आयकर अपीलीय अधिकरण
मुंबई पीठ "ए",मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " A ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं. 3190/मुं/2013 (नि. व. 2003-04)
ITA NO.3190/MUM/2013(A.Y.2003-04)

Deputy Commissioner of Income Tax-2(2),Mumbai,
Room No.545, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020 ..... अपीलार्थी / Appellant

बनाम Vs.

M/s. Larsen & Toubro Limited,
L&T House, N.M.Marg,
Ballard Estate, Mumbai – 400 001.
PAN: AAACL- 0140-P ..... प्रतिवादी / Respondent

आअसं. 3451/मुं/2013 (नि. व. 2003-04)
ITA NO.3451/MUM/2013(A.Y.2003-04)

M/s. Larsen & Toubro Limited,
L&T House, N.M.Marg,
Ballard Estate, Mumbai – 400 001.
PAN: AAACL- 0140-P ..... अपीलार्थी / Appellant

बनाम Vs.

Asst. Commissioner of Income Tax-2(2),Mumbai,
Room No.545, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020 ..... प्रतिवादी / Respondent

Assessee by : Shri J.D.Mistry, Sr.Advocate with
Shri Nayan Thakker, Advocate
Revenue by : Shri Ajay Chandra, CIT-DR

सुनवाई की तिथि / Date of hearing : 21/12/2023
घोषणा की तिथि / Date of pronouncement : 15/03/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the Department and the assessee are directed against the order of Commissioner of Income Tax(Appeals)-5, Mumbai [in short 'the CIT(A)'] dated 30/01/2013, for the Assessment Year 2003-04.

ITA NO.3190/MUM/2013-A.Y. 2003-04:

2. The Revenue in its appeal has assailed the order of CIT(A) on solitary issue i.e. deleting disallowance of Rs.107.13 crores qua work-in-progress of Construction Contracts. The ground raised in appeal by the Revenue reads as under:

> *2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.107.13 crore being the amount provided in valuing work-in-progress of construction contracts since to that extent profit of the assessee company got reduced."*

3. Shri Ajay Chandra representing the Department submitted that assessee is engaged in execution of civil projects. The assessee while determining work-in-progress (WIP) in respect of construction work valued the same after reduction of certain amounts on account of various adverse factors. The assessee in the past made similar adjustment to the WIP. Such reduction was treated as provision for contingent liability and was disallowed in the past . In the impugned assessment year the facts are identical and the manner of computation of WIP by the assessee is similar to earlier Assessment Years. The Assessing Officer following the view taken in the earlier Assessment Years allowed deduction of Rs.2,35,91,996/- i.e. difference between closing and opening construction WIP. The CIT(A) deleted the disallowance. The ld.

Departmental Representative vehemently supported the assessment order and prayed for reversing the findings of CIT(A) on this issue.

4. Per contra, Shri J.D.Mistry appearing on behalf of the assessee vehemently supported the findings of CIT(A) on this issue. The ld.Counsel for the assessee submitted that addition on account of difference between closing and opening of WIP is a perennial issue. The Assessing Officer has been making addition year after year for the same reason. The Tribunal taking a consistent view since 1994-95 has deleted the addition. The CIT(A) in the impugned order following the order of Tribunal and his predecessor in Assessment Year 2001-02 and 2002-03 deleted the addition. There has been no change in facts and the manner of determining WIP in assessment year under appeal.

5. Both sides heard. The short issue in appeal by the Revenue is with respect to deleting the disallowance of WIP. Both sides are unanimous in stating that this issue is recurring for the past several Assessment Years. The Tribunal has been consistently deciding this issue in favour of assessee. We find that in Department's appeal for Assessment Year 2002-03 in ITA No.2284/Mum/2013 similar ground was raised. The Co-ordinate Bench following the order of Tribunal in assessee's own case in ITA No.4265/Mum/1998 for Assessment Year 1994-95 dismissed Revenue's ground of appeal. The relevant extract of the findings of Tribunal in assessee's appeal in Assessment Year 1994-95 is as under:

> *"54. This ground, raised by the assessee is directed against the disallowance of amount provided in valuing work-in-progress of construction contracts. From the perusal of records, we find that similar issue raised by the Revenue in its appeal in ITA No. 1806/Mum/1998 relating to Assessment Year 1990-91 in asssessee's own case, wherein the Tribunal following the decisions of the Tribunal in assessee's own*

case relating to Assessment Years 1988-89 & 1989-90, observed that the Tribunal has made specific finding in the earlier years that the valuation of work-in-progress relating to incomplete contracts has been made by the assessee company in a consistent manner following the accepted principles of accounting and decided the issue in favour of the" assessee. Respectfully following the decision of the co-ordinate bench in assessee's own case, we set aside the impugned orders of the authorities below and allow the ground of appeal raised by the assessee."

No contrary decision or any material has been brought to our notice by the Revenue, thus, we see no reason to take a different view. Respectfully following the decision of Co-ordinate Bench in assessee's own case in the preceding Assessment Years we find no merit in the ground raised by the Revenue in its appeal. Hence, the solitary ground raised by the Revenue in its appeal is dismissed.

6. In the result, appeal of the Revenue is dismissed.

ITA NO.3451/MUM/2013-A.Y.2003-04:

7. The assessee in its appeal has raised as many as 10 grounds and two additional grounds. The grounds / additional grounds of appeal are taken up for adjudication in seriatim as under.

8. Shri J.D.Mistry, Sr. Advocate appearing on behalf of the assessee stated at the outset that majority of the issues raised in appeal by the assessee have already been considered and decided by the Tribunal in assessee's own case in the preceding Assessment Years.

Ground No.1- Disallowance of Commission -Rs.46,20,000/-:

9. During the period relevant to the assessment year under appeal the assessee paid an amount of Rs.46,20,000/- to various parties in respect of contracts received from Government Departments/Public Sector Undertakings.

The said commission was paid for varied services including liaisoning with the customers for providing feed back on the tenders, collection of C-Forms, etc. The Assessing Officer disallowed payment of said commission for want of evidence. The CIT(A) following the order of Tribunal in Assessment Year 2000-01 dismissed the ground. The ld.Counsel for the assessee fairly submitted that the issue was decided against the assessee in the preceding Assessment Years, however, in appeal for Assessment Year 1988-89 in ITA No.2423/Mum/1992 the Tribunal had decided this issue in favour of assessee.

10. Per contra, the ld. Departmental Representative vehemently supported the order of CIT(A) and prayed for dismissing the ground of appeal raised by the assessee. The ld. Departmental Representative submitted that the Tribunal has consistently decided this issue in favor of Department as assessee has failed to furnish any documentary evidence in support of the claim made.

11. Both sides heard. A perusal of the assessment order shows that the Assessing Officer has disallowed payment of commission as the assessee had not furnished adequate evidence to substantiate that the expenditure was incurred wholly and exclusively for the purpose of business. We find that similar claim on commission paid to certain parties was made by assessee in Assessment Year 2001-02, the said claim was rejected by the Assessing Officer and the CIT(A). The assessee carried the issue in appeal before the Tribunal in ITA No.6908/Mum/2012. The Co-ordinate Bench dismissed the assessee's claim by following the order of Tribunal in assessee's own case in Assessment Year 2000- 01. We find that this issue is recurring. In absence of any cogent evidence, the assessee's claim of payment of commission has been

consistently dismissed. Similar is the situation in the impugned assessment year. No evidence has been brought on record by the assessee to substantiate its claim. Hence, we find no merit in ground No.1 of appeal. The ground No.1 of appeal is dismissed.

Ground No.2- Addition u/s. 40A(9) of the Income Tax Act, 1961 [in short 'the Act']- Contribution to Utmal Employees Welfare Fund – Rs.1,00,000/- :

13. During the period relevant to assessment year under appeal, the assessee contributed to Utmal Employees Welfare Fund Rs.1,00,000/-. The Assessing Officer disallowed assessee's claim on the ground that the said payment is not backed by any legal provision or any law for the time being in force, hence, the amount was disallowed u/s. 40A(9) of the Act. The CIT(A) upheld the findings of the Assessing Officer. The ld.Counsel for the assessee pointed that this issue has been decided by the Tribunal in ITA No.6908/Mum/2012(supra). The Co-ordinate Bench following the order of Tribunal in assessee's own case for preceding Assessment Year allowed assessee's contribution towards Utmal Employees Welfare Fund. We find that this issue has been recurring since Assessment Year 1994-95. In preceding Assessment Years, the Tribunal has consistently allowed contribution towards said Fund.. The facts being similar in the impugned assessment year, ground No.2 of appeal is allowed for parity of reasons.

Ground No.3 – Reduction in depreciation claim arising on account of refusal to treat transfer of Bangalore Undertaking as "Slump Sale" – Rs.5,16,16,863/-

14. In the period relevant to assessment year 1998-99, the assessee transferred its construction equipment manufacturing undertaking to its associate concern M/s. L&T Komatsu Ltd. The assessee treated the above sale as slump sale. The Assessing Officer disregarded assessee's transaction as

slump sale and determined sale price of various assets separately. Accordingly, the sale price was determined and was credited to the respective block of assets. Based on the above depreciation was recalculated for Assessment Year 1998-99. During Assessment Year under appeal, the Assessing Officer recomputed the depreciation on such reduced written down value carried from Assessment Year 2002-03, which has resulted in reduction of depreciation claim by Rs.5,16,16,863/-. The ld.Counsel for assessee pointed that the Tribunal in appeal of the assessee for Assessment Year 1998-99 in ITA No.4442/Mum/2010 decided on 27/07/2016 accepted assessee's claim in treating transfer of Bangalore Undertaking as slump sale. Hence, consequential reduction in depreciation by the Department in all subsequent Assessment Years needs to be eliminated. He further pointed that this issue has been considered by the Tribunal in an appeal for Assessment Year 2001-02 and 2002-03 decided vide common order dated 12/04/2022.

15. We find that identical ground was raised by the assessee as additional ground of appeal in appeal for Assessment Year 2001-02. The Co-ordinate Bench decided the issue following the decision of Tribunal in assessee's own case for Assessment Year 1998-99. No contrary material is placed before us by the Department. Hence, respectfully following the decision of Co-ordinate Bench we direct the Assessing Officer to accept assessee's claim of depreciation. In the result, ground No.3 of assessee's appeal is allowed.

Ground No.4 – Disallowance u/s.14A of the Act – Rs.47,000/- :-

16. The ld.Counsel for assessee submitted that during the period relevant to assessment year under appeal the assessee has earned income from tax free bonds Rs.11,55,000/-. The said income was claimed as exempt u/s. 10(15)

of the Act by the assessee. The Assessing Officer made disallowance of Rs.47,000/- on account of interest attributable to earning of interest income and disallowed the same u/s. 14A of the Act. The ld.Counsel for the assessee submits that the assessee is having own interest free funds to cover investments, hence, disallowance u/s. 14A of the Act on account interest expenditure is not warranted. In support of his submissions he placed reliance on the decision in the case of HDFC Bank Ltd. ,383 ITR 529 (Bom) and the decision in the case of Reliance Utilities & Power Ltd., 178 taxmann.com 135 (Bom). We find that the Assessing Officer has made disallowance u/s.14A of the Act solely on account of interest expenditure. The contention of the assessee is that assessee is having own funds sufficient to cover the investments. It is no more res-integra that where the assessee is having mixed bag of; own interest free funds and borrowed interest bearing funds, it shall be presumed that the assessee has made investments from own interest free funds. Similar disallowance made by Assessing Officer in Assessment Year 2001-02 & Assessment Year 2002-03 was deleted by the Co-ordinate Bench . We deem it appropriate to restore this issue to Assessing Officer for the limited purpose of verification of availability of assessee's own funds matching investments. In the result, ground No.4 of appeal is allowed with aforesaid directions.

Ground No.5- Extinguishment of Sales Tax deferred loan liability treated as revenue receipts – Rs.7,66,41,506/- :

17. The ld.Counsel for the assessee submits that as per the scheme of Maharashtra Sales Tax Department, the payment of Sales Tax collected by the assessee was initially deferred for payment to the Sales Tax Department for the period specified in the scheme. Subsequently, the assessee was entitled to

pre-pay the amount at the net present value. The assessee instead of making payment to the Sales Tax Department, assigned the same to an Associated Enterprise at its net present value. The Assessing Officer held it to be a cessation of liability and treated the difference between the actual amount and its net present value as income of assessee u/s. 41(1) of the Act. The assessee carried the issue in appeal before the CIT(A) but remained unsuccessful. The ld.Counsel for the assessee submitted that similar issue had come up before the Tribunal in assessee' appeal for Assessment Year 2001-02 and 2002-03. The Co-ordinate Bench while deciding identical issue in Assessment Year 2001-02 palced reliance on the decision of the Tribunal in assessee's own case for Assessment Year 2000-01. The Tribunal in assessee's appeal in ITA No.3076/Mum/2012 for Assessment Year 2000-01 decided the issue as under:-

> *37. After hearing both the parties and perusing the material available on record, the undisputed facts coming out are that the sales tax was collected by the assessee from the customers under Sales Tax deferral Incentive Scheme. As per the said scheme the payment of said sale tax was to be deferred for specified number of years subject to the fulfillment of certain special conditions as specified in the scheme. Such deferment of sale tax was to be treated as loan to the assessee by sales tax department to be paid after a specified number of years. During the year the assessee deferred the sales tax amounting to Rs. 71.34 crores which the assessee has assigned to another company at a net present value of Rs. 19.73 crores. In other words, the assessee has paid an amount of Rs. 19.73 crores in assignment in consideration for taking over the said obligation for repaying for Rs. 71.34 crores on future date to another company. The differential amount of Rs.51.61 Crores was credited to the P&L account, however while computing the income the assessee, the same was reduced in the computation of income by treating the same as capital receipt not chargeable to tax. According to the A.O., the said liability has ceased to exist in the books of the assessee as the same was taken over by another entity. In coming to this conclusion, the A.O relied on the decision of CIT vs. Sunderam Iyengar & Sons Ltd. (supra). wherein the assessee used to receive deposits in the course of its trading transaction on sale of Coca Cola in glass bottles of, etc. which are refundable on return of the said bottles. wherein the order of the Supreme Court has held that liability needs to be treated as income of the assessee u/s 41(1) of the Act. The ld. CIT(A) in the appellate proceeding affirmed the order of AO by holding that the said*

takeover of deferred sales tax liability to be paid in future is taxable u/s 28(iv) of the Act, by relying on the decision of CIT(A) Vs. Sundaram Iyangam& Sons Ltd., (supra) and also the decision of the Jurisdiction High Court in the case of Solid Container Ltd., Vs. DCIT (supra). In this case, we note that the A.O made addition u/s 41(1) of the Act, while in the appellate proceeding, ld. CIT(A) upheld the said addition u/s 28(iv) of the Act and not u/s 41(1) of the Act. The arguments of the Ld. counsel before us are that the said assignment of sales tax liability by the assessee is neither income u/s 41(1) of the Act nor benefit or perqs 28(iv) of the Act. In defense of his arguments the Ld. CIT(A) relied on the decision of Cable Corporation of India Ltd., Vs. DCIT(supra). In the present case, we find that provisions of Sec. 41(1) of the Act are not applicable as the necessary conditions as envisaged in the said section are not fulfilled namely the assessee has (i) not obtained any amount in respect of loss or expenditure; (ii) nor any benefit in respect of trading liability by way of remission or cessation. The first condition of obtaining an amount is obviously not applicable as the assessee has paid an amount for discharge of a future liability while the issue as to the applicability of the second condition of obtaining a 'benefit' is now settled by the decision of the Apex Court in the case of CIT vs. Balkrishna Industries Ltd. 88 taxmann.com 273 (SC) wherein the Supreme Court has affirmed the decision of the Hon'ble Bombay High Court in the case of CIT vs. Sulzer India Ltd., 369 ITR 717(Bom) holding that when an assessee discharges the present value of future obligation, it would not be a case of any 'benefit' accruing to the assessee, as the assessee has discharged the full liability at the present value. Therefore, as there is no 'benefit' obtained by or accruing to the assessee, the question of applicability of section 41(1) of the Act does not arise. In both the Supreme Court and the High Court decisions were concerned with pre-payment of salestax liability at net present value to the Sales-tax Department, but the same principle would equally be applicable to the present case of assignment of the sales-tax deferred loan liability at the net present value. We find merits in the case of the assessee that the provisions of section 41(1) of the Act are not applicable, as there is no remission or cessation of the liability. The remission or cessation of liability contemplates a discharge or partial discharge of a liability coupled with no obligation to discharge the balance liability and thus, it would not cover the facts of the present case, where the Appellant has assigned its obligation, although at the present value. The liability has been discharged by the Appellant by making an immediate payment at the present value and therefore it cannot be said that there is a remission or cessation of the liability. Further there is no remission or cessation of the liability for the reason that the assignment of the liability is to a third party whereas qua the Sales-Tax Department the assessee continues to be liable to pay the said amount and thus as for as the Sales-Tax Department is concerned, there is no remission or cessation of a liability. The case of the assessee finds support from the decision of the Apex Court in CIT vs. S.I. Group India Ltd., (Supra) wherein the Apex Court held that when the Sales-tax Department has not accepted the pre-payment, it cannot be a case of cessation or remission of a liability. In the present case also, the assignment has not been accepted by the Sales-tax Department and, therefore, there is no question of cessation or remission of the liability.Besides the deemed loan from the Sales-tax Department is not a loss or expenditure or a trading liability and, therefore, the provision of section 41(1) of the Act is not applicable. The sales-tax

originally collected by the assessee was an expenditure which has been allowed to the assessee by treating it as a deemed loan. Once the said amount has been treated as a loan, it loses its characteristic of sale-tax liability. Such deemed loan is not a loss or expenditure or a trading liability and, hence, does not come within the ambit of section 41(1) of the Act.

38. Similarly the difference of Rs. 51.61 Crores arising out of assignment of sales tax liability of Rs.71.34 Crores to be paid in future date at its present value of Rs. 19.73 Crores has not resulted in any benefit or perquisites and thus not covered by the provisions of section 28(iv) of the Act as section 28(iv) proposes to tax 'benefit' or 'perquisite' arising from business of the assessee. In the present case the pre-payment of a deferred sales-tax loan liability at the net present value, does not result in any 'benefit' to the assessee. Besides the case of the assessee is squarely covered by the decision of the coordinate bench in Cable Corporation of India Ltd. vs. Deputy Commissioner of Income-tax(supra) wherein on identical facts, the Tribunal has concluded that the assignment of such liability, at the net present value, cannot be charged to tax either under section 41(1) of the Act or under section 28(iv) of the Act.The provisions of section 28(iv) of the Act are not applicable to the facts of the present case as monetary benefit is not covered by the said section. Section 28(iv) of the Act uses the phrase - 'whether convertible into money or not', which would mean that cash benefits are not covered by the said section. This issue is covered in favour of the assessee by the decision of the Apex Court in the case of CIT vs. Mahindra & Mahindra Ltd.93 taxmann.com 32(SC) wherein the Apex Court has held that waiver of loan is a monetary benefit and, hence, it does not come within the ambit of section 28(iv) of the Act. Therefore, the amount of Rs.51,60,87,976/- is to be regarded as capital receipt which is not chargeable to tax.

39. We have also perused the decision relied upon by the revenue to support the orders of the authorities below but find that the same are distinguishable on facts or reversed or not a good law in view of the subsequent decisions. In the case of CIT vs. Sunderam Iyengar & Sons Ltd. (supra), the assessee used to receive deposits in the course of its trading transaction on sale of Coca Cola in glass bottles of, etc. which are refundable on return of the said bottles. During the relevant year, such deposits outstanding for a number of years were transferred by the assessee to the Profit & Loss Account as no longer payable to the said customers. On these facts, the Apex Court held that the amount was received by the assessee in the course of trading transaction and the same is chargeable to tax as trading receipts when the said amount becomes the assessee's own money. The Apex Court further held that because of the trading transaction, the assessee has become richer to the extent of the amount transferred to Profit & Loss Account and, hence, the amount so transferred is to be treated as income of the assessee. In the present facts are distinguishable and, therefore, the decision of the Apex Court is not applicable as the Supreme Court was neither concerned with section 28(iv) or section 41(1) of the Act, but with the issue of whether the amount received by an assessee in the course of a trading transaction, should be treated as income of the assessee or not. In the present case, the allegation of the Assessing Officer and the Commissioner of

Income-tax (Appeals) is that the provision of section 41(1) or section 28(iv) of the Act is applicable which issue is not there before the Hon'ble Supreme Court. Further, the Supreme Court has held that the amount is treated as income of the assessee as the assessee had become richer by the amount which is transferred to the Profit & Loss Account. In the present case, the assessee has discharged its complete obligation by paying the net present value of the obligation and, therefore, there is no question of the assessee either becoming richer or poorer on such transaction. The Apex Court in the cases of Balkrishna Industries Ltd. (supra) and Mahindra & Mahindra Ltd. (supra) has specifically dealt with the provisions of section 41(1) and section 28(iv) of the Act and, therefore, the said decisions are applicable to the case of the Appellant. So far as the decision in Solid Containers Ltd. v DCIT (supra) is concerned, the counsel of the assessee submitted that the finding in this decision by the Bombay High Court is contrary to the decision of the Apex Court in Mahindra & Mahindra Ltd. (supra) and, therefore, the said decision is no longer good law. The finding by the High Court that the provision of section 28(iv) of the Act is applicable to a waiver of loan is contrary to the decision of Mahindra & Mahindra Ltd. (supra) wherein the Apex Court has held that waiver of loan being a monetary benefit is not covered under section 28(iv) of the Act. Even for applicability of section 41(1) of the Act, the Apex Court has held that waiver of loan amounts to cessation of a liability other than a trading liability, for which no deduction has been claimed in earlier years and, therefore, does not come within the ambit of section 41(1) of the Act. Thus the decision of the Bombay High Court in Solid Containers Ltd.(supra) which had taken a contrary view, is no longer good law. Further the decision of Solid Containers Ltd.(supra) is further not applicable to the present case as in the present case, the Appellant has discharged the full liability at net present value which cannot be said to be a case of either waiver or cessation of the liability, which was the fact before the High Court. The decision in the case of CIT vs. Ramaniyam Homes Pvt. Ltd.,(supra) relied upon by the ld DR has been reversed by the Apex Court by the common judgment dated 24th April 2018 in Mahindra & Mahindra Ltd.(supra).Therefore, the reliance on the decision of the Madras High Court by the Revenue is wholly misplaced and completely unjustified. The facts in the case of CIT vs. Aries Advertising Pvt. Ltd.(supra) are altogether different vis a vis the facts in the present case as in the case before the High Court, there was actual write off credit balance (trading liabilities) and, accordingly, the High Court held that the assessee therein had received a benefit in respect of a trading liability which came within the ambit of section 41(1) of the Act whereas in the present case, there is no question of any benefit being received by the Appellant as the appellant has discharged the net present value of a future liability not can the present case be said to be of remission or cession of the liability. Therefore, this decision is clearly inapplicable to the facts of the present case. In the case of CIT vs. ICC India Pvt. Ltd. (supra), the Hon'ble High Court has held that share application amount was a capital receipt and was never received towards trading purpose and, therefore, the question of applicability of section 41(1) does not arise. The High Court has, therefore, dismissed the appeal of the Revenue. Although the High Court has noted that if the loan was received for trading purposes, the provision of section 41(1) of the Act may be applicable; however, as the fact in the present case was not a case of receipt of loan towards the trading purposes, the High Court has not

considered whether other conditions of section 41(1) are fulfilled or not. In the case of Indian Seamless Steels & Alloys Ltd. vs. ITO (supra). The Tribunal in paragraph 16 of the order has noted that the assessee therein has transferred its deferral sales-tax loan to third party for a consideration which is higher than the amount payable to the Sales-tax Deptt. The Tribunal has further noted that the assessee therein has sold its 'sales-tax incentive' and what it has received is not sales-tax benefit but sale consideration on transfer of its entitlement and such sale consideration is a benefit directly arising from business and is, therefore, revenue receipt. In the present case of the Appellant, the Appellant has, in fact, paid a consideration to the other Company for taking over its obligation, which amount is lesser than the amount payable to the Sales-tax Department. The facts in this case are different is further clear from the reliance by the Tribunal on decision of Sun & Sand Hotels Pvt. Ltd. vs. DCIT (ITA No.7125/MUM/2007) wherein also it was a case of transfer of sales-tax entitlement for a consideration which was held as revenue receipt. Therefore, the Appellant submits that the said decision is clearly inapplicable on the facts of the present case. Even otherwise, the Appellant submits that the decision of the Tribunal being contrary to the decisions in Balkrishna Industries Ltd. (supra) and Mahindra & Mahindra Ltd. (supra), is not applicable to the Appellant. In view of these facts and decisions as discussed above we are inclined to set aside the order of CIT(A) on this issue by holding that Rs. 51.61 Crores is a capital in nature. The AO is directed accordingly. The ground of the assessee is allowed".

No contrary material is placed before us by the Revenue, hence, following the decision of Co-ordinate Bench in assessee's own case in preceding Assessment Years, ground No.5 of appeal is allowed for parity of reasons.

Ground No.6 – Deduction u/s. 80HHC of the Act:-

18. The assessee had claimed deduction of Rs.2,03,164/- u/s. 80HHC of the Act. The assessee in ground No.6 of appeal has assailed recomputation of deduction by the Assessing Officer u/s. 80HHC on different facets. The same are as under:

(a) Reduction of 90% gross interest received from profits & gains of Business- Rs.4804.16 lacs.

19. The ld.Counsel for the assessee submits that in assessment proceedings the Assessing Officer held that the assessee has not reduced gross interest received from profits and gains of business. Accordingly, 90% of the interest

received on ICD, subsidiary and associate companies and customers treated as business income by the assessee was reduced from the profits and gains of the business. There should be no reduction of interest for computing profits u/s. 80HHC of the Act. The ld.Counsel for the assessee pointed that this issue has been decided by the Tribunal in assessee's own case in preceding Assessment Years and recently in appeal for Assessment Year 2001-02 and Assessment Year 2002-03.

20. We find that the Co-ordinate Bench while deciding the appeal for Assessment Year 2001-02 and Assessment Year 2002-03 following the decision of Tribunal in assessee's own case in ITA No.3076/Mum/2012 for Assessment Year 2001-02 restored the issue back to the file of Assessing Officer. Both sides are unanimous in stating that the facts relating to Assessment Year under appeal on this issue are identical, hence, respectfully following the decision of Co-ordinate Bench we restore this issue back to the file of Assessing Officer with similar directions.

(b) Set off of loss on export of trading goods against profits on export of Manufactured goods:-

21. The ld.Counsel for the assessee fairly stated that this issue has been decided against the assessee in the preceding Assessment Years, the facts in the impugned assessment year are identical. In view of the statement made by ld.Counsel for the assessee, sub-ground No. (b) is dismissed.

(c) Reduction of 90% Miscellaneous Income received from profits of Business:

22. The assessee has received Miscellaneous Income aggregating to Rs.8439.35 lacs from the following activities:

	Other Miscellaneous income	Rs.
12.	Hire of Plant & machinery	104,955,976
a.	Profit on sale of license granted under import	663,000
B	Custom duty drawback & excise duty drawback	1,165,000
C	Other export incentives	24,000
13	Rent on premises leased	48,705,068
14	Insurance claims	3,170,570
15	ERDC Design fees	87,000
16	Loading and transportation charges at quarry	261,440
17	Soil investigation testing	1,395,009
18	Staff deputation cost	2,267,291
19	Materials transfer	611,453
20	Sale of empty tins and drums & compensation received	3,980,488
21	Cost of services	3,857,193
22	Freight charges	1,778,745
23	Others	51,408,102
24	Forfeiture of security deposit	98,000,000
25	Bond money from employees	337,000
26	Exchange gain	46,349,986
27	Pumping & freight charges for RMC	224,746,713
28	Service charges	6,079,672
29	Technical fees	9,868,200
30	Commercial leadership fees	216,275,767
31	Other receipts	15,408,681
32	Learning centre charge from units	1,343,705
33	Incentives from mutual funds	214,626
34	Corporate incentives- Maruti Cars	980,397
	Sub- Total (C)	**843,935,082**

The assessee has included aforesaid receipts in profits eligible for deduction u/s. 80HHC of the Act. The Assessing Officer held that the Miscellaneous Receipts are not directly derived from export activity, hence, not eligible for deduction u/s. 80 HHC of the Act.

23. The ld.Counsel for the assessee submitted that Tribunal has restored this issue to the file of Assessing Officer in Assessment Year 2001-02 and 2002-03. The facts are identical in the impugned Assessment Year. We find that similar issue was raised before Co-ordinate Bench in appeal by the assessee in Assessment Year 2001-02 and Assessment Year 2002-03. The Co-ordinate Bench placing reliance on the decision of Tribunal for Assessment Year 2000-

01 in ITA No. 3076/Mum/2012 decided on 29/10/2020. restored the issue back to the file of Assessing Officer. The Revenue has not placed on record any material to controvert the submissions of the assessee, hence, following the decision of Co-ordinate Bench, we restore sub-ground (c) to the Assessing Officer for parity of reasons.

(d) **Reduction of profits in respect of projects eligible for deduction u/s. 80HHB of the Act.**

24. We find that this issue was also considered by Co-ordinate Bench in the preceding Assessment Year and was restored to the Assessing Officer. Both sides are unanimous in stating that the facts relevant to the issue are identical to the facts in appeal for Assessment Year 2001-02. Hence, following the decision of Co-ordinate Bench, the issue in sub-ground (d) is also restored to the Assessing Officer.

25. In the result, ground No.6 is partly allowed for statistical purpose.

Ground No.7 - Deduction U/s.80HHE of the Act:

26. The assessee has claimed deduction of Rs.23,93,457/- u/s. 80HHE of the Act .In ground No.7 of appeal assessee has assailed computation of deduction u/s. 80HHE. The assessee has assailed recomputation u/s. 80HHE on multiple grounds:

(a) Reduction on 90% of gross interest;

(b) Reduction of 90% of Miscellaneous Income received from profits of business;

(c) Reduction of 30% of profits in respect of profits eligible for deduction u/s. 80HHB.

27. The CIT(A) has held that the scheme of deduction u/s. 80HHE is similar to the scheme of deduction u/s. 80HHC of the Act, hence the ratio laid down while deciding the issue of deduction u/s. 80HHE of the Act may be applied to the deduction u/s. 80HHE of the Act. We find that assessee has assailed computation of deduction u/s. 80HHE on the same parameters as we have discussed while adjudicating ground No.6. Hence, the finding given by us while adjudicating ground No.6 would *mutatis mutandis* apply to ground No.7 including sub-grounds (a), (b) and (c). For parity of reasons, the ground No.7 of appeal is restored to the Assessing Officer for fresh adjudication in line with the directions of the Tribunal in the preceding Assessment Years.

In the result, ground No.7 of the appeal is allowed for statistical purpose.

Ground No.8 – Rejection of claim of deduction u/s.80IA of the Act in respect of Captive Power generating units:

28. The ld.Counsel for the assessee submitted at the outset that this issue has been considered by the Tribunal in the preceding Assessment Years. The facts in the impugned Assessment Year are identical. We find that the Co-ordinate Bench while deciding the appeal of assessee for Assessment Year 2001-02 has considered this issue in para 35 to 37 of the order. The Bench has allowed this ground of appeal by placing reliance on the order of Tribunal in assessee's own case for Assessment Year 1999-2000 and 2000-01. No contrary material has been brought to our notice by the Revenue. Hence, for parity of reasons ground No.8 of appeal is allowed.

Ground No.9- Disallowance u/s. 14A of the Act for the purpose of computing book profit u/s. 115JB:

29. The Special Bench in the case of Vireet Investments Pvt. Ltd. (supra) has held that while computing book profits u/s. 115JB of the Act disallowance made u/s.14A r.w.r. 8D shall not be considered. The Hon'ble Karnataka High Court in the case of Sobha Developers Ltd. vs. DCIT 125 taxmann.com 72 has reiterated that disallowance made u/s. 14A could not be added to book profits of assessee u/s.115JB of the Act. In light of aforesaid decisions, assessee succeeds on ground No.9 of appeal.

30. The assessee vide application dated 14/11/2018 has raised additional grounds of appeal. The additional grounds reads as under:-

> *"1. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer (AO) ought to have computed the deduction u/s 80HHC of the Act in determining the Book Profit u/s 115JA on the basis of "profit as per the profit and loss account" instead of "profits of business and profession computed under the normal provisions of the Act" while determining tax liability u/s 115JA of the Act.*
>
> *2. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer (AO) ought to have computed the deduction u/s 80HHE of the Act in determining the Book Profit u/s 115JA on the basis of "profit as per the profit and loss account" instead of "profits of business and profession computed under the normal provisions of the Act" while determining tax liability u/s 115JA of the Act."*

31. The ld.Counsel for the assessee submits that for adjudication of additional grounds no fresh documents are required to be furnished. These grounds can be decided on the basis of documents already on record. The Assessing Officer has already granted deduction on the basis of profits of business and profession under normal provisions of the Act. By virtue of these additional grounds the assessee is claiming deduction u/s. 80HHC and 80HHE of the Act under MAT provisions.

32. The additional grounds raised by the assessee are purely legal, hence, additional grounds are admitted for adjudication. Since, these grounds have been raised for the first time before the Tribunal, we deem it appropriate to restore this ground to the Assessing Officer for consideration and adjudication on merits after affording reasonable opportunity of making submissions to the assessee, in accordance with law. Hence, additional ground No.1 and 2 are allowed for statistical purpose.

33. In the result, appeal of the assessee is partly allowed.

34. **To sum up, appeal of the Revenue is dismissed and appeal of assessee is partly allowed.**

Order pronounced in the open court on Friday the 15th day of March, 2024.

Sd/-	Sd/-
(AMARJIT SINGH)	(VIKAS AWASTHY)
लेखाकार सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated 15/03/2024
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai