

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3951/Mum/2008**

**(A.Y. 2000-01)**

M/s Hindustan Unilever Ltd., Hindustan Lever House, 165/166 Backbay Reclamation Mumbai - 400 020	Vs.	Addl. Commissioner of Income Tax, Range 1(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACH1004N		
Appellant	..	Respondent

**ITA No.4033/Mum/2008**

**(A.Y. 2000-01)**

ACIT-1(1), Room No. 579, Aayakar Bhavan, Mumbai - 400 020	Vs.	M/s Hindustan Unilever Ltd., 165/166, Backbay Reclamation Mumbai - 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACH1004N		
Appellant	..	Respondent

Appellant by :	Nishant Thakkar & Ms. Jasmin Amalsadvala
Respondent by :	Chandip Singh

Date of Hearing	09.03.2023
Date of Pronouncement	16.05.2023

अदेश / O R D E R

**Per Amarjit Singh (AM):**

Both these appeals filed by the assessee and the revenue are pertained to assessment year 2000-01 based on similar fact and

identical issue therefore for the sake of convenience these appeals are adjudicated together.

### **ITA No. 3951/Mum/2008 (Assessee's Appeal)**

- “1. *The learned CIT(A) erred in not allowing Rs.40,94,260/- being business expenditure on foreign travel in respect of spouses who accompanied some of the company employees on official four*
2. *The learned CIT(A) erred in not directing the assessing officer to allow full deduction of Rs.15,46,24,982/- under Sec 80-I and Rs.6,61,48,74,180/- u/s 80-IB as claimed by the appellant*
- 2.1 *The learned CIT(A) erred in confirming that for the purposes of section 80-I and 80-IB the profits derived from the new industrial undertakings ought to be reduced by the amount of certain common expenses incurred at the Head Office on central departments such as Audit, Legal & Secretarial Shares dept, Selection & Training. Central accounts & Treasury etc. which cannot be identified with any of the industrial undertakings of the appellant eligible for deduction u/s 80-I and 80-IB.*
- 2.2 *The learned CIT(A) erred on facts in disposing of ground no 3 to 6 of the appellant's appeal on the assumption that the Assessing Officer has only apportioned expenses of purchase department advertisement and transport He failed to appreciate that the appellant on its own had allocated the expenses of purchase department advertisement, transport and other expenses.*
- 2.3 *The learned CIT(A) failed to appreciate that the appellant was in appeal against the allocation of only those Head Office overheads which in any case have to be incurred by the appellant irrespective of the new undertakings eligible u/s 80-I & 80IB and are in no way dependent on the said new industrial undertakings and therefore cannot be considered and allocated in arriving at the amount of profits derived from the said undertakings*
3. *Without prejudice to Ground 2 above, the learned CIT(A) erred in not directing the assessing officer that, if the common head office expenses referred to above in Ground 2 are to be allocated for claiming deduction u/s 80-I & 80-IB then on same basis, the common income credited to the profit & loss account but not allocated by the appellant to the individual units should also be allocated and accordingly, considered in computing the profit and gains of the said undertakings eligible u/s 80-I/80-IB on principles of equity and justice and consistent accounting practice*
4. *The learned CIT(A) erred in confirming that for the purposes of allowing deduction under Sec 80-I/80-I8, in respect of Concentrated Detergent Powder undertaking at Chhindwara DFA undertaking at Orai and Chemical undertaking at Daman, the profits derived by the undertakings are required to be reduced by the losses/unabsorbed depreciation in respect of these undertakings determined in earlier years*
- 4.1 *He failed to appreciate and ought to have held that the losses/unabsorbed depreciation of earlier years had already been set-off against profits from other undertakings/activities and there was no*

losses/unabsorbed depreciation, which had been brought forward in the current year

- 4.2 He also failed to appreciate that as laid down in Section 80AB of the Act, deduction under Sec 80-I/IB is to be allowed with reference to the amount of profits included in the Gross Total Income and cannot be notionally reduced by amounts which are not actually reduced in arriving at the Gross Total Income
5. The learned CIT(A) erred in holding that the Royalty amounting to Rs.15,55,63,403/- is to be allocated to the profits and gains derived from industrial undertakings eligible for deduction u/s 80-I and 80-IB.
6. The learned CIT(A) erred in holding that sale of miscellaneous products(scrap) and foreign exchange gain are required to be included in total turnover for the purposes of computing deduction under sec. 80HHC
- 6.1 He failed to appreciate that sale of miscellaneous products(scrap) and foreign exchange gain comprises of receipts other than those arising from sale of regular products and cannot be considered as turnover.
7. The learned CIT(A) erred in confirming that 90% of the following amounts are to be reduced from the profits & gains from business for the purposes of allowing deduction under Sec. 80HHC

(i)	Interest	1,91,58,69,283
(ii)	Royalty	1,87,25,437
(iii)	Commission	58,84,229
(iv)	Other Income	5,28,26,259
(v)	Receipts from services rendered	37,96,32,000
(vi)	Rent-Oil storage	24,70,135

- 7.1 The learned CIT(A) further failed to appreciate that Royalty is not specified in the clause (baa) to the Explanation under sec. 80HHC and therefore, he ought not to have reduced 90% of the amount of Royalty from the amount of profits from the business.
- 7.2 The learned CIT(A) erred in not adjudicating ground no. 102, of the grounds of appeal to the Commissioner of Income Tax(Appels), reproduced below:  
 "10.2. The learned AC failed to appreciate and ought to have held that since the appellant had also incurred interest expenditure of Rs 18,01,67,000/-, there was no justification in reducing 90% of the gross amount of interest receipts from the profits of the business without considering the interest expenditure."
8. The learned CIT(A) erred in holding that the sales proceeds not realised till 30.9.2000 were required to be reduced from the export turnover.
- 8.1 He failed to appreciate that the sales proceeds were not realised till 30.9.2000 due to reasons beyond the control of the appellant
9. The learned CIT(A) erred in holding that loss on export of traded goods is to be reduced from the amount of profits derived from export of goods manufactured by the appellant for the purposes of computing deduction under sec 80HHC.

- 9.1 *He also failed to appreciate that the entire FOB value of exports of traded goods represents turnover in respect of which certificates in Form No 10CCAB have been issued to supporting manufacturers under Sec 80HHC(1A) and therefore the loss on such traded goods ought not to be adjusted against the profits derived from export of goods manufactured by the appellant.*
- 9.2 *He failed to appreciate that under Sec 80HHC, deduction is allowed in respect of profit derived from exports and therefore losses incurred ought to be ignored.*
- 9.3 *The learned CIT(A) also failed to appreciate that the losses were incurred in export of traded goods which was a different business activity.*
10. *The learned CIT(A) erred in not allowing the appellants' claim for deduction of a sum of Rs.30,20,41,982/- being net provision for Retirement pension payable by the appellant to its employees*
11. *The learned CIT(A) erred in increasing the value of closing stock of raw materials and packing materials by Rs.13,83,00,000/- representing unutilised balance of Modvat as on 31.3.2000.*
12. *The learned CIT(A) erred in confirming the reduction of appellant's claim under section 10(33) by notional expenditure of Rs.72.487/-.*
- 12.1 *He failed to appreciate and ought to have held that the appellant did not incur any expenditure on earning of dividends.*
13. *The learned CIT(A) erred in confirming the disallowance of exemption u/s 10B in respect of Miscellaneous income of Rs.2,54,530/-.*
- 13.1 *He failed to appreciate that miscellaneous income relates to amount realised on sale of scrap generated out of normal manufacturing activity and is directly related to the operations carried on at the industrial undertaking.*
14. *The learned CIT(A) erred in confirming that the legal cost incurred in respect of merger of erstwhile Ponds (India) Limited is a capital expenditure*
- 14.1 *He failed to appreciate that the legal cost was incurred during the year and was laid out wholly and exclusively for the purposes of the business of the appellant.*
15. *The learned CIT(A) erred in confirming the reduction of appellant's claim under section 80-0 by notional expenditure of Rs.77,319/-*
- 15.1 *He failed to appreciate and ought to have held that the appellant did not incur any expenditure on earning of royalty income.*

*The appellant craves leave to add to, alter or amend all or any of the aforesaid grounds of appeal.”*

2. The fact in brief is that return of income declaring total income of Rs.6,73,16,39,240/- was filed on 30.11.2000. The assessee company is engaged in the manufacturing, trading and marketing (including export) of Fast Moving Consumer Goods (FMCG) etc. The case was subject to

scrutiny assessment and assessment order u/s 143(3) of the Act was passed on 03.03.2003. The total income was assessed at Rs.81,15,35,13,191/- after making various disallowances. The further fact of the case are discussed while adjudicating the ground of appeal filed by the assessee.

**Ground No. 1: Disallowance of foreign travelling expenditure:**

3. During the course of assessment the A.O noticed that assessee has debited an amount of Rs.40,04,260/- on account of foreign travelling expenses in respect of spouses who accompanied on official tour with some of the company employees. The Assessing Officer has disallowed such foreign travelling expenses on the basis of similar disallowance made in assessment year 1999-2000 on the reason that expenditure of foreign travelling of the spouses was wholly and exclusively not for the purpose of business.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the ground of appeal of the assessee.

5. During the course of appellate proceedings before us the ld. Counsel contended that such foreign travelling expenses is covered in favour of the assessee vide order of the ITAT, Mumbai in the case of assessee itself for assessment year 1998-99. He also referred the decision of Hon'ble Bombay High Court in the case of CIT Vs. Alfa Laval (I) Ltd. (2015) 149 taxman.com 29 (Bom) dated 15.07.2015.

On the other hand, the ld. D.R supported the order of lower authorities.

6. With the assistance of ld. Representative we have perused the decision of ITAT vide ITA No. 2031/Mum/2004 for assessment year 1998-99 wherein the identical issue on similar fact has been adjudicated in favour of the assessee after referring the decision of the

coordinate benches of the Tribunal in assessee's own case for assessment year 1985-86 to assessment year 1997-98. Consistent with the view taken by the coordinate bench as referred above we allow the ground of appeal of the assessee.

**Ground No. 2 & 3: claim of deduction u/s 80I and 80IB:**

7. During the course of assessment the AO noticed that assessee has claimed deduction u/s 80I & 80IB of Rs.15,46,24,982/- and Rs.6,61,48,74,180/- respectively. The deduction claimed u/s 80I was in support of 2 units namely FBP and detergent unit and claimed deduction u/s 80IB in respect of 21 units at various locations. The AO has examined the allocations of administrative expenditure to the eligible units and set off of brought forward losses of the eligible unit. The A.O was of the view that unallocated head office expenses need to be apportioned to determine the quantum of profit derived from industrial undertakings. The A.O also observed that for computing deduction u/s 80I and 80IB losses and depreciation and investment allowances of earlier years have to be taken into consideration. Accordingly, the AO has recomputed the claim of deduction and restricted the claim u/s 80I to Rs.11,00,81,388/- and u/s 80IB to Rs.6,25,58,99,199/-.

8. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

9. During the course of appellate proceedings before us the ld. Counsel submitted that identical issue on similar facts in the case of the assessee has been adjudicated by the ITAT, Mumbai for the assessment year 1998-99 and 1999-2000.

10. The ld. D.R supported the order of lower authorities.

11. Heard both the sides and perused the material on record. Regarding claim of deduction, the ITAT vide ITA No. 2201/Mum/2004 for assessment year 1998-99 held that this issue has been decided by the coordinate bench of the Tribunal in assessee's own case for the preceding assessment year 1985-86 to 1997-98, 2006-07 and AY 2009-10 wherein the Tribunal has partly allowed the identical issue in favour of the assessee while adjudicating these appeals. Accordingly, the Tribunal has restored the issue back to the AO for de novo adjudication after considering the findings of the Tribunal in accordance with law. Similarly, taking consistent view we restored this issue to the file of the A.O for de novo adjudication as directed vide ITA No. 2201/Mum/2004. Accordingly, ground no. 2 & 3 are allowed for statistical purposes.

**Ground No. 4: For allowing deduction u/s 80I/A in respect of concentrated detergent powder undertaking at Chhindwada:**

12. The profit derived by the undertaking are required to be reduced by the losses/unabsorbed depreciation in respect of these undertaking determined in earlier years.

13. The ld. Counsel submitted that identical issue on similar facts was decided by the ITAT, Mumbai in the case of assessee itself for assessment year 1999-2000 against the assessee's.

14. Heard both the sides and perused the decision of ITAT in the case of the assessee itself for assessment year 1999-2000 vide ITA No. 1039/Mum/2005 wherein on the similar issue the appeal of the assessee was dismissed. The relevant part of the decision is reproduced as under:

*"12. We have heard the rival contentions. This issue had travelled upto the Tribunal in the preceding assessment years (i.e. Assessment Years 1988-89 to 1991-92, 1996-97 and 1997-98. While deciding identical issues in appeal for the Assessment Year 1990-91 [ITA No. 4628 & 4658/Mum/2003, 08.02.2012] the Tribunal has held as under:*

- 37 Ground No.10 regarding setting off of loss of earlier years for deduction u/s 80I.
- 37.1 The Assessing Officer adjusted the earlier year's loss of the unit eligible for deduction u/s 80I and consequently the claim of deduction u/s 80I was not allowed in full as claimed by the assessee.
- 37.2 On appeal, the CIT(A) has referred sub.sec. (1) of sub sec (6) of sec. 80I and held that the profit has to be computed, if the Haldia unit eligible for deduction u/s 80I was only undertaking.
- 38 We have heard the ld Sr counsel for the assessee as well as ld DR and considered the relevant material on record. At the outset, we note that this issue has been decided against the assessee by the Tribunal for the AY 88- 89 & 89- 90. The Tribunal for the AY 89- 90 has adjudicated the issue in para 27.1 as under;

"27.1 After hearing both the parties, we find that this issue is also covered by the decision of Tribunal in assessment year 1988-89 (supra). In that year, the Revenue had relied on the judgment of Hon'ble Supreme Court in case of Synco Industries Ltd. vs. Assessing Officer (299 ITR 444), to argue that the brought forward losses and unabsorbed depreciation have to be adjusted before allowing claim of deduction u/s 80HH & 80I. The Tribunal distinguished the said case on the ground that brought forward losses/depreciation of the new unit had already been set off against other income of the assessee and nothing was brought forward either as loss or unabsorbed depreciation. Therefore, the Tribunal held that the deduction u/s 80HH has to be allowed without adjusting the brought forward losses/depreciation. However, in relation deduction u/s 80I, the Tribunal noted that in view of the specific provision of sec. 80I(6) as per which deduction u/s 80I has to be allowed on stand allone basis, treating the undertaking as the only source of income. Therefore, the Tribunal directed that brought forward losses and unabsorbed depreciation of the unit of the earlier years starting from the initial year has to be set off before allowing claim u/s 80I. Facts of this year are identical. Therefore, respectfully following the decision of Tribunal in assessment year 1988-89 (supra), we confirm the order of CIT(A) in relation to deduction u/s 80HH and set aside the order in relation to sec.80I on which the order of Assessing Officer is restored."

38.1 Following the order of the Tribunal for the earlier years, we decide this issue against the assessee.

13. In view of the specific provisions contained in Section 80IA(6) of the Act and the judgment of the Hon'ble Supreme Court in the case of Synco Industries Ltd. vs. Assessing Officer: 299 ITR 444, this issue raised in Ground No. 3 to 3.2 were decided against the Appellant by the Tribunal in the above decision. Respectfully following the same, we decide the issue against the Assessee and confirm the order of CIT(A) on this issue. Ground No. 3 to 3.2 raised by the Assessee are dismissed."

Following the decision of ITAT as referred supra this ground of appeal of the assessee stand dismissed.

**Ground No. 5: Royalty is to be located to profit derived from industrial undertaking eligible for deduction:**

15. The assessee has not pressed this ground therefore the same stand dismissed.

**Ground No. 6: Error in holding that sundry sales, sale of miscellaneous products and foreign exchange gains was required to be included in total turnover:**

16. The Id. Counsel submitted before us that identical issue on similar facts for assessment year 1998-99 vide ITA No. 2201/Mum/2004 after following the decision of the ITAT in the case of the assessee itself for assessment year 1991-92 to 1997-98 the issue was restored to the file of the A.O for de novo adjudication by the ITAT Mumbai. Following the decision of ITAT after taking consistent view we also set aside this issue to the file of the A.O to decide de novo as per the finding/ directions of the ITAT in preceding assessment year as supra and in accordance with law. Therefore, ground no. 6 of the assessee is allowed for statistical purposes.

**Ground No. 7: Error in confirming that 90% of the gross interest received, royalty, commission, other income, receipt for other services, and rent income to be reduced from the profit gains from business for the purpose of allowing deduction u/s 80HHC:**

17. The Id. Counsel submitted that identical issue on similar facts has been adjudicated in favour of the assessee by the ITAT vide ITA No. 2201/Mum/2004. With the assistance of Ld. Representative we have perused the above referred decision of the ITAT wherein the issue of 90% reducing of gross interest received while computing deduction u/s

80HHC was decided in favour of the assessee after following the decision of the ITAT in the case of the assessee for AY 1995-96 to 1997-98. Thereafter, taking consistent view we restore this issue to the file of the AO to allow the claim of the assessee as directed supra by the ITAT in its decision on similar issue for preceding assessment years. Similarly vide ITAT order No. 2031/Mum/2004 for AY 1998-99 the issue related to reduction of 90% of Royalty from the profit and gains of business was decided in favour of the assessee after following the decision of the ITAT on this issue for AY 1995-96 to 1997-98. We also restore this issue to the file of the AO for allowing as per the direction of the ITAT given in the above referred order. In respect of commission and other income the ld. Counsel submitted that ITAT vide ITA No. 1039/Mum/2005 for assessment year 1999-2000 has decided the issue against the assessee. Following the decision of the ITAT as referred supra we consider that 90% of the amount of commission and other income should be reduced from the amount of profit from the business while calculating profit of business for computing deduction u/s 80HHC of the Act. Therefore, this ground of appeal of the assessee is partly allowed for statistical purposes.

**Ground No.8: Sales proceeds not realized till 30.09.1999 were required to be reduced from the export turnover:**

18. The ld. Counsel submitted that identical issue on similar facts has been remand back to the A.O by the ITAT in assessment year 1998-99. After perusal of the order of the ITAT for assessment year 1998-99 it is noticed that vide ITA No. 2201/Mum/2004 the aforesaid issue was restored back to the file of the A.O for de novo adjudication as decided by the ITAT in assessee's own case for preceding assessment year 1992-93 & 1993-94. Consistent with the view taken following the decision of ITAT we restore this issue back to the file of the Assessing Officer for

deciding afresh as per findings of the ITAT in assessee's own case for the preceding assessment year as referred supra. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

**Ground No.9: Sale of loss of export of traded goods should not be reduced from the amount of profit derived from export of manufacturing goods while computing deduction u/s 80HHC:**

19. The ld. Counsel submitted that similar issue on identical facts has been adjudicated by the ITAT in assessment year 1998-99 against the assessee vide ITA No. 2201/Mum/2004 assessment year 1998-99 on the basis of decision of ITAT in assessee's own case for assessment year 1995-96 and 1997-98. Following the decision of ITAT at para 16 for AY 1998-99 as supra after taking consistent view we dismiss this ground of appeal filed by the assessee.

**Ground No. 10. Claim for deduction showing net provision for retirement pension payable by the employees:**

20. The ld. Counsel submitted that similar issue on identical facts has been decided by the ITAT for assessment year 1998-99 in favour of the assessee vide ITA No. 2201/Mum/2004 after following the decision of ITAT in the assessee's own case for assessment year 1993-94 to 1997-98. Taking the consistent view after following the order of the ITAT we allow the appeal of the assessee.

**Ground No. 11:**

21. The ld. CIT(A) erred in increasing value of closing stock of raw material and packing material by Rs.13.83 crores representing unutilized balance of Modvat as on 31.03.2000.

22. The ld. Counsel submitted that ITAT in assessment year 2006-07 in assessee's own case has restored the issue back to the file of the A.O.

With the assistance of Id. Representatives we have perused the decision of the ITAT on the identical issue on similar facts for assessment year 1999-2000 vide ITA No. 1039/Mum/2005. The relevant part of the decision is reproduced as under:

60. *Ground No. 12*

*–12. The learned CIT(A) erred in increasing the value of closing stock of raw materials and packing materials by Rs.13,84,00,000/- representing unutilised balance of Modvat as on 31.3.99.*

61. *During the relevant previous year the Assessee accounted for purchase of raw material and packing materials on net of excise duty basis. The Assessing Officer increased the value of closing stock of raw material and packing materials by the unutilised balance in the Modvat Credit Account of INR.13,84,00,000/- as on 31.3.1999. The CIT(A) declined to grant any relief on this issue in appeal preferred by the Assessee. Therefore, the Assessee is in appeal before us on this issue.*

62. *We have considered rival submissions. Both the sides agree that identical issue has been remanded back to the file of Assessing Officer vide order dated 10.12.2012 passed in ITA No. 7868/Mum/2010 for the Assessment Year 2006-07. We note that the Assessee has taken a position that the accounting policy has been consistently been followed by the Tribunal. For the Assessment Year 2006-07, the Dispute Resolution had directed Assessing Officer to adjust the opening stock, purchases and the closing stock by considering all taxes/duties and shares and thereafter, make addition under section 145A of the Act in case there was any difference in the profits. With the same direction we remand this issue back to the file of Assessing Officer. The Assessee is directed to furnish necessary details and information to enable Assessing Officer to implement the directions. Accordingly, Ground No. 12 is disposed off as allowed for statistical purposes.”*

Following the decision of ITAT as referred supra we restore this issue to the file of the A.O for deciding afresh as directed in the findings of the ITAT in preceding assessment year as above. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

**Ground No. 12: (Reduction of assessee’s claim u/s 10(33) by notional expenditure)**

23. This ground of appeal is not pressed therefore the same stand dismissed.

**Ground No. 13: The ld. CIT(A) erred in confirming the disallowance of exemption u/s 10B in respect of miscellaneous income:**

24. During the course of assessment proceedings the A.O noticed that assessee claimed exemption u/s 10B of the Act on the profit and gains from 100% of export oriented unit Etah amounting to Rs.3,47,62,388/- . The assessee claimed that miscellaneous income was pertained to the activity carried out by the said unit. The miscellaneous income mainly consisted of amount realized on sale of scrap generated out of the normal manufacturing activity. However, the A.O has disallowed this claim of deduction.

25. The ld. CIT(A) has dismissed the claim of the assessee holding that such income has not been generated by production or sale of any article by the newly established undertaking.

26. During the course of appellate proceedings before us the ld. Counsel placed reliance on the decision of CIT. Hewlett Packard Global Soft Ltd. 87 taxcom.182 (Kar) & GE BE P. Ltd. Vs. ACIT 49 taxman.com 348 (Kar). The ld. Counsel also submitted that ITAT in assessment year 1999-2000 vide ITA No. 1039/Mum/2005 has restored the issue to the file of the A.O for adjudicating afresh. We have perused the above referred order of the ITAT and found that the similar issue on identical facts has been restored back to the file of the A.O for deciding afresh as per provisions of Sec. 10B applicable at the relevant time after giving the assessee reasonable opportunity of being heard. Accordingly, we restore this issue to the file of the A.O for deciding afresh as per the direction of the ITAT given at para 69 of the above referred order. Therefor this ground of appeal is allowed for statistical purposes.

**Ground No. 14: Legal cost incurred in respect of merger of Erstwhile Ponds (India) Ltd. is a capital expenditure:**

27. During the course of assessment the AO noticed that assessee claimed certain expenses in connection with amalgamation of M/s Industrial Perfumes Ltd. with the assessee. One of the claim was a sum of Rs.7,09,997/- towards legal cost incurred in respect of merger of Erstwhile Ponds Ltd. with the assessee company. The AO has disallowed the same by treating as capital in nature.

28. The ld. CIT(A) has dismissed the appeal of the assessee.

29. During the course of appellate proceedings before us the ld. Counsel contended that allowability of such expenditure are to be considered as per provision of Sec. 35DD of the Act.

30. We consider that the claim of the assessee regarding allowability of the expenditure as per the provisions of Sec. 35DD of the Act is required to be examined by the A.O on the basis of relevant material after providing opportunity to the assessee. Therefore, this ground of appeal of the assessee is restored to the file of the A.O for deciding afresh as directed above. Accordingly, this ground of appeal is allowed for statistical purpose.

**Ground no. 15: (Reduction of claim u/s 80-0)**

31. This ground of appeal is not pressed therefore the same stand dismissed.

**ITA No. 4033/Mum/2008 (Revenue's Appeal)**

**Ground No. 1: Expenses re-imbursed to the Hindustan Lever Sports Club and Tata Sports Club being Staff Welfare expenses:**

31. During the course of assessment the assessee claimed an amount of Rs.55,000/- as reimbursement of expenditure incurred on account of Lever Sports Club and Tata Sports Club which were being run by the employees of company. The A.O has disallowed the same under

Sec.40A(9) of the Act stating that no provision has been made by the assessee for these expenditure.

32. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the claim of the assessee.

33. During the course of appellate proceedings before us at the outset the Id. Counsel submitted that identical issue on similar facts has been adjudicated by the ITAT Mumbai in assessment year 1998-99 in the case of the assessee itself in favour of the assessee.

On the other hand, the Id. D.R could not controvert the same.

34. We have perused the order of the ITAT in the case of the assessee itself for assessment year 1998-99 vide ITA No. 2031/Mum/2004. The ITAT has decided the issue in favour of the assessee after following the decision of ITAT on the similar issue and identical facts for the preceding assessment year 1995-96 to 1997-98. Consistent with the view taken by the ITAT at para 40 of the above referred order we don't find any error in the decision of Id. CIT(A) therefore this ground of appeal of the revenue stand dismissed.

**Ground No. 2: Disallowance of 50% of the expenditure incurred on membership and entrance fees to club:**

35. During the course of assessment the A.O noticed that in clause 17(a) of part B of form no. 3CD of the audit report the auditor has reported the amount of expenditure incurred on club membership as entrance fees to the amount of Rs.237.68 lacs and Rs.34.03 lacs respectively towards cost of club services and facilities used. On query, the assessee explained that rationale behind obtaining club membership was to enable its senior employees to interact with their counterpart and colleague in the industry in the competitive business environment. It was further subtitled that short term corporate membership was

obtained purely for business reasons. However, the A.O was of the view that by becoming members, the executive have also obtained benefits of personal nature. Therefore, the A.O treated 50% of such expenditure incurred for non-business purpose. Accordingly, 50% of Rs.2,71,72,121/- which comes to Rs.1,35,86,060/- was added to the total income of the assessee.

36. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following decision of jurisdictional High Court of Bombay in the case of Otis Elevator Company India Ltd. 195 ITR 682.

37. During the course of appellate proceeding before us the ld. Counsel submitted that similar issue on identical facts has been adjudicated by the ITAT, Mumbai in the case of the assessee itself for assessment year 1999-2000 in the case of the assessee itself.

38. We have perused the decision of ITAT Mumbai in the case of the assessee itself vide ITA No. 1039/Mum/2005. At para 57-58 of the said order held that this is a recurring issue which has been decided in favour of the assessee for the preceding assessment years 1986-87 to 1993-93 and from A.Y. 1995-96 to 1996-97. Taking consistent view following the decision of ITAT as referred supra, this ground of appeal of the revenue stand dismissed.

**Ground no. 3: Deleting disallowance of Rs.52,62,483/- towards administration and Training expenditure of Rural development:**

39. During the course of assessment the A.O noticed that assessee has claimed expenditure on Rural Development programme for Rs.52,62,483/-. On query the assessee explained that training activities and information and knowledge required for its business provide direct benefit for company's business and these Rural activities also provide

indirect benefit for company's business by creating a favourable business environment and the corporate image as a responsible corporate citizen. However, A.O had not agreed with the submission of the assessee and disallowed expenditure holding that such expenditure was also disallowed in the preceding assessment year.

40. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee. The relevant part of the decision of CIT(A) is reproduced as under:

*“9.4 I have carefully considered the submissions of the Ld.AR and gone through the assessment order of the AO. The AO has disallowed the amount only on the ground that the specific deduction available u/s. 35CC has been withdrawn and not available for this year. However, allowability of the expenditure, like any other expenditure, can be considered u/s. 37. There is no dispute that the appellant company manufacture a large number of products which are sold all over India including the rural areas. If the executives of the company are sent to the rural areas to acquaint themselves with the conditions there the experiment will be beneficial to the business interest of the company and as such any expenditure incurred therein will be an expenditure incurred for the purpose of business. So the issue is to find out the details of the expenditure incurred. Since my predecessors have accepted such expenditure on rural development, I am inclined to follow my predecessors in the absence of any evidence to the contrary. **Under the circumstances the AO is directed to allow the expenditure claimed under this head.**”*

41. Heard the rival contentions and perused the material on record. The ITAT Mumbai in the case of the assessee itself vide ITA No. 2201/Mum/2004 for A.Y. 1998-99 has decided the similar issue as per para 46 of the order after following the ITAT decision for A.Y. 1989-90 to 1997-98. Being a recurring issue after following the decision of ITAT as supra this ground of appeal of revenue stand dismissed.

**Ground No. 4: Deleting disallowance of Rs.33.57 crores being the deduction claimed by the assessee towards voluntary retirement:**

42. During the course of assessment the A.O noticed that assessee has claimed expenditure being ex-gratia payment on the voluntary retirement of employees. However the A.O was of the view that such

expenditure has not linkage with the revenue therefore, such expenditure were disallowed by treating as capital expenditure.

43. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim after following the decision of Hon'ble Bombay High Court in the case of Bhor Industry Ltd. Vs. CIT 264 ITR 180. The ld. Counsel submitted that similar issue on identical facts has been decided by the ITAT Mumbai in the case of the assessee itself for A.Y. 1999-2000. The ld. D.R could not controvert the same. We have perused the decision of ITAT Mumbai in the case of the assessee itself vide ITA No. 1244/Mum/2005 for AY 1999-2000 wherein after following the decision of Hon'ble jurisdictional Bobmay High Court as referred supra the issue was decided in favour of the assessee. Therefore, following the decision of the ITAT as referred supra, we do not find any merit in the ground of revenue. Therefore, this ground of appeal of Revenue is also dismissed.

44. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue stand dismissed.

Order pronounced in the open court on 16.05.2023

Sd/-

(Vikas Awasthy)  
Judicial Member

Place: Mumbai

Date 16.05.2023

Rohit: PS

Sd/-

(Amarjit Singh)  
Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**