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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 2943/MUM/2008
(Assessment Year 2001-02)
ITA No. 6537/MUM/2006
(Assessment Year 2003-04)
ITA No. 4987/MUM/2008
(Assessment Year 2002-03)
ITA No. 4988/MUM/2008
(Assessment Year 2004-05)
ITA No. 6523/MUM/2008
(Assessment Year 2005-06)
ITA No. 5539/MUM/2009
(Assessment Year 2006-07)
ITA No. 3409/MUM/2011
(Assessment Year 2007-08)
ITA No. 755/MUM/2012
(Assessment Year 2008-09)

ITO-4(2)(4) R. No. 647, 6th Floor, Aaykar Bhavan, M.K.Road, Mumbai 400 020 **(Appellant)**	Vs.	M. M. Poonjiaji Spices Ltd 42, Anandilal Poddar Marg, Dhobi Talao, Mumbai-400 002 **(Respondent)**

ITA No. 5047/MUM/2009
(Assessment Year 2006-07)

M. M. Poonjiaji Spices Ltd 42, Anandilal Poddar Marg, Dhobi Talao, Mumbai-400 002 **(Appellant)**	Vs.	DCIT-4(2) R. No. 647, 6th Floor, Aaykar Bhavan, M.K.Road, Mumbai 400 020 **(Respondent)**

PAN No. AACCM2635C

Assessee by	:	Dr. K. Shivaram, Sr. Adv. Rahul Hakani
Revenue by	:	Shri Chetan M. Kacha, Sr. AR.

Date of hearing: 20/02/2024
Date of pronouncement : 15/04/2024

O R D E R

PER PRASHANT MAHARISHI, AM:

1. ITA No. 2943/MUM/2008 for A.Y. 2001-02 is filed by The Income Tax Officer 4 (2) (4), Mumbai (the learned AO) against appellate order passed by the Commissioner of income tax (appeals) (IV) Mumbai (the learned CIT – A) wherein the appeal filed by the assessee against the assessment order passed under section 144 read with section 147 of the income tax act, 1961 passed by the AO on 26/12/2006 was partly allowed.

2. The learned AO is aggrieved and has raised following grounds of appeal:

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the AO's action of rejection of books of accounts u/s. 145 is incorrect.*
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> *2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that undertakings at Ratlam & Nasik are not formed by transfer of machinery previously used.*

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that preparation of pickle & spices pastes are manufacturing activities.

4. On the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in holding that undertaking at Ratlam & Nasik are eligible for exemption u/s. 10B.

5. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that assessee company is entitled for exemption u/s. 10B in spite of applicability of subsection 9 of section 10B.

6. On the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in applying the provisions of section 10B(9A), without appreciating that the same was not applicable in the year under consideration.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the sales proceeds of the articles exported out of India were received in India in convertible foreign exchange within the prescribed time inspite of non-production of realization certificates.

8. On the facts and in the circumstances and in law, the Ld.CIT(A) erred in deleting addition of income

on account of difference of ₹ 3,61,257/- between the books of accounts of assessee with that of Widen without reconciliation of accounts.

9. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the additions made on account of the difference in closing stock as per statement submitted to the bank and as per the Balance Sheet.

10. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition on account of Unsecured loan of ₹ 22,11,374/- without ascertaining the genuineness of Loan.

11. On the facts and in the circumstances of the case, the impugned order of the Ld.CIT(A) is contrary to law and consequently merits to be set aside and that of the Assessing Officer be restored."

3. Assessee has raised an application under rule 27 of ITA T rules filed on 31/05/2018 against the order of the learned CIT – A wherein the rejection of books of accounts was confirmed.

4. Facts of the case show that the assessee is a private limited company engaged in the business of manufacturing pickles, spices, paste and chutney. It filed its return of income on 31/10/2001 declaring loss of ₹ 275,407/– the return of income was supported by the audited accounts of company, tax audit report. This return of income was processed under section 143 (1) of the act on 16/5/2002. The

assessing Officer reopens the assessment under section 147 of the act on 20/1/2006 by issue of notice under section 148 of the act. In response to that notice, assessee filed a letter dated 14/2/2006 stating that the return of income filed on 13/10/2001 May be treated as a return filed in response to the notice. It further objected to the notice of reopening stating that it is bad in law. Assessee was provided reasons recorded for reopening of the assessment and speaking order was passed on 16/6/2006 objections of the reopening.

5. As the assessee company is engaged in the business of garlic powder, ginger powder, madras curry powder including pickles and spices et cetera, it also claimed deduction under section 10 B of the act of rupees to .27 crores being hundred percent of the profits derived from the business of preparation and export of powder, seeds, pickles, spices, paste, chutney. On question, the learned AO found that.

i. assessee is not manufacturing of producing any article or thing as the assessee is carrying on the activity of preparation and packing of pickles, powders of spices as well as exporting various seed ,the activities which do not constitute manufacture or production.

ii. Assessee was also not eligible for deduction for the reason that Nasik undertaking is formed by transfer or taking on leasehold machinery is in plant and owned in the business of another company and Ratlam is formed by transfer or taking back the machinery in plant which were previously used by assessee on lease hold basis.

iii. Further the beneficial interest in the undertaking at Nashik has been transferred by one private limited company to the assessee and a beneficial interest of Ratlam unit was also transferred by another entity.

iv. The sale proceeds of article exported out of India are not proved to have been received within the period of six months from the end of the previous year.

6. Thus, for verification of the statutory condition assessee was requested to furnish details. Assessee was given 10 opportunities to prove its claim of deduction under section 10 B of the act of ₹ 227 lakhs which assessee failed. However, the assessee submitted that regarding deduction under section 10 B of the act assessee has already filed a detailed submission as per letter dated 10/8/2006 for assessment year 2004 – 05 which may be considered. The AO further issued a final show cause notice on 1 December 2006 stating why the deduction allowed under section 10 B should not be disallowed as the statutory condition laid down under that section are not fulfilled. Assessee did not file any information. Therefore, the learned assessing officer decided the issue of eligibility of deduction under section 10 B of the act on its merit.

7. The AO examining the first condition stated that the undertaking at Nasik and Ratlam Formed by the transfer of machinery in plant previously used in other business to a business already in existence. It was found that for Nasik undertaking Widem machines private limited was in the business of flavored syrup and mineral water. On 19 February 1991 that private limited company is an associate concern of the assessee of paint allotment of factory land at

91/2/southpaw from Maharashtra industrial development Corporation. In June 1992 that company obtained an extra rise registration certificate for preparation of flavored edible ice in pouches and plastic tubes. In addition to the activities of flavored syrup and mineral water it also started preparation of pickle, chutney masala et cetera from 12/12/1994. On 10/3/1997 that company further obtained excise registration for preparation of vegetable fruits, nuts or other parts of plants pickles chutneys paste et cetera on 22/9/1999 the assessee applied for since tax registration. On 24/12/1999 on the basis of the above application for sale tax, the since tax authorities held that there is no additional place of business except the place of business at 42, and in the love Poddar Marg, Mumbai. On verification of income tax return for assessment year 1999 – 2000 of the assesses it was found that it is in the business of preparation of pickles and spices having the place of business at the same place at which that private limited company is operating. Further on 20 December 2000 the assessee took the factory including land and measuring about 3 acres and building along with used plant and machinery of that company on lease rent basis. In the registration of excise, the assessee also referred to its previous name of that private limited company. Therefore, the learned assessing officer held that on 7/4/2001 the assessee company did not have any Nashik unit as the factory or undertaking is taken on lease rent. Thus, that private limited company owns Nasik undertaking.

8. With respect to the Ratlam unit it was found that on 1/9/1993 M M Poonjiaji and company which is a proprietary concern of M/S Arte Indiana has taken over on lease the factory premises for preparation of pickles and masalas. This proprietary concern obtained excise

registration for preparation of pickle's chutney and masala. On 27/1/1994 that company applied for registration to the Chief Manager District industries Centre stating that it is estimated date of commencement of production on 10/4/1994 and also disclosed main items of manufacturing activities as pickles. On 28/1/1994 the assessee was issued a provisional certificate by the district industries Centre. On 28/10/1994 District industries Centre issued a permanent certificate of registration to that company. As per that certificate the date of commencement of the business of manufacturing pickles, chutney, and masala was 1/2/1994. Ultimately that undertaking was given on rent to the assessee till 11/11/1999. On 22/9/1999 as applied for sales tax registration without showing any additional place of business. On the basis of the above application on 24/12/1999 registration was granted. In the income tax return of the assessee the business of the assessee company was also stated to be at Ratlam, which is the address of that company. When questioned, assessee submitted the details submission made on this issue for assessment year 2004 – 2005 may be considered. Based on the above facts, the learned assessing officer held that the undertakings at Nasik and of Ratlam are a continuation of the business which is already in existence.

9. As the plant and machinery of Nasik unit has been previously used by Widem industries private limited and taken on lease from that company by the assessee and further the plant and machinery of Ratlam unit were taken over from another company which was also used by previously M M Ponjiaji foods private limited. Therefore, the old plants and machinery have been transferred to new units. The learned AO rejected the explanation of the assessee that the plant and

machinery which were purchased by Arte Indiana for its new units at Nasik and Ratlam Unit during the financial year 1995 – 96 to 1996 – 97 is incorrect. Assessee was also asked to furnish the copies of bills of plant and machinery purchased during 1992 – 1998 along with balance sheet and a proof of installation of plant and machinery at various factories. The assessee did not produce all the bills of fixed assets. Assessee also failed to produce certificate for installation of plant and machinery and therefore AO reached the conclusion that assessee has failed to discharge the onus of proving that the units are newly set up and started production in the year 1997 – 1998 as claimed by the assessee.

10. Assessee further contested that AO has completed the assessment of Arte Indiana and passed order under section 143 (3) for assessment year 1996 – 1997 and 1997 – 1998 thereby verifying the acquisition of the assets and therefore now once again the assessing officer is investigating the same facts. The AO rejected the same holding that AO did not specifically mentioned anything in orders about the acquisition of the assets.

11. The learned assessing officer further found that various statements made by the assessee are incorrect. Therefore, he asked for information from central excise department Ratlam and Nasik, District industries Centre, sales tax department Mumbai and customs department New Mumbai. The information collected from these departments was shown to the assessee. Based on this information the learned AO reached at the conclusion that Nasik unit was started on 29/6/1992 by another company and not by the Assessee Company and plant and machinery of Ratlam unit was used by another

company till 11/11/1999 and not by the assessee company. The assessee company did not have any units at Nasik and the assessee has taken plant and machinery previously used by another company. Thus, the business of the assessee is formed by transfer of old plants and machinery previously used in the business of another companies. Therefore, the assessee is not entitled to claim a deduction under section 10 B of the income tax act.

12. The second ground of disallowance of deduction was that that the beneficial interest in the undertaking at Nasik has been transferred by one company to the assessee and the beneficial interest of wrath alarm unit was transferred to assessee by another company. Thus, there is a violation of subsection 9 of section 10 B of the act. In absence of any explanation by the assessee, the learned AO held that the assessee case is covered by the above section and therefore the assessee is not entitled for deduction.

13. The learned AO further questioned that the sale proceeds of the articles exported out of India are not received or brought into India within the period of six months for the reason that in spite of giving sufficient opportunity the assessee has failed to prove that the entire receipt of ₹ 18.79 crores were brought into India in the form of convertible foreign exchange within the period of six months or further. As extended. Therefore, the assessee is also not eligible for a deduction under section 10 B of the act.

14. The learned AO further noted that assessee is in the business of preparing pickles, based, chutney which both on the facts and in law does not amount to manufacture or production. The preparation of pickles involves mixing of cut fruits, vegetables, masala, green chilis

etc. and mixing of the said ingredients can be said neither a manufacturing nor production activity.

15. Further the assessee has not produced the books of accounts, material receipts, packing list, applications to excise department for removal of goods, stock register is, and books of accounts, necessary details were called for from the JNPT for financial year 2003 – 04 and 2004 – 05. It was found that the assessee has not only exported pickles, paste, and chutney but also exported machinery parts, machinery, seeds powder and sweet mango slices. In fact, the assessee was shown to be an export house. The assessee has submitted a step-by-step stage of preparation of pickle to show that it is a manufacturing activity. Assessee also produced various decisions in support of claim to show that the activity of preparing pickle from fruits et cetera is a manufacturing activity. It was further stated that in assessment year 97 – 98 the assessing officer accepted the assessee’s activities as manufacturer and granted a deduction. The learned assessing officer rejected all of them and stated that process of activity carried on by the assessee company of preparing sweet mango slices, pickles and also exporting various seeds et cetera does not constrain you to manufacture or production within the meaning of section 10 B.

16. The learned AO further questioned the report under section 10 B in form number 56G of the act of the respective unit and held that the assessee has not fulfilled and complied with the provisions of section 10 B and rule 16 E and prescribed form number 56G are not proper. Accordingly, he held that assessee does not fulfill the criteria for the

eligibility to claim the deduction under section 10 B. Accordingly the claim of deduction of ₹ 22,778,606/– was disallowed.

17. As the assessee did not produce the books of accounts and did not submit the supporting bills and vouchers during the year, he found that the expenses debited to the profit and loss account were not explained after giving sufficient opportunity to the assessee. Therefore, he rejected the book results and completed the assessment on the basis of material facts available on record under section 144 of the act.

18. The AO further examined the claim of the assessee of deduction under section 80 HHC of the act. As the assessee has not submitted the prescribed certificate in form number 10 CCAC and further the goods were produced by an exported by the assessee, the deduction under section 80 HH C was also disallowed as an alternative claim.

19. The AO further found that there is a difference in account with respect to both the entities and therefore an addition of ₹ 2,381,763/– was also added to the total income of the assessee. Assessee or obtained unsecured loan of ₹ 15,158,958 confirmation of which were not provided, addition was also made to that extent. Depreciation was also disallowed based on the previous year's assessment orders.

20. During the course of assessment proceedings, the assessee company was asked to furnish the stock statement submitted to the bank on 31/12/2001. On examination of the details, it was found that the stock as given to the Bank was ₹ 14.04 crore and stock as per balance sheet was ₹ 11.85 crore and thus there is a difference of

rupees 2 .19 crores. Accordingly, an addition of ₹ 21,909,800/– was made on this count.

21. Accordingly, assessment order was passed under section 144 read with section 147 of the income tax act on 20/12/2006 assessing the total income of the assessee at ₹ 49,734,160 against the returned a loss of ₹ 275,407/–.

22. Assessee preferred appeal before the learned CIT – A. The appellate order was passed on 28/2/2008 wherein assessee challenged that the order is passed in the breach of principles of natural justice bad in law and reopening is also not valid. On merits also the additions were also challenged.

23. Learned CIT – A confirmed the reopening of the assessment as invalid. With respect to the challenge of assessment under section 144, the action of the AO was confirmed. With respect to the rejection of the books of accounts under section 145 of the act the learned CIT – A held that the addition has not been made on the basis of any rejection in the books of accounts and therefore same was allowed. With respect to ground number 6 against the disallowance of deduction under section 10 B of the act, the learned CIT – A the first assessment for assessment year 2003 – 2000 for was passed under section 143 (3) wherein for the first time the claim of exemption under section 10 B of the assessee was disallowed holding that the assessee has not fulfill the necessary condition prescribed under section 10 B. As a consequence, assessment year 2000 – 2001, 2001 – 2002 and 2002 – 2003 were reopened. Further assessment year 2004 – 2005 was also taken under scrutiny. The first appeal for the assessment year 2003 – 04 is decided by the CIT – A

as per appellate order dated 27/9/2006 wherein the exemption under section 10 B has been allowed to the assessee. In that order the first appellate authority detailed reasons were given on the various issues raised by the AO and has given a categorical finding regarding the fulfillment of various conditions prescribed under section 10 B. On the basis of the learned CIT – A the learned assessing officer has discussed the issue in paragraph number 2 on page number 2 – 37 of the assessment order. Assessee made detailed submissions before him with respect to each of the units and each of the reasons of the AO. The assessee categorically stated that the learned assessing officer has recorded incorrect facts in the assessment order. Same are reproduced by the learned CIT – A at page number 38 of appellate order. These were the observations for the Nasik unit. The assessee also made similar statements and submissions of Ratlam Unit.

24. The learned CIT – A forwarded the written submission made by the assessee to the assessing officer for his comments and the AO has made his remand report on 24/9/2007. Such a remand report is also reproduced at page number 43 – 48 of the appellate order. A copy of the remand report was provided to the assessee for its comment which was replied to on 10/10/2007 in the form of rejoinder which is reproduced by the learned CIT – A at page number 48 – 62. Further a paper book was also filed by the assessee on 11/1/2008 providing copies of the permission 400% export oriented unit, a chart showing the main issues raised by the assessing officer, copies of the certificates in form number 56G certifying the deduction under section 10 B and also a chart giving details of hearing before the learned assessing officer. The various assessment orders, annual

reports, other submissions and assessment orders with respect to all the units/companies. The learned CIT – A held that: –

i. M/s M M Ponjiaji & co was established in the year 1983. On 23/3/1992 the above company was taken over by Arte India partnership firm. That firm set up a new unit in Nasik in October 1997 and April 1998. In February 1999 a new partnership firm was formed, and old assets of Arte India were acquired from the old partnership firm. The partnership firm was converted into a company under part IX under section 566 of the companies act. This company is the assessee and the appellant.

ii. The Nasik and Ratlam units were granted hundred percent EOU statuses in March 2000 and May 2000. Therefore, the establishment of undertaking was in that period. The AO mistook the case of establishment of the assessee. The deduction is allowable on the income of an undertaking. All the criteria are required to be fulfilled by the undertaking. Those undertakings fulfill those conditions.

iii. The observation of the learned assessing officer is incorrect that all the old units were having and owning fixed assets. On perusal of the balance sheet, those companies were not in possession of any assets and therefore the observation that the formation of new undertaking is merely restructuring/reconstruction of the old unit is not correct therefore the question of transfer of the plant and machinery required for manufacture of spice and pickles do not arise.

iv. He further held that provisions of section 10 B (9) of the beneficial interest have wrongly been interpreted by the learned assessing officer. After becoming a company, the assessee being an approved hundred percent export-oriented unit, there has not been any transfer of ownership and beneficial interest. Therefore, the above provision does not apply.

v. With respect to the sale proceeds of export not received within the permitted time, he noted that in the remand proceedings the learned assessing officer has agreed that the proceeds have been received but the bank realization certificates have not been produced. He noted that assessee is not able to reconcile a sum of ₹ 598,738/– only which is part of certain charges, freight and exchange fluctuation et cetera. He further noted that for several assessment years the export turnover and realization as per the bank statement shows that assessee has received the export proceeds.

vi. With respect to whether the assessee is a manufacturing undertaking or not and whether it is manufactured or produced a new article or thing, he referred to the procedure for preparation of pickle and various produce exported by the assessee, held that for assessment year 1997 – 1998 the assessee was carrying on the similar activity and the learned assessing officer has accepted the assessee's activities as manufacturer. He referred to the earlier order and held that mangoes and mango pickles held to be treated as two distinct and separate things with respect to their marketability, use,

and manufacturing process. The process which brings out a complete transformation so as to produce a commercially different article has to be necessarily treated as a manufacturing process. He further looked at the value addition test to examine that assessee has been granted the permission by the development Commissioner for putting up the 100 percent export oriented unit where the net value addition of 76% in the terms of foreign exchange earnings were analyzed and accepted. He further referred to several judicial precedents of various courts and then held that it becomes amply clear that the raw material used by the assessee mango, fruits, vegetables, spices and other ingredients in different and elaborate processes obtain the entirely distinct and different finished products in the shape of pickle, chutney and jam is a manufacturing process and the units at Nasik and Ratlam are manufacturing units.

vii. With respect to the various units formed by transfer of the old plant and machinery, he examined both the units and found that assets were acquired during the financial year 1995 – 1996 to 1996 – 1997. The factory sheds were constructed during the financial years 97 and 98. The excise registration was taken in the month of March 1997 of Nasik unit and EOU status was granted in the month of May 2000. For Ratlam unit intimation to the sales tax department was made in the month of September 97 and EOU status was granted in the month of March 2000.

viii. Therefore, he held that the assessee fulfils the conditions stipulated under section 10 B and is entitled to deduction accordingly this ground was allowed in favour of the assessee.

ix. As the assessee has been allowed the deduction under section 10 B alternative claim and grounds of the assessee for deduction under section 80 HHC were not considered

x. With respect to the various other additions made by the learned AO he deleted the addition on verification of the details filed by the assessee and remand report submitted by the AO.

xi. On the issue of addition of alleged the difference in closing stock of ₹ 21,909,807, he found that identical issue arose in the case of the assessee for assessment year 2003 – 04 wherein the addition was deleted. He found that the stock of raw materials and work in progress shown in the balance sheet are higher than that shown in the bank statement. Though the stock of finished goods in the balance sheet is at a lower figure but that stands explained as the goods invoiced but pending shipment are not considered as a sale by the bankers in contrast to the treatment given in the books of accounts. Even otherwise the stock in question pertains to export of goods qualifying for exemption under section 10 B further the addition is not of much significance as the enquiries in closing stock of this year would mean increase in opening stock for the next assessment year. Accordingly, he deleted the addition.

xii. The appellate order was passed on 28/2/2008.

25. Thus learned AO is aggrieved with the same and is in appeal before us.

26. Ground number 1 – 8 is with respect to the claim of deduction under section 10 B of the act with respect to Nasik and Ratlam units. The learned departmental representative Shri C M Kacha, SR DR vehemently supported the order of the learned assessing officer. He submitted that the learned assessing officer has given several reasons for the purpose of denial of deduction under section 10 B of the act. He submits that.

i. Assessee is not manufacturing or producing any article or thing. He submits that the manufacturing of pickles cannot be considered to be a manufacturing activity.

ii. Nasik and Ratlam units are formed by transfer of old plants and machinery which were used by other companies of the group.

iii. The beneficial interest in the undertaking at Nasik and Ratlam units was transferred.

iv. the sale proceeds of articles exported out of India are not proved to have been received within a period of six months as the assessee failed to furnish the bank realization certificate in support of the realization of export proceeds.

v. they learned assessing officer has categorically referred to the provision of section 10 B of the act and stated that it violates the condition of manufacturing, split up for the construction of

the unit, unit is formed by the transfer of a new business of machinery or plant previously used for the purposes and further the sale proceeds have not been received in India within a specified period is not been proved by the assessee.

vi. He referred to the assessment order and stated that the assessee has failed to show any evidence with respect to the export proceeds received in convertible foreign exchange.

vii. Assessee did not produce the relevant bills of addition made to the fixed assets to show that Nasik and Ratlam units was started by the assessee or eligible.

viii. All books of accounts along with the bills and vouchers were never shown to the assessing officer.

ix. The learned CIT – A with respect to the realization of export proceeds have merely reconciled the bank statement without looking at the foreign inward remittance certificates for the export proceeds.

x. Form number 56G, which is mandatory, was not furnished. Revised form number 56G was claimed to have been filed but some are not available.

xi. The learned CIT – A remanded the issue for earlier years.

27. In view of the above arguments, it was submitted that the order of the learned CIT – A granting the deduction to the assessee under section 10 B of the act is not sustainable in law.

28. The learned authorized representative Dr K Shivram submitted that:-

i. Assessee manufactures pickles which are out of the fruits and vegetables and has a definite process. He referred that in absence of specific definition of the town manufacture under section 10 B as well as under section 2 (29BA) for assessment year 2003 – zero for the term manufacture would include every process which would result in production of a new article or thing having a different character with respect to its marketability, its value and use. He submits that conversion from a vegetable to pickle would be considered manufacture for the purpose of section 10 B. He further referred to several judicial precedents. It was his argument that assessee is engaged in business of producing of massage of different varieties from raw spices purchase from the market was a manufacturing concern entitled to deduction under section 10 B of the act.

ii. He referred to notification issued by the wherein making of pickles et cetera are considered as manufacturing. He further stated that that the deduction claimed under section 80 HHC in earlier years has also been allowed considering the appellant is a manufacturer/exporter. The registration certificate under the Central Excise Department of both Nasik and Ratlam units that the status of appellant as a manufacturer along with the approval granted by the export processing John Department of commerce and industries. He further referred to the order of the learned CIT – A for assessment year 2003 – 04.

iii. With respect to the sale proceeds not received in India within the prescribed time he submits that the assessee has produced

a bank realization certificates, bank certified statement of forex receipts, auditor certificate to prove that the export realization was brought back into India. He further referred to the statement showing realization of export proceeds. It was his argument that the learned CIT – A had referred to the remand report and after the finding of the learned AO, relief was granted.

iv. With respect to the conversion of form into company he submitted that section 10 B (9) was introduced from 1 April 2021 hence it would not apply to the conversion that happened prior to that date further that section applies to an export-oriented units eligible for deduction and not to non-eligible units. In the year of conversion, the assessee was not an eligible unit. He referred to various dates and stated that there is a conversion of a partnership firm into a private limited company which would not be covered by the above provision.

v. With respect to form number 56G is submitted that there was an earlier discrepancy in that form, however revised form number 56G was filed by the assessee and therefore there is no reason not to consider the same.

29. Accordingly, he submitted that there is no infirmity in the order of the learned CIT – A in allowing the claim of the deduction under section 10 B of the act.

30. We have Carefully Considered the Rival Contention and Perused the Order of the Lower Authorities. The Claim of the Deduction under

Section 10 B of the Income Tax Act Is Pertaining to All the assessment years for which the learned AO has filed the appeal.

31. The only dispute is with respect to the fact that whether the assessee is entitled to deduction under section 10 B of the income tax act with respect to the eligible profits of eligible units at the Nasik and Ratlam. The first issue that arises whether the assessee manufacturing pickles by purchasing raw fruits and vegetables, using masala and different process can be said to engaged in manufacturing activity or not which is entitled for deduction under section 10 B of the act. Identical issue arose in case of **Sterling Agro Products Processing (P.) Ltd. [2011] 13 taxmann.com 174 (Chennai)/[2011] 48 SOT 80** wherein the coordinate bench has held as under:-

> "**3.***ITA Nos. 598 to 600/Mds/2011:* It was submitted by the learned authorised representative that the only issue in the assessee's appeals was as to whether the assessee is entitled to the benefit of deduction u/s 10B of the Income-tax Act, 1961 ('the Act' in short) in regard to its business of manufacturing of gherkin pickles. It was the submission that gherkins are commonly known as cucumbers. The assessee purchased gherkins and put them through various processes for manufacture of gherkin pickles. The learned authorised representative placed before us the process involved which is extracted herein below :
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> "*Process involved in the manufacture of the end product 'pickle'*
>
> (*a*) Gherkins are procured from the individual farmers and the same are unloaded at the receiving centre of the appellants EOUs;
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> (*b*) Gherkins are stored in cold storages at particular temperatures;
>
> (*c*) Thereafter, various defects are removed from the gherkins to get the desired quality of the raw materials. This process is known as pre-culling;
>
> (*d*) Selected quality gherkins are put into dry grading machine, wherein the gherkins undergo machine oscillation through dry plate. As a result, very fine

and thin varieties are selected in this process;

(*e*) Gherkins are then subjected to the process of manual culling;

(*f*) The selected varieties after the grading are taken through a process of washing by the machine;

(*g*) Thereafter, the process of fine grading is undertaken;

(*h*) The fine graded and washed gherkins are next put into barrels and various chemicals like acetic acid, brine, vinegar, salt, calcium and KMS preservatives are added thereto. The mixture is then stored for seven to ten days for stabilization. During the period, a fermentation process takes place inside the barrels;

(*i*) Once fermented, gherkins are transported from the factory and unloaded into pits and held until the next phase of processing. Inside the pit the levels of lactic acid and salt are adjusted as per the requirements of the customers. This is achieved by adding salt/water to the brine and allowing the levels of salt and acid in the brine and pickle to equalize. Reduction in the level of lactic acid is required due to a pungent flavour associated with the said acid;

(*j*) Thereafter, the gherkins are lifted out of the pit by a conveyer into a rod washer which removes extraneous matter from the gherkins, as a result of which the products get cleansed;

(*k*) Subsequently, the gherkins are inspected for removal of defective fruits. The defective fruits include any broken, bloated, enzymes softened or discoloured gherkins. After defect removal, the gherkins are sliced;

(*l*) Once sliced, secondary inspection is carried out as the sliced gherkins move across a conveyer. At this stage, slices with holes/incomplete skins or cuts are removed;

(*m*) The slices thereafter move across a shaker table which allows the slices not having the desired size specifications to drop through a screen;

(*n*) Thereafter a vibratory two-speed automatic pail filler packs the slices and covers the slices in the pail with the solution having appropriate blend of

spice emulsion. The pails have manufacturing dates written on them as well as the hour of the day when they were produced;

(*o*) In addition to the above, the gherkins removed at the stage of pre-cutting (*i.e.,* gherkins of good quality and big in size) are again taken into process. These gherkins are put into a machine which washes them, cuts them into required pieces and automatically packs in bottles. These bottles are filled with the aforesaid chemicals to convert them into a distinct product namely sweet pickle or hot pickle. Sugar is added to the sweet pickle and chilly is added to the hot pickle at the process of topping up the chemicals. This process involves chemical reactions like fermentation; neutralization and oxidization."

4. It was fairly agreed by the learned authorised representative that in the assessee's own case for the assessment years 2000-01 to 2003-04 in ITA Nos. 2416 to 2418/Mds/2007 vide order dated 06-02-2009 the co-ordinate Bench of this Tribunal has held the issue against the assessee by following the decision of the Hon'ble Supreme Court in the case of *Indian Hotels Co. Ltd.* v. *ITO* [2000] 245 ITR 538/ 112 Taxman 46. It was the submission that after the decision of the Hon'ble Supreme Court in the case of *Indian Hotels Co. Ltd.* (*supra*) referred to supra, the issue of 'manufacture or production' has undergone substantial debate. It was the submission that the Hon'ble Supreme Court in the case of *ITO* v. *Arihant Tiles & Marbles (P) Ltd.* [2010] 320 ITR 79 / 186 Taxman 439 has held once excise duty is being paid it would not be possible to hold that there was no manufacturing involved. He drew our attention to Chapter 20 of the Central Excise Tariff Act, 1985 wherein it is specifically mentioned that pickles are classified under the heading 20.01 *vide* M. F.(D.R.) F. No. 114/18/86-CX.3, dated 24-3-1986. It was the further submission that the Hon'ble Supreme Court in the case of *Edward Keventer (P) Ltd.* v. *Bihar State Agricultural Marketing Board* [2000] 6 SCC-264. The Hon'ble Supreme Court has held that under the provision even though basic ingredients may be the same end product which is known differently is treated as a separate item. It was the submission that in the assessee's case the gherkin pickles are different from gherkins and as the end product in the assessee's case was different from gherkin as such, the same was liable to be held to be "manufacture". He further relied upon the decision of the Hon'ble J & K High Court in the case of *CIT* v. *Pankaj Jain, Prop. Aagam Food Industries* [2006] 152 Taxman 80 to submit that the decision in the case of Indian Hotels Co. Ltd., referred to supra, was not applicable insofar as the said decision was dealing with the flight kitchen which was being run along with hotel and was ancillary to the hotel business and that was why it was not held to be a separate industrial undertaking within the meaning of section 80J of the Act. It was the further submission that the decision in the case of *Indian Hotels Co. Ltd.* (*supra*) referred to supra, would not apply insofar as in the said decision the assessee

therein was engaged in the business of trading activity. It was the further submission that in any case even if the decision of the Hon'ble Supreme Court in the case of *IndianHotels Co. Ltd.* (*supra*) was to be applied, then it had been categorically held there that food prepared in the flight kitchen involved only the activity of processing and not manufacturing.

5. The learned authorised representative drew our attention to the provisions of section 10B as it stood when the assessee started its business. It was the submission that the assessment year 2006-07 was the 7th year of claim and the date of commencement of manufacture or production was 01-04-1999. It was the submission that the provisions of section 10B had been substituted by the Finance Act, 2000 w.e.f. 1-4-2001. It was the submission that when the assessee had made its claim for deduction u/s 10B, the provisions of the Explanation to section 10B had categorically provided that "manufacture" includes any "process". It was the submission that in any case the activities of the assessee in converting raw gherkins into gherkin pickles involved multiple processes and the same, in view of the Explanation to section 10B as it stood at the year of commencement of its claim, were "manufacture". It was the further submission that the Hon'ble Kerala High Court in the case of *Tata Tea Ltd.* v. *Asstt. CIT* [2010] 189 Taxman 303 , for the purpose of section 10B of the Act had held that blending, packing and exporting of tea bags, tea in packets and tea in bulk packs was manufacture. The learned authorised representative further relied upon the decision of the Hon'ble jurisdictional High Court in the case of *CIT* v. *Jamal Photo Industries (I) (P.) Ltd.* [2006] 287 ITR 620 (Mad.) wherein it had been held that for the purpose of section 80-IA, the expression "manufacture" involves the concept of changes effected to a basic raw material resulting in the emergence of, or transformation into, a new commercial commodity. It is not necessary that the original article or material should have lost its identity completely. All that is required is to find out whether as a result of operation in question, a totally different commodity had been produced. It was the submission that in the present case the gherkins which were converted into gherkin pickles was a totally different commodity which had been produced. It was the submission that in view of the later development in the law, the decision of the co-ordinate Bench of this Tribunal in the assessee's own case for the assessment years 2001-02 to 2003-04, referred to supra, should not be followed and it should be held that the assessee is entitled to the claim of deduction under section 10-B of the Act.

6. In reply, the learned DR submitted that there was a decision of the coordinate Bench of this Tribunal in the assessee's own case and it had the binding precedent. It was the further submission that if the pickle as manufactured by the assessee was washed, the gherkin could be obtained. It was the submission that no new produce came into existence. It was the submission that the main ingredient of the assessee's pickle was gherkins and the same did not lose their individuality after the various activities done by the assessee for converting the gherkins into gherkin pickles. It was the further submission that the term "manufacture" has been defined in section 2(29BA) of the Act and as per the definition of "manufacture" there should be the transformation of the object or article or thing into a new and distinct

object or article or thing having different name, character and use, which in the present case was not available. Learned DR further relied upon the decision of the Hon'ble Supreme Court in the case of *Dy. CST (Law), Board of Revenue (Taxes)* v. *Pio Food Packers* [1980] 46 STC 63 to say that converting pineapple into pineapple slices, pineapple jam, pineapple squash and pineapple juice was not "manufacture". He vehemently relied upon the order of the learned CIT(A) as also the decision of the co-ordinate Bench of this Tribunal in the assessee's own case for the assessment years 2001-02 to 2003-04, referred to supra.

7. In reply, the learned authorised representative submitted that the decision in the case of *Pio Food Packers* (*supra*), referred to supra, also recognized that what was being done there was processing. It was the submission that for the purpose of Kerala General Sales Tax Act, 1963, the processing of pineapple into pineapple slices was not manufacture but as per the Explanation to section 10B of the Income Tax Act, 1961 as process has been held to be inclusive in the term "manufacture", the assessee should be held to be eligible for the deduction under section 10B of the Act.

8. We have considered the rival submissions. A perusal of the provisions of section 10-B of the Act in the present case clearly shows that it is the provision of section 10-B before its substitution w.e.f. 1.4.2001 which is applicable in the assessee's case. This is because the assessment year 2006-07 is the 7th year of its business and it remains undisputed that the assessee had started its production on 1.4.1999 and its first year of claim is 2000-01. Before its substitution, section 10B and the Explanation thereto has categorically held that "manufacture" includes any "process". A perusal of the various decisions as have been quoted above clearly shows that the conversion of the gherkins in the present case into gherkin pickles involves "process". This is also evident from the chart of the activity done by the assessee, extracted above. Once it is held to be a "process" for the purpose of the provisions of section 10B, it would have to be held that the assessee is doing "manufacture". Further a perusal of the provisions of section 2(29BA) though inserted by the Finance (No.2) Act, 2009, with retrospective effect from 1-4-2009, clearly shows that "manufacture" would mean a change in a non-living physical object or article or thing resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use. In the present case, the term "difference name, character and use" comes into importance. The gherkin by itself is a vegetable. When it is processed and made into gherkin pickles, the name is "gherkin pickles". Its characteristic from that of a vegetable changes into a pickle and its use also changes. Gherkin as a vegetable is used for making food dishes or salads. It is eaten raw. It is used for beauty treatment. The gherkin pickles cannot be used in the same manner as the gherkin itself. Washing the gherkin pickles to obtain the gherkins would in no way help the case of the Revenue insofar as the gherkin pieces so obtained from the washing of the gherkin pickles cannot be used for the same purpose as gherkin could normally be used. Further, a reading of the provisions of section 80-IC(2) talks of manufacture or production. The XIV Schedule to the Income Tax Act, 1961 which gives the list of articles or things or

operations in Item I recognizes Fruit and Vegetable Processing Industries manufacturing or producing -- (*i*) canned or bottled products. Obviously, the assessee is a Vegetable Processing Industry and as per the XIV Schedule itself, it is manufacturing or producing the bottled product of gherkin pickles.

9. A reading of the decision of the Hon'ble Supreme Court in the case of *CIT* v. *N.C Budharaja & Co.* [1993] 204 ITR 412/ 70 Taxman 312 clearly shows that the Hon'ble Supreme Court has defined the term "production" when used in juxtaposition with the word "manufacture" to take in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, immediate products and residual products which emerge in the course of manufacture of goods. Here again the word "process" is used. A perusal of the decision in the case of Indian Hotels Co. Ltd., referred to supra, also clearly recognizes the process. However, for the purpose of the deduction under section 80J, 80IA etc. the process is not being treated as a "manufacture" as process does not amount to "manufacture" for the said sections. However, for the purpose of section 10B the term "manufacture" has been held to include "process". This is where the difference comes. Sec. 80J, 80IA etc. did not explain or define the term "manufacture". This led to the interpretation of the term "manufacture" or "production". However, sec. 10B before its substitution w.e.f. 1.4.2001 defined "manufacture" to include "process".

10. Now coming to the decision of the co-ordinate Bench of this Tribunal in the assessee's own case for the assessment years 2001-02 to 2003-04, it is noticed that the co-ordinate Bench has held that there was no production or manufacture of article or thing. It is noticed that the co-ordinate Bench of this Tribunal had not taken into consideration the Explanation to section 10B where the term "manufacture" included the "process". In the circumstances, we are of the view that in view of the decision of the Hon'ble jurisdictional High Court in the case of *CIT* v. *Hi-Tech Arai Ltd.* [2010] 321 ITR 477 (Mad.) we must take a different view and we do so. In the circumstances, we are of the view that the assessee is entitled to the deduction under section 10B of the Act as the assessee is manufacturing gherkin pickles from gherkin for the purpose of deduction u/s 10B. In the circumstances, the appeals of the assessee are allowed."

32. The process of manufacturing is also similar in the case of the assessee as compared to the process considered by the coordinate bench. In view of the above facts, we do not find any reason to hold that the assessee is not engaged in manufacturing activities. Thus, we hold that the process of manufacturing pickles from raw vegetables and fruits, masala and other ingredients has different marketable commodities than the raw materials which are a different value addition, and a new product emerges therefrom.

33. With respect to the realization of the export proceeds it has been stated that the assessee has produced bank realization certificates, bank certified statement of the Forex receipt, and certificate of the auditor, therefore we do not find any infirmity in the order of the learned CIT – A in allowing the claim of the assessee under section 10 B to the extent of foreign exchange received during the specified period.

34. With respect to the conversion of the firm into a company and use of plant and machinery, it is a fact that both the units of the assessee became hundred percent export-oriented units in 2001 – 01. The first year of claim of deduction under section 10 B was assessment year 2001 – 02. With respect to the use of plants and machinery the learned CIT – A gave a categorical finding about acquisition of the machinery in different years. This is held after the obtaining of the remand report. Thus, the finding of the learned assessing officer was in consequence of nonproduction of detail by the assessee. When the assessee has produced the details before the learned CIT – A, the remand report is obtained; there is no reason to sustain the disallowance.

35. Accordingly, we felt the order of the learned CIT – A allowing the claim of the assessee of deduction under section 10 B of the act.

36. The learned authorized representative during the pendency of this appeal has raised several applications, revising existing grounds of appeal, filing additional ground of appeal, revised concise grounds of appeal etc. those are not pressed before us but merely the issue with respect to deduction under section 10 B are raised. It was also raised that the learned CIT – A has admitted the additional evidence,

but we find that same has been admitted after obtaining the remand report from the learned assessing officer and giving the detailed reasons thereof. Accordingly, all the grounds with respect to allowability of deduction under section 10 B of the act raised by the learned assessing officer are dismissed.

37. The second issue is with respect to the difference of stock submitted to the banker and book stock. The learned assessing officer has noted that there was a difference of stock shown in the books of account in the statement shown to the banks and that the difference to the total income of the assessee of ₹ 21,909,800. CIT – A held that a similar issue arose in the case of the assessee for assessment year 2003 – 04 and on the basis of reconciliation the addition was deleted as difference to explained. This was after obtaining the remand report of the learned assessing officer. We do not find any infirmity in the order of the learned CIT – A because addition could not be made on the basis of difference between the closing stock declared in the statement submitted by the banker is less than the book stock. Accordingly, we dismiss this ground of appeal of the AO also.

38. As, the issue raised by the learned authorized representative under rule 27 of ITA T rules has merely become academic issue, same is also dismissed.

39. In the result ITA number 2943/M/2008 for assessment year 2001 – 02 filed by the learned assessing officer is dismissed.

40. ITA number 4987/M/2008 is filed by the learned assessing officer for assessment year 2002 – 03 against the appellate order passed by the Commissioner of income tax (appeals) –Iv, Mumbai dated

9/5/2008 granting deduction under section 10 B to the assessee. Assessee has claimed deduction under section 10 B of the act of ₹ 22,778,606/– which was disallowed by the learned assessing officer. This ground of appeal is identical to ground of appeal in assessment year 2001 – 02 raised by the learned AO. As there is no change in the facts and circumstances of the case and further, we have dismissed those grounds for that year holding that assessee is eligible for deduction under section 10 B of the act, for similar reasons we dismissed all the grounds related to this issue in this appeal also.

41. The second ground of appeal is with respect to the difference in closing stock. Assessee has submitted stock to the bank the stock provided to the bankers ₹ 158,428,700 whereas the book stock is ₹ 135,830,497/– this resulted into difference in closing stock of ₹ 22,598,203/–. Same was added to the total income of the assessee. The assessee submitted before the learned assessing officer that this issue is covered by the decision of the learned CIT – A in assessee's own case for the earlier year. The learned AO dismissed this ground and stated that the order of the learned CIT – A has not been accepted and further the learned assessing officer with respect to the addition held that that part of the addition has already been made in assessment year 2001 – 02 and therefore only the differential addition of ₹ 688,403/– was made during the year. The learned CIT – A followed his own decision for assessment year 2001 – 02 unrelated the addition. Further, as in the case of the assessee for assessment year 2001 – 02 we have confirmed the order of the learned CIT – A, for similar reasons, we confirm the order of the learned CIT – A for this year also and dismiss this ground of appeal.

42. Accordingly, all the grounds of appeal of the learned assessing officer for assessment year 2002 – 2003 in ITA number 4987/M/2008 are dismissed.

43. For assessment year 2003 – 04 the learned assessing officer in ITA number 537/M/2006 has challenged the order of the learned CIT – A and deduction under section 10 B of the act to the assessee. The facts and circumstances relating to the disallowance of deduction under section 10 B are similar. As we have categorically held in assessment year 2001 – 02 in ITA number 2943/M/2000 date that assessee is eligible for deduction under section 10 B of the act, giving similar reasons for this year also, we dismiss the appeal of the learned assessing officer and confirmed the order of learned CIT – A grant deduction to the assessee under section 10 B of the income tax act amounting to ₹ 25,050,587/–.

44. The argument of the learned authorized representative by invoking the provisions of rule 27 of the ITAT rules is also on the similar line as raised for assessment year 2001 – 02. In view of dismissing the appeal of the learned assessing officer it becomes merely academic in nature and hence dismissed.

45. Another issue is with respect to the disallowance of trading loss of ₹ 8,005,983 incurred by the assessee held to be by the learned assessing officer is a speculation loss. The learned CIT – A deleted the same.

46. On careful consideration of the rival arguments, we find that the assessee has purchased so have been from Cargill global trading private limited and exported to Cargill International Limited and

incurred the above loss. The learned CIT – A of the copies of the bills and the appeal of leading along with the other supporting evidence found that it is a regular loss incurred by the assessee on high seas sales. Therefore, we upheld the order of the learned CIT – A – this ground of appeal of the learned AO.

47. In the result ITA number 6537/M/2006 for assessment year 2003 – 2004 filed by the learned assessing officer is dismissed.

48. ITA number 4988/M/2008 is filed by the learned assessing officer for assessment year 2004 – 05 challenging the deletion of the disallowance of deduction claimed by the assessee under section 10 B of the income tax act and further addition on account of difference in book stock and stock given to the bank by the learned CIT – A as per order dated 19/05/2008. This year assessee has claimed deduction under section 10 B of ₹ 28,120,497/– which was disallowed by the learned assessing officer however allowed by the learned CIT – A following its decision for the earlier year. The identical issue arose in the case of the assessee for assessment year 2001 – 02 wherein dismissing the appeal of the learned AO we have directed the learned assessing officer to allow the claim under section 10 B of the act confirming the order of the learned CIT – A. For similar reasons, this year also we uphold the order of the learned CIT – A and dismiss those grounds of appeal raised by the learned assessing officer.

49. Second issue in the appeal raised as per ground number 8 of the appeal is with respect to the addition on account of the difference in closing stock as per statement submitted bank and as per the balance sheet this ground is identical to the ground raised in the appeal for

assessment year 2001 – 02 wherein we have confirmed the order of the learned CIT – A deleting the addition. Therefore, for similar reasons we also confirm the order of the learned CIT – A on this issue for this assessment year.

50. Ground number 9 of the appeal is with respect to the order of the learned CIT – A in allowing the laws in trading and spices. During the year under consideration the assessee has undertaken some trading sales and has incurred loss to the extent of ₹ 419,635/–. The assessee explained that it was on account of trading operations however the learned assessing officer without verifying the details filed is held that the trading activities nothing but a speculation loss which the appellant is not entitled to get set of against the normal business income. Therefore, such loss was disallowed. The learned CIT – A holding it to be a regular trading loss.

51. On careful consideration of the argument of the parties it was found that that it is a loss arising from the sale of goods and high seas. Therefore, it cannot be said to be a speculation loss. Accordingly, the order of the learned CIT – A holding it to be a regular trading loss is upheld. Ground number 9 of the appeal is dismissed.

52. Accordingly, ITA number 4988/M/2008 for assessment year 2004 – 05 filed by the learned assessing officer is dismissed.

53. ITA number 6523/M/2008 is filed by the learned assessing officer against the order of the CIT appeals dated 1/8/2008 for assessment year 2005 – 06.

54. Ground number 1 – 6 is with respect to the deduction under section 10 B of the act. This is identical to the appeals of learned AO for

assessment year 2001 – 02 onwards. The facts and circumstances are also the same and arguments of the parties are also the same. As we have already confirmed the order of the learned CIT – A in allowing the claim of the assessee of deduction under section 10 B of the act, for similar reasons, we further the year also confirm the order of the learned CIT – A and direct the learned assessing officer to delete the disallowance of deduction under section 10 B of the act. Therefore, these grounds are dismissed.

55. Ground number 7 is with respect to the addition made on account of difference in closing stock as per statement submission submitted to the bank and as per the balance sheet deleted by the learned CIT – A. This is also identical to the appeal of the learned assessing officer for assessment year 2001 – 02, while deciding that appeal, we have confirmed the order of the learned CIT – A deleting the above addition, for similar reasons we also confirm the order of the learned CIT – A and dismiss ground number 7 of the appeal.

56. Ground number 8 is with respect to the loss incurred by the assessee held by the learned assessing officer is speculation loss whereas the learned CIT – A following the order for assessment year 2003 – 04 and 2004 – 05 held that it is a regular trading loss incurred by the assessee. As this ground of appeal is identical to appeal of the learned assessing officer for assessment year 2003 – 04 and 2004 – 05, while deciding that appeal, we have confirmed the order of the learned CIT – A for similar reasons, we uphold the order of the learned CIT – A for this year also holding that the loss incurred by the assessee is not a speculation loss. Ground number 8 of the appeal is dismissed.

57. ITA number 6523/M/2008 filed by the learned assessing officer for assessment year 2005 – 06 is dismissed.

58. ITA number 5539/M/2009 filed by the learned assessing officer for assessment year 2006 – 07 against the appellate order passed by the learned CIT – A on 7/7/2009.

59. Ground number 1 of the appeal is against the deletion of disallowance of deduction under section 10 B of ₹ 31,009,477/–. This issue is identical to the appeal of learned AO for earlier years starting from assessment year 2001 – 02. As the arguments of the parties remains the same and there is no change in the facts and circumstances of the case, following our own decision for assessment year 2001 – 02 wherein we have confirmed the order of the learned CIT – A and that the learned assessing officer to allow the deduction under section 10 B of the act, we also dismiss ground number 1 of this appeal.

60. Ground number 2 is with respect to the addition of ₹ 26,539,393/– deleted by the learned CIT – A. The learned assessing officer has made the addition on account of difference in closing stock which could not be reconciled by the assessee and therefore rejecting the books of accounts estimated the profit at the rate of 26%. The learned CIT – A deleted the addition partly considering the gross profit rate of 1% as fair and reasonable against the gross profit declared by the assessee of 0.34%. Thus, the learned CIT – A confirmed the addition of ₹ 1,584,547/–. This is also ground number 1 – 3 of the appeal of the assessee in ITA number 5047/M/2009.

61. On careful consideration of the fact, we find that when the learned assessing officer asked the assessee to furnish the stock statement submitted to the bank, it was found that as on 31/3/2006 the bank statement submitted to the bank shows closing stock of ₹ 19.15 crores whereas the book stock is only ₹ 20.15 crores. Thus, the assessee has shown higher stock in its books of accounts than stock shown to the bankers. The difference was Rs 1 crore. As the assessee could not reconcile the difference, the learned AO rejected the books of accounts and estimated the gross profit at the rate of 26% and made the addition of ₹ 26,539,393/– on account of suppression of profits. We find that when the assessee has shown higher stock in books of accounts and shown lesser stock to the bank, we do not find any reason to make any addition in the hence of the assessee. Thus, the order of the learned CIT – A is reversed to the extent of confirmation of the addition of ₹ 1,584,547 and confirmed deleting the balance addition. Thus, ground number 2 of the appeal of the AO is dismissed and ground number 1 – 3 of the appeal of the assessee are allowed.

62. Ground number 4 of the appeal of the assessee is with respect to the order of the learned CIT – A in confirming the disallowance of ₹ 146,418/– in respect of provident fund and ESIC payment. During the course of the assessment proceedings the assessee was asked to furnish details on the employee’s contribution to the above fund and the date of payment. It was found that a sum of ₹ 146,418/– was collected from the employees but the date of payments has not been filed. Therefore, the learned assessing officer made the addition. When the matter reached before the learned CIT – A the assessee submitted that there is a double disallowance of the same amount.

The learned CIT – A rejected the same holding that the learned assessing officer has started the computation from the net profit as per profit and loss account and thereafter made the disallowance. Before us also the same argument was advanced. We do not find any infirmity in the order of the learned CIT – A as the computation by the learned assessing officer started from the net profit as per profit and loss account there cannot be any question of double disallowance. Thus, ground number 4 of the appeal of the assessee is dismissed.

63. In the result ITA number 5539/M/2009 filed by the learned assessing officer is dismissed and ITA number 5047/M/2009 filed by the assessee for assessment year 2006 – 07 is partly allowed.

64. For assessment year 2007 – 08, ITA number 3409/M/2011 is filed by the learned assessing officer against the order of the learned CIT – A – 11 Mumbai dated 10/2/2011 raising 2 grounds of appeal. The first ground of appeal is with respect to the disallowance of deduction under section 10 B of ₹ 3,44,04,950/– under section 10 B of the act is squarely covered in favour of the assessee by the decision of the coordinate bench in ITA number 2943/M/2008 wherein the order of the learned CIT – A is in appeal for assessment year 2001 – 02. As the issue is the same, we follow our own decision for assessment year 2001 – 02 in above ITA, dismiss ground number 1 of the appeal.

65. Ground number 2 of the appeal is with respect to the deletion of the addition of ₹ 15,639,254 on account of suppression of profit by rejecting the books of accounts. Briefly stated the facts shows that on the basis of the stock details filed by the assessee, the learned

assessing officer observed that the value of the closing stock submitted to the banker authority as on 31/3/2007 was ₹ 22.21 crores whereas the stock in the books of the assessee was only ₹ 23.41 crores. Therefore, the difference of ₹ 1.20 crores in valuation of closing stock. As this year the situation has reversed wherein the valuation given to the bankers lower and the valuation of closing stock as per the books of account is higher by ₹ 1.20 crores the learned assessing officer rejected the books of account applying the provisions of section 145 (3) of the act and made an addition at the profit of 20% being average of three years and thus made an addition of ₹ 15,639,254. The learned CIT – A after considering the explanation of the assessee and considering the average gross profit shown by the assessee held that by showing the valuation of the closing stock of inventory at higher amount by ₹ 1 20 crores the appellant has offered higher gross profit/net profit for taxation and not vice versa. The charge regarding the suppression of profit by the learned assessing officer was without pointing out any defect in the books of account maintained by the assessee company. Further the manner of making an addition was also not correct. On careful consideration of the rival arguments, we find no infirmity in the order of the learned CIT – A wherein the addition was deleted. We do not find any reason to sustain the rejection of the books of accounts by invoking the provisions of section 145 (3) of the act when the assessee has maintained the details of the accounts and the gross profit and net profit are also comparable. The rejection of the book profit and the books of accounts which are audited without pointing out latent, patents and glaring defects are not sustainable. Accordingly ground number 2 of the appeal of the AO is dismissed.

66. In the result ITA number 3409/M/2011 filed by the learned assessing officer for assessment year 2007 – 08 is dismissed.

67. ITA number 755/M/2012 is filed by the learned assessing officer for assessment year 2008 – 09 against the order of the Commissioner of income tax – – 8, Mumbai dated 21/11/2011 wherein 2 grounds of appeal are raised which are dealt with as under.

68. The first ground of appeal is with respect to the deletion of the disallowance of deduction under section 10 B of ₹ 3,515,120/– with respect to the eligible profit of Nasik unit. This issue was first decided by this order for assessment year 2001 – 02 wherein we have confirmed the order of the learned CIT – A deleting the above disallowance. One of the eligible units considered therein is Nasik unit. The facts and circumstances, arguments of the parties and the orders of the lower authorities remains the same, therefore, following the order for assessment year 2001 – 02 in assessee's own case, we dismiss ground number 1 and confirmed the order of the learned CIT – A.

69. Ground number 2 is with respect to the deleting the disallowance amount in two ₹ 12,870,429 on account of suppression of profit. during the course of assessment proceedings, it was found that as on 31/3/2008 the assessee company has submitted to the Bank the stock statement having value of ₹ 23.01 crores however the closing stock as per the books of accounts was 24.89 crores and therefore there was a difference of ₹ 1.88 crores. The learned assessing officer rejected the books of accounts and applying the provisions of section 145 (3) of the act estimated the profits at 50.03% and made an addition of ₹ 12,870,429/–. On appeal before the learned CIT – A,

following the decision of the CIT – F for assessment year 2007 – 08, the addition was deleted. The learned AO is in appeal.

70. On careful consideration of the rival arguments, we find that when the assessee has disclosed higher book stock in its books of account then stock shown to the banker, there cannot be any reason to reject the books of accounts of the assessee and make addition of applying the higher gross profit. We do not find any reason to sustain the order of the learned AO. Therefore, we confirm the order of the learned CIT – A, as confirmed by us for earlier assessment year where identical additions are made, we dismiss ground number 2 of the appeal of the AO.

71. Accordingly, ITA number 755/M/2012 for assessment year 2008 – 09 filed by the learned AO is dismissed.

72. Accordingly, all the appeals involved in this bunch of appeals as well as application u/r 27 of ITAT Rules 1963 are disposed of by this common order.

Order pronounced in the open court on 15.04.2024.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.04. 2024
Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to :

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

BY ORDER,

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