depreciation be deleted.*
3. *The Commissioner of Income Tax (Appeals) erred in holding that expenditure amounting to ₹18,92,424/- by way of compensation under voluntary retirement scheme was expenditure of deferred revenue nature. The expenditure was of revenue nature incurred wholly and exclusively for*

the purposes of business and therefore fully deductible. It is submitted that entire expenditure to be allowed as deduction.

- 3.1 The appellant without prejudice to above, submitted that deduction allowed at the rate of 10% is grossly inadequate. The Commissioner of Income Tax (Appeals) ought to have allowed deduction at the higher rate reducing the period of amortization. It be so held.*
- 3.2 The appellant without prejudice to above, submits that the Commissioner of Income Tax (Appeals) ought to have deleted ₹1,89,242/- disallowed by the appellant. It is submitted on account of said addition the Assessing Officer has disallowed entire amount of ₹18,92,424/-.*
- 3.3 The Commissioner of Income Tax (Appeals) ought to have allowed deduction proportionately out of disallowance made in the earlier year and further for the subsequent period on the basis of the period of amortization out of disallowance for the year under consideration. It is submitted that directions be issued to Assessing Officer.*
- 4. The Commissioner of Income Tax (Appeals) erred in not allowing deduction of ₹37,83,062/- the appellant submits that the write off is deductible either u/s 28 and/or 36 and/or 37 of the Act. It be so held and deduction be allowed.*
- 4.1 The Commissioner of Income Tax (Appeals) erred in not directing the Assessing Officer to cancel the addition of ₹37,83,062/- made by him in computation of the total income. The deduction was not considered in computation of total income and therefore in event of disallowance also the addition was contrary to the fact. The addition be deleted.*
- 5. The Commissioner of Income Tax (Appeals) erred in upholding disallowance of ₹14,24,518/- out of expenditure incurred by way of interest.*

- 5.1 *The appellant submits that disallowance was made without providing reasonable opportunity of being heard, without appreciating the facts and the observations are contrary to the facts.*
- 5.2 *The appellant submits that each and every amount was utilized for the purpose of business and there was no fund which was not utilized wholly and exclusively for the purpose of the business.*
- 5.3 *The disallowance is contrary to the facts. It be so held and disallowance be deleted.*
- 5.4 *The appellant submits that in any event disallowance is excessively high. It is submitted that substantial portion of the disallowance be deleted.*
6. *The Commissioner of Income Tax erred in upholding disallowance of ₹29,42,856/- out of expenditure incurred by way of interest. The disallowance is contrary to the facts and the law. It be so held.*
- 6.1 *The disallowance was made without providing reasonable opportunity of bearing heard. The observation made by the Assessing Officer are contrary to the facts.*
- 6.2 *The appellant submits that interest is deductible as each and every amount was utilized for the purpose of the business and funds were utilized wholly and exclusively for the purpose of the business.*
- 6.3 *The appellant submits that in any event disallowance is excessively high. It is submitted that substantial portion of the disallowance be deleted.*
7. *The CIT(A) erred in not allowing deduction u/s 80IA as per provisions of law. Deduction 80IA be allowed as per the provisions of law.*
- 7.1 *The AO had provided no reasonable opportunity of being heard before making variations to the eligible profit entitled to deduction u/s 80IA. The*

variations are in violation of the principles of natural justice and therefore are void ab initio. It be so held.

- 7.2 *The CIT(A) erred upholding exclusion of ₹11,894/- while computing eligible profit entitled to deduction u/s 80IA. Interest was derived by the industrial undertaking and therefore ought not to have excluded ₹11,894/- . It be so said.*
- 7.3 *The exclusion of ₹11,894/- is excessively high under the facts. It be so said.*
- 7.4 *The CIT(A) erred in upholding allocation of interest of ₹59,53,664/- to the industrial undertaking and accordingly reducing the profit eligible for deduction u/s 80IA.*
- 7.4(a) *The allocation was made by the Assessing Officer without affording any reasonable opportunity of being heard. The observations made by the Assessing Officer are contrary to facts and erroneous in the eyes of law.*
- 7.4(b) *The appellant has maintained separate books of account in respect of each unit. Interest expenditure incurred by Unit No. III was accounted for in computing the eligible profit of Unit III. The allocation of ₹59,53,664/- is contrary to the facts and be quashed.*
- 7.4(c) *The appellant submits that allocation of ₹59,53,664/- is excessively. The allocation made in mechanical manner be substantially reduced. The appellant submits that appropriate relief be allowed as per the provisions of law.*
- 7.5 *The CIT(A) ought to have held that ₹84,66,995/- being balance in excise duly receivable amount was erroneously excluded while computing eligible profit entitled to deduction u/s 80IA. The exclusion being contrary to the facts and erroneous in the eyes of law be quashed.*

- 7.5(a) *The appellant submits that the commissioner of Income Tax (appeals) ought to have allowed the consequential benefits including deduction as expenditure in respect of payment etc. and all the consequential re-computations. It be so held.*
- 7.6 *The CIT(A) erred in upholding exclusion relied u/s 80IA. Various income were derived from the industrial undertakings/manufacturing activities and qualified for deductions 80IA. It be so held.*
- 7.6(a) *It is submitted that in any event the exclusion of gross receipts is erroneous. The Assessing Officer ought to have deducted the expenses incurred for the purpose of earning the income and only the balance of the amount ought to have been excluded. It be so held.*
- 7.7 *The CIT(A) ought to have directed the AO to adopt the profits and gains of the units as assessed by him and making all the recomputations. The AO ought to have adopted the profit and gains of the units as assessed by him i.e. after considering disallowance made by him. It be so held.*
8. *The CIT(A) erred in not allowing deduction u/s 80HHC as per law and the facts. The appellant submits that the Commissioner of Income Tax (Appeals) ought to have allowed deduction u/s 80HHC as per law.*
- 8.1 *The appellant submits that various variations have been made by the Assessing Officer in computing deduction u/s 80HHC without affording any reasonable opportunity of being heard.*
- 8.1(a) *Reference made by the AO to various decisions of the Supreme Court stated at page No. 25 of the assessment order are grossly misleading as the decisions were in the field of section 80IA and interpreted in the word "derived from".*

- 8.2 *The AO erred in holding that the appellant was not entitled to deduction u/s 80HHC. The appellant submits that the AO ought to have ignored the deficit and ought to have adopted ₹Nil and he ought to have allowed deduction on the basis of proviso to section 80HHC(3). It be so held.*
- 8.3 *The CIT(A) ought to have held that income in respect of DEPB fell within the purview of section 28(iv). The appellant submits that income in respect of DEPB fell within the purview of provisions of section 28(iv). It is submitted that it be so held now.*
- 8.4 *The CIT(A) ought to have allowed all the consequential benefits i.e. exclusion of realization in respect of DEPB from computation of the total income as not being income. The recomputation of income under the head profit and gains of business and all other adjustments admissible under the provisions of law. It be so held.*
- 8.5 *The CIT(A) ought to have excluded ₹801 lacs while computing the profit and gains of business as there was no accrual of the said amount.*
- 8.6 *The CIT(A) ought to have held that realization of DEPB were not the part of total turnover. The realizations part of the total turnover. It be so held.*
9. *The CIT(A) erred in not admitting the additional ground of appeal. The additional ground of appeal dealt with a question of law and was based on decision of the appellant Tribunal (Special Bench) Mumbai and therefore ought to have been admitted by the CIT(A).*
- 9.1 *The appellant submits that subsidy being receipt of capital nature be excluded from computation of the total income. It is submitted that it be held and subsidy be directed to be excluded from computation of the total income.*

10. *The CIT(A) erred in not quashing the demand. The Assessing Officer ought to have forwarded a copy of ITNS 150 as claimed by him on page NO. 35 of the order.*
11. *The CIT(A) ought to have cancelled interest. It is submitted that charging of interest is void ab initio. Interest charged be deleted.*

6.1 The grounds raised by the Revenue in its appeal are reproduced as under:

1. *The Ld. CIT(A) has erred in law and on facts of the case in deleting the addition made on account of disallowance of lease rent without appreciating the fact that the transaction of purchase of D.G. set between Metrochem Capital Trust Ltd. and Sudhir Engineering Company is not genuine and the assessee company is the owner of the D. G. set.*
2. *2. The Ld. CIT(A) has erred in law and on facts of the case in deleting addition of Rs.4614149/- being interest claimed for funds borrowed for capital expenditure for the purpose of entirely new projects/new business.*
3. *3. The Ld. CIT(A) has erred in law and on facts of the case in deleting addition of Rs.2686564/- made by way of disallowance of interest u/s 14A without appreciating the fact that the assessee was not able to prove that only interest free funds were used for making investments and its funds are not mixed one.*
4. *4. The Ld. CIT(A) has erred in law and on facts of the case in deleting addition of Rs.29000/- made by way of disallowance of proportionate interest expenses for making advances for non-business purposes to Fairdeal Management Pvt. Ltd.*
5. *5. The Ld. CIT(A) has erred in law and on facts of the case in directing not to exclude the following income from profit of the business for the purpose of deduction U/s 801A.*
 - a *Expenditure related to Effluent Treatment Plant Rs.39.97 lacs.*
 - b *Profit on LMT Rs.27 lacs.*

C Profit from trading Rs.2.23 lacs.

6. *6. The Ld. CIT(A) has erred in law and on facts of the case in holding that DEPB is eligible export incentive for the purpose of deduction U/s 80HHC.*
7. *7. The Ld. CIT(A) has erred in law and on facts of the case in directing the A.O. to apply the proviso to Section 80HHC(3) of the Act despite the fact that the profit derived from manufacturing export and trading export as computed U/s 80HHC(3)(c) of the I. T. Act comes to negative. The decision of the Id. CIT(A) in this regard is not in accordance with the decision of Hon'ble Supreme Court in the case of IPCA Laboratories Ltd.*
8. *8. On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the A.O.*

7. Briefly stated facts of the case are that the assessee during relevant year was engaged in the manufacturing of speciality chemical, trading in chemical dyes and intermediaries and their export. The assessee filed return of income for the year under consideration on 31/10/2001 declaring total income at nil after claiming deduction under section 80HHC and 80I etc. under chapter VIA of the Income-tax Act, 1961 (in short the Act). In the scrutiny assessment completed under section 143(3) of the Act, the Assessing Officer made certain additions/disallowance to the returned income. On further appeal, the Ld. CIT(A) allowed part relief to the assessee. Aggrieved, both the assessee and Revenue are before the Tribunal by way of raising grounds as reproduced above.

8. Before us the learned Counsel of the assessee filed a paperbook in two volumes containing pages 1 to 248 and 1 to 81 respectively. He also filed a copy of decisions of Tribunal for earlier assessment years in the case of the assessee.

8.1 The ground No. one of the appeal being general in nature, we are not required to adjudicate upon specifically. Hence dismissed as infructuous.

9. The ground No. 2 relates to disallowance of ₹1,19,456/- out of the depreciation on the fixed assets. The learned Assessing Officer on page 2 of the assessment order has noted that claim of depreciation on office building of Metro house in unit I and II of the assessee company in 'Rahul Dyechem industries Ltd' and 'Metro Dyechem India Ltd' respectively, was disallowed in the earlier years and upheld by Ld. CIT(A), therefore following the same, he directed the assessee to identify the written down value of those properties and the amount of depreciation claimed. The assessee provided details, which is reproduced by the Assessing Officer on page 3 of the assessment order. The assessee identified the depreciation of ₹1,19,456/- claimed in the year under consideration. Accordingly, the Assessing officer disallowed the said claim of the depreciation of the assessee following finding of his predecessor. The Ld. CIT(A) also following finding of his predecessor, confirmed the disallowance.

10. Before us, the learned Counsel of the assessee submitted that issue in dispute in assessment year 1999-2000 and 2000-2001, has been decided in favour of the assessee by the Tribunal in ITA No. 1692 & 1693/Ahd/2004 respectively.

11. The Ld. DR on the other hand submitted that Tribunal in assessment year 1999-2000 and 2000-01, has followed finding of the Tribunal in assessment year 1998-99 in ITA No. 1463/Ahd/2002 dated 02/04/2007. In said decision the Tribunal has followed the finding in ITA No.1481 & 1482/Ahd/2001 for assessment year 1996-97 and 97-98 and relevant para 3 of the order has been reproduced by Tribunal. The learned DR pointed out the issue-in-dispute before the Tribunal in assessment year 96-97 and 97-98 was disallowance of depreciation in respect of the machinery as to whether the depression was to be allowed at the rate of hundred percent or 50% for being used less than 180 days. Therefore, he submitted that in assessment year 1999-2000 and 2000-2001 the issue has been allowed wrongly by the Tribunal, without any finding on the merit of the issue. He accordingly submitted that issue in dispute may be decided on merit.

12. We have heard rival submission of the parties and perused the material on record. The issue in dispute before us whether the office buildings in units

of other companies namely Rahul Dyechem industries Ltd and Metro Dyechem India Ltd are eligible for depreciation. The lower authorities have relied on their predecessors, whereas the learned Counsel of the assessee has relied on the order of the Tribunal for assessment year 1990-00 and 2000-01 in ITA No. 1692 & 1693/Ahd/2004. The relevant finding of the Tribunal is reproduced as under:

"4. We have heard the parties. It is submitted by the ld. AR that issue has been decided in favour of assessee in Asst. Year 1998-1999 by the Tribunal vide its order in ITA No.1463/Ahd/2002 dated 2.4.2007 as per para 13 thereof as under :-

"13. The ground No.1 relates to the deletion of the disallowance of depreciation amounting to Rs.1,63,864/-. The AO has disallowed the depreciation. The ld. CIT(A) has allowed the depreciation following the order for the Asst. Year 1997-98. Having heard both the parties, we find that the issue in controversy is decided by the Tribunal in favour of the assessee in ITA Nos.1481 & 1482/Ahd/2001 wherein the Tribunal has allowed the claim by observing as under :-

'We have heard the parties and considered the rival submissions. Facts and circumstances being similar, the Tribunal having accepted the claim of the assessee in the base year, where the depreciation was claimed for the first time, we uphold the order of the CIT(A) in allowing the claim of the assessee, in this year as well.' Respectfully following the aforesaid order of the Tribunal, we dismiss this ground of appeal of the revenue."

Respectfully following the above order, we allow the claim of the assessee. This ground of assessee is allowed."

12.1 The Tribunal in above decision has reproduced para No. 3 (three) of the decision of the Tribunal in in ITA No. 1481 and 1482/Ahd/2001 for assessment year 1996-97 and 97-98. The relevant paras of the order of the Tribunal (supra) relating to the controversy are reproduced for ready reference:

"2. The first dispute in Revenue's appeal for Asst. Year 1996-97 is against the disallowance of depreciation of Rs.30,25,000. The depreciation was claimed in respect of machinery, which were purchased and installed during the accounting period relevant to Asst. Year 1995-96. Depreciation worked out to Rs.60,50,000, which was claimed to be entitled to 100% and since 50% was claimed in Asst. Year 1995-96 because the user of less than 180 days and the balance Rs.30,25,000 claimed in the year under consideration. In the earlier year also, the claim was rejected by the Assessing Officer and the matter reached the Tribunal and the Tribunal vide order in ITA No.1673/Ah/2000 & Cross Objection No.14/Ahd/2003, upheld the allowance of the claim by observing that the finding of the CIT(A) being on appreciation of facts and the Revenue having not disputed the same, the observations of the Revenue Authorities loses their sanctity and, therefore, in absence of any fact to the contrary, the order of the CIT(A) allowing the claim was upheld. Paragraph 5 of the order of the CIT(A) extracted in the Appellate order for Asst. Year 1995-96 was in paragraph 6, which reads as under:-

"5 I have considered the rival submission and perused the various details, statements, agreements, invoice, insurance claim and also the copies of litigation between the appellant company and m/s. Premier Vinyl Flooring Ltd. Barring the litigation correspondence which the appellant has filed only to emphasis its contention that the lease transaction in question is a genuine transaction and not a sham transaction as held by the Assessing Officer, all other details had been filed before the Assessing Officer during the assessment proceedings. Further with a view to verify the appellant's contention that it was never confronted with the

information gathered by the Assessing Officer from ADIT (Invn.) Unit-III, New Delhi, the assessment records were called for. On perusal of the assessment records and the order sheet notings, appellant's contention is found to be correct. In the instant case in respect of both the companies in question i.e. Ms. Premier Vinyl- Flooring Ltd. & M/s. Haryana Petrochemicals Ltd, the appellant had placed on record various evidences such as insurance claim, transporters invoice, suppliers invoice etc. during the course of assessment proceedings. As far as M/s.Premier Vinyl Flooring Ltd, is concerned while rejecting appellant's claim for depreciation the Assessing Officer has only relied on the independent inquiry conducted by him without confronting the appellant with the same. As far as Ms Haryana Petrochemical is concerned, the Assessing Officer has rejected appellant's claim merely on the basis of his own conclusions such as jets and spindles are used in lot and not individually and therefore depreciation claimed on individual item cannot be entertained and since the jets and spindles were supplied on 30.3.95 the same could not have been installed before 31.3.95. The Assessing Officer has not brought any cogent evidence to rebut appellant's contention and also the supporting evidence placed on record by the appellant. It is also seen that the lease rentals received by the appellant from both these companies have been duly taxed in the hands of the appellant company by the Assessing Officer. Therefore, considering the totality of facts and supporting evidence relied upon by the appellant in support of its contention the Assessing Officer is directed to allow appellant's claim.

2.1 Following this order, the CIT(A) allowed the claim of the assessee in this year, as well.

3. We have heard the parties and considered the rival submissions. Facts and circumstances being similar, the Tribunal having accepted the claim of the assessee in the base year, Where the depreciation was chimed for we uphold the order of the CIT(A) in allowing the claim of the assessee, in this year as well."

12.2 Thus, it is evident that before the Tribunal in assessment year 96-97 and 97-98 issue of disallowance of depreciation on plant and machinery was involved, which is different from current issue in dispute of depreciation on office building and therefore decision of the Tribunal in assessment year 1990-2000 and 2000-01, not related to issue in dispute before us, we are not required to follow the same. The parties were accordingly directed to argue the issue on merit. But neither the assessee nor the department was in position to provide the exact reason as why the assessing officer in earlier years has disallowed the depreciation on buildings under reference. In absence of detailed facts in respect of issue in dispute and reasons on which the disallowance has been made by the assessing officer, we are not in position to adjudicate the issue on merit. When the assessee has raised this ground, the onus was on the assessee to provide details of the disallowance and in failure to do so, we are unable to adjudicate the issue on merit. In the circumstances, there is no alternative except dismissing the ground of the assessee. Accordingly, the ground No. 2 raised by the assessee is dismissed.

13. The ground Nos. 3 to 3.3 of the appeal relate to disallowance of ₹18,92,424/- by way of compensation under Voluntary Retirement Scheme.

14. Before us the Ld. Counsel of the assessee did not press the grounds and accordingly, same are dismissed as infructuous.

15. The Ground Nos. 4 (four) and 4.1 of the appeal, relate to write off of ₹37,83,062/- disallowed by the Assessing officer. Before the Assessing Officer, the assessee claimed that the amount of write off was in respect of loans and advances given to various parties during the course of the business operations. The assessee referred to one such advance to M/s Monari industries Ltd, which went into liquidation and therefore assessee lost both the principal amount and the interest credited from the same as income in books of accounts. The contention of the assessee was that both principal and interest should be allowed for write off in terms of section 36(1)(vii) read with section 36(2) of the Act or section 28 of the Act. The assessing officer held that assessee company was not registered with the Reserve Bank of India as Non-Banking Financial Company (NBFC) and hence the claim cannot be considered under section 36(1) or section 28 of the Act. The assessing officer also observed that the amount written off was never credited in the profit and loss account of earlier years or current year and therefore condition laid down in section 36(1)(vi) read with section 36(2) are also not satisfied. Before the Ld. CIT(A), the assessee contended that carrying out financial transactions and deriving

income therefrom being one of the object of the company, therefore amount should be allowed as trading loss. The Ld. CIT(A) however rejected the contention of the assessee observing as under:

“5.1 I have perused the copy of account of M/s. Montari Industries Ltd. submitted at page 100 of the paper book and find that the amount was given as inter corporate deposits on 20.09.1993. The contention of the appellant's representative Shri Son that the condition laid down u/s. 36(1) and 36(2) are satisfied is not actually correct. It is admitted that the amount sought to be written off have not been credited in the profit and loss account in any of the earlier assessment years. This is contrary to the submissions made in the written submissions. Thus, the condition laid down u/s. 36(1) /36(2) are not satisfied and the appellant's claim can be considered only u/S. 37(1) r.w.s. 28 of the Income Tax Act The object clause referred by the appellant company is of general nature and the main activity of the appellant company is not that of finance but that of manufacturing of chemicals as observed by the A.O. The income arising from the same therefore cannot be considered as business income of the appellant company and in absence of any evidence submitted either before the AO or before the undersigned that the said loss has crystallised accrued during the course of commercial business activity of the appellant company, the inference drawn and the findings given by the AO in the order are therefore justified and the claim cannot allowed which is in the nature of capital loss”.

16. Before us the learned Counsel of the assessee submitted that benefit of write off to the extent of interest income in respect of the loans credited in earlier years or in current years should be allowed and accordingly submitted that issue in dispute may be sent back to the file of the Ld. CIT(A) or Ld. AO.

The learned DR on the other hand submitted that the assessee has not filed specific details of claim of write off of interest before the lower authorities and therefore such claims should not be allowed by the Tribunal.

17. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessing officer has denied claim of write off in respect of loans and advances, however the claim of the assessee before us is that claim of write off to the extent of interest credited in books of accounts in respect of those loans and advances, should be allowed as same satisfies the condition of section 36(1)(vi) read with section 36(2) of the Act. We are of the opinion that before the assessing officer also the assessee submitted that amount of the write off include the interest credited in the books of accounts in respect of the loans and advances. As per the provisions of the Act if any income has been credited in the books of accounts and same has not been recovered, the assessee is entitled to claim of write off of the same if same has been written off in books of account as bad debts. As the claim of the assessee has not been examined properly by the lower authorities, in the interest of substantial justice, we set aside the finding of the Ld. CIT(A) on the issue in dispute and feel it appropriate to restore this issue to the file of the assessing officer for deciding in accordance with law after verification. The

ground Nos. 4 and 4.1 of the appeal of the assessee are accordingly allowed for statistical purposes.

18. The ground Nos. 5 to 5.4 of the appeal, relate to the issue of disallowance of ₹14,24,518/-out of the interest expenses for not charging interest on loans advanced by the assessee. The Assessing Officer noted that assessee advanced loans amounting to ₹1,20,73,172/-but no interest was charged except interest at the rate of 18% per annum charged on advance of ₹22,48,909/- to M/s Navrathna organization developers Private Limited. The Assessing Officer has reproduced a list of such seven parties, from whom no interest was charged by the assessee. According to him, the assessee being not registered as NBFC with RBI, the advances were not business advances and therefore, he made proportionate disallowance out of the interest claimed as expenditure on the ground that funds were diverted for nonbusiness purposes by way of advancing interest-free loans. The Assessing Officer disallowed interest at the rate of 14.5% per annum treating the interest cost of funds borrowed. The Ld. CIT(A) also upheld the disallowance.

19. Before us, the Ld. Counsel of the assessee submitted that assessee was having sufficient share capital and reserve and surplus to meet the advances out of own funds, and in the absence of clear nexus that loans for advances were

out of borrowed funds, it is presumed that advances were made out of own funds of the assessee. In support, the learned Counsel relied on the order of the Hon'ble Bombay High Court in the case of **Reliance utilities Ltd 313 ITR 340 (Bom)**.

20. The Ld. DR on the other hand submitted that it is not open to draw the presumption unless the assessee provide complete details as to when those loans were advanced and whether immediate source of advances was own fund or borrowed fund. The assessee has not provided required evidences to the assessing officer for examining immediate source of the advances for establishing nexus of the advances with borrowed funds. According to him, therefore the decision relied upon cannot be applied over the facts of the instant case. He submitted that matter may be restored back to the file of the assessing officer for examining immediate source of advances. The learned Counsel of the assessee did not object to this proposal of Ld. DR.

21. We have heard rival submission of the parties on the issue in dispute. The learned Counsel fairly admitted that these advances are not trade advances. But, he submitted that immediate source of these advances are not borrowings and therefore in absence of immediate nexus, may be presumed to have advanced out of own share capital and reserve and surplus available of ₹81

Crores. We find that the immediate source of these advances in question was not provided by the assessee and therefore same could not be verified at the end of the Assessing Officer. Thus, in the interest of substantial justice, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the Ld. Assessing Officer for examining the immediate source for advancing interest-free loans to 7 parties listed on page 10 of assessment order. The assessee is directed to produce all necessary evidence in support of the claim that there is no direct nexus between the money borrowed and advances in question made. The ground No. 5 to 5.4 of the appeal are accordingly allowed for statistical purposes.

22. The ground Nos. 6 to 6.3 of the appeal, relate to disallowance of ₹29,42,856/- out of interest expenditure. The Assessing Officer noted that assessee made investment in 'Shikalesh residential project' amounting to ₹2,02,95,564/-. According to him, this investment was not part of a regular business activity of the assessee. Therefore, he capitalized proportionate interest corresponding to investment at the rate of 14.5% amounting to ₹29,42,856/- and disallowed out of the interest claimed. The Ld. CIT(A) also held that this investment was neither connected with existing business nor extension of the existing business i.e. manufacturing and sale of the chemicals,

therefore, he upheld the action of the assessing officer in treating the same as capital expenditure.

23. Before us, the Ld. Counsel of the assessee repeated the arguments of availability of own share capital and free reserves of more than ₹80 crores against the investment of around 2 crore in building, and submitted that no disallowance should be made in the case of the assessee. The Ld. DR on the other hand submitted that the investment in building being not for the purpose of the business, the corresponding interest cost of the investment, is not allowable to the assessee.

24. We have heard rival submission of the parties on the issue in dispute and perused relevant material on record. We find that this issue in dispute being identical to ground No. 5 to 5.4, wherein also the Ld. counsel submitted availability of own funds of approximately ₹81 crores, but the immediate source of advances was not verified and therefore issue has been restored back to the file of the Assessing Officer. Following our same finding, the issue in dispute raised in this ground is also restored back to the file of the Ld. Assessing Officer for verification as directed while adjudicating the ground Nos. 5 to 5.4 of this appeal. The ground no. 6 to 6.3 of the appeal are accordingly allowed for statistical purposes.

25. The ground Nos. 7 to 7.1 of the appeal were not pressed by the learned Counsel of the assessee being ground of general nature. Accordingly, the grounds are dismissed as infructuous.

26. The ground No. 7.2 to 7.3 relate to exclusion of interest amounting to ₹11,894/-from eligible profit entitled to deduction under section 80IA of the Act.

27. The Ld. Counsel of the assessee fairly submitted that this issue in dispute is covered against the assessee by the order of the Tribunal for assessment year 1999-2000.

28. We find that Tribunal in ITA No. 1692/Ahd/2004 for assessment year 1999-2000, has rejected the claim of the assessee for allowing deduction under section 80IA on the interest income earned being not earned from business undertaking. The relevant finding of the Tribunal (supra) is reproduced as under:

“13. The next issue is regarding exclusion of gross interest income. The ld. AR has relied on the decision of Hon. Delhi High Court in CIT vs. Shriram Honda Power Equipment & Ors. 289 ITR 475 (Del) for the proposition that netting of expenditure against receipt of interest income should be allowed. However, this decision could be applicable only when it is held that interest income is derived from business of industrial undertaking. Since there is no such finding by the

authorities below and also no facts have been put up before us, we decline to take a different view than what the authorities below have taken. It is for the assessee to submit his claim with proper evidence which has not been done. Accordingly, this ground of the assessee is rejected.”

28.1 The assessee credited this income as other income and failed to substantiate before the lower authorities as well as before us that said interest income is derived from business undertaking. Therefore, following the finding of the Tribunal (supra), the ground No. 7.2 and 7.3 of the appeal are dismissed.

The ground Nos. 7.4 (a) to 7.4(c) relate to allocating head “office interest expenditure” in proportion of turnover of the various units and consequently allocating additional interest of ₹59,53,664/- to the unit eligible for deduction under section 80IA of the Act.

28.2 The Assessing Officer observed interest debited to head office expenditure of ₹7,85,43,698/- and show caused to the assessee as why the same should not be allocated to the respective units in proportion of their turnover. The assessee however submitted that separate books were maintained for each unit and no notional interest should be allocated to the eligible unit. The Assessing Officer on verification of the trial balance of the Unit-III (i.e. eligible unit) concluded that there was no basis of allocation and utilization of the funds among various units, and therefore he allocated interest of ₹83,02,068/- out of

head office interest expenditure to the unit III and after subtracting interest of ₹23,48,404/- already charged to the unit III, made addition for the remaining amount of ₹59,53,664/-. The Ld. CIT(A) justified the allocation of the interest observing as under :

“In the common expenses percentage of turnover is taken @ 10.57% against Unit No. III and if the same is applied on total interest outgo of ₹7,95,43,698/- , the interest allocation is worked out at ₹83,02,068/- and accordingly the same is treated as expenditure of Unit III. However, the assessee has already debited a sum of ₹23,48,404/-. Towards interest charges by way of bill discounting and accordingly further addition made on this account is only to the tune of ₹59,53,664/-.”

29. Before us, the Ld. Counsel of the assessee submitted that interest corresponding to the fund utilized by each unit was already debited in their respective accounts and therefore Assessing Officer is not justified in further allocating the interest expenditure relating to head office to the eligible unit.

30. The Ld. DR on the other hand relied on the order of the lower authorities.

31. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. According to the assessing officer head office interest expenditure need to be allocated to all the units in proportion of their turnover, whereas according to the assessee interest expenditure of respective units has already been debited in their accounts. We are of the

opinion that the assessee is required to justify the purpose for which expenditure of interest has been incurred by the head office. The assessee must justify the utilization of money borrowed by the head office, for which it has incurred interest expenditure of ₹7,85,43,698/-. In absence of any such evidence submitted by the assessee, the learned Assessing Officer is justified in allocating the head office interest expenditure towards various units. But in our opinion, the turnover is not appropriate key for allocation of the interest expenditure among various units. The liability of the interest arises in respect of the funds borrowed and therefore interest should be allocated in proportion of the capital employed or the fund utilized by the various units. Therefore, we set aside the order of the lower authorities on the issue in dispute and restore the matter back to the file of the learned Assessing Officer for verification of head office interest cost and thereafter allocation of said interest expenditure corresponding to the head office amongst various unit on the basis of utilization of funds or average capital employed in respective units. The ground Nos. 7.4(a) to 7.4(c) of the appeal are accordingly allowed partly for statistical purposes.

32. The ground No. 7.5 to 7.5(a) of the appeal, relate to exclusion of ₹84,66,995/- being balance in excise duty receivable from the eligible profit entitled to deduction under section 80 IA.

33. The Assessing Officer held that Central Excise refund of ₹84,66,995/-is not derived from the industrial activity and therefore assessee was not entitled for deduction under section 80IA of the Act in view of the decision of the Supreme Court in the case of Hindustan Lever Ltd versus Commissioner of Income-Tax (supra).

34. We find that the Ld. CIT(A) in Para 11.1(iii) of the impugned order directed the assessing officer to verify the claim of the assessee that said refund was never credited to the profit and loss account as the assessee was following exclusive method in respect of excise duty. The Ld. Counsel of the assessee before us submitted the Assessing Officer has not complied the said direction of the Ld. CIT(A). We are of the opinion that appropriate remedy should have been by way of application before the Assessing Officer for giving the effect of the order of the Ld. CIT(A), however in the interest of justice and to dispose off the ground, we feel it appropriate to direct the assessing officer to verify whether said effect is given or not and if not, then give effect to the finding of the Ld. CIT(A) on the issue in dispute. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

34.1 The ground Nos. 8 to 8.6 of the appeal of the assessee relate to deduction under section 80HHC of the Act on Duty Entitlement Pass Book (DEPB) benefit

received against export of goods. The ground No. six of the appeal of the Revenue also relate to the deduction on the DEPB amount. The ground No. seven of the appeal of the Revenue relates to considering negative profit of units for set off against the export incentive while computing deduction under section 80HHC of the Act.

34.2 In the computation of deduction for section 80HHC of the Act, the assessee treated the loss in trading export of ₹50,71,432/-; loss in manufacturing export of ₹3,20,91,065/- and loss in disclaimer certificates of ₹10,52,147/- as nil and claimed deduction on the export incentive of ₹5,61,62,446/-, eligibility of which for the year under consideration was restricted to the rate of the 80%, accordingly the assessee claimed deduction of ₹4,49,29,957/- under section 80HHC of the Act.

34.3 The Assessing Officer held that deduction under section 80HHC of the Act on DEPB as not entitled to the assessee due to following reasons:

- (i) the DEPB incentive received is on account of the scheme under Foreign Trade Development Act and not derived from the profit of the export. There is no first-degree nexus between the DEPB incentive received and the activity of export business.

- (ii) Both in the trading and manufacturing segment of the export there being loss, no deduction on sale of DEPB licenses (treating the same as export incentive) could be allowed as per the express provision of section 80HHC(3) of the Act.

34.4 The Ld. CIT(A) on the issue of consideration of loss from export units while computing the deduction under section 80HHC of the Act followed the finding of the Hon'ble Supreme Court in the case of IPCA laboratories 266 ITR 521 wherein it is held that negative income (loss) is to be considered as such while working out business profit as per explanation (baa) to section 80HHC of Act and accordingly directed the assessing officer to follow the ratio of the Hon'ble Supreme Court.

34.5 On the issue, whether the income from sale of DEPB licence is derived from the business of export, the Ld. CIT(A) followed the decision of Tribunal Ahmedabad bench in the case of Pratibha Syntex Ltd 63 TTJ 409 and directed to modify the claim of deduction as per the provisions to section 80HHC(3) of the Act.

35. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us the Ld. counsel of the assessee referred to section 28(iiid), wherein profit on transfer of DEPB scheme

formulated under Foreign Trade (Development and Regulation) act, 1992 has been prescribed as income chargeable to Act under the head “profit and gains of business or profession”.

36. The learned Counsel also referred to 2nd and 3rd proviso to section 80HHC(3), which has prescribed for considering profit under section 28(iiid) for profit eligible for deduction under section 80HHC of the Act . According to him, thus the controversy whether the profit on sale of DEPB licenses derived from the business of export or not is no longer survive. However, the learned Counsel submitted that the conditions imposed under third proviso for claiming deduction from sale of DEPB license by the assessee having turnover exceeding ₹10 crore, by way of taxation laws (Amendment)Act, 2005 with retrospective effect from 01/04/1998 has been read down by the Hon’ble Supreme Court in the case of CIT vs Avani Export (2015) 58 taxmann.com 100 (SC). The relevant finding of the Hon’ble Supreme Court is reproduced as under:

1. *Amendment to [Section 80HHC\(3\)](#) of the Income Tax Act, 1961 (in short ‘the Act’) was made by the Taxation Laws (Second Amendment) Act, 2005 with retrospective effect i.e. with effect from 1st April, 1992. By this amendment certain benefits were in fact extended to the exporters who are entitled to claim according to Sec.80HHC of the Act. However at the same time, the amendment also carved out two categories of exporters, namely, those whose export is less than Rs. 10 crores per year and those exporters whose exports turn over is more*

than Rs.10 crores per annum. Insofar as entitlement of these benefits to the exporter having turn over of more than Rs.10 crores p.a. is concerned, two conditions contained in third and fourth proviso to the said amendment were to be satisfied for claiming the benefits. Those were:

(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being Duty Remission Scheme.

2. *All the respondents in these SLPs, who are the exporters, belong to the second category. They filed the writ petitions challenging conditions mentioned in third and fourth proviso to Section 80 HHC(3). In fact it was their precise contention that these conditions are severable and therefore these two conditions should be declared ultra vires and severed. The rationale behind seeking such a prayer was obvious inasmuch as the writ petitioners did not want entire Notification to be declared ultra vires which was to their advantage. What they wanted was that the benefit of amended provision be accorded, without insisting on the aforesaid conditions.*

3. *The High Court vide impugned judgment has decided the issue in favour of the writ petitioners by concluding as under:*

"26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assesseees whose assessments were still pending although such benefit will be available to the assesseees whose assessments have already been concluded. In other words, in this type of

substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a few section of the assessees.

27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessees whose export turnover is above Rs.10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessees.”

4. Against the High Court judgment these SLPs are filed by the Union of India. Mr. Mukul Rohtagi, learned Attorney General for India submits that once the prayer made was to sever the aforesaid two conditions as onerous and ultra vires, the High Court should have couched the reliefs in terms of that prayer only, instead of stating that the operation of the Section would be given effect to prospectively only and these conditions would not operate retrospectively. At the same time, he accepts that the legal position would be that those exporters with turnover of rupees less than Rs. 10 crores and other like the respondents with turnover of more than Rs.10 crores would be at par and both would be entitled to the benefits.

5. We find that in essence the High Court has quashed the severable part of third and fourth proviso to Sec.80HHC (3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following direction:

“Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters having a turnover below and those above 10 cr. Should be treated similarly. This order is in substitution of the judgment in Appeal.

6. *With the aforesaid clarification all these SLPs including that of assesseees filed against the judgment of M.P.High Court are disposed of.*

36.1 In view of the above, we are of the opinion that profit from sale of DEPB license has to be considered for the purpose of deduction under section 80HHC of the Act without going into any controversy whether it was derived from the business of export or not. The ground No. 6 of the appeal of the Revenue is accordingly not sustainable and we dismiss the same.

36.2 As far as considering of negative profit from business of export is considered, the learned Counsel drawn our attention to Vth Proviso to section 80HHC(3), which reads as under:

“Provided also that in case the computation under clause (a) or clause (b) or clause (c) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent of-

(a) any sum referred to in clause (iiia) or clause (iiib) or clause (iiic), as the case may be, or

(b) any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be,

the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.]

36.3 This provision has been inserted by the Taxation Laws Act 2005, with effect from 01/04/1992, and therefore while computing profit eligible for deduction under section 80HHC, the loss from various units have to be set off

against 90% of profit under section 28(iiid) of the Act. we find that Ld. CIT(A) has already directed the assessing officer to follow the ratio of the Hon'ble Supreme Court in the case of IPCA laboratories (supra), wherein similar findings have been given by the Hon'ble Supreme Court. We accordingly, direct the assessing officer to ensure that deduction u/s section 80 HHC is allowed to the assessee keeping in view the Vth proviso to section 80HHC of the Act. The ground No.7 of the appeal of the Revenue is accordingly dismissed.

37. The learned Counsel further submitted that Assessing Officer in the assessment order without prejudice directed to consider DEPB as part of total turnover. In this regard, the learned Counsel submitted that explanation (ba) below the section 80HHC has prescribed the definition of the turnover, which reads as under :

"(ba) "total turnover" shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs stations' as defined in the Customs Act, 1962 (52 of 1962) :

Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also excluded any sum referred to in clauses (iiia), (iiib) [(iiic), (iiid) and (iiie)] of section 28]"

38. We find that the legislature has already excluded the sums referred in section 28(iiia) to section 28(iiid) of the Act for the purpose of turnover for computing deduction under section 80HHC of the Act. In the case the incentive

of DEPB, which falls under section 28(iiid) has been proposed by the assessing officer as part of the turnover, which being against the express provision of the law, we direct accordingly to not to consider said sum for the purpose of the turnover while computing deduction under section 80HHC of the Act.

39. The ground Nos. 8 to 8.5 of the assessee are accordingly allowed.

40. The ground No. 9 of the appeal relates to non-admission of additional ground for treating the subsidy of ₹49,10,305/- as capital in nature to be excluded from profit and loss account. The Ld. CIT(A) rejected this ground observing as under :

“Ground No. 14: This is an additional ground of appeal raised during the course of appellate proceedings as per letter dated 24.12.2004 and relates to excluding Rs. 49,10,305/- being subsidy of capital nature to be excluded from the profit and loss account/profit declared in the return of income. A copy of the said ground of appeal was forwarded to the A.O. i.e. ACIT, Circle-4, Ahmedabad as per letter dated 24.12.2004 on which his comments have been submitted as per letter dated 24.12.2004 received on 27.12.2004. The A0 has submitted that this issue was never claimed in the return and neither contested during the course of assessment proceedings and therefore the same not be entertained at this stape. Even otherwise on merits, it is submitted that the receipt of subsidy is revenue in character as held by Supreme Court in the case of Sahani Steel and Press Warks Lid. 228 TR 253. The rejoinder to the same was submitted by the appellant’s representative on 29.12.2004. Reliance is placed on the decision of Supreme

Court in the case of Jute Corporation of India Ltd. 187 TR 688 with reference to the objection of the AO and it is pleaded that the additional ground of appeal may be admitted. On careful consideration of the facts, i find that the contention of the AO that this ground has never raised at any stage before the AC or in the return filed is found to be correct. It do not find any change in law or any subsequent decision of jurisdictional High Court or the Apex Court not available to the assessee company at the time of filing of the return or during assessment proceedings. Having regard to the ratio of the Apex Court in 111 IT 1 in the case of CIT Vs. Gurjar Gravures (P) Lid., the additional ground is not maintainable. As stated earlier no monies in the nature of subsidy has been received during the year nor credited to the profit and loss account and neither taxed by the AO and the appellant would not have any prima facie case of exclusion from returned income on this account either. The additional ground is accordingly dismissed.”

41. Before us, the learned Counsel of the assessee relied on the decision of Hon’ble jurisdictional High Court in the case of **Siva equipment Private Limited reported in (2020) 119 taxmann.com 472(Bom)** to support that appellate authorities have jurisdiction to entertain additional ground raised by the assessee during appellate proceedings. He also relied on the decision of the Hon’ble Madras High Court in the case of **Abhinitha foundation Private Limited reported in (2017) 83 taxmann.com 100 (Madras)**.

42. The learned DR on the other hand relied on the order of the Ld. CIT(A) and submitted that no fresh claim can be entertained.

43 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that Ld. CIT(A) has rejected the additional ground of the assessee in view of the decision of Hon'ble Supreme Court in the case of **CIT Vs Gurjar Gravures P Ltd (supra)**. The Hon'ble Bombay High Court in the case of Shiva equipment Private Limited (supra) considered the decision of the Hon'ble Supreme Court in the case of Gurjar Gravures (supra) and did not follow the said decision of division bench in view of three-judge bench decision of the Hon'ble Supreme Court in the case of Kanpur Coal syndicate (supra), wherein it is held that power of the appellate authorities is coterminous with the power of the assessing authorities. The relevant finding of the Hon'ble High Court is reproduced as under:

"16. The question which therefore arises in this matter is whether the CIT (Appeals) had the jurisdiction to entertain this additional grounds in the appeal instituted by the appellant questioning the Assessing Officer's order dated 12/12/2011 made under section 143 (3) of the said Act, even though such grounds neither flow from any change of circumstances or the law nor is it that such grounds were unavailable to the appellant/assessee at the stage of filing the return or during the progress of the assessment proceedings before the Assessing Officer.

17. The CIT (Appeals) has held that it had such jurisdiction. In exercise of such jurisdiction, the CIT (Appeals) not only permitted the appellants to raise these additional grounds but also allowed the appeal by accepting such additional grounds.

18. The ITAT by the impugned judgment and order dated 11/4/2014, by relying mainly on *Gurjargravures (supra)* and *Goetze (supra)* has held that the CIT (Appeals) exceeded its jurisdiction in entertaining the two additional grounds, which had never been raised by the appellant before the Assessing Officer in the course of the assessment proceedings.

19. According to us, the view taken by the ITAT is not consistent with the view taken by the Division Bench of this Court in the case of *Pruthvi Brokers (supra)*, which has considered the decisions in *Gurjargravures (supra)* as well as *Goetze (supra)* and further read and interpreted the same in a particular manner.

20. *Gurjargravures (supra)*, is a decision of a two Judge bench of the Hon'ble Apex Court. This was considered by a three Judge Bench of the Hon'ble Apex Court in the case of *Jute Corporation of India Ltd. (supra)*, wherein the three Judge Bench, observed that apparently the view taken by the two Judge bench in *Gurujargravures (supra)* appears to be in conflict with the view taken by the three Judge Bench in *Kanpur Coal Syndicate (supra)* which is again a decision of the three Judge Bench of the Honble Apex Court. Accordingly, it was held that the view of the Larger bench in *Kanpur Coal Syndicate (supra)* prevails, in which, it has been categorically held that the power of the appellate authorities is co-terminus with the power of the assessing authorities.

21. Apart from the aforesaid, the Division Bench of this Court in *Pruthvi Brokers (supra)* by reference to the portion in *Gurujargravures (supra)* upon which specific reliance was placed by Ms. Linhares, has held that such portion which was also relied upon by ITT, does not curtail the ambit of the jurisdiction of the appellate authorities. Such portion does not restrict the new/additional rounds that may be taken by the assessee before the appellate authorities, to those that were not available when the return was filed or even when the assessment order was made. The appellate authorities, have jurisdiction to deal with the additional grounds including those which were available when the original

return was filed. in taking this view, the Division Bench also adverted to and relied upon the decision of Ahmedabad Electricity Co. Ltd. V. CIT (1923] 66 Taxman 27/199 TR 351 (Bom.), in which the Full Bench of this Court has held that the appellate authorities have very wide powers while considering an appeal which may be filed by the assessee. The appellate authorities may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of the assessee in accordance with law

22. In Pruthvi Brokers (supra), the division Bench, after considering several decisions has held that it is clear that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise is entirely different from the existence of jurisdiction.

23 The decision in Goetze (supra) upon which reliance is placed by the ITAT also makes it clear that the issue involved in the said case was limited to the power of the assessing authority and does not impeach the powers of the ITAT under section 254 of the said Act. This means that in Goetze, the Hon'ble Apex Court was not dealing with the extent of the powers of the appellate authorities but the observations were in relation to the powers of the assessing authority. This IS the distinction drawn by the division Bench in Pruthvi Brokers (supra) as well and this is the distinction which the ITAT failed to note in the impugned order.

24. Taking into consideration the aforesaid rulings, we are satisfied that the substantial questions of law as framed are required to be answered in favour of

the appellant/assessee and against the respondent/revenue to the extent of holding that the el Appeals), in the facts and circumstances of the present case, did have the jurisdiction to entertain the two additional grounds mised by the appellants in the context of payment of the amount of Rs. 52,14,543/- as short terms capital gain and the addition of amount of Rs. 5,90,093/- business income in the return filed by the appellant. However, in the present case the ITAT after holding that the CIT (Appeals) lacked the jurisdiction to entertain the two additional grounds has proceeded to observe that even on merits, the C11 (Appeals) was wrong In exercising discretion in favour of the appellants accepting the case of the appellants on merits.”

43.1 Similarly, Hon’ble Madras High Court in the case of Abhinitha foundation Private Limited (supra) also considered the decision of the Hon’ble Bombay High Court in the case of CIT Vs Pruthvi Brokers and shareholders Private Limited (supra) and held that appellate authorities have power to consider the claim, if relevant material is available on record. The relevant finding of the Hon’ble High Court is reproduced as under :

“12.5. A reading of the aforesaid observations would clearly establish that the arguments advanced by Mr. Ravi that the assessee company could only raise an additional ground and not make a new claim or additional claim is not sustainable. As indicated by us hereinabove, this power of entertaining the claim vests with the appellate authorities based on the facts and circumstances of the case. The power of the appellate authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing Officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in

law. Any other view, in our opinion, will set at naught the plenary powers of appellate authorities.”

43.2 After considering various decisions on the issue, the Hon’ble Madras High Court (supra) finally held as under :

“18.In sum, what emerges from a perusal of the ratio of the judgments cited above, in particular, the judgments rendered by the Supreme Court in GOETZE's case and National Thermal Power Co. Ltd.'s case, and those, rendered by the Division Bench of this Court in Ramco Cements Ltd. and CIT vs Malind Laboratories P. Ltd., as also the judgments of the Delhi High Court in Sam Global Securities Ltd.'s case and Jai Parabolic Springs Ltd.'s case, that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record, either by the appellate authorities, (which includes both the CIT (A) and the Tribunal) by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal, on perusal of the record, found that the relevant material qua the claim made by the assessee company under Section 80 IB (10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its reexamination by the Assessing Officer.”

44. We find that relevant material on the issue of the subsidy is available on record and no fresh investigation of the facts is required and therefore respectfully following the finding of the Hon’ble High Courts, we direct the Ld. Assessing Officer to admit the claim of the assessee in additional ground and

examine the same in accordance with law. The ground raised by the assessee is accordingly allowed.

45. The ground No. 10 was not pressed and ground No. 11 of the appeal being consequential, these grounds are dismissed as infructuous.

46. The ground No.1(one) of the appeal of the Revenue relates to disallowance of lease rent in relation to DG set.

47. The Assessing Officer following finding of his predecessor held that the transaction of purchase of DG set from M/s Sudhir Engineering Co by M/s Metrochem capital trust Ltd (a sister concern of the assessee), is a sham transaction and therefore Ld. Assessing Officer disallowed difference of lease rent paid by the assessee to M/s Metrochem capital trust Ltd amounting to ₹4,39,524 and the depreciation of ₹3,87,598/-, i.e. net disallowance of ₹51,926. The Ld. CIT(A) following the finding of his predecessor deleted the addition.

48. Before us, the learned DR relied on the order of the Assessing Officer, whereas the learned Counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the order of the tribunal in ITA No. 1692 and 1693/Ahd/2004 for assessment year 19 99-00 and assessment year 2000-01.

49. We have heard rival submission of the parties and perused relevant material on record including the order of the lower authorities and decision of the Tribunal relied upon by the assessee. The relevant finding of the Tribunal (supra) is reproduced as under:

"7. Ground No.3 relates to lease rent expenses of Rs.9,90,259/-. This issue is also covered in favour of assessee by the decision of the Tribunal vide its order for Asst. Year 1998-99 in ITA No.1463/Ahd/2003 in assessee's own case. The Tribunal vide para 15 had observed as under :-

"15. The third issue relates to the deletion of the disallowance of lease rent amounting to Rs.14,08,011/-. We have heard the rival contentions of both the parties. We find that the issue in controversy is already dealt with in ITA No.1208/Ahd/2001 & 1484/Ahd/2001 wherein we uphold the order of the CIT(A). The ld. CIT(A) has followed the order for the Asst. Year 1998-99. We confirm the order of the ld. CIT(A)."

It is noticed that appellant company has taken on lease a D.G. generating set from sister concern namely M/s Metrochem Capital Trust Ltd. for which lease rent of Rs.9,09,259/- was paid. AO has held that this purchase by M/s Metrochem Capital Trust Ltd. was a sham transaction and consequently lease rent paid by the assessee company to Metrochem Capital Trust Ltd. was not a genuine expenditure. As none appeared before the ld. CIT(A), he confirmed the addition."

49.1 As the Tribunal (supra), has deleted the addition following earlier orders of the Tribunal, respectfully following the same, we uphold the order of the Ld.

CIT(A) on the issue in dispute. The ground of the appeal of the Revenue is accordingly dismissed.

50. The ground No. 2 (two) of the appeal relates to addition of ₹46,14,149/- for interest on capital expenditure in relation to new project/business.

51. The assessing officer noted total work in progress of the assessee as on 31/03/2001 at ₹17,41,51,271/-, break up of which, is reproduced by the Assessing Officer on page 11 of the assessment order. The Assessing Officer further noted that assessee company has not capitalized any interest debited in the profit and loss account of said Units i.e. Baroda Unit, Unit No. 1 Ahemddabad, Unit No. II, Ahemdabad, Unit No. 5 Ahemdabad. He further observed that only interest for Bardoa unit to the extent of ₹2,35,20,245/- was only capitalized. The assessee submitted that investment had been made for the business purpose and interest incurred on corresponding borrowing for same are deductible u/s 36(1)(iii) of the Act. The assessing officer however rejected the contention of the assessee and held the proportionate interest expenditure of ₹46,14,149/- relating to investment in respective units is not allowable being capital expenditure. On further appeal, the Ld. CIT(A) deleted the disallowance of the ring as under:

“8.1 I have perused the facts brought on record by the AO and also the submissions given. It is not in dispute that the various units (except the Shilalekh Project) discussed by the A at page 11 of the assessment order are inter-connected to the same business of the appellant company. In respect of any additions/extension of the same is therefore to be considered as revenue expenditure keeping in view the decision of Gujarat High Court in the case of Core Healthcare Ltd. (251 TR 61) referred by the appellant company. The disallowance of Rs. 46,14,149/- held as attributable as capital expenditure on interest payments correlated with the said units cannot be upheld and therefore directed to be deleted.”

52. We have heard rival submission of the parties on the issue in dispute. The assessing officer has made disallowance mainly on the ground that money borrowed has been utilized towards capital work in progress and the assessee is paying huge amount of the interest. In the grounds raised, the revenues is claiming that the investment out of borrowed fund is towards new business or project, however failed to substantiate the same. The Ld. assessing officer himself has admitted that expenditure has been incurred towards capital work in progress of plant and machinery of the various units, and not for new project or business. Therefore, expenditure being connected with the existing business, same has been allowed correctly by the Ld. CIT(A). Moreover, the proviso to the section 36(1) is not applicable for the year under consideration. We do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly,

uphold the same. The ground No. 2(two) of the appeal of the Revenue is accordingly dismissed.

53. The ground No. 3 (three) of the appeal relates to disallowance of interest of ₹26,86,564/-under section 14A of the Act.

54. The assessee has shown dividend income of ₹1,26,950/- and claimed the same as exempt under section 10 (33) of the Act. The learned Assessing officer made disallowance under section 14A of the Act for proportionate interest at the rate of the 14.5 % on the cost of funds invested in the shares and securities.

The Ld. CIT(A) deleted the addition of observing as under:

“6.1 Before me the appellant's representative submitted that the appellant company had surplus funds of Rs. 114333 lacs as on 01 04.2001 and Rs.9243.79 lacs as on 31.03.2002. A copy of the relevant balance sheets have also been placed on the paper books filed. It is therefore submitted that the investments have been made to the extent of Rs. 166.96 lacs in A.Y 94.95 and no major amount has been invested thereafter. It is submitted that the appellant company had reserves and surplus of Re. 2288.67 lacs as on 31.03.1994 which was used for the said investments. Details of the breakup have been given at page 119, 122, and 157 of the paper book. After perusing the same the contentions of the appellant's representative in this respect are correct and the action of the NO in holding that the investments are out of borrowed funds is not correct and therefore raking proportionate disallowance cannot be upheld on this count and the same is accordingly directed to be deleted.”

55. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that Hon'ble jurisdictional High Court in the case of Reliance Utilities Ltd. (supra) has held that if own funds of the assessee including capital and reserve and surplus is more than the investment made, then it is presumed that investment has been made out of one sources. The Ld. DR has not doubted the figure of reserve and surplus mentioned by the Ld. CIT(A) in the impugned order. Thus, interest free fund available being more than investment yielding exempted income, the finding of Ld. CIT(A) is justified. Therefore, in such circumstances, we do not find any error in the order of the Ld. CIT(A) and accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground of appeal of the Revenue is accordingly dismissed.

56 The ground No. 4 (four) of the appeal of the revenue relates to disallowance of ₹29,000/-in relation to interest free advance of ₹2 lakhs to M/s Fairdeal Portfolio Management Private Limited.

57. We have heard rival submission of the parties on the issue in dispute. The Assessing Officer noted that assessee made advance of ₹2,00,000/- to M/s Fairdeal portfolio management private limited on 11/05/1992. The assessee contended that payment was made for availing administrative and

management services for expanding in the field of financial activities. The Assessing Officer held that assessee is not a NBFC and therefore interest incurred for advances for commencing new business not being incurred for the business of the assessee, and hence disallowable. The Ld. CIT(A) however rejected the finding of the Assessing Officer on two grounds. Firstly, the advance was given on 11/05/1992 and not in the year under consideration. Secondly, at the relevant point of time of giving advance, the assessee was having sufficient own funds by way of reserve and surplus. Before us, the learner DR could not controvert the finding of fact that assessee was having sufficient own funds. He also could not support the action of the assessing officer as why the disallowance is made in the year under consideration only. In the circumstances, we do not find any error in the order of the Ld. CIT(A) in deleting disallowance of ₹29,000/-out of interest debited in profit and loss account for giving interest free advance of ₹2 lakh to M/s Faiedeal portfolio management private limited. The ground of the appeal of the Revenue is accordingly dismissed.

58. The ground No. five of appeal of the revenue relates to direction of the Ld. CIT(A) not to exclude expenditure related to effluent treatment plant, profit on

LMT and profit from trading while computing the profit of the business for the purpose of deduction under section 80IA of the Act.

59. The Assessing Officer observed expenditure of ₹3,78,19,631/-for effluent treatment and pollution by the assessee in Unit-IV. The assessing officer noted that in earlier years said expenditure has been allocated on the basis of the sales turnover which was worked out at the rate of 10.57%, therefore, accordingly he excluded ₹39,97,535/-from the profit of the business to be considered for deduction under section 80IA of the Act, following his predecessors. The Ld. CIT(A) also following order of his predecessor dated 4/02/2002 for AY 1998-99, directed the assessing officer not to exclude the said sum from the profit for computation of deduction under section 80IA of the Act.

60. We have heard rival submissions of the parties on the issue in dispute. We find that identical issue was raised in assessment year 1999-2000. The Tribunal after considering rival submissions, restored the matter of verification whether the effluent treatment plant was utilised by other units. The relevant finding of the Tribunal is reproduced as under:

“18. After considering the rival submissions, we restore this issue to the file of AO to actually verify, may be physically, whether CETP has been utilized for treatment of effluents in Unit II & III. He may obtain experts report on the issue or take any other necessary steps to come to the conclusion whether CETP was

exclusively used by Unit I or was also utilized by other units. So far as basis of allocation is concerned which has been taken on turnover basis, is upheld and in case it is necessary to allocate expenditure on CETP then such allocation would be done on turnover basis. Accordingly, this ground of assessee is allowed but for statistical purposes."

60.1 The issue in dispute being identical to the issue decided by the Tribunal in assessment year 1999-2000, respectfully following the Tribunal (supra), the issue in dispute in the year under consideration is also restored back to the file of the assessing officer for deciding in the light of the direction of the Tribunal above. The ground of the appeal is accordingly allowed for statistical purposes.

61. Regarding the issue of inter-unit transfer of the goods, which the Assessing Officer has called as LMT, the assessing officer asked the assessee to justify whether the inter-unit transactions had been made at fair market value. The assessee submitted that the transactions were recorded as per the excise invoices. The learned Assessing Officer rejected the said contention and in absence of any evidence of fair market value made available by the assessee, the Assessing officer invoking section 80IA(9), held that assessee shifted extra profit at the rate of the 10% to the eligible unit, and accordingly excluded the amount of ₹27,00,927/- from the profit to be considered for deduction under section 80IA of the Act.

62. Similarly, the Assessing Officer observed that profit from the trading activity included in the profit of the unit-III (i.e. unit eligible for deduction under section 80IA) has not been excluded, therefore applying the net profit rate declared by the assessee for the unit -III (i.e. 16.05%) on the trading turnover, he excluded profit of ₹2,23,593/- from the profit of the Unit-III for considering deduction under section 80 IA of the Act.

63. Both above items of profit on inter-unit transfer and profit from trading activity have been excluded by the assessing officer, but deleted by the Ld. CIT(A) mainly on the ground that no show cause notice was issued to the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

(vi & vii) Profit on LMT ₹27,00,927/- and profit on trading of ₹2,23,593/-.
This has been discussed by the AO at page 22 and 23 of the other it was noted by the AO that local material transfer had been made of ₹3,87,28,639/- on which sale amount is shown at ₹1,17,19,366/-. The AO therefore invoked provisions of section 80IA(9) and estimated 10% of net turnover as profit attributable and accordingly made working of ₹ 27,00,927/- Before me, the appellant's representative has submitted that no specific transaction generating profit at higher rate has been brought on record by the AO and there is no basis for 10% figure. It is further submitted that no opportunity was given by the AO to explain the factual position. On perusal of the order I find that there is no reference of any show-cause notice issued in this respect and in the absence of any specific transaction brought on record the adhoc figure of 10% cannot be sustained and therefore no exclusion can be made on this count Similarly, in respect of the trading profit of Rs. 2,23,593/ discussed by the AO at page 23 of

the order, of the order, it is submitted that there is no basis for the same. It is not denied by the appellant's representative that there has been trading activity. However, it is submitted the relevant transactions in this respect are as under :

	(₹)
"Opening Stock	Nil
Purchases (J. Acid/Tobia Acid)	<u>1485667</u>
	1485667
Less: Closing Stock	<u>Nil</u>
	1485667
Add: Incidental expenses i.e. freight Insurance, landing others etc. @ 10%	<u>148566</u>
	1634233
Less: Sales	<u>1560075</u>
Gross Profit	<u>Nil"</u>

It is therefore submitted that as against the purchases of ₹14,85,667/- sales are ₹15,60,075/- and no amount is included in the profit of the undertaking. In the absence of any show cause notice issued and any specific material brought on record to justify the GP of 16,05% adopted by the AO as against Nil submitted by the appellant company, this item of ₹2,23,593/. cannot be excluded for 801A purpose and the A.O. is directed to modify the computation u/s. 801A accordingly."

64. We have heard rival submissions and perused the relevant material on record. We find that the assessing officer duly asked the assessee to justify the fair market price of entry in the transfer. He also asked the assessee to justify element of profit on the trading activity, but no information was provided by the assessee and therefore he estimated the profit and excluded the same from the profit of the unit-III, to be considered for computing deduction under section 80 IA, act. In view of the above facts and circumstances and in the

interest of substantial justice, we feel it appropriate to restore this issue back to the file of the assessing officer for deciding afresh after verification of the evidences in support of fair market value and profit from trading activity which will be furnished by the assessee. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard.

65. The ground 5 of the appeal on all the three items of exclusion from the profit of Unit-III, is accordingly allowed for statistical purposes.

66. Now we take up cross appeal of the assessee (ITA No. 66/Ahd/2007) and Revenue (ITA No. 788/Ahd/2007) for assessment year 2003-04.

67. The grounds of appeal raised by the Revenue reproduced as under:

1. *The Ld. CIT(A) erred in law and on facts of the case in directing to delete the disallowance of Rs.96,760/- on account of depreciation claimed on office building by the assessee.*
2. *The Ld. CIT(A) erred in law and on facts of the case in directing to delete the disallowance of interest of Rs.16,109/-*
3. *The Ld. CIT(A) erred in law and on facts of the case in directing to include the interest of Rs.16,109/- and depreciation of Rs.96,760/- while computing profits of business for computation of deduction u/s 80HHC.*
4. *The Ld. CIT(A) further erred in law and on facts of the case in directing the A.O to re-compute profit of business for deduction u/s 80HHC, without excluding foreign exchange fluctuation amounting to Rs.13,52,298/-*
5. *The Ld. CIT(A) erred in law and on facts of the case in directing the A.O to exclude the excise duty and sales-tax of Rs. 3,56,85, 683/- and Rs. 1,35,*

15,866/- respectively, while computing the total turnover for the purpose of deduction u/s 80HHC.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

68. At the outset, the Ld. Counsel of the assessee submitted that tax effect involved in the appeal is below the limit prescribed by the CBDT for filing appeal before the Tribunal. The learned DR could not controvert the fact of tax effect involved in issues challenged before the tribunal being less than the limit prescribed by the CBDT in circular No. 17 of 2019 Dated 08.08.2019 for filing appeal to the Tribunal.

69. We have heard the submission of the parties and perused the record. The calculation of tax effect in respect of the issues disputed in appeal submitted by the assessee is reproduced as under:

Calculation of Tax Effect of Departmental Appeal

Ground No.	Issue	Amount(₹)
1	Dep. On Office Bldg.	96,760/-
2.	Disallowance of interest-interest-free advance to Arcata	16,109/-
3.	80HHC- to include interest and depreciation in profits (above two additions)	12,17,331/-
4.	80HHC – Foreign Exchange Fluctuation to be included in Profit	
5.	80HHC – Excise duty & sales tax to be excluded from total turnover	
	[Detailed calculation of 80HHC deduction is enclosed]	
	Total	13,30,200/-
	Tax @ 35%	4,65,570/-
	Surcharge @ 5%	23,279/-
	Total	4,88,849/-

70. This tax calculation has not been disputed by the learned DR. Thus, we find that tax effect involved in this appeal of the revenue is only ₹4,88,849/-as against the limit of ₹50 lakhs prescribed by the CBDT for filing appeal to the Tribunal, and therefore the Revenue was required to withdraw this appeal. Hence this appeal of the Revenues is dismissed as infructuous.

71. The grounds raised by the assessee in its appeal having ITA No. 66/Ahd/2007 for assessment year 2003-04 are reproduced as under:

"1. The order passed by the CIT(A) is bad in law since is contrary to the provisions of the law and the facts of your appellant's case. It is submitted that it be so held now.

2. The CIT(A) erred in upholding the computation of deduction u/s 80HHC made by the Assessing Officer and erred in not allowing any deduction u/s 80HHC. The appellant submits that deduction u/s 80HHC claimed by the appellant was as per the provisions of law and ought to have been accepted by the Assessing Officer.

2.1 The appellant further submits that variations to the profits of the business, the total turnover, setting off of negative profit, adjustment of DEPB etc. are contrary to the facts. It is submitted that it be so held now.

3. The CIT(A) erred in holding that sales tax set off and miscellaneous income be excluded while computing the profit of the business. It is submitted that both the items form part of profits of the business and ought to have been excluded. It is submitted that it be so held now.

3.1 The CIT(A) erred in upholding loss at ₹2,71,02,006/- from export of manufacturing goods and he further erred in not adopting the loss of ₹Nil

while computing deduction u/s 80HHC. The appellant submits that the Assessing Officer ought to have ignored the loss from the manufacturing operations while computing deduction u/s 80HHC. It is submitted that it be so held now.

3.2 The CIT (A) erred not allowing relief in the matter of DEPB and in the matter of set off of loss in accordance with the provision of proviso to section 80HHC (3). The appellant submits that relief as admissible under the provisions of law ought to have allowed by the CIT(A). It be allowed

3.3 The CIT(A) erred in holding that ₹9,23,48,115/- being income in respect of duty entitlement passbook fall within purview of provisions of explanation baa and he accordingly further erred in excluding the same while computing the profit of the business. The appellant submits that the export incentive is out of purview of Provisions of Explanation baa therefore the assessing Officer ought not to have considered the said export incentive of ₹9,23,48,115/- in computation of the profit of business as per provisions of Explanation baa to section 80HHC. It is submitted that it be so held now.

The appellant without prejudice to above further submits that in any even exclusion of ₹9,23,48,115/- made by the assessing officer and upheld by the CIT(A) is excessively high and it is submitted that the assessing officer be directed to adopt the amount of export incentive after allowing all deductible expenses incurred in respect of the said income. It is submitted that it be so held now.

4. The CIT (A) erred in upholding exclusion of entire amount of ₹9,23,48,115/- in computation of the total income. The appellant submits the entire export incentive of ₹9,23,48,115- did not accrue as income during the previous year ended 31st March, 2003. The appellant submits that the assessing Officer ought to have excluded the export incentive which had did not accrue on or before 31st March, 2003. It is submitted that it be so held now.

5. *The Assessing Officer erred in not properly computing the demand in the case of the appellant. The appellant submits that the Assessing Officer be directed to delete interest charged by the Assessing Officer by invoking provisions of section 234B. It is submitted that appropriate relief be allowed as per the provisions of law.*

72. The ground No. 1, 2 and 2.1 of the appeal being general in nature, the learned Counsel of the assessee did not press and accordingly same are dismissed as infructuous.

73. The ground No. 3(three) of the assessee relates to exclusion of sales tax set off and miscellaneous income while computing the profit of the business for deduction under section 80HHC of the Act.

74. We find that the Assessing Officer in para 5.2 of the assessment order has computed the profit of business eligible for deduction under section 80HHC of the Act. The two items which have been excluded by him from the profit of the business eligible for deduction under section 80HHC are 90% of sales tax set off (₹2,25,000/-) and miscellaneous income (₹19,96,000/-). According to the Assessing Officer, these receipts are to be excluded as per the profit of the business defined in 'explanation baa' of section 80HHC of the Act. The Ld. CIT(A) however has wrongly considered sale of a scrap (₹43,768/-) for

exclusion instead of miscellaneous income. The finding of the Ld. CIT(A) is reproduced as under:

7.2 Other incomes excluded: it is seen from the order that the AO has excluded the following income from profit of business for the purpose of computing deduction u/s 80HHC:

- i. Sales tax written back : ₹2,05,500/-*
- ii. Foreign exchange fluctuation: ₹13,52,298/-*
- iii. Sale of scrap : ₹43,768/-*

It is contentions of the appellant that the above income are not liable to be excluded from the profit of the business.

7.3 I have considered the submission of the appellant. So far as sales tax amount returned back is concerned, the same cannot be treated as income derived from export. Actually, there is no such income derived from export. There is only deemed income due to application of provisions of section 41(1). Sales tax allowed as deduction in earlier years which are received during this year as refund has been written back. Therefore, this cannot be part of profit of business for the purpose of deduction u/s 80HHC. Same is the case with sale of scrap of ₹43,768/-. This income cannot be treated as income from export. Therefore, I hold that the AO is justified in excluding sale tax written off at ₹2,05,500/- and sale of scrap at ₹43,768/- from profit of business while computing deduction u/s 80HHC."

75. Before us the learned Counsel of the assessee relied on the order of the Tribunal in ITA No. 2067/Ahd/1999 and submitted that issue in dispute is covered by way of the decision of the Tribunal in para 5 of the order.

76. The Ld. DR on the other hand relied on the order of the assessing officer and also on the order of the Ld. CIT(A) to the extent of sales tax set off excluded by the Ld. CIT(A).

77. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The first item which has been excluded by the Assessing officer and upheld by the Ld. CIT(A) while computing profit of business for deduction under section 80 HHC of the Act is 'set off of sales tax', which is in the nature of 'credit of sales tax received back'. The second item is 'miscellaneous income'.

77.1 The term "profit of business" for considering eligibility under section 80HHC of the Act has been defined in 'explanation baa' to section 80HHC of the Act, which reads as under:

"(baa) profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by-

(1) ninety per cent of any sum referred to in clauses (iia), (iib) [(iic), (iid) and (iie)] of section 28 or of any receipts by way of brokerage, commission, interest, rent, "charges or any other receipt of a similar nature") included in such profits' ; and

(2) the profits" of any branch, office, warehouse or any other establishment of the assessee situate outside India]."

77.2 The assessing officer has referred to explanatory notes to the Finance Bill No. 2 of 1991 citing the reason for exclusion of receipts like interest, commission etc. which are not having an element of turnover. The relevant explanation in memorandum to the Finance Bill (supra) is reproduced as under:

“Receipt like interest, commission etc. which do not have an element of turnover are included in the profit and loss account. It is therefore, proposed to clarify that profits of the business for the purpose of section 80HHC will not include receipt by way of brokerage commission, interest, rent, charges for any other receipt of similar nature. As some expenditure might be incurred in earning these incomes which in the generality of cases is part of common expenses. It is proposed to provide ad-hoc 10% deduction from such incomes to account for such expenses. Therefore, it is very clear that the receipt like above should not be considered as a part of the total turnover as the legislature has excluded the same from the computation of the profit of the business on the ground that it is not a part of turnover.”

77.3 The assessing officer has reduced 90% of sales tax set off and miscellaneous income considering the same as receipt not having element of turnover.

77.4 The Tribunal in ITA No. 2067/Ahd/1999 for assessment year 1993-94 in para 5 has adjudicated the issue of sales tax set off and miscellaneous income, as under:

“5. The third ground relates to the direction by the learned CIT(A) for exclusion of the amount of miscellaneous income, being Sales-tax set off - (₹46,909) and income by way of foreign exchange fluctuation (₹11,988), for reduction in the computation of profits of the business in terms of Explanation "(baa)(1) to Sec.80HHC. The same was done by the learned CIT(A) on finding force with the contention of the assessee that the two amounts are a part of the assessee's turnover/trading receipt. inasmuch as the Sales-tax set off is on its purchases (so that the same might as well be deducted from the purchase amount) and the receipt by way of foreign exchange fluctuation is also in respect of goods sold. He, therefore, adverting the Circular of CBDT. explaining the provisions of Finance (No.2) Act, 1991, vide which the said explanation was introduced in the statute, i.e., to remove the distortion that otherwise enters into the computation of export income, i.e., when the amount of interest, rent, dividend, etc. are not excluded, finding merit in the assessee's contention. directed their deletion. We are inclined to be in agreement with the observations of the learned CIT(A): the amount of Sales-tax as well as the foreign exchange fluctuation both contain an element of turnover, being only in relation to the goods traded in, and not an ancillary income. which could be taken to be akin to brokerage, commission, interest, rent, etc., following the principle of ejusdem generis. However, at the same time, we also find that there is another amount of income, i.e., ₹52,161, being miscellaneous balances written off, the nature of which has not been discussed by the learned CIT(A) in his order. As such, this matter, to this extent, would require to be restored to his file for adjudication in accordance with law. We order accordingly.”

77.5 The Tribunal has held that sales tax is having element of turnover and therefore it is not receipt in the nature of interest rent etc., which are required

to be eliminated at the rate of 90%. On the issue of the miscellaneous income, in absence of the details, the matter was restored back to the file of the Ld. CIT(A).

78. In the instant case before us, it is not evident from the record whether the sales tax at off was taken by the assessee into turnover. The details of the miscellaneous income are also not available on record. In the circumstances, the issue in dispute is restored back to the file of the learned Assessing Officer for verifying as mentioned above and then for deciding in accordance with law. The ground of the appeal of assessee is accordingly allowed for statistical purposes.

79. The ground Nos. 3.1 to 3.4 of the appeal relate to issue of deduction under section 80HHC in respect of DEPB and set off of 'negative profit' against 'export incentive' while computing deduction under section 80HHC of the Act.

80. The identical ground Nos. 8.1 to 8.3 of the appeal of the assessee for assessment year 2001-02 have been adjudicated in ITA No. 764/Ahd/05 and ITA No. 1190/Ahd/2005, where we have noted that third proviso to section 80HHC(3) has been read down by the Hon'ble Supreme Court in the case of Avani Exports (supra) and therefore now the profit from sale of DEPB licenses

in case of assessee having export turnover more than ₹ 10 crore has also to be treated at par with the assessee having export turnover less than ₹10.00 crores and no conditions specified in third proviso shall be applicable. Similarly, the negative profit of the units have to be taken into consideration while computing profit of the business and such negative profit has to be set off against income from export incentives including from sale of DEPB licenses in terms of section 28(iiid) of the Act. The facts and circumstances in the year under consideration being identical to the assessment year 2001-02, the ground Nos. 3.1 to 3.4 of the present appeal are also adjudicated *mutasis mutandis*. The grounds are accordingly allowed for statistical purposes.

81. The ground No. 4 (four) of the appeal has been raised in respect of quantum of profit from sale of DEPB licenses. The Ld. CIT(A) has adjudicated the issue in dispute as under:

“10.1 I have carefully gone through the above submission. The arguments of the appellant is not acceptable. According to it the DEPB income has to be considered as income under section 28(iii)(a). I don't agree with the above submission on of the appellant. There is a specific provision in section 28(iii)(c) and (iii)(d) for accounting DEPB income. The next argument of the appellant is that it has not sold the DEPB license next argument of the appellant is that it has not sold the DEPB license neither it has made any profit. No details have been filed either before the AO or before me in support of the above claim. Therefore,

argument on this ground is rejected. It is also stated that due to government regulations the appellant has claimed DEPB income as soon as it complete export though on the closing day of the accounting year i.e. 31.3.2003, certain incomes have not been sanctioned by the government authorities. The appellant appears to be taking a contradictory stand. In the income it has accounted DEPB income. On the basis of regular method of accounting followed by it. Having done so it cannot go back and take a stand that the DEPB scrips which have not been sanctioned as on the closing date of the accounting year should be excluded. In any case, no such details has been filed either before me or before the AO, neither any such ground has been taken before the AO. Therefore, this argument of the appellant is not acceptable and hence rejected.”

82. We have heard rival submission of the parties on the issue in dispute. It is evident from the order of the Ld. CIT(A) the assessee has not filed complete detail as to the quantum of profit accrued on sale of DEPB licese before the Ld. CIT(A). Before us also no such details have been filed. In the circumstances, we feel it appropriate to restore this issue back to the file of the learned Assessing Officer, with the direction to the assessee to produce all the necessary details in support of its claim. The learned Assessing Officer is directed to adjudicate the issue in dispute after taking into consideration the evidences submitted by the assessee in this regard. The assessee shall be afforded adequate opportunity of being heard. In the result, the ground No. 4 (four) of the appeal is allowed for statistical purposes.

83. The ground No. 5 (five) of the appeal was not pressed by the learned Counsel of the assessee being consequential in nature, accordingly same is dismissed as infructuous.

84. Now we take up the appeal of the Revenue (ITA No. 87/Ahd/2008) and the cross objection of the assessee for assessment year 2004-05. The grounds of appeal raised by the revenue are reproduced as under:

1. *The Ld. CIT(A) erred in law and on the facts of the case in directing the A.O to follow the decision of the Hon"ble Gujarat High Court in CIT Vs. Amba Impex 282 ITR 144 and rework the deduction u/s 80HHC in connection with exchange rate fluctuation income of Rs.45,44,550/-.*
2. *The Ld. CIT(A) erred in law and on the facts of the case in directing the A.O not to include sales tax and excise duty in the total turnover for the purpose of computation of deduction u/s 80HHC.*
3. *On the facts and in the circumstances or the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

85. At the outset, the learned Counsel of the assessee submitted that tax effect involved in the appeal of the Revenue is below the limit prescribed by the CBDT for filing appeal before the Tribunal and therefore appeal need to be dismissed. The learned DR also could not controvert the fact of tax effect being less than the prescribed limit of ₹50 lakh for filing appeal before the Tribunal.

86. We have heard rival submission of the parties on the issue in dispute. The tax effect involved in the appeal computed by the assessee is reproduced as under:

Calculation of Tax Effect of Departmental Appeal

Ground No.	Issue	Amount (₹)
1.	80HHC - Foreign Exchange Fluctuation to be included in Profits	10,03,554/-
2.	80HHC-Excise duty & Sales Tax to be excluded From Total turnover	
	[Detailed calculation of 80HHC deduction is enclosed]	
	Total	10,03,554/-
	Tax @ 35%	3,51,244/-
	Surcharge @ 2.5%	8,781/-
	Total	3,60,025/-

86.1 Evidently, the tax effect in the appeal of the Revenue of ₹3,60,025/- which is below the limit prescribed by the CBDT of ₹50 lakh for filing appeal to the Tribunal. The relevant CBDT circular has already been referred while dismissing the appeal of the Revenue for assessment year 2003-04. Accordingly, the appeal of Revenue for assessment year 2004-05 is also dismissed as infructuous.

87. The grounds raised by the assessee in cross objection No. 50/Ahd/2008 for assessment year 2004-05 are reproduced as under:

- The order passed by the Commissioner of Income tax (Appeals) is bad in law since it is contrary to the provisions of the law and the facts of the case. It is submitted that it be so held*

2. *The Commissioner of Income tax (Appeals) erred in upholding disallowance of Rs. 80,084/- out of depreciation in respect of the office building. The disallowance is contrary to the provisions of law. The disallowance be deleted.*

2.1 *The assessee without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now.*

3. *The Commissioner of Income tax (Appeals) erred in upholding disallowance of Rs.7,87,436/- out of interest payment of Rs. 2,130/- out of expenses by invoking provisions of section 14A. The disallowance is contrary to the facts and provisions of law. The disallowance be deleted.*

3.1 *The assessee without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now.*

4. *The Commissioner of Income tax (Appeals) erred in upholding computation of deduction u/s 80HHC made by the assessing officer and erred in not allowing deduction U/s 80HHC as per provisions of law. The assessee submits that deduction u/s 80HHC claimed by the assessee was as per the provisions of law and ought to have been accepted by the assessing officer. The assessee submits that it be allowed now.*

4.1 *The assessee further submits that variations to the provisions of the business, the total turnover, setting off of negative profit, adjustment of DEPB etc. are contrary to the facts. submitted that it be so held now.*

4.2 *The Commissioner of Income tax (Appeals) erred in upholding incorrect computation of profit of business. The assessee submits that the assessing officer be directed to make computation of profits of business as per law and inter alia is submitted that the Commissioner of Income tax (Appeals) ought*

not to have excluded foreign exchange fluctuation of Rs,45,51,150/- while computing the profit of the business. It is submitted that it be so held now.

88. The issues raised by the assessee in the cross objection for assessment year 2004-05, are identical to the relevant grounds raised in appeal of the assessee for assessment year 2001-02, therefore following our finding in assessment year 2001-02, the grounds of cross objection are decided mutatis mutandis. The cross objection of the assessee are accordingly allowed for statistical purposes.

89. Now we take up the appeal of the assessee having ITA No. 2140/Ahd/08 for assessment year 2005-06. The grounds raised by the assessee are reproduced as under:

1. *The order passed by the Commissioner of Income Tax(Appeals) is bad in law since it is contrary to the provisions of the law and the facts of your appellant's case. It is submitted that it be so held now.*

2. *The Commissioner of Income Tax(Appeals) erred in upholding disallowance of disallowing ₹78,376/- out of depreciation in respect of the office building. The disallowance is contrary to the provisions of law. The disallowance be deleted.*

2.1 *The appellant without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now.*

3. *The Commissioner of Income Tax(Appeals) erred in upholding disallowance ₹12,73,660/- out of the interest payment and Rs. 1,642/- out of expenses by invoking provisions of section 14A. The disallowance is contrary to the facts and provisions of law. The disallowance be deleted.*

3.1 *The appellant without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now.*

4. *The Commissioner of Income Tax(Appeals) erred in upholding disallowance of ₹4,46,000/- claimed by the appellant in respect of bad debts. The appellant submits that debts had arisen during the ordinary course of business operations, debts were irrecoverable and debts were written off as bad to the Profit and Loss account. The appellant had fulfilled all conditions of law and therefore the assessing officer ought to have allowed deduction. The deduction be allowed now.*

4.1 *The appellant without prejudice to above submits that disallowance of ₹4,46,000/- is excessively high and the assessing officer ought to have allowed substantial deduction examining each write off independently. It is submitted that it be so held and substantial portion be directed to be deleted.*

5. *The Commissioner of Income Tax(Appeals) erred in not directing to delete and/or substantially reduce interest charged by the assessing officer. It is submitted that appropriate relief be allowed as per the provisions of law.*

90. The ground No. one of the appeal is general in nature, therefore we are not required to adjudicate upon specifically. Hence dismissed as infructuous.

91. The ground No. 2 (two) and 2.1 of the appeal relate to the issue of depreciation in respect of office building. The grounds are covered by our

decision in ground No. 2 of the assessee's appeal for assessment year 2001-02.

Accordingly, these grounds are dismissed.

92. The ground No. 3 (three) and 3.1 relate to disallowance of ₹12,73,660/- out of interest payment on ₹1,642 out of expenses by invoking provisions of section 14A of the Act.

93. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. CIT(A) has adjudicated the issue in dispute as under:

"4.2 I have considered the submissions of the Authorised Representative carefully. The appellant has not furnished the details of source of investment in the shares and mutual funds. The appellant could have proved its claim that the shares were not purchased out of borrowed funds by furnishing copy of Bank statement or cash flow statement to justify the source of investment in the years the same were purchased. The appellant did not submit the same. The appellant has not justified its claim that the investments in shares made in the relevant years were out of interest free funds. The appellant has reiterated the submissions which were made before the A.O. without any additional facts or evidences. As held in the case of decision of Delhi H.C. in Motor General Finance Ltd. 254 ITR 449 (Delhi) in case of failure of the assessee to produce documents adverse inference can be drawn to the effect that if produced they would have gone against the assessee. As the facts were within knowledge of the appellant and the same were not explained, the A.O. is justified to draw adverse conclusion. In view of the above facts, it is held that the Assessing Officer has rightly disallowed the proportionate expenses as having been incurred to earn

the dividend income ws.14A of the Act. In support of the disallowance the reliance is made on the following decisions :-

(1) Everplus Securities & Finance Ltd. - 101 ITD 151/285 ITR(AT) 112 (Delhi)

(2) Rhythm Exports (P) Ltd. vs. CIT -2 SOT (Mum) 429 /97 TTJ 493 (Mum)

(3) Harish Krishnakant Bhatt vs. ITO - 278 ITR(AD)1 (Ahd)

(4) Mumbai Bench in the case of ACIT vs. Citi corp Finance India Ltd., reported in 111 TTJ 82 (Mum) wherein it has been held that it is not correct to say that dividend income can be earned by incurring no or nominal expenses and all expenses connected with such exempt income have to be disallowed ws.14A regardless of whether they are direct or indirect, fixed or variable and managerial or financial and provisions of sub section 2 and 3 of section Sec. 14A inserted by Finance Act 2006 are procedural in nature and hence apply to all pending matters. In view of the above facts and the legal position, this ground of appeal is dismissed."

94. Thus the Ld. CIT(A) has sustained the interest disallowance mainly on the ground that the assessee did not submit evidence in support that investments yielding exempted income were not made out of the borrowed funds & made out of own funds. Before us, the Ld. counsel of the assessee has relied on the decision of Hon'ble Bombay High Court in the case of Reliance utilities Ltd (supra). Before us the Ld. counsel of the assessee referred to the balance sheet along with respective schedules to show that own sources of the assessee are much more than the investment in assets yielding exempted income. Since the disallowance has been sustained on the ground that relevant evidences were

not submitted, in the interest of substantial justice, we feel it appropriate to restore the issue back to the file of the assessing officer for deciding in accordance with law after verification of sources of funds for investment in assets yielding exempted income.

94.1 As for as issue of disallowance of administrative expenses of ₹1642/-is concerned, we find that the assessing officer has disallowed the administrative expenses in the ratio of dividend income to total receipt. In our opinion, in absence of application of the rule 8D of income tax rules, 1962 (in short 'the Rules') for the year under consideration, the disallowance made out of administrative expenses on proportionate basis of the dividend income, is justified.

95. The grounds of the appeal are accordingly allowed partly for statistical purposes.

96. The ground No. 4 (four) and 4.1 of the appeal relate to disallowance of bad debts of ₹4,46,000/-. The assessing officer observed claim of bad debts amounting to ₹4,46,000/-in respect of eight parties, which he has listed in para 5.1 of the assessment order. According to the assessing officer assessee did not mention recovery measures taken by the assessee against those parties so as to establish a how the debt become bad. Before the Ld. CIT(A) the assessee

submitted that relevant parties denied the payments on account of rebate/discount/shortage in quantity/variation in quality etc. It was also submitted that that debts were written off by the assessee in the books of accounts for the year under consideration. The Ld. CIT(A) however sustained the disallowance observing as under:

“5.2 I have considered the submissions of the A.R. carefully. However, the A.R. has not given the details of steps taken for recovery either before the AO or before me. Therefore, relying on the decision of Gujarat High Court in the case of Dhal Enterprises & Engineers Pvt. Ltd. (207 CTR 729) (Guj.) wherein it has been held that the assessee should prove that the debt has become bad in that year, as the appellant has not proved that the above debts have really become bad, the disallowance of bad debt is sustained.”

97. Before us, the Ld. counsel of the assessee submitted that in view of the decision of the Hon’ble Supreme Court in the case of **TRF Ltd. (2010) 323 ITR 397**, the assessee fulfils both the conditions that respective debts are part of income reported in earlier years and said debts have been written off in the books of accounts of the assessee for the year under consideration. The DR on the other hand relied on the order of the lower authorities.

98. We have heard rival submission of the parties on the issue in dispute. We are of the opinion that the issue of bad debt in terms of section 36(1)(vi) of the Act has been settled by the decision of the Hon’ble Supreme Court in the case of

TRF Ltd (supra). Therefore, in the circumstances, we feel it appropriate to restore this issue to the file of the assessing officer for verifying the claim of the assessee in the light of the decision of the Hon'ble Supreme Court in the case of TRF Ltd (supra) after verifying books of accounts of the assessee. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

99. The ground No. 5 (five) of the appeal being consequential, same is dismissed as infructuous.

100. Now we take up the appeal of the assessee having ITA No. 606/Ahd/2011 for assessment year 2006-07. The grounds raised by the assessee are reproduced as under:

"1. The order passed by the CIT(A) is bad in law since it is contrary to the provisions of the law and the facts of your appellant's case. It is submitted that it be so held now.

2. The CIT(A) erred in upholding disallowance of ₹6,67,830/- out of interest/administrative expenses by invoking provisions of section 14A. The disallowance is contrary to the facts and provisions of law. The disallowance be deleted.

2.1 The appellant without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now

3. *The CIT(A) erred in upholding disallowance of ₹431518/- out of voluntary retirement payments. The expenses was incurred wholly and exclusively for the purpose of the business. The disallowance is contrary to the facts and provisions of law. The disallowance be deleted.*

3.1 *The appellant without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now*

4. *The CIT(A) erred in not directing the assessing officer to compute and assess income in accordance with provisions of law and the facts in the case of the appellant. It is submitted that the assessing officer ought to have recomputed income on basis of the assessment orders for the earlier years. The appellant submits that the assessing officer be directed accordingly.*

5. *The CIT(A) erred in upholding erroneous computation of the demand in the case of the appellant. It is submitted that the assessing officer be directed to make correct computation of the demand. It is further submitted by the appellant that the assessing officer be directed to delete interest charged by the assessing officer by invoking provisions of section 234B and 234D. It is submitted that appropriate relief be allowed as per the provisions of law.”*

101. The ground No. 1 (one) of the appeal being general in nature, same is dismissed as infructuous.

102. The ground No. 2 (two) and 2.1 of the appeal relate to disallowance of ₹6,67,830/-out of interest/administrative expenses in terms of section 14A of the Act.

103. The assessing officer observed receipt of dividend income of ₹29,630/- and long-term capital gain of ₹23,16,528/-, which were claimed by the assessee is exempt under section 10 of the Act. After considering submission of the assessee, the Ld. Assessing Officer made disallowance of ₹6,67,830/- observing as under:

“The assessee is in receipt of considerable amount of exempt income and no separate account has been maintained in regard to the earning of exempt income. Investments reduce the availability of liquid funds with the company which many times create the need for borrowed funds. Putting another way, had certain funds not been diverted for such investments, need for interest-bearing funds would have been lesser. Also management and maintenance of such investments always entail certain administrative expenditure such as telephone expenditure etc.

In view of the above, claim of the assessee that no expenditure has been incurred for earning exempt income is hereby rejected.

The amount disallowable u/s 14A is computed on estimate basis as under:

$$\begin{aligned} \text{I. Amount of interest relatable to earning of exempt income} \\ &= \frac{\text{Interest expenditure} \times \text{Average value of investments}}{\text{Average value of total assets}} \\ &= \frac{\text{₹6,31,24,653} \times \text{₹1,60,51,709}}{1,72,44,83,024/-} = \text{₹5,87,572/-} = \text{₹5,87,572/-} \end{aligned}$$

II. Administrative expenditure relatable to earning of exempt income:

$$0.5\% \text{ of Average value of investments} = \text{Rs.}1,60,51,709/- \times 0.5\% = \text{Rs.}80,258/-$$

Total disallowance w/s.14A=Rs.6,67,830/-."

104. The Ld. CIT(A) upheld the disallowance observing as under:

"4.3 It is seen that AR has contended that no interest bearing funds have been used towards the investment in shares. However, no evidence what so ever was filed in support of the above claim.

In view of the above, the contention of the AR that no interest bearing fund was attributable to investment in shares is not justified.

4.3(i) In the absence of details filed, the AO was right in holding that appellant had not shown disallowance required to be made us.14A and hence he was justified in computing the disallowance under Rule 8D of the IT Rules.

In view of the above, the addition made by the AO is justified, the same is hence confirmed."

105. We have heard rival submission of the parties on the issue in dispute. In the year under consideration also the Ld. CIT(A) has upheld the disallowance of the interest mainly on the ground that no evidence were filed by the assessee in support of the claim that no interest-bearing funds had been used towards the investment in assets yielding exempted income. The disallowance of administrative expenses has been made at the rate of 0.5% of average value of the investment, whereas rule 8D(2)(iii) of the rules has been made effective from assessment year 2008-09. Therefore, following our finding in assessment year 2005-06, the issue of disallowance of interest is restored to the file of the

assessing officer for deciding a fresh keeping in view our direction in assessment year 2005-06. The ground of disallowance of administrative expenses is also restored back to the file of the Assessing Officer for computation of disallowance in the ratio of exempted receipt to the total receipts, as upheld by us in assessment years 2005-06.

106. The ground No. 2 (two) and 2.1 of the appeal are accordingly allowed partly for statistical purposes.

107. The ground No. 3 (three) and 3.1 of the appeal relate to disallowance of ₹4,31,518/-out of Voluntary Retirement Payments.

108. The Assessing Officer noted the claim of the assessee of expenditure of ₹2,42,276/-and ₹1,89,242/-in respect of the payments made under voluntary retirement scheme in assessment year 2001-01 and 2001-02. According to the assessing officer in terms of section 35DDA of the Act inserted with effect from assessment year 2001-02, the expenditure incurred in connection with any voluntary retirement scheme in any previous year has to be claimed over a period of five years -1/5th each year, beginning with the year in which expenditure incurred and subsequent four years. For any assessment years prior to assessment year 2001-02 said expenditure in respect of voluntary

retirement scheme should have been claimed in relevant years only. Accordingly, the learner Assessing Officer rejected the claim of the assessee.

109. Before the Ld. CIT(A), the assessee claimed that in the books of accounts the expenditure was claimed as deferred revenue expenditure and debited 1/10th of the same in the profit and loss account. The Ld. CIT(A) however rejected the claim of the assessee observing as under:

“5.3(i) The contention of the AR is not correct. There is no concept of deferred revenue expenditure under the IT Act. The Act only recognizes capital expenditure and revenue expenditure. Unless there is specific mention in the Act, the expenditure is either allowable or disallowable. Only in respect of certain expenditure under specific situations, as mentioned in the Act, the amount is liable to be written off over a period of time. It is seen that in respect of Voluntary Retirement payment, section 35DDA was introduced with effect from 1st April 2001 which under this section, expenditure on account of Voluntary Retirement Payment were to be allowed at the rate of 20% each over a period of 5 years.

5.3(ii) It is seen that the AO in this case erroneously held that only 10% expenditure was allowable. The same was also erroneously confirmed by the CIT(A). Such decision contrary to the provisions of the Act cannot found binding 'Precedent' to be followed in later years.

In view of the above, there is no merit in the contention that this year also, 1/10th of the amount should be allowed.

In view of the above, addition made by the AO is on sound footing, hence confirmed.”

110. Before us the Ld. counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the order of the Tribunal in ITA No. 1693/Ahd/2004 for assessment year 2000-01. The Ld. DR did not controvert the finding of the Tribunal, however submitted that assessee should not be allowed double benefit of the deduction.

111. We have heard rival submission of the parties on the issue in dispute. The Tribunal in assessment year 2000-01, has adjudicated the issue as under:

"36. It was submitted by the ld. AR that entire expenditure is consequence to salary payable to the employees. Even though the assessee has treated it as deferred revenue expenditure entire payment is an allowable expenditure in view of the decision of the Tribunal, Jodhpur Bench in PI Industries Ltd. vs. ACIT (2006) 104 TTJ (Jd) 333. Whatever may be the treatment assessee might have given in the books of account will not be relevant and its true nature has to be decided as held in following three judgements:-

(1) DCIT vs. Core Healthcare Ltd. (2001) 251 ITR 61 (Guj) (2) CIT vs. Gujarat Mineral Dev. Corpn. (1981) 132 ITR 377 (3) Kedarnath Jute Mfg. Co. Ltd. vs. CIT (1971) 82 ITR 363

37. Against this, ld. DR relied on the orders of authorities below.

38. After considering the rival submissions, we are of the view that the claim is basically revenue in nature as it is directly connected with salary expenditure. The assessee has saved future salary by accepting voluntary retirement of the employees. But this benefit will accrue to the assessee in subsequent years. Hence it has been rightly treated as deferred revenue

expenditure. Accordingly, the claim made by the assessee at 10% of the total expenditure was reasonable and should have been accepted by the revenue authorities. Accordingly claim of the assessee at Rs.2,42,276/- is allowed. The question of making addition of Rs.21,81,487/- does not arise because this amount is not claimed as revenue expenditure in the profit and loss account. As a result, this ground of assessee is allowed."

111.1 The issue in dispute in the year under consideration being identical to the issue in dispute in assessment year 2000-01, respectively following the Tribunal (supra), we direct the assessing officer for allowing 1/10th of the expenses incurred in respect of voluntary retirement schemes of years prior to assessment year 2001-02. The ground of the appeal of the assessee is accordingly allowed.

112. The ground No.4 of the appeal being general in nature, we are not required to adjudicated upon specifically, accordingly same is dismissed as infructuous.

113. The ground No. 5 (five) of the appeal being partly general and partly consequential, same is dismissed as infructuous.

114. Now we take up the appeal of the assessee having ITA No. 1076/Ahd/2011 for assessment year 2007-08. The grounds raised by the assessee reproduced as under:

1. *The order passed by the Commissioner of Income tax (Appeals) is bad in law. The order is contrary to the provisions of the law and the facts of your appellant's case. It is submitted that it be so held now.*

1.1 *The Commissioner of Income tax (Appeals) erred in framing the order ex parte alleging non-compliance with the notices. The appellant submits that each and every notice was complied.*

The order framed by the Commissioner of Income tax (Appeals) is bad in law.

1.2 *The Commissioner of Income tax (Appeals) erred in not quashing notice of demand issued by the assessing officer. The notice of demand is erroneous and bad. The appellant submits that the notice of demand be quashed and demand be held to be not enforceable. It is submitted that it be so held.*

2. *The Commissioner of Income tax (Appeals) erred in upholding disallowance of Rs. 5,80,812/- out of the interest/administrative expenses by invoking provisions or section 14A. The disallowance is contrary to the facts and provisions of law. The disallowance be deleted.*

2.1 *The appellant without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now.*

3. *The Commissioner of Income tax (Appeals) erred in upholding disallowance of ₹4,31,518/- out of the voluntary retirement payments. The expenses was incurred wholly and exclusively for the purpose of the business. The disallowance is contrary to the facts and provisions of law. The disallowance be deleted.*

3.1 *The appellant without prejudice to above further submits that disallowance in any event is excessively high and it be directed to be substantially reduced. It is submitted that it be so held now.*

4. *The Commissioner of Incometax (Appeals) erred in upholding disallowance of ₹77,098/- made u/s. 43B. The appellant submits that addition of ₹77,098/- is grossly erroneous and contrary to the facts. The addition be quashed.*

4.1 *The appellant submits that provisions in respect of GST and bonus in earlier years were disallowed in computation of total income for the respective assessment years. The appellant submits that excess provisions were written off and credited to the Profit and Loss account and the write off were excluded from computation of the total income as they were disallowed in the earlier years. The appellant submits that addition of Rs.77,098/- is therefore erroneous. The addition be quashed.*

5. *The Commissioner of Income tax (Appeals) erred in upholding the demand in the case of the appellant. It is submitted that the assessing officer be directed to make correct computation of the demand. It is further submitted by the appellant that the assessing officer be directed to delete interest, if any, charged by the assessing officer by invoking provisions of sections 234A to 234D. It is submitted that appropriate relief be allowed as per the provisions of law.*

115. The ground No. 1 is general in nature. The ground No. 1.1 and 1.2 were not pressed before us. Accordingly, the ground No. 1 to 1.2 of the appeal are dismissed as infructuous.

116. The ground No.2 relate to disallowance of ₹5,80,2012/-out of the interest/administrative expenses by invoking provisions of section 14A of the Act.

117. During the year under consideration the assessee received dividend income of ₹23,550/-and long-term capital gain of ₹59,523/-. Both these items were claimed by the assessee as exempt income. In view of no disallowance made by the assessee for earning such exempted income, the Assessing Officer computed the disallowance as under:

“The amount disallowable u/s 14A is computed on estimate basis as under :

I. Amount of interest relatable to earning of exempt income

= Interest expenditure X Average value of investments

Average value of total assets

= ₹6,93,63,000/- X 1,52,56,000/- = ₹5,80,812/-

1,82,19,94,500/-

II. Administrative expenditure relatable to earning of exempt income :

0.5% of Average value of Investments = ₹1,52,56,000/- X 0.5% = ₹76,280/-

Total disallowance u/s 14A = ₹5,80,812/-.

118. The Ld. CIT(A) upheld the disallowance.

119. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that facts and circumstances

in respect of issue in dispute of disallowance under section 14A in the year under consideration are identical to the facts and circumstances of assessment year 2006-07. Accordingly, following our finding in assessment year 2006-07, the issue of disallowance of interest and disallowance of administrative expenses is restored to the file of the assessing officer for deciding in view of our finding in assessment year 2006-07 on the issue in dispute. The ground of the appeal of the assessee are accordingly allowed partly for statistical purposes.

120. The ground No. 3 (three) and 3.1 of the appeal relate to disallowance of ₹4,31,518/-out of voluntary retirement scheme payments.

120.1 In the year under consideration also the assessee claimed expenditure of ₹2,42,276/-and ₹1,89,242/- in respect of payments made under voluntary retirement scheme for assessment year 2000-01 and 2001-02 respectively, which is 1/10th the expenses incurred in respective years.

121. As the identical issue of the claim of voluntary retirement scheme payments has been allowed by us in assessment year 2006-07, therefore, following our finding in assessment year 2006-07, in present appeal also the Assessing Officer is directed to allow 1/10th of the expenses incurred in respect

of voluntary retirement scheme of years prior to assessment year 2001-02. The ground No. 3 to 3.1 of the appeal are accordingly allowed.

123. The ground No. four and 4.1 of the appeal relate to disallowance of ₹77,098/- in terms of section 43B of the Act.

124. Before us the Ld. counsel of the assessee submitted that provisions in respect of the GST and bonus were disallowed in earlier years in computation of the total income, however in the year under consideration the excess provisions were written off and credited to the profit and loss account and the write off were excluded from computation of the total income as they were disallowed in earlier years.

125. We find that Ld. CIT(A) has however confirmed the disallowance in view of non-compliance on the part of the assessee. The relevant finding of the Ld. CIT(A) reproduced as under:

“4. I have carefully considered the material available on record as well as findings of the AO. As mentioned here in above the AO made three additions, giving elaborate findings for each addition after considering the submission of the assessee during assessment proceedings. During appellate proceedings the case was fixed for hearing five times. The appellant did not avail any of the opportunity given to present its case. There were no new facts/explanation available before me, further, to the facts available before AO and therefore, I endorse the findings of the AO for

all the additions discussed above. As such all the additions made by the AO are confirmed."

125.1 In view of the non-compliance before the Ld. CIT(A) on the issue in dispute, in the interest of substantial justice, we restore this issue back to the file of the Ld. Assessing Officer for verification of the claim of the assessee that amount in question was disallowed in earlier assessment years in computation of the income and the provisions have been written off and credited to the profit and loss account in the year under consideration. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

126. In the result, the appeals of Revenue and appeals/cross objection of the assessee allowed/ dismissed as under:

S. No.	ITA No./CO No.	AY	Assessee/Revenue	Result
1.	ITA No. 2594/Ahd/2008	1998-99	Assessee	Dismissed
2.	ITA No. 764/Ahd/2005	2001-02	Assessee	Allowed partly for statistical purpose
3.	ITA No. 1190/Ahd/2005	2001-02	Revenue	---do---
4.	ITA No. 66/Ahd/2007	2003-04	Assessee	Partly allowed for statistical purposes
5.	ITA No. 788/Ahd/2007	2003-04	Revenue	Dismissed
6.	ITA No. 87/Ahd/2008	2004-05	Revenue	Dismissed
7.	CO. No. 50/Ahd/2008	2004-05	Assessee	Allowed for statistical Purposes
8.	ITA No. 2140/Ahd/2008	2005-06	Assessee	-----do-----
9.	ITA No. 606/Ahd/2011	2006-07	Assessee	Allowed partly for statistical purposes

10.	ITA No. 1076/Ahd/2011	2007-08	Assessee	Allowed partly for statistical purposes
-----	-----------------------	---------	----------	---

Order pronounced in the open Court on 31/03/2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: **31/03/2022**

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai