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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 4793/Mum/2011
(Assessment Year: 2007-08)

Blue Star Ltd. Kasturi Building, Mohan T. Advani Chownk, J. Tata Road, Mumbai-400 020 **(Appellant)**	Vs.	ACIT -1(1) Room No.579, Aaykar Bhavan, Mumbai-400 020 **(Respondent)**

PAN No. AAACB4487D

ITA No. 5551/Mum/2011
(Assessment Year: 2007-08)

ACIT -1(1) Room No.579, Aaykar Bhavan, Mumbai-400 020 **(Appellant)**	Vs.	Blue Star Ltd. Kasturi Building, Mohan T. Advani Chownk, J. Tata Road, Mumbai-400 020 **(Respondent)**

Assessee by	:	Shri Gunjan Kakkad, AR
Revenue by	:	Shri Dilip K. Shah, DR

Date of hearing:	12.01.2024
Date of pronouncement :	31.01.2024

O R D E R

PER PRASHANT MAHARISHI, AM:

01. ITA No.4793/Mum/2011 is filed by Blue Star Ltd (assessee /appellant) and ITA No. 5551/Mum/2011 is filed by the Asst. Commissioner of Income Tax, Circle 1(1), Mumbai (the learned Assessing Officer) in cross appeals for A.Y. 2007-08

against the appellate order passed by the Commissioner of Income-tax (Appeals)-1, Mumbai [the learned CIT (A)] dated 25th March, 2021, wherein the appeal filed by the assessee against the assessment order dated 14th December, 2009, passed by the Asst. Commissioner of Income Tax, Range-1(1), Mumbai, under Section 143(3) of the Act, was partly allowed. Therefore, both the parties are aggrieved and are in appeal before us.

02. In ITA No.4793/Mum/2011, the assessee has raised following grounds of appeal:-

> *"1. We beg to refer to the above appeal, which is yet to be disposed off by the Hon'ble Tribunal. In this regard, we would humbly request for inclusion of the enclosed additional grounds of appeal which does not require any further investigation of facts.*
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> *2. In the computation of total income for the instant Assessment Year, the appellant has disallowed under clause (f) to section 43B, provision for leave encashment of Rs. 1,83,72,108/- created during the year and not paid on or before the due date of filing of return. The same should be considered as allowable deduction in computing the total income in view of the decision of Hon'ble Calcutta High Court in the case of Exide Industries Ltd - vs.- Union of India (2007) 292 ITR 470 (Cal).*
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> *3. The appellant follows exclusive method of accounting for Cenvat Credit in the books of account and hence, opening inventory, purchases and closing inventory are recorded net of Cenvat Credit. As per Sec. 145A (i.e. inclusive method), purchase, sales and value of inventories should be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred to bring the goods to the place of its location and condition. In view of Accounting Standard 2 'Valuation of Inventories, Guidance Note on Accounting Treatment for CENVAT and Guidance accounting and adjustments made u/s 145A will have no impact on profit and loss account*

3.1 However, in the computation of income for the instant Assessment Year, the appellant has offered to tax Rs. 3,20,82,000/- u/s 145A based on reporting in clause 12(b) read with Revised Annexure II-A of the Tax Audit Report. The said amount was inadvertently computed as difference between Cenvat Credit on closing inventory as on 31-03-2007 and Cenvat Credit on opening inventory as on 01-04-2006. In view of the explicit provision of Sec. 145A as explained in Guidance Note on Tax Audit, adjustment in only the value of the opening and the closing stock in isolation is contrary to the provisions of the said section, which required adjustment in the value of opening stock, purchases, sales and closing stock. If adjustments on all counts u/s 145A were made, then the net effect of the said adjustments will be Nil. Thus, amount of Rs. 3,20,82,000/- erroneously offered to tax in the computation of income should be treated as withdrawn.

4. In the instant Assessment Year, the appellant has claimed total depreciation of Rs. 17,02,49,797/-, which includes additional depreciation u/s 32(1)(iia) on eligible assets of Rs. 2,10,92040/-. The said additional depreciation has been claimed on eligible assets installed and put by the appellant during the Previous Year 2006-07 relevant to the instant Assessment Year. However, claim for balance 10% additional depreciation in respect of eligible assets of Rs. 9,25,07,148/- installed and put to use for less than 180 days in the Previous Year 2005-06 was advertently not claimed by the appellant. Hence, claim for balance 10% additional depreciation amounting to Rs. 92,50,715/- on such assets should be allowed to the appellant in the instant Assessment Year.

5.0 CBDT, vide Circular No. 91/58/66-ITI(19) dated 18-05-1967, has clarified that the effect of the omission of the word 'cess' from Sec. 40(a)(ii) of the Act is that only taxes paid are to be disallowed. Following the same analogy, only the taxes paid are to

be disallowed u/s 115-0(5) and 40(a)(ic) in the case of Dividend Distribution Tax and Fringe Benefit Tax respectively.

5.1 In view of the aforesaid circular, Education Cess amounting to Rs. 55,47,946/-on Income Tax, Dividend Distribution Tax and Fringe Benefit Tax debited to the P & L Account by the appellant during the previous year relevant to the Assessment Year under consideration should be allowed as deduction in computing total income.

6.0 The appellant undertakes contracts for erection and commissioning of air conditioning system, wherein certain percentage of the bill raised by the appellant is retained by the parties as retention money to be paid after successful completion of the contract or on fulfillment of certain predetermined conditions mentioned therein. The appellant has no right to receive the said money by virtue of the terms of the contract & also has no right to enforce payment till the completion of contract or fulfillment of predetermined conditions for claiming the retention money. Thus, the said amount has not accrued as income to the appellant during the year under consideration and shall be excluded in the computation of income in view of judicial decisions of High Courts. In the instant assessment year, the appellant inadvertently omitted to claim exclusion from total income in respect of retention money of Rs. 2,78,63,957/- included in sales from contract business recognized during the previous year 2006-07.

7.0 During the previous year relevant to assessment year under consideration, the Dadra Unit of the appellant situated in the Union Territory of Dadra & Nagar Haveli had received sales tax incentive of Rs. 24,81,00,885/- for setting up and/or expansion of industries in the backward areas of Dadra & Nagar Haveli and to generate employment opportunities. The same should be considered as capital in nature and hence not liable to tax. Such incentive should

be excluded in the computation of total income under normal provisions.

8.0 In the computation of total income for the instant Assessment Year, the appellant allocated Rs. 3,98,00,000/- as sales commission expenses actually incurred while computing profit eligible for deduction u/s 80-IC in respect of its unit in Himachal Pradesh ('HP unit'). In the assessment order u/s 143(3), the Ld. AO further allocated sales commission expenses of Rs. 1,70,53,142/- to the HP unit, which was computed by allocating the total sales commission expenses of the appellant company amounting to Rs. 16,84,63,000/- in the ratio of total turnover of HP unit to the total turnover of the appellant company following the order of Ld. CIT(Appeals) in earlier years. While computing the claim u/s 80-IC, the Ld. AO did not give credit for expenses already allocated by the appellant, thereby resulting in double allocation. In the original appeal filed on 15-06-2011, vide Ground No. 4, the appellant had erroneously urged that the Ld. AO be directed to delete further allocation of Rs. 1,70,53,142/- while computing deduction u/s 80-IC, since the appellant has already allocated Rs. 3,98,00,000/-as sales commission expenses.

8.1 The appellant amends the aforesaid Ground No. 4 of original appeal filed on 15-06- 2011 and urges that the Ld. AO be directed to add sales commission expenses of Rs. 3,98,00,000/- being already allocated by the appellant to the eligible HP unit in computing deduction u/s 80-IC and thereby deleting the double allocation of such expenses.

9.0 Prayer:

9.1 In view of the above, the appellant most respectfully prays for admission of the enclosed additional grounds of appeal in the appeal pending before your goodself. Your appellant also most respectfully craves leave to add, to amend, modify, rescind, or alter

the additional ground either before or at the time of hearing of the appeal."

03. In ITA No.5551/Mum/2011, the Revenue has raised following grounds of appeal:-

"1. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is right in deleting the disallowance of Rs. 24,25,312/- on account of payment to Clubs in the light of Kerala High Court reported in 294 ITR 559 (Ker.) as held that entrance fees paid to Club is capital expenditure ?"

2. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is right in restoring the issue of disallowance of Rs. 8,30,696/- u/s. 14A as per rule 8D to the Assessing Officer's file and directing that disallowance to be as per immediate preceding year in the light of observation of jurisdictional High Court in the case of Godrej Boyce Mfg. Co. Ltd. vs. DCIT 234 ITR 1 (Bom.) as the decision of Hon'ble Bombay High Court is not accepted by the Department?".

3. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has justified in allowing appeal to the assessee and directing to allocate the Corporate expenses @50% as against 100% allocated by the Assessing Officer @100% for the purpose of determining the eligible profit for deduction u/s. 801B of the IT Act, 1961 of Dadra Unit?."

4. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has justified in allowing appeal to the assessee and directing not to allocate the depreciation on asset used by Head Office while determining the profit eligible for deduction u/s. 80IB of the IT Act, 1961, in respect of Dadra Unit to the total turnover of the assessee company?".

5. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has justified in allowing appeal to the assessee and directing the Assessing Officer not to allocate Rs. 4,77,90,080/- on account of travelling expenses to the Dadra Unit while determining profit eligible for deduction u/s. 801B of the IT Act, 1961 ?".

6. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has justified in allowing appeal of the assessee and in directing to allocate 50% of the depreciation asset of Head Office in the ratio of turnover of HP Unit while determining eligible profit for deduction u/s. 801B of the IT Act, 1961 ?".

7. "Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has justified in allowing appeal of the assessee and in directing Assessing Officer to allocate only 50% corporate expenses as against @100% allocated by the Assessing Officer allowing deduction u/s. 801B of the IT Act, 1961 ?

8. Whether on the facts and in the circumstances of the case, and in law, the learned CIT (A) has justified in directing the Assessing Officer to allocate 50% of the depreciation on assets of Head office in the ratio of turnover of the HP unit while determining eligible profit for deduction u/s 80IC of the Income-tax Act, 1961 (the Act), 1961.

9. Whether on the facts and in the circumstances of the case, and in law, the learned CIT (A) has justified in allowing appeal to the assessee and directing not to allocate travelling expenses amounting to ₹2,31,29,544/- to the HP unit while determining profit eligible for deduction u/s 80IC of the IT Act,1961?"

04. The brief facts of the case shows that assessee is a company engaged in the business of Air conditioning and Refrigerators Systems such as central air

conditioning plant, water coolers, deep freezers and other electrical and medical equipments. The assessee filed its return of income on 5th November, 2007, declaring total income of ₹48,62,52,472/-. This return was picked up for scrutiny by issuing notice under Section 143(2) of the Income-tax Act, 1961 (the Act) on 18 September 2008. Subsequently, CIT-1, Mumbai vide order dated 12th February, 2009 authorized Addl. Commissioner of Income Tax, 1(1), Mumbai to discharge the functions of the learned Assessing Officer for this assessment year. Accordingly, the learned Addl. CIT passed the assessment order under Section 143(3) of the Act wherein the total income of the assessee was determined at ₹64,61,23,750/-. The assessee preferred the appeal before the learned CIT (A), who partly allowed the appeal of the assessee.

05. First, we come to the appeal of the assessee in ITA No.4793/Mum/2011.

06. The first ground of appeal is with respect to the allocation of advertisement expenses amounting to ₹9,19,64,000/-. The assessee has claimed deduction under Section 80IB of the Act, of ₹24.03 crores in respect of Dadra Unit and ₹20,07,00,000/- in respect of Himachal Pradesh Unit. The learned Assessing Officer on examination of the claim noted that the computation of deduction furnished by the assessee shows that assessee has not allocated head office depreciation and other expenses such as advertisement, travelling, etc., to the expenses of eligible unit, therefore, according to the learned Assessing Officer the income of the assessee from eligible units for the impugned deduction was not correctly computed and claimed at higher amount of deduction. The learned Assessing Officer questioned the claim of the assessee, which was replied by the assessee that it has allocated 50% of head office expenses to the eligible units and such stand taken has been upheld by the co-ordinate Bench in assessee's own case in earlier years. The learned Assessing Officer noted that Revenue has not accepted the order of the ITAT as according to the Revenue 100% of head office expenses were to be allocated to the profit of eligible unit in earlier Years. Accordingly, the learned Assessing Officer allocated head office depreciation, head office expenses and other expenses amounting to ₹7,410 lacs to the respective units on the basis of the turnover. He computed the expenses allocated to Dadra unit of ₹15.49 crores and Himachal Pradesh Unit of ₹7.50

crores. Accordingly, the claim deduction under Section 80IB of the Act was restricted to ₹19.38 crores against the claim of Rs. 24.03 crores and deduction under Section 80IC of the Act was restricted to Rs. 12.57 crores instead of ₹20.07 crores. On appeal before the learned CIT (A) following his own order held that the learned Assessing Officer was directed to allocate 50% of depreciation on assets of head office in the ratio of turnover of Himachal Pradesh Unit for computation of deduction under Section 80IC of the Act. With respect to the allocation of advertisement expenses, he upheld the allocation of the learned Assessing Officer subject to certain modifications; therefore, against the order of the learned CIT (A), the assessee is aggrieved. This is challenged as per ground no.1.

07. The learned Authorized Representative submitted that this issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for A.Y. 2001-02 in ITA No.3363/Mum/2005. It was further stated that identical issue has been decided in ITA No.4792/Mum/2011, for A.Y. 2006-07, wherein ground no.1 at para no.8 is identical. He referred to paragraph no.15 of the co-ordinate bench wherein the claim was allowed. Accordingly, he submitted that this ground needs to be allowed in favour of the assessee.

08. The learned Departmental Representative vehemently supported the order of the learned CIT (A) and the learned Assessing Officer stating that the learned Assessing Officer has not accepted the order of the co-ordinate bench.

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that identical issue has been considered by the co-ordinate Bench in the appeal of the assessee for A.Y. 2006-07, dated 30th November, 2023, wherein paragraph no.15-16, the coordinate Bench has considered and allowed this ground. We also find that the ground is identical except the change in the amount. The co-ordinate Bench has considered this issue as under:-

> *"15. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee company has incurred advertisement expenses on account of*

publication of quarterly, half yearly and annual result, public notice, company meeting etc. These expenses are said to enhance sale of the product of the assessee company and according to the Revenue are directly benefitting the eligible units by increasing the customer base for sale of the product. The assessee has relied on the word 'derived from' as per the provision which according to the assessee relates to the expenses which have direct nexus pertaining to the eligible units for claiming deduction u/s. 80IB/80IC of the Act. The Revenue, on the other hand, has contradicted the same by stating that this interpretation of the assessee is not to be considered and only the allocation in proportion to the turnover of the eligible units to the proportion of the total turnover of the assessee company should be allocated for determining the profit eligible for deduction u/s. 80IB/80IC of the Act. The assessee has relied on the decision of the coordinate bench for A.Y. 2001-02 which has held that the assessee has itself allocated 50% corporate expenses including advertisement expenses of head office as per the rate of turnover of the eligible unit to the turnover of the assessee company which was duly certified by a Chartered Accountant. The co-ordinate bench has accepted the allocation made by the assessee and directed the ld. A.O. not to make any further allocation for computation of deduction u/s. 80IB of the Act. The relevant extract of the said decision is cited hereunder for ease of reference:

> *18. We have heard the learned representatives of the parties and have perused the material placed on record. after considering the facts of the case, we notice that the assessee company on its own has allocated 50% corporate expenses including advertisement expenses of Head Office in ratio of Turnover of Dadra unit to total Turnover of the assessee company. The allocation made by the assessee company is duly certified by a technical person Chartered Accountant. The revenue has failed to point out any cogent reasons and material for a different allocation of expenditure in addition*

to the allocation made by the assessee. Since there is no cogent material on evidence available on record, we are of the considered view that the allocation in respect of Head Office corporate expenses and advertisement expenses made by the assessee are required to be accepted. The Assessing Officer is directed to accept the allocation of the expenses as per the allocation of the expenses by the assessee. The Assessing Officer need not make any further allocation in this regard for computation of deduction u/s. 80IB. As regard the depreciation on assets at Head Office, we notice that the assessee has allocated 50% corporate expenses as the same were found related to Dadra unit. The assessee should have followed the consistency when the assessee on its own has allocated 50% corporate expenses. We are of the view that the deprecation on assets of Head Office is also required to be allocated in the same proportion. We find that disallowance on account of deprecation of Head Office is warranted. The Assessing Officer is directed to calculate the disallowance amount by adopting source basis and ratio as adopted by the assessee for considering Head Office expenses. The Assessing Officer is directed according.

16. As this issue has been dealt with by the co-ordinate bench and as there is no change in circumstances, we deem it fit to respectfully follow the said decision. Therefore, ground no. 1 raised by the assessee is allowed."

010. In view of the above findings respectfully following the decision of the co-ordinate Bench for A.Y. 2006-07, we allow the ground no.1 of the appeal of the assessee.

011. Ground no.2 of the appeal is with respect to the treatment of advertisement expenses in the nature of brand building expenses and consequently, considered the same capital expenditure.

012. The fact shows that it is not the claim of the learned Assessing Officer, however, the appeal before the learned CIT (A) at paragraph no.10.6, he held that assessee has incurred expenditure of ₹853.85 lacs on brand building, therefore, he enhanced income by issuing notice under Section 251 of the Act, he following his own order for A.Y. 2006-07 and held that entire expenditure of ₹953.95 lacs incurred by the assessee company is on brand building and therefore, is capital in nature accordingly, he enhanced the income of the assessee and directed the learned Assessing Officer to grant the allowances of deprecation on it appropriately. Therefore, assessee is in appeal on this ground.

013. The learned Authorized Representative submitted that identical issue arise in case of the assessee for A.Y. 2006-07, wherein the co-ordinate Bench in ITA No.4792/Mum/2011, vide paragraph no.17 to 20 following the decision of the Hon'ble High Court in case of CIT vs. Asian Paints India Ltd. 75 taxmann.com 152 (Bom) has deleted the addition holding that such advertisement expenditure are revenue in nature. Therefore, this issue is covered in favour of the assessee. The learned Departmental Representative supported the order of the learned Commissioner of Income tax (Appeals).

014. The ld DR vehemently supported appellate order.

015. We have carefully considered the rival contentions and perused the orders of the lower authorities as well as the order of the co-ordinate Bench for A.Y. 2006-07, wherein in paragraph no. 17 to 20, following the decision of the Hon'ble Bombay High Court, it was held that such advertisement expenditure are revenue expenditure and not capital expenditure, allowed the claim of the assessee. Accordingly, respectfully following the decision of the co-ordinate Bench, we also hold that amount of ₹853.85 lacs of advertisement expenditure is revenue expenditure. The learned Assessing Officer is directed for deletion/ disallowance after taking into consideration if any depreciation is allowed on that, accordingly, ground no.2 of the appeal is allowed.

016. Ground no.3 of the appeal of the assessee is regarding allocation of sales commission expenditure while computing eligible income for deduction under Section 80IB of the Act. It is the claim of the learned Authorized Representative

that the same amounts to the double addition. He submitted that as per paragraph no.12 of the order of the learned CIT (A), the assessee did not press this ground of appeal, however, it was submitted that it has resulted into double disallowance of the same expenditure when further expenditure is allocated.

017. The learned Departmental Representative stated that if it amounts to double disallowance of expenditure, the learned Assessing Officer may be directed to verify the same and if it amounts to double disallowance, it requires to be rectified.

018. We have carefully considered the rival contentions and perused the orders of the lower authorities. The commission allocated to Section 801B unit, has been upheld by the learned CIT (A) vide paragraph no.12 of his order. However, if that amounts to double disallowance, it requires to be deleted. In view of this, we restore the ground no.3 of the appeal to the file of the learned Assessing Officer to verify the claim of double disallowance.

019. The ground no.4 is also connected with the same and assessee has raised an additional ground no.7 on this issue itself. Therefore, all these grounds are restored back to the file of the learned Assessing Officer with a direction to the assessee to show before the learned Assessing Officer that it amounts to double disallowance, the learned Assessing Officer may verify the same and if it amounts to double disallowance, it may be rectified accordingly by deleting the same. Accordingly, ground no.3 and 4 as well as ground no.7, are allowed.

020. Ground no.5 & 6, are with respect to non-granting of credit of ₹24,65,016/- on dividend income received from foreign company, the learned CIT (A) has directed the learned Assessing Officer to verify the provisions of law and also the Double Taxation Avoidance Agreement between India and Malaysia and if the credit claim is allowable to the assessee, same may be considered. We do not find any infirmity in the order of the learned CIT (A) in giving the above direction. Accordingly, we restore this ground back to the file of the learned Assessing Officer and direct him to verify the claim of the credit along with quantification of the above sum in accordance with the provisions of Double

Taxation Avoidance Agreement between India and Malaysia. Accordingly, ground no.5 and 6 of the appeal are allowed with above direction.

021. Ground no.7 and 8 are with respect to the levy of interest under Section 234B and 234C of the Act which are consequential in nature and therefore, same are dismissed.

022. Assessee has raised three additional grounds of appeal as per letter dated 18 December 2015.

023. The first Additional ground of appeal on deduction in respect of provision for leave encashment. Same was not pressed in view of the decision of the Hon'ble Supreme Court in Union of India Vs. Exide Industries Ltd. 425 ITR 1. Therefore, same ground is not admitted and dismissed.

024. The second additional ground is with respect to the incorrect computation under section 145A of the act. The claim of the assessee is that it is following exclusive method of accounting for Cenvat credit in the books of account and hence opening inventory, purchases and closing inventory are recorded net of cenvat credit. As per section 145A, purchases sales and value of inventory should be adjusted to include the amount of any tax duty cess or fee actually paid or incurred to bring the goods to the place of present location and condition. Accounting standard 2, guidance note on accounting treatment for cenvat and guidance note on tax audit issued by the Institute of chartered accountants of India has stated that assessee cannot follow inclusive method of accounting and adjustment made under section 145A will have no impact on profit and loss account. However in the computation of income for the assessment year the assessee has offered to tax a sum of ₹ 3 20,82,000/– under section 145A based on reporting in clause number 12 (b) read with the revised annexure IIA of the tax audit report. Therefore in view of the explicit provisions of section 145A as explained and guidance note on tax audit, adjustment in only the value of the opening and closing stock in isolation is contrary to the provisions of the said section which requires an adjustment in the value of opening stock, purchases, sales and closing stock. If adjustments on all counts under section 145A made then net effect of the said adjustment would be nil.

Thus, the amount offered by the assessee of ₹ 32,082,000/– is erroneously offered to tax in the computation of income.

025. On careful consideration of the facts we find that the additional ground is arising out of the facts available on record, no fresh facts are required to be investigated and it is merely a correction of the correct treatment to be given under section 145A of the act. Therefore, we restore this ground of appeal back to the file of the learned assessing officer to examine computation in accordance with the provisions of section 145A. If the claim of the assessee is found to be correct, the necessary adjustment/allowance may be granted. If, it is not available in accordance with the law, the assessee may be granted opportunity of hearing before deciding the issue. Accordingly, additional ground 2 is allowed with above directions.

026. The additional ground number 3 is with respect to the depreciation of ₹ 170,249,797 which includes an additional depreciation on eligible assets of ₹ 21,092,014. The additional depreciation has been claimed on the eligible assets installed and put by the assessee during the previous year 2006 – 07 additional depreciation is allowed to the extent of 10 % as those assets are put to use for less than 180 days in that previous year. . However claim for balance 10% additional depreciation in respect of eligible assets of ₹ 92,507,148/– installed and put to use for less than 180 days in the previous year 2005 – 06 was inordinately not claimed in the return of income. Hence, the claim for balance 10% additional depreciation amounting to ₹ 9,250,715/– on such assets are claimed.

027. We have carefully considered the contentions of the assessee as well as the arguments of the parties. We find that the assessee is eligible for additional depreciation under section 32 (1) (iia) on the assets purchased and put to use for less than 180 days in the previous year of ₹ 92,507,148/–. However as assets are used for less than 180 days only 10 % of additional depreciation is allowed. The balance 10% of the additional depreciation is allowable to the assessee in the next year. We do not find any infirmity in the claim of the assessee. The claim of the assessee is also supported by several judicial precedents. Accordingly additional ground number 3 of the appeal is allowed and Ld

assessing officer is directed to grant the additional depreciation to the assessee at the rate of 10% on the assets purchased in earlier financial year which was put to use for less than 180 days in that year. Accordingly additional ground number 3 of the appeal is allowed.

028. Assessee has also raised an additional ground of deduction of education cess on income tax, dividend distribution tax and fringe benefit tax, it was not pressed during the course of hearing and therefore same is dismissed.

029. Assessee has also raised additional ground no 5 with respect to the exclusion of the amount of retention money included in sales since the same is not accrued during the year, in computing the total income under the normal provisions of the act. As the assessee is engaged in the contract business of erection and commissioning of air-conditioning system whereby certain percentage of bill raised is retained by the parties as retention money. During the year under consideration sales bills credited to the profit and loss account by the appellant includes a retention money amounting to ₹ 27,863,957. The fact clearly shows that a certain percentage of bills raised retained by the parties as retention money to be paid after successful completion of the contract or on fulfillment of certain predetermined conditions mentioned in the order itself. Since sales are booked on percentage completion method, the amount of retention money is already included in the sale. The said amount does not accrue as income to the appellant and the same needs to be excluded from the computation of total income. Such is the mandate of the honourable jurisdictional High Court in case of CIT versus associated cables private limited (2006) to 86 ITR 596 (Bombay).

030. We find that if the facts are available on record, the assessee can raise a ground for forgotten claim at appellate stage also. The identical issue arose in case of the assessee for assessment year 2006 – 07 in ITA number 4792/M/2011 dated 30/11/2023 wherein at Para paragraph number 29 – 31 this ground is decided in favour of the assessee. Therefore we also direct the learned assessing officer, respectfully following the decision of the coordinate bench in assessee's own case for the earlier year, to examine the sum of retention money offered for taxation in the sale for this year and if the claim is found to be correct, to reduce

the same from the income for this year and to include the same as income in the year in which the retention price reaches finality. Accordingly ground number 5 raised additional ground of appeal is allowed.

031. The assessee has raised 6th additional ground with respect to the exclusion of sales tax incentive available during the year in respect of the other unit being capital in nature in computing the total income under the normal provisions of the act. The brief fact shows that the during the previous year the appellant has availed sales tax incentive by way of exemption of local sales tax and Central sales tax in respect of goods manufactured or processed by its eligible manufacturing unit set up in Dadra where the backward area exemption scheme is available. Identical issue arose in case of the assessee for assessment year 2006 – 07 w herein as per paragraph number 21 – 24, this issue is decided and the matter is restored back to the file of the learned assessing officer. With similar direction, respectfully following the decision of the coordinate bench in assessee's own case, the additional ground is restored to the file of the learned AO.

032. Accordingly, appeal filed by the assessee is partly allowed with above directions.

033. Now we come to the appeal of the learned assessing officer.

034. The first ground of appeal is with respect to the deleting the disallowance of ₹ 2,425,312/– on account of payment made to clubs. The learned assessing officer is of the view that entrance fees paid to the club is a capital expenditure. The brief facts of the case shows that the assessee has incurred ₹ 54,056/– towards the entrance fee and ₹ 2,371,256/– towards subscription paid to the club. The assessee claimed the same as a business expenditure under the provisions of section 37 (1) of the act. The learned assessing officer relying on the decision of the honourable Kerala High Court held that the entrance fee paid to clubs is a capital expenditure not allowable as business expenditure and disallowed the aggregate sum of ₹ 2,425,312. The learned CIT – A deleted the addition following the decision of order of the coordinate bench in assessee's own case

for assessment year 94-95 and 95-96 wherein the identical disallowance was deleted. The learned assessing officer is aggrieved with the same.

035. The learned departmental representative vehemently contested that the entrance fee paid to the club is a capital expenditure and cannot be allowed under section 37 (1) of the act.

036. The learned authorised representative stated that now the honourable Supreme Court has decided this issue in case of CIT versus United Glass Manufacturing Co Ltd (2012 –TIOL-102 – SC – IT) wherein it has been held that the club membership fees of the employees is a pure business expenses and the deduction is allowable under section 37 (1) of the act.

037. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the assessee has paid the club membership expenditure for the employees of the assessee. Therefore now the issue is squarely covered by the decision of the honourable Supreme Court in case of CIT versus United Glass manufacturing Co Ltd (supra) and therefore no infirmity can be found in the deletion of the disallowance made by the learned CIT – A. Accordingly ground number 1 of the appeal of the learned assessing officer is dismissed.

038. Ground number 2 of the appeal is with respect to the setting aside the disallowance made by the learned assessing officer under section 14 A of the act of ₹ 830,696. The fact shows that the assessee has earned dividend income of ₹ 33,108,700 out of which ₹ 23,978,700 was claimed as exempt income under section 10 (34) of the act. The assessee did not make any disallowance under section 14 A since no expenditure was claimed to have been incurred for earning the said income. The learned assessing officer applied the provisions of rule 8D and made a disallowance of ₹ 830,696/–. The learned CIT – A held that the rule 8D does not apply to the impugned assessment year and therefore directed the learned assessing officer to make disallowance on reasonable basis in accordance with the decision of the honourable Bombay High Court in 328 ITR 81. The learned assessing officer is aggrieved with the above direction.

039. On hearing both the parties we find that there is no infirmity in the direction of the learned CIT – A that rule 8D cannot apply to the impugned assessment year and the assessing officer has to make disallowance on reasonable basis. Identical issue arose in case of the assessee for assessment year 2006 – 07 wherein the coordinate bench has also upheld such direction of the learned CIT – A. There is no change in the facts and circumstances of the case and therefore respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2006 – 07 we find no infirmity in the direction of the learned CIT – A. Accordingly ground number 2 of the appeal of the learned assessing officer is dismissed.

040. With respect to ground number 3 on allocation of 50% of the head office expenses as against 100 % allocated by the learned assessing officer to the eligible unit is connected to the ground number 1 of the appeal of the assessee where the coordinate bench has already decided this issue in favour of the assessee holding that 100 % t of the head office expenses cannot be allocated to the eligible unit while claiming deduction under section 80 IB of the act. The facts clearly show that the assessee has claimed deduction under section 80 IB of the act in respect of a manufacturing unit situated in backward area. According to the computation of eligible income, the assessee has claimed 50% of corporate expenses related to the eligible units in the ratio of turnover of eligible units to total turnover of the company. The learned assessing officer rejected the above allocation and held that hundred percent of the head office expenses in the ratio of turnover of eligible unit to the total turnover of the company should have been considered as an expenses of the eligible unit. Accordingly the order was passed. On appeal before the learned CIT – A, he followed the order of the income tax appellate Tribunal in assessee's own case for earlier years where they have directed the learned assessing officer to accept allocation of expenses at 50% is made by the assessee. We find that when this issue is squarely covered in favour of the assessee, there is no infirmity in the order of the learned CIT – A following the same. The learned departmental representative also did not show us any reason to deviate from the same. Therefore we do not find any infirmity in the order of the learned CIT – A in directing the learned assessing officer to consider the allocation of 50% of the

head office expenses and then to allocate the same in the ratio of total turnover to the turnover of the eligible units. Accordingly, ground number 3 of the appeal is dismissed.

041. Ground number 4 and 6 is with respect to the allocation of 50% of the depreciation on head office assets against hundred percent allocated by the learned assessing officer to the eligible unit by the learned CIT – A. This is identical to ground number 3 of the appeal of the AO where the issue was of the expenses pertaining to the head office and this ground relates to issue with respect to the depreciation of head office assets. As the reasoning given by the learned CIT – A in following the decision of the coordinate bench in assessee's own case for earlier years, we do not find any infirmity in the order of the learned CIT – A in following the decision of the coordinate bench in assessee's own case for earlier years. Accordingly, ground number 4 and 6 of the appeal are dismissed.

042. Ground number 5 of the appeal is with respect to accepting the allocation of travelling expenses. The fact shows that the assessee while computing the profits eligible for deduction under section 80 IB of the act allocated travelling expenses directly incurred by the eligible units and various regions. Further 50% of the travelling expenses of ₹ 16,319,625/– incurred by the head office were also located to the eligible units in the ratio of turnover of eligible unit to total turnover of the company. The learned assessing officer rejected the above allocation and allocated total travelling expenses of ₹ 228,490,000 incurred by the assessee in ratio of turnover of eligible unit to the total turnover of the company. The learned CIT – A following the order of the coordinate bench in assessee's own case for assessment year 2003 – 04 directed the AO to not to allocate any further travelling expenses over and above expenses already allocated by the assessee. As the learned CIT – A has followed the decision of the coordinate bench in assessee's own case, no reasons were shown by the learned departmental representative to deviate from the same. Accordingly we confirm the order of the learned CIT – A in accepting the allocation of travelling expenses made by the assessee of ₹ 16,319,625 of the head office which were allocated to the eligible unit in the ratio of turnover of those units to the total

turnover of the company. Accordingly, ground number 5 of the appeal is dismissed.

043. Ground number 7 is with respect to the allocation of 50% of the head office expenses as against hundred percent allocated by the AO to the eligible units four which deduction is claimed under section 80 IC of the act. Ground number 8 is with respect to the 50% depreciation on head offices assets and ground number 9 is related to the allocation of travelling expenses. All these grounds are identical to ground number 3 – 6 of the appeal of the learned assessing officer where the contention was with respect to the deduction of eligible units claimed under section 80 IB of the act. The learned CIT – A has given similar reasoning. The learned departmental representative could not show us any reason to deviate for computing the profits of eligible unit either under section 80 IB or under section 80 IC of the act. Therefore, the similar reasons given by us while accepting the order of the learned CIT – A on identical computation mechanism under section 80 IB of the act, we also confirm the order of the learned CIT – A4 computation mechanism under section 80 IC of the act. Accordingly, ground numbers 7 – 9 of the appeal of the learned assessing officer are dismissed.

044. Thus, appeal filed by the assessing officer is dismissed.

045. In the result, appeal filed by the learned AO is dismissed and appeal of the assessee is partly allowed.

Order pronounced in the open court on 31.01.2024.

Sd/-	Sd/-
(SANDEEP SINGH KARHAIL)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.01.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent

3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai