

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

**BEFORE SHRI VIKAS AWASTHY, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 6626/Mum/2009  
(Assessment Year: 2005-06)**

<b>Sanofi India Limited</b> (Formerly known as Aventis Pharma Ltd.), Sanofi House, CTS 117-B, L&T Business Park, Saki Vihar Road Powai, Mumbai- 400072 <b>PAN : AAACH2736F</b>	Vs.	<b>The Addl. CIT, Range-8(1),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**I.T.A. No. 7987/Mum/2010  
(Assessment Year: 2006-07)**

<b>Sanofi India Limited</b> (Formerly known as Aventis Pharma Ltd.), Sanofi House, CTS 117-B, L&T Business Park, Saki Vihar Road Powai, Mumbai- 400093 <b>PAN : AAACH2736F</b>	Vs.	<b>The Addl. CIT, Range-8(1),</b> 2nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**I.T.A. No. 7712/Mum/2010  
(Assessment Year: 2006-07)**

<b>Asst. CIT, Circle-3(1)(1),</b> Room No. 607, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	<b>M/s Sanofi India Limited</b> (Earlier known as M/s Aventis Pharma Ltd.), 54-A, Sir Mathuradas Vasanji Road, Andheri (E), Mumbai- 400093 <b>PAN : AAACH2736F</b>
<b>Revenue)</b>	:	<b>Respondent)</b>

**I.T.A. No. 6698/Mum/2011**  
(Assessment Year: 2007-08)

<b>Asst. CIT, Circle-8(1),</b> Room No. 210, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	<b>M/s Sanofi India Limited</b> (Earlier known as M/s Aventis Pharma Ltd.), Aventis House, 54/A, Sir M.V. Road, Andheri (East) Mumbai- 400093 <b>PAN : AAACH2736F</b>
<b>Revenue)</b>	:	<b>Respondent)</b>

**Cross Appeal No. 165/Mum/2012**  
(Assessment Year: 2007-08)

<b>Sanofi India Limited</b> (Formerly known as Aventis Pharma Ltd.), Sanofi House, CTS 117-B, L&T Business Park, Saki Vihar Road Mumbai- 400072 <b>PAN : AAACH2736F</b>	Vs.	<b>The Addl. CIT, Range-8(1),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Shri J.D. Mistri & Shri Sanjiv M. Shah, CA

**Revenue/Respondent by** : Shri Ajay Chandra (CIT-DR) & Shri Manoj Kumar Sinha (Sr. DR)

**Date of Hearing** : 14.12.2023

**Date of Pronouncement** : 23.02.2024

ORDER

**Per Bench:**

These appeals and cross objections of the assessee and the appeals of the Revenue are against the different orders of the Commissioner of Income Tax (Appeals)-VIII, Mumbai [for short 'the CIT(A)] dated 20.11.2009 for the AY

2005-06, the CIT(A)-16 dated 22.09.2010 for AY 2006-07 and the order of the CIT(A)-16 dated 15.07.2011 for AY 2007-08. The issues contended in these appeals are common and therefore, these appeals are heard together and disposed of through this common order.

### **ITA No. 6626/Mum/2009 AY 2005-06 – Assessee's appeal**

2. The assessee filed a return of income for AY 2005-06 on 30.10.2005 declaring total income of Rs. 211,16,00,422/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The AO completed the assessment assessing the income at Rs. 230,48,96,400/-. Aggrieved the assessee filed further appeal before the CIT(A) who confirmed the additions/disallowances made by the AO. The assessee is in appeal before the Tribunal contending the various additions/disallowances which are adjudicated as under:

#### **Disallowance of depreciation on obsolete asset – Ground No.1**

The AO during the course of assessment noticed that the assessee has written off certain assets as obsolete assets and has claimed depreciation on the same. The AO further noticed that the amount written off is added in the computation of total income. The AO called on the assessee to submit the relevant details pertaining to the obsolete assets which have been written off and the assessee responded vide letter dated 19.11.2008. However, the AO relied on the decision in assessee's own case for earlier AYs and accordingly made an addition of Rs. 52,26,287/-. The CIT(A) confirmed the addition by placing reliance on the decision in assessee's own case for AY 2003-04 and earlier years. The relevant observations of the CIT(A) is extracted below:

*“1.4 This issue has been covered in the case of the appellant for A.Y.2003- 04 and earlier years. The facts of the case are that the appellant company has obsolete assets to the tune of Rs.52,26,287/-. During the year under consideration, the appellant has not used these assets for the purpose of business but claimed depreciation u/s.32 of the I.T. Act. However, the A.O. has disallowed the depreciation with the argument that since the assets are not used for the business purposes, depreciation is not allowable as per provisions of section 32. This issue has decided against the assessee in the earlier years also. Section 32(1) has laid down condition for claiming depreciation that the assets should have been owned by the person claiming depreciation and it should have been used for purpose of the business or profession. To strengthen this view, reliance is placed on the following decisions:-*

*1.5 206 ITR 682, 124 ITR 561 Bom, 131 ITR 884 Gujarat, where it is held that assets not used for business purposes, no depreciation is allowable. In case of Allied Electronics and Magnetics Ltd. Vs. DCIT 160 Taxman 325, it was held that to claim write-off of discarded unit, plant and machinery u/s.31(2)(iii), same plant and machinery must have been used during such year. The Hon'ble Mumbai Tribunal in case of ACIT Vs. Rhishi Rook Polymers Pvt. Ltd. 102 ITR 121 has held that there should actual use of assets to be eligible for depreciation- not put to use because of strike or block out - no depreciation allowable. The decision relied upon by the appellant could not be submitted during the appellate proceedings. Therefore, the facts of that case cannot be known whether it was applicable to the facts of this case or not, therefore, not helpful to the appellant company.*

*1.6 Keeping in view all these facts and circumstances and decision of the Hon'ble Courts and the provisions of section 32(1) which is very clear that for claiming depreciation, the assets should have been used for business purposes. However, in the case of the assessee, the assets have not been used for the business of the appellant, therefore, depreciation cannot be allowed.*

*In totality of facts and circumstances, the order of the A.O. on this issue is confirmed and ground of appeal is dismissed.”*

3. The Id. AR submitted that this is a recurring issue where the Revenue has been disallowing the depreciation on assets written off as obsolete assets without appreciating the fact that the depreciation under the Income Tax Act is claimed on the "Block of Assets" and not based on the Written Down Value (WDV) of the

assets. The ld. AR drew our attention to the decision of the co-ordinate bench in assessee's own case for AY 2003-04 (ITA No. 1606/Mum/2007 dated 31.10.2023) to submit that lower authorities have relied on the earlier years decision would mean that the decision of the Tribunal in assessee's own case for AY 2003-04 is applicable for the year under consideration also. Accordingly, the ld. AR prayed that the disallowance be deleted.

4. The ld. DR relied on the order of the lower authorities.

5. We have heard the parties and perused the material on record. We noticed that the Co-ordinate Bench in assessee's own case for AY 2003-04 has considered an identical issue and held that

*“10. Considered the rival submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2002-03. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3092/Mum/2006 dated 11.08.2021 held as under: -*

*“15. We have considered rival submissions and perused materials on record. It evident, assessee's claim of depreciation on the opening WDV of block of assets has been disallowed simply for the reason that similar claim made by the assessee in preceding assessment years has been disallowed. As brought to our notice by learned senior counsel for the assessee, while deciding identical issue in assessee's own case in assessment years 1998-99 to 2001-02, the Tribunal has allowed assessee's claim of depreciation. In the latest order passed for the assessment year 2001-02 in ITA No.8978/Mum/2004 & 8746/Mum/2004 dated 28-07-2014, the Tribunal, following its earlier order, has allowed assessee's claim holding as under:-*

*"8.1 We have considered rival contentions and found from the record that exactly similar issue has been decided by the Tribunal in assessee's own case for the assessment year 1998-99 and 1999-2000, wherein the Tribunal after considering the decision in the case of G.R.Shipping Company and Inductotherm India Ltd, 73 ITD 529, held that depreciation was allowable on obsolete assets to the assessee. However, against this decision of the Tribunal, the department has not*

*filed any further appeal before the Hon'ble High Court. Thereafter relying the same, the Tribunal in assessee's own case for the assessment year 2000-01 has decided the issue in favour of the assessee.*

*8.2 As the facts and circumstances during the year under consideration are same, respectfully following the decision of the Tribunal in assessee's own case, we do not find any merit in the action of the AO for declining assessee's claim of depreciation on obsolete assets."*

*16. Facts being identical, respectfully following the decisions of the Tribunal, as referred to above, we delete the disallowance. This ground is allowed.*

*11. Further, the Coordinate Bench in assessee's own case for the A.Y.2001-02 in ITA.No. 8978/Mum/2004 held as under: -*

*"8. Ground No.3 is regarding disallowance of estimated depreciation on obsolete assets of Rs. 68,16,036/-. It was contended by the learned AR that this issue has been decided by the Hon'ble Bombay High Court in the case of CIT VS. GR Shipping Ltd., ITA No.598/2009 in favour of the assessee and relying upon the aforesaid decision of the Hon'ble jurisdictional High Court, the Tribunal has decided the issue in assessee's own case for the assessment year 2000-01 vide order dated 16-4- 2014.*

*8.1 We have considered rival contentions and found from the record that exactly similar issue has been decided by the Tribunal in assessee's own case for the assessment year 1998- 99 and 1999- 2000, wherein the Tribunal after considering the decision in the case of G.R.Shipping Company and Inductotherm India Ltd, 73 ITD 529. held that depreciation was allowable on obsolete assets to the assessee. However, against this decision of the Tribunal, the department has not filed any further appeal before the Hon'ble High court. Thereafter relying the same, the Tribunal in assessee's own case for the assessment year 2000-01 has decided the issue in favour of the assessee.*

*8.2 As the facts and circumstances during the year under consideration are same, respectfully following the decision of the Tribunal in assessee's own case, we do not find any merit in the action of the AO for declining assessee's claim of depreciation on obsolete assets."*

*12. Respectfully following the above decisions and following the principle of consistency, the view taken by the Coordinate Bench in previous Assessment*

*Years are respectfully followed, ground raised by the assessee is accordingly allowed.”*

6. We noticed that the lower authorities have made the disallowance by placing reliance on their own orders in assessee's case for earlier AYs. Therefore, there is merit in the contention of the ld. AR that the decision of the Tribunal for AY 2003-04 is applicable for the year under consideration also. Accordingly respectfully following the above decision, we hold that the disallowance made towards depreciation is not sustainable. This ground of the assessee is allowed.

### **Disallowance under section 40A(2)(b)- Ground No.2**

7. The assessee during the year under consideration has purchased 47,83,150 vials of Rabipur Vaccines from M/s Chiron Behrings Vaccines Pvt. Ltd. (CBV) at the average price of Rs. 123 per vial. The assessee is substantially interested in CBV since the assessee holds 49% of shares in CBV. The assessee entered into marketing and distribution agreement with CBV and accordingly the assessee has undertaken the marketing and distribution of Vaccines produced by CBV in India, Sri Lanka and Bangladesh. The AO invoked the provisions of section 40A(2)(b) to hold that the price at which the assessee has bought the vials is an excess as compared to the price at which CBV is selling the vials to its other Associated Enterprises (AE). Therefore, the AO made an addition of Rs. 16,26,69,188/-. The AO had relied on the decision in assessee's case for earlier AYs in this regard. The assessee before the CIT(A) submitted that the issue is covered by the decision of the Jurisdictional High Court in the case of *CIT Vs. Indo-Saudi Services (Travel) Pvt. Ltd. (2008) 12 ITR Bombay 304* and also placed reliance on the CBDT Circular No. 6-P dated 06.07.1968. The assessee further submitted that both the assessee and CBV are assessed to tax under the same jurisdiction paying taxes at

the same rate and therefore, there is no question of tax evasion in the transaction of purchasing the vials from CBV by the assessee. Accordingly, the assessee submitted that the disallowance under section 40A(2)(b) is not sustainable. The CIT(A) however upheld the disallowance by placing reliance on the decision of his predecessor in assessee's own case for AY 2003-04.

8. The ld. AR submitted that the addition made by the AO is based on the export price charged by CBV to its AE and the same cannot be compared with a price at which CBV sells to assessee in India. The ld. AR further submitted that the assessee is having a Gross Profit of approximately 40% even after the alleged higher price paid for purchase of Vaccine and that the average profit made by other companies trading in pharmaceutical products is in the range of 18% only. The ld. AR also submitted that both the assessee and CBV are paying income tax at the same rate without any set off of losses which would mean that there is no tax evasion by alleged selling of the Vaccine at higher price. The ld. AR further submitted that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2003-04 (supra) where it has been held that

*“37. Considered the rival submissions and material placed on record, we observe that Assessing Officer has disallowed the portion of cost of purchase of vial, purchased from Chiron India, which is a subsidiary company of the assessee. Based on the information available on record, we observe that the subsidiary is a Joint venture between the assessee and Chiron USA with the holding ratio of 49:51 between them. As per the agreement for forming the above said JV in the form of subsidiary company ie., Chiron India, as per the terms of engagement, it is agreed to manufacture the Rabipur vaccine for the exclusive Indian/South Asia Market, Chiron India will produce the vaccine and sell the same to the assessee at the 60% of the selling price of the Assessee. Accordingly, the obligation of the assessee to market the same in the South Asia, which has demand of about 80 to 85% of the capacity of the Chiron India. The rest of the capacity are available to Chiron USA to market in the rest of World. From the record we observe that the assessee has*

*purchased the vaccine at 60% of the selling price in India ie., at ₹.127/- as against the selling price of ₹.96/- to Chiron USA by the Chiron India. The Ld CIT(A)/AO has considered the above difference as excessive u/s 40A(2) of the Act.*

*38. In subsequent AY 2004-05, the respective CIT(A) has decided the issue in favour of the assessee by distinguishing point of view of the AO. After careful consideration of the fact on record, we are of the view that the Rabipur vaccine is unique and manufactured and marketed in the South Asia by the assessee with the agreement with the Chiron Group. The majority of the vaccines are sold in the India and adjacent countries. There is no equivalent vaccine manufactured by any other pharmaceutical companies. Therefore, Chiron Group of companies holding monopoly in this line of business, it shows that there is no comparable available for this vaccine. Therefore, it has to be analyzed independently and on commercial basis.*

*39. As per the JV agreement, the Chiron India will produce and market the same by the assessee company with full monopoly on the market, therefore there is no comparable. Then it has to be bench marked on the commercial terms only. As per the commercial understanding, Chiron India produces and sells 80 to 85% of the vaccines to assessee and rest of the capacity are utilized to manufacture and sells to Chiron USA having marketing right to the rest of the world. Therefore, the success of the venture depends upon the marketing of the vaccines in the South Asia, where the assessee has the marketing rights. Further we observe that the assessee buys the vaccine at the 60% of the selling price of vaccine marketed by it. Since, the assessee has to buy the vaccine only from Chiron India, which supplies the same having monopoly over the product, it is left to the Chiron group of companies to decide on the pricing of the vaccines. They sell the vaccines to assessee at the cost of 60% of the selling price, which ultimately recovers its cost of manufacturing, which is also based on the JV agreement. The Chiron group markets the same at the lesser cost does not make, anyway, affects the marketability or achieving the profitability of the assessee in the whole marketing strategy of the Chiron Group. It is wrong on the part of the revenue authorities in invoking the provisions of section 40A(2) of the Act in this case. Even otherwise, the existence of the assessee depends on the JV agreement and majority of the vaccines are marketed only by the assessee and the business of the assessee depends on the supply of vaccines from Chiron India, it is like co existence and mutual dependence.*

40. In the similar situation and facts, the Hon'ble Bombay High Court in the case of *CIT v. Goa Mineral Pvt. Ltd.*, [2017] 396 ITR 452 (Bom.) (Goa Bench) held as under: -

“5. We have duly considered the rival contentions and we have also gone through the records. Section 40A(2)(a) of the Income Tax Act reads thus :

“(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the [Assessing] Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction”

6. On going through the said provisions, it clearly provides that in case the first part of the Section is satisfied, the question of refusing such charges when such amounts are not excessive would not at all arise. In the present case, the authorities below have concurrently found that the charges claimed by the respondent were not excessive as they were based on the charges fixed by the Barge Owners Association. As the findings of fact have been arrived at based on the documentary evidence on record whose authenticity has not been disputed by the appellant, we find that such findings cannot be said to be perverse. The learned counsel appearing for the appellant was unable to point out that the finding rendered by the authorities below is on the basis of misreading of the evidence or that any relevant document has been overlooked while arriving at such findings of fact. As already pointed out herein above, the findings of fact are based on the documentary evidence and consequently, this Court in the present appeals under Section 260 of the Income Tax Act cannot reappraise the evidence to come to any contrary findings. As the appellant have failed to produce any evidence or material to show that the amount of charges were excessive, we are of the opinion that there is no infirmity committed by the Tribunal while coming to the conclusion that the amount charged are not excessive and as such do not come within the four corners of Section 40A(2)(a) of the Income Tax Act.

7. In fact, this Court in the judgment in the case of *V. S. Dempo & Co. (P) Ltd.*, (supra) has observed at paras 6, 9 and 10 thus :

*“6. In our view, in a business of export consistency of supply as well as quality of supply is important. In order to assure a consistent supply of material of the same quality the purchaser of a commodity may pay to a seller bound under a contract a little higher than the current rate. Furthermore, in case of yearly contracts by agreeing to buy goods at a specified rate the exporter is insulated from vagaries of any seasonal rise in the market rate. Therefore, unless the rate agreed is so very much excessive or unreasonable as to doubt the objective behind the agreement, it cannot be said that the rate, a little higher than the seasonal market rate is unjustified or amounts to diversion of profit. In this connection, the fact that the assessee as well as its subsidiary which is the seller are in the same tax bracket and pay same rate of tax is a fact which assumes importance. Admittedly, it is not a case of tax evasion inasmuch as if the rate would have been less, the assessee's profit would have been more, but the profits of the seller would have been less and both being taxable at the same rate, there would be no difference in the aggregate tax payable by the assessee and its subsidiary.*

*9. Clause (a) of sub-section (2) of Section 40A of the Act provides that where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of the sub-section and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as it so considered by him to be excessive or unreasonable, shall not be allowed as a deduction. The object of Section 40A(2) is to prevent diversion of income. An assessee who has large income and is liable to pay tax at the highest rate prescribed under the Act often seeks to transfer a part of his income to a related person who is not liable to pay tax at all or liable to pay tax at a rate lower than the rate at which the assessee pays the tax. In order to curb such tendency of diversion of income and thereby reducing the tax liability by illegitimate means, Section 40-A was added to the Act by an amendment made by the Finance Act, 1968. Clause (b) of Section 40A(2) gives the list of related persons. It is only where the payment is made by the assessee to the related persons mentioned in clause (b) of Section 40A(2) of the Act that the Assessing Officer gets jurisdiction to disallow the expenditure or a part of the expenditure which he considers excessive or unreasonable. Clause (b) of Section 40A(2) reads as under :*

*“40A(2)(b) The persons referred to in clause (a) are the following, namely:—*

- (i) where the assessee is an individual any relative of the assessee;*
- (ii) where the assessee is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;*
- (iii) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;*
- (iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;*
- (v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;*
- (vi) any person who carries on a business or profession,—*
  - (A) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or*
  - (B) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner, or member, has a substantial interest in the business or profession of that person.*

*Explanation.—For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,—*

- (a) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profit) carrying not less than twenty per cent of the voting power; and (b) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession.”*

*10. Learned Counsel for the appellant submitted that the present case falls under sub-clause (ii) or subclause (iv) of clause (b) of Section 40A(2). Subclause (ii) provides that where the assessee is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or*

*any relative of such director, partner or member would be a related person. In the present case, the assessee is a company and the seller is its subsidiary company. The seller i.e. the subsidiary company does not fall in any of the capacities mentioned under sub-clause (ii) of clause (b). Only a director of the company, partner of the firm, or member of the association or family or any relative of such director, partner or member is a related person, under subclause (ii) of clause (b) of sub-section (2). Another company, even if it is a subsidiary of the assessee, is not a related person within the meaning of sub-clause (ii) of clause (b) of Section 40A(2). Sub-clause (iv) of clause (b) of Section 40A(2) provides that in case of a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member is a related person. Again a subsidiary company does not fall in any of the class of persons mentioned in sub-clause (iv) of clause (b) of Section 40A(2). In law, a holding company is a member of subsidiary company and holds more than 50% equity share capital of the subsidiary company (except in cases where it controls the composition of the board of directors without holding majority of the shares). While the holding company is a member of its subsidiary company, the subsidiary company is not a member of the holding company. As, the subsidiary company was not a member of the assessee subclause (iv) of clause (b) of Section 40A(2) of the Act is also not attracted in the present case.”*

*8. Taking note of the said observations, we find that in the present case, the learned Tribunal has found in the impugned order dated 18.02.2009 for the Assessment Years 2003-2004 that there is no evidence brought on record to show that the payment itself was excessive and it had enriched the individual Directors. It is also noted that the records reveal that there is no undue advantage by the Directors by the arrangement and there is no loss to the Revenue as the subject amount has already been taxed in the hands of the HUF. It is further noted that the case of the HUFs has not been reopened and there is no reopening of the assessment of the individual Directors. It is also pointed out that the records reveal that the barges were taken on payment of time charter charges of income earned from the transportation of iron ore on the basis of per tonne rate as prescribed by the Goa Barge Owners Association. Considering the said factual position, the learned Tribunal observed that in the absence of any comparative case that the payments were excessive and unreasonable, the orders of the Revenue Authorities are liable to be set aside. The learned Tribunal also took note of the Circular dated 06.07.1968, particularly para 74 thereof*

*and noted that there is nothing on record to show that either of the parties enriched by getting a fixed sum of money as charter hire charges and the tax due by the Assessee has been reduced by this arrangement. The learned Tribunal also found that as far as the other appeal being I.T.A. No. 48/PANJ/2006, the issues involved are identical and consequently, the appeal filed by the respondents came to be allowed.*

*9. In the present case, we find that the factual findings are that there is no excessive payment or that the arrangement has in any way enriched the respondents which cannot be faulted as they are based on the appreciation of evidence by the learned Tribunal and no perversity has been shown to such findings by the appellant.*

*10. In such circumstances and for the aforesaid reasons, we find that the substantial question of law framed is answered against the Revenue/appellant. Both the appeals stand accordingly rejected.”*

*41. Respectfully following the above said decision of Hon'ble High Court and discussions in the above paras, we are inclined to allow the ground raised by the assessee.”*

9. Respectfully following the above decision of the Co-ordinate Bench, we hold that the addition made by the AO under section 40A(2)(b) is not sustainable and accordingly delete the same. This ground is allowed in favour of the assessee.

**Adjustment in the value of inventory on account of MODVAT Credit –  
Ground No.3**

10. The AO noticed that the assessee has unutilized MODVAT Credit and that the same are not forming part of closing stock. Accordingly the AO held that the accounts of the assessee are not prepared in accordance with provisions of section 145A since the assessee has not added the MODVAT Credit to closing stock. The AO therefore made an addition of Rs. 1,77,59,501/-. On further appeal, the CIT(A) upheld the addition by placing reliance on the decision in assessee's own case for AY 2003-04 .

11. The ld. AR submitted that the issue is covered by the decision of the Co-ordinate Bench and assessee's own case for AY 2003-04 where the Tribunal has held the issue in favour of the assessee.
12. The ld. DR on the other hand relied on the order of the lower authorities.
13. We have heard the parties and perused the material on record. We noticed that the Co-ordinate Bench in assessee's own case for AY 2003-04 has considered a similar issue where it has been held that

*“19. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2002-03. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3092/Mum/2006 dated 11.08.2021 held as under: -*

*“34. Facts being identical, respectfully following the aforesaid decision of the co-ordinate bench, we restore the issue to the assessing officer with similar directions. This ground is allowed for statistical purpose.*

*20. Further, the Coordinate Bench in assessee's own case for the A.Y.1999-2000 in ITA.No. 4180/Mum/2003 held as under: -*

*“2.9.1 We have heard both the parties, perused records and considered the matter carefully. The dispute is regarding adjustment on account of Modvat Credit u/s 145A of the Income-tax Act. Under the said provision, valuation of purchase and sale of goods and inventory has to be made on the basis of method of accounting regularly followed and further adjustment is required to be made to include the amount of any tax, duty, cess to bring the goods to the place of its location condition on the date of the valuation. Therefore, under the provision u/s 145A adjustment on account of tax, duty etc has to be made at all stages that is, opening stock, purchases and sales and closing stock. It has been held by the Hon'ble High Court of Delhi in case of Mahavir Aluminium Ltd. (295 ITR 77) that adjustment u/s 145A has to be made both to the opening stock and closing stock. This issue therefore in our view requires fresh examination. We, therefore, set aside the order of CIT(A), and restore*

*the matter to AO for passing a fresh order after allowing opportunity of hearing to assessee.”*

*21. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in previous Assessment Years is respectfully followed. It is brought to our notice that the department has accepted the similar decisions in the AY 2006-07 and 2007-08 were accepted by the revenue by not preferring appeals and subsequently no adjustments were proposed by Assessing Officer in the subsequent years, accordingly, this ground is decided in favour of the assessee. Hence this ground of appeal is allowed.”*

14. We noticed that the CIT(A) has followed the decision of his predecessor in assessee's case for AY 2003-04 while upholding the addition made by the AO. Therefore, there is merit in the contention that the decision of the Co-ordinate Bench for AY 2003-04 is applicable for the year under consideration also. Respectfully following the above decision we delete the adjustment made by the AO with respect to MODVAT Credit. This Ground of the assessee is allowed.

#### **Disallowance of Leave Encashment – Ground No. 4**

15. During the year under consideration the assessee has claimed expenditure towards leave encashment amounting to Rs. 40,75,171/-. The said claim is made on the basis of actual payment of leave encashment during the year in accordance with provisions of section 43B of the Act. The AO noticed that in the earlier years the assessee had claimed provision towards leave encashment as a deduction on the basis of actuarial valuation and that the same has been allowed by the revenue. Therefore the AO was of the view that the assessee during the year under consideration has claimed double deduction by making the claim on payment basis also. The AO further noticed that in earlier AYs the assessee was allowed 1/24<sup>th</sup> of the amount claimed and accordingly made an addition of Rs. 39,05,372/-.

However, the AO restricted the disallowance to Rs. 26,97,503/- based on what has already been claimed and allowed from AY 2001-02. The CIT(A) relied on the order for AY 2003-04 while confirming the disallowance made by the AO.

16. The ld. AR submitted that the assessee was claiming leave encashment on provision basis and the same was allowed until AY 2001-02. The ld. AR further submitted that during the year under consideration the assessee has made the claim on payment basis which cannot be disallowed in view of Explanation (3B) to section 43B. Accordingly, the ld. AR submitted that the leave encashment as claimed by the assessee should be allowed as a deduction.

17. The ld. DR on the other hand, submitted that since the assessee was allowed to claim leave encashment on provision basis until AY 2001-02, the assessee has to substantiate that the amount claimed during the year under consideration on payment basis does not include the amount already claimed on provision basis. Therefore, the ld. DR argued that the assessee has to evidence the claim that the amount debited to the P&L A/c does not pertain to earlier year's provision or otherwise the opening balance in the provision for leave encashment account needs to be disallowed.

18. We have heard the parties and perused the material on record. We noticed that in assessee's own case for AY 2003-04 the Co-ordinate bench has considered a similar issue and held that

*“47. Considered the rival submissions and material placed on record, we observe from the submissions made and material available on record. We notice that the assessee has started adopting the amended provisions of section 43B and started claiming actual payments of leave encashment. However, until previous AY, it has claimed deduction based on Actuarial valuation by*

*claiming on the basis of provisions created. Since the assessee has started adopting the expenses on actual payment basis, it is the duty of the assessee to declare the provisions created until previous assessment years and the same has to be reversed in the current assessment year and start claiming on the basis of actual payments.*

*48. We observe that the AO has rejected the submissions of the assessee and disallowed the actual claim made by the assessee without any discussion on the reversal of provisions by the assessee. Before us Ld.AR of the assessee submitted that the assessee has reversed the provisions made. It is fact on record that the assessee has claimed the expenses on leave encashment on the basis of actuarial valuation until previous year and no specific details were submitted before us to adjudicate the issue on merit, since it is factual matter, in our considered view, it needs to be verified by the tax authorities on the aspect of status of opening provisions outstanding in the books of the assessee, which was based on the actuarial valuation, which needs to be reversed first before allowing any expenditure on actual basis. Therefore, we are inclined to remit this issue back to the file of Assessing Officer to determine the provisions outstanding in the books of the assessee and disallow the same during this year and allow the actual claim of the assessee on the basis of actual payment. Accordingly, we allow the ground raised by the assessee for statistical purpose.”*

19. It is not in dispute that there has been a change in the manner in which the assessee has been claiming the deduction towards leave encashment from provision basis to actual payment basis pursuant to amendment in section 43B of the Act. It is also not disputed that the amount if already was allowed as a deduction on provision basis cannot be allowed once again on payment basis. We notice that the assessee is making provision for leave encashment on actuarial valuation basis which is done on year to date (YTD) cumulative basis and accordingly the difference between the opening and the closing provision as per the actuarial report gets debited to the P&L account. It is relevant to mention here that it would be difficult for the assessee to establish a one to one matching of employees for whom the provision is made with the payment since the provision is made on actuarial valuation. Given this we are of the view that the right way to

claim deduction is to disallow the amount of provision made in the current year as per the actuarial valuation i.e. provision that pertains to current year and allow the deduction based on actual payment made by the assessee towards leave encashment. Accordingly remit the issue back to the AO with a direction to disallow only the current year provision made towards leave encashment as per the actuarial valuation and allow the claim based on actual payment made by the assessee. The assessee is directed to submit the relevant details in this regard before the AO. It is ordered accordingly. This ground of the assessee is allowed for statistical purposes.

20. Ground No.5 is not pressed during the course of hearing, hence dismissed as not pressed.

**Disallowance of brokerage expenses incurred for giving premises on lease –  
Ground No.6**

21. The AO on perusal of the return of income noticed that the assessee has claimed a sum of Rs. 3,24,000/- as brokerage in respect of the rented premises. In this regard the assessee made the following submissions before the AO

*“12.3 In response, vide letter dated 03-12-2008 the assessee has stated as under:*

*"The company has paid Rs. 324,000 to Mehta Enterprises, as professional fee for sourcing & securing a suitable Licensee for its residential flat in a building "Rashmi" at Mumbai. This services resulted into the leave & Licence agreement with McKinsey & Company.*

*Prior to letting out, the said flat was occupied by the company's Managing Director. Since the new Managing Director did not occupy the flat as he wanted his residence nearer to the Head Office at Andheri, the said flat was*

*given on leave & licence basis to McKinsey. This expenditure was incurred to put to use its business asset to a profitable use and though the income from this premises after letting out has to be computed under the head income from house property, the deduction of professional fee is allowable u/s 37(1) from Business Income.”*

22. The AO did not accept the submissions of the assessee. The AO held that no expenditure is allowed when the income is offered under the "Income from House Property" except the adhoc deduction at 30%. Accordingly the AO disallowed the amount of Rs. 3,24,000/- claimed by the assessee towards brokerage charge. The CIT(A) upheld the order of the AO by placing reliance on the order of his predecessor for AY 2003-04. The ld. AR submitted that the brokerage expenditure was incurred by the assessee prior to letting out the flat on rent and therefore, cannot be disallowed on the basis that the same was not allowable under section 24 of the Act. The ld. AR further submitted the expenditure was incurred by the assessee in order to put the business asset to profitable use and therefore, it should be allowed as a deduction under section 37 of the Act.

23. The ld. DR on the other hand relied on the decision of the lower authorities.

24. We have heard the parties and perused the material on record. From the perusal of the submissions made by the assessee before the AO it is clear that the assessee has rented out the excess space available which was earlier used by the company's Managing Director to McKinsey & Co. and has entered into a leave and license agreement in this regard. It is further noticed that the assessee has paid a brokerage of Rs. 3,24,000/- to Mehta Enterprises who procured the tenant to the assessee. From these facts it is clear that the income arising to the assessee by renting out the excess space is to be taxed under the head "Income from House Property". Accordingly, the assessee is entitled to claim the deductions that are

allowable only under section 24 of the Act. Therefore, we are inclined to agree with the findings given by the lower authorities while considering the claim of the assessee. In this regard we direct the AO to consider the claim of the assessee as a deduction under the head "Income from House Property" and allowed the claim in accordance with law. It is ordered accordingly.

**Adjustments made to amount claimed as deduction under section 80IB-**  
**Ground No.7**

25. The AO while considering the deduction claimed by the assessee under section 80IB did not allow the claim to the extent of 30% of Rs. 10,70,852/- which was attributable to interest income from bank deposits, interest on deposits with Reliance Energy and vendor balances written back. The CIT(A) upheld the disallowance made by the AO by placing reliance on the decision of the Hon'ble Supreme Court in the case of Pandian Chemicals Ltd. v/s CIT 262 ITR 278.

26. The ld. AR in this regard submitted that the interest from bank deposits to the tune of Rs.4,26,913/- is derived from the bank deposit of Rs. 28,00,000/- placed by the assessee's Goa Unit to secure a bank guarantee in favour of the Goa Electricity Board. The ld. AR further submitted that the electricity power to the Goa Unit was supplied based on the bank guarantee and therefore, the interest earned on such deposit cannot be treated as not derived from business of the assessee. With regard the interest earned on deposit with Reliance Energy the ld. AR placed similar arguments since the deposit is linked with the power supply to the assessee. With regard to the amount written back the ld. AR submitted that the amount represents the profit derived from the business of the industrial undertaking since the balance outstanding i.e. written back now pertain to the business

expenditure of the assessee. The ld. AR argued that the words used in section 80IB are "derived from the business of an industrial undertaking" and therefore, the income earned by the business which has a direct nexus to the business of the assessee should be included for the purpose of deduction under section 80IB.

27. The ld. DR on the other hand relied on the order of the lower authorities to submit that the words "derived from" should interpreted narrowly as has been held by the Hon'ble Supreme Court in the case of Pandian Chemicals (supra).

28. We have heard the parties and perused the material on record. We notice that the issue of interest on deposits whether to be included for the purpose of deduction under section 80IB has been considered by the Hon'ble Bombay High Court in the case of CIT vs JagdishprasadM. Joshi ([2009] 318 ITR 420 (Bombay)) and the relevant observations are extracted below –

*1. Heard the learned counsel for the appellant and the learned counsel for the respondent. In the above appeals, the following substantial question of law arises :*

*"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the appeal of the assessee holding that the interest income earned by the assessee on fixed deposits with the bank and other interest income are eligible for deduction under section 80-IA of the Income-tax Act, 1961 ?"*

2. \*\*\*\*

*3. Mr. Suresh Kumar, learned counsel for the appellant, strongly relied upon the judgment of the Supreme Court in the case of Pandian Chemicals Ltd. v. CIT [\[2003\] 262 ITR 278](#) and also the judgment of the Madras High Court in the case of CIT v. Pandian Chemicals Ltd. [\[1998\] 233 ITR 497](#).*

*4. However, Mr. Murlidhar, learned counsel appearing on behalf of the respondent, strongly relied on the judgment of the Delhi High Court in the case of CIT v. Eltek SGS (P.) Ltd. [\[2008\] 300 ITR 6](#) wherein the Delhi High Court has in fact considered the very same issue, and also the judgment relied upon by the Revenue and has*

clearly distinguished the language employed under sections 80-IB and 80HH and has observed as under (pages 9, 10) :

*"That apart, section 80-IB of the Act does not use the expression 'profits and gains derived from an industrial undertaking' as used in section 80HH of the Act but uses the expression 'profits and gains derived from any business referred to in sub-section' . . .*

*A perusal of the above would show that there is a material difference between the language used in section 80HH of the Act and section 80-IB of the Act. While section 80HH requires that the profits and gains should be derived from the industrial undertaking, section 80-IB of the Act requires that the profits and gains should be derived from any business of the industrial undertaking. In other words, there need not necessarily be a direct nexus between the activity of an industrial undertaking and the profits and gains.*

*Learned counsel for the Revenue also drew our attention to Pandian Chemicals Ltd. v. CIT [2003] 262 ITR 278 (SC). However, on a reading of the judgment we find that that also deals with section 80HH of the Act and does not lay down any principle difference from Sterling Foods [1999] 237 ITR 579 (SC). In fact, in Pandian Chemicals [2003] 262 ITR 278 (SC) reliance has been placed on Cambay Electric Supply Industrial Co. Ltd. [1978] 113 ITR 84 (SC) and the decision seems to suggest, as we have held above, that the expression 'derived from an industrial undertaking' is a step removed from the business of the industrial undertaking."*

*5. Having regard to the aforesaid judgments we are not inclined to entertain the above appeals, as there is no substantial question of law involved in both the appeals. In the result, both the appeals stand dismissed.*

The ratio laid down by the jurisdictional High Court is applicable to assessee's case also and accordingly we hold that the interest income earned by the assessee from bank deposits held against the bank guarantee and with Reliance Power are eligible to be included for the purpose of deduction under section 80IB

29. With regard to the vendor balances written back, we are of the view that in order to be eligible for deduction under section 80IB, income earned should be inseparably connected with the business carried on by the assessee and that so long

as profits and gains emanate directly from the business itself then the assessee would be eligible to get a deduction u/s.80IB. The Hon'ble Supreme Court in the case of Liberty India Ltd. Vs CIT [2009] 183 Taxman 349 (SC) has laid down the ratio that by using the expression “derived from”, Parliament intended to cover sources not beyond the first degree from where the profit/income is generated .The vendor balances written back in our view is not directly emanating from the business of the assessee since writing back the vendor balance which is no longer payable is an independent activity that has no first degree nexus to the eligible business of the assessee eligible for deduction under section 80IB. Accordingly we uphold the disallowance made by the AO to the extent of vendor balances written back. This ground of the assessee is partly allowed.

30. During the course of hearing the assessee raised an additional ground with regard to disallowance under section 14A r.w.r 8D. The ld. AR in this regard submitted that the additional ground does not warrant examination of any new facts and is purely a legal contention and accordingly prayed for admission of the additional ground.

31. On the other hand, the ld. DR vehemently opposed the admission of additional ground.

32. The additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence, placing reliance on the judgment of the Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)*, we admit the additional grounds.

33. During the year under consideration the assessee has earned Rs. 82,512/- as interest from tax free bonds and Rs. 2,45,03,282/- as dividend income. The

assessee had claimed exemption towards these amounts. Besides the assessee had earned interest income of Rs. 12,55,99,897/- and offered the same to tax under the head "Income from Other Sources". The AO invoked the provision of section 14A r.w.r. 8D and arrived at a disallowance of Rs. 2,64,718/- under Rule 8D(2)(iii). The CIT(A) upheld the disallowance made by the AO.

34. The ld. AR submitted that the assessee did not incur any expenditure towards earning the exempt income since the investment out of which such exempt income is earned are old investments. The ld. AR further submitted that for the year under consideration the AO should not applied Rule 8D since the same was not applicable for the year under consideration.

35. The ld. DR on the other hand relied on the order of the lower authorities.

36. We have heard the parties and perused the material on record. We notice that in the year under consideration, the AO has made disallowance under section 14A by invoking provisions of Rule 8D of the Income Tax Rules, 1962. Rule 8D was introduced on March 24, 2008 by CBDT vide Notification No. 45/2008, dated March 24, 2008 to take effect from AY 2008-09. It is a settled position as held in the decision of the jurisdictional High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. vs DCIT* ([2010] 194 Taxman 203 (Bombay)) that Rule 8D is not retrospective. Therefore the AO is not correct in applying Rule 8D while making the disallowance under section 14A. We accordingly restore the matter back to the file of the AO to compute disallowance on the same basis in the year under consideration after taking requisite details from the assessee and giving opportunity of being heard by following the principle of natural justice. This ground is allowed for statistical purposes.

37. In the result the appeal for AY 2005-06 is partly allowed.

**ITA No. 7987/Mum/2010 AY 2006-07 –Assessee's appeal**

38. The assessee filed the return of income for AY 2006-07 on 30.11.2006 declaring total income of Rs. 2,42,36,58,270/-. The AO while completing the assessment under section 143(3) made various additions/disallowance to arrive at the assessed income of Rs. 2,54,87,33,440/-. On further appeal the CIT(A) gave partial relief to the assessee. Both the assessee and the Revenue are in appeal before the Tribunal against the order of the CIT(A).

**Disallowance of write off of tender and securities deposit –Ground No.1**

39. The AO in the course of assessment proceedings noticed that the assessee has claimed a sum of Rs. 4,02,126/- as deduction towards deposits written off. The AO called on the assessee to provide further details on the same. The assessee submitted that these expenses are bad and doubtful debts and advances written off during the year against security and tender deposits given to various Government Institutions and Hospitals. The assessee further submitted that the write off claimed as a deduction are incidental to the business and therefore should be allowed as a deduction. The AO however did not accept the submissions of the assessee and accordingly added the sum claimed as a deduction. The CIT(A) confirmed the addition made by the AO stating that the amount receivable from Government Agencies cannot become bad. The CIT(A) had also relied on the decision of his predecessor for AY 2004-05 in this regard.

40. Both the parties fairly conceded that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2004-05 (ITA No. 5939/Mum/2010 dated 31.10.2023)

41. We have heard the parties and perused the material on record. We noticed that the Co-ordinate Bench in assessee's own case has considered a similar issue where it is held that

*“119. Considered the rival submissions and material placed on record, we observe that assessee has claimed the unrecoverable tender deposits and other deposits which are outstanding in its books of accounts. Ld. CIT(A) observed that these tender deposits are made to secure business for the assessee but it is not an expenditure which has been debited to the profit and loss account rather it is a balance sheet item. It is also not in the nature of bad debts in as much as no income was included in the accounts earlier. After considering the submissions and the nature of deposits written off by the assessee we observe that no doubt these advances are made to secure the business for the assessee, however, when these tender deposits are not recoverable it becomes part of the expenditure for the assessee which assessee failed to claim. However, these are all outstanding for a long period of time, it becomes irrecoverable and becomes bad debts. Therefore, it is allowed as allowable expenditure for the assessee. Further, it is also brought to our notice that Ld. CIT(A) has allowed the similar deduction in A.Y. 2000-01 in his order dated 19.03.2004, however, it is brought to our notice that revenue has not preferred any further appeal against the above findings of the Ld. CIT(A). Accordingly, the ground raised by the assessee is allowed.”*

42. The facts for the year under consideration being identical, respectfully following the above decision of the Co-ordinate Bench we delete the addition made by the AO in this regard. This ground is allowed.

**Adjustments made to amount claimed as deduction under section 80IB-**  
**Ground No. 2**

43. The AO disallowed 30% of the following amounts from the deduction claimed under section 80IB

(i)	Foreign Exchange gain	– Rs. 7,728/-
(ii)	Sales Tax / Service Tax Refund	– Rs. 4,07,449/-
(iii)	Sale of scrap	– Rs. 3,66,342/-
(iv)	Miscellaneous Income	– Rs. 3,35,939/-

44. The CIT(A) deleted the disallowance made towards Foreign Exchange gain and upheld the rest of the disallowances made by the AO.

45. We have while considering the similar issue of adjustment made to deduction under section 80IB for AY 2005-06 held that in order to be eligible for deduction under section 80IB, income earned should be inseparably connected with the business carried on by the assessee and that so long as profits and gains emanate directly from the business itself then the assessee would be eligible to get a deduction u/s.80IB. Out of the above disallowances made by the AO in our considered view Sales Tax / Service Tax Refund and Sale of scrap have a first degree nexus with the business of the assessee and accordingly we direct the AO to delete the adjustment made towards Sales Tax / Service Tax Refund and Sale of scrap while considering the deduction claimed under section 80IB. With regard to miscellaneous income no evidences were brought on record before us to establish the direct nexus with the business of the assessee and therefore we hold that the same is not eligible for deduction under section 80IB. This ground of the assessee is partly allowed.

46. In the result, the appeal of the assessee for AY 2006-07 is allowed.

**ITA No. 7712/Mum/2010 – AY 2006-07 – Revenue's appeal**

47. Ground No.1 raised by the Revenue is with regard to the relief given by the CIT(A) against the disallowance of depreciation on obsolete asset made by the AO. We have while considering the same issue for AY 2005-06 have already held that this is a recurring issue in assessee's case and that the Co-ordinate Bench in assessee's own case for AY 2003-04 has deleted the disallowance. The facts for the year under consideration being similar, the decision in earlier AYs as relied on in the decision for AY 2005-06 are mutatis mutandis applicable for AY 2006-07 also. Accordingly, we dismissed the ground raised by the Revenue.

48. Ground No.2 raised by the Revenue pertains to the addition made by the AO towards 40A(2)(b) which the CIT(A) has deleted by placing reliance on the decision of his predecessor for AY 2004-05. We have while considering the same issue for AY 2005-06 have deleted the addition made by the AO by relying on the decision of the Co-ordinate Bench in assessee's own case for AY 2003-04. Since the facts for the year under consideration being similar our decision for AY 2005-06 is mutatis mutandis applicable to AY 2006-07 also. Therefore, we see no reason to interfere with the decision of the CIT(A). Accordingly the ground raised by the Revenue in this regard is dismissed.

49. In the result, the appeal of the Revenue for AY 2006-07 is dismissed.

**ITA No. 6698/Mum/2011 AY 2007-08 – Revenue's appeal**

50. The Revenue raised grounds pertaining to the following issues:

- (i) Disallowance of depreciation on obsolete assets – Ground No.1
- (ii) Addition under section 40A(2)(b) in respect of purchases from CBV – Ground No.2
- (iii) Disallowance under section 14A r.w.r. 8D – Ground No. 3 to 5

51. Both the parties fairly conceded that the issues contended by the Revenue in (i) & (ii) as listed above are covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2003-04. In this regard it is also relevant to notice that the similar issues are considered by us for AY 2005-06 and by placing reliance on the decision for AY 2003-04 we have deleted the additions made by the AO. Accordingly, we see no infirmity in the order of the CIT(A) in giving relief to the assessee and therefore we dismiss these grounds raised by the Revenue in this regard.

52. With regard to the issue of disallowance under section 14A, we notice that the similar issue has been considered by us for AY 2005-06 and our decisions are given in the earlier part of this order. The facts being identical in our considered view the same is applicable mutatis mutandis to the issue for AY 2007-08 also with similar directions. Accordingly, the grounds raised by the Revenue in this regard is allowed for statistical purposes.

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

**C.O. No. 165/Mum/2012 AY 2007-08 – Assessee**

54. The assessee through Ground No.1 of the C.O. has objected to curtailing the deduction under section 80IB by making adjustment towards sales tax/service tax refund. We have already deleted the similar adjustment made by the AO while considering the deduction under section 80IB for AY 2006-07. Since the facts for the year under consideration being identical we are of the view that our decision for AY 2005-06 is mutatis mutandis applicable for AY 2007-08 also. Accordingly, Ground No.1 is allowed in favour of the assessee.

55. Through Ground No.2 of the C.O. the assessee is contending the decision of the CIT(A) in not deleting the disallowance under section 14A r.w.r. 8D to the extent of Rs. 2,65,440/-.

56. The AO observed during the course of assessment proceedings that the assessee has earned dividend income which is exempt from tax but has not disallowed any corresponding expenditure. The AO observed that in the decision of the Special Bench of the ITAT, Mumbai in the case of Daga Management Pvt. Ltd. (117 ITD 169) where it was held that the provisions of section 14A would apply to securities and shares held as stock-in-trade. Therefore, the AO made a disallowance of Rs. 2,65,440/-. The assessee submitted before the CIT(A) that the investments are very old and that the assessee has not incurred any expenditure during the year under consideration for earning the exempt income. The CIT(A) restored the issue back to the AO with a direction to consider the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT 328 ITR 81 and determine the disallowance accordingly.

57. We have heard both the parties. we notice that the similar issue has been considered by us for AY 2005-06 and our decisions are given in the earlier part of this order. The facts being identical in our considered view the same is applicable mutatis mutandis to the issue for AY 2007-08 also with similar directions. Accordingly, we see no reason to interfere with decision of the CIT(A). This ground of the assessee is dismissed.

58. In the result, the C.O. of the assessee for AY 2007-08 is partly allowed.

59. In result, the appeal of the assessee in **ITA No. 6626/Mum/2009** for AY 2005-06, in **ITA No. 7987/Mum/2010**, for AY 2006-07 and in **C.O. No.**

**165/Mum/2012** for AY 2007-08 are partly allowed. The appeal of the Revenue in **ITA No. 7712/Mum/2010** for AY 2006-07 is dismissed and in **ITA No. 6698/Mum/2011** 2007-08 is partly allowed.

*Order pronounced in the open court on 23-02-2024.*

*Sd/-*  
**(VIKAS AWASTHY)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(MS. PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**