आयकर अपीलीय अधिकरण, "गुवाहाटी" न्यायपीठ गुवाहाटी
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI

(Heard from Kolkata Benches through web-based video conferencing platform)

[BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT & DR. MANISH BORAD, HON'BLE, ACCOUNTANT MEMBER]

I.T.A. No. 99/Gau/2000
Assessment Year: 1993-94

Asstt. Commissioner of Income Tax Circle-Tinsukia	Vs	**M/s. Brooke Bond India Limited (successors in-interest to Doom Dooma India Ltd.) B.D. Sawant Marg Unilever House Andheri East Mumbai – 40099 [PAN: AAPFA9709D]**

C.O. No. 08/Gau/2000
Assessment Year: 1993-94

M/s. Brooke Bond India Limited (successors in-interest to Doom Dooma India Ltd.) B.D. Sawant Marg Unilever House Andheri East Mumbai – 40099 [PAN: AAPFA9709D]	Vs	**Asstt. Commissioner of Income Tax Circle-Tinsukia**

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Smt. Harshita Jain on behalf of Nitu Hawelia, Advocate
Revenue by :	Shri N.T. Sherpa, JCIT, D/R

सुनवाई की तारीख/**Date of Hearing** : **29/09/2022**
घोषणा की तारीख /**Date of Pronouncement:** **20/12/2022**

आदेश/O R D E R

PER SHRI RAJPAL YADAV, VICE PRESIDENT:

The present appeal is directed at the instance of the revenue against the order of the Learned Commissioner of Income Tax (Appeals) - Guwahati, (hereinafter the "ld. CIT(A)") dt. 25/11/1999, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 1993-94.

2. On receipt of the notice in the revenues appeals, the assessee has filed cross-objection bearing C.O. No. 08/Gau/2000. Adjournments were sought from both the sides continuously on all occasions. Ultimately on 29th September, 2022, we have concluded the hearing. The order sheet passed by us reads as under:-

> *"This appeal was listed on 27th September, 2022 and it was treated as heard on 28th September. We have passed the following order: -*
>
> *"The appeal and C.O. were listed yesterday. During the course of hearing, ld. D.R. submitted that tax effect appears to be less than monetary limit for challenging the order of the ld. CIT (Appeals). With his assistance, we have perused the grounds of appeal and concluded the hearing under the impression that tax effect is less than the monetary limit an appeal of the Revenue is not maintainable. Ld. Counsel for the assessee was seeking adjournment and, therefore, she was also not well-versed with the complete fact. However, during dictation, we find that Revenue has raised additional grounds of appeal also and if quantum in those grounds is being taken, then it will exceed the monetary limit for challenging the order of ld. CIT (Appeals). Therefore, we re-fix it for hearing tomorrow, i.e., 29th September, 2022. The emphasis for this exercise is that it is twenty-two years old and without our endeavor, the assessee is not going to argue this appeal. The parties be informed telephonically. Hearing will be taken through Virtual Mode and no adjournment will be given. Copy of this order- sheet be supplied to both sides electronically."*
>
> *In response this order, the assessee has filed an application for adjournment on the ground that the counsel for the assessee is not keeping good health. A prescription issued by the doctor has also been placed on the record to this effect. Harshita Jain, submitted that Ms. Nitu Hawelia is not well and has sought for adjournment. We find that it is a 22 years old appeal. Even on 27th September, 2022, a request for adjournment was made by Ms. Nitu Hawelia. We did not grant the adjournment because on that date the ld. D/R had pointed out that the tax effect is less that Rs.50, 00,000/- and, therefore, hearing was concluded. But neither the ld. Counsel was ready on 27th*

September, 2022, nor today. With the assistance of the ld. D/R, we have gone through the record and concluded the hearing. We do not grant any further adjournment to the assessee. Ordered accordingly."

3. In the first ground of appeal, the revenue has pleated that the ld. CIT(A) was not justified in directing the Assessing Officer to allow deduction u/s 80G of Rs.1,16,090/- before application of Rule 8 of the Income Tax Rules, 1962 (hereinafter 'the Rules').

3.1. Brief facts of the case are that the assessee company was engaged in the business of growing and manufacturing of tea. It has filed its return of income on 31/05/1993 declaring total income at Rs.2,54,66,700/-. The assessment order was passed u/s 143(3) of the Act on 27/03/1996. With regard to the ground of appeal, the facts are that the assessee has filed a revised return wherein it has claimed deduction u/s 80G & 80HHC of the Act of Rs.1,16,090/- and Rs.7,14,163/-. The issue before us relates to the claim made u/s 80G of the Act only. The assessee company was engaged in manufacturing of tea and as per Rule 8 of the Rules, 40% of the income is liable to Central Income Tax and balance 60% is eligible to agricultural income tax itself. The dispute is, when to claim deduction u/s 80G? The Assessing Officer was of the view that first total income is to be computed and thereafter, it has to be divided in 40 : 60 ratio and then claim of deduction u/s 80G has to be made against 40% shares. The stance of the assessee was that, first business income has to be determined after allowing all necessary deduction and thereafter, apportionment of 40:60 has to be made. It can be explained by a simple example i.e., An assessee has gross income of Rs.100/-. Out of that necessary expenditure and deductions are to

be allowed and the assessee has deduction admissible under Chapter VI at Rs.10/- and also under 80G, 80IA or 80HHC, then that Rs. 10/- has to be excluded from Rs.100/- and from the balance Rs. 90/-, apportionment of 40:60 has to be made. The Assessing Officer did not accept this contention. However, the ld. First Appellate Authority has accepted this contention on the strength of the decision of the Hon'ble Madras High Court in the case of *Periakaramalai Tea and Produce Co. Ltd. and others (84 ITR 643).*

3.2. After going through this well reasoned finding of the ld. CIT(A) based on the decision of the Hon'ble Madras High Court, we do not find any error in it. Accordingly, this ground of appeal is dismissed.

4. **Ground Nos. 2 & 4:-**

These grounds are interconnected with each other. In these grounds of appeal, grievance of the revenue is that the ld. CIT(A) has erred in deleting the disallowance of Rs.18,182/- on account of travelling expenses and further allowed the expenses of Rs.1,57,330/- claimed by the assessee on foreign of travel expenses of the wife of the Managing Director, Shri D. Sen. The Assessing Officer was of the view that these expenses were not incurred for the purpose of business. However, the ld. CIT(A) has deleted both the disallowances. The ld. CIT(A) was of the view that the Board of Directors had approved that the expenses incurred on foreign tours of the wife of the Managing Directors would be reimbursed by the company. It is further observed that the wife of the director has performed secretarial services and was supposed to attend social gathering in business tour.

5. We do not find any error in the finding of the ld. CIT(A) because various Hon'ble High Courts, namely, Hon'ble Gauhati High Court (in the decision of *CIT vs. George Williamson (Assam) Ltd. reported in 234 ITR 130)*, Hon'ble Bombay High Court (in the decision of *Glaxo Laboratories (India) Ltd. vs. Second ITRO [18 ITD 226 (Bom.)]* and the Hon'ble Kerala High Court (in the decision of *CIT vs. Appolo Tyres Ltd. [237 ITR 707]*, are unanimous in their opinion that presence of wife with the top level executives is to assist him for discharging his social cum business obligation and such expenditure are deductible u/s 37(1) of the Act. Finally, the ld. First Appellate Authority held that similar expenditure was allowed in the earlier Assessment Years, and no disallowance is called for. After going through the well-reasoned finding of the ld. CIT(A), we do not find any reason to interfere in it and uphold the same by dismissing Ground Nos. 2 & 4.

6. **Ground No. 3:-**

In this ground, the grievance of the revenue is that the ld. CIT(A) has erred in directing the Assessing Officer to treat the sale of Rs.6,62,200/- and Rs.88,227/- as business income.

Brief facts regarding this issue is that, during the course of its business activity i.e., manufacturing of tea, certain scrap value has been generated. The assessee has sold gunny bags and other items, which are by-product of its business activity as well as manufacturing activity. The Assessing Officer has treated sale proceeds of such gunny bags etc. as income from other source which the ld. CIT(A) has held as income from business. We find that identical issue came up in earlier years and these were held as integral part of assessee's manufacturing process and gunny

bags are necessary tools. Therefore, as the gunny bags go through wear and tear, they are bound to be sold out. This activity is interconnected with the business activity and hence such income deserves to be assessed as business income. The ld. CIT(A) has given right treatment to the above sale proceeds. We do not find any error in the order of the ld. CIT(A). Thus, this ground of appeal is rejected.

7. **Ground No. 5:-**

In this ground of appeal, the grievance of the revenue is that the ld. CIT(A) has erred in deleting the disallowance of Rs.8,12,692/-, incurred on account of Guest House expenses.

Brief facts of the case are that the assessee has incurred Rs.2,65,723/- on repairs and maintenance. It claimed depreciation at Rs.26,723/- and a sum of Rs.5,26,969/- is meant for transit flats. Out of the total amount of Rs.94,905/-, Rs.20,000/- is debited towards food for guests. The Assessing Officer has added back this Rs.20,000/- The ld. First Appellate Authority has gone through the details of all these expenditure and held that no disallowance u/s 37(4) of the At can be made out of the above expenditure except Rs.20,000/-. The finding recorded by the ld. CIT(A) is reproduced as under:-

> *"(10.3) I have considered the matter. Repair and maintenance depreciation on guest house cannot be brought under the purview of section 37(4) as there are specific provisions for allowance of the same. The said items of expenditure are not governed by the provisions of section 37(1) which is pre-condition for applying section 37(4). Therefore, respectfully following the decisions cited above, it delete the disallowance of Rs.2,65,723/- .*
>
> *(10.4) Regarding disallowance of Rs.5,26,969/-, I find that the facts of the case warrant that these expenses cannot be treated as amounts disallowable under section 37(4) as the expenditure is necessary for*

accommodation of persons required in the business of the appellant as also due to specific conditions the unavailability of alternate accommodation I the remote areas where tea gardens are located. The Hon'ble High Courts have deliberated on this issue and have held that similar expenses cannot be brought under disallowance by applying section 37(4). I, therefore, delete the disallowance of Rs.5,26,969/- following decisions cited above.

(10.5) The ad-hoc disallowance in my view is unwarranted. The A/O has not brought on record any material for such disallowance. In fact, he himself has written off that the disallowance is made on the basis of possibility that the expenditure may be for the purpose of business. The Supreme Court has held in Dhakeswari Cotton Mills case that disallowances cannot be made on presumption. In my view the A/O has acted on presumption rather than any concrete material. I, therefore, delete the disallowance of Rs.20,000/-. (RELIEF Rs.2,65,723/- Rs.5,26,969/- and Rs.20,000/-)"

8. The basic reason for the Assessing Officer to make the disallowance is that such expenditure are to be disallowed towards maintenance of guest house. On the other hand, the stand of the assessee is that sum of Rs.5,26,969/- is not meant for guest house. Rather, it is with respect to transit flats given to the employees on transfers. The manufacturing activities of the assesse are such a place where it is difficult to find out any space to stay. The employees have to stay in the gardens where certain space is mandatory for the assessee to maintain. After considering the finding of the revenue, we do not find any error in this finding and accordingly, this ground of appeal is rejected.

9. Apart from the above grounds of appeal, the revenue has filed an application for raising additional grounds of appeal. The additional grounds of appeal read as under:-

"1. For that the learned CIT(A) was not justified in deleting the addition of Rs1, 27,27,520/-being deduction u/s 32 AB (1) (b) allowed in earlier years for direct utilization for purchase of plant and machinery without appreciating the fact that due to amalgamation of Doom Dooma India Ltd with Brooke Bond India Ltd the provisions of Sec 32 9AB(7) were attracted and as such, there was transfer of assets acquired in terms of Sec. 32 AB and therefore, the unutilized amount was income of the year under appeal.

2. For that the CIT(A) was not justified in deleting addition of Rs.2,19,13, 300/-on the grounds that amalgamation is not hit by provisions of Sec 32 AB (7) and 33 AB (8).

3. For that the CIT(A) was not justified in deleting addition of Rs. 1,31,81, 134/- u/3 33 AB without appreciating the fact that Doom Dooma India Ltd. ceased to exist on 1-1-93 and the deposit, with NABARD was made on 24-5-93."

10. First of all, we take *additional Ground No. 3* wherein the grievance of the revenue is that the ld. CIT(A) has erred in deleting the addition of Rs.1,31,81,134/-.

Brief facts of the case are that the assessee company had claimed deduction u/s 33AB of the Act on a sum of Rs.1,31,81,134/-. Section 33AB(1) of the Act contemplates a pre-condition for the assessee claiming deduction under this Section that, it has to deposit a sum which is atleast equivalent to the quantum of deduction in an account maintained in accordance with the scheme approved by the Tea Board. Earlier, there was Doom Dooma India Ltd. (DDIL), who has deposited a sum of Rs.1,60,00,000/- in its account with NABARD maintained in accordance with the Tea Developments Accounts Scheme, 1990. The details of such deposit were filed before the ld. CIT(A). DDIL was amalgamated with Brooke Bond India Ltd. as on 01/01/1993. According to the decision of Hon'ble Calcutta High Court & Hon'ble Guwahati High Court, it was stipulated that the amalgamation would be

construed as complete on the last approval in this regard obtained under Clause (10) of the amalgamation scheme. The Assessing Officer was of the view that amount was deposited on 24/05/1993, whereas the assessee DDIL, ceased to exist on 01/01/1993. Therefore, it is not entitled for deduction of Rs.1,31,81,134/-.

10.1. The ld. CIT(A) has held that as per the claim approved by the Hon'ble High Courts in the company petition in terms of Section 391 and 394 of the Companies Act, 1956, the amalgamation scheme would be applicable *w.e.f.* the date of last approval mentioned in Clause (10) of the scheme shall be obtained. This last approval in this regard was obtained for increasing share capital of DDIL on 31/05/1993. This scheme of amalgamation would become effective from 01/06/1993 and, therefore, the ld. CIT(A) has allowed the deduction.

11. With the assistance of ld. D/R, we have gone through the record carefully. We have perused page no. 17 to 20 of the ld. CIT(A)'s order. There is no factual dispute between both the parties. The amalgamating company would take on all assets and liabilities of the amalgamated company on the date of amalgamation. The Assessing Officer has also not disputed this aspect. The area of dispute between the Assessing Officer and the assessee, is the date from which amalgamation would be construed to have taken place. According to the Assessing Officer it has to be considered the date of decision given by the Hon'ble High Courts while disposing off the amalgamation petition whereas, according to the assessee it is the day when such approval is obtained as per Clause (10) of the amalgamation scheme.

The Hon'ble High Courts have given this liberty to the companies and last approval has been taken on 31/05/1993. Therefore, it is entitled for claim for deduction.

12. On due consideration of the above facts and circumstances, we are of the view that the ld. Assessing Officer has erred in construing the judgment of the Hon'ble High Courts. On the other hand, the ld. CIT(A) has rightly appreciated it and has rightly held that once choice of the date is left open for making any scheme applicable, then it will be applicable from that date which is finalized by the parties. In the present case, that date is 31/05/1993. The amalgamated company DDIL ceased to exist on 01/06/1993. Whatever, it has deposited will be falling to its successor i.e. Brooke Bond India Limited (amalgamated company and it is entitle for deduction u/s 33AB of the Act. The ld. CIT(A) has not committed any error in this regard. Accordingly, this additional ground of appeal is dismissed.

13. **Additional Ground Nos. 1 & 2:-**

Both these grounds of appeal are interconnected with each other. The grievance of the revenue in these grounds is that the ld. CIT(A) has erred in deleting the addition of Rs.1,27,27,520/- which was claimed as deduction u/s 33AB (1) and a sum of Rs.2,19,13,300/- which was claimed as deduction u/s 32AB(7) and 33AB(8). In other words, the assessee has claimed deduction of these amounts u/s 32AB(1)(b) and 32AB(7) r.w.s. 33AB(8) of the Act. These deductions were disallowed to the assessee by the Assessing Officer whereas the ld. CIT(A) has allowed the deduction. The discussion made by the ld. CIT(A) on this aspect reads as under:-

"GROUND NO. 14 is against the addition made by the A/O by applying section 32AB(7) of the Income-tax Act to deductions allowed in the earlier years under section 32AB(1)(ii) for direct utilization by purchase of plant and machinery, amounting in the aggregate to Rs.1,27,27,520/- and GROUND NO. 15 is against the addition made by applying sections 32AB(7) and 33AB(8) of the Income-tax Act to deductions allowed on utilisations of funds out of withdrwal from NABARD account. The additions have been made on the ground of amalgamation of the appellant company with Brooke Bond India Ltd. which according to the A/O has resulted in transfer of assets to which deductions u/s. 32AB and 33AB relate to and as a result the provisions of sections 32AB(7) and 33AB(8) are attracted.

(12.1)

The A/Rs have submitted as under:-

"Your kindself is aware that the pursuant to a Scheme of merger/ amalgamation in terms of sections 391 and 394 of the Companies Act, per order of the Calcutta and Guwahati High Courts, the appellant had amalgamated with Brooke Bond India Limited as on 1.1.93. The said orders of the High Courts provided that pursuant to the Scheme of amalgamation copy enclosed - Annexure -3) the effective date of the amalgamation was the date on which the last of the approvals mentioned in clause 10 of the Scheme was to be obtained. The last approval in this regard was the approval for increasing share capital of Brooke Bond India Limited. The said approval was obtained by form no. 21 dated 31" May, 1993 under the Companies Act (copy enclosed Annexure -4). The Scheme of amalgamation therefore became effective only on and from 1" June, 1993.

In the assessment order passed for the year under appeal the Assessing Officer has added back an aggregate sum of Rs. 1,27,27,520/- being deduction under section 32AB (1) (b) allowed in the undernoted assessment years on account of amounts utilized in purchase of plant and machinery.

Assessment Year	*Amount utilised u/s.32AB(i)(b)*
1990-91	*Rs. 76,83,463*
1989-90	*Rs. 25,43,427*
1988-89	*Rs. 10,08,832*
1987-88	*Rs. 14,99,798*
	Rs. 127,27,520

The Assessing Officer held that due to the amalgamation of Doom Dooma India Limited with Brooke Bond India Limited the provisions of section

32AB (7) was attracted in view of the fact that there was transfer of the assets acquired in terms of section 32AB and as such the aforesaid amount was to be added back to the income of the year under appeal.
On the same ground as above, the Assessing Officer has also added back a sum of Rs. 2,19,13,300/- by applying the provisions of section 32AB (7)/ 33AB (8) of the Income Tax Act. The aforesaid amount has been arrived at by deducting from the aggregate amount of Rs. 9,27,85,000/- deposited during the undernoted assessment years, the sum of Rs. 7,08,71,700/- which was the balance in the NABARD account as on 31.12.92.

Assessment Year	*Amount deposited*
1986-87	*Rs. 1,52,00,000*
1987-88	*Rs. 90,43,000*
1988-89	*Rs. 83,42,000*
1989-90	*Rs. 74,00,000*
1990-91	*Rs. 1,83,00,000*
1991-92	*Rs. 2,00,00,000*
1992-93	*Rs. 1,45,00,000*

The Assessing Officer has held especially that as there is no provision in sections 32AB and 33AB analogous to section 32A (6) and 33A(5) which considers cases of amalgamations, the amalgamation of Doom Dooma India Ltd. would be hit by the provisions of sections 32AB (7) and 33AB (8).

It is submitted that –

1. Factually, it is pointed out that the sum of Rs. 1,52,00,000/- deposited for the assessment year 1986-87 pertains to deduction under section 33AB which existed during that relevant year. Under the said section 33AB (copy enclosed - Annexure - 5), there was no provision similar to section 33AB (8) which was introduced in the new section 33AB with effect from the assessment year 1991-92. Therefore the Assessing Officer has mistakenly taken the deposit amount of Rs. 1,52,00,000/- in the figure of disallowance of Rs. 2,19,13,300/-. On this factual basis the aforesaid disallowance of Rs. 2,19,13,300/- should be reduced to 67,13,000/-.

2. The action of the Assessing Officer is not in accordance with the provisions of law and the judicial pronouncement made by the Supreme Court and the High Courts. Section 32AB (7)/33AB(8) of the Income Tax Act, 1961 provides that any asset acquired in accordance with the Scheme

framed under section.32AB/33AB is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of 8 years from the end of the "previous year in which it was acquired" such part of the cost of such asset is as relatable to the deduction allowed under sub-section (1) of the said section shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income tax as the income of that previous year.

The use of the expressions 'sold or otherwise' transferred in section 32AB (7)/33AB (8) clearly postulates a transfer by act of parties and by way of bilateral transactions. The expressions 'ot rwise transferred' in the said section is to be construed on the well known principle of ejusdem generis and the said expression "otherwise transferred" will take its colour and content from the expression namely "the asset is sold or otherwise transferred". From the context of juxta position of the expression sold or otherwise transferred it stands to reason that the expression otherwise transferred must be read in consonance with the expression sale i.e. it postulates the existence of two parties and it must also involve payment of consideration for such transfer.

Admittedly in the present case there has been an amalgamation. Amalgamation does not amount to a sale. Further, amalgamation does not fall within the expression otherwise transferred as there are no two parties to the transaction and there is no consideration involved. A scheme of amalgamation does not amount to a transfer as under the scheme of amalgamation the whole undertaking of the amalgamating company stands transferred to and vested in the amalgamated company by an order of the High Court in terms of section 391 and 394 of the Companies Act, 1956 i.e. by operation of law, without any conveyance and/ or without any bilateral transaction. It is therefore a case of legal transmission and not transfer.

The learned CIT(Appeals) will note that as a result of amalgamation in terms of section 2(1B) of the Income Tax Act all the properties i.e. the whole undertaking of the amalgamating company immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation and no particular asset which had been acquired in accordance with the scheme can be said to have been sold or otherwise transferred to the amalgamated company so as to attract the provisions of section 33AB (8) of the Income Tax Act and as such the said provisions

cannot be applied for treating the cost of the asset acquired in accordance with the schemes as deemed profits under the said sections.

It has been held by the Hon'ble Supreme Court of India in Saraswati Industrial Syndicate Limited vs. CIT, reported in 186 ITR 278 (SC) that when two companies are merged and are so joined as to form a third company or one is absorbed into the other or blended with another, the amalgamating company loses its entity. Under an order of amalgamation made on the basis of the High Court's order the amalgamating company ceases to be in existence in the eye of law and it effaces itself for all practical purposes. The amalgamating company therefore ceases to have any identity. The learned CIT(Appeals) will therefore appreciate that amalgamation cannot be brought within the purview of expression "sold or otherwise transferred" so as to apply the provisions of section 32AB (7)/33AB (8). Amalgamation, as held by the Court is the case of legal transmission and not that of transfer.

3. As regards the Assessing Officer's reasoning that section 32AB and 33AB do not contain any provisions analogous to section 33A (5) and section 32A (6), it is submitted that the said sub-sections in sections 33A and 32A make it incumbent upon the amalgamated company to fulfill the conditions required for allowance under the said sections and also provide for the benefit of carry forward of the unabsorbed allowances in the hands of the amalgamating company. None of the said requirements/ benefits exist in case of sections 32AB and 33AB. There is no provision for continuing fulfillment of any conditions, nor is there any carry forward benefit available for the allowances under sections 32AB and 33AB. The equation made by the Assessing Officer is therefore legally incorrect and has no validity as such.

4. It is further submitted that the provisions of section 32AB (7) and 33AB(8) have been inserted with a view to check tax evasion. Amalgamation per se is not with a view to evade tax. Further, amalgamation being a procedure which has to pass through the scrutiny of High Courts, there can not be any case of tax evasion where an amalgamation has taken place pursuant to an order of the High Court. If there is any such objection, the High Court is empowered to reject an amalgamation scheme. In the appellant's case the scheme has passed through the scrutiny of the High Courts at Calcutta and Guwahati. There is therefore no question of any tax evasion. Such being the fact, the provision of section 32AB (7) and 33AB (8)

cannot be applied to cases of amalgamation per se as also to the appellant's case.

5. The fact that the proviso to sections 32AB (7) and 33AB (8) specifically provide for exemption of cases of succession in the business of a firm a company is also not material. Succession cannot be equated with amalgamation. Amalgamation is a case of legal transmission and there is no further requirement for providing for exclusion of the same from transfer. Further, a case of succession does not go through the scrutiny of High Courts which, as mentioned above objects to tax evasion. As such, there is no merit in the Assessing Officer's highlighting the existence of special exemption provisions.

(12.2) I have given careful consideration to the issue. Before dealing with the basic issue of whether amalgamation is hit by the provisions of sections 32AB(7) or 33AB(8). I find that the A/O has erroneously brought into the ambit of disallowance of the deduction referable to section 33AB applicable for the assessment year 1986-87.The said section did not have any provision for withdrawal of deduction in the case of sale or otherwise transfer or assets acquired out of the deposits. As such the withdrawal provisions cannot be applied to the deduction allowed under the earlier provision which is self contained. Section 33AB(8) was part of Section 33AB which was brought into the statute by Finance Act, 1990 with effect from the assessment year 1991-92. The said section has not been given retrospective effect by the statute. The provisions of the new section, prospective in nature, cannot be applied to deductions allowed under the erstwhile section 33AB which was inoperative from assessment year 1988-89. I, therefore, hold that the A/O should not have brought the sum of Rs.1,52,00,000/- referable to deduction allowed in the assessment year 1986-87 as part of disallowance of Rs.2,19,13,360/-. I, therefore, delete a sum of Rs.1,52,00,000/- out of the disallowance of Rs.2,19,13,300/- made by the A/O (challenged in ground no. 15) for this reason.

(12.3) I will now deal with the issue whether a case of amalgamation would be attracting the provisions of section 32AB(7) and section 33AB(8).

(12.4.) Section 32AB(7) and section 33AB(8) provide that where assets acquired under the scheme referable to deduction allowed under section 32AB and 33AB are sold or otherwise transferred by an

assessee within 8 years of acquisition, the deduction allowed in the earlier years with reference to such assets is to be added as income of the assessee for the year in which the asset is sold or otherwise transferred.

(12.5) In my view, this provision down not have application to amalgamations. As a result of amalgamation, all assets and liabilities of the undertaking i.e., the whole undertaking on its totality stand transferred and get vested in the amalgamated company. Amalgamation is not a sale. It in my view is also not coming under the purview of "otherwise transferred" as the said expression has to take its colour from word sale. There must be a consideration involved in the transactions. In an amalgamation there is no consideration involved as the amalgamating company does not get anything in return for the vesting of its whole undertaking in the amalgamated company. There is no individual transfer of any particular asset. It is a case of transmission rather than transfer.

(12.6) The non-existence of any provision like section 33A(5) and section 32A(6) in section 32AB and 33AB do not have any materiality. The said sub-section in section 33A and 32A make it compulsory for the amalgamating company to continue satisfying the conditions required for allowance under the sections for the benefit of carry forward of the unabsorbed allowances in the hands of the amalgamated company. None of the said requirements/benefit exist in case of sections 32AB and 33AB. There is no provision for continuing fulfilment of any conditions, nor is there any carry forward benefit available for the allowances under sections 32AB and 33AB.

(12.7) I also agree with the submission of the appellant that there is no specific exemption necessary for amalgamation similar to succession of partnership by a company.

Considering the matter as above, I delete the additions made by the A/O by applying the provisions of section 32AB(7) and 33AB. (RELIEF Rs.1,52,00,000/- + Rs.1,27,27,520/- +Rs.67,13,000/-)"

14. With the assistance of the ld. D/R, we have gone through the record carefully. A perusal of the impugned order of the ld. First Appellate Authority would reveal that the ld. CIT(A) has noted down the facts enumerated by the assessee in its written submission categorically and

lucidly. Thereafter it has recorded a categorical finding in favour of the assessee. We have extracted above the discussion of the ld. CIT(A) *(supra)*. The basic area of dispute between the Assessing Officer and the assessee is, whether merger of two companies under the scheme of amalgamation would be construed as transfer of assets for denying benefit of Section 33AB and 33AB(8) r.w.s. 32AB(7) of the Act. The Assessing Officer was of the view that under the scheme of Section 33AB of the Act, the amalgamated company has made certain deposits and also purchased certain machineries which was required to be used for eight continuous years as contemplated in the Act. But since before completion of those eight years, the amalgamated company which had made deposits has been amalgamated with Brooke Bond India Ltd. and, therefore, all those benefits are to be treated as of the assessee company i.e., Brooke Bond India Ltd. The assessee has explained about two factual positions about years of purchase and utilization of the machineries as well as about the creation of the funds with NABARD and its withdrawal for utilization for business purposes. The amalgamation of erstwhile DDIL into Brooke Bond India Limited cannot be construed as transfer. It is just an amalgamating company which ceased to exist in the eyes of law and it excludes itself for all practical purposes. In other words, it merged in the new company along with all its assets and liabilities and the same treatment has to be given to the new company i.e., the amalgamating company. The ld. First Appellate Authority has discussed this issue thoroughly and after going through all these details, we do not find any reason to interfere in the findings of the ld. CIT(A) extracted *supra*. Accordingly, these additional grounds of appeal are dismissed.

15. As far as the cross-objection of the assessee is concerned, it is not maintainable in the present form, because sub-Section (4) of Section 253 of the Act contemplates that on receipt of notice in an appeal, the respondent may file cross-objection within 30 days of receipt of such notice, against any part of the impugned order. In other words, the respondent has to show its grievance against any part of the impugned order. The assessee has not shown any grievance in the grounds of cross-objection. Rather they are in support of the ld. CIT(A)'s order. It has simply pleaded that additional ground taken by the revenue are bad in law and the Tribunal cannot take cognizance thereto. We do not find any merit in this plea. Accordingly, the cross-objection filed by the assessee is dismissed.

16. In the result, appeal of the revenue and the cross-objection of the assessee are dismissed.

Order pronounced in the Court on 20th December, 2022 at Kolkata.

Sd/-	*Sd/-*
(MANISH BORAD)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Kolkata, Dated 20/12/2022
SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, **आयकर अपीलीय अधिकरण गुवाहाटी** /DR,ITAT, Guwahati,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Guwahati