IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.4754/Mum./2004

(Assessment Year : 2003–04)

Grasim Industries Ltd.
Aditya Birla Centre
"A" Wing, 2nd Floor Ahire Marg ……. Appellant
Worli, Mumbai 400 025
PAN – AAACG4464B

v/s

Dy. Commissioner of Income Tax
Range–6(3), Mumbai ..... Respondent

ITA no.5978/Mum./2004

(Assessment Year : 2003–04)

Dy. Commissioner of Income Tax
Circle–6(3), Mumbai ……. Appellant

v/s

Grasim Industries Ltd.
Aditya Birla Centre
"A" Wing, 2nd Floor Ahire Marg ..... Respondent
Worli, Mumbai 400 025
PAN – AAACG4464B

Assessee by : Shri J.D. Mistry a/w
Shri Madhur Agrawal
Revenue by : Dr. Kishore Dhule

Date of Hearing – 05/06/2023	Date of Order – 13/06/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present cross appeal has been filed challenging the impugned order dated 21/05/2004, passed under section 250 of the Income Tax Act, 1961 (for short *"the Act"*) by the learned Commissioner of Income Tax (Appeals)–XXVI, Mumbai, [*"learned CIT(A)"*], for the assessment year 2003–04.

2. The brief facts of the case, as emanating from the record, are: For the year under consideration, the assessee filed its return of income on 31/10/2003, declaring a total income of Rs.458,45,81,926. The return of income filed by the assessee was selected for scrutiny and statutory notices under section 143(3) as well as under section 142(1) of the Act were issued and served on the assessee. The assessee is engaged in the production and sales of Viscose Staple Fibre, Chemicals, Cement, and the production of Sponge Iron and Textile. The Assessing Officer (*"AO"*), vide order dated 26/03/2004, passed u/s 143(3) of the Act, assessed the total income of the assessee at Rs.494,59,33,333, after making certain additions/disallowances to the income declared by the assessee. The learned CIT(A), vide impugned order granted partial relief to the assessee. Being aggrieved, both, the assessee as well as the Revenue are in appeal before us.

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3. In its appeal, the assessee has raised the following grounds:–

The appellant prefers an appeal against the order of the Commissioner of Income Tax (Appeals)- XXVI [hereinafter referred as "CIT (A)"] on the following amongst other grounds each of which is without prejudice to any other.

1. Disallowance under section 43B:

1.1 The CIT (A) erred in not allowing the amounts paid or written back during the previous year amounting to Rs. 1.30,00,904/-, which had already been disallowed in the past under clause (c), (d) and (e) of section 43B, consistent with the Department's stand.

1.2 The CIT (A) ought to have held that in the event the Department's stand is accepted by the ITAT in earlier years, then deduction of amounts paid or written back amounting to Rs. 1,30,00.904/- should be allowed in the previous year.

2 Disallowance of Club membership fees

The CIT (A) erred in not allowing club membership fees of Rs. 8,48,100/- paid to Wellington Sports Club as deduction.

3 Interest received from Income Tax Department:

3.1 The CIT (A) erred in upholding the action of the AO in taxing interest of Rs. 14,38,79,778/- allowed by the Department.

3.2 The CIT (A) failed to appreciate that no income can be taxed until the entitlement is absolute or irretrievable. The CIT (A) ought to have held that interest allowed by the Department is not to be taxed till the matters are finally decided and the appellant is absolutely entitled to such interest.

4. Deduction under section 80 HHC

4.1 The CIT (A) erred in not directing the AO to allow deduction under section 80 HHC, as claimed by the appellant.

4.2 The CIT (A) ought to have held that no amount of interest received is to be reduced from profit of the business for the purpose of calculating deduction u/s. 80 HHC.

4.3 Without prejudice to the above, the CIT (A) failed to appreciate that interest paid during the previous year amounting to Rs. 168,40,60,135/- was higher than the amount of interest received amounting to Rs. 39,32,84,366/- resulting in net interest paid and therefore amount of interest received during the previous year cannot be reduced from the profit of the business.

4.4 The CIT (A) ought to have held that rent Rs. 1,53,05,670/- should not be reduced from the profit of the business, while calculating allowable deduction under section 80HHC.

4.5 The CIT (A) ought to have held that miscellaneous receipts Rs. 11,47,54,429/- should not be reduced from the profit of the business, while calculating allowable deduction under section 80HHC.

4.6 The CIT (A) failed to appreciate that interest, rent and miscellaneous receipts were operational income and were accrued out of incidental business.

4.7 The CIT (A) erred in not following the decisions of the Jurisdictional High Court in the cases of Bangalore Clothing Co. (260 ITR 371) and Alfa Laval India Ltd. (133 Taxman 740).

4.8 The CIT (A) erred in upholding the action of the AO in adjusting loss on export of traded goods against profit on export of manufactured goods, while calculating deduction under section 80 HHC.

5. Appropriation of Head Office expenses

5.1 The CIT (A) erred in confirming the AO's action in appropriating Head Office expenses and reducing the amount of allowable deduction u/s 80O.

5.2 The CIT (A) failed to appreciate that Head Office expenses cannot be reduced from the receipts while computing allowable deduction u/s. 80O.

5.3 Without prejudice to the above, the CIT (A) failed to appreciate that even if head office expenses are to be reduced from gross receipts for computing allowable deduction u/s. 80O, such expenses can only be a certain percentage of the gross receipts eligible for deduction u/s. 80O and not the total turnover of the division.

6. Long Term Capital Loss

6.1 The CIT (A) erred in upholding the action of the AO in reducing long term capital on sale of equity shares of MRPL from Rs. 328,24,90,776/- to Rs. 314,11,35,651/-.

6.2 The CIT (A) ought to have held that the third proviso to Sec 48(ii) is not applicable to the appellant's case.

7. Additional depreciation u/s. 32(1)(iia)

The CIT (A) erred in confirming action of the AO in rejecting the appellant's claim for additional depreciation of Rs. 30,19,657/- u/s. 32(1)(iia).

8. The appellant prays for the cost of this appeal in view of section 254 (2B) of the IT. Act.

The appellant craves leave to add to, alter, amplify or delete any of the above ground(s) before or at the time of hearing.

The appellant respectfully prays that relief prayed for in the abovementioned grounds be granted and that the appellate order of the learned CIT (A) be modified accordingly."

4. The issue arising in ground no.1, raised by the assessee, is pertaining to the amount paid or written back, during the year under consideration, which had already been disallowed in earlier years under section 43B of the Act.

5. At the outset, the learned Sr. Counsel, appearing for the assessee, submitted that this ground is in respect of alternate claim of the assessee to

allow deduction under section 43B(c), (d) and (e) of the Act in respect of liability disallowed in earlier years, which are paid/written back in the year under consideration. The learned Sr. Counsel further submitted that the claim of the assessee under section 43B of the Act has been allowed by the Tribunal in earlier years and, therefore, this ground now is rendered infructuous.

6. We find that a similar issue came up for consideration before the coordinate bench of the Tribunal in assessee's own case in Grasim Industries Ltd. v/s ACIT, in ITA no.4753/Mum./ 2004 and ITA no.5584/Mum./2004, for the assessment year 2002–03, wherein the coordinate bench, while dismissing the similar issue, following the earlier decision rendered in assessee's own case, observed as under:–

> *"6. 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. 2001-02. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum./2003 dated 22.10.2014 held as under: -*
>
> > *"2. Rival contentions have been heard and perused the record. The assessee is engaged in manufacturing and sale various products. During the course of scrutiny assessment, the A.O. disallowed assessee's claim of deduction u/s 43-B of the Act in respect of liabilities disallowed in earlier years which are paid/written back in the current year. The A.O. found that in the computation of income an amount of Rs. 10.85 crores has been considered as disallowance u/s 43-B (a) of the Act by the assessee itself. However, an amount of Rs. 1.31 crores was not considered as disallowance u/s 43-B of the Act falling under clause (b) to (d). The contention of the assessee was that the amount of Rs. 1.31 crores which falls under clauses (b) to (d) of section 43-B of the Act which are not payable as on 31-3- 2001 cannot be covered by the provisions of section 43-B of the Act. However, the A.O. did not agree with this explanation and made the disallowance. The ld. CIT(A) by his impugned order, confirmed the order of the A.O. and the assessee is in appeal before us.*
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> > *3. At the outset, the ld. Counsel for the assessee contended that the issue is covered by the decision of the Tribunal in earlier years i.e assessment years 1993-94 to 1998-99 and 2000-01 in assessee's own case, copy of which was placed on record. We find that similar issue was considered by the Tribunal in A.Y. 2000-01 vide order dated 9-10-2013 wherein the ground taken by the assessee was dismissed as the same has become infructuous. It was found by Tribunal that it is an alternative plea which relates to A.Y. 1993-94 decided by the Tribunal in assessee's favour. The appeal filed by the Department has been dismissed by the Tribunal vide order dated 20- 12-2001. As the facts and circumstances during the year under consideration are para materia wherein appeal of department in earlier year was dismissed by the Tribunal, therefore, ground taken by assessee for disallowance during the year has become infructuous. The view taken by the Tribunal in A.Y. 2000-01 is respectfully followed, ground of the assessee becomes otiose and is accordingly dismissed."*

7. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2000-01 is respectfully followed, ground raised by the assessee is accordingly dismissed."

7. Thus, respectfully following the aforesaid decision, ground no.1, raised in assessee's appeal is dismissed.

8. The issue arising in ground no.2, raised in assessee's appeal, is pertaining to the disallowance of Club Membership fees.

9. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee paid Club Membership fees of Rs.11,32,074, towards membership fees to various Clubs. During the assessment proceedings, on a perusal of the details, it was observed that an amount of Rs.8,48,100, is paid to Willingdon Sports Club for obtaining Corporate Membership. Accordingly, the assessee was asked as to why this amount should not be treated as capital expenditure. In response thereto, the assessee submitted that the payments have been made to various Clubs for enrolling its senior officials as members for the purpose of promoting the business of the assessee. It was further submitted that such members meet various kind of people because of which they developed business relationships benefiting the assessee company. The assessee also submitted that in commercial work, the contact with right persons is vital for efficient business organization and, therefore, the expenditure should be allowed as business expenditure. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that the payments made for obtaining membership is not allowable expenditure and the payments made towards annual renewal fees and expenditure incurred at Clubs for the business purpose is allowable expenditure, but not the payment made for obtaining membership. The AO further held that by such payment, the assessee got the right to use the facilities of the Club which is the advantage of enduring nature. Accordingly, the AO disallowed the payment towards Club Membership fees of Rs.8,48,100. The AO further accepted the

alternative contention of the assessee and allowed depreciation considering it it as intangible asset.

10. The learned CIT(A), vide impugned order, granted partial relief to the assessee and directed the A.O. to disallow only the entrance fees as capital in nature and allow all other expenditures as revenue expenditure. Being aggrieved, the assessee is in appeal before us.

11. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03 cited supra, by following the decision rendered in the preceding year, observed as under:–

> *"12. 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. 1993-94. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 2944/Mum/1997 dated 31.01.2005 held as under: -*
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> > *"15. Ground No. 4 raised only in the assessment year 199-34 only reads as under:-*
> >
> > > *"On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the sum of Rs.6,183/- incurred in the Diners Club and Rs.17,350/- incurred in the Taj Hotel Membership fees for S.V. Birla disallowed by Assessing Officer on the reasoning that early hearing same is business expenditure.*
> >
> > *16. We have heard both the parties, we find that he aforesaid issue raised in the assessment year 1993-94 is covered in favour of the assessee by the decision of the jurisdictional High Court in Otis Elevator CO. (India) Ltd., v. CIT 195 ITR 682 (Bom.). Respectfully following the same, we dismiss the ground raised by the department."*
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> *13. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in ay 1993–94 is respectfully followed, accordingly, ground raised by the assessee is allowed."*

12. The learned Departmental Representative ("*learned DR"*) could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in the facts and law was alleged in the relevant assessment year. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we uphold the plea of the assessee and allow

the Club Membership fees paid by the assessee. As a result, ground no.2, raised in assessee's appeal is allowed.

13. The issue arising in ground no.3, raised in assessee's appeal, is pertaining to the taxability of the interest received from the Income–tax Department.

14. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee, before the learned CIT(A), submitted that since the receipt of interest on refund has not reached the stage of finality as the Department has not accepted the decision of the learned CIT(A) and has preferred further appeal before the Tribunal, at this stage, the interest on refund should not be taxed. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee and held that there is nothing in the Act to wait for such taxation till the matter reaches the stage of finality. Being aggrieved, the assessee is in appeal before us.

15. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03 cited supra, by following the decision rendered in the preceding year, observed as under:–

> *"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. 2001-02. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
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> > *"7. The assessee is also aggrieved for taxing of interest received from Income Tax Department amounting to Rs. 13,64,09,609/-. We find that similar issue has been dealt with by the Tribunal in A.Y. 1993-94 in ITA No. 1523/Mum/1997 vide para 62 as under;-*
> >
> > > *"We have heard the parties and considered the rival submissions. These refunds have been granted to the assessee in the year under consideration and therefore they would partake the character of income of the assessee. If however, any refund has been found to be not refundable to the assessee and consequently the interest granted is withdrawn the same would not partake the character of income. We accordingly direct the Assessing Officer to reduce from the taxability of*

the aforesaid interest granted to the assessee, the amount which has been withdrawn subsequently. We direct accordingly."

8. It was argued by the Id. A.R. that benefit of interest so allowed by the department was subsequently withdrawn as a result of the appellate orders should be given to the assessee and the interest subsequently withdrawn should not be taxed and for this, reliance was placed on the decision of the Tribunal in the case of Avada Trading Co. (P.) Ltd. vs. ACIT (2006) 100 ITD 131.

9. We have considered the rival contentions. As far as the taxability of interest amounting to Rs. 13,64,09,609/- is concerned, granted alongwith interest. However, if in the subsequent year refund of interest is withdrawn, then the same should be reduced from the total income of the assessee. Accordingly, we direct the A.O. to tax interest income in terms of the order of the tribunal for A.Y. 1993-94 as reproduced above, keeping in view our above observation"

16. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal is respectfully followed, we order accordingly."

16. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in the facts and law was alleged in the relevant assessment year. Therefore, we allow ground no.3, raised in assessee's appeal with similar directions, as rendered by the coordinate bench in the preceding assessment years.

17. The issue arising in ground no.4.1 is general in nature and therefore, the same needs no separate adjudication.

18. The issue arising in grounds no.4.2 and 4.3, raised in assessee's appeal is pertaining to the reduction of interest income while calculating the deduction under section 80HHC of the Act.

19. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee claimed deduction under section 80HHC of Rs.7,78,77,192 and furnished Form no.10CCAC along with the return of income. From the perusal of the working, it was observed that the assessee has not reduced the interest income of Rs.39,32,84,366 while computing the profit of the business for the purpose of deduction under section 80HHC of the Act. Accordingly, the assessee was asked to show cause as to why 90% of the above receipt be not reduced from the profit of the business for the purpose of deduction under section 80HHC of

the Act. In response thereto, the assessee submitted that the interest paid during the previous year is Rs.168.41 crore, and, therefore, only net interest should be reduced from business profit. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that only gross interest is to be reduced for the purpose of section 80HHC of the Act.

20. The learned CIT(A), vide impugned order, dismissed the ground taken by the assessee. Being aggrieved, the assessee is in appeal before us.

21. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03 cited supra, by following the decision rendered in the preceding year, observed as under:–

> *"18. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"14. The next grievance of the assessee relates to allowing deduction u/s 80HHC of the Act with respect to interest income. The issue under consideration is squarely covered by the decision of Hon'ble Supreme Court in the case of ACG Associated Capsules Pvt. Ltd., 343 ITR 89(SC) wherein it was held that net interest income is to be excluded from the eligible profit for computing deduction u/s 80HHC rather than gross interest.*
> >
> > *15. An identical issue raised as additional grounds for the assessment year 1996-97 and 97-98 was considered and decided by this Tribunal in assessee's own case in paras 30 & 30.1 as under:*
> >
> > > *"30 As regards the additional ground no.1 pertaining to deduction u/s 80HH on gross interest the Sr Id counsel for the assessee has submitted that this issue has been decided by the Hon'ble Supreme Court in the case of ACG Associated Capsules vs CIT vide decision dated 8.2.2012; therefore, the deduction u/s 80HH should be allowed on the gross interest received.*
> > >
> > > *30.1 Since this ground has been raised by the assessee first time in view of the decision of the Hon'ble Supreme Court; therefore, it requires verification and examination at the level of the AO. Accordingly, we remit this issue to the record of the AO to consider and decide the same as per law after considering the contention of the assessee and after giving reasonable opportunity of being heard to the assessee.*

> *16. In view of the decision of honourable Supreme Court in case of ACG Associated Capsules reported in 67 DTR (SC) 205, the Explanation to section 80 HHC to be applied on net interest and not on gross interest. Accordingly, we direct the AO to apply clause (baa) in respect of interest receipt by following the decision of honourable Supreme Court (supra). We accordingly direct the A.O. to exclude the excess of interest income over interest expenditure from the eligible profit of the company while computing deduction u/s 80HHC of the Act.*
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> *19. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly."*

22. We also find that in the preceding assessment years, the coordinate bench, followed the decision of the Hon'ble Supreme Court in ACG Associate Capsule Pvt. Ltd. v/s CIT, [2012] 343 ITR 89 (SC), wherein it was held that for computation of profit of business for the purpose of deduction under section 80HHC of the Act, only 90% of net interest or net rental income is to be reduced under clause (1) of Explanation (baa) to section 80HHC of the Act. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in the facts and law was alleged in the relevant assessment year. Since in the present case, it is an accepted fact that interest paid during the year is Rs.168.41 crore, while interest received is Rs.39.33 crore, therefore, respectfully following the judicial precedence in assessee's own case cited supra, we uphold the plea of the assessee and allow grounds no.4.2 and 4.3, raised in assessee's appeal.

23. The issue arising in ground no.4.4, is pertaining to the reduction of rental income while calculating deduction under section 80HHC of the Act.

24. The brief facts of the case pertaining to the issue, as emanating from the record, are: The AO, vide assessment order passed under section 143(3) of the Act, reduced 90% of the rental income credited to the Profit & Loss Account for computing the profit of business for the purpose of deduction under section 80HHC of the Act.

25. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

26. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03 cited supra, by following the decision rendered in the preceding year, observed as under:–

> *"21. 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. 2001-02 in favour of the assessee. While deciding, the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"17. On the same proposition, the net rent expenditure and net commission expenditure is required to be reduced from eligible profit rather than the gross rent and gross commission for the computation of deduction u/s 80HHC of the Act. We direct accordingly."*
>
> *22. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly."*

27. On a perusal of the audited financial statements, forming part of the paper book, we find that during the year, the assessee paid rent of Rs.8.12 crore, while it received rental income of Rs.1.93 crore. Therefore, following the judicial precedents in assessee's own case cited supra, we uphold the plea of the assessee and allow ground no.4.4, raised in assessee's appeal.

28. The issue arising in grounds no.4.5, 4.6 and 4.7 raised in assessee's appeal is pertaining to the reduction of miscellaneous receipts from the profit of business while calculating the deduction under section 80HHC of the Act.

29. The brief facts of the case pertaining to the issue, as emanating from the record, are: The AO, vide assessment order passed under section 143(3) of the Act, reduced 90% of the miscellaneous receipts of Rs.11,47,54,429, credited to the Profit & Loss Account for the purpose of computation of deduction under section 80HHC of the Act.

30. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

31. The learned Sr. Counsel, appearing for the assessee, during the hearing, by referring to Page–41 of the paper book submitted that these miscellaneous receipts are in respect of various items. The learned Sr. Counsel further submitted that these receipts are in the nature of rebate on sales tax, refund of mineral area development cess, sundry balance returned back, scrap sales, sale of empty cement bags, plastic barrel, scrap barrel, waste oil, insurance claim and recovery, deposit forfeited, discount, recovery of water charges, freight recovery, liquidated damages, recovery of packing charges and other miscellaneous income. The learned Sr. Counsel submitted that under Explanation (baa) to section 80HHC of the Act, only non–operation receipts are excluded for the computation of deduction under the said section, however, the aforesaid receipts are pertaining to operations carried out by the assessee and, therefore, the same are not to be excluded while computing deduction under section 80HHC of the Act.

32. On the contrary, the learned DR submitted that there is no examination by any of the lower authorities whether these receipts are directly in relation to operations carried out by the assessee.

33. We have considered the submissions of both sides and perused the material available on record. From the perusal of the audited financial statements, forming part of the paper book, we find that during the year, the assessee received miscellaneous receipts of Rs.11.48 crore. The details of these receipts as provided on Page–41 of the paper book, are as under:-

Statement of Misc. Receipts		
Sr. no.	*Units*	*Amount (Rs.)*
1.	*CFD*	*10,52,686*
2.	*SFD Nagda*	*17,88,183*
3.	*SFD – Mavoor*	*1,46,511*
4.	*Pulp – Mavoor*	*10,297*
5.	*Grasilene*	*9,62,379*
6.	*BC*	*35,60,754*
7.	*Pulp – Harihar*	*36,018*

8.	*Chemical – Nagda*	*51,68,205*
9.	*Membrane*	*27,76,339*
10.	*CSA*	*2,814*
11.	*Textile Divn – BTM*	*31,05,371*
12.	*V. Woollen*	*0*
13.	*BTM – Bhiwani*	*33,61,022*
14.	*Power Divn – Bhiwani*	*10,776*
15.	*Elegant*	*11,31,001*
16.	*Vikram Cement*	*2,85,91,311*
17.	*Aditya Cement*	*85,42,247*
18.	*Grasim Cement*	*11,80,249*
19.	*Rajashree Cement*	*3,45,675*
20.	*Cement South*	*47,05,613*
21.	*Dharani Cement*	*1,76,495*
22.	*BGU*	*8,42,171*
23.	*Cement Marketing – East*	*70,42,133*
24.	*Cement Marketing – West*	*30,75,557*
25.	*Cement Marketing – North*	*4,20,958*
26.	*Cement Marketing – South*	*13,50,989*
27.	*RMC*	*24,04,935*
28.	*Birla White*	*2,08,14,549*
29.	*E&DD*	*645*
30.	*Vikram Ispat*	*62,99,422*
31.	*V. Shipping (MBC)*	*3,47,652*
32.	*BIMC*	*55,01,471*
		11,47,54,428

34. It is the claim of the assessee that these receipts are in relation to operations carried out by the assessee and, therefore, should not be excluded while computing deduction under section 80HHC of the Act. In the Chart filed during the course of the hearing, the assessee provided the following details of these receipts:-

Statement of Misc. Receipts		
Sr. no.	*Units*	*Amount (Rs.)*
1.	*Rebate on sales tax*	*1.69 crore*
2.	*Refund of Mineral Area*	*2.83 crore*

	Development Cess	
3.	*Sundry balances written back*	*52.36 lakh*
4.	*Scrap sales*	*18.56 lakh*
5.	*Sale of empty cement bag, plastic barrel, scrap barrel, waste oil*	*23.37 lakh*
6.	*Insurance claim and recovery*	*Rs.28.02 lakh*
7.	*Deposit forfeited*	*Rs.19.01 lakh*
8.	*Discount*	*Rs.20.84 lakh*
9.	*Recovery of water charges*	*17.25 lakh*
10.	*Freight Recovery*	*11.31 lakh*
11.	*Liquidated damages*	*37.51 lakh*
12.	*Recovery of packing charges*	*1.02 crore*
13.	*Other misc. expenses*	*4.66 crore*
14.	*Net misc. expenses incurred* *Misc. expenses* *Misc. income of*	*Rs.58.86 crore* *Rs.70.34 crore* *Rs.11.48 crore*

35. In respect of rebate on sales tax and refund of Mineral Area Development Cess, the assessee has placed reliance upon the decision of the Hon'ble Jurisdictional High Court in Alfa Laval India Ltd. v/s DCIT, [2003] 133 Taxman 740 (Bom.), wherein the Hon'ble Court held that interest income received from customers as well as sales tax set off cannot be excluded from business profit while calculating deduction under section 80HHC of the Act. Further, in respect of sundry balances written back, the assessee has placed reliance upon the decision of the coordinate bench of the Tribunal in DCIT v/s Gharda Chemicals Ltd., [2016] 71 taxmann.com 56 (Mumbai-Trib.), wherein the coordinate bench, inter-alia, held that registration charges written back cannot be excluded from the profit of the business for the purpose of computing deduction under section 80 HHC of the Act. Similarly, in respect of scrap sales and sale of empty cement bag, plastic barrel, scrap barrel, waste oil, the assessee has placed reliance upon the decision of the Hon'ble Madras High Court in CIT v/s TTK LIG Ltd., 2018 (11) TMI 53, wherein the Hon'ble High Court held that sale of scrap is derived from operation activity of the undertaking and therefore cannot be excluded from business profit while calculating deduction under section 80HHC of the Act. Further, in respect of insurance claim and recovery, the assessee has placed reliance upon the

decision of the Hon'ble Jurisdictional High Court in CIT v/s Pfizer Ltd, [2011] 320 ITR 62 (Bom.), wherein the Hon'ble jurisdictional High Court held that contract of insurance is a contract of indemnity and the indemnification stand on the same footing as the income that would have been realised by the assessee of the sale of the stock in trade. Accordingly, the Hon'ble Court held that the insurance claim on account of the stock in trade does not constitute an independent income or receipt of the nature similar to brokerage, commission, interest, rent, or charges and thus would not be subjected to deduction of 90% under clause (1) of Explanation (baa).

36. As is evident from the record, in the present case, the lower authorities did not examine each and every item of miscellaneous receipt as mentioned on page 41 of the paper book and the AO straightaway proceeded to reduce 90% of miscellaneous receipts amounting to Rs. 11,47,54,429, from the profit while computing deduction under section 80HHC of the Act. During the hearing, these receipts have been categorised in various categories as noted above, however, it is evident that the Revenue has not examined the relation of such receipts with the business of the assessee. In this regard, it is pertinent to note that in CIT v/s Bangalore Clothing Co., [2003] 127 Taxman 637 (Bom.), the Hon'ble Jurisdictional High Court held that the AO has to ascertain whether the receipts were part of operational income and for that the Department will have to consider the Memorandum and Articles of Association of the company, nature of the business, nature of the activity and such other tests. The Hon'ble Court further held that just looking at the nomenclature without any further enquiry into the nature of the business, Explanation (baa) cannot be invoked, since the nomenclature may not be accurate. The relevant findings of the Hon'ble Jurisdictional High Court, in the aforesaid decision, are as under:-

> *"8. We do not find any merit in the argument advanced on behalf of the Department. In this case, we are concerned with profits from business of exports of goods manufactured by the assessee. Therefore, the export profits were required to be computed in the ratio of export turnover to total turnover as contemplated by the above formula. Explanation (baa) was introduced into the Act by Finance (No. 2) Act, 1991 with effect from 1-4-1992. Under the Circular of CBDT bearing No. 621 dated 19-12-1991, it has been stated that the above formula gave distorted figure of export profits when receipts like interest, commission etc. which do not have element of turnover are included*

by the assessee in profit and loss account. Therefore, Explanation (baa) came to be introduced. Under that Explanation, profits of business, for the purposes of section 80HHC, does not include receipts which do not have element of turnover like rent, commission, interest etc. However, as some expenditure might be incurred in earning such incomes an ad hoc 10% deduction from such incomes is provided to account for those expenses. However, the learned counsel for the Department cannot invoke Explanation (baa) in every matter involving receipts by way of brokerage, commission, interest, rent, labour charges etc. These items of income have got to be seen in the context of the business activity of the assessee. To give an example, in the case of a manufacturing Company which undertakes exports, receipt of interest or commission may not be Operational Income because they do not have the element of turnover and consequently Explanation (baa) will apply. However, that will not be the case if the assessee is carrying on the business of Financing because in the case of Financing, the interest income which accrues to the assessee will have the element of turnover and in such a case, receipts like interest, will not attract Explanation (baa). The point which we would like to make, therefore, is that in every matter the Assessing Officer will have to ascertain whether receipt of interest, commission, labour charges etc. were a part of Operational Income. We cannot lay down any standard test for deciding what would constitute Operational Income. Broadly, the Department will have to consider the Memorandum and Articles of the Association of the Company, the nature of the business, the nature of the activity and such other tests. The Department will also have to ascertain as to what is the dominant business of the Company and whether receipts like interest, commission, etc. accrues as a part of the main business activity or whether they accrue out of incidental business. In the case of K.K. Doshi & Co. (supra), the assessee had received Rs. 19.60 lakhs as service charges. It was held that the service charges of Rs. 19.60 lakhs did not have the element of turnover because the charges were received for a seasonal activity which was not an integral part of the manufacturing activity. Therefore, the test to be applied in all such matters is, whether interest, service charges, commission accrues out of the main business activity of the Company and whether they were Operational Income. The case of K.K. Doshi & Co. (supra) shows that service charges of Rs. 19.60 lakhs did not represent Operational Income and, therefore, it came within Explanation (baa). However, we find that the Department just looks at the nomenclature of the receipt and if it finds that the nomenclature is rent, interest, commission then without any further inquiry into the nature of business, the Department invokes Explanation (baa) which is not the purpose and the object of that Explanation. In the present case, the receipt in question is labour charges. However, this nomenclature may not be accurate. In the present case, the assessee is a manufacturer and exporter of garments. In the present case, the Tribunal has recorded a finding of fact which is not challenged, namely, that there was no difference between the activities relating to export business carried on by the assessee and the processes carried on for manufacturing garments for others under job-work contracts. The Tribunal has further found, on facts, that the activity of labour job involved use of machinery, labour and material which were also forming part of the activity of manufacturing garments for its own sales. The Tribunal further found that there was no difference between manufacturing of garments for the assessee's own sales and manufacturing of garments for others on labour job basis. These are findings of fact. They have not been challenged in the Memo of Appeal. The Memo of Appeal proceeds only on the basis that because the receipt is by way of labour charges, Explanation (baa) stood attracted. As stated above, each

case will have to be examined by the Assessing Officer. As stated above, in each case of receipt of labour charges, rent, interest, commission etc. the Assessing Officer will have to ascertain whether the element of turnover existed. In the present case, the Tribunal has found, on facts, that there was an element of job-work turnover and therefore, the Tribunal concluded on the facts of this case that the receipt of labour charges was not in the nature of brokerage, commission, rent, interest or charges as mentioned in Explanation (baa) to section 80HHC. Further, the assessee received Rs. 66,35,083 as processing charges. This can be seen from profit and loss account. The Company is engaged in manufacture and sale of garments, both domestically and by way of exports. The processing charges earned was by using the entire undertaking of the Company which also manufactured garments for domestic sales and export sales and which processing charges were earned by incurring expenditure of the factory like wages, electricity charges etc. debited in profit and loss account. That, the income of Rs. 66,35,083 was only an income from business and the expenditure for earning this income is included in several items of expenditure debited in profit and loss account. In the circumstances, we do not wish to interfere with the finding of fact recorded by the Tribunal. As stated above, if the receipt of labour charges (job-work charges), interest, commission etc. accrues by way of operating income then it falls outside Explanation (baa). In the present case, the receipt accrued from manufacturing activity. The Tribunal has found that job processing activity was linked to the manufacturing activity of the assessee. In the circumstances, on facts, the judgments cited by the Department do not apply to this case. Lastly, we may point out that, in this case, there is no challenge to the findings of facts recorded by the Tribunal in relation to the processing activity forming part of the manufacturing activity of the assessee."

37. Therefore, in view of the above, before applying the ratio laid down by the aforesaid decisions, relied upon by the assessee, it is relevant to examine each and every receipt under the broad head of '*Miscellaneous Receipts*' in light of the decision of the Hon'ble Jurisdictional High Court in Bangalore Clothing Co. (supra) and for this purpose, we remand this issue to the file of the AO for *de novo* adjudication. We further direct that if upon examination it is found that the receipt is having an element of turnover or arises out of the business operation of the assessee then the same cannot be excluded from the profit of the business for the purpose of computing deduction under section 80HHC of the Act. During the hearing, the learned Sr. Counsel also submitted that the net miscellaneous expenses incurred by the assessee is Rs. 70.34 crore, while miscellaneous income is Rs. 11.48 crore and therefore applying the ratio laid down by the Hon'ble Supreme Court in ACG Associated Capsules Pvt. Ltd. (supra), only the net amount can be added. As noted above, under the broad head '*Miscellaneous Receipt*' the assessee has received income of

varied nature. Therefore, we deem it appropriate to remand this aspect also to the file of the AO for *de novo* adjudication after necessary examination. If upon examination it is found that the miscellaneous expenses incurred by the assessee are of a similar nature as business income earned, then relief be granted to the assessee in light of the decision in ACG Associated Capsules Pvt. Ltd. (supra). As a result, grounds No. 4.5, 4.6, and 4.7 raised in assessee's appeal are allowed for statistical purposes.

38. The issue arising in ground no. 4.8, raised in assessee's appeal, is pertaining to adjusting loss on the export of trade in goods against profit on export of manufactured goods, while calculating the deduction under section 80HHC of the Act.

39. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the assessment proceedings, the assessee contended that the loss on export of trading goods should not be adjusted against the profit on the export of manufactured goods. The AO vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and by placing reliance upon the decision of Hon'ble Jurisdictional High Court in IPCA Laboratories v/s CIT (251 ITR 401) held that loss arising on the export of trading goods is required to be adjusted against the profit on the export of manufactured goods and deduction under section 80HHC is to be allowed on the net amount. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

40. During the hearing, the learned Sr. Counsel, fairly agreed that the coordinate bench of the Tribunal in assessee's own case in Grasim Industries Ltd. (supra), vide order dated 14/12/2021, for the assessment year 2002-03 dismissed similar ground filed by the assessee, inter-alia, in view of the decision of Hon'ble Supreme Court in IPCA Laboratories, 266 ITR 521 (SC). Therefore, in view of the above, we dismiss ground No. 4.8 raised by the assessee in the present appeal.

41. The issue arising in grounds No. 5.1 and 5.2, raised in assessee's appeal, is pertaining to the allocation of head office expenditure and reducing the same from deduction under section 80-O of the Act.

42. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee has claimed a deduction of Rs.6,00,362, under section 80-O of the Act. The total turnover of the ED & D unit for the previous year was Rs.20.58 crore. Therefore, the AO, vide assessment order passed under section 143(3) of the Act, allocated the head office expenses of Rs.9,05,520 (being 0.44% of the turnover) against royalty income of Rs.30,01,812 and computed the deduction under section 80-O to Rs. Nil (20% of Rs. 30,01,812, i.e. Rs.6,00,362 minus Rs. 9,05,520). The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue.

43. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case in Grasim Industries Ltd. (supra), vide order dated 14/12/2021, for the assessment year 2002-03, decided the similar issue in favour of the assessee, following the decision rendered in preceding years, by observing as under:-

> *"27. 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.2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"25. The assessee has taken additional ground with regard to appropriation of HO expenses in computing deduction u/s 80-O of the Act amounting to Rs. 3,18,000/-.*
> >
> > *26. The issue has been decided in favour of the assessee by the Tribunal for the assessment years 1996-97, 1997-98, 1994-95 & 1995-96. It was further brought to our notice that no appeal has been filed by the Department against the decision of the Tribunal for allowing appropriation of HO expenses in computing deduction u/s 80-O of the Act.*
> >
> > *27. For the assessment year 1996-97 and 1997-98, this Tribunal has considered and decided an identical issue in para 15.2 to 15.4 as under.*
> >
> > *"15.2 We have heard the Sr ld Counsel for the assessee as well as the ld DR and considered the relevant material on record. A similar issue has been considered*

and decided by the Tribunal in assessee's own case for the AY 1995-96 in paras 29.1 & 29.2 as under:

29.1 On a similar issue the Tribunal in assessee's own case in AY 1994-95(supra) in paragraphs 25 to 25.2 has held as follows:-

'25. In grounds of appeal No. 32 to 35, the assessee has challenged the order of the CIT(A) in allocating head office expenses and thereby reducing the quantum of deduction available to the assessee under the following provisions:

Section	*Rs.*
8OHH	*14,20,000*
801	*5,54,600*
80M	*7,50,000*
80-0	*3,50,000*
	30,74,600

25.1 Facts of the case, in brief, are that the AO estimated the expenses and allocated head office expense to the various units which had claimed benefits u/s. 8OHH,801, 80M and 80-0 of the Act. Since the nexus between the head office and the individual units cannot be denied and since the assessee did not give details so as to give better allocation of these expenses to various units, the CIT(A) upheld the action of the AO. Aggrieved with such order of the CIT(A), the assessee is in appeal before us.

25.2 After hearing both the sides, we find the AO has only allocated the expenses but no income was allocated. We find the co-ordinate Bench of the Tribunal in the case of M/s. Procter & Gamble India Ltd. Vs. DCIT, vide ITA No. 5466/Mum/99 order dated 27th November, 2006 for the A.Y. 1990-91 has held that head office expense allocated to the units are not to be taken into consideration for computing the income of the assessee eligible for deduction u/s. 801 and also u/s 8OHH. Similarly we find the Bangalore bench of the ITAT in the case of Wipro GE Medical Systems Ltd. Vs. DCIT reported in 81 TTJ 455 has held that there is no need for allocation of any expenses when the expenses are directly connected with periods. Following the decision of the coordinate bench of the Tribunal and the decision of the Bangalore Bench of the Tribunal, we are of the considered opinion that there is no necessity for allocating the head office expenses to the units claiming deduction u/s. 8OHH, 801, 80M and 80-0. The order of the CIT(A) on this issue is accordingly set aside and the grounds raised by the assessee are allowed.

29.2 Respectfully following the aforesaid decision of the Tribunal, these grounds, namely 27 to 30 A, are allowed".

Respectfully following the earlier order of the Tribunal, we decide this issue in favour of the assessee."

28. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly."

44. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we uphold

the plea of the assessee and allow grounds no.5.1 and 5.2 raised in assessee's appeal.

45. In view of our decision in respect of grounds no.5.1 and 5.2, the issue arising in ground no.5.3 is rendered infructuous and, therefore, is kept open.

46. The issue arising in ground No. 6, raised in assessee's appeal, is pertaining to reducing the long-term capital loss on the sale of equity shares.

47. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year, the assessee sold 15,03,79,023 equity shares of MRPL. Out of these, 9,53,79,023 equity shares were acquired on 26/12/1998 on the conversion of fully convertible debentures ("*FCD*"). These FCDs were allotted to the assessee on 27/06/1997. While computing the long-term capital loss, the assessee has computed index cost considering the date of acquisition of FCD as the date of acquisition of the equity shares. During the assessment proceedings, the assessee was asked to explain that in view of the third proviso to section 48(ii) of the Act indexation on debentures is not allowable. In response thereto, the assessee submitted that the third proviso is applicable to long-term capital gain arising from the transfer of long-term capital assets being debenture or bonds other than capital-indexed bonds issued by the Government of India. The assessee further submitted that in the present case, long-term capital gain was from the sale of equity shares and not from the sale of debenture as mentioned in the said proviso. Therefore, the said proviso is not applicable in assessee's case. The AO vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that third proviso is applicable. Accordingly, long-term capital loss on the sale of 9,53,79,023 shares was computed considering the date of conversion of FCD, i.e. 26/12/1998 as the date of acquisition of equity shares. Accordingly, long-term capital loss for the year was reduced from Rs.328,24,90,776 to Rs. 314,11,35,651 by applying the third proviso to section 48(ii) of the Act. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the findings of the AO. Being aggrieved, the assessee is in appeal before us.

48. We have considered the submissions of both sides and perused the material available on record. The assessee acquired 9,53,79,023 nos. of 7% unsecured FCD of Mangalore and Petrochemical Refinery Ltd at the rate of Rs.19.26 each on 27/06/1997. These debentures were converted into 9,53,79,023 equity shares on 26/12/1998. During the year under consideration, the assessee sold the equity shares at the rate of Rs.2 each and computed long-term capital loss of Rs.328.25 crore. The aforesaid facts are not in dispute in the present case. Further, it is also not in dispute that the shares sold by the assessee are long-term capital assets. The assessee considered the date of acquisition of debentures, i.e. 27/06/1997, as the date of acquisition of the equity shares and accordingly indexed the cost of acquisition. While, the AO considered the date of conversion of FCD, i.e. 26/12/1998 as the date of acquisition of equity shares and recomputed the long-term capital loss to Rs. 314.11 crore. Thus, the only dispute between the parties is regarding the date of acquisition of equity shares for the purpose of computation of long-term capital loss. It is pertinent to note that as per section 49(2A) of the Act, the cost of debentures shall be deemed to be the cost of acquisition of equity shares which were received on the conversion of debentures. Therefore, the issue arises whether the same analogy can be applied for determining the date of acquisition of the shares on conversion of the FCD. We find that the Hon'ble Punjab and Haryana High Court in CIT v/s Naveen Bhatia, [2015] 62 taxmann.com 87 (P&H), held that where the assessee was allotted convertible debentures and later on same were converted into shares, while computing capital gains arising from the sale of said shares, it would be but logical to reckon the date of acquisition of convertible debentures as date of acquisition of such shares. The relevant findings of the Hon'ble High Court, in the aforesaid decision, are as under:-

> *"8. A plain reading of Section 47(x) would indicate that the conversion of convertible debentures into shares would not constitute transfer for the purposes of computation of income under the head 'capital gains'. Similarly, Section 49(2A) of the Act clarifies that for computing the capital gains on sale of shares received on conversion of convertible debentures, the cost of acquisition of shares shall be the cost of convertible debentures and thus it shall be deemed to be the cost of such shares received on conversion. In such*

a situation, as a necessary corollary, it would be but logical to reckon the date of acquisition of the convertible debentures as the date of acquisition of such shares received on conversion of convertible debentures. Now examining the factual matrix herein, the assessee was allotted 27160 convertible debentures of TELCO Limited on 20.12.2001 which were converted into equal number of shares on 31.3.2002. The assessee sold the said shares between 23.12.2002 to 10.3.2003 in different lots. This shall result in long term capital gains as the shares shall be deemed to have been held for a period exceeding 12 months by the assessee."

49. Thus, respectfully following the aforesaid decision, we are of the considered view that in the present case, the date of acquisition of debentures, i.e. 27/06/1997, be considered as the date of acquisition of the equity shares for the computation of long-term capital loss. As a result, ground no.6, raised in assessee's appeal is allowed.

50. The issue arising in ground No. 7, raised in assessee's appeal, is pertaining to claim for additional depreciation under section 32(1)(iia) of the Act.

51. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee claimed additional depreciation as per the provisions of section 32(1)(iia) of the Act on assets acquired and put to use during the previous year, which contributed in enhancing the installed capacity. In this regard, the assessee also filed accountant's report in Form No.3AA as prescribed in the third proviso to section 32(1)(iia) of the Act. Accordingly, the AO allowed the deduction of Rs.4,04,34,409. The assessee further submitted that the additional depreciation under section 32(1)(iia) of the Act of Rs.30,19,657 be also allowed on the assets, which were purchased in the year prior to the relevant previous year but were installed during the relevant previous year. In this regard, the assessee submitted that section 32(1)(iia) of the Act is a beneficial provision and therefore should be interpreted liberally. The AO, vide order passed under section 143(3) of the Act, did not accept the submissions of the assessee and held that the words used in the section clearly mentioned that plant and machinery should be acquired and put to use in the previous year and there is no ambiguity on the language of the section. Accordingly, the AO

disallowed the additional depreciation claimed by the assessee on assets acquired in earlier years and put to use during the relevant previous year. The learned CIT(A), vide impugned order, rejected the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

52. We have considered the submissions of both sides and perused the material available on record. As per the assessee, the additional depreciation section 32(1)(iia) of the Act is also available in respect of assets which were purchased in the year prior to the relevant previous year but were installed in the relevant previous year. In this regard, the assessee placed reliance upon the decision of the Hon'ble Gujarat High Court in Pr. CIT v/s IDMC Ltd, [2017] 393 ITR 441 (Guj.). We find that in the aforesaid decision, following substantial question of law came up for consideration before the Hon'ble High Court:-

> *"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in law in allowing additional depreciation claim of Rs. 2,18,50,976/= @ 20% under Section 32 [1](iia) of the Income-tax Act, 1961 on the machinery purchased before 31st March 2005, but installed after 31st March 2005 ?"*

53. While deciding the aforesaid substantial question of law in favour of the taxpayer, the Hon'ble Gujarat High Court observed:-

> *"7. Applying law laid down by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the case on hand, if the submission on behalf of the Revenue is accepted, in that case it will lead to an absurd and unjust result and the purpose and object of granting the additional depreciation will be frustrated. If the contention on behalf of the Revenue is accepted, in that case, the assessee shall never get the additional depreciation as provided under Section 32(1)(iia) of the IT Act. In the facts and circumstances of the case, the twin conditions of the acquired and installed shall never be satisfied in a year and therefore, the assessee shall never get any depreciation. The purpose and object of granting additional depreciation under Section 32(1)(iia) of the IT Act is stated hereinabove i.e. to encourage the industries by permitting the assessee setting up the new undertaking/installation of new plant and machinery and to give a boost to the manufacturing sector by allowing additional depreciation deduction. Thus, as rightly held by the learned ITAT the provision of section 32(1)(iia) of the IT Act is required to be interpreted reasonably and purposively as the strict and literal reading of section 32(1)(iia) of the IT Act will lead to an absurd result denying the additional depreciation to the assessee though admittedly the assessee has installed new plant and machinery. Under the circumstances, no error has been committed by the*

learned ITAT in allowing the additional depreciation at the rate of 20% on the plant and machinery installed by the assessee after 31st Day of March 2005 i.e. the year under consideration. No substantial question of law arise."

54. We further find that the Hon'ble Supreme Court vide order dated 13/10/2017 dismissed the Special Leave Petition in Pr. CIT v/s IDMC Ltd, in Diary No. 28648 of 2017, filed by the Revenue against the aforesaid decision of the Hon'ble Gujarat High Court. Since in the present case also the AO denied the claim of additional depreciation on the similar basis that the plant and machinery should be acquired and put to use in the relevant previous year, therefore, respectfully following the aforesaid decision of the Hon'ble Gujarat High Court we allow the additional depreciation claimed by the assessee under section 32(1)(iia) of the Act. As a result ground No. 7, raised in assessee's appeal is allowed.

55. Ground no.8 raised in assessee's appeal seeking the cost of this appeal was not pressed during the hearing. Therefore, the same is dismissed as not pressed.

56. Vide application dated 03/07/2006, the assessee sought admission of the following additional ground of appeal:-

"1. The learned CIT(A) ought to have held that the sum of Rs.2,78,28,270/- being royalty was an allowable deduction when computing the assessee's income chargeable to tax and could not be disallowed by applying section 43B of the Act.

2. The learned CIT(A) ought to have held that the sum of Rs.2,09,58,531/- being interest on royalty was an allowable deduction when computing the assessee's income chargeable to tax and could not be disallowed under section 43B of the Act.

The appellant craves leave to add, to alter, amplify or delete all or any of the ground (s) before or at the time of hearing."

57. Since, the issue raised by way of additional ground is a legal issue, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC Ltd vs CIT: [1998]

229 ITR 383 (SC). Having heard the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case in Grasim Industries Ltd (supra), vide order dated 14/12/2021, for the assessment year 2002-03, decided the similar issue in favour of the assessee, following the decision rendered in preceding years, by observing as under:-

> *"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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"The next grievance relates to the disallowance of royalty and interest on royalty u/s 43B of the Act treating it as tax. The issue is now settled by various orders of the Tribunal in assessee's own case for assessment years 1995-96 to 2000-01. A similar issue was considered by the Tribunal in the assessee's own case in A.Y. 1999-2000 in ITA No.5631/M/2002, wherein we find that the Tribunal has followed its earlier order in the assessee's own case in ITA No. 5630/Mum/02 for A.Y. 1998-99. In the absence of any contradictory facts brought on record by the Revenue, following the aforementioned decision, we decide this issue in favour of the assessee. Additional ground No. 2 is accordingly allowed."*
>
> *41. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02 is respectfully followed, we order accordingly."*

58. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we uphold the plea of the assessee and allow aforesaid additional grounds raised by the assessee vide application dated 03/07/2006.

59. The assessee, vide another application dated 26/04/2006, raised the following additional grounds of appeal:-

> *"1. On the facts and circumstances of the case and in law, the Appellant prays that the ("AO") be directed to:*
>
> *i. Exclude from taxable profits, the sales tax exemption benefit of Rs 93 crores, which is included in Sales and which is taxed in the assessment order as part of profits of the business; and*

ii. To treat the same as capital receipt not chargeable to tax.

The Appellant craves leave to add and/or to amend and/or to alter the above Ground of Appeal."

60. Since, the issue raised by way of additional ground is a legal issue, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC Ltd vs CIT: [1998] 229 ITR 383 (SC). Having heard the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case in Grasim Industries Ltd (supra), vide order dated 14/12/2021, for the assessment year 2002-03, while deciding the similar issue observed as under:-

"37. 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.2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -

> *"28. In the additional ground, the assessee has also taken ground regarding sales tax exemption benefit being capital receipt not chargeable to tax. We find that a similar issue has been restored back by the Tribunal in A.Y. 2000-01 in assessee's own case to the file of the A.O. to decide after considering the decision of Special Bench in the case of DCIT vs. Reliance Industries Ltd., 88 ITD 273 (Mum). Respectfully following the said decision of the Tribunal, we restore this issue back to the file of the A.O. for deciding the same in the light of the findings of the Tribunal in assessee's own case for A.Y. 1999-2000 in ITA No. 5631/Bom/2002, wherein the Tribunal at para No. 26.1 on page 11 has restored the issue back to the file of the A.O. to decide the issue afresh after considering the decision in the case of Special Bench of the Tribunal in the case of Reliance Industries Ltd. (supra). Respectfully following the same, the issue is restored back to the file of the A.O. for deciding the same afresh."*

38. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 2001-02, we also remit this issue back to the file of AO for deciding the issue afresh after proper verification. It is needless to say that assessee may be given proper opportunity of being heard."

61. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we remand

the issue raised vide aforesaid additional to the file of AO for adjudication after proper verification. As a result, the aforesaid additional grounds are allowed for statistical purposes.

62. Vide application dated 23/01/2013, the assessee raised the following additional ground of appeal:-

> *"1. The learned CIT (A) ought to have held that the sum of Rs.78,48,577/- being dividend received from Alexandria Carbon Black Company, a company incorporated and registered in Egypt (U.A.R.) was not taxable in India.*
>
> *The appellant craves leave to add, to alter, amplify or delete all or any of the ground (s) before or at the time of hearing."*

63. Since, the issue raised by way of additional ground is a legal issue, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC Ltd. (supra).

64. The issue arising in the aforesaid additional ground of appeal is pertaining to the taxability of the dividend received from the Egyptian company. During the year under consideration, the assessee received a dividend amounting to Rs.78,48,577 from M/s Alexandria Carbon Black Company S.A.E., a company incorporated and registered under the laws of Egypt (U.A.R.) and offered the dividend income to tax. It is the plea of the assessee that as per the terms of the India and United Arab Republic (Egypt) Double Taxation Avoidance Agreement ("*DTAA*"), the dividend received is taxable only in Egypt and therefore the same is to be excluded while computing the taxable income of the assessee in India. In this regard, reliance was placed upon the decisions of the coordinate bench of the Tribunal in assessee's own case in the preceding assessment years, wherein it was held that income of the foreign branch office is not taxable in India as per the relevant tax treaty. During the hearing, the learned Sr. Counsel, appearing for the assessee, submitted that sub-section (3) was inserted in section 90 of the Act vide Finance Act 2003, w.e.f. 01/04/2004, and therefore, the change in

legal provision is not applicable to the year under consideration. As a result, Notification No. 91 of 2008, dated 28/08/2008 issued by the Central Government in the exercise of powers conferred by section 90(3) of the Act, whereby the meaning of the term "*may be taxed*" used in the tax treaty was clarified, is also not applicable to the year under consideration. On the other hand, the learned DR submitted that this issue be remanded to the file of the AO to examine whether taxes have been paid in Egypt.

65. Having considered the submissions of both sides, we find that as per Article 11(2) of the India- UAR (Egypt) DTAA, dividends paid by a company which is a resident of the UAR (Egypt) to a resident of India may be taxed in the UAR (Egypt). As noted above, it is the plea of the assessee that prior to amendment by Finance Act 2003, w.e.f. 01/04/2004, to section 90 of the Act, the term "*may be taxed*" means that only the source country has the right to tax the income earned in such country and the resident country does not have any taxing rights. Therefore, the dividend received by the assessee from the Egyptian company, in the present case, is only taxable in Egypt. We find that while examining the issue of applicability of the aforesaid amendment vide Finance Act, 2003 to section 90 of the Act, and the aforesaid Notification issued under the said section, the coordinate bench of the Tribunal in Essar Oil Ltd v/s ACIT, [2013] 42 taxmann.com 21 (Mum-Trib.), observed as under:-

> *"88 We summarise our conclusion as under:—*
>
> *(i) …..*
>
> *(ii) The notification dated 28th August 2008, reflects a particular intent and objective of the Government of India, as understood during the course of negotiations leading to formalization of treaty. Therefore, such a notification has to be reckoned as clarificatory in nature and hence interpretation given by Govt. of India through this notification will be effective from 1st April 2004, i.e., from the date when provision of section 90(3) was brought in the statute, giving a Legal frame work for clarifying the intent of one of the negotiating parties;"*

66. The coordinate bench of the Tribunal also noted the legal position as it existed prior to the aforesaid amendment as under:-

"57A. If we analyse all the judgments as have been referred to above, it is evident that:—

- *Firstly, in R.M. Muthaiah (supra), the expression "may be taxed" has not been expressly dealt with, however, in the context of Article-6(1), wherein similar phraseology has been used, the High Court has given its decision that once it has been taxed in the foreign country, the same cannot be taxed in India. Thus, this decision in a way interprets the phrase "may be treated" to mean that source country has a right to tax to the exclusion of resident state;*
- *Secondly, in S.R.M. Firm (supra), the High Court has in a very clear terms, has interpreted the expression "may be taxed" to mean that once the income is taxable in other contracting State that is country of source then country of resident i.e., India is precluded from including the same income in India;*
- *Thirdly, the Hon'ble Supreme Court in Azadi Bachao Andolan (supra), has approved the reasoning of R.M. Muthaiah (supra) in an entirely different context, therefore, it cannot be held that the Hon'ble Supreme Court has carved out any express law on the phraseology of "may be taxed";*
- *Fourthly, in P.V.A.L. Kulandagan Chettiar (supra's) the Hon'ble Supreme Court has specifically refrained from giving any such interpretation of "may be taxed" and affirmed the decision of High Court on a different reasoning and grounds. Thus, this decision does not carve out any express law on the phrase "may be taxed"; and*
- *Lastly, the Hon'ble Supreme Court in Turquoise Investments & Finance Ltd. (supra) has not only confirmed the decision of R.M. Muthaiah (supra) but also decision of the M.P. High Court, wherein extensively reliance was placed on the decision of S.R.M. Firm (supra). Thus, this decision of the Hon'ble Supreme Court in a way has confirmed the entire reasoning of the S.R.M. Firm (supra) which, in our opinion, is slightly different from the judgment of the Hon'ble Supreme Court in P.V.A.L. Kulandagan Chettiar (supra) to the extent that the phrase "may be taxed" was not expressly dealt with by the Hon'ble Supreme Court as the reasoning of the High Court was affirmed on different ground. Thus, the later decision of the Hon'ble Supreme Court in Turquoise Investments & Finance Ltd. (supra) can be said to be the view expressed by the decision in S.R.M. Firms (supra) by the Madras High Court.*

In this background, that the three High Courts have expressed their views and which have been affirmed by the Hon'ble Supreme Court in some context or the other, specially the decision of Turquoise Investments & Finance Ltd. (supra), wherein the Apex Court has approved these decisions completely, then as a judicial precedence, one has to accept that the phrase "may be taxed" has to be inferred as allocating the taxing right to the source country only on the income earned in such country and the country of resident is completely precluded from taxing the same income."

67. Accordingly, the coordinate bench held that as a result of amendment w.e.f. 01/04/2004, by which sub-section (3) to section 90 has been brought in the statute from the assessment year 2004-05, there would be a clear departure from the earlier position, wherein various courts have interpreted the expression "*may be taxed*". Since the year under consideration is the

assessment year 2003-04, therefore, respectfully following the aforesaid decision the amendment vide Finance Act 2003, to section 90 of the Act is not applicable to the present case. In view of the above, we find no merits in the submissions of the learned DR that this issue be remanded to the AO to examine whether taxes have been paid in Egypt. Since as per the legal position, as it existed prior to the aforesaid amendment, the country of residence is completely precluded from taxing the said income, and therefore, accepting the prayer of the learned DR would result in a complete academic exercise. Thus, respectfully following the legal position as it existed during the year under consideration, which was taken due note by the coordinate bench in the aforesaid decision, we uphold the plea of the assessee that the dividend income received by the assessee from Egypt entity is to be excluded while computing the taxable income of the assessee in India. Accordingly, the additional ground filed by the assessee vide application dated 23/01/2013, is allowed.

68. In the result, the appeal by the assessee is partly allowed for statistical purposes.

ITA no.5978/Mum./2004
Revenue's Appeal : A.Y. 2003–04

69. The Revenue, in its appeal, has raised the following grounds:–

"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.10,89,50,144/- made under clauses (b) to (f) of section 43B of the Income-tax Act, ignoring the provisions of section 43B of the Act as a whole and without taking into consideration a harmonious construction of various provisions of the said section. Further, the meaning of the word 'payable', as applicable to the provisions of section 43B(b), (c), (d), (e) & (f), was also ignored.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.17,94,238/- towards contribution to local organisations, relying upon the CIT(A)'s orders in the assessee's own case for the AYrs. 1999-2000, 2001-02 & 2002-03 which have been contested by the department in further appeal before the ITAT.

3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.64,21,953/- made by the Assessing Officer on account of rural development expenses, relying upon the orders of

the CIT(A) in the assessee's own case for the AYrs 1996-97 to 2002-03 which have been contested by the department in further appeal before the ITAT.

4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.33,33,614/- made on account of exchange rate fluctuation loss, relying upon the orders of the CIT(A) in the assessee's own case for the AYrs.1998-99 to 2002-03 which have been contested by the department in further appeal before the ITAT.

5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow the deduction in respect of payments on account of PF/ESIC made after the due date but within the grace period without appreciating that the department has not accepted the decision of the Bombay High Court on this issue in the case of Maharashtra State Seeds Corporation Ltd. Vs. CIT, Nagpur and is contesting the same by way of SLP.

6. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs.95,24,532/-, being expenses incurred for making advertisement film, relying upon the order of the CIT(A) in the assessee's own case for the AYrs. 2001-02 & 2002-03 which have been contested by the department in further appeal before the ITAT.

7. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of professional fees of Rs.10,75,000/- paid in connection with software development and implementation of ERP accepting the assessee's contention that in the field of computer software new devices and user friendly concepts are introduced which are fast changing and no software could be of enduring nature without appreciating that the Rajasthan High Court has, in the case of Arawali Constructions Co. P. Ltd. (259 ITR 30), held that expenditure incurred in the acquisition of computer software is a capital expenditure and, in view of the same, the Assessing Officer rightly treated software expenses of Rs.10,75,000/- as a capital expenditure and disallowed the same.

8. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to exclude the amount of sales tax and excise duty from the total turnover for the purpose of computation of deduction u/s.80HHC of the Act relying upon the decision of the Bombay High Court in the case of Sudarshan Chemicals Industries Ltd. (245 ITR 769) which has been contested by the department by way of SLP.

9. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that no amount of head office expenses can be apportioned to the units eligible for deduction u/s.80-IA, relying upon the orders of the CIT(A) in the assessee's own case for the AYrs.1996-97 to 2002-03, which have been contested by the department in further appeal before the ITAT.

10. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow deduction u/s.80-1A in respect of Vikram Power Unit, relying upon the orders of the CIT(A) in the assessee's own case for the AYrs 1998-99 to 2002-03, which have been contested by the department in further appeal before the ITAT.

11. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the assessee is eligible for deduction u/s.80-IA in respect of profit derived from alleged 'Rail System' ignoring the fact that the "Rail System" is itself not an Industrial Undertaking and also that the assessee company has not fulfilled the conditions laid down u/s.80-1A in as much as:---

(i) the assessee company has developed the alleged 'Rail System' for its 'Cement Division' over the years and for its own convenience for transportation and not with any 'profit making motive'; and

(ii) further that the alleged 'Rail System' itself is neither a saleable commodity nor a 'profit centre' but it is the cost centre of the assessee company; and

(iii) further that the assessee company does not maintain separate books of account for alleged 'Rail System' as envisaged under the provisions of section 80-IA; and

(iv) further that the assessee company has capitalised the different assets in different assessment years and was also claiming depreciation on these assets under the block of assets of 'Cement Division' and only in the year under consideration, the assessee company demerged these assets from block of assets of the 'Cement Division' and, after renaming it as 'Rail System", claimed deduction u/s.80-1A; and

(v) further that the assessee company has only split / restructured the asset from 'Cement Division' for the purpose of claiming deduction u/s 80-IA as 'Rail System'; and

(vi) further that the assessee company has engaged only one employee effectively for the purpose of having liaison with railway authorities regarding the operations of the alleged 'Rail System'; and

(vii) further the claim u/s.80-IA is based on the receipt of the alleged 'Rail System' on notional basis and not on actual receipt basis."

12. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance made by the Assessing Officer by reducing the deduction u/s.80M by Rs.38,69,281/-, relying upon the order of the CIT(A)/ITAT in the assessee's own case for the AYr 1993-94, which has been contested by the department in further appeal u/s.256(2).

13. The appellant, prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

14. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

70. The issue arising in ground no.1, raised in Revenue's appeal, is pertaining to disallowance made under clause (b) to (f) of section 43B of the Act.

71. The brief facts of the case pertaining to the issue, as emanating from the record, are: In the computation of income, an amount of Rs.27,55,08,330, has been considered as disallowance under section 43B(a) of the Act by the assessee. However, an amount of Rs.10,89,50,144, was not considered as disallowance under section 43B falling under clause (b) to (f). The assessee contends that the amount of Rs.10,89,50,144, which falls under clause (b) to (f) of section 43B of the Act and which is not payable as on 31/03/2003, cannot be covered by provision of section 43B of the Act. During the assessment proceedings, the assessee submitted that the issue has been decided in its favour by the coordinate bench of the Tribunal for the assessment year 1993–94 and the reference application filed by the Revenue on this issue has been rejected by the Tribunal. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee on the basis that the Revenue has filed an appeal before the Hon'ble Jurisdictional High Court on this issue. Accordingly, the amount of Rs.10,89,50,144, was disallowed.

72. The learned CIT(A), vide impugned order, following judicial precedent in assessee's own case deleted the aforesaid disallowance made by the AO. Being aggrieved, the Revenue is in appeal before us.

73. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee, by observing as under:–

> *"48. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"31. Ground No. 1 in Revenue's appeal relates to the disallowance u/s 43B of the Act which has been dealt with by the A.O. at para No. 9-9.5 of his order. The ld. CIT(A) dealt with this issue at page No. 2, para 5 of his order and deleted the disallowance by following the order of the Tribunal in earlier years. From the record, we found that the Tribunal has been consistently allowed the issue in favour of the assessee in assessment years 1990-91, 1993-94, 1994-*

> *95, 1996-97, 1997-98 & 1998-99. We further found that against the order of the Tribunal, the Department has not filed any appeal before the Hon'ble High Court in assessment years 1996-97, 1997-98, 1995- 96 & 1994-95. As the matter has been settled and the ld. CIT(A) deleted the disallowance by following the order of the Tribunal, we do not find any reason to interfere with the order of the Ld. CIT(A) deleting the disallowance made by the A.O. u/s 43-B of the Act."*
>
> *49. Respectfully following the above decision, we sustain the order passed by the Ld.CIT(A) and dismiss the Ground No. 1 raised by the revenue."*

74. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. This issue is recurring in nature and has been decided in favour of the assessee in the preceding years. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.1, raised in Revenue's appeal is dismissed.

75. The issue arising in ground no.2, raised in Revenue's appeal, is pertaining to the disallowance of contribution to local organisations.

76. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee made contributions amounting to Rs.17,94,238 to various local organizations located in and around the areas where the plants/offices of the assessee company are situated. During the assessment proceedings, the assessee submitted that such contributions are not in the nature of charity but are made purely for business consideration. It was further submitted that such contributions are necessary for maintaining a good relationship and to earn the goodwill of the local population which ensures the smooth working of the factories and, therefore, should be allowed as business expenditure. The A.O., vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that such contributions are essential in the nature of donations and since a specific provision already exists in the Act to take care and govern the allowability of payments made in the nature of donations, only such payments which satisfies the conditions laid down under section 80G of the Act can be allowed as deduction. Accordingly, the AO held that these

contributions do not satisfy those conditions and, therefore, are not eligible for deduction.

77. The learned CIT(A), vide impugned order, following the decision of its predecessor–in–office, rendered in assessee's own case deleted the aforesaid disallowance made by the AO. Being aggrieved, the Revenue is in appeal before us.

78. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee, by observing as under:–

> *"52. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"32. With regard to the contribution to the local organization, the issue has been dealt with by the A.O. at page 6 -7, para 10 of his order. The ld. CIT(A) deleted the addition/disallowance by dealing the issue at page 3, para 7 of his order wherein he has followed the order of the Tribunal in earlier years.*
> >
> > *33. We have considered the rival contentions and we found that the issue has been decided by the Tribunal consistently in favour of the assessee in the assessment years 1986-87 to 1989-90, 1994-95 & 1995-96 to 1997-98. In an appeal further filed by the Revenue before the Hon'ble High Court in assessment years 1988-89, 1994-95, 1995-96, the same has been decided in favour of the assessee. The order of the Tribunal for 2000-01 was not challenged by the Department before the Hon'ble High Court on this issue. Respectfully following the order of the Tribunal and Hon'ble High Court in assessee's own case, we do not find any reason to interfere with the order of the ld. CIT(A)."*
>
> *53. Respectfully following the above decision, we sustain the order passed by the Ld.CIT(A) and dismiss the Ground No. 2 raised by the revenue. We order accordingly."*

79. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue is recurring in nature and has been decided in favour of the assessee in the preceding years.

Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.2, raised in Revenue's appeal is dismissed.

80. The issue arising in ground no.3, raised in Revenue's appeal, is with regard to disallowance on account of rural development expenditure.

81. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee incurred expenditure of Rs.64,21,953, towards rural development expenditure. In this regard, the assessee submitted that rural development activities include family welfare expenses, sewing centre, supply of horticulture sapling to villagers, self-help training, natural resources management, medical camps, medicine distribution, etc., where the majority of working population employed in assessee's factories/offices are residing. Accordingly, the assessee submitted that the expenditures incurred were for the purpose of business and claimed the same as allowable under section 37(1) of the Act. On the basis that in the assessment year 2002–03, such expenditure was disallowed, the AO disallowed the expenditure in the year under consideration.

82. The learned CIT(A), vide impugned order, following the decision of its predecessor–in–office in assessee's own case deleted the aforesaid disallowance made by the AO. Being aggrieved, the Revenue is in appeal before us.

83. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee by observing as under:–

> *"60. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*

> *"38. Ground No. 6 of Revenue's appeal relates to the disallowance of rural development expenses. The A.O. has dealt with this issue at page 9, para 15 and the ld. CIT(A) has dealt with this issue at page 4-5, para 11 of his order. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1998-99, 1999-00 & 2000-01. We further found that the Department on this ground is not in appeal before the Hon'ble High Court in these years. Respectfully following the order of the Tribunal, we do not find any reason to interfere with the order of the ld. CIT(A) for deleting the rural development expenses amounting to Rs. 66,08,937/-.*
>
> *61. Respectfully following the above decision, we sustain the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly."*

84. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. This issue is recurring in nature and has been decided in favour of the assessee in the preceding years. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.3, raised in Revenue's appeal is dismissed.

85. The issue arising in ground no.4, raised in Revenue's appeal, is pertaining to disallowance made on account of exchange rate fluctuation loss.

86. The brief facts of the case pertaining to the issue, as emanating from the record, are: In the year under consideration, the assessee's annual accounts show exchange fluctuation loss of Rs.83,68,690. The assessee was asked to give details and break–up of the loss. From the details, it was observed that there is an actual loss of Rs.50,35,076, and the loss was due to the conversion of assets and liabilities on 31/03/2003, which is Rs.33,33,614. In this regard, the assessee submitted that exchange fluctuation loss debited to the Profit & Loss Account pertains to business organisation viz. import of raw material and spare parts, export sale proceeds receivable, etc. Thus, the loss is incurred in respect of its trading assets/liabilities, in the normal course of its business, which are part of the circulating capital or working capital of the business. On the basis that loss on exchange fluctuation was disallowed in the assessment year 1998–99, the AO vide order passed under section 143(3) of the Act, disallowed the deduction claimed in respect of exchange fluctuation loss of Rs.33,33,614, incurred due to conversion at the exchange rate on 31/03/2003.

The learned CIT(A), vide impugned order, following the decisions of his predecessor–in–office rendered in assessee's own case deleted the aforesaid disallowance made by the AO. Being aggrieved, the Revenue is in appeal before us.

87. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee, by observing as under:–

> *"65. 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. 2001-02. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA. No. 4083/Mum/2003 dated 22.10.2014 held as under:-*
>
> > *"39. Ground No. 7 pertains to exchange rate fluctuation loss on conversion of trading assets and liabilities amounting to Rs. 2,00,03,443/-. The A.O. has dealt with this issue at page 9-10, para 16-16.6and the ld. CIT(A) has dealt with this issue at page 5, para 12 of his order. The ld. CIT(A) has allowed the assessee's claim after having observed at para 12. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1998-99 to 2000-01. Furthermore, the Department is not in appeal on this ground before the Hon'ble High Court against the Tribunal order. The Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd., 312 ITR 254 (SC) has decided this issue in favour of the assessee. Accordingly, we do not find any reason to interfere with the order of the ld. CIT(A) deleting the disallowance made on account of exchange fluctuation loss on conversion of trading assets and liabilities on balance sheet date."*
>
> *66. Respectfully following the above decision, we sustain the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly."*

88. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue is recurring in nature and has been decided in favour of the assessee in the preceding years. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.4, raised in Revenue's appeal is dismissed.

89. The issue arising in ground no.5, raised in Revenue's appeal, pertaining to the deduction claimed in respect of payments on account of Provident Fund (P.F) / Employees State Insurance Corporation Scheme (ESIC) made after the due date but within the grace period.

90. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has made a payment of P.F/ESIC amounting to Rs.1,65,558, after the due date. The assessee was asked to explain as to why the above payment made belatedly be not disallowed under section 43B(b) of the Act. In response thereto, the assessee submitted that the P.F. Authorities have, with the approval of the Government of India, issued a circular and allowed a grace period of 5–15 days for making payment of contribution. The assessee submitted that the payment has been made within the grace period and thus the same is within the due date under the relevant statute. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that the payment was made after the due date and accordingly disallowed the same under section 43B(b) of the Act.

91. The learned CIT(A), vide impugned order, following the decision of the coordinate bench of the Tribunal, Mumbai Bench, in Fluid Air (India) Ltd. v/s DCIT, [1997] 63 ITD 182 (Mum.), directed the AO to allow the claim of the assessee if the payment has been made within 9–22 days of the date of disbursement. Being aggrieved, the Revenue is in appeal before us.

92. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee, by observing as under:–

> *"78. Considered the submissions and material placed on record, we observe from the record the coordinate bench has already considered this issue and decided the issue in favour of the assesse in the case of Fluid Air (supra), the relevant findings are given below:*

"17. Considering all the facts and circumstances of the case as well as the decisions referred to above, we are of the opinion that as the assessee had paid all the amounts within a period from 9 to 22 days from the date of payment of wages/salary and therefore the submissions, regarding admissibility of benefits for having a bona fide belief entertained as a result of its advice by the tax advisors that the payment was to be made after 15 days from the date of payment of salaries and wages that the delay; otherwise had been due to financial difficulty as well as the submission that the delay was not intentional or was not to defraud the revenue because by delaying the payments by a few days the assessee was not to get any benefit rather was putting it to the risk of serious penal consequences, as envisaged in sections 43B, 2(24)(x) read with the provisions of section 36(1)(va) which no prudent person would like to do, have got force. We, therefore, are of the opinion that in the light of our decision for liberal interpretation of the provisions of the relevant sections, as observed earlier, by following the decision of the Hon'ble Supreme Court, the delay in depositing the amounts in question being under a bona fide belief and for want of funds can be said to be due to reasonable cause and, therefore, there was no justification in disallowing the assessee's claim for payments of contributions towards, EPF, EFPF, Administrative Charges, Insurance Fund and ESIS by invoking the provisions of section 43B and in making addition of contribution on account of employee's contribution towards EPF, EFPF by treating the same as assessee's deemed income under section 2(24)(x) because the same should have been allowed as a deduction under section 36(1)(va) of the Act.

18. Before parting with the matter, we would like to record that a similar view has been taken by the Tribunal, Madras Bench, in the case of Madras Radiators & Pressings Ltd. (supra) where on the facts of that case it has been held that so long as the payments of PF and contribution to ESIS are made within the previous year, the same cannot be disallowed under section 43B and also cannot be considered as assessee's income under section 2(24)(x) read with section 36(1)(va). Further, in an unreported case the ITAT Calcutta Bench, in the case of Sudera Services (P.) Ltd. (supra), on which the ld. counsel relied on (copy is placed at page 65 of the paper-book), it has been held, on the facts of that case, that the provisions of section 43B should be construed in a liberal way keeping in view the Legislative intention so that absurdity and the interpretation which leads to injustice may be avoided.

19. In view of the decisions referred to in the foregoing paragraphs of this order, and the facts and circumstances of the present case, we are of the considered opinion that none of the payments in question were hit by the provisions of section 43B or section 2(24)(x) read with section 36(1)(va), as the case may be, and the additions made by invoking these provisions are hereby deleted."

79. Respectfully following the above decision, on similar facts as the Hon'ble Jurisdictional High Court held that provisions of section 43B should be construed in a liberal way keeping in view the Legislative intention so that absurdity and the interpretation which leads to injustice may be avoided. Thus, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly."

93. In the present case, the assessee claims that the payment of P.F/ESIC has been made within the grace period and, therefore, is an allowable deduction. In view of the above, we deem it appropriate to restore this issue to the file of the jurisdictional AO to examine the payments of P.F/ESIC made

during the period as provided in the relevant statute and to delete the disallowance to that extent. Accordingly, ground no.5, raised in Revenue's appeal is allowed for statistical purposes.

94. The issue arising in ground no.6, raised in Revenue's appeal, is pertaining to the disallowance of expenditure incurred for making advertisement films.

95. The brief facts of the case pertaining to the issue, as emanating from the record, are: For the year under consideration, the assessee incurred expenditure on advertisement film. During the assessment proceedings, the assessee was asked to furnish the details of expenditure incurred on the production of advertisement films. The assessee was also asked to explain as to why the expenditure incurred on the production of advertisement films should not be treated as capital expenditure. In response thereto, the assessee submitted that it incurred an expenditure of Rs.95,24,532, on the production of advertisement films. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and disallowed the expenditure on the production of advertisement films by observing as under:–

> *"15.3. The submissions of the assessee was duly considered but it was found unacceptable. Assessee is not in the business of production of feature films, rather the films have been used for advertisement. The airtime on T.V. or radio is allowed as expenditure in the year in which such advertisement is telecast/broadcast, but position in case of production of films is a bit different. The advertisement film produced can be used again and again and therefore assessee derives benefit of enduring nature on account of production of films. The cost of production of ad film does not stand on the same footing as the expenditure on air-time on IV or radio. The film produced once is used -again and again to advertise the product. Thus the cost of ad film cannot be allowed as deduction in full in the year in which the said expenditure has been incurred, as the assessee has derived benefit of enduring nature.*
>
> *15.4. Assessee company is in the business of manufacturing and selling various products. Assessee company is not in the business of producing ad films. Rather, the advertisement films have been got produced by assessee to be used in an advertisement of its products: The question is whether by producing the film itself assessee has done the advertisement of its product. Answer is clearly no because production of ad film does not advertise anything. Only after the film has been produced, it is telecast. It is used as advertisement when it is telecast. Thus the production of ad film is not business expenditure incurred by*

assessee for purposes of business, rather, it is an expenditure of capital nature incurred to acquire an asset namely, advertisement film, which can be exploited by advertising it again and again on TV/Radio etc. Thus, the film by itself is not advertisement but the airing of it involves advertisement of assessee's product. The ad film does not loose its value as soon as it is telecast once. Rather, repeated telecast of an ad film makes people aware and increases the brand value of the product. Depending on the quality of the ad film and the response of the public, the ad film can be aired on TV/Radio for many years. In the contemporary advertising scene, it is not difficult to recall that several ads of popular brands are being aired for so many years. Thus the production of ad films results in acquisition of a product, which is a capital asset. This capital asset can be utilised for advertisement for assessee's product. An ad film is sometimes not discontinued fully. Some of the parts of ad film are deleted and fresh parts are shot and new ad film is used by making small adjustment in the old film. Thus, it is clear that the production of ad film does not involve any advertisement at all. Assessee is not in the business of films and sale thereof. Therefore, the cost of production of ad film cannot be held to be revenue expenditure for assessee. By incurring this expenditure, assessee has acquired a capital asset, which can be exploited for the business purpose of assessee, namely advertisement:

15.5. In this regard, Hon'ble Bombay High Court had an occasion to consider a similar case in the case of CIT vs. Patel International Films Ltd. (1976) 102 ITR 209 (Bom.). In this case the assessee company which was engaged in processing and printing of movie films, processing and printing laboratory. Subsequently, it purchased a film processed in the laboratory to serve as a model for exhibition to induce confidence in its customers by way of advertisement and claimed the amount spent on the purchase of film as business expenditure. It was held in this case that the asset was not the stock-in-trade of assessee and it had not been purchased for purposes of exhibition as normally understood. The asset that was acquired by the assessee was a capital asset to be used for the purpose of advertisement of business that the assessee was going to carry on in future. Therefore, even if the expenditure could be said to have been incurred exclusively for business purpose, it was a capital expenditure and not revenue expenditure.

15.6. The judgment of Hon'ble Bombay High Court is directly on the facts involved in the case of assessee. Assessee has not acquired the ad films as stock-in-trade. Rather, this has been acquired to be used as advertisement for assessee's business. Therefore following the judgment of Hon'ble Bombay High Court, the expenditure incurred on purchase/production of ad films is held to be expenditure of capital nature. Accordingly, the claim of assessee is not allowed.

15.7. Addition of Rs. 95,24,532/- is made to income of assessee for capital expenditure on production of films. The alternate submission is accepted and depreciation is allowed on the cost of film at the rate applicable to plant and machinery."

96. The learned CIT(A), vide impugned order, following the decision of his predecessor–in–office, deleted the aforesaid disallowance made by the Assessing Officer. Being aggrieved, the Revenue is in appeal before us.

97. Having considered the submissions of both sides and perused the material available on record, we find that the Coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee by observing as under:–

> *"94. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"47. The issue in ground No. 13 with regard to deleting the disallowance of expenses incurred for making advertisement films has been dealt with by the A.O. at page 15-16, para 26. The ld. CIT(A) deleted the same after having observed at page 12-13, para 21 of his order. We found that the issue has already been settled by the Tribunal in assessee's own case in A.Y. 1976-77 and no ground was taken by the Department before the Hon'ble High Court. Similar issue has been decided by the Hon'ble Supreme Court in the case of Empire Jute Co. Ltd., 124 ITR 1 (SC). Accordingly, we do not find any infirmity in the order of the ld. CIT(A) deleting the disallowance by observing that advertisement film was made only for advertisement and its useful life is very short and such films do not add to the capital structure of the company."*
>
> *95. Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly."*

98. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue is recurring in nature and has been decided in favour of the assessee in the preceding years. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.6, raised in Revenue's appeal is dismissed.

99. The issue arising in ground no.7, raised in Revenue's appeal, is pertaining to the disallowance of professional fees paid in connection with software development and implementation of ERP.

100. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the assessment proceedings, on a perusal of professional fees expenditure, it was observed that the assessee has claimed payment

made to M/s. Mahindra Consulting Ltd., for implementation of ERP software as a Revenue deduction. The AO, vide order passed under section 143(3) of the Act, treated the said payment as payment for the acquisition of software, which is the capital asset, and accordingly disallowed the deduction claimed by the assessee. The AO, however, allowed the depreciation on this payment at the rate applicable to computer software.

101. The learned CIT(A), vide impugned order, deleted the disallowance made by the AO by treating the expenditure as revenue in nature.

102. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, by following the decision rendered in the preceding year, decided the similar issue, inter–alia, in respect of payment made to M/s. Mahindra Consulting Ltd., for implementation of software and ERP in favour of the assessee. The relevant findings of the coordinate bench, in the aforesaid decision, are as under:–

> *"99. Considered the submissions and material placed on record, we observe that this issue is dealt by the Hon'ble Jurisdictional High Court in the case Raychem RPG Ltd. [346 ITR 138 (Bom. HC)] and held as under: -*
>
> > *"1. Two questions of law raised by the Revenue in this appeal, which reads thus:*
> >
> > > *"(a) Whether on the facts and circumstance of the case and in law, the Hon'ble ITAT was justified in deleting the additions in respect of disallowance of software expenditure to the extent of Rs.23,62,368/- as capital expenditure as software used for the first time will have to be considered as capital in nature?*
> > >
> > > *(b) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in deleting the additions made in respect of the scrap sales as while computing the eligible deduction u/s 80HHC of the Act , any receipt credited to the profit & loss account should either be included in the total turnover or 90% of the same should be reduced while computing profit of the business.?"*
> >
> > *2. As regards the first question, ITAT relying upon on its order in the assessee's own case relating to Assessment year 2001-02 held that the software expenditure was a revenue expenditure. The appeal filed by the Revenue for the assessment year 2001 and 2002 has been dismissed for want of removal of office objections and thus the order passed by the ITAT for the Assessment year 2001-2002 has attained finality. Moreover, the Tribunal in its order relating the*

assessment year 2001-02 has allowed expenditure as revenue expenditure by recording thus:

> *"7. When we apply this functional test suggested by the Special Bench of the Tribunal, we find that impugned software does not form part of the profit making apparatus of the assessee and hence the same is to be disallowed a revenue expenditure. We hold so because we find that the business of the assessee company is that of manufacturing of telecommunication and power cable accessories and trading in oil retracing system and other products and impugned software is an Enterprises Resources Planning (ERP) package and hence it facilitate the assessee's trading operations or enabling the management to conduct the assessee's business more efficiently or more profitably but it is not in the nature of profit making apparatus. We, therefore, decide this issue also in favour of the assessee and we hold that this expenditure of Rs.20.60 lakhs is of revenue expenditure. We hold so by following the judgment of the Special Bench of the Tribunal relied upon by the LD AR of the assessee."*

3. In our view, no fault can be found in the aforesaid order of ITAT holding that software expenditure was allowable as revenue expenditure."

100. Respectfully following the above said decision and on a perusal of the Ld.CIT(A) order, we do not find any infirmity in the order of the Ld.CIT(A) in allowing the claim of the assessee. Ground raised by the revenue are dismissed. We order accordingly."

103. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue has been decided in favour of the assessee in the preceding years also. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.7, raised in Revenue's appeal is dismissed.

104. The issue arising in ground no.8, raised in Revenue's appeal, is pertaining to the exclusion sales tax and excise duty from the total turnover.

105. We find that this issue is no longer *res integra* and has been decided in favour of the assessee by the Hon'ble Supreme Court in CIT v/s Lakshmi Machine Works, [2007] 290 ITR 667 (SC), wherein the Hon'ble Supreme Court held that excise duty and sales tax component cannot form part of the total turnover for computation of deduction under section 80HHC of the Act. Thus, respectfully following the aforesaid decision, ground no.8, raised in Revenue's appeal is dismissed.

106. The issue arising in ground no.9, raised in Revenue's appeal is pertaining to apportionment of Head Office expenses to the units eligible for deduction under section 80IA of the Act.

107. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee company has claimed deduction under section 80IA of the Act based on the income of the respective unit. Since the Head Office is a controlling unit which manages the affairs of all the units, proportionate expenditure of the Head Office was deducted from the eligible profits of respective units.

108. The learned CIT(A), vide impugned order, directed the Assessing Officer to exclude the allocation of Head Office expenses to the respective units claiming deduction under section 80IA of the Act by following the decision rendered in assessee's own case in the preceding years. Being aggrieved, the Revenue is in appeal before us.

109. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee, by observing as under:–

> *"109. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*
>
> > *"54. The issue in ground No. 18 pertains to the apportionment of head Office expenses while computing deduction u/s 80IA of the Act.*
> >
> > *55. This issue has been dealt with by the ld. CIT(A) vide his order in page 15-16, para 23.5 & 23.6. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1994-95 to 1998-99 and the Department is not in appeal against the order of the Tribunal. Respectfully following the order of the Tribunal, we do not find any reason to interfere with the order of ld. CIT(A) on this issue.."*
>
> *110. Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly."*

110. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue has been decided in favour of the assessee in the preceding years also. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.9, raised in Revenue's appeal is dismissed.

111. The issue arising in ground no.10, raised in Revenue's appeal is pertaining to allowance of deduction under section 80IA of the Act in respect of Vikram Power Unit.

112. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee claimed deduction of Rs.13,75,79,804, in respect of power unit at Salav (Vikram Power Unit) under section 80IA of the Act. The A.O., vide order passed under section 143(3) of the Act, following the approach adopted in earlier years disallowed the claim of deduction under section 80IA of the Act in respect of the profit of Vikram Power Unit.

113. The learned CIT(A), vide impugned order, following the decision of its predecessor–in–office in assessee's own case in earlier assessment year deleted the aforesaid disallowance made by the AO. Being aggrieved, the Revenue is in appeal before us.

114. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench, vide order dated 14/12/2021, passed in assessee's own case for the assessment year 2002–03, while following the decision rendered in the preceding year, decided the similar issue in favour of the assessee, by observing as under:–

> *"113. 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. 2001-02 in favour of the assessee. While deciding the issue in favour of the assessee the Coordinate Bench of the Tribunal in ITA.No. 4083/Mum/2003 dated 22.10.2014 held as under: -*

> *"Ground No. 19 of Revenue's appeal pertains to deduction u/s 80-IA of the Act in respect of Vikram Power Unit amounting to Rs. 3,58,74,158/–.*
>
> *57. The ld. CIT(A) has dealt with this issue at page 16-17, para 24 of his order. We found that the issue has been decided by the Tribunal in assessee's own case in its favour in assessment years 1998-99 to 2000-01. Furthermore, the Department is not in appeal against the Tribunal order on this issue before the Hon'ble High Court for A.Y. 1998-99. Respectfully following the order of the Tribunal, we do not find any infirmity in the order of the ld. CIT(A) for allowing deduction u/s 80IA of the Act in respect of Vikram Unit amounting to Rs. 3,58,74,158/-."*
>
> *114. Respectfully following the above decision, we do not find any reason to interfere with the order of the Ld.CIT(A) and dismiss the ground raised by the revenue. We order accordingly.*

115. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue has been decided in favour of the assessee in the preceding years also. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.10, raised in Revenue's appeal is dismissed.

116. The issue arising in ground No. 11, raised in Revenue's appeal, is pertaining to the claim of deduction under section 80-IA of the Act in respect of profit derived from the rail system.

117. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee claimed a deduction of Rs.7,67,21,341 under section 80-IA of the Act in respect of the rail system at Raipur. During the assessment proceedings, the assessee was asked to submit justification in support of this claim. In response thereto, the assessee submitted that it has established a Cement plant in the Raipur District of Chhattisgarh state. For the operation of the cement plant, inward materials are transported through Rail up to the nearest railway siding, and for dispatch of cement from the plant through rail, cement bags are taken up to the railway siding for onward transportation to various destinations. The nearest railway siding is at a distance of around 20 km from the plant. To facilitate the inward and outward movement of goods, the assessee company

developed an infrastructure facility for the rail system. The new rail system was made operative in September 1999. By placing reliance upon the Explanation to section 80-IA(4), the assessee submitted that the infrastructure facility includes a rail system. The assessee further submitted that in addition to the employee of the assessee, railway staff is also posted for the operation and maintenance of the railway system as per guidelines of the Indian Railway Board. The system also has been commissioned after obtaining various/compliance certificates required by Railway Authorities from time to time. The assessee also submitted that for establishing a rail system and allowing the movement of racks, an agreement dated April 2000 was entered into by the assessee with the Government of India. The assessee further submitted that the income offered for tax by the assessee includes income from the rail system and the assessee has the option to claim deduction under section 80-IA of the Act for any ten consecutive years out of twenty years beginning from the assessment year 2000-01. Therefore, the assessee has opted for claiming deduction under section 80-IA from the assessment year 2003-04 onwards. The assessee further submitted that it fulfils all the conditions as are provided in sub-section (4) and has also filed along with its return of income Form 10CCB duly audited by an accountant as per the provisions of section 80-IA(7) of the Act.

118. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that the rail system of the assessee is not a profit centre but it is a cost centre and it is part of cement unit situated at Rawan. The AO further held that the assessee does not maintain separate books of account for the rail system. All the assets of the rail system have been acquired by the assessee at different point in time and were capitalised with the different block of assets and the self-identity of different assets were merged with the block of assets of the cement division at Rawan. The AO further held that the assessee has de-merged the assets from the different blocks of assets of the cement division at Rawan and termed these as rail system for the purpose of claiming deduction under section 80-IA of the Act. Thus, the rail system is not an independent unit and it is 100%

dependent on the cement unit. Therefore, in the absence of a cement unit, the identity of the rail system is not feasible. The AO further held that the assessee has only one employee for liaison between the assessee and the Railway Authority. For crucial operations, the Railway Department has deputed its own staff. Therefore, the assessee is not having any control over the operations of the rail system. The AO also held that the rail system per se is not an industrial undertaking or enterprise as understood to have been eligible for deduction under section 80-IA of the Act. The AO also held that in the present case, the rail system does not have any agreement with any of the authorities as mentioned in sub-section(4) of section 80-IA of the Act. Accordingly, the AO rejected the claim of deduction under section 80-IA of the Act in respect of the rail system.

119. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue, by observing as under:-

> *"16.4 The appellant made detailed submission with regard to the issue in dispute before the undersigned. It stated that the appellant company had established a cement plant in Raipur. The nearest available Railway Siding was at a distance of around 20 kilometres from the plant. To facilitate inward and outward movement of goods, the appellant developed infrastructure facility of Rail System. which was made operative in September 1999. The appellant company duly entered into an agreement with Southern East Railway, which is a part of Government of India. It was submitted that there was option available u/s 801A with the appellant to claim deduction for any 10 consecutive years at its own choice. The appellant has opted for claiming the deduction from AY 2003-04 onwards. The income offered for tax by the appellant includes income from Rail System."*

120. The learned DR submitted that the assessee has not submitted any agreement entered into with the Government Authority within the meaning of section 80-IA (4) applicable for the financial year 1999-2000 of a date prior to September 1999. The learned DR further submitted that the assessee has constructed a private siding for captive usage which cannot be termed as a public infrastructure facility within the meaning of section 80-IA(4) of the Act and therefore, the assessee is not eligible for claiming deduction under section 80-IA of the Act as applicable for the assessment year 2000-01. The learned DR also submitted that no agreement was entered into by the assessee as

required under section 80-IA(4) of the Act as applicable for the financial year 1999-2000. The learned DR also filed a written submission on 06/06/2023, wherein the arguments are summed up in para 15 as under:-

> *"15. To sum up -*
> *a. It is the undisputed fact that the assessee made operational alleged rail system from Sep. 1999.*
>
> *b. The income offered for tax by assessee company includes income from rail system. The assessee has option to claim deduction u/s 80-IA for any consequent assessment years out of 20 years beginning from AY 2000-01. The assessee has opted for claiming deduction u/s 80-IA from AY 2003-04 onwards.*
>
> *C. The assessee has not submitted any agreement entered into with the Govt. Authority within the meaning of section 80 IA (4) applicable for FY 1999-200 of a date prior to the Sept. 1999.*
>
> *d. The assessee has not submitted anyagreement entered into with the Govt. Authority within the meaning of section 80 IA (4) applicable for FY 1999-2000 mentioning that the said infrastructure facility shall be transferred back to such Govt. Authority.*
>
> *d. Since the assessee has constructed a private siding for captive usage which cannot be termed as Public infrastructure facility within the meaning of section 80 IA (4) applicable for FY 1999-200, the assessee is not eligible for claiming deduction u/s 80 LA for the Act as applicable for AY 2000-01."*

121. On the contrary, the learned Sr. Counsel, appearing for the assessee submitted that the learned DR has raised submissions which do not find any mention in the assessment order and thus the learned DR cannot now improve the case of the AO. The learned Sr. Counsel further submitted that no material has been produced to overturn the factual basis of the assessee as submitted before the learned CIT(A).

122. We have considered the submissions of both sides and perused the material available on record. In the present case, it is undisputed that the assessee has a cement plant in Raipur District. It is the claim of the assessee that to facilitate the inward and upward movement of goods, the assessee company developed an infrastructure facility for the rail system and the same satisfies the conditions for deduction under section 80-IA of the Act. We find that the assessee on this aspect made detailed submissions before the AO, which have been recorded in para 21.3 of the assessment order. Similarly, the

assessee also made submissions before the learned CIT(A), which have been recorded in para 16.4-16.13 of the impugned order, as under:-

> *"16.4 The appellant made detailed submission with regard to the issue in dispute before the undersigned. It stated that the appellant company had established a cement plant in Raipur. The nearest available Railway Siding was at a distance of around 20 kilometres from the plant. To facilitate inward and outward movement of goods, the appellant developed infrastructure facility of Rail System. which was made operative in September 1999. The appellant company duly entered into an agreement with Southern East Railway, which is a part of Government of India. It was submitted that there was option available u/s 801A with the appellant to claim deduction for any 10 consecutive years at its own choice. The appellant has opted for claiming the deduction from AY2003-04 onwards. The income offered for tax by the appellant includes income from Rail System.*
>
> *16.5 The appellant further submitted that the Rail System is a 'Profit Centre'. The Rail System is engaged in business of providing transportation facility to the cement plant, profit of which is embedded in the profit of the appellant company as a whole. By developing this infrastructure facility, there has been a saving in transportation cost and all over profits of the Company has increased due to such savings. All the businesses of the appellant company are interconnected. interlaced and there is common management, funds and control. Profits of the Rail System are embedded in the overall profit of the company. In support of contention that treatment of a transaction in books of account cannot govern the tax statement, the appellant relied on the decisions of the Supreme Court 82 ITR 363 Kadernath Jute Mfg. Co. Ltd Vs. CIT and 227 ITR 172 Tuticurin Alkali Chemical Ltd.*
>
> *16.6 The appellant further submitted that Sec. 80IA(8) itself contemplates a situation where goods or services are transferred by an eligible undertaking to non eligible undertaking and vice versa. In such cases, deduction is to be allowed based on the market value of such goods or services. It was submitted that Section Itself envisages situation of captive consumption. Reliance was placed 59 ITR 514(Gui.) Anil Starch Ltd. vs CIT. 254 ITR 187(Bom.) CIT vs. Win Laboratories Pvt Ltd and 48 ITR 123(SC) Tata Iron & Steel Co. Ltd. vs State of Bihar.*
>
> *16.7 Further, it was submitted that the facility of Rail System consists of all that is required to carry on the railway activity in an organised and systematic manner. The activity of Rail System is real and substantial and it is carried on with a said purpose, namely, transportation of goods from one place to another and thereby augmenting profits of the company as a whole by saving transportation cost which it would have otherwise incurred. The profits derived from the Rail System are clearly arising out of the business of developing, operating and maintaining the Rail System.*
>
> *16.8 The appellant submitted that substantial investment has been made in setting up the Rail System. All the assets are new assets and were not used for any purpose by any person earlier. There is an agreement with the Government for operating and maintaining the Rail System. It employees required personnel directly or through the railway authorities and is bearing the salary cost.*

relating thereto. Rail System is developed on the basis of entirely different technology and employs different equipment and machinery from those applied by the cement unit for cement production. It was also submitted that the Rail System is not formed by splitting up on reconstruction of a business already in existence or by the transfer to a new business of machinery previously used for any purpose. It was therefore, argued that the Rail System is not a part of the cement unit but is an independent unit.

16.9 The appellant submitted that the conditions specified in Section 801A (4)() in respect of an infrastructure facility are fully satisfied in the present case. The Rail System is owned by the appellant company which is a company registered in India. The appellant has entered into an agreement with the Central Government for operating and maintaining the new infrastructure facility. It has started operating and maintaining the infrastructure facility after 1st April 1995.

16.10 The appellant submitted that there is no basis on which the Assessing Officer has mentioned that the legislature's intention was to cover organisations like Konkan Railway, Delhi Metro Corporation, etc. There is no such specific mention in the Act. The appellant relied on the decision of the Bajaj Tempo Ltd vs CIT 156 ITR 188(SC).

16.11 Regarding maintenance of separate books of account, the appellant submitted that there is no such condition for grant of tax holiday benefit. Although separate books of account are not maintained, profit of the eligible business has been computed based on the memorandum books of account and other details maintained by the appellant. The Balance Sheet and Profit & Loss account of the eligible business has been audited by the Chartered Accountant. The appellant has filed along with its Return of Income the form No. 10CCB, duly audited, as per the provisions of Section 801A(7). In the case of CIT vs Dunlop Rubber Co (1) Ltd. 107 ITR 182 (Cal.) it was held that for the purpose of tax holiday benefits it is not necessary that the eligible unit must maintain separate books of account.

16.12 The appellant submitted that the number of employees directly employed in the eligible business is not relevant at all. There is an agreement with the railway authority for operation and maintenance of the Rail System and under the said agreement, the operations and maintenance is to be carried out by the railways and the appellant bears the cost of the employees deputed by the railway authorities for this purpose. It is settled position that in order to compute the number of workers, casual and other workers appointed through the contractors have to be taken into consideration. The number of employees, including appointed through the railway authorities, would far exceed 10. The appellant relied 152 ITR 152(Kar.), K.G. Yediyurappa & Co, and 99 Taxmann 229 Vikshana Tdg & Investment Pvt Ltd. In any case, the condition of employing a minumum of 10 workers is not applicable to an infrastructure enterprise.

16.13 The appellant argued that the AO's allegations that it has no control over the operations of the Rail system, is baseless and without merits. Merely because the workers are deputed by the railway under the operations and maintenance agreement, does not mean that the appellant has no control over the Rail System. It is not open for the railway authority to use the faclity for any purpose other than for the purpose of appellant's business. The entire

loading and unloading is done under the insistence of and supervision of the appellant. The appellant decides the destination to which the material is to be transported. Entire risk and reward in relation to the Rail Sytem are of the appellant. Therefore, it was submitted that the appellant has effective and total control over the Rail System."

123. After considering the aforesaid submission, the learned CIT(A) vide impugned order came to the conclusion that all the 3 conditions required to be fulfilled as per section 80-IA(4)(i) of the Act are satisfied by the assessee. At the outset, it is pertinent to note that in respect of the same rail terminal at Rawan District, Raipur, deduction under section 80-IA of the Act was allowed in the case of assessee's subsidiary company in UltraTech cement Ltd v/s DCIT, in ITA No. 1412/Mum./2018, etc., vide order dated 14/12/2021, by the coordinate bench of the Tribunal.

124. In the assessment order, the AO held that in the present case, the rail system does not have any agreement with the authorities mentioned above. On the contrary, the learned DR though agreed that the assessee has entered into an agreement with South-Eastern Railway administration on 10/04/2000 for the Rail System at Rawan District, Raipur, however, submitted that the same is subsequent to the commencement of operations on 25/09/1999. The learned DR also submitted that since the infrastructure facility was made operational during the financial year 1999-2000, therefore, the claim of benefit under section 80-IA for the alleged infrastructure facility is to be examined as per the provisions of the Act relevant for the financial year 1999-2000. The learned DR also submitted that as per the provisions of section 80-IA (4)(i)(b) of the Act, as applicable for the financial year 1999-2000, such undertaking was required to be transferred to the Central Government, State Government, local authority or such other statutory body. However, the agreement dated 10/04/2000 does not have any such clause and therefore the same is not in conformity with the provisions of the Act. From the perusal of the record, it is evident that aforesaid submissions made by the learned DR were not the basis for disallowance under section 80-IA of the Act. In this regard, the following observations of the Special Bench of the Tribunal in Mahindra and Mahindra Ltd vs DCIT, [2009] 30 SOT 374 (Mumbai) (SB), becomes relevant:-

> *"In our considered opinion the learned Departmental Representative has no jurisdiction to go beyond the order passed by the Assessing Officer. He cannot raise any point different from that considered by the Assessing Officer or CIT(A). His scope of arguments is confined to supporting or defending the impugned order. He cannot set up an altogether different case. If the learned DR is allowed to take up a new contention de hors the view taken by the Assessing Officer that would mean the learned A.R. stepping into the shoes of the CIT exercising jurisdiction under section 263. We, therefore, do not permit the learned DR to transgress the boundaries of his arguments."*

125. Therefore, on this preliminary basis only, as noted by the Special Bench of the Tribunal in the aforesaid decision, the contention of the learned DR is rejected. Even otherwise, it is an accepted position that the assessee did not make any claim in the first year of its operation and the claim was made for the first time in the year under consideration, i.e. assessment year 2003-04. Therefore, we are of the considered view that in order to determine the eligibility of the assessee for deduction under section 80-IA of the Act, the provisions of the Act as applicable for this year become relevant. We find that vide Finance Act 2001, w.e.f. 01/04/2002, the provisions of section 80-IA (4) of the Act were amended and the same reads as under:-

> *"(4) This section applies to—*
>
> *(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely :—*
>
> *(a) it is owned by a company registered in India or by a consortium of such companies;*
>
> *(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;*
>
> *(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:"*

126. We find that all the aforesaid conditions are satisfied in the present case for claiming deduction under section 80-IA of the Act. As regards the submission of the learned DR that the assessee has constructed a private

siding for captive use, we find that similar submission was rejected by the coordinate bench of the Tribunal in the case of assessee's subsidiary company in UltraTech cement Ltd (supra), vide order dated 14/12/2021. Further, even though the agreement was entered on 10/04/2000, and the operations commenced in September 1999, it is pertinent to note that the parties to the agreement have honoured the said agreement, and the rights granted therein were not revoked for this reason and the said agreement was still valid in the year under consideration. In view of the aforesaid findings and respectfully following the decision of the coordinate bench cited supra, we find no infirmity in the impugned order allowing deduction under section 80-IA of the Act to the assessee in respect of profits from the rail system. As a result, ground no.11 raised in Revenue's appeal is dismissed.

127. The issue arising in ground no.12, raised in Revenue's appeal, is pertaining to deduction under section 80M of the Act.

128. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the year under consideration, the assessee has claimed a deduction under section 80M of the Act of Rs.32,31,34,454, in its return of income. During the assessment proceedings, the assessee was asked to submit the details of expenditure incurred to earn dividend and as to why such expenditure be not reduced while allowing deduction under section 80M of the Act. In response thereto, the assessee submitted that investments in shares/securities on which dividend was received during the previous year were made out of internal accruals and own funds. The assessee further submitted that no borrowings were made specific or general for the purpose of making these investments and during the previous year, no expenditures were incurred for earning dividend income. The assessee also placed reliance upon the decision of the coordinate bench of the Tribunal in assessee's own case for the assessment year 1993–94 wherein, in relation to deduction under section 80M of the Act, it was held that there is no justification for allocation of any expenditure as expenditure relatable to the dividend income. The AO, vide order passed under section 143(3) of the Act, did not agree with the submissions of the assessee and held that the decision of the Tribunal is not

acceptable to the Revenue and has been challenged before the higher authorities. The AO further held that no income can be earned without incurring administrative and financial expenses attributable to it. Accordingly, the AO made disallowance of Rs.38,69,281, as expenditure incurred for earning the dividend income while computing deduction under section 80M of the Act by observing as under:–

> *"22.6 The assessee company has submitted that the Head Office makes all the investments. Head Office provides funds to the business units and cash profit of the business units is transferred to the Head Office on regular basis. Audited balance sheet and profit and loss account of the head office was submitted. I find that total funds available as on 31.3.2003 were of Rs. 3597.71 crores. Investment made in shares of other companies as on 31.03.2003 was of Rs. 1796.05 crores. Interest expense for the financial year ended on 31.03.2003 was Rs. 77,50,647/-. Therefore, the proportionate disallowances out of interest are worked out at Rs. 38,69,281/- i.e. Rs. 1796.05 / 3597.71 x 77,50,647/– = 38,69,281/- and the same is disallowed as expenses incurred for earning dividend income while computing deduction u/s 80M of the I.T. Act."*

129. As a result, the AO reduced the deduction under section 80M of the Act to Rs.31,92,65,173. The learned CIT(A), vide impugned order, following the judicial precedents in assessee's own case deleted the aforesaid disallowance made by the A.O. on an estimate basis. Being aggrieved, the Revenue is in appeal before us.

130. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal, vide consolidated order dated 17/03/2004, while deciding a similar issue in assessee's own case in Grasim Industries Ltd. v/s DCIT, ITA no.7593/Mum./ 1997 (for A.Y. 1990–91), ITA no.7594/Mum./1997 (for A.Y. 1991–92) and ITA no.7595/ Mum./1997 (for A.Y. 1992–93), observed as under:–

> *"185. The learned counsel for the assessee referred to the order of the I.T.A.T. for the assessment year 1993-94, wherein the Tribunal having regard to the position of the assessee's funds has held that no presumption could be drawn that borrowed funds were utilized for making investments in securities on which dividend was earned and, therefore, the allocation of part of interest for earning dividend was unjustified. The learned counsel for the assessee has filed before us a comparative chart for the source of investment in shares and securities on which dividend was earned The said chart is reproduced herein below. As is evident from the aforementioned chart, the assessee's own funds*

were much more than the value of investment on which dividend was received in all the three years. It is not disputed that there were no specific borrowings made for making investment in shares and securities Therefore, consistent with the view taken in the assessment year 1993–94, we set aside the order of the learned CIT(A). These grounds are dismissed."

131. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in relevant assessment year. This issue has been decided in favour of the assessee in the preceding years also. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, ground no.12, raised in Revenue's appeal is dismissed.

132. Grounds no.13 is general in nature, hence, no specific adjudication is needed.

133. In the result, the appeal by the Revenue is partly allowed for statistical purposes.

134. To sum up, the present cross-appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 13/06/2023

Sd/-	**Sd/-**
AMARJIT SINGH	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 13/06/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai