

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.3053 & 3273/AHD/2016 (AY 2011-12)
(Hearing in Virtual Court)

Gujarat Insecticides Ltd. Plot No.805/806, GIDC Estate, Ankleshwar, District, Bharuch-393002 PAN : AAACG 8436D Assistant Commissioner of Income Tax, Circle-2, Above Bank of Baroda, Station Road, Bharuch-392002	Vs	Deputy Commissioner of Income Tax, Bharuch Circle, Bharuch M/s Gujarat Insecticide Ltd., Plot No.805/806, GIDC Estate Ankleshwar, Dist. Bharuch-392002
Appellant		Respondent

ITA No.2519/AHD/2016 (AY 2012-13)

Assistant Commissioner of Income Tax, Circle-2, Above Bank of Baroda, Station Road, Bharuch-392002	Vs	M/s Gujarat Insecticide Ltd., Plot No.805/806, GIDC Estate Ankleshwar, Dist. Bharuch-392002
Appellant		Respondent

Assessee by	Ms. Arti N. Shah, AR
Revenue by	Shri Ritesh Mishra, CIT-DR & Ms. Anupma Singla and Sh Vinod Kumar Sr-DR
Date of hearing	04.07. 2022
Date of pronouncement	26.09. 2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This is set of three appeals, out of which two cross-appeal for Assessment Year (AY) 2011-12 and one appeal by Revenue for AY 2012-13 are directed against the separate orders of Id. Commissioner of Income tax (Appeals)-3, Baroda [‘CIT(A)’ for

short] dated 01.09.2016 & 29.07.2016, which in turn arise against assessment order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide dated 28.03.2014 & 20.02.2015 respectively. In all three appeals, the parties have raised certain common grounds of appeal; facts in both the years are almost similar except variation of figures of various additions or disallowance. Therefore, with the consent of parties, all appeals were clubbed heard together and are decided by a consolidated order to avoid the conflicting decisions.

2. For appreciation of facts, facts in AY 2011-12 are treated as '**lead**' case. The assessee in its appeal ITA No.3053/AHD/2016 has raised the following grounds of appeals:-

"1.The Learned Commissioner of income Tax, (Appeals)-3, Vadodara has erred in law and on facts of the case in confirming the finding of the Assessing Officer that the Appellant has not properly valued opening and closing stock of finished goods viz. MBP and Quinalphos and accordingly, confirming the addition of Rs.16,40,988/- and Rs.15,31,168/-respectively.

2. The Learned Commissioner of Income Tax, (Appeals)-4, Vadodara has erred in law and on facts of the case in confirming the finding of the Assessing Officer that the Appellant has undervalued closing stock of various finished goods item sold by the Appellant, and accordingly, erred in confirming the addition of Rs.2,22,74,370/- made by the Assessing Officer."

The Revenue in its appeal ITA No.3273/AHD/2016 has raised the following grounds of appeals: -

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the disallowance of Rs.2,14,33,000/- made by the Assessing Officer being interest free credit granted to the holding company M/s Gharda Chemicals Ltd., thereby the assessee had diverted interest bearing funds to its holding company defined u/s 40A(2)(b) of the Act.

2.The Ld. CIT(A) erred in holding that provisions of section 40A(2)(b) is not applicable on the assessee’s transactions with Gharda Chemicals Ltd., as the extra benefit granted was a normal commercial transaction without appreciating the fact that interest bearing funds were parked with holding company.”

3. Brief facts of the case are that the assessee is a company engaged in business of manufacturing of insecticides, pesticides and its formulations and intermediates. The assessee-company is a subsidiary of Gharda Chemicals Ltd. The assessee filed its return of income for the A.Y. 2011-12 on 27.09.2011 declaring income of Rs.15.42 crores. The case of assessee was selected for scrutiny and assessment was completed under section 143(3) of the Act on 28.03.2014. The Assessing Officer while passing assessment order made disallowance of interest and financial charges of Rs.2.143 crores by taking view that assessee has diverted its interest-bearing fund for non-business purposes. The assessee has shown receivable from Gharda Chemicals Ltd., which is holding-company of assessee falling within the provision of section 40(A)(2)(b) and the assessee has parked its fund with Gharda Chemicals Ltd., without interest. Further there is

outstanding loan of Rs.2.50 crores against Gharda Chemicals Ltd., which is also related party on which no interest is chargeable. Therefore, whole of the interest and financial charges of Rs.2.143 crores is disallowed. The Assessing Officer on perusal of details of opening stock & closing stock summary of work-in-progress and finished products noted that finished stock valued less than its work-in-progress in respect of two items MPB and Quinalphos. The assessee was issued show cause notice and directed to furnish opening stock and closing stock summary of work-in-progress of finished products. The assessee filed its reply dated 29.01.2014 and furnished required details. In addition to furnishing required details, the assessee also stated that in the opening stock statement, submitted earlier and in the revised statement, the item-wise total value is not changed and it was the clerical error. The assessee explained that while furnishing details during assessment, at page 195 mistake has crept as recorded to the quantity of finished goods and work-in-progress, in fact, total quantity of 6300 kg instead of finished goods, and the quantity of 4525 shown as work-in-progress is nil. The assessee's finished goods of 6,300 kilograms only. The assessee furnished revised statement and

stated that the cost of MPB is Rs.288 per kg. the assessee furnished the detailed in the following manner:-

particulars	Average rate of finished goods (Rs)	Quantity (Kg)	Value (Rs)
MPB-finished goods	288	6,300	17,74,372/-
MPB-Work in process*	--	--	58,07,035/-
Total			75,81,407/-

* As on 31 March 2011, the product MJPB was under production and certain raw materials were charged in the process. Some process has been carried out on these materials. Since the finished products is not manufactured therefore no quantity is reflected in the WIP, but only value of the material and processing cost to the extent of process completed in process has to be reflected and it has been valued at Rs.58,07,035/-“

4. With regard to rate of MPB and Quinalphos, the assessee submitted that while furnishing the details during assessment this is a mistake as escape so as to stock of quantity of finished goods and work-in-progress of two items i.e., MPB and Quinalphos, in fact, the quantity of MPB finished goods is 6025 kg. instead of '0' mentioned in the statement of finished goods of MPB is Rs.13,67,746/- and the value of work-in-progress batches Rs. 56,856,465/- as per corrected statement attached. The assessee also explained one more mistake in the finished goods “Quinalphos Technical” the value of Quinalphos Technical is Rs.50,71,250/- and value of work-in-

process is Rs.11,65,953/-. The assessee explained that in original statement, ratio work-in-progress at Rs.6545/- by mistake it was shown only for MPB. Now they have shown correct position of work-in-progress which is for two products namely Quinalphos of Rs.11,65,953/- and MPB of Rs.56,86,465/- for raw material and processing cost to the extent of process completed which are charged in work-in-progress batches and certain progress carried out are valued in the revised statement. The assessee furnished the following statement: -

particulars	average rate of finished goods (Rs)	Quantity (Kg)	Value (Rs)
MPB - finished goods	227	6,025	13,67,746/-
MPB-Work-in-process*	- -	- -	56,86,465/-
Total	-	-	70,54,211/-

*As on 31 March 2010, the product MPB was under production and certain raw materials were charged in the process. Some process has been carried out on these materials. Since the finished products is manufactured therefore no quantity is reflected in the WIP but only value of the material and processing cost to the extent of process completed, in process has to be reflected and it has valued at Rs.56,86,465/-.....

particulars	average rate of finished goods (Rs)	Quantity (Kg)	Value (Rs)
Quinalphos (T) - finished goods	248	12,375	30,71,255/-
Quinalphos (T)- Work-in-process*	- -	- -	11,65,953/-
Total	-	-	42,37,208/-

*As on 31 March 2010, the product Quinalphos Technical was under production and certain raw materials were charged in the process. Some process has been carried out on these materials. Since the

finished products is not manufactured therefore no quantity is reflected in the WIP, but only value of the material and processing cost to the extent of process completed, in process has to be reflected and it has valued at Rs.11,65,953/-..."

5. The assessee prayed to ignore their earlier submissions and to consider the aforesaid revised statement. The Assessing Officer on perusal of submission of assessee noted that quantity as well as value of closing stock consist of finished stock also work in on normal methodology adopted for working the value of closing stock, is the first identify the stock in respect of each item and at what stage i.e., stock in the form of raw material, stock which is lying as finished products, and the stock which would be in the process of production, once the same is done the next stage follows the valuing the same. Firstly, a particular item needs to quantify in respect of work-in-progress & finished stock. In case of MPB, as per chart at page 195, clearly indicate that closing stock of MPB differentiated by showing 1775 kgs as finished stock and 4525 kgs. as work-in-progress. The assessee contended that there was a mistake cropped up as regards quantity of finished goods and work-in-progress of MPB. It was clarified that total quantity of 6300 kgs. was in respect of finished goods from the quantity of 4525 kgs. shown as work-in-progress is nil. Hence, total quantity of finished goods is 6300 kgs only, is totally after-though and valiant efforts to

justify the assessee offered baseless explanation with regard to discrepancy in the figure of Quinalphos. The explanation offered by assessee is not supported by documentary evidence which is totally baseless and without any logic. On the contention of assessee, that finished product is not manufactured, therefore no quantity is reflected in work-in-progress but only value of material and processing cost to the extent for process completed in process has to be reflected of MPB and Quinalphos have been valued at Rs.58,07,035/- and Rs.11,65,953/- respectively indicate the stock of work-in-progress is taken at nil and valued overhead expense at Rs.58,07,035/- and Rs.11,65,953/- respectively is devoid beyond understanding of merit. The assessee again served show cause notice as recorded in para-5.26 in assessment order. The assessee again filed its explanation vide letter dated 21.03.2014. The assessee explained its following: -

“with reference to the discussion we had with you during the hearing on 18 March 2014, wherein most of the quarries were discussed in length and proper justifications were provided for.

During the discussion in respect of Quarry No.10, 11 and 12 of your Letter No. BRC/DCIT./Que/SC/GIL/2013-14, dated 07 January 2014 and in response to it, the submission made to you vide our letter No.GIL/FIN/4052/(ASST)/1214 DT.29 January 2014, at para no 8 and 9 on page 8 to 10,you have asked us to provide further explanation for your consideration for valuation of the Work In Process amounting to Rs.58,07,035/- for MPB as on 31st March 2011 and Work In Process amounting to Rs.68,52,480/- (Rs.5686465/- for MPB (WIP) and Rs.11,65,953/- Quinalphos (WIP) as on 31st March 2010.

In this regard and as explained to you that these are not the final output/product but are items charged for manufacture of finished product and lying at various stages of the production for which raw materials charged, utilities consumed and overheads charged are provided at Page No.697 to 704 for Rs.58,07,035/- for WIP as on dated 31st March 2011 and at Page No.705 to 714 for Rs.68,52,418/- for WIP as on dated 31st March 2010. In the statement we have worked out the valuation of WIP considering the quantum of Raw Material charged, Utilities consumed and the other Overhead expenses alongwith the supporting for stage-wise as under:

Particulars	Units/Kg/Ltr.	Qty.	Value (Rs)	Ref.page
Raw materials	Kg/Ltr	93226	5110313	698
Utilities				
Fuel	Scm	4866	82241	699
Electricity	Kwh	62872	387163	699
Water	KL	2008	43281	699
Labour cost			163255	700
Stores			11842	701
Transportation RM			8940	702
Total cost of Work-in-process as on 31-03-2001			587035	697

Similarly for Work In Process as on 31-03-2010 for Quinalphos and MPB is as under:

Work-in-process of MPB as on 31-03-2010

Particulars	Units/Kg/Ltr.	Qty.	Value (Rs)	Ref.page
Raw materials	Kg/Ltr	107206	5177616	706
Utilities				
Fuel	Scm	4015	53410	708
Electricity	Kwh	52392	324269	708
Water	KL	1961	37858	708
Labour cost			70629	709
Stores			9781	710
Transportation RM			12902	711
Total cost of Work-in-process as on 31-03-2001			5686465	705

Work-in-process of Quinalphos as on 31-03-2010

Particulars	Units/Kg/Ltr.	Qty.	Value (Rs)	Ref.page
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Raw materials	Kg/Ltr	11653	1118287	707
Utilities				
Fuel	Scm	1092	14531	708
Electricity	Kwh	2167	13409	708
Water	KL	--	---	708
Labour cost			16939	709
Stores			3272	710
Transportation RM			2787	711
Total cost of Work-in- process as on 31-03-2001			1165953	705

Moreover, we also draw your attention to the details of sales submitted earlier on page No.280 wherein the average sale price of MPB works out to Rs.445/- per kg and average sale price of Quinalphos works out to rs.304/- per kg.

As you are aware for any profit making organisation the cost of finished product shall always be lesser than the sale price of respective finished product.

From the above submission you will observe that there is no suppression of the closing stock value of above referred finished products and therefore no disallowance shall be made on this account.”

6. On the basis of aforesaid explanation, the assessee contended that there is no suppression of closing stock of finished products and no disallowance be made. The reply of assessee was not accepted by Assessing Officer by taking view that assessee has not furnished the used stock of work-in-progress of MPB as also Quinalphos have been valued, work-in-progress of MPB has been furnished as on 31.03.2014. It is seen that quantity of raw material considered to be work-in-progress of MPB is 9366 kg, whose value is adopted at Rs.51,10,313/- while the total value of expense is taken at

Rs.6,96,722/- kg i.e., raw material per kg is considered at Rs.54.82/- only against the finished stock of MPB is re-work at Rs.288/- per kg which is totally not convincing. The Assessing Officer also given certain other instances as recorded in two pages 18 & 19 of the assessment order and worked out suppression of valuation of stock of Rs.16,40,988/- for MPB and Rs.15,31,168/- for Quinalphos respectively.

7. The assessing officer on perusal of details in respect of opening stock and closing stock summary of work-in-progress of finished products, this finished stock was valued less than that of opening stock. Accordingly, show cause notice dated 07.11.2014 was issued to assessee with detailed queries as recorded in para-5.3 at pages 20 to 23 of the assessment order. The assessee filed its reply dated 29.01.2014 and explained as follows:-

“3. As regard Query No.14 to 29, we state as under:-
Kindly refer item 1€ above, regarding the valuation of finished goods and Traded goods – AS per the Accounting policy, these items are valued at lower of cost or net realisable value.

The stocks are valued at lower of cost / net realisable value where the items are not in saleable condition, i.e., they are in damaged condition of near expiry. The items which are damaged or near expiry shall not realise the same value in the market and they are valued at 5% of the cost. It may kindly be noted that the above policy has been regularly followed by the company since inception and the same has been duly accepted by the Department while finalizing the assessment every years.

We are attaching herewith the statement giving explanation with regard to itemNo.14 to 29. Refer page No. 681 to 690

From the attached statement, you will observe that the total quantityof:-

PARAMVEER is 7,162 Ltrs. of which, 831 ltrs are damaged of near expiry and therefore 2,831 lts are valued at 5% of the cost and therefore, the average cost is Rs.314/- per ltr. The value of saleable quantity is valued at Rs.502/- per ltr.

INDOXA is 223,080 Ltrs. Of which 1,625 ltrs are damaged of near expiry and therefore,1,625 ltrs are valued at 5% of the cost and therefore, the average cost is Rs.1,885/- per ltrs. He value of saleable quantity is valued at Rs.2,021/- per ltrs The opening stock of Indoxa was purchased, whereas the closing stock quantity is from manufactured stock.

GILPHOS is 34,126 ltrs. Of which 11,723 ltrs are damaged of near expiry and therefore 1,723 ltrts arte valued at 5% of the cost and therefore, the average cost is Rs.83/- per ltr. The value of saleable quantity is valued at Rs.124/- per ltr.

NIDAN is 12,375 Ltrs. Of which 9,285 ltrs are damaged of near expiry and therefore 9,285 ltrs are valued at 5% of the cost and therefore, the average cost is Rs.52/- per ltr. The value of saleable quantity is valued at Rs.184/- per Ltr.

NARMADA is 26,573 Ltrs. Of which 3,182 ltrs are damaged of near expiry and therefore 3,182 ltrs are valued at 5% of the costs and therefore, the average cost is Rs.160/- per ltr. The value of saleable quantity is valued at Rs.181/- per ltr.

GILQUIN is 36,344 Ltrs. of which 11,990 Ltrs are damaged of near expiry and therefore 11,990 Ltrs are valued at 5% of the cost and therefore, the average cost is Rs.127/- per ltrs. The value of saleable quantity is valued at Rs.185/- per ltr.

CARBENDAZIM (WP) is 16,770 Ltrs, of which 1,545 Ltrs arte damaged of near expiry and therefore 1,545 ltrs are valued at 5% of the cost and therefore, the average cost is Rs.131/- per Ltr. The value of saleable quantity is valued at Rs.144/- per ltr.

ARMY is 8,915 Ltrs of which 1,906 Ltrs are damaged of near expiry and therefore, 1,906 ltrs are valued at 5% of the cost and therefore, the average cost is Rs.310/- per Ltr. The value of saleable quantity is valued at Rs.390/- per ltrs.

GILFEN is 5,865 ltrs. of which 2,659 ltrs are damaged of near expiry and therefore 2,659 ltrs arte valued at 5% of the costs and therefore, the average cost is Rs.100/- per ltrs. The value of saleable quantity is valued at Rs176/- per ltr.

SANGRAM TOLL is 29,361 Ltrs. of which 4,404 ltrs are damaged of near expiry and therefore 4,404 ltrs are valued at 5% of the cost and therefore, the average cost is Rs.210/- per ltr. The value of saleable quantity⁹ is valued at Rs.245/- per ltrs.

YODHA is 30,009 Ltrs of which 4,014 ltrs are damaged of near expiry and therefore 4,014 ltrs are valued at 5% of the cost and therefore, the average cost is Rs.279/- per ltrs. the value of saleable quantity is valued at Rs.320/- per Ltr.

GILRON is 7,508 of which 3,638 Ltrs are damaged of near expiry and therefore 3,638 Ltrs are valued at 5% of the cost and therefore, the average cost is Rs.133/- per Ltr. The value of saleable quantity is valued at Rs.248/- per Ltr.

NIHAL is 27,238 Ltrs, of which 10,963 Ltrs are damaged of near expiry and therefore 10,963 Ltrs are valued at 5% of the cost and therefore, the average cost is Rs.138/- per Ltr. The value of saleable quantity is valued at Rs.225/- per Ltr.

GILTOP is 66,169 Ltrs. of which 16,975 Ltrs are damaged of near expiry and therefore 16,975 Ltrs are valued at 5% of the cost and therefore, the average cost is Rs.29/- per Ltr. The value of saleable quantity is valued at Rs.39/- per Ltr.

PRATIGHAT is 7,964 Ltrs of wich 1,844 Ltrs are damaged of near expiry and therefore 1,844 Ltrs are valued at 5% of the cost and therefore, the average cost is Rs.227/- per Ltr. The value of saleable quantity is valued at Rs.225/- per Ltr.

AXON is 5,056 Ltrs of which 941 Ltrs are damaged of near expiry and therefore 941 Ltrs are valued at 5% of the cost and therefore, the average cost is Rs.335/- per Ltr. The value of saleable quantity is valued at Rs.409/- per Ltr.

MONOGIL is 21,476 Ltrs of which 10,386 Ltr. are damaged of near expiry and therefore 10,386 Ltrs are valued at 5% of the cost and therefore, the average cost isRs.132/- per Ltr. The value of saleable quantity is valued at Rs.245/- per Ltr.

From the above submission of query no 14 to 29 you will observe that there is no suppression of the closing value of finished goods and therefore no disallowance be made on this account.”

8. The explanation furnished by assessee was not accepted by Assessing Officer. The Assessing Officer held that for unit Paramveer, the chart furnished with submission indicates that the figures brought out are totally fabricated. The main explanation as offered by assessee for discrepancy is that there exist damage goods, which has been valued @ 5% of finished stock. This is a very small of fabricate figure of damage goods, once it is decided that what percentage of damage goods were valued and what is price and to be adopted of finished goods in good condition. Once it is decided that finished goods is to be valued at Rs.502/- per kg as has been decided in case of Paramveer. The secondly decided the damaged goods is to be valued @ 5% of finished stock i.e. Rs.25.10/- per kg. The ratio between finished good stock and damaged stock can be worked out. The assessee has taken the help of this simple mathematical calculation to fabricate the figures to back its claim convincingly as no document is furnished by assessee. On the other item being 'Indoxa', the Assessing Officer noted that damaged goods in the opening stock inventory of 117.1 kg which is 1.58% of the total opening stock of 7422 kg. However, in the closing stock of

damaged goods is 1625 kg out of total stock of 21996 kg which was served to 7.37% which is almost five times more as compared to opening stock which indicate that there has been more production loss in the year under consideration as compared to preceding year without shaking the production people to question and tap such damages. Thus, the assessee indulged in drawing fabricating figures by mathematical aid. The Assessing Officer made a details of quantity of its opening stock, quantity of damaged goods in opening stock, percentage of damaged goods, quantity of closing stock, quantity of damaged goods in opening stock, percentage of damaged good to finished goods in opening, quantity in closing stock, quantity of damaged goods in opening stock and percentage of damaged goods in closing stock in respect of 17 items, was prepared as mentioned in para-5.36 of assessment order and concluded that there has not been a single instance, whereas the percentage of damaged goods in closing stock has been decrees as compared to percentage of damaged goods in opening stock. In fact, there is a total rivalry percentage of damaged goods from 7.5% to 28.61% which is almost rise by four folds. This is only because of the assessee has presented fabricated figures only to make believe its contention. The Assessing Officer worked out the total

disallowance of Rs.2.227 crores (para 5.38). The assessing officer also made ad-hock disallowance @ 5% of various expenses in para 5.42 (which are not subject matter of any appeal). Thus, the assessing officer made addition/disallowance of interest of Rs. 2.143 Crore, addition of Rs. 16,40,988/- and 15,31,168/- on account of under valuation of closing stock of MPB and Quinalphos and Rs. 2.227 Crore of undervaluation of closing stock of various finished goods.

9. Aggrieved by disallowance of interest expenses and disallowance of under-valuation closing stock and difference in valuation of MPB and Quinalphos, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A), the assessee filed detailed written submission which are recorded by Ld. CIT(A) on different pages. With regard to disallowance of interest expenses, the assessee stated that they have not charged interest from Gharda Chemicals Ltd., against amount outstanding. The assessee having regular business transaction with Gharda Chemicals Ltd. The said Company is a major customer of assessee and purchasing major quantity of assessee's products. The assessee is purchaser of raw material from them which is a monopoly product and assessee is also enjoying long credit facilities for such purchases. The assessee is also getting valuable & specialized

services in the field of manufacturing and marketing of assessee's toll pack product. The normal sales realization from other customers is also ranging from 4 to 12 months on which the assessee is not charging any interest. The assessee is in the business of manufacturing of pesticides related to agricultural industry and in such business, normal credit facilities of 180 days. The bank while granting working capital facilities also considered 180 days' credit on book debt. Thus, the amount of outstanding from Gharda Chemicals Ltd., is only on account of 'business transaction' and no stretch of imagination is considered as loan to Gharda Chemicals Ltd., and therefore the question of charging interest thereon does not arise at all. The assessee specifically contended that similar issue was raised in AY 2001-02, 2002-03 and 2003-04 to 2006-07 and on appeal before Hon'ble Tribunal, the similar disallowances were deleted in order dated 31.05.2011 and 27.03.2012 respectively. The assessee pleaded that in AY 2009-10 the same issue is decided by Tribunal in favour of assessee.

10. The Ld. CIT(A) after considering the submission of assessee allowed the relief to the assessee by taking view that similar issue related to disallowance of interest on the ground that assessee had transferred / diverted the borrowed funds to the

holding Co. and allowed undue credit to it. The issue is covered in favour of assessee in assessee's own case for AY 2009-10 in ITA No.556 & 675/AHD/2013 dated 19.07.2013.

11. On the disallowance of valuation of opening stock and closing stock of finished goods, the assessee made similar submission as made before the Assessing Officer. Similarly, for addition on account of valuation of closing stock, the assessee reiterated similar submission as submitted before Assessing Officer.

12. The Ld. CIT(A) after considering the submission of assessee on addition of valuation of closing stock of MPB and Quinalphos held that the reasons for addition by making on account of incorrect valuation of opening stock and closing stock of such finished goods. The assessee has reiterated the same submissions as furnished before Assessing Officer and reproduced it earlier submission. The facts are that during assessment, on perusal of details in respect of opening stock and closing stock of work-in-progress and finished products, observed that the finished stock was valued by assessee less than that of work-in-progress in respect of both produces (MBP & Quinalphos). The Ld CIT(A) held that Assessing Officer after issuing detailed show cause notice asked the assessee as to why the suppression of valuation of stock of finished goods

be not added. The Assessing Officer made detailed discussion after considering the submission of assessee and not accepting the submission with detailed reasoning for making addition of Rs.16,40,988/- and another addition of Rs.15,31,168/- respectively. The submission of assessee in respect of work-in-progress MPB and Quinalphos are that these products as on 31.03.2011 were under-production and certain raw materials were charged in the process and same process has been carried out on these materials. Further submission of assessee that since finished products are not manufactured, therefore, no quantity reflected in work-in-progress but only value of material processing cost to the extent of processed completed in process has to be reflected. The submissions of assessee are against capital practice of valuation of borrowing closing stock of raw material, work-in-progress and finished goods. Thus, Assessing Officer rightly pointed out that normal methodology adopted for working the value of closing stock is to first identify the stock in respect of each item and at working stage of such stock are their i.e. whether stock is in the form of raw material or stock are still in the process of production or stocks are lying as finished goods. If certain raw materials are used for carrying the same process for the stock and such stock have treated as either

semi-finished goods for working process and accordingly the same has to be treated as work-in-progress for the purpose of valuation. The Ld. CIT(A) concluded that it cannot be said that finished products are not manufactured and therefore no quantity reflected in work-in-progress but only value of material and processing stock to the extent process completed in process has to be reflected. The Assessing Officer has rightly pointed out the anomaly in the valuation of opening stock and closing stock of MPB and Quinalphos after proper appreciation of the facts of the case and dismissed corresponding grounds of appeal.

13. On the addition of under-valuation of closing stock, the assessee submitted similar contention as contended before Assessing Officer. The explanation of assessee is recorded by Ld. CIT(A) in para-4.2 by the order of Ld. CIT(A).

14. The Ld. CIT(A) after considering the submission of assessee held that each item of closing stock as mentioned in the chart has been valued by Assessing Officer at the rate on which the opening stock has been valued and the addition against each of the items as mentioned in the show cause notice has been made by Assessing Officer. The Assessing Officer worked out the addition in respect of each of the items of closing stock and worked out as figure of disallowance of Rs.2.22 crores,

which has been correctly made by Assessing Officer and accordingly confirmed the addition made by Assessing Officer.

15. Aggrieved by the confirming addition disallowance on account of under-valuation of closing stock and addition on account of valuation of closing stock of MPB and Quinalphos, the assessee filed appeal before Tribunal. Similarly, against deleting of interest disallowance, the Revenue has filed its appeal before Tribunal.

16. We have heard the submissions of Ld. Authorized Representative (AR) for the assessee and Ld. Commissioner of Income-tax-Departmental Representative (CIT-DR) and Ld. Senior Departmental Representative (Sr. DR) for the Revenue. At the outset of hearing the ld.AR of the assessee submits that the grounds of appeal raised by Revenue in both the years are covered in favour of assessee by the decision of Tribunal in earlier years. The Ld.AR of the assessee submits that similar issue was involved in appeal for AY 2009-10, wherein similar interest disallowance was deleted, the ld AR for the assessee submits that the copy of decisions of Tribunal is filed on record.

17. On the other hand, two set of Ld. CIT-DR and Ld. Sr. DR for the Revenue supported the order of Assessing Officer.

18. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We find that Ld. CIT(A) granted relief to assessee by following the decision of Tribunal in assessee's own case in ITA No.556 & 675/AHD/2013 for AY 2009-10 dated 19.07.2013. We find that similar set of fact, similar disallowance was made by Assessing Officer in AY 2009-10, on appeal before Ld. CIT(A) the disallowance was confirmed on account of interest free credit. On further appeal before Tribunal, the disallowance to holding Co. was deleted. On further appeal before Tribunal, the appeal of Revenue was dismissed by Tribunal by passing following order (supra):-

10. We have heard the rival submissions and perused the material on record. It is an undisputed fact that during the year, Assessee has granted interest free loan of Rs. 2,50,00,000/- to Gharda foundations a related party. A perusal of the balance sheet of the Assessee reveals that the Reserves and Surplus balance as on 1.04.2008 was 56,41,35,000/- and the closing balance as on 31.03.2009 was 65,81,71,000/- thereby indicating an increase in reserves and surplus of Rs.9,40,36,000/- during the same period as against which the interest free loan given to Gharda Foundation was Rs.2,50,00,000/-. The aforesaid facts reveal that there was sufficient fund available with the company in the form of reserves and surplus. Further nothing has been brought on record by Revenue to prove that interest bearing loans taken by the Assessee for the purpose of own business has been diverted for non business purposes or for lending to Gharda Foundation. No direct nexus has been proved either by Assessing

Officer or by CIT(A) between the interest bearing loans taken and the interest free loans granted. The Hon. Bombay High Court in the case of CIT vs. Reliance Utilities (supra) has held that if there are funds available both interest free and over draft and or loans taken than a presumption would arise that investment would be out of interest free fund generated or available with the company, if the interest free funds were sufficient to meet the investment.

11.In the case of CIT vs. Raghuvir Synthetics (supra), The Hon. Gujarat High Court has held as under:

Head note:

INTEREST ON BORROWED CAPITAL - INTEREST-FREE LOANS TO SISTER CONCERNS- HUGE FUNDS AVAILABLE WITH ASSESSEE WITHOUT ANY INTEREST LIABILITY- NO EVIDENCE THAT BORROWED MONEY UTILISED FOR PURPOSE OF ADVANCE TO SISTER CONCERNS- INTEREST ALLOWABLE.

12.In view of the aforesaid facts and placing reliance on the aforesaid decisions of Hon. High Courts, we are of the view that no disallowance on account of interest can be made in the hands of the Assessee in the present case. Thus this ground of Assessee is allowed.”

19. Considering the decision of Tribunal on similar set of fact on similar ground of appeal in AY 2009-10, therefore respectfully following the binding precedent, we affirm the order of Ld. CIT(A).

20. In the result, Revenue's appeal in ITA No.3273/AHD/2016 (AY 2011-12) is dismissed.

21. Now adverting the grounds of appeal raised by assessee in ITA No. 3053/Ahd/2016 (AY 2011-12). Ground No.1 relates to confirming the addition on account of closing stock and finished goods viz., MPB & Quinalphos of Rs.16,40,988/- and

Rs.15,31,168/- respectively. The Ld. AR of the assessee submits that during the assessment proceedings, the Assessing Officer observed that finished stock was less value at less than work-in-progress in respect of two items the ld. AR of the assessee submits that during the course of assessment proceedings, it was observed by the Assessing Officer that finished stock was valued at less than ii WIP in respect of two items being MBP and Quinalphos as follows:

	Particulars	Quantity (In Kg.)	Rate per Kg.	Amount Rs.
A	MPB			
	WIP	4525	1253	58,07,035
	Finished Stock	1775	1000	17,74,372
B	Quinalphos			
	Closing Stock	16220	248	
	Opening Stock	—	342	

22. The ld. AR of the assessee submits that during the course of assessment proceedings, the assessee clarified that there was a mistake in mentioning the quantity of stock of MPB. In fact, the total quantity of 6300 kg (4525 kg. + 1775 kg.) was in respect of finished goods and WIP quantity was NIL The correct details were as follows:

	Particulars	Quantity (in kg)	Rate per kg	Amount Rs
A	MPB			
	WIP	Nil	Nil	58,07,035
	Finished stock	6300	288	17,74,372
	Total			70,54,211

23. The ld. AR of the assessee submits that on 31/03/2011 MPB was under production and certain raw material was used in the process. Since finished products was not manufactured therefore no quantity is reflected in WIP. However, value of material and processing cost to the extent the process is completed has been reflected and valued at Rs 58,07,035A as stated above.

	Particulars	Quantity (in kg)	Rate per kg	Amount Rs
A	Quinalphos			
	WIP	Nil	Nil	11,65,953
	Finished stock	12375	248	30,71,255
	Total			42,37,208

24. The ld. AR submits that as on 31/03/2011 Quinalphos was under production and certain raw material was used in the process. Since finished products were not manufactured therefore no quantity is reflected in WIP. However, value of material and processing cost to the extent the process is completed has been reflected and valued at Rs 42,37,20s/- as stated above. The rate per kg

is around Rs 342/- per kg (4237208/12375). Therefore, the value per kg of closing stock being Rs 342/- per kg is the same as 342/- per kg of opening stock as mentioned by the Assessing officer. The details of above-mentioned Work-in-Progress with respect to MPB and Quinalphos was also given, wherein the cost of raw material, fuel, electricity, water, labour cost, store consumed and transportation value were allocated to both the items. Ld. AR further submits that it is further submitted that the method for valuation of stock is followed consistently year on year by the Appellant and there has been no change in respect of the same in the current year also. It is also that the Department has accepted this fact and there has been no addition made with respect to the said ground in any preceding or subsequent years. The ld AR for the assessee submits that all the details are available as per details on page No. 137 to 144 of paper book. Therefore, there is no undervaluation of stock in case of MPB and Quinalphos and the addition of Rs 16,40,9887- and Rs 15,31, 168/- may kindly be deleted. The ld AR for the assessee has given such submissions in writing.

25. On the other hand, Ld. CIT-DR and Ld. Sr. DR for the Revenue supported the order of lower authorities. Ld. CIT-DR further submits that the Assessing Officer as well as Ld. CIT(A) in their details order have clearly spilt out that there was under-valuation of MPB and Quinalphos. Therefore, they support the order of Ld. CIT(A). In the alternative submissions, the ld Sr DR for the revenue submits that the assessee in its submissions has given different figure and facts, which was not submitted to the lower authorities and cannot be allowed to take different stand at this stage. The ld SR DR for revenue submits that in case the Hon'ble Bench consider that the fresh fact as submitted deserve consideration, the issue may be restored to the file of assessing officer to verify such facts and to pass order afresh.
26. In the rejoinder submissions, the ld AR for the assessee submits that she has no objection in restoring the issue to the file of assessing officer and she is ready to explain the facts before assessing officer.
27. We have considered the rival submission of both the parties and have gone through the order of authorities below carefully. We find that the assessee is consistently changing their stand with regard to valuation of opening and closing stock of finished goods viz; MPB and Quinalphos. While making submission before us, the ld AR for the assessee submits that the details

given in her written submissions are final and she is ready to explain before the assessing officer that there is no inconsistency in the stand of the assessee on the opening and closing stock of finished goods viz; MPB and Quinalphos. We find that there is variation in the stand of the assessee, therefore, we restore this issue of opening and closing stock of finished goods i.e. MPB and Quinalphos to the file of assessing officer to consider the submissions of the assessee, as submitted before us and pass the order in accordance with law. Needless to direct that before passing the order, the assessing officer shall allow reasonable opportunity to the assessee of being heard. In the result, Ground No. 1 in assessee's appeal is allowed for statistical purpose.

28. Ground No.2 relates to confirming the addition of undervaluation of closing stock of various finished goods of Rs.2.22 crores. The Ld. AR of the assessee submits that during the course of assessment, the details with respect of opening and closing stock of WIP and finished product were called for and submitted by the assessee. The Assessing Officer has observed with respect to 17 items that the closing stock of damaged goods has been undervalued and has made an addition of Rs.2,22,74,370/-. The Assessing Officer has

estimated the percentage of damaged stock in the opening and closing stock of each of these items and has gone to observe that there has been an increase in the percentage of damaged goods. The ld. AR of the assessee submits that the assessee has submitted detailed reasons, wherein assessee have stated that they are governed by the Insecticides Act, 1968 along with Insecticides Rules, 1971, and reproduced as below:

Rule 10-A: Segregation and disposal of date expired pesticides:

"b. All such stocks then shall be disposed of in such a manner as may be specified from time to time by the Central Government in consultation with the Central Insecticide Board. "

44 Disposal of used packages surplus materials & washings of insecticides:

(1) It shall be the duty of the manufacturers formulators of insecticides and operators to dispose packages or surplus materials in a safe manner so as to prevent environmental or water pollution.

(2) The used packages shall not be left outside to prevent their re-use

(3) The packages shall be broken and buried away from habitation.

29. The ld AR for the assessee submits that as per statutory provisions, it can be inferred that expired pesticides cannot be sold but need to be disposed of as per the Insecticides Act referred above. The ld. AR of the assessee submits as per the accounting policy of ICAI followed by the Appellant, the stocks are valued at lower cost or net realizable value where the items are not in saleable condition i.e. they are in damaged condition of near expiry. The items which are damaged or near expiry shall not realize the same value in the market, and therefore, they are valued at 5% of the cost. Ld. AR of the assessee submits that it may kindly be noted that the above policy has been consistently followed by the company since inception and the same has duly been accepted by the Department while finalizing the assessment every year. The very reason for valuing the damaged material at 5% of the cost, is to maintain quantitative records of such material till they are disposed off. Ld. AR of the assessee submits that since the material is not saleable, the realizable value estimated at 5% of the value of closing stock. The supporting documents for one of such items

viz. Paramveer, as a sample case for closing stock of saleable / un-saleable or damaged material at various locations was submitted for verification. The Ld. AR of the assessee submits that it can also be seen that the closing stock has been certified by Chartered Accountant at all the locations. The Assessing Officer has not at all considered and has proceeded to reject the contention on presumption and assumption basis and not bringing out any contrary evidences to the facts of the case. The ld. AR of the assessee submitted that there is no suppression of closing value of finished goods. To support her submissions, the Ld. AR of the assessee relied on the following decisions;

- CIT Vs Hughes Communications (33 taxmnn.com 95) (Delhi),
- Goodwill Fabrics Pvt Ltd Vs ACIT (ITA No 525/JP/2Q18) (Jodh-Trib),
- M P Bros Vs DCIT (102 Taxman 300) (Mum-Trib),
- DCIT Vs Dawaat Foods Ltd (128 taxmann.com 432)(DeI)(Trib) and
- ITO Vs Wasan Exports (P) Ltd (106 taxmann.com 21) (Del-Trib).

30. The ld. AR of the assessee prayed to delete the addition of Rs.2,22,74,370/-.

31. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld. CIT(A). The ld Sr DR for the revenue

submits that before assessing officer the assessee has not furnished stock statement at various location. The assessee has proved the quantity of the goods which were not saleable. The assessee was claiming a substantial part as not saleable without bringing any evidence on record. Moreover, there is substantial increase in the percentage of damaged product/ goods in the closing stock compare with earlier year. The ld Sr DR for the revenue further submits that the assessee again the assessee has taken a new stand that expired pesticides cannot be sold and needs to be disposed of, which was not raised before lower authorities. Even, the assessee has not shown such evidence of stock of expired goods. The ld DR for the revenue submits that order of lower authorities are very details in explain the huge variance of damaged goods.

32. We have considered the rival submission of both the parties and have gone through the orders of the lower authorities carefully. We have also deliberated on the various case laws relied by ld AR for the assessee. The assessing officer made the addition on account of undervaluation of closing stock of Rs. 2.227 Crore by

taking view that there is rise in the percentage of damaged goods in respect of 17 items ranging from 7.5 to 28.6%, which is almost four folds. It was also held that the assessee has presented fabricated figures only to make believe its stand that stock of finished goods consist of damaged goods which was valued at 5% of value of finished goods. The assessee has not separately shown in his original submissions. The assessing officer prepared summery of 17 items and on the basis of figures provided by assessee worked the percentage as recorded in para5.3.2 of assessment order. And on the basis of such working, worked out disallowances of Rs. 2.227 Crore. The Id CIT(A) upheld the addition by taking view that in each item, the damage goods in closing stock has increased substantially and not marginally as compared to the damaged goods in opening stock. The Id CIT(A) has recorded certain example wherein increase is more than 65% or 75% in case of SANGRAM and NIDAN respectively. Similarly, in many cases it is very high. The Id CIT(A) also noted that as per the working of assessing officer damaged goods in the stock of 17 items as per the chart is 7.5% to

28%, which is about four-time rise, which is unusual. The ld CIT(A) also recorded the valuation of certain items, like Indoxica was valued at Rs. 1740/- per kilograms which is less than the opening stock which is valued at Rs.2274/- per kilograms and such discrepancies are not substantiated by the assessee. On the basis of such various references the ld CIT(A) upheld the addition.

33.Before us, the ld AR for the assessee vehemently submitted that the assessing officer estimated the percentage of damaged stock in the opening and closing stock of each of the item by taking view that there is increase in percentage of damaged goods. The ld AR for the assessee impressed that the goods prepared by the assessee are governed by Insecticides Act and the damaged or expired goods cannot be sold being not saleable. And relied on various case laws. We find that the facts of all the case laws relied by her are at variance.

34.In CIT Vs Hughes Communication India Ltd (supra), the Hon'ble Court held that where same method of valuation of stock was consistently followed by assessee, resulting in no distortion of profit, any alleged difference or

discrepancy such as diminution in valuation pf closing stock could be allowed. We find that the assessee in the present case has not proved such fact as no evidence is placed on record to prove such practice regularly. Moreover, the assessing officer has clearly held that there is huge variation in the percentage of damaged goods shown by the assessee. Similarly, in other case laws, the ratio of decisions is that when similar method of valuation of damaged goods was accepted by the revenue, there is no justification for making disallowance. As noted above the assessing officer from the figures of the assessee has clearly spelt out the huge difference of damage in 17 products of the assessee.

35. Again adverting to the issues under discussion. We find that main dispute between the assessee and revenue is about the substantial increase of quantum of damaged goods. No doubt that certain percentage of product/ goods produce by the assessee is bound to damage or expired by efflux of time or by other factor effecting the chemical composition of such pesticides. It is also common feature that neither the expired chemical nor the damaged goods

of assessee can secure the price in the market, moreover, most of the product of the assessee may prove hazardous to the environment, even if in the damaged position is not disposed in control manner. Thus, we are of the view that in such circumstances the assessee may be allow certain percentage of cost of damaged product. However, we find that the assessee has not provided the quantity of such damaged or unsaleable product and valued it without justifying with the comparable cases. Similarly, we also find that the assessing officer has also not brought any contrary evidence on record to disbelieve the contention of the assessee. Therefore, to avoid the possibility of revenue leakage, we are of the view that the disallowance to the extents of 25% (25% of 2.227 Crore), on account of undervaluation of closing stock would be sufficient to meet the end of justice. Thus, remaining disallowance is deleted. The assessing officer is directed accordingly.

36. In the result, this ground of appeal is partly allowed.

37. In the result, the appeal of the assessee is ITA No. 3053/Ahd/2016 is partly allowed.

ITA No. 2519/Ahd/2016 (by revenue for AY 2012-13)

38. The revenue has raised following grounds of appeals;

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the disallowance of Rs.2,40,58,000/- made by the Assessing Officer being interest free credit granted to the holding company M/s Gharda Chemicals Ltd., thereby the assessee had diverted interest bearing funds to its holding company defined u/s 40A(2)(b) of the Act.

2. The Ld. CIT(A) erred in holding that provisions of section 40A(2)(b) is not applicable on the assesses transactions with Gharda Chemicals Ltd., as the extra benefit granted was a normal commercial transaction without appreciating the fact that interest bearing funds were parked with holding company.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the disallowance of Rs.21,24,160/- out of repairs and maintenance to plant and machinery without appreciating the fact that the old replaced item were used independently which are having life span of more than 25 years, therefore, replacement of such items would give benefit of enduring nature to the assessee company.

39. We find that the ground No. 1 & 2 raised by the revenue is similar to the grounds of appeal raised by revenue in appeal for 2011-12, which we have already dismissed by following the order of Tribunal in earlier years. Therefore, following the principal of consistency, the grounds of appeal No. 1 & 2 are dismissed with similar observation.

40. Ground No. 3 relates to delating the repairs and maintenance charges.

41. Brief facts of the case leading to the addition are that during the assessment, the assessing officer during the assessment noted that the assessee has claimed expenses of Rs. 7.843 Crore on account of repair and maintenance of Plant and Machinery. The assessing officer on examination of certain item found that those are capital in nature. On show cause notice, the assessee replied vide its reply dated 12.01.2015 as recorded in para 5.3.2 of the assessment order that those maintenance and repair are necessary due to continue usage of equipment for many years on account of highly corrosive plant. The reply of the assessee was not accepted by the assessing officer by taking view that replacement of parts will result in enduring benefit and the assessee would be eligible for depreciation, thus repair and maintenance of Rs. 21,24,160/- was treated as capital in nature. On appeal before Id CIT(A) the assessee contended that replacement of parts of plant and machinery, and not independent plant. There is no increase in the capacity of the production of the plant. Further similar addition/treatment was either allowed by Id CIT(A) or by Tribunal

in assessee's own case in earlier years, the details of which was given to the ld CIT(A) as recorded in page 24 of his order. The assessee also relied on the decision of various Higher Courts. The ld CIT(A) after considering the submissions of the assessee held that the contention of the assessee is convincing. The assessing officer has not brought any material on record to prove that some of those items are independent machine or apparatus which can be used independently for manufacturing activities. The assessing officer has not explained the technical aspect of the items to prove that the replaced items are independent machine which could be used independently. The finding of the assessing officer is not based on any material or evidence and are general in nature, thus he is not correct in treating such expenditure as capital in place of revenue and deleted the treatment. Aggrieved by the order of ld CIT(A) the revenue has raised this ground of appeal while filing this appeal before Tribunal.

42. We have heard the submissions of the ld. Sr DR for the revenue and the ld AR for the assessee and have gone through the orders of the lower authorities carefully. The

ld. Sr DR for the revenue supported the order of assessing officer and prayed to restore it.

43. On the other hand, the ld AR for the assessee supported the order of ld CIT(A). The ld AR for the assessee submits that ld CIT(A) has given clear finding that the order of the assessing officer is not based on any material or evidence and are general in nature. No new machine has come in existence, rather it was replacement of certain part of existing machinery.

44. We have considered the rival submissions of the parties and considered the orders of the lower authorities. We find that the assessing officer while treating the expenses as capital in nature has not given any basis of his observation if his observation is based on any material or evidence and is basically general in nature. We find that the ld. CIT(A) while deleting the addition clearly held that the assessing officer has not brought any material on record to prove that some of those items are independent machine or apparatus, which can be used independently for manufacturing activities. Further, the assessing officer has not explained the technical aspect of the items to

prove that the replaced items are independent machine which could be used independently. The ld CIT(A) concluded that finding of the assessing officer is not based on any material or evidence and are general in nature, thus he is not correct in treating such expenditure as capital in place of revenue. No contrary fact or law is brought to our notice to take other view to the finding of the ld CIT(A). Hence, we affirm the order of ld CIT(A). in the result, this ground of appeal is dismissed.

45. In the result, the appeal of the revenue for AY 2012-13 in ITA No. 2519/AHD/2016 is dismissed.

46. Copy of this order be placed in the respective case file(s).

Order pronounced in the open court on 26/09/2022 and result was also placed on the Notice Board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 26/09/2022

Dkp. OutSourcing P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-Vadodara
4. CIT
5. DR
6. Guard File

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By order

Assistant Registrar, ITAT, Surat