INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI

BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.325/Del/2012
Asstt. Year: 2004-05

ITA No. 3054/Del/2010
Asstt. Year: 2006-07

ITA No. 3205/Del/2014
Asstt. Year: 2009-10

DCIT, Circle 13(1) New Delhi.	Vs.	Shri Subhash Chander Sehgal Prop. M/s. Ozone Ayurvedics, 1,LSC, Block A-3, Janak Puri, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Advocate Shri Deepesh Garg, Advocate
Department by :	Shri Umesh Takyar, Sr. DR Shri Sumit Kumar Verma, Sr. DR
Date of Hearing	13.04.2022 06.01.2023
Date of pronouncement	06.04.2023

O R D E R

PER ASTHA CHANDRA, JM

These three appeals of the Revenue are directed against the order dated 24.08.2011, order dated 29.03.2010 and order dated 21.02.2014 of the Ld. Commissioner of Income Tax (Appeals)-XVI, New Delhi **("CIT(A)")** pertaining to the Assessment Year **("AY")** 2004-05, 2006-07 and 2009-10 respectively. These were heard together and are being disposed of by this common order.

2. The assessee is an individual. He is proprietor of two concerns, namely M/s. Ozone Ayurvedics and M/s. 4th D wherein manufacturing, trading and export of Ayurvedic medicines are undertaken.

Assessment Year 2004-05

3. The assessee filed his return on 28.09.2004 declaring total income of Rs. 3,84,710/-. It was processed under section 143(1) of the Income Tax Act, 1961 **(the "Act")** and the case was picked up for scrutiny. Notices under section 143(2) and 142(1) along with detailed questionnaire were issued and compliance were made. The Ld. Assessing Officer **("AO")** completed the assessment under section 143(3) of the Act on 28.12.2006 on total income of Rs. 6,29,12,450/- including therein following additions/disallowances:

(1)	Trading addition profit from baddi unit	–	Rs. 25,60,525/-
(2)	Addition under section 40A(2)(a)	-	Rs.17,52,728/-
(3)	Addition on account of unexplained expenditure	-	Rs. 10,00,000/-
(4)	Expenses disallowed	-	Rs. 28,81,913/-
(5)	Disallowance out of R & D expenses	-	Rs. 40,62,606/-
(6)	Refund accrued out of excise duty paid	-	Rs. 42,81,469/-
(7)	Addition made on account of wastage	-	Rs. 13,43,584/-
(8)	Proportionate interest paid to bank and others disallowed	-	Rs. 48,99,034/-
(9)	Disallowance out of unsecured loans	-	Rs. 34,33,200/-
(10)	Disallowance out of sundry creditors	-	Rs. 1,02,56,704/-
(11)	Expenses not relating to business disallowed	-	Rs. 28,950/-
(12)	Sales tax penalty	-	Rs. 500/-
(13)	Undisclosed income from sale of 4th D magazines	-	Rs. 81,78,274/-
(14)	Undisclosed income from sale of closing stock of preceding year	-	Rs. 11,70,847/-
(15)	Deemed dividend added back under section 2(22)(e)	-	Rs. 44,93,268/-
(16)	Denial of claim of deduction under section 80IB		

4. The assessee filed appeal before the Ld. CIT(A) against all the additions and disallowances. The Ld. CIT(A) deleted all of them except sales tax penalty.

5. Aggrieved, the Revenue is in appeal before the Tribunal. Following grounds of appeal have been taken :-

"Point No. 1 Trading addition - profit from Baddi Unit (Rs. 25,60.525/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 25,60,525/- made on account of Trading addition - profit from Baddi Unit without appreciating the facts brought out by the AO that a large scale of discrepancies were found in the Books of accounts.

Point No. 4 Disallowance of Expenses Debited to Profit & Loss account (Rs. 28.81.913/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 28,81,913/- on account of expenses disallowed from the Profit & Loss account under various heads, which were not supported with documentary evidence and the assessee did not discharge its obligation to prove the truthfulness and genuineness of the expenses,

Point No. 5 :- Disallowance made out of R & D expenses (Rs. Rs. 40.62,606/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs.40,62,606/- on account of disallowance made out of R & D expenses pertaining to various other concerns, the real utility of expenses incurred on R&D for its own business, was not verifiable and the products of other concerns are developed by incurring such expenses and these expenses are debited in the P&L account of proprietorship concerns, which are not allowable.

Point No. 6 :- Refund accrued out of excise duty paid (Rs. Rs. 42,81,469/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 42,81,469/- on account of refund accrued out of

excise duty paid without appreciating the fact that under the accrual system of accounting followed by assessee, the excise duty refund sanctioned by Excise Department was required to be credited in P&L account which the assessee failed to do so.

Point No. 7 :- Wastage (Rs. 13,43,584/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 13,43,584/- on account of wastage out of manufacturing activities, and the raw material consumed and other details of finished products were not produced for examination which were duly examined by the AO and the Ld. CIT(A) has erred in not appreciating the complete facts brought out by the AO in the assessment order.

Point No.8 Proportionate interest paid to Bank & others disallowed (Rs. 48.99.034/-)

On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance of Rs. 48,99,034/- on interest bearing loan taken by the assessee from M/s North Eastern Development Finance Corporation Ltd. and was utilized by M/s OPL, a sister concern of the assessee without getting any interest, which was wrongly allowed as expenses.

Point No. 9 Unsecured loans (Rs. 34,33,200/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 34,33,200/- on account of unsecured loans without appreciating the fact that the assessee failed to furnish details of unsecured loans viz., address, nature of loans taken, period, whether interest bearing or not, relationship with the lenders and confirmations of the lenders.

Point No. 10 :- Sundry Creditors (Rs. 1.02,56,704/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 1,02,56,704/- on account of sundry creditors on which the genuineness of trade transactions or any other transactions with such firms/company/persons supported with bills, vouchers and banking evidence were not furnished for examination as held out by the AO which were not appreciated by the Ld. CIT(A).

Point No. 11 :- Expenses not relating to business (Rs. 28,950/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 28,950/- on account of expenses not relating to business on account of furniture provided at the residence of one Sh. Dipak Singh at Guwahati which was not related to the business of the assessee but the Ld. CIT(A) has erred in adjudicating that as the asset was used by the employee of the assessee, it cannot be considered as a personal expense of the assessee.

Point No. 13 :- Undisclosed income from sale of closing stock of preceding year (Rs. 11,70,847/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 11,70,847/- on account of undisclosed income from sale of closing stock of preceding year without appreciating the fact that the closing stock of preceding year is a part of opening stock and also of closing stock, if the same has not been sold during the year, since it neither reflected as opening stock nor as closing stock, therefore, it is clear that the said magazines have been sold during the year.

Point No. 15 Deduction u/s 80IB of the IT Act (Rs. 1,21,84,143/-)

On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief of Rs. 1,21,84,143/- on account of deduction u/s 80IB of the IT Act without examining the following defects brought out by the AO:-

(a) The business of the assessee at Guwahati unit was set up after substantial split of Baddi Unit.

(b) Both the units at Baddi and Guwahati are engaged in manufacture/ production of similar/identical products.

(c) Mismatch of sales disclosed ini the Books of account and the sales disclosed before sales tax authorities and excise authorities.

(d) Substantial differences in the opening and closing stock, stock transferred / sales as declared in the Books of accounts and excise records made available by the assessee.

(e) Non furnishing of complete details regarding separate trading account and Profit and Loss account of Guwahati unit and Baddi Unit.

(f) Non furnishing of complete details regarding month wise, item wise raw material purchased, raw material consumed and production made from Guwahati unit and Baddi unit.

(g) Non furnishing of month wise expenses incurred at Guwahati unit and Baddi Unit.

(h) Non furnishing of evidence of installation of new plant and machinery at Guwahati unit.

(i) Non furnishing of evidence in support of power consumption and allocation of power to different units. Even the electricity bills were not produced for examination.

(j) Comparative analysis of the raw material consumed found to be the same and only there is quantitative difference amongst the Baddi and Guwahati unit of raw material consumption. This may indicate that the production/manufacturing may still be carried on by Baddi Unit and profits diverted to Guwahati unit for the purpose of enjoying tax deductions and sales tax exemptions."

6. The Ld. DR relied upon the order of the Ld. AO whereas the Ld. AR filed written synopsis highlighting the adverse observations of the Ld. AO, discussion of the Ld.CIT(A) and his findings in respect of the aforementioned all the items of additions/disallowances. The Ld. AR submitted that the decision arrived at by the Ld.CIT(A) after considering the contention of the assessee and the remand report obtained from the Ld. AO on various issues deserves to be upheld.

7. We have gone through the orders of the Ld. AO and the elaborate appellate order of the Ld. CIT(A) and considered the rival contentions of the parties raised before us.

8. We record our findings ground-wise hereunder:-

<u>Ground 1: Trading addition of Rs. 25,60,525/- in Baddi unit</u>

8.1 The Ld. AO discussed this issue in para 28 to 32 on page 17 to 19 of his order under the heading "Trading Results". He noticed decline in GP ratio and a sharp decline in NP ratio during the year when compared to earlier year. He observed that trading result was not fully reliable in the absence of supporting documents. Most of the expenses of one unit are debited to the other unit. As the correctness or completeness of the accounts of the assessee are not relied upon and not supported fully with the bills and vouchers, he rejected the books of account by invoking provisions of section 145(3) of the Act. He observed that the assessee is manufacturing same items of cosmetic creams, raw material consumed is the same and only there is quantitative difference among Baddi and Guwahati unit, this may indicate that the production/manufacturing may still be carried on by Baddi unit and profits diverted to Guwahati unit for the purpose of enjoying tax deductions and sales tax exemptions. The Ld. AO applied NP ratio of 7.67% on declared sales of Rs. 3,33,83,638/- from Baddi unit which resulted in the impugned trading addition as against loss of Rs. 32,54,803/- declared by the assessee.

8.2 Before the Ld. CIT(A) the assessee contended that the Ld. AO wrongly invoked the provisions of section 145(3) of the Act by rejecting the books of account which were accepted and vetted by other statutory authorities i.e. excise, sales tax, ESIC, PF, Drug Deptt., Factory Act without any negative remarks and by passing various orders under their respective Acts. Further, Guwahati unit is availing excise exemption, enjoying transport subsidy, power subsidy, labour subsidy, sales tax exemption and therefore, the expenses are lower as compared to expenses incurred at Baddi, and moreover Guwahati unit has new machines while Baddi unit has old machines. The machineries installed at Guwahati unit are more capable and high tech as compared to machineries installed at Baddi unit.

8.3 It was submitted that Guwahati unit and Baddi unit are different. Guwahati unit produced for local markets with automatic technology and Baddi unit is producing with semi automatic plants mainly for exports, and

hence GP ratios are not comparable. The Hon'ble Tribunal in its order dated 27.02.2009 for AY 2003-04 held that rejection of books was not justified. Affidavits sworn by the advocate and by the CA deposing on oath that complete books of account was produced which were examined by the Ld. AO were also filed before the Ld. CIT(A).

8.4 The Ld. CIT(A) recorded his finding as under :-

"4.41 I have carefully considered the facts relating to the issue and submissions made by the Counsel of the appellant. I have perused the assessment order, and the report of the A.O. I have also examined the various details submitted by the appellant which are placed in the paper books submitted before me. I have also considered the rejoinder filed by the AR, on the report submitted by the A.O. on the documents which were provided to him during the course of appellate proceedings. After detailed examination of the documents/evidences furnished, I am constrained to observe that the books of accounts of the appellant have been rejected by the A.O. without appreciating and analyzing the details submitted by the appellant during the course of assessment proceedings. From the bare reading of the order, and evidences submitted by the appellant, it appears that the provisions of section 145(3) have been invoked by the A.O. just because, in the immediately preceding year, the books of the appellant were rejected and assessment was completed on the basis of special audit completed u/s 142(2A) of the Act. In the entire assessment order, the A.O. could not bring on record a single instance where he found that either some sales were not recorded, or some expenses incurred in Guwahati unit were recorded in Baddi Unit, or some sales made of Baddi unit were recorded in Guwahati Unit. Various doubts raised by the A.O. in the remand report and my observations thereon are discussed hereunder:-

i) Whether all the sales and purchases made are supported with complete bills and vouchers and whether the same were recorded in the regular books of accounts - A.O'. has himself mentioned that books are maintained separately for two units. He has also mentioned that these were examined. No instance is brought on record by the A.O. to strengthen his case before invoking provisions of section 145(3) that any bills or vouchers were found defective or not recorded in books of accounts of the appellant.

ii) Whether actual manufacturing/production undertaken by two units are matching with the quantity of raw material purchased for such units - The A.O. has raised a doubt but has failed to bring on record any material to substantiate this doubt. Moreover it is not the case of the A.O. that he made analysis of the raw material consumed according to formulas of various products manufactured by the appellant.

iii) Failed to produce any evidence of the quantum of manufacturing/production done of different products. - Allegation of the A.O. is contrary to records as the appellant has furnished all requisite information as was available with him.

iv) Failed to provide the terms and conditions on which the alleged sales/purchases and expenses have been shown in the profit and loss account and trading account.

- Nothing adverse has been brought on record by the A.O.

v) In spite of several opportunities, failed to produce complete books of accounts at three different occasions (a) during the initial assessment proceedings before invoking the provisions of special audit (b) before the special auditor (as distinguishably established by the special auditors) and (c) before the assessing officer who passed the assessment order u/s 143(3). - It is seen from the records that in the present assessment year under appeal there was no special audit, thus I do not find that the appellant was to produce books before any Special Auditor. Furthermore, in the order the A.O. has stated at places that the books of accounts have been examined as produced by the appellant but in the same breath A.O. says that complete books of accounts were not produced. A.O. has not brought on record as to specifically which book(s) he asked for which were not produced by the appellant. It appears that the A.O. has simply repeated his observations made in the assessment order of A.Y. 2003-04.

vi) Failed to establish that the products manufactured/produced from two units i.e. Guwahati and Baddi unit are completely separate from one another with evidences. The appellant had given a chart to justify that the products being manufactured at Guwahati differ from those being manufactured at Baddi Unit. (PB 475-477 of appellant's paper book).

vii) Failed to establish that the cost of production of Baddi unit is higher when compared to Guwahati unit - It has been explained that Guwahati Unit is availing excise exemption, enjoying transport subsidy, power subsidy, labour subsidy, sales tax exemption and therefore, the expenses are lower as compared to expenses incurred at Baddi, and more over Gauhati unit has new machines while Baddi Unit has old machines.

viii) Failed to establish that the machineries installed at Guwahati unit are more capable and high tech when compared to machineries installed at Baddi unit; - At page 478 in the written submissions, it was explained that the products are being manufactured in automatic plant with high capacity and latest technology for production in Guwahati unit as against the manufacturing in Baddi which is done with semi automatic machines with less capacity.

ix) Failed to establish that the samples given free of cost are only manufactured from Baddi unit and no samples have been manufactured from Guwahati unit. Doubts of the A.O. in this regard are without any basis as complete details and information have been given by the appellant and A.O. has nothing in his possession to reject and disbelieve the claim of the appellant.

x) Failed to establish that the products manufactured /produced by the assessee are ethical and allowable under different law agencies in the field of drugs and cosmetics and no banned drugs are manufactured or produced by the assessee. - Doubt expressed by A.O. is without any basis.

xi) The assessing officer rejected the books of account by invoking provisions of section 145(2) of Act, for the various discrepancies enumerated in the assessment order: - These

discrepancies enumerated do not give any specific instances on the basis of which action of the A.O. can be substantiated.

xii) Bogus expenses booked in the trading account:- In the absence of any specific instance brought on record by the A.O., it cannot be held so.

xiii) Suppression of sales, no stock register maintained, no manufacturing account maintained, day to day production register and incomplete audit report. - No specific instance is brought on record by the A.O. to show suppression of sales. Observations of A.O. w.r.t. production/ non-production of records are self contradictory.

xiv)Complete books of accounts not produced for examination - A.O. has not specified which books were not produced, and what he means about complete were books, when he himself says that books of accounts were produced , were examined, and subsequently he rejected the same as well.

xv) Sale and purchase are erratic and ill-logical prices undertaken between sister concerns; - No instance has been brought on record by the A.O.

xvi) Sales and purchases are not fully declared. - The A.O. has not given any basis or any supporting evidence to justify the same.

4.42 Further 1 have seen and verified that the appellant has maintained all relevant records, namely the raw material stock register (RG-1 register), finished goods stock register (RG 23 register), Sales tax records, octroi records, transport bills, wages register, and purchase and sale vouchers. The books and vouchers were examined by the A.O. as could be made out by me from the perusal of assessment records and order. 1 have also called for and examined the books of accounts and other records to satisfy myself and to clear all doubts raised in this regard. In any case when an opportunity was given by me to the A.O., he could have again asked for and examined whatever records he wanted to verify. It is further seen that the Baddi unit was producing Ayurvedic medicines for exports, while the Guwahati unit was manufacturing the medicines for Indian markets. Therefore, the results of two units could not have been compared. In Baddi unit, Ayurvedic medicines were being manufactured for export orders and the goods produced for one country could not be sold in any other country or in India due to labeling language prevalent in that country. Such orders were smaller lots and accordingly produced in smaller quantities, leading to increase in cost substantially. The Baddi Unit was an old unit while the Guwahati unit was new unit which used advanced automatic machines, capable of producing medicines in large quantities as against semi-automatic machinery used in Baddi unit. Thus, the gross profits of the two units could not have been compared.

4.43. It is seen that in A.Y.2003-04 similar addition was made by the A.O. rejecting books of the appellant, and after detailed discussion the same was partly upheld by my predecessor, but the Hon'ble ITAT deleted the entire addition made on this ground. It has been observed that in preceding year i.e. A.Y. 2003-04 also the A.O. made an addition of

Rs.69,35,757/- as against net loss declared of Rs.35,57,470/- from Baddi Unit. The additions were made on the same grounds as made in the impugned year. In that year also it was explained by the appellant that it had maintained all relevant records viz. raw' material stock register, RG-1 Register, finished goods stock register, RG-23 Register, Sales Tax record, Octroi Record, Transport bills, wages payment register, purchase and sales vouchers, etc. It was also explained that the two sets of undertakings are at a distance of 2300 K.M. and the production is with different technology and on different v scales in both the units.

4.44 Though the Ld. CIT(A) did not agree to the submissions made by the appellant with regard to rejection of books, but he held that the estimation of the profits of the Baddi unit should have been based on the gross profit ratio rather than the net profit ratio, and also held that for the purpose of adoption of profit ratio, the Guwahati unit is not comparable to the Baddi unit. On further appeal, the Hon'ble ITAT, while deciding the issue, held at page 140-141 of their order (Refer PB 1115-1116) as under:-

4.45 "The reasons mentioned in the order of the lower authorities do not lead to a conclusion that there were evidences or attendant circumstances in the nature of omission of entries of purchase or sale or suppression of stock etc. which could lead to rejection of books of account. The assessee had maintained complete books, which were produced before the statutory auditors as well as the A.O. Therefore, the books of account, could not have been rejected u/s 145(3). After rejecting the books of account, the past results could be a good ground for estimating the profits, as pointed out by the learned CIT(Appeals). Such a comparison would, involve adjustment of profit in respect of factors, which were dis-similar, being the expenditure on samples in this year. If the expenditure on samples is taken into account, we find that the gross profit ratio was more than the average of gross profit ratios of the last two years. Thus, it is held that the learned CIT(Appeals) erred in even sustaining the addition of Rs.46,27,481/-. Accordingly, these grounds are allowed."

4.46 In the present appeal, after considering the deficiencies and defects pointed out by A.O. in the books of accounts, there was nothing specific brought on record by the A.O. and there was no decline in G.P. rate as compared to the immediately preceding year, as there was G.P. rate of minus 9.7% in the year under consideration as compared to immediately preceding year's G.P. rate of minus 16.44%. Thus it can be held that G.P. rate of the Baddi unit cannot be said to have declined from the previous year. From the above observations made by me, and after examining the details furnished and more so when the unit of Baddi is also eligible for deduction u/s 80IB, I do not find any reasons, as to why the appellant would transfer expenses to the other unit, particularly when there is substantial decline in sale of Guwahati unit as well in the year under consideration, as compared to the immediately preceding year. It also cannot be denied that the net profits ratio of the appellant has also come down in the year under consideration as compared to previous years. In view of these reasons I do not find any logic to confirm the action of the A.O., for rejecting the books of the appellant and also to apply rate of Guwahati Unit, which is a separate and independent unit of the appellant, and specifically when, no such instance has been brought on record by the A.O. to justify any of his grounds taken for , applying the N.P. rate of Guwahati unit on sales

made by the appellant from Baddi Unit. The addition made by the A.O. of Rs.25,60,525/- is deleted, and the loss claimed by Baddi Unit of Rs.32,54,803/- is allowed.

8.5 We observed that the assessee maintained complete books of accounts as in the preceding AY 2003-04 which was rejected by the Ld. AO under section 145(3) of the Act. However, the Tribunal in its order dated 27.02.2009 for AY 2003-04 held that the assessee had maintained complete books which were produced before the statutory auditors as well as the Ld. AO. Therefore, the books of account could not have been rejected under section 145(3). There was no decline in GP rate as compared to the immediately preceding year. No justifiable reason has been brought on record to apply NP ratio on declared sales in Baddi unit. The impugned addition has rightly been deleted by the Ld. CIT(A). We, therefore, reject this ground of the Revenue.

Ground 2: Disallowance of expenses debited to P&L account –Rs. 28,81,913/-

8.6 The Ld. AO discussed this issue in para 37 page 21 of his order. Observing, inter alia that the expenses are not verifiable for want of bills, vouchers etc., the Ld. AO made the impugned disallowance out of sales promotion, marketing expenses, repairs and maintenance, telephone expenses, vehicle running and maintenance, travelling expenses, general expenses, preliminary expenses written off, brokerage and donation.

8.7 Before the Ld. CIT(A) the assessee contended that the Ld. AO is influenced by the special audit conducted in the last year. The assessee submitted that complete books of account and vouchers were produced and the Ld. AO did not point out any specific defect. Disallowance in an arbitrary manner is prohibited in law and cited the decision of apex court in Dhakeshwari Cotton Mills Ltd. vs. CIT 26 ITR 775 and Lalchand Bhagat Ambica Ram vs. CIT 37 ITR 288.

8.8 The Ld. CIT(A) observed that the assessee produced complete books of accounts and vouchers before him which he examined with reference to ledger accounts of the above heads of expenses and supporting vouchers were also test checked by him. The Ld. CIT(A) further observed that similar disallowances made by the Ld. AO in AY 2006-07 have been deleted by his predecessor vide his order dated 29.03.2010. Since the impugned addition was made purely on ad-hoc basis, the Ld. CIT(A) deleted the same.

8.9 Before us the case of the Revenue is that the expenses were not supported with documentary evidences and that the assessee did not discharge his obligation to prove truthfulness and genuineness of the expenses.

8.10 We are not inclined to agree with the contention of the Revenue. The assessee has stated that month wise details of expenses were furnished before the Ld. AO duly supported with vouchers which were examined by him and no defect was pointed out. Books of account were produced along with supporting vouchers and the Ld.CIT(A) test checked them and disagreed with the Ld. AO that the assessee failed to establish the genuineness of expenses incurred for business purposes. We agree with the view of the Ld. CIT(A) that disallowance made on ad-hoc basis is not justified and therefore decline to interfere and reject this ground of the Revenue.

Ground 3: Disallowance made out of R&D expenses – Rs. 40,62,606/-

8.11 The Ld. AO discussed the issue in para 38 page 23 of his order. He observed that no evidence regarding any research and development done in the case of the assessee's business or its products have been produced for examination. The R&D expenses remained unverifiable. Moreover, the assessee is having substantial interest with various other concerns, the real utility of expenses incurred on R&D for its own business is not verifiable. With the above observations, he made the impugned disallowance.

8.12 The Ld. CIT(A) dealt with this issue in para 8 page 52-54 of his appellate order. It was submitted by the assessee that the assessee is having an in-house R&D Centre at Bahadurgarh for its own products which is utmost need to meet the competition and to improve efficiency and effectiveness of the product and for development of new products. The Ld. AO made the disallowance without appreciating the business expediency. The assessee has employed 8 or 9 persons in R&D division. Copies of employment letters of the persons, their Form No. 16 were furnished. The Ld. CIT(A) examined them and found that salary amounting to Rs. 18,00,181/- had been paid to them. In para 8.14 of his order, the Ld. CIT(A) recorded his findings as under:-

> *"8.14 Considering the facts of the case, nature of business carried on by the appellant, and the nature of expenses incurred, and more so when the A.O. has not pointed out any discrepancy in any of the expenses incurred under this head, and the silence of the A.O. in the remand report on this issue, it is not proved as to how the claim of the appellant is not allowable. The absence of any adverse comments from the AO in the remand report, and finding on this issue in the impugned order do not justify the addition and I consider that the expenses were incurred for the business of the appellant, and should have been allowed."*

8.13 The only grievance of the Revenue is that the real utility of expenses incurred on R&D for assessee's own business is not verifiable and the products of the other concerns are developed by incurring such expenses.

8.14 We do not agree. The nature of assesse's business is such that R&D expenditure is a must without which business cannot be run. It is the responsibility of the R&D department to ensure continuous development in the products. It also ensures the quality of raw material so that the products may not be harmful in any manner. The research work being of utmost necessity of the business of the assessee and there being no adverse material on record to substantiate that R&D expenses were incurred for purposes other than assessee's business, we sustain the findings of the Ld. CIT(A) and reject this ground of the Revenue.

Ground No. 4: Refund accrued out of excise duty paid-Rs. 42,81,469/-

8.15 The Ld. AO discussed this issue in para 39 page 23-24 of his order. The Ld. AO noticed that the assesee paid excise duty in respect of Guwahati Unit to the tune of Rs. 42,81,469/- which the assessee is eligible to get the refund to the extent of duty paid thereon. He observed that the assesee is following mercantile system of accountancy and the exemption is accrued as per the certificate issued by Central Excise Department. In the absence of any clear explanation furnished by the assessee with documentary evidences, he added back the impugned sum to the income of the assessee.

8.16 Before the Ld. CIT(A) the assessee submitted that excise duty is paid on the various purchases made during the year and as per excise law, excise duty paid at the time of purchases is not refundable. Hence, no such refund accrued from the excise department to the assesee. It was argued before the Ld. CIT(A) that since the amount of excise duty paid through CENVAT credit is not entitled to refund, the same was debited to P&L account. The Ld. CIT(A) gave relief to the assesee recording the following findings in para 9.13 of his appellate order :-

> *"9.13 I have considered the submissions made by the authorized representative of the appellant. I have gone through the findings of the AO in the impugned assessment order and remand report. I have also examined the order of the Assistant Commissioner, Central Excise, Bhangagarh, Guwahati dated 18.10.2001 (PB 229-230), according to which Guwahati Unit of the appellant is eligible for the benefit of exemption of excise duty by way of refund to the extent of duty paid through personal ledger account for the products allowed to be manufactured and cleared from the said unit for a period not exceeding 10 years w.e.f. 30.5.2001 i.e. from the date of commencement of commercial production or till the breach of any of the terms of the said notification or the related Acts / Rules for the time being in force subject to PMT and relevant notification having been in force. The amount of excise duty paid is shown at PB 84 of the paper book, which is Excise duty account, and the account shows a debit balance (expense) of Rs. 42,81,469/- which infact has been added by the A.O., and which is part of the Profit and Loss A/c. PB 85 is copy of ledger account of Excise duty payable. It is seen that this account is credited by the excise duty payable first, and when the excise duty is paid the same is debited and after each month the balance excise duty payable becomes nil, since the amount payable is paid by the appellant. The amount paid of excise duty is the amount routed through excise duty payable account. This account is at PB 84 of the paper book, and shows that it is a part of the Manufacturing expenses a/c of the appellant. A perusal of this account shows that this account is debited by the appellant for*

each month on account of excise duty, which increases the cost of the material. Subsequently, the same is credited with the amount of excise duty refund received by the appellant and this amount is credited, which means in fact only excise duty which has been paid by the appellant is charged to the expense account. When this excise duty is paid /deposited by the appellant, the PLA account is debited by that amount and when the refund is received the same is credited. Appellant's unit being exempt for payment of excise duty, can make the claim of refund of excise duty paid on sales made by the appellant from these units. When the amount of refund of excise duty is received, the same is adjusted through PLA account, the amount of refund is accordingly shown as income of the appellant. Thus, it A.No.23/2009-10 Assessment year 2004-05 appears that the A.O. has not appreciated the accounting system of the appellant for Excise duty paid / refunded through CENVAT, and made the addition of the amount claimed by the appellant in its profit and loss account which infact is an expense of the appellant, on the purchases made by the appellant. Thus the claim of the appellant is bona fide. I also find from the profit and loss account for the period ending 31.3.2003 that similar expenses for Rs.93,06,540/- were claimed by the appellant, and the same was allowed even after special audit and no such disallowance was made by the A.O. and there is no change in facts and accounting system of the appellant for the year under appeal. In view of these discussions, and after verifying the records of the appellant, produced before me, and following the principle of consistency, I find that there is no wrong claim made by the appellant on account of excise duty debited to Profit and Loss A/c, and therefore, addition made on account of alleged refund is directed to be deleted. This ground of appeal is allowed and the appellant's income shall be reduced by Rs.42,81,469/-."

8.17 The Revenue's case is that under the accrual system of accounting followed by the assessee, the excise duty refund sanctioned by excise department was required to be credited in P&L account which the assessee did not do.

8.18 We do not agree. The assessee pointed out that the AO misappreciated and misunderstood the facts of the assessee's case. He picked up the figure of Rs. 42,81,469/- from P&L account of Guwahati unit whrerein the said amount was debited under the head 'manufacturing expenses'. The Ld. AO incorrectly interpreted that the said amount was refundable by excise department to the assessee and should have been shown as income which was not done. In fact, the assessee was not entitled to refund of excise duty paid on the amount of purchases (input) and the assessee asserted that no such amount has so far been received by the assessee. We concur with the finding of the Ld. CIT(A) that the claim of the assessee is bonafide. Since

similar claim in the preceding year was allowed, we do not find any reason for the impugned addition which has rightly been directed by the Ld. CIT(A) to be deleted. Accordingly, we reject this ground of the Revenue.

Ground 5 : Wastage – Rs. 13,43,584/-

8.19 The Ld. AO discussed this issue in para 41 at page 25 of his order. The Ld. AO observed that in the list of closing stock, raw materials consumed and part details of finished products manufactured showed that the assessee has shown large unit of wastages shown under each products. He made the impugned addition for the reason that in the absence of any details of modus of manufacturing activities, the outcome of wastage of Ayurvedic products was not acceptable.

8.20 Before the Ld. CIT(A) the assessee contended that the wastage of approx. 1.12% of finished goods was negligible. These wastages were duly recorded in books of account which has been accepted by the excise and sales tax deptt. The Ld. AO multiplied the wastage with MRP without understanding the fact that the wastage had already been accounted for in the quantitative statement. The addition is double blow for the assessee. The Ld. CIT(A) deleted the impugned addition and recorded his finding in para 11.14 at page 62-63 of the appellate order as under :-

> *"11.14 I have considered the submissions made by the authorised representative of the appellant company. It has been observed by me that even in the immediately preceding year no such addition was made by the A.O. on this account. Ld. Counsel, referred me to Annexure 9 of 3CD report of the immediately preceding year, where similar claim was made for wastage of different items, and the same was allowed. Even for A.Y 2006-07, for which appeal has been decided by CIT(A) (my predecessor), there is no such addition made by the A.O. on this ground. No addition has been made for A.Y. 2005-06 as well. Ld.*

Counsel further stressed that the books of accounts of the appellant are audited by statutory auditors, and the wastage has been discussed in the audit report in each year. Ld. AR further argued that the units of the appellant are subject to audit by the excise department as well and no such defect has ever been pointed out by them on this issue. It is observed from the impugned assessment order as well that the AO relied on the figures declared by the appellant in Annexure 6 of the 3 CD report. Ld. AR has given explanation for the wastage claimed stating that it was due to very hot mixture filled in the tubes because of which the tubes got leaked and these tubes were of no use and also were not in saleable position in the market. The appellant is justified in making the assertion. It is difficult to imagine that in such manufacturing systems there would not be any wastage, either because of mishandling or because of disproportion. The AO has not brought on record any material to contradict the stand of the appellant and to justify the reasons to disbelieve the factum of normal wastages in such a manufacturing unit. Considering the circumstances and facts explained by the appellant, I do not find any reasons to uphold the addition made by the AO in the absence of any specific reason given to make the impugned addition. In view of the discussions made, the addition made of Rs. 13,43,584/- is hereby deleted. This ground of appeal is decided in favour of the appellant."

8.21 We observed that no addition on account of wastage was made in the preceding AY 2003-04 or in the succeeding AY 2005-06 though similar claim of wastage was made in those years also. For AY 2006-07 as well no such addition was made. The assessee explained that due to hot mixtures filled in the tubes, the tubes get leaked which were of no use and not saleable in the market. We agree with the Ld. CIT(A) that wastage in such a manufacturing unit is normal feature. The impugned addition is not sustainable. We

uphold the findings of the Ld. CIT(A) and decide this ground against the Revenue.

Ground 6: Proportionate Interest paid to Bank and other disallowed- Rs. 48,99,034/-

8.22 This issue is discussed by the Ld. AO in para 42 at page 26 to 28 of his order. The Ld. AO alleged that despite being asked the assesee did not furnish details of loans and advances given to various parties and advances received by him. Moreover, the assessee did not file details of loans taken from banks, its utilization in his business. The assessee also did not submit reconciliation of interest received and interest paid. The Ld. AO observed that the assesee obtained working capital loan from NEDFI and on the same day the money was transferred to M/s. Ozone Pharmaceuticals where the assesee is substantially interested. The Ld. AO further observed that the assessee took interest bearing loan from NEDFI and later utilized it for his sister concern, hence, interest paid on such loans is not allowable as business expenditure. For the reasons aforesaid, he made the impugned disallowance.

8.23 On appeal the Ld. CIT(A) deleted the impugned disallowance observing in para 12.12 on page 67-68 of the appellate order as under :-

> *"12.12 On examination of the impugned order, I find that the A.O. has made this addition of Rs.48,99,034/- i.e. the total amount of interest paid by the appellant in respect of loans taken, details of which are given by the A.O. at page 26 of the impugned order. It is seen that the amount is paid by the appellant to Citi Bank, term loan interest, interest paid to NEDFI, for auto finance, and some interest is paid on unsecured loans. The A.O. has further mentioned at page 27 of the impugned order, that appellant had secured loans of Rs.2,20,14,879/-. It is no where stated by the A.O. as to which part of the loan was not used by the appellant for his business purpose. Details of loans of Rs.2,20,14,879/- was submitted by the appellant with his reply dated 30.12.2010. It was submitted by the Ld. Counsel that the AO's allegation that the amount of loan received from NEDFI was utilized by transferring to M/s. OPL (Ozone Pharmaceuticals Ltd.), was factually incorrect, as no specific incidence of diverting funds to M/s. Ozone Pharmaceuticals Limited has been brought on record by the A.O. As per these details, secured loans are reduced to Rs.2,20,14,879/- as compared to the immediately preceding year's figure of Rs.3,31,99,717/-. It is further observed that during the*

year the appellant has received fresh term loan of Rs.40,56,272/- from Standard Chartered Bank, which has been utilised by the appellant for business purposes. Moreover, the A.O. has also not been able to bring on record any specific adverse finding for this loan or any other loan obtained during the year by the appellant. It has been further argued by him that on one side the A.O. has mentioned that the appellant has transferred the sum to M/s. OPL while in Para 49 of the impugned order, he has discussed about deemed dividend u/s 2(22)(e), alleging that the appellant has received the funds from M/s. OPL. The Ld. Counsel stated that in fact the appellant has sold products to M/s. OPL and against the supplies made, received the payments. The other increase in secured loan is in respect of term loan from NEDFI at Guwahati which has increased to Rs. 18,00,076/- as compared to Rs.7,80,076/- in the immediately preceding year, which proves there is no change in the situation as that of the immediately preceding year, so far as usage of these secured loans is concerned. More so, following the findings of the Hon'ble ITAT, the appellant's own funds are much more than the advances to sister concerns, and more particularly when there is no change as compared to the immediately preceding year, and also because nothing specific could be brought on record by the A.O. to justify the addition made, I do not find any justification to confirm the addition so made. Since the disallowance has been made by the A.O. on ad hoc basis, such disallowance would not stand the test of appeal and therefore, the A.O. is directed to delete the same. Addition made of Rs.48,99,034/- is therefore, deleted. This ground of appeal is allowed. "

8.24 The grievance of the Revenue is that the interest bearing loan obtained by the assessee from NEDFI was utilised by M/s. OPL, a sister concern without getting any interest. Hence impugned deletion is not justified.

8.25 We do not agree. We find that the Ld. AO disallowed the entire claim of interest of Rs. 48,99,034/- paid by him which included interest paid on secured and unsecured loans. In the preceding AY 2003-04, disallowance of Rs. 4,24,109/- maintained by the Ld. CIT(A) for the reason that loan was diverted to sister concern was also deleted by the Tribunal in its order dated 27.02.2009 holding that the assesee had enough funds to cover advances to OPL. Moreover, the Ld. CIT(A) found that the allegation of transfer of loan obtained from NEDFI to OPL was factually incorrect as no specific instance of diverting funds to OPL was brought on record by the Ld. AO. The Ld. AO made the impugned disallowance on ad-hoc basis which cannot be sustained. We endorse the findings of the Ld. CIT(A) and decide this ground against the Revenue.

Ground 7 :Unsecured loans –Rs. 34,33,200/-

8.26 The Ld. AO discussed this issue at para 43 on page 28-29 of his order. The Ld. AO found that the assesee has shown unsecured loan to the tune of Rs. 34,33,200/-. He made the impugned addition for the reason that the assessee failed to discharge his onus of proving the genuineness of the transaction and creditworthiness of the lender.

8.27 On appeal, the Ld. CIT(A) deleted the impugned addition observing in para 13.6 page 70-71 of the appellate order as under :-

> *"13.6 I have examined the impugned order, the remand report, and also considered the submissions made by the Ld. Counsel, and averments made in the rejoinder filed. The A.O. has not offered any comment in his report on this addition made in the assessment order. The Ld. Counsel referred me to various confirmations filed and placed at PB 432 to 444 of the paper book which are confirmations in respect of other unsecured loan creditors. After examining all these, I have also examined the balance sheet filed by the appellant. It is seen that as on 31.3.2003 there were outstanding unsecured loans of Rs.76,95,000/- which included Security from C&F agents & Stockists at Rs.65,00,000/- and others as Rs.l 1,95,000/- . It was explained that inadvertently some of the unsecured loans were wrongly included in the figure of unsecured creditor, and as such the figure was shown at Rs.l 1,95,000/-. The details are available at PB 112 and PB 409. It is seen that infact there are fresh unsecured loans of Rs.l0,13,200/- which includes loan of Rs.l0,00,000/- from Smt. Anupama Verma raised by the appellant during the year, for which confirmation has also been filed by the appellant. From these details filed it has been observed that during the year under consideration the appellant received further new loan of Rs.l0,00,000/- from Mrs. Anupama Verma, besides a previous loan of Rs.2,60,000/- from her outstanding as on 31.3.2003. In view of these facts, the new unsecured loan is of Rs.l0,00,000/- only raised by the appellant during the year under consideration from Mrs. Anupama Verma. The rest of the loans are brought forward balances of unsecured loans from the immediately preceding year. As regards confirmations filed which are placed at PB-114-116, it is observed that there are three confirmations, in which balance of each loan taken from Mrs. Anupama Verma is confirmed independently. The total unsecured loan raised was of Rs. 12,60,000/- from Mrs. Anupama Verma including fresh loan of Rs. 10,00,000/- raised by the appellant during the impugned year which is confirmed by her. Her Confirmation is available at PB 114. PAN of Mrs. Anupama Verma is also provided During the course of appellate proceedings, it was informed by the Id. AR that these confirmations were directly called by the A.O. from these parties. Copy of reply dated 15.1.2009 submitted by Smt. Anupama Verma is placed at PB 513 of the Paper book, which confirms, her address and the fact that she confirmed directly in response to notice issued by the A.O. Copy of the bank statement was also forwarded by her which is placed at PB 514. Her copy of H R is placed at PB 515 of the paper book.*

Confirmation filed of Mrs. Anupama Verma is placed at PB 114-116. The appellant has been able to prove identity and creditworthiness of Mrs. Verma and transaction has also been confirmed by her. There is nothing in the possession of the A.O. to doubt the genuineness of the transaction. The A.O. has totally ignored these facts and even during remand proceedings he has not brought anything on record to negate the claim of the appellant and to reject the evidences placed by the appellant on record. In view of these reasons no addition can be made by the A.O. for the unsecured credit balances brought forward, and for the new loan, since confirmation has been filed, and the unsecured loan creditor has also confirmed the fact of loan given, together with her copy of ITR, and bank statement. Considering all these facts, I am of the view that the appellant has discharged his onus in respect of the unsecured loan creditors and no addition can be made for unsecured loans as has been done by the A.O. in the impugned order before me."

8.28 We concur with the finding of the Ld. CIT(A) that addition cannot be made for the unsecured credit balances brought forward. For the new unsecured loan obtained by the assessee, confirmation was brought on record. The creditor confirmed having advanced the loan; copy of ITR and bank statement was filed in support. The impugned addition is totally unjustified and the Ld. CIT(A) has rightly deleted the same. The Revenue's ground is rejected.

Ground 8 : Disallowance out of sundry creditors - Rs. 1,02,56,704/-

8.29 The Ld. AO discussed this issue in para 44 at page 29 of his order. The Ld. AO observed that the assessee has shown a sum of Rs. 1.02,56,704/- as sundry creditors in the balance sheet. The assessee did not furnish complete details of name and address of sundry creditors, the genuineness of trade transactions supported with bills and vouchers. Complete books of account have never been produced for examination. Complete confirmation has not been filed nor the persons have been produced for examination. A few confirmations filed have incomplete details. With these observations the Ld. AO added the impugned sum to the income of the assessee.

8.30 Before the Ld. CIT(A) the assessee contended that the entire amount of sundry creditors has been disallowed on ad-hoc basis. The genuineness of

creditors was proved by furnishing complete details of purchases made from the creditors and no defect in the purchases have been pointed out and were accepted in totality. The Ld. AO did not consider this while making the addition. In remand proceedings also the assessee submitted all details. The Ld. AO made independent inquires from all these parties and could not find any defect. The Ld. CIT(A) directed the Ld. AO to delete the impugned ad-hoc addition by recording the following finding in para 14.6 of his appellate order at page 73-74:-

"14.6 I have examined the impugned order. I find that the appellant has shown total sundry creditors of Rs. 1,02,56,704/- as on 31.3.2004. It is not the case of the AO that any purchase shown was found bogus. The AO has not disputed the purchases made by the appellant. In the immediate preceding year the total sundry creditors were shown by the appellant as on 31.3.2003 at Rs. 8,06,61,637/-. I have also examined the copies of ledger accounts of these unsecured creditors enclosed by the appellant in the paper books submitted, and from these it is found that in many of the accounts, balances are being forwarded from the previous year. Besides this, there are number of transactions in each account. The AO has not disputed any transaction in any account of any of the sundry creditors. Thus there seems to be no reason to make addition of the closing balance of unsecured creditors appearing in the balance sheet of the appellant as on 31.3.2004, when the appellant has furnished the copies of the ledger accounts of all these sundry creditors and their complete addresses as well in respect of all units of the appellant. I have also seen the remand report of the A.O. wherein no comments are offered by the A.O. on this addition made. I have futher considered the various submissions made by the Ld. Counsel of the appellant company and his rejoinder on the remand report. The Ld. Counsel also referred to reply dated 3.6.2008 (PB 430) submitted before my predecessor during the course of appellate proceedings. In this reply, the appellant submitted the complete details such as names, addresses, PANs etc. of the parties to the Assessing Officer on 16.5.2008 (Refer PB 454) wherein he specifically asked the A.O. to inform in case any further information was required by him in respect of the sundry creditors. Ld. AR further stated that similar details were again asked by the A.O., and the appellant furnished the same again before the A.O. (now placed in paper book at PB 525 to 803 which consists of confirmations from various sundry creditors, and the copies of ledger accounts of the appellant in their books). Ld.AR further stressed that the A.O. also made independent verifications from various sundry creditors, which were also replied to by them directly. The A.O. could bring no specific incidence on record where any of the parties would have not confirmed the balance. No adverse comments were offered by the A.O. in his remand report on this issue. It is observed from all these details and evidences furnished, that the Assessing Officer after examining all the details furnished by the appellant, neither during the course of assessment proceedings, nor during the course of remand proceedings, specifically asked for any particular sundry creditor who was not found genuine in the opinion of the Assessing officer. The A.O. has added the entire sundry creditors, without examining as to what amount was outstanding even on 1.4.2003, and which of the sundry creditors was bogus or doubtful. The addition made is without

verifying the details and evidences submitted by the appellant in this regard, it is not the case of the A.O. that any specific creditor has denied any balance. In view of these reasons, and after verifying the evidences placed on record by the appellant during the course of assessment proceedings, 1 do not find any merit to accept the contention of the A.O. to make the impugned ad-hoc addition of Rs. 1,02,56,704/- of the balance appearing of unsecured creditors in the Balance sheet, and therefore, direct the A.O. to delete the same."

8.31 The Revenue is in support of the Ld. AO. But we are not inclined to accept the view of the Revenue. The assessee submitted before the Ld. AO the list of sundry creditors and their ledger account as appearing in his books. Name, address, PAN of the parties were also submitted. Purchases made by the assessee from the creditors have never been doubted and accepted in toto. The Ld. CIT(A) examined the ledger accounts of the creditors and found that in many of the accounts balances are being forwarded from the previous year. In independent inquiry made by the Ld. AO directly, no incriminating evidence could be brought on record. All the parties replied. It is astonishing to notice that the entire sum of sundry creditors appearing in the balance sheet has been added without even examining the outstanding balance brought forward from the earlier year. None of the creditor denied the balance appearing in the ledger account in the books of the assessee. The ad-hoc addition is without any basis. We hold that the Ld. CIT(A) was fully justified in deleting the impugned addition. The ground raised by the Revenue is decided against the Revenue.

Ground 9 : Expenses not relating to business- Rs. 28,950/-

8.32 The Ld. AO noticed from the details of fixed assets that the assessee incurred an expenditure of Rs. 28,950/- towards furniture provided at the residence of one Shri Dipak Singh at Guwahati. Since the business exigency was not established, the Ld. AO made the impugned disallowance. The assessee explained that Shri Dipak Singh is his employee who resided in guest house of the assessee at Guwahati unit. The expenditure was incurred on account of furniture for guest house where Shri Dipak Singh resided. The assessee is paying rent of the guest house which is wholly for the business

purposes. The Ld. CIT(A) deleted the impugned disallowance with the following observation and findings :-

"15.5 I have considered the submissions made by the authorized representative of the appellant company and the observations made by the A.O. in the impugned order. It is seen from the profit and loss account that no such expense has been debited to profit and loss account which might affect the profit declared. The AO has infact taken this amount from the amount spent on addition made to assets. In any case, the AO could have disallowed the depreciation, if he was not satisfied with the explanation given by the appellant. Ld. AR explained before me that the amount was spent for purchase of furniture for one of his employees at Guwahati unit, and the asset was for official use of the appellant. It is not denied that the appellant is running its unit at Guwahati. Merely because the appellant has purchased an asset for the same which is being used in a remote are by an employee of the appellant, cannot make the expense s a personal expense of the appellant, and cannot be disallowed. The addition made is, therefore, directed to be deleted."

8.33 The impugned disallowance is totally unwarranted. The Ld. AO picked up the amount of Rs. 28,950/- from addition made to assets. We agree with the Ld. CIT(A) that the amount spent towards purchase of asset for use in a remote area by an employee of the assessee cannot be disallowed as personal expense of the assessee. The Revenue's ground is decided against it.

Ground 10 : Undisclosed income from sale of closing stock of preceding year – Rs. 11,70,847/-

8.34 The Ld. AO observed in para 48 at page 33 of his order that in the preceding year the assessee had declared closing stock of 75783 copies of magazines in the trading account but in this year the opening stock of magazines is nil. The assessee failed to advance any reply regarding the discrepancy. He, therefore, added the value of 75783 magazines amounting to Rs. 11,70,847/- to the income of the assessee. On appeal, the Ld. CIT(A) agreed with the contention of the assessee that after the new print of magazine, the old magazine has no value and refuted the view of the Ld. AO that the value of unsold stock not declared of the earlier year was having any value which was to be shown as closing stock. However, if the closing stock of the preceding year is considered as the opening stock of AY 2004-

05, that would result in lowering of the income declared by the assessee. We agree with the reasoning given by the Ld. CIT(A) and uphold his decision to delete the impugned addition and reject this ground of the Revenue.

Ground 11 : Deduction under section 80IB of the Act-Rs. 1,21,84,143/-

8.35 The Ld. AO has discussed this issue in para 18-27 at page 10-17 of his order. The Ld. AO observed that the assessee has not satisfied the conditions for claim under section 80IB of the Act, namely that it should be a new undertaking; it should not be formed by transfer of old plant and machinery; it should manufacture or produce articles other than non-priority items given in the Eleventh Schedule; manufacture or production should be started within a stipulated time limit; it should employee 10/20 workers and that return of income should be submitted on or before due date of submission of return of income and except this condition assessee has not fulfilled any of the other above conditions.

8.36 According to the Ld. AO Guwahati unit of the assessee is result of splitting of existing unit. Similar products with similar unit with similar composition and size have been manufactured/produced from two units, i.e. Baddi unit and Guwahati unit at the same time. In the absence of evidence it is not established that altogether new machines have been purchased for setting up of unit at Guwahati. The assessee has not fulfilled the condition of manufacturing or production of a new thing ready for commercial exploiting as supporting evidence has not been produced. Regarding employment of manpower, the Ld. AO stated that salary certificate, appointment letter, attendance register, ESI / PF certificate or any other proof for specifying the number of employee is as per the specified number have not been produced.

8.37 Before the Ld. CIT(A), the assessee vide letter dated 16.04.2008 made submissions which are incorporated in the appellate order in paras 20.15 to 20.85. Thereafter the Ld. CIT(A) recorded his findings in para 80.86 to 80.93 thereof. We have perused the contentions of the assessee raised in the rebuttal of the Ld. AO's point of view as also the observations and findings of the Ld. CIT(A).

8.38 Regarding employment of manpower the Ld. CIT(A) observed that during the year the assessee had employed more than 20 persons. This issue was before the Tribunal in AY 2003-04 and the Tribunal relying on the daily attendance register, the details of contributions to PF and ESIC and certificate under Sales Tax Act came to the conclusion that more than 10 workers were employed by the assessee. The Tribunal had also observed that AY 2003-04 was the second year of the setting up of the unit and that the provisions of section 80IB(4) were applicable to the assessee and therefore the assessee is entitled to deduction of whole of the profit in the initial assessment year and subsequent four years and thereafter 25% of the profits is deductible in computing the total income for the rest of the period of deduction. The Ld. CIT(A) observed that AY 2004-05 was the third year and that the facts being similar to AY 2003-04, in his considered view, Guwahati unit of the assessee is eligible for deduction under section 80IB of the Act.

8.39 The Ld. CIT(A) further observed that Tribunal in para 23.12 of its order discussed that the deduction is based upon the manufacture of an article or thing. It is an admitted position that the assessee is producing ayurvedic medicines which are articles or things. Therefore, the condition laid down in sub-section (3) is also satisfied. The Tribunal in para 23.13 recorded the finding that the Guwahati unit was newly set up with new machinery for production of ayurvedic medicines.

8.40 The Ld. CIT(A) concluded his findings recording in para 20.91 and 20.92 as under :-

"20.91 On maintenance of books of accounts, Hon'ble ITAT held in para 23.15 of their order that with regard to books of account of the Guwahati unit not being properly maintained, "there is no evidence to that effect as the books have been audited and produced before the lower authorities, including before the statutory auditors. Audit report u/s 44AB has also been filed. We have also seen that there was no transfer of finished goods from the Baddi unit to the Guwahati unit and the confusion arose because of the narration of "stock transfer" in bill no. 17 of the Guwahati unit were exported through the head office and accounted for in the books of the Baddi unit, as was usual in respect of the exports. We are also of the view that the results of the two units are not comparable and in any case if the deferred expenditure of advertisement of about Rs.8 crores, which has already been discussed by us and higher advertisement expenses in the Baddi unit are taken into account, then, there will be hardly any difference in the working of the two units. We may hasten to add that such a comparison is not a material factor for grant of deduction u/s 80IB. The fact of the matter is that the A. O. merely reproduced comparison and comments made by the statutory auditors and proceeded to make assessment on that basis without examining the issue independently on his own. Thus, it is held that his conclusion in this behalf was not based on any evidence on record. "

20.92 From the above, it is clear that the ITAT has discussed all the conditions which are relevant for claim of deduction u/s 80IB of the Act and held that the appellant is entitled to deduction u/s 80IB. During the course of present proceedings for the impugned year also, the appellant has been asked to file the documentary evidence in support of the condition laid down as per section 80IB(2)(iv) in response to which the appellant company filed copies of wages register of Guwahati Unit for full year which shows that the appellant has fulfilled this condition of employing more than the requisite number of workers as stipulated by Law for the year under consideration. Regarding the Addl. CIT's contention that the Ayurvedic medicine industry does not figure in the list of notified industries as per Notification No.S.0.627/(E) dated 04.08.1999 and hence no deduction u/s 80IB is allowable, it is observed that the said notification has been issued for the purpose of second proviso to section 80IB(4) of the Act. The second proviso says that An case of such industry in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred percent of profits and gains for a period of ten assessment-years, and the total period of deduction shall in such a case not exceed ten assessment years'. On this issue, the Hon'ble ITAT has also rendered a decision as follows:-

"The absence of notification of Ayurvedic medicines in the notification can only lead to conclusion that the further benefit granted in the second proviso is not available to the assessee and, therefore, the provision contained in sub section (4) is applicable to the case of the assessee, which means that he is entitled to the deduction of full profits in the initial five years and 25% of the profits for the rest of the period of the deduction."

8.41 There is no dispute that the facts remain identical with those in the preceding AY 2003-04 and the issue of deduction claimed by the assessee under section 80IB of the Act is fully covered by the decision of the Tribunal for the AY 2003-04. The Ld. CIT(A) directed the Ld. AO to allow deduction to

the assessee under section 80IB of the Act in view of the facts, evidences found on record and after verifying the same and following the order of the Tribunal for AY 2003-04, and therefore, we endorse his decision on the issue and decide this ground of the Revenue against it.

9. In the result, appeal of the Revenue for AY 2004-05 is dismissed.

Assessment Year 2006-07

10. The Revenue has taken six grounds of appeal as under :-

"*(1) The Ld. CIT(A) erred in facts and in law by deleting deduction of Rs. 4,28,12,655/- u/s 80IB of IT Act,1961.*

(2) The Ld. CIT(A) has erred in deleting the disallowance u/s 80IB ignoring the fact that Guwahati unit was formed by splitting up or reconstruction of business already in existence at Baddi Unit.

(3) That on the facts and circumstances of the case and in law the Ld CIT(A) erred in following the order of earlier years and in holding that comparative analysis of financial results, product details, unreasonable profitability difference etc. of the units at Guwahati & Baddi were not relevant to the issue under consideration as the AO had not invoked Section 80IB(13). That even if section not specifically mentioned, the AO had held at a number of places during this year that the profit of Guwahati unit was highly inflated by among others shifting of Guwahati unit expenses to Baddi unit on one hand and by shifting turnover of Baddi unit to Guwahati unit which is prohibited by various provisions of section 80IB of the Act.

(4) That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting disallowance of various expenses amounting to Rs. 86,00,000/- without appreciating the fact that the assessee has failed to justify that the expenses were incurred wholly and exclusively for the purpose of business and more so for the legitimate needs of the business.

(5) That on the facts and circumstances of the case and in law the Ld. CIT(A) erred while allowing expenses of Rs. 86,00,000/- disallowed by the assessing officer under various heads in simply following the decision of earlier year without appreciating the facts of this year.

The CIT(A) has ignored that fact that the Assessing Officer has brought out evidences that the expenditure were supported only by the self made vouchers and no justification for incurring such huge expenses was adduced by the assessee company before the Assessing Officer and the CIT(A) has failed to appreciate the fact that no bills were produced to support the expenditure and failed to show the purposes for which the expenditure were incurred.

(6) That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of Rs. 29,72,725/- made by the Assessing Officer on account of interest paid to banks ignoring the fact that assessee's own funds reflected in balance sheet stand deployed in certain assets and cannot be said that assets and funds were available with the assesee for making advances to the sister concerns.

The CIT(A) has failed to appreciate the fact that the interest bearing loans were raised and interest free loans were raised and interest free loans were advanced to sister concerns, as established by the Assessing Officer in the assessment order."

10.1 Ground No. 1, 2 and 3 relate to denial of deduction of Rs. 4,28,12,655/- claimed by the assessee under section 80IB of the Act which has been deleted by the Ld. CIT(A).

10.2 The Ld. AO discussed this issue in para 19-24 of his order dated 26.12.2008 under section 143(3) of the Act. According to him the basic conditions as stipulated for allowing deduction under section 80IB are not fulfilled for the reason that Guwahati unit is formed on account of business

restructuring of Baddi unit and employing 9 workers which is contrary to mandatory requirement as stipulated in sub-section (2) of section 80IB of the Act. He, therefore, made the impugned disallowance.

10.3 In his appellate order dated 29.03.2010 the Ld. CIT(A) quoted the observation of the Tribunal in ITA No. 1125/Del/2008 and 1867/Del/2008 dated 27.02.2009 for AY 2003-04 in para 3.5.1 wherein the Tribunal after noticing the facts on record held that "*all these facts lead to an inescapable conclusion that the Guwahati unit was newly set up with new machinery for production of ayurvedic medicines. In view thereof, we are not in opposition to uphold the findings of the assessing officer that the business of Baddi unit was carried out from the Guwahati unit. Thus we tend to agree with the Ld. CIT(A) in the matter, and it is held accordingly.*"

10.4 The Ld. CIT(A) also quoted the observations of the Tribunal on the number of workers employed and on maintenance of books of account and finally recorded his findings as under :-

"From the above, it is clear that the ITAT has discussed all the conditions which are relevant for claim of deduction u/s 80IB of the Act and held that the appellant company is entitled for deduction u/s 80IB. During the course of present proceedings, the appellant has been asked to file the documentary evidence in support of the condition laid down as per section 80IB(2)(iv) in response to which the appellant company filed copies of wages register of Guwahati Unit for full year along with copies of return of the Provident Fund which shows that the appellant has fulfilled this condition of employing more than the requisite number of workers as stipulated by Law for the year under consideration. Regarding the Addl. CIT's contention that the ayurvedic medicine industry does not figure in the list of notified industries as per Notification No.S.0.627/(E) dated 04M.1999 and hence no deduction u/s 80IB is allowable, it is observed that the said notification has been issued for the purpose of second proviso to section 80IB(4) of the ct. The second proviso says that An case of such industry in the North-Eastern Region,

as may be notified by the Central Government, the amount of deduction shall be hundred percent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years'. On this issue, the Hon'ble ITAT has also rendered a decision as follows:-

> *"The absence of notification of ayurvedic medicines in the notification can only lead to conclusion that the further benefit granted in the second proviso is not available to the assessee and, therefore, the provision contained in sub section (4) is applicable to the case of the assessee, which means that he is entitled to the deduction of full profits in the initial five years and 25% of the profits for the rest of the period of the deduction*

In view of above, the Department's contentions do not have any force and being a covered issue in favor of the appellant company by the ITAT order, I direct the assessing officer to allow the deduction to the appellant company u/s 80IB of the Act. This being the case, there is no requirement to adjudicate on the alternate claim of deduction u/s 80IC of the Act."

10.5 Similar disallowance of claim of deduction under section 80IB was made by the Ld. AO in AY 2004-05 which was deleted by the Ld. CIT(A). In our order of date for AY 2004-05 we have endorsed the findings of the Ld. CIT(A). The facts and circumstances remaining the same as in AY 2004-05, we do not find any substance in the appeal of the Revenue and reject the ground No. 1, 2 and 3 taken in AY 2006-07.

10.6 Ground No. 4 ad 5 relate to disallowance of various expenses amounting to Rs. 86,00,000/- made by the Ld. AO which has been deleted by the Ld. CIT(A). It is observed that the Ld. CIT(A) noticed the reasons given by the Ld. AO for the impugned disallowance on page 22 of the appellate order which mainly consist of non production of bills and vouchers and books of account. The Ld. CIT(A) observed that no disallowance can be made as the Ld. AO has failed to indicate any instances where the expenditure is proved to be either bogus and/or of non-business in nature. He further

observed that order-sheet notings nowhere suggested that the Ld. AO specially called for books of account to be produced for verification of expenditure along with the supporting documents. We agree with the findings and observations of the Ld. CIT(A) that ad-hoc disallowance of expenditure is not sustainable and accordingly reject ground no. 4 and 5 of the Revenue as well.

10.7 Ground no. 6 relates to disallowance of Rs. 29,72,725/- account of interest paid to banks made by the Ld. AO which has been deleted by the Ld. CIT(A). Briefly stated the Ld. AO noticed that the assessee has given loan of Rs. 57,41,224/- to M/s. Fourth Dimensions Media Ltd., a sister concern on which the assessee did not charge any interest whereas the assessee paid interest on capital loans taken from banks. He, therefore, disallowed 50% of interest paid to banks and other concerns which worked out to Rs. 29,72,725/-.

10.8 It was contended by the assessee before the Ld. CIT(A) that the impugned disallowance is on ad-hoc basis and without pointing out any incidence of fund diversion. The Ld. CIT(A) agreed with the contention of the assessee and observed that nowhere the Ld. AO has proved any nexus between the interest bearing funds and interest free advances made to the sister concern. We endorse the view of the Ld. CIT(A). We are also of the opinion that in the absence of direct nexus established by the Ld. AO between the money borrowed for the purpose of business and diversion thereof for giving interest free loan to sister concern, disallowance out of interest paid to bank and other concerns cannot be made. The Ld. CIT(A) has rightly deleted the impugned ad-hoc disallowance of Rs. 29,72,725/- and accordingly we decide this ground no. 6 also against the Revenue.

11. In the result, the appeal of the Revenue for AY 2006-07 is dismissed.

Assessment Year 2009-10

12. The Revenue has taken eight grounds as under:-

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in allowing the deduction u/s 80IB/80IC of the Act amounting to Rs.2,08,53,170/- by ignoring the fact that the same issue is pending with various appellate authorities.

2. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in ignoring the provision laid in 3rd proviso of section 80IB(4) of the Income Tax Act, 1961.

3. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance u/s 80IC of Rs.2,08,53,170/- by ignoring the fact that Guwahati unit was formed by splitting up or reconstruction of business already in existence at Baddi Unit.

4. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in following the order of earlier years and in holding that comparative analysis of financial results, production details, unreasonable profitability difference etc of the units at Guwahati & Baddi were not relevant to the issue under consideration as the AO had not invoked Section 80 1B(13). That even if section not specifically mentioned, the AO had held at a number of places during this year that the profit of Guwahati unit was highly inflated by, among others, shifting of Guwahati unit expenses to Baddi unit on one hand and by shifting turnover of Baddi unit to Guwahati unit which is prohibited by various provisions of section 80IC of the Act.

5. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting disallowance of various expenses amounting to Rs. 10,00,000/- without appreciating the fact that the assessee has failed to justify that the expenses were incurred wholly and exclusively for the purpose of business and more so for the legitimate needs of the business.

6. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in allowing expenses of Rs. 10,00,000/- disallowed by the

assessing officer under various heads by simply following the decision of earlier year without appreciating the facts of this year and also erred in failing to appreciate the fact that no bills wore produced to support the expenditure and failed to show the purposes for which the expenditure were incurred.

7. *On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting Le disallowance of Rs. 13,52,427/- made by the Assessing Officer on account of interest paid to banks by ignoring the fact that assessee's own funds reflected in the balance sheet stand deployed in certain assets and it cannot be said that assets and funds were available with the assessee for making advances to the sister concerns.*

8. *On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that the assessee has taken interest bearing capital loans from Banks and utilized the same for assessee's sister concern on which any interest paid is not allowable as business expenditure."*

12.1 Ground no. 1 to 4 relate to deduction of Rs. 2,08,53,170/- claimed by the assessee under section 80IB/80IC of the Act which was disallowed by the Ld. AO. But on appeal, the Ld. CIT(A) allowed the claim of the assessee. Aggrieved the Revenue is before us.

12.2 It is observed that the Ld. CIT(A) enumerated on page 16 of his appellate order the main observation of the Ld. AO for making the impugned disallowance. Relying on the order of the Tribunal for AY 2003-04 on the issue wherein the aforesaid observations of the Ld. AO have been dealt with by the Tribunal in its order (supra), the Ld. CIT(A) recorded the finding in para 4.1.4 at page 19 of his order that in AY 2009-10 also there is no change in the business activity of the assessee and no new facts have been brought on record by the Ld. AO. The Ld. CIT(A) further observed as under :-

"4.1.4 .....ln the instant AY 2009-10 the appellant claimed the deduction under the provision of sec 80IC of the Act. There is no dispute that the Guwahati unit of the appellant is located in notified area in EPIP, Amingaon, Guwahati in Assam. There being no article or thing specified in thirteenth schedule for industrial undertaking in notified area in NER, therefore, manufacture of any article or thing by an industrial undertaking in notified area in NER is eligible for deduction u/s 80IC. Therefore, under the new provisions of sec 80IC(2)(a)(iii) and 80IC(3)(i) the profits and gains derived from Guwahati unit is eligible for 100% deduction u/s 80IC(1) for a period of 10 assessment years commencing with initial assessment year 2002-03. The instant AY 2009-10 being the eighth year setting up of the unit, therefore, the Guwahati unit is eligible for 100% deduction u/s 80IC of the Act, provided profits and gains are derived from manufacture or production of any article or thing and other conditions specified therein are fulfilled.

4.1.5 Under the new provision of sec 801C, there is no restriction regarding number of workers to be engaged in the industrial undertaking. Therefore, disallowance of deduction u/s 80IC by the AO on the ground that required number of workers were not engaged in Guwahati unit, is erroneous and disallowance on this ground cannot be sustained. Although the number of workers being engaged is not a requirement, however, from the daily attendance register, Provident Fund & ESI contribution forms, it is observed that more than 100 workers were engaged in Guwahati Unit in the relevant previous year. It is also note worthy that the appellant by its submission dt. 30.11.2011 produced the wages register of the units at Guwahati along with certificates of EPF and Inspector of factories as an evidence of workers engaged in the Guwahati Unit.

4.1.6 On the issue whether the industrial undertaking is engaged in production of any article or thing during the relevant previous year, AO

called for evidence in respect of deduction claimed under chapter VIA as per questionnaire dt. 20.07.2011 and trading results of manufacturing unit and modus operandi as per order sheet recording dt. 01.12.2012. The assessee vide its submission dt. 30.11.2011, 09.12.2011 and 14.12.2011 furnished the details as called for. The assessee has also filed complete details of products manufactured and closing stock of finished goods unit wise as per its submission dated 09.12.2011 and 14.12.2011. From the particulars furnished it is evident that the assessee has carried out production of ayurvedic medicines. The requirement u/s 80IC is manufacture or production of article or thing. The AO has failed to show how the manufacture of ayurvedic medicines by the assessee does not involve any manufacturing or production activity. Moreover as observed earlier, business activity in instant assessment year is the same as in AY 2003-04, wherein ITAT held that appellant is producing ayurvedic medicines which are article or thing. Therefore, in the instant AY 2009-10 the condition laid down in sub-section 2(a) is satisfied.

4.1.7 The books have been audited and produced before AO as per assessee's reply to the AO dt. 30.11.2011. Copy of the ledger account of various items debited in the P&L account were furnished before the AO. Audit report u/s 44AB and 10CCB has also been filed. Not a single instance of transfer of finished goods or services from Baddi unit to the Guwahati unit is pointed out by the AO. The deduction u/s 80IC was claimed as per the audit report u/s 10CCB filed. Thus, all the conditions regarding grant of deduction have been satisfied. In view of the above, the deduction u/s 80IC of Rs. 2,08,53,170/- claimed by the appellant is allowed."

12.3 On careful consideration of the issue involved, we are of the view that the Ld. CIT(A) has dealt with the matter from all the angles and arrived at the conclusion that the assessee's claim of impugned deduction under

section 80IC is allowable. We concur with his conclusion. Finding no substance in ground no. 1 to 4 of the Revenue, we reject them.

12.4 Ground No. 5 and 6 relate to disallowance of expenses under various heads amounting in all to Rs. 10,00,000/- which stands deleted by the Ld. CIT(A). The Ld. AO disallowed Rs. 2,00,000/- each out of (i) sales promotion (ii) marketing (iii) general expenses (iv) repair and maintenance and (v) vehicle repair and maintenance aggregating to Rs. 10,00,000/- for the reason that the assessee has not produced complete books of account; that it was not proved that expenses incurred were wholly and exclusively for the purpose of business and that these were not supported by bills.

12.5 On appeal, the Ld. CIT(A) noted that similar disallowance was made in preceding last five years which were deleted by the Ld. CIT(A) as the additions were made on ad-hoc basis and nothing adverse was brought on record by the Ld. AO. In AY 2009-10 also similar disallowance has been made by the Ld. AO without bringing on record any specific adverse material which cannot be sustained. He deleted the impugned disallowance.

12.6 We are of the considered view that ad-hoc disallowance without bringing on record any adverse material is not sustainable. We observe that the Ld. AO required the assessee to produce the vouchers for the month of March, 2009. The assessee complied and the Ld. AO verified the same on test check basis but no defect was found. Therefore the impugned disallowance is not justified and hence has rightly been deleted by the Ld. CIT(A). Accordingly, we reject ground No. 5 and 6 of the Revenue as well.

12.7 Ground No. 7 and 8 relate to disallowance of Rs. 13,52,427/- made by the Ld. AO on account of interest paid to banks and others which has been deleted by the Ld. CIT(A). The Ld. AO found that the assessee paid interest of Rs. 90,16,177/- to banks and others. Since interest bearing loans obtained by the assessee from banks and others have later been utilised for the sister concern of the assessee, interest paid on such loans is not

allowable as business expenditure. He, therefore, disallowed 15% of the claim of interest paid at Rs. 90,16,177/- which worked out to Rs. 13,52,427/-.

12.8 The Ld. CIT(A) observed that similar disallowance was made in preceding six assessment years. However, the disallowance made in AY 2003-04 was deleted by the Tribunal for the reason that the assessee had sufficient funds of its own to cover the advances to sister concern Ozone Pharmaceuticals Ltd. In subsequent AYs 2004-05 to 2008-09, the Ld. CIT(A) deleted the disallowance as no specific instance of diverting funds to sister concern was brought on record by the Ld. AO. The Ld. CIT(A) further observed that in AY 2009-10 the Ld. AO made the disallowance even without mentioning the name of the sister concern to whom advance was allegedly made by the assessee. The loans obtained by the assessee from Citi Bank and ICICI Bank were utilised for working capital of the assessee and from the balance sheet and details of loans and advances it is obvious that no loan or advance was made to any relative or sister concern. In the absence of any instance of utilisation of borrowed fund for purposes other than business brought on record by the Ld. AO, the Ld. CIT(A) deleted the impugned addition.

12.9 Similar disallowance came up for our consideration in AY 2004-05 and AY 2006-07 and for the reasons recorded in our order of date, we have concurred with the findings of the Ld. CIT(A). Since the facts are similar, following our order for the AY 2004-05 and AY 2006-07, we agree with the view of the Ld. CIT(A) and reject ground No. 7 and 8 of the Revenue.

13. In the result, the appeal of the Revenue is dismissed for AY 2009-10.

14. In the net result, all the three appeals of the Revenue in ITA No. 325/Del/2012 for AY 2004-05, ITA No. 3054/Del/2010 for AY 2006-07 and ITA No. 3205/Del/2014 for AY 2009-10 are dismissed.

Order pronounced in the open court on 6th April, 2023.

sd/-	**sd/-**
(G. S. PANNU)	**(ASTHA CHANDRA)**
PRESIDENT	**JUDICIAL MEMBER**

Dated: 6th April, 2023

Veena

Copy forwarded to -
1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	