IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 769/Mum/2008

(A.Y: 2004-05)

Piramal Enterprises Ltd (Formerly known as Piramal Healthcare Ltd) (Before known as Nicholas Piramal Ind) Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400013.	Vs.	ACIT, Circle – 7(1) Aayakar Bhavan Mumbai – 400020.
PAN/GIR No. : AAACN4538P		
Appellant	..	Respondent

ITA No. 1954/Mum/2008

(A.Y: 2004-05)

DCIT, Circle – 7(1) Aayakar Bhyavan Mumbai – 400 020.	Vs.	Piramal Enterprises Ltd (Formerly known as Piramal Healthcare Ltd) (Before known as Nicholas Piramal Ind) Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400 013.
PAN/GIR No. : AAACN4538P		

Assessee by :	Mr.Ronak Doshi & Ms.Manshi Padhiyar.AR
Revenue by :	Mr.S.N.Kabra.DR

Date of Hearing	03.06.2022
Date of Pronouncement	20.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The cross appeal is filed by the assessee and the revenue against the order of the Commissioner of Income Tax (Appeals)-XIX, Mumbai passed u/s 143(3) and 250 of the Act.

For the sake of convenience, we shall take up the revenue appeal in ITA No. 1954/Mum/2008 for the A.Y 2004-05 as a lead case and the facts narrated. The revenue has raised the following grounds of appeal.

i) On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to restrict the disallowance of Rs. I I, 12,62,638/- to Rs.5, I 1,35,562/- ignoring the fact that the disallowance made by the Assessing Officer comprise of revenue expenditure of Rs.8,42,02,053/-, capital expenditure on Research & Development of Rs,2,70,60,585/-/-, depreciation of the current year of Rs.45, 10,098/- and depreciation on opening WDV of Rs.5,33,2501- (total Rs. I 1,58,25,986/-) and the assessee had itself admitted that there was a difference in the claim of Research & Development expenditure and that the assessee had claimed excess deduction u/s.35 (2AB) and excess depreciation.

2. On the facts and in the circumstances of the case and

in law, the CIT(A) erred in allowing depreciation © 60% on the software purchased by the assessee clubbing the same with the computer hardware ignoring the fact that software as an intangible asset was entitled for depreciation only © 25% u/s.32(l)(ii) of the Income-tax Act, 196 1 since software purchased is not a product but only is in nature of a commercial right.

3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow depreciation in respect of the assets transferred to the assessee as a result of merger of BMIL & PHL in the manner computed by the assessee ignoring the fact that the Assessing Officer had correctly worked out the depreciation allowance as it should have been claimed by M/s. PHL & M/s. BMIL and also ignoring the fact that similar decision of the CIT(A) for earlier years has not been accepted and appeals are pending with the ITAT.

4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in restricting the addition upto net unutilized Modvat credit the addition on account of increase in the value of closing stock of Rs. 11,77,76,480/- by application of the provisions of section 145 A of the Income-tax Act ignoring appropriate treatment to Modvat credit.

5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing to treat the expenditure of Rs.3,21,98,592/- on consultancy charges as revenue expenditure and allow deduction u/s.35 DD ignoring the fact that under the provisions of section 35 DD, expenditure incurred towards amalgamation or de-merger of company is allowable, being 1/5th in each of the successive years, and is not available in respect of the expenditure which is aimed at developing a long term business strategy.

6. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing to treat the rental

income from RP house property and Centre point as income from 'house property' as against assessed as income from 'other sources' ignoring the fact that the assessee was not the legal owner of the property in the relevant assessment year.

7. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing that deduction u/s.80 HHC in the cases in which the provisions of MAT are applicable is to be worked out on the basis of adjusted book profit and not on the basis of the profit computed under the regular provisions of law applicable to the computation of profits and gains of business and profession ignoring the fact that the provisions of section I 15 JA are substantially different from the earlier provisions u/s. I 15 J where deduction u/s.80 HHC was available on the basis of adjusted book profit.

8. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing to allow set off of losses / depreciation of Tools Division of Rs.2,34,54,04,405/- on account of demerger without appreciating the fact that the entire scheme of demerger of Tools Dvision with the assessee company is not valid and is only the method designed to benefit the assessee company in order to claim the benefits of brought forward losses u/s.72 A of the Act under the guise of demerger.

9. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AO restore the appellant craves leave to amend or alter any ground or add a new ground that may be necessary.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and sale of pharmaceuticals and it deals in both prescription and OTC products as well as bulk drugs,

chemicals and skin care products. The assessee has filed the return of income for the A.Y 2004-05 on 28.10.2004 disclosing a total income of Rs. 3,02,91,080/- under the normal provisions of income tax and u/s 115JB of the Act Rs. 181,19,56,123/-. The return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) of the Act was issued. In compliance the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. It was brought to the notice of the Assessing Officer (A.O.) that during the F.Y 2003-04 the assessee company has amalgamated M/s Sarabhai Piramal Pharmaceuticals P Ltd with itself under the scheme of Amalgamation approved by the Hon'ble Bombay High Court. As per the amalgamation, the assets and liabilities of Sarabhai co P ltd were transferred to the assessee company w.e.f 01.04.2003. Further another company M/s Canare Activities and Fine Chemicals P Ltd(Canera) was amalgamated under the scheme of amalgamation approved by the Hon'ble Bombay High Court order dated 06.05.2004 and as per the scheme of amalgamation, all the assets and liabilities of Canera

transferred and vested with the assessee company w.e.f 01.10.2003. In F.Y.2003-4,there was a demerger with M/s. Morarjee Gokuldas Spinning and Weaving Co. Ltd with the Canera with respect to Tools division. The A.O. has dealt on the facts of amalgamation and demerger in the Assessment order. The A.O. On perusal of the financial statements found that the assessee has claimed the deduction u/s 35(2AB) of the Act in respect of research and development expenditure, while computing the income.(i) The A.O has dealt and observed at Para 5 to 5.5 of the order and worked out the disallowance u/s 35(2AB) of the Act of Rs. 11,58,25,986/-. (ii) On second disputed issue with respect of depreciation on computers and computer software, the A.O observed that the assessee has claimed the depreciation @ 60% which is higher and the contentions raised before the A.O. that the claim is correct but the AO has restricted @ 25% rate and disallowed the excess claim of Rs.69,02,148/-.(iii) the A.O. calculated the Short term capital gains of computers of Rs.1,72,61,062/-(iv) Since the computer block of Assets ceased to exist, the depreciation claimed on computers of Rs17,57,338/- is disallowed. (v) the

A.O. dealt on facts of deprecation on the assets merged with the assessee company in the earlier years in the scheme of amalgamation of Boehringer Mannheim Limited (BMIL) at Para 9.3 and disallowed the excess depreciation of Rs. 3,87,47,001/- as under:

> *9.3 Accordingly, the WDV in respect of the assets belonging to erstwhile BMIL is adjusted for the foregone deprecation for A.Y 1995-96 & 1996-97. In respect of Pharma Division take over from Piramal Holdings Ltd., also the WDV is adopted on the basis of the income tax records. Similarly, the sale by the assessee of its glass division and the bulk drug division in A.Y 1999-00 was considered by the AO to be an itemized sale of assets as against the claim of the assessee that the same was slump sale. As detailed in the assessment order of A.Y 1999-00, the block of assets is reduced by the sale value as recorded in the books of the purchasing company and continuing with the consistent stand of the earlier years, the WDV is reduced and depreciation is reworked, vide annexure-I, as per which the excess depreciation is Rs. 3,87,47,001/-.*

3. The A.O based on the tax audit report dealt (vi) on the of Modvat credit and valuation of closing stock as disclosed in Form No. 3CD. The A.O was not satisfied with the method of treatment of Modvat Credit and discussed elaborately on quantitative details and valuation of closing stock at Para 10.1 to 10.14 of the order and made addition being increase in value of

closing stock of Rs. 11,77,76,480/-. (vii) The A.O. find that the assessee has obtained interest bearing loan for purchase of equity and has disallowed the interest on loan of Rs.2,87,00,000/- and observed at Para 11.4 of the order read as under :

> *11.4 The assessee company's contentions have been considered. However, the same are found to be untenable. The aforesaid interest of Rs.2.87 crores has been incurred on the loan availed for the express purpose of acquiring the equity shares of Phone Poulenc India Limited. For the detailed reasons as discussed in the assessment orders of the assessee company for A Ys 2002-03 and 2003-04, the interest amounting to Rs.2.87 crores debited in the profit and loss account on the loan of Rs.200 Crores from ICICT Ltd which was restructured, as stated above, is held as capital expenditure and the same is hereby disallowed as the interest on loans obtained for the purpose of buying the equity shares, which is not the business of the asscssee, is not. allowable expenditure.*
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> *Addition: Disallowance of interest on capital loan: Rs. 2,87,00,000/-*
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> *Penalty proceedings u/s 271(1)(c) is initiated separately for concealing of particulars of income and furnishing inaccurate particulars of income.*

4. The A.O. found that (viii) the assessee has claimed consultancy charges Of Rs.3,21,98,592/- in the books of accounts. The assessee has filed the details and explanations referred at para12.1 but the AO was not satisfied with the nature of the payments and observed at Para 12.3 and disallowed the claim:

12.3 From a perusal of these details it is noticed that similar services had been rendered by these enteritis in the preceding previous year also.

Considering the scope of the services rendered, it is clearly seen that the benefit accruing to the assessee company is of long term and enduring n nature. Similarly, the agreement operates for bringing long term and enduring benefit to the assessee company. The assessee company has itself debited under Exceptional Items and has treated it as non-recurring items. Further, for the detailed reasoning given in the Orders u/s. 143(3) for A.Y. 2002-03 and 2003-04, the expenditure on Consultancy Charges is treated as Capital in nature. 12.4 Accordingly, the expenditure amounting to Rs.3,21,98,592/- under the head consultancy charges is treated as capital expenditure.

Additional: Consultancy charges disallowed: Rs. 3,21,98,592.

5. The A,O, dealt on (ix) treatment of capital gains on sale of RP house observing at Para 15.4 of the order as under:

The representatives of the assessee also submitted. during the course of assessment proceedings that this issue was already discussed in detail in the assessment orders of AY 2002-03 and 2003-04, and our submissions made there under may also he considered for the current year as well. The contents of the assessee's letter filed for AY 2003-04, are reproduced here under:

Vide para no. 15 of the Order u/ s. 143(3) for A . Y. 2002-03, while completing the assessment, the A.O. has reduced our claim for depreciation in the block of building - factory /

office (10%), by considering the entire value of the agreement for the sale of RP1L House as having been received for the previous year pertaining to A. Y. 2002-03. This has resulted in the entire sale proceeds relating to building out of Rs.84.50 crs which was to be received over a number of years, being reduced from the said block in the previous year relevant to A.Y 2002- 03. This has eventually resulted in. the said block being reduced to NIL. As per the contention of the assessee company, the transfer of RP1L House is intended to be completed in installments over a period of 4 years. Accordingly, in the previous year relevant to the current A. Y. 2003-04, the assessee company had reduced the appropriate portion of the sale proceeds from the said block. Also refer Note no. 2 of the Notes to the Computation of A. Y. 2003-04. Consistent with the stand taken by the A. O. for A. Y. 2002-03, we are now excluding the appropriate portion of the sales proceeds for the purpose of calculating depreciation on the said block. Please refer to Annexure XII submitted vide our letter dated 02.09.2005.

6. On the disputed issue (x) in respect of rental income from RPIL house and centre point, the AO found the claim cannot be allowed, as the ownership is in dispute and observed at Para 16.1 to 16.2 as under:

16.1 A perusal of the computation filed along with the return of income shows that the assessee company has declared. Income from House property in respect of rent received from RPIL House and Centre Point amounting to Rs.476.19,394 (including additional compensation received of Rs.71,92,815). It is pertinent to note here that the RPIL house has been sold off by the assessee company in the F Y 200 1 -02 relevant to A Y 2002-03 Further, the capital gains on such sale have also been declared by the

assessee company in A Y 2002-03. As the registration of the sale of RPJL house has also been done in the previous year relevant to A Y 2002-03, the ownership of the RPIL house does not vests with the assessee company. Similarly, the assessee company had entered into a purchase agreement with Morarjee Goculdas Spinning &. Waving Co. Ltd (MOM.) for purchase of office premises at Centre Point. However, the deal did not materialize. Hence, the ownership of the office premises of centre point does not vest with the assessee company.

16.2 In view of the above, the rental income received by the assessee company from the aforesaid two premises (i.e. RPIL House and Centre point) cannot be taxed under the head Income from House Property, since the assessee company is not the owner of the said properties during the financial year 2003-04. Further, the assessee company is also not in the business of letting out of premises. Hence, the rental receipts can also not be taxed under the head Business Income. Such rental receipts can only be taxed under the head "Income from other sources". The deduction available to the assessee company would be only those which qualify u/s 57(iii) of the I T Act. The rental income of Rs.4,76, 19,394 (including additional compensation received of Rs.71,92,815) is hereby taxed as income from Other Sources. There are no expenses incurred in relation to this income and hence no deductions are allowable. Hence the entire rents received of Rs.4,76, 19,394 (including additional compensation received of Rs.71,92,815) is hereby brought to tax under the head "income from Other Sources" without allowing any deductions / expenses.

Addition: Income from other sources Rs. 4,75,19,394/-.

7. The A,O dealt on issue (xi) set off of losses/ depreciation on amalgamation, the AO dealt at Para 17.7 to 17.15 of the order on the provisions of Sec72A of the Act, scheme of amalgamation, demerger and notes on Accounts and observed that the entire loss from the tools division is not allowed to set off and denied the claim of brought forward losses of Rs.2,34,54,04,405/-.(Xii) the A.O. dealt on the allowance of depreciation and computation of book profit u/s 115JB of the Act and computing the claim of deduction u/sec80HHC of the Act at Para 18.1 to 18.9 and in particular at Para 18.9 read as under:

> *18.9 A plain reading of the above Explanation (iv) leads to the conclusion that what needs to he reduced from the "Book Profits" is the amount of profits biefor deduction_u/s.8OHHC. Hence, it is amply clear that only the amount which is deducted u/s.8OHHC from the Gross Total Income has to be deducted while computing the income for MAT purposes. Hence the book prcfits are to be determined by reducing the amount that is actually deductible u/s.80HHC of the Act, amounting to Rs.3,20,76653, as above. However, since the regular income as determined in the order is more than the income determinable u/s.i 115JB, the assessment is completed by adopting the regular income.*

8. Finally the A.O. has assessed the total income of Rs.1,515,994,254/- and passed the order u/s 143(3) of the Act dated 29.12.2006.

9. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the A.O and has granted relief in some of the grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, both the assessee and revenue have filed the appeal with the Honble Tribunal.

10. At the time of hearing, the LD.DR submitted that the CIT(A) has erred in granting the relief and the revenue has challenged the issues highlighted in the grounds of appeal and the Ld.DR supported the order of the Assessing officer on the disputed issues raised by the revenue. Contra the Ld. AR Supported the order of the CIT(A) on the disputed issues raised by the revenue and emphasized that most of the issues are covered by the Honble tribunal decisions in the assesses own case and substantiated the submissions with the judicial decisions, Chart and voluminous paper book.

11. We heard the rival submissions and perused the material on record. On the first disputed issue that the CIT(A) has erred in restricting the disallowance u/s 35(2AB) of the Act. We find that the CIT(A) has dealt at page 2 to 5 Para 1 of the order as under:

> *The submissions of the appellant and the contentions made by the AO in the assessment order were duly considered. It is also observed that the appellant has filed an application for rectification u/s. 154 of the I.T. Act. However, the contentions put forth by the appellant were not disposed off by the AO. The AO is directed to restrict the disallowance to Rs.5,11,35,563/- after necessary verification as specifically brought out in the contentions of the appellant.*
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> *Further, the AO is also directed to delete the disallowance of excess depreciation amounting to Rs.45,10,098/- of the current year and Rs.53,2501- on the opening written down value(WDV).*
>
> *In the result this ground of appeal is allowed for statistical purpose.*

We find the Ld.AR has filed the working of disallowance U/sec35(2AB) of the Act which explains the nature of expenditure, actual expenses debited to profit &loss account, claim made in the return of income and the assessee claim before the DSIR and the revised claim. The workings tally with the net disallowance restriction directed by the CIT(A) to A.O. The Ld. DR could not controvert the above findings of restoration to the file of

A.O. and we do not find merit in this ground of appeal of the revenue and is dismissed.

12. On the claim of depreciation on computer software. We find that the CIT(A) has dealt at Para 2 and observed at page 6 as under and partly allowed the ground of appeal:

> *The submissions of the appellant as well as the contentions of the AO were duly considered. After giving due consideration I am of the opinion the computer software is different from Computer and the rate of depreciation should be 25% as held by the A.O. However, since the appellant had claimed only 17,67,338/- as depreciation, the disallowance should be restricted to Rs. 17,67,338/-.*
>
> *In the result this ground of appeal is partly allowed.*

The Ld.AR submitted that the CIT(A) in fact has upheld the A.O. decision and whereas the Honble ITAT in the Assessee own case in A.Y.2010-11 in ITA no.1754&1832 /Mum/2015 dated 15-01-2010 has observed that the computer software is eligible for depreciation @60%. We find there is nothing remains in the ground of appeal as it become in fructuous due to grant of higher depreciation on software and the ground of appeal of the revenue is dismissed.

13. The third disputed issue ventilated by the revenue that the CIT(A) has erred in directing the grant of depreciation on assets transfer of BMIL and PHL to the assessee in the merger and the said companies have not claimed depreciation on the assests held by them . We find that the CIT(A) has dealt at Para 5 as under :

> *Ground No. V*
>
> *Disallowance of excess depreciation : Rs. 3,87,47,001*
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> *In ground of appeal No. V, it is contended that the A.O erred in computing depreciation allowable in respect of assets of Boehringer Mannheim India Ltd (BMIL) merged with the appellant and the assets of the pharma division taken over from Piramal Holdings Limited (PHL) in a manner different from the one calculated by the appellant. It is further contended that the AO erred in reducing from the block of assets the sale value as recorded in the books of purchasing company pertaining to Glass division and Bulk division sold in AY 1999-2000 on slump sale basis on the alleged ground that the AC has considered it as sale of itemized sale of assets.*
>
> *I have duly considered the issue. The issue is recurring one. In earlier years the AO had worked out WDV as on 31.03.1996 as if the depreciation for the assessment years 1995-96 and 1996-97 were notionally allowed by BMIL which had not opted to claim depreciation on its assets for AY 1995- 96 and 1996-97 MY learned predecessors in earlier assessment years have directed the A) to allow depreciation on the basis of the computation made ky the appellant and not to reduce the WDV on the basis of notional amount of depreciation. Respectfully*

following the orders of my learned predecessor, the AO is directed to allow the depreciation as claimed by the appellant in respect of assets of BMIL. In the case of PHL the said concern had not claimed depreciation for AY 1996-97. The depreciation was thrust upon the A.O. My learned predecessor had held that the A.O. was not justified to thrust upon the depreciation. In view of this decision of my learned predecessor and the decisions of my learned predecessors in the case of the appellant itself for A. Yrs. 1997- 98, 1998-99, 1999-200, 2000-01, 2001-02 ,2002-03,and 2003- 04, the A.O. is directed that the depreciation not claimed by BMIL and M/s. PHL should not be considered for the purpose of working out the WDV and consequently allowing depreciation thereon.

In the result this ground of appeal is allowed.

Further we find in the assessee's own case for the A.Y 1997-98 to 2003-04 & 2009-10 to 2010-11, the Hon'ble Tribunal has decided the issue in favour of the assessee In ITA no1754/Mum/2015 for the A.Y 2010-11 at Para 18 to 20 of the order read as under:

18. The next issue that came up for our consideration from ground No.5 of assesee appeal is disallowances of claim of depreciation pertaining to BMIL and PHL of Rs. 94,43,089/-. The Ld. AR for the assessee submitted that this issue is covered in favour of the assessee by the decision of ITAT for AY 2008-09 and 2009-10, where under identical set of facts, the Tribunal has allowed the claim of the depreciation pertaining to BMIL and PHL units. The Ld. DR, on the other hand, fairly accepted that the issue is squarely covered in favour of the assessee by the decision of Tribunal for earlier

years. But, he strongly supported order of the Ld.AO, as well as the Ld. DRP.

19. We have head both the parties, perused the material available on record and gone through orders of the authorities below. We find that this issue was subject matter of deliberations by the co-ordinate bench of ITAT, Mumbai 'J' bench in assessee's own case for AY 2009-10, where under identical set of facts, the Tribunal allowed claim of depreciation. The relevant findings of the Tribunal are as under:-

18. Insofar the disallowance of the claim of depreciation pertaining to BMIL is concerned, we find that the same being a recurring issue is covered by the order of the Tribunal in the assesses own case for A.Y. 2008-09 in favour of the assessee. We find that the Tribunal while disposing off the appeal of the assessee for A.Y. 2008-09, had observed that it was an admitted fact that BMIL before its merger had not claimed depreciation on the assets in the A.Y. 1995-96 & A.Y 1996-97. In fact, the assessee had claimed depreciation for the first time on the assets taken over from BMIL. It was observed by the Tribunal that as per the provisions of Sec. 32 of the I-T Act applicable to the relevant assessment year, the assessee was free to either claim or not claim depreciation, as per its own option. On the basis of the aforesaid deliberations, it was concluded by the tribunal that the A.O was not justified in notionally reducing the depreciation for A.Y 1995-96 & A.Y 1996-97 from the WDV of the assets of BMIL while quantifying the depreciation in the hands of the assessee. As a matter of fact, the Tribunal while concluding as hereinabove had relied on a similar view taken by a coordinate bench in the assesses own case viz. Additional CIT Vs. Nicholas Piramal India Ltd. (2012) 150 TTJ 1 (Mum). In the said case the Tribunal drawing support from the judgment of the Hon"ble Supreme Court in the case

of CIT Vs. Mahendra Mills (2000) 159 CTR (SC) 381, had concluded that in the absence of a claim of depreciation by the assessee, the same could not have been thrust upon it even if the particulars were available with the AO. We have perused the order of the Tribunal for A.Y. 2008-09 and finding no reason to take a different view, respectfully follow the same. Apart there from, we are also in agreement with the ld. A.R that now when the DRP while disposing off the objections filed by the assessee had specifically directed the A.O to allow claim of depreciation as was raised by the assessee in respect of BMIL, therefore, there was no reason for the A.O to have not followed such directions while passing the final assessment order u/s 143(3) r.w.s 144C(13), dated 28.01.2014. In terms of our aforesaid observations, we direct the A.O to allow the assesses claim of depreciation insofar the assets of BMIL are concerned.

19. As regards the claim of depreciation raised by the assessee on the assets of PHL which w.e.f 01.06.1996 were taken over by the assessee under a scheme of arrangement duly sanctioned by the Hon"ble High Court of Bombay, vide its order dated 14.08.1997, we find that the assessee subsequent to the takeover had taken the WDV on the basis of the Income Tax records of PHL. As is discernible from the orders of the lower authorities and admitted by the assessee in its objections raised before the DRP, though PHL had not claimed depreciation on its assets, however, the A.O while framing the assessment in its hands for A.Y 1996-97 had allowed the same. Apart there from, the assessee had during the year relevant to A.Y 1999- 2000 sold its two divisions viz. (i). Glass Division (GGL); and (ii). Bulk Drug Division (BDD) on a slump sale basis. As such, the assessee company in A.Y 1999-2000 while computing the deprecation had dropped the WDV of the aforesaid two undertakings from the respective „block of assets" on the date of such „slump sale".

As observed hereinabove, the A.O declined to accept the claim of the assessee that it was a „slump sale" transaction and considered the same as an itemised sale of assets. On the basis of his aforesaid observations, the A.O worked out the WDV of the „block of assets" by taking the values of the assets as were recorded in the „books of accounts" of the purchasing company, as the sale value, and reduced the same from the different „block of assets". In the backdrop of his aforesaid reworking of the WDV the A.O scaled down the assesses claim of depreciation in respect of assets of PHL.

20. On a perusal of the records, we find that it is the claim of the assessee that the CIT(A) while disposing off its appeal for A.Y 1999- 2000 had observed that the sale of two divisions viz. (i). Glass Division (GGL); and (ii). Bulk Drug Division (BDD) by the assessee was rightly claimed as „slump sale" transaction. However, as is discernible from the order of the DRP, the issue as to whether the sale of the aforesaid two divisions was to be construed as itemized sale of assets or slump sale is pending before the ITAT in the preceding years of the assessee. Accordingly, the DRP had directed the A.O to allow depreciation to the assessee on the basis of the outcome of the main appeal regarding slump sale vs. itemized sale. In the backdrop of the aforesaid fact situation, now when the matter as to whether the sale of the aforesaid two divisions by the assessee is to be treated as an itemized sale or a slump sale is pending in the case of the assessee for the preceding years, therefore, we find no infirmity in the order of the DRP who had rightly directed the A.O to allow depreciation to the assessee on the basis of the outcome of the main appeal. In terms of our aforesaid observations the Ground of appeal No. IV raised by the assessee is partly allowed.

20. In this view of the matter and consistent with view taken by the co-ordinate bench, we direct the Ld. AO to

allowed depreciation as claimed by the assessee on BMIL and PHL units.

We find the Honble Tribunal has considered the facts, provisions of the Act and judicial decisions and directed the A.O. to allow the depreciation. In the present case the facts are identical and CIT(A) has relied on the earlier years decision and granted the relief. We rely on the decision of the Honble Tribunal and findings of the CIT(A) and up held the same as decided in favour of the assessee. Accordingly we dismiss this ground of appeal of the revenue.

14. The fourth disputed issue being the Addition u/s 145A of the Act with respect to modvat credit. We find that the CIT(A) has granted relief and observed at Para 6 read as under:

6.I have duly examined the issue and have studied the submissions made by the Appellant and am of the view that the new method adopted by the AO is totally illogical and have no basis. This method is not as per any provisions of law or any guidelines provided. This issue of applicability of section 145A is a recurring issue and has been considered by my learned predecessors in A.Y. 2003-04. Following the same and accordingly, I direct the A.O. to restrict the disallowance to net unutilized modvat credit after doing

necessary rectification as pointed out by the Appellant in rectification application.

In the result this ground of appeal is partly allowed.

Further we found that the Hon'ble Tribunal has decided the issue and dealt in the assessee's own case for the A.Y 2002-03 2003-04,2009-10&2010-11.The Honble Tribunal in ITA no.4000/Mum/2007 &others for A.Y.2003-04 dated 5-10-2021 has observed at page 11 Para 11 to 11.2 as under.

11. The ground No. I raised by the assessee is challenging the addition in respect of unutilized MODVAT credit u/s.145A of the Act.

11.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed before us that this issue is already adjudicated by this Tribunal in assessee"s own case for A.Y. 2002-03 in ITA No.3927/Mum/2006 dated 20/02/2020 wherein it was held as under:-

"5.1. We have heard rival submissions. We find that the ld. AO had recorded in the assessment order that in the tax audit report, the Tax Auditor mentioned that assessee is following EXCLUSIVE method of accounting for MODVAT with regard to inventory, purchases and consumption. The assessee vide letter dated 29/11/2004 had also contended that the aforesaid treatment had no impact on the profit at all. The ld. AO observed that unutilised balance of MODVAT credit on stock in trade is reflected in the balance sheet as an asset amounting to Rs.152.83 lakhs and as per the proviso of Section 145A of the Act, the unutilised MODVAT needs to be included in the value of closing stock. During the course of assessment proceedings, the

assessee, without prejudice, claimed that the amount which was added to the closing stock in A.Y.2001-02 on similar lines as above i.e. Rs.86.56 lakhs should be allowed as part of the opening stock in A.Y.2002-03. This claim of the assessee was allowed by the ld. AO by increasing the opening stock to the extent of Rs.86.56 lakhs and the net addition on account of unutilised MODVAT credit was made by the ld. AO at Rs.66,27,443/-. This action of the ld. AO was upheld by the ld. CIT(A). We find that this issue was the subject matter of adjudication by this Tribunal in assessee's own case for A.Y.2009-10 in ITA Nos.1257/Mum/2014 & 1486/Mum/2014 dated 07/05/2019 wherein it was held as under:-

"Adjustment of Inventory as per Sec. 145A : Rs. 1,16,08,088 21. We shall now advert to the contention of the ld. A.R that the A.O/DRP had erred in re-computing the value of the "closing stock" at Rs. 15,982.73 lacs as against Rs. 14,834 lacs and "opening stock" at Rs. 14,367.65 lacs as against Rs. 13,335 lacs, on the ground that the assessee is following exclusive method of accounting for MODVAT with regards to its inventory. It is the claim of the ld. A.R that irrespective of whether the assessee follows Inclusive or Exclusive method of valuation of stock, the amount of unutilized MODVAT shall have no bearing on the profits of the assessee. We find that the assessee had before the lower authorities objected to the aforesaid addition as was sought to be made by the A.O on three counts viz. (i) that requirement of valuing the purchases, sales and inventories for the purpose of determining the income under the head "Profits and gains of business or profession" was contrary to the accounting principles laid down by Accounting Standard-2 (for short "AS-2"); (ii). that the ICAI had issued "Guidance Note on Tax Audit under Section 44AB of the I-T Act", which specifically requires the formats in which information as regards the valuation of purchases, sales and inventories under both inclusive and exclusive method are to be presented, and the same provides that irrespective of the methods being followed, the net impact on the profit and loss will be nil; and (iii). that irrespective of whether the assessee follows Inclusive or Exclusive method of valuation of stock, the amount of unutilized

MODVAT credit will have no impact on the profits of the assessee. Apart there from, the assessee had also objected to the calculation of the "closing stock" and „opening stock" by the A.O by multiplying the stock value by the ratio of purchases (including excise) and purchases (net of excise). It is further averred by the ld. A.R that insofar the valuation of inventories as per Sec. 145A was concerned, the raw material, packing material, stores and works-in-progress was valued at cost, while for the finished goods were valued at cost or net realisable value, whichever was lower. In fact, it is the claim of the assessee that the „cost" has consistently been taken at net of MODVAT credit. On the basis of the aforesaid facts, it is stated by the assessee that the element of MODVAT was neither included in the consumption nor into cost for valuation of „closing stock". As such, it is the claim of the assessee that as it has debited its „profit & loss a/c" with purchases of raw material net of MODVAT Excise duty, therefore, the valuation of „closing stock" of raw material was also made at cost net of such excise duty. In sum and substance, it is the claim of the assessee that the costs which have not been debited to the profit and loss account at all, cannot be used for valuation of „closing stock". On the basis of its aforesaid submissions, it is the claim of the assessee that the deviation on the profit of the year on account of method of valuation prescribed under Sec. 145A is Rs. Nil, which formed part of the tax audit report as "Annexure B".
22. We have deliberated at length on the issue under consideration and find that the assessee for the purpose of its statutory accounts had followed the AS-2 on Valuation of Inventories, and the Guidance Note on Accounting Treatment of MODVAT/CENVAT issued by the ICAI. Accordingly, the assessee had followed the exclusive method for accounting purposes. However, for the purposes of incometax it had worked out the impact of grossing up of tax, duty, cess etc. by restating the values of purchases and inventories by including inter alia the CENVAT credit. The adjustment required u/s 145A of the I.T Act was reflected in Clause 12(b) of the tax audit report of the assessee. As per Clause 12(b) the adjustment u/s 145A worked out at Nil. It is the claim of the assessee that the amount

reflected in Clause 12(b) of the tax Audit report shall be treated as the adjustment required u/s 145A, and in support thereof had relied on the order of the ITAT, Mumbai in the case of Hawkins Cookers Ltd. Vs. ITO (2008) 14 DTR 206 (Mum). We have perused Clause 12(b) (Page 61 of „APB") of the Tax Audit report of the assessee and find that it is the claim of the assessee that the impact of grossing up of tax, duty, cess etc. by restating the values of purchases and inventories by inter alia including the effect of CENVAT credit will be Nil, subject to Sec. 43B that the duty, taxes, cess etc. is paid before the „due date" of filing of the return of income. As the ld. D.R had submitted that the aforesaid working of the assessee would require to be verified, we therefore, in all fairness restore the matter to the file of the A.O for readjudication. Needless to say, the A.O shall in the course of the set aside proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its claim before him. The Ground of appeal No. V is allowed for statistical purposes."

5.2. Respectfully following the same, we deem it fit and appropriate, to remand this issue to the file of the ld. AO to decide the same in the light of directions issued by the Tribunal for the A.Y.2009-10 . Accordingly, the Ground No. II raised by the assessee is allowed for statistical purposes".

11.2. The workings for the MODVAT credit are enclosed in pages 161-164 of the paper book filed by the assessee. Respectfully following the aforesaid decision, we restore this issue to the file of the ld. AO to decide the same in the light of directions issued by this Tribunal for A.Y.2009-10. Accordingly, the ground No. I raised by the assessee is allowed for statistical purposes.

We fallow the judicial precedence and uphold the decision of the CIT(A) and duly supported by the Honble Tribunal decisions ,Accounting Standard 2 of ICAI, Guidance note and the Ld.AR elaborate submissions on

the point of dispute and we do not find merit in the ground of appeal raised by the revenue and is dismissed.

15. The fifth disputed issue is with respect to allowance of consultancy charges as revenue expenditure and allow deduction u/s 35DD of the Act. We found that the CIT(A) has dealt at Para 8 and relied on the appellate orders and granted relief :

> *Disallowance of consultancy charges: Rs. 3,21,98,592/- Similar issue was involved in earlier years and while passing the Appellate orders for A.Y. 2002-03 and A.Y. 2003-04 it was held that the payment made to Mckinsey and Company is revenue expenditure and allowable deduction u/s. 37.*
> *In the result this ground of appeal is allowed.*

16. We find that the similar issue has been decided in the assessee favour by the Honble Tribunal in ITA no.4000/Mum/2007 & others for A.Y.2003-04 dated 5-10-2021 at page 37 Para 13 to 13.2 read as under:

> *13. The ground No.III raised by the assessee is with regard to challenging the action of the ld. CIT(A) granting deduction only in respect of 1/5th of the expenditure in respect of payment made to M/s. Accenture by applying the provisions of section 35DD of the Act as against the claim of deduction of the whole expenditure u/s.37(1) of the Act by the assessee.*
>
> *13.1. We have heard rival submissions and perused the materials available on record. We find that the very same issue was the subject*

matter of adjudication by this Tribunal in assessee''s own case in ITA No.3927/Mum/2006 dated 20/02/2020 for A.Y.2002-03 wherein it was held that assessee would be eligible for deduction ITA No.4000/Mum/2007 & 4345/Mum/2007 M/s. Piramal Enterprises Limited 38 u/s.37(1) of the Act. We find that the ld. CIT(A) had merely placed reliance on the decision of his predecessor in A.Y.2002-03 and directed the ld. AO to allow deduction u/s.35DD of the Act in respect of the subject mentioned payment. We find that this Tribunal had directed the ld. AO to allow deduction u/s.37(1) of the Act by observing as under:-

"7.1. We have heard rival submissions and materials available on record. We find that under the head legal and professional fees, the assessee had claimed deduction in respect of payments made to Accenture in the sum of Rs.522.97 Lakhs. The assessee submitted that payment of Accenture was mainly pertaining to successful integration of RPIL with the assessee company. The assessee submitted that this expenditure has been incurred on the grounds of commercial expediency allowable as deduction u/s.37(1) of the Act. The ld. AO however, disregarded the contentions of the assessee and disallowed the claim of the assessee by treating it as capital expenditure. The ld. CIT(A) however, observed that since this expenditure had been incurred pursuant to amalgamation of RPIL with assessee company, the same would fall within the ambit of provisions of Section 35DD of the Act and accordingly only 1/5th of the said expenditure would be eligible for deduction. Against this action of the ld. CIT(A) both assessee as well as the revenue are in appeal before us.

7.2. We find that the genuinity of incurrence of this expenditure by way of making payment to Accenture in the total sum of Rs.522.97 lakhs is not in dispute. We find that the payment was made by the assessee to Accenture based on agreement which mandated Accenture to assess in the integration of RPIL with the assessee. As per the agreement, the NPIL management had requested Accenture to submit a proposal to ensure the realization of further value to the group through the proposed integration between NPIL and RPIL. Thus, team of Accenture consultants had conducted a detailed pre-proposal study spanning over five weeks to revive NPIL and RPIL operations with a view to identify synergy and cost reduction opportunities across the merged entity. A preliminary assessment of various opportunities identified with a focused profit improvement initiation could potentially yield in which recurring benefits

of about Rs.20 to 30 Crores in the short and medium term. From the aforesaid scope of services to be rendered by Accenture, it could be seem that Accenture had purely rendered professional services by way of pre-proposal study to understand the viability of the merger by integrated operations of RPIL with NPIL and the resultant profitability that the resultant merged entity would derive in short to medium term. Hence, it is a clear case of simple professional services rendered by Accenture to the assessee which at any cost cannot be considered as a capital in nature. We find that the said expenditure has to be considered as wholly and exclusively as deduction u/s.37(1) of the ITA No.4000/Mum/2007 & 4345/Mum/2007 M/s. Piramal Enterprises Limited 39 Act. We hold that the provisions of Section 35DD of the Act as alleged by the ld. CIT(A) cannot be made applicable in the instant case as admittedly the same only refers to expenses incurred pursuant to amalgamation. Hence, we direct the ld. AO to grant deduction of the said expenditure u/s.37(1) of the Act. Accordingly, the ground Nos. IV and IV(i) raised by the assessee are allowed and Ground No.4 raised by the revenue is dismissed."

13.2. Respectfully following the same, the ground No.III raised by the assessee is allowed.

The Ld.DR fairly accepted the decision of the Honble Tribunal in the earlier years . We find the Ld.AR relied on the order of the ITAT on the claim of consultancy charges as discussed and judicial decisions in support of his submissions. Accordingly, we uphold the decision of the CIT(A) in allowing the claim of the assesee and dismiss this ground of appeal of the revenue.

17. The sixth disputed issue is with respect to treating rental income from RP House and centre point under

the head IFHP instead as IFOS. We find the CIT(A) has dealt at page 23 Para 11 of the order as under:

> *Similar ground had arisen in A.Y. 2002-03 and 2003-04 wherein my predecessor had held that income earned from RP House property is assessable as "Income form Other Sources" since ratio of the decision of the Supreme Court in case of Podar Cement was not applicable to the present case.*
>
> *Following the same for the year under consideration, this ground is dismissed.*
>
> *Further, as regard to Centre point my predecessor had held that income is chargeable under the head "Income form House property" and had directed the A.O. to grant appropriate deduction u/s 24 (a) in accordance with law.*
>
> *Following the same, this ground of Appeal is partly allowed.*

18. We find that the Honble Tribunal in ITA no.4000/Mum/2007 & others for A.Y.2003-04 dated 5-10-2021 has observed at Para 19&19.1 as under:

> *19. The ground No. IX raised by the assessee is with regard to treatment of rental income from let out portion of Rhone Poulenc House (RPIL) as „income from other sources" instead of „income from house property".*
>
> *19.1. We have heard rival submissions and perused the materials available on record. We find that assessee company had declared the income from house property in respect of rent received from RPIL House and Centre Point. The ld. AO observed that RPIL House has been sold by the assessee company in A.Y.2002-03 and capital gains offered thereon and registration of the said property was also done*

in A.Y. 2002-03, the ownership of the said property does not vest with the assessee company. Similarly, the assessee company had entered into a purchase agreement with Morarjee Goculdas Spinning and Weaving Co. Ltd, (MGM) for purchase of office premises at Centre Point, which duly did not materialize. Hence, the ownership of the said premises does not vest with the assessee company. In view of the same, the ld. AO proceeded to treat the rental income received on letting out of the aforesaid property to be taxed under the head „income from other sources" by consequentially denying 30% standard deduction u/s.24(a) of the Act. The ld. AO however, observed that assessee would be eligible only for deduction that qualify u/s.57(iii) of the Act.

19.2. The ld. CIT(A) upheld the action of the ld. AO in respect of treatment of rental income from RPIL house as income from other sources. However, with regard to rental income derived from Centre Point, he directed the ld. AO to treat the rental income as „income from other house property" and grant statutory deduction in terms of Section 24(a) of the Act. Against this direction, the revenue is not in appeal before us. We find that the ownership of the RPIL House vests with the assessee for four years and hence, assessee continued to be the owner of the part premises of RPIL House and hence, the rental income thereon should be assessed only under the head „income from house property" and assessee would be entitled for statutory deduction @30% u/s.24(a) of the Act for the same. Accordingly, the ground No. IX raised by the assessee is allowed.

We find the Honble Tribunal has held that the transfer of ownership has to be completed over a period of 4 years and therefore the assessee continues to remain

the owner of part property of the RP House. Further it was decided that the income from RP House and Centre Point is assessable as Income From House Property. The Cit(A) has considered the factual aspects and made a reasonable observations and granted the relief. We find the revenue could controvert on the findings of the CIT(A) on this disputed issue. Accordingly,we fallow the judicial precedence of ratio of the ITAT decision and dismiss the ground of appeal of the revenue.

19. The seventh disputed issue is with respect to deduction of eligible profits u/s 80HHC of the Act while calculating the book profits under Sec. 115JB of the Act. The CIT(A) has dealt at page 37 Para 13 as under:

> *My predecessor had decided the similar issue in earlier year A.Y. 2003-04 wherein he had followed the decision of the Special Bench in case of Syncome Formulations India Limited and others (108 TTJ 105) (MUM) (SB) and has directed the AO to deduct profits eligible u/s 80HHC and not the deduction u/s 80HHC from book profit for the calculation of book profit u/s 115JB of the Act.*
>
> *Following appellate order for the earlier year, I allow this ground of Appeal.*

20. Further we find that in the assessee's own case for the A.Y 2003-04, the Hon'ble Tribunal has allowed the assessee's ground of appeal in ITA no.4000/Mum/2007

& others for A.Y.2003-04 dated 5-10-2021 has observed at page 6 Para 4&4.1 as under:

> *4. Ground No. 1(b) raised by the Revenue is with regard to computation of deduction u/s.80HHC of the Act for the purpose of calculating book profits u/s.115JB of the Act.*
>
> *4.1. We have heard rival submissions and perused the materials available on record. We find that assessee had claimed deduction of Rs.234,67,414/- u/s.80HHC of the Act which was also reduced from the computation of book profit u/s.115JB of the Act. The assessee vide letter dated 16/02/2006 revised the computation of book profit by stating that the amount to be reduced is not a deduction u/s.80HHC of the Act but the profits eligible for deduction u/s.80HHC of the Act. The ld. AO however, disallowed the revised claim made by the assessee in this regard. We find that the ld. CIT(A) by applying provisions of Section 80HHC(3)(c) of the Act observed that what is to be deducted from book profit is profits eligible for deduction u/s.80HHC of the Act. The ld. CIT(A) by placing reliance on the decision of the Special Bench of this Tribunal in the case of Syncom Formulations India Pvt. Ltd., reported in 106 ITD 193 granted relief to the assessee in this regard. We find that this issue is no longer res integra in view of the decision of the Hon"ble Supreme Court in the case of CIT vs. Bhari Information Technology Systems (P) Ltd., reported in 340 ITR 593 (SC) wherein the decision of the Mumbai Tribunal Special Bench in the case of Syncom Formulations India Pvt. Ltd., referred to supra had been duly approved by the Hon"ble Apex Court. Though this decision was rendered by the Hon"ble Apex Court in the context of claiming deduction u/s.80HHE of the Act vis-à-vis computation of book profits u/s.115JA of the Act, the same analogy would apply to the issue in dispute before us. We find that the Hon"ble Apex*

Court had held that deduction u/s.80HHE had to be worked out on the basis of adjusted book profit u/s.115JA of the Act and not on the basis of profits computed under regular provisions of law applicable to computation of profits and gains of business. Respectfully following the same, we do not find any infirmity in the order passed by the ld. CIT(A). Accordingly, the ground No.1(b) raised by the Revenue is dismissed.

The Ld.AR supported the submissions relying on the decision of the Honble ITAT and judicial decisions. We find the CIT(A) has relied on the Special Bench decision, facts and provisions and directed the A.O. to deduct eligible profits while calculating the Book Profits U/sec115 JB of the Act .We find the Honble Tribunal in A.Y.2003-04 has affirmed the action of the CIT(A) in granting relief to the assessee. Accordingly, for the present year, we do not find merits in this ground of appeal raised by the revenue and is dismissed.

21. The last disputed issue is with respect to allowance of set off of losses /depreciation of tools division on account of demerger. The CIT(A) has dealt at page 23 Para 12 as under:

After careful consideration of the provisions of Sec. 72A, the demerger order passed by the Bombay High Court as well as the facts and circumstances of the case, I am of the considered opinion that the AO has erred in interpreting the

provisions of Sec. 72A(4)and tried to apply conditions pertaining to amalgamations which is distinctly different from the demerger issue as claimed by the appellant.

As a result I hold that the losses/depreciation of the tools division, on account of demerger is allowable in the hands of the appellant. This ground of appeal is therefore allowed.

22. The Hon'ble Tribunal has dealt this issue in favour of the assessee in ITA no.4000/Mum/2007 & others for A.Y.2003-04 dated 5-10-2021 and has observed at page 18 Para 7 to7.7 as under:

7. The primary effective issue hereinabove together with the relevant dates of slump sale of Ibuprofen undertaking by GBDFC on 01/11/2002; appointed date of merger being 01/01/2003 and the scheme of merger being approved by the Hon"ble High Court on 20/02/2003 are not in dispute. It is very crucial to note that the assessee had filed petition before the Hon"ble Bombay High Court for seeking approval of the scheme of amalgamation of GBDFC only on 15/01/2003, which is much after the date of slump sale of Ibuprofen undertaking by GBDFC to Alpex, hence, the primary arguments of the ld. DR that amalgamation process was already initiated prior to the date of slump sale on 01/11/2002 is factually incorrect and deserves to be dismissed. Hence, the allegation levelled by the ld. DR that these transactions tantamount to colourable device in this aspect is also dismissed. It is not in dispute that GBDFC got merged with the assessee company with appointed date effective from 01/01/2003 pursuant to the order of the Hon"ble Bombay High Court approving the scheme of amalgamation on 20/02/2003. It is not in dispute that

pursuant to such amalgamation, all the assets and liabilities of GBDFC as on the date of amalgamation got vested with the assessee company with effect from the appointed date. Hence on the date of amalgamation, what is to be seen is whether GBDFC had accumulated losses in its kitty or not, along with other assets and liabilities. It is not in dispute that GBDFC had accumulated losses in the form of unabsorbed business losses and unabsorbed depreciation on the date of amalgamation with assessee. It could not be brushed aside that the assets and liabilities on the date of amalgamation together with the details of losses available thereon in the hands of GBDFC was duly placed before the Hon"ble Bombay High Court along with the scheme of amalgamation while seeking approval. We hold that once the scheme of merger was duly approved by the Hon"ble High Court having in mind the larger public interest, the same cannot be disturbed by the Revenue by merely alleging that the merger was done only to buy losses and it was done only as a measure of colourable device. It is also pertinent to note that scheme of amalgamation when it goes for approval before the Hon"ble Bombay High Court, Union of India is made a party to the said scheme, which means all the Central Government regulatory authorities had a right to raise objections to the scheme of merger before the Hon"ble High Court. In the instant case, Income Tax department which is part of Union of India had not filed any objections before the Hon"ble High Court objecting to the merger. No evidence has been brought on record by the ld. DR before us in this regard. Hence, the department cannot object to the same at this point of time while implementing the said order of merger. We find that the scheme of amalgamation approved by the Hon"ble Bombay High Court had to be understood and looked into in a holistic way. It would be just and fair to believe that the scheme of amalgamation would be approved by the Hon"ble High

Court only after ensuring that the same is not prejudicial to the interests of its members or to public. Hence, it could be safely inferred that the Hon"ble Court would exercise due diligence and would conduct detailed enquiries before sanctioning the claim. The fact that the Hon"ble Bombay High Court had accorded the sanction of the scheme of amalgamation in the assessee"s case implies that the same had been done by considering the representations from the various fields and by duly considering the tax evasion point for income tax purposes. In this regard, it would be relevant to note the observations made by Shri A. Ramaiya in the Companies Act part 2 at pages 2499 and 2500 in point No.6 incorporated hereunder:-

"That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to the public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same."

7.1. We also find that the Hon"ble Madras High Court in the case of Penta Media Graphics Ltd. vs. ITO reported in 236 CTR 204 had categorically held that once the merger scheme had been sanctioned with effect from the particular date by the Hon"ble Court, it is binding on everyone including the statutory authorities. Similar is the view rendered by the Hon"ble Jurisdictional High Court in the case of Casby CFS (P) Ltd., In Ra reported in 231 Taxman 89 (Bom) dated 19/03/2015.

7.2 Further, we also find that the Hon"ble Supreme Court in the case of J.K.(Bombay) P. Ltd., vs. New Kaiser-I- Hind Spinning Weaving Company reported in AIR 1970 AIR 1041 had held as under:-

"The principle is that a scheme sanctioned by the court does not operate as a mere agreement between the parties; it becomes binding on the company, the creditors and the shareholders and has statutory force, and therefore, the joint-debtor could not invoke the principle of accord and satisfaction. By virtue of the provisions of sec. 391 of the Act, a scheme is statutorily binding even on creditors, and shareholders who dissented from or opposed to its being sanctioned. It has statutory force in that sense and therefore cannot be altered except with the sanction of the Court even if the shareholders and the creditors acquiesce in such alteration."

7.3. We find that the aforesaid observations of Hon"ble Supreme Court had been followed in yet another decision by the Hon"ble Bombay High Court in the case of Sadanand Varde vs. State of Maharashtra reported in 247 ITR 609 wherein it was held that Once a scheme becomes sanctioned by the court, it ceases to operate as a mere agreement between the parties and becomes binding on the company, the creditors and the shareholders and has statutory operation by virtue of the provisions of Section 391 of the Companies Act."

7.4. The said judgment of Hon"ble Bombay High Court further provided that an appeal, if any, against the order of amalgamation lies u/s.391(7) of the Companies Act 1956 and the same cannot be agitated in any collateral proceedings. The relevant extract of the said judgment is reproduced hereunder:-

"We are of the view that the amalgamation, which has become final and binding, cannot be permitted to be challenged by the petitioners, without locus standi, in a

collateral proceeding in the present writ petition. An amalgamation order can only be challenged under the Companies Act by an appeal under Section 391(7) by any one of the parties, but no such appeal was ever filed."

7.5. The ld. DR before us was not able to point out whether any appeal u/s.391(7) of the Companies Act, 1956 against the order of amalgamation sanctioned by the Hon"ble High Court, had been preferred by the Income Tax department. In view of the aforesaid observations, the ld. DR cannot object to the scheme of amalgamation approved by the Hon"ble High Court in the garb of calling the entire arrangements carried out by the assessee as a colourable device.

7.6. Having observed so, it would be relevant to address the next crucial aspect as to whether the assessee had complied with the provisions of Section 72A of the Act r.w.rule 9C of the Rules which alone would enable it to get the benefit of set off of accumulated losses of amalgamating company in addition to the scheme of merger approved by the Hon"ble Bombay High Court. We find that Section 72A(2) of the Act as it stood then as is relevant to A.Y.2003-04 stipulated fulfillment of 3 conditions. For the sake of ready reference, the relevant provisions of Section 72A(2) as applicable for A.Y.2003-04 are reproduced as under:- "(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company- (i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation; (ii) continues the business of the amalgamating company for a minimum period of five years

from the date of amalgamation; (iii) fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose."

7.7. There is absolutely no dispute that assessee in the instant case had fulfilled all the three conditions cumulatively. There is absolutely no dispute that assessee has also fulfilled the requirement stipulated in Rule 9C of the rules by using minimum 50% of installed capacity of amalgamating company within a period of four years and which fact should also be supported by a certificate from a Chartered Accountant in Form No.62. A certificate from an Accountant in the Form No.62 is enclosed in page 76 of the factual paper book. We also find that assessee in the instant case had duly specified the commercial rationale beyond doubt which goes to prove the complete revival of GBDFC. This fact is also reiterated in the "FINANCIAL EXPRESS" news paper on 29/11/2002 Mumbai edition which date happens to be prior to the date of amalgamation. In other words, the said intention behind merger of GBDFC with assessee company, by exploiting the business prospects and inherent networking advantages of GBDFC, which was reported in the news paper on 29/11/2002 stood ratified and strengthened by the subsequent act of the assessee by fully utilizing the resources of GBDFC. At this juncture, we are conscious of the fact that the income tax dispute cannot be determined based on newspaper reports. But in the instant case, the facts stated in the newspaper reports stood subsequently ratified by the actual events that had taken place post merger. We are completely in agreement with the argument advanced by the ld. AR that since assessee was not in control of the operations of GBDFC prior to the merger including the sale of ibuprofen

undertaking on 01/11/2002 by way of slump sale, the assessee cannot be held responsible for the same. The act of GBDFC prior to merger, to sell any of its undertaking to its sister concern Alpex for a paltry consideration is of absolutely no relevance to the assessee company herein. In view of the aforesaid observations, we hold that the ld. CIT(A) had rightly directed the ld. AO to allow set off of losses of amalgamating company in the hands of the assessee. Accordingly, ground No. 1(d) raised by the revenue is dismissed.

The Ld.DR fairly accepts the decision of the Honble Tribunal. The Ld.AR substantiated the submissions with the legal decisions, facts and ITAT order. We find the Ld.CIT(A) has distinguished the facts and directed the A.O. to allow losses/ depreciation of Tools division to the assessee and we fallow the earlier year decision of the Honble ITAT and uphold the decision of the CIT(A) and dismiss this ground of appeal of the revenue.

23. The Honble Tribunal has dealt on factual aspects and the legal decisions. Whereas, the Ld.DR could not controvert the observations of the CIT(A) with any new cogent material or information to take a different view. Accordingly, we followed the judicial precedence and the ratio of the decisions of Hon'ble Tribunal and dismissed the grounds of appeal of the revenue.

24. In the result, the appeal filed by the revenue is dismissed.

ITA No. 769/Mum/2008, A.Y 2004-05

25. The assessee has raised the following grounds of appeal.

GROUND I:

Disallowance of depreciation on computer software: Rs. 17,57,338/-

1. On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - XIX ("the CIT (A)") erred in upholding the action of the Additional Commissioner of Income Tax, Circle 7(1), Mumbai ("the AO") in recalculating depreciation on computer software @ 25% instead of @ 60% as claimed by the Appellant and thereby disallowing depreciation to the extent of Rs. 17,57,338/- on the alleged ground that computer software is different from computers.

2. He failed to appreciate and ought to have held that software purchases are for upgrading the computers and for using computers with latest technology and hence the purchases are wholly and exclusively related to use of the computers and hence are correctly shown as additions under the head computers and depreciation @ 60% is allowable on the same.

3. The Appellant, therefore prays that, depreciation on computer software be allowed 60% as correctly claimed by the Appellant.

GROUND II:

Short term capital gain on sale of computers:

1. On the facts and in the circumstances of the case and in law, CIT (A) erred in confirming the action of the AO of calculating short term capital gain of Rs.1,72,61,062/- on sale of computers by segregating computers and computer software as two different blocks and then reducing sale value of computers from total block of computers.

2. The Appellant prays that AO be directed to treat computer and computer software under one block namely computers and after which there will not be any capital gain as calculated by the AU.

GROUND III: Disallowance u/s 145A:

1. On the facts and circumstances of the case and in law, CIT (A) erred in confirming the action of the AO of making an addition in respect of unutilized MOD VAT credit u/s. 145A of the Income Tax Act, 1961 ("the Act").

2. He failed to appreciate and ought to have held that irrespective of whether the Appellant follows gross or net method of valuation of stock, the amount of unutilized MODVAT credit has no impact on the profits of the Appellant.

3. The appellant prays that the addition in respect of unutilized MODVAT credit be deleted.

GROUND IV:

Disallowance of interest on loan taken for purchase of Equity: Rs.2,87,00,000I-

1. On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in disallowing interest expenditure amounting to Rs.2.87 crores paid to various Banks on the alleged ground that the payment was made for a loan which was utilised for acquiring a capital asset and accordingly amount expended

was capital in nature.

2. He failed to appreciate and ought to have held that:

Loan from various Banks was obtained for acquiring business of Rhone Poulenc India Limited ("RPIL"), which is a pharma company, the Appellant has benefited from economies of scale, extension of geographical reach, improved logistics management, benefits from common procurement resulting in lower cost of manufacturing, achieving better cost efficiency, etc.

ii. The Appellant had fulfilled all the conditions mentioned in section 36(1)(iii) and as laid down in judicial pronouncements. As per provisions of section 36(1)(iii) as was applicable to the year under appeal, interest paid on capital borrowed for the purpose of the business should be allowed irrespective of whether it was utilised for acquiring revenue asset or capital asset.

3. The Appellant therefore prays that aforesaid disallowance of interest charges made by the AO be deleted.

GROUND V:

Capital Gain on sale of RP House property: Rs.2,45,44,7681-

On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO of not reducing Long Term Capital Gain of Rs.2,45,44,768/- arising on proportionate sale of Rhone Poulenc ("RP") House Property being land from the Return of Income on the protective basis.

2. The Appellant prays that A.O be directed to reduce Long term Capital Gain of Rs.2,45,44,768/- from the Return of Income.

GROUND VI:

Depreciation on RP House Property building:

On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in not allowing depreciation on proportionate sale of Building by reducing entire sale proceeds related to Building and thereby reducing the said block to NIL in the previous year 2001-02.

2. The Appellant prays that A.O be directed to allow depreciation on Building by reducing only appropriate portion of sale proceeds from the said block.

GROUND VII:

Treating Rental Income from RPIL House as "Income form other sources" Rs.4,76,1 9,394/-

On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the action of the A.O of treating the Rental Income from Rhone Poulenc India Limited ("RPIL") as 'Income from Other Sources' instead of 'Income from House Property' as offered by the Appellant on the alleged ground that the Appellant is not the owner of the property and thereby denying the deduction of 30% of the annual value u/s. 24(a) of the Act.

2. He failed to appreciate and ought to have held that:

the rental income is received from the proportionate portion of the property of which, the appellant was the owner for the year under consideration.

ii. The Supreme court has held in the case of CIT v. Podar cement P. Ltd. (226 ITR 625) that "Owner" is a person who is entitled to receive income from the property in his own right.

3. The Appellant therefore prays that the A.O be directed to treat the Rental Income from above property as 'Income from House Property' and thereby allow the deduction u/s.

24(a) of the Act.

GROUND VIII:

Additional ground of Appeal:

On the facts and circumstances of the case and in law, the CIT(A) erred in not admitting the additional ground raised by the Appellant during Appellate proceedings as regard to taxability of gain on repayment of Sales Tax deferral Loan amounting to Rs.6,08,34,568/

2. The Appellant prays that the aforesaid receipt be treated as capital receipt or be set aside to the file of the A.O to decide afresh in accordance with law.

GROUND IX:

The Appellant craves leave to add to, alter or amend the above Grounds of Appeal.

26. The first disputed issue is with respect to disallowance of depreciation on computer software @ 60% instead of 25%. We find the CIT(A) has dealt at Para 2 as under:

The submissions of the appellant as well as the contentions of the AO were duly considered. After giving due consideration I am of the opinion the computer software is different from Computer and the rate of depreciation should be 25% as held by the A.O. However, since the appellant had claimed only 17,67,338/- as depreciation, the disallowance should be restricted to Rs. 17,67,338/-.

In the result this ground of appeal is partly allowed.

27. The Ld. AR mentioned that the Hon'ble Tribunal in ITA.No.1754/Mum/2015 for the A.Y 2010-11 dated 15-01-2020 has granted relief to the assessee referred at Page 13 Para 14 to 17 read as under:

> *14. The next issue that came up for our consideration from ground No. 4 of assessee appeal is disallowances of claim of depreciation on additions to computer software of Rs. 2,82,05,985/-. The facts with regard to the impugned disputes are that during the course of assessment proceedings, the Ld. AO noticed that the assesee had incurred software expenses on up gradation of its existing software namely MFGPRO, MS-office, etc and claimed depreciation @ 60% as applicable to computer software. The Ld. AO was of the opinion that as per Rule 5 of the I.T.Rules, 1962 only computers, including software were eligible for depreciation @ 60%, when the computers were purchased along with software. In case, the software is purchased separately, then the same would be an acquisition of intangible assets as envisaged in part- B of depreciation schedule and such intangible asset is entitled for depreciation @ 25%. Accordingly, disallowed excess depreciation claimed by the assessee.*
>
> *15. The Ld. AR for the assessee submitted that this issue is also squarely covered in favour of the assessee by the decision of ITAT, Mumbai bench in assessee's own case for AY 2009-10, where under identical set of facts, the Tribunal held that the assessee is entitled for depreciation @ 60% on up gradation of software. The Ld. DR, on the other hand, fairly accepted that the issue is covered in favour of the assessee by the decision of ITAT for earlier years. But, he*

strongly supported the findings of the Ld. AO, as well as the Ld.DRP.

16. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the co-ordinate bench had considered an identical issue for AY 2009-10 and after considering relevant facts and also, by following the decision of Hon'ble Bombay High Court, in the case of CIT vs Saraswath Infotech Ltd. in ITA No. 124 of 2012 dated 15/01/2013 held that the assesee is entitled for 60% depreciation on computer software and up gradation of existing software. The relevant findings of the Tribunal are as under:-

15. We find that the issue before us is as to whether an independent purchase of software which admittedly formed part of the profit making apparatus of the assesses business and was capitalized in its „books of accounts" would be entitled for depreciation @ 60% (as claimed by the assessee) or @25% (as allowed by the AO). Admittedly, the claim of the assessee towards depreciation on computer software @ 60% was allowed by the CIT(A) in its own case for A.Y 2008-09. The revenue had not carried the aforesaid order of the CIT(A) any further in appeal before the Tribunal, which thus had attained finality. Be that as it may, we find that the ITAT, Mumbai in the case of Owens and Corning (India) P. Ltd. Vs. ACIT, Range 7(3)(i), Mumbai (2018) 93 taxamann.com 223 (Mum), had observed that the revenue was in error in restricting the assesses claim of depreciation on computer software @ 60% to 25%. In fact, the Tribunal while concluding as hereinabove, had taken support of the judgment of the Hon"ble High Court Bombay in the case of CIT Vs. Saraswat Infotech Ltd. [ITA (L) No. 1243 of 2012; dated 15.01.2013]. Apart there from, we find that further in the following cases also the coordinate benches of the Tribunal had concluded that depreciation on software expenses is allowable @ 60%: "(i) Sriniovasa Rsorts Vs. ACIT (41 taxmann.com 350) (Hyd-Trib) (ii). Ushodaya Enterprises Limited 938 ITR (T) 148) (Hyd-Trib) (iii). ACIT Vs. Zydus Infrastructure (P) Ltd. (72 taxmann.com 199) (AhdTrib)
16. We are persuaded to subscribe to the view taken by the aforesaid coordinate benches of the Tribunal and respectfully follow the same.

Further, as observed hereinabove, the assesses claim of depreciation on software expense @ 60% which was allowed by the CIT(A) had also been accepted by the revenue and the same had also not been carried any further in appeal before the Tribunal. In terms of our aforesaid observations, we are of the considered view that the assessee had rightly claimed depreciation on computer software @ 60%. We thus set aside the order of the CIT(A) in context of the issue under consideration and vacate the disallowance of Rs.17,63,425/- made by the A.O on the said count. The Ground of appeal No. III is allowed. Disallowance of claim of depreciation on assets of BMIL and PHL : Rs. 68,75,396/- :

17. In this view of the matter and consistent with view taken by the co-ordinate bench, we direct the Ld. AO to allow depreciation as claimed by the assesse.

We found that the facts of the present case are similar to the above decision, therefore applying decision of the Hon'ble Tribunal, we direct the A.O. to allow depreciation on computers &software @60% to the assessee and allow the ground of appeal.

28. In respect of second disputed issue on the short term capital gains on sale of computer. We find that the CIT(A) has dealt at page 7 Para 3 as under:

"*The appellant had relied on submissions made in ground of appeal no. 2 andhas requested to treat computer and computer software under one block namely computers and after which there will not be any capital gain as caliculated by the A.O*

I have considered this issue in ground No. 2 wherein I have held that computer software is different from computers and the rate of depreciation should be 25% as correctly applied

by the AO and hence action of the AO of calculating aforesaid capital gain is correct and hence I confirm the action of the AO of making addition of Rs. 1,72,62,062/- on account of capital gain.

In the result this ground of appeal is dismissed."

29. We are of the opinion that the matter needs to be examined verified. Accordingly we direct the A.O to allow depreciation @ 60% rate after due verification and recomputed the computer and computer software as on block &WDV and allow ground of appeal for statistical purpose.

30. The third ground of appeal is with respect to disallowance under section 145A of the Act being addition of net unutilized Modvat credit in closing stock. We find that the CIT(A) has dealt at Para 6 as under:

I have duly examined the issue and have studied the submissions made by the Appellant and am of the view that the new method adopted by the AO is totally illogical and have no basis. This method is not as per any provisions of law or any guidelines provided. This issue of applicability of section 145A is a recurring issue and has been considered by my learned predecessors in A.Y. 2003-04. Following the same and accordingly, I direct the A.O. to restrict the disallowance to net unutilized modvat credit after doing necessary rectification as pointed out by the Appellant in rectification application.

In the result this ground of appeal is partly allowed.

31. The Ld. AR contended that this issue has been dealt by the Hon'ble Tribunal in ITA.No.1754/Mum/2015 for the A.Y 2010-11 dated 15-01-2020 and was restored to the file of the A.O and allowed for statistical purposes as observed at page 17 Para 22&23 of the order read as under:

> *22. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that a similar issue has been considered by the co-ordinate bench for AY 2009-10 and after considering relevant facts has restored the matter back to the file of the Ld. AO to verify the claim of the assessee that impact of grossing up of tax, duty, cess, etc by revaluing the purchases and inventories by inter alia including the effect of CENVAT credit would be nill. The relevant findings of the Tribunal are as under:-*
>
> *22. We have deliberated at length on the issue under consideration and find that the assessee for the purpose of its statutory accounts had followed the AS-2 on Valuation of Inventories, and the Guidance Note on Accounting Treatment of MODVAT/CENVAT issued by the ICAI. Accordingly, the assessee had followed the exclusive method for accounting purposes. However, for the purposes of income-tax it had worked out the impact of grossing up of tax, duty, cess etc. by restating the values of purchases and inventories by including inter alia the CENVAT credit. The adjustment required u/s 145A of the I.T Act was reflected in Clause 12(b) of the tax audit report of the assessee. As per Clause 12(b) the adjustment u/s 145A worked out at Nil. It is the claim of the assessee that the amount reflected in Clause*

12(b) of the tax Audit report shall be treated as the adjustment required u/s 145A, and in support thereof had relied on the order of the ITAT, Mumbai in the case of Hawkins Cookers Ltd. Vs. ITO (2008) 14 DTR 206 (Mum). We have perused Clause 12(b) (Page 61 of „APB") of the Tax Audit report of the assessee and find that it is the claim of the assessee that the impact of grossing up of tax, duty, cess etc. by restating the values of purchases and inventories by inter alia including the effect of CENVAT credit will be Nil, subject to Sec. 43B that the duty, taxes, cess etc. is paid before the „due date" of filing of the return of income. As the ld. D.R had submitted that the aforesaid working of the assessee would require to be verified, we therefore, in all fairness restore the matter to the file of the A.O for readjudication. Needless to say, the A.O shall in the course of the set aside proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its claim before him. The Ground of appeal No. V is allowed for statistical purposes.

23. In this view of the matter and consistent with view taken by the co-ordinate bench in all fairness, we restored the matter to the file of the Ld. AO for re-adjudication in light of the claim of the assessee that impact of grossing up of tax would be nil to profit and loss for the year, if taxes are paid before the due date of filing the return of income.

32. We Find the facts of the present case are similar to the decision of the Honble Tribunal .The Ld.AR supported the submissions with the decisions of the ITAT for A.Y2002-03, 2003-04,2009-10 &2010-11. The Ld.DR fairly accepted the decisions of the ITAT. Accordingly, we fallow the judicial precedence and

restore the issue to the file of the Asseessing officer on similar directions and allow the ground of appeal for statistical purpose.

33. The fourth disputed issue on disallowance of interest on loan taken for purchase of a capital asset(Shares of RPIL). We find that the CIT(A) has dealt at Para 7 page 21 as under:

> *Ground No VII*
> *Disallowance of interest on loan taken for purchase of Equity Rs 2,87,00,000/-*
> *In this ground, the Appellant has contended that the AO has erred in disallowing interst expenditure amounting to RS. 2.87 crores paid to various banks on the ground that the payment was made for a loan which was utilized for acquiring a capital asset and accordingly, amount expended was capital in nature. This issue has come up for decision in the case of Appellant for A.Y. 2002-03 and 2003-04 wherein my predecessor had confirmed the disallowance. Accordingly, following the decision of the earlier year, I confirm the disallowance for this year also.*
> *In the result this ground of appeal is dismissed.*

34. Further at the time of hearing it was brought to the knowledge of the Bench, by the Ld.AR that that in the assessee's own case for the A.Y 2003-04 in ITA no.4000/Mum/2007 & others dated 5-10-2021,the ITAT has observed at page 35 Para 12&12.1 as under:

12. The ground No. II raised by the assessee is challenging the disallowance of interest expenditure paid to various banks u/s.36(1)(iii) of the Act on the ground that payment was made for the loan which was utilized for acquiring the capital asset and an amount expended in the sum of Rs.9.47 Crores which was upheld ITA No.4000/Mum/2007 & 4345/Mum/2007 M/s. Piramal Enterprises Limited 36 by the ld. CIT(A) by placing reliance on the order passed by his predecessor in assessee"s own case for A.Y.2002-03. We find that the appeal preferred to this Tribunal in assessee"s own case for A.Y.2002-03 had been adjudicated already by this Tribunal in ITA No.3927/Mum/2006 dated 20/02/2020 (authored by the undersigned) wherein this issue has been decided in favour of the assessee by holding as under:-

6.9. We find that in the instant case, the expenditure on interest and prepayment charge had been incurred by the assessee to expand the existing business of the assessee company. It was submitted by the ld AR that it was with the intent of acquiring the business of M/s RPIL that, subsidiary of the assessee company had purchased shares of M/s RPIL and, since the loan had been raised for purchase of the shares of subsidiary company so as to enable the assessee company to acquire the business of M/s RPIL, hence the expenditure incurred in respect of loan raised in the instant year is a revenue expenditure u/s 36(l)(iii)of the Act. We find lot of force in the said argument of the ld AR and we accept the same.

6.10. We find that when this point was put to the ld DR, he argued that in any case, the proviso to section 36(1)(iii) of the Act would come into operation which reads as under:- Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of account or not) ; for any period beginning from the date on which the capital was borrowed

for acquisition of the asset till the date on which such asset was first put to use , shall not be allowed as deduction. We find that this proviso in any case would not be applicable for the year under consideration as the same was introduced in the statute only with effect from Asst Year 2004-05 and not applicable for earlier years.

6.11. We find that the ratio laid down by the Hon'ble Supreme Court in the case of S.A. Builders v CIT reported in 288 ITR 1 would be squarely applicable to the facts of the instant case. In the said case, the Hon'ble Apex Court held as under:

"In our opinion, the decisions relating to section 37 of the Act will also be applicable to section 36(l)(iii) because in Section 37 also the expression used is "for the purpose of business". It has been consistently held in the decisions relating to section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.

Thus in Atherton Vs. British Insulated and Helsby Cables Ltd. [1925] 10 TC 155, it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not necessity and grounds of commercial expediency and in order to indirectly to facilitate the carrying on the business. The above test in Atherton's case [1925] 10 TC 155 (HL) has been approved by this court in several decisions, e.g. Eastern Investments Ltd. Vs. CIT [1951] 20 ITR 1, CIT Vs. Chandulal Keshavlal and Co. [1960] 38 ITR 2 601 etc.

26. The expression "Commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation but yet it is allowable as a business

expenditure if it was incurred on grounds of commercial expediency. [Emphasis Supplied]

6.12. We hold that the payment of prepayment charges also partakes the character of interest . We find that there cannot be any iota of doubt that the entire transaction of acquisition of business assets by the assessee has been done on the grounds of commercial expediency and hence the entire interest payment of Rs 27.11 crores and prepayment charges of Rs 8.62 crores would be squarely allowable as deduction u/s 36(1)(iii) of the Act itself. Accordingly, the Ground No. III raised by the assessee is allowed."

12.1. Respectfully following the same, the ground No. II raised by the assessee is allowed.

35. The Ld.AR submits that if the barrowed funds are used for investment in shares held for controlling interest, interest is allowable U/sec36(1)(iii) of the Act and such expenditure is incurred out of commercial expediency and relied on the catena of the legal decisions. We find the CIT(A) has fallowed the assessee own case for A.Y.2002-03 &2003-04 and confirmed the disallowance of interest. Further on appeal by the assessee to the Honble Tribunal, for both the assesseement years , The ITAT has decided in favour of the assessee as per the observations discussed in the above paragraphs. The Ld.DR has accepted the decisions of the Honble Tribunal. Accordingly, we set

aside the decision of the CIT(A) on this disputed issue and direct the assessing officer to delete the disallowance of interest and allow the ground of appeal.

36. The fifth disputed issue in on treatment of capital gains on sale of RP house property. We found the CIT(A) has dealt at page 22 Para 9 as under:

> *In this ground, the Appellant has contended about not reducing*
> *long term capital gain arising out of proportionate sale of Rhone Poulenc House and taxing the same on protective basis. Similar issue was decided in earlier years i.e. A.Y. 2002-03 and 2003-04 wherein my predecessor had held that there is no illegality in taxing the proportionate amount of capital gain on protective basis. Further, in this action, no prejudice is caused against the Assessee.*
> *Accordingly, following the decision in earlier years, this ground is dismissed.*

37. Whereas it brought to the knowledge of the Bench that in the assessee's own case for the A.Y 2002-03 the wherein it has been held that capital gains on sale of RP house to be taxed over 4 years and is against the assessee. The Honble Tribunal for the A.Y 2003-04 in ITA no.4000/Mum/2007 & others dated 5-10-2021 has observed at page 42 Para 15 as under: .

15. The ground No. V was stated by the ld. AR as infructuous in view of the decision rendered by this Tribunal in assessee"s own case in ITA No.3927/Mum/2006 dated 20/02/2020 for A.Y.2002-03 vide ground No.7. We find that for A.Y.2002-03, the Tribunal had held that capital gain is taxable over the period of four years in respect of capital gains arising on sale of Rhone Poulenc house property. In view of our decision taken for A.Y.2002-03 on this issue, the ground No. V raised by the assessee is hereby dismissed as infructuous.

38. The Ld.AR submitted that the assessee offered the sale consideration to be taxed over a period of four assesseement years relevant to previous year in which the consideration is received , but the A.O. has taxed entire sale consideration as capital gains in the first year being A.Y.2002-03.But the Honble Tribunal on appeal has directed that the capital gains is taxable over a period of 4 years. In view of the decision of the ITAT applicable to the present case, the ground of appeal becomes infructuous and is dismissed.

39. The sixth disputed issue is with respect to depreciation on RP house property. The CIT(A) has observed at Para 10 as under

Disallowance of depreciation on RP house property:

This ground is regarding not allowing depreciation on proportionate sale of building (RP House) by reducing the

> *entire sale proceeds relating to building and thereby reducing the said block to Nil in the previous year 2001-02. Similar issue was decided by me in earlier years i.e. A Y. 2002-03 and 2003-04 wherein my predecessor had upheld the action of the A.O. of disallowing the depreciation.*
>
> *Accordingly, following the decision in earlier years, this ground is dismissed.*

40. Further at the time of hearing it was brought to the knowledge of the Bench that in the assessee's own case the Honble Tribunal for A.Y.2003-04 in ITA no.4000/Mum/2007 & others dated 5-10-2021 has observed at page 43 Para 16 as under:

> *16. The ground No. VI is challenging the disallowance of depreciation of proportionate sale of building by reducing the entire sale proceeds from the block and reducing it to „Nil" for the A.Y.2002-03. We find that this ground is consequential to ground No.V above and also consequential to decision taken by us in A.Y.2002-03 as stated supra. In view of the finding given by us on this issue for A.Y.2002-03 wherein we have held that the block of building continued, depreciation thereon should be eligible to the assessee. Accordingly, we direct the ld. AO to grant depreciation and ground No. VI raised by the assessee is allowed.*

41.The Ld.AR relied on the ITAT decision for earlier year and Ld.DR has accepted the decision of the Tribunal. Accordingly, on similar directions , we direct the

assessing officer to grant the depreciation on the block of building and allow the ground of appeal.

42. The seventh disputed issue in respect of treating rental income from let out portion of Rhone Poulenc House as Income from other sources (IFOS) instead of Income from House Property(IFHP). We found the CIT(A) has discussed and dealt at page 23 Para 11 of the order read as under:

> *Similar ground had arisen in A.Y. 2002-03 and 2003-04 wherein my predecessor had held that income earned from RP House property is assessable as "Income form Other Sources" since ratio of the decision of the Supreme Court in case of Podar Cement was not applicable to the present case.*
>
> *Following the same for the year under consideration, this ground is dismissed.*
>
> *Further, as regard to Centre point my predecessor had held that income is chargeable under the head "Income form House property" and had directed the A.O. to grant appropriate deduction u/s 24 (a) in accordance with law.*
>
> *Following the same, this ground of Appeal is partly allowed.*

43. We find in the assessee's own case the Honble Tribunal for A.Y.2003-04 in ITA no.4000/Mum/2007 & others dated 5-10-2021 has observed at page 45 Para 19.2 as under:

19.2. The Ld.CIT(A) upheld the action of the Ld.AO in respect of treatment of rental income from RPIL house as income from other sources. How ever with regard to rental income derived from centere point , he directed the Ld.AO to treat the rental income as income from other house property and grant statutary deduction in terms of section 24(a) of the Act. Against the direction, the revenue is not in appeal before us.We find that the ownership of the RPIL House Vests with the assessee for four years and hence assessee continued to be the owner of the part premises of RPIL House and hence,the rental income thereon should be assessed only under the head Income From House Property and the assessee would be entitled for statutary deduction @30% U/sec24(a) of the Act for the same. Accordingly, the ground NoIX raised by the assessee is allowed.

44. The Ld.AR submitted that the assessee continues to be the owner of the part premises of RP house, therefore rental income has to be assessed under the head Income From House Property and supported the submissions with the decision of the Honble Tribunal for A.Y.2003-04. The Ld.DR fairly accepts the ITAT decision and accordingly, we direct the A.O. to assessed the rental income under the income from house property and allow deduction U/sec24(a) of the Act and we allow the ground of appeal in favour of the assesee.

45. The last disputed issue is with respect to addition ground of appeal raised and treatment of sales tax

deferral loan as revenue receipt instead of capital receipt. We found that this ground of appeal was filed before the CIT(A) and the CIT(A) has dealt at Para 17 page 39 and 40 as under:

> *17.This ground had not been claimed by the appellant at the time of assessment. The issues raised related to taxability on account of repayment of sales tax deferral loan. From the submissions it appears that this is only an after thought which is now being claimed before this office at the time of appeal. This issue would have been properly examined and considered at the time of assessment itself. There is not enough justification to put forward by the appellant for admitting the additional grounds of appeal at this stage after giving due consideration, I do not find sufficient reasons for admitting the additional grounds of appeal, simply when the appellant had adequate opportunity before the finalization of assessment to argue its contentions. Accordingly, the additional grounds of appeal filed by the appellant vide letter dated 10.10.2007 are not admitted. In effect this ground of appeal is dismissed.*

46. We considered the submissions of the Ld.AR & Ld.DR on the additional ground of appeal and admit. Since it was raised for the first time, we are of the opinion that the Assessing officer should also be provided an opportunity to verify and examine the facts in the additional ground raised by the assessee. Hence to meet the ends of justice with out going in to merits of

the case restore this disputed issue for limited purpose to the file of the Assessing officer to decide on merits and allow the ground of appeal for statistical purposes.

47. The appeal filed by the assessee is partly allowed for statistical purposes.

48. In the result, the appeal filed by the revenue is dismissed and the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 20.06.2022

Sd/-	Sd/-
(S RIFAUR RAHMAN)	(PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 20 .06.2022

KRK, PS

Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

//True Copy//

(Asst. Registrar)