

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.7154 /Del./2017
(ASSESSMENT YEAR : 2010-11)**

**ITA No.7253/Del./2017
(ASSESSMENT YEAR : 2011-12)**

Dabur India Limited, vs. DCIT, Circle 7 (1),
8/3, Asaf Ali Road, New Delhi.
Delhi – 110 002.
(PAN : AAACD0474C)

**ITA No.7431 /Del./2017
(ASSESSMENT YEAR : 2010-11)**

**ITA No.183/Del./2018
(ASSESSMENT YEAR : 2011-12)**

DCIT, Circle 7 (1), vs. Dabur India Limited,
New Delhi. 8/3, Asaf Ali Road,
Delhi – 110 002.
(PAN : AAACD0474C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rohit Jain, Advocate
Shri MP. Rastogi, Advocate
Ms. Deepashree Rao, CA
Shri Shaurya Jain, CA
REVENUE BY : Shri Mahesh Shah, CIT DR

Date of Hearing : 14.07.2022
Date of Order : 20.09.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are cross appeals by the assessee and Revenue arising out of the orders of Id. CIT (A) for Assessment Years 2010-11 and 2011-12.

2. Since the issues are common and connected and the appeals were heard together, these are being disposed off by this common order.

3. For the sake of reference, we are referring to grounds of appeal for AY 2010-11 :-

“ITA No.7431/Del/2017 (REVENUE’S APPEAL)

1. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.17,20,021/- made by the AO on account of interest on corporate guarantee given to the associated enterprises.

2. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.6,63,80,000/- made by the AO on account of royalty not accrued or due from its associated enterprises.

3. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs. 3,70,730/- made by the AO on account of interest on loan advanced.

4. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.7,36,494/- made by the AO on account of interest on bills receivable."

5. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.11,57,03,3531- made by the AO on account of deduction u/s 801B and 80IC under the head profit and gains.

6. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.2,18,081/- made by the AO on account of PF, ESI & EPS contribution after the due date.

7. Ld Commissioner of Income-tax (Appeals) erred in law on the facts of the case in deleting the addition of Rs.3,29,87,000/- made by the AO on account of notional expenditure on exempted income."

“ITA No.7154/Del/2017 (ASSESSEE’S APPEAL)

- 1) That the Ld TPO and CIT(Appeals) failed to take into account the reciprocal arrangement and Transfer Pricing Analysis before notionally holding the charge of brand royalty of 0.75% in case Dabur International Ltd and 2% composite royalty in case of Asian Consumer Care Ltd.
- 2) That the TPO and CIT (Appeals) failed to consider the geographical conditions of working of Dabur International Ltd., and Asian Consumer Care Ltd., having no substantial awareness about the Dabur brand in the area and consequently the presumption and assumption about the chargeability of royalty by invoking the provision of Section 92CA of the Act from Dabur International Ltd and Asian Consumer Care Ltd. is arbitrary, unjust and without any basis.
- 3) That the CIT (Appeals) and TPO have failed to consider that in the absence of any expenditure incurred by the assessee for the establishment of brand in the geographical area of working of Dabur International Ltd and Asian Consumer Care Ltd., no brand royalty can be said to have accrued to the assessee when Dabur International Ltd., and Asian Consumer Care Ltd. have incurred expenses on advertisement and sales promotion in their respective area for promotion of the brand/ different product.
- 4) That both Ld AO and CIT(Appeals) failed to appreciate through the Transfer Pricing Analysis that incurrence of Advertisement, Marketing and Promotional expenditure by the assessee of its foreign subsidiaries would have been prejudicial to the interests of revenue and waiver of brand royalty by the assessee is ultimately not harmful practice from the angle of Transfer Pricing provisions.
- 5) That the TPO and CIT (Appeals) failed to consider that the manufactured products by Asian Consumer Care Ltd are at his own technical know-how and R& D.
- 6) That the CIT (Appeals) has erred in sustaining the alleged service fee on account of the corporate guarantee in the case Dabur Egypt Ltd on the loans availed from HSBC and NSGB bank @ 0.50% is arbitrary, unjust, without any basis and at any rate very excessive.
- 7) That the CIT (Appeals) has erred in sustaining the alleged service fee on account of the corporate guarantee in the case of Naturelle LLC on the loans availed from Royal Bank of Scotland @0.50% is arbitrary, unjust, without any basis and at any rate very excessive.

9) That without prejudice to grounds no 6 & 7 above the assessee submit that CIT(A) and AO erred in holding corporate guarantee as "International Transaction".

11) That CIT (Appeals) failed to admit the additional grounds of appeal despite remand report from the assessing officer on claim of deduction of Rs 95,22,33,881 as capital subsidy on statutory exemption from payment of excise duties.

12) That CIT (Appeals) failed to admit the additional grounds of appeal despite remand report from the assessing officer on claim of deduction of Rs 9,19,47,491 as expenditure incurred on Employee Stock Option Scheme.

13) That the and CIT (Appeals) failed to appreciate that Judgement of Supreme Court in case of Goetze India Ltd vs CIT is not binding to the first Appellate Authority to consider the deduction claimed in additional grounds.

14) That the above grounds of appeal are independent and without prejudice to one another.”

4. Apropos the issue of royalty : Grounds No.1 to 5 of assessee’s appeal and Ground No.2 of Revenue’s appeal. Assessee in this case is a flagship company of Dabur Group. It is primarily engaged in manufacturing operations, product development and marketing/selling etc. On the issue of royalty, the AO noted that during the year, assessee has not received any royalty from its Associated Enterprises (AEs). He referred to earlier years record wherein assessee has received royalty from Dabur Nepal (P) Ltd., Dabur International UAE and Asian Consumer Care Ltd.. AO proceeded to compute royalty in the hands of assessee by concluding as under :-

“6.7 In this case there is all arrangement for using the brand name / trade name "Dabur" by the associated enterprises, The brand name is

owned by the assessee, Agreements were in existence for payment or royalty and the royalty was being paid in accordance with the terms and conditions of these agreements till F.Y. 2004-05 and FY 2005-06, However for reasons best known to the assessee the royalty was not received by the assessee during the current year. The argument of the assessee that it has no right to receive royalty is devoid of any evidence or merits, It is an admitted fact that the brand name is owned by the assessee company and the AEs were using the brand name of the assessee in the year under consideration. Under arm's length situation no independent party shall allow the use of brand name by any third party without any consideration. The benefits of the brand name are derived by the AEs for which the assessee company has not been compensated.

6.8 In view of the above discussion I am of the considered view that the AEs have used the trade name/brand name owned by the assessee without any compensation accordingly there is a need to determine the arm's length price. I therefore compute the arm's length price of the royalty for use of brand name on the basis of data available. The assessee has furnished the value of sales made to the AEs. Keeping in view above finding I have computed the arm's length price of the royalty in the year under consideration as under in following table:

Company	FOB sales Rs. in Lakhs	Royalty Rs. in lakhs	Royalty shown in the books of accounts	Difference Rs. in lakhs
Dabur Nepal (P) Ltd. @ 3%	10061.1	301.83	--	301.83
Dabur International UAE @ 3%	10815.31	324.46	--	324.46
Asian Consumer Care Ltd. @ 2%	1875.53	375.11	--	375.11
Total				1001.40

5. Upon assessee's appeal, ld. CIT (A) observed that ITAT, Delhi in assessee's own case for AY 2006-07 has dealt with the issue regarding payment of royalty by the assessee to its AEs. Following ITAT's order, he directed the AO/TPO to delete the transfer pricing adjustment made by the TPO in respect of royalty to assessee by Dabur Nepal (P) Ltd.. As regards royalty to assessee's AE, Dabur International UAE, following the

said ITAT order, ld. CIT (A) directed that AO/TPO should charge royalty @ 0.75%. As regards royalty payment to the assessee by Asian Consumer Care Ltd., ld. CIT (A) noted that for AYs 2007-08 to 2009-10, ITAT have directed that 2% royalty should have been charged. He directed accordingly.

6. Against the above order, Revenue and assessee are in cross appeals.

7. We have heard both the parties and perused the record.

8. Ld. counsel of the assessee submitted that the issue is squarely covered by the orders of ITAT in assessee's own case for AYs 2006-07 to 2009-10. Referring to the earlier orders of ITAT for the AY 2009-10, he submitted that the Tribunal quantified the royalty adjustment to Dabur Nepal (P) Ltd. at nil, Dabur International UAE @ 0.75% of FOB sales and Asian Consumer Care Ltd., Bangladesh @ 0.75% of FOB sales.

9. Ld. DR for the Revenue on the other hand submitted that in earlier years, ITAT has not properly appreciated the issue and the agreements in this regard. As regards agreement with Dabur International UAE, he submitted that 1% royalty as per the clauses of the agreement has to be upheld by the ITAT. As regards royalty from Asian Consumer Care Ltd., Bangladesh, he submitted that the royalty charged by the TPO should be

upheld and without prejudice he submitted that at least 1% should be confirmed.

10. We find that on the same agreement, ITAT in earlier years have given a finding and has directed the rates at which royalty should be charged. Now, Id. DR for the Revenue is finding fault in the aforesaid order and arguing that the same need not to be followed. However, we are of the considered opinion that order of the ITAT in assessee's own case in earlier years need to be followed for the principles of judicial discipline. It is also not the case that Hon'ble Delhi High Court has reversed the orders of ITAT. In fact, Id. counsel of the assessee has pointed out that Hon'ble jurisdictional High Court has upheld the order of ITAT in ITA No.1142 of 2017 vide order dated 13.12.2017 ((2018) 89 taxmann.com 78 (Delhi)). We may gainfully refer to the order of ITAT for AY 2009-10 in this regard wherein vide order dated 24.11.2021, ITAT has adjudicated the issue as under :-

"10. We have heard both the parties and perused the relevant material available on record. As regards to agreement with Dabur Nepal Pvt. Ltd. Nepal, it is pertinent to note that the issue stands covered in favour of the assessee by the order of the Tribunal in the assessee's own case in ITA No. 3257/Del/2013 for the A.Y. 2006-07, wherein the Tribunal held that no royalty was payable assessee by M/s Dabur Nepal Pvt. Ltd and deleted the addition made by TPO/CIT(A). The relevant findings of the Tribunal is as under:

"36. As regards to the royalty charged from M/s Dabur Nepal Ltd. is concerned, it is not in dispute that earlier the royalty, was @ 7.5% as the assessee was bearing the cost of marketing expenses

but later on Ms Dabur Nepal Pvt. Ltd. incurred expenditure in order to penetrate the market and the agreement was amended w.e.f. 1st April, 2004 vide which the royalty ht reduced from 7.5% to 3% (copy of the same is placed at page no. 113 of the assessee s paper book). In the preceding year, basis of the said amended agreement, the royalty was charged (a), 3%. Therefore, the TPO was not justified in working royalty @ 7.5% as provided in the original agreement dated 05.11.1992 (copy of which is placed at page nos. 111& 112 assessee's paper book). For the year under consideration, M/s Dabur Nepal Pvt. Ltd has not paid any royalty to the asses the reasons that it had to incur the expenses to penetrate the market. In this regard, vide letter written in May 2005, it was informed to the assessee that no royally will be payable from Financial Year 2005-06. It was also claimed that as per the Clause of the original agreement dated 05.11.1992, the agreement shall become effective only after the approval by HMG Nepal and shall remain valid for a period of 10 years from the said date, unless renewed by mutual consent in writing and with prior approval of HMG Nepal. In the present case, it is not brought on record that the original agreement dated 05.11.1992 valid for 10 years, was renewed for further period and approval of HMG Nepal was taken. In the present case, the contention of the assessee that 80% products manufactured by M/s Dabur Nepal Pvt. Ltd. were purchased by the assessee has not been rebutted. It is also not in dispute that the royalty was payable earlier on the sales, therefore, it is unbelievable that the assessee charged the royalty on the purchases made by it from M/s Dabur Nepal Pvt. Ltd. to increase the cost of purchases. Even if it is presumed that the royalty was to be charged by the assessee then same amount was to be added in the purchases thus the impact will be revenue neutral i.e. on the one hand, income will be increased by crediting the royalty and on the other hand, the cost of purchases will be increased by that amount, since the sale was made by M/s Dabur Nepal Pvt. Ltd. to the assessee. In the present case, it is an admitted fact that there was no agreement in existence between the assessee and the AE i.e. M/s Dabur Nepal Pvt. Ltd. and nothing is brought on record to substantiate that the assessee incurred any expenditure which benefited M/s Dabur Nepal Pvt. Ltd. in any manner. Therefore, no royalty was payable to the assessee by M/s Dabur Nepal Pvt. Ltd. By considering the totality of the facts as discussed herein above, we are of the view that the royalty @ 2% directed to be charged by the Id. CIT(A) was not justified, therefore, the addition made on the said basis is deleted."

Following the order passed for A.Y. 2006-07, the Tribunal, vide order dated 18.02.2021 passed in assessee's own case for the AYs 2007-08 and 2008-09 in ITA Nos. 3241, 3114, 6525 & 6256/Del/2014 deleted similar

addition of royalty in respect of Dabur Nepal Pvt. Ltd. The order of the Tribunal is as under:-

"81.6 We find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year, i.e. 2006-07. We find, the Tribunal vide ITA No.3257 Del 2003 and ITA No.3492/Del/2013, order dated 12.04.2017 has thoroughly discussed the issue and has deleted the royalty receivable by the assessee from Dabur Nepal and had restricted the Royalty receivable from Dabur International Ltd., UAE at 0.75% by observing as under:-

81.7 Since the facts of the present appeal are identical to the facts decided by the Tribunal in assessee's own case in the preceding assessment year, therefore, in absence of any distinguishable features brought before it by either side, we, respectfully following the same, hold that no royalty is receivable by the assessee from Dabur Nepal and, therefore, the order of the CIT(A) sustaining the addition on account of Royalty receivable from Dabur Nepal (P) Ltd., at 2% is directed to be deleted. So far as royalty receivable from Dabur International, UAE is concerned, the same is directed to be restricted to 0.75% as held by the Tribunal.

The facts in the present assessment is also similar and no distinguishing facts were pointed out by the Ld. DR, therefore, the finding of the CIT(A) that royalty @ 2% is to be charged from Dabur Nepal Pvt. Ltd. is not correct and has to be deleted.

11. As related to agreement with Dabur International Ltd., UAE operations, it is pertinent to note that the said issue is covered partly in favour of the assessee by the order of the Tribunal in assessee's own case in ITA No. 3257/Del/2013 for A.Y. 2006-07, wherein the Tribunal, on similar fact held that royalty @ 0.75% is to be charged from Dabur International Ltd. The Tribunal held as under:-

"35 From the co-joint reading as contemplated u/s 92C of the Act read with Rules 10B and 10C of the Income Tax Rules, 1962, it would be clear that for the purpose of making transfer pricing adjustments, the arm's length price has to be determined on finding out similar type of payments received by similarly situated and comparable independent entities. But in the present case no comparable case has been brought on record by the TPO or the Ld. CIT(A) while making adjustment on account of royalty. Moreover, no agreement was in force to charge royalty from the AEs and that the FMCG products are new to the assessee who is known for its Herbal and Ayurvedic products. In the instant case, it is not brought

on record that the assessee had incurred any expenses for marketing the products manufactured by M/s Dabur International Ltd. (AE) in UAE and that the assessee either made any efforts or contributed any money for the establishment of its name in geographical area of UAE and the products manufactured by the UAE were not different from the products manufactured in India by the assessee. Moreover, the claim of the assessee that the raw material and medium used in the manufacturing at UAE was totally different from the raw material and medium used in India has not been rebutted. The products manufactured by the assessee were as per the local needs and taste of the public residing in UAE. Furthermore, the Id. CIT(A) himself admitted that M/s Dabur International Ltd., UAE had not manufactured any products with the technical know-how and R&D support of the assessee but had manufactured on its own, in accordance with the requirement and local taste of the local public, however, he directed the AO to calculate the royalty @ 2% but without any basis. In the present case, it is an admitted fact that the TPO/AO had not applied any transfer pricing method as prescribed under the Act and simply made the adjustment in respect of royalty based on the earlier agreements which had already expired and there was no new agreement between the assessee and its AEs. The earlier agreement was entered by M/s Redrock Ltd. on 1st April 2003, at that point of time, the said company was manufacturing the products with the technical know-how and R&D support of the assessee in respect of Aurvedic Herbal products. But later on, when the said company found that the Aurvedic products were not acceptable in UAE as in the said country Unani system of medicines was acceptable as per the local trend and custom. The said AE in UAE had abandoned the manufacturing of the Ayurvedic herbal products and then entered into the business of FMCG products which were earlier manufactured by the Redrock Ltd. with its own technology as per the requirement and taste of a local public of UAE by keeping into consideration the geographical and market situation. The said company was acquired by the assessee and now for the manufacturing of its products, the assessee did not provide any market strategies, nothing is brought on record that the assessee had borne the expenses, provided the funds or compensated for market failure and the quality etc. It, therefore, appears that the assessee had not made any effort for establishing the trade name nor had made any other contribution. Therefore, the assessee did not receive any royalty for the year under consideration and in the preceding year, the royalty @ 1% was paid to the assessee for the reason that Ayurvedic products were made with the technical know-how and R&D support of the assessee. However for the year under consideration, the FMCG products were manufactured which were different from the Indian products having different raw

material and medium used in the manufacture. At the same time, the brand name of the assessee was used by the AE and in the earlier years the assessee provided the R&D support, know-how technologies etc. which helped the AE for the year under consideration also to some extent. It is also noticed that the assessee received the royalty @ 1% in the preceding year. The TPO also while working out the royalty rate for the year under consideration was of the view that the royalty @ 1% was chargeable on the products manufactured without the aid and support of assessee company but marketed by using "Dabur" name, however, no basis has been given for the same. In our opinion the estimate made by the TPO for the rate of royalty was highly excessive. We therefore, after considering the totality of the facts are of the view that the Id. CIT(A) was not justified in directing the AO to charge the royalty from Dabur International UAE @ 2%. Particularly, when the assessee was not using the technical know- how or R&D support from the assessee, in our opinion it will be fair and reasonable to charge the royalty @ 0.75% by considering this fact that in the year under consideration the assessee had incurred huge expenses on marketing, advertisement & brand building etc. and that in the preceding year the royalty was although charged @ 1% on the products manufactured without R&D support and technical know-how from the assessee but the aforesaid expenses were comparability less."

Following the said order passed for A.Y. 2006-07, the Tribunal, vide order dated 18.02.2021 in assessee's own case for A.Ys. 2007-08 and 2008-09 restricted the adjustment of royalty @ 0.75% of FOB sales in respect of Dabur International Ltd. The Tribunal held as under:

"81.6 We find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding year, i.e. 2006-07. We find, the Tribunal vide ITA No.3257/Del/2003 and ITA No. 3-192 Del 2013, order dated 12.04.2017 has thoroughly discussed the issue and has deleted the royalty receivable by the assessee from Dabur Nepal and had restricted the Royalty receivable from Dabur International Ltd.. UAE at 0.75% by observing as under:-

81.7 Since the facts of the present appeal are identical to the facts decided by the Tribunal in assessee's own case in the preceding assessment year, therefore, in absence of any distinguishable features brought before us by either side, we, respectfully following the same, hold that no royalty is receivable by the assessee from Dabur Nepal and, therefore, the order of the CIT(A) sustaining the addition on account of Royalty receivable from Dabur Nepal (P) Ltd. at 2% is directed to be deleted. So far

receivable from Dabur International, UAE is concerned, the same is directed to be restricted to 0.75% as held by the Tribunal.

81.8. So far as the argument of the ld. Counsel that the order of the Tribunal cannot be accepted because the same is not based on correct appreciation of facts is concerned, we do not find any merit in the argument of the ld. Counsel since as fairly conceded by the ld. Counsel at the time of hearing before us, the Hon'ble High Court has already dismissed the appeal filed by the assessee on this very issue."

The facts in the present assessment is also similar and no distinguishing facts were pointed out by the Ld. DR or the Ld. AR, therefore, the finding of the CIT(A) that royalty @ 2% is to be charged from Dabur International Ltd., appears to be not correct. It is pertinent to note that in this year also the AE was not using the technical know-how or R&D support from the assessee, therefore it will be appropriate to charge the royalty @ 0.75% by considering this fact that in the year under consideration the assessee had incurred huge expenses on marketing, advertisement & brand building etc. and that in the preceding year the royalty was although charged @ 1% on the products manufactured without R&D support and technical know-how from the assessee but the aforesaid expenses were comparability less. Thus, royalty to be charged at 0.75% in respect of agreement with Dabur International UAE.

12. As regards to Asian Consumer Cure Pvt. Ltd. Bangladesh, again it is to be noted that the issue is covered partly in favour of the assessee by the order of the Tribunal in assessee's own case for A.Ys. 2007-08 and 2008-09 in ITA Nos. 3241, 3114, 6525 & 6256/Del/2014. The Tribunal held that royalty @ 0.75% is to be charged from Asian Consumer Care Pvt. Ltd. The Tribunal held as under:

"81.4. So far as Asian Consumer Care Pvt. Ltd. Bangladesh is concerned, it is his submission that the assessee was having 100% ownership in ACCPL, directly indirectly and thus, it could not have received any royalty from itself. The agreement with ACCPL entered on 01.12.2003 which was for a period of two years became defunct in December, 2005 as the same was not renewed thereafter. Therefore, in the absence of any contractual agreement, the assessee was not eligible to receive any royalty from ACCPL. It is his submission that products manufactured by ACCPL using technical knowhow of the assessee did not meet the requirements of customers in Bangladesh. Accordingly, after 2006, ACCPL entered into an agreement with Dabur Dubai to provide technical know. It is also his submission that merely on the basis of trade name of 'Dabur', the products manufactured by ACCPL were not accepted in Bangladesh and that it had to manufacture the products

as per the local needs and taste of the public residing in the public area. It is also his submission that in order to penetrate the Bangladesh market, ACCPL adopted its own market strategy and had made all the efforts for the establishment of 'Dabur' name in the Bangladesh which was very little known in that geographical area and incurred lot of expenses on advertisement, market establishment and had borne all the risks of market, manufacture and finance. Accordingly the assessee had neither made any efforts in establishing the trade name in Bangladesh nor had made any contribution towards the same.

.....

81.9 So far as the royalty from Asian Consumer Care Pvt. Ltd., Bangladesh is concerned, we find, the facts and salient features of the agreement are identical to that of the facts and agreement with Dabur International Ltd., UAE. Since the Tribunal already restricted such royalty to 0.75% in case of Dabur International Ltd., UAE, therefore, respectfully following the ratio of the decision of the Tribunal in assessee's own case for the immediately preceding assessment year while restricting such royalty to 0.75% in case of Dabur International Ltd., UAE, we restrict the royalty from Asian Consumer Care Pvt. Ltd., Bangladesh to 0.75%.

81.10 In view of the above discussions, the grounds relating to the issue of Royalty by the Revenue are dismissed and it raised by the assessee are partly allowed."

The facts in the present assessment is also similar and no distinguishing facts were pointed out by the Ld. DR or the Ld. AR, therefore, the finding of the CIT(A) that royalty @ 2% is to be charged from Asian Consumer Care Pvt. Ltd., appears to be not correct. Therefore, following the earlier years order by the Tribunal, we are restricting the said royalty to 0.75% in case of Asian Consumer Care Pvt. Ltd., Bangladesh."

11. Following the aforesaid decision of the ITAT in assessee's own case, we direct that in case of Dabur Nepal (P) Ltd., royalty is quantified at nil, the case of Dabur International UAE, royalty is quantified at 0.75% of FOB sales and in case of Asian Consumer Care Ltd., Bangladesh, royalty is quantified at 0.75% of FOB sales.

12. Apropos issue of corporate guarantee charges : Grounds No.6 to 8 of assessee's appeal and Ground No.1 of Revenue's appeal. On the issue of corporate guarantee, TPO determined arm's length price of providing corporate guarantee @ 75% of interest saved :

- (a) Dabut Egypt Ltd., Egypt :
 - HSBC Bank Egypt SAE, Cairo – 0.45%
 - NSGB Bank, Egypt – 0.75%
 - Royal Bank of Scotland, UAE – 0.75%
- (b) Naturelle LLC, UAE
 - Royal Bank of Scotland, UAE – 0.75%

13. Ld. CIT (A) referring to earlier year's CIT (A) order quantified the amount of adjustment as under :-

- (a) Dabut Egypt Ltd., Egypt :
 - HSBC Bank Egypt SAE, Cairo – 0.50%
 - NSGB Bank, Egypt – 0.50%
 - Royal Bank of Scotland, UAE – 0.50%
- (b) Naturelle LLC, UAE
 - Royal Bank of Scotland, UAE – 0.50%

14. Against the above order, the Revenue and assessee are in cross appeals.

15. We have heard both the parties and perused the record.

16. Ld. counsel of the assessee submitted that ITAT for AYs 2007-08 to 2009-10 has directed the rates as under :-

- (a) Dabut Egypt Ltd., Egypt :
 - HSBC Bank Egypt SAE, Cairo – 0.30%
 - NSGB Bank, Egypt – 0.30%

- (b) Naturelle LLC, UAE
 - Royal Bank of Scotland, UAE – 0.30%

17. Per contra, ld. DR for the Revenue tried to distinguish the order of ITAT for the earlier years and submitted as under :-

“The Hon'ble Delhi Bench of Tribunal in the Assessee's own case for A.Y 2007-08 held that in the issues of corporate guarantee the savings of incremental interest by the assessee is to be split between the guarantor and borrower on 50:50 basis. Moreover, the proportionate interest saved by the assessee was only for a period of 7 months instead of 12 months due to guarantee provided by the assessee which was only with effect from September, 2007 and accordingly, incremental interest savings of 0.60% was made by the assessee instead of 1.025%. The relevant extract of the decision of the Tribunal is being reproduced as under: -

"127. So far as the corporate guarantee issued on behalf of Naturelle LLC. VA E is concerned, a perusal of the details furnished by assessee in the paper book shows that the assessee has saved incremental interest of 1.025% due to guarantee provided by the assessee which was only with effect from September, 2007. Therefore, we find merit in the argument of the Ld. Counsel that the proportionate interest saved by the Naturelle, LLC was only for a period of 7 months and accordingly. interest saving on only 0.60% was made by Naturelle LLC We have held in the preceding years that interest benefit be split between the guarantor and borrower on 50:50 basis. " (Emphasis Supplied)

It is prayed that the rate charged by the TPO for A.Y. 2010-11 and should be upheld as the TPO has applied the rates on the scientific basis. Without prejudice to the above argument, even if the Hon'ble coordinate bench order is to be followed, the rate has to be calculated for 12 months, which

would be 0.513% instead of 0.3% which has been confirmed by the Hon'ble tribunal.”

18. Upon careful consideration, we find that in assessee's own case, ITAT has for three successive years given orders which have not been reversed by the Hon'ble jurisdictional High Court, hence we are not convinced with the reasoning of Id. DR for the Revenue to depart from the aforesaid order of ITAT in assessee's own case. We may gainfully refer to the order of ITAT for AY 2009-10 as under :-

“16. We have heard both the parties and perused the relevant material available on record. It is pertinent to note that the issue of corporate guarantee issued by the assessee-company to HSBC Bank, Egypt, SAE and NSGB Egypt on behalf of Dabur Egypt Ltd. stands squarely covered by the order dated 18.02.2021 passed by the Tribunal in assessee's own case for A.Ys. 2007-08 and 2008-09 in ITA Nos. 3241, 3114, 6525 & 6256/Del/2014. In the consolidated order, the Tribunal, while adjudicating the appeals for the A.Y. 2007-08, observed that the incremental interest saved due to guarantee provided by the assessee to HSBC Bank, Egypt, SAE on behalf of Dabur Egypt Ltd was only 0.60% as against 1% considered by the CIT(A). Accordingly, the Tribunal restricted the rate of service fee @ 0.30% as against 0.50% as held by the CIT(A). The relevant extracts of the decision of the Tribunal are as under:

“23. So far as corporate guarantee issued on behalf of Dabur Egypt Ltd., Egypt is concerned, we find the assessee had issued corporate guarantee of Rs.4.899 crores (EGP 3.55 million) to HSBC Bank, Egypt, SAE against the loan of EGP 3.55 Millon and USD 4,50,000 - raised by Dabur Egypt Ltd., Egypt. A perusal of the letter dated 11th September, 2013 issued by HSBC Bank, Egypt, SAE copy of which is placed at page 345 of the paper book shows that on account of release of corporate guarantee requested for by Dabur Egypt Ltd., Egypt, the bank increased the interest rate from 11.90% to 12.50%. Thus, an inference can be drawn from the said letter that the incremental interest saved due to guarantee provided by the assessee was 0.60%. We find merit in the argument of the Id. Counsel for the assessee that the benefit of the explicit guarantee accrue to both the guarantor and the borrower, therefore, the interest benefit should be split between the parties to the transaction, i.e. the borrower and the guarantor and as per rule of

thumb such benefit should be in 50:50 basis. Although the Ld.CIT(A) has attributed 50% of such savings as the service fee on account of guarantee, however, he had taken the savings on interest due to such guarantee provided by the assessee at 1%. Under these circumstances, we find merit in the argument of the Id. Counsel that charging of service fee at an adhoc rate of 0.5% should be reversed and may be restricted to 0.30% in respect of corporate guarantee issued to Dabur Egypt Ltd. as against 0.5% held by the CIT(A). Thus, the ground raised by the Revenue on this issue is dismissed and the ground raised by the assessee is partly allowed.”

Subsequently, while adjudicating the appeals for the assessment year 2008-09 which involved the issue of corporate guarantee by the assessee-company to both HSBC Bank, Egypt, SAE and NSGB Bank, Egypt (same as in the assessment year 2009-10 on behalf of Dabur Egypt Ltd, the Tribunal restricted the rate of service fee @ 0.30%. The Tribunal held as under:

"126. We have heard the rival arguments and perused the record. So far as the guarantee issued on behalf of Dabur Egypt Ltd., Egypt is concerned, we have already dealt with this issue while deciding ground of appeal No. 2 and 3 for A.Y. 2007-08 and the same has been determined at 0.30%. Following similar reasonings, we modify the order of the CIT(A) and directed the AO to adopt the service fee on account of corporate guarantee at 0.30% in respect of an grantee issued on behalf of Dabur Egypt Ltd., Egypt.”

The action of the CIT(A) of charging service fee at an ad-hoc rate of 0.50% in case of HSBC Bank, Egypt, SAE and NSGB Bank, Egypt needs to be restricted to 0.30% as per the decision of the Tribunal in A.Ys. 2007-08 and 2008-09 as the facts of the present assessment year 2009-10 is identical and no distinguishing facts were pointed out by the Ld. DR at the time of the hearing. As regards to Naturalle LLC, UAE, the corporate guarantee issued by the assessee-company to Royal Bank of Scotland, UAE on behalf of Naturalle LLC, UAE stand squarely covered by the order dated 18.02.2021 passed by the Tribunal assessee’s own case for A.Y. 2008-09 in ITA Nos. 6525 & 6256/Del/2014 wherein the Tribunal restricted the service fee @ 0.30% as against 0.513% as held by the CIT(A). Thus, we direct the Assessing Officer to restrict the service fee @ 0.30% in respect of Dabur Egypt Ltd., Egypt. The Tribunal held as under:

"127. So far as the corporate guarantee issued on behalf of Naturalle LLC. UAE is concerned, a perusal of the details further by the assessee in the paper book shows that the assessee has saved incremental interest of 1.025% due to guarantee provided by the assessee which was only with effect from September, 2007. Therefore, we find merit in the argument of the Id. Counsel that the

proportionate interest saved by the Naturalle. LLC was only for a period of 7 months and accordingly, interest saving on only 0.60% was made by Naturalle, LLC. We have held in the preceding years that interest benefit be split between the guarantor and borrower on 50:50 basis. Therefore, applying the said rule, the benefit can be attributed to the service fee on account of guarantee at 0.30%. We accordingly modify the order of the CIT(A) and direct the AO to restrict the service fee/commission for providing such corporate guarantee at 0.30% on the amount of Rs. 13.06 crores provided to Naturalle LLC, UAE. The grounds of appeal Nos. 7 and 8 filed by the assessee are accordingly partly allowed.”

Thus, the action of the CIT(A) of charging service fee at an ad-hoc rate of 0.513% was not correct and the same has to be restricted to 0.30% as the facts are identical to that of A.Y. 2008-09 and no distinguishing facts were pointed out by the Ld. DR at the time of the hearing. Thus, we direct the Assessing Officer to restrict the service fee @ 0.30%. Therefore, Ground Nos. 8 to 10 of the assessee’s appeal are partly allowed and Ground No. 1 of Revenue’s appeal is dismissed.”

19. Since the above order of ITAT is in assessee’s own case and we are not convinced with the reasoning of the ld. DR to depart from the same, we follow the order of aforesaid coordinate Bench of the Tribunal and direct accordingly.

20. Apropos Ground No.3 of Revenue’s appeal. On loan to AE, Dermoviva Skin Essentials, USA, the TPO adopted PLR + 3% and imputed rate of interest @ 14.88%. Ld. CIT (A) referred to Hon’ble jurisdictional High Court decision in the case of CIT vs. Cotton Naturals (I) Pvt. Ltd. (ITA 233/2014) wherein it was held that loans in foreign currency extended to AEs should be benchmarked using LIBOR, hence he directed that the addition made by the TPO be deleted.

21. Against the above order, the Revenue is in appeal before us.

22. We have heard both the parties and perused the record.
23. Ld. DR for the Revenue referred to the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Cotton Naturals (I) Pvt. Ltd. and submitted as under :-

“In the judgement of Cotton Naturals, the Hon 'ble Delhi High Court has laid down the principle that LIBOR should be used in respect of Loans to AE in foreign currency. However, the Hon'ble HC has at Para 42 of the judgement also laid down that 'Inter-company loans would require examination of the loan agreement, comparison of the terms and conditions of loan agreements. the determination of the credit rating of the lender and the borrower identification of the comparable third-party loan agreements and suitable adjustments should be made. In addition to the aforesaid/actors, the comparability analysis should also take into account the business relationship and the functions performed by the subsidiary AE for the parent company.

Considering the risk profile of the Assessee and credit rating being a new company, the basis point over LIBOR should be retained as 500 basis points as arrived at by TPO, in any case, the TPO has followed the judgement of Hon'ble Delhi High Court in Cotton naturals.”

24. Per contra, ld. counsel for the assessee submitted that the issue is squarely covered by the ITAT's order for AYs 2007-08 and 2008-09 wherein ITAT has upheld the deletion of the addition. ITAT in ITA nos.3241 & 6525/Del/2014 & ors. in assessee's own case for AYs 2007-08 & 2008-09 vide common order dated 18.02.2021 upheld the order of ld. CIT (A) by holding as under :-

“82.13 We have considered the rival arguments made by both the sides, perused the orders of the AO/TPO/CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee in the instant case has disbursed two loans to Dabur International, UAE at the interest rate of 6.5/7% the details of which are given below:-

Particulars	Amount (in Rs. crores)
Loan given @ 6.75%	Rs.7 crores
Loan given at 7%	Rs.20 crores
Less : Repayment of loan during the year	(Rs.17 crores)
Loan outstanding as on 31.03.2007	10 crores

82.14 During the impugned assessment year, the assessee has earned interest of Rs.1,05,27,000/- on the aforesaid loans. In the TP study report the assessee applied internal CUP method where the interest rate charged by the Bank of Baroda for Commercial Papers was 5.675%. Considering that the international transaction of receipt of interest from Dabur International ltd., Dubai at 6.75%/7% was higher than the bank's rate of interest, the international transaction of interest received was considered to be at arm's length applying the CUP method. We find, the TPO disregarded the benchmark analysis undertaken by the assessee for determining the ALP of interest on loan applying internal CUP method. According to him, for loans given the rate charged by Indian banks on foreign currency loans is to be taken as benchmark. Applying the rate of interest of 14% on the basis of data collected from CRISIL where rate of interest for BBB Bonds for F.Y. 2006-07 was 15.13%, the TPO proposed an addition of Rs.96,67,520 which was added by the AO to the total income of the assessee on account of interest charged on loan from AEs. We find, the Id.CIT(A) deleted the addition made by the AO/TPO on the ground that interest rate to be applied in case of international loan given in international currency (USD) should be LIBOR + margin. He noted that in the instant case, the average LIBOR rate for A.Y. 2006-07 was 5.20% whereas the assessee has charged interest @ 6.75/7% which is much higher than the comparable ALP rates. He further noted that the TPO while adopting the rate of 14% has contravened the provisions of Rule 10B(2) which prescribes the factors for comparability of controlled transactions of uncontrolled transactions.

82.15 We do not find any infirmity in the order of the CIT(A) deleting the addition made by the AO/TPO. The provisions of Rule 10B(1)(a) read as under:-

“10B . (1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction or a specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely :—

(a) comparable uncontrolled price method, by which,—

- (i) the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified;
- (ii) such price is adjusted to account for differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market;
- (iii) the adjusted price arrived at under sub-clause (ii) is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction or the specified domestic transaction;”

82.16 We find identical issue had come up before the Chennai Bench of the Tribunal in the case of VVF Ltd. vs. DCIT, vide ITA No.673/Mum/2006 where the Tribunal in a case involving transaction of loan advanced to the associated enterprise, has held as under:-

“We have noted that as was also noted by the Transfer Pricing Officer himself at page 3 of his order the appellant has borrowed foreign currency loans in US Dollars and for the purposes of investing in subsidiaries abroad, from ICICI Bank at the rate of LIBOR + 3% The appellant has also filed a letter from Bank of India stating that "during March 2002, we have been charging spreads of 150 bps to 300 bps over LIBOR in respect of foreign currency loans based on financial position and credit rating of the borrower". As for the LIBOR rate, as per the information provided by appellant, it ranged from 1.85000 (2 weeks) to 3.00250 (I year). On the given facts, in our considered view, it would be appropriate to accept internal CUP, i.e. the rate at which the appellant has resorted to foreign exchange borrowings from the ICICI, as arms length price under CUP method. The fact, as painstaking brought on record by the authorities below that this loan from ICICI bank was not used for the purposes of remittance to subsidiaries as interest free loans has no bearing for the purposes of computing ALP of interest free loan. The financial position and credit rating of the subsidiaries will be broadly the same as the holding company, and, therefore, the precise rate at which the ICICI Bank has advanced the foreign currency loans to the appellant company can be adopted at arm 's length price of interest free loans advanced by the appellant company to its foreign subsidiaries."

82.17 Since the assessee in the instant case has charged interest on loan @ 6.75%/7% from Dabur International, UAE, which is higher than the internal CUP wherein interest rate charged by Bank of Baroda for

Commercial Papers was 5.675%, therefore, the international transaction of interest received, in our opinion, is considered to be at arm's length applying the CUP method.

82.18 We find, the Hon'ble Delhi High Court in the case of DCIT vs. Cotton Naturals India (P) Ltd. (supra) while upholding the finding of the Tribunal with respect to appropriate comparable rate of interest on foreign currency denominated loan, has held as under:-

"39. The question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, in our considered opinion, must be answered by adopting and applying a commonsensical and pragmatic reasoning. H e have no hesitation in holding that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency o r legal tender of the place or the country of residence of either party. Interest rates applicable, to loans and deposits in the none currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate if the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e., the rate of interest."

82.19 We find, the coordinate Bench of the Tribunal in the case of Bharti Airtel Limited vs. ACIT: 161 TTJ 428, too, has held that in a case where loans are advanced in foreign currency, the interest rate on foreign currency loans being qualitatively different, and accordingly, even if one has to see the interest that the assessee would have earned, one has to see the interest that the assessee would have earned on foreign currency loans and not rupee denominated loans.

82.20 We further find merit in the argument of the Id. Counsel that the Revenue /TPO himself in the case of Perot Systems TSI (India) Ltd. Vs. DCIT (2010-TIOL-51-ITAT-Del.) and in the case of DDIT vs. Development Bank of Singapore: 144 ITD 265 (Mum), has applied LIBOR rate for benchmarking of international transaction of loans undertaken with the AE. It is the settled law that the Revenue has to be consistent in its approach and it is not open to the Revenue to take an inconsistent stand in the case of different assessee. [Ref. Kaumudini Narayan Dalai: 249 ITR 219 (SC) and Berger Paints India Ltd. vs. CIT: 266 ITR 99 (SC)]. Therefore, consistent with the stand taken by the Revenue in the case of different assesses, the said filter, in our opinion, is to be uniformly applied in all cases.

82.21 In view of the above discussion and in view of the detailed reasoning given by the CIT(A) while deleting the addition, we do not find any infirmity in his order. Accordingly, the order of the CIT(A) deleting the addition of Rs.96,67,520/- is upheld and the ground raised by the Revenue on this issue is dismissed.”

25. We find that in assessee’s own case, ITAT has upheld the deletion by the ld. CIT (A). ITAT has duly found that the same was in accordance with the Hon’ble Delhi High Court decision in the case of CIT vs. Cotton Naturals (I) Pvt. Ltd.. ITAT has also referred to other decisions. In this view of the matter, we are not convinced with the reasoning given by the ld. DR for the Revenue to distinguish the ITAT decision in assessee’s own case. Accordingly, we uphold the order of ld. CIT (A) on this issue and deletion of the addition.

26. Apropos Ground No.4 of Revenue’s appeal. On the issue of receivables, TPO held that interest rate of 14.88% would be the arm’s length interest for the receivables from the AE. Ld. CIT (A) gave relief to the assessee on a finding that assessee does not charge interest from its unrelated parties also and that the net margin of the assessee in these transactions with AEs is significantly higher. Ld. CIT (A) has held as under:-

“16.3 In the case of the Appellant, the international transactions have been benchmarked separately for its two segments namely FMCG and non FMCG which have been accepted by the TPO as follows:-

Particulars	FMCG Segment	Non FMCG
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		Segment
International Transaction	Sale of finished goods of Rs.12.95 crores; Sale of Raw Materials Rs.12.48 crores; Purchase of raw materials Rs.27.0 crores	Purchase of Finished Goods Rs.140.74 crores
Net Margin of Dabur – Appellant	18.94%	8.38%
Net Margin of Comparable	12.48%	3.49%

The Appellant has argued that that it had aggregated all the transactions pertaining to a particular segment but had again benchmarked 'receivables' separately. The appellant has also pointed out that it had earned higher margin than the comparable companies which had been accepted by the TPO. The appellant has also stated that all its operations form part of its supply chain and are inextricably linked. It has relied upon the judgment of the Hon'ble Delhi High Court in the ruling of Sony Ericsson Mobile Communication India Pvt. Ltd.(supra) in support of its above contention. The appellant has relied upon the decision of Kusum Healthcare Pvt. Ltd v ACIT ITA No. 6814/Del/2014 Assessment Year 2010-11 where the Hon'ble Tribunal has held that a higher margin earned by a taxpayer more than compensates for the credit period extended to the AEs. The order of the Hon'ble Delhi Tribunal has been confirmed by the Hon'ble High Court of Delhi in its order in ITA No 765/2016 dated 25.04.2017.

16.4 Perusal of the records and orders of my predecessors shows that this is the first year that the TPO has made an addition on account of outstanding receivables.

16.5 I have perused the transfer pricing order of the TPO, written submission and oral arguments of the appellant. I agree with the TPO that receipt of receivables is an international transactions in view of the amendment to explanation (i)(c) of section 92B by the Finance Act, 2012. The appellant has argued that it does not charge interest on net receivables from its unrelated parties. However, it is also noted that in both the FMCG an non FMCG segments, the net margin of the appellant is significantly higher than the net margin of the comparable. The benchmarking of both these segments has been accepted by the TPO. In view of the same there is no reason to separately benchmark receivables. The AO /TPO is directed to delete the transfer pricing adjustment made on account of receipt of receivables. The ground of appeal is allowed.”

27. Against the above order, the Revenue is in appeal.

28. We have heard both the parties and perused the record.
29. Ld. DR for the Revenue relied upon the order of TPO.
30. Per contra, ld. counsel of the assessee supported the order of ld. CIT (A) and submitted that assessee's net margin is considerably higher than the comparables. Upon careful consideration, we are not in agreement with the submission of ld. DR. It is no doubt that after the amendment, receivables are an international transaction which needs to be benchmarked separately but as rightly pointed out by the ld. CIT (A) above that the margin of the assessee both in FMCG and non-FMCG segment is much higher than the comparables. Hence, since benchmarking under both the segments has been accepted in the transfer pricing, we do not find any infirmity in the order of ld. CIT (A) that there is no reason to separately benchmark receivables.
31. Apropos Ground No.5 of Revenue's appeal. The AO has restricted the deduction u/s 80IB and 80IC by further allocation of Head Office expenses to eligible units and has worked out deduction u/s 80IB and 80IC to Rs.2,27,55,44,004/- as against Rs.2,32,95,64,449/- claimed by the assessee. Ld. CIT (A) granted relief to the assessee by observing as under:-

“27.1 The appellant submitted that selling and administrative expenses of Rs.9,10,78,714 consisted of expenses like donation, bad debts, loss on sales of fixed assets written off etc. which were not admissible for

deduction under the Act. Such expenses had already been already been added back to the income of the appellant and tax had been paid on the same. Since such expenses, being non eligible deduction, could not be allocated to various units eligible or deduction u/s 80IB/IC.

27.2 Similarly, for the miscellaneous expenses written of, Rs 5,66,38,292 is included in the deduction of Rs 9.91 crores which has been added back to the income suomoto by the appellant.

27.3 The appellant has already added Rs.6,43,96,900 to the income as depreciation under Companies Act and then claimed deduction for depreciation calculated as per the Income Tax act, 1961. In view of the above it was stated that depreciation calculated as per the Company's Act could not be allocated as expense once again among the various units eligible for deduction u/s 80IB/80IC of the Act.

27.4 The contention of the appellant has been verified from Computation of Income (at page No.7 of the submission dated 14.09.2017); Schedule IB of the Balance Sheet and the extracts of the Annual Report submitted along with letter dated 14.09.2007.

27.5 The additions made by the AOs on the same issue have consistently been deleted in AYs 2007-08 to 2009-10 by the CsIT(A). The material facts of the case are the same in the instant year also. In accordance with the principle of consistency and respectfully following the order of the CsIT(A) in AYs 2007-08 to 2009-10, the disallowance of Rs.11,57,03,353 made by the AO is deleted. The ground of appeal is decided in favour of the appellant.”

32. Against the above order, the Revenue is in appeal.
33. We have heard both the parties and perused the record.
34. Ld. DR for the Revenue relied upon the order of AO.
35. Per contra, ld. counsel of the assessee submitted that ITAT in assessee's own case for AYs 2007-08 to 2009-10 has deleted the addition.
36. Upon careful consideration, we note that ITAT in the order of AY 2009-10 has adjudicated the issue as under :-

“19. We have heard both the parties and perused all the relevant material available on record. The identical issue of the allocation of head office

depreciation, selling & distribution expenses and miscellaneous expenditure resulting in reduction of claim of deduction under section 80IB and 80IC of the Act has been decided by the Tribunal in the assessee's own case or the A.Ys. 2007-08 and 2008-09 in ITA Nos. 3241, 3114, 6525, 6256/Del/2014. The relevant findings of the decision of the Tribunal for the assessment 2007-08 are reproduced as under:

"93. We have considered the rived arguments made by both the sides, perused the orders of the AO and CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, during the year under consideration, had 18 industrial units undertaking manufacturing of products out of which 10 units were eligible for deduction u/s 80IB/80IC of the Act, the details of which were given at para 83 of this order. During the year, the assessee declared profit and gains from eligible business on the basis of separate books of account and claimed deduction aggregating to Rs. 27,209.71 lakh u/s 80IB and 80IC of the Act. According to the AO, the Head Office expenses amounting to Rs.2214.02 lakhs were not allocated to the units. Further, according to the AO, depreciation to the tune of Rs. 704.49 lakhs on assets of the Head Office was not allocated to the units. Accordingly, the AO allocated the Head Office expenses and depreciation in the ratio of sales of eligible unit for computing the deduction u/s 80IB /80IC and restricted such deduction to Rs 25,404.88 lakhs as against Rs.27,207.71 lakhs claimed by the assessee. We find, the Ld. CIT(A) reversed the action of the AO and directed him to recompute the deduction u/s 80IB/80IC of the Act without further allocation of head office expenses and depreciation to various units by observing that the assessee has itself added back the depreciation as per Companies Act, 1956 and claimed depreciation as per the Act and, therefore, the AO was wrong in allocating difference of depreciation available under the Companies Act and the Income-tax Act to the eligible units. So far as the head office expenses aggregating to Rs.2,214.02 lakhs is concerned, he noted that expenses aggregating to Rs.1,563.02 lakhs, were suo motu disallowed by the assessee and added back in the computation of income. Therefore, once these expenses were not claimed by the assessee, the same cannot be allocated to the eligible units for computation of deduction u/s 80IB/80IC of the Act. The ld.CIT(A) also further noted that scientific research expenses of Rs.651 lakhs, which was included in the head office expenses allocated by the AO are not connected with the units eligible for deduction u/s 80IB/80IC of the Act and, therefore, cannot be, allocated to the eligible units.

93.1 We do not find any infirmity in the order of the CIT(A) reversing the action of the AO in allocating the head office expenses and depreciation to various eligible units for the purpose of recomputing the deducting u/s 80IB/80IC. The factual finding of the Id. CIT(A) that the assessee has added back the depreciation as per Companies Act, 1956 and claimed depreciation as per Income-tax and, therefore, the AO was wrong in allocating the difference of depreciation available under the Companies Act and the Income-tax Act to the eligible units could not be controverted by the Id. DR. Similarly, the Id. DR also could not controvert the factual finding given by the CIT(A) that expenses aggregating to Rs.1,563.02 lakhs being head office expenses were suo moto disallowed by the assessee and added back in the computation of income and once these expenses were claimed by the assessee the same cannot be allocated to the eligible units for computation of deduction u/s 80IB/80IC and, therefore, cannot be allocated to the eligible units.

93.2 A perusal of page 67 of the paper book Volume-I shows that during the financial year under consideration, depreciation amounting to Rs.2,197.81 lakhs was debited to the P&L Account. A perusal of the computation of income, copy of which is at page 425 of the patten book Volume II, shows that the assessee has added back the aforesaid depreciation under Companies Act and claimed depreciation of Rs.2,902.3 lakhs in accordance with the provisions of section 32 of the Act. The depreciation as claimed in the return of income was duly allocated among all the units including the eligible units. We, therefore, find no infirmity in the order of the CIT(A) in reversing the action of the AO in allocating the difference of depreciation available under the Companies Act and Income-tax Act to the eligible units.

93.3 So far as the Head office expenses are concerned, we find the AO has allocated the head office expenses of Rs.2.214.0 lakhs. the details of which are as under:-

.....

93.4 A perusal of page 425 of paper book, Volume-II shows that Miscellaneous expenses written off, donation and provision for bad debts were suo motu disallowed by the assessee in its return of income. Therefore, once the aforesaid expenses were not claimed as a deduction by the assessee, the same, in our opinion, cannot be allocated to the eligible units and be considered for computing the deduction u/s 80 IB/80IC of the Act.

93.5 So far as scientific research expenses of Rs. 651 lakhs is concerned, the finding of the id. CIT(A) that such expenses have

no nexus with the units eligible for deduction has not been controverted by the Revenue. We find, the Hon'ble Bombay High Court in the case of Zandu Pharmaceuticals Works Ltd. vs CIT, 350 ITR 366 (Bom) has held that once the expenses have no nexus with the units eligible for deduction, such expenses cannot be allocated to units for the purpose of computing deduction u/s 80IB/80IC of the Act. Since the scientific research expenses of Rs 651 lakhs which were included in the head office expenses allocated by the AO are not connected with the units eligible for deduction u/s 80IB/80IC, the same, in our opinion, cannot be allocated to the eligible units. In this view of the matter, the order of the CIT(A) is upheld and the ground raised by the Revenue on this issue is dismissed."

In the present assessment year i.e. 2009-10, the assessee had 9 industrial units undertaking manufacturing of products and all these units are eligible for deduction u/s 80IB/80IC, the details are reproduced in page 12 of the assessment order itself. During the year also the assessee claimed the deduction u/s 80IB/80IC as per the details given. These units are eligible for the deduction u/s 80IB/80IC which is identical to that of earlier years i.e. 2007-08 and 2009-10. Hence, the CIT(A) has rightly allowed this deduction. It is pertinent to note that similar allocation of expenses and depreciation made by the Assessing Officer in A.Y. 2008-09 was also deleted by the Tribunal. The extracts are reproduced as under:

"131. After hearing both the sides, we find the assessee in the instant case has already disallowed depreciation under Companies Act and has claimed depreciation under Income-tax Act and has duly allocated to various units. Similarly, selling and distribution expenses of Rs. 789.37 lakhs was suo moto disallowed in the computation of income, the sales tax expenses of Rs. 135.78 lakhs which does not have any impact on profit cannot be allocated to the eligible units. The miscellaneous expenses of Rs.566.79 lakhs was suo motu disallowed in the computation of income. We find, the above ground is identical to ground of appeal No.6 in ITA No.3114/Del/2014 filed by the Revenue. We have already decided the issue and the ground raised by the Revenue has been dismissed. Following similar reasoning, this ground filed by the Revenue is dismissed"

The CIT(A) has given a detailed findings and no distinguishing facts were pointed out by the Ld. DR for the present assessment year. Hence, there is no need to interfere with the findings of the CIT(A). Ground No. 3 of the Revenue's appeal is dismissed."

37. We find that Id. CIT (A) has given a finding that material facts in this case are similar to earlier year. Hence we accept the contention that the issue is covered in favour of the assessee by the decision of ITAT as above. Accordingly, we uphold the order of Id. CIT(A) on this issue.

38. Apropos Ground No.6 of Revenue's appeal. This issue relates to deletion of addition on account of belated payment of employees contribution of ESI under section 36(1)(va) r.w.s. 2(24)(x) of the Act. On this issue, Id. counsel of the assessee submitted that this issue is now covered in favour of the assessee even after the amendment as held by ITAT Delhi Benches. ITAT, Delhi in the case of ITA No.5570/Del/2017 in M/s. Express Roadway vs. ACIT has followed Hon'ble Delhi High Court decision in the case of CIT vs. AIMIL Ltd. 321 ITR 508 and SPL Industries vs. CIT 9 taxmann.com 195 for the proposition that such additions are not sustainable if the impugned payments are done upto the date of filing of return of income for the concerned assessment year. Hence, we uphold the order of Id. CIT (A).

39. Apropos Ground No.7 of the Revenue's appeal. This issue relates to disallowance of allowance u/s 14A of the Act read with Rule 8D of the Income-tax Rules, 1962. In this case, AO invoked section 14A read with Rule 8D and made disallowance of Rs.329.87 crores. Ld. CIT (A) noted

that the same issue was raised in AYs 2007-08 to 2009-10 and deleted the addition. Following the same, ld. CIT (A) directed the AO to delete the addition.

40. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the record.

41. Ld. counsel of the assessee submitted that ITAT has also decided this issue in favour of the assessee in its order for AYs 2007-08 to 2009-10.

42. Ld. DR for the Revenue on the other hand relied upon the order of the AO.

43. We note that ITAT in assessee's own case has upheld the deletion of addition in ITA No.3423/Del/2015 & anr. for AY 2009-10 order dated 24.11.2021 by holding as under :-

“22. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the identical issue of disallowance under Section 14A of the Act in absence of any exempt income has been decided by the Tribunal in the assessee's own case for the A.Y. 2008-09 in ITA No. 6256/Del/2014. The Tribunal held as under:

“133. After hearing both the sides, we find, the assessee has not received any exempt income during the impugned assessment year and, therefore, following the decisions of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT reported in, 272 CTR 232, no disallowance u/s 14A can be made. Therefore, in absence of any exempt income earned by the assessee for the

impugned assessment year no disallowance u/s 14A could have been made. The ground raised by the Revenue is, therefore the dismissed.

This issue is also covered in favour of the assessee by various decisions of the Hon'ble Delhi High Court wherein it is held that in the absence of any exempt income, no disallowance can be made under Section 14A. Thus, the CIT(A) has rightly deleted the addition of Rs.5.22 crore under section 14A of the Act. Ground No.4 of the Revenue's appeal is dismissed.”

44. We find that the facts in the present case are also not in dispute that assessee has not earned any exempt income. In this view of the matter, disallowance u/s 14A read with Rule 8D is not permissible as per case law, hence this ground of Revenue's appeal stands dismissed.

45. Apropos Grounds No.11 & 12 of the assessee's appeal. In this issue, authorities below have not accepted the additional claim of the assessee on account of refund of excise duty on capital subsidy and claim of expenses on stock option scheme on the reasoning that the same was not claimed by filing revised return of income and referring to Hon'ble Supreme Court decision in the case of Goetze India Ltd. vs. CIT (2006) 284 ITR 323.

46. We note that ITAT in assessee's own case for AYs 2006-07 to 2009-10 had admitted the claim and remanded the matter to the file of AO for adjudication. Moreover, in Goetze India Ltd. case itself, the Hon'ble Apex Court has expounded that decision in that case would not

impinge upon the power of the ITAT in admitting the claims otherwise than by revising the return of income. Since consistently ITAT in assessee's own case had admitted such claims and remanded the file to AO to adjudicate the same as per law, we follow the same and admit these two claims in grounds no.11 & 12. Accordingly, this issue is remitted to the file of AO to adjudicate as per law.

47. Our above adjudication applies mutatis mutandis to the appeals for AY 2011-12.

48. In the result, all these appeals are allowed for statistical purposes.

Order pronounced in the open court on this 20th day of September, 2022.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 20th day of September, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**