

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.5030/MUM/2001 (A.Y: 1997-98)**

ACIT (LTU-1) 29 <sup>th</sup> , Floor, Centre-1 World Trade Centre Cuffe Parade, Mumbai- 400075	v.	Bajaj Holdings Investment Ltd 226, Bajaj Bhavan, 2 <sup>nd</sup> Floor Jamnalal Bajaj Marg, Nariman Point Mumbai- 400021  <b>PAN: AAACB3370K</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**C.O.No. 96/MUM/2002  
[ARISING OUT OF ITA NO.5030/MUM/2001 (A.Y: 1997-98)]**

Bhajaj Auto Limited Bhajaj Bhavan Nariman Point Mumbai - 400020  <b>PAN: AAACB3370K</b>	v.	ACIT (LTU-1) 29 <sup>th</sup> , Floor, Centre-1 World Trade Centre Cuffe Parade, Mumbai- 400075
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Percy Pardiwala &amp; Ms. Vasanti Patel</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Rahul Kumar &amp; Shri Vranda U Matkarri</b>
<b>Date of Hearing</b>	<b>:</b>	<b>16.01.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>13.04.2023</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. This appeal and cross objection are filled by the revenue and assessee respectively, against order of Learned Commissioner of Income Tax (Appeals)-II, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 02.05.2001 for the A.Y.1997-98.

2. At the time of hearing, both the counsels fairly agreed that the issues raised in both these appeals are covered and adjudicated by the Coordinate Bench of the Tribunal in assessee's own case for the A.Ys.1990-91 to 1996-97. Copies of the orders are placed on record.

**ITA NO.5030/MUM/2001 (A.Y: 1997-98) – REVENUE APPEAL**

3. Revenue has raised following revised grounds in its appeal: -

*"On the facts and in the circumstances of the case and in law, the Ld. CIT(A), Mumbai has*

*(a) Erred in allowing the expenditure on dies & Moulds of Rs.7,16,16,415/- as a revenue expenditure even though the expenditure on purchase the assets results in enduring benefit of the assessee and therefore constitutes expenditure of capital nature.*

*(b) Erred in deleting the addition of Rs. 27,95,851/- representing penalty charges received from machinery suppliers despite the fact that these receipts fall within the definition of income u/s 2(24) of the Income Tax Act."*

*(c) Erred in direction the A.O. to allow deduction of Rs. 2,36,37,738/- towards expenditure even though expenditure on purchase these assets results in enduring benefit of the assess and therefore constitution an expenditure of capital nature.*

*(d) Erred in direction the A.O. to grand deduction u/s 80HH & 80IA on the profits derived from respective units without deducting depreciation of respective units which is contrary to the provisions of above section.*

*(e) Erred in direction the A.O. to grand deduction u/s 80HH & 80IA by including duty draw back. and interest which is contrary to the decision of Supreme Court in sterling Foods Ltd. (237ITR 579).*

*(f) Erred in direction the A.O. to exclude Sale Tax and Excise Duty from total turnover which is covered by the decision of Supreme Court in the Chowringes Sales Bureau Vs. CIT.*

*(g) Erred in holding that 90 % of the technical know-how charges of Rs. 41969433/- should be included for determining the profits of the business."*

*(h) Erred in directing the exclusion of Rs. 6,35,455/- for Sponsorship Lunch & Dinner and an amount of Rs. 11,12,981/- on Expenditure on entertainment on inside office/office premises while admitting that sponsorship lunch are entertainment expenditure for computation of deduction u/s 37(2) of the Income Tax Act.*

*(g) Erred in allowing expenditure of Rs. 7.42 Lakhs on lease land for 99 years as revenue expenditure.*

*(i) Erred in allowing addition of Rs. 9,60,123/- towards Wealth Tax liability by holding that the same is wealth tax paid by the assessee.*

*(k) Erred in allowing expenses on GDR issue as covered in Sec. 35D even though these expenses cannot be said to be on account of cost of project or for capital employed for the business of the assessee.*

*(l) Erred in holding that the sales and lease back transaction entered into by the assessee with M/s Tata Chemicals Ltd. (TCL) was genuine one and legally valid and that the lease assets is immovable property on which the assessee is entitled to claim depreciation.*

*(m) Erred in holding that the lease agreement with JCT Ltd. is genuine and the assessee company is entitled to depreciation on the assets leased to JCT Ltd.*

*(n) Erred in holding that sum of Rs. 4,60,02,985/- being the surplus on redemption of treasury bills is to be taxed as 'Capital Gains' and not revenue receipts and further allowing benefit of indexation to the assessee.*

*(o) Erred in holding that sum of Rs. 34,76,738/- being the surplus on redemption of treasury bills is to be taxed as 'Capital Gains' and not as revenue receipts and further allowing benefit of indexation to the assessee."*

**4.** At the outset, with regard to Ground No. (a), which is in respect of allowing the expenditure on dies & moulds of ₹.7,16,16,415/- as a revenue expenditure, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

5. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

6. Considered the rival submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

*"55. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1990-91 to 1994-95 (ITA No. 6324 & 6325/Mum/2010 and 6963 & 6964/Mum/2014) on merits. For the sake of clarity, relevant portion of the said decision is reproduced below:-*

*5.1. We find that for the Assessment Year 1991, 1993-94 & 1994-95, the only ground raised by the revenue is with regard to the direction of the Ld. CIT(A) in allowing the revenue expenditure in respect of replacement of jigs and fixtures and dies and moulds. The decision restored by us in ground no. 1 for Assessment Year 1990-91 would hold good for the same. Accordingly, the grounds raised by the revenue are dismissed.*

*56. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is **dismissed.**"*

**7.** We further observe that in assessee's own case for the immediately preceding Assessment Year i.e. A.Y. 1996-97, the Tribunal decided the above issue in favour of the assessee following the decision for the A.Y.1995-96. Respectfully following the above decisions and following the principle of consistency, the view taken by the Tribunal in A.Y. 1995-96 is respectfully followed, ground raised by the revenue is accordingly dismissed.

**8.** With regard to Ground No. (b) which is in respect of deleting the addition of ₹.27,95,851/- representing penalty charges received from machinery suppliers, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**9.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**10.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the

assessee in the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999, held as under: -

*"34. At the outset, Ld. AR brought to our notice para 4 of assessment order and para 3 of CIT(A)'s order and submitted that this issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1993-94 & 1994-95 (ITA No. 2739, 3175, 3491 & 3492/Mum/1999) on merits in favour of the assessee.*

*35. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the decision of ITAT.*

*36. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 1993-94 & 1994-95 (ITA No. 2739, 3175, 3491 & 3492/Mum/1999) on merits. For the sake of clarity, relevant portion of the decision in assessee's own for Assessment Year 1993-94 (ITA No. 3491/Mum/1999) is reproduced below:-*

*3. The first issue in this appeal filed by the revenue is against the deletion of an addition 22,80,791/- representing penalty charges received from machinery suppliers. Both the parties agreed that the issue is covered by the decision of this Tribunal in assessee's own case for the assessment year 1989-90 to 1992-93 wherein the receipt in question has been held as a capital receipt. The Tribunal in the above referred orders (ITA 2468/Mum/98 & ITA No. 2643/Mum/99 for the assessment year 1992-93 – 'J' Bench order dated 16<sup>th</sup> November, 2006, paragraph 15) has dealt with the issue in the following manner in rejecting the ground raised by the Revenue:-*

*"15. Ground no. 8 relates to the addition of Rs. 24,14,323/- being the penalty charges received from the suppliers of machineries on account of some default. The learned CIT(A) has deleted the addition following his order for Assessment Years 1989-90 to 1991-92 as well as the decision of Hon'ble Andhra Pradesh High Court in the case of Barium and Chemicals Ltd 168 ITR164. After hearing both the parties, we find that this issue is covered in favour of the assessee by the decisions of the Tribunal in assessee's own case pertaining to Assessment Years 1988-89 and 1991-92. Therefore following the same, the order of the learned CIT(A) is upheld and the ground o the Revenue is dismissed.*

*We do not have a reason deviate from this consistent view of the Tribunal on the issue. Accordingly, this ground of the revenue is rejected.*

*37. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is **dismissed.**"*

**11.** Further, in assessee's own case in ITA.No. 2230/Mum/2000 dated 20.06.2022 for the A.Y. 1996-97, Coordinate Bench, held as under: -

*"15. During the period relevant to assessment year under appeal, the assessee recovered penalty charges amounting to Rs.2,56,209/- from suppliers of the capital goods. The assessee claimed the aforesaid charges as cpital receipt, whereas, the Assessing Officer treated the aforesaid charges as revenue in nature. The CIT(A) following the order of his predecessor in Assessment Year 1991-92 to 1994-95 held the penalty charges to be capital receipt. We find that in the preceding Assessment Year this issue had come up in the appeal of assessee. The Co-ordinate Bench afterconsidering the decisions in assessee's own case for*

*Assessment Year 1993-94 in ITA No.3491/Mum/1999 decided the issue in favour of assessee holding penalty charges to be capital receipt. The aforesaid decision of the Tribunal has not been controverted by the Revenue, hence, following the same we uphold the findings of CIT(A) and dismiss ground No.2 in the appeal by Revenue."*

**12.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y.1996-97 is respectfully followed, accordingly, ground raised by therevenue is dismissed.

**13.** With regard to Ground No. (c) which is in respect of directing the Assessing Officer to allow deduction of ₹.2,36,37,738/- towards expenditure relating to purchase of jigs and fixtures, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**14.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**15.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the

assessee for the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

*"57. With regard to this ground, Ld. AR brought to our notice para 8-8.5 of assessment order and para 33 of CIT(A)'s order and submitted that the similar issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 1990-91 to 1994-95 (ITA No. 6324 & 6325/Mum/2010 and 6963 & 6964/Mum/2014) on merits in favour of the assessee.*

*58. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the decision of ITAT.*

*59. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 1990-91 to 1994-95 (ITA No. 6324 & 6325/Mum/2010 and 6963 & 6964/Mum/2014) on merits. For the sake of clarity, relevant portion of the said decision is reproduced below:-*

*3.1. We have heard rival submissions and perused the materials available on record. We find 'that the assessee company had incurred expenditure on jigs and fixtures amounting to Rs. 1,06,11,0647- including capital work in progress amounting to Rs.11,18,955/- during the Financial Year 1989-90 relevant to A.Y. 1990-91. Assessee submitted that these are nothing but replacement of jigs and fixtures in the main plant and machinery and would be eligible for deduction as revenue expenditure. During the course of assessment proceedings, the assessee requested the Id. AO to allow the sum of Rs.94,92,103/- as deduction in A.Y. 1990-91 and the balance sum of Rs.11,18,955/- in A.Y. 1991-92 since the said amount was lying in capital work in*

*progress and the same was not put to use during the A.Y. 1990-91. We find that the Id. AO observed that the expenditure incurred on replacement of jigs and fixtures would be capital expenditure and accordingly, granted depreciation thereon. It is not in dispute that assessee had indeed capitalised the replacement cost of jigs and fixtures in its books and had claimed depreciation as per Companies Act in its books. However, for the purpose of Income Tax, the assessee had claimed the said expenditure as the revenue expenditure on the ground that the said expenditure would fall under the category of "current repairs". We find that the present state of appellate proceedings is the second round of proceedings, since in the first round, this Tribunal had restored this issue to the file of the Id. CIT(A) for adjudication in the light of various judicial decisions relied upon by the assessee. We find that the expenditure incurred on replacement of jigs and fixtures are basically tooling aids required in the production process and these items are part of the machinery in automobile industry. We find that these jigs and fixtures need to be constantly replaced due to constant wear and tear and also due to changes in the design of the part. It is not in dispute that the 'expenditure incurred on jigs and fixtures at the time of first purchase together with the main plant and machinery was duly capitalised by the assessee at the time of first purchase for the purpose of Income Tax Act and depreciation claimed accordingly for the purpose of Income Tax Act. Later, whenever the said jigs and fixtures were replaced for the reasons stated supra, the assessee has been claiming the same as revenue expenditure for the purpose of Income Tax Act. We find that this argument was duly 'appreciated by the Id. CIT(A) and the Id. CIT(A) duly granted relief to the assessee in this regard by following the decision of his predecessor in assessee's own case for the A.Yrs 2002-03, 2005-06 and 2006-07.*

*60. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is*

*applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is **dismissed.**"*

**16.** Further, in assessee's own case for the A.Y. 1996-97 the Coordinate Bench in ITA.No. 2230/Mum/2000 dated 20.06.2022, held as under: -

*"16. The assessee has purchased Jigs and Fixtures to the tune of Rs.1,83,34,475/- to be used in production process. The assessee revenue. claimed the said expenditure as against the claim of assessee the Assessing Officer treated the expenditure as capital in nature and allowed depreciation on the same. In the first appellate proceedings, the CIT(A) reversed the findings of Assessing Officer and held the expenditure to be on revenue account. We find that in immediate preceding assessment year, the Tribunal following its earlier order in assessee's own case for assessment years 1990-91 to 1994 revenue. held the expenditure on Jigs and Fixtures as We find no infirmity in the findings of the CIT(A) on this issue. Ergo, ground No 3 raised in the appeal by Revenue is dismissed."*

**17.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

**18.** With regard to Ground No. (d) which is in respect of deduction u/s.80HH and 80-IA without deducting notional depreciation of individual units, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided

the issue in favour of the revenue and against the assessee. However, Ld. AR relied on the decision on Reliance Industries Limited v. ACIT in ITA.No. 7299/Mum/2017 and prayed that the ground raised by the revenue be dismissed.

**19.** On the other hand, Ld. DR objected to the submissions made by the Ld.AR and filed his written submissions vide letter dated 19.01.2023. For the sake of clarity, it is reproduced below: -

*"2. During, the hearing on 16.01.2023 for ground No. 4 which relates to "Erred in directing the A.O. to grant deduction u/s 80HH & 80IA on the profits derived from respective units without deducting depreciation of respective units which is contrary to the provision of the above section". During, the course of hearing, AR ha presented a case law, which was never put forth before the honorable bench. Thus, a written submission is being submitted.*

*3. Firstly, it is stated that the above ground of appeal is squarely covered in favour of department vide ITAT order of assessee's own case of AY 1993-94 to 1996-97. However, assessee in its argument asserted that the issue is covered in assessee's favour in ITAT order of Reliance industries vs ACIT ITA No.7299/M/2017. It is also submitted that the assessee has never cited the above case before the lower authorities and has not made any reference of the above case.*

*4. Secondly, it is submitted that the case cited by assessee counsel, is dealing with section 10AA and not with sections 80HH and 80IA(9) involved in this case. Further, it is also submitted that the above cited case has drawn its reference from the case of Vijay Industries dated 01.03.2019 wherein the issue before the Apex Court relates to the interpretation of section 80HH relevant to AY 1979-80 and 1980-81.*

*In the order of Vijay Industries, the Apex Court held as under "provisions of section 80AB, which is a deeming fiction to provide that for the purposes of deduction under Chapter VIA (heading C deduction in respect of certain income), only income as computed under the provisions of the Act shall be deemed to income eligible for deduction, are not clarificatory in nature and the provisions of section 80AB prospectively. are applicable Hence the same would not apply to AY 1979-80 and 1980-81.*

*5. As per the provision of section 80AB, for purpose of computing the deduction under this chapter, the amount of income in accordance with the provision of this Act and deduction under this chapter will be as per section 28 to 43D and depreciation will be levied as per section 32 of the Act. Further, section 80AB has been inserted in the Income Tax Act by the Finance Act No 2 and effective from 01.04.1981.*

*6. As the case under contention pertains to AY 1997-98, therefore section 80AB will be applicable in assessee's case. The case cited by assessee counsel of Reliance industries vs ACIT (ITA No.7299/M/2017) which is having issue regarding section 10AA is of no relevance here, hence the action of CIT(A) may be upheld."*

**20.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the revenue for the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999 dated 20.01.2021, held as under:-

*"42. Ld. DR brought to our notice para 13-13.7 of assessment order and para 8-8.5 of CIT(A)'s order and submitted that this issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1993-94 & 1994-95 (ITA No. 2739, 3175, 3491 & 3492/Mum/1999) on merits against the assessee.*

*43. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1993-94 & 1994-95 (ITA No. 2739, 3175, 3491 & 3492/Mum/1999) on merits. For the sake of clarity, relevant portion of the decision in assessee's own for Assessment Year 1993-94 (ITA No. 3491/Mum/1999) is reproduced below:-*

*6. The next issue in the revenue's appeal is against the grant of deductions u/s 80HH, 80I & 80IA on the profits of the respective units without deducting depreciation of the individual units. The issue is covered in favour of the revenue and against the assessee by the earlier decisions of the Tribunal for assessment years 1988-89 to 1992-93 in assessee's own case. Respectfully following the same we allow this ground of the revenue.*

*44. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. DR. Accordingly, this ground raised by the revenue is **allowed**.*

**21.** Further, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 for the A.Y. 1996-97 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"17. A perusal of the impugned order shows that the CIT(A) has directed the Assessing Officer to compute deduction u/s 80HH and 80IA without deducting depreciation from the profits of the eligible undertaking. The Revenue is in appeal against the said findings of the CIT(A). The Co-ordinate Bench in the appeal by Revenue for assessment year 1995-96 had accepted identical ground raised by the Revenue following the decision rendered in ITA*

*No.3491/M/1999 for assessment year 1993-94 by the Tribunal in assessee's own case No contrary material has been placed before us by the Ld.Counsel for the assessee. We find no reason to take a different view. Consequently, the fining of the CIT(A) on this issue are reversed and Ground No.4 raised in the appeal by Revenue is allowed."*

**22.** The decision relied on by the Ld. AR of the assessee in the case of Reliance Industries Limited v. ACIT (supra) is distinguishable to the facts and related to the section 10AA, accordingly, not applicable to the instant case. Therefore, respectfully following the decision in assessee's own case for the A.Y. 1996-97 and also following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed. Accordingly, ground raised by the revenue is allowed.

**23.** With regard to Ground No. (e) which is in respect of deduction u/s.80HH and 80-IA by including duty drawback and interest. Ld. AR of the assessee submitted that, Interest received on suppliers' advances and interest on delayed supplies considered part of eligible profits. Further, duty drawback received on account of duties on raw material content in the finished goods exported is also considered as a part of the eligible profits. Duty drawback received on export of products manufactured at the eligible

units was directly related to the profits of the said undertakings and went on to reduce the cost of manufacture of the products since it was received in respect of duty paid on the raw material contents in the finished goods exported. Interest received on suppliers advances and on delayed payments was directly related to the eligible units and went on to reduce the interest paid by the said units. In support of the above propositions, Ld. AR of the assessee relied on the following case laws: -

- a) CIT vs. Meghalaya Steels Ltd [2016] 383 ITR 217 (SC)*
- b) Arvind Footwear Pvt. Ltd. vs. DCIT (ITA No.363/Lkw/2010)*
- c) Suzlon Energy Limited vs. DCIT (32 taxmann.com 349) (Ahd) (Trib.)*
- d) CIT vs. Vidyut Corporation [2010] 324 ITR 221 (Bom)*
- e) CIT vs. Advance Detergents Ltd [2010] 339ITR 81 (Delhi)*

**24.** On the other hand, Ld. DR relied on the order of the Assessing Officer.

**25.** Considered the rival submissions and material placed on record, the issue raised before us is that whether the income earned by the assessee relating to interest earned from the suppliers and duty drawback from the customs are relating to the business carried on by the assessee or income from other sources. The issue under consideration is already considered by

various courts particularly the Hon'ble Supreme Court in the case of Meghalaya Steels Ltd (supra) and held as under: -

*"An important test in order to determine whether profits and gains are derived from business or an industrial undertaking is that there should be a direct nexus between such profits and gains and the industrial undertaking or business. Such nexus cannot be only incidental.*

*What is to be seen for the applicability of sections 80-IB and 80-IC is whether the profits and gains are derived from the business. So long as profits and gains emanate directly from the business itself, the fact that the immediate source of the subsidies is the Government would make no difference. The "profits and gains" spoken of by sections 80-IB and 80-IC have reference to net profit. And net profit can only be calculated by deducting from the sale price of an article all elements of cost which go into manufacturing or selling it. Thus understood, it is clear that profits and gains are derived from the business of the assessee, namely, profits arrived at after deducting manufacturing costs and selling costs reimbursed to the assessee by the Government concerned.*

*Section 28(b) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income-tax under the head "Profits and gains of business or profession". Y cash assistance received or receivable against exports schemes are included as being income under the head "Profits and gains of business or profession", subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "Profits and gains of business or profession", and not under the head "Income from other sources".*

*The assessee was engaged in the business of manufacture of steel and ferro silicon. For the year 2004-05 it claimed deduction under section 80-IB of the Income-tax Act, 1961 on the profits and gains*

*of its industrial undertaking which included transport subsidy, interest subsidy and power subsidy received from the Government. The Assessing Officer held that the amounts received by the assessee as subsidies did not qualify for deduction under section 80-IB(4) of the Act and disallowed the deduction on account of the three subsidies. The assessee preferred an appeal before the Commissioner (Appeals), who dismissed it. The Tribunal allowed the further appeal of the assessee and the High Court, on appeal by the Department, affirmed this Or further appeals:*

*Held, dismissing the appeals, that as all the four subsidies were recent receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products, there could certainly be said to be direct nexus between profits and gains of the industrial undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products."*

**26.** From the above, it is clear that the source of income earned by the assessee which has direct link to the business carried on by the assessee has to be considered to assess the same under the head income from Business and earned from the eligible unit. Therefore, it is eligible to get the benefit under section 80HH and 80IA. Accordingly, the ground raised by the revenue is dismissed.

**27.** With regard to Ground No. (f) which is in respect of deduction u/s.80HHC pertaining to exclusion of excise duty of ₹.518,72,77,930/- and exclusion of Sales-tax of ₹.131,65,350/-. Ld. AR of the assessee brought to

our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**28.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**29.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1781/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Ys. 1995-96, relevant portion is reproduced below:-

*"5. The first issue raised by the assessee in appeal is against the exclusion of excise duty and sales tax from total turnover for the purpose of computing deduction u/s 80HHC of the Act. A perusal of the assessment order and the order of CIT(A) would show that per se assessee's eligibility to claim deduction u/s 80HHC is not disputed. It is only some of the components of total income from exports on which the assessee has claimed benefit of deduction u/s 80HHC of the Act that have been excluded by the Assessing Officer while computing the deduction. In Assessment Year 1995-96 similar ground was raised by the assessee before the Tribunal assailing exclusion of excise duty and sales tax from the total turnover while computing deduction u/s 80HHC of the Act. The*

*Coordinate Bench in appeal by the assessee in ITA No.3144/Mum/1999(supra) decided this issue in favour of the assessee by placing reliance on the judgment rendered by Hon'ble Supreme Court of India in the case of CIT vs. Laxmi Machine Works, 290 ITR 667. The facts germane to the issue raised the present appeal are admittedly identical to the facts in Assessment Year 1995-96, therefore, following the decision of Co-ordinate Bench the ground No.1 raised in the appeal is allowed for parity of reasons.*

*5. In additional ground No.1 of the appeal the assessee has assailed exclusion of scrap sales, miscellaneous scrap sales and sundry sales from total turnover for the purpose of calculating deduction u/s 80HHC of the Act. The Id. Counsel for the assessee has placed reliance on the decision of Tribunal in assessee's own case for Assessment Year 1995-96 to contend that the assessee is eligible to claim deduction u/s.800HHC on scrap sale, miscellaneous scrap sale and sundry sale.*

*5.2 A perusal of the impugned order shows that the Assessing Officer had included scrap sales generated out of raw material used in manufacturing Rs.43,92,32,708/, miscellaneous scrap sales consisting of packing material like emptybarrels, steel covers, etc. amounting to Rs.4,82,77,276/- and sundry sales not covered in items above amounting to Rs.2,44,358/-. In the first appellate proceedings, the CIT(A) held that the sale of aforesaid items should be excluded from total turnover for the purpose of calculating deduction u/s 80HHC of the Act, as in Assessment Year 1995-96 these very items were excluded from total turnover while computing deduction u/s 80HHC of the Act. In assessment year 1995-96, the assessee carried the issue in appeal before the Tribunal in ITA No.3144/Mum/1999 (supra). The Co-ordinate Bench after placing reliance on the decision rendered by Hon'ble Supreme Court of India in the case of CIT vs. Punjab Stainless Steel Industries Ltd. 364 ITR 144 decided the issue in favour of assessee. Since, in the impugned assessment year there is no distinguishing feature, we see no reason to take a different view. Consequently, additional ground No.1 of the appeal is allowed."*

**30.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in assessee's own case for the A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

**31.** With regard to Ground No. (g) which is in respect of "Technical know-how" charges, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**32.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**33.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 held as under: -

*"We find that in assessment year 1995-96 the Assessing Officer had accepted assessee's claim of deduction u/s. 80HHC of the Act in respect of Technical Know-how Charges received from Maharashtra Scooters Ltd., a State Government an Undertaking. Subsequently, the LLATE Commissioner of Income Tax (CIT) invoked the provisions of Section 263 of the Act to disallow 90% of Technical Know-how Charges on the premise that the income from Technical Know-how is not directly from export business, hence, not eligible for deduction u/s. 80HHC of the Act in full. The CIT further held that income from Technical Know-how Charges falls under the 'charges' referred in Explanation (baa) to section 80HHC of the Act. The assessee carried the issue in appeal before the Tribunal in ITA No.1427/Mum/2000, inter-alia, challenging action of CIT. in invoking the provisions of section 263 of the Act and the addition proposed by CIT.*

*18.1 The Tribunal vide order dated 05/08/2004 set-aside the revision order on merits by holding as under:-*

*5. The CIT has given his direction mainly on the ground that the income on account of technical know-how was not pertaining directly on account of export business. Frankly speaking it need not be. There is no rule that the business income of an exporter should invariably arise directly out of the export business, for the purpose of claiming the deduction u/s. 80HHC. The only condition is that the assessee should have made exports. He can have the profit out of export as well as profit out of local trade. There is a formula prescribed by the statute for working out export profit as against the total profit of the business pertaining to the total turnover. Therefore, whether the profit has come out of main business or subsidiary business or incidental business is not a matter to be considered in the context of section 80HHC. The only issue to be looked into whether the income arose out of any of the business activities carried on by an assessee. Here, the assessee is a manufacturing company possessing requisite technical know-how. The said technical know-how has been provided to a Maharashtra*

*State Government Undertaking and the assessee thereby earned income. The income earned by the assessee by way of technical know-how fees is absolutely its business income. The technical know-how is its business asset. Its own manufacturing activities are carried-on on the strength of technical know-how, the assessee has in its possession. The deliberation of such technical know-how to other companies for a consideration is one of the business activities, incidental or ancillary carried on by the assessee-company. Therefore, there is no force in arguing that the income that arose to the assessee out of deliberation of technical know-how is not business income.*

*6. That apart another finding of the CIT is that the technical know-how fees received by the assessee falls under the category of commission interest, rent, charges or any other receipts of similar nature susceptible to exclusion to the extent of 90 per cent. This finding is also not legally valid. The technical know-how fees received by the assessee cannot be commission or interest or rent. The remainder is charges or any other receipts of similar nature. The work "charges" used in sub clause(i) of clause (baa) is found in the company of expressions like brokerage", "commission", "interest", "rent". If we apply the principle of "efusdem generis", the term "charges" has to be read in the company of the preceding words, such as brokerage, commission, interest, rent, etc. The brokerage or commission or interest or rent does not have any nexus with any manufacturing or processing of the core business activity that could be carried on by the assessee. Similarly, the word "charges" appearing in the company of those words also will not have any nexus with manufacturing or processing or core business activity of an assessee. The word "charges" appearing in the company of brokerage, commission interest, rent etc. cannot be singled out and imputed with a different meaning alleging a nexus with manufacturing or processing or core business activities. Efusdem generis rule is the rule of generic words following more specific ones. The rule is that when general*

*words follow specific words of the same nature, the general words must be confined to the things of the same kind as those specified. The specified words must form a distinct genesis or category. This rule reflects an attempt to reconcile incompatibility between specific and general words. In sub-clause (i) of clause (baa), the "charges" are preceded by words of specific name, such as brokerage, commission, interest, rent etc. These specific words form a distinct genesis or category, inasmuch as all those items relate to receipts earned by an assessee other than for its regular and principal business activity. In such circumstances, the word "charges" also should be read along with the meaning of those specific words forming themselves into a special category. If so, the word "charges" should be confined to those charges which do not have anything to do with the business and the related activities carried on by the assessee.*

*7. In the present case, rendering of technical know-how in the peculiar line of industry in which the assessee is engaged in, is undoubtedly an activity related to the business carried on by the assessee. Therefore, the technical know-how income earned by the assessee company cannot be dissociated with its business income. For the same reason, it cannot be brought under the items qualified in sub-clause (i) of clause (baa). Therefore, the finding of the CIT that the technical know-how need to be excluded to the extent of 90 per cent is again not sustainable in law."*

*The Technical know-how charges in the impugned assessment year is identical. Thus, in the light of above decision of Co-ordinate Bench, we concur with the order of CIT(A) in reversing the addition made by Assessing Officer in respect of Technical Know-how charges. The ground No.5 of the appeal is dismissed being devoid of any merit."*

**34.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

**35.** With regard to Ground No. (h) which is in respect of disallowance of entertainment expenditure, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the revenue and against the assessee. He submitted that the Ld CIT(A) has already decided the issue against the assessee and ground raised by the revenue is misconceived.

**36.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**37.** Considered the rival submissions and material placed on record. We observe that Ld CIT(A) has already decided the issue against the assessee and revenue has wrongly raised this ground of appeal. Therefore, the ground raised are not relevant and the issue is already decided against the assessee and the assessee also has not raised any ground in this regard. Therefore, this ground also dismissed as not maintainable.

**38.** With regard to Ground No. (i) which is in respect of allowing expenditure of ₹.7.42 lakhs on lease land for 99 years as revenue expenditure, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**39.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**40.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1995-96. While deciding the issue, the Coordinate Bench in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

*"49. Ld. AR brought to our notice para 32-32.2 of CIT(A)'s order and submitted that this issue is covered by the following decisions of Hon'ble Supreme Court, High Courts and ITAT on merits in favour of the assessee:-*

*(i) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 329 ITR  
479 (Guj)*

*(ii) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 325 ITR  
(SC)*

*(iii) United Phosphorous Ltd. vrs. ACIT(2015) 230 Taxman  
596 (Guj)*

*(iv) Lupin Ltd. vrs. JCIT (ITA No. 5088/Mum/2005)*

*50. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the decision of Hon'ble Apex Court, High Courts & ITAT.*

*51. Considered the rival submission and material placed on record. We notice from the records that the identical issues have already been decided by the Hon'ble Supreme Court, High Courts and ITAT on merits:-*

*(i) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 329 ITR  
479 (Guj)*

*(ii) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 325  
ITR (SC)*

*(iii) United Phosphorous Ltd. vrs. ACIT(2015) 230  
Taxman 596 (Guj)*

*(iv) Lupin Ltd. vrs. JCIT (ITA No. 5088/Mum/2005)*

*For the sake of clarity, relevant portion of the decision in the case of Lupin Ltd is reproduced below:-*

*7. Ground nos. 5 and 6 relates to the disallowance of amortisation of payment made for leasehold land of ₹.2,45,000/-. At the outset, the learned counsel of the assessee submitted that this issue has come up for consideration in assessee's own case in the A.Y. 2000-01 in ITA No. 3314/3242/M/05 and in the A.Y. 2002-03 in ITA No.648/411/M/2008, wherein this issue has been decided against the assessee. However, the learned counsel submitted that this issue now stands covered by the decision of DCIT v SUN Pharmaceuticals Limited reported in 329 ITR 479, wherein it has been held that making of advance payment for acquiring land on lease for 19 years was*

*allowable as revenue expenditure. Therefore, the decision of the earlier Tribunal order may not be followed. 7.1 On the other hand, the learned DR relied upon the findings given by the Ld. CIT(A) as well as the earlier orders of the ITAT.*

*8. After carefully considering the rival submissions, we find that the amount which has been amortized relates to the payment for lease hold of land and building. The Ld. CIT(A) has dismissed the assessee's ground on the reason that this issue has been decided against the assessee by the Ld. CIT(A) in the earlier year. The Tribunal also in the A.Y. 2000-01 in ITA No.3314/M/2005 has dismissed the assessee's appeal on the following reasoning:-*

*"6. Ground 2 relates to CIT (A)'s decision in confirming the disallowance of the assessee's claim of Rs 2,97,015/- u/s 35D.*

*7. During the assessment proceedings before us, the Ld AR stated that the said expenditure was incurred in connection with the issue of shares for increase in share capital. AO made disallowance basing on the apex court judgments in the case of M/s Brooke Bond India Ltd (225 ITR 798)(SC) and M/s Punjab State Industrial Development Corporation Ltd (225 ITR 792)(SC). The CIT (A) confirmed the action of the AO stating that the said expenditure should not be allowed as revenue expenditure. During the proceedings before us, Ld AR for assessee relied on various judgments including the jurisdictional High Court judgment in the case of Maharashtra UGINE and Steel Co Ltd (250 ITR 84)(Bom). After going through the said judgments, we find that the said jurisdictional High Court judgment relates to allowability of expenditure incurred on payment of Stamp duty for debenture issue and, therefore, we are of the considered opinion that the apex court judgments cited above are relevant and expenses are not allowable as revenue expenditure and thus, the order of the CIT (A) does not call for any interference. Accordingly, ground 2 is dismissed."*

*9. From the perusal of the above decision, it is seen that the Tribunal had decided this issue based on the decision of M/s Brooke Bond India Ltd. (supra) and M/s Punjab State Industrial Development Corporation Ltd (supra), wherein the matter related to the issue of allotment of shares and increase in share capital, whereas in this case, the issue is entirely different and relates to the payment on account of lease hold of land and building. This issue as rightly been pointed out by the learned counsel is covered by the decision of the Hon'ble High Court of Gujarat in the case of DCIT vs. Sun Pharmaceuticals Industries Ltd. reported in 329 ITR 479, wherein the Hon'ble High Court has held that the payment of advance lease rent for acquisition of land on lease for a period of 19 years is revenue expenditure. While coming to this conclusion the Hon'ble High Court has relied upon the principle and ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. Madras Auto Services Ltd. (1998), reported in 233 ITR 468 (SC). The point in issue is also covered by the decision of the Hon'ble Madras High Court in the case of CIT vs. Ucal Fuel Systems Ltd. reported in 296 ITR 702, wherein similar matter was involved and was held that upfront lease rent charges paid for obtaining lease of land and building is revenue expenditure. In view of the aforesaid preposition laid down by the Hon'ble High Courts, we are persuaded to agree with the learned counsel that the earlier decision of the Tribunal cannot be held as a binding precedence on the facts of the case. Accordingly, the ground nos. 5 and 6 are allowed in favour of the assessee.*

*52. Therefore, respectfully following the above decision of Coordinate Bench of ITAT and also the decision of Hon'ble Supreme Court and Hon'ble High Courts, which are applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is **dismissed**.*

**41.** Further, in assessee's own case for the A.Y. 1996-97 the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"20. A perusal of the impugned order shows that the Assessing Officer following the assessment made in assessment year 1995-96 has disallowed assessee's claim of proportionate write off premium paid on leasehold land Rs.7.42.135/- In first FRITH appellate proceedings the CIT(A) following the order of first appellate authority in assessment year 1985-86 and 1995-96 reversed the findings of Assessing Officer, hence, the Revenue is in appeal against the findings of the CIT(A) on this issue. We find that in assessment year 1995-96 the Co-ordinate Bench has upheld the findings of the CIT(A) by placing reliance on various decisions viz:*

*(i) DCIT vs. Sun Pharmaceutical Industries Ltd., 329 ITR 479 (Guj);*

*(ii) United Phosphorus Ltd. vs. ACIT, 230 Taxman 590(Guj);  
and*

*(iv) Lupin Ltd. vs. JCIT in ITA No.5088/Mum/2005 for A.Y. 1994-95 decided on 02/11/2012.*

*The Revenue has not been able to controvert the findings of Co-ordinate Bench on this issue in assessee's own case for assessment year 1995-96. Following the decision of Co-ordinate Bench, we uphold the findings of CIT(A) on this issue and dismiss ground No.7 raised in appeal by the Revenue."*

**42.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

**43.** With regard to Ground No. (j) which is in respect of allowing addition of ₹.9,60,123/- towards wealth tax liability by holding that the same is wealth tax paid by the assessee, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**44.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**45.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1995-96. While deciding the issue, the Coordinate Bench in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

*"69. Considered the rival submission and material placed on record. We notice from the records that the identical issues have already been decided by ITAT Delhi Bench in the case of Punj Sons*

*(P) Ltd. vrs. DCIT (2002) 74 TTJ 596) (Del) on merits. For the sake of clarity, relevant portion of the said decision is reproduced below:-*

*7. We have considered the rival submissions and the materials on the file. We are of the view that the issue in the present case is covered by the Supreme Court decision in the case of AAC Ltd (supra). Section 40(a)(iia) prohibits deduction of "any sum paid on account of wealth-tax". However, Explanation to Section 40(a)(iia) provides as under:*

*"Section 40(a)(iia):*

*Explanation--For the purpose of this sub-clause, "wealth-tax" means wealth-tax chargeable under the WT Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession are allowed as deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of business or profession."*

*In view of the Supreme Court decision in ACC Ltd. case (supra), last part of the Explanation i.e., "but does not include any tax chargeable with reference to the value of any particular asset of the business or profession" has to be read as in continuation of the beginning part of the Explanation i.e., "for the purpose of this sub-clause wealth-tax means wealth-tax chargeable under the WT Act, 1957 (27 of 1957)". Thus, these two parts of the Explanation put together would read as under:*

*"For the purpose of this sub-clause wealth-tax means wealth-tax chargeable under the WT Act, 1957 (27 of 1957),*

*but does not include any tax chargeable with reference to the value of any particular asset of the business or profession".*

*8. Accordingly, the wealth-tax chargeable with reference to the value of any particular asset of the business or profession will not be covered by the prohibition clause of Section 40(a)(iia) of the IT Act, 1961, and as such wealth-tax could be admissible for deduction. Admittedly, the wealth-tax paid in pursuance to Section 40 of the Finance Act, 1983, was with reference to the value of particular asset of the business of the assessee. Under Section 40 of the Finance Act, 1983, total wealth of the company was not chargeable to wealth-tax. It was only the assets specified under Sub-section (3) of Section 40 of the Finance Act, 1983, which was chargeable to wealth-tax. Therefore, the exception part of Explanation to Section 40(a)(iia) of the Act referred to above became applicable in the present case and the wealth-tax amounting to Rs. 1,55,820 paid by the assessee in pursuance to Section 40 of the Finance Act, 1983, was admissible for deduction.*

*9. In the above view of the matter, we direct the AO to allow deduction of Rs. 1,55,820.*

*70. Therefore, respectfully following the above decision, which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed."*

**46.** Further, in assessee's own case for the A.Y. 1996-97 the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"22. During the period relevant to assessment year under appeal the assessee paid wealth tax of Rs.6,19,229/-. The deduction of the aforesaid amount claimed by the assessee was denied by the*

*Assessing Officer. In first appellate proceedings, the CIT(A) allowed assessee's claim of deduction in the light of explanation to section 40(a)(iia) of the Act. Assessee's similar claim was allowed by the CIT(A) for the assessment year 1995-96. We find that the Revenue in assessment year 1995-96 has assailed the order of CIT(A) in allowing assessee's claim of deduction in respect of wealth tax. The Co-ordinate Bench following the order of Tribunal in the case of Punj Sons P. Ltd. vs. DCIT, 74 TTJ 596 (Del) upheld the findings of CIT(A) and dismissed the ground raised by Revenue in its appeal. No contrary material has been placed before us by the Revenue. Thus, ground No.9 raised by the Revenue in this appeal is dismissed for parity of reasons."*

**47.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

**48.** With regard to Ground No. (k) which is in respect of allowing expenses on GDR issue as covered in section 35D, Ld. AR of the assessee submitted that Expenses amounting to ₹.11,71,99,600 incurred in connection with issue of GDR of USD 109,999,983 in the previous year relevant to A.Y.1995-96. Expenditure claimed u/s. 37(1) in AY 1995-96 disallowed relying on the decision of the Supreme Court in the case of Brooke Bond India Ltd. (225 ITR 795) - Alternative claim for deduction u/s. 35D not considered in AY 1995-96 since expansion of industrial undertaking

was not completed. Copy of Assessment Order for AY 1995-96 is placed on record, Letter dated 11 February 2000 submitted before the Assessing Officer.

**49.** Ld. AR of the assessee relied on the following case laws: -

- a) CIT vs. Shree Synthetics Ltd. (162 ITR 819)*
- b) Gujarat Narmada Valley Fertilizers Co. Ltd. vs. DCIT (ITA No. 1463/Ahd/2007)*
- c) S.S.I. Limited vs. DCIT (85 TTJ 1049) (Chn)*

**50.** On the other hand, Ld. DR relied on the order of the Assessing Officer.

**51.** Considered the submissions and material placed on record, from the submissions of the parties, we observe that the assessee has incurred expenses in connection with the issue of GDR and these expenses are allowable only when new or expansion of industrial undertaking. During the current Assessment Year, the assessee has completed the expansion of the Industrial undertaking, the expenses are allowable deduction u/s 35D of the Act, since the expenses are incurred during previous AY and expansion was completed only this AY, the relevant expenses are allowable in this Assessment Year. In the similar facts, the ITAT Ahmedabad Bench has

decided the issue in favour of the assessee, in the case of Gujarat Narmada Valley Fertilizers Co. Ltd., v. DCIT (supra), the same reproduced below:

"24. As regards Ground no.10 of the assessee's appeal, the assessee has claimed deduction u/s 35D amounting to Rs.87,73,000/- which was restricted to Rs.13,50,000/- by the AO. The brief facts are that during the previous year relevant to AY 1995-96 the company made an Euro Issue of the Global Depository Receipts (GDRs) for its Acetic Acid Expansion Project and collected Rs.191.72 crores inclusive of premium. The company incurred expenditure of Rs.8.77 crores for this issue. It was submitted by the assessee in assessment proceedings that subscribed and paid up capital of the company increased to Rs.146.48 crores and that coupled with debenture and long term borrowings of Rs.583.77 crores the total capital employed was Rs.730.25 crores and 2.5 % of such capital employed is Rs.18.26 crores. It was further stated that the cost of project of Acetic Acid Expansion project was Rs.188.31 crores and that the said project was commissioned on 30.5.1995. It was stated that the expenditure of Rs.8.77 crores was less than 2.5 % of the cost of the project and capital employed and thus the assessee was entitled to deduction of Rs.87.7 lakhs as claimed u/s. 35D. The Assessing Officer was of the view that GDR issue was admittedly in connection with the extension of industrial undertaking and only the incremental capital employed which is attributable to the new project should be considered as capital employed. The increase in share capital and debenture between 31.3.1994 and 31.3.1995 was Rs.37.53 crores and thus 2.5% of such capital employed was Rs.93.82 lacs. Further it was stated that cost of Acetic Acid Expansion Project was Rs.188.31 crores whereas the net proceeds of GDR issue was Rs.182.95 crores (191.72 crores being gross proceeds - 8.77 crores being expenses). Further from the proceedings for A.Y. 2001-02 it was noticed that Rs.128.93 crores was invested in UTI Unit 65 scheme out of the GDR issue proceeds and since this investment was 70% of the GDR issue process, 70% of the expenses of Rs.87.73 lacs written off in that year by the assessee amounting to Rs.62 lacs was disallowed u/s. 14A as the dividend income in respect of UTI was exempt under the Act. It is mentioned by the Assessing Officer that excluding the investment in UTI the amount invested towards the cost of project is Rs.54.02 crores ( 182.95 crores - Rs.128.93 crores) and 2.5% of such cost works out to Rs.1.35 crores. Therefore 10 % of this

*amount of Rs.1.35 crores at Rs.13.5 lacs was allowed by the Assessing Officer under section 35D.*

*25. The learned CIT(A) confirmed the action of the AO.*

*26. The learned counsel for the assessee argued that the assessee has been allowed the identical claim since 1995-96 by the Income-tax Department and it is only in the impugned year where the Department has doubted its decision when there is no change of the facts and circumstances of the case.*

*27. The learned DR, on the other hand, argued that res judicata does not apply.*

*28. We have heard the rival contentions and perused the facts of the case. From the reading of the provisions contained in section 35D and the arguments of both the parties, we are of the view that there are no change in the facts as in the last 7 years and, therefore, relying upon the decision of the Hon'ble Supreme Court in the case of Radha Soami Satsang vs. CIT 193 ITR 321, it would not be at all appropriate to allow the position to be changed in a subsequent year. Therefore, in the circumstances and facts of the case, we direct the AO to allow the claim of the assessee and accordingly the order of the learned CIT(A) is reversed. Thus, Ground no.10 of the assessee' appeal is allowed."*

**52.** Respectfully following the above said decision, we direct assessing officer to allow the claim made by the assessee relating to deduction u/s. 35D of the Act.

**53.** With regard to Ground No. (i) which is in respect of allowability of depreciation in respect of sale and lease back transaction with M/s. Tata Chemical Limited. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this

tribunal in assessee's own case and decided the issue in favour of the assessee and against the department. Further, he submitted that for the year under consideration there is no transactions involved with M/s. Tata Chemicals limited. Therefore, the ground raised by the revenue is misconceived.

**54.** On the other hand, Ld. DR agreed with the submissions made by the Ld AR.

**55.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. However, the Ld AR has brought to our notice that the assessee has not entered in any such transaction with Tata Chemical Ltd. Therefore, this ground raised by the revenue is not maintainable considering the fact that no such transactions are carried on by the assessee with the above company. Accordingly, ground raised by the revenue is dismissed.

**56.** With regard to Ground No. (j) which is in respect of holding that the lease agreement with JCT Ltd is genuine and the assessee company is

entitled to depreciation on the assets leased to JCT Limited. Ld. AR of the assessee submitted that Lease agreement with JCT Limited dated 26 March 1996 - BAL purchased assorted items of equipments at the original cost of purchase, i.e. ₹.6,92,22,335/-- The assets were leased back to JCT. Further, he brought to our notice the decision of the Coordinate Bench in assessee's own case for the Assessment Year 1996-97 and by referring to Para No.24 he submitted that depreciation on such assets claimed and allowed by the order of the Tribunal in the earlier year by dismissing the revenue ground in AY 1996-97. During the year under consideration, BAL has claimed depreciation on the opening written down value of the block which includes the above assets. Once depreciation allowed in earlier year and such asset forms part of block of assets, depreciation ought to be allowed in subsequent years. for the above proposition he relied on the following case law:

- (a) *Director of Income-tax (International Taxation) - II v. HSBC Asset Management India Private Limited [2014] 47 taxmann.com 286 (Bombay)*
- (b) *Commissioner of Income-tax 7 v. Sonic Biochem Extractions Private Limited (ITA No. 2088 of 2013) (Bombay)*
- (c) *CIT V. G.N.Agrawal (Individual) 217 ITR 250*

**57.** On the other hand, Ld. DR relied on the order of the Assessing Officer.

**58.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following various judicial pronouncements dismissed the ground raised by the revenue. The Relevant portion is extracted below: -

*"25:3 We have heard the submissions made by rival sides and have examined the orders of authorities below. In the light of findings given by Assessing Officer to reject assessee's claim following points were considered by the CIT(A).*

*"(a) Whether the assessee can be said to have acquired ownership of the assets in question from the Electricity Boards for purpose of claiming depreciation.*

*(b) Whether the transactions entered into with the Electricity Boards were genuine lease transactions.*

*(c) Whether the transactions can be characterized as loan transactions against security of the assets in question.*

*(d) Whether the transactions can be treated as hire-purchase agreements"*

*The CIT(A) after considering the facts of the case and lease agreement threadbare answered the first two issues in affirmative holding that the assessee had acquired the ownership of the assets purchased from Electricity Board and hence, eligible to claim depreciation on the said assets. The CIT(A) further held that the*

*lease agreements with the State Electricity Board i.e. HSEB and PSEB are genuine lease transactions.*

*As regards the issue raised in (c) & (d) above, the CIT(A) answered the question in negative holding that the transaction of purchase of assets from HSEB and PSEB and leasing it back to the State Electricity Board is not a hire purchase agreement nor it is a loan transaction against security of the assets. We, concur with the detailed and reasoned findings of the CIT(A) on this issue, they are not reproduced for the sake of brevity. The Hon'ble Supreme Court of India in the case of CIT vs. K.Y.Pillah & Sons, 63 ITR 411 and Hon'ble Delhi High Court in the case of CIT vs. Global Vantedge P. Ltd., 354 ITR 21 held that where the Tribunal concur with the view of CIT(A), the findings of CIT(A) need not be reproduced.*

*25.4 We find that in the case of CIT vs. Punjab State Electricity Board, wherein after the sale of asset the same asset was leased back to the Punjab State Electricity Board and the Electricity Board claimed deduction in respect of lease rental, the Department allege that sale of asset to third party and the same asset being taken on lease for claiming deduction in respect of lease rental is a colorable device to reduce tax liability and have denied the same. The Tribunal decided the issue in favour of the assessee holding the transaction of sale and lease back of asset as genuine. The Revenue carried the issue in appeal before the Hon'ble High Court raising following substantial question of law:*

*"Whether on the facts and in the circumstances of the case, the income-tax Appellate Tribunal is legally correct in holding that in the present case/ no colourable device has been adopted by the assessee, even when the intention of the assessee behind drafting the agreements between the assessee and the financial institution was to reduce the tax liability artificially of both the parties and as such the ratio of the decision of the hon'ble apexcourt in the case of McDowell Ltd. v, CTO [1985] 154 ITR 148 (SC) has wrongly been, interpreted"*

*The Hon'ble High Court rejected the appeal of Revenue by holding as under:*

*3. "Only contention raised by the learned counsel for the Revenue is that the machinery was integral part of the bidders and the same continued to be with the assessee in spite of sale. The fact remains that the sale consideration was received by the assessee and lease rental was paid by the assessee. Merely because tax liability was reduced could not be conclusive of arrangement being sham or a device. As regards the observations of the hon'ble Supreme Court in McDowell [1985] 154 ITR 148, the matter has been explained in subsequent judgments including in Union of India v. AzadiBachaoAitdokn [2003] 263 ITR 706 (SC); AIR 2004 SC 107. Reiterating the view that the assessee was entitled to arrange his affairs to reduce his tax liability, without violating the law, it was observed in AzadiBachaoAndolan [2003] 263 ITR 706 (SQ; AIR 2004 SC 107 that the principle laid down in IRC v. Duke of Westminster [1936) AC 1 was still valid.*

*4. It was further observed that the above principle had been approved in India in the Judgment of the hon'ble Supreme Court in CZT v, A. Roman and Co. [1968] 67 ITR 11 (Mad) and the observations of Chinnappa Reddy J. in McDowell could not be treated as the ratio of the Judgment in view of opinions of majority to the effect (headnote of 154 TR 148):*

*Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."*

*5. The hon'ble Supreme Court affirmed the view taken by the Madras High Court in M. V. Valliappan v. TTO [1988] 170*

*ITR 238 and the Gujarat High Court in Banyan and Deny vs. CIT (1996) 222 ITR 831. Reference was also made to the judgment in CWT v. Arvind Narottam [1988] 173 FIR 479 and Mathuram Agrawal v. State of Madhya Pradesh (1999) 8 SCC 667. It: was further observed that the word "device" or "sham" could not be used to defeat the effect of a legal situation.*

*6. In view of the finding recorded by the Tribunal in the facts of this case, no substantial question of law arises. The appeal is dismissed."*

*25.5 Thus, the Hon'ble Court held that lease agreement where the asset is leased back to the vendor is not a ploy to reduce tax incidence and is an accepted arrangement. In view of our above findings, we see no merit in Ground No.11 raised by the Revenue, hence, the same is dismissed."*

**59.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed and the issue involved in relation to transaction with JCT Ltd are similar to the above findings in relation to transaction with PSEB, accordingly, ground raised by the revenue is dismissed.

**60.** With regard to Ground No. (k) which is in respect of taxability of surplus on account of redemption of preference shares, debentures, bonds, certificate of deposits as revenue receipts and not under the head "Capital Gains" and not allowing indexation of such gains of ₹.4,60,02,985/-. Ld. AR

of the assessee submitted that the ground of appeal raised by the revenue is infructuous as in the Assessment Order, the Assessing Officer himself assessed such surplus on redemption under the head "capital gain". Further, he submitted that the indexation benefits to be allowed on long term capital assets. In addition to the above, Ld. AR of the assessee submitted that if capital gains only income should be charged after indexation for taxation.

**61.** On the other hand, Ld.DR relied on the order of the Assessing Officer.

**62.** Considered the rival submissions and material placed on record, we observe that assessee has recorded a sum of ₹.4,60,02,985/- as surplus on redemption of treasury bills etc., Assessing Officer observed that in the return of income the assessee has claimed that the amount is not liable to tax on the ground that redemption does not amount to transfer resulting in capital gains, relying on the decision of the Hon'ble Supreme Court in the case of Vania silk Mills P. Ltd., v. CIT [191 ITR 647]. The Assessing Officer rejected the contention of the assessee and by relying on the decision of

the Hon'ble Supreme Court in the case of Anarkali Sarabhai *v.* CIT [228 ITR 222] followed in Karthakaya Sarathai *v.* CIT [228 ITR 163].

**63.** Before the Ld.CIT(A) assessee has fairly accepted that the issue under consideration is against the assessee following the decision of the Hon'ble Supreme Court in the case of Grace Collins *v.* CIT [248 ITR 323] wherein it was held that extinguishment of the asset itself is also covered by the term "transfer" and would give rise to capital gains. Accordingly, Ld.CIT(A) held that surplus on redemption as liable to tax under the head "capital gain".

**64.** Aggrieved revenue is in appeal before us, taxability of surplus on account of redemption of preference shares is revenue receipt. However, it is brought to our notice that the Assessing Officer himself treated the surplus of redemption of preference shares and preference shares as income chargeable to tax under the head "capital gain". Therefore, even Ld.CIT(A) has decided the issue as per the findings of the Assessing Officer. Therefore, it is not the case of the Assessing Officer that the above surplus should be considered for taxation under the head "under the term revenue receipt". Therefore, in our considered view the ground raised by the

revenue is not maintainable as the fact suggest that the ground raised by the revenue is not connected with the findings of the Assessing Officer. The Ld.CIT(A) has sustained the findings of the Assessing Officer, therefore, there is no grievance to the revenue. Accordingly, ground raised by the revenue is dismissed.

**65.** With regard to Ground No. (I) of grounds of appeal, which is in respect of redemption of treasury bills, Ld. AR of the assessee brought to our notice the letter dated 10.03.2000. He submitted that Surplus on redemption was shown as short- term capital gains in the return of income out of abundant caution. Redemption results in total extinguishment of securities other than by way of transfer and is not be covered within the definition of transfer as per section 2(47). In support of the above contentions, he relied on the decision of the Hon'ble Supreme Court in the case of Vania Silk Mills Pvt. Ltd. v. CIT (191 ITR 647) (SC).

**66.** On the other hand, Ld. DR relied on the order of the Assessing Officer.

**67.** Considered the rival submissions and material placed on record, we observe from the record that the issue involved in this ground of appeal is

similar to the grounds of appeal raised in Ground No. (K). However, the surplus received on redemption of treasury bills was shown as short term capital gain in the return of income out of abundant caution by the assessee itself and the same was sustained by the Ld.CIT(A). However, before us in the grounds of appeal revenue has raised this issue that the above said surplus has to be treated as "interest income" substantiating the views of the AO and not under the head "capital gain". After considering submissions of both the parties, we are not inclined to accept the submissions raised by the revenue that the surplus earned by the assessee cannot be treated as interest income and it is fact on record that assessee has held the treasury bills for certain period of time as investment and the surplus has to be taxed under the head "capital gain" and the same was sustained by the Ld.CIT(A). Therefore, the contention of the Assessing Officer is accordingly rejected and we observe that Ld.CIT(A) has rejected claim made by the assessee that the redemption of such treasury bills is not a transfer.

**68.** Similar issue was considered by the Coordinate Bench in favour of the revenue for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022

following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"21. In the books of account for the period relevant to the assessment year under appeal, the assessee has shown Rs.1,48,47,037/- as surplus on redemption of treasury bills. The Assessing Officer held the aforesaid amount as short term capital gains. The claim of the assessee is, that redemption of treasury bills result in total extinguishment of the treasury bills other than by way of transfer, hence, does not cover by the definition of 'transfer u/s 2(47) of the Act so as subjected to short term capital gains. The CIT(A) following the ratio laid down in the case of Vania Silk Mills Pvt. Ltd. vs. CIT, 191 ITR 647(SC) held that in redemption, the asset in the form of treasury bills stood extinguished without transfer. Therefore, the surplus arising out of redemption of treasury bills cannot be subject to capital gains. The treasury bills being capital asset, the surplus arising out of its redemption can neither be taxed as revenue receipt. The learned Counsel for the assessee fairly admitted LA that this issue is decided against the assessee by the Tribunal in assessee's own case for assessment year 1995-96.*

*We find that the Co-ordinate Bench in assessee's own case for assessment year 1995-96 in appeal by the Revenue after placing reliance on the decision of Hon'ble Supreme Court of India in the case of CIT vs. Grace Collis, 248 ITR 323 has decided the issue in favour of the Revenue. Thus, in view of uncontroverted findings of the Co-ordinate Bench in assessee's own case in the immediately preceding assessment year, ground No.8 in appeal by the Revenue is allowed."*

**69.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully

followed, accordingly, grounds raised by the revenue is allowed. Therefore, we are not inclined to sustain the findings of the Ld.CIT(A), accordingly, ground raised by the revenue is dismissed.

**70.** In the result, appeal filed by the Revenue is partly allowed.

### **C.O. NO. 96/MUM/2002 (ASSEESSEE CROSS OBJECTION)**

**71.** Assessee has raised following grounds in its cross objection: -

#### **I. DEDUCTION UNDER SECTION 80HHC**

*1.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the contention of the Joint Commissioner of Income-tax that income from scrap sales, miscellaneous sales and sundry sales aggregating to Rs.50,78,91,907/- are includible in 'total turnover for the purpose of computing the deduction under section 80HHC.*

*1.2 In upholding the said computation, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that the income from the sales proceeds of these items go to reduce the cost of raw materials and accordingly, ought to be excluded from 'total turnover.*

#### **II. ENTERTAINMENT EXPENSES:**

*2.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in holding that only 25% of the expenditure of Rs.6,35,455/- incurred on sponsorship of lunches / dinners hosted by various associations ought to be treated as entertainment expenditure and accordingly, is includible for the purpose of computation of disallowance under section 37(2) of the Act.*

*2.2 In doing so, the Commissioner of Income-tax (Appeals) failed to appreciate that sponsorship of lunches/dinners hosted by associations were in the nature of advertisement expenses and could not be regarded as entertainment expenditure and accordingly, no portion thereof ought to have been considered for disallowance under section 37(2) of the Act.*

**III. DISALLOWANCE OF FINES AND PENALTIES:**

*3.1 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 Joint Commissioner of Income-tax and disallowing the sum of Rs.5,59,750/- being expenditure on fines and penalties.*

*3.2 In doing so the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that the said fines and penalties had been incurred incidental to the carrying on of the business and not for deliberate infraction of law and accordingly ought to have been allowed as a deduction.*

**IV. DIES AND MOULDS LEASED**

*4.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the respondent's claim for deduction of Rs. 1,46,01,825/- as revenue expenses and thereby upholding the action of the Joint Commissioner of Income-tax to treat the same as a capital expenditure in respect of cost of Dies & Moulds leased to job workers*

*4.2 In doing so, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that though the dies and moulds were leased for administrative convenience, they represented a part of the respondent's plant and machinery and since the dies and moulds purchased in the past had been capitalized, the cost of new dies and moulds used during the year represented only replacements either on account of wear and tear of the dies or on account of change in the design of the press part for the production of which the aforesaid dies and moulds have been used and hence ought to be allowed as a deduction.*

**V. TAXABILITY OF SURPLUS ON REDEMPTION OF SECURITIES**

*5.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in holding that the surplus arising on redemption of securities is chargeable to tax.*

*The Commissioner of Income-tax (Appeals) failed to appreciate that on maturity/ redemption of the securities, the said asset ceases to exist and the extinguishment of the right in the asset is on account of the extinguishment of the asset itself and is not a transfer of the right because the asset ceases to exist."*

**72. Further, assessee has raised following additional grounds: -**

*"1. On the facts and in the circumstances of the case and in law, it is prayed that while computing 'indirect costs attributable to the export of trading goods for the purpose of deduction under section 80HHC of the Income-tax Act, 1961 (the Act), the Assessing Officer ought to be directed to exclude expenses attributable to other income and export incentives estimated at 10% thereof.*

*2. On the facts and in the circumstances of the case and in law, it is prayed that just as only income 'derived from the undertaking is included in the profits for the purpose of computing deduction under sections 80HH and 80-IA of the Act, then, the same norm should also apply to expenditure, and accordingly, the expenditure which has no nexus with the undertaking ought not to be considered.*

*3. On the facts and in the circumstances of the case and in law, it is prayed that if at all duty drawback and interest is excluded while computing the deduction under sections 80HH and 80-IA as prayed for by the Department in ground no. 5 of Appeal No, 5030/Mum/2000, then only the net interest and the net duty drawback received ought to be taken into account while computing the profits of the eligible undertakings.*

*4. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) rejecting the claim for deduction in respect of provision for doubtful debts amounting to Rs. 3,95,59,255/-.*

*5. On the facts and in the circumstances of the case and in law, it is prayed that in caseground no. 4 above is decided in favour of the Department, directions may be issued to grant deduction in respect of the aforesaid amount in the year/s in which the corresponding debts have been written off against the provision for doubtful debts created in the above assessment year or in case of write back of the provision, to exclude the same from total income.*

*6. The appellant prays that in respect of provision of doubtful debts disallowed in the earlier years, directions may be issued to grant deduction in respect of bad debts written off during the year against the said provision for doubtful debts or in case of write back of the said provision during the year, to exclude the same from the total income in assessment year 1997-98."*

**73.** Ld. Counsel for the assessee submitted that the above additional grounds of appeal are purely legal grounds and do not require any fresh examination of facts. Therefore, Ld. Counsel for the assessee prayed it may be admitted.

**74.** Ld. DR objected for admission of the additional grounds as they were never raised before lower authorities and therefore cannot be admitted.

**75.** Considered the rival submissions and material placed on record, we observe that as the said additional grounds are legal grounds, wherein, the

facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited v. CIT 229 ITR 383 (SC), we admit the said additional grounds of appeal.

**76.** With regard to Ground No. 1 which is in respect of exclusion of scrap sales, miscellaneous scrap sales and sundry sales from total turnover for the purpose of calculating deduction u/s. 80HHC of the Act. Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the assessee and against the department.

**77.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**78.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1781/Mum/2000 dated 20.06.2022

following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"5. The first issue raised by the assessee in appeal is against the exclusion of excise duty and sales tax from total turnover for the purpose of computing deduction u/s 80HHC of the Act. A perusal of the assessment order and the order of CIT(A) would show that per se assessee's eligibility to claim deduction u/s 80HHC is not disputed. It is only some of the components of total income from exports on which the assessee has claimed benefit of deduction u/s 80HHC of the Act that have been excluded by the Assessing Officer while computing the deduction. In Assessment Year 1995-96 similar ground was raised by the assessee before the Tribunal assailing exclusion of excise duty and sales tax from the total turnover while computing deduction u/s 80HHC of the Act. The Co-ordinate Bench in appeal by the assessee in ITA No.3144/Mum/1999(supra) decided this issue in favour of the assessee by placing reliance on the judgment rendered by Hon'ble Supreme Court of India in the case of CIT vs. Laxmi Machine Works, 290 ITR 667. The facts germane to the issue raised in the present appeal are admittedly identical to the facts in Assessment Year 1995-96, therefore, following the decision of Co-ordinate Bench the ground No.1 raised in the appeal is allowed for parity of reasons.*

*5. In additional ground No.1 of the appeal the assessee has assailed exclusion of scrap sales, miscellaneous scrap sales and sundry sales from total turnover for the purpose of calculating deduction u/s 80HHC of the Act. The Id. Counsel for the assessee has placed reliance on the decision of Tribunal in assessee's own case for Assessment Year 1995-96 to contend that the assessee is eligible to claim deduction u/s.800HHC on scrap sale, miscellaneous scrap sale and sundry sale.*

*5.2 A perusal of the impugned order shows that the Assessing Officer had included scrap sales generated out of raw material used*

*in manufacturing Rs.43,92,32,708/, miscellaneous scrap sales consisting of packing material like emptybarrels, steel covers, etc. amounting to Rs.4,82,77,276/- and sundry sales not covered in items above amounting to Rs.2,44,358/-. In the first appellate proceedings, the CIT(A) held that the sale of aforesaid items should be excluded from total turnover for the purpose of calculating deduction u/s 80HHC of the Act, as in Assessment Year 1995-96 these very items were excluded from total turnover while computing deduction u/s 80HHC of the Act. In assessment year 1995-96, the assessee carried the issue in appeal before the Tribunal in ITA No.3144/Mum/1999 (supra). The Co-ordinate Bench after placing reliance on the decision rendered by Hon'ble Supreme Court of India in the case of CIT vs. Punjab Stainless Steel Industries Ltd. 364 ITR 144 decided the issue in favour of assessee. Since, in the impugned assessment year there is no distinguishing feature, we see no reason to take a different view. Consequently, additional ground No.1 of the appeal is allowed."*

**79.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is allowed.

**80.** With regard to Ground No. 2 which is in respect of entertainment expenses, Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the revenue and against the assessee.

**81.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**82.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 1781/Mum/2000 dated 20.06.2002 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"7.2 Both sides heard. Undisputedly, the facts germane to the present issue are identical to the facts in Assessment Year 1995-96. The Co-ordinate Bench in assessee's own case in ITA NO.3144/Mum/1999(supra) after considering the decisions referred by the assessee and after appreciating the facts decided the issue against the assessee by holding ass under:-*

*"18. However, we notice that the issue in the present appeal is relating to disallowance u/s 37(2) of the Act, which was applicable at that point of time. It was omitted by the Finance Act, 1977 w.e.f. 01.04.1988. The expenditure incurred by the assessee was on sponsorship of lunch and dinner hosted by various associations. The assessee claimed that these are in the nature of advertisement. Ld. CIT(A) rejected the contention of the assessee. We notice that the issue under consideration is covered under the explanation to entertainment expenses under Explanation-(iii) to section 37(2) of the Act. It is reproduced for the sake of clarity- (iii) expenditure on provisions of hospitality of every kind by the*

*assesses to any person, whether by "way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assesses to his employees in office, factory or other place of their work."*

*We notice that the explanation clearly states that hospitality of every kind to any person by whatever manner. The only exception was expenditure on food or beverages provided to its employees in work places. Therefore, in our view, the decision relied by Ld. AR is distinguishable i.e. the seminars are not organized by assessee, but only sponsored the events hosted by others and the expenditure incurred by assessee is covered by the Explanation to section 37(2A) of the Act. Accordingly, this ground raised by the assessee is dismissed."*

*We find that in Assessment Year 1995-96 similar arguments were raised by the Id. Counsel for the assessee and the same were rejected by the Tribunal. The decisions on which the Id. Counsel has placed reliance have already been considered and distinguished by the Tribunal. We see no reason to take a contrary view. Following the order of Co-ordinate Bench in assessee's own case on same set of facts ground No.3 raised by the assessee is dismissed."*

**83.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is dismissed.

**84.** With regard to Ground No. 3 which is in respect of disallowance of fines and penalties, Ld. AR of the assessee brought to our notice that the

issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the revenue and against the assessee.

**85.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**86.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the revenue for the A.Y. 1993-94. While deciding the issue the Coordinate Bench in ITA.No. 3491/Mum/2019 dated 30.05.2008 and held as under:-

*"9. The last ground in the revenue's appeal is against the deletion of addition on account of fines and penalties. The issue is admittedly covered against the assessee and in favour of revenue by the decision of the Coordinate Bench of the Tribunal in assessee's own case for the A.Y. 1998-99. Respectfully following the same this ground of the revenue is allowed."*

**87.** Further, in assessee's own case for the A.Y. 1994-95 the Coordinate Bench of the Tribunal in ITA.No. 3492/Mum/1999 dated 30.05.2008 following the decision in assessee's own case for the A.Ys. 1998-89 to 1992-93 and held as under: -

*"22. The next ground is against the addition on account of fines and penalties. Admittedly the issue has been decided against the assessee in the assessee's own case for the assessment years 1988-89 to 1992-93. Consistent with the view taken for assessment year 1993-94 on a similar issue we allow this ground of the revenue."*

**88.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in assessee's own case for A.Y.1993-94 is respectfully followed, accordingly, ground raised by the assessee is dismissed.

**89.** With regard to Ground No. 4 which is in respect of Dies and Moulds leased, this ground is not pressed by the Ld. AR of the assessee. Accordingly, the same is dismissed as not pressed.

**90.** With regard to Ground No. 5 which is in respect of taxability of surplus on redemption of securities, this ground is similar to ground raised by the revenue in Ground No. (d), accordingly, the decision taken therein shall apply mutatis-mutandis to this ground of appeal also. Accordingly, the ground raised by the assessee is dismissed.

**91.** Coming to the additional Ground No. 1, Ld. AR of the assessee submitted that while computing indirect cost attributable to export of trading goods for the purpose of computing deduction u/s. 80HHC, expenses attributable to other income and export incentive estimate at 10% thereof ought to be excluded. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**92.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**93.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in the immediately preceding assessment year in ITA.No. 1781/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"5.3 In additional ground No.2 of the appeal the assessee has assailed exclusion of certain expenses i.e. "indirect cost" attributable to export of trading goods for the purpose of deduction u/s 80HHC of the Act. In first appellate proceedings the CIT(A) directed the Assessing Officer to exclude expenses attributable to other Income and export incentive, estimated at 10%. We find that similar issue had come up before the Co-ordinate Bench in assessee's own case for the Assessment Year 1995-96 (supra). The Tribunal after examining the issue placed reliance on the decision of Hon'ble Supreme Court of India in the case of Hero Exports vs. CIT 295 ITR 454 and the decision of Special Bench of the Tribunal in the case of Surendra Engineering Corporation vs. ACIT, 86 ITD 121 and decided the issue in favour of assessee. For the sake of brevity the findings of the Co-ordinate Bench are not reproduced hereunder. The Revenue could not controvert the findings of Co-ordinate Bench on the issue. Following the decision of Tribunal in assessee's own case for the immediately preceding Assessment Year, the additional ground No.2 of the appeal is allowed."*

**94.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is allowed.

**95.** With regard to additional Ground No. 2, Ld. AR of the assessee submitted that common expenditure not specifically incurred towards the tax incentive unit ought not to be considered for computing the deduction u/s.80HH and 80-IA of the Act. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate

Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**96.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**97.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in the immediately preceding assessment year in ITA.No. 1781/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"8. The learned Counsel for the assessee submitted that as only income "derived from" the undertaking is included for the purpose of computing deduction u/s 80HH and 80I of the Act, following the same analogy the expenditure which has no nexus with the undertaking ought not to be considered. The Id. Authorized Representative for the assessee pointed that similar issue had come up before the Tribunal in assessee's own case in ITA No.3144/Mum/1999(supra). The Tribunal after considering the judgment rendered in the case of Zandu Pharmaceuticals Ltd. vs. CIT 350 ITR 356(Bom), CIT vs. Hindustan Unilever Ltd., 72 taxmann.com 325 (Bom) and CHT vs. Hindustan Lever Ltd., 42 taxmann.com 132(Mad) decided the issue in favour of the assessee.*

*8.1 The Id. Departmental Representative fairly conceded that the issue has been decided by the Tribunal in immediately preceding Assessment Year in favour of the*

*8.2 In the case of Zandu Pharmaceuticals Ltd. vs CIT(supra) it has been held that while computing profits and gains of the concerned undertaking only expenses relating thereto can be deducted. The expenses attributable to other unit or head office expenses which have no relevance to the Industrial undertaking cannot be deducted in respect of the said undertaking while computing profit and gains of the said undertaking for the purpose of computing deduction u/s 80HH, 80I and 80IA of the Act. The Co-ordinate Bench in assessee's own case for Assessment Year 1995 96 following the ratio laid down in the case of Zandu Pharmaceuticals Ltd.(supra) allowed identical ground raised in the appeal before the Tribunal. Since, there has been no change in the facts and legal position in impugned assessment year, the additional ground No.3 of the appeal is decided in favour of the assessee."*

**98.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is allowed.

**99.** With regard to additional Ground No. 3, this ground is similar to ground raised by the revenue in Ground No. (e), accordingly, the decision taken therein shall apply mutatis-mutandis to this ground of appeal also. Accordingly, the ground raised by the assessee is allowed.

**100.** With regard to additional Ground No. 4, which is in respect of addition on account of provision for doubtful debts, Ld. AR of the assessee brought

to our notice that the issue in appeal has been considered by the Coordinate Bench of this tribunal in assessee's own case in the immediately preceding assessment year and decided the issue in favour of the assessee and against the department.

**101.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**102.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in the immediately preceding assessment year in ITA.No. 1781/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"19. A perusal of the assessment order shows that in computation of total income the Assessing Officer has added provision for bad and doubtful debts Rs.2,85,47,483/-. However, the Assessing Officer has not given any reasoning for adding provision for doubtful debts. In the first appellate proceedings the CIT(A) has directed the Assessing Officer to allow deduction of the aforesaid amount. Against this the Revenue is in appeal before the Tribunal. We find that in assessment year 1995-96 the Assessing Officer in identical manner had added provision for doubtful debts. The CIT(A) directed the Assessing Officer to delete the addition. The Revenue carried the issue in appeal before the Tribunal. The*

*Tribunal following the decision rendered in the case of Vijaya Bank vs. CIT, 323 ITR 166 (SC) upheld the findings of CIT(A) and dismissed the ground raised by the Revenue. In the impugned assessment year there is no change in the facts. Consequently, the ground No.6 raised in the appeal by the Revenue is dismissed."*

**103.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is allowed.

**104.** With regard to additional Ground No. 5, which is in respect of deduction on account of provision for doubtful debts in the year of actual write-off, if the same is not allowed in the year of provision. As we have adjudicated the additional ground No. 4 in favour of the assessee, this ground becomes infructuous. Accordingly, ground raised by the assessee is kept open at this stage.

**105.** With regard to additional ground No. 6 which is in respect of exclusion of provision for doubtful debts written back in A.Y. 1997-98, of which no deduction was allowed in the year of making the provision, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered

by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee and against the department.

**106.** On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

**107.** Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in the immediately preceding assessment year in ITA.No. 1781/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

*"10. The learned Counsel for the assessee submitted that identical additional ground was raised before the Tribunal in Assessment Year 1995-96. The Tribunal following its own order for Assessment Year 1994-95 in ITA No.3175/Mum/1999 restored the issue back to the file of Assessing Officer to follow the findings in the consequential order passed in Assessment Year 1993-94 and 1994-95, therefore, the issue can be restored back to the Assessing Officer with similar directions.*

*10.1 We find that in Assessment Year 1995-96 in assessee's own case identical ground was raised. The Co-ordinate Bench restored this issue back to the file of Assessing Officer by observing as under:*

*"30. With regard to additional ground no. 4, we notice from the records that the similar ground has already been*

*decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1993-94 & 1994-95 (ITA No. 2739 & 3175/Mum/1999) on merits, wherein IT AT has remit the matter back to the file of AO for fresh adjudication in accordance with law. For the sake of clarity, relevant portion of the decision in assessee's own for Assessment Year 1994-95 reproduced below:-*

*28. In this assessment year also the assessee has raised two additional grounds. The first being the debts written off against the provision /provision of written back in the subsequent year have to be allowed. In other words that deduction should be allowed in respect of debts written off during the year against the provision or in case of write back of the said provision the same should be excluded from total income. With regard to the first additional ground in view of our decision at paragraph 16 above, we admit the additional ground and restore the issue back to the AO to decide the issue by following the direction given at para 16 of this order. The other additional ground is only academic before us as in our considered opinion, though we find force in the contention of the assesses that when a provision is writtenback in the subsequent year the same should not form part of the total income, it would not be proper forum to comment on a subsequent assessment. However, the assessee may well raise the issue before the assessing officer when the issue crops up at the assessment stage. These additional grounds are thus treated as partly allowed.*

*31. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Therefore, we remit this issue to the file of AO to follow the findings in the consequential order passed in Assessment Year 1993-94 and 1994-95 in assessee's own case. Accordingly, this ground is allowed for statistical purposes,"*

*For parity of reasons we restore this issue back to the file of Assessing Officer to decide the same in line with the aforesaid directions. The additional ground No.5 ofthe appeal is allowed for statistical purpose."*

**108.** Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is allowed for statistical purpose.

**109.** In the result, cross objection filed by the assessee is partly allowed.

**110.** To sum-up, appeal filed by the revenue as well as cross objection filed by the assessee are partly allowed.

Order pronounced in the open court on 13<sup>th</sup> April, 2023.

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 13/04/2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER  
(Asstt. Registrar)  
**ITAT, Mum**