

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM

**ITA Nos. 5431/Mum/2017**  
(Assessment Year 2010-11)

**ITA Nos. 5432/Mum/2017**  
(Assessment Year 2011-12)

DCIT  
Central Circle 6(3)  
Room No.1926,  
19<sup>th</sup> Floor,  
Air India Building,  
Nariman Point,  
Mumbai-400 021

Vs.

M/s Excel Industries  
Limited  
184/187, Excel Estate,  
S.V. Road,  
Jogeshwari (West)  
Mumbai-400 102

**(Appellant)**

**(Respondent)**

**PAN No. AAACE2488F**

**ITA No. 5472/Mum/2017**  
(Assessment Year 2010-11)

**ITA Nos. 5473/Mum/2017**  
(Assessment Year 2011-12)

**ITA No. 5474/Mum/2017**  
(Assessment Year 2012-13)

**ITA No. 914/Mum/2018**  
(Assessment Year 2013-14)

**ITA No. 915/Mum/2018**  
(Assessment Year 2014-15)

**ITA No. 6444/Mum/2018**  
(Assessment Year 2015-16)

M/s Excel Industries  
Limited  
184/187, Excel Estate,  
S.V. Road,  
Jogeshwari (West)  
Mumbai-400 102

Vs.

DCIT  
Central Circle 6(3)  
Room No.1926,  
19<sup>th</sup> Floor,  
Air India Building,  
Nariman Point,  
Mumbai-400 021



**(Appellant)**

**(Respondent)**

**Assessee by** : Shri Kirit Kamdar, AR  
**Revenue by** : Shri Suresh Periasamy, DR

**Date of hearing:** 12.10.2022  
**Date of pronouncement :** 09.01.2023

**ORDER**

**PER BENCH:**

01. These are the bunch of eight appeals of one assessee i.e., Excel Industries Ltd., pertaining to A.Ys. 2010-11 to 2015-16 involving similar ground of appeal, therefore, the parties argue all these appeals together and therefore, same are disposed of by this common order.

**A Y 2010-11**

02. ITA No.5472/Mum/2017 is filed by Excel Industries Ltd. (the appellant/ assessee) and ITA No.5431/Mum/2017 is filed by the Dy. Commissioner of Income Tax, Central Circle 6(3), Mumbai [ the Id. AO ] for A.Y. 2010-11 against the appellate order passed by the Commissioner of Income-tax (Appeals)-54, Mumbai [the learned CIT (A)] dated 3<sup>rd</sup>May 2017.
03. In ITA No.5472/Mum/2017 for A.Y. 2010-11, the assessee has raised following grounds of appeal:-



"1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing interest amounting to Rs 41,38,397/- by treating the same as attributable towards Capital Work-in-Progress (CWIP).

2. Without prejudice to the above ground of appeal, the Commissioner of Income-tax (Appeals) erred in rejecting the claim of the appellant that since the closing CWIP includes CWIP acquired during the year, the rate of disallowance of interest should be average rate of interest (i.e. 6%, half of the rate applied by the Assessing Officer).

3. Without prejudice to the above grounds of appeal, the Commissioner of Income-tax (Appeals) erred in rejecting the contention of the appellant that in case the aforesaid interest is held to be capital in nature then the same ought to be considered as part of the cost of asset and depreciation ought to be allowed thereon in the year in which the CWIP is capitalized.

4. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the disallowance under section 14A made by the Assessing Officer by applying Rule 8D.



5. *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in applying Rule 8D without recording any non-satisfaction with the disallowance computed by the appellant.*

6. *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that no interest bearing funds were utilized for making investments yielding exempt income and accordingly, no interest had been incurred for the purpose of earning income from shares/units.*

7. *Without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in not excluding the investments made in group companies for holding controlling stake which are strategic in nature while computing the average value of investments for the purpose of computing the disallowance as per Rule 8D.*

8. *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in applying*



*the provisions of Rule 8D while computing the book profits under section 115JB of the Act.*

*9. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in not allowing deduction in respect of provision for doubtful debts written back amounting to Rs. 10,15,81,117/- while computing the total income as per the normal provisions of the Act.*

*10. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in not allowing deduction of provision for doubtful debts written back amounting to Rs.8,54,36,354/-while computing book profits under section 115JB of the Act.*

*11. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in adding back an amount of Rs. 1,78,75,000/- in respect of provision for current tax without netting off Minimum Alternative Tax (MAT) credit entitlement*



*while computing the book profits as per the provisions of section 115JB of the Act.*

*12. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in adding back an amount of Rs.2,00,000/- on account of provision for wealth tax while the computing book profits under section 115JB of the Act.*

*13. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing excise duty debited to the profit and loss account amounting to Rs.29,32,000/-.*

*14. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing a sum of Rs.30,60,000/- out of interest paid attributable to loan to a subsidiary.*

*The Appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal.”*

04. In ITA No.5431/Mum/2017, the learned Assessing Officer has raised following grounds of appeal:-

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating the contention of the assessee company that the prior expenses should be allowed in the years to which they pertain if the same are not allowed in assessment year under consideration, thereby keeping the issue open and unaddressed"*

*2. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) while dismissing the grounds of appeal of the assessee company against disallowance of prior period expense of ₹ 1,41,51,738/- on the alternate plea of the assessee, had over exercised his jurisdiction in directing the AO to verify the claim of the assessee company for allowability of above expenses in the preceding assessment years.*

*3. "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in directing the AO to exclude the interest expenses capitalized to the CWIP while computing the disallowance U/s 14A if the Act"* 4. *"Whether on the facts and circumstances of the case and in law, the*



*Ld. CIT(A) has erred in directing the AO to exclude the interest expenses disallowed for diverting bearing funds for making interest free loans/advances, from the interest expenses debited in P&L account, while computing the disallowance U/s 14A of the Act."*

*5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in relying upon the judgment of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs CIT(ITA 749/2014) while directing that for the purpose of disallowance under Rule 8D(2)(ii) and 8D(2)(iii), investment from which exempt income was received by the appellant should only be considered, overlooking the fact that the above decision has not been accepted by the revenue as the Civil Appeal No. 122/2015 has been filed against above decision and the same is pending before the Hon'ble Supreme Court."*

05. Briefly, the fact shows that assessee is a company engaged in the business of manufacturing and trading of industrial chemicals, biotech and life sciences. It filed its return of income on 1<sup>st</sup> October 2010 for ₹34,79,502/-. This return was revised on 28<sup>th</sup> September, 2011 at ₹ nil. The case of the assessee was picked up for scrutiny. The assessment order under Section 143(3) of the Act was passed on

20<sup>th</sup> March, 2013, determining the total income of the assessee at ₹34,90,70,420/-. The book profit income under Section 115JB of the Income-tax Act, 1961 (the Act) was offered by assessee at ₹3,90,10,127/-, which was revised at ₹14,87,59,916/-.

06. Aggrieved by the order of the learned Assessing Officer, assessee preferred the appeal before the learned CIT (A), who, vide order dated 3<sup>rd</sup> May 2017, partly allowed the appeal of the assessee. Therefore, assessee is aggrieved against the disallowance confirmed and learned Assessing Officer is aggrieved with respect to the disallowance deleted. Accordingly, both the parties are in appeal before us.
07. We first note that assessee has raised an additional ground of appeal vide letter dated 5<sup>th</sup> November, 2019, raising following grounds of appeal:-
- i. "on the facts and in the circumstances and in law, the assessee prays that the learned Assessing Officer be directed to allow deduction of prior period expenses in the year in which the said expenses are debited to the profit and loss account."
08. Assessee says that it is merely a legal ground require to be admitted. Assessee relied on the decision of Hon'ble Supreme Court in case of National Thermal Power Company vs. CIT 229 ITR 383, Jute



Corporation of India Ltd. vs. CIT 187 ITR 688 and Full Bench decision of Hon'ble Bombay High Court in case of Ahmadabad Electricity vs. CIT 199 ITR 351.

09. We find that this is an alternative claim of the assessee, therefore, it is not an additional ground but an alternative claim, it is also connected to ground number 1 and 2 of the appeal of the learned assessing officer, which we will consider at the time of disposal of the ground of appeal of the AO.
010. On 6<sup>th</sup> November, 2013, assessee raised another additional ground pursuant to the decision of Hon'ble Rajasthan High Court in case of Chambal Fertilizers and Chemicals td. Vs. JCIT that.
- i. "On the facts and in the circumstances and in the case in law, the appellant prays that the learned Assessing Officer be directed to allow deduction in respect of Education Cess on income tax paid during the year. Similar arguments were made for admission of the additional ground."
011. At the time of hearing, the learned authorized representative did not want to press for admission of this ground of appeal. Therefore, same is not admitted and dismissed.
012. Now, we take up the appeal of the assessee first. The 1<sup>st</sup> ground of appeal is with respect to the



disallowance of interest expenditure. Groundnos. 2 and 3, are alternative submissions.

013. The facts relating to the above issue shows that during the year the assessee has incurred capital work-in-progress of ₹3,44,86,643/-. The assessee was asked to show that why the proportionate interest expenditure should not be attributed to work-in-progress till the time assets was put to use.
014. Assessee submitted that above capital work-in-progress is incurred in connection with pharma intermediate and advances given to suppliers for purchase of capital equipment. The capital work-in-progress was converted into fixed assets in the subsequent year. Therefore, the assets were put to use in the subsequent year. Assessee further submitted that there is no cost incurred on account of interest by the assessee. Further, borrowing of the company from bank was only for working capital purposes and not for acquiring any fixed assets. Therefore, no interest cost can be attributed to the work-in-progress. The learned Assessing Officer rejected the contention of the assessee as the reply of the assessee was considered general in nature. He found that interest expenditure was incurred by the assessee at the rate of 12% to 15% per annum and therefore, applying the rate of interest 12%.He computed the interest amounting to ₹41,38,397/- and disallowed the sum under Section 37(1) of the



Act. The issue travelled before the learned CIT (A). The learned CIT (A) following the decision of first appellate authority in appellant's group concerns M/s Excel Crop Care Ltd for A.Y. 2009-10 confirmed the disallowance. He also rejected the argument of the assessee that no such disallowances were made in the earlier years and the disallowance even if to be made, should not be at the rate of 12% but at the rate of 6%. Therefore, the assessee is in appeal before us.

015. The learned Authorized Representative submitted that as per accounting policy of the assessee with respect to the cost of acquisition of fixed assets the borrowing cost related to the period till such assets are put to use is already capitalized. He submitted that the capital expenditure was not funded out of borrowed funds but incurred out of internal accruals. To demonstrate that, he referred to the annual accounts of the company and also submitted that all other are working capital loans and are not used for the purposes of acquisition of assets. He further referred to the statement showing details of capital work-in-progress in this regard. He submitted that when interest bearing funds are not utilized by the assessee for the purpose of acquisition of asset and the share capital and free reserve available with the assessee is far in excess of amount of investment in capital work in progress, addition could not have been made. He referred to the decision of the



Hon'ble Bombay High Court in case of Reliance Utilities and Power Limited 178 taxman 135 and also, the decision of co-ordinate Bench in case of Excel Crop Care Ltd. in ITA no.4042/Mum/2014 which was relied upon by the learned CIT (A) for making the addition. The learned Authorized Representative therefore submitted that disallowance made by the learned Assessing Officer is sustainable in law.

016. The learned Departmental Representative vehemently supported the order of the learned lower authorities stating that when the assessee has failed to give any nexus of the fund used, the disallowance of interest is proper.
017. We have carefully considered the rival contentions and perused the orders of lower authorities. On careful perusal of the balance sheet of the assessee company placed at page no.149 of the Paper Book of the assessee has share capital and free reserve amounting to ₹10,215 lacs against which the capital work-in-progress including capital advances are only to ₹344 lacs. The statements of secured and unsecured loans were also perused at Schedule C and Schedule D of the annual accounts. Loan of ₹2331 lacs is with respect to cash credit facility and ₹999 lacs are with respect to working capital demand loans. Therefore, it is apparent that working capital and cash credit loans are tied up in the current assets of the company. Anyway, the alleged amount



of investment in capital work-in-progress is far less than the interest free funds available with the assessee. Therefore, in absence of any nexus, it cannot be stated that interest bearing funds have been used by the assessee for acquiring the capital work-in-progress. In view of this, we do not find any reason to confirm the disallowance. Further, the presumption would always be available in favour of the assessee that non-interest bearing funds have been used for the purpose of acquisition of capital work-in-progress. The above view is also supported by the decision of the Hon'ble Bombay High Court in case of Reliance Utilities and Power Limited 313 ITR 340 as well as the decision of the Hon'ble Supreme Court in case of CIT vs. Reliance Industries Ltd. 410 ITR 466. Accordingly, ground no.1 of the appeal is allowed.

018. In view of our decision in ground no.1, ground no.2 and 3 of the appeal becomes infructuous and hence, dismissed.
019. Ground no.4 of the appeal is with respect to the disallowance under Section 14A read with Rule 8D of the Rules. The fact shows that assessee has earned exempt income of ₹1,33,73,241/- and has also offered SUO Moto disallowance u/s 14 A of the act of ₹56,132/-. The learned Assessing Officer found that disallowance offered by the assessee is on ad hoc basis and without any mathematical working. The



learned Assessing Officer questioned the assessee to show cause how the disallowance has been worked out and to give proof about the expenses incurred or not incurred for earning exempt income. Assessee submitted that no expenses have been incurred for earning exempt income. The learned Assessing Officer after considering the explanation of the assessee stated that he is not satisfied with the same, invoked the provisions of Rule 8D of the Income Tax Rules and computed the disallowance as per that Rule of ₹45,94,567/-. As assessee has already disallowed of ₹56,132/-, So, Ld. AO made the balance disallowance of ₹45,38,435/-.

020. The assessee aggrieved with the same challenged before the learned CIT (A) stating that no satisfaction has been recorded by the learned Assessing Officer as well as the disallowance cannot be made as it is a strategic investment. Both these arguments were rejected. The assessee also raised an argument that the disallowance cannot be made on the investments which have not yielded exempt income, various other contentions are raised. The learned CIT (A) directed the learned Assessing Officer to re-compute the disallowance under Section 14A of the Act. The learned Assessing Officer was directed to exclude the investments which did not yielded any exempt income.



021. The learned Assessing Officer also made similar addition while computing the book profit under Section 115JB of the Act. The learned CIT (A) confirmed the addition of disallowance under Section 14A of the Act to the book profit also. Therefore, assessee is aggrieved on this issue as per ground no.4 to 8 of the appeal.
022. The learned Authorized Representative referred to the statement of dividend income and submitted that there is no movement in investment during the year, he further referred to the Suo moto disallowance of ₹56,518/-. He further submitted that the assessee has own non-interest bearing funds of ₹102 crores which is far higher than the investment of ₹9.96 crores and during the year only ₹7.91 crores of investment have yielded exempt income. Therefore, as the entire investment is far lower than own non-interest bearing funds, the interest disallowance cannot be made. Further, with respect to the book profit, further increased by the disallowance under Section 115JB of the Act. It was submitted that issue is squarely covered in favour of the assessee by the decision of Vireet Investment Pvt. Ltd. 165 ITD 27.
023. The learned Departmental Representative vehemently supported the order of the lower authorities.
024. We have carefully considered the rival contentions and perused the orders of the lower authorities. The



learned CIT (A) after considering the explanation of the assessee rejected that no interest of disallowance can be made under Section 14A of the Act. In the present case, we find that when non-interest bearing funds are much higher than the amount invested which yielded exempt income, there is no question of making any disallowance under Rule 8D2 (1) and 8D (2)(iii) of the Act. Such claim of the assessee before us is only with respect to the interest disallowance under Rule 8D of the Rules, Assessee succeeds on this issue. . With respect to the ground no.8, being disallowance under Section 14A imputed under the computation of book profit, we find that issue is squarely covered in favour of the assessee by the decision of Hon'ble Karnataka High Court in 125 taxmann.com 72 in case of Sobha Developers vs. Dy. Commissioner of Income Tax. Even otherwise, we find that assessee has already complied with Provision of Section 115JB of the Act, explanation 1 clause (f) of the Act in form no 29B. There is no finding of the learned Assessing Officer that provision of Explanation 1(f) of Section 115JB of the Act is not properly applied by the assessee. Unless that fact is recorded along with the fact that disallowance under Section 14A of the Act is identical to the disallowance under that clause, the order of the learned lower authorities cannot be sustained. Accordingly, ground no.8 of the appeal is allowed.



025. Ground nos. 5 to 7, were not pressed, hence, dismissed.
026. Ground no.9 of the appeal is with respect to write back of the provisions for doubtful debts of ₹10,15,81,117/-. The fact shows that from A.Y. 2003-04 to 2009-10, the assessee has disallowed in its computation of total income a sum of ₹10,15,81,117/- on account of doubtful debts provision. This provision was debited in the books of account but in the computation of total income those were added to the total income. Subsequently, in the current year this provision is written back in the profit and loss account and consequently in the computation of total income, it was reduced from the taxable income. The learned Assessing Officer added the same disallowing it. The assessee challenged the same before the learned CIT (A).
027. The learned Assessing Officer further made addition of ₹8,71,63,354/- while computing book profit. Thus, ₹10,15,81,117/-, was disallowed in the normal computation whereas ₹8,71,36,354/- of provision of doubtful debts was added to the book profit under Section 115JB of the Act.
028. The assessee challenges the same before the learned CIT (A). The learned CIT (A) confirmed the addition to the normal computation and further, for computation of book profit under Section 115JB of



the Act. Therefore, assessee is aggrieved and is in appeal before us.

029. The learned Authorized Representative submitted that when the assessee has not claimed the amount of provision for doubtful debts in the year in which provisions were created, the subsequent write back cannot make the above write back credit to profit and loss account as taxable Income. To substantiate its claim, he further referred to the computation of Total income for A.Y. 2003-04 to 2009-10. He further referred to the remand report of the learned Assessing Officer, where the learned Assessing Officer himself says that Provision of doubtful debt has not been claimed by the assessee as deduction in the earlier year. With respect to the computation of book profit, it was submitted that write back of provision for doubtful debts is reduced from the book profit computation in view of clause (i) of explanation 1 to Section 115JB of the Act. At the time, when the provision was made same was added to the book profit earlier therefore, the learned Assessing Officer inadvertently added further ₹8,71,36,354/-.
030. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer and learned CIT (A).
031. We have carefully considered the rival contentions and perused the orders of the lower authorities. During the year assessee has credited to the profit



and loss account of sum of ₹10,15,81,117/- being write back of provision of bad and doubtful debts. Assessee created the above provision from A.Y. 2003-04 to 2009-10. At the time when the provision was created, the assessee has disallowed the same in all the assessment year which is substantiated by filing the computation of total income for all these years. The learned Assessing Officer in the remand report also agreed with the above finding of the fact. The above provision for doubtful debts has been written back during this year. Naturally, this amount has not been claimed as deduction in the year in which the provision has been made. Therefore, naturally, same would be not taxable in the present assessment year when such provisions were written back. Accordingly, we find that learned lower authorities are not correct in making the addition of the above amount. Accordingly, the learned Assessing Officer is directed to delete the addition in the computation of normal taxable income. Ground no.9 of the appeal is allowed.

032. With respect to ground no.10, we find that according to provision of Section 115JB of the Act as per clause (i) of explanation 1, the amount or amount set aside as provision for diminution in valuation of any asset is required to be added. For A.Y. 2007-08 to 2009-10, a sum of ₹8,54,36,354/-, which was provided in the books of account by the assessee was already added to the book profit. Therefore, there is no



impact of the above amount on the computation of book profit for the present year. Accordingly, the amount of addition made of ₹8,71,36,354/- to the book profit under Section 115JB of the Act is incorrectly confirmed by the lower authorities. Hence, direct to be deleted. Ground no.10 is allowed.

033. Ground no.11 is with respect to the addition of ₹1,78,75,000/- being MAT credit added to the book profit. The fact shows that assessee has raised the above sum of MAT credit while computing book profit under Section 115JB of the Act. The learned Assessing Officer found that there is no provision in the Act for such deduction. Accordingly, MAT credit was added to the book profit under Section 115JB of the Act. The learned CIT (A) also confirmed the same.
034. The learned Authorized Representative submitted that the above issue is squarely covered in favour of the assessee by the decision of co-ordinate bench in case of JK Paper Limited in ITA No.2155/Ahd/2013 and Zuari Global Ltd in ITA No.328/PNJ/2014.
035. The learned Departmental Representative relied upon the orders of the lower authorities.
036. On careful consideration we find that fact shows that while computing the book profit assessee has reduced an amount of ₹1,78,75,000/- being MAT credit from the book profit us/ 115 JB of The Act as

above sum was reduced from the provision for taxation in the profit and loss account. The learned Assessing Officer was of the view that it is not permissible adjustment as per explanation 1, and therefore, same is not allowable. The assessee was of the view that MAT credit arises directly out of payment of minimum alternative tax. The MAT is an item of current tax which is specifically covered within clause (a) of explanation 1 to Section 115JB (2) of the Act. Thus, the claim of the assessee is that the amount of income tax paid or payable required to be added to the book profit is always under a MAT credit.

037. We find that identical view has been taken by the coordinate Bench in case of ACIT vs. JK paper Ltd in ITA No.2156/Ahd/2013 for A.Y. 2008-09, para no.23 of the order covers the issue in favour of the assessee. We also find that whenever a provision of current tax is required to be made in the profit and loss account it has to be net of MAT credit available to the assessee. Accordingly, the separate adjustment of MAT credit cannot be made and added to the book profit. Accordingly, the adjustment made by the learned Assessing Officer and confirmed by the learned CIT (A) is not correct. Ground no.11 of the appeal is allowed.
038. As per ground no.12, ₹2 lacs added by the learned Assessing Officer being provision for wealth tax to



the book profit u/s 115JB of the Act. Claim of the assessee is that only provision for income tax is required to be added. The provision of income tax and provision of wealth tax are two separate items. Therefore, the addition cannot be made. The learned Assessing Officer made the addition which was confirmed by the learned CIT (A).

039. The learned Authorized Representative submitted that issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in CIT Vs. M/S. Echjay Forgings Pvt. Ltd. (2001) 251 ITR 15 (Bom). We find that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in case of CIT vs. Reliance Industries Ltd. (2019) 102 taxman.com 142, wherein the Hon'ble Bombay High Court held that in plain terms, the clause (a) reference to amount of income tax paid or payable or the provision made thereof. The legislator is advisably included wealth tax in the clause 40 (a) (iia) but not u/s 115 JB of the Act. Therefore, by no interpretation process the wealth tax can be included in clause (a) of explanation 1 to section 115JB of the Act. We find that the addition deserves to be deleted. Ground no.12 of the appeal is allowed.
040. Ground no.13 of the appeal is with respect to the disallowance of excise duty debited to the profit and loss account of ₹29,32,098/-. The fact shows that



assessee has debited to the profit and loss account being difference between the excise duty debited in the opening stock and closing stock of the finished goods. Therefore, the differential duty becomes an allowable expenditure, if paid before the due date of filing of ROI. The learned Assessing Officer held that above sum is the double deduction of excise duty expenses. According to him, the assessee claim deduction firstly, from sales in credit side of profit and loss account by showing net sales and consequently, by debiting the excise duty expenses in the profit and loss account. The addition made by the learned Assessing Officer was contested before the learned CIT (A) based on the decision of learned CIT (A) in case of sisters concern.

041. The learned Authorized Representative reiterated the same argument and submitted that this issue is covered in favour of the assessee by the decision of Hyundai Motors India Ltd. 19 IT(T) 778. He further referred to the annual accounts, net on accounting for excise duty report.
042. The learned Departmental Representative vehemently supported the order of the lower authorities.
043. We have carefully considered the rival contentions and perused the orders of the lower authorities. On careful consideration of note no.18 to the annual accounts which shows that excise duty on sales



amounting to ₹1,322 lac has been reduced from sales in profit and loss account and excise duty on increased and decreased in stock amounting to ₹29.32 lacs has been considered as in the profit and loss account. At page no.113, the assessee has also shown that difference of excise duty was arising out of duty included in opening stock as well as closing stock. At page no.114 and 115 of the Paper Book the assessee has also demonstrated that whatever is not paid before due date of filing of return of income, it is offered for disallowance. We find that addition is not correctly made for the reason that it is not double deduction as stated by the learned Assessing Officer. Accordingly, ground no.13 of the appeal is allowed.

044. Ground number 14 of the appeal is with respect to disallowance of interest expenditure of Rs. 3,060,000/- on account of interest attributable to the loans to subsidiary companies. Facts relating to the disallowance shows that the learned assessing officer questioned the assessee to submit details of the name address et cetera parties to whom loans and advances were made along with the rate of interest charged. Assessee filed details where in it is stated that the assessee advance loan to its subsidiary company of Rs. 25,500,000 and no interest was charged. Assessee contended that loans to subsidiaries were granted in earlier years and were out of the profits generated by the company. It



was further stated that as the loans to a subsidiary were on account of commercial expediency. The Id. Assessing officer rejected the contention of the assessee for the reason that identical issue was involved in the earlier year also and in assessee's own case as no nexus between the interest-bearing loan taken an interest free advance given established, the Id.AO applied the interest rate at the rate of 12% as in earlier years and disallowed the sum of Rs. 30,60,000 out of the interest expenditure. The above issue was raised before the learned CIT A who confirmed the disallowance based on his earlier order in assessee's own case for assessment year 2009 – 10. Therefore, assessee is contesting the above confirmation of disallowance by this ground.

045. LD AR submitted that there is no specific borrowing made for advancing the said loan and the loan was made from own funds and therefore there cannot be any disallowance. Assessee also submitted that identical issue has been decided by the Coordinate bench in assessee's own case for earlier years deleting the identical disallowance.
046. The learned departmental representative imminently supported the orders of the law authorities.
047. We have carefully considered the rival contention and perused the orders of the law authorities. We find that in the case of the assessee in earlier the



about disallowance has been deleted for the reason that assessee has higher interest free advances available than the amount of loan advanced to the sister concern. Therefore, the presumption would be available in favour of the assessee that the amount of loan advance to subsidiary companies without charging interest is out of interest-free funds available with the assessee. Above fact also remains prevalent in this year. It was not shown by the learned departmental authorities that assessee has diverted its interest-bearing funds for giving advance to its subsidiaries free of interest. Accordingly, respectfully following the decision of the coordinate bench in assessee's own case, we allow ground number 14 of the appeal and direct the learned law authorities to delete the disallowance of Rs. 3,060,000.

048. Thus, appeal of the assessee is partly allowed.

049. Now we come to the appeal of the AO. The Ground No. 1 & 2 are related to the disallowance of prior period expenditure. The AO noticed that assessee has claimed an amount of ₹ 1,41,51,738/- as gross prior period expenses despite assessee following mercantile system of accounting. The AO questioned the assessee that why the above amount should not be disallowed. The claim of the assessee is that the above expenditure though related to prior years has been debited, but this expenditure is



accounted in this year due to non-receipt of invoices from the suppliers. Assessee also stated that if the same is not allowed in this year it should be allowed in the year to which it pertains to. The Id. AO held that assessee following mercantile system of accounting cannot book the expenses in the like manner therefore he held that only those expenses which are approved for the current year are allowable. Accordingly, he disallowed ₹1,41,51,738/-.

050. On appeal before the Id. CIT(A) The assessee raised the above ground. Before the Id. CIT(A) it was further stated that in assessee's own case 1987-88 and 1990-91 the co-ordinate bench has also held that if the amount is disallowed in the year in which it is booked, but pertaining to earlier years, the claim of the assessee should be allowed either in this year or in the year which pertains to. Thus, the claim of assessee before the Id.CIT(A) was that either the expenditure should be allowed in this year and if not so it should be allowed as deduction in the year to which said expenses pertain to.

051. The Id.CIT(A) held that the impugned expenses do not pertain to the assessment year under consideration but our prior period expenses same cannot be allowed deduction in this year accordingly he confirmed disallowance of ₹1,41,51,738/-. He considered the alternative claim of the assessee and



directed the Id. AO to verify it and decide in accordance with the law.

052. The Id. AO is aggrieved with the above direction and is in appeal before us as per Ground No. 1 & 2. The Id. DR vehemently submitted that the Id. CIT(A) has clearly exceeded his authority in directing the AO for verification and to grant the deduction in the year which they have pertained to. He submitted that CIT(A) is required to disposed of the appeal for the year and cannot direct the AO to consider the claim of the assessee for altogether different year which are concluded. Accordingly, the CIT(A) has exceeded its powers.
053. The Id. Authorized Representative submitted that there is no infirmity in direction of Id. CIT(A). He further submitted that assessee has also raised an issue as per additional Ground No. 2 that prior period expenses should be allowed as deduction in the year in which such expenses are debited to the profit & loss account. He submits that, the ITAT has decided identical issue in assessee's own case for A.Y. 1987-88 and 1990-91. Thus, the issue is covered in favor of the assessee.
054. We have carefully considered the rival contentions and perused the orders of the lower authorities. In fact, assessee has incurred expenditure which are in the nature of prior period expenses amounting to ₹ 1,41,51,738/-. The Id. CIT(A) has confirmed the

disallowance. The assessee is not appeal in the confirmation of disallowance on above expenditure for this year.

055. However, both the parties are in appeal before us contesting the direction of the Id.CIT(A) to the Id. AO to verify the claim of the assessee and allow it in the year to which the expenses pertain to. Therefore, we need to decide the issue whether the direction of Id.CIT(A) is correct or not. According to, assessee it is correct and according to the AO it is incorrect.
056. Identical issue arose in the case of the assessee ITA No. 5630/MUM/1991 for A.Y. 1987-88 and ITA No. 3540/MUM/1994 in A.Y. 1990-91 dated 12.09.2000. The Para No. 5 deals with this issue where an expenditure of ₹3,13,381/- was an expenditure relating to earlier years, disallowed by the Id.AO on the ground that assessee follows the mercantile system of accounting, CIT(A) confirmed the same in Para No. 7. The facts clearly shows that assessee made claimed of expenditure for A.Y. 1986-87 but same was disallowed on the ground that no entries were made in the books of account for that year. Assessee also made the claimed in A.Y. 1987-88. The ITAT held that if assessee gives up the claim in A.Y. 1987-88 then its request for considering the said expenditure for deduction in the year under appeal (1987-88) could be considered. ITAT held that the purpose of assessment was to make a fair



determination of tax liability of assessee. In Para No. 8. It held that if expenditure is otherwise allowable the claim should not be denied by adopting an unreasonable approach. Assessee by abandoned caution took the ground in both years that in A.Y. 1986-87 as well as in assessment year 1987-88. Since the assessee did not withdraw the claim in the A.Y. 1986-87 it was not allowed in that year in conformity with the order of the order of d co-ordinate bench for AY 1987-88. We find that the facts in the appeal before us are quite different. Even assessee is not sure to which year the expenditure claimed is to be allowed. Further, it was held to be a decision of ITAT and before us the decision is required to be examined of the Id.CIT(A). According to the provisions of section 251 of the Act, the CIT(A) has power in appeal against an order of assessment to either confirm, reduce, enhance, or annul the assessment. He cannot disturb the assessment already concluded of earlier years. Even the Ld.AO does not have the powers to disturb the assessment of earlier years based on the directions of the Id. CIT(A). No such powers are shown by the assessee before us.

057. The Id.AR merely relied upon the order of co-ordinate bench which is on different facts. In view of this, we are of the view that Id.CIT(A) has exceeded his jurisdiction in directing the AO to verify and allow the claim of the expenses in the preceding assessment



year. Therefore, Ground No. 1 & 2 of the appeal of the AO are allowed and additional Ground No. 2 of the appeal of the assessee is dismissed.

058. Ground No. 3-5 of the appeal of the AO is with respect to the disallowance u/s. 14A of the Act. This issue has already been dealt with by dealing Ground No. 4-7 of the appeal of the assessee wherein we have held that there cannot be any disallowance of interest expenditure as assessee has excess of free funds available more than the investment which yield it tax free income. We have also confirmed the direction that only those investments which yield at tax free income should be considered for disallowance under rule 8D 2 (III). Accordingly, Ground No. 3-5 of the appeal of the AO are dismissed.

059. Accordingly for AY 2010-11 appeal of the assessee as well as of the AO are partly allowed.

### **AY 2011-12**

**ITA No 5432 / Mum/2017 (by Ld. AO)**

**&**

**ITA No 5473 / Mum/ 2017 ( By Assessee)**

060. Now we come to the appeal of the assessee and the learned assessing officer for assessment year 2011 –

12. Both the parties confirmed that the identical grounds are raised in their respective appeal. Their arguments are also similar. Both of them confirmed that there is no change in the facts and circumstances of the case compared to the assessment year 2010 - 11 of the impugned assessment year i.e., 2011 - 12.

061. For the impugned assessment year the assessee filed its return of income on 30/9/2011, returning total income of Rs. 201,156,899/- as per the normal computation of income and u/s 115JB of Rs 180,362,036/-. The income was assessed u/s 143 (3) of the income tax act, 1961 by order dated 28<sup>th</sup> of March 2014 wherein the total income of the assessee is determined at Rs 26,95,44,811/- as per the normal computation of income, whereas the book profit u/s 115 JB was also increased by disallowance u/s 14 A, and provision of wealth tax as well as excess provision of taxation of earlier years. Consequently, the book profit was determined at Rs. 189,664,488/-.
062. The matter went to the learned CIT - A, who passed an order on 3/5/2017 on similar lines of the appellate order passed by him for assessment year 2000 - 11. Therefore, both the parties are in appeal before us.
063. First, we consider the appeal of the assessee in ITA number 5473/M/2017.



064. The first ground of appeal is with respect to the disallowance of interest expenditure attributable to capital work in progress of Rs. 35,68,701/-. This is identical to the ground number [1] of the appeal of the assessee for assessment year 2010 - 11. Similarly, assessee has also raised ground number 2 as an alternative ground and ground number 3 also as second alternative ground of the above disallowance and ground number 4 is the 3<sup>rd</sup> alternative with respect to the addition, if upheld, the requisite allowance of depreciation by including the disallowance of interest in the actual cost of the asset may be allowed.
065. However, as we have already considered the ground number 1 of the appeal's wherein, we have held that as assessee is having the more interest free funds available with it, the disallowance of interest expenditure attributable to capital work in progress cannot be made in absence of any nexus shown by the learned AO. Accordingly we allow ground number [1] for the reasons given by us in appeal of the assessee for assessment year 2010 - 11. Thus, Ground no [1] is allowed and the alternative ground number 2 to 4 of the appeal are dismissed.
066. The ground number 5 - 8 is with respect to the computation of disallowance u/s 14 A, read with rule 8D of The Income Tax Rules 1962. This is identical to the ground number 5 - 8 in case of the assessee for

assessment year 2000 – 11 wherein we have held that disallowance u/s 14 A, is required to be restricted With respect to rule 8D (2) (i) and (ii) As assessee has more non-interest-bearing funds available than the amount invested in the securities or investments yielding tax free income. Therefore, no disallowance on interest under that rule can be upheld. Further we have held that the learned CIT – A, is correct in holding that only those investments from which the tax free exempt income is earned should be considered for working out disallowance of administrative expenditure Under rule 8D (2) (iii) of the act. Accordingly ground numbers 5 – 8 are allowed to the above extent.

067. Ground number 9 is with respect to the disallowance u/s 14 A, as per rule 8D made by the learned assessing officer and in the normal computation of total income was once again added to the book profit computed by the assessee u/s 115 JB of the act. The identical issue arose in the case of the assessee as per ground number 9 of the appeal for assessment year 2010 – 11 wherein we following the decision of the Honourable High Court's and special bench has deleted the above addition. For the similar reasons we also allow ground number 9 of the appeal of the assessee.

068. Ground number 10 of the appeal is with respect to the addition in respect of the provision for wealth tax



while computing the book profit u/s 115 JB of the income tax act of Rs 3 lakhs. The identical issue arose in the case of the assessee for assessment year 2010 - 11 in ground number 10 where the wealth tax provisions made by the assessee have been added to the book profit of the assessee holding that it is part of the tax provisions. While deciding that ground We have directed the learned assessing officer to delete the addition of wealth tax provision to the book profit u/s 115 JB of the income tax act. For similar reasons, we also allow ground number 10 of the appeal of the assessee and direct the learned assessing officer to delete the addition of Rs 3 lakhs of wealth tax provision to the book profit u/s 115 JB of the act. Ground number 10 of the appeal is allowed.

069. Ground number 11 of the appeal is with respect to the disallowance in respect of excise duty debited to the profit and loss account of Rs 34,19,000/-. The excise duty of RS 34,19,000/- is debited to the profit and loss account in respect of difference between the excise duty included in the opening stock and closing stock of finished goods and excise duty paid on sample as same has been reduced from the sales value. The assessee in the tax audit report has disallowed the sum of the excise duty, which remained unpaid till the date of filing of the return of income. The identical issue arose in the case of the appeal of the assessee for assessment year 2010 -

11. While deciding ground number 11 of the appeal, we have directed the learned lower authorities to delete the above addition. Accordingly for the similar reasons, we allow ground number 11 of the appeal and direct the learned assessing officer to delete the addition with respect to excise duty debited to the profit and loss account of Rs . 34,19,000/-.

070. Ground number 12 is with respect to the disallowance of interest paid attributed to the laws of subsidiaries of rupees. 32 lakhs. This ground is identical to the ground of appeal raised by the assessee in assessment year 2010 – 11 wherein the addition was made by the learned assessing officer and confirmed by the learned CIT – A. In absence of change of facts or circumstances, following the decision in case of the appeal of the assessee for assessment year 2010 – 11, reverse the finding of the lower authorities and direct the learned assessing officer to delete the disallowance. Accordingly ground number 12 of the appeal is allowed.

071. The assessee has raised 2 additional grounds. The first additional ground is with respect to deduction in respect of education cess paid by the assessee, in view of the retrospective amendment by the finance act 2022. The said ground of appeal was not pressed and hence same was not admitted and hence dismissed.



072. 2<sup>nd</sup> additional ground raised is with respect to deduction in respect of prior period expenses in the year in which expenses debited to the profit and loss account should be allowed. The appellant has submitted that prior period expenses ought to be allowed as deduction in the year in which the said expenses debited to the profit and loss account, relying on the decision of the coordinate bench in assessee's own case for assessment year 87 – 88 and 1990 – 91. The identical issue was decided by us in the appeal of the assessee for assessment year 2010 – 11 where we have rejected the above argument and dismissed the additional ground. For the similar reasons we dismiss this ground of appeal.
073. Accordingly appeal of the assessee in ITA No 5473/Mum/2017 for AY 2011-12 is partly allowed.
074. Now we come to the appeal of the learned assessing officer in ITA number 5432/M/2017 for assessment year 2011 – 12.
075. The ground number 1 and 2 of the appeal of the assessee is with respect to the disallowance of prior period expenses of Rs 105,25,417/- wherein the learned CIT – A, has directed the learned assessing officer to verify the claim of the assessee and allow the deduction of these prior period expenses in year in which it pertains to. Identical ground has been decided by us where wherein we have allowed the appeal of the learned assessing officer holding that



such direction cannot be given by the learned CIT – A, we allow ground number 1 and 2 of the appeal of the learned AO.

076. Ground number 3 – 5 of the appeal is with respect to the disallowance u/s 14 A of the income tax act. We find that identical issue arose in the case of the assessee for assessment year 2010 – 11 wherein we have held that the learned CIT – A, is incorrect in upholding the disallowance of interest expenditure Under rule 8D where the assessee has more interest free funds available with it Then the amount of investment made in the exempt income yielding investment . Further the direction given by the learned CIT – A, to restrict the disallowance of administrative expenditure Under rule 8D only with respect to the investment, which has yielded exempt income is found correct. We have rendered our decision for assessment year 2010 – 11 on identical facts and circumstances. Therefore, we decide the ground number 3 – 5 of the appeal of the learned assessing officer on similar reasons and dismiss those grounds.

077. Accordingly appeal of the assessee is partly allowed and appeal of the learned assessing officer is dismissed for assessment year 2011-12.

**AY 2012-13**

**ITA number 5474/M/2017(by Assessee )**



078. Now we come to the appeal of the assessee for assessment year 2012 – 13 in case of ITA number 5474/M/2017.
079. Brief fact shows that assessee filed its return of income on 28/09/2012, returning the total income of Rs. 125,807,827, under the normal provisions of the income tax act as well as u/s 115 JB of the income tax act book profit was computed at Rs. 173,716,181/-.
080. The learned assessing officer passed an assessment order u/s 143 (3) of the act on 30/3/2015 determining the total income of the assessee as per the normal computation of total income at Rs. 158,690,600/- and the book profit computed u/s 115 JB of the income tax act was also increased by disallowance u/s 14A of the Act of Rs 5,187,207 and provision for wealth tax of Rs 3 lakhs. Accordingly, the revised book profit was determined at Rs. 17,92,03,388.
081. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A, who passed an appellate order on similar lines as in earlier year on 3/05/2017. The assessee is aggrieved with that and has preferred this appeal in ITA number 5474/M/2017.



082. Both the parties confirmed that the grounds in the appeal of the assessee are identical to the grounds raised by the assessee for assessment 10 – 11 and further there is no change in the facts and circumstances of the case.
083. Ground number 1 – 4 are with respect to the addition of interest cost to the capital work in progress and consequently disallowance of interest expenditure, these grounds are identical to the grounds of appeal raised by the assessee for assessment year 2010 – 11. For assessment year 2010 – 11, While deciding ground number one of the appeal of the assessee, we have directed the learned lower authorities to delete the above disallowance. For the similar reasons, we direct the lower authorities to delete the disallowance. Accordingly ground number 1 is allowed. Ground number 2 – 4 of the appeal being alternative claims of the assessee are not required to be adjudicated hence dismissed.
084. Ground number 5 – 8 of the appeal is with respect to the disallowance u/s 14 A of the act applying the provisions of rule 8D. Assessment year 2010 – 11. We have confirmed that as assessee has more than enough interest free funds available than the amount of investment made in exempt income yielding instrument, then, no disallowance on account of interest can be made. Accordingly ground number 5 and 7 of the appeal of the assessee are allowed.



Ground number 6 & 8 were not pressed, are dismissed.

085. Ground number 9 is with respect to the addition to the book profit u/s 115JB of the act of the amount disallowable worked out by the learned assessing officer u/s 14 A, a read with rule 8D in the normal computation of total income. Identical issue arose in the case of the assessee for assessment year 2000 – 11 wherein we have followed the decision of the Honourable High Court and special bench directed the learned assessing officer to delete the above addition to the book profit. Accordingly, for the similar reasons, ground number 9 of the appeal of the assessee is allowed.

086. Ground number 10 is with respect to the addition of provision for wealth Tax to the book profit u/s 115 JB of the income tax act. Identical issue arose in the case of the assessee for assessment year 2010 – 11 wherein we have held that wealth tax provision is not similar to the income tax provision which is required to be adjusted as per explanation 2 to Section 115 JB of the act. Both are distinct and separate. In view of this we have held that wealth tax provision cannot be added to the book profit u/s 115 JB of the income tax act. Accordingly, we also allow ground number 10 of the appeal of the assessee directing the learned lower authorities to delete the addition of the tax provision.



087. Ground number 11 is with respect to the disallowance of excise duty debited to the profit and loss account of ₹ 6,930,581/-. This ground is identical to ground number 11 of the appeal of the assessee for assessment year 2010 - 11 wherein while deciding that appeal we have directed the learned lower authorities to delete the above disallowance. For similar reasons, we direct the learned lower authorities to delete the disallowance of ₹ 6,930,581/-, accordingly, ground number 11 of the appeal is allowed.
088. Ground number 12 is with respect to the disallowance of interest paid which is attributable to the loans to the subsidiaries. This ground is identical to ground number 14 of the appeal of the assessee for assessment year 2010 - 11. Similarly, applying those reasons, we direct the learned assessing officer to delete the above disallowance. Accordingly ground number 12 of the appeal is allowed.
089. The assessee has raised 2 additional grounds of appeal. Stop ground number one is with respect to deduction in respect of education cess paid. Assessee did not press this ground. In view of the retrospective amendment as per the Finance act 2022, therefore same is dismissed.
090. Ground number 2 is with respect to the deduction in respect of prior period expenses disallowed in assessment year 2010 - 11, if those are pertaining

to this year, same should be allowed to the assessee. The assessee is relying on the decision in favour of the assessee in his own case for assessment year 1987 – 88 and 1990 – 91. While deciding the appeal of the assessee for assessment year 2010 – 11, we have dismissed this ground of appeal. Accordingly, this ground is also dismissed.

091. Accordingly, the appeal of the assessee in ITA number 5474/M/2017 is partly allowed.

### **Assessment year 2013 – 14**

#### **ITA number 914/M/2018 (by Assessee )**

092. Now we come to the appeal of the assessee for assessment year 2013 – 14 filed in ITA number 914/M/2018. Assessee filed its return of income on 30/9/2013 declaring a total income of ₹ 210,453,450 as per the normal operation of income, whereas u/s 115 JB of the act total book profit was computed at ₹ 201,106,320/-. This return was revised on 31/3/2015 at a total income of ₹ 202,194,064 and book profit remained unchanged. Subsequently the assessment u/s 143 (3) of the act was passed on 16 March 2016, wherein the normal income of the assessee was computed at ₹ 216,146,200 and book profit was also computed at ₹ 199,153,904.
093. Assessee preferred an appeal before the learned CIT – A, who passed an order on 20/11/2017 on similar lines as in the case of the assessee for earlier years.



Therefore, assessee aggrieved with that order is in appeal before us.

094. At the time of hearing the assessee has raised an additional ground of appeal as per application dated 6 November 2019 wherein it challenges for allowability of education cess as deduction of expenditure. This ground was not pressed. In view of amendment to the finance act 2022. Accordingly, the additional ground raised by the assessee is not admitted and dismissed.
095. The first ground of appeal raised by the assessee is with respect to the allowability of prior period expenses in the year in which the said expenses debited to the profit and loss account. Identical ground was raised by the assessee in assessment year 2010 – 11, which was dismissed by the Asst. Therefore, for the similar reasons we dismiss ground number 1 of the appeal.
096. Ground number 2 of the appeal is with respect to the addition of ₹ 3 lakhs on account of provision for wealth tax while computing the book profit u/s 115 JB of the income tax act. This ground is identical to the grounds of appeal in the case of the assessee for assessment year 2010 – 11 wherein we have held that according to the explanation II of Section 115 JB, the income tax provisions do not include wealth tax provision and therefore the addition made by the learned assessing officer is not sustainable. For the



similar reasons we allow ground number 2 of the appeal of the assessee and direct the learned assessing officer to delete the addition of ₹ 3 lakhs of well tax provision to the book profit computed u/s 115 JB of the act.

097. Ground number 3 is with respect to the deduction of excise duty debited to the profit and loss account amounting to Rs. 30,33,700/-. Identical issue arose in the case of the assessee for assessment year 2000 – 11. Wherein we have found that the assessee has disallowed the sum of excise duty not paid before the due date of filing of the return of income and the above sum is not double deduction. Therefore, for the similar reasons, we direct the learned assessing officer to delete the addition of Rs. 30,33,700 on account of excise duty debited to the profit and loss account. Ground number 3 of the appeal of the assessee is allowed.

098. Ground number 4 of the appeal of the assessee is with respect to the confirmation of the disallowance of sum of Rs. 91,80,000 out of interest paid attributable to the loan to a subsidiary. This issue is identical to the ground of appeal raised in the case of appeal for assessment year 2010 – 11 wherein we have deleted the above addition. For the similar reasons, we direct the learned AO to delete the disallowance and, accordingly allow ground number 4 of the appeal.



099. In the result, appeal filed by the assessee for assessment year 2013 – 14 is partly allowed.

### **Assessment year 2014 – 15**

#### **ITA number 915/M/2018**

0100. Now we come to the appeal of the assessee for assessment year 2014 – 15 in ITA number 915/M/2018 wherein the original return filed by the assessee on 30/11/2014 declaring a total income of ₹ 150,782,521/- Under the normal provision and ₹ 179,970,890/- u/s 115 JB of the act was assessed by an order passed u/s 143 (3) of the act dated 14/12/2016, wherein the normal income was computed at ₹ 155,584,055 and the book profit was as determined at ₹ 179,810,161.

0101. The assessee preferred an appeal before the learned and CIT appeal, who passed an appellate order on 20/11/2017 on the similar lines, wherein the appellate orders were passed by him for assessment year 2010 – 11 to 2013 – 14. Therefore, the assessee is aggrieved with the order of the learned and CIT – A, and has preferred this appeal.

0102. At the time of hearing of the appeal the assessee has filed an application for admission of additional ground of appeal on 6 November 2019 asking for the deduction in respect of education cess on income tax. At the time of hearing, the above ground was



not pressed for admission. Therefore, same is dismissed.

0103. Ground number 1 in this appeal is with respect to the addition of ₹ 3 lakhs to the computation of book profit u/s 115 JB of the income tax act on account of provision for well tax. This issue is identical to the grounds of appeal in the case of the assessee for assessment year 2010 - 11 wherein we have held that the provisions of income tax act which is required to be added u/s 115 JB of the income tax act to the book profit does not include the provisions of the Wealth tax. Therefore, same is not required to be added. Thus, the addition made by the learned assessing officer deserves to be deleted, hence deleted. Accordingly ground number 1 of the appeal is allowed.

0104. Ground number 2 of the appeal of the assessee is with respect to the addition on account of excise duty debited to the profit and loss account amounting to ₹ 661,881/-. This ground is identical to the grounds of appeal in the case of the assessee for earlier years. For assessment year 2010 - 11. We have directed the learned lower authorities to delete the addition on the ground that it is, does not amount to double deduction as well as where the assessee has not paid the amount of excise duty before the due date of filing of the return of income,



Ground number 2 of the appeal of the assessee is allowed.

0105. Grounds number three of the appeal of the assessee with respect to the disallowance of interest of Rs. 769315/- out of interest paid attributable to interest free loan given to subsidiary. we find that this ground is identical to ground number 14 of the appeal in the case of the assessee for assessment year 2010 - 11 wherein we have deleted the disallowance made by the learned assessing officer for the reason that assessee has higher non-interest-bearing funds available with it than the amount of advance given to the subsidiary company. In view of this, ground number 3 of the appeal of the assessee is allowed.

0106. In the result appeal of the assessee in ITA number 915/MU M/2018 for assessment year 2014 - 15 is allowed.

### **Assessment year 2015 - 16**

#### **IT number 6444/M/2018**

0107. Assessee has filed above appeal against the appellate order passed by the Commissioner of income tax appeals - 54, Mumbai for assessment year 2015 - 16 dated 28/8/2018.

0108. Assessee filed its return of income on 30/9/2015 declaring income of Rs. 343,770,588/- under normal



provisions and Rs. 475,841,812 as book profit under section 115 JB of the act. The assessment under section 143 (3) of the act was passed on 12/12/2017 wherein the total income of the assessee was determined at Rs. 104,773,615 as per normal computation and book profit under section 115 JB was computed at Rs. 47,61,41,810/-.

0109. Assessee preferred an appeal before the learned CIT – A Who partly allowed the appeal of the assessee and therefore the assessee is in appeal before us.

0110. the first ground of appeal raised by the SSE is against confirmation of the action of the assessing officer in disallowing the sum of Rs 10,080,000 out of interest paid attributable to loan to a subsidiary. This issue is identical to ground number 14 of the appeal of the assessee for assessment. 2010 – 11 wherein on the issue that assessee is having more known interest-bearing funds available with it then the amount of investment in subsidiary. Therefore, for similar reasons, we direct the London lower authorities to delete the about disallowance. Accordingly ground number 1 of the appeal is allowed.

0111. The second round of appeal is an addition of Rs. 190,000/- on account of provision for wealth tax while computing book profit under section 115JB of



the act. This ground is also covered in favour of the assessee by our decision in appeal of the assessee for assessment year 2010 - 11 wherein identical addition made to the book profit was deleted. Therefore, for similar reasons, we allow ground number 2 of the appeal of the assessee and direct the lower authorities to delete the addition of wealth tax provision of Rs 190,000/- to the book profit computed under section 115JB of the act.

0112. Ground number 3 is with respect to the deduction of education cess on income tax paid during the year, this ground is covered against the assessee by the decision of the Honourable Supreme Court and hence dismissed.
0113. Accordingly. Of the assessee for assessment. 2015 - 16 is partly allowed.
0114. Accordingly, all the 8 appeals involved of this Assessee are disposed of as above.

Order pronounced in the open court on 09.01.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.01.2023

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)



4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai