IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.3518 & 2277/Mum/2012
ITA No.1735/Mum/2013

(A.Ys. 2006-07 to 2008-09)

Procter & Gamble Hygiene & Healthcare Limited P & G Plaza Cardinal Gracias Road, Chakkala, Andheri (East) Mumbai – 400009	Vs.	Additional CIT Circle 8(2) Mumbai -400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACP6332M		
Appellant	..	Respondent

ITA No.2167 & 3566/Mum/2012
ITA No.2446/Mum/2013

(A.Ys. 2006-07 to 2008-09)

Dy. CIT-8(2) R. No. 209, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s Proctor & Gamble Hygiene & Healthcare Private Limited P & G Plaza Cardinal Gracias Road, Chakkala, Andheri (East) Mumbai – 400099
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACO6352Q		
Appellant	..	Respondent

Appellant by :	Yogesh Thar, Ms. Sukanya Jayaram & Hiloni Shah
Respondent by :	Tushar Mohite

Date of Hearing	19.10.2023
Date of Pronouncement	12.12.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

All these cross appeals are filed by the assessee and revenue for assessment year 2006-07 to 2008-09 directed against the different order of CIT(A). Since, common issue on identical facts are involved in these appeals filed by the assessee and revenue, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 2277/Mum/2012 & ITA No.2167/Mum/2012 as lead case and its finding will be applied mutatis mutandis to the other appeals wherever it is applicable.

ITA No. 2167/Mum/2012 (Revenue's Appeal)

2. Fact in brief is that return of income declaring total income of Rs.145,90,09,605/- was filed on 21.11.2006. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 21.11.2007. The assessment u/s 143(3) of the Act was finalized on 05.02.2010 and total income was assessed at Rs.234,49,28,840/- after making various disallowance and additions. Further facts of the case are discussed while adjudicating the various grounds of appeal filed by the revenue and the assessee.

Ground No.1: Disallowance of advertisement expenses on production of television films and commercial holding by treating the same as capital expenditure amounting to Rs.3544.38 lacs:

3. During the course of assessment the assessing officer noticed that assessee company has claimed Rs.56,55,86,101/- as expenditure on advertisement during the previous year 2005-06. On analysis of the expenditure the assessing officer observed that assessee has also included the expenditure pertaining to production of television film and

commercials in the advertisement expenditure. The detail of such expenses incurred towards cost of production on T.V films are as under:

Sr. No.	*Particulars of Expenditure*	*Amount (Rs.)*
1.	*Madison Communications Pvt. Ltd.*	*319005288*
2.	*Ambience Publicis Advertising Pvt. Ltd.*	*20809726*
3.	*TLG India Pvt. Ltd.*	*13230186*
4.	*AC Nielsen research Services Ltd.,*	*1392377*

On query, the assessee explained that these expenditure were essential for the growth of business of the assessee company, therefore the same should be treated as revenue expenditure laid out for the business operation of the assessee during the year under consideration. The assessee also explained that production of advertisement film did not result in any enduring benefit in the highly competitive market. The assessee explained that advertisement film was prerequisite for its telecasting. Since, telecasting or releasing in media was considered as revenue expenditure, therefore, the production of advertisement films should be treated as revenue expenditure. However, AO had not agreed with the submission of the assessee on the ground that TV films and commercials had a life span of a number of years and the production cost of TV film and commercial could not be treated as revenue expenditure and the same pertained to the category of capital expenditure. Therefore, the AO has treated the expenditure of production of TV films of Rs.35,44,37,577/- claimed under the head advertisement expenditure as capital in nature and added back to the assessee's income.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following the decision of ITAT, Mumbai in the case of the assessee itself vide order dated 18.06.2010 wherein it is held that such expenditure are revenue in nature.

5. During the course of appellate proceedings before us the ld. Counsel submitted that the impugned issue has been adjudicated in favor of the assessee by the ITAT, Mumbai in the case of the assessee itself for various assessment year.

> "AY 2004-05 (ITA No. 6591/Mum/2010)
> (para 4.1 – 4.9) (Internal Page 4-8)
> A.Y. 1996-97 to 1998-99
> (ITA No. 3076. 5423. 5424.4541. 5009/M/2004)
> AY 1999-00 to 2000-01 (ITA No. 6795,8999, 6486, 6796/M/2004)"

The ld. Counsel further submitted that revenue has preferred appeal before the Hon'ble High Court, however, the question of law submitted on the claim of such expenditure was not admitted by the Hon'ble jurisdictional High Court for the assessment year 1996-97 to 2001 -02.

6. Heard both the sides and perused the material on record. With the assistance of the ld. Representative we have perused the decision of ITAT, Mumbai in the case of the assessee itself for assessment year 2004-05 vide ITA No. 6591/Mum/2010 dated 25.08.2023 on the identical issue on similar fact for claim of cost of production of telephone films under advertisement. It is noticed that such claim of expenditure has been decided in favour of the assessee by the ITAT after referring the similar decision of ITAT in the case of the assessee for the assessment year 1996-97 to 2000-01. The relevant extract of the decision of ITAT is reproduced as under:

> *"4.5. We have heard the rival contentions and perused the material on record. We note that identical issue stands decided in the favour of the Assessee in the case of the Assessee in ITA No. 3076, 5423, 5424, 4541, & 5009/Mum/2004 pertaining to Assessment Year 1996- 97 to 1998-99, ITA No. 6795, 8999, 6486, & 6796/Mum/2004 pertaining to Assessment Year 1999-2000 to 2000-01, and ITA No. 1499, 1500, 1241/Mum/2005 & 119/Mum/2009 pertaining to Assessment Year 2001-2002, all placed before us as part of the paper-book.*
>
> *4.6. The relevant extract of the common order, dated 18/06/2010, whereby the Tribunal had decided this issue in ITA No. 3076/Mum/2004 pertaining to Assessment Year 1996-97, reads as under: —*

"10. Ground No. 4 pertains to addition of Rs. 61,45,000/- in respect of expenditure incurred on production of films for advertising the products of the assessee.

11. It was the assessee contention that the expenditure was incurred for advertisement of products being manufactured/marketed by it in the ongoing business and no there is enduring benefit. The AO relied on the decision of CIT vs. Patel International Film Ltd 102 ITR 219 which was confirmed by the CIT(A). This issue is covered in favour of the assessed by the decision of the Hon'ble Bombay High Court in the case of CIT vs. M/s. Geoffrey Manner & Co. Ltd. 180 Taxman 87 where in the above decision was distinguished and held that expenditure was revenue in nature if the same was incurred in the ongoing business. Respectfully following the said decision, the ground raised by the assessee is allowed" (Emphasis Supplied)

4.7. On perusal of above, it can be seen that while allowing the appeal of the Assessee, the Tribunal has placed reliance on the judgment of the Hon'ble Bombay High Court in the case of CIT vs. M/s Geoffrev Manner & Co. Ltd. (180 Taxman 87) (Bombay High Court), wherein it has been held as under: —

3. The only ground based on, which the revenue has approached this Court is as pointed out earlier that the Tribunal ignored the ratio of the judgment in Patel International Film Ltd.'s case (supra). We may point out, that on facts there the assessee-company was in the business of processing and printing movie films in a processing and printing laboratory purchased by them. It subsequently purchased a film processor in the laboratory to serve as a model for exhibition to induce confidence in its customers by way of advertisement and claimed the amount spent on the purchase as business expenditure. After considering the facts a learned Bench of this Court noted as under :—

> *"..... In other words, the asset that was acquired by the assessee-company was a capital asset to be used for the purpose of advertisement of the business that the assessee-company was going to carry on in future and, therefore, the expenditure will have to be regarded as a capital expenditure and not revenue expenditure." (p. 224)*

It would, thus be clear that the machinery purchased was not in respect of an ongoing business of the assessee, but in respect of the business which was going to be carried out in the future. In the instant case as the facts bear out, the advertisement was in respect of an ongoing business of the assessee herein.

4. A similar issue had come up for consideration before the Division Bench of the High Court of Punjab and Haryana in CIT v. Liberty Group Marketing Division [2008] 173 Taxman 439. In that case the assessee had claimed expenditure incurred on glow sign boards as also T.V. Films. The expenditure was held to be revenue in nature.

5. In our opinion the correct test to be applied in such a case would be, that if the expenditure is in respect of an ongoing business of the assessee and there is no enduring benefit it can be treated as revenue

expenditure. If, however, and if it is in respect of business which is yet to commence then the same cannot be treated as revenue expenditure as expenditure is on a product yet to be marketed. Considering the above, in our opinion the judgment in Patel International Film Ltd.'s case (supra) is clearly distinguishable. The CIT(A) and the Tribunal on the facts of this case were clearly within their jurisdiction in holding that the expenditure was by way of revenue expenditure as it was in respect of promoting ongoing products of the assessee herein." (Emphasis Supplied)

4.8. We note that the Hon'ble Bombay High Court has, vide order dated 12/03/2013, passed in Income Tax Appeal No. 1536 of 2011 preferred by the Revenue against the decision of the Tribunal for the Assessment Year 1996-97 declined to admit the question of law on this issue. While doing so the Hon'ble Bombay High Court relied upon another decision passed on the same day (i.e. 12/03/2013) by the Hon'ble Bombay High Court in appeal preferred by the Revenue for the Assessment Year 2001-2002 (Income Tax Appeal (L) No 946 of 2012, dated 12/03/2013). In that case it was held that the issue raised was covered in favour of the Assessee and against the Revenue by the above decision of the Hon'ble Bombay High Court in the case of CIT vs. M/s Geoffrev Manner & Co. Ltd. (180 Taxman 87) (Bombay High Court).

4.9. Since both the sides had agreed that there was no change in the facts and circumstances of the case, we find no reason to take a different view. Accordingly, in view of the above judgments/decisions, we hold that the Assessee is entitled to claim deduction under Section 37(1) of the Act for the television film production expenses of INR 25,47,53,254/- incurred in relation to promotion of ongoing products since no enduring benefit accrues to the Assessee. Ground No. I raised by the Assessee is allowed."

Following the decision of ITAT as referred we don't find any merit in the appeal of the revenue, therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 2: Disallowance in respect of depreciation on left behind assets at Vicks vaporub unit location at Honda Location amounting to Rs. 5.33 lakhs:

7. During the course of assessment after verification of the detail filed by the assessee the assessing officer noticed that assessee has shifted its vicks vaporub unit located at Honda Goa to Kundaim, Goa. The department had conducted enquiry regarding the claim of depreciation that while shifting some of the assets were left behind and remained at Honda as reported by the ADIT, (Investigation) Goa. The

such assets were worth of Rs.52,43,452/- and were not utilized by the assessee company for its business activities as detailed in the assessment order of assessment year 2003-04 and assessment year 2004-05. Therefore, assessee's claim of depreciation of Rs.553,020/- on the left behind assets at Honda unit was disallowed and added to the total income of the assessee.

8. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of depreciation stating that the same issue was covered in favour of the assessee in its own case for the assessment year 2005-06 vide order dated 18.01.2011.

9. During the course of assessment proceedings before us the ld. Counsel submitted that similar issue on identical facts has been adjudicated by the ITAT, Mumbai in the case of the assessee itself for assessment year 2004-05 vide ITA No. 6591/Mum/2010 dated 25.08.2023.

10. Heard both the sides and perused the material on record. We have perused the above referred the decision of the ITAT. The relevant operating part of the decision is reproduced as under:

> *"7.1. The Assessee had shifted its Vicks Vaporub Unit located at Honda to Kundiam during the financial year 2003-04. Further, as per the enquiries conducted by the Investigation Wing of the Department, the Assessing Officer got to know that some of the assets were left behind. Since the aforesaid assets worth INR 52,43,452/- remained at its Honda location and were not utilized by the Assessee for its business activities during the relevant previous year, the Assessing Officer disallowed depreciation of INR 9,83,147/- claimed in respect of the same computed as under:*
>
> | | |
> |---|---|
> | *Assets left behind and not utilized in AY 2003-04* | *INR 52,43,452* |
> | *Depreciation claim for AY 2003-04 @ 25%* | *INR 13,10,863* |
> | *Opening WDV for the AY 2004-05 as per Assessee* | *INR 39,32,589* |
> | *Depreciation claimed by Assessee for AY 2004-05* | *INR 9,83,147* |
>
> *7.2. The CIT(A) also confirmed the disallowance of depreciation of INR 9,83,147/- made by the Assessing Officer.*
>
> *7.3. Being aggrieved, the Assessee carried the issue in appeal before the Tribunal.*

7.4. We have considered the rival submissions and perused the material on record. We note that the assets though abandoned have not been discarded by the Assessee who continues to be the owner. The fact that such assets were not used during the relevant previous year cannot lead to disallowance of depreciation which continue to form part of the block of depreciable assets. In the case of Swati Synthetics Vs. ITO 4(3)(4), Mumbai: 38 SOT 208, it was held by the Tribunal as under:

> *"7.13 From above discussions we noticed that the concept of allowing depreciation on block of assets has been introduced in the statutes with certain objects. The calculation of depreciation in respect of each capital asset separately requires elaborate book keeping and process of checking by the Assessing Officer is time consuming. The practice of granting terminal allowance for taxing the balancing charge under the Income-tax necessitate the keeping of records and depreciation already availed by each asset eligible for depreciation necessitated simply the system of allowing depreciation of block of assets have been introduced by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 1-4-1988 to give effect to this new system regarding depreciation balancing charge and capital gain relevant provisions were also amended accordingly. No doubt…….. …….. Recently after introducing the block concept of depreciation, Hon'ble jurisdictional High Court dismissed the appeal of revenue vide their judgment dated 28-7-2009 for want of substantial question of law appeal filed by the revenue against the order of the ITAT Mumbai, in the case of GR Shipping Ltd. (supra). The ITAT held that depreciation on (Ship) Barge which included in block of asset, therefore, depreciation is allowable even though said Barge was not used for the purpose of business during the financial year. The Hon'ble jurisdictional High Court in the said case of GR Shippling Ltd. against the revenue appeal, in Income-tax Appeal No. 598 of 2009, vide order, dated 28-7-2009, held as under: —*
>
> > *1. Heard learned counsel for the parties.*
> > *2. The question sought to be raised in this appeal is based on the ground of non-user of the Barge in the subject assessment year though they were used in the previous assessment year. According to revenue, depreciation would not be available under section 32 of the Income tax Act. The question sought to be canvassed is squarely covered by two judgments of this Court one in the case of Whittle Anderson Ltd. v. CIT 79 ITR 613 and another in the case of CIT v. G.N. Agrawal (Individual) 217 ITR 250.*
> >
> > *In this view of the matter, appeal stands dismissed for want of substantial question of law."*

7.14 In concept of depreciation on block assets one doubt comes to the mind that how depreciation can be allowed on assets which were not used for the purpose of business. The reply to this doubt is available in the object of the scheme and respective consequence amendments in the Act. The Legislature was aware about this situation, therefore, various corresponding amendments were made in respective provisions of the Act, if any depreciation has been claimed on an asset of block of assets which was not used, than the profit/income for that year will be reduced

but this aspect of the matter has been taken care by the amended section 50 of the Act, when asset is transferred/sold and block ceases the calculation of short- term capital gain will be more as in those cases WDV will be less.

7.15 In the light of above discussions, the condition/requirement of section of word _used for the purpose of business' as provided in section 32 of (1) of the Act for the concept of depreciation on block pf assets can be summarized, that use of individual asset for the purpose of business can be examined only in the first year when the asset is purchased. In subsequent years use of block of assets is to be examined. Existence of individual asset in block of assets itself amounts to use for the purpose of business. This view is fully supported by various provisions of the Act which were amended consequence to the scheme of depreciation on block of assets including to proviso to section 32 of the Act of which detailed discussion is made in above Para of this order. The said proviso to section 32 requires that whore an asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be. When an asset purchased is satisfied the above condition in the year of purchase that asset will be included in the respective block of asset. Depreciation for that year will be calculated on written down value in accordance with section 43(6) of the Act by the increase opening WDV by the actual cost of any asset falling within that block, acquired during the previous year. Once an asset is included in the block of assets it's remained in block for its entire life. The end of asset, i.e., to go out from block is only in accordance with the provisions of the Act. There are following three situations provided in the statutes when an individual asset of the block goes out of block :

(1) an asset is sold or discarded or demolished or destroyed during that previous year as provided in sections 43(6)(c)(i)(b) and 32(1)(iii) of the Act.
(2) An Asset not exclusively used for the purposes of the business or profession but used other than business purposes as provided in section 38(2) of the Act.
(3) where any block of assets does not cease to exist but the full value of the consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the amounts stated in section 50 of the Act and where any block of assets ceases to exist for the reason that all the assets in that block are transferred during the previous year."

7.16 In the case under consideration, the admitted facts are that the division of Surat had been closed but the block of assets of the closed unit, (the division of Surat) along with other assets of the block were used for the purpose of business in earlier years. The year under consideration is not the first year of the assets acquired. The assets of closed unit still remained exist/part of the block of assets. The assets did not fall under

any of the above exceptional three conditions. The said block of assets was used for the purpose of business during the year. Under the circumstances, the assets of the said closed unit amounts to use for the purpose of business in the year under consideration, we are, therefore, of the considered view that the assessee is entitled for depreciation. We, accordingly, allow the claim of the assessee." (Emphasis Supplied)

7.5. In the above decision it has been held by the Tribunal that once the asset is put to use and forms part of block of asset in subsequent years, depreciation would not be disallowed in subsequent years in respect of such asset merely on the ground that the asset has not been used for the purpose of business during the relevant previous year. In the case before us, the asset under consideration, though not used by the Assessee during the relevant previous year, continue to be part of block of asset. Therefore, the Assessee would be entitled to claim depreciation on the written down value of the block of asset in view of the above decision of the Tribunal. Accordingly, we delete the disallowance of depreciation of INR 9,83,147/- made by the Assessing Officer and confirmed by the CIT(A). Ground No. IV raised by the Assessee is allowed."

Following the decision of ITAT as referred above we don't find any reason to interfere in the decision of ld. CIT(A) therefore this ground of appeal of the revenue is dismissed.

Ground No. 3: Increasing in claim of deduction u/s 80IB by allocating certain Head Office expenses like salary, depreciation. R & D expenses. Interest on turnover basis to profits derived from Honda unit and Kundaim Unit:

11. At the time of assessment the assessing officer observed that assessee has not properly allocated expenses towards personnel, depreciation and interest to the units, commensurate with the sales turnover of the units. The assessing officer was of the view that assessee has not allocated any such overhead expenses incurred at head office level to the profit units for the purpose of computing the profit for claim of deduction u/s 80IB of the Act. Therefore, assessing officer re-computed the allocated and non-allocated expenses to the different units as under:

Unit/Expense	*Total Expenditure*	*Vicks Tin (Allocated)*	*Vicks Ors. (Allocated)*	*Whisper (Normal (Allocated*	*Whisper E-line (Allocated*	*HO-Expenses not allocated*
Personal	*233098677*	*6186255*	*3808592*	*6500535*	*7779604*	*208823691*

Depreciation	*55153856*	*1797072*	*6845770*	*19434582*	*16395541*	*10680891*
Interest	*1131680*	*100621*	*61969*	*149033*	*178358*	*641699*
Total	*289384213*	*8083948*	*10716331*	*26084150*	*24353503*	*220146281*
Turnover	*6236333539*	*515439269*	*317332183*	*880969683*	*1054312484*	
% of turnover		*8.26*	*5.08*	*14.13*	*16.90*	
Un-allocated Expenses now allocated proportionate to turnover	**220146281*	*18184083*	*11183431*	*31106670*	*37204721*	

Taking into consideration the aforesaid reallocation the assessing officer observed that assessee has not allocated the amount of Rs.22,01,46,281/- pertaining to expenditure of personnel, depreciation, and interest incurred at the corporate level amongst the 80IB units for the purpose of computation of deduction. Therefore, the assessee has allocated the aforesaid amount of Rs.22,01,46,281/- for the purpose of computation of deduction u/s 80IB and total deduction u/s 80IB for the year was computed at Rs.26,00,6,151/- as against Rs.61.91 crores claimed by the assessee.

12. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee after following the decision of ITAT, Mumbai in the case of the assessee itself for the assessment year 1995-96 to 2000-01.

13. During the course of appellate proceedings before us the ld. Counsel submitted that in the earlier years the ITAT has constantly decided the similar issue on identical facts from assessment year 1996-97 to 2000-01 and assessment year 2004-05 in favour of the assessee. He further submitted that the question of law on this issue preferred by the revenue before the Hon'ble High Court for assessment year 1996-97 to 1998-99 and 2001-02 were not admitted.

14. After hearing both the sides we have perused the decision of ITAT, Mumbai in the case of the assessee itself for assessment year 2004-05 vide ITA No. 6591/Mum/2010 wherein identical issue on similar facts

was decided in favour of the assessee after following the various such decision of the ITAT of earlier years decided in the case of the assessee. The relevant extract of the decision is reproduced as under:

> *"8.4. We have heard the rival contentions and perused the material on record. We note that the Tribunal has decided identical issue in the favour of the Assessee in Assessee's own case for the following Assessment Years:*
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> | | | |
> |---|---|---|
> | *-1995-96* | *ITA No. 845/Mum/2003* | *Dated 26/03/2010* |
> | *-1997-98* | *ITA No. 5423/Mum/2004* | *Dated 18/06/2010* |
> | *-1997-98* | *ITA No. 5424/Mum/2004* | *Dated 18/06/2010* |
> | *-1999-00* | *ITA No.6795/Mum/2004* | *Dated 22/10/2010* |
> | *-2000-01* | *ITA No. 8999/Mum/2004* | *Dated 22/10/2010* |
> | *-2001-02* | *ITA No. 1500/Mum/2005* | *Dated 25/01/2012* |
> | *-2002-03* | *ITA No. 4488/Mum/2009* | *Dated 17/01/2023* |
>
> *8.5. The relevant extract of the common order, dated 22/10/2010, passed by the Tribunal in appeal preferred by the Assessee for Assessment Year 1999-2000 (ITA No. 6795/Mum/2009) reads as under: —*
>
> > *10. Ground No. V(1) pertains to reducing the deduction under section 80IA by allocating Head Office expenses like employment cost, depreciation, capital expenditure, etc.*
> >
> > *11. This issue is also considered by the Tribunal in assessee's own case in ITA No. 5423/Mum/2004 for A.Y. 1997-98 and decided in favour of the assessee by holding that there is no rationale in allocating the salary expenses of the marketing personnel which may be common expenses of the entire company which were already considered for allocation on the basis of turnover. Likewise the R&D expenditure and depreciation were already considered for allocation on the basis of the turnover ratio. The same principles apply even for the interest expenses allocation also. Since the facts are similar and allocations also similar to the working of the other unit in earlier years, for the reasons discussed in ground No. 9 in ITA No. 3076/Mum/2004 in para 20 above the issue is to be decided in favour of the assessee. Respectfully following the above decision, the A.O. is directed to delete the said allocation of expenditure. Ground is allowed.‖ (Emphasis Supplied)*
>
> *8.6. Similarly, in appeal for the Assessment Year 2002-03 (ITA No. 4488/Mum/Mum/2009, dated 17/01/2023) the Tribunal has held as under: —*
>
> > *18. Ground number 3 of the appeal of the learned assessing officer is with respect to deletion of the adjustment to the profit made by the learned assessing officer by locating the head office salaries to the Hyundai unit and Kundaim unit on which assessee has claimed deduction under section 80 IB of the act.*
> >
> > *19. Both the parties agreed that identical issue arose in the case of the assessee for earlier assessment years wherein the coordinate bench has allowed the issue in favour of the assessee. Further, the revenue has preferred an appeal before the honourable High Court in earlier years where the appeals of the Department have been dismissed. Accordingly,*

these issues are squarely covered in favour of the assessee. Accordingly respectfully following the decision of the coordinate benches in the honourable High Court in assessee's own case for earlier years involving similar facts and circumstances, we dismiss ground number 3 of the appeal of the AO."

8.7. Respectfully following the above decisions of the co-ordinate Bench of the Tribunal in the case of the Assessee, we hold that the Assessing Officer and CIT(A) erred in holding that that the Assessee has not properly allocated the expenses aggregating to INR 51,30,05,284/- consisting of Head Office Employees Cost (INR 37,78,87,656/-), Depreciation of Head Office (INR 12,65,20,024/-) and Interest Expenses (INR 85,97,604/-). Accordingly, we set aside the reallocation of expenses made by the Assessing Officer and direct the Assessing Officer recomputed deduction under Section 80IB of the Act accordingly."

Respectfully, following the decision of coordinate bench as referred above this ground of appeal of the revenue stand dismissed.

(Revenue Ground)

Ground No.4: Considering the total sales consideration in respect of Mandideep of Rs.76.246 cr. Instead of total consideration computed by the AO at Rs.101.365 cr. and Ground No. IV and V of the Appeal of the assessee:

(Assessee Ground) (ITA No. 2277/Mum/2012)

Ground No.4: Assessing Long Term Capital Gain instead of Long term capital loss by holding that sale of Mandideep detergent unit was in nature of slump sale.

Without, prejudice to above, Erred in considering the total sales consideration at Rs.76.246 cr instead of actual consideration of Rs.68.05 cr:

15. During the year under consideration the assessee company has sold its sister concern M/s Proctor & Gamble Home Products Pvt. Ltd. for a sale consideration of Rs.30.07 crores. However, in the computation of income the assessee has offered only Rs.1 crores representing the

same as sale consideration for the portion of the land of the said undertaking and after indexing the cost of land has declared a long term capital loss of Rs.11,09,894/-. The assessee claimed that sale consideration received excluding land has been adjusted against block of assets and accordingly, lower depreciation has been claimed on the assets. The assessing officer referred the sale agreement dated 26.09.2005 and observed that the value of business transferred by the assessee to its sister concern was fixed at Rs.30.70 crores. The assessing officer further stated that it is also mentioned in schedule III of the agreement that upon transfer of the business amount locked up in working capital amounting to Rs.62.469 crores deployed as working capital would also be transferred and made available to the vendor for alternative use. In view of the aforesaid information the assessing officer observed that assessee company was entitled to receive an amount of Rs.30.70 crores as value of the business and another amount of Rs.62.469 crores deployed as working capital for the alternative use by the assessee company. The assessing officer further stated that assessee has transferred the entire detergent undertaking as a going concern to its sister concern and the sale consideration has also been provided in schedule III at a lumpsum value without assigning any value to the individual assets, therefore, the sale consideration falls into ambit of slump sale as provided in Sec. 2(42C) of the Act. On query, the assessee pointed out that while transferring the detergent business as a going concern all the assets were individually valued by the approved valuer based on which the value related to fixed assets transferred was determined. Similarly working capital assets were determined on the basis of value as appearing in the accounts. The assessee submitted that the only current liability were taken over by the purchaser and not all liabilities related to business. The assessee also submitted that the working capital which was valued at Rs.62.46 crores as on 31.03.2005

was reduced to Rs.22,28,61,109/- as on the date of transfer. However, the AO has not agreed with the submission of the assessee and stated that entire business of Mandideep was sold as a going concern and for a lump-sum amount as mentioned in the agreement without assigning any sale value to any individual asset therein. Consequently, the assessing officer has computed the total consideration of the detergent business for the computation of long term capital gain arising out of the slump sale was taken at Rs. 101.365 crores as per the valuation report of M/s Bansi S. Mehta and the long term capital gain was worked out as under:

	"Total Sales Consideration	Rs.101.365
Less:	Net Worth of the undertaking	Rs.49.507
	Long Term Capital Gain	Rs.51,858

16. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has justified the action of the assessing officer in treating such transfer as slump sale u/s 50B r.w.s 2(42C) of the Act. The ld. CIT(A) has held the sale of detergent unit as a slump sale with the term that consideration of transfer of assets to be taken at Rs.68.05 crore and not at Rs.101.365 crores by taking the transfer value of working capital on the date of transfer. The relevant extract of the decision of the ld. CIT(A) is reproduced as under:

> *"xv. The appellant has in ground X1 raised the contention in respect of the actual consideration received by the appellant for the subject transfer of the asset at Rs.68.05 crores. The AO in his order has considered the total sale consideration referring to the various clauses of the agreement at Rs.101.365 crores.*
>
> *xvi. The appellant has submitted that it has received the consideration for the aforesaid transaction of transfer of Laundry Business at Rs. 68.05 crores which comprises of the following:*
>
> - *Value of itemized Fixed Assets as at 31.03.2005-Rs 30 70 crores*
> - *Value of Fixed assets added upto 30.09.2005- Rs 15.06 crores*

- *Net current assets as at 30 09.2005-22 29 crores*

xvii. *It is seen from the Schedule III of the agreement where at point 4, it has been mentioned that upon transfer of business, Rs.307 million which represents the value of the business to be transferred will be paid by the purchaser to the vendor as of March 31, 2005. Point 9 of the schedule further mention that the purchaser will pay the vendor for any assets added between April 1, 2005 and the Transfer Date. And transfer date has been defined in clause 'b' of para I of the agreement as October 1, 2005.*

xviii. *In the facts of the case, the consideration for transfer of business at Rs. 30.7 crores and further addition of fixed assets between April 1,2005 to the date of transfer at Rs. 15.06 crores has not been disputed. These figures have been considered by the AO and has not been disputed by the appellant during the instant proceedings*

xix. *It is seen from the point 5 of Schedule III of the agreement that amount locked up in working capital amounting to Rs. 624.69 million which was deployed for the business to be transferred would also be available to the vendor for alternate use. The AO has considered this figure and has contended that this amount ought to have been received by the appellant as the agreement is dated 26.09 2005 and the transfer date is 01.10.2005 and in four days time, there should not have been any change towards the valuation of the working capital.*

xx. *At point 8 of the schedule III, it has been mentioned that the transfer value of the working capital shall be determined as on the date of the transfer date This aspect has not been controverted by the AO in his order.*

xxi. *In the facts of the case, the question arises as to what is the transfer value of the working capital as on the date of the transfer date. The contention of the appellant is that the value of working capital of Rs 62.47 crores mentioned in the Accountant Report at para 3.4 is an estimated level of working capital as on 31.03.2006 based on the level of working capital as the ratio of turnover expected to be maintained over a period to time The Accountant Report in the same para also requires the consideration of material divergence in such value of working capital on the date of transfer*

xxii. *It is seen from the para 3.4 of the Accountant's Report where it has been mentioned that the management has ascertained that the level of working capital so required (excluding cash and bank balance) would be 22.8% of the turnover and such ratio is expected to be maintained over a period of time. Based on this information the Accountants have worked out the level of working capital excluding cash for the year ending 31.03.2006 at around 624 69 million. This figure has found its mention in Schedule III of the agreement. It is therefore seen that such estimated amount locked up in working capital has been considered to be for the year under consideration and that too as on 31.03.2006 and not on the transfer date of the business which is 01.10.2005 The point 8 of the Schedule III of the agreement clearly mentions that the transfer value of*

working capital shall be determined as on the date of the transfer date and further para 3 4 of the Accountant's Report states that if on the date of the transfer there is any material divergence from the value of the working capital, the same will need to be considered for valuation.

xxiii. *The AO in his order has not factually disputed that the working capital that is the net current assets as at 30.09.2005 was of Rs.22.29 crores and not any other figure as has been submitted by the appellant, except that figure mentioned in the agreement is at Rs. 62.49 crores and that should be considered*

xxiv. *It is further seen from the facts of the case that while computing the Long Tem Capital Gain, the AO has considered the net worth of the undertaking at Rs. 49.507 crores which include the net current assets of Rs. 22.29 crore only This without prejudice submission was given to the AO vide appellant's submission at Annexure 111 to the submission dt. 09.12.2009 to the AO. It may be mentioned here that while computing the net worth of the Laundry Business, when the net current assets has been considered at Rs.22.29 crores, then it cannot be differently considered in the sales consideration received by the appellant. As the corollary if the AO has considered the value of net current assets to be al Rs. 62.46 crores, then the same should also have been considered while arriving at the net worth of the undertaking, for the purpose of computation of the Long Term Capital Gain. This is for the reason that as per the general principle and also as per the terms of the agreement, the appellant has to receive sale consideration of Rs. 30.7 crores which is on account of transfer of business, the money towards the working capital and further the present value of the super profit which is towards the transfer of intangibles.*

xxv. *It is nowhere mentioned in the agreement or anywhere else that the working capital which should be available to the purchaser shall have to be compensated to the vendor other than the actual value or higher than the actual value of net current assets Therefore the value of net current assets which is to be considered for arriving at the net worth of the undertaking for the computation of the capital gain shall .ave to be similarly considered as part of the total sales consideration as well. Accordingly on this count also the figure taken for net current assets on account of transfer of business which is to be on actuals shall not have an effect on the quantum of Long Term Capital Gain arising out of the sale of Laundry Business of the appellant Accordingly the contention of the appellant in this regard is found to be acceptable and AO is directed to recomputed the capital gain accordingly*

xxvi. *It is further seen from the facts of the case that as per para 2 and 6 of Schedule III of the agreement, the appellant has to receive consideration towards the transfer of intangible assets attached to its manufacturing contracts with the purchaser and the computation has to be based on the present value of the super profits. The value of the intangibles has been estimated at Rs.8.196 crores. However, the same has not been reflected by the appellant to have been received. In the submission, the appellant has stated that there is no scope to adopt any other value of consideration for the transfer of Laundry Business other than what it has received which totals to Rs.68.05 crores. In this regard it is stated that*

the transfer of Laundry Business has been done by entering into an agreement dt. 26.09.2005 which has been executed as per procedure and law and is binding on either side. The terms of the agreement are therefore justiciable and enforceable. As per the agreement, the appellant has to receive Rs.8.196 crores towards the value of intangible transferred which pertains to the appellant's intangible assets and the same have been specifically provided at para 2 and 6 of Schedule III of the agreement and further also at point 7 of the Schedule Ill of the agreement. Accordingly, the contention of the appellant in this regard is not acceptable and the action of the AO of including the value of intangibles at Rs.8.196 crores for arriving at the Long Term Capital Gain is considered to be justifiable and the action in this regard is accordingly upheld."

17. During the course of appellate proceedings before us, the ld. Counsel submitted that as per the valuation reported the valuer Radbin Consultants Pvt. Ltd. and Bansi S. Mehta Co. the valuation were assigned to the individual fixed assets therefore the sale of the detergent undertaking cannot be considered as slump sale. The ld. Counsel has placed reliance on the decisions of ITAT Mumbai in the case of M/s ACC Ltd. Vs. ACIT (ITA No. 5655/Mum/2011) and the decision of Hon'ble Supreme Court in the case of CIT Vs. Artex Mfg. Co. (1997) (227 ITR 260 (SC).

In his alternative plea the ld. Counsel submitted that ld. CIT(A) is not justified in considering the total sales consideration at Rs.76.246 crores instead of the actual sale consideration of Rs.68.05 crores received by the assessee.

18. On the other hand, the ld. D.R submitted that case law relied upon by the assessee are distinguishable from the facts in the case of the assessee. He further submitted that AO has correctly determined the sale of detergent undertaking in accordance with the method of valuation mentioned in Schedule III of the agreement as slump sale.

19. Heard both the sides and perused the material on record. During the under consideration the assessee has sold its detergent manufacturing unit located at Mandideep to its sister concern for a sale

consideration of Rs.30.07 crores. As discussed in this order the assessee had only offered long term capital loss of Rs.11.09,894/- and sale consideration from other fixed assets has been adjusted against block of assets. In Schedule III of the agreement it has also been provided that amount locked up in the working capital would also be transferred to vendor for alternate use. The AO found from the terms of agreement and the schedule III that the assessee had transferred the undertaking at a lump sale value. The relevant part of the extract of the findings of the AO is reproduced as under:

> *"12.9. The assessee's explanation is carefully perused, but the same is not found to be tenable under law. The contents of the decision of the Supreme Court in the aforesaid Iwo cases are perused and found that they are factually distinguishable from the transactions made by the assessee. It is observed that both the above cases cited by the assessee deal with the provisions of Sec.41(2) and not 50B of the Income Tax Act, 1961. In the case of Artex, the question before the Supreme Court was whether Sec 41(2) was applicable in the context of a private limited company which was formed to take over the business of the assessee partnership firm. Similarly in the case of Electric Control Gear Mfg. Co., the going concern of a partnership firm was taken over by a limited company and the question of applicability of provisions of Sec 41(2) arose, which was considered by the Supreme Court. The facts of those cases are not even remotely connected with the facts of the present case and the assessee has cited these cases completely out of context. Nevertheless, it may be noted here that the supreme court itself in the case of Commissioner of Income Tax Vs. Electric Control Gear Manf. Co. (1997) 227 ITR 278 (SC) distinguished its own decision in Artex Manufacturing Co 227 ITR 260(SC) by holding that "there was nothing to indicate the price attributable to the assets like Machinery, plant or building out of the total sales consideration amount and merely because depreciation had been allowed, it could not be said that the balance was the excess amount between the price and WDV". In this connection the High Court of Gujarat has, in the case of Commissioner of Income Tax Vs. Garden Silk Weaving Factory (279 ITR 136), after considering the decision of the Supreme court in the above named two cases, held that where the entire business is sold as a going concern with all the assets and liabilities, the provision of section 41(2) cannot be invoked unless and until the information with regard to the actual cost, the W.D.V. and the sale consideration for each asset sold is available with the Assessing Authority. In the instant case of the assessee the entire business of Mandideep Factory was sold as a going concern and for a lump-sum amount as mentioned in the agreement without assigning any sale value to any individual asset therein. The undertaking was sold with all the assets and liabilities as a going concern on a as is where is basis Under the circumstances, the sale transaction of Mandideep undertaking squarely confirms to all the criteria prescribed under the definition of a slump sale and therefore, the entire transactions has to be treated as a slump sale and consequently, the capital gain has to be considered as a Long Term Capital Gain in terms of Sec.50B of the Income Tax Act, 1961."*

20. After referring the contents of the agreement and sale consideration provided in Schedule III the ld. CIT(A) stated that at para no. 3 of the agreement it is clearly stated that purchaser shall pay to the vendor a slump price arrived in accordance with the method and value mentioned in schedule III. However, the assessee has solely referred the report of the valuer related to value of the fixed assets transferred and also contended that only current liabilities were taken over by the purchases.

21. Both the AO and the ld. CIT(A) discussed in their findings that how the decision of the Hon'ble Supreme Court in the case of the Artex and Electric Control Company dealing with the provisions of Sec. 41(2) of the Act and not section 50B of the Act factually distinguishable from the nature of transactions made by the assessee. The case of Hon'ble Gujarat High Court in the case of CIT Vs. Garden Sick Wearing Factory (279 ITR 136) is also discussed wherein after considering the decision of the Hon'ble Supreme Court in the above referred cases held that where the entire business is sold as a going concern with all assets and liabilities the provisions of Sec. 41(2) cannot be invoked unless and until the information with regard to the actual cost the WDV and the sale consideration for each of the asset sold is available with the Assessing authority.

22. We have perused the agreement for sale of detergent undertaking as going concern executed on 26.09.2005. The para 2 and 3 of the agreement as discussed in the findings of the ld. CIT(A) referred above categorically referred that purchases shall pay to the vendor a slump price. The ld. CIT(A) has analysed the terms of the agreement for sale demonstrating how the same was sold as going concern for a slump price covering not only immovable, movable properties but also the working capital and benefits of all pending contracts engagements etc.

23. We have also perused the judicial pronouncements referred by the ld. Counsel. The decision of Hon'ble Supreme Court in the case of Artex Mfg. Co. as rightly discussed by the ld. CIT(A) is related to the applicability of provision of Sec. 41(2) of the Act whereas the case of the assessee is pertained to the issue of provision of Sec. 50B of the Act. We have also perused the decision of the ITAT Mumbai in the case of ACC Ltd. Vs. Addl. CIT vide ITA No. 5655/Mum/2011 dated 25.08.2023 as referred by the assessee. In that case it is categorically mentioned in note of the Board of Director of the Company that transactions of sale of business would be item wise sale. In Board note the price of the sale was based on value assigned to various assets as mentioned in valuation report therefore in that case the genuineness of valuation report was never doubted. In that, case the purcahses has also mentioned in the bid document that transaction may be structured with an item wise category wise break-up. In that case when the entire transaction was approved in shareholder meeting it was never stated that the assessee was selling the undertaking on slump sale basis. In the case of ACC Ltd. item wise valuation was not disputed because of relevant supporting evidences like Board Note as well as Bid documents clearly showing that transactions would be item wise sale and both buyer and seller was well aware that transfer was not slump sale but item wise sale.

However, the facts in the case of the assessee are distinguishable compared to the case of ACC Ltd. as briefly as discussed above in the case of the assessee no other relevant evidences except different reports of two valuers. were brought as relevant evidences to substantiate that transactions were not slump sale therefore, in the light of the above facts and findings we consider that assessing officer has computed the total consideration at Rs.101.35 crores after including the amount of Rs.62.46 crores pertaining to working capital as mentioned in the

valuation report of the valuer Bansi S. Mehta & Company, however, it is noticed that the aforesaid value was based on 31.03.2005 whereas the actual value of the working capital on the date of transfer was only Rs.22.29 crore, therefore, we consider that the ld. CIT(A) has correctly held that while computing the net worth of the laundry business the net current assets has to be considered as per actual value of such assets of Rs.22.29 crores on the date of transfer of the business. Regarding estimating value of intangible assets of Rs.8.196 crores we find no material on record substantiating the detail and existence of such intangible assets was brought on record by the lower authority therefore, we direct the AO to restrict the total sale consideration to Rs.68.08 by excluding the estimated value of intangible assets. In view of the above facts and detail finding of the ld. CIT(A) as referred, the ground of appeal of the Revenue is dismissed and ground of appeal of the assessee is partly allowed.

ITA No. 2277/Mum/2012 (Assessee's Appeal)

Ground No.1: Restricting deduction claimed u/s 80-IB in respect of Vicks Vaporub (Tins) line to 30% as against 100%, alleging that the new line was only an extension of the existing industrial undertaking:

24. During the course of assessment the assessing officer noticed that assessee company had closed down its unit at Honda (Goa) during the F.Y. 2002-03 and shifted its Vicks Vaporub plant to Kundiam (Goa) where it had already a factory producing whisper sanitary napkins. The AO further noticed that from the assessment order for assessment year 2002-03 that the Vicks Vaporub Unit in which 100% deduction u/s 80IB was claimed since assessment year 1997-98 has been commenced by splitting up the existing block number 3 plant & machinery at Honda. After referring the assessment order for assessment year 2005-

06 the AO stated that the profit of the vaporub unit were not considered unit wise as claimed by the assessee in the return of income instead both the units were considered as one of the same unit which had been enjoying the deduction u/s 80IB since assessment year 1997-98 and therefore, the current assessment year 2006-07 was considered as the last assessment year for allowing deduction u/s 80IB to the assessee.

25. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the ground of appeal of the assessee holding that the same was recurring issue for assessment year 2003-04 to 2005-06 wherein such ground of appeal of the assessee was dismissed.

26. During the course of appellate proceedings before us it was brought to our notice that similar issue on identical facts has been decided against the assessee by the order of the ITAT, Mumbai vide ITA No. 6591/Mum/2010 for assessment year 2004-05 dated 25.08.2023.

27. Heard both the sides and perused the material on record. We have perused the decision of ITAT as referred above. The relevant operating part of the decision on the issue is reproduced as under:

> *"6.1. Ground No. III pertains to restricting the deduction claimed by the Assessee under Section 80-IB of the Act in respect of Vicks Vaporub Tins Unit – manufacturing 10 gm tins line to 30% as against 100%.*
>
> *6.2. The relevant facts in brief are that for the Assessment Year 2004-05 the Assessee has claimed deductions under Section 80IB of the Act at INR 28,90,66,437/- in respect of the profits derived from the following industrial undertakings set up at various locations in Goa.*
>
> *(a) Vaporub Tin Unit located at Kundiam, Goa (shifted from Honda, Goa), and manufacturing vicks vaporub tins of 10 gms [for short 'Vaporub-10 gm Unit']*
> *(b) Vaporub Non-Tin Unit located at Kundiam, Goa (shifted from Honda, Goa), and manufacturing vicks vaporub jars [for Short 'Vaporub Jar Unit']*
> *(c) Whisper-Unit, located at Kundiam, Goa, and manufacturing Whisper sanitary napkins [for short 'Wishper Unit']*
> *(d) Whisper-Eline Unit located at Kundiam, Goa, and manufacturing Whisper Eline sanitary napkins [for short 'Whisper ELine Unit']*
>
> *6.3. During the assessment proceedings, the Assessing Officer noticed that the Assessee had, during the financial year relevant to Assessment Year*

1997-98, set up an undertaking to manufacture Vicks Vaporub - 25 gms. [for Short 'Vaporub-25 gm Unit'] and claimed deduction in respect of profits of such undertaking at the rate of 100% for the first five years i.e. upto Assessment Year 2001- 02 and at the rate of 30% thereafter. During the Financial Year relevant to Assessment Year 2001-02, the Assessee also claimed to have set up a separate undertaking for manufacture of vicks vaporub 10 gms tins, i.e., Vaporub-10 gm Unit. The Assessing Officer, taking note of the Assessment Order for the Assessment Year 2003-04, asked the Assessee to explain why Vaporub-10 gm Unit and Vaporub-25 gm Unit should not be treated as one unit.

6.4. *The Assessee claimed that Vaporub-10 gm Unit was a new undertaking and the Assessee was eligible to claim deduction under Section 80IB of the Act in respect of the same at the rate of 100%. It was claimed that the Vaporub-10 gm Unit eligible undertaking though it was set up in a part of existing building. The claim of the Assessee is that the Vaporub-10 gm Unit fulfilled all the other eligibility conditions from claiming Section 80IB deduction. Though Old plant and machinery was used, the percentage of the old plant & machinery used was less than the threshold limit of 20%. The new line employed more than 10 workers (since its manufacturing process was carried on with the aid of power) and manufactured a product, which was not specified in the 11th Schedule. Further, even after the new line was set up. Further, the existing line was not affected at all. Thus, the Vaporub-10 gm Unit complied with all the conditions specified in Section 801B(2) of the Act and was accordingly eligible for deduction at the rate of 100% of its profits.*

6.5. *The Assessing Officer did not accept the above claim of the Assessee and restricted the deduction claimed by the Assessee to only 30% holding that the Vaporub-10 gm Unit and Vaporub-25 gm Unit as one undertaking giving the following reasoning:*

(a) *The Assessee was manufacturing the same product, i.e., Vicks Vaporub. It was earlier packed in jars and 25 gm tins, from now the Assessee started packing the same in 10 gm tins and stated claiming 100% deduction.*
(b) *Contrary to claim of the Assessee, no separate undertaking came into existence in respect of 10 gm tins.*
(c) *The Assessee had submitted, vide letter dated 20/12/2006, that the Vaporub-10 gm line, though a complete line itself, may be considered to take support of the certain machinery being used by already existing line. Thus, instead of starting a new undertaking, an existing manufacturing facility has been utilized by the Assessee.*
(d) *The Assessee has bifurcated written down value of the plant and machinery used for manufacturing vicks vaporub on a prorata basis (as opposed to providing details of plant & machinery actually used)*
(e) *In Annexure 1 to Letter dated 20/12/2006, the Assessee had also ignored the value of the 'Building' while computing the percentage of commonly used equipment as against the total plant and machinery employed in Vaporub-10 gm Unit at 8.33%*

6.6. *Being aggrieved, the Assessee carried the issue in appeal before the CIT(A). By following the decision of his predecessor in appeal preferred by the Assessee for the Assessment Year 2003-04, the CIT(A) upheld the*

action of the Assessing Officer and confirmed the order restricting the deduction under Section 80IB in respect of Vaporub-10 gm Unit to 30%.

6.7. The Assessee is now in appeal before us.

6.8. We have given thoughtful consideration to the rival submission and perused the material on record. We find that that the Assessee has claimed that Vaporub-10 gm Unit was set up as a new unit during the Financial Year relevant to the Assessment Year 2001-02. However, this position has been disputed by the Revenue.

6.9. On perusal of Audit Report in Form 10CCB filed by the Assessee in support of its claim for deduction at the rate of 100% in respect of Vaporub-10 gm Unit, we find that it has been stated as under:

(a) Paragraph 8. - Date of Commencement of Operation by the Undertaking : 01/04/2000

(b) Paragraph 18 - (a) Has the industrial undertaking received any machinery or plant on transfer which was previously used for any purpose : No, (b) If yes, please specify value of machinery received on transfer : Not Applicable;

(c) Total Value of machinery or plant used in the business : INR 2,77,70,116/- and (f) number of workers employed in the manufacturing process: 16 (c) Paragraph 19 – Total Sales of the Undertaking : INR 31,23,96,364/-

(d) Paragraph 21 – Profits and Gains derived by the undertaking/enterprise from the eligible business: INR 10,81,22,810/-

(e) Deduction under section 80IB – INR 10,81,22,810/-

We note that while the case set up by the Assessee is that old plant and machinery was used it was less than 20%, Form 10CCB states that the undertaking had not received by way of transfer any plant and machinery previously used.

6.10. On perusal of Depreciation Schedule annexed to the separate Profit and Loss Account and Balance Sheet drawn up for Vaporub-10 gm Unit, we find that the Plant & Machinery as at 01/04/2002 is stated to be INR 2,77,70,115/-. However, the breakup of such machinery or the details thereof have not been furnished by the Assessee during the assessment or the appellate proceedings to controvert the findings by the Assessing Officer that no new unit was set up.

6.11. Thus, there is nothing on record to support contention of the Assessee that old plant and machinery used for setting up of the Vaporub-10 gm Unit was less than 20% of the entire plant and machinery.

6.12. Ld. Authorised Representative for the Assessee had vehemently contended that the Assessing Officer had relied upon the judicial precedents to support the contention that the deduction under Section 80IB of the Act would be available (a) even if same product is produced by the new undertaking, (b) the new undertaking is setup under the same building, and (c) even if the new undertaking in expansion of undertaking, and (d) dehors the new undertaking having common electricity connection, store room and ancillary activities. We note that none of the judicial precedents cited deal with a situation where all the

above factors are present at the same time. In the present case the product manufactured is same, the new undertaking has been set-up in the existing building with common amenities and involving some common equipment. Be that as it may, even if all the other conditions are assumed to be satisfied, the Assessee would not be able to claim deduction under Section 80IB of the Act at the rate of 100% since the Assessee has failed to establish that the unit has been set up by transfer of old plant and machinery of less than threshold limit of 20%. While we agree with the Learned Authorised Representative of the Assessee that the threshold limit is to be tested in the year of set-up and the building cost cannot be included in computing the aforesaid threshold limit, there is nothing on record to show that the aforesaid eligibility condition was met in the initial assessment year or the year of set-up. There is nothing on record from which it could be established or inferred that plant & machinery of specified value was deployed/used to set-up Vaporub10 gm Unit as claimed by the Assessee. The Assessing Officer had returned a finding that the Assessee had merely bifurcated the written down value of plant and machinery amongst the units on a pro-rata basis and the same has gone uncontroverted during the appellate proceedings. Though, the Vaporub-10 gm Unit is claimed to set-up during the Assessment Year 2001-02, it cannot be said that the claim made by the Assessee has been accepted by the Revenue in any of the preceding years. In absence of the supporting documents/details which support the claim of the Assessee as aforesaid, we are not inclined to accept the contention of the Assessee that deduction under Section 80IB of the Act is available for 100% of the profits from Vaporub-10 gm Unit. Accordingly. Ground No. III raised by the Assessee is dismissed."

28. Following the decision of the ITAT as referred above, we don't find any merit in the appeal of the assesse, therefore, the same stand dismissed.

Ground No.2: Disallowance of 80-IB in respect of Whisper E-line to 30% as against 100%, alleging that the new line was only an extension of the existing industrial undertaking:

29. During the course of assessment the AO noticed that assesse has claimed deduction u/s 80IB @ 100% in respect of its industrial undertaking manufacturing whisper E-line and the same was restricted to 30% only for the reason mentioned in assessment proceedings for assessment year 2005-06. On query, the assessee submitted that the unit was not formed by splitting up or reconstruction of already existing business.

30. However, the AO has not agreed with the submission of the assessee stated that for assessment year 2005-06 it has already considered and found acceptable on the basis of detailed factual analysis and concrete evidence and spot survey in industrial undertaking located at Goa by the investigation wing Belgaum which had established beyond doubt that the assessee's claim of deduction u/s 80IB for its manufacturing of ultra whisper E-line was factually incorrect untenable, therefore, the claim of the assessee was rejected. The AO further stated that the investigation has clearly found out as under:

> *"a. The machinery installed for production of whisper E-line is part of the whole unit at Kundaim.*
>
> *b. All existing facilities like common electric connection, common factory shed, common Air compressor machine and common labour and staff are being used for both regular whisper and E-line products.*
>
> *c. The whisper E-line brand differ from the regular whisper only in thickness of obsorbent material*
>
> *d. There is no difference in the manufacturing processes between the two products.*
>
> *e. The undertaking does not maintain any separate pay roll for the Labour and staff for the two products as they are commonly used for all the machines and all the products."*

In view of the aforesaid findings the assessing officer concluded that there was no separate unit for whisper E-line product and therefore, sales were carried out from the same undertaking at Kundiam. Therefore, both the units were treated as one of the same units for the purpose of claim of deduction u/s 80IB and the deduction u/s 80IB in respect of whisper E-line was restricted to 30% of Rs.44,89,04,071/- which works out to Rs.13,46,71,221/- as against 100% claimed by the assessee.

31. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) after referring the decision on similar issue for assessment year 2005-

06 held that no separate undertaking came into existence and same was part of the whole unit at Kundaim, therefore, action of the assessing officer was upheld and ground of appeal of the assesse was dismissed.

32. During the course of appellate proceedings before us the ld. Counsel brought to our notice that the same issue on identical facts in the case of the assessee for assessment year 2005-06 has been adjudicated by the ITAT, Mumbai vide ITA No. 2780/Mum/2011 on 25.08.2023 in favour of the assessee

33. Heard both the sides and perused the material on record. The relevant operating part of the above referred decision is reproduced as under:

> *"20.1. Ground No. III pertains to deduction claimed by the Assessee under Section 80IB of the Act in respect of Whisper E-line Unit.*
> *20.2. The relevant facts in brief are that during the financial year relevant to the Assessment Year 1998-99 had set up an undertaking to manufacture 'Whisper' which was eligible for deduction under Section 80IA/80IB of the Act in respect of profits of such undertaking at 100% for the first five years i.e. upto Assessment Year 2002-03 and thereafter, at the rate of 30%. During the previous year relevant to the Assessment Year 2004-05, the Assessee had established Whisper e-Line Unit.*
> *20.3. For the Assessment Year 2005-06, while the Assessee claimed deduction at the rate of 100% of profits derived from Whisper e-Line Unit, the Assessing Officer restricted the same to 30% holding that the aforesaid unit was nothing but in extension of the Whisper Unit established in 1998-99.*
> *20.4. In appeal preferred by the Assessee, the CIT(A) decline to grant any relief on this issue and confirmed the order passed by CIT(A) restricting the amount of deductions under Section 80IB of the Act to 30% of the profits of Whisper e-Line Unit.*
> *20.5. Being aggrieved, the Assessee has carried the issue in appeal before us.*
> *20.6. We have heard the rival contentions and perused the material on record.*
> *20.7. We note that the Tribunal has already examined this issue in appeal preferred by the Assessee for the Assessment Year 2004-05 against the order, dated 28/02/2011, passed by the CIT(A) dismissing the appeal preferred by the Assessee which inturn arose from the Assessment Order, dated 31/12/2009, passed under Section 143(3) read with Section 263 of the Act for the Assessment Year 2004-05. We have perused the aforesaid order passed by the Tribunal in ITA No. 4903/Mum/2011 [Assessment Year 2004-05, dated 09/05/2022] and find that after examining all the issues/contentions raised by both the sides, the Tribunal had concluded that Whisper e-Line Unit was a new unit engaged in manufacturing a new product and that the same was not formed by splitting up or reconstruction of existing business. Thus,*

Whisper e-Line Unit was held to be a separate industrial undertaking eligible for deduction under Section 80IB(4) of the Act at the rate of 100%. Respectfully following the aforesaid decision of the Tribunal in the case of the Assessee for the Assessment Year 2004-05, we hold that the Assessee is entitled to claim deduction under Section 80IB of the Act at the rate of 100% of profits derived from Whisper e-Line Unit. Accordingly, Ground No. III Raised by the Assessee is allowed."

34. Following the decision of ITAT as referred above this ground of appeal of the assessee is allowed.

Ground No. 3: Reduction in claim of deduction u/s 80-IB by reducing the profits of the undertakings by disregarding certain incomes:

35. During the course of assessment the AO noticed that assessee company has credited several other income to the four units as follows:

Vaporub-Tin Unit	10701083
Vaporub- Others Unit	6590475
Whisper Unit	15849778
Whisper e-Line Unit	18968437
Total	52109773

On query, the assessee did not furnish the detail of other income credited to the above four units in order to give any explanation as to why the same should not be excluded from the profit and gains derived from the respective industrial undertaking while computing deduction u/s 80IB. Therefore, the AO stated that whole of the above other income was not derived from the industrial undertaking and same was excluded from the profit derived from the industrial undertaking for the purpose of computing deduction u/s 80IB of the Act. Therefore, total deduction allowable u/s 80IB of the Act in respect of the above four units at Goa was arrived at by excluding the above mentioned other income which come to Rs.26,00,61,151/-. Therefore, deduction u/s 80IB was disallowed by Rs.35,90,27,245/-.

36. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee by referring the similar decision on identical facts in the case of the assessee for the assessment year 2005-06.

37. During the course of appellate proceedings before us the ld. Counsel brought to our notice that the same issue on identical facts in the case of the assessee for assessment year 2005-06 has been adjudicated by the ITAT, Mumbai vide ITA No. 2780/Mum/2011 on 25.08.2023 against the assessee.

38. Heard both the sides and perused the material on record. We have perused the decision of ITAT, Mumbai as referred above and the relevant part of the decision is reproduced as under:

> *"9.1. During the assessment proceedings, the Assessing Officer also noticed that the Assessee had included several 'Other Incomes' in the profits and gains derived from the following units claiming deduction under Section 80IB of the Act.*
>
> | | |
> |---|---|
> | *- Vaporub-Tin Unit* | *INR 74,75,679/-* |
> | *-Vaporub-Others Unit* | *INR 88,74,151/-* |
> | *- Whisper Unit* | *INR 1,51,80,215/-* |
> | *- Whisper e-Line Unit* | *INR 16,68,479/-* |
> | *Total* | *INR 3,31,98,524/-* |
>
> *9.2. Relying upon the judgment of Hon'ble Supreme Court in the case of Pandian Chemicals Ltd. Vs. Commissioner of Income Tax: 262 ITR 278 (SC) and Commissioner of Income Tax Vs. Sterling Foods: 237 ITR 579 (SC), the Assessing Officer concluded that the above other income could not be considered as profits derived from industrial undertaking since the effective and immediate source of the said incomes was not the industrial undertakings. Thus, the Assessing Officer reduced the Other Income from the profits and gains derived from the industrial undertaking for the purpose of computing deduction under Section 80IA of the Act.*
>
> *9.3. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). However, the CIT(A) declined to grant any relief and dismissed the ground raised by the Assessee in this regard.*
> *9.4. The Assessee is now in appeal before us on this issue.*
> *9.5. During the course of hearing, both the sides agreed that identical issue stands decided against the Assessee in the case of the Assessee for the preceding assessment year. We note that the Tribunal has decided identical issue against the Assessee in appeal pertaining to the*

Assessment Year 1999-2000 (ITA No. 6795/Mum/2004, dated 22/10/2010), the relevant extract of the same read as under: —

> *12. Ground No. V(2) is with reference to the action of the A.O. of reducing profits of eligible units by excluding certain items of other income from the profits of eligible units. This issue is already covered against the assessee, in earlier years as the interest and rental income was held as income from other sources. Accordingly the same cannot be considered as income of the eligible units for deduction under section 80IA. Since the A.O.'s order in line with the principles for allowing the deduction of profits of the eligible units the order is upheld. Ground is rejected."*

9.6. Taking a view consistent with the view taken by the Tribunal in the preceding Assessment Year in the case of the Assessee, we uphold the order passed by the Assessing Officer on this issue. The Assessing Officer was justified in reducing the 'Other Income' from the profits and gains of the undertaking for the purpose of computing deduction under Section 80IB of the Act. Ground No. VI raised by the Assessee is, therefore, dismissed."

39. Following the decision of ITAT as referred supra we don't find any merit in the appeal of the assessee, therefore, the same stand dismissed.

Ground No.4: Assessing Long Term Capital Gain instead of Long term capital loss by holding that sale of Mandideep detergent unit was in nature of slump sale.

Without, prejudice to above, Erred in considering the total sales consideration at Rs.76.246 cr instead of actual consideration of Rs.68.05 cr:

40. This ground of appeal of the assessee has already been adjudicated along with ground no. 4 of the Revenue on similar issue vide ITA No. 2167/Mum/2013 as supra in this order.

ITA No. 3566/Mum/2012 (Revenue's Appeal)

Ground No. 1: Disallowance of advertisement expenses on production of telephone films and commercial holding by treating the same as capital expenditure amounting to Rs.3,56,60,595/-:

41. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 1 vide ITA No. 2167/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2167/Mum/2012 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

Ground No. 2: Disallowance in respect of depreciation on left behind assets at Vicks vaporub unit location at Honda Location amounting to Rs. 2.48 lakhs:

42. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 2 vide ITA No. 2167/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2167/Mum/2012 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

Ground No. 3: Increasing in claim of deduction u/s 80IB by allocating certain Head Office expenses like salary, depreciation. R & D expenses. Interest on turnover basis to profits derived from Honda unit and Kundiam Unit:

43. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 3 vide ITA No. 2167/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2167/Mum/2012 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

ITA No.2446/Mum/2013 (Revenue's Appeal)

Ground No. 2: Disallowance of advertisement expenses on production of television films and commercial holding by treating the same as capital expenditure amounting to Rs.2.11 lacks:

44. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 1 vide

ITA No. 2167/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2167/Mum/2012 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

Ground No. 3: Increasing in claim of deduction u/s 80IB by allocating certain Head Office expenses like salary, depreciation. R & D expenses. Interest on turnover basis to profits derived from Honda unit and Kundiam Unit:

45. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 3 vide ITA No. 2167/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2167/Mum/2012 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

ITA No. 3518/Mum/2012 (Assessee's Appeal)

Ground No.1: Restricting deduction claimed u/s 80-IB in respect of Vicks Vaporub (Tins) line to 30% as against 100%, alleging that the new line was only an extension of the existing industrial undertaking:

46. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 1 vide ITA No. 2277/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2277/Mum/2012 as mutatis mutandis this ground of appeal of the assessee is also dismissed.

Ground No.2: Disallowance of 80-IB in respect of Whisper E-line to 30% as against 100%, alleging that the new line was only an extension of the existing industrial undertaking:

47. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 2 vide ITA No. 2277/Mum/2012 as adjudicated supra in this order, therefore,

applying the finding of ITA No. 2277/Mum/2012 as mutatis mutandis this ground of appeal of the assessee is also allowed.

Ground No. 3: Reduction in claim of deduction u/s 80-IB by reducing the profits of the undertakings by disregarding certain incomes:

48. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 3 vide ITA No. 2277/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2277/Mum/2012 as mutatis mutandis this ground of appeal of the assessee is also dismissed.

ITA No.1735/Mum/2013 (Assessee's Appeal)

Ground No.1: Restricting deduction claimed u/s 80-IB in respect of Vicks Vaporub (Tins) line to 30% as against 100%, alleging that the new line was only an extension of the existing industrial undertaking:

49. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 1 vide ITA No. 2277/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2277/Mum/2012 as mutatis mutandis this ground of appeal of the assessee is also dismissed.

Ground No.2: Disallowance of 80-IB in respect of Whisper E-line to 30% as against 100%, alleging that the new line was only an extension of the existing industrial undertaking:

50. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 2 vide ITA No. 2277/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2277/Mum/2012 as mutatis mutandis this ground of appeal of the assessee is also allowed.

Ground No. 3: Reduction in claim of deduction u/s 80-IB by reducing the profits of the undertakings by disregarding certain incomes:

51. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal ground No. 3 vide ITA No. 2277/Mum/2012 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2277/Mum/2012 as mutatis mutandis this ground of appeal of the assessee is also dismissed.

52. In the result the appeals of the revenue are dismissed and the appeals of the assessee are partly allowed.

Order pronounced in the open court on 12.12.2023

Sd/-	Sd/-
(Aby T Varkey) Judicial Member	(Amarjit Singh) Accountant Member

Place: Mumbai
Date 12.12.2023
Rohit: PS

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

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

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

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