

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.7742/M/2012
Assessment Year: 2001-02**

**ITA No.2679, 2680, 3488, 4416, 4395, 3489 & 3490/M/2013
Assessment Years: 2002-03, 2003-04, 2004-05, 2005-06, 2006-07,
2007-08 & 2008-09**

DCIT 3(2), Room No.674/608, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. LML Ltd., 714, Raheja Chambers, 213, Nariman Point, Mumbai – 400 021 PAN: AAACL0141N
(Appellant)		(Respondent)

**ITA No.4417/M/2013
Assessment Year: 2005-06**

DCIT 3(2), Room No.674/608, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. LML Ltd., 714, Raheja Chambers, 213, Nariman Point, Mumbai – 400 021 PAN: AAACL0141N
(Appellant)		(Respondent)

**CO No.190/M/2014
(Arising out of ITA No.4417/M/2013)
Assessment Year: 2005-06**

M/s. LML Ltd., 714, Raheja Chambers, 213, Nariman Point, Mumbai – 400 021 PAN: AAACL0141N	Vs.	DCIT, Range-3(2), Room No.674, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

CO No.189/M/2014
(Arising out of ITA No.4395/M/2013)
Assessment Year: 2006-07

M/s. LML Ltd., 714, Raheja Chambers, 213, Nariman Point, Mumbai – 400 021 PAN: AAACL0141N	Vs.	DCIT, Range-3(2), Room No.674, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

ITA Nos.1894, 2653, 2654, 3008 & 3449/M/2013
Assessment Years: 2001-02, 2002-03, 2003-04, 2004-05 & 2005-06

M/s. LML Ltd., 714, Raheja Chambers, 213, Nariman Point, Mumbai – 400 021 PAN: AAACL0141N	Vs.	ITO/Addl. CIT, Range-3(2)/3(2)(2) Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Salil Mishra (CIT-DR) &
Shri Mehul Jain, Sr. D.R.

Date of Hearing : 13 . 04 . 2022

Date of Pronouncement : 13 . 04 . 2022

ORDER**Per Bench:**

For the sake of brevity aforesaid cross appeals/objections filed by appellant DCIT 3(2), Mumbai (hereinafter referred to as the Revenue) and cross objector/appellant M/s. LML Ltd. (hereinafter referred to as the assessee) for A.Ys. 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 bearing common question of law and facts are being disposed of by way of common order to avoid repetition of discussion.

2. Revenue and the assessee by filing aforesaid cross appeals/objections sought to set aside the impugned orders passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the Ld. CIT(A)] on identical grounds taken from the appeal of assessee as well as of Revenue for A.Y. 2002-03 for the purpose of disposing of the appeals inter alia that:

“ITA No.2653/M/2013 for A.Y. 2002-03 (Assessee’s appeal) :

Ground No. 1

Disallowance of 5/6th of Technical Know-how fees

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance claim of the Appellant u/s. 37 of the Act in respect of amounts paid/payable to certain Foreign parties towards Technical Fees allegedly on the grounds that the same falls under section 35AB of the Act.

The learned CIT(A) failed to appreciate and ought to have held that:

- the expenditure is not incurred for acquiring any know-how and hence the provision of section 35AB are not applicable.***
- the expenditure is incurred towards Licence Fees for use of Know-how and/or Technical Assistance and hence is of a revenue nature fully allowable u/s. 37 of the Act.***

Ground No.2 Disallowance U/s 14A

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of Rs. 1,00,000/- on an adhoc basis claiming it to be the cost incurred for earning tax-free dividend income.

2. The learned CIT(A) failed to appreciate and ought to have held that:

- Merely because the investments have generated tax free income the expenses cannot be disallowed arbitrarily;***
 - The expenses like employee expenses, bank charges, etc. would be incurred irrespective of whether the investments would have been made or not;***
 - No expenditure has been specially incurred to earn income on investments;***
- Section 14A cannot be invoked in absence of any nexus between the expenditure incurred and the income earned.***

Ground No.3 Disallowance u/s 40A(9)

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of Rs. 96,912/- by invoking provisions of section 40A(9) in respect of following payments which are in nature of subsidy :

<i>Workers Benovoalent Fund</i>	<i>Rs. 33,582/-</i>
<i>Employees' contribution to workers' Relief Fund</i>	<i>Rs.63,330/-</i>
	<i>-----</i>
	<i>Rs. 96.912/-</i>
	<i>=====</i>

2. The CIT(A) failed to appreciate and ought to have held that:

- The amounts paid are in nature of subsidy to meet the actual expenditure incurred by the staff and hence in the nature of staff welfare expenditure;*
 - The expenditure has been wholly and exclusively incurred for the purpose of business and also fulfils all the conditions of section 37(1);*
 - The concerned funds have not been created or used as a vehicle for tax avoidance and that at no point in time has the contributions flowed back to the Appellant in a different form and hence, having regard to the purpose for which section 40A(9) was introduced, no addition is called for or warranted.*
- 3. The Appellant prays that the disallowance be deleted in totality and expense allowed u/s 37(1) of the Act.*

Ground No.4**Pre-operative expenses (except Interest).**

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs. 14.31 lacs being a pre-operative expenditure incurred during the period of expansion cum diversification of manufacturing activity.

2. Without prejudice to the above, the learned CIT(A) further erred in not granting depreciation on amount treated as capital expenses.

Ground No. 5**Disallowance of Prior Period Expenses.**

1. The learned CIT(A) erred in confirming the addition of Rs.15.89 lakhs debited by Appellant as Prior Period Expenses.

2. *The learned CIT(A) failed to appreciate and ought to have held that:*

- *Since the crystallization and quantification of additional liability has taken place during the year even though the same relates to earlier year it is allowable as an expense for the current year;*
- *If there is a settlement of a disputed liability during the year even though the same relates to a prior period the same should be allowable as an expense for the current year.*

3. *The Appellant prays that the amount of Rs. 15.89 lacs relating to prior period expenses be allowed in the current year as claimed by the Appellant on the basis of the facts and the submissions made.*

4. *Without prejudice to the above the Appellant prays that the prior period expenses be allowed as an expense in the relevant assessment years to which they relate.*

Ground No. 6

Disallowance of amount incurred for Sundry Equipment.

1. *The learned CIT(A) erred in confirming the addition in respect of expenditure incurred towards purchase of sundry equipment on the alleged ground that the expenses incurred are of a Capital nature.*

2. *The learned CIT(A) failed to appreciate and ought to have held that:*

- *A revenue expenditure cannot be held to be of capital in nature going by the nomenclature of account in which it is accounted for;*
- *The items purchased under the head sundry equipments are of small value like brief cases for staff, calculators, telephones, modems, etc. which are largely towards replacement of damaged items;*
- *The expenses incurred fulfill all the conditions laid down by section 37(1) of the Act.*

3. *The Appellant prays that the expenditure incurred on purchase of sundry equipments be allowed as revenue in nature.*

Ground No.7

Appellant craves leaves to add, amend, delete or modify any of the above Grounds of the Appeal.”

“ITA No.2679/M/2013 for A.Y. 2002-03 (Revenue’s appeal) :

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting corresponding Notional Interest of Rs.2,28,64,385/- on loans due from VCCL Ltd. without appreciating the fact that advances to subsidiary companies cannot be construed as for the purpose of the business within the meaning of section 36(l)(iii) and the assessee has huge borrowed funds on which interest liability has been claimed as against interest free loan advanced.*

2. *Whether on the facts and circumstances of the case and in law, the Id. CIT (A) was justified in deleting Notional interest on debts due from Esslon Synthetics Ltd. of Rs. 1,41,75,000/-without appreciating the fact that interest is due on receivables from Esslon Synthetics Ltd.*

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the disallowance made u/s 40A(9) in respect of contribution to LML Executive Club, LML Officers Club and LML Ladies Club aggregating to Rs. 3,48,000/-without appreciating the fact that such contributions are not falling within the provisions of sec. 40A(9).*

4. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the disallowance made on account of pre operative expenses without appreciating the fact that the expenses have been incurred prior to commencement of business.*

5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in not treating the expenditure of Rs. 6,70,552/- and of Rs. 1,44,901/- incurred on account of obtaining ISO 9002 Certification and WCM Certification respectively as capital expenditure without appreciating the fact that these expenses have fetched the assessee the benefit of enduring nature.*

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

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

3. Briefly stated facts necessary for adjudication of the controversy at hand in the aforesaid cross appeals/objections are : the assessee company is into the business of manufacturing gear

scooters (metal body), gearless scooters (plastic body), motor bicycles and mopeds at its factory situated at Kanpur and Gurgaon. Assessee company's products are sold through chain of authorized dealers/representatives. Assessee company is also into the business of manufacturing and selling spare parts related to its products. Common question raised in all the appeals is Assessing Officer (AO) disallowed interest claimed by the assessee from M/s. Vespa Car Company Limited (VCCL) and M/s. Ession Synthetics Ltd. (ESL), disallowed debit balances written off under section 40A(i), disallowance of deferred revenue expenditures made, disallowance under section 14A, disallowance under section 14A(a), disallowance of royalty written back and disallowance of provision for royalty to Daelim claimed as deduction during the year under consideration, disallowance of payment to the club, pre-operative expenses, prior period expenses and advance bonus payment. The AO also made disallowance of miscellaneous expenses on account of license fee, furnishing expenses, expenses on ISO 9002, expenses on ISO 9001, expenses on ventures ISO 9002, world class manufacturing and sundry equipment.

4. In A.Y. 2005-06 & 2006-07 on the information received from Directorate of Enforcement, AO recorded reasons and reopened the assessment under section 147 of the Act by way of issuance of notice under section 148 of the Act by noticing that the AO during assessment framed under section 143(3) of the Act disallowed an amount of Rs.3,29,07,461/- by treating the same as capital expenditure, but it is observed that only a part of the lead manager fee and other expenses have been capitalized in place of entire Rs.1213.48 lakhs. By declining the contentions raised by the

assessee, the AO made addition of Rs.9,74,40,539/- being the difference as capital expenditure. The AO also disallowed foreign currency expenditure of Rs.8.37 crore in relation to restructuring which was actually made in A.Y. 2006-07 but has been claimed in A.Y. 2005-06.

5. Similarly, in A.Y. 2006-07 the AO on the basis of information received from Directorate of Enforcement recorded the reasons and initiated the reopening of assessment under section 147 of the Act by way of issuance of notice under section 148 of the Act. The AO noticed that for the period ending 31.09.2006 the assessee in its financials shown an amount of Rs.792.52 lakhs debited under the head “professional and legal charges” in P&L account whereas in the notes to account of the annual account under the head “professional and consultation fee” the amount of Rs.1632.67 lakhs was mentioned. Since the assessee has failed to reconcile the same, difference of Rs.836.15 lakhs is added back to the income of the assessee as unexplained expenditure.

6. On account of overlapping nature of account an amount of Rs.836.15 lakhs was added to the income of the assessee for A.Y. 2007-08 on protective basis. The AO also added back to the income of the assessee an amount of Rs.178.45 lakhs debited in P&L account under the head “extraordinary items” by capitalizing the same. Consequently the AO proceeded to frame the assessment at the net loss as below :

Loss in Rs.	Assessment Year	Appeal /CO No.	
		Revenue's	Assessee's
-Rs.34,51,89,264/-	2001-02	ITA No.7742	ITA No.1894

		/M/2012	/M/2013
-Rs.49,19,20,009/-	2002-03	ITA No.2679/M/ 2013	ITA No.2653/ M/2013
-Rs.29,67,68,325/-	2003-04	ITA No.2680/M/ 2013	ITA No.2654/ M/2013
-Rs.30,13,99,936/-	2004-05	ITA No.3488 /M/2013	ITA No.3008 /M/2013
-Rs.101,07,75,169/-	2005-06	ITA No.4416/M/ 2013	ITA No.3449 /M/2013
-Rs.91,33,34,630/-	2005-06	ITA No.4417/M/ 2013	CO No.190/M/ 2014
-Rs.62,09,48,984/-	2006-07	ITA No.4395 /M/2013	CO No.189/M/ 2014
-Rs.35,53,07,050/-	2007-08	ITA No.3489 /M/2013	-
-Rs.20,04,19,419/-	2008-09	ITA No.3490 /M/2013	-

7. Despite issuance of the notice to the assessee company none appeared on behalf of it, so the Bench decided to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

8. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

9. At the very outset, it is brought to the notice of the Bench that National Company Law Tribunal (NCLT) vide its order dated

23.03.2018 passed in CP No.IB(SS) Ald/2017 dated 30.05.2017 has appointed liquidator to carry out the process of liquidation as per provision of insolvency and bankruptcy (I&B) Code 2016 and thereby ordered that all the proceedings against the corporate debtors shall be looked into by the resolution professionals and in these circumstances all the proceedings against the corporate debtors including execution of judgment, decree or order in any court of law, Tribunal, arbitration, panel or other authorities have been prohibited and as such present cross appeals/cross objections in the present format are not maintainable having not been filed by Resolution Professional who is empowered to file appeal only on the approval of the committee members. Hence, all the aforesaid cross appeals/cross objections are liable to be dismissed being not maintainable at this stage.

10. Resultantly, aforesaid cross appeals/cross objections filed by the assessee as well as Revenue are dismissed being not maintainable in the present format with liberty to file fresh one in proper format duly verified by the person authorized. Appellants are also given liberty to get the present cross appeals/cross objections restored, if need be, by moving an application.

Order pronounced in the open court on 13.04.2022.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 13.04.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.