IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.268/Mum./2018
(Assessment Year : 2013–14)

Asian Paints Ltd.
Asian Paints House
6A, Shanti Nagar, Santacruz (East)
Mumbai 400 055 PAN – AAACA3622K ……. Appellant

v/s

Asstt. Commissioner of Income Tax
Large Taxpayer Unit-2, Mumbai ..... Respondent

ITA no.841/Mum./2018
(Assessment Year : 2013–14)

Asstt. Commissioner of Income Tax
Large Taxpayer Unit-2, Mumbai ……. Appellant

v/s

Asian Paints Ltd.
Asian Paints House
6A, Shanti Nagar, Santacruz (East)
Mumbai 400 055 PAN – AAACA3622K ..... Respondent

Assessee by : Shri Madhur Agrawal
Revenue by : Shri Vachashpati Tripathi

Date of Hearing – 18/01/2024	Date of Order – 05/03/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present cross-appeal has been filed challenging the impugned order dated 22/11/2017, passed under section 250 of the Income Tax Act, 1961

(*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–55, Mumbai, [*"learned CIT(A)"*], for the assessment year 2013–14.

2. The brief facts of the case are that the assessee is a company and is engaged in the business of manufacturing paints and enamels. For the year under consideration, the assessee filed its return of income on 28/11/2013 declaring a total income of Rs.1259,97,53,980. Subsequently, the assessee revised its return of income declaring a total income of Rs.1248,74,49,480. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) were issued and served on the assessee. The Assessing Officer ("*AO*") vide order dated 25/01/2017 passed under section 143(3) read with section 144C(3) of the Act assessed the total income of the assessee at Rs.1351,78,51,596, under normal provisions of the Act, after making certain additions/disallowances. The learned CIT(A), vide impugned order, granted partial relief to the assessee. Being aggrieved, both the assessee as well as the Revenue are in appeal before us.

ITA No.268/Mum./2018
Assessee's Appeal – A.Y. 2013–14

3. In its appeal, the assessee has raised the following grounds:–

1) The learned Commissioner of Income Tax (Appeals) -55, Mumbai erred in applying Rule 8D and disallowed a sum of Rs. 69.44 lacs (net of Rs. 23.87 lacs offered by assessee) u/s 14A of the Income Tax Act, 1961.

2) The learned Commissioner of Income Tax (Appeals) -55, Mumbai disallowed Rs.26.79 lacs on account of Transfer pricing adjustments for low mark up on support service provided to associated enterprises.

3) The learned Commissioner of Income Tax (Appeals) -55. Mumbai erred in disallowing Rs.5.98 lacs on account of Transfer Pricing adjustments for non-recovery of charges for providing letter of support/comfort.

4) The learned Commissioner of Income Tax (Appeals)-55, Mumbai erred in confirming an ad hoc addition of Rs.84.41 lacs (net) on account of non-inclusion of damaged stock in valuation of closing stock.

5) The Appellant craves leave to add, amend, alter, modify, delete or change all or any of the above ground on or before the date of hearing of this appeal."

4. The issue arising in ground no.1, raised in assessee's appeal, pertains to disallowance under section 14A of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee earned dividend income from domestic companies/mutual funds of Rs.31,69,67,788, which was claimed as exempt under section 10(34) of the Act and also earned interest on tax-free REC bonds amounting to Rs.2,16,86,381. The assessee suo-moto made a disallowance of Rs.23.86 lakh as an expense incurred for earning the aforesaid exempt income. The AO vide order passed under section 143(3) read with section 144C(3) of the Act by applying the provisions of Rule 8D of the Income Tax Rules, 1962 ("*the Rules*") computed the disallowance of Rs.1,82,91,196 under section 14A of the Act after considering the suo-moto disallowance of Rs.23,86,531 made by the assessee. The learned CIT(A), vide impugned order, restricted the disallowance made under section 14A read with Rule 8D to Rs.93,30,985 after granting relief to the assessee with respect to the proportionate interest amount computed on interest incurred for the normal running of the business, following the approach adopted by its predecessor in earlier years in assessee's own case. Being aggrieved, both the assessee as well as the Revenue are in appeal before us.

6. During the hearing, the learned Authorised Representative ("*learned AR*") made similar arguments as were made in assessee's appeal for the assessment year 2012-13 and submitted that recording of satisfaction is a prerequisite for invoking the provisions of section 14A of the Act. However, in the present case, the AO did not record any satisfaction regarding the rejection of assessee's plea. The learned AR further submitted that in preceding years disallowance made under section 14A of the Act has been deleted in the absence of any satisfaction being recorded by the AO.

7. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the AO.

8. We have considered the submissions of both sides and perused the material available on record. Undisputedly, in the present case, the assessee earned a dividend income of Rs.31,69,67,788 from domestic companies/mutual funds and also on interest on tax-free REC bonds amounting to Rs.2,16,86,381, which has been claimed as exempt under section 10 of the Act. Further, there is also no dispute regarding the fact that the assessee while computing its taxable income suo-moto disallowed an amount of Rs.23,86,531 as an expenditure incurred for earning the aforesaid exempt income. As per the assessee, the aforesaid suo-moto disallowance is based on the report obtained from the accountant, who after verifying assessee's books of accounts and relevant records has estimated the amount of disallowance. The working of aforesaid suo-moto disallowance made by the assessee, forms part of the paper book on page 329, as under:

Sr. No.	*Particulars*	*Rupees*
1.	*Interest on borrowed funds directly attributable to income which does not form part of total income.*	*–*
2.	*Interest on funds borrowed which is not directly attributable to any particular income or receipt*	*5,25,265*
3.	*Expenditure indirectly attributable to the investment activity*	*18,61,266*
4.	*Total Amount disallowable u/s 14A of the Act*	*23,86,531*

9. We find that while deciding a similar issue in favour of the assessee, the coordinate bench of the Tribunal in assessee's own case in Asian Paints Ltd. v/s ACIT, in ITA No.5363/Mum./2017, vide order dated 01/03/2024, for the assessment year 2012-13, observed as under:-

> *"8. We have considered the submissions of both sides and perused the material available on record. Undisputedly, in the present case, the assessee earned a dividend income of Rs.40.57 crore, which has been claimed as exempt under section 10 of the Act. Further, there is also no dispute regarding the fact that the assessee while computing its taxable income suo-moto disallowed an amount of Rs.24,45,540 as an expenditure incurred for earning the aforesaid exempt income. As per the assessee, the aforesaid suo-moto disallowance is*

the salary cost in respect of the time spent by its employees on carrying out the investment-related activity, which has been computed as under:

Disallowance u/s 14A of Income Tax Act (Estimated allocable expenses)			
Employee Designation	*Percentage*	*Cost to Company*	*Value of disallowance*
Chief Financial Officer	*5%*	*1,62,88,500*	
Senior Manager-Finance	*25%*	*30,28,400*	*8,14,425*
Finance Executive	*50%*	*10,30,600*	*7,57,100*
			5,15,300
Total Proportionate salary			*20,86,825*
Proportionate Interest amount			*3,58,715*
Total Section 14A disallowance			*24,45,540*

9. It is the plea of the assessee that it has not engaged any specific staff for investment activity and the same is being carried out by the existing staff. Further, no incremental expenditure has been incurred on staff and other administrative activities for earning the exempt income. It is evident from the record that the AO disagreed with the correctness of the claim of expenditure made by the assessee and held that adequate interest and administrative expenses have not been disallowed for earning the exempt income. Accordingly, the AO proceeded to compute the disallowance of Rs.1,51,24,084/- under section 14A read with Rule 8D of the Rules, after considering the suo-moto disallowance made by the assessee.

10. Before proceeding further, it is pertinent to note certain relevant provisions of the Act, which are necessary for adjudication of the issue at hand. Section 10 of the Act deals with income which does not form part of the total income of the assessee. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. Further, section 14A(2) of the Act, reads as under:

> *"(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does in form part of the total income under this Act".*
>
> *(emphasis supplied)*

11. Thus, if the AO is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income, after having regard to the accounts of the assessee, the AO can determine the amount of such expenditure. The Hon'ble Supreme Court in Maxopp Investment Ltd v. CIT: [2018] 402 ITR 640 (SC), while emphasising the aspect of recording satisfaction by the AO, observed as under:

> *"41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of*

> *apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer."*

Further, the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. Vs DCIT: [2017] 394 ITR 449 (SC), observed as under:

> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (emphasis supplied)*

12. Therefore, the satisfaction as required to be recorded under the provisions of section 14A of the Act is not limited to merely disagreeing with the submission of the assessee and requires that the AO should also provide the basis for reaching such a conclusion, after having regard to the accounts of the assessee. However, as noted above, in the present case the AO merely proceeded to compute the disallowance under section 14A read with Rule 8D without examining the correctness of the claim of the assessee regarding expenditure incurred for earning the exempt income. It is evident from the record that the assessee's own funds, i.e. share capital and reserves & surplus, are Rs.2487.78 crore, while investment in tax-free securities is only limited to Rs.165.07 crore and therefore it can be presumed that the assessee had sufficient own funds for making the aforesaid investment in tax-free securities. Further, it is also evident from the record that the assessee has computed the suo-moto disallowance on the basis of the salary cost of the designated employees, however, there is no material available on record to show that the AO has recorded the requisite satisfaction to the effect that the computation made by the assessee is incorrect having regard to the accounts of the assessee.

13. We find that the Hon'ble jurisdictional High Court in CIT v/s M/s Asian Paints Ltd., in ITA No. 1564 of 2016, vide order dated 06/04/2019, for the assessment year 2008-09, while dismissing the appeal filed by the Revenue on a similar issue held that in the absence of recording of non-satisfaction in terms of section 14A(2) of the Act, invocation of Rule 8D is not permissible. The relevant findings of the Hon'ble jurisdictional High Court, in the aforesaid decision, are reproduced as under:-

> *"4. Regarding question no.(c) :-*

(a) In its return of income, the respondent made a suo-moto disallowance of Rs.15.21 lakhs being the expenditure incurred to earn exempt income under Section 14A of the Act. The Assessing Officer disregarded the same and proceeded to disallow an amount of Rs.1.10 crores under Section 14A of the Act read with Rule 8D of the Rules as expenditure incurred to earn exempt income. Thus, adding Rs.1.10 crores to the income of the respondent.

(b) Being aggrieved, the respondent filed an appeal to the CIT(A) but without success.

(c) On further appeal, the impugned order of the Tribunal while allowing the appeal held that before invoking the provisions of Rule 8D of the Income Tax Rules, the Assessing Officer has to record his non satisfaction with the suo moto disallowance of expenditure made towards earning exempt income by the respondent. This exercise not having been carried out by the Assessing Officer before applying Rule 8D of the Income Tax Ru'es, the disallowance of expenditure to earn exempt income cannot be sustained.

(d) This issue is no longer res integra as the Apex Court in Gorej & Boyce Mfg. Co. Ltd. Vs. Dy. CIT, 394 ITR 449 decided the issue in favour of the respondent. In the above case, the Supreme Court has while considering the issue of disallowing of expenditure incurred to earn exempt income observed as under :-

> *"Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14A (2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."*
>
> *Thus, Rule 8D of the Rules cannot be invoked where the suo moto disallowance made by the respondent assessee is not found to be satisfactory by the Assessing Officer having regard to the accounts of the assessee. In the absence of recording the aforesaid fact of non-satisfaction in terms of Section 14A(2) of the Act, invocation of Rule 8D is not permissible.*

(e) Therefore, in view of the above decision of the Apex Court, this question also does not give rise to any substantial question of law. Thus, not entertained."

14. Since, in the present case, no proper satisfaction has been recorded by the AO in terms of the provisions of section 14A(2) of the Act, having regard to the accounts of the assessee, about the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income, respectfully following the aforesaid decisions, we do not find any reason for upholding the disallowance made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted. As a result, ground no.1 raised in assessee's appeal is allowed."

10. In the present case, it is evident from the record that the AO without recording any satisfaction regarding the claim of the assessee in respect of

expenditure incurred in relation to exempt income proceeded to compute the disallowance of Rs.1,82,91,196/- under section 14A read with Rule 8D of the Rules. Therefore, respectfully following the decision rendered in assessee's own case cited supra, we do not find any reason for upholding the disallowance made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted. As a result, ground no.1 raised in assessee's appeal is allowed.

11. The issue arising in ground no.2, raised in assessee's appeal, pertains to transfer pricing adjustment on account of low markup on support services provided to the associated enterprises.

12. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee, inter-alia, entered into international transaction with its associated enterprises and received payment towards the provision of support services and intragroup services. The assessee provided support services in the nature of (i) time cost recovery of engineering, legal, HR, and other miscellaneous support functions, and (ii) software support for the purpose of book keeping and other systems support to its overseas associated enterprises. The assessee charged its overseas associated enterprises on a cost +12% basis. Further, the assessee also provided certain centralised intragroup services in the nature of supply chain, marketing, human resources, legal, systems, etc. to its associated enterprises without any consideration but for which arm's length amount was offered to tax in the return of income on the total cost incurred towards rendering the said services plus a markup of 12%. For benchmarking this transaction, the assessee used the Transactional Net Margin Method ("*TNMM*") as the most appropriate method with the Profit Level Indicator ("*PLI*") of Operating Profit to Operating Cost ("*OP/OC*"). By considering itself as the tested party, the assessee identified five comparable companies with a single-year weighted margin of 8.46%. As the assessee has charged a markup of 12% on cost for these transactions, accordingly, it claimed that the international transaction of provision of support services and intragroup services is at arm's length price ("*ALP*").

13. The AO made reference to the Transfer Pricing Officer ("*TPO*") for the determination of ALP of the aforesaid international transaction. The TPO vide order dated 21/10/2016 passed under section 92CA(3) of the Act rejected two companies selected as comparables by the assessee and included two other companies i.e. Axis Intergrated Systems Ltd. and Inmacs Management Services Ltd. as comparables to the assessee. Accordingly, by considering the following five companies as comparables to the assessee, the TPO arrived at average OP/OC of 22.82%:-

Sr. No.	*Name of the Company*	*Margin (OP/OC)*
1.	*Axis Integrated Systems Ltd.*	*36.30%*
2.	*Inmacs Management Services Ltd.*	*41.11%*
3.	*H G S Business Services Pvt. Ltd.*	*15.33%*
4.	*I C R A Management Consulting Ltd.*	*2.11%*
5.	*Konmineni Infotech Ltd.*	*19.23%*
	Average	*22.82%*

14. By applying the arm's length margin of 22.82% as computed above, the TPO, inter-alia, proposed an upward adjustment of Rs.26,79,717 with respect to international transaction of provision of support services and intragroup services. In conformity, the AO, inter-alia, passed the order under section 143(3) read with section 144C(3) of the Act. In appeal, learned CIT(A) vide impugned order dated 22/11/2017 dismissed the ground raised by the assessee and upheld the benchmarking done by the TPO. Being aggrieved, the assessee is in appeal before us.

15. During the hearing, learned AR submitted that if Axis Integrated Systems Ltd. and Inmacs Management Services Ltd., selected as comparable by the TPO, are directed to be excluded, then the entire transfer pricing adjustment made in respect of international transaction of provision of support

services and intragroup services will be deleted. In view of the above, we have confined our findings only in respect of the aforesaid two comparables.

i) Axis Integrated Systems Ltd.

16. The first comparable under dispute is Axis Integrated Systems Ltd. This company was included as comparable by the TPO vide order passed under section 92CA(3) of the Act on the basis that this company is engaged in export licensing services and procedures and EXIM consideration, service tax audit services, money exchange services, etc. and these activities are in the nature of business support services as rendered by the assessee. The TPO rejected the contention of the assessee that this company is engaged in providing licensing services and also traded in Digital Certificate. The learned CIT(A) did not agree with the submissions of the assessee challenging the inclusion of this company as comparable to the assessee. Being aggrieved, the assessee is in appeal before us.

17. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it is difficult to trace the exact business description/activity of the company undertaken during the year, and therefore this company cannot be considered as comparable to the assessee. From the perusal of the annual report of Axis Integrated Systems Ltd., for the year ending 31/03/2013, forming part of the supplementary factual paper book from pages 8-30, we find that there is no description of the business undertaken by this company during the year under consideration. Further, the company has claimed to have earned its revenue from operations from sales, liaison charges, and reimbursement of expenses. It is pertinent to note that there are no details as to from where these liaison charges were earned. From Note 26 of the financial statement pertaining to additional disclosure, we find that the company has traded in Digital Certificate and quantitative details of the trade have been mentioned therein. Accordingly, in view of the information as provided in the annual report of this company, we agree with the submissions of the assessee that the nature of activities undertaken by this company is ambiguous and in any case cannot be said to

be similar to the business support services rendered by the assessee, during the year under consideration, to its associated enterprises. Further, there is no material available on record to show that this company is engaged in the activities noted by the TPO in para-5.3 of its order. In view of our aforesaid findings, we are of the considered view that Axis Integrated Systems Ltd. is not comparable to the assessee, and accordingly, we direct the exclusion of this company for benchmarking the international transaction of provision of support services and intragroup services.

ii) Inmacs Management Services Ltd.

18. The next comparable under dispute is Inmacs Management Services Ltd. This company was included as comparable by the TPO vide order passed under section 92CA(3) of the Act on the basis that the consultancy and professional services provided by the company are in line with the services provided by the assessee. The learned CIT(A) did not agree with the submissions of the assessee challenging the inclusion of this company as comparable to the assessee. Being aggrieved, the assessee is in appeal before us.

19. We have considered the submissions of both sides and perused the material available on record. With respect to this company also, the assessee raised a similar plea that it is difficult to trace the exact business description/activity of the company undertaken during the year, and therefore this company cannot be considered comparable to the assessee. From the perusal of the annual report of Inmacs Management Services Ltd. for the year ending 31/03/2013, forming part of the paper book from pages 31-50, we find that the company has claimed that its consultancy business has grown significantly as many renowned companies have been added to its clientele list. Further, the company has declared its revenue from operations from the professional income. Apart from the above details, there is no description of the activities undertaken by the company during the year under consideration. We find that the TPO has placed reliance upon the services offered by this company as mentioned on its website, however, there are no details as to whether these services were rendered in the year under consideration.

Therefore, the nature of the consultancy business is not clear in the case of this company. Accordingly, due to the lack of complete data being available in the public domain, pertaining to the year under consideration, we are of the considered view that this company cannot be considered comparable to the assessee. Therefore, we direct the exclusion of this company for benchmarking the international transaction of provision of support services and intragroup services.

20. Since the inclusion of Axis Integrated Systems Ltd. and Inmacs Management Services Ltd. was only challenged by the learned AR, therefore in view of aforesaid findings, ground no.2 raised in assessee's appeal is allowed.

21. The issue arising in ground no.3, raised in assessee's appeal, pertains to transfer pricing adjustment on account of non-recovery of charges for providing the letter of comfort/support.

22. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that during the transfer pricing assessment proceedings, the TPO noted that apart from the international transactions reported by the assessee in Form No.3CEB, the assessee has issued non-contractual letters of comfort/support to banks on behalf of some of its subsidiaries from time to time and has not charged anything from its associated enterprises. It was observed that the associated enterprises have availed loans amounting to Rs.149.56 crore (approx.) based on the letters of comfort issued by the assessee. We find that during the transfer pricing assessment proceedings, the assessee made similar submissions as were made in the preceding assessment year. However, the TPO vide order dated 21/10/2016 passed under section 92CA(3) of the Act did not agree with the submissions of the assessee and held that the letter of comfort is to be regarded as an international transaction, as an intergroup service has been rendered by the assessee to its associated enterprise. Considering the similarity in the facts and circumstances of the case vis-a-vis the issuance of corporate guarantee, the arm's length rate of the letter of comfort was determined at 0.50% (being 50% of 1% fee for

guarantee commission). Accordingly, the TPO computed the transfer pricing adjustment of Rs.74,77,915 (i.e. 0.50% of Rs.149.56 crore) in respect of the letter of comfort issued by the assessee. Similar to the approach adopted in the preceding year, the learned CIT(A), vide impugned order, restricted the arm's length rate of letters of comfort to 0.04% and confirmed the adjustment to the extent of Rs.5,98,240.

23. We find that a similar issue came up for consideration before the coordinate bench of the Tribunal in assessee's own case for the assessment year 2012-13. The coordinate bench, vide order dated 01/03/2024 cited supra, held that letters of comfort issued by the assessee in respect of the credit facility extended to its subsidiaries by the banks outside India constitutes an international transaction within the meaning of section 92B of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are as under:-

> *"23. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee issued letters to the banks on behalf of some of its associated enterprises (i.e. Asian Paints (Bangladesh) Ltd. and Berger International Ltd, Singapore), who availed loans of Rs.123.46 crore from the banks outside India. As per the assessee, these letters are non-contractual letters of comfort, which merely state that the assessee being the parent company of the Asian Paints Group is aware of the banks providing various financial assistance to its subsidiaries. Further, the intention of issuing letters of comfort is to inform the banks that the assessee would not divest its holding from the subsidiaries. It is further the plea of the assessee that the letters of comfort do not keep the assessee financially or legally obligated to bear the cost of repayment of loans to the banks in case the subsidiaries default in repayment. Therefore, it has been the submission of the assessee that the letters of comfort cannot be called on to make good the default if any by the subsidiaries and thus cannot be said to be covered within the scope of transfer pricing provisions, which requires determination of ALP.*
>
> *24. The letters of comfort, pursuant to which the loan of Rs.123.46 crore was availed by the associated enterprises from the banks outside India, are reproduced as under, for ready reference:-*
>
> > *(i) "Re. Facilities extended by Citibank N.A to Asian Paints (Bangladesh) Limited*
> >
> > *We confirm that we are aware of the facilities amounting to Bangladesh Taka 38 Million extended by Citibank N.A to our subsidiary. Asian Paints (Bangladesh) Limited (herein referred to as "the Company") in addition to the facilities worth Bangladesh Taka 386 Million already extended by Citibank to this Company.*

The aforesaid company is viewed as a strategic investment for us in Bangladesh and we will continue to lend management and technical support to this company and will be fully supportive of its operations.

We, Asian Paints Limited confirm that it is our intention to maintain our majority ownership and management control of this company during the currency of the facilities and that we as and when they fall due. We will also not do anything or take any steps so as to permit the company to enter into liquidation (whether compulsory or voluntary) or any arrangement with its creditors in a manner as to prejudice your rights against the company in respect of the said facilities.

We undertake to provide your bank with adequate notice if we decide to divest ourselves of our ownership in the company and/or reduce our management and technical support to this company."

(ii) "Re: Facilities extended by Citibank N A to Berger International Limited, Singapore

We confirm that we are aware of the facilities amounting to SGD 36.5 mn extended by Citibank N.A to our subsidiary (herein referred to as "the Company")

We will continue to lend management and technical support to this Company and will be fully supportive of its operations.

We, Asian Paints Limited confirm that it is our intention to maintain our majority ownership and management control of this company during the continuation of the facilities and that we will use are best endeavors to see that the obligations of the company y are met with as and when they fall due. We will also not do anything or take any step so as to permit the company to enter into liquidation (whether compulsory or voluntary) or any arrangement with its creditors in a manner as to prejudice your rights against the company in respect of the said facilities.

We undertake to provide your bank with adequate notice if we decide to divest ourselves of our ownership in the company and/or reduce our management and technical support to this company."

25. At the outset, from the perusal of aforesaid letters, the following facets are pertinent to be noted:-

- *(i) The assessee is aware of the credit facility extended by the bank to its subsidiary.*
- *(ii) Assurance to the bank that the assessee will continue to lend management and technical support to its subsidiary and will be fully supportive of its operations.*
- *(iii) Confirmation to the bank that the assessee will maintain majority ownership and management control of the subsidiary during the currency of the credit facility.*
- *(iv) The assessee will use its best endeavour to see that the obligations of the subsidiary are met with as and when they fall due.*
- *(v) Assurance to the bank that the assessee will not take any steps which permit the subsidiary to enter into liquidation or any arrangement with its creditors in a manner so as to prejudice the rights of the bank against the subsidiary in respect of the credit facility.*

26. In the aforesaid facts, the first issue that arises for our consideration in respect of the impugned adjustment is whether the aforesaid letters of comfort issued by the assessee to the banks on behalf of some of its associated enterprises constitute an international transaction within the meaning of the Act. And if so, then it is to be decided as to what would be the ALP of the said international transaction. The term "international transaction" has been defined in section 92B of the Act as under:-

> *"(1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises."*

27. From a plain reading of the aforesaid provision, it is evident that for a transaction to be an international transaction it has to be between two or more associated enterprises, either or both of whom are non-residents. Undoubtedly, in the present case, the assessee issued letters of comfort on behalf of its associated enterprises outside India. Thus, in our considered view, the first condition for being an international transaction is satisfied in the present case. The aforesaid provision further requires that the transaction, inter-alia, needs to be of the following nature:-

(a) purchase, sale or lease of tangible or intangible property; or

(b) provision of services or lending or borrowing money; or

(c) any other transaction having a bearing on the profits, income, losses or assets of such enterprises

28. From the perusal of the financial statement of the assessee, forming part of the paper book from pages 1-27, we find that the assessee has declared the letters of comfort/support issued to the banks on behalf of some of its subsidiaries as its contingent liability in Note-25 of the Notes to Financial Statements, as under:-

"NOTE 25: CONTINGENT LIABILITIES AND COMMITMENTS

(Rs. In Crores)

a) Contingent Liabilities	*As at 31.03.2012*
1. Guarantee given on behalf of Company's dealers in respect of loans granted to them by a bank for acquiring dealer tinting systems.	*2.49*
2. Corporate guarantees issued by the Company to certain banks on behalf to some of its subsidiaries (converted to Letter of Comfort/ Support during the year)	*-*
3. Letters of comfort/support to banks on behalf of some of its subsidiaries, limited to: *The company has also issued a letter to the board of a subsidiary informing its commitment of continue extending*	*207.70*

letters of comfort for banking facilities as included in the above for a period upto 15th May, 2013	
4. Claims against the Company not acknowledged as debts *i. Tax matters in dispute under appeal.* *ii. Others*	 *63.15* *7.38*

29. Thus, from the aforesaid declaration by the assessee in its financial statement, it is discernible that the assessee has not only considered the corporate guarantees issued to certain banks on behalf of its subsidiaries as its contingent liability but has also considered the letters of comfort/support to banks on behalf of some of its subsidiaries as its contingent liability. It is pertinent to note that the corporate guarantees issued by the assessee have already been accepted to be an international transaction by the assessee in the present case. Such being the facts of the present case, we are of the considered view that the letters of comfort issued by the assessee in respect of the credit facility extended to its subsidiaries by the banks outside India, which has been admitted to be a liability by the assessee and thus have a bearing on the assets, constitutes an international transaction within the meaning of section 92B of the Act. Further, in view of the aforesaid declaration, we find no merits in the submission of the assessee that it is not financially obligated to bear the cost of repayment of loans to the banks in case subsidiaries default in repayment, as the assessee itself has treated the credit facility extended to its subsidiaries pursuant to the letters of comfort as its contingent liability. During the hearing, no material was brought on record to controvert the disclosure made by the assessee in its financial statement. Further, from the document of the credit facility extended to Berger International Ltd, Singapore, forming part of the paper book from pages 4-6, we find that the credit facility was extended on the security/support of the letter of comfort issued by the assessee.

30. During the hearing, the learned AR placed reliance upon the decision of the coordinate bench of the Tribunal in assessee's own case in preceding assessment years, wherein the coordinate bench of the Tribunal held that issuance of a letter of comfort/support is not an international transaction within the meaning of the provisions of the Act. We find that the coordinate bench of the Tribunal in assessee's own case in Asian Paints Ltd v/s Addl.CIT, in ITA No. 2754/Mum./2014, vide order dated 03/02/2021, for the assessment 2009-10, observed as under:-

> *"7. We have considered rival submissions in light of the decisions relied upon and perused materials on record. After going through sample copy of letter of comfort / support given to the bank towards loan availed by the AE, we have noticed that there is no liability or responsibility fastened with the assessee for making good the liability of the AE in case of any default. There is nothing on record to suggest that in case of any default by the AE, the outstanding loan will be recovered from the assessee. Pertinently, while sustaining a part of the adjustment made by the TPO, learned Commissioner (Appeals) has equated the letter of comfort / support to corporate guarantee. In our view, on perusal of the letter of comfort / support, it cannot be construed to be in the nature of any sort of guarantee in respect of the loan liability of the AE. The only promise made by the assessee is, it will not make any divestment of the shares during the currency of the loan. In our view, in no way it makes the letter of comfort / support a guarantee of any kind as there is no financial implication on the assessee. On a careful reading of section 928 of the Income Tax Act, 1961 (in short, 'the Act'), more particularly Explanation I(c), we are of the considered opinion that provision of letter of comfort/support cannot be termed as an international transaction within the*

meaning of the aforesaid provision. Our aforesaid view is well supported by the decisions cited by the learned Counsel for the assessee. Accordingly, we delete the addition of Rs.3,28,280/-. This ground is allowed."

31. We find that similar findings were rendered by the coordinate bench of the Tribunal in the assessment years 2010-11 and 2011-12. However, in the present case, it is pertinent to note that the assessee, vide letters of comfort, not only undertook to use its best endeavour to see that the obligations of the subsidiary are met as and when they fall due but also treated the liability as a contingent liability in its financial statement. Therefore, we are of the considered view that the facts of the present case, as noted above, are different from the facts that were under consideration before the coordinate bench in the preceding years, and thus, the findings of the coordinate bench are not applicable to the present case.

32. As regards the ALP of the letters of comfort, the TPO considered 0.50% as the arm's length rate (being 50% of 1% fee for guarantee commission). While the learned CIT(A) reduced the arm's length corporate guarantee commission to 0.20%, and the arm's length rate for letters of comfort was also reduced to 0.04% (being 20% of 0.20%). During the hearing, the learned AR without prejudice to the main submission that the letters of comfort issued by the assessee are not an international transaction submitted that the corporate guarantee issued by the assessee cannot be compared with the letters of comfort and therefore agreed with the computation of arm's length rate of 0.04%. Agreeing with the submissions of the assessee, we upheld the findings of the learned CIT(A) in computing the arm's length rate of the letter of comfort to be @0.04%, finding the same to be reasonable in the peculiar facts and circumstances of the present case. Accordingly, ground no.3 raised in assessee's appeal is dismissed."

24. We find that in the year under consideration also the assessee has issued similar letters of credit, as were considered by the coordinate bench in the preceding year, and has also declared the letters of comfort/support issued to the banks on behalf of some of its subsidiaries as its contingent liability in Note-25 of the Notes to Financial Statements. Therefore, respectfully following the decision rendered in assessee's own case cited supra, we are of the considered view that letters of comfort issued by the assessee constitute an international transaction within the meaning of the Act. We further find that in the aforesaid decision, the coordinate bench upheld the arm's length rate of the letter of comfort to be @0.04% finding the same to be reasonable in the peculiar facts and circumstances of the case. Since undisputedly in the present case, similar facts are involved and both sides have also placed reliance on their submission as made in the preceding year, therefore we upheld arm's

length rate of 0.04% computed by the learned CIT(A). Accordingly, ground no.3 rasied in assessee's appeal is dismissed.

25. Ground no.4 raised in assessee's appeal was not pressed during the hearing. Accordingly the same is dismissed as not pressed.

26. During the hearing, the applications dated 16/03/2021 seeking admission of additional grounds of appeal were not pressed by the assessee. Accordingly, these applications are dismissed as not pressed.

27. In the result, the appeal by the assessee is partly allowed.

ITA No.841/Mum./2018
Revenue's Appeal – A.Y. 2013–14

28. In its appeal, the Revenue has raised the following grounds:–

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance on account of Letter of Comfort to 0.04% as against 0.50%, without appreciating the facts of the case or giving any cogent reason for doing the same."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A. O to verify the allowability of expenditure incurred u/s 35(2AB) without appreciating the fact that the expenditure was disallowed by DSIR (as per Certificate in Form No. 3CL) as the same was not incurred for R & D purpose."

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance @ 0.50% of damaged stock, in the closing stock of finished goods without appreciating the facts of the case."

4. "On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in restricting the disallowance u/s 14A r.w. Rule 8D to Rs. 93,30,985/-, without appreciating the facts of the case.

5. "On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in allowing Rs. 96,29,369/- on account of balance 10% additional depreciation on additions made in A. Y. 2012-13, without appreciating the facts of the case."

6. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing Rs. 83,53,74,860/-on account of expenditure incurred on PC Club Trip & other Trip Schemes without appreciating the fact that the trip expenditure was not expended wholly and exclusively for the purpose of the business."

7. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 3,93,68,206/-being waiver of royalty for two subsidiaries situated in Bangladesh and Srilanka, without appreciating the facts of the case."

8. "On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in allowing Rs. 39.41 lacs being expenditure incurred on CSR claimed u/s 37(1) of the Act."

9. "The Ld. CIT (A) erred in allowing Rs. 2.38 Crores on account of various sundry balance written off during the year without appreciating the fact that such claim/deduction of expenses is not allowed under any provision of the Income-tax Act".

10. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 31.49 lakhs being subsidy received from Maharashtra Government under Package Scheme of incentives 2007, without appreciating the facts of the case."

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

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

29. The issue arising in ground no.1, raised in Revenue's appeal, pertains to restricting the transfer pricing adjustment on account of the letter of comfort. In view of our findings rendered in assessee's appeal on a similar issue, ground no.1 raised in Revenue's appeal is dismissed.

30. The issue arising in ground no.2, raised in Revenue's appeal, pertains to allowability of expenditure under section 35(2AB) of the Act.

31. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has claimed weighted deduction under section 35(2AB) of the Act. Accordingly, the assessee was asked to produce the certificate issued by the Department of Science and Industrial Research ("*DSIR*") in Form No.3CL and reconciliation for the same. In response thereto, the assessee submitted that it has recognised R&D Unit at Turbhe (Navi Mumbai) and during the year claimed weighted deduction under section 35(2AB) of the Act with respect to expenditures incurred for R&D activities. The assessee furnished the copy of

approval received from DSIR obtained in Form No.3CM during the assessment proceedings. The assessee also furnished a copy of the certificate of expenditure in Form No.3CL received from the DSIR. The assessee also provided a copy of the reconciliation between the amounts claimed in the return of income vis-a-vis the claim allowed by the DSIR. During the assessment proceedings, the assessee was also asked to show cause why the differential amount as per Form No.3CL be not disallowed, which was not allowed by the DSIR. In response thereto, the assessee submitted that except for the expenditure in the nature of land and building, all other expenditures incurred on scientific research will be eligible for the weighted deduction under section 35(2AB) of the Act. The assessee further submitted that all the expenditure incurred by it is eligible for weighted deduction since they are incurred in the approved R&D facility.

32. The AO vide order passed under section 143(3) read with section 144C(3) of the Act did not agree with the submissions of the assessee and restricted the weighted deduction on R&D expenditure under section 35(2AB) of the Act on the basis of the certificate issued by the DSIR in Form No.3CL.

33. The learned CIT(A), vide impugned order, following the decision of the coordinate bench of the Tribunal rendered in assessee's own case in earlier years directed the AO to verify the nature of expenditure, which has been disallowed by the DSIR and if upon verification, the AO finds that such expenditure was incurred for the purpose of R&D, then the AO is directed to allow such expenditure to the assessee. However, if the AO finds that such expenditure was not incurred for the purpose of research and development, then the addition made by the AO will stand confirmed. Being aggrieved, the Revenue is in appeal before us.

34. Having considered the submissions of both sides and perused the material available on record, we find that while deciding a similar issue the coordinate bench of the Tribunal in assessee's own case in Asian Paints Ltd v/s Addl. CIT, in ITA No. 2178/Mum./2012, vide order dated 20/12/2013, for the assessment year 2007-08, restored the issue to the file of the AO with a

direction to decide the same afresh after verifying whether the expenditure in question has been incurred by the assessee on research and development, which is eligible for deduction under section 35(2AB) of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

> *"13. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. In support of the assessee's case, the Id. Counsel for the assessee has relied on the decision of the Hon'ble Gujarat High Court in the case of CIT vs Cadila Health Care Itd. 87 DTR 56. A perusal of the judgment passed by the Hon'ble Gujarat High Court in this case, however, shows that the expenditure on R & D was bifurcated by the prescribed authority as per it's certificate in two parts, one incurred in-house and the other incurred outsider. Relying on the said certificate, the Revenue disallowed the expenditure incurred by the assessee outside its in-house facilities while the Tribunal allowed the same. The Hon'ble Gujarat High Court upheld the decision of the Tribunal holding that merely because the prescribed authority segregated expenditure into two parts by itself could not be sufficient to deny the benefit to the assessee u/s 35(2AB). The issue involved the in the case of Cadila Health Care ltd. (supra) thus was entirely different and even the facts involved in the said case were different from the facts of the assessee's case in as much as the entire expenditure incurred by the assessee in that case on R & D was duly certified by the prescribed authority whereas in the case of the assessee, the same is not certified to be eligible R & D expenditure to the extent of Rs.54.34 lakhs.*
>
> *14. The le Counsel for the assessee has also relied on the decision of the Ahmedabad bench of ITAT in the case of ACIT vs Torrent Pharmaceuticals Ltd. in ITA No.3569/Ahd/2004 dated 13.11.2009 in support of the assessee's case on the issue under consideration. In the said case, weighted deduction claimed by the assessee u/s 35(2AB) on account of R & D expenditure was partly disallowed by the AO relying on the figure contained in the certificate issued by DSIR and the same was held to be unsustainable by the Tribunal holding that There was no justification in harping upon the figure contained in the certificate issued by DSIR as was done by the Assessing Officer. It was held by the Tribunai that the relevant provisions of the Act did not contain any specific condition that the deduction u/s 35(2AB) and accordingly the claim of the assessee for deduction u/s 35(2AB) will be restricted to the amount of R & D expenditure as contained in the certificate. The Tribunal found on verification of the relevant details that even the expenditure is not included in the said certificate was eligible for deduction u/s 35(2AB) in respect of the said expenditure was allowed by the Tribunal. In our opinion, the issue involved in the case of Torrent Pharmaceuticals itd. thus is similar to the one involved in the present case and this position is not disputed even by the Id. DR at the time of the hearing before us. He, however, has contended that the claim of the assessee of having incurred the expenditure in question on R & D which is eligible u/s 35(2AB) has not been examined either by the AO or by the ld. CIT(A). He has urged that the matter may therefore be restored to the file of AO for giving him an opportunity to verify the same. We find merit in this contention of the Id. DR and since the Id. Counsel for the assessee has also not*

raised any objection in this regard we restore this issue to the file of the AO with a direction to decide the same afresh after verifying whether the expenditure in question has been incurred by the assessee on research and development which is eligible for deduction u/s 35(2AB). The appeal of the assessee is accordingly treated as allowed for statistical purpose."

35. We find that similar directions were rendered by the coordinate bench of the Tribunal in assessee's own case in subsequent assessment years, i.e. 2009-10, 2010-11, 2011-12, and 2012-13. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Since the learned CIT(A) has decided the issue keeping in view the aforesaid directions of the Tribunal, therefore we find no infirmity in the findings of the learned CIT(A) on this issue. Accordingly, ground no.2 raised in Revenue's appeal is dismissed.

36. The issue arising in ground no.3, raised in Revenue's appeal, pertains to restricting the disallowance of damaged stock in the valuation of the closing stock.

37. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the perusal of the annual report, it was observed that damaged, unserviceable, and inert stock was depreciated by the assessee. Accordingly, the assessee was asked to show cause why the value of damaged stock be not added to closing stock. In response thereto, the assessee submitted that while loading and unloading, many a time, the tins containing paints get damaged. The level of damage for each tin varies from others. It was submitted that hence it is very difficult to ascertain the value of such damaged tin while valuing the closing stock at the year end. Therefore, damaged stocks are segregated and are stored in a separate storage location and the value of such material is considered as Nil while valuing the closing stock. It was further submitted that as and when such goods are disposed of, the consideration is accounted for under the head Sales. The AO vide assessment order held that the assessee has admitted that damaged stock is not entirely in non-saleable condition and sale is recorded, whenever such sale takes place. The AO further held that this method of

writing off a part of the stock at the end of the year and then booking the sales in subsequent years gives a distorted picture of the real profits of the business of the assessee, which is not acceptable by any standard of accounting or legal principles. Accordingly, the AO rejected the contention of the assessee of valuing the damaged stock at Nil and considered the actual cost price of the so-called damaged stock for the purpose of taxation.

38. The learned CIT(A), vide impugned order, following the decision of the coordinate bench of the Tribunal rendered in assessee's own case in earlier years restricted the disallowance to the tune of 0.5% of the value of closing stock for the purpose of valuation of damaged stock. Further, the learned CIT(A) directed that the consequential effect in the opening stock be given. Being aggrieved, the Revenue is in appeal before us.

39. We have considered the submissions of both sides and perused the material available on record. We find that while deciding a similar issue in assessee's own case the coordinate bench of the Tribunal in Addl. CIT v/s Asian Paints Ltd., in ITA No. 749/Mum./2017, for the assessment year 2011-12, vide order dated 28/07/2022, observed as under:-

> *"32. Considered the rival submissions and material placed on record, we observe that assessee is valuing closing stock for damaged stock taking the value at NIL and however, Assessing Officer makes disallowance to the extent of 0.5% of the value of closing stock and the same was confirmed by the Coordinate Bench in the earlier years from A.Y. 2003-04 to-2006-07 and A.Y. 2008-09. We further observed that following the decision of the ITAT, the Ld.CIT(A) in A.Y: 2009-10 and A.Y. 2010-11 had followed the same. Respectfully following the earlier decision of the ITAT, Ld.CIT(A) in the present appeal also allowed the same. Considering the fact on record and also this method is consistently followed by the assessee over the years there is no loss to the revenue. Accordingly, we do not find any reason to interfere with the findings of the Ld.CIT(A). Accordingly, ground raised by the revenue is dismissed."*

40. We find that similar findings were rendered by the coordinate bench of the Tribunal in assessee's own case in the assessment year 2012-13. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Since the learned CIT(A) has decided on the issue following

the decisions of the coordinate bench in the preceding years, therefore we find no infirmity in the findings of the learned CIT(A) on this issue. Accordingly, ground no.3 raised in Revenue's appeal is dismissed.

41. The issue arising in ground no.4, raised in Revenue's appeal, pertains to disallowance under section 14A of the Act. In view of our findings rendered in assessee's appeal on a similar issue, ground no.4 raised in Revenue's appeal is dismissed.

42. The issue arising in ground no.5, raised in Revenue's appeal, pertains to the allowance of balance additional depreciation.

43. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has claimed additional depreciation @10% on assets acquired during the financial year 2011-12 amounting to Rs.96,29,369 under section 32(1)(iia) of the Act. Accordingly, the assessee was asked to explain the allowability of additional depreciation so claimed. In response thereto, the assessee submitted that as per section 32(1)(iia) of the Act, the assessee is entitled to claim 20% additional depreciation on any new plant and machinery acquired after 31/03/2005. It was further submitted that as per the provision to section 32(ii)(b), if the assets are put to use for less than 180 days in the previous year, then the deduction in respect of depreciation shall be restricted to 50%. Accordingly, the assessee could claim only 10% of the additional depreciation for additions made in the second half of the financial year 2011-12 and the balance 10% additional depreciation was claimed in the year under consideration. The AO vide assessment order did not agree with the submission of the assessee and held that there is no such provision in the Act to claim a balance 10% additional depreciation in the year under consideration for additions made in the earlier year. Accordingly, the AO disallowed the additional depreciation of Rs. 96,29,369 claimed by the assessee in the year under consideration and added the same to the total income of the assessee.

44. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the decision of its predecessor in assessee's own case. Being aggrieved, the Revenue is in appeal before us.

45. We have considered the submissions of both sides and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case cited supra, for the assessment year 2011-12, vide order dated 28/07/2022, decided the similar issue in favour of the assessee by following the earlier decisions rendered in assessee's own case. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

> *"35. Considered the rival submissions and material placed on record, we observe that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2010-11 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -*
>
> > *"035. Ground number 6 is in relation to allowing the additional depreciation at the rate of 10% amounting to Rs 1,51,65,251/-. The claim of the assessee is that according to the provisions of Section 32 (1) (iiia) the assessee is eligible to claim 20% additional depreciation on any Machinery or plant, acquired after 31st of March 2005. As per the proviso to Section, if the assessee has put to use it for less than 1 80 days in a previous year, the deduction in respect of depreciation shall be restricted to 50%. The assessee has already claimed 10% of the additional depreciation in financial year 2008-2009 (assessment year 2009-10) and therefore it claimed that balance 10% of the depreciation should be allowed to the assessee in financial year 2010-11.*
> >
> > *036. The learned assessing officer rejected the claim of the assessee holding that there is no such provision to claim balance 10% additional depreciation in subsequent years for addition made in earlier year. In past year learned CIT -A who allowed the claim of the assessee following the decision of coordinate bench in Cosmo films Ltd 24 taxmann 189 and SIL Ltd 26 taxmann 78, The learned assessing officer did not followed order of the learned CIT - A in earlier year also and made disallowance of Rs 1,51,65,251/-.*
> >
> > *037. On appeal before the learned CIT -A, he allowed the claim of the assessee based on his own decision for assessment year 2008- 2009 in case of the assessee. We find that the identical issue has been decided in favour of the assessee in the assessee's own case for assessment year 2009-10 in ITA number 2754/M/2014 and ITA number 4203/M/2014 by coordinate bench as Under:-*
> >
> > > *"38. In ground No. 5, revenue has challenged the decision of learned Commissioner (Appeals) in allowing assessee's claim of additional depreciation.*
> > >
> > > *39. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed carried over amount of additional depreciation relating to the immediately preceding assessment year. Therefore, he called upon the assessee to justify the claim. However, the assessee furnished a detailed submission stating that the balance portion of additional depreciation,*

which could not be claimed in the preceding assessment year, has to be allowed in the impugned assessment year; however, the Assessing Officer was not convinced. Accordingly, he disallowed the additional depreciation claimed of ₹ 1,72,86,752/-. Assessee contested the disallowance before learned Commissioner (Appeals). Taking note of the decision cited by the assessee including the decision of the Tribunal in assessee's own case for Assessment Year 2008 09, learned Commissioner (Appeals) deleted the disallowance made by the Assessing Officer.

40. The learned Departmental Representative supporting the decision of the Assessing Officer submitted, additional depreciation is a onetime allowance granted to the assessee for installing new v plant and machinery. Any unclaimed amount cannot be set off in the subsequent assessment year 41. The learned Counsel for the assessee strongly relying upon the decision of the first appellate authority submitted, the issue is now squarely covered by a number of judicial precedents including the decision of the Tribunal in assessee's own case.

42. We have considered rival submissions and perused materials on record. The facts on record clearly reveal that assessee had purchased and installed new plant and machinery in the preceding assessment year, which is eligible for additional depreciation @20%. However, since the new assets were put to use for less than 180 days in the preceding assessment year, the claim of additional depreciation allowable at 20% was restricted to half of it, l.e. 50%. Thus, in effect, the assessee was allowed additional depreciation of 10%. Now, it is well settled by a number of judicial precedents that if for use of new plant and machinery for a period of less than 180 days the entire amount of additional depreciation cannot be claimed in the subject assessment year, the balance unclaimed amount can be claimed in the subsequent assessment year. It is also a fact on record, against similar claim allowed by learned Commissioner Appeals) in assessee's own case in Assessment Year 2008- 29, the revenue has not preferred any appeal before the bunal. In view of the above, we uphold the decision of Jeaned Commissioner (Appeals) on the issue. Ground raised is dismissed.

038. Therefore, respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2009- 10, ground number 6 of the appeal is dismissed holding that the learned CIT appeal is correct in allowing additional depreciation at the rate of 10% for asset purchased in the earlier year amounting to Rs.151,65,251/-

36. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2010-11 and also following the principle of "Rule of consistency" we dismiss the ground raised by the revenue holding that Ld.CIT(A) is correct in allowing the additional depreciation at the rate of 10% for asset purchased in the earlier year. Ground raised by the revenue is dismissed."

46. We find that similar findings were rendered by the coordinate bench of the Tribunal in assessee's own case in the assessment year 2012-13. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully

following the judicial precedents in assessee's own case cited supra, ground no.5 raised in Revenue's appeal is dismissed.

47. The issue arising in ground no. 6, raised in Revenue's appeal, pertains to the allowance of expenditure incurred on the Trip Scheme.

48. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is having huge chain of dealers across India and it is incurring expenses under various heads of the consolidated head "*advertisement promotion expenses*". Further, these expenses are mainly in the nature of providing freebies to the dealer in the form of luxury foreign/local tours and travels. During the assessment proceedings, the assessee was asked to furnish details of advertisement and sales promotion expenses. On perusal of these details, it was observed that the assessee has incurred an expenditure of Rs.83,53,74,861 under its Trip Scheme for its dealers. The AO vide assessment order disallowed the aforesaid expenditure on the basis that in the entire trip of the dealers, there was no conference, exhibition, or meeting abroad to justify that the expenses were for business purposes. The AO held that the expenditure was incurred for the pure leisure trip for the dealers and accordingly cannot be said to have been expended wholly and exclusively for the purpose of the business. Accordingly, the AO disallowed the entire expenditure of Rs.83,53,74,861. Further, in the alternative, the AO held that even if these expenditures are considered in the nature of commission paid by the assessee directly to its dealers, in the absence of deduction of TDS under section 194H, these expenses are disallowable under section 40(a)(ia) of the Act.

49. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the decision of its predecessor in assessee's own case. Being aggrieved, the Revenue is in appeal before us.

50. We have considered the submissions of both sides and perused the material available on record. We find that while deciding a similar issue in favour of the assessee the coordinate bench of the Tribunal in assessee's own

case in ACIT v/s Asian Paints Ltd., in ITA No. 4675/Mum/2015, for the assessment year 2010-11, vide order dated 23/02/2022, observed as under:-

> *"041. It is also stated before us that the issue squarely covered in favour of the assessee for assessment year 2009 10 in ITA number 2754/M/2014 and ITA number 4203/M/2014 wherein the coordinate bench held as Under: -*
>
> > *"43. In ground 6, the revenue has challenged deletion of disallowance of 1,610.45 lakhs on account of expenditure incurred on trip scheme.*
> >
> > *44. Briefly the facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee had debited an of amount 16,10,45,094/- towards expenditure incurred on account of trip scheme. Noticing this, he called upon the assessee to justify the claim. After verifying the details furnished by the assessee, the Assessing Officer observed that the amount was paid to SOTC for foreign trip of its dealers. Being of the view that the expenditure incurred was not for the purpose of assessee's business, he held the same as not allowable. Further, he held that since the assessee has not deducted tax at source on the expenditure incurred, which is nothing but in the nature of commission paid to dealers and distributors, the same has to be disallowed under section 40(a)(ia) of the Act. Accordingly, he disallowed the deduction claimed by the assessee. Assessee contested the disallowance before the first appellate authority. considering After the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) deleted the disallowance made by the Assessing Officer.*
> >
> > *45. Strongly relying upon the observations of the Assessing Officer, the learned Departmental Representative submitted, the expenditure incurred by the assessee for trip scheme is nothing but commission paid to dealers and distributors; hence, subject to deduction of tax under section 194H Act. The assessee having failed to do so, the amount has to be disallowed under section 40(a) (ia) of the Act.*
> >
> > *46. The learned Counsel for the submitted, there is no question of payment of any commission to the dealers and distributors as there is no principal agent relationship between the assessee and them. He submitted, the transactions with the distributors were carried out purely on principal-to-principal basis. Therefore, there is no liability to deduct tax under section 194H of the Act. In support, the learned Counsel relied upon the following decisions:-*
> >
> > *1. CIT, Pune vs. Intervet India Pvt. Ltd. (ITA 1616/2011-Bombay High Court*
> >
> > *2. Pr. GT vs. Reliance Communication Infrastructure Ltd. (ITA No. 702 of 12017-Bombay High Court*
> >
> > *3. DOT vs. BCH Electric Ltd. (ITA 1336/Kol/2012)*
> >
> > *4. ACIT vs. Raymond Ltd. ITA 5889/M/10*
> >
> > *5. CIT vs. Piramal Healthcare Ltd. 230 Taxman 505 (Bom)*
> >
> > *6. CIT vs. Qatar Airways 332 ITR 253 (Bom)*
> >
> > *7. Radhasaomi Satsang vs. CIT (193 ITR 321 (SC)*
> >
> > *47. Without prejudice, the learned Counsel submitted, since no amount has been paid or credited to the distributors, question of deduction of tax at source does not arise. Further, he submitted, whatever amount the assessee has paid to SOTC has been subjected to TDS provisions. Therefore, there cannot be any further*

disallowance under section 40(a)(ia) of the Act. Further, he submitted, the expenditure incurred is purely for the purpose of business as it is in the nature of an incentive linked to quantum of purchases made by the dealer. Finally, he submitted, the assessee is claiming such deduction for past 20 years. Except the impugned assessment year, the expenditure has never been disallowed. Therefore, there is no reason to deviate in the impugned assessment year.

48. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, to expand its business the assessee has devised a trip scheme wherein it organized foreign trips to its dealers and distributors based on achieving a specific target assigned by the assessee. On achieving such target, the dealer/distributor is entitled to undertake the trip organized by the assessee through SOTC. Thus, from the aforesaid facts it is very much clear that the entire trip scheme is for the purpose of expanding assessee's business by encouraging the dealers and distributors to achieve a specific target of purchase. Thus, the scheme is closely linked to assessee's business activity. It is also a fact that the assessee has not paid any amount to the dealers and distributors, but amount spent has been paid to SOTC for organizing the trip. It is also a fact on record that the amounts paid to SOTC has been subjected to TDS as per the relevant provision. Therefore, the allegation of the Assessing Officer that the amount has not been subjected to deduction of tax is without any basis. As regards the applicability of section 194H of the Act, by no means, the Assessing Officer has established on record that dealers/distributors are agents of the assessee. Further, as we find, the trip scheme has been introduced by the assessee from past 20 years and the deduction claimed by the assessee on account of such trip scheme has never been disallowed by the Assessing Officer except for the impugned assessment year. Therefore, even applying the rule of consistency, the expenditure claimed by the assessee has to be allowed. Accordingly, we do not find any infirmity in the decision of learned Commissioner (Appeals). Ground raised is dismissed."

042. Therefore respectfully following the decision of the coordinate bench in assessee's case own for assessment year 2009 10, in absence of any contrary evidence, we uphold the order of the learned CIT A deleting the above disallowance of Rs.252,660,686/-. Accordingly, ground number 7 of the appeal is dismissed."

51. We find that similar findings were rendered by the coordinate bench in assessee's own case for the assessment years 2011-12 and 2012-13 cited supra. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedents in assessee's own case cited supra, ground no.6 raised in Revenue's appeal is dismissed.

52. The issue arising in ground no.7, raised in Revenue's appeal, pertains to the deletion of addition on account of waiver of Royalty received from two subsidiaries.

53. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee has various associated enterprises all over the globe situated in various countries from which income in the form of Royalty is received for providing them with "*Brand Name*" along with other technical support. The Royalty is calculated @3% of associated enterprises' sales as per the agreement duly signed and executed. However, for the year under consideration, the assessee partly waived the Royalty income receivable from two of its subsidiary companies situated in Bangladesh and Sri Lanka. During the assessment proceedings, the assessee submitted that it had an agreement with its indirect overseas subsidiaries in Bangladesh and Sri Lanka, according to which the assessee has to receive a Royalty of 3% of net sales of other units. However considering the financial position of the subsidiaries, the assessee agreed to waive part of the Royalty and therefore during the year has credited 1% of the Royalty amount to the Profit and Loss account instead of 3% as per the agreement. The assessee further submitted that under the Act as well as the Double Taxation Avoidance Agreement ("*DTAA*") entered with the aforesaid countries, the assessee is liable to pay tax only on the amount of Royalty received by it. The AO vide assessment order did not agree with the submissions of the assessee and by following the approach adopted in the assessment years 2011-12 and 2012-13 proceeded to make the addition of the balance Royalty, i.e. 2%, which was waived by the assessee.

54. The learned CIT(A), vide impugned order, held that a similar waiver was granted to the subsidiaries from the assessment year 2008-09 till 2010-11 and the AO/TPO has not made any addition with respect to the same. Following its decision rendered in assessee's own case for the assessment years 2011-12 and 2012-13, the learned CIT(A) allowed the ground raised by the assessee on this issue. Being aggrieved, the Revenue is in appeal before us.

55. Having considered the submissions of both sides and perused the material available on record, we find that while deciding a similar issue in favour of the assessee, the coordinate bench of the Tribunal in assessee's own case cited supra, for the assessment year 2012-13, observed as under:-

"64. We have considered the submissions of both sides and perused the material available on record. The assessee provides technical data, together with trademarks and also allied services for the manufacture of decorative paints to its overseas subsidiaries. In this connection, the overseas subsidiaries are charged Royalties depending on the package offered and also taking various factors into consideration. As per the transfer pricing study report, forming part of the paper book, it is claimed that the overseas subsidiaries are charged a Royalty of 1% to 3% on net sales realised product manufactured using the technology transferred by the assessee. The assessee entered into an agreement with its indirect subsidiaries, i.e. Asian Paints (Bangladesh) Ltd and Asian Paints (Lanka) Ltd, according to which the assessee was to receive a Royalty of 3% of net sales. However, considering the financial position of the group companies, the assessee agreed to waive the charges of the Royalty until the subsidiary company achieves breakeven. As a result, during the year under consideration, the assessee has accounted for Royalty income at 1% net sales basis and received Royalty income of Rs.24,18,244 from Asian Paints (Lanka) Ltd and Rs. 92,54,784 from Asian Paints (Bangladesh) Ltd. It is pertinent to note that the assessee declared the aforesaid international transaction pertaining to the receipt of Royalty income from its subsidiaries in Bangladesh and Sri Lanka in Form 3CEB and benchmarked the same by comparing it with the rate of Royalty charged to overseas subsidiaries. Undisputedly, the TPO vide order passed under section 92CA(3) of the Act did not make any transfer pricing adjustment on account of the aforesaid international transaction. However, the AO, by placing reliance upon the findings of its predecessor in assessee's own case for the assessment year 2011-12, held that the legitimate right to receive corresponding income (Royalty) cannot be waived off through an arbitrary decision, particularly till such time as the original written and duly signed agreement is in place. Accordingly, the AO made the addition of the balance of 2% royalty waived off by the assessee as the income receivable in the hands of the assessee. Even though no adjustment was made by the TPO on account of the transaction of receipt of Royalty from the subsidiary companies in Bangladesh and Sri Lanka.

65. Before proceeding further, it is pertinent to note that as per section 5(1) of the Act in the case of a resident, the total income, inter-alia, includes all income from whatever sources derived which accrues or arises to him outside India during the year. As per the assessee, it is entitled to receive the Royalty from its overseas subsidiaries @3% on the net sales price of products sold by the overseas subsidiaries. Thus, the net sale price of the products sold can only be determined at the end of the financial year and accordingly, the amount of Royalty payable to the assessee can only be computed thereafter. Therefore, prior to the end of the financial year, no amount accrues or arises to the assessee outside India. In the present case, prior to the determination of the net sale price of the products sold, the assessee had decided to waive Royalty by 2%. No material has been brought on record to show that there is no understanding between the assessee and its overseas subsidiaries to waive the Royalty. Such being the facts, we are of the considered view when only 1% Royalty is payable by the overseas subsidiaries, therefore the AO has no authority to make an addition of the balance 2% Royalty waived by the parties, which is nothing but a notional income considered taxable by the AO in assessee's hands. Before concluding, it is pertinent to note that in the assessment year 2011-12, the coordinate bench of the Tribunal decided a similar issue in favour of the assessee. Accordingly, in view of the

aforementioned findings, we find no basis in the impugned addition made by the AO. As a result, ground no. 7 raised by the Revenue is dismissed."

56. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. Thus, respectfully following the judicial precedent in assessee's own case cited supra, ground no.7 raised in Revenue's appeal is dismissed.

57. The issue arising in ground no.8, raised in Revenue's appeal, pertains to allowance of Corporate Social Responsibility ("*CSR*") expenses.

58. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee claimed the deduction of Rs.39.41 lakh under section 37(1) of the Act on CSR expenses. The AO disallowed the aforesaid expenditure on the basis that the assessee has neither proved any commercial expediency nor any obligation towards the school and other purposes. However, the learned CIT(A), vide impugned order allowed these expenditures on the basis that similar expenditure was allowed in assessee's own case in the assessment years 2005-06 and 2012-13. It was further held that the Explanation-2 to section 37(1) of the Act was introduced from 01/04/2015 and is prospective in nature, therefore CSR expenditures incurred prior thereto are allowable expenditures. We find that the Hon'ble Delhi High Court in Pr.CIT v/s PEC Ltd., [2023] 146 taxmann.com 407 (Delhi) held that amendment brought by way of Explanation 2 to section 37(1) by Finance Act, 2014, with effect from 1-4-2015 is prospective in nature and thus, CSR expenditure incurred prior to 1-4-2015 was to be allowed. Since, in the present case, it is undisputed that the aforesaid expenditure incurred by the assessee is towards its Corporate Social Responsibility, therefore we find no infirmity in the findings of the learned CIT(A) in allowing the expenditure in the year under consideration. As a result, ground no.8 raised in Revenue's appeal is dismissed.

59. The issue arising in ground no.9, raised in Revenue's appeal, pertains to sundry balances written off.

60. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee has written off various old balances lying in its books of accounts. During the assessment proceedings, the assessee was asked to show cause about its allowability. In response thereto, the assessee submitted that during the year it has written off certain balances amounting to Rs.2,37,64,666 and debited the same to the profit and loss account. The assessee also furnished the breakup of the same in treatment given in his return of income. The AO vide assessment order noted that in the assessment year 2011-12, the assessee itself is disallowing the sundry balances written off in its books of accounts. However, from the assessment year 2012-13, the assessee has changed its practice and started claiming the same as allowable expenditure. It was further held that the assessee could not prove that the alleged advances were made in the ordinary course of the business and such advances written off cannot be treated at par with the bad debts written off.

61. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee on this issue by following the approach adopted in earlier years including the assessment year 2012-13. Being aggrieved, the Revenue is in appeal before us.

62. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case cited supra, for the assessment year 2012-13, restored this issue to the file of the AO by observing as under:-

> *"71. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it has changed its practice from the assessment year 2012-13, where sundry balances written off is claimed as deduction, and sundry balances written back is offered for tax in its return of income. The assessee submitted that the expenditure is normal business expenditure and allowable as deductible expenditure. However, from the perusal of the record, we find that neither there is an examination of the aforesaid claim of the assessee nor any details were furnished. Accordingly, we deem it appropriate to restore this issue to the file of the AO for de novo adjudication. The*

assessee is directed to file necessary details/documents in support of its claim of deduction of sundry balances written off. As a result, ground no.9 raised in Revenue's appeal is allowed for statistical purposes."

63. Since a similar issue has already been restored to the file of the AO in a similar factual matrix, therefore, we deem it appropriate to restore this issue to the file of the AO with similar directions as rendered by the coordinate bench in the preceding year. As a result, ground no.9 raised in Revenue's appeal is allowed for statistical purposes.

64. The issue arising in ground no.10, raised in Revenue's appeal, pertains to the deletion of the addition of subsidy received from the Government of Maharashtra under Package Scheme of Incentives, 2007.

65. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee credited a sum of Rs.31,49,397 in its Profit and Loss account as a subsidy received from the Government of Maharashtra but the same was not considered as taxable. During the assessment proceedings, the assessee was asked the reason for its non-taxability. In response thereto, the assessee submitted that the Government of Maharashtra had announced the Package Scheme of Incentives, 2007 to encourage the dispersal of industries to the less-developed areas of the State. It was further submitted that the assessee has put up a manufacturing facility that satisfies the criteria of "*Mega Project*" under the Package Scheme of Incentives, 2007. It was submitted that the assessee has credited a sum of Rs. 31,49,397 as a subsidy received from the Government of Maharashtra under the Package Scheme of Incentives, 2007. The AO vide assessment order did not agree with the submissions of the assessee and held that the nature of subsidy appears to be revenue in nature as it is only when the assessee had set up its industry and commenced production that various incentives were given for the limited period of five years. The AO also held that in this case subsidy granted is for running the business more efficiently and profitably. Accordingly, the AO made the addition of the subsidy of Rs.31,49,397 received by the assessee.

66. The learned CIT(A), vide impugned order, by following the decision of the Hon'ble Supreme Court in CIT v/s Ponni Sugars and Chemicals Ltd., [2008] 306 ITR 392 (SC) allowed the ground raised by the assessee on this issue and held that the subsidy received by the assessee is capital in nature. Being aggrieved, the Revenue is in appeal before us.

67. We have considered the submissions of both sides and perused the material available on record. From the perusal of the Package Scheme of Incentives, 2007, forming part of the paper book from pages 182-210, we find that in order to encourage the dispersal of industries to the less-developed areas of the State, Government gave a package of incentives to new/expansion units set up in the developing region of the State. The object of the Scheme is to achieve higher and more sustainable economic growth with an emphasis on balanced regional development and employment through greater public and private investment. Further, the Scheme classifies different areas within the State as Group A to Group D+ depending on the development and the specified areas. The Scheme also provides for various types of companies/products for setting up manufacturing facilities in the State of Maharashtra classified as Micro, Small, Medium Enterprises, LSI units, Mega Projects, etc. The Scheme also provides for various promotional and financial incentives, such as industrial Promotion Subsidy, Interest Subsidy, Exemption from Electricity Duty, Waiver of Stamp Duty, Royalty Refund, Refund of Octroi/Entry Tax in lieu of Octroi, etc. We find that as the assessee proposed to manufacture paints and intermediates at Kesurdi MIDC Area, District Satara, falling in "D" zone under the Package Scheme of Incentives, 2007, wherein the assessee proposed to invest Rs.735 crores and provide employment to 300 persons, the Government of Maharashtra vide letter dated 30/06/2009, forming part of the paper book from pages 211-212, conferred the status of "*Mega Project*" on the proposed project. We find that in this regard the assessee also entered into a Memorandum of Understanding dated 31/05/2010 with the Government of Maharashtra, forming part of the paper book from pages 213-215, under which the assessee was granted Electricity

Duty Exemption, Exemption from payment of stamp duty, and Industrial Promotion Subsidy.

68. We find that the Hon'ble jurisdictional High Court in CIT v/s Kirloskar Oil Engines Ltd. [2014] 364 ITR 88 (Bombay) after considering the decision of the Hon'ble Supreme Court in Ponni Sugars and Chemicals Ltd. (supra) and Sahney Steel & Press Works Ltd. v. CIT [1997] 228 ITR 253 (SC), observed as under:-

> *"6. …..We are unable to accept this stand. In the case of in Sahney Steel & Press Works Ltd. v. CIT [1997] 228 ITR 253/94 Taxman 368 (SC) and in Ponni Sugars & Chemical Ltd.'s. case (supra), the honourable Supreme Court has emphasized that the character of receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. The purpose test has to be applied. The point of time at which the subsidy is given is not relevant. The source is immaterial. The form of subsidy is immaterial. The main condition and with which the court should be concerned is that the incentive must be utilized by the assessee to set up a new unit or for substantial expansion of the existing unit. If the object of the subsidy scheme is to enable the assessee to run the business more profitably then the receipt is on the revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit then the receipt of subsidy was on the capital account.*
>
> *7. We do not find any justification for the Revenue questioning the con-current findings of fact in the present case. The concurrent findings of fact do not raise any substantial question of law. There is no perversity in rendering such findings and the purpose of assistance given by the Government through SICOM. In such circumstances the Revenue should not have questioned the concurrent orders in the case of the present assessee. Once the undisputed facts point towards the object and that being to enable the assessee to set up a new unit then the matter is squarely covered by the judgments of the Division Bench of this court and equally that of the honourable Supreme Court.*
>
> *8. We are afraid that if the Revenue persists with such stand and as has been turned down repeatedly, that would defeat the very object and purpose of the schemes and packages devised by the States. That would also result in frustrating the entrepreneurs and defeating the purpose of setting up new industries and particularly in backward areas. The Revenue, there-fore, should bear in mind that in every such case and whenever the funds or receipts are from the schemes and packages devised by the State, it should note the object and purpose of the same. If that is of the nature specified in the judgments of this court and equally that of the honourable Supreme Court then the Revenue must act accordingly. We hope that this much is enough so as to dissuade the Revenue from bringing such matters repeatedly to this court. Ordinarily and for wasting judicial time and which is precious, we would have imposed heavy costs on the Revenue while dismissing this appeal but we refrain from doing so by giving last opportunity to the Revenue. This appeal does not raise any substantial question of law. It is dismissed. No order as to costs."*

69. Upon analysing the incentives/subsidy received by the assessee under the Package Scheme of Incentives, 2007, in light of the purpose test, as envisaged by the Hon'ble Supreme Court in Ponni Sugars and Chemicals Ltd. (supra) and Sahney Steel & Press Works Ltd. (supra), we are of the considered view that incentives/subsidy granted was only to encourage the setting up of industries in the less developed areas of the State and the same was not for the purpose of running the business more profitably. Accordingly, respectfully following the aforesaid decisions, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue in treating the subsidies as capital in nature. As a result, ground no.10, raised in Revenue's appeal is dismissed.

70. In the result, the appeal by the Revenue is partly allowed for statistical purposes.

71. To sum up, the appeal by the assessee is partly allowed, while the appeal by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 05/03/2024

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 05/03/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai