# आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR**

**(Through Virtual Court)**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**
**AND**
**SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA Nos.561 & 564/NAG/2016**
**निर्धारण वर्ष / Assessment Years : 2010-11 & 2009-10**

The Income Tax Officer,
Ward – 5(1), Nagpur

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Bilt Graphic Paper Product Ltd.,
P.O. At Bellarpur,
Dist.-Chandrapur – 442901

PAN : AADCB2230M

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.562 & 563/NAG/2016**
**निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11**

Bilt Graphic Paper Products Ltd.,
First India Place, Tower 'C',
Mehrauli – Gurgaon Road,
Gurgaon, Haryana – 122002

PAN : AADCB2230M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,
Ward – 5(1), Nagpur

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.214/NAG/2017**
**निर्धारण वर्ष / Assessment Year : 2013-14**

ACIT, Circle – 5,
Nagpur

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Bilt Graphic Paper Product Ltd.,
First India Place, Tower 'C',
Mehrauli – Gurgaon Road,
Gurgaon, Haryana – 122002

PAN : AADCB2230M

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.120/NAG/2018**
**निर्धारण वर्ष / Assessment Year : 2012-13**

ACIT, Circle – 5,
Nagpur

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Bilt Graphic Paper Product Ltd.,
First India Place, Tower 'C',
Mehrauli – Gurgaon Road,
Gurgaon, Haryana – 122002

PAN : AADCB2230M

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishore Dewani
Revenue by : Shri Maurya Pratap

सुनवाई की तारीख / Date of Hearing : 19-07-2023
घोषणा की तारीख / Date of Pronouncement : 14-09-2023

## आदेश / ORDER

**PER BENCH :**

All these appeals by the Revenue and assessee against the separate orders dated 22-08-2016, 30-03-2017 and 28-03-2018 passed by the

Commissioner of Income Tax (Appeals)-4, Nagpur ['CIT(A)'] for the above mentioned assessment years.

2. Since, the issues raised in all these appeals are similar basing on the same identical facts, with the consent of both the parties, we, therefore, proceed to hear all these appeals together and to pass a consolidated order for the sake of convenience.

3. The ld. AR, Shri Kishore Dewani submits that the assessee is not interested to prosecute the appeals in ITA Nos. 562 & 563/NAG/2017 for A.Ys. 2009-10 and 2010-11, respectively. Hence, the same are dismissed as not pressed.

**4. First, we shall take up appeal of Revenue in ITA No. 561/NAG/2016 for A.Y. 2010-11.**

5. Brief facts of the case are that the assessee is a company, engaged in the business of manufacturing and sale of paper, pulp, caustic soda, chlorine etc. The assessee filed its return of income declaring a total loss at Rs.187,68,56,740/- and book profit at Rs.94,87,89,879/- u/s. 115JB of the Act. The said return was processed u/s. 143(1) of the Act. Under scrutiny, notice u/s. 143(2) of the Act was issued and in response to which the assessee explained the claims to the AO. The AO completed the assessment at loss of Rs.28,17,847/- as against the loss declared by the assessee at Rs.187,68,56,740/-, but charged the tax u/s. 115JB of the Act on revised book profit at Rs.1,17,16,62,056/- as against the book profit declared by the assessee at Rs.94,87,89,879/- inter alia making addition on account of Sales Tax Incentive at Rs.22,28,72,177/- vide its order dated 25-03-2014 passed u/s. 143(3) r.w.s. 144C(3) of the Act. The CIT(A)

allowed the appeal of assessee in part. Aggrieved by the order of CIT(A), the Revenue is before us.

6. Ground No. 1 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.22,28,72,177/- made on account of sales tax incentive as capital receipt as against the revenue receipt as held by the AO.

7. We note that the AO discussed the issue in para 4.1 of the assessment order. According to the AO, the assessee has claimed to have reduced sales tax incentive from computation of income. The AO asked the assessee to justify the claim of deductibility of the said liability. The AO observed that the assessee made the same submissions as was made in earlier year assessment of which reproduced in page 2 of the assessment order. According to the said submissions of the assessee, we note that the Government of Maharashtra has given a package of incentive for overall development of the state in the country under a scheme called as package Scheme of Incentive in order to achieve industries near Pune region. The relevant part of which is reproduced hereunder :

> *"Incentive as allowed by way of adjustment against sales - tax liability Rs.22,28,72,177/- as capital receipt has been claimed by this assessee In computing the 'Income' chargeability to tax on the following grounds:*
>
> *Object of the Scheme as pronounced by the Government of Maharashtra and eligibility of this assessee for availing the incentive. Incentive was qualified by SICOM, an implementing agency as nominated by the Government of Maharashtra for overall development of the state resulting in one of the most developed state in the country. Incentive was disbursed in cash. Incentive was appropriated against statutory and financial liability (Sales Tax & Purchase Tax as per Bombay Sales Tax Act) as owed to the State Govt. on account of sale of paper produced in one of the factory located in under developed area in Maharashtra.*
>
> *Whereas assessee did not collect sales tax from its customers for sales of paper in order to discharge the liability towards sales tax as per Bombay Sales Tax Act. Sales tax liability being statutory liability for the year under assessment was determined on the basis of return filed. Therefore such*

*liability cannot be ignored / denied even for paying income tax as per Income Tax Act, 1961.*

*Thus, liability towards sales-tax on sale of paper has been claimed in the return as deductible item in order to charge the profit as per Profit & Loss account as the said liability has been adjusted against liability owed to the Government of Maharashtra but adjusted against incentive in terms of package Scheme of Incentive, 1993 as quantified and allowed not because of sale of paper but on account of development of backward area. Thereby, assessee has discharged its sales tax liability on sale of paper which is in the revenue filed whereas incentive adjusted as above squarely falls in the capital field i.e. capital receipt.*

*Thus, it is abundantly clear that incentive as allowed by the Government of Maharashtra falls within the four walls of investment in backward area but not at all for the purpose of sale of paper. And we repeat that this distinguishment makes abundantly clear that incentive towards sales - tax as quantified by the Government of Maharashtra is not in the revenue filed liable to tax under Income-tax Act as held by the judiciary including 1ncome-tax Appellate Tribunal, Nagpur Bench, Nagpur in many cases in relation to asst, year 1993-94 onwards.*

*Considering facts and circumstances of the assessee's case, you will appreciate that incentive was never received in cash whereas sales tax liability for earning sale proceeds was discharged because of such incentive. Accordingly, incentive was not credited in accounts simply because any receipt which is notional and also in nature of capital receipt cannot and must not be included as income for the purpose of paying income tax."*

8. On an examination of the same, the AO was of the opinion, sales tax liability has been never paid or payable by the assessee and such liability cannot be allowed, rejected the submissions of the assessee. The CIT(A) in the impugned order discussed the same in detail at pages 65 to 67 of the impugned order. On perusal of the same, we note that the CIT(A) placed reliance on the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 in ITA No. 342/NAG/2013 and held incentive package scheme of Government of Maharashtra being capital receipt and not exigible to tax. The ld. DR vehemently supported the order of AO and prayed to reverse the order of CIT(A) as an appeal against the order of ITAT, Nagpur Bench in assessee's own case pending before the Hon'ble High Court of Bombay. The ld. AR drew our attention to the paper book Vol.-I and referred to para 5 of the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12 in ITA No. 213/NAG/2017 and supported the order of CIT(A). The ld.

AR submits that the issue in the year under consideration is similar to the issue in A.Y. 2011-12 passed on same identical facts and submits the finding recorded by the ITAT, Nagpur Bench in assessee's own case is applicable to the facts on hand.

9. We note that there is no dispute with regard to the facts and circumstances of the case as similar to the facts in A.Y. 2011-12. On perusal of the order of Tribunal in assessee's own case for A.Y. 2011-12, the Tribunal followed the order of Tribunal in assessee's own case for A.Y. 2008-09 and held the order of CIT(A) is justified. Further, we note that the Tribunal for A.Y. 2008-09 in order to come to such conclusion in holding the sales tax incentive is a capital receipt, followed the decision dated 19-04-2016 of Hon'ble Supreme Court in the case of Shree Balaji Alloys in Civil Appeal No. 10061 of 2011. For better understanding, the relevant part in para Nos. 5,6 and 7 of the Tribunal's order is reproduced hereunder:

> *"5. In Ground No.1 of appeal Revenue has challenged the relief granted by learned CIT(A) at Rs.28,42,41,299/- by holding that sales tax incentive received is capital receipt. Learned DR relied upon the order of Assessing Officer and submitted that relief granted in earlier year is not accepted by revenue and is in challenge before Hon'ble High Court. Learned CIT(A) has granted relief by holding as under:*
>
> > *''5.2 I have considered the submissions made by counsel of the appellant and perused the evidence on record and assessment order. The A.O. has discussed the addition at para 4.2 of the assessment order. The addition made by A.O is on same 1.nes as was made in the case of appellant in A.Y 2010-11. The issue in dispute had come up in the case of appellant in the appellate proceedings for assessment year 2010-11. In assessment year 2010-11, the CIT (A) in appeal No.CIT(A)-4/69/14-1: vide order dated 22/08/2016 has deleted the similar addition made by A.O. The operative part of the order of CIT (A) is reproduced herein under for ready reference:*
> >
> > *"I have considered the submissions made by counsel of the appellant and perused the evidence on record and assessment order. The A.O. has discussed the addition at para 4.1 of the assessment order. The addition made by A.O is on same lines as was made in the case of appellant in A.Y 2008-09. Facts & circumstances are identical to that in A.Y 2008-09.The issue in dispute had come up for consideration in the case of appellant in the appellate proceedings for*

*assessment year 2008- 09.In assessment year 2008-09 the Hon'ble CIT (A} in appeal No.CIT(A)-II 559/2010-11 vide order dated 27/06/2013 has deleted the similar addition made by A.O. The operative part of the order of CIT (A) is reproduced herein under for ready reference:*

*"I have considered the submissions made by counsel of the assessee and perused the evidence on record. The A.O. has discussed the disallwance at para 4.1 of the assessment order. The addition made is in line with similar addition made on this issue in the case of Ballarpur Industries in earlier assessment year. During the course of appellate proceedings AR of the appellant has also pointed out that in the case of M/s Bal!arpur Industries Ltd. the Hon'ble Tribunal and CIT{A) have decided the issue in favour of the appellant in all the years beginning from 1994-95. The A.R of the appellant has also enclosed the copies of the orders passed by Hon'ble Tribunal and CIT{A) . Respectfully following the same I hold that sales tax incentives availed under the Package Scheme of Incentives of Govt of Maharashtra is capital receipt and not chargeable to tax. This ground is therefore allowed''*

*It is also noticed that the order passed by Hon'ble CIT(A) for the assessment year 2008-09 has been upheld by Hon'ble ITAT, Nagpur Bench, Nagpur in ITA No. 342/Nag/2013 vide order dated 25/02/2016.*

*The facts and circumstances for the year are identical to that in assessment year 2008-09, I agree with the detailed reasons as observed in the appellate order. for assessment year 2008-09 for deletion of similar addition made at the hands of assessee.*

*The Hon'ble High Court of Jammu & Kashmir in the case of Shree Balaji Alloys & Ors vs CIT reported at 331 ITR 335 has held that Excise Duty refund and interest subsidy received in pursuance to New Industrial Policy of Government with the objects of acceleration of Industrial Development and generation of employment is capital receipt at the hands of assessee. Civil appeal filed by revenue in C.A. No.10061 of 2011 before Apex Court has been dismissed vide judgement dated 19-04-2016. The ratio laid down squarely applies to the facts in the case of assesee and supports the submission of appellant.*

*Respectfully following the appellate order in Asstt. Year 2008-09 and decision of Hon'ble Apex Court in the case of Shree Balaji, I hereby direct AO to delete the addition made at Rs.22,28,72,177/- in respect to incentive under package scheme of Govt. of Mahrashtra being capital receipt and not exigible to tax. This ground of appeal is therefore allowed.''*

*5.3 The facts and circumstances for the year are identical to that in assessment year 2010-11, I have given the detailed reasons as observed in appellate order for Assessment Year 2010-11 for deletion of identical addition made at the hands of assessee. Respectfully following the same, I hereby direct AO to delete the addition made at Rs.28,42,41,299/- in respect to incentive under package scheme of Govt. of Maharashtra being capital receipt not exigible to tax. This ground of appeal is therefore allowed.''*

*6. The learned counsel of assessee before us has made submission as under:*

*A) Sales tax incentive availed under the Package Scheme of Incentive of Government of Maharashtra is for setting up of Industrial Unit and is capital receipt.*

*B) Issue covered in favour of assessee by decision in the case of assessee in Asstt. Year 2008-09 by order of ITAT in ITA No.342 & 344/Nag/2013. ( Para 4 page 4)*

*C) In ground of revenue it is observed that in Shri Balaji Alloys Hon'ble Apex Court has referred matter back to ITAT for denovo consideration is factually incorrect ( Page 20 to 25)*

*7. It is noted that learned CIT(A) has granted relief by following the order of ITAT, Nagpur Bench, Nagpur in ITA No.342/Nag/2013 vide order dated 25/02/2016 and judgment of Hon'ble Apex Court in the case of Shree Balaji Alloys in Civil Appeal No.10061 of 2011 dated 19/04/2016. It is noted that Hon'ble Apex Court has dismissed the appeal of Revenue. It is mentioned in Ground No.1 that Hon'ble Apex Court has referred the matter back to the Tribunal for de novo consideration is factually incorrect on bare perusal of judgement of Hon'ble Apex Court placed in paper book. The learned CIT(A) has dealt with the facts and evidence on record extensively while granting relief in the case of assessee. Detailed order passed by the ld. CIT(A) indicating reason for deleting the addition has been reproduced in the paragraphs hereinabove. We are in agreement with the findings and reasoning recorded by ld. CIT(A) deleting the addition in the case of assessee. This Tribunal in assessee's own case in Asstt. Year 2008-09 in ITA No.342/Nag/2013 has held that sales tax incentive is capital receipt in order dated 25/02/2016. We uphold the order of learned CIT(A) on this issue. In view of above ground No. 1 of appeal of Revenue is dismissed."*

10. In the light of the above and discussion made by us, we did not find any order contrary to the view taken by the Tribunal in assessee's own case for A.Y. 2008-09, therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, we hold the sales tax receipt under incentive package scheme of Government of Maharashtra is capital receipt and not exigible to tax. Thus, ground No. 1 raised by the Revenue fails and it is dismissed.

11. Ground No. 2 raised by the Revenue challenging the action of CIT(A) in deleting the disallowance of Rs.1,07,47,218/- made on account of contribution to various institutions and office club in the facts and circumstances of the case.

12. We note that the AO discussed the issue in para 4.3 of the assessment order, wherein, it is observed that the assessee made contribution of Rs.1,07,47,218/- to various institutions, clubs, schools etc. The details of which are reflected in page 6 of the assessment order. The AO observed that the claim of the assessee was allowed in earlier year, but however, non-acceptance of such allowance by the appellant-revenue being questioned before the Hon'ble Jurisdictional High Court disallowed the same u/s. 40A(9) of the Act. The CIT(A) by following the order of ITAT, Nagpur Bench in assessee's own case allowed the claim of assessee. We note that the CIT(A) discussed the reasons recorded in A.Y. 2008-09 in the impugned order, wherein, it is noted the ITAT upheld the reasons recorded by the CIT(A) for A.Y. 2008-09 in deleting the addition made by the AO on account of contribution to various institutions etc. The ld. DR relied on the order of AO and prayed to reverse the finding given by the CIT(A). The ld. AR drew our attention to paper book-I and argued that the ITAT, Nagpur Bench for A.Y. 2011-12 allowed similar issue based on same identical facts as that of A.Y. 2008-09. On perusal of the same, the ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12 agreed with the reasons recorded by the CIT(A) in deleting the addition made by the AO. The relevant part at paras 9 and 10 at pages 8 and 9 of the paper book-I is reproduced hereunder for ready reference :

> *"9. The learned counsel of assessee before us has made submission as under:*
>
> *A) Expenditure is in the nature of staff welfare or meant for business developing and is in the nature of allowable business expenditure.*
>
> *B) CIT(A) has relied up on order in the case of assessee for earlier year to decide issue in favour of assessee.*
>
> *C) Issue covered in favour of assessee by decision in the case of assessee in Asstt. Year 2008-09 by order of Hon'ble ITAT, Nagpur Bench in ITA Nos.342 & 344/Nag/2013.*
>
> *(Para 6 - Page 4*

*10. It is noted that learned CIT(A) has granted relief by following the order of ITAT, Nagpur Bench, Nagpur in ITA No.342 & 344/Nag/2013 vide order dated 25/02/2016. The learned CIT(A) has dealt with the facts and evidence on record extensively while granting relief in the case of assessee. Detailed order passed by ld. CIT(A) indicating reason for deleting the addition has been reproduced in the paragraphs hereinabove. We are in agreement with the findings and reasoning recorded by CIT(A) deleting the addition in the case of assessee. This Tribunal in assessee's own case in Asstt. Year 2008-09 in ITA No.342 & 344/Nag/2013 has held that contribution to various institutions and clubs is not to be disallowed in its order. We, therefore, uphold the order of learned CIT(A) on this issue. In view of above ground of appeal of revenue is dismissed."*

13. In view of the order of this Tribunal in assessee's own case for A.Y. 2011-12 and in the absence of contrary view, we find no infirmity in the order of CIT(A) in deleting the addition made by the AO on account of contribution to various institutions etc. u/s. 40A(9) of the Act and it is justified. Thus, ground No. 2 raised by the Revenue fails and it is dismissed.

14. Ground No. 3 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.8,74,03,000/- made by the AO on account of sales tax incentive received for Mega Project under Package Scheme of Incentive as capital receipt as against revenue receipt as held by the AO.

15. It is noted from para 4.5 of the assessment order that the assessee claimed sales tax incentive of Rs.8,74,03,000/- for Maga project under Package Scheme of Incentive-2007 as capital receipt. The eligibility criteria and preamble of the said incentive is reproduced in para 4.5 of the assessment order. In terms of the said eligibility and preamble, the assessee claimed incentive on the basis of Scheme of incentive for least developed areas, Incentive for investment in Mega Project expansion, Development of backward area (notified) and Gain of the enterprises arose not out of any trading transaction. The AO did not agree with the contents

of the assessee and added an amount of Rs.8,74,03,000/- to the total income of the assessee. The CIT(A) by following the decision of ITAT, Nagpur Bench in the case of M/s. Sanvijay Rolling and Engineering Ltd. in ITA No. 224/NAG/2015 for A.Y. 2012-13 vide order dated 30-03-2017 which held that the industrial promotion subsidy received under Package Scheme of Incentive of Govt. of Maharashtra is capital receipt and not exigible to tax. Further, the CIT(A) placed reliance on the decision of Hon'ble High Court of Jammu & Kashmir in the case of Shree Balaji Alloys & Ors. reported in 331 ITR 335 which held that the Excise refund and interest subsidy received in pursuance to New Industrial Policy of Government with the object of acceleration of Industrial Development and generation of employment is capital receipt. The CIT(A) considering the above said decision held the addition made on account of sales tax incentive in respect of Maga project under Package Scheme of Incentive of Govt. of Maharashtra is not justified and directed the AO to delete the same. For ready reference, relevant part at paras 8.3 to 8.7 of the impugned order is reproduced hereunder :

> *"8.3 I have considered the submission made by the counsel of appellant and peruse the evidence on record .It is seen that the appellant has set up the Mega project at Bhigwan and is eligible for incentives under the Package Scheme of Incentives of Govt. of Maharashtra. The A.G. has made the ddition of Rs.8,74,03,000/- being an amount of VAT receivable on accrual basis in Asstt. Year 2010-11. The entry in Books of account in respect to such Incentives has been made in F.Y. 2011-12. The incentives has been dentified as industrial promotional subsidy under Package Scheme of Incentives of Govt. of Maharashtra. The issue as to assessebility of industrial promotion subsidy received under Package Scheme of Incentive of Govt. of Maharashtra has been considered by CIT(A)-II, Nagpur in case of M/s. Sanvijay Rolling and Engineering Ltd. for A.Y.2012-13 in appeal No. CIT(A)-2/248/14-15 'vide, order dated 07/05/2015. The Hon'ble CIT(A) in its appellate order had examined the nature of industrial promotion subsidy received under the Package Scheme of Incentive of Govt. of Maharashtra and has concluded the same to be in nature of capital receipt. The findings recorded to arrive at conclusion are reproduced hereunder for your ready reference.*
>
> > *I have considered the facts of the case and the submissions of the appellant. I find substantial merits in the submissions made. It is not disputed that the appellant company has set up an industrial undertaking at Plot Nos. B-203 to 206 in Butibori Industrial area which is a Mega Project in terms of Package Scheme of Incentives of*

*2001 of Government of Maharashtra and in terms of the said scheme the appellant is eligible for incentives as provided under the scheme. It is also evident from the various legal pronouncements relied upon by the appellant (including the judgement of the Hon'ble ITAT Nagpur Bench in the appellants own case) that the object of the incentive scheme of Government of Maharashtra was to achieve dispersal of industries out of Bombay, Thane, Pune belt and the objective of the scheme being in the nature of incentive for setting up of industries, the incentive availed cannot be held to be in the nature of revenue receipt at the hands of assessee.*

*In this context it is vital to peruse the basic purpose behind the Package Scheme of Incentive (PSI) of the Government of Maharashtra in pursuance of which the said amount of Rs.891.13 lacs has been received by the appellant. Also, since it is the contention of the ld. AO that the various decisions relied upon by the appellant related to "Sales Tax Incentive" and "Deferment of Sales Tax Collected" while in the case under consideration the appellant had directly received a sum of Rs.891.13 lacs from the State Government of Maharashtra, it has to be examined if the basic nature of the scheme has undergone any change or has remained the same over its successive versions. If the objects of the various versions of the package scheme of inventive remains the same and if such receipts have been held to be capital in nature in earlier versions, there would be no reason to hold the said receipts to be revenue in nature under PSI-2001 merely because the method of dispersal of the subsidy has changed.*

*In this context, it is important to read the preamble of the PSI-2001 to understand and appreciate the intention behind introducing the said scheme. The same has been reproduced above at para G of the appellants submissions. In the preamble itself it is stated that in order to encourage the dispersal of industries to the less developed areas of the State, Government has been giving a Package of Incentives to New/Expansion Units set up in the developing region of the State Since 1964 and it concludes by again stating that the intent of the Package Scheme of Incentives. 2001 is for intensifying and accelerating the process of dispersal of industries to the- less developed regions and promoting high-tech industry in developed areas of the State coupled with the object of generating mass employment opportunities. The said package schemes of incentives were originally declared by the Government of Maharashtra in 1964 and the same has been amended and modified from time to time on various occasions by issue of Government resolutions. However it is vital to note that the object of preamble of various versions declared by the government of Maharashtra remains the same i.e. incentives are provided for setting up of industries in the State of Maharashtra considering the object of dispersal of industries from Bombay, Thane and Pune belt and to generate mass employment opportunities.*

*In this context, the various judicial pronouncements on similar facts are new considered. In the case of Commissioner of Income-tax, Madras v. Ponni Sugars & Chemicals Ltd. (supra) it was held that the object for which the subsidy/incentive is given determines the nature of the incentive subsidy and that the form of the mechanism through which the subsidy is given is irrelevant. In this case the assessee-company had received subsidy under the incentive subsidy scheme, 1980. The incentives conferred under the scheme were two fold; first, in nature of a higher free sale price of the free sale sugar in excess of the normal quota, but to pay to the Government only the excise duty payable on the price of levy sugar. As per the scheme, the*

*assessee was obliged to utilize the subsidy only for repayment of term loans undertaken by if for setting up new units/expansion of existing business. The assessee claimed that incentive received by it was a capital receipt, not includible in the total income. According to the department, since incentives were given through price and duty differentials, the character of the impugned incentives was revenue and not capital in nature. The High Court held that incentive subsidy received by the assessee was a capital receipt. On the revenue's appeal to the Supreme Court it was held as under:*

*" .... The importance of the judgment of this Court in Sahney Steel & Press Work's Ltd. 's case (supra) lies in the fact that it has discussed and analyzed the entire case law and it has laid down the basic test to be applied in judging the character of a subsidy. That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial. The main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilized for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.*

*In the decision of House of Lords in the case of Seaham Harbour Dock Co. v. Crook (1931) 16 TC 333 the Harbour Dock Co. had applied for grants from the Unemployment Grants Committee from funds appropriated by Parliament. The said grants were paid as the work progressed the payments were made several times for some years. The Dock Co. had undertaken the work of extension of its docks. The extended dock was for relieving the unemployment. The main purpose was relief from unemployment. Therefore, the House of Lords held that the financial assistance given to the company for dock extension cannot be regarded as a trade receipt. It was found by the House of Lords that the assistance-had nothing to do with the trading of the company because the work undertaken was dock extension. Accordingly to the house of Lords, the assistance in the form of a grant was made by the Government with the object that by its use men might be kept in employment and, therefore, its receipt was capital in nature. The importance of the judgment lies in the fact that the company had applied for financial assistance to the Unemployment Grants Committee. The Committee gave financial assistance from time to time as the work progressed and the payments were equivalent to half the interest for two years on approved expenditure met out of loans. Even though the payment was equivalent to half the interest amount payable on the loan (interest subsidy) still the House of Lords held that money received by the company was not in the course of trade but was of subsidy nature. The judgment of House of Lords shows that the source of payment or the form in which the subsidy is paid or the mechanism through which it is paid is immaterial and that what is relevant is the purpose for payment of assistance. Ordinarily such payments would*

*have been on revenue account but since the purpose of the payment was to curtail/obliterate unemployment and since the purpose was dock extension, the House of Lords held that the payment made was of capital nature.*

*One more aspect needs to be mentioned. In Sahney Steel & Press Works Ltd.'s case (supra) this Court found that the assessee was free to use the money in its business entirely as it liked. It was not obliged to spend the money for a particular purpose. In the case of Seaham Harbour Dock Co. (supra) assessee was obliged to spend the money for extension of its docks. This aspect is very important. In the present case also, receipt of the subsidy was capital in nature as the assessee was obliged to utilize the subsidy only for repayment of term. loans undertaken by the assessee for setting up new units/expansion of existing business. Applying the above tests to the facts of the present case and keeping in mind the object behind the payment of the incentive subsidy we are satisfied that such payment received by the assessee under the scheme was not in the course of a trade but was of capital nature. Accordingly, the first question if answered in favour of the assessee and against the Department.*

*Thus it has been held by the Supreme Court that the object for which the subsidy/incentive is given determines the nature of the incentive subsidy and that the form of the mechanism through which the subsidy is given is irrelevant. The High Court of Delhi in the recent case of Commissioner of Income-tax-l v. Bougainvillea Multiplex Entertainment Centre (P.) Ltd. [2015] 55 taxmann.com 26 (Delhi) examined a similar issue. The assessee was engaged in the business of running ofmultiplex cinema Halls and shopping malls. It had been the beneficiary of a scheme promulgated by the State Government wherein it had been granted exemption from entertainment tax payment. It claimed deduction to the extent of entertainment tax collected in the corresponding financial years terming the amounts as capital receipts. On such facts it was held that the appellant is entitled, in terms of the U.P. Scheme, to treat the amounts collected towards entertainment tax as capital. The key findings in the said judgment were as under:*

** The U.P. Scheme under which the assessee claims exemption to the extent of entertainment tax subsidy, claiming it to be capital receipt, is clearly designed to promote the investors in the cinema industry encouraging establishment of new multiplexes. A subsidy of such nature cannot possibly be granted by the Government directly. Entertainment tax is leviable on the admission tickets to cinema halls only after the facility becomes operational. Since the source of the subsidy is the public at large which is to be attracted as viewers to the cinema halls, the funds to support such and incentive cannot be generated until and unless the cinema halls become functional. [Para 32].*

** The State Government had offered 100 percent tax exemptions for the first three years reduced to 75 per cent in the remaining two years. Thus, the amount of subsidy earned would depend on the extent of viewership the cinema hall is able to attract. After an the collections of entertainment tax would correspond to the number of admission tickets sold. Since the maximum amount of subsidy made available is subject to the ceiling equivalent to the amount invested by the assessee in the construction of the multiplex as also the actual cost incurred in arranging the requisite equipment installed therein, it naturally follows that the purpose is to assist the entrepreneur in*

*meeting the expenditure incurred on such accounts .Given the uncertainties of a business of this nature, it is also muster enough viewership to recover all his investments in the five year period. [Para 33].*

** See in the above light- it was unreasonable on the part of the Assessing Officer to decline the claim of the assessee about the in setting up of the project, such receipt (subject, of course, to the cap of amount and period under the scheme) could not have been treated as assistance for the purposes of trade. [Para 34].*

** The facts that the subsidy granted through deemed deposit of entertainment tax collected does not require it to be linked to any particular fixed asset or that is accorded 'year after year' do not make any difference. The scheme makes it clear that the grant would stand exhausted the moment entertainment tax has been collected (and retained) by the multiplex owner meeting the entire cost of construction (apparatus, interiors etc. included], even if it were before completion of five years [Para 35].*

** For the foregoing reasons, Tribunal in the impugned orders has taken a correct view of law on the basis of available facts to conclude that the assessee is entitled, in terms of the UP. Scheme, to treat the amounts collected towards entertainment tax as capital. The question of law raised in these appeal is, thus answered in the negative against the revenue. [Para 39].*

*On similar facts, it was held by the Bombay High Court in the case of Commissioner of Income-tax-I, Kolhapur v Chaphalkar Brothers (supra) as under:*

*5. Since the object of subsidy was to promote construction of multiplex theatre complexes, in our opinion, receipt of subsidy would be on capital account. The fact that the subsidy was not meant for repaying the loan taken for construction of multiplexes cannot be a ground to hold that subsidy receipt was on revenue account, because, if the object of the scheme was to promote cinema houses by constructing multiplex theatres, then irrespective of the fact that the multiplexes have been constructed out of own funds or borrowed funds, the receipt of subsidy would be on capital account. In the light of the aforesaid objects of the Scheme framed by the State Government the decision of the Income Tax Appellate Tribunal that the amount of subsidy received by the assessee is on capital account cannot be faulted. Accordingly, both the appeals are dismissed with no order as to costs.*

*In all the above cases, the incentives received by the appellant for setting up of industry were held to be capital in nature and it has been held that what is important is the purpose of the incentive /subsidy and a mere change in the method of disbursement cannot be lead to a different treatment and the said receipt ca not be brought to tax as a revenue receipt. The Special Bench of the Tribunal Reliance Industries Ltd. (supra) relying on the principles laid down by Supreme Court in the case of Sahney Steel & Press Works Ltd. (supra) came to the conclusion that since the incentives were given for bringing about addition to necessary infrastructure in developing the backward area, it would be in the nature of capital receipt not liable to tax. The aforesaid decision of the Special Bench has been rendered on identical facts and is on all fours with the facts of the assessee's case. This is because the objectives of the successive PSIs have remained*

*identical in its successive avatars. The purpose of granting incentive is clearly only to provide an incentive for establishment of new industries in the underdeveloped regions or to expand its existing units of the State of Maharashtra. The intention is not to increase the viability of the eligible units but to promote development of further industry and infrastructure in the region and to provide employment.*

*Also, as held by the Honorable Supreme Court, the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid, the form in which it is paid or its source is immaterial. The Honorable Supreme Court held that the crucial aspect was the object of the scheme and if the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account and on the order hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. It held that it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy and the form of the mechanism through which the subsidy is given is irrelevant.*

*As discussed above, in the case of the appellant, the purpose of granting incentive is clearly only to provide an incentive for establishment of new industries in the underdeveloped regions or to expand its existing units of the State of Maharashtra. The variation in methodology of availment of various incentives under the scheme will not alter the character of receipt being capital nature. The ratio laid down by the various binding judicial pronouncements discussed hereinabove squarely applies to the facts of the case. Respectfully following the same I hold that the amount received by the appellant during the year under consideration as promotional subsidy under the PSI of Maharashtra in the capital field and not liable to tax. In view of the above facts, the action of the Ld. AO of treating the said amount of Rs.8,91,13,000/- as revenue receipts is erroneous and consequentially the addition made by the ld. AO in this regard is therefore hereby deleted. These grounds are therefore allowed.*

*8.4. The nature of subsidy being an industrial promotion subsidy is identical to that considered in case of M/s. Sanvijay Rolling & Engineering Ltd. as discussed hereinabove. I agree with the detailed reasons indicated in the appellate order of M/s Sanvijay Rolling & Engineering Ltd. for holding that the industrial promotion subsidy received under the Package scheme of Incentives of Govt. of Maharashtra is capital receipt and is not exigible to tax.*

*8.5. Industrial promotion subsidy accrued at Rs.8,74,03,000/- is not exigible to tax at the hands of appellant as the same is capital receipt. The package scheme of incentives as discussed in the appellate order indicates that the subsidy is for setting up of industrial unit and generation of employment.*

*8.6. The Hon'ble High Court of Jammu & Kashmir in the case of Shree Balaji Alloys & Ors vs. CIT reported at 331 ITR 335 has held that Excise refund and interest subsidy received in pursuance to New Industrial Policy of Government with the object of acceleration of Industrial Development and generation of employment is capital receipt at the hands of assessee. Civil appeal filed by revenue is CA. NO.10061 of 2011 before Apex Court has been dismissed vide judgement dated 19/04/2016. The ratio laid down*

*squarely applies to the facts in the case of assessee and supports the submission of appellant.*

*8.7. Respectfully following the aforesaid appellate order and decision of Hon'ble Apex Court in the case of M/S Shree Balaji Alloys &ors, I hold that addition made at Rs.8,74,03,000/- in respect to industrial promotion subsidy received under Package scheme of Incentives of Govt. of Maharashtra is unjustified and be directed to be deleted. The Industrial Promotional Subsidy under Package Scheme of Incentive is capital receipt and not exigible to tax. This ground of appeal is therefore Allowed."*

16. The ld. DR relied on the order of AO and prayed to allow ground No. 3 raised by the Revenue. The ld. AR drew our attention to paper book-II and made reference to the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 and argued that the similar issue on identical facts, the Tribunal allowed the claim of assessee by holding that the sales tax incentive under Maga Project is a capital receipt, not exigible to tax. We note that the Tribunal discussed the issue and held the sales tax incentive under Mega Project Package Scheme of Incentive of Govt. of Maharashtra is already held by the Tribunal in assessee's own case as capital receipt not chargeable to tax. Therefore, we find no contrary view against the view taken by the Tribunal in treating the sales tax incentive as capital receipt. Thus, we find no infirmity in the order of CIT(A) and it is justified. Thus, ground No. 3 raised by the Revenue is fails and it is dismissed.

17. Ground No. 4 raised by the Revenue challenging the action of CIT(A) in deleting the payment of commission of Rs.44,91,419/- to Avantha Holding Ltd.

18. It is observed from para 4.7 of the assessment order, that the assessee made payment to M/s. Avantha Holdings Limited for procurement of stores and raw material. According to the AO, there was no agreement between the assessee and M/s. Avantha Holdings Limited, but however, on

an examination of agreement as furnished by the assessee between M/s. Ballarpaur Industries Ltd. and M/s. Newquest Corporation Ltd. held the same agreement is not binding on the assessee as the M/s. Ballarpaur Industries Ltd. and M/s. Newquest Corporation Ltd. are different. Before the CIT(A), it was contended that M/s. Newquest Corporation Ltd. changed its name to M/s. Avantha Holdings Limited and the same is affected through proceedings of Registrar of companies. The assessee paid commission and service charge to the said M/s. Avantha Holding Limited in terms of agreement dated 08-09-2005. The relevant part of the submissions of assessee was reproduced in para 9.2 of the impugned order. The CIT(A) by considering the said submissions held the assessee has received services from the said M/s. Avantha Holding Limited earlier known as M/s. Newquest Corporation Ltd. and the payments made through banking channel. Further, it is noted that the AO did not make any addition for A.Y. 2012-13. Accordingly, the CIT(A) directed the AO to delete the said addition made on account of commission payment. The ld. DR vehemently supported the order of AO and requested to allow ground No. 4 raised by the Revenue. The ld. AR drew our attention to para 17 of the ITAT, Nagpur Bench order in assessee's own case at page 21 of the paper book-I. On perusal of the same, we note that the ITAT, Nagpur Bench upheld the order of CIT(A) for the reason when there was no addition made by the AO in A.Y. 2012-13 basing on the same agreement, the present addition is not warranted. The ITAT, Nagpur Bench for A.Y. 2011-12 agreed with the reasons recorded by the CIT(A) in this regard and upheld the order of CIT(A). Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, ground No. 4 raised by the Revenue is fails and it is dismissed.

19. Ground No. 5 raised by the Revenue challenging the action of CIT(A) in deleting the disallowance of Rs.9,38,713/- made on account of Festival Celebration Expenses.

20. We note that the AO disallowed expenditure incurred towards festival celebration by following the assessment order for A.Y. 2009-10. The CIT(A) by following the order of ITAT, Nagpur Bench for A.Y. 2008-09 in ITA No. 344/NAG/2013 directed the AO to delete the same. We note that the CIT(A) reproduced the order of ITAT in assessee's own case for A.Y. 2008-09 at pages 32 to 34 of the impugned order, wherein, by following the order of ITAT, Nagpur Bench in assessee's own case directed the AO to delete the same. The ld. DR did not bring on record any order contrary to the view taken by the ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09. The ld. AR drew our attention to para 20 of the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12 in ITA No. 213/NAG/2017. On perusal of the same, the ITAT, Nagpur Bench by following the order of A.Y. 2008-09 in assessee's own case upheld the order of CIT(A). Therefore, in our opinion, the CIT(A) is justified in deleting the addition made on account of festival celebration expenses. Thus, the ground No. 5 raised by the Revenue is fails and it is dismissed.

21. Ground No. 6 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.44,19,01,544/- made on account of adjustment on international transaction of interest payment on CCD's in the facts and circumstances of the case.

22. We note that the AO following the adjustment proposed by the TPO added an amount of Rs.44,19,01,544/- to the total income of the assessee

on account of international transaction of interest payment on CCD's. The CIT(A) following the order of ITAT, Mumbai Bench in the case of Indian Debt Management Service P. Ltd. in IT(TP)A No. 7518/MUM/2014 held the rate of interest paid on CCD's is not in excess of arm's length price and held the upward adjustment made by the AO is not justified. The ld. DR relied on the order of AO. The ld. AR drew our attention to order of ITAT, Mumbai Bench in the case of Indian Debt Management Service P. Ltd. (supra) and referred to ground No. 1 therein at page 20 of the paper book-II. He argued that by referring to para 11.2 of the impugned order and reiterated the submissions as made before the CIT(A), he submits that the transfer of three undertaking as per Scheme of Arrangement and Reorganisation as approved by the Hon'ble High Court of Bombay at Nagpur and transferee company (BILT) of the said three undertakings assessed by the same Assessing Officer at Nagpur who has considered and held that the income arising out of the said transfer of three undertaking by BILT the assessee as slump sale u/s. 50B of the Act for a total consideration of RS.1950 crores through allotment made by the appellant by way of equity shares Rs.450 crores and issue of 9% Compulsory Convertible Debentures (CCD) of Rs.1500 cores. The BILT thereafter intends to transfer the share and debenture of the assessee held by it to BPH (Netherland entity) who shall pay cash consideration for purchase of the shares and debenture of the transferee (appellant) company. Further, he submits that the BPH (Netherland Company) transferred the said debenture to BIPH which is another Netherland entity (an associate company). He argued that the interest on debenture of Rs.1500 crores as issued in the form of CCD within the norms of RBI, which was paid by the assessee to the original allottee i.e. BILT, a domestic entity and thereafter two Netherland entities as they got the same debenture transferred. He

vehemently argued that since the transfer of CCD were issued in Indian Currency and the interest payable on such transfer needs to be compared in the Indian Currency only. Further, he argued that the said transaction cannot be compared with the transaction made in foreign currency. He argued that the assessee paid interest @ 9% and such rate of 9% is not excessive. He prayed that the upward adjustment made by the TPO as added by the AO is not maintainable. In view of the finding of CIT(A) and also submissions of ld. AR, we deem it proper to examine the order of Mumbai Tribunal in the case of Indian Debt Management Service P. Ltd. (supra) is reproduced hereunder for better understanding :

> *"13. Now coming to the issue, whether the arm's length interest rate arrived at by the TPO and endorsed by the DRP by adopting USD Corporate Bond Rate and LIBOR interest rate based on external commercial borrowing is justified in the present case or not. First of all, as stated in the foregoing paragraphs and reiterated several times that the CCDs have been issued in INR denominated debt and the interest paid / payable is also in terms of INR. Once the tested transaction is in INR denominated debt, then interest rate must necessarily be based on economic and market factors affecting Indian currency and data available for debt issuances in India or INR denominated rather than foreign currency rate or external data. The base rate on which interest rate depends is directly related to the currency or denomination of issuance and, therefore, it should be taken into account according to the market conditions prevalent in the country of such currency, here in this case India. The market conditions capable of capturing best of the rates do not depend much on any place but rather on currency concern, because the supply and demands of funds in a specific currency the price/interest rates for funds denominated in that currency. Hence, cost of borrowing funds denominated in INR or lending rates based on INR loans/debt instrument issuances is more reliable and ideal base for benchmarking similar transactions undertaken by the companies or entities with similar ratings.*
>
> *14. The TPO and DRP in our opinion have committed a fallacy, firstly, by considering the AE as a "tested party" and secondly, relying upon USD Corporate Bond Rates to benchmark the ALP of the interest rate because the interest rates for bonds or loan has to be seen from the point of view of borrowers creditworthiness and not the lender's creditworthiness. Thus, the entire approach of the TPO/DRP in applying USD Corporate bond rates to benchmark the interest transaction in a blanket manner is not correct. As pointed out by Ld. Senior counsel, now, Hon'ble Delhi High Court in the case of Cotton Naturals P Ltd. (supra) have held that, arm's length interest rate should be computed based on market determined interest rate applicable to currency in which loan has to be repaid. The relevant observation of the Hon'ble High Court in this regard reads as under:-*
>
> > *"39. The question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the*

*borrower was a resident and an assessee of the said country, in our considered opinion, must be answered by adopting and applying a commonsensical and pragmatic reasoning. We have no hesitation in holding that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. Klaus Vogel on Double Taxation Conventions (Third Edition) under Article 11 in paragraph 115 states as under:-*

*x x x x x x x x x x x x x x x x x x x x x x x …*

*40. The aforesaid methodology recommended by Klaus Vogel appeals to us and appears to be the reasonable and proper parameter to decide upon the question of applicability of interest rate. The loan in question was given in foreign currency i.e. US $ and was also to be repaid in the same currency i.e. US $. Interest rate applicable to loans granted and to be returned in Indian Rupees would not be the relevant comparable. Even in India, interest rates on FCNR accounts maintained in foreign currency are different and dependent upon the currency in question. They are not dependent upon the PLR rate, which is applicable to loans in Indian Rupee. The PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate in the extant case. PLR rates are not applicable to loans to be re-paid in foreign currency. The interest rates vary and are thus dependent on the foreign currency in which the repayment is to be made. The same principle should apply".*

*If we apply the same ratio, then arm's length interest rate should be based on INR in which CCDs has been issued and the currency in which interest is being paid and not on any foreign currency lending rate. Thus, respectfully following the aforesaid ratio, we reject the TPO's application of USD Corporate Bonds Rate as well as the LIBOR rate for benchmarking the interest transaction in this case.*

*15. The last leg of the controversy is, whether the benchmarking analysis done by the assessee is correct or not and whether the average rate of interest of 11.30% paid by the assessee to its AE is at ALP or not. So far as the assessee's benchmarking analysis as done in TP Study report based on external data using Thomson Reuters' DealScan, and Bloomberg Database, we find that such an approach is not correct, firstly, there are no INR denominated debt issuance available on such databases and; secondly, in absence of such a data the assessee has to carry out huge adjustments on account of country risk, currency risk and tenor risk. With all these factors of adjustments, it would be difficult to arrive at an appropriate arm's length range of price; therefore, in our opinion such an approach of the assessee for benchmarking the arm's length interest rate may not be correct. However, as regards the search undertaken for comparable debt issuances in BSE data, we find that the assessee has shortlisted two comparables namely; Starlight Systems Private Limited and Share Microfin Limited which have a coupon rate of 15% and 13.75%. Since these data belong to year 2013, the assessee had made minor tenor adjustment to factor the time period to arrive at interest rate of 15.97% and 14.05% giving a mean rate of 15.01%. Though*

*the assessee was required to benchmark its transaction by taking the financial year data for year 2009-10, but, if such a data were not available then it cannot be held that such a tenor adjustment for taking into time period cannot be made under CUP, if it has been made quite accurately taking into account the material factors relating to time of the transaction affecting the price. We though agree that, a high degree of comparability is required under CUP, but in absence of such a comparable data, a minor adjustment can be made to eliminate the material effect of time difference for arriving at a comparable uncontrolled price. Now before us, the assessee had filed two comparable transactions for the year 2009, that is, for the same financial year in the case of Shriram Transport Financial Company Ltd. and Tata Capital Ltd., wherein, for credit rating of AA Enterprises the coupon rate of interest per annum was between 11% to 12% for a tenor of 60 months. The yield on redemption is also around 11.25% to 12%. If for a credit rating company AA or AA(+) the interest rate is ranging between 11% to 12%, then in the case of the assessee which is admittedly BBB(-) credit rating company, 11.30% interest paid by the assessee to its AE is much within the arm's length rate. This data/document from public domain now made available before us is worth relying to benchmark and analyze the current transaction of coupon rate of interest paid/payable on CCDs issued by the assessee. Accordingly, we hold that 11.30% interest rate is at arm's length price. Thus, in our conclusion, the transfer pricing adjustment made by the TPO and as confirmed by the DRP at Rs.48,53,19,310/-stands deleted and consequently ground no. 1 is allowed."*

23. On perusal of the above, we note that the Mumbai Tribunal examined whether the arm's length interest rate arrived at by the TPO which was endorsed by the DRP by adopting USD Corporate Bond Rate and LIBOR interest rate based on external commercial borrowing is justified or not? We note that the facts therein are, that the CCDs have been issued in INR denominated debt and the interest paid / payable is also in terms of INR. The Tribunal opined that when the tested transaction is in INR denominated debt, then interest rate must necessarily be based on economic and market factors affecting Indian currency and data available for debt issuances in India or INR denominated rather than foreign currency rate or external data. Further, it was observed the cost of borrowing funds denominated in INR or lending rates based on INR loans/debt instrument issuances is more reliable and ideal base for benchmarking similar transactions undertaken by the companies or entities with similar ratings.

24. Coming to the facts of the present case as emanating from para 11.3 of the impugned order, we note that the assessee issued CCDs for Rs.1500 crores to M/s. Ballarpur Industries Ltd. in consideration for transfer of business undertaking by it in A.Y. 2008-09. The CCD issued by the assessee had coupon rate of 9% which were issued on 26-12-2007. The said CCDs were tradable security and could be transferred by M/s. Ballarpur Industries Ltd. to any investor. On 19-03-2008, M/s. Ballarpur Industries Ltd. transferred the part of the CCDs in favour of M/s. Ballarpur Paper Holding for face value of Rs.258.225 crores for which the assessee paid interest @9% to M/s. Ballarpur Industries Ltd. and also to M/s. Ballarpur Paper Holding on CCDs worth of Rs.258.225 crores for a period from 19-03-2008 to 31-03-2008. The CCDs were issued in subsequent years 2009-10 and 2010-11. We find the Revenue accepted the payment of interest at coupon rate at 9% for A.Y. 2008-09 which is clear from para 11.7 of the impugned order. A contention was also raised before the CIT(A) when the coupon rate at 9% accepted for earlier year 2008-09 why it should not be accepted for the year under consideration also. The CIT(A) discussed the issue in detail along with the issuance of CCDs from A.Ys. 2008-09 to 2011-12 and submissions of the assessee and by placing reliance in the case of Indian Debt Management Service P. Ltd. (supra) held the payment of interest at 9% is not excessive. For ready reference paras 11.3 to 11.12 are reproduced hereunder for better understanding :

> *"11.3. I have considered the submission made by the counsel of the appellant and perused the evidence on record. The detailed submission made by appellant is reproduced hereinabove. The brief facts in the case of appellant are that it had issued Compulsory Convertible Debentures (CCD) worth Rs.1,500/- crores to M/s Ballarpur Industries Ltd. in consideration for transfer of business undertaking by it in Asstt. Year 2008-09. The CCD issued by appellant had coupon rate of 9%. The CCD was issued on 26/12/2007. The CCD issued by the appellant company was tradable security and could be transferred by M/s Ballarpur Industries Ltd. to any investor. M/s Ballarpur Industries Ltd. on 19/03/2008 has transferred the*

*part of the CCDs' in favour of M/s Ballarpur Paper Holding for face value of 258.225 crores. In the Asstt. Year 2008-09 the appellant has paid interest at 9% to M/s Ballarpur Industries Ltd. and to M/s Ballarpur Paper Holding on CCD worth Rs. 258.225 for a period from 19/03/2008 to 31/03/2008. The payment made by appellant to M/s Ballarpur Industries Ltd. was payment to a person specified u/s 40A(2) (b) of LT. Act 1961 and payment to M/s. Ballarpur Paper Holding, Netherland was payment to associate concern and was international transaction in terms of section 92B of I.T. Act 1961. The regular assessment proceedings for Asstt. Year 2008-09 has been completed u/s 143(3) of LT. Act 1961. In the assessment framed the interest paid to M/s. Ballarpur Industries Ltd. was allowed as claimed and no part of the same was considered to be in excess of fair market value. In fact payment of interest to M/s. Ballarpur Industries Ltd. was considered to be at fair market value of services and was accepted without inviting any disallowance u/s 40A(2) (b) of LT. Act 1961 as is evident from the assessment order passed u/s.143(3) of LT. Act. In respect to payment of interest to Ballarpur Paper Holding it appears that the A.O. had not made reference to Transfer Pricing Officer in terms of section 92CA of LT. Act 1961 as a natural corollary the payment made by the appellant to associate enterprise in respect to international transaction was concluded to be at arms length price without inviting any adjustment required to be made in case of appellant company under the provisions of section 92CA of LT. Act 1961.*

*11.4. In Asstt. Year 2009-10 balance CCD held by M/s. Ballarpur Industries Ltd. were transferred in favour of Bllarpur Paper Holding on 23/06/2008. The Ballarpur Paper Holding has further transferred CCD in favour of Ballarpur International Paper Holding on 30/06/2008. The entire holding of CCD comprising of Rs.1500 crores after 01/07/2008 is held by Ballarpur International Paper Holding in Asstt. Year 2009-10. The appellant has paid interest to Ballarpur Industries Ltd., Ballarpur Paper Holding & Ballarpur International Paper Holding. The coupon rate of CCD was 9% and interest paid is in terms of coupon rate to respective investors for the period for which CCDs were held by respective person. The details of interest paid is indicated in chart reproduced submission of appellant at para 11.1. The regular assessment for the Asstt. Year 2009-10 is framed u/s 143(3) of I.T. Act 1961 and from the assessment record it is evident that no addition has been made out of interest paid by the appellant in respect to domestic as well as international transaction. It is worthwhile to observe that the payment made by Ballarpur Paper Holding Ltd. & Ballarpur International Paper Holding were the payments made in international transaction. The payment made by appellant company was found to be at arms length price and was not considered more than the fair market value of services in respect of domestic transaction. In view of above facts no disallowance u/s. 40A(2) or u/s. 92CA of I.T. Act 1961 appears to have been made in the regular assessment framed.*

*11.5. In the assessment year 2010-11 the CCD worth Rs. 1,000 crores were purchased by Ballarpur Industries Ltd. from Ballarpur International Paper Holding on 07/10/2009 which have been redeemed by appellant on 28/10/2009. The appellant company at the time of redemption of debenture has made payment of interest at coupon rate at 9% at Rs. 5.50 crores. The aforesaid payment of interest has been allowed in the assessment framed without inviting any adverse observations. The interest paid has not been considered to be in excess of fair market value. At the opening day of the previous year the total CCD issued by appellant were Rs.l,500 crores out of debenture worth Rs.l,000/- crores have been redeemed on 28/10/2009. The balance debenture worth Rs.500/- crores were outstanding and retained by Ballarpur International Paper Holdings.*

*11.6. In respect to interest paid on investment of Ballarpur International Paper Holding Transfer Pricing Officer has determined sum of Rs. 44,19,01,544/- as adjustment to be made as according to him the payment of interest at 9% is in excess of the arms' length price. The detailed facts as given hereinabove make it evident that the addition made by the A.O. is on the basis of order of Transfer Pricing Officer wherein the arms length price in respect to interest paid has been held by him to be excessive as according to him 5.146% would be arms length interest rate. A.O. has computed this rate of interest by benchmarking interest on Circular issued by RBI in respect to External Commercial Borrowing (ECB).*

*11.7. The brief facts in case of appellant are the CCD issued by the appellant company is in Indian Rupees and were issued to a resident company and payment of interest is required to be made in Indian currency. The aforesaid security was tradable and transferable to any other person. The coupon rate of 9% was fixed at the time of issue of CCD. The aforesaid CCDs have been issued by the appellant company in Asstt. Year 2008-09. In case of appellant Asstt. Year 2008-09 and even in subsequent Asstt.Year 2009-10 the revenue authorities have accepted the claim of appellant in respect to payment of interest @ 9% to be reasonable expenditure on account of interest and transaction has not invited any adverse observation. The facts and circumstances of such security being same and identical in the previous year under consideration there appears to be no justification for the Transfer Pricing Officer to take different view or come to different conclusion. The payment of coupon rate at 9% having been considered as reasonable in Asstt. Year 2008-09 and 2009-10 it could not be considered excessive in Asstt. Year 2010-11. In view of above, the recommendation of Transfer Pricing Officer and the addition for the same made by the A.O. in case of appellant cannot be held to be justified.*

*11.8. Further, the appellant company has argued that, the appellant company has issued the security in Asstt. Year 2008-09 to resident company and security issued being of tradable nature if transferred to associate enterprises located out of India the payment of interest in respect to such security technically may constitute international transaction for the purpose of provisions of chapter of LT. Act 1961 being special provision relating to avoidance of tax. The appellant having issued the security at coupon rate much before the associate enterprises became owner of such security it cannot be said that the appellant has transacted with the associate enterprises inviting adverse inference to be drawn in the case of assessee. The appellant had fixed coupon rate much before investment is made by associate enterprise and thus such transaction cannot be envisaged under Chapter X for which an adjustment could be made at the hands of appellant. Moreover the entire transaction was before Hon'ble Bombay High Court and it had its approval in its judgment dated 30/11/2007. Transaction which had approval of Hon'ble Jurisdiction High Court could not be subjected for addition to be made at the hands of appellant. The appellant was already committed to pay coupon rate of 9% at the time of issue of CCD towards domestic company. The coupon rate of 9% have not invited any adverse observations in the earlier assessment year.*

*11.9. I find that, in respect to transfer price adjustment recommended by Transfer Pricing Officer at Rs.44.19 crores, it is observed in TPO's order that the interest rate in respect to the CCD at 9% is not at arm's length price. He has taken the aforesaid transaction as ECB and relying on circular issued by RBI it has been concluded that arms length interest rate works out to 5.146%. The Transfer Pricing Officer after discussing above has recommended to make adjustment of Rs.44.19 crores in respect to interest payment on CCD.*

*11.10 It is seen that CCDs acquired by associate enterprises are not from appellant company but are acquired from companies to whom CCD were issued by appellant company in Asstt. Year 2008-09. It is undisputed fact on record that CCDs have been issued by appellant company in Indian currency and interest is also payable in Indian currency. In view of above, I do not find any justification for comparing the same with loan transaction in foreign currency being in nature of external commercial borrowing. The Transfer Pricing Officer has adopted only single rate as a CUP in respect to ECB being circular of RBI is not justified as it is not in respect to transaction in Indian currency. The Hon'ble Income Tax Appellant Tribunal, Mumbai Bench in case of Indian Debt Management Service P. Ltd. Vs. DCIT in ITA No.IT(TP) Appeal No.7518 (Mum) of 2014 vide order dated 10/03/2016 has considered a similar dispute. In the facts of the said case the compulsory convertible debentures were issued and average interest payout was at 11.30%. The transfer pricing officer compared the same with External Commercial Borrowing and made addition of Rs.48.53 crores as transfer price adjustment in respect to interest expenditure incurred on account of CCDs issued by such company to it's Associate Enterprises. On above facts Hon'ble ITAT had deleted the addition made and relevant findings in the said judgment are reproduced hereunder:-*

> *"4. The TPO and DRP in our opinion have committed a fallacy, firstly, by considering the AE as a "tested party" and secondly, relying upon USD Corporate Bond Rates to benchmark the ALP of the interest rate because the interest rates for bonds or loan has to be seen from the point of view of borrowers creditworthiness and not the lender's creditworthiness. Thus, the entire approach of the TPO/DRP in applying USD Corporate bond rates to benchmark the interest transaction in a blanket manner is not correct. As pointed out by LD. Senior counsel, now Hon'ble Delhi High Court in the case of Cotton Naturals (I) (P.) Ltd. (supra) have held that arm's length interest rate should be computed based on market determined interest rate applicable to currency in which loan has to be repaid. The relevant observation of Hon 'ble High Court in this regard reads as under:-*
>
> > *"39. The question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, in our considered opinion, must be answered by adopting and applying a commonsensical and pragmatic reasoning. We have no hesitation in holding that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central Bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent i.e. rate of interest.' Klaus Vogel on Double Taxation Conventions (Third Edition) under Article 12 in paragraph 115 states as under:-*
> >
> > > *"40. The aforesaid methodology recommended by Klaus Vogel appeals to us and appears to be the reasonable*

*and proper parameter to decide upon the question of applicability of interest rate. The loan in question of applicability of interest rate. The loan in question was given in foreign currency i.e. US $ and was also to be repaid in the same currency i.e. US $. Interest rate applicable to loans granted and to be returned in Indian Rupees would not be the relevant comparable. Even in India, interest rates of FCNR accounts maintained in foreign currency are different and dependent upon the currency in question. They are not dependent upon the PLR rate, which is applicable to loans in Indian Rupee. The PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate in the extent case. PLR rates are not applicable to loans to be re-paid in foreign currency. The interest rates vary and are thus dependent on the foreign currency in which the repayment is to be made. The same principle should apply".*

*If we apply the same ratio, then arm's length interest rate should based on INR in which CCDs has been issued and the currency in which interest is being paid and not on any foreign currency lending rate. The main ratio of the Tribunal's order is that, if the CCD's are issued in Indian Currency and the interest is payable in Indian Currency then the benchmark should also be done vis-a-vis Indian Interest Rate and not with a ECB transaction. Thus, respectfully following the aforesaid ratio, we reject the TPO's application of USD Corporate Bonds Rate as well as the LIB OR rate for benchmarking the interest transaction in this case.*

*The last leg of the controversy is, whether the benchmarking analysis done by the assessee is correct or not and whether the average rate of interest of 11.30% paid by the assessee to its AE is at ALP or not. So far as the assessee's benchmarking analysis as done in TP Study report based on external data using Thomson Reuters' DealScan, and Bloomberg Database, we find that such an approach is not correct, firstly, there are no INR dominated debt issuance available on such data bases and; secondly, in absence of such a data the assessee has to carry out huge adjustments on account of country risk. Currency risk and tenor risk. With all these factors of adjustments, it would be difficult to arrive at an appropriate arm's length range of price; therefore, in our opinion such an approach of the assessee for benchmarking the arm's length interest rate may not be correct. However, as regards the search undertaken for comparable debt issuance in BSE data, we find that the assessee has shortlisted two comparables namely; Starlight Systems Private Limited and Share Mircofin Limited which have a coupon rate of 15% and 13.75%. Since these data belong to your 2013, the assessee had made minor tenor adjustment to factor the time period to arrive at interest rate of 15.97% and 14.05% giving a mean rate of 15.01%. Though the assessee was required to benchmark its transaction by taking the financial year data for year 2009-10, but, if such a data were not available then it cannot be held that such a tenor adjustment for taking into time period cannot be made under CUP, if it has been made quite accurately taking into account the material factor relating to time of transaction affecting the price. We though agree that, a high degree of comparability is required under CUP, but in absence of such a comparable data, a minor adjustment can be made to eliminate the material effect of time difference for arriving at a comparable uncontrolled price. Now before us, the assessee had filed two*

*comparable transactions for the year 2009, that is, for the same financial year in case of Shriram Transport Financial Company Ltd. and Tata Capital Ltd., wherein, for credit rating of AA Enterprises the coupon rate of interest per annum was between 11 % to 12% for a tenor of 60 months. The yield on redemption is also around 11.25% to 12%. If for a credit rating company AA or AA(+) the interest rate is ranging between 11% to 12%, then in case of the assessee which is admittedly 888(-) credit rating company, 11.30% interest paid by the assessee to its AE is much within the arm's length rate. This data/document from public domain now made available before us is worth relying to benchmark and analyze the current transaction of coupon rate of interest paid/payable on CCDs issued by the assessee. Accordingly, we hold that 11.30% interest is at arm's length price. Thus, in our conclusion, the transfer pricing adjustment made by the TPO and as confirmed by the DRP at Rs.48,53,19,310/- stands deleted and consequently ground No.1 is allowed."*

*11.11. It is seen from the aforesaid judgment that the interest payable in Indian currency needs to be compared with bonds issued in the Indian currency only. It cannot be compared with transaction made in foreign currency. It is seen that the compulsory convertible debentures in the said company were issued in Indian currency. The Hon'ble Tribunal has concluded that interest paid @ 11.30% is at arm's length price. In case of appellant company interest paid is at 9%. In view of above it cannot be said that interest payment made by assessee is in excess of arms length price. In view of above addition made by A.O. is unjustified and unsustainable. Thus considering the fact that the entire transaction had the approval of Hon'ble Jurisdictional High Court and also respectfully following the decision of Hon'ble ITAT I hold that for applying the comparable CUP it can be only interest paid in Indian Currency. The rate of interest paid on CCO by appellant company cannot be considered to be in excess of arm's length price and thus addition made by A.O. is held to be unjustified and unsustainable.*

*11.12. Considering the totality of facts and circumstances in the case of appellant I am of considered view that addition made by A.O. on account of interest in international transaction is unjustified and unsustainable. The same is hereby directed to be Deleted."*

25. On an examination of the above and also the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12, we agree with the reasons recorded by the CIT(A) and by following the decision of Hon'ble High Court of Bombay in the case of M/s. Jaiswal Neco Ltd. in Income Tax Application No. 16 of 1998, we hold that the payment of interest at coupon rate at 9% by the assessee is not excessive and the upward adjustment made by the TPO as followed by the AO is not justified. Further, it is brought to our notice that the SLP by the Revenue in the case of M/s. Jaiswal Neco Ltd. (supra) was dismissed by the Hon'ble Supreme Court vide order dated 05-

09-2011. Therefore, respectfully following the decision of Hon'ble High Court of Bombay in the case of M/s. Jaiswal Neco Ltd. (supra), we do not find any infirmity in the order of CIT(A) and it is justified. Thus, ground No. 6 raised by the Revenue fails and it is dismissed.

26. Ground No. 7 raised by the Revenue challenging the action of CIT(A) in directing the AO to reduce sales tax incentive of Rs.22,28,72,177/- from the computation for the purpose of book profit u/s. 115JB of the Act.

27. We note that the AO discussed the issue of claim deduction of sales tax incentive for book profit u/s. 115JB of the Act at para 4.10 of the assessment order. The AO reproduced the contention of the assessee in excluding sales tax incentive from book profit at pages 19 to 21 of the assessment order. On perusal of the same, it is noted that the assessee taken reference to orders in the case of Ballarpur Industries Ltd. from A.Ys. 1993-94 to 2000-01 and 2003-04 to 2006-07 contending that the sales tax incentive as allowed by the Government of Maharashtra is in the nature of capital receipt and such receipt is outside the scope of book profit u/s. 115JB of the Act. The said incentive is intimately connected with the investment in backward area, being in the nature of capital side is not chargeable to tax. Further, it was contended that the ITAT, Nagpur Bench in the case of M/s. Ballarpur Industries Ltd. examined the issue and held the sales tax incentive is not includible in computation of income for the purpose of section 115JB of the Act. The AO did not accept the said submissions of the assessee and rejected the same, accordingly, the claim of deduction of sales tax incentive Rs.22,28,42,177/- was denied to reduce from computation for the purpose of section 115JB of the Act. The CIT(A) discussed the issue at para 13 of the impugned order. The CIT(A) primarily

placed reliance on the order of ITAT, Nagpur Bench for A.Y. 2008-09, wherein, the ITAT, Nagpur Bench confirmed the order of CIT(A) in directing the AO to reduce sales tax incentive from the computation of book profit u/s. 115JB of the Act. The ld. AR supported the order of CIT(A) and drew our attention to paper book at page 27, wherein, the order of this Tribunal for A.Y. 2011-12 is placed and argued that this Tribunal for A.Y. 2011-12 confirmed the order of CIT(A) in reducing sales tax incentive from the book profit. He referred to order of ITAT, Mumbai Benches in the case of M/s. Batliboi Limited in ITA No.5428/Mum/2015 for A.Y. 2011-12 which held the capital receipt is not liable to be taxed while computing books profits u/s.115JB of the Act vide paras 5.2 and 5.3. He argued that the ITAT, Mumbai Benches in order to come to such conclusion followed the decision of Hon'ble High Court of Calcutta in the case of Ankit Metal and Power Ltd. reported in 416 ITR 591 (Cal.). Further, the ld. AR drew our attention to the decision of Hon'ble High Court of Calcutta in the case of Ankit Metal and Power Ltd. (supra) and argued that the sales tax incentive is a capital receipt does not fall within the definition of income u/s. 2(24) of the Act. Further, he argued when a receipt is not in the character of income it cannot be formed part of book profit u/s. 115JB of the Act. The relevant portion is as under :

> *"i. Whether on the facts and in the circumstances of the case the learned Tribunal has erred in law in allowing the claim of the assessee to treat the incentives received by it on account of 'Interest subsidy' under West Bengal Incentive Schemes, 2000' and 'Powers subsidy' under West Bengal Incentive to Power Intensive Industries Scheme, 2005 as capital receipt and not revenue receipt in relevant assessment year 2010-11 and not to include the aforesaid receipts in Book Profit under Section 115 JB of the Income Tax Act, 1961 ?.*
>
> *ii. Whether on the facts and in the circumstances of the case the learned Tribunal erre0d in law in accepting the claim of deduction by the assessee towards 'Interest subsidy' and 'Power subsidy' under the aforesaid schemes by filing revised computation instead of revised return before the assessing officer for exclusion of the aforesaid receipts from the book profit under Section 115 JB on the ground that the said subsidies do not constitute income under Section 2(24) of the Income Tax Act, 1961 ?.*

*28. On perusal of the contents of the relevant portion under the incentive subsidy schemes in question we found that in the case of the assessee, the State Government under the West Bengal Incentive Scheme, 2000, and 'West Bengal Incentive to Power Intensive Industries Scheme, 2005', had actually granted the subsidy with the sole intention of setting up new industry and attracting private investment in the state of West Bengal in the specified areas in the present case Bankura which is industrially backward hence the same was of the nature of non-taxable Capital receipt. Thus according to the 'purpose test' laid out by the Hon'ble Supreme Court, various and High Courts including our Court the aforesaid subsidy should be treated as capital receipt in spite of the fact that computation of 'Power subsidy' is based on the power consumed by the assessee. It is well established from submission of the assessee as enunciated above that once the purpose of a subsidy is established; the mode of computation is not relevant as held in the decisions of the Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd. Vs. Commissioner of Income tax [1997] 228 IRT 253(SC); CIT Vs. Ponni sugars and Chemicals Ltd. [2008] 306ITR 392 (SC) and the decision of our High Court in case of CIT Vs. Rasoi Ltd. 335 ITR 438 (Cal.) against which SLP has been dismissed. The mode of computation/form of subsidy is irrelevant. The mode of giving incentive is re-imbursement of energy charges. The nature of subsidy depends on the purpose for which it is given. Hence the assessee draws support from the decisions already discussed earlier as the same principle will apply here. Thus, the entire reason behind receiving the subsidy is setting up of plant in the backward region of West Bengal, namely, Bankura.*

*29. Accordingly we hold the aforesaid incentive subsidies are 'capital receipts' and is not an 'income' liable to be taxed in relevant assessment year 2010-11 on the basis of discussion made above and further taking into consideration the definition of Income under Section 2(24) of the Income Tax Act, 1961, where sub- clause (xviii) has been inserted including 'subsidy' for the first time by Finance Act, 2015 w.e.f. April, 2016 i.e assessment year 2016-17. The amendment has prospective effect and had no effect on the law on the subject discussed above applicable to the subject assessment years.*

*30. Now the second issue which requires adjudication is as to whether the aforesaid incentive subsidies received by the assessee from the Government of West Bengal under the schemes in question are to be included for the purpose of computation of book profit under Section 115 JB of the Income Tax Act, 1961 as contended by the revenue by relying on the decision in the case of Appollo Tyres Ltd. Vs. CIT reported in 225 ITR 273 (SC).*

*31. In this case since we have already held that in relevant assessment year 2010-11 the incentives 'Interest subsidy' and 'Power subsidy' is a 'capital receipt' and does not fall within the definition of 'Income' under Section 2(24) of Income Tax Act, 1961 and when a receipt is not on in the character of income it cannot form part of the book profit under Section 115JB of the Act, 1961. In the case of Appollo Tyres Ltd. (supra) the income in question was taxable but was exempt under a specific provision of the Act as such it was to be included as a part of the book profit. But where a receipt is not in the nature of income at all it cannot be included in book profit for the purpose of computation under Section 115JB of the Income Tax Act, 1961. For the aforesaid reason, we hold that the interest and power subsidy under the schemes in question would have to be excluded while computing book profit under Section 115 JB of the Income Tax Act, 1961. The third issue involve in the instant appeal which requires adjudication is whether the action of Tribunal entertaining / allowing the claim which was made by the assessee before the Assessing Officer by filing a revised computation instead*

*of filing a revised return since the time to file the revised return was lapsed, for claiming to treat the incentive subsidies in question as capital receipts instead of revenue receipts as claimed in original return. The Assessing Officer had denied this claim. Revenue has attacked the order of the tribunal by relying on the decision in the case of Goetze (India) Ltd. Vs. CIT reported in 284 ITR 323 (SC).*

*32. This case does not help the revenue/appellant. In this case Supreme Court has made it clear that its decision was restricted to the power of the Assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under Section 254 of the Income Tax Act, 1961. The Hon'ble Supreme Court in the said decision held as follows:*

> *".....In the circumstances of the case, we dismiss the Civil Appeal. However, we make it clear that the issue in this case is limited to the power of the Assessing Authority and does not impinge on the power of the Income Tax Appellate Tribunal under Section 254 of the Income Tax Act, 1961."*

*33. This judgment was followed by our Court in the case of CIT Vs. Britannia Industries Ltd. (Cal.) page 677 holding that Tribunal has the power to entertain the claim of deduction not claimed before the Assessing Officer by filing revised return. Respectfully following the aforesaid decision as well as the view already taken by us in this case that the aforesaid subsidies are capital receipt and not an 'income' and not liable to Tax Tribunal in exercise of its power under Section 254 of the Income Tax Act justified this claim though no revised return under Section 139 (5) of the Act was filed before the Assessing Officer. We answer both the question Nos. 1 and 2 in negative and in favour of assessee .*

*34. Accordingly Appeal of the revenue is dismissed with no order as to cost."*

28. We discussed incentive scheme in question granted by the Government of Maharashtra under Package Scheme of Incentive with the sole intention of setting up new industry in the backward areas or in specified areas in the State of Maharashtra in the aforementioned paragraphs. We held the said incentive particularly sales tax incentive in ground No. 1 as capital receipt which is not an income liable to be taxed. When particular incentive is a capital receipt not falling under the definition u/s. 2(24) of the Act, it cannot form part of book profit u/s. 115JB of the Act. The ITAT, Mumbai Benches held the same in the case of M/s. Batliboi Limited (supra) by following the decision of Hon'ble High Court of Calcutta in the case of Ankit Metal and Power Ltd. (supra).

Therefore, where receipt is not in the nature of income at all it cannot be included in the book profit for the purpose of computation u/s. 115JB of the Act. Thus, we hold the sales tax incentive under the incentive package scheme in question would have to be excluded while computing book profit u/s. 115JB of the Act. Thus, respectfully following the ratio laid down by the Hon'ble High Court of Calcutta in the case of Ankit Metal and Power Ltd. (supra), we find no infirmity in the order of CIT(A) and it is justified. Thus, ground No. 7 raised by the Revenue is dismissed.

29. Ground No. 8 raised by the Revenue challenging the action of CIT(A) in allowing the claim of amortization of expenses of Rs.80,35,716/- on the issue of debentures.

30. We note that the AO discussed the same in para 4.6 of the assessment order, wherein, he observed that the assessee incurred expenses in relation to debentures in A.Y. 2008-09, since, the same is in the nature of revenue denied amortization of such expenses in the year under consideration. Before the CIT(A), it was contended that the assessee incurred total expenses of Rs.5,62,55,000/- in A.Y. 2008-09 towards the issue of debentures of Rs.1500 crores. The said total expenditure was amortized in the accounts for life span of the debentures over 8 years. In A.Y. 2008-09, expenses to an extent of Rs.60,26,786/- was debited to the profit and loss account which were allowed, whereas, an amount of Rs.80,35,716/- amortized in each of subsequent years 7 years from A.Y. 2009-10. Further, the CIT(A) for A.Y. 2009-10 allowed the claim of assessee. Considering the same, the CIT(A) in the year under consideration allowed amortization of expenses of Rs.80,35,716/- by following the order for A.Y. 2010-11 which in turn followed the decision of

Hon'ble High Court of Bombay in the case of M/s. Jaiswal Neco Ltd. (supra) which held the expenditure incurred in respect to convertible debentures is allowable as revenue expenditure. We note that the Hon'ble Supreme Court dismissed the SLP filed by the Revenue on 05-09-2011 vide CC7233/2011 which is at page No. 17 of the paper book, Vol.-II. We note that the same issue came up before this Tribunal in assessee's own case for A.Y. 2011-12 which is at page 30 of the paper book vide ground No. 8 the Tribunal allowed amortization of expenditure as revenue expenditure. On perusal of the reasons recorded by the CIT(A) at para 14, 14.1 and 14.2, we are of the opinion that the assessee is entitled to claim amortization of expenditure as revenue expenditure for the year under consideration. The ld. DR did not bring on record any order contrary to the view taken by the ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12. Thus, ground No. 8 raised by the Revenue is dismissed.

31. In the result, the appeal of Revenue is dismissed.

**ITA No. 564/NAG/2016, A.Y. 2009-10.**

32. Ground No. 1 raised by the Revenue challenging the action of CIT(A) in treating the sales tax incentive of Rs.40,37,57,833/- as capital receipt.

33. We find ground No. 1 is similar to ground No. 1 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn following the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 held the sales tax receipt under incentive package scheme of Government of Maharashtra is capital receipt and not exigible to tax. Since, the issue raised in ground No. 1 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding

recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 1 of this appeal also. Thus, ground No. 1 raised by the Revenue is dismissed.

34. Ground No. 2 raised by the Revenue challenging the action of CIT(A) in deleting the disallowance of Rs.86,01,145/- made on account of contribution to various institutions and employees clubs in the facts and circumstances of the case.

35. We find ground No. 2 is similar to ground No. 2 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12, therefore, we find no infirmity in the order of CIT(A) in deleting the addition made by the AO on account of contribution to various institutions etc. u/s. 40A(9) of the Act and it is justified. Since, the issue raised in ground No. 2 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 2 of this appeal also. Thus, ground No. 2 raised by the Revenue is dismissed.

36. Ground No. 3 raised by the Revenue challenging the action of CIT(A) in deleting the addition made by the AO on account of sales tax incentive of Rs.56,65,000/- received for Mega Project under Package Scheme of Incentive.

37. We find ground No. 3 is similar to ground No. 3 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A)

which in turn following the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 held that the sales tax incentive under Maga Project is a capital receipt, not exigible to tax. Since, the issue raised in ground No. 3 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 3 of this appeal also. Thus, ground No. 3 raised by the Revenue is dismissed.

38. Ground No. 4 raised by the Revenue challenging the action of CIT(A) in deleting the payment of commission of Rs.11,70,43,324/- to Avantha Holding Ltd.

39. We find ground No. 4 is similar to ground No. 4 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 in deleting the addition made by the AO on account of payment of commission. Since, the issue raised in ground No. 4 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 4 of this appeal also. Thus, ground No. 4 raised by the Revenue is dismissed.

40. Ground No. 5 raised by the Revenue challenging the action of CIT(A) in deleting the disallowance of Rs.28,46,049/- made on account of Festival Celebration Expenses.

41. We find ground No. 5 is similar to ground No. 5 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A)

which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 in deleting the addition made by the AO on account of festival celebration expenses. Since, the issue raised in ground No. 5 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 5 of this appeal also. Thus, ground No. 5 raised by the Revenue is dismissed.

42. Ground No. 6 raised by the Revenue challenging the action of CIT(A) in directing the AO to reduce sales tax incentive of Rs.40,37,57,833/- from the computation for the purpose of book profit u/s. 115JB of the Act.

43. We find ground No. 6 is similar to ground No. 7 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 which held the sales tax incentive under incentive package scheme in question would have to be excluded while computing book profit u/s. 115JB of the Act. Since, the issue raised in ground No. 6 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 6 of this appeal also. Thus, ground No. 6 raised by the Revenue is dismissed.

44. Ground No. 7 raised by the Revenue challenging the action of CIT(A) in allowing the claim of amortization of expenses of Rs.80,35,715/- on the issue of debentures.

45. We find ground No. 7 is similar to ground No. 8 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein, we upheld the order of CIT(A) which in turn following the decision of Hon'ble High Court of Bombay in the case of M/s. Jaiswal Neco Ltd. (supra) which held the expenditure incurred in respect to convertible debentures is allowable as revenue expenditure. Since, the issue raised in ground No. 7 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 7 of this appeal also. Thus, ground No. 7 raised by the Revenue is dismissed.

46. In the result, the appeal of Revenue is dismissed.

**ITA No. 214/NAG/2017, A.Y. 2013-14 by Revenue.**

47. Ground No. 1 raised by the Revenue challenging the action of CIT(A) in treating the sales tax incentive of Rs.30,39,81,579/- as capital receipt.

48. We find ground No. 1 is similar to ground No. 1 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn following the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 held the sales tax receipt under incentive package scheme of Government of Maharashtra is capital receipt and not exigible to tax. Since, the issue raised in ground No. 1 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 1 of this appeal also. Thus, ground No. 1 raised by the Revenue is dismissed.

49. Ground No. 2 raised by the Revenue challenging the action of CIT(A) in deleting the disallowance of Rs.48,68,159/- made on account of contribution to various institutions and clubs in the facts and circumstances of the case.

50. We find ground No. 2 is similar to ground No. 2 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12, therefore, we find no infirmity in the order of CIT(A) in deleting the addition made by the AO on account of contribution to various institutions etc. u/s. 40A(9) of the Act and it is justified. Since, the issue raised in ground No. 2 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 2 of this appeal also. Thus, ground No. 2 raised by the Revenue is dismissed.

51. Ground No. 3 raised by the Revenue challenging the action of CIT(A) in allowing claim of assessee under Corporate Social Responsibility expenses (CSR).

52. We note that the details of expenses incurred by the assessee to Corporate Social Responsibility are at page 4 of the assessment order. It was contended that the said expenses are in the nature of charity and donation mainly to those who were related with the business activities and the place of business of assessee. According to the assessee the nexus between expenditure & business of the assessee or welfare of society in large established and the expenditure incurred cannot be ruled out, that

there is principle of commercial expediency. It was vehemently contended that all such expenses are in the nature of staff welfare and/or business development expenses on the ground that expenditure were incurred for local people of the neighbouring areas where factory/offices of the assessee are located far away from big cities. Further, alternative claim was raised before the AO if at all such expenses are not allowable u/s. 37 of the Act, may be allowed u/s. 80G of the Act. The AO did not accept the explanation of the assessee by holding the expenditure incurred are not deemed to have been wholly and exclusively for the purpose of carrying on business or profession, disallowed the claim of assessee. The CIT(A) by following the order of ITAT for A.Y. 2008-09 remanded the issue to the file of AO for its consideration afresh u/s. 80G of the Act. In order to come to such conclusion, the CIT(A) placed reliance on the order of ITAT which is reproduced in para 13 of the impugned order. On perusal of the same, we note that the ITAT, Nagpur Bench in assessee's own case for A.Y. 2004-05, the CIT(A) confirmed the order of AO in disallowing the said expenditure. The ITAT in turn remanded the said issue to the file of AO by placing reliance in the case of B.G. Shirke & Co. reported in 264 ITR 83 (Bom.) which held expenditure incurred by the assessee by way of contribution to welfare trust of the employee was rightly held to be deductable u/s. 37 of the Act. Further, it held that the amount spent for bringing drinking water as also for establishing or improving the school meant for the resident of the locality in which the business was situated. Admittedly, the assessee made an alternative argument before the AO to consider the claim of assessee under CSR in case the claim is not allowable u/s. 37 of the Act, no finding was given by the AO in this regard. The CIT(A) vide para 14 of the impugned order, directed the AO to examine the issue as per direction of ITAT, Nagpur Bench in assessee's own case in terms of the decision of

Hon'ble High Court of Bombay in the case of B.G. Shirke & Co. (supra), therefore, we find no infirmity in the order of CIT(A) in remanding the issue to the file of AO for its fresh consideration as indicated above. Thus, ground No. 3 raised by the Revenue is dismissed.

53. Ground No. 4 raised by the Revenue challenging the action of CIT(A) in allowing the claim of amortization of expenses of Rs.80,35,716/- on the issue of debentures.

54. We find ground No. 4 is similar to ground No.8 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein, we upheld the order of CIT(A) which in turn following the decision of Hon'ble High Court of Bombay in the case of M/s. Jaiswal Neco Ltd. (supra) which held the expenditure incurred in respect to convertible debentures is allowable as revenue expenditure. Since, the issue raised in ground No. 4 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 4 of this appeal also. Thus, ground No. 4 raised by the Revenue is dismissed.

55. Ground No. 5 raised by the Revenue challenging the action of CIT(A) in allowing the claim of contribution of Rs.11,45,550/- to the approved body recognized u/s. 35(1)(ii) of the Act.

56. We note that the assessee claimed deduction of contribution u/s. 35(1)(ii) of the Act made to university which is an approved institution eligible for such deduction. The AO denied the claim for want of proof of evidence of contribution made to BAIF Development Research Foundation

vide para 4.6 of the assessment order. It is noted that the assessee made reference to tax audit report where Auditor reported payment of contribution to BAIF Development Research Foundation under clause 15. Further, the said payment duly certified in Form 3CB/3CD forming part of tax audit report. The CIT(A) considering the same held that the Government of India vide notification dated 16-07-2008 recognized the BAIF Development Research Foundation as an approved institution and the assessee is eligible for deduction at 175% of the amount paid of Rs.11,45,550/-. Accordingly, the CIT(A) directed the AO to allow deduction to an extent of Rs.20,34,947/- (Rs.11,45,550/- @ 175%). On perusal of the assessment order as discussed above for want of evidence showing the contribution made to BAIF Development Research Foundation was disallowed by the AO, whereas, in the First Appellate proceedings, the assessee referred to report of Auditor in tax audit report at clause 15 which was reflected through Form 3CB/3CD contribution made to BAIF Development Research Foundation. Thus, we find no infirmity in the order of CIT(A) in allowing deduction @ 175% of the amount paid to BAIF Development Research Foundation. Accordingly, ground No. 5 raised by the Revenue is dismissed.

57. Ground No. 6 raised by the Revenue challenging the action of CIT(A) in allowing the initial depreciation of Rs.6,97,02,509/- on the acquisition of used assets by slump sale.

58. We note that during the course of assessment proceedings, it was identified that initial depreciation of Rs.6,97,02,509/- was wrongly included in the return of income for another assessee i.e. BILT for the year under consideration. On noticing the same, the AO reduced the said initial

depreciation from the computation of BILT and there is no dispute with regard to this as it is evident from para 4.8 of the assessment order. Now, the assessee claimed the said initial depreciation in the hands of the assessee vide submission dated 18-10-2016 which is evident from para 4.8 of the assessment order. According to the AO, the said initial depreciation by way of an additional claim is not acceptable as the said claim is not made in the return of income. Accordingly, the same was denied. The CIT(A) allowed the same taking support from the decision of Hon'ble High Court of Bombay in the case of M/s. Pruthvi Brokers and Shareholder (P) Ltd. reported in 349 ITR 336 (Bom.) and in the case of Jain Parabolic Spring reported in 6 DTR 35 (Delhi). The relevant portion at paras 24 and 24.1 is reproduced here-in-below for ready reference :

> *"24. I have considered the submission made by appellant and find substantial force in same. The Hon'ble Bombay High Court in case of CIT vs. M/s. Pruthvi Brokers and Shareholders (P) Ltd. reported at 349 ITR 336 had considered the decision of Hon'ble Apex Court in case of M/s. Goetze (India) Ltd. and had concluded that appellate authorities can entertain the claim even if it not made before the AO. The claim of appellant in respect to addition depreciation u/s 32(1)(iia) thus cannot be denied for the reason that appellant has not made the claim in return or has not filed any revised return. The claim was made before AO. and was justified by adducing legal evidence on record. Further, in the case of NTPC Ltd. (229 ITR 383) it is held that the ratio in case of Goetz India Ltd does not impinge in the power of tribunal to entertain a fresh claim. Similarly in the case of CIT Vs. Jain Parabolic Spring 6 DTR 3S (Delhi) after considering the ratio laid down by Goetz India Ltd. The Ld. High Court dismissed department's appeal in a case where CIT(A) had entertained the claim of appellant for the first time. Accordingly, it is settled proposition of law that assessee can claim deduction during the course of appellate proceedings and eligible deduction cannot be denied for want of claim before AO. The claim of appellant is thus being considered on merits.*
>
> *24.1 It is seen that appellant has acquired Plant & Machinery on Slump Exchange from Ballarpur Industries on 01/07/2012. The aforesaid Plant & Machinery was acquired by appellant for manufacture or production of an article or thing. The AO has granted depreciation on same for determining income at the hands of appellant. It was new machinery on which no deprecation was allowed to Ballarpur Industries in Asstt. Year 2013-14 or any of the past assessment years. Auditors have also certified that appellant is eligible for additional deprecation in respect to Plant & Machinery acquired from Ballarpur Industries. On above facts and evidence on record denial of allowance on account of additional depreciation at Rs.6,97,02,509/- is unjustified. A'O, is directed to grant initial deprecation as claimed at Rs.6,97,02,509/-. Ground of appeal of appellant is allowed."*

59. On perusal of the above, we note that admittedly, there was no claim of initial depreciation was made in the return of income and it was noticed during the course of assessment proceedings. The AO identified the same and reduced the initial depreciation from the assessment of BILT and denied the claim made by the assessee as there was no claim made in return of income of the assessee. Further, it is noted from the assessment order in page 21 that BILT and BGPPL have transferred their units by claiming it slump exchange by applying methodology of slump sale. According to the AO, BILT has utilized those units and then transferred to BGPPL as per agreement. The assessee is claiming the depreciation of Sewa & Ashti units which were transferred to the BGPPL in exchange of Kamalapuram unit. The AO did not dispute the same and denied the claim of initial depreciation only on the ground that there was no claim in the return of income as the AO has no jurisdiction to entertain the same. The CIT(A) exercised its jurisdiction by taking support in the decision of Hon'ble Supreme Court in the case of Goetz (India) Ltd. reported in 284 ITR 323 (SC) which held that the assessee can claim deduction during the course of appellate proceedings for the first time. The ld. DR did not dispute the same. Taking into the facts and circumstances of the case, we agree with the reasons recorded by the CIT(A) at paras 24 and 24.1 of the impugned order. Therefore, we find no infirmity in the order of CIT(A) in allowing initial depreciation and it is justified. Thus, ground No. 6 raised by the Revenue is dismissed.

60. Ground No. 7 raised by the Revenue challenging the action of CIT(A) in holding the addition of Rs.15,09,95,015/- made on account of product development expenditure is in the nature of revenue expenditure.

61. It is noted from the assessment order that the assessee incurred expenditure of Rs.15,09,95,015/- on account of product development. The details of which are reproduced in para 4.10 of the assessment order. The claim of assessee is, salaries and wages and other administrative expenses including cost of spares, pulp, chemicals, power etc. do not fall within the parameter of capital asset and expenditure thereof is revenue in nature. According to the AO, the assessee made huge investment into development of new product so as to create technical know-how in the field of paper industry. The said technical know-how, a type of intangible asset giving long enduring benefits to the assessee in the field of paper industry, which is nothing but the capital expenditure, that's how the AO treated the expenditure incurred product development as capital expenditure and denied deduction u/s. 37 of the Act. The CIT(A) by placing reliance on the decision of Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. reported in 177 ITR 377 (SC) and in the case of ACL Wireless Ltd. reported in 361 ITR 210 (Del.) of Hon'ble Delhi High Court held the expenditure incurred, as disallowed by the AO as capital expenditure is Revenue expenditure. The ld. DR relied on the order of AO and the ld. AR relied on the order of CIT(A).

62. On perusal of the details of expenditure incurred by the assessee in para 4.10 of the assessment order, we note that the assessee incurred product development process in the category of paper for carry bag as BILT fine print for publication segment, MG poster for adhesive lamination, AR grade poster 65 export towards purchase of pulp, chemicals, coating chemicals, power, steam water etc. on variable cost. Further, on spare consumption towards wire synthetic fabric, blade tungsten carbide,

metering rod, rail sealing etc. On repairs and maintenance towards repair of econip roll, new cover for backing roll, super calendar composite, soft calendar nipco covering of applicator roll etc. and also on administrative expenses like salaries, wages, travelling, audit fee, technical etc. As per the submissions made before the CIT(A), it is noted that the assessee incurred the said expenditure towards attaining technical development as per market requirement and huge opportunity in the area of flexible packaging, C1S 50 GSM paper which is special application for making pouches as used for items such as mouth fresheners, for upgrading of existing process and the product development on necessary strategic advantage. On perusal of the reasons recorded by the CIT(A) in para 30 of the impugned order, we note that the assessee considered the said expenditure as intangible asset under development in the books of account as it was on development of existing products of existing business. According to the CIT(A), the said expenditure was not incurred for a new product, but however, incurred in the existing line of business as manufacturing of paper. The CIT(A) placing reliance on the decision of Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. (supra) where it held that expenditure incurred on technical know-how fees, even if made in one lump sum, which pertains to the existing business of the assessee and is in respect of improvement in the existing process and technology, is a revenue expenditure and allowable as deduction. As discussed above, on perusal of the details of the expenditure as reproduced by the AO as well as CIT(A) that the assessee incurred expenditure on variable cost, spare consumption, repairs and maintenance and administrative expenses which clearly shows that the assessee incurred said expenditure in the existing business for manufacturing of development of existing process. Further, in the case of

ACL Wireless Ltd. (supra) which held the product development expenses are allowable as revenue expenditure. We note that on perusal of tabular chart regarding the details of total expenditure, major portion of which incurred towards purchase of pulp, chemicals, coating chemicals, power, steam water etc. Further, on spare consumption and repairs and maintenance apart from administrative expenses like salaries, wages, travelling, audit fee, technical etc. which were not incurred towards creating any new capital asset for enduring benefit, but for normal day to day expenses in the existing business for development of new process. Therefore, we find no infirmity in the order of CIT(A) in holding the expenditure incurred on product development expenditure as revenue expenditure in terms of decision of Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. (supra). Further, it is noted that the similar expenses were debited in the books of account as revenue expenses for A.Y. 2002-03. The said assessment was completed u/s. 143(3) of the Act wherein, the claim of assessee as revenue expenses allowed as revenue expenditure. Thus, we agree with the reasons recorded by the CIT(A) in paras 30 and 30.1 of the impugned order. Therefore, the order of CIT(A) is justified and ground No. 7 raised by the Revenue is dismissed.

63. Ground No. 8 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.55,78,088/- on account of Provident Fund Contribution deposited beyond the due date under respective laws.

64. We note that the assessee filed return of income on 30-11-2013. The AO disallowed an amount of Rs.55,78,088/- for not depositing the employee's contribution of PF/ESI before prescribed due dates under the respective Act. Having aggrieved, the assessee preferred an appeal before

the CIT(A). The assessee contended that the assessee is entitled to claim deduction if the employee's contribution is paid before due dates of filing return of income. The CIT(A) on an examination of Tax Audit Report and by following Hon'ble High Court of Bombay in the case of Ghatge Patil Transport held that the assessee entitled to claim deduction of an amount of Rs.55,78,088/- which is employee's contribution towards PF/ESI paid before the due date of filing return of income. The ld. DR placed on record the decision of Hon'ble Supreme Court in batch of the appeals, lead case being Checkmate Services P. Ltd. in Civil Appeal No. 2833 of 2016 and submitted that the assessee is not entitled to claim deduction if the employee's contribution is not paid within due dates of respective statutes. On careful reading of the said decision of Hon'ble Supreme Court held that Section 2(24)(x) deems amount received from the employees as income and the amounts retained by the employer from out of the employee's income by way of deduction etc. were treated as income in the hands of the employer (assessee). Further, it held unless the conditions spelt by Explanation to section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date of respective statutes, the assessee is not entitled to claim benefit of deduction from the total income. Therefore, in our opinion, essential condition for claiming such deduction if such amounts are deposited on or before due date of respective statutes. It is evident from the impugned order that the assessee deposited the employee's contribution to PF/ESI after the prescribed due date of relevant Act which is not disputed by the ld. AR. Therefore, following the decision of Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra), we find the order of CIT(A) is not justified and it is set aside. The order of AO is restored in holding the assessee is not entitled to claim deduction for its failure to deposit

employee's contribution before due date prescribed under the relevant statutes. Thus, the ground No. 8 raised by the Revenue is allowed.

65. Ground No. 9 raised by the Revenue challenging the action of CIT(A) in holding that the sales tax incentive of Rs.39,73,77,579/- is to be reduced while computing the profits u/s. 115JB of the Act.

66. We find ground No. 9 is similar to ground No. 7 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 which held the sales tax incentive under incentive package scheme in question would have to be excluded while computing book profit u/s. 115JB of the Act. Since, the issue raised in ground No. 9 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 9 of this appeal also. Thus, ground No. 9 raised by the Revenue is dismissed.

67. In the result, the appeal of Revenue is partly allowed.

**ITA No. 120/NAG/2018, A.Y. 2012-13 by Revenue**

68. Ground No. 1 raised by the Revenue challenging the action of CIT(A) in treating the sales tax incentive of Rs.31,72,56,863/- as capital receipt.

69. We find ground No. 1 is similar to ground No. 1 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn following the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 held the sales tax receipt under incentive package scheme of Government of Maharashtra is capital receipt and not exigible to

tax. Since, the issue raised in ground No. 1 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 1 of this appeal also. Thus, ground No. 1 raised by the Revenue is dismissed.

70. Ground No. 2 raised by the Revenue challenging the action of CIT(A) in deleting the disallowance of Rs.1,48,43,318/- made on account of contribution to various institutions and employees clubs in the facts and circumstances of the case.

71. We find ground No. 2 is similar to ground No. 2 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2011-12, therefore, we find no infirmity in the order of CIT(A) in deleting the addition made by the AO on account of contribution to various institutions etc. u/s. 40A(9) of the Act and it is justified. Since, the issue raised in ground No. 2 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 2 of this appeal also. Thus, ground No. 2 raised by the Revenue is dismissed.

72. Ground No. 3 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.24,03,17,553/- made by the AO on account of sales tax incentive received for Mega Project under Package Scheme of Incentive as capital receipt as against revenue receipt as held by the AO.

73. We find ground No. 3 is similar to ground No. 3 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn following the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 held that the sales tax incentive under Maga Project is a capital receipt, not exigible to tax. Since, the issue raised in ground No. 3 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 3 of this appeal also. Thus, ground No. 3 raised by the Revenue is dismissed.

74. Ground No. 4 raised by the Revenue challenging the action of CIT(A) in allowing the claim of amortization of expenses of Rs.80,35,716/- on the issue of debentures.

75. We find ground No. 4 is similar to ground No. 8 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein, we upheld the order of CIT(A) which in turn following the decision of Hon'ble High Court of Bombay in the case of M/s. Jaiswal Neco Ltd. (supra) which held the expenditure incurred in respect to convertible debentures is allowable as revenue expenditure. Since, the issue raised in ground No. 4 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 4 of this appeal also. Thus, ground No. 4 raised by the Revenue is dismissed.

76. Ground No. 5 raised by the Revenue challenging the action of CIT(A) in allowing the festival celebration expense of Rs.21,17,501/- disallowed by the AO.

77. We find ground No. 5 is similar to ground No. 5 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 in deleting the addition made by the AO on account of festival celebration expenses. Since, the issue raised in ground No. 5 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 5 of this appeal also. Thus, ground No. 5 raised by the Revenue is dismissed.

78. Ground No. 6 raised by the Revenue challenging the action of CIT(A) in deleting the addition of Rs.21,31,18,334/- made on account of adjustment on international transaction of interest payment on CCD's in the facts and circumstances of the case.

79. We find ground No. 6 is similar to ground No. 6 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein, we held that the payment of interest at coupon rate at 9% by the assessee is not excessive and the upward adjustment made by the TPO as followed by the AO is not justified. Since, the issue raised in ground No. 6 in this regard is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 6 of this appeal also. Thus, ground No. 6 raised by the Revenue is dismissed.

80. Ground No. 7 raised by the Revenue challenging the action of CIT(A) in allowing the claim of contribution of Rs.5,91,398/- to the approved body recognized u/s. 35(1)(ii) of the Act.

81. We find ground No. 7 is similar to ground No. 5 of ITA No. 214/NAG/2017 for A.Y. 2013-14, wherein, we upheld the order of CIT(A) in allowing deduction @ 175% of the amount paid to BAIF Development Research Foundation. Since, the issue raised in ground No. 7 in this regard is similar and identical on facts related to issue raised in A.Y. 2013-14, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 7 of this appeal also. Thus, ground No. 7 raised by the Revenue is dismissed.

82. Ground No. 8 raised by the Revenue challenging the action of CIT(A) in holding that the sales tax incentive of Rs.31,72,56,863/- is to be reduced while computing the profits u/s. 115JB of the Act.

83. We find ground No. 8 is similar to ground No. 7 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 which held the sales tax incentive under incentive package scheme in question would have to be excluded while computing book profit u/s. 115JB of the Act. Since, the issue raised in ground No. 8 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 8 of this appeal also. Thus, ground No. 8 raised by the Revenue is dismissed.

84. Ground No. 9 raised by the Revenue challenging the action of CIT(A) in holding that the sales tax incentive of Rs.40,34,99,768/- is to be reduced while computing the profits u/s. 115JB of the Act.

85. We find ground No. 9 is similar to ground No. 7 of ITA No. 561/NAG/2016 for A.Y. 2010-11, wherein we upheld the order of CIT(A) which in turn followed the order of ITAT, Nagpur Bench in assessee's own case for A.Y. 2008-09 which held the sales tax incentive under incentive package scheme in question would have to be excluded while computing book profit u/s. 115JB of the Act. Since, the issue raised in ground No. 9 is similar and identical on facts related to issue raised in A.Y. 2010-11, thus, the finding recorded by us in Revenue's appeal in aforementioned paragraphs is equally applicable to ground No. 9 of this appeal also. Thus, ground No. 9 raised by the Revenue is dismissed.

86. In the result, the appeal of Revenue is dismissed.

87. To sum up, the appeals of Revenue in ITA Nos. 561 & 564/NAG/2016, ITA No. 120/NAG/2018 and the appeals of assessee in ITA Nos. 562 & 563/NAG/2016 are dismissed and the appeal of Revenue in ITA No. 214/NAG/2017 is partly allowed.

Order pronounced in the open court on 14th September, 2023.

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|---|---|
| Sd/- | Sd/- |
| (Inturi Rama Rao) | (S.S. Viswanethra Ravi) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

पुणे / Pune; दिनांक / Dated : 14th September, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Nagpur.
4. The Pr. CIT-3, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर, / DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune