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

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO.4236/MUM/2005(A.Y: 2001-02)

M/s. Bajaj Auto Limited Bajaj Bhavan, 226-Nariman Point Mumbai – 400021 **PAN : AAACB3370K**	*v.*	DCIT – Range – 3(1) 6th Floor, Aayakar Bhavan M.K. Road, Mumbai - 400020
(Appellant)		**(Respondent)**

ITA NO.4372/MUM/2005 (A.Y: 2001-02)

DCIT – Range – 3(1) Room No. 623, 6th Floor Aayakar Bhavan M.K. Road, Mumbai - 400020	*v.*	M/s. Bajaj Auto Limited Bajaj Bhavan, 226-Nariman Point Mumbai – 400021 **PAN : AAACB3370K**
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Ms. Vasanti Patel& Shri Kirit Kamdar**
Department Represented by	**:**	**Shri Ankush Kapoor**
Date of conclusion of Hearing	**:**	**17.01.2024**
Date of Pronouncement	**:**	**23.02.2024**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. These cross appeals are filled by the assessee and revenue respectively against order of Learned Commissioner of Income Tax (Appeals)-XXVII, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 31.03.2005 for the A.Y.2001-02.

2. At the time of hearing, both the counsels fairly agreed that the issues raised in both these appeals are covered and adjudicated by the Coordinate Bench of the Tribunal in assessee's own case for the A.Ys.1990-91 to 2000-01. Copies of the orders are placed on record.

ITA NO.4372/MUM/2005 (A.Y: 2001-02) – REVENUE APPEAL

3. Revenue has raised following revised grounds in its appeal: -

> *"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in allowing deduction u/s.35 D in respect of expenditure in connection with the issue of GDR of Rs.43,43,676/-."*
>
> *2. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the A.O to allow depreciation on the leased assets."*
>
> *3. "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in directing the A.O to treat the*

expenditure on dyes and moulds amounting to Rs. 41,09,44,780/- as revenue expenditure."

4. "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in treating the penalty charges of Rs.1932545/- received from machinery suppliers as capital receipt and directing the A.O to allow the same accordingly."

5. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in treating the disallowance of expenditure on jigs and fixtures of Rs. 7,03,57,509/- as revenue expenditure."

6. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the A.O to deduct from the profit of the business the disallowance of Rs.42,10,566/- being the amount written off against lease hold land."

7. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in considering the foreign travel expenses of wife of Managing Director amounting to Rs. 3,51,667/- as expenditure incurred wholly for the purpose of business."

8. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of interest of Rs.2,26,23,876/- attributable to earning of exempted income."

9. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs. 16,19,922/- made u/s.40(a)(i) in respect of expenditure incurred in foreign currency."

10. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the interest charged u/s.234 B in view of the deemed provision of Sec. 143(4)(b) of the Act."

11. "The Appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored".

12. "The Appellant carves leave to amend or alter the ground or add a new ground which may be necessary".

4. At the outset, with regard to Ground No. 1,which is in respect of allowing deduction under section 35D in respect of GDR issue expenses, Ld.AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assessee, against the department.

5. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

6. Considered the rival submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1997-98. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 5030/Mum/2001 dated 13.04.2023 held as under:-

> *"48. With regard to Ground No. (k) which is in respect of allowing expenses on GDR issue as covered in section 35D, Ld. AR of the assessee submitted that Expenses amounting to ₹.11,71,99,600 incurred in connection with issue of GDR of USD 109,999,983 in the previous year relevant to A.Y.1995-96. Expenditure claimed u/s.37(1) in AY 1995-96 disallowed relying on the decision of the Supreme Court in the case of Brooke Bond India Ltd. (225 ITR 795) - Alternative claim for deduction u/s. 35D not considered in AY*

1995-96 since expansion of industrial undertaking was not completed. Copy of Assessment Order for AY 1995-96 is placed on record, Letter dated 11 February 2000 submitted before the Assessing Officer.

49. Ld. AR of the assessee relied on the following case laws: -

a) CIT vs. Shree Synthetics Ltd. (162 ITR 819)

b) Gujarat Narmada Valley Fertilizers Co. Ltd. vs. DCIT (ITA No. 1463/Ahd/2007

c) S.S.I. Limited vs. DCIT (85 TTJ 1049) (Chn)

50. On the other hand, Ld. DR relied on the order of the Assessing Officer.

51. Considered the submissions and material placed on record, from the submissions of the parties, we observe that the assessee has incurred expenses in connection with the issue of GDR and these expenses are allowable only when new or expansion of industrial undertaking. During the current Assessment Year, the assessee has completed the expansion of the Industrial undertaking, the expenses are allowable deduction u/s 35D of the Act, since the expenses are incurred during previous AY and expansion was completed only this AY, the relevant expenses are allowable in this Assessment Year. In the similar facts, the ITAT Ahmedabad Bench has decided the issue in favour of the assessee, in the case of Gujarat Narmada Valley Fertilizers Co. Ltd., v. DCIT (supra), the same reproduced below:

"24. As regards Ground no.10 of the assessee's appeal, the assessee has claimed deduction u/s 35D amounting to Rs.87,73,000/- which was restricted to Rs.13,50,000/- by the AO. The brief facts are that during the previous year relevant to AY 1995-96 the company made an Euro Issue of the Global Depository Receipts (GDRs) for its Acetic Acid Expansion Project and collected Rs.191.72 crores inclusive of premium. The company incurred expenditure of Rs.8.77 crores for this issue. It was submitted by the assessee in

assessment proceedings that subscribed and paid up capital of the company increased to Rs.146.48 crores and that coupled with debenture and long term borrowings of Rs.583.77 crores the total capital employed was Rs.730.25 crores and 2.5 % of such capital employed is Rs.18.26 crores. It was further stated that the cost of project of Ascetic Acid Expansion project was Rs.188.31 crores and that the said project was commissioned on 30.5.1995. It was stated that the expenditure of Rs.8.77crores was less than 2.5 % of the cost of the project and capital employed and thus the assessee was entitled to deduction of Rs.87.7 lakhs as claimed u/s. 35D. The Assessing Officer was of the view that GDR issue was admittedly in connection with the extension of industrial undertaking and only the incremental capital employed which is attributable to the new project should be considered as capital employed. The increase in share capital and debenture between 31.3.1994 and 31.3.1995 was Rs.37.53 crores and thus 2.5% of such capital employed was Rs.93.82 lacs. Further it was stated that cost of Acetic Acid Expansion Project was Rs.188.31 crores whereas the net proceeds of GDR issue was Rs.182.95 crores (191.72 crores being gross proceeds - 8.77 crores being expenses). Further from the proceedings for A.Y. 2001-02 it was noticed that Rs.128.93 crores was invested in UTI Unit 65 scheme out of the GDR issue proceeds and since this investment was 70% of the GDR issue process, 70% of the expenses of Rs.87.73 lacs written off in that year by the assessee amounting to Rs.62 lacs was disallowed u/s. 14A as the dividend income in respect of UTI was exempt under the Act. It is mentioned by the Assessing Officer that excluding the investment in UTI the amount invested towards the cost of project is Rs.54.02 crores (182.95 crores - Rs.128.93 crores) and 2.5% of such cost works out to Rs.1.35 crores. Therefore 10 % of this amount of Rs.1.35 crores at Rs.13.5 lacs was allowed by the Assessing Officer under section 35D.

25. The learned CIT(A) confirmed the action of the AO.

26. The learned counsel for the assessee argued that the assessee has been allowed the identical claim since 1995-96 by the Income-tax Department and it is only in the impugned year where the Department has doubted its decision when there is no change of the facts and circumstances of the case.

27. The learned DR, on the other hand, argued that res judicata does not apply.

28. We have heard the rival contentions and perused the facts of the case. From the reading of the provisions contained in section 35D and the arguments of both the parties, we are of the view that there are no change in the facts as in the last 7 years and, therefore, relying upon the decision of the Hon'ble Supreme Court in the case of RadhaSoamiSatsang vs. CIT 193 ITR 321, it would not be at all appropriate to allow the position to be changed in a subsequent year. Therefore, in the circumstances and facts of the case, we direct the AO to allow the claim of the assessee and accordingly the order of the learned CIT(A) is reversed. Thus, Ground no.10 of the assessee' appeal is allowed."

52. Respectfully following the above said decision, we direct assessing officer to allow the claim made by the assessee relating to deduction u/s. 35D of the Act."

7. Respectfully following the above decisions and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, ground raised by the revenue is accordingly dismissed.

8. With regard to Ground No.2 which is in respect ofdepreciation allowed in respect of sale and lease back transaction with JCT Ltd., Ld. AR of the

assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

9. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

10. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1997-98. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 5030/Mum/2001 dated 13.04.2023, held as under: -

> *"56. With regard to Ground No. (j) which is in respect of holding that the lease agreement with JCT Ltd is genuine and the assessee company is entitled to depreciation on the assets leased to JCT Limited. Ld. AR of the assessee submitted that Lease agreement with JCT Limited dated 26 March 1996 - BAL purchased assorted items of equipments at the original cost of purchase, i.e.₹.6,92,22,335/-- The assets were leased back to JCT. Further, he brought to our notice the decision of the Coordinate Bench in assessee's own case for the Assessment Year 1996-97 and by referring to Para No.24 he submitted that depreciation on such assets claimed and allowed by the order of the Tribunal in the earlier year by dismissing the revenue ground in AY 1996-97. During the year under consideration, BAL has claimed depreciation on the opening written down value of the block which includes the above assets. Once depreciation allowed in earlier year and such*

asset forms part of block of assets, depreciation ought to be allowed in subsequent years. for the above proposition he relied on the following case law:

(a) Director of Income-tax (International Taxation) - II v. HSBC Asset Management India Private Limited [2014] 47 taxmann.com 286 (Bombay)

(b) Commissioner of Income-tax 7 v. Sonic Biochem Extractions Private Limited (ITA No. 2088 of 2013) (Bombay)

(c) CIT V. G.N.Agrawal (Individual) 217 ITR 250

57. On the other hand, Ld. DR relied on the order of the Assessing Officer.

58. 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. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following various judicial pronouncements dismissed the ground raised by the revenue. The Relevant portion is extracted below: -

"25:3 We have heard the submissions made by rival sides and have examined the orders of authorities below. In the light of findings given by Assessing Officer to reject assessee's claim following points were considered by the CIT(A).

"(a) Whether the assessee can be said to have acquired ownership of the assets in question from the Electricity Boards for purpose of claiming depreciation.

(b) Whether the transactions entered into with the Electricity Boards were genuine lease transactions.

(c) Whether the transactions can be characterized as loan transactions against security of the assets in question.

(d) Whether the transactions can be treated as hire-purchase agreements"

The CIT(A) after considering the facts of the case and lease agreement threadbare answered the first two issues in affirmative holding that the assessee had acquiredthe ownership of the assets purchased from Electricity Board and hence, eligible to claim depreciation on the said assets. The CIT(A) further held that the lease agreements with the State Electricity Board i.e. HSEB and PSEB are genuine lease transactions.

As regards the issue raised in (c) & (d) above, the CIT(A) answered the question in negative holding that the transaction of purchase of assets from HSEB and PSEB and leasing it back to the State Electricity Board is not a hire purchase agreement nor it is a loan transaction against security of the assets. We, concur with the detailed and reasoned findings of the CIT(A) on this issue, they are not reproduced for the sake of brevity. The Hon'ble Supreme Court of India in the case of CIT vs. K.Y.Pillah& Sons, 63 ITR 411 and Hon'ble Delhi High Court in the case of CIT vs. Global Vantedge P. Ltd., 354 ITR 21 held that where the Tribunal concur with the view of CIT(A), the findings of CIT(A) need not be reproduced.

25.4 We find that in the case of CIT vs. Punjab State Electricity Board, wherein after the sale of asset the same asset was leased back to the Punjab State Electricity Board and the Electricity Board claimed deduction in respect of lease rental, the Department allege that sale of asset to third party and the same asset being taken on lease for claiming deduction in respect of lease rental is a colorable device to reduce tax liability and have denied the same. The Tribunal decided the issue in favour of the assessee holding the transaction of sale and lease back of asset as genuine. The Revenue carried the issue in appeal before the Hon'ble High Court raising following substantial question of law:

"Whether on the facts and in the circumstances of the case, the income-tax Appellate Tribunal is legally correct in holding that in the present case/ no colourable device has been adopted by the assesses, even when the intention of the assessee behind drafting the agreements between the assessee and the financial institution was to reduce the tax liability artificially of both the parties and as such the ratio of the decision of the hon'bleapexcourt in the case of McDowell Ltd. v, CTO [1985] 154 ITR 148 (SC) has wrongly been, interpreted"

The Hon'ble High Court rejected the appeal of Revenue by holding as under:

3. "Only contention raised by the learned counsel for the Revenue is that the machinery was integral part of the bollers and the same continued to be with the assessee in spite of sale. The fact remains that the sale consideration was received by the assessee and lease rental was paid by the assessee. Merely because tax liability was reduced could not be conclusive of arrangement being sham or a device. As regards the observations of the-hon'ble Supreme Court in McDowell [1985] 154 ITR 148, the matter has. been explained in subsequent judgments including in Union of India v. AzadiBachaoAitdokn [2003] 263 ITR 706 (SC); AIR 2004 SC 107. Reiterating the view that the assessee was entitled to arrange his affairs to reduce his tax liability, without violating the law, it was observed in AzadiBachaoAndolan [2003] 263 ITR 706 (SQ; AIR 2004 SC 107 that the principle laid down in IRC v. Duke of Westminster [1936) AC 1 was still valid.

4. It was further observed that the above principle had been approved in India in the Judgment of the hon'ble Supreme Court in CZT v, A. Roman and Co. [1968] 67 ITR 11 (Mad) and the observations of Chinnappa Reddy J. in McDowell could not be treated as the ratio of the Judgment in view of opinions of majority to the effect (headnote of 154 TR 148):

Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

5. The hon'ble Supreme Court affirmed the view token by the Madras High Court in M. V. Valliappan v. TTO [1988] 170 ITR 238 and the Gujarat High Court in Banyan and Deny vs. CIT (1996) 222 ITR 831. Reference was also made to the judgment in CWT v. Arvind Narottam [1988] 173 FIR 479 and Mathuram Agrawal v. State of Madhya Pradesh (1999) 8 SCC 667. It: was further observed that the word "device" or "sham" could not be used to defeat the effect of a legal situation.

6. In view of the finding recorded by the Tribunal in the facts of this case, no substantial question of law arises. The appeal is dismissed."

25.5 Thus, the Hon'ble Court held that lease agreement where the asset is leasedback to the vendor is not a ploy to reduce tax incidence and is an acceptedarrangement. In view of our above findings, we see no merit in Ground No.11 raised by the Revenue, hence, the same is dismissed."

59. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed and the issue involved in relation to transaction with JCT Ltd are similar to the above findings in relation to transaction with PSEB, accordingly, ground raised by the revenue is dismissed."

11. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y.1997-98 is respectfully followed, accordingly, ground raised by therevenue is dismissed.

12. With regard to Ground No. 3 which is in respect of allowing deduction in respect of expenditure incurred on dies and moulds as revenue expenditure. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

13. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

14. 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. 1997-98. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 5030/Mum/2001 dated 13.04.2023held as under: -

"4. At the outset, with regard to Ground No. (a), which is in respect of allowing the expenditure on dies &moulds of ₹.7,16,16,415/- as a revenue expenditure, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

5. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

6. Considered the rival submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

> *"55. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1990-91 to 1994-95 (ITA No. 6324 & 6325/Mum/2010 and 6963 & 6964/Mum/2014) on merits. For the sake of clarity, relevant portion of the said decision is reproduced below:-*
>
> > *5.1. We find that for the Assessment Year 1991, 1993-94 & 1994-95, the only ground raised by the revenue is with regard to the direction of the Ld. CIT(A) in allowing the revenue expenditure in respect of replacement of jigs and fixtures and dies and moulds. The decision restored by us in ground no. 1 for Assessment Year 1990-91 would hold good for the same. Accordingly, the grounds raised by the revenue are dismissed.*
>
> *56. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed."*

> *7. We further observe that in assessee's own case for the immediately preceding Assessment Year i.e. A.Y. 1996-97, the Tribunal decided the above issue in favour of the assessee following the decision for the A.Y.1995-96. Respectfully following the above decisions and following the principle of consistency, the view taken by the Tribunal in A.Y. 1995-96 is respectfully followed, ground raised by the revenue is accordingly dismissed."*

15. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

16. With regard to Ground No. 4 which is in respect of allowing penalty charges recovered from suppliers of capital goods as capital receipts, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the assessee and against the revenue.

17. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

18. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the

assessee for the A.Y. 1997-98. While deciding the issue, the Coordinate Bench iITA.No. 5030/Mum/2001 dated 13.04.2023 held as under: -

> *"8. With regard to Ground No. (b) which is in respect of deleting the addition of ₹.27,95,851/- representing penalty charges received from machinery suppliers, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.*
>
> *9. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.*
>
> *10. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999, held as under: -*
>
> > *"34. At the outset, Ld. AR brought to our notice para 4 of assessment order and para 3 of CIT(A)'s order and submitted that this issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year: 1993-94 & 1994-95 (ITA No. 2739, 3175, 3491 & 3492/Mum/1999) on merits in favour of the assessee.*
> >
> > *35. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the decision of ITAT.*
> >
> > *36. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 1993-94 & 1994-95 (ITA No. 2739, 3175, 3491 & 3492/Mum/1999) on merits. For the sake of clarity, relevant portion of the*

decision in assessee's own for Assessment Year 1993-94 (ITA No. 3491/Mum/1999) is reproduced below:-

3. The first issue in this appeal filed by the revenue is against the deletion of an addition 22,80,791/- representing penalty charges received from machinery suppliers. Both the parties agreed that the issue is covered by the decision of this Tribunal in assessee's own case for the assessment year 1989-90 to 1992-93 wherein the receipt in question has been held as a capital receipt. The Tribunal in the above referred orders (ITA 2468/Mum/98 & ITA No. 2643/Mum/99 for the assessment year 1992-93 – 'J' Bench order dated 16th November, 2006, paragraph 15) has dealt with the issue in the following manner in rejecting the ground raised by the Revenue:-

> *"15. Ground no. 8 relates to the addition of Rs. 24,14,323/- being the penalty charges received from the suppliers of machineries on account of some default. The learned CIT(A) has deleted the addition following his order for Assessment Years 1989-90 to 1991-92 as well as the decision of Hon'ble Andhra Pradesh High Court in the case of Barium and Chemicals Ltd 168 ITR164. After hearing both the parties, we find that this issue is covered in favour of the assessee by the decisions of the Tribunal in assessee's own case pertaining to Assessment Years 1988-89 and 1991-92. Therefore following the same, the order of the learned CIT(A) is upheld and the ground o the Revenue is dismissed.*
>
> *We do not have a reason deviate from this consistent view of the Tribunal on the issue. Accordingly, this ground of the revenue is rejected.*
>
> *37. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in*

> *assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed."*

11. Further, in assessee's own case in ITA.No. 2230/Mum/2000 dated 20.06.2022 for the A.Y. 1996-97, Coordinate Bench, held as under: -

> *"15. During the period relevant to assessment year under appeal, the assessee recovered penalty charges amounting to Rs.2,56,209/- from suppliers of the capital goods. The assessee claimed the aforesaid charges as cpital receipt, whereas, the Assessing Officer treated the aforesaid charges as revenue in nature. The CIT(A) following the order of his predecessor in Assessment Year 1991-92 to 1994-95 held the penalty charges to be capital receipt. We find that in the preceding Assessment Year this issue had come up in the appeal of assessee. The Co-ordinate Bench afterconsidering the decisions in assessee's own case for Assessment Year 1993-94 in ITA No.3491/Mum/1999 decided the issue in favour of assessee holding penalty charges to be capital receipt. The aforesaid decision of the Tribunal has not been controverted by the Revenue, hence, following the same we uphold the findings of CIT(A) and dismiss ground No.2 in the appeal by Revenue."*

12. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y.1996-97 is respectfully followed, accordingly, ground raised by therevenue is dismissed."

19. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

20. With regard to Ground No. 5 which is in respect of allowing deduction of expenditure incurred in respect of jigs and fixtures as revenue expenditure, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

21. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

22. 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. 1997-98. While deciding the issue, the Coordinate Bench in ITA.No. ITA.No. 5030/Mum/2001 dated 13.04.2023held as under:-

> *"13. With regard to Ground No. (c) which is in respect of directing the Assessing Officer to allow deduction of ₹.2,36,37,738/- towards expenditure relating to purchase of jigs and fixtures, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.*
>
> *14. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.*

15. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1995-96. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

> *"57. With regard to this ground, Ld. AR brought to our notice para 8-8.5 of assessment order and para 33 of CIT(A)'s order and submitted that the similar issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 1990-91 to 1994-95 (ITA No. 6324 & 6325/Mum/2010 and 6963 & 6964/Mum/2014) on merits in favour of the assessee.*
>
> *58. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the decision of ITAT.*
>
> *59. Considered the rival submission and material placed on record. We notice from the records that the identical issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 1990-91 to 1994-95 (ITA No. 6324 & 6325/Mum/2010 and 6963 & 6964/Mum/2014) on merits. For the sake of clarity, relevant portion of the said decision is reproduced below:-*
>
> > *3.1. We have heard rival submissions and perused the materials available on record. We find 'that the assessee company had incurred expenditure on jigs and fixtures amounting to Rs. 1,06,11,0647- including capital work in progress amounting to Rs.11,18,955/- during the Financial Year 1989-90 relevant to A.Y. 1990-91. Assessee submitted that these are nothing but replacement of jigs and fixtures in the main plant and machinery and would be eligible for deduction as revenue expenditure. During the course of assessment proceedings, the assessee requested the Id. AO to allow the sum of Rs.94,92,103/- as deduction in A.Y. 1990-91 and the balance sum of Rs.11,18,955/- in A.Y. 1991-92 since the said amount*

was lying in capital work in progress and the same was not put to use during the A.Y. 1990-91. We find that the Id. AO observed that the expenditure incurred on replacement of jigs and fixtures would be capital expenditure and accordingly, granted depreciation thereon. It is not in dispute that assessee had indeed capitalised the replacement cost of jigs and fixtures in its books and had claimed depreciation as per Companies Act in its books. However, for the purpose of Income Tax, the assessee had claimed the said expenditure as the revenue expenditure on the ground that the said expenditure would fall under the category of "current repairs". We find that the present state of appellate proceedings is the second round of proceedings, since in the first round, this Tribunal had restored this issue to the file of the Id. CIT(A) for adjudication in the light of various judicial decisions relied upon by the assessee. We find that the expenditure incurred on replacement of jigs and fixtures are basically toolling aids required in the production process and these items are part of the machinery in automobile industry. We find that these jigs and fixtures need to be constantly replaced due to constant wear and tear and also due to changes in the design of the part. It is not in dispute that the 'expenditure incurred on jigs and fixtures at the time of first purchase together with the main plant and machinery was duly capitalised by the assessee at the time of first purchase for the purpose of Income Tax Act and depreciation claimed accordingly for the purpose of Income Tax Act. Later, whenever the said jigs and fixtures were replaced for the reasons stated supra, the assessee has been claiming the same as revenue expenditure for the purpose of Income Tax Act. We find that this argument was duly 'appreciated by the Id. CIT(A) and the Id. CIT(A) duly granted relief to the assessee in this regard by following the decision

of his predecessor in assessee's own case for the A.Yrs 2002-03, 2005-06 and 2006-07.

60. Therefore, respectfully following the above decisions of Coordinate bench of ITAT in assessee's own case which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed."

16. Further, in assessee's own case for the A.Y. 1996-97 the Coordinate Bench in ITA.No. 2230/Mum/2000 dated 20.06.2022, held as under: -

"16. The assessee has purchased Jigs and Fixtures to the tune of Rs.1,83,34,475/- to be used in production process. The assessee revenue. claimed the said expenditure as against the claim of assessee the Assessing Officer treated the expenditure as capital in nature and allowed depreciation on the same. In the first appellate proceedings, the CIT(A) reversed the findings of Assessing Officer and held the expenditure to be on revenue account. We find that in immediate preceding assessment year, the Tribunal following its earlier order in assessee's own case for assessment years 1990-91 to 1994 revenue. held the expenditure on Jigs and Fixtures as We find no infirmity in the findings of the CIT(A) on this issue. Ergo, ground No 3 raised in the appeal by Revenue is dismissed."

17. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed."

23. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

24. With regard to Ground No. 6 which is in respect of allowing deduction in respect of proportionate premium on leasehold land, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

25. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

26. 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. 1997-98. While deciding the issue, the Coordinate Bench in ITA.No. 5030/Mum/2001 dated 13.04.2023held as under: -

> *"38. With regard to Ground No. (i) which is in respect of allowing expenditure of ₹.7.42 lakhs on lease land for 99 years as revenue expenditure, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.*
>
> *39. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.*
>
> *40. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1995-96. While deciding the issue, the*

Coordinate Bench in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

"49. Ld. AR brought to our notice para 32-32.2 of CIT(A)'s order and submitted that this issue is covered by the following decisions of Hon'ble Supreme Court, High Courts and ITAT on merits in favour of the assessee:-

(i) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 329 ITR 479 (Guj)

(ii) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 325 ITR (SC)

(iii) United Phosphorous Ltd. vrs. ACIT(2015) 230 Taxman 596 (Guj)

(iv) Lupin Ltd. vrs. JCIT (ITA No. 5088/Mum/2005)

50. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the decision of Hon'ble Apex Court, High Courts & ITAT.

51. Considered the rival submission and material placed on record. We notice from the records that the identical issues have already been decided by the Hon'ble Supreme Court, High Courts and ITAT on merits:-

(i) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 329 ITR 479 (Guj)

(ii) DCIT vs. Sun Pharmaceutical Ind. Ltd [2010] 325 ITR (SC)

(iii) United Phosphorous Ltd. vrs. ACIT(2015) 230 Taxman 596 (Guj)

(iv) Lupin Ltd. vrs. JCIT (ITA No. 5088/Mum/2005)

For the sake of clarity, relevant portion of the decision in the case of Lupin Ltd is reproduced below:-

7. Ground nos. 5 and 6 relates to the disallowance of amortisation of payment made for leasehold land of ₹.2,45,000/-. At the outset, the learned counsel of the assessee

submitted that this issue has come up for consideration in assessee's own case in the A.Y. 2000-01 in ITA No. 3314/3242/M/05 and in the A.Y. 2002-03 in ITA No.648/411/M/2008, wherein this issue has been decided against the assessee. However, the learned counsel submitted that this issue now stands covered by the decision of DCIT v SUN Pharmaceuticals Limited reported in 329 ITR 479, wherein it has been held that making of advance payment for acquiring land on lease for 19 years was allowable as revenue expenditure. Therefore, the decision of the earlier Tribunal order may not be followed. 7.1 On the other hand, the learned DR relied upon the findings given by the Ld. CIT(A) as well as the earlier orders of the ITAT.

8. After carefully considering the rival submissions, we find that the amount which has been amortized relates to the payment for lease hold of land and building. The Ld. CIT(A) has dismissed the assessee's ground on the reason that this issue has been decided against the assessee by the Ld. CIT(A) in the earlier year. The Tribunal also in the A.Y. 2000-01 in ITA No.3314/M/2005 has dismissed the assessee's appeal on the following reasoning:-

"6. Ground 2 relates to CIT (A)'s decision in confirming the disallowance of the assessee's claim of Rs 2,97,015/- u/s 35D.

7. During the assessment proceedings before us, the Ld AR stated that the said expenditure was incurred in connection with the issue of shares for increase in share capital. AO made disallowance basing on the apex court judgments in the case of M/s Brooke Bond India Ltd (225 ITR 798)(SC) and M/s Punjab State Industrial Development Corporation Ltd (225 ITR 792)(SC). The CIT (A) confirmed the action of the AO stating that the said expenditure should not be allowed as revenue expenditure. During the proceedings before us, Ld AR for assessee relied on various judgments including the jurisdictional High Court judgment in the case of Maharashtra Ugine and Steel Co Ltd (250 ITR 84)(Bom). After going through the said judgments, we find that the said jurisdictional High Court

judgment relates to allowability of expenditure incurred on payment of Stamp duty for debenture issue and, therefore, we are of the considered opinion that the apex court judgments cited above are relevant and expenses are not allowable as revenue expenditure and thus, the order of the CIT (A) does not call for any interference. Accordingly, ground 2 is dismissed."

9. From the perusal of the above decision, it is seen that the Tribunal had decided this issue based on the decision of M/s Brooke Bond India Ltd. (supra) and M/s Punjab State Industrial Development Corporation Ltd (supra), wherein the matter related to the issue of allotment of shares and increase in share capital, whereas in this case, the issue is entirely different and relates to the payment on account of lease hold of land and building. This issue as rightly been pointed out by the learned counsel is covered by the decision of the Hon'ble High Court of Gujarat in the case of DCIT vs. Sun Pharmaceuticals Industries Ltd. reported in 329 ITR 479, wherein the Hon'ble High Court has held that the payment of advance lease rent for acquisition of land on lease for a period of 19 years is revenue expenditure. While coming to this conclusion the Hon'ble High Court has relied upon the principle and ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. Madras Auto Services Ltd. (1998), reported in 233 ITR 468 (SC). The point in issue is also covered by the decision of the Hon'ble Madras High Court in the case of CIT vs. Ucal Fuel Systems Ltd. reported in 296 ITR 702, wherein similar matter was involved and was held that upfront lease rent charges paid for obtaining lease of land and building is revenue expenditure. In view of the aforesaid preposition laid down by the Hon'ble High Courts, we are persuaded to agree with the learned counsel that the earlier decision of the Tribunal cannot be held as a binding precedence on the facts of the case. Accordingly, the ground nos. 5 and 6 are allowed in favour of the assessee.

52. Therefore, respectfully following the above decision of Coordinate Bench of ITAT and also the decision of Hon'ble Supreme Court and Hon'ble High Courts, which are applicable

mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed.

41. Further, in assessee's own case for the A.Y. 1996-97 the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

> *"20. A perusal of the impugned order shows that the Assessing Officer following the assessment made in assessment year 1995-96 has disallowed assessee's claim of proportionate write off premium paid on leasehold land Rs.7.42.135/- In first FRITH appellate proceedings the CIT(A) following the order of first appellate authority in assessment year 1985-86 and 1995-96 reversed the findings of Assessing Officer, hence, the Revenue is in appeal against the findings of the CIT(A) on this issue. We find that in assessment year 1995-96 the Co-ordinate Bench has upheld the findings of the CIT(A) by placing reliance on various decisions viz:*
>
> *(i) DCIT vs. Sun Pharmaceutical Industries Ltd., 329 ITR 479 (Guj);*
>
> *(ii) United Phosphorus Ltd. vs. ACIT, 230 Taxman 590(Guj); and*
>
> *(iii) Lupin Ltd. vs. JCIT in ITA No.5088/Mum/2005 for A.Y. 1994-95 decided on 02/11/2012.*
>
> *The Revenue has not been able to controvert the findings of Co-ordinate Bench on this issue in assessee's own case for assessment year 1995-96. Following the decision of Co-ordinate Bench, we uphold the findings of CIT(A) on this issue and dismiss ground No.7 raised in appeal by the Revenue."*

42. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y.1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed."

27. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

28. With regard to Ground No. 7 which is in respect of allowability of deduction in respect of foreign travelling expenses, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the revenue and against the assessee.

29. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

30. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the Revenue for the A.Y. 1998-99. While deciding the issue, the Coordinate Bench in ITA.No. 8952/Mum/2004 dated 22.08.2023 held as under: -

> *"25.0 Ground no.12 raised by the revenue relates to the disallowance of expenses incurred by the assessee on foreign travel by the wife of Managing Director along with him. The assessee had incurred a sum of Rs.4,11,981/- towards foreign travel expenses of Mrs Rupa Bajaj, wife of Managing director. The AO disallowed the*

same. The Ld CIT(A) noticed that the Managing director had travelled abroad for business purposes and Mrs Rupabajaj has accompanied him to assist the managing director to discharge his social cum business obligations. The Ld CIT(A) further noticed that similar expenditure incurred in AY 1986-87 has been allowed by the Tribunal. The Ld CIT(A) also relied upon the decision rendered by Hon'ble Kerala High Court in the case of CIT vs. Apollo Tyres Ltd (237 ITR 706) and the decision rendered by Mumbai bench of Tribunal in the case of Glaxo Laboratories Ltd (18 ITD 226). Accordingly, the Ld CIT(A) deleted the disallowance.

25.1 The Ld D.R submitted that the foreign travel expenses incurred for wife of Managing director is not related to the business and hence the AO has rightly disallowed the same. The Ld A.R, however, submitted that the managing director has visited Netherlands and UK in connection with business meeting as a member of CII – CEO mission to UK for attendingIndia Growth Fund Board meeting. His travel and his wife's travel have been approved by the Board. He further relied upon the decision rendered by Hon'ble Bombay High Court in the case of Alfa Laval (I) Ltd (149 taxman 29) to contend that there is no requirement of making any disallowance.

25.2 We heard the parties on this issue and perused the record. We notice that the Hon'ble jurisdictional High Court in the case of Alfa Laval (I) Ltd has upheld the deletion of disallowance of expenses incurred on the foreign trips of company's President only for the reason that there was concurrent finding of both Ld CIT(A) and the Tribunal that it has been incurred for the purposes of business. However, the jurisdictional high court has clarified that the case needs to be decided on its own facts primarily considering the business expediency. It was further held that this kind of claim is to be allowed only if it is connected with the business of the assessee.

25.3 In the instant case, we notice that the Managing director Shri Rahul Bajaj has visited Netherland & UK for attending India Growth fund Board Meeting. The Board resolution with regard to the

expenses to be incurred on wife of Shri Rahul Bajaj reads as under:-

> *"Further Resolved that air-fare and other expenses in connection with the above visit (including those of Smt. Bajaj) be and are hereby authorized to be borne by the Company."*

We notice that the Board resolution did not bring out any business expediency. Further, the assessee has also not proved existence of any commercial or business expediency in incurring the foreign travel expenses of wife of M D except producing copy of Board resolution, in which also, no reason was given. There should not be any doubt that this is a factual aspect and the facts prevailing in each foreign trip has to be examined. Accordingly, the decision taken by the Tribunal in AY 1986-87 may not be relevant. We notice that the Ld CIT(A) has also not brought out the business orcommercial expediency in incurring expenses on foreign trips of wife of M D, but deleted the addition on the basis of quantum of expenditure, status of the M D and approval by Board. These are not the proper reasons for allowing this type of expenditure, as held by the jurisdictional High Court. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and confirm the disallowance made by the AO."

31. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1998-99 is respectfully followed, accordingly, ground raised by the revenue is allowed.

32. With regard to Ground No. 8 which is in respect of deleting disallowance of proportionate interest expense attributable to earning exempt income. Ld.AR of the assessee brought to our notice that the issue

in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

33. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

34. 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. 1998-99. While deciding the issue, the Coordinate Bench in ITA.No. 8952/Mum/2004 dated 22.08.2023 held as under: -

> *"24.0 Ground no.11 raised by the revenue relates to disallowance of interest expenses relatable to exempt income. The AO noticed that the assessee has borrowed funds and paid interest thereon. The assessing officer took the view that common funds have been used to make investments and accordingly disallowed proportionate interest expenses. The ld CIT(A) noticed that own funds available with the assessee was more thanthe value of investments. Accordingly, he held no disallowance out of interest expenses is called for.*
>
> *24.1 We heard the parties and perused the record. We notice that the view taken by Ld CIT(A) gets support from the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505)(Bom). The jurisdictional Bombay High Court has held in the above said case that the interest disallowance u/r 8D(2)(ii) of I T Rules is not called for when the own funds available with the assessee is in excess of the value of investments. In our*

view, the ratio of the said decision shall apply to the facts of the present issue. Accordingly, we confirm the order passed by Ld CIT(A) on this issue."

35. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1998-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed.

36. With regard to Ground No. 9 which is in respect of allowing of deduction under section 40(a)(i) in respect of expenditure incurred in foreign currency, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

37. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

38. 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. 2000-01. While deciding the issue, the Coordinate Bench in ITA.No. 3055/Mum/2005 dated 28.11.2023 held as under: -

"109. During the year under consideration the assessee has incurred expenditure in foreign currency amounting to Rs.194.85 lacs and tax at source had been deducted wherever applicable and in some cases no tax was deducted. The assessing officer has disallowed the amount of Rs.26,62,904/- u/s 40(a)(i) in respect of the following expenditure:

Sr. No.	*Particulars*	*Rs.*
1.	*Research and development expenses*	*13,04,852*
2.	*Motor Car Expenses*	*34,354*
3.	*Truck Van Expenses*	*39,838*
4.	*Books and periodicals*	*2,84,291*
5.	*Subscription fees*	*9,99,569*
	Total	*26,62,904*

110. The ld. CIT(A) had allowed the claim of the aforesaid expenses after verification that payment for the purchases were made from the non-residents having no business connection in India and same was not in nature of income that arise or accrued in India.

111. Heard both the sides and perused the material on record. After perusal of the nature of expenditure and finding of the ld. CIT(A) given at page no. 19 to 21 of the order of CIT(A) holding that the assessee has made payment for the various expenses as referred above to the non-residents who were having no business connection in India, therefore, no tax was deducted for such payments. During the course of appellate proceedings before us revenue has not brought any material contrary to the finding given by the ld. CIT(A), therefore, we don't find any merit in this ground of appeal of the revenue and the same stand dismissed."

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

40. With regard to Ground No. 10 which is in respect of deleting the interest charges Under section 234B in view of the deemed provision of section 143(4)(b) of the Act. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

41. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

42. 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. 2000-01. While deciding the issue, the Coordinate Bench in ITA.No. 3055/Mum/2005 dated 28.11.2023 held as under: -

> *"114. Heard both the sides and perused the material on record. During the course of appellate proceedings before us the assessee submitted that it has paid the total advance tax of Rs.204,00,00,000/- whereas assessed tax comes to Rs.195,36,36,406/- and 90% of the assessed tax comes to Rs.175,82,72,765/-, therefore, there was no shortfall in payment of advance tax. During the course of appellate proceedings before us revenue has not brought any material contrary to the submission and finding of the ld. CIT(A) therefore, this ground of appeal of the revenue also stand dismissed.*

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

44. In the result, appeal filed by the revenue is partly allowed.

ITA No. 4236/MUM/2005 (A.Y. 2001-02) - ASSESSEE APPEAL

45. Assessee has raised following grounds in its appeal: -

> *"1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in taxing the surplus on redemption of treasury bills amounting to Rs.2,98,17,570/- as interest under the head "Income from Other Sources", instead of as "Capital Gains".*
>
> *2. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in directing the Assessing Officer to reduce the cost of the respective assets by the penalty charges recovered amounting to Rs. 19,32,545/- for the purpose of granting depreciation.*
>
> *3. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the claim for deduction of an amount of Rs. 13,600/- being expenditure on fines and penalties without appreciating the fact that such expenditure was incurred while carrying on the business and was not for deliberate infraction of law and accordingly ought to have been allowed as a deduction.*

4. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellant's claim for deduction in respect of wealth-tax paid amounting to Rs. 16,75,863/-

5. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in holding that the sum of Rs 34,725/- received from the franchisee M/s Autotechnica, Columbia, South America, is not royalty' covered by the provisions of section 80-0 and accordingly, disallowing deduction @ 40% thereof amounting to Rs. 13,890/- claimed in the return of income

6. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellant's claim that expenditure amounting to Rs. 17,70,92,101/-, in respect of process know-how expenses, incurred to achieve efficiency in operations was a revenue expenditure allowable under section 37 of the Act

7. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellant's claim that expenses amounting to Rs.2,28,09,176/- incurred for the purpose of buy back of shares are eligible for deduction as revenue expenses."

46. We shall proceed to dispose off the appeal by adjudicating the issues ground wise.

47. With regard to Ground No. 1 which is in respect of taxability of surplus on redemption of treasury bills as interest under the head "Income from other sources" instead of "Capital Gains", Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate

Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

48. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

49. 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. 1997-98. While deciding the issue, the Coordinate Bench inITA.No. 5030/Mum/2001 dated 13.04.2023 held as under: -

> *"65. With regard to Ground No. (l) of grounds of appeal, which is in respect of redemption of treasury bills, Ld. AR of the assessee brought to our notice the letter dated 10.03.2000. He submitted that Surplus on redemption was shown as short- term capital gains in the return of income out of abundant caution. Redemption results in total extinguishment of securities other than by way of transfer and is not be covered within the definition of transfer as per section 2(47). In support of the above contentions, he relied on the decision of the Hon'ble Supreme Court in the case of Vania Silk Mills Pvt. Ltd. v. CIT (191 ITR 647) (SC).*
>
> *66. On the other hand, Ld. DR relied on the order of the Assessing Officer.*
>
> *67. Considered the rival submissions and material placed on record, we observe from the record that the issue involved in this ground of appeal is similar to the grounds of appeal raised in Ground No. (K). However, the surplus received on redemption of treasury bills was shown as short term capital gain in the return of*

income out of abundant caution by the assessee itself and the same was sustained by the Ld.CIT(A). However, before us in the grounds of appeal revenue has raised this issue that the above said surplus has to be treated as "interest income" substantiating the views of the AO and not under the head "capital gain". After considering submissions of both the parties, we are not inclined to accept the submissions raised by the revenue that the surplus earned by the assessee cannot be treated as interest income and it is fact on record that assessee has held the treasury bills for certain period of time as investment and the surplus has to be taxed under the head "capital gain" and the same was sustained by the Ld.CIT(A). Therefore, the contention of the Assessing Officer is accordingly rejected and we observe that Ld.CIT(A) has rejected claim made by the assessee that the redemption of such treasury bills is not a transfer.

68. Similar issue was considered by the Coordinate Bench in favour of the revenue for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

> *"21. In the books of account for the period relevant to the assessment year underappeal, the assessee has shown Rs.1,48,47,037/- as surplus on redemption of treasury bills. The Assessing Officer held the aforesaid amount as short term capital gains. The claim of the assessee is, that redemption of treasury bills result in total extinguishment of the treasury bills other than by way of transfer, hence, does not cover by the definition of 'transfer u/s 2(47) of the Act so as subjected to short term capital gains. The CIT(A) following the ratio laid down in the case of Vania Silk Mills Pvt. Ltd. vs. CIT, 191 ITR 647(SC) held that in redemption, the asset in the form of treasury bills stood extinguished without transfer. Therefore, the surplus arising out of redemption of treasury bills cannot be subject to capital gains. The treasury bills being capital asset, the surplus arising out of its redemption can neither be taxed as revenue receipt. The learned Counsel for the assessee fairly*

admitted LA that this issue is decided against the assessee by the Tribunal in assessee's own case for assessment year 1995-96.

We find that the Co-ordinate Bench in assessee's own case for assessment year 1995-96 in appeal by the Revenue after placing reliance on the decision of Hon'ble Supreme Court of India in the case of CIT vs. Grace Collis, 248 ITR 323 has decided the issue in favour of the Revenue. Thus, in view of uncontroverted findings of the Co-ordinate Bench in assessee's own case in the immediately preceding assessment year, ground No.8 in appeal by the Revenue is allowed."

69. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, grounds raised by the revenue is allowed. Therefore, we are not inclined to sustain the findings of the Ld.CIT(A), accordingly, ground raised by the revenue is dismissed."

50. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the assessee is allowed.

51. With regard to Ground No. 2 and 3, Ld.AR of the assessee submitted that these grounds are not pressed, accordingly, the same are dismissed as such.

52. With regard to Ground No. 4 which is in respect of disallowance of wealth-tax payment, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

53. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

54. 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. 1997-98. While deciding the issue, the Coordinate Bench in ITA.No. 5030/Mum/2001 dated 13.04.2023 held as under: -

> *"43. With regard to Ground No. (j) which is in respect of allowing addition of ₹.9,60,123/- towards wealth tax liability by holding that the same is wealth tax paid by the assessee, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.*
>
> *44. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.*
>
> *45. 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. 1995-96. While deciding the issue, the Coordinate Bench in ITA.No. 3493/Mum/1999 dated 20.01.2021 held as under: -

> *"69. Considered the rival submission and material placed on record. We notice from the records that the identical issues have already been decided by ITAT Delhi Bench in the case of Punj Sons (P) Ltd. vrs. DCIT (2002) 74 TTJ 596) (Del) on merits. For the sake of clarity, relevant portion of the said decision is reproduced below:-*
>
> > *7. We have considered the rival submissions and the materials on the file. We are of the view that the issue in the present case is covered by the Supreme Court decision in the case of AAC Ltd (supra). Section 40(a)(iia) prohibits deduction of "any sum paid on account of wealth-tax". However, Explanation to Section 40(a)(iia) provides as under:*
> >
> > *"Section 40(a)(iia):*
> >
> > *Explanation--For the purpose of this sub-clause, "wealth-tax" means wealth-tax chargeable under the WT Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession are allowed as deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of business or profession."*
> >
> > *In view of the Supreme Court decision in ACC Ltd. case (supra), last part of the Explanation i.e., "but does not include any tax chargeable with reference to the value of any particular asset of the business or profession" has to be read as in continuation of the*

beginning part of the Explanation i.e., "for the purpose of this sub-clause wealth-tax means wealth-tax chargeable under the WT Act, 1957 (27 of 1957)". Thus, these two parts of the Explanation put together would read as under:

"For the purpose of this sub-clause wealth-tax means wealth-tax chargeable under the WT Act, 1957 (27 of 1957), but does not include any tax chargeable with reference to the value of any particular asset of the business or profession".

8. Accordingly, the wealth-tax chargeable with reference to the value of any particular asset of the business or profession will not be covered by the prohibition clause of Section 40(a)(iia) of the IT Act, 1961, and as such wealth-tax could be admissible for deduction. Admittedly, the wealth-tax paid in pursuance to Section 40 of the Finance Act, 1983, was with reference to the value of particular asset of the business of the assessee. Under Section 40 of the Finance Act, 1983, total wealth of the company was not chargeable to wealth-tax. It was only the assets specified under Sub-section (3) of Section 40 of the Finance Act, 1983, which was chargeable to wealth-tax. 'Therefore, the exception part of Explanation to Section 40(a)(iia) of the Act referred to above became applicable in the present case and the wealth-tax amounting to Rs. 1,55,820 paid by the assessee in pursuance to Section 40 of the Finance Act, 1983, was admissible for deduction.

9. In the above view of the matter, we direct the AO to allow deduction of Rs. 1,55,820.

70. Therefore, respectfully following the above decision, which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed."

46. Further, in assessee's own case for the A.Y. 1996-97 the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

> *"22. During the period relevant to assessment year under appeal the assessee paid wealth tax of Rs.6,19,229/-. The deduction of the aforesaid amount claimed by the assessee was denied by the Assessing Officer. In first appellate proceedings, the CIT(A) allowed assessee's claim of deduction in the light of explanation to section40(a)(iia) of the Act. Assessee's similar claim was allowed by the CIT(A) for the assessment year 1995-96. We find that the Revenue in assessment year 1995-96 has assailed the order of CIT(A) in allowing assessee's claim of deduction in respect of wealth tax. The Co-ordinate Bench following the order of Tribunal in the case of Punj Sons P. Ltd. vs. DCIT, 74 TTJ 596 (Del) upheld the findings of CIT(A) and dismissed the ground raised by Revenue in its appeal. No contrary material has been placed before us by the Revenue. Thus, ground No.9 raised by the Revenue inthis appeal is dismissed for parity of reasons."*

47. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the revenue is dismissed."

55. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the assessee is allowed.

56. With regard to Ground No. 5 which is in respect of disallowing deduction under section 80-O of the Act in respect of 40% of royalty

amount received. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

57. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

58. 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. 1998-99. While deciding the issue, the Coordinate Bench in ITA.No. 9564/Mum/2004 dated 20.01.2021 held as under: -

> *"10. Ground no.9 urged by the assessee relates to the deduction claimed by the assessee u/s 80-O of the Act. The assessee claimed a deduction u/s 80-O of the Act a sum of Rs.1,96,608/- calculated @ 50% of royalty amount of Rs.3,93,216/- received by the assessee from a Columbian company. The AO rejected the above said claim with the following observations:-*
>
> > *"The agreement filed only talks about import of CKD Kits into Columbia. Further the amended provisions of section 80-O only provide for deduction u/s 80-O in respect of the drawing, design, invention, patent and trade mark outside India. In the circumstances, it would appear clear that the amount received is not for any of these purposes. Therefore the deduction claimed is not allowable."*

The Ld CIT(A) confirmed the disallowance without much discussion.

10.1 We heard the parties on this issue and perused the record. A deduction u/s 80-O is allowed in respect of income received, inter alia, from a foreign enterprise in consideration for the use outside India of any patent, invention, design or registered trade mark…..

10.2 The facts prevailing in the instant case are that the assessee has entered into a "Technical Knowhow agreement" with M/s Autotecnicia Columbiana, S.A, a foreign enterprises domiciled at Columbia. The assessee herein has appointed the above said foreign company as exclusive LICENSEE within the territory of Columbia for assembly and progressive manufacture and sale of Bajaj Chetak, Bajaj Chetak Classic, Bajaj Super and Bajaj Super FE scooters and derivatives of these scooters. As per clause 4 of the agreement, assessee shall supply completely knocked down packs ofproducts in primered condition consisting of standard configuration of the production in the production at Bajaj plants (referred as 'CKD Packs'). As per clause 5 of the agreement, the LICENSEE can request the assessee to delete any part from CKD pack, meaning thereby the LICENSEE shall manufacture those parts by itself. In that case, the assessee shall provide the LICENSEE a set of drawings for such parts/components and characteristics of materials to be use in the manufacture of such parts/components. For supplying the drawings, the assessee has collected technical knowhow fee from the above said licensee, on which the deduction u/s 80-O has been claimed.

10.3 The case of tax authorities is that the payment so received by the assessee was not in respect of the drawing, design, invention, patent and trade mark outside India. However, we notice that the Agreement entered between both the parties clearly provides that the technical knowhow fee is received for supplying the drawings. The relevant clause 5 reads as under:-

> *"5. It is further agreed that should the LICENSEE request BAJAJ to delete any part, component or process from such CKD packs, BAJAJ will provide the LICENSEE as part of Engineering Services a set of drawings for such*

parts/components and characteristics of materials to be used in the manufacture of such parts/components. For such deletion/s from CKD packs the LICENSEE shall pay to BAJAJ a lump sum technical knowhow fee of US Dollars Five Hundred Thousand (USD 500,000) in installments as under:- …"

A careful perusal of the above said clause would show that the assessee has received technical knowhow fee for supplying a set of drawings for such parts/components and also for providing information about characteristics of material to be used in the manufacture of such parts/components. In the instant case, the assessee has given license to assemble its scooter models. When the Licensee prefers to manufacture certain parts/components on its own, the assessee permits the same and accordingly supplies the drawings relating to those parts and collects technical know how fee. The Licensee is bound to manufacture those parts/components in accordance with thosedesigns only. Otherwise, the same will not fit into Scooter when the scooter is assembled. Hence, we are unable to find any reason to say that the said payment will not fall under the category of "consideration received for the use of patent, invention, design" mentioned in sec. 80-O of the Act. Accordingly, we are of the view that the technical knowhow fee received by the assessee would fall under the category of "royalty", as defined in sec.80-O of the Act and it is eligible for deduction u/s 80-O. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the claim of the assessee."

59. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1998-99 is respectfully followed, accordingly, ground raised by the assessee is allowed.

60. With regard to Ground No. 6 which is in respect of disallowing the expenditure in respect of process Know-how expenses. The brief facts relating to this ground are, during the course of assessment proceedings, Assessing Officer observed that assessee has incurred an amount of ₹.17,70,92,101/- for obtaining process know-how from M/s.Kawasaki Heavy Industries Limited, Japan. In note No. 5D of the notes to computation enclosed with the return of income, it was mentioned that the above said amount has been capitalized in the accounts and 1/6thof the same has been written off during the year. In the return of income, the entire amount of ₹.17,70,92,101/- was claimed as a deduction by relying on the decision of the Hon'ble Supreme Court in the case of Alembic Chemicals Works Co. Ltd. *v.* CIT [177 ITR 377]. In this regard, assessee submitted that the assembly line for two wheeler models are always dedicated lines i.e. single model lines. However, the assessee has developed many more models in view of increasing competition and it would be too expensive to have dedicated lines for each model, a new line for motor cycles under the concept of multi model assembly line was to be developed. In this regard, the assessee utilized the services of M/s. Kawasaki Heavy Industries Ltd., Japan to understand the effect of multi model assembly line. It was

contended that the expenditure was incurred to achieve efficiency in operations and accordingly, is an allowable expenditure. However, Assessing Officer not accepted the contention of the assessee. He observed that once an expenditure has been incurred for obtaining know-how, the same amounts to a capital expenditure. Therefore, the sum of ₹.17,70,92,101/- is accordingly added back to the total income. He is of the view that depreciation on the said amount is allowable to the assessee.

61. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and Ld.CIT(A) considered the detailed submissions of the assessee and sustained the additions made by the Assessing Officer by observing as under: -

> *"Now coming to the facts of the present case. In the instant case, the amount was given for the technology which was used for the improvement in the existing plant and machinery. This can be an intangible asset, but the expenditure in any case will have to be a capital expenditure. In the case of CIT v. Mahindra Ugine Steel Co. Ltd. (1998) 233 ITR 204 (Bom), the Hon'ble Bombay High Court held that technical know how is a plant. Similar view was taken in the case of Scientific Engg. House (P) Ltd. CIT (1986) 157 ITR 86 (SC) by the Hon'ble Supreme Court. Even in the case CIT v. Escorts Employees Maries Ltd. (2000) 242 ITR 74 (P&H) and CIT v. Premier Automobiles Ltd. 19941 ITR 633 (Guj) and CIT v. Premier Automobiles Ltd. (1994) 206 ITR 1Bom), Anup Engineering Ltd. v. Flee 4199320 Clt (1991) 192 ITR 633 (Guj), CIT v. ToshniwalMgg. Co. Ltd. (1991) 192 ITR 209 (Bom) and CIT vs. Kar Valves Ltd. ITR 490 (Ker), it has been held that cost of acquisition of technicalknow how is to be treated as capital asset. Lord Atkinson in a concurring*

speech indicated that the word 'asset' ought not to be confined to 'something material; [(1926) AC 205 222] the asset or advantage may be of an impalpable or incalculable nature. [Assam Bengal Cement v. CIT 27 ITR 34 (SC); Sitalpur Sugar v. CIT 49 ITR (SC) 160; Collins v. Joseph 7 ITR 92,99; Bradlbury v. United Glass 38 TC 369 (CA). Thus, expenditure on a scheme which increases the value of a capital asset is capital expenditure. In Assam Bengal Cement Co Ltd. v. CIT [177 ITR 377] it was held that the expenditure incurred for procuring an enduring benefit to the business is to be treated as a capital expenditure. In view of the above I hold that the amount paid is to be treated as capital expenditure and at most the appellant is entitled to depreciation on this amount. The order of the Assessing Officer on this point is confirmed.

62. Aggrieved, assessee is in appeal before us and submitted as under: -

"3. In the assessment order, the Assessing Officer did not allow deduction for the above expenditure by merely stating that the said expenditure is capital in nature without providing any reason for arriving at such conclusion. The Assessing Officer, however, allowed depreciation on such expenditure.

4. On appeal before the CIT(A), the appellate authority noted that the expenditure was incurred for technology which was used for improvement in the existing plant and machinery. The Hon'ble CIT(A) considered such expenditure incurred to be an intangible asset as the companyhas received know-how and accordingly upheld the action of the Assessing Officer.

In this connection, we wish to submit as under

5. The company is an Indian company engaged in the business of development, manufacturing and distribution of (a) Two wheelers, and (b) parts thereof. The company sells its products in India as well as in various other global markets. The company manufactures various models of Two wheelers. For the captioned year, the company had a dedicated assembly line for each model. Given that the company has to cater to diverse market conditions and had several automotive models in place, it was not feasible to have dedicated assembly line for each model. The company as part of its on-going business availed expert services from Mis. Kawasaki Heavy Industries Ltd. Japan for introducing manufacturing

of various models in multi model assembly line. This would result in the company manufacturing various different models on the same assembly line rather than having a dedicated assembly line for each model. This has resulted in operating efficiency for the company and has not resulted into receiving any enduring benefit in the capital field. There is no new product or model for which the company has incurred the aforesaid expenditure and the said expenditure has been incurred only to achieve the operational efficiency.

6. Further, Article 2 to 5 of the agreement with Kawasaki highlights the various roles of the company and that of Kawasaki which reinforces the submission of the company that the expenditure incurred did not bring any new know-how to the company as the company and Kawasaki were jointly involved in bringing the operating efficiency.

7. In this regard, we wish to place reliance on the decision of the Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd [1989] 177 ITR 377 (SC) where the assessee under an agreement with a foreign firm obtained technical know-how, sub cultures, etc., on 'once for all' payment for increasing yield of penicillin in its existing plant with a proviso to keep the said know-how confidential. In view of the said facts, the Hon'ble Supreme Court held as under:

> *There was no material for the Tribunal to hold that the area of improvisation was not a part of the existing business or that the entire gamut of the existing manufacturing operations for the commercial production of penicillin in the assessee's existing plant had become obsolete or inappropriate in relation to the exploitation of the new sub-cultures of the high yielding strains of penicillin supplied by the foreign firm and that the mere introduction of the new bio-synthetic source required the erection and commissioning of a totally new and different type of plant and machinery. The financial outlay under the agreement was for the better conduct and improvement of the existing business and should, therefore, be held to be a revenue expenditure. The circumstance that the agreement insofar as it placed limitations on the right of the assessee in dealing with the know-how and the conditions as to non-portability. confidentiality and secrecy of the know-how inclined towards the inference that the right pertained more to the use of the know-how than to its exclusive acquisition. The further circumstance that the agreement pertained to a product already in the line of the assessee's established business and not to a new product indicated that what was stipulated was*

an improvement in the operations of the existing business and its e ciency and profitability not removed from the area of the day-to-day business of the assessee's established enterprise.

The once for all payment test was also inconclusive. What was relevant was the purpose of the outlay and its intended object and , considered in a commonsensway having regard to the business realities. In a given case, the test of 'enduring benefit might break down.

In the result, the assessee was held to be entitled to the deduction of the amount paid by it to the foreign firm, the same being revenue expenditure.

8. Further, reliance is also placed on the decision of the Hon'ble Bombay High Court in the case of Bombay Burmah Trading Corpn. Ltd (2017) 250 Taxman 436 (Bom).

Facts of the case:

The company was engaged in business of manufacturing laminates. An agreement was entered into between the assessee and one, ACL in which ACL agreed to transfer technology to the assessee. Due to 'executive research development and experimental studies', ACL had developed modern and sophisticated technique of manufacturing various types of laminates and other products by e cient and economical use. Some technique was transferred to the assessee. The assessee claimed payment made to ACL as a revenue expenditure.

The Assessing Office concluded that the expenses resulted in bringing into e ect and production new type of know how, that was to become the property of the assessee. Thus, same was a capital expenditure and not revenue expenditure.

On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.

On further appeal, the Tribunal held that mere improvisation in the process and technology in some areas when supplemental to the existing business, there being no new or fresh ventures, then, the expenditure incurred was revenue in nature. The assessee was already in the business of manufacturing laminates. Thus, by mere improvising the technology of manufacturing the product, the assessee had not derived such benefit

which would enable the Revenue to term this expenditure as capital in nature.

On Revenue's appeal to the High Court:

The aspect which has been highlighted, improvisation in the process and technology in some areas of the enterprise and if that is supplemental to the existing business, then, there is no new or fresh venture. The Tribunal has found in this case that the Assessing Officer was in error in holding that the expenditure was not a revenue expenditure. The findings in that regard would denote that the agreement was entered into with ACL which agreed to provide expertise, skill, know-how and technical data to the assessee company for the manufacture of various types of laminates and other industrial products. The argument of the assessee was that if the agreement, is referred preamble then, it would be clear that the assessee was already in possession of the technology which required updation. The updated technology was mainly aimed at reduction and control of heat requirement, upgrading of existing equipment and general cost production. In the case of this very assessee, for the assessment year 1984-85, the Tribunal had rejected the claim for deduction of this very amount on the ground that the liability was not incurred in that year. Hence it was argued that the deduction be allowed in the assessment year in question. The Tribunal, on consideration of rival contentions, came to the conclusion that the technology had been supplied and which technology would enable the assessee to update and improve upon its process of manufacturing laminates. It is in these circumstances that the Tribunal concluded that in this age of vast advancing technology, it is di cult to hold that the technology acquired by the assessee would be enduring. No new asset is required by the assessee. It is in these circumstances that it allowed the deduction as revenue expenditure. [Para 19]

This finding of fact cannot be interfered further appellate jurisdiction. Mere so, when it is not vitiated as pointed above. [Para 21]

The facts of the case before your Honours is similar to the case before the Hon'ble Bombay High Court. The said expenditure has been incurred to update and improve the existing process of manufacturing automobiles which is similar to the finding in the case before the Hon'ble Bombay High Court.

9. Further, reliance is also placed on the decision of the Mumbai Bench of the Hon'ble Tribunal in the case of Spectrum Coal & Power Ltd [2017] 58 ITR(T) 566 wherein the Hon'ble Tribunal held as under:

Held that the payment has been made by the assessee for improvement in the coal beneficiation activity for power grade coal. Power grade coal was the existing business of the assessee. This meant improvement in the coal beneficiation eected the day to daybusiness of the assessee and improved the operations of the existing business. It did not relate to a new product.

10. In view of the above, the know-how expenditure incurred by the company for an on-going business does not create enduring benefit in view of rapid obsolescence in technology as has been decided by the Hon'ble Supreme Court in the case of Alembic Chemical Works Co. v CIT 177 ITR 377 (SC) & CIT v. Ciba India Ltd 69 ITR 692 (SC). The said expenditure was incurred with respect to achieving better operational capabilities and therefore, the said expenditure ought to be allowed as a deduction."

63. On the other hand, Ld. DR submitted that what is relevant in this transaction is whether the know-how purchased by the assessee will have an enduring benefit or not. In this case the production capacity was better utilized by the assessee by acquiring this new know-how by efficiently utilizing the existing line for the purpose multi model manufacturing. For this purpose, he relied on the decision of the Hon'ble Delhi High Court in the case of M/s.Bharat Gears Limited *v.* CIT in ITA No. 14/2005 dated 03.06.2011. In this regard, he brought to our notice Para No. 5 to 8 of the above decision, which is facts of the case and Para No. 15 wherein Hon'ble

High Court relying on the decision of the Saravana Spinning Mills Pvt Ltd., [2007] 293 ITR 201 (SC) decided the issue in favour of revenue.

64. Considered the rival submissions and material placed on record, we observe from the record that assessee was having several manufacturing lines for individual manufacturing / assembly line for each models of the motor cycles. However, it was submitted that assessee is not in a position to invest enough dedicated manufacturing line for each models, therefore they acquired manufacturing process for multi model assembly line from M/s.Kawasaki Heavy Industries Limited, Japan. This shows that assessee has acquired a new method of process which can accommodate multi model assembly line for manufacturing various models in the same line. This upgradation of manufacturing process which was not available with the assessee. Therefore, this is a new processing technique which assessee has acquired by paying considerable amount. The assessee has relied on several case law to put forth the argument that mere upgradation of process will not lead to any enduring benefit or does not create any capital assets.

65. On a careful consideration, we are of the view, the case law relied by the assessee are distinguishable to the facts in the present case. What is relevant is whether the new process acquired by the assessee will have an enduring benefit and whether this new process falls within the definition of Know-how. As per the definition given under section 35AB the Know–how means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil well or other sources of mineral deposits. From the above definition it is very clear that any industrial information or technique likely to assist in the manufacture or processing of any goods covers within the definition of know-how.

66. In the given case, assessee has acquired a new technique in order to assist in manufacture / assemble of multi model in the same manufacturing / assembly line. This is a new information or technique acquired by the assessee from M/s.Kawasaki Heavy Industries Limited, Japan. This clearly shows that assessee has acquired a new method of manufacturing of multi models of scooters in one dedicated manufacturing or assembly line instead of several dedicated lines for each model. This shows that it is not an

improvement of existing manufacturing process. Certain improvements can also be made in the existing line or may be certain process were readjusted to improve the efficiency of the manufacturing line. However, in this case it is completely new process technique acquired by the assessee and it is relevant to note that assessee also paid a huge sum to acquire the above technique and in books of accounts also assessee has recognized that assessee has a new technique and claimed as deferred revenue expenditure. Further, as held in the case of M/s.Bharat Gears Limited *v.* CIT (supra), the expenses incurred by the assessee is nothing but capital expenditure and assessee has an option to claim either differed revenue expenditure or depreciation as allowed by the Assessing Officer. After considering the overall facts on record, we do not find any reason to disturb the findings of the Ld. CIT(A). Accordingly, Ground No. 6 raised by the assessee is dismissed.

67. With regard to Ground No. 7 which is in respect of disallowance of expenditure incurred for the purpose of buy-back of shares. The brief facts are, during the course of assessment proceedings, Assessing Officer observed that assessee has incurred an amount of ₹.2,28,09,176/- towards

buy-back of share expenses for purchase of its own shares. Further, Assessing Officer observed that the above said amount was added to the total income out of abundant caution and in note no. 7 of the notes to computation of total income, the assessee has submitted that the said sum is an allowable deduction since it was incurred to carry on the business more efficiently.

68. Aggrieved, with the above order assessee preferred an appeal before the Ld. CIT(A) and submitted before the Ld. CIT(A) that the above expenses were incurred for improving the efficiency of the organization and all the said expenses are of a revenue nature, the same should be allowed as deduction while computing the total income. The assessee also relied on the case of Bombay Burmah Trading Corporation Ltd. *v.* CIT (145 ITR 793) and CIT *v.* General Insurance Corporation of India (254 ITR 203).

69. After considering the submissions of the assessee, Ld. CIT(A) sustained the additions made by the Assessing Officer by observing that the expenditure had been incurred not for introduction of any capital but for the purpose of reduction of share capital, by relying on the decision of CIT *v.* Sakthi Finance [256 ITR 488 (Mad)] that the expenditure incurred

after the commencement of business for increase in share capital is not to be allowed under section 35D. By relying on the above said logic and keeping in view the circumstances he held that basically the expenditure has been incurred for the benefit of the shareholders and not for the benefit of the company.

70. Aggrieved, assessee preferred appeal before us and filed the present grounds of appeal.

71. At the time of hearing, Ld. AR submitted that assessee has incurred the above said expenditure to buy back the shares, for that purpose assessee has incurred several expenditures for the above said purpose. Ld.AR brought to our notice the details of expenses which is placed on record at Page No. 190 of the Paper Book which are relating to preparation of documentations, advertisement expenses, fees paid to Khandwala Securities Ltd. Further, he brought to our notice Page No. 37 of the Paper Book which is extract of annual report giving details of buy back of shares. He submitted that the above said expenditure are allowable expenditure by relying on the following decisions: -

(a) CIT v. Hindalco Industries Ltd (ITA No. 517 of 2009) (Bom)

(b) PCIT v. Mearck Ltd (434 ITR 596) (Bom)

(c) CIT v. Aditya Birla Nova Ltd (246 Taxman 202) (Bom)

(d) CIT v. Selan Exploration Technology Ltd (188 Taxman 1) (Delhi)

(e) ACIT v. Britannia Industries Ltd (ITA No. 1789/Kol/2008)

(f) DCIT v. Ocwen Financial Solutions P. Ltd(ITA No. 511/Bang/2016)

(g) Abbott India Limited v. ACIT (ITA No. 8428/Mum/2011)

(h) CIT v. General Insurance Corporation (286 ITR 232) (SC)

72. On the other hand, Ld. DR supported the findings of the lower authorities and in this regard he relied on the decision of Hon'ble Supreme Court in the case of Brooke Bond India Limited *v.* CIT dated 27.02.1997.

73. Considered the rival submissions and material placed on record, we observe that the assessee has incurred various expenditures in order to carry out the process of buy-back of shares. The details of the same are placed at Page No. 190 of the Paper Book and by incurring all these expenditures there in no increase in the capital basis of the assessee company and it restricted only to the out flow of capital. In the similar facts on record, the Hon'ble Bombay High Court allowed the similar claim of the assessee in the case of CIT v. Hindalco Industries Ltd (supra), the relevant findings of the Hon'ble High Court are given below: -

"5. Re. : Question (D) :-

> *"(D) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT are justified in law in allowing expenses on buy- back of shares which were to be treated as capital expenditure as laid down in Apex Court's decision in The case of Brooke Bond India Ltd (225 ITR 98)?"*

It must be clarified that the expenditure does not includethe price paid to the shareholders for buying back the shares. Itmerely relates to the expenditure incurred in connection with the carrying out of the buy back scheme.

As observed by the Tribunal, the buy-back was part of therespondent's ongoing process for enhancing shareholders value, The respondent afforded its shareholders the facility of buying back its shares. The same would enure to the benefit of the shareholders. It may well enhance the shareholders sentiment qua the respondent. The buy back however, would not in any manner enhance the capital structure of the respondent. If anything there is an outflow of capital. As we noted earlier, the respondent has not claimed a deduction qua the outflow. It has claimed a deduction in respect of the expenditure incurred in connection with the process. There is no increase in the capital base of the respondent and the expenses incurred were in connection with the existing business of the company. That certainly is for the over all business of the company and liable to be allowed as a revenue deduction.

The issue raised in question (D) does not give rise to the substantial question of law."

74. Respectfully following the above decision, we are inclined to allow the ground raised by the assessee and with regard to the decision of the Brooke Bond India Limited *v.* CIT (supra) relied by Ld DR, we observe that the above decision was also quoted before the Hon'ble Bombay High Court. The Hon'ble High Court has considered the same and distinguished the same.

Therefore, the case law relied by the Ld. DR are already distinguished. Accordingly, ground raised by the assessee is allowed.

75. In the result, appeal filed by the assessee is partly allowed.

76. To sum-up, appeals filed by the revenue as well as assessee are partly allowed.

Order pronounced in the open court on 23rd February, 2024.

Sd/-	**Sd/-**
(ABY T VARKEY)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 23/02/2024
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum