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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T. A. No. 1172/Mum/2023
(**निर्धारण वर्ष** / Assessment Year: 2010-11)
&
आयकर अपील सं/ I.T. A. No. 1175/Mum/2023
(**निर्धारण वर्ष** / Assessment Year: 2012-13)
&
आयकर अपील सं/ I.T. A. No. 1176/Mum/2023
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

DCIT, Central Circle-7(2) Room No. 637, 6th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	**बनाम** / Vs.	M/s. Patanjali Foods Ltd (Formerly known as Ruchi Soya Industries Ltd) 616, Tulsiani Chambers, Nariman Point, Mumbai- 400021.

Cross objection No.51/Mum/2023
(Arising out of I.T. A. No. 1172/Mum/2023)
(**निर्धारण वर्ष** / Assessment Year: 2010-11)

M/s. Patanjali Foods Ltd (Formerly known as Ruchi Soya Industries Ltd) 616, Tulsiani Chambers, Nariman Point, Mumbai- 400021.	**बनाम** / Vs.	DCIT, Central Circle-7(2) Room No. 637, 6th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.

&
आयकर अपील सं/ I.T. A. No. 320/Mum/2023
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

M/s. Patanjali Foods Ltd (Formerly known as Ruchi Soya Industries Ltd) 616, Tulsiani Chambers, Nariman Point, Mumbai- 400021.	**बनाम** / Vs.	DCIT, Central Circle-7(2) Room No. 637, 6th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACI1220M		

(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri S. S. Nagar & Shri B. Maheshwari
Revenue by:	Dr. Mahesh Akhade (DR)

सुनवाई की तारीख / Date of Hearing: 07/03/2024
घोषणा की तारीख /Date of Pronouncement: 05/04/2024

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are appeals preferred by the revenue and the assessee, as well as cross objection [CO] filed by assessee arise out of the orders of the Ld. Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter referred to as the "CIT(A)"] dated 26.10.2016 (for AY. 2010-11) and dated 12.06.2017 & 21.02.2020 (for AY. 2012-13) respectively against the orders passed by the Dy. CIT, Central Circle-7(2), Mumbai [in short 'the AO']. Since the issues involved are common in these appeals, they were heard together. Both the parties also argued them together raising similar arguments on these issues. Accordingly, for the sake of convenience and brevity, we dispose of these appeals by this consolidated order.

2. Before we advert to the grounds taken in the appeals and the cross objections, it would first be relevant to cull out the basic facts of the case and effect of law in brief in respect of the relevant AYs before us. Search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted against the Ruchi Soya Group, on 29-01-2013 thereby triggering Section 153A of the Act. Prior to the date of

search, the income-tax assessment under section (hereinafter referred to as "u/s.") 143(3) of the Act for AY 2010-11 was pending and therefore this assessment abated as a consequence of the search conducted on 29-01-2013. With regard to AY 2012-13, it was pointed out that the time limit for issuance of notice u/s 143(2) of the Act had not expired and therefore even this AY was an abated one. Hence, both the AYs before us are abated assessments.

3. We first take up the Revenue's appeal in ITA No. 1172/Mum/2023 for AY 2010-11. Ground Nos. 1 to 3 raised by the Revenue read as follows :-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in narrowing down the scope of assessment us.153A in respect of completed assessments by holding that only undisclosed income and undisclosed assets detected during search could be brought to tax.

2. "On the facts and circumstances of the case and in law, the Id. CIT(A) erred in holding that the scope of Section 153A is limited to assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income that comes to the notice of the A. O.

3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in limiting the scope of Section 153A only to undisclosed income when as per the section, the A.O has to assess the total income of the relevant assessment years.

3.1 These grounds are noted to be against the purported action of the Ld. CIT(A) in narrowing down the scope of assessment u/s 153A of the Act in respect of completed assessments, by holding that only undisclosed income and undisclosed assets detected during the search could be brought to tax, in such completed assessments. At the onset, the Ld. AR pointed out that these grounds do not emanate from the orders of the lower authorities. As noted by us above, AY 2010-11 was an abated assessment and therefore the AO was free to frame a de novo assessment on all issues, irrespective whether it emanated from the findings of the search or not. It was brought to our notice that the assessee had not raised any such ground before the Ld. CIT(A) contending that only those additions could be made in the abated AY 2010-11 which were based on incriminating material found in the course of search. Taking us through the order of the Ld. CIT(A), the Ld. AR showed us that, the addition had been deleted by him on merits. It was shown to us that, there was no discussion in the entire appellate order on the issue of scope of Section 153A of the Act nor was it a case that the Ld. CIT(A) had deleted the additions holding that it was not based on any incriminating material unearthed in course of search. The Ld. CIT, DR appearing for the Revenue was unable to controvert the foregoing facts.

3.2 Having gone through the material placed before us, we agree with the Ld. AR that these grounds do not emanate from the orders of the lower authorities in as much as the Ld. CIT(A) is noted to have

adjudicated the additions/disallowances made by the AO on merits. Hence, these grounds raised by the Revenue are found to be infructuous and are therefore dismissed.

4. Ground Nos. 4 & 5 of the Revenue's appeal being interlinked are taken up together, which are as follows:

4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the addition of Rs. 1,49,48,313/- in respect of notional interest could not be made by the Assessing Officer, as it was not based on incriminating material found during the course of search, "

5. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 1,49,48,313/- in respect of notional interest made by the Assessing Officer, without appreciating the fact that the decision of CIT us. Continental Warehousing Corporation (Nhava Sheva) Ltd (2015) & the decision in the case of All Cargo Global Logistics have not been accepted by the department and an SLP has been filed in the Supreme Court in both the cases decided by the High Court vide ITXA 1969 of 2013 ie. Continental Warehousing Corporation as well as All Cargo Logistics vide Appeal Civil 8546 of 2015 and SIP Civil 5254-5265 of 2016 respectively."

4.1 These grounds are against the Ld. CIT(A)'s action of deleting the disallowance of Rs.1,49,48,313/- made by the AO in respect of interest paid on borrowings, which were attributable to interest free advances amounting to Rs.13,58,93,759/-, given to three (3) parties in

earlier years. Briefly stated, the facts of the case are that, the assessee is engaged in the business of manufacture of edible oil, vanaspati solvent extraction and allied products. Apart from the foregoing, the assessee is also involved in trading of food products. The AO noted that the assessee had given interest free advances to three (3) commodity brokers namely, M/s Pooja Agencies, M/s Shakhambhari Commodities Pvt. Ltd. and Shri Sushil Kumar Khowal in the earlier years. These advances were however not reflected as outstanding in the relevant year. The AO is noted to have enquired as to when these advances were received back from these brokers, to which the assessee had explained that they had been transferred to M/s Nova Trading Pvt. Ltd. According to the AO, this transfer of advances by way of book entry in earlier year was not tenable. The AO observed that the assessee had not furnished any supporting evidence to substantiate their claim as to how such advances, which were outstanding for years, were assigned to M/s Nova Trading Pvt. Ltd and thus he disregarded such transfer of advances by way of book entry. The AO held that these interest free advances given to these three (3) brokers were not for business purposes and therefore disallowed proportionate interest paid on borrowings, which worked out to Rs.1,49,48,313/-. Aggrieved by this action of the AO, the assessee preferred an appeal before the Ld. CIT(A), who is noted to have deleted this impugned disallowance. Being aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before us.

4.2. Assailing the action of the Ld. CIT(A), the Ld. CIT, DR submitted that the assessee was unable to explain the business expediency behind advancement of interest-free sums to these three (3) brokers. According to him therefore, the AO had rightly disallowed the corresponding interest paid on borrowings made by the assessee, which according to him, was utilized to make such interest free advances. The Ld. CIT, DR, in this regard, relied on the order passed by this Tribunal in assessee's own case for AYs 2006-07 and 2007-08, wherein similar disallowance of interest had been upheld.

4.3 Per contra, the Ld. AR submitted that the AO had proceeded on incorrect assumption of fact that these advances given to the brokers remained outstanding during the year. He invited our attention to the audited financials of the assessee to show that there was no balance outstanding in the name of these brokers and hence the question of disallowing proportionate interest towards such non-existing advances did not arise. The Ld. AR further showed us that these advances had been assigned to M/s Nova Trading Pvt. Ltd. way back in AY 2008-09. He pointed out that the assessee was having a running account with M/s Nova Trading Pvt. Ltd. and therefore these advances receivable were transferred in satisfaction of the dues payable to M/s Nova Trading Pvt. Ltd. by mutual consent. Hence, according to him, when there was no outstanding sum receivable from these brokers during the entire FY 2009-10 and moreover the audited books of accounts had not been rejected by the AO, the Ld. CIT(A) had rightly deleted the

disallowance of notional interest made by the AO qua these non-existent advances. The Ld. AR alternatively contended that the assessee had sufficient own funds during the year for making these advances and therefore according to him, even otherwise, the disallowance was untenable.

4.4 We have heard both the parties and perused the material placed before us. It is noted that the assessee had given interest free advances to the brokers of NBOT Exchange aggregating to Rs.13,59,93,759/- in FY 2005-06. These advances were said to have been given in connection with the future transactions for edible oil. It is noted that, these advances had been assigned to M/s Nova Trading Pvt. Ltd. in FY 2007-08. The relevant ledgers evidencing the transfer of amount as on 31.03.2008 has been placed before us at Pages 51 to 53 of the Paper book. From the audited financial statements found at Pages 1 to 40 of the Paper book, it is noted that these advances did not exist and stood at NIL as on 01.04.2009 and continued to remain NIL as on 31.03.2010. We therefore note that the assessee has shown that these advances in question neither existed nor were outstanding during the year under consideration. We further note that the audited book results had not been rejected by the AO nor had he invoked Section 145(3) of the Act and held the financial statements to be unreliable. On these given facts, we find merit in the Ld. CIT(A)'s finding that, when there was no outstanding balance in the name of these three brokers during the year, the disallowance of notional interest in relation thereto, was

erroneous. The relevant findings of the Ld. CIT(A), countenanced by us are as follows:

> "6.1 From the details filed and submissions made, I find that an amount of Rs.13,58,93,759/- was transferred from the appellant company to M/s. Nova Trading Pvt Ltd by way of journal voucher entries on 31.3.2008. No further advances were given to the said brokers thereafter. Thus, during the assessment year under consideration there was no balance outstanding in the name of the above-said brokers. Since, there was no outstanding balance in the name of the above-said brokers, disallowance of proportionate interest of Rs. 149,48,313/- on the basis of disallowance of notional interest of similar amount made in A.Y.2006-07 and A.Y.2007-08 is found to be erroneous and without merit. Accordingly, the addition of Rs. 149,48,313/- is deleted and ground No.6 is allowed.
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> Further, as the amount of advance, in respect of which interest has been disallowed, is no longer outstanding in the books of the appellant, the other grounds (i.e. ground No. 2 to 5) on the merits of the disallowance become academic in nature and are dismissed as infructuous."

4.5. The reliance placed by the Revenue on the appellate orders passed in assessee's own case in AYs 2006-07 & 2007-08 are found to be factually distinguishable. In those years, the advances given to the three brokers were very much alive and outstanding in the books of the assessee and therefore the authorities were justified in enquiring into the nature and purpose of these advances and to ascertain whether any

interest paid on the borrowings were attributable to such outstanding advances. In the present case before us however, the fundamental fact itself is not present viz., there is no amount outstanding as receivable from these three brokers in the books of accounts for the AY 2010-11. For the aforesaid reasons, we find that the Ld. CIT(A) had rightly held that the impugned disallowance made by the AO following the orders for AYs 2006-07 & 2007-08 was factually erroneous.

4.6 In view of our above findings therefore, we see no reason to interfere with the order of the Ld. CIT(A) and accordingly dismiss Ground Nos. 4 & 5 of this appeal.

5. Ground No. 6 of the appeal is as follows:

> 6. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,39,18,84,499/ - in respect of the disallowance on account of inflated import purchases made by the Assessing Officer, without appreciating the fact that the said addition was made relying on the statements recorded under oath during the course of search and seizure action and clearly admitted by the assessee that the same were with paper companies to inflate the turnover."

5.1 This ground is against the Ld. CIT(A)'s action of deleting the addition of Rs.139,18,84,499/- made on account of inflated purchases. Briefly stated, the facts of the case as noted by the AO are that, the assessee had imported goods which were initially sold on high-sea basis in a systematic manner amongst group/associate companies. The

goods so sold on high-sea basis was thereafter re-purchased from these group/associate companies. After analyzing the data, the AO noted that the goods, which were originally imported by the assessee at an aggregate price of Rs.2380,09,46,947/-, were sold at a higher value of Rs.2452,46,33,043/- to the group/associate companies and thereafter repurchased at a value lower than the original purchase price viz., Rs.2240,90,62,448/-. According to the AO, by doing this, the assessee would wipe out the bogus losses incurred through high-sea sales or park its losses in group/associate companies. The AO noted that the directors of the group/associate companies to whom high-sea sales were made, were the employees of the assessee company. This fact, according to the AO, showed that the group/associate companies were effectively controlled by the assessee and therefore the transaction of high-sea sales was not genuine. The AO accordingly added the difference between the original purchase price and repurchase price of Rs.139,18,84,449/- (Rs.2380,09,46,947 – Rs. 2240,90,62,448) as inflated purchases by the assessee.

5.2 To justify this disallowance, the AO is noted to have referred to the disclosure of Rs. 100 crores made by the Group in the hands of several different entities on completely different issues. According to the AO however, these surrounding facts revealed that the Group to which the assessee belonged, was engaging in a systematic pattern of evading taxes by incurring losses in its other companies and that a distinctive pattern was noted which showed that sundry creditors were

matched with sundry debtors plus loans plus advances plus investments by them. This according to the AO implied that the turnover achieved by such other companies was bogus. Referring to these observations, the AO held that, the assessee, in the present case, had sold a commodity at a price higher than the original purchase price, and then re-purchased it back at a lower price. This according to him implied that the purchases were inflated. The AO accordingly disallowed the inflated payments for purchases quantified at Rs.139,18,84,449/- and added the same to the total income. It was brought to our notice that certain transactions valuing Rs.50,87,27,103/- had been considered more than once, which had since been subsequently rectified by the AO by way of an order u/s 154 of the Act and therefore the disputed addition before us stands reduced to Rs.88,31,57,396/-. Being aggrieved by the order of the AO, the assesse preferred an appeal before the Ld. CIT(A), who is noted to have deleted the same. Now, aggrieved by the Ld. CIT(A)'s order, the Revenue is in appeal before us.

5.3 We have heard both the parties and perused the material placed before us. From the facts narrated by the AO and the figures quantified by him, it is noted that the assessee had entered into transaction involving high-sea sales of edible oil and its repurchase with its associate concerns. The data set out by the AO at Page 4 of his assessment order reveals that, the assessee had derived gains from the transaction of high sea sales. As noted by the AO, the imports worth

Rs.2380.09 crores had been sold for Rs.2452.46 crores. It is thus ex-facie evident the transaction of high-sea sales resulted in gain to the assessee and not a loss, as erroneously alleged by the AO. These goods are thereafter noted to have been re-purchased at a price lower than the original import price itself, viz. Rs.2240.09 crores. As rightly noted by the Ld. CIT(A), these facts show that the transactions had resulted losses in the group/associate companies to whom these high-sea sales were made and from whom thereafter re-purchases were done. The assessee, on the other hand, had in fact derived profits and these transactions did not result in loss or over-charging of any expense. We thus find merit in the factual finding rendered by the Ld. CIT(A) that these transactions neither resulted in any artificial loss to the assessee nor amounted to inflation of purchase and therefore there was no justification for making the impugned disallowance in the hands of the assessee. The relevant findings of the Ld. CIT(A) as noted by us are as follows:

> "Original purchases have been made by the appellant for Rs. 2067,42,53,4421-. The same has been sold for Rs. 2154, 15,44,643 and repurchased for Rs. 1948, 11, 18,961/-by way of high seas sale/purchase transactions. Considering the overall transactions, there is an overall profit and instead of inflation of import price, the appellant has booked more profit in its books by repurchasing goods at price lesser than the original import price.

> 8.4.5. In view of above discussion, I am of the considered opinion that there is no justification for making the addition of Rs. 139,18,84,499/- and the same is deleted."

5.4 The Revenue is noted to have cited the disclosure of additional income of Rs.100 crores given by the Ruchi Soya Group in the course of search to justify the impugned disallowance made by the AO. In this regard, we note that the said disclosure was made in the hands of two different entities namely, M/s Spectra Realities Pvt. Ltd. and M/s Soya Marketing Pvt. Ltd. and therefore the said disclosure was of no relevance to the case of the assessee. It is noted that the Ld. CIT(A) had examined the said disclosure and found that even the issue on which the disclosure was made, was unrelated, and did not pertain to these purchase transactions of edible oil by the assessee. The relevant findings recorded by the Ld. CIT(A) in this regard are as follows:

> "8.4.3. The A.O. has also referred to incriminating documents found in the course of search on 29.01.2013 on the basis of which disclosure of additional income of Rs. 100 crores was made in the hands of various associate concerns ie Spectra Realities Pvt Ltd and Soya Marketing Pvt It. However, in those transactions non-genuine losses were booked by trading in gold commodities to wipe out the abnormal profit resulting From trade in guar-gum/gum sheet. The disclosure of additional income was also based on seized documents relating to brokers, contract notes etc. However, the same is not the case in respect of the purchase transactions of edible oil by the appellant company."

5.5 Moreover, unlike the above disclosure wherein the losses incurred in trading of gold commodities were found to be only on paper and thus non-genuine, it is not in dispute, in the present case, that these imports were physically made by the assessee and cleared from the custom authorities. Hence, overall, we countenance the above findings of the Ld. CIT(A) on this aspect.

5.6 We now come to the statements of the two employees cited by the AO in his order. Having perused these statements, we find that these two persons had admitted to the contemporaneous fact that, apart from being employees of the assessee company, they were also directors in the group/associate companies. The Ld. CIT, DR was unable to show us as to how these statements in any way suggested that the transaction of high-sea sales and re-purchase thereafter was not genuine and more particularly resulted in inflation of purchases made by the assessee. We therefore find merit in the submissions of the Ld. AR that these statements did not contain anything adverse relating to the import of edible oil and high-sea sales and hence were of no relevance to the issue before us.

5.7 In light of the above, we hold that the finding of the AO that, there was inflation of import prices, was based on incorrect understanding of facts. Overall, it is noted that there was profit derived by the assessee and that the value of purchases recorded in the books was in fact lower and not inflated. Accordingly, the action of the Ld.

CIT(A) deleting the impugned addition for these reasons is upheld. Hence, this ground of the Revenue stands dismissed.

6. Now we shall take up the Cross-objections filed by the assessee in C.O No. 51/Mum/2023. It is noted that in these cross-objections the assessee has lodged new claims for deduction, which were not made in the return of income originally filed u/s 139 of the Act. In support of the same, the assessee has raised the following Additional Ground No. 7 in the Cross Objections :-

> "That in view of the judgment of Hon'ble Ahmedabad ITAT in the case of DCIT Vs. M/s Jindal Worldwide Limited (ITA. 1843/Ahd/2016) and other judicial pronouncements, the respondent is entitled to raise the above additional grounds of appeal before ITAT, since ITAT has jurisdiction to consider new and/or additional claims/deductions subsequently claims/deductions/subsequently which was not claimed in return of income &/or before the Ld. AO &/or before the Hon'ble CIT(A)."

6.1 Before us, the Ld. CIT, DR for the Revenue objected to the admission of these claims, as according to him, the assessee could not lodge such new claims in the proceedings being conducted u/s 153A of the Act. Per contra, the Ld. AR contended that, the assessee is entitled to make fresh claim u/s 153A of the Act in relation to abated assessments. He submitted that, Section 153A of the Act mandates that, the assessments or re-assessments pending on the date of

initiation of search would stand abated and return of income filed by the person qua such abated assessment year would be construed to be a return of income under Section 139 of the Act. Therefore, in view of the second proviso to Section 153A of the said Act, once the assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as the Revenue to make new claims for allowance or to make disallowance, as the case may be. Hence, according to him, the provisions of law which are applicable to regular income-tax assessments u/s 143(3) of the Act would apply. The Ld. AR thus contended that, the assessee was legally permitted to raise new/fresh claims in the abated assessment for AY 2010-11. For this, he relied on the decision of the jurisdictional Hon'ble Bombay High Court in the case of **CIT v. B G Shirke Construction Technology (P) Ltd (246 Taxman 300)**.

6.2 We have heard the rival submissions and perused the relevant provisions of law. It is noted that, the second proviso to Section 153A of the Act mandates that the assessments or re-assessments pending on the date of initiation of search would stand abated. It further provides that, the return of income filed by the searched person, in terms of Section 153A(1)(a) of the Act, would be construed to be a return of income under Section 139 of the Act. Therefore, once the assessment gets abated, the original return which had been filed loses its originality and the subsequent return filed under Section 153A of the said Act (which is in consequence to the search action conducted under

Section 132 of the Act) takes the place of the original return. In such a case, the return of income filed under Section 153A(1) of the said Act, would be construed to be one filed under Section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. A return filed under Section 153A takes the place of the original return under Section 139 of the Act, for the purposes of all other provisions of the Act. It is noted that, the provisions of Section 153A of the Act explicitly provides that, all the provisions of the Income-tax Act will apply to the return filed by an assessee under Section 153A of the Act, as if such return filed by the assessee was a return filed under section 139(1) of the Act. In other words, in view of the second proviso to Section 153A(1) of the said Act, once an assessment gets abated, the provisions of the Act which would be otherwise applicable in case of return filed under Section 139(1) of the Act, would also continue to apply in case of return filed under Section 153A of the Act. Having regard to the foregoing provisions, we are of the view that the assessee is entitled to lodge a new claim in a proceeding under Section 153A of the Act, which was not claimed in the regular return of income, because the assessment was never made/finalized in the case of the assessee in such a situation. We find that this particular issue has been decided in favour of the assessee by the Hon'ble Bombay High Court held in the case of **B.G. Shirke Construction Technology P Ltd (supra)**, wherein it was held as under :-

> "8. The grievance of the Revenue before us is that the impugned order is unsustainable as it is a passed in the face of the Apex

Court Order in Goetze (India) Ltd. (supra). It is submitted that the impugned order could not have held that the claim for deduction could be entertained by the Assessing Officer in the absence of the same finding a place either in return of income or in the revised return of income. It is further submitted that in view of the decision of the Apex Court in CIT v. Sun Engineering Works (P.) Ltd.[1992] 198 ITR 297/64 Taxman 442 a re-assessment consequent to re-opening of the assessment cannot lead to reduction of income which had been originally assessed to tax. In the above view, it is submitted that the impugned order of the Tribunal is not justified and admission of the appeal is warranted.

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10. The reliance on the decision of the Apex Court in Sun Engineering Works (P.) Ltd. (supra) by the Revenue is misplaced. The above case dealt with re-opening of an assessment under Section 147 of the Act. It was in that context that the Apex Court observed that the Order passed under Section 147/148 and the Assessing Officer is primarily restricted to such income which has escaped assessment and does not permit reconsideration of issue which are concluded in the earlier assessment years in favour of the Revenue.

11. In the present facts for the subject assessment years it is an undisputed position that the pending assessment before the Assessing Officer consequent to return filed under Section 139(1) of the Act for the subject Assessment years had abated. This was on account of the search and as provided in second proviso to Section 153A(1) of the Act. The consequence of notice under Section 153A(1) of the Act is that assessee is required to furnish fresh return of income for each of the six assessment years in

> regard to which a notice has been issued. It is this return which is filed consequent to the notice which would be subject of assessement by the Revenue for the first time in the case of abated assessment proceedings. Consequent to notice under Section 153A of the Act the earlier return filed for the purpose of assessment which is pending, would be treated as non est in law. Further, Section 153A(1) of the Act itself provides on filing of the return consequent to notice, the provision of the Act will apply to the return of income so filed. Consequently, the return filed under Section 153A(1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent-assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore the provisions of the Act which would be otherwise applicable in case of return filed in the regular course under Section 139(1) of the Act would also continue to apply in case of return filed under Section 153A of the Act and the case laws on the provision of the Act would equally apply."

6.3 The Hon'ble Bombay High Court in the case of **Pr.CIT Vs JSW Steel Ltd (422 ITR 71)** is also found to be squarely applicable to the present case. In this case also, the Hon'ble High Court has held that, it was permissible for an assessee to lodge new claim in proceedings u/s. 153A of the Act in case of abated assessments as the return filed u/s 153A of the Act was required to be treated as return of income filed u/s 139(1) of the Act. The relevant findings of the Hon'ble High Court are noted to be as under:

"8.1 In other words, section 153-A(1) provides that where a person is subjected to a search under section 132 or his books of accounts, etc. are requisitioned under section 132-A after 31-5-2003, the assessing officer is mandated to issue notice to such person to furnish return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Such returns of income shall be treated to be returns of income furnished under section 139. Once returns are furnished, income is to be assessed or re-assessed for the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, once section 153-A(1) is invoked, assessment for 6 assessment years immediately preceding the assessment year in which search is conducted or requisition is made becomes open to assessment or re-assessment. Two aspects are crucial here. One is use of the expression "notwithstanding" in sub-section (1); and secondly that returns of income filed pursuant to notice under section 153-A (1)(a) would be construed to be returns under section 139. The use of non obstante clause in sub-section (1) of section 153-A i.e., use of the expression "notwithstanding" is indicative of the legislative intent that provisions of section 153-A(1) would have overriding effect over the provisions contained in sections 139, 147, 148, 149, 151 and 153.

8.2 Having noticed the above, we may also refer to the second and the third proviso to section 153-A(1). For the sake of convenience, the second and third proviso to section 153A(1) of

the said Act which is relevant is reproduced below and reads thus :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

8.3 The second proviso says that any assessment or re-assessment proceedings falling within the said period of six assessment years pending on the date of initiation of search under section 132 or making of requisition under section 132-A shall abate. The third proviso mentions that the Central Government may frame rules to specify such class or classes of cases in which the assessing officer shall not be required to issue notice for assessing or re-assessing the total income for the said six assessment years.

8.4 Reverting back to the second proviso what is to be noticed is that as per this proviso, any assessment or re-assessment in

respect of any assessment year falling within the said period of six assessment years is pending on the date of initiation of search or making of requisition, those assessment or re-assessment proceedings shall abate. In other words, pending assessment or re-assessment proceedings on the date of initiation of search or making of requisition shall abate.

8.5 That brings us to the crucial expression, which is 'abate'. The ordinary dictionary meaning of the word 'abate', as per Concise Oxford English Dictionary, Indian Edition, is to reduce or remove (a nuisance). Derivative of abate is abatement. In Black's Law Dictionary, Eighth Edition, 'abatement' has been defined to mean an act of eliminating or nullifying; the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. In Supreme Court on Words and Phrases (1950-2008), "abating" has been defined to mean "an extinguishment of the very right of action itself"; to "abate", as applied to an action, is to cease, terminate, or come to an end prematurely.

9. Therefore, from a critical analysis of the provisions contained in section 153-A(1) of the Act more particularly the key expressions as referred to above, it is evident that assessments or re-assessments pending on the date of initiation of search would stand abated. Return of income filed by the person concerned for the six assessment years in terms of section 153-A(1)(a) would be construed to be a return of income under section 139 of the Act.

……

13. In the present case, search was conducted on the assessee on 30-11-2010. At that point of time assessment in the case of

assessee for the assessment year 2008-09 was pending scrutiny since notice under section 143(2) of the Act was issued and assessment was not completed. Therefore, in view of the second proviso to section 153A of the said Act, once assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be, etc. That apart, assessee could lodge a new claim for deduction etc. which remained to be claimed in his earlier/regular return of income. This is so because assessment was never made in the case of the assessee in such a situation. It is fortified that once the assessment gets abated, the original return which had been filed looses its originality and the subsequent return filed under section 153A of the said Act (which is in consequence to the search action under section 132) takes the place of the original return. In such a case, the return of income filed under section 153A(1) of the said Act, would be construed to be one filed under section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. If that be the position, all legitimate claims would be open to the assessee to raise in the return of income filed under section 153A(1).

14. We would further like to emphasis on the judgment passed by this Court in the case of Continental Warehousing Corpn (Nhava Sheva) Ltd. (supra) which also explains the second proviso to Section 153A(1). The explanation is that pending assessment or reassessment on the date of initiation of search if abated, then the assessment pending on the date of initiation of search shall cease to exist and no further action with respect to that assessment shall be taken by the AO. In such a situation the assessment is required

to be undertaken by the AO under section 153A(1) of the said Act.

15. In view of the above, we are in agreement with the findings given by the Tribunal in respect of allowing of the assessee's appeal in paragraph -14 of the order under challenge dated 28-9-2016, which reads thus :

> "14. From the above discussion and precedence, the scheme of assessment u/s. 153A of the Act in case of search, the AO shall issue notice to searched person requiring him to furnish within such period as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A and clause (b) postulates assessment or reassessment of the total income of six years immediately preceding the assessment year relevant to the previous year in which such search is conducted. The first proviso mandates that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso postulates that the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in sub-section (1) is pending on the date of initiation of the search u/s. 132 of the Act shall abate. In the present case before us, however, though the second proviso to sub-section (1) of section 153A would not apply in the first three years of this case, yet, as far as the second three year period is concerned (which are pending before us), the assessments were

pending The proceedings in relation thereto abate. Now the entire assessment in relation to the second phase of three years can be made. The pending assessment in that case may be undertaken u/s. 153A of the Act. The abatement of pending assessment is for the purpose of avoiding two assessments for the same year i.e. one being regular assessment and the other being search assessment u/s. 153A of the Act. In other words, these two assessments merge into one assessment. It means that completed assessments stand on different footing from the pending assessments. Hence, in so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s. 153A of the Act merge into one and in that case only one assessment for the remaining set of years, where assessment is pending, is to be made separately on the basis of search materials and the regular material existing or brought on record before the AO/Revenue. It means that the assessee can make any new claim in the return of income filed u/s. 153A of the Act or even during the course of assessment proceedings undertaken u/s. 153A of the Act. In our view, and in view of the second proviso to section 153A (1) of the Act, once assessment get abated it is opened both way i.e. for the Revenue to make any additions apart from seized material even regular items declared in the return can be subject matter if there is doubt about the genuineness of those items and similarly the assessee also can lodge new claim, deduction or exemption or relief which remained to be claimed in regular return of income, because assessment

> was never made in the case of the assessee in such situation. Hence, we allow this issue of assessee's appeal."
>
> 16. From the above we conclude that in view of the second proviso to section 153A(1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income, because assessment was never made/finalised in the case of the assessee in such a situation.

6.4 In view of the ratio laid down in the above decisions (supra), it is amply clear that the assessee is entitled to lodge new claims in the abated assessments u/s 153A of the Act. As noted earlier, the provisions of the Act, which would be otherwise applicable in case of return filed under Section 139(1) of the Act, would also continue to apply in case of return filed under Section 153A of the Act. Hence, ordinarily under the regular provisions, the assessee is legally permitted to raise additional claims before Appellate Authorities, which were not claimed in the return filed u/s 139 of the Act. For this, gainful reference may be made to the decision of the jurisdictional Hon'ble Bombay High Court in the case of **Pruthvi Brokers & Shareholder (349 ITR 336)**. In the decided case, it was held that an assessee is allowed to raise additional & new claims before Appellate Authorities, although not claimed in the return filed u/s 139 of the Act. Having regard to the decisions of **B.G. Shirke Construction Technology P Ltd (supra)** & **JSW Steel Ltd (supra)**, the same analogy would be applicable with equal force in the proceedings u/s

153A of the Act for abated assessments as well. We accordingly hold that the assessee is entitled to raise additional claim/s in the abated assessment for AY 2010-11 in the proceedings u/s 153A of the Act. Accordingly, the Additional Ground No. 7 raised in support of the cross objections is found to be maintainable and the preliminary objection of the Revenue is rejected.

7. We now take up the grounds raised in the cross objection. Ground No. 1 is found to be in support of the order of Ld. CIT(A) deleting the additions made by the AO. This ground being general in nature is treated as dismissed.

8. Additional Ground No. 1 raised in the cross objection is as follows:-

1. "On the facts and circumstances of the case, the respondent wishes to claim export incentive received under FPS & VKGUY scheme as capital receipt in computing tax liability under normal and under section 115JB of the Income Tax Act."

8.1 During the relevant AY 2010-11, the assessee has claimed that it was in receipt of incentives under the Focus Product Scheme ('FPS') and Vishesh Krishi and Gram Udyog Yojna ('VKGUY') aggregating to Rs.29,84,94,162/- under the Foreign Trade Policy of the Government of India. It was pointed out that these subsidies inter alia formed part of 'Export Incentive', which was shown under Schedule 15 of the financial statements, which is available at Pages 28 of the

Paper book. The details of these incentives was separately placed at Page 60 of the Paper book.

8.2 The assessee has brought to our notice that these incentives were granted by the Government for exploring potentially new markets from a long-term prospective to enhance India's export potential in the international market. Inviting our attention to the objective of the Scheme, copy of which was placed at Pages 61 to 71 of the Paper book, the Ld. AR showed us that, the objective of the Scheme was to increase the share of global trade of India and expand the employment opportunities in these sectors. The Ld. AR has thus submitted that on application of the 'purpose test' laid down by the Hon'ble Supreme Court in the case of **CIT vs Ponni Sugars and Chemicals Limited (306 ITR 392)**, these incentives were not meant to subsidize exports or meet any costs incurred in the regular course of business, and was therefore in the nature of capital receipt. In support of his proposition, he relied on the decision of the Hon'ble Rajasthan High Court in the case of **PCIT vs Nitin Spinners Limited (116 taxmann.com 26).** The Ld. AR also relied upon the decisions of this Tribunal at Mumbai in the cases of **M/s Vinati Organics Ltd. vs ACIT (ITA No. 1859/Mum/2021)** and **DCIT vs Aarti Drugs (ITA No. 2503/Mum/2021)**. The Ld. AR further contended that since these incentives were in the nature of capital receipt, they should be excluded while computing book profit u/s 115JB of the Act as well. In this regard, he relied on the decision of the Hon'ble jurisdictional High

Court in the case of **CIT vs Harinagar Sugar Mills Ltd. (Appeal No. 1132 of 2014)** and Hon'ble Calcutta High court in the case of **PCIT vs Ankit Metal and Power Ltd. (416 ITR 591)**. Per contra, the Ld. CIT, DR argued that this claim was not admissible at this stage.

8.3 We have considered the rival submissions of both the parties. From the facts as already discussed in the foregoing, it is noted that the FPS and VKGUY Schemes, in terms of which the subsidy was granted, was with the object to enhance the Indian export potential in the international market and generate employment opportunities. It was not granted to meet any cost of expenditure incurred by the assessee to make the exports. We note that the Hon'ble Rajasthan High Court in the case of **PCIT vs Nitin Spinners Ltd. (supra)** has considered similar scheme notified under the same Foreign Trade Policy. The Hon'ble High Court thereafter held that the incentive received under such Scheme was in the nature of capital receipt and therefore not taxable. The relevant findings of the Hon'ble High Court are noted to be as under:

> **"8.** As far as the question with regard to Focus Marketing Scheme was concerned, apparently the Central Government gave the subsidy to enhance indian export potential in the international market. It was not granted to meet the cost of expenditure to meet the competition of the Indian textile market. The ITAT took note of judgment in *Ponni Sugars & Chemicals Ltd*. (*supra*) and held that the amount was not an export incentive, but rather capital

> receipt and therefore, not taxable. This Court is of the opinion that there is no infirmity with the reason."

8.4 It is also noted that the SLP preferred by the Revenue against the above judgment of the Hon'ble High Court has since been dismissed by the Hon'ble Supreme Court, which is reported in **130 taxmann.com 402**. We also note that identical issue has also been consider by this Tribunal in the case of **DCIT vs Aarti Drugs Limited (supra)** wherein also the incentives received under the FPS/FMS/SHIS Schemes notified under the Foreign Trade Policy was held to be capital in nature and thus not liable to tax. The relevant findings of this Tribunal, as noted by us, are as under:

> "43. We have considered the rival submissions and perused the material available on record. The assessee is a manufacturer of bulk drugs and also exports some of the products to various countries for which the government is providing certain subsidies under the Foreign Trade Policy. As noted above, the assessee initially, in its return of income, treated the subsidies received as Revenue receipts and offered the same to tax. However, before the learned CIT(A), the assessee filed additional grounds claiming that the subsidy received under the FPS, FMS, SHIS schemes are capital in nature and therefore cannot be included in the total income of the assessee. As noted elsewhere, the appellate authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of income or by way of a revised return of income. Thus, we find no infirmity in the impugned order admitting the additional ground filed by the assessee.

44. Further, we find that the learned CIT(A) analyzed the objectives of subsidies received under the aforesaid schemes in para 14.10 of its order, as under:

> "14.10 The Government of India notified the Foreign Trade Policy, 2009-14 under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 vide notification No 1 (RE-2012)/2009-14 dated 05.06.2012. The Policy contains a Chapter on Special Focus Initiatives, wherein the objective of special focus incentives given for various sectors (FMS and FPS) is specified as under:
>
> "(a) with a view to continuously increasing our percentage share of global trade and expanding employment opportunities, certain special focus initiatives have been identified/continued for Market Diversification, Technological Upgradation, Support to status holders, Agriculture, Handlooms, Handicraft, Gems & Jewellery, Leather, Marine, Electronics and IT Hardware manufacturing Industries, Green products, Exports of products from North- East, Sports Goods and Toys sectors Government of India shall make concerted efforts to promote exports in these sectors by specific sectoral strategies that shall be notified from time to time"
>
> Further, the objective of subsidy under Status Holder Incentive Scrip (SHIS) is laid down in the policy as under:

> "With an objective to promote investment in upgradation of technology of some specified sectors as listed in Para 3.16.4 below, Status Holders shall be entitled to incentive scrip @ 1% the FOB Value of exports made during 2009-10 and during 2010-11 of these specified sectors in the form of duty credit. This shall be over and above the duty credit scrip claimed/availed under this chapter. "

45. In this regard, it is also relevant to note that the AO in its remand report dated 11/04/2019, forming part of the paper book from pages No. 117-120 after examining the submissions of the assessee and schemes and various facts placed on record noted that the salient objectives of the FPS/FMS/SHIS subsidy received under the Foreign Trade Policy is to increase percentage share of global trade by increasing the competitiveness in selected markets, technological upgradation and expanding employment opportunity. In para 7.2 of its remand report, the AO further stated that the purpose of introduction of the schemes was to encourage industries, which require industrial growth, technological upgradation, and development.

46. Accordingly, the learned CIT(A) came to the conclusion that the subsidy is a capital receipt in the hands of the assessee and therefore not includable in the total income. The relevant findings of the learned CIT(A) in this regard are as under:

> "14.11 Thus, on a plain reading of the relevant policy document of the Government of India, it is clear that the objective of the subsidy granted under FPS, FMS and SHIS is to increase the global market share, technology up gradation and employment generation in certain sectors. The object of

the subsidy under these schemes was not to enable the assessee to run the business more profitably. The object was primarily to provide encouragement and support, which would create benefits of enduring nature, for the Industry as a whole in certain sectors of economy. It is pertinent to recall here that in the remand report, after examining the facts brought on record by the appellant, AO has also concluded that the salient objective of the FPS, FMS and SHIS subsidy under the Foreign Trade Policy is to increase percentage share of global trade by increasing competitiveness in select markets, technological upgradation andexpanding employment opportunity. In that view, I am of the considered opinion that, having regard to the 'purpose test' laid down by the Supreme Court in the aforementioned cases, the amounts received by the appellant during the year, under those Schemes as subsidy should be treated as capital receipt in its hands, not includible in the total income."

47. We find that the subsidy granted under the FMS scheme came up for consideration before the Hon'ble Rajasthan High Court in PCIT Vs. Nitin Spinners Ltd. (2020) 116 Taxmann.com 26 (Raj.), wherein the Hon'ble High Court observed as under:

….

48. We further find that the Hon'ble Supreme Court dismissed the Revenue's Special Leave Petition in PCIT Vs. Nitin Spinners Ltd., [2021] 283 Taxman 2(SC), against the aforesaid decision of the Hon'ble Rajasthan High Court. Thus, when the objective of the aforesaid subsidies has been admitted to be to encourage industries by providing industrial growth, technological

> upgradation, and development, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue in treating the amount received by the assessee under the aforesaid schemes as capital receipt. As a result, grounds no. 9-13 raised in Revenue's appeal are dismissed."

8.5 Following the ratio laid down in the above decisions, we, in principle, find merit in the claim of the Ld. AR that the subsidies received by the assessee under the Foreign Trade Policy was in the nature of capital receipt not liable to tax.

8.6 Now coming to the issue relating to the treatment of subsidies while computing book profit u/s 115JB of the Act, we find that the Hon'ble Bombay High Court, in the case of **PCIT vs Harinagar Sugar Mills Ltd. (supra)**, has held that these subsidies, being in the nature of capital receipt, cannot be added to arrive at the book profit u/s 115JB of the Act. The relevant findings of the Hon'ble High Court in this regard are as follows:

> "3. Regarding question no. (i):-
>
> (a) It is undisputed position before us as also before the Tribunal that the subsidy scheme formulated by the Government of Bihar was for the purpose of attracting capital investment and to encourage setting up / expansion of existing units. Thus the object / purposes of the subsidy was for the purposes of encouraging capital investments in the State of Bihar. Consequently the impugned order holds that subsidy would be on Capital account and could not be considered to be on Revenue account.

(b) In fact this issue about the object/purpose of the subsidy deciding its character as revenue or capital is no longer res integra in view of the decision of the Supreme Court in CIT, Madras v/s. Ponni Sugars & Chemicals Ltd. (2008) 9 SCC 337 and in Civil Appeal No.10666 of 2013 (CIT v/s. M/s. Shree Balaji Alloys) rendered on 19 th April, 2016. Thus the test has been correctly applied by the Tribunal in accordance with the above decisions.

(c) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus not entertained.

4. Regarding question no. (ii):-

(a) The issue raised in this question is consequential to question no.(i). We have already held that the subsidy received by the respondent - assessee from the State of Bihar was in the nature of capital receipt. Hence the same cannot be added to arrive at book profits of the respondent - assessee under Section 115J of the Act."

8.7 It is noted that the Hon'ble Calcutta High Court in the case of **PCIT vs Ankit Metal and Power Ltd. (supra)** has also held that, the subsidies which are in the nature of capital receipt, cannot be deemed as income, for the purposes of computing book profit u/s 115JB of the Act. The relevant observations of the Hon'ble High Court are as follows:

"26. Now the second issue which requires adjudication is as to whether the aforesaid incentive subsidies received by the assessee

from the Government of West Bengal under the schemes in question are to be included for the purpose of computation of book profit under section 115JB of the Income-tax Act, 1961 as contended by the revenue by relying on the decision in the case of *Appollo Tyres Ltd*. (*supra*).

27. In this case since we have already held that in relevant assessment year 2010-11 the incentives 'Interest subsidy' and 'Power subsidy' is a 'capital receipt' and does not fall within the definition of 'Income' under section 2(24) of Income-tax Act, 1961 and when a receipt is not on in the character of income it cannot form part of the book profit under section 115JB of the Act, 1961. In the case of *Appollo Tyres Ltd*. (*supra*) the income in question was taxable but was exempt under a specific provision of the Act as such it was to be included as a part of the book profit. But where a receipt is not in the nature of income at all it cannot be included in book profit for the purpose of computation under section 115JB of the Income-tax Act, 1961. For the aforesaid reason, we hold that the interest and power subsidy under the schemes in question would have to be excluded while computing book profit under section 115 JB of the Income-tax Act, 1961."

8.8 As far as the Ld. CIT, DR's contention regarding admission of fresh claim is concerned, we note that the assessee had raised the claim in the abated AY 2010-11. As already held above, the Hon'ble Bombay High Court in the decisions rendered in the cases of **Pr. CIT v. JSW Steel Limited (supra)** and **CIT v. B. G. Shirke Construction Technology (P.) Ltd. (supra)** has held that, it is open for an assessee

to lodge a new claim in a proceeding under section 153A which was not claimed in his regular return of income, provided the assessment stood abated as a consequence of the search. Also, the Hon'ble Bombay High Court in the case of **CIT Vs Pruthvi Brokers & Shareholders (supra)** after considering the decisions of the Hon'ble Supreme Court in the cases of **Addl. CIT v. Gurjargravures (P.) Ltd., (111 ITR 1)**, **Jute Corpn. of India Ltd. v. CIT (187 ITR 688)**, **National Thermal Power Co. Ltd. v. CIT (229 ITR 383)** and **Goetze (India) Ltd. v. CIT (284 ITR 323)** has upheld the powers of the appellate authorities including Ld. CIT(A) to entertain and adjudicate additional claims which was not made by an assessee in the return of income.

8.9 We further note that, on similar set of facts & circumstances, identical contention was also raised by the Revenue before the Hon'ble Calcutta High Court in the case of **Ankit Metal and Power Ltd. (supra)**. In the decided case also, the assessee had raised this plea for the first time before the Tribunal *viz.*, the subsidy received under the State Industrial Scheme is capital in nature and therefore should be excluded from the book profit u/s 115JB of the Act. The Tribunal admitted this legal issue raised by the assessee and answered it in their favour. Before the Hon'ble High Court, the Revenue raised the following question for their consideration.

> "(*ii*) Whether on the facts and in the circumstances of the case the learned Tribunal erred in law in accepting the claim of deduction by the assessee towards 'Interest subsidy' and 'Power subsidy'

under the aforesaid schemes by filing revised computation instead of revised return before the assessing officer for exclusion of the aforesaid receipts from the book profit under section 115 JB on the ground that the said subsidies do not constitute income under section 2(24) of the Income-tax Act, 1961?."

8.10 The Hon'ble High Court answered the question in negative and in favour of the assessee by observing as under:

"28. The third issue involve in the instant appeal which requires adjudication is whether the action of Tribunal entertaining/allowing the claim which was made by the assessee before the Assessing Officer by filing a revised computation instead of filing a revised return since the time to file the revised return was lapsed, for claiming to treat the incentive subsidies in question as capital receipts instead of revenue receipts as claimed in original return. The Assessing Officer had denied this claim. Revenue has attacked the order of the tribunal by relying on the decision in the case of *Goetze (India) Ltd*. (*supra*).

29. This case does not help the revenue/appellant. In this case Supreme Court has made it clear that its decision was restricted to the power of the Assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under section 254 of the Income-tax Act, 1961. The Hon'ble Supreme Court in the said decision held as follows:

> "…….In the circumstances of the case, we dismiss the Civil Appeal. However, we make it clear that the issue in this case is limited to the power of the Assessing Authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961."
>
> 29.1 This judgment was followed by our Court in the case of *Britannia Industries Ltd*. (*supra*) holding that Tribunal has the power to entertain the claim of deduction not claimed before the Assessing Officer by filing revised return. Respectfully following the aforesaid decision as well as the view already taken by us in this case that the aforesaid subsidies are capital receipt and not an 'income' and not liable to Tax Tribunal in exercise of its power under section 254 of the Income-tax Act justified this claim though no revised return under section 139 (5) of the Act was filed before the Assessing Officer. We answer both the question Nos. 1 and 2 in negative and in favour of assessee."

8.11 For the reasons set out above therefore, we do not find any merit in the legal plea raised by the Ld. CIT, DR contesting validity of admission of additional claim of the assessee. We accordingly allow this claim raised by the assessee.

8.12 However, at the same time, we agree with the Ld. CIT DR that these details and figures now being provided by the assessee, have not been examined by the AO, and therefore the same warrants verification. The AO is accordingly directed to verify the same and

accordingly quantify and exclude the subsidies which were received under the FPS and VKGUY of the Foreign Trade Policy, which has been held to be capital receipt, both while computing income under the normal provisions as well as book profit u/s 115JB of the Act. This additional ground no. 1 of the cross objections therefore stands partly allowed for statistical purpose.

9. The additional ground Nos. 2 & 3 are as follows:

2. On the facts and circumstances of the case, the respondent wishes to claim that no disallowance u/s 14A r.w rule 8D should be made in computing book profit u/s 115JB of the Act.

3. On the facts and circumstances of the case, the respondent wishes to lodge claim that disallowance of expenses u/s 14A should be restricted to exempt income in computing tax liability under the normal provision & u/s 115JB of the Act.

9.1 In these grounds, the appellant has contested the correctness of the suo moto disallowance of Rs.65,00,000/- made u/s 14A of the Act in the return of income. The assessee has brought to our notice that, the dividend income earned during the year was Rs.62,70,016/- and has accordingly pleaded that the disallowance made u/s 14A of the Act ought to be restricted to the extent of exempt income. The assessee has accordingly sought that, the excess disallowance of Rs.2,29,984/- (Rs.65,00,000 – Rs.62,70,016) made by them u/s 14A of the Act ought to be deleted. The assessee has further prayed that no disallowance u/s

14A read with Rule 8D was not warranted while computing book profit u/s 115JB of the Act.

9.2 Heard both the parties. It is noted that the Hon'ble jurisdictional Bombay High Court in the case of **M/s Nirved Traders Pvt. Ltd. vs DCIT (ITA No. 149 of 2017)** and **PCIT vs HSBC Invest Direct (India) Ltd. (ITA No. 1672 of 2016)** has held that the disallowance u/s 14A of the Act cannot exceed the exempt income so earned by the assessee. Following the binding decisions of the Hon'ble jurisdictional High Court (supra), we find merit in the assessee's plea seeking restriction of the disallowance u/s 14A to the extent of exempt income earned i.e. Rs.62,70,016/-. The AO is accordingly directed to delete the excess disallowance made u/s 14A of the Act of Rs.2,29,984/- while computing total income under the normal provisions.

9.3 Now we come to the addition made on account of Section 14A r.w. Rule 8D, while computing book profit u/s 115JB of the Act. Following the decision of the Special Bench of this Tribunal in the case of **ACIT vs Vireet Investments Ltd. (165 ITD 27)**, we hold that the disallowance made u/s 14A read with Rule 8D cannot be added to the book profit computed u/s 115JB of the Act. Hence, the disallowance u/s 14A added to the book profit u/s 115JB is directed to be deleted. Overall therefore, Additional Ground Nos. 2 & 3 are allowed.

10. The Additional Ground No. 4 raised by the assessee reads as under:

> 4. On the facts and circumstances of the case, the respondent wishes to claim deduction of advances written off & bad debts expenditure adjusted by the respondent in the Reserve & Surplus in computing book profit u/ s 115JB of the Act.

10.1 This ground raised by the assessee relates to the claim for deduction of bad debts and advances written off in the books of accounts amounting to Rs.5,69,65,197/- and Rs.26,30,29,711/- respectively, which were directly adjusted against General Reserve, while computing book profit u/s 115JB of the Act. Brief facts qua the issue are that, during the year, M/s Mac Oil Palm Limited had amalgamated with the assessee. In terms of the approved Scheme of Arrangement, certain debtors and advances of the amalgamating company, which were found to be unrealizable, were directly adjusted from the General Reserve. The Ld. AR of the assessee invited our attention to the Note No. 5 (ii) of the Auditor's Report, wherein the statutory auditor had taken note of the same and emphasized that, had the Scheme, as approved by the Hon'ble High Court, not prescribed this accounting treatment, the bad debts and advances written off would have to be routed through the Profit & Loss Account. The relevant Note given by the auditor is extracted below:

> "Without qualifying our opinion, attention is drawn to Note 5 of Schedule 20 relating to the Scheme of Arrangement and

Arrangement between Mac Oil Palm Limited and the Company and their respective shareholders sanctioned by the Hon'ble High Court of Mumbai, in pursuance of which :

….

(ii) An amount of Rs. 5,193.54 lac has been adjusted to General Reserve as per details given below:

Particulars	**Amount (Rs. in lac)**
Bad Debt written off	569.65
Provision for Doubtful Debts	1,433.96
Advances written off	2630.30
Provision for Doubtful Advances	193.42
Expenses on amalgamation	26.12
Additional depreciation on revaluation of fixed assets	1,991.35
Less:	
Current Tax and Deferred Tax	1,651.26
TOTAL	5,193.54

10.2 The Ld. AR also brought to our notice the Note Nos. 5(d)(vii) & 5(e)(i) of Schedule 20 of the Notes appended to the annual financial statements for the year ended 31st March 2010, which read as follows:

"As provided by the Scheme, an amount of Rs.5,193.54 lac has been adjusted to General Reserve as under:

Particulars	**Amount (Rs. in lac)**
Bad Debt written off	569.65
Provision for Doubtful Debts	1,433.96
Advances written off	2630.30

Provision for Doubtful Advances	193.42
Expenses on amalgamation	26.12
Additional depreciation on revaluation of fixed assets	1,991.35
Less:	
Current Tax and Deferred Tax	1,651.26
TOTAL	5,193.54

(e) Had the Scheme, approved by the Hon'ble High Court, not prescribed the accounting treatment as described above,
(i) the profit for the year and balance in the profit and loss account for the year would have been lower by Rs. 5,193.54 lac.
(ii) Balance in General Reserve & Securities Premium account would have been higher by Rs. 5,193.54 lac & Rs.23,842.29 lac respectively."

10.3 It was shown to us that, the assessee had claimed separate deduction for the bad debts and advances written off in the course of business, while computing total income under normal provisions and the AO had accepted and allowed the same. According to the Ld. AR, the assessee had inadvertently omitted to claim the deduction for such bad debts and advances written off, while computing book profit u/s 115JB of the Act. The Ld. AR has thus pleaded that the impugned claim be allowed to the assessee. Per contra, the Ld. CIT, DR opposed the claim for such deduction since the impugned sum was not debited to the Profit & Loss Account and in absence of any specific adjustment provided in Explanation to Section 115JB of the Act, the same should not be allowed.

10.4 We have heard the rival submissions of both the parties. From the facts placed before us, it is noted that the impugned sum in question comprises of bad debts and advances written off in the course of business. The nature and allowability of these items are noted to be not in dispute, as the AO had allowed the deduction for the same while assessing income under normal provisions. From the remarks of the statutory auditor in his audit report as well as the Notes to the financial statements (supra), it is evident that these items ought to have been ordinarily debited and routed through the Profit & Loss Account. It was only because the Scheme of Arrangement, as approved by the Hon'ble High Court, prescribed the accounting treatment of adjusting the same against General Reserve, that such entries were passed in this manner in the books of accounts. It is noted that, Section 115JB of the Act is a code in itself to compute the book profit with reference to the book results reported in the Profit & Loss Account and Balance Sheet, read with the Notes to Accounts. The Notes to Accounts are integral part of the financial statements as they explain the figures reported in the Profit & Loss Account and Balance Sheet. The provisions of Section 115JB provides that, the starting point for computation of book profit is the 'Net Profit' as per the Profit & Loss Account, prepared in accordance with Part II of Schedule VI to the Companies Act, 1956. Where the Profit & Loss Account is not strictly drawn up in accordance with Part II of Schedule VI of Companies Act, 1956, the necessary adjustments is to be first made to bring the Net Profit in line with the relevant provisions of the Companies Act and thereafter, the

adjustment prescribed in Explanation 1 to Section 115JB is to be carried out. For this, we may gainfully refer to the decision of the Hon'ble Supreme Court in the case of **Indo Rama Synthetics (I) Ltd. v. CIT (330 ITR 363),** wherein it was held that, the object of MAT provisions is to bring out the true working result of the companies, for which if so required, relevant adjustments can be made to the Net Profit.

10.5 In the present case, and from the facts discussed in the foregoing, it is evident that the items viz., bad debts and advances written off, ought to have effect on the Net Profit of the company. The fact that, the assessee adopted an alternate approach, which was approved by the Hon'ble High Court, of directly adjusting the same from the General Reserve, does not mean that these items are not to be considered for bringing out the true working result and accordingly in our view, the same ought to be adjusted to arrive at the Net Profit as envisaged in Section 115JB of the Act.

10.6 It is noted that the Hon'ble Calcutta High Court in the case of **Kanoi Paper Industries Ltd. vs CIT (ITA No. 298 of 2014)** held that the Notes to the Financial Statement are an integral part of the accounts and have to be read as part thereof and the AO ought to compute the book profit under Section 115JA of the Act, taking into account the amount mentioned in the notes to accounts of these financial statements. The same view has been upheld by the Hon'ble

Delhi High Court in the case of **CIT v. Sain Processing & Weaving Mills (P.) Ltd. (325 ITR 565).**

10.7 Our view is fortified by the judgment of the Hon'ble Karnataka High Court in the case of **CIT v. Karnataka Soaps & Detergents Ltd. (59 taxmann.com 43**), which allowed reduction of deferred revenue expenditure which was not debited to profit and loss account for purpose of computing book profit under section 115JA of the Act. The Hon'ble High Court observed as follows:

> "16. ... ... When the assessee has actually incurred expenditure and the tax liability is less when compared with the net profit arrived at after giving deduction to the actual expenditure, the tax payable is on that net profit and not on the fancy figure shown in the Profit and loss account for the purpose of showing profit to the shareholders. In other words, to find out what is net profit one has to look into the books of accounts maintained by the company and the profit and loss account prepared on the basis of such books of account. What is shown in the printed balance sheet is for the benefit of the shareholders as it will not reflect the true state of affairs and that cannot be made the basis for levying tax under the Act. This is precisely what the Tribunal has held. Neither under the Companies Act nor under the Income-tax Act, this concept of deferred expenditure is recognized. That is a pathology used by the chartered accountants to show to the shareholders that the company has made profit though it has not earned profits. In other words, it is nothing but a window dressing and the authority should not be misled or guided by this balance sheet which is

> prepared to satisfy the shareholders. It is the profit and loss account prepared on the basis of the books of accounts as contemplated in Part 11 of Schedule VI which should form and assist to find out what is the profit earned and on that profit, tax is levied."

10.8 Useful reference may also be made to the decision of this Tribunal at Pune in the case of **K.K. Nag Limited Vs Addl. CIT (52 SOT 281)**. In the decided case, the assessee is noted to have created an incremental provision towards leave encashment, which was not debited to the Profit & Loss Account but was disclosed separately in the Notes to Accounts forming part of the financial statements. While computing book profit u/s 115JB of the Act, the assessee separately claimed deduction in respect of the said liability. The AO denied the claim for the aforesaid deduction from book profit because, the same had not been debited to Profit & Loss Account. On appeal, the question posed before the Tribunal was whether the fact that incremental liability towards leave encashment has not been debited to the Profit & Loss account would disentitle the assessee of its claim for deduction from the 'net profit' for the purposes of determining 'book profits' under section 115JB. The Tribunal is noted to have observed that the information towards incremental liability of leave encashment which had not been provided in the Profit & Loss account was otherwise disclosed in the Notes to the accounts and hence it would fall within the ambit of Explanation 1 of the second proviso to section

115JB which defines 'book profits' to mean 'net profit' as 'shown' in the Profit & Loss account for the relevant previous year prepared under sub-section (2) of section 115JB. The Tribunal noted that Sub-section (2) of section 115JB imposes an obligation on every assessee to prepare a Profit & Loss account in the relevant previous year in accordance with the provisions of Parts II & III to Schedule VI of Companies Act, 1956. It was found that the liability towards leave encashment was as an item of expense in terms of Accounting Standard 15 issued by the Institute of Chartered Accountants of India and, therefore, on a conjoint reading of sub-section (6) to section 211 of the Companies Act, 1956 and sub-section (2) of section 115JB, this Tribunal held that the incremental liability was required to be considered while determining the 'net profit' as shown in the Profit & Loss account referred to in the Explanation 1 to the second Proviso to section 115JB.

10.9 Hence, applying the principle laid down in the above decisions (supra), which are squarely applicable to the facts involved in the present case as well, we are of the considered view that the assessee is entitled to seek deduction for the bad debts and advances written off from Net Profit to arrive at the book profit u/s 115JB of the Act, even though the same was not charged to the Profit and Loss Account, though disclosed in the Notes appended to the accounts. Accordingly, this additional ground of the assessee stands allowed.

11. The Additional Ground No. 5 raised by the assessee reads as under:

> 5. On the facts and circumstances of the case, the respondent wishes to claim VAT/Excise Refund/Remission received under different state scheme as capital receipt in computing tax liability under the normal provision & u/s 115JB of the Act.

11.1 In this additional ground, the assessee is seeking exclusion of capital subsidy of Rs.26,22,78,114/- from computation of income under normal provisions as well as book profit u/s 115JB of the Act, which was not made in the return of income. From the facts placed before us, it is noted that, the assessee was in receipt of excise & VAT subsidy under different State Schemes.

11.2 The assessee submitted that it had set-up new manufacturing units in Gwalior, Indore and Mangalia in the State of Madhya Pradesh. In terms of the Notifications issued by the Directorate of Industries, M.P., the assessee was entitled to VAT exemption on the goods sold from these Units. The assessee invited our attention to the copies of the Eligibility Certificates placed at Pages 86 – 92 of the paper book. It is noted that the Directorate of Industries, M.P. confirmed that the unit set-up by the assessee was eligible for exemption from VAT duty in terms of the said Notification, as a new unit, with effect from the date of commencement of commercial production. It is noted that the said

exemption was given only to the new units for development of Industries and generation of employment in the State of Madhya Pradesh.

11.3 During the relevant year, the assessee was also in receipt of subsidy in form of refund of sales tax/VAT from the State of West Bengal under the West Bengal Incentive Scheme, 2000 which was formulated expressly for the purpose of attracting private investment in the State of West Bengal in the specified areas which are industrially backward. To promote industrialization, the Government offered various incentives/subsidies inter alia including remission of VAT. The subsidy was directed towards industrial development in the State. The assessee received an eligibility Certificate from the Government of West Bengal for setting up a new unit for manufacturing texturized soya proteins, vanaspati ghee and edible oil having capacity of 15,000 TPA, 30,000 MT and 90,000 MT respectively. The object and applicability of the West Bengal Incentive Scheme, 2000 is as follows:—

> "NOTIFICATION
>
> No. 91-CH/H/4F-54/200
>
> Whereas in pursuance of a National Policy the sales tax related incentives have been withdrawn from the 1st January 2000.
>
> And whereas the State Government have considered it necessary and expedient to extend new types of incentives for promotion of industries in the State from the same date. Now, therefore, the Government is pleased hereby, in supersession of the West Bengal Incentive Scheme 1999 sanctioned under Commerce &

> Industries Department's Notification No. 580CI/H dated 22-6-1999 and amended from time to time, to approve and sanction a New Incentive Scheme for large, medium and small-scale industrial units as under:
>
> APPLICABILITY OF THE 2000 - SCHEME:
>
> The 2000 Scheme shall generally be applicable to all large, medium, cottage and small-scale projects and to large/medium sector tourism units to be set up and also to expansion projects of existing units on or after the 1st January, 2000. The units may be in the private sector, co-operative sector, joint sector as also companies/undertakings owned or managed by the State Government."

11.4 The assessee had also received subsidy for setting up these new industrial units from the Central Government vide their Notification No. 39/2001 dated 31.07.2001 by way of refund of excise duty. On perusal of the Notification dated 31.07.2001, it is noted that this subsidy was available only to the new industrial units set up by an assessee. The relevant extract of the notification is as under:

> "The exemption contained in this notification shall be subject to the followijg conditions namely,
>
> (i) It shall apply only to new industrial units, that is to say, units which are set up on or after the date of publication of this notification in the Official Gazette, but not later than the 31st day of July 2003."

11.5 The object of the above Industrial Schemes is therefore noted to be for encouraging the setting up of new industrial units pursuant to which subsidy in form of VAT exemption/excise duty refund was granted to the assessee.

11.6 In view of the above facts, it was the plea of the ld. AR that the incentive in the form of excise duty refund and sales tax/VAT subsidy, have been granted for setting up new units in the States of Madhya Pradesh and West Bengal, which lagged behind in industrial development for development of industries and generation of employment opportunities. The object of the assistance was not to enable the assessee to run the business more profitably but encourage them to set up a new unit or expand the existing unit for overall economic development of the State. Referring to the decision of the Hon'ble Supreme Court in the batch of cases, with its lead order in the matter of **CIT v. Chaphalkar Brothers (400 ITR 279)**, the Ld. AR contended that, it is now well settled that subsidies granted under the State Industrial Schemes formulated with the object to accelerate industrial development and generate employment, is capital in nature and therefore not liable to income-tax. He further contended that even while computing book profit u/s.115JB of the Act, these subsidies should be excluded though it is credited in the profit and loss account. In support of this proposition, he relied on the judgment of the Hon'ble Calcutta High Court in the case of **Pr. CIT v. Ankit Metal & Power**

Ltd. (supra). Per contra, the Ld. CIT, DR opposed the merits of this additional claim raised by the assessee.

11.7 We have considered the rival submissions of both the parties. From the facts as discussed in the foregoing, it can be safely inferred that the subsidy was granted to the assessee for setting up new unit in the States of Madhya Pradesh and West Bengal. The Hon'ble Supreme Court in the case of **Chaphalkar Brothers (supra)** has held that the subsidies granted under Government Industrial Scheme to accelerate industrial development and generate employment is capital in nature. The relevant extracts of the judgment are as follows:

> "21. What is important from the ratio of this judgment is the fact that Sahney Steel was followed and the test laid down was the "purpose test". It was specifically held that the point of time at which the subsidy is paid is not relevant; the source of the subsidy is immaterial; the form of subsidy is equally immaterial.
>
> 22. Applying the aforesaid test contained in both Sahney Steel as well as Ponni Sugar, we are of the view that the object, as stated in the statement of objects and reasons, of the amendment ordinance was that since the average occupancy in cinema theatres has fallen considerably and hardly any new theatres have been started in the recent past, the concept of a Complete Family Entertainment Centre, more popularly known as Multiplex Theatre Complex, has emerged. These complexes offer various entertainment facilities for the entire family as a whole. It was

noticed that these complexes are highly capital intensive and their gestation period is quite long and therefore, they need Government support in the form of incentives qua entertainment duty. It was also added that government with a view to commemorate the birth centenary of late Shri V. Shantaram decided to grant concession in entertainment duty to Multiplex Theatre Complexes to promote construction of new cinema houses in the State. The aforesaid object is clear and unequivocal. The object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. This being the case, it is difficult to accept Mr. Narasimha's argument that it is only the immediate object and not the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. We hasten to add that the object of the scheme is only one -there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant, as has been held in both Ponni Sugar and Sahney Steel.

23. Mr. Ganesh, learned Senior Counsel, also sought to rely upon a judgment of the Jammu and Kashmir High Court in ShreeBalaji Alloys v. CIT [2011] 9 taxmann.com 255/198 Taxman 122/333 ITR 335. While considering the scheme of refund of excise duty and interest subsidy in that case, it was held that the scheme was capital in nature, despite the fact that the incentives were not available unless and until commercial production has started, and

that the incentives in the form of excise duty or interest subsidy were not given to the assessee expressly for the purpose of purchasing capital assets or for the purpose of purchasing machinery.

24. After setting out both the Supreme Court judgments referred to hereinabove, the High Court found that the concessions were issued in order to achieve the twin objects of acceleration of industrial development in the State of Jammu and Kashmir and generation of employment in the said State. Thus considered, it was obvious that the incentives would have to be held capital and not revenue. Mr. Ganesh, learned Senior Counsel, pointed out that by an order dated 19-4-2016, this Court stated that the issue raised in those appeals was covered, inter alia, by the judgment in Ponni Sugars & Chemicals Ltd. case (supra) and the appeals were, therefore, dismissed.

25. We have no hesitation in holding that the finding of the Jammu and Kashmir High Court on the facts of the incentive subsidy contained in that case is absolutely correct. In that once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that the subsidy took a particular form and the fact that it was granted only after commencement of production would make no difference." (Emphasis Supplied)

11.8 The above decision of the Hon'ble Supreme Court has been followed by the jurisdictional Hon'ble Bombay High Court in the case

of **Pr. CIT Vs Welspun Steel Ltd (264 Taxman 252)**. In the decided case also, the Hon'ble Court held that, where the incentive under the Industrial Scheme is given only to new units and units which have undergone an expansion, then the real purpose of such incentive has to be seen as a capital subsidy and therefore should be regarded as a capital receipt and not a revenue receipt. The relevant findings of the Hon'ble High Court are noted to be as follows :-

> "6. Having heard the learned Counsel for the parties on this question, we notice that, the Government of Gujarat Sales Tax Incentive Scheme was envisaged to promote large scale investments in the Kutch District since on account of devastating earth-quake, development of the district had suffered. The Scheme envisaged that, the same was confined only with the Kutch District. Similar, being the purpose and philosophy of the Government of India, while granting excise duty exemption, we may not separately take note of the back-ground thereof. In view of these facts, the question arises is - whether the Tribunal was justified in holding that Sales Tax and Excise duty exemption enjoyed by the assessee under the said subsidy scheme, was not taxable as revenue receipt. Such and similar issue has came up before different High Courts and Supreme Court on the numerous occasions. Reference to all those judgments would be un-necessary. However, the principle that has evolved is that, not the nomenclature of the subsidy or the fact that, the computation of the subsidy benefit is in terms of tax payable, would not be conclusive. What is to be examined in each case is the purpose for granting such subsidy. We may refer to the decision of the Supreme Court in case of CIT v. Chaphalkar Bro. [2017] 88

taxmann.com 178/[2018] 252 Taxman 360/400 ITR27. It was a case arising out of judgment of this Court in which, the dispute between assessee and the Revenue was with respect to subsidy granted to the multiplex cinema operators in the form of entertainment tax waiver. The subsidy was granted in view of the fact that, industry was highly capital intensive. The Revenue argued that, the subsidy was revenue in nature. This Court after referring to several decisions of the Supreme Court including the case of CIT v. Ponni Sugars and Chemicals Ltd. [2008] 306 ITR 392/174 Taxman 87 and Sahney Steel and Press Works Ltd. v. CIT [1997] 94 Taxman 368/228 ITR 253 (SC) held that, subsidy had not been granted for construction but only after setting up of a new industry which was in the nature of assistance given for the purpose of carrying on business.

……

8. In the present appeal also, as noted, the subsidy was granted under schemes framed by the State and the Central Government, to be given to the assesses who set up new industry in Kutch District. The scheme was envisaged to encourage investment which would in turn, provide fresh employment opportunity in the district which had suffered due to devastating earthquake. The computation of subsidy may be on the basis of sales tax or excise duty. Nevertheless, the purpose test would ensure that, the subsidy was capital in nature."

11.9 Following the ratio laid down in the judgements (supra), we hold that the subsidy received in the form of excise duty refund and remission of sales tax/VAT was in the nature of capital receipt not

liable to tax, as the object of granting subsidy was to encourage setting up new industries for industrial growth of industrially non-developed area.

11.10 Coming to the issue relating to treatment of these subsidies while computing book profit u/s 115JB of the Act, as already held in Paras 8.6 & 8.7 above, since these subsidies have been held to be in the nature of capital receipt, the same cannot be added to arrive at the book profit u/s 115JB of the Act. Following the ratio laid down in the decisions of **Harinagar Sugar Mills Ltd (supra)** and **Ankit Metal and Power Ltd. (supra),** the AO is directed to exclude the subsidies received by the assessee for setting up new industries, by way of refund of excise duty and remission of VAT/sales tax, from the computation of book profit u/s 115JB of the Act.

11.11 However, since the relevant facts and figures have not been examined by the lower authorities, we deem it fit to set aside this issue back to the AO for the limited purpose of verifying the details & figures placed before us. The AO shall accordingly quantify and exclude the subsidies received by way of refund of excise duty and remission of VAT/sales tax under the Industrial Schemes, which have been held to be capital receipt, both while computing income under the normal provisions as well as book profit u/s 115JB of the Act. Needless to say, the AO shall provide an opportunity of hearing to the

assessee in this regard. This additional ground no. 5 of the cross objections therefore stands partly allowed for statistical purpose.

12. The additional ground no. 6 reads as under:

> 6. That on the facts and in the circumstances of the case, after giving effect to the above additional ground, the tax would be payable under book profit u/s 115JB and hence provision of interest u/s 234B and 234C shall not be applicable in computing tax liability.

12.1 The issue in dispute in this ground relates to the liability to pay advance tax and interest u/s 234B & 234C of the Act, in case the income is held to be chargeable to tax u/s 115JB of the Act. The Ld. CIT, DR, at the outset, contended that the Hon'ble Supreme Court in the case of **JCIT vs Rolta India Ltd. (330 ITR 470)** has held that interest is leviable u/s 234B & 234C even if the income tax is ultimately payable under MAT provisions.

12.2 Per contra, the Ld. AR has contended that, earlier the Hon'ble Supreme Court in the case of **CIT vs Kwality Biscuits Ltd. (284 ITR 434)** vide order dated 26.04.2006 had held that, where income was computed u/s 115JB of the Act, then interest u/s 234B & 234C would not be leviable. He fairly stated that, later on the Hon'ble Supreme Court in the case of **Rolta India Ltd. (supra)** dated 07.01.2011 has held otherwise. However, for the intervening period between these two

judgments of Hon'ble Apex Court, the Ld. AR brought to our notice that the Hon'ble jurisdictional High Court in the case of **PCIT vs Mangalore Refinery & Petrochemicals Ltd. (ITA No. 875 of 2017)** has clarified that, no interest shall be leviable u/s 234B & 234C in years prior to the date of judgment in the case of **Rolta India Ltd. (supra)**, if income tax is payable under MAT provisions. Explaining the rationale for holding so, the Ld. AR explained that, the assessee, at that material time [prior to decision of Rolta India Ltd (supra)], in light of the then prevailing decision of the Hon'ble Supreme Court in the case of CIT vs Kwality Biscuits Ltd. (supra), was under the bonafide belief that, advance tax was not payable in respect of MAT u/s 115JB of the Act.

12.3 Heard both the parties. We note that on identical set of facts, the Hon'ble High Court of Bombay in the case of **Mangalore Refinery and Petrochemicals Pvt Ltd (ITA No.875 & 1237 of 2017) dated 17.03.2020** was inter alia seized with the following question of law:

> "2. Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in confirming the decision of the Commissioner of Income Tax (Appeals) holding that interest under section 234B and section 234C of the Act was not chargeable with respect to tax liability determined under minimum alternate tax (MAT)?"

12.4 The relevant findings of the Hon'ble High Court as noted by us are as under:

> "32. This brings us to the second question which deals with charging of interest under sections 234B and 234C when income is taxable under section 115JB of the Act. 33. We have already noticed that Assessing Officer computed book profit of Rs.2,44,63,94,360.00 in order section 115JB of the Act while passing the assessment order and charged interest thereon amongst others under sections 234B and 234C of the Act. 34. CIT (Appeals) relied upon the decision of the Karnataka High Court in Kwality Biscuits Limited (supra) in holding that interest under sections 234B and 234C of the Act is not chargeable where the tax liability has been determined in terms of the book profit calculated under section 115JB of the Act. 35. Before the Tribunal it was contended on behalf of the Revenue that charging of interest under sections 234B and 234C of the Act is mandatory in nature by placing reliance on the decision of the Supreme Court in the case of Rolta India Limited (supra) as per which interest under sections 234B and 234C of the Act is chargeable even where the tax liability is determined in terms of section 115JB of the Act. On the other hand, assessee defended the decision of the first appellate authority on the ground that during the relevant period judgment of the Karnataka High Court in Kwality Biscuits Limited (supra) was holding the field and in such circumstances assessee was not expected to pay advance tax in respect of tax leviable on the book profit determined under section 115JB of the Act. The contention was that since at the relevant point of time

Karnataka High Court had held that assessee was not required to pay advance tax in respect of minimum alternate tax (MAT), non-payment of advance tax with respect to the liability under MAT would not attract levy of interest under sections 234B and 234C of the Act.

…….

40. Adverting to the order of the Tribunal, we find that at the time of the relevant dates for payment of advance tax by the assessee, judgment of the Karnataka High Court in the case of Kwality Biscuits Limited (supra) delivered on 30th November, 1999 was holding the field. As per the said judgment interest under sections 234B and 234C of the Act was not liable to be paid with respect to tax liability determined under minimum alternate tax (MAT). In such circumstances, Tribunal took the view that at the relevant point of time assessee had a justifiable and plausible reason to believe that no advance tax was required to be paid by it. Being a corporate entity with respect to liability under section 115JB of the Act, Tribunal further noted that Supreme Court in the subsequent decision in the case of Rolta India Limited (supra) held that interest under sections 234B and 234C of the Act is leviable even with respect of the liability determined on minimum alternative tax (MAT) but this decision was delivered at a later point of time i.e. on 7th January, 2011. Therefore, Tribunal held that the later decision of the Supreme Court in Rolta India Limited (supra) being a subsequent decision would not discredit a bonafide reason entertained by the assessee in not depositing advance tax on MAT in view of the decision in Kwality Biscuits

Limited (supra). In this context, Tribunal held that contention of Revenue that charging of interest under sections 234B and 234C is mandatory would not be germane in deciding the controversy in as much as the levy can be said to be mandatory only if its payment is attracted per se as per the prevailing legal position. Therefore, Tribunal affirmed the decision of the CIT (Appeals).

41. In Kwality Biscuits Limited (supra) one of the questions for consideration before the Karnataka High Court was whether in an assessment year where the assessee's income is computed by invoking the provisions of section 115J of the Act interest under sections 234B and 234C were leviable? Karnataka High Court referred to the requirements of sections 234B and 234C and also the scheme of section 115J whereafter it was held that since the entire exercise of computing income or book profit could be done only at the end of the financial year, provisions of sections 207, 208, 209 or 210 (dealing with liability to pay advance tax) cannot be made applicable. Until and unless the accounts are audited and the balance-sheet is prepared, even the assessee would not know whether the provisions of section 115J would be applicable or not. The liability would arise only after the book profits are determined. Accordingly, it was held that interest could not be charged under sections 234B and 234C of the Act while computing book profit. It may be mentioned that Revenue preferred appeal against the aforesaid decision of the Karnataka High Court before the Supreme Court in CIT Vs. Kwality Biscuits Limited, 284 ITR 434. The decision of the Karnataka High Court was affirmed by the Supreme Court and the appeal was dismissed.

……..

46. As noticed, in Rolta India Limited (supra) Supreme Court again examined the provisions of sections 234B and 234C and held that section 115JB is a self contained code pertaining to MAT and all companies were liable for payment of advance tax under section 115JB. Consequently, provisions of sections 234B and 234C imposing interest on default in payment of advance tax were also applicable. Therefore, the decision of the Karnataka High Court in Kwality Biscuits limited (supra) was overruled.

47. Though in Rolta India Limited (supra) Supreme Court held that interest under sections 234B and 234C is payable on failure to pay advance tax in respect of tax liability under section 115JB of the Act, the fact remains that at the time of payment of advance tax by the assessee the decision of the Karnataka High Court in Kwality Biscuits Limited (supra) was holding the field as per which assessee was not required to pay advance tax since the entire exercise of computing book profit could only be made at the end of the financial year and therefore, following the law applicable at that point of time, assessee did not pay the advance tax on the book profit which was subsequently computed. Therefore, there was no deliberate or intentional failure to pay advance tax on the book profit by the assessee. In the circumstances, Tribunal was justified in affirming the view taken by the first appellate authority that the charge of interest under sections 234B and 234C on the book profit was not justified.

48. Consequently, the second question so framed is also answered in favour of the assessee and against the Revenue."

12.5 We also note that the coordinate bench of this Tribunal in the case of **Charbhuja Industries Pvt. Ltd. vs ACIT (31 ITR(T) 89)** after taking note of the decisions of the Hon'ble Supreme Court in the cases of Kwality Biscuits Ltd. (supra) and Rolta India Ltd. (supra), has held as under:

> "5. We have considered the rival submissions as well as relevant material on record. There is no dispute regarding the fact that during the assessment years under consideration the settled law on the point was the decision of the hon'ble Supreme Court in the case of Kwality Biscuits Ltd. (supra) as well as a number of other decisions including the decisions of the hon'ble jurisdictional High Court in the case of Snowcem India Ltd. (supra) and in the case of CIT v. Natural Gems Ltd. [2010] 327 ITR 269 (Bom) wherein it has been held that no advance minimum alternate tax was payable by the company. Therefore, the assessee had no reason to believe or foresee a subsequent decision fastening the liability of payment of advance tax. Even otherwise the decision in the case of Rolta India Ltd. (supra) is a subsequent decision and therefore, the impossibilities at the relevant point of time cannot be thrust upon the assessee. In the facts and circumstances as discussed above no fault can be found with the assessee in not depositing the advance tax of minimum alternate tax in view of the decision of the hon'ble Supreme Court as well as various decisions of the hon'ble High Court. The assessee had the bona fide reason to believe that advance tax was not payable in respect of minimum alternate tax under section 115JB as it was a settled law laid down by the hon'ble Supreme Court and the hon'ble High Court which hold good till the subsequent decision of the hon'ble

> Supreme Court in the case of Rolta India Ltd. (supra). Therefore, prior to the decision of the hon'ble Supreme Court in the case of Rolta India Ltd. (supra) settled proposition of the law on the point was that no advance tax was payable on minimum alternate tax computed under section 115JB and accordingly, the interest under sections 234B and 234C cannot be levied for non-deposit of advance tax on minimum alternate tax for the year under consideration. Hence, we delete the levy of interest under sections 234B and 234C in this case."

12.6 From the above it is evident that, the Hon'ble jurisdictional High Court and also the coordinate bench of this Tribunal have held that, the assessee was not liable to pay advance tax in case of MAT computed u/s 115JB of the Act, in the years prior to the judgment of the Hon'ble Supreme Court in the case of Rolta India Ltd. (supra). Admittedly, the assessment year in dispute in case of the assessee is prior to rendering of the said decision of the Hon'ble Supreme Court. Hence, respectfully following the above judicial precedents (supra), the AO is directed not to levy interest u/s 234B & 234C of the Act, in case the assessee is found to be assessable to MAT u/s 115JB of the Act, while giving effect to this appellate order. This ground is therefore allowed for statistical purposes.

13. We now take up the appeal in ITA No. 1175/Mum/2023 filed by the Revenue for AY 2012-13. Ground No. 1 of the Revenue's appeal reads as under :-

1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the disallowance of on account of inflated import purchase made by the Assessing Officer, without appreciating the fact that the said addition was made relying on the statements recorded under oath during the course of search and seizure action and clearly admitted by the assessee that the same were with paper companies to inflate the turnover.

13.1 This ground relates to the Ld. CIT(A)'s action of deleting the disallowance made by the AO on account of inflation of purchases. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Ground No. 6 of Revenue's appeal in A.Y. 2010-11. Following our conclusion drawn in A.Y. 2010-11, we dismiss this ground of the Revenue.

14. Ground Nos. 2 to 4 of the Revenue's appeal reads as under :-

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of addition towards alleged unaccounted profit earned in physical trading guar gum and guar seed in JV with Betul Group.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was erred in appreciate the provision of section 132(4A) wherein it is stated that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any

person in the course of a search, it may presumed that the contents of such books of account and other documents are true.

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was erred in appreciate decision of Hon'ble Supreme Court in the case of Sumati Dayal (80 Taxman 89) wherein it was held that apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be Considered by applying the test of human probabilities."

14.1 These grounds relate to the addition of Rs.243,60,00,000/- made by the AO by way of unaccounted profits derived from trading in guar gum and guar seed in a joint venture with Betul Group. Brief facts as noted by us are that, in the course of search conducted upon the Ruchi Soya Group, a worksheet summarising the profits from guar/seed transactions of Ruchi & Betul Group was found from the possession of one employee, Shri RC Gupta, General Manager (Accounts). When confronted with this worksheet, it is noted that Shri RC Gupta, in his answer to Question No. 18 of his statement recorded u/s 131 of the Act, had stated that, this was a working sheet which contained the estimated profit/projections in respect of future trading and physical trading. It is noted that, Shri RC Gupta, in his answers to Question Nos. 19 & 20 further clarified the meaning of the abbreviations mentioned in this worksheet. He further stated that, this sheet had been sent to him by the Betul Group in FY 2011-12. He is further noted to

have categorically stated that, this sheet was undated and no period was mentioned and therefore, he was unable to explain as to on what basis had the Betul Group prepared the sheet. Shri RC Gupta is noted to have supported his averment by showing that the assessee did not have any future trading in guar in the FY 2011-12, albeit found noted on this working sheet. As far as the estimates regarding physical trading was concerned, Shri Gupta is noted to have explained that, this sheet contained approximate figures and did not mention any period, date or year. He however brought to the notice of the Investigating authorities that, the assessee had already submitted a detailed statement of physical trading in guar seeds & gum done by them.

14.2 The AO thereafter, in the course of assessment, is noted to have required the assessee to explain the contents of this worksheet. To this, the assessee is noted to have relied on the statement of Shri RC Gupta from whose possession this worksheet was found. The assessee accordingly reiterated that, this loose paper contained estimates/ projections and was therefore required to be disregarded. The assessee further showed that they had not done any business in guar futures in FYs 2010-11 to 2012-13, which proved that the workings regarding future trading in guar were only estimates. As far as the workings for physical trading was concerned, the assessee explained that the sheet did not contain any details as to which period it related to and also clarified that they had no joint venture with the Betul Group. The assessee further brought to the notice of the AO that the assessee had

derived profit of Rs.839 crores approx. from physical trading of guar during the year, which was accounted and offered to tax and much more than the notings mentioned in this working sheet. According to the assessee therefore, viewed from any angle, the workings found mentioned on this worksheet could not be viewed adversely.

14.3 The AO however is noted to have rejected the explanations put forth by the assessee. The AO was of the view that the notings found on this working sheet denoted that the assessee had a joint venture with Betul Group. After analysing the notings, the AO concluded that this joint venture had derived profit of Rs. 243,60,00,000/- from trading in guar gum and guar seeds, which according to him, had not been accounted in the books of the assessee. For arriving at such conclusion, the reasons given by the AO have been summarized below, for the sake of convenience :-

(i) The assessee group had funded the Betul Group to hold large quantity of stocks of guar seed and gum.

(ii) There was a relationship between the assessee group and Betul Group.

(iii) The answers given by Shri RC Gupta showed that he had deciphered the worksheet and was aware of the transactions conducted by the joint venture.

(iv) The averment of Shri RC Gupta and the assessee that the document did not contain any dates or period for the transaction was not acceptable because Shri RC Gupta had clearly stated that he had received this working sheet in FY 2011-12 and therefore the AO deduced that such transactions ought to pertain to AY 2012-13.

(v) The AO further had made enquiry from Shri Jigar Shah, an employee of Betul Group, whose statement was recorded u/s 131 of the Act, in which he had denied handing over the worksheet found in the possession of Shri RC Gupta.

(vi) The AO further noted that several emails were seized as loose papers from the cabin of the MD of the assessee, which spoke of fund requirement for guar business, proposed date of payment and the details of persons to whom payment was to be made etc.

(vii) The AO noted that most of these transactions were found recorded in the books of accounts except two transactions, which according to him spoke of transactions between the assessee and Betul Group and was therefore to be recorded in the books of the joint venture.

(viii) Some of the group entities had filed a settlement application before the Settlement Commission, wherein they had admitted to be engaged in trading outside the books, which according to the AO clearly suggested that even the assessee would have been indulging in out of books transactions.

14.4 Citing the above reasons, the AO held that, it was clear that there was a JV between the assessee and Betul Group in FY 2011-12, and they had engaged in physical trading of guar gum and guar seeds,

which had resulted in huge profits to both and they had not offered the same to tax. This worksheet, according to the AO, was therefore a summary of the transactions already taken place and hence made the impugned addition in the hands of the assessee. Being aggrieved by the above order of the AO, the assessee had preferred an appeal before the Ld. CIT(A), who was pleased to delete the same. Aggrieved by this action of the Ld. CIT(A), the Revenue is now in appeal before us.

14.5 The Ld. CIT, DR appearing for the Revenue vehemently supported the above findings of the AO. He argued that, the contents of the seized documents clearly showed that it was a summary of actual transactions taken place and not estimates/projections as claimed by the assessee. He laid much emphasis on the existing relationship between the assessee and Betul Group, which according to him corroborated the inference of the AO, that there was a joint venture between them outside the books. He also referred to the AO's findings that certain other entities of the Ruchi Soya Group had been found to be indulged in trading outside the books, which in his view corroborated the AO's case that this worksheet also denoted trading transactions undertaken outside the books. He thus urged that the order of Ld. CIT(A) be reversed and the action of AO be restored. Per contra, the Ld. AR heavily relied on the order of the Ld.CIT(A).

14.6 We have heard both the rival parties and perused the relevant material placed before us. It is noted that, the issue in dispute

emanated from a loose paper which was a working sheet found from the possession of the General Manager (Accounts) of the assessee company. It is the case of the Revenue that this working sheet contains summary of actual transactions undertaken by a joint venture between the assessee and Betul Group during FY 2011-12. Having perused this sheet, it is noted that, ex-facie it does not contain any dates or period of transaction. It is observed that the AO had deduced this working sheet to be pertaining to FY 2011-12, by relying on the statement of Shri RC Gupta. As rightly pointed out by the Ld. AR that Shri R C Gupta had nowhere admitted that this statement pertained to FY 2011-12. Rather, he is noted to have averred that this working sheet was received by him in FY 2011-12 and in the same breath he has clarified that this sheet is undated and that no period is mentioned and therefore he is unable to explain the same. The relevant excerpts from his statement as noted by us is as follows:

> "Q.19 Peruse the contents of the said working sheet and explain the nature of transactions. Which period does this sheet pertain to?
>
> Ans: This sheet was provided by Ms. Bewl Oil Limited during the Financial Year 2011-12. The sheet represents the estimated profit/projections in respect of Future Trading/Physical Trading. We are not aware of the figures mentioned in Future trading. Moreover, this sheet is undated and no period has been mentioned, so we are not able to explain on what basis they (Ms. Betul Oil Limited) have prepared the above

mentioned sheet. Ruchi Soya Industries Limited has no Future Trading in Gaur in the financial year 2011-12.

With regards to the physical trading an approximate figure has been mentioned and not mentioning any period, date or year, we are unable to explain the date of the sheet. However, Ruchi Soya Industries Limited has submitted detailed statement of physical trade done by them, which have been already provided to your goodself and the same is on record."

14.6 Having perused the foregoing, it is noted that, the AO had chosen to selectively read the statement of Shri R C Gupta, which would suit his needs for making addition in the relevant AY 2012-13. We however are unable to countenance such action of the AO. According to us, the statement of Shri R C Gupta has to be read as a whole and not in part. The Revenue cannot pick and choose one line from his statement to allege that the notings in this working sheet pertains to FY 2011-12, whereas if his statement is read in totality, it is evident that he had nowhere admitted to the same. Hence, the action of the AO inferring the notings found in this working sheet to be pertaining to FY 2011-12 is found to be without any cogent basis.

14.7 It is further noted that the Ld. CIT(A) had analysed the worksheet in question and thereafter found that this worksheet was a dumb document and that the notings therein did not suggest that the profits mentioned therein was the undisclosed income of the joint

venture between assessee and Betul Group. The Ld. CIT(A) particularly took note of the fact that, there were separate workings regarding the transactions in guar gum and seeds conducted by Ruchi and Betul Group and the preparer of this statement had remarked that Ruchi had realised Rs.44.9 more than Betul. This according to Ld. CIT(A) suggested that there was no joint venture between them. Going by the figures mentioned against the name of the assessee in the worksheet, the Ld. CIT(A) noted that the preparer had worked out the profit of Ruchi at Rs.365.35. Against this, the Ld. CIT(A) took note of the fact that, the assessee had already accounted for profit in excess of Rs.839 crores from physical trading of guar in its books of accounts. Since there was no date or period mentioned in this working sheet, we agree with the Ld. AR that, even if the notings are said to be actual, then also no feasible reconciliation with the books was possible. However, as the profits reflected in the books for the year were substantially higher than what was found noted on this working sheet, we agree with the Ld. AR that, a plausible inference could be drawn that the notings found in this working sheet did not represent undisclosed income of the assessee. In this regard, the relevant findings of the Ld. CIT(A) taken note by us are as follows:

> "13.3.2. I find that the said work sheet, found from the cabin of Shri R.C. Gupta contained summary of certain transactions relating to guar gum and guar seeds, profits arising from such transactions in JV books, in Ruchi books, in Betul books and the profit which pertain to each partners share. On the upper half of the sheet certain figures are noted against Ruchi and Betul and

JV books. The total of figures in JV books is noted at 1070.25 (which includes futures profit of 936.96) , total of Ruchi at 580.02, total of Betul at 490.03 and the remark that Ruchi has realized 44.9 more than Betul. In the lower half of the sheet working on recent physical sales have been noted giving details of quantity, price, value in Cr, Rs in Cr for purchase and sale of guar gum and guar seed by Betul and by Ruchi separately and profits in the Betul books and Ruchi books have been noted at 120.74 and 365.65, respectively with the remarks that each partners share was 243.20. The said sheet do not contain any reference to the dates or period of transactions. The above said summary of transactions prima-facie appears to be noting of actual transactions considering the words used like 'Ruchi has realized more than Betul', working of recent physical sale, 'profit in Betul books', 'profit in Ruchi books' etc. However, Shri R.C. Gupta from whose cabin the said document was found has stated that - (i) the working sheet reflects commodity transactions of estimated profits in future trading and physical trading, (il) He was not aware of the figures mentioned in future trading. (i) the sheet was provided by Mr. Jigar Shah of M/s. Betul Oil Ltd(BOL) during F.Y.2011-12 and was undated, so they were not able to explain the basis of preparing the said sheet, (iv) the figures of physical trading are mentioned approximately and no period, date or year has been mentioned, (V) JV books means proposed joint venture which could not be materialised. Statement of Shri Jigar Shah was also recorded u/s. 131 of the Act, wherein he has submitted that he had not handed over the paper found in the drawer of Shri R.C.Gupta.

> 13.3.3. Although section 132(4A) and section 292C provide that the documents found in the possession of a person in the course of a search u/s. 132 or survey u/s. 133A, it may be presumed that such document belong to such person and the contents of such document are true. However, such presumption is also rebuttable. The appellant has denied the existence of any joint venture between the Betul group and the appellant company and has submitted that the income arising from physical trading of guar gum and guar seed in its own name, during the year had been recorded in the books of account and profit of approximately Rs.839 crore earned from such physical trading was appropriately accounted for. It has been submitted that the appellant company did not have any business in guar gum and guar seed futures during the A. Y. 2011-12, 2012-13 & 2013-14. I find that the figures noted in the said worksheet do. not refer to any date or period and has not been corroborated with any other evidence like purchase/sale bills, vouchers, details of payments etc. to come to a conclusion that the profits noted therein are in the nature of undisclosed income of the appellant company…"

14.8 It is also noted that Shri R C Gupta had all along maintained his stand in his statement given u/s 131 of the Act that, this working sheet contained estimates and projections and therefore it cannot be construed as actual transactions undertaken by the assessee. The assessee had also denied having any joint venture with the Betul Group. Moreover, even the enquiries made from Betul Group also did not support the AO's case as they did not admit to having any joint

venture with the assessee. The AO however is noted to have rejected the aforesaid statement of Shri R C Gupta and also the explanation of the assessee on the premise that, the assessee was unable to substantiate its onus that there was no joint venture with Betul Group and therefore the notings in this working sheet were only estimates/projections. Having considered the overall facts placed before us and that nothing else incriminating was found in the course of search which would suggest existence of joint venture nor was any material found that suggested that such large value of trading transactions had been undertaken outside the books, we agree with the Ld. AR that, the assessee could not be expected to prove the negative. On the given facts, as discussed in the foregoing, if the Revenue is of the view that, there was a JV between the assessee and Betul Group, then the onus was on the Revenue to bring corroborative material on record for proving so. The only material which the Revenue is noted to have referred to, was the emails exchanged between employees of Ruchi Group and Betul Group, to allege existence of a joint venture. We note that, the Ld. CIT(A) had analysed these emails and recorded a finding of fact that none of these emails contained anything incriminating nor did it suggest any JV between the assessee and Betul Group as wrongly alleged by the AO. The relevant findings of the Ld. CIT(A), as taken note by us, is as follows:-

> 13.3.3…… Further, the summary of profits in the said worksheet is stated to be of JV (Joint Venture) with Ruchi Soya Industries Ltd (RSIL) and Betul as partners. If the said notings

are to be taken at face value then such income can be assessed in the hands of the joint venture, as a separate assessee in the status of AOP, as per the definition of 'person' in section 2(31) of the I.T. Act and not in the case of the appellant.

13.3.4. The A.O. has also referred to the seized documents containing e-mails which show that the concerns of RSIL and BOL are having transactions relating to guar gum/guar seeds and there is a mention of two transactions relating to the JV. In this regard, I find that the e-mails have been exchanged between Raj Kumar Goyal of Ruchi group and Ravi Daga and Manish of Betul group with copy to Jigar Shah on various dates pertaining to F.Y.2011-12 and F.Y 2012-13. The transactions noted in the e-mails pertain to invoices raised by BOL and its group concerns like Vision Millennium in favour of Nova Trading and other concerns of Ruchi group, summary of advances (company-wise) given to Vision Millennium and Betul by various associate concerns of Ruchi group. The seized documents containing e-mail from Ramesh Gupta of Ruchi group to Raj Kumar Goyal contains an internal correspondence regarding requirement of fund considering the proposed date of payment falling in the month of January 2012 and it is stated that these pertain to the fund requirement for guar business to be made from the books of RSIL except two entries amounting to Rs.97.5 crores and Rs.82.5 crores relating to delivery of exchange of seed and gum from JV books. The appellant has filed copy of ledger accounts of associate concerns noted. in the e-mail and has submitted that the said transactions of advances and sale/purchase are duly recorded in their books of accounts. The ledger shows advance

payment by associate concerns of appellant company like Nova Trading Pvt Ltd, Imperial Mark trade (I) Pvt Ltd etc. to Vision Millennium Exports Pt Ltd, and credit on account of purchase/goods received. The appellant has submitted that there was no joint venture with Betul group during the year under consideration. However, as noted above, even if there is presumption that some income or profit has arisen to the joint venture referred to in the seized documents, such income can be rightfully assessed in the hands of the joint venture as an AOP and not in the hands of the appellant company."

14.9 Before us the Ld. CIT, DR was unable to point out any defect in the above findings recorded by the Ld. CIT(A). He was also unable to show us any specific email exchange/correspondence which referred to the purported joint venture as presumed by the AO or that the transactions discussed in these emails related to trading conducted outside the books of accounts, which would lend certain credence to the theory propounded by the AO regarding the working sheet. We thus note that the Revenue was unable to bring on record any cogent evidence to substantiate their case that the working sheet, which was explained to be estimates/projections by the person from whose possession it was found, was actually a summary of transactions taken place in a joint venture between assessee and Betul Group.

14.10 At the time of hearing, the Ld. CIT, DR had also relied upon the AO's observations regarding the shareholding of Betul Group of

companies in the assessee, which according to him, suggested that there was a joint venture relationship between the two groups. The Ld. AR in this regard pointed out that, the assessee is a publicly listed company having several shareholders and therefore, merely because Betul Group held shares in the assessee company, it would not ipso facto lead to a conclusion that there was a joint venture between the assessee and Betul Group. Having considered the foregoing, we find this contention raised by the Revenue to be indecisive and irrelevant to the issue before us. Likewise, the Revenue's reference to the settlement application filed by other group entities of the assessee is also found to be frivolous and irrelevant, as they do not relate to the assessee or refer to this working sheet in question.

14.11 Overall for the above reasons, we countenance the findings of the Ld. CIT(A) that the entries/summary found noted in the said worksheet being without any reference to date or time period and not corroborated by any other evidence or material, was unreliable. Hence, we agree with the Ld. CIT(A) that it was not possible to drawn any legitimate inference that these notings denoted undisclosed income in the hands of the assessee. Accordingly, we see no reason to interfere with the order of the Ld. CIT(A) deleting the impugned addition made by the AO. These grounds of appeal of the Revenue are therefore dismissed.

15. We now take up the appeal in ITA No. 320/Mum/2023 filed by the assessee for AY 2012-13. Ground No. 1.0 being general in nature does not call for any adjudication. Ground No. 1.1 of the appeal reads as under :-

> 1.1. That on the facts and in the circumstances of the case the Ld. CIT(A) is unjustified in confirming the disallowance of Rs. 2,57,78,489/- being expend towards employee Stock Options (ESOPs) provided the employees.

15.1 This ground relates to the Ld. CIT(A)'s action of confirming the disallowance of ESOP expenditure made by the AO. Briefly noted the facts of the case are that, the assessee had claimed deduction for ESOP expenses in the return filed u/s 139(5) of the Act on 31.01.2014. The AO is noted to have disallowed the claim on the erroneous premise that, this deduction was not made in the return of income filed u/s 139 of the Act, and hence this additional claim made in return filed u/s 153A of the Act was not entertainable. Aggrieved by this action of AO, the assessee preferred an appeal before the Ld. CIT(A).

15.2 In the appellate order, the Ld. CIT(A) noted that the assessee had made this claim in the revised return of income filed u/s 139(5) of the Act and therefore it was incorrect for the AO to say that the assessee had made fresh claim in the proceedings u/s 153A of the Act. It is noted that this finding of the Ld. CIT(A) has attained finality and is not in dispute before us. However, on merits, the Ld. CIT(A) held that the ESOP expenses was not allowable as deduction from the

profits of business. Aggrieved by this finding of the Ld. CIT(A), the assessee is now in appeal before us.

15.3 Heard both the parties. It is noted the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in **CIT vs. Biocon Ltd. (121 taxmann.com 351)**, wherein it has been held that the ESOP expenditure is allowable to the assessee under section 37(1) of the Act. It is noted that, similar view has been expressed by the Hon'ble Madras High Court in the case of **CIT vs. PVP Ventures Ltd. (211 Taxman 554)**. Respectfully following the same, we hold that the Ld. CIT(A) had erred in confirming the disallowance of Rs.2,57,78,489/- made on account of ESOP expenses and the AO is directed to delete the same. Accordingly, this ground of the assessee stands allowed.

16. Ground No. 1.2 of the assessee reads as follows :-

> 1.2. That on the facts and in the circumstances of the case the Ld. CIT(A) is unjustified in confirming disallowance of Rs.53,67,95,036/- being loss on account of fluctuation in rate of exchange treating it as capital expenditure.

16.1 Briefly stated, the facts of the case are that, the assessee had borrowed foreign currency loans, which were utilised to acquire fixed assets that were put to use in earlier year/s. Till AY 2011-12, the foreign exchange loss incurred on such loans were debited to the Profit & Loss Account. It was brought to our notice that, the foreign

exchange loss so debited was allowed as deduction by the AOs in the earlier years. During the year, the assessee is noted to have availed the option set out in Para 46A of AS-11 notified by Institute of Chartered Accountants of India dated 29th December 2011, in terms of which, the assessee capitalized the foreign exchange loss of Rs.53,67,95,036/- incurred during the year to the fixed assets. However, while filing the return of income, the assessee is noted to have separately claimed deduction for such foreign exchange loss while computing business income. Correspondingly, the said foreign exchange loss, which was capitalized to fixed asset, was excluded / reduced for the purposes of computing depreciation u/s 32 of the Act. The AO however held that the said foreign exchange loss was not allowable u/s 43A of the Act but was required to be added to the block of assets. The AO accordingly disallowed the foreign exchange loss holding it to be capital in nature. Instead, he added the same to the block of assets and allowed increased depreciation thereon, thereby resulting in net disallowance of Rs.31,85,98,806/-. On appeal, the Ld. CIT(A) is noted to have upheld the disallowance. Now, the assessee is in appeal before us.

16.2 Assailing the action of Ld. CIT(A), the Ld. AR for the assessee submitted that the provisions of Section 43A of the Act which were invoked by the AO had no application because the fixed assets in question were indigenous and not imported from outside India. The Ld. AR further submitted that these fixed assets acquired had already

been put to use and therefore in terms of the provisions of Section 36(1)(iii) of the Act, the interest paid on such foreign currency loans was allowed as deduction from computation of business profits. Likewise, the Ld. AR claimed that, even the foreign exchange loss incurred on such foreign currency loans was allowable as deduction from business profits as well. He showed us that, identical claims were allowed in all earlier AYs as well. It was brought to our notice that, the reason for departure from the consistent view taken in the earlier years was that, the assessee had availed the option set out in Para 46A of AS-11 notified in December 2011 and capitalized the foreign exchange loss, instead of debiting it to Profit & Loss Account. He pointed out that, the lower authorities were swayed by the entries passed in the books of accounts and accordingly held the foreign exchange loss to be capital in nature. According to the Ld. AR, the entries passed in the books of accounts were not decisive for ascertaining the allowability of the claim and thus urged that the impugned disallowance be deleted. Per contra, the Ld. CIT, DR vehemently supported the order of lower authorities.

16.3 We have heard the rival submissions and perused the relevant provisions of law. The question that arises for our consideration is that whether loss on account of foreign exchange fluctuation loss incurred in relation to foreign currency loans taken for acquisition of fixed assets should be allowed as revenue expenditure or not. On perusal of the provisions of Section 43(1) of the Act, which defines the term

'actual cost' as the actual cost incurred for acquiring the capital asset by the assessee, reduced by that portion of cost of capital asset that has been met directly or indirectly by any other person or authority. This Section is noted to have several *Explanations* as well. However, on perusal of the same, it is noted that nowhere does this Section specify that any gain or loss on foreign currency loans acquired for the purchase of indigenous assets will have to be reduced or added to the cost of assets. We find the decision of the Hon'ble Supreme Court in the case of **CIT vs Tata Iron & Steel Co. Ltd. (231 ITR 285)** to be relevant in the facts of the present case. In the decided case, it was held that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Once the asset has been acquired, the events subsequent to the acquisition cannot alter the price paid for it. Therefore, the fluctuation in foreign exchange rates while repaying the foreign currency loans raised to acquire capital assets, which had already been put to use, cannot alter the actual cost of assets in terms of Section 43(1) of the Act.

16.4 It is noted that the AO had applied provisions of Section 43A of the Act to hold that the gain/loss incurred on foreign currency loans in relation to capital assets was to be reduced/added to the cost of assets. In our opinion, Section 43A of the Act only applies to the gain/loss incurred on repayment of foreign currency loans which were used for acquiring asset from a country outside India. The said provision does not apply indigenous assets acquired out of foreign currency loans.

Hence the fundamental premise on which the AO made the impugned disallowance viz., by invoking Section 43A of the Act, is found to be erroneous on the given facts of the case. Moreover, having regard to the fact that the Legislature in its consciousness has mandated that, only the gain/loss incurred on repayment of foreign currency loans which were used for acquiring asset from a country outside India is to be capitalised to the cost of assets, then by applying the principle of *"cassus omissus"*, in our considered view, the foreign exchange loss incurred in respect of loans which were used for acquiring indigenous fixed assets should be allowed as revenue expenditure. Our foregoing view finds support from the following decisions of this Tribunal:

- Baby Memorial Hospital Ltd. vs ACIT (77 ITR (T) 484)
- MFAR Hotels & Resorts Ltd. vs ACIT (105 taxmann.com 335)

16.5 We further observe that, similar foreign exchange loss incurred on the same foreign currency loans were allowed as deduction in the earlier abated AY 2010-11 completed by the same AO. Hence, when on same set of facts and circumstances, the Revenue, in the earlier AY 2010-11, did not draw any adverse inference on this issue, then in absence of any change in position of law, we uphold the claim of the assessee claiming deduction for the foreign exchange loss, while computing total income in the return of income. Useful reference in this regard may be made to the following observations made by the

Hon'ble Supreme Court in the case of **Radhasoami Satsang v. CIT (193 ITR 321)**.

> "where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

16.6 Before us, the Ld. CIT DR had argued that the assessee's entries in the books of accounts capitalizing the foreign exchange loss incurred to the cost of assets denoted that the said loss was capital in nature. The Ld. AR had pointed out to us that, AS-11 notified by ICAI, as amended in 2003, provided that the foreign exchange loss arising out of foreign currency fluctuations in respect of fixed assets acquired out of foreign currency loans was to be routed through Profit & Loss Account. Following the said applicable AS-11, the assessee had consistently debited the foreign exchange loss on such foreign currency loans to the Profit & Loss Account upto FY 2010-11 and the same was also accepted and allowed by the Revenue. In the relevant FY 2011-12, the ICAI had modified Para 46A of AS-11 in December 2011, in terms of which the company now had an option to either debit such foreign exchange loss to the Profit & Loss Account or capitalise the same to the cost of assets. The assessee, in the present case, chose the latter option. Merely because the assessee chose the later option would not alter the nature of foreign exchange loss viz., revenue in

nature. It is by now trite in law that, the entries whether the assessee is entitled to a particular deduction or not depends upon the provision of law relating thereto. The existence or absence of entries in the books of account be decisive or conclusive in the matter. This legal principle has been laid down by the Hon'ble Supreme Court in the case of **Kedar Jute Mfg Co. Ltd. vs CIT (82 ITR 363)** wherein the Hon'ble Court has clearly stated as follows:

> "Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might taken of its right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter."

16.7 Likewise, it is noted that, the Hon'ble jurisdictional High Court also while adjudicating the nature and allowability of expenditure incurred on repairs & maintenance which were capitalized to fixed assets, have held that the entries in the books of accounts was not determinative to decide whether expenditure was capital or not, but it had to be examined in light of the provisions of the law. The relevant judgments wherein such expenses were allowed as revenue deduction, inspite of the same being capitalized in books of accounts taken note of by us are as follows:

- Reliance Footprint Ltd. v. Asstt. CIT [2014] 41 taxmann.com 553 since upheld by the Hon'ble Bombay High Court in ITA No. 948 of 2014 dated 5-7-2017

- Reliance Fresh Ltd. v. Asstt. CIT [2016] 72 taxmann.com 170 (Mum.) since upheld by the Hon'ble Bombay High Court in ITA No. 985 of 2017

16.8 For the above reasons therefore, we hold that the lower authorities had erred in disallowing the claim for deduction of foreign exchange loss and thus, the AO is directed to delete the impugned disallowance. This ground is therefore allowed.

17. The assessee has further raised additional grounds in this appeal. These grounds are noted to be legal in nature and are therefore admitted for adjudication.

18. The Additional Ground No. 1.3 reads as under :-

> "1.3 That on the facts and in the circumstances of the case the CIT(A) ought to have considered Rs 72,57,04,219/- export incentive granted under foreign trade policy as focus product scheme (FPS) Vishes Krishi and Gram Udyog Yojana (VKGUV) as capita receipt in the computation of total income under the normal provisions of the Act as well as in computing the book profit u/s 115JB of the Act."

18.1 This additional ground relates to the claim for treatment of incentives received under FPS & VKGUY Schemes of the Foreign Trade Policy as capital receipt and therefore not liable to tax, both

while computing income under normal provisions and book profit u/s 115JB of the Act. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Additional Ground No.1 taken by this assessee in the Cross Objections for the earlier AY 2010-11. Following our conclusion drawn in A.Y. 2010-11, we hold these incentives to be in the nature of capital receipt. However, as the relevant facts and figures were not placed before the AO, we deem it fit to set this issue aside for the limited purpose of verifying the details & figures. The AO shall accordingly quantify and exclude the subsidies received under the FPS & VKGUY Scheme of Foreign Trade Policy, which have been held to be capital receipt, both while computing income under the normal provisions as well as book profit u/s 115JB of the Act. Needless to say, the AO shall provide an opportunity of hearing to the assessee in this regard. This additional ground is therefore partly allowed for statistical purposes.

19. The Additional Ground No. 1.4 reads as under :-

> "1.4 That on the facts and in the circumstances of the case the CIT(A) ought to have considered that the disallowance of Rs. 60,00,997/- u/s 14A r.w.r. 8D c not be made in computing the book profit u/s 115JB of the Act."

19.1 This additional ground is against the addition of disallowance computed u/s 14A r.w. Rule 8D to the book profit u/s 115JB of the Act. After considering the rival submissions, it is observed that the

issue involved in this ground is similar to the Additional Ground No. 2 taken by this assessee in the Cross Objections for the earlier AY 2010-11. Following our conclusion drawn in A.Y. 2010-11, we direct the AO to delete the addition made on account of disallowance computed u/s 14A r.w. 8D while assessing book profit u/s 115JB of the Act and thus allow this ground of the assessee.

20. The Additional Ground No. 1.5 reads as under :-

> "1.5 That on the facts and in the circumstances of the case the CIT(A) ought to have considered deduction Rs.20,32,71,667/- advertisement expenses adjusted the Business Development Reserve under the he Reserve and surplus in computing the book profit u/s 115JB of the Act."

20.1 This additional ground relates to the claim for deduction of advertisement expenses directly adjusted against Business Development Reserve, while computing book profit u/s 115JB of the Act. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Additional Ground No. 4 taken by this assessee in the Cross Objections for the earlier AY 2010-11. Following our conclusion drawn in A.Y. 2010-11, we direct the AO to allow the deduction for the same, while working out book profit u/s 115JB of the Act. Hence, this additional ground stands allowed.

21. The Additional Ground No. 1.7 reads as under :-

> "1.7. That on the facts and in the circumstances of the case the CIT(A) ought to have considered the nature of Rs 7,86,66,431/- VAT/Excise refund/Remission as capital receipt in nature instead of revenue under the normal provisions of the Act as well as in computing the book profit u/s 115JB of the Act."

21.1 This additional ground relates to the claim for treatment of subsidies received under the Industrial Schemes for setting up new industries, as capital receipt, and therefore not liable to tax both while computing income under normal provisions and book profit u/s 115JB of the Act. After considering the rival submissions, it is observed that the issue involved in this ground is similar to the Additional Ground No. 5 taken by this assessee in the Cross Objections for the earlier AY 2010-11. Following our conclusion drawn in A.Y. 2010-11, we hold these subsidies to be in the nature of capital receipt. Following our conclusion drawn in A.Y. 2010-11, we hold these subsidies to be in the nature of capital receipt. However, since the relevant facts and figures were not available before the AO, we deem it fit to set this issue aside for the limited purpose of verifying the details & figures. The AO shall accordingly quantify and exclude the subsidies received by way of VAT Remission & Excise refund under the different Industrial Schemes, which have been held to be capital receipt, both while computing income under the normal provisions as well as book profit u/s 115JB of the Act. Needless to say, the AO shall provide an

opportunity of hearing to the assessee in this regard. This additional ground is therefore partly allowed for statistical purposes.

22. The last additional ground raised by the assessee in AY 2012-13 is against the levy of interest u/s 234C of the Act. This ground is noted to be consequential in nature. The levy of interest u/s 234C of the Act is mandatory. The AO is therefore directed to recompute and levy the interest in accordance with law while giving effect to this appellate order. This ground is therefore allowed for statistical purposes.

23. We now take up the Revenue's appeal in ITA No. 1176/Mum/2023 for AY 2012-13. This appeal has been preferred by the Revenue against the order of Ld. CIT(A) deleting the penalty levied by the AO with reference to the addition/s which were confirmed in the quantum appeal by the Ld. CIT(A). The relevant grounds taken by the Revenue are as under :-

> "1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the penalty levied u/s 271(1)(c) of the Act without appreciating the fact that in the original assessment order passed u/s 143(3) r.w.s. 153A of the Act, the income was computed as per the normal provisions of the Act.
>
> 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the penalty levied u/s 271(1)(c) of the Act without appreciating the fact that the department is in

appeal before the Hon'ble ITAT against the additions deleted by the CIT(A) and the matter is still sub-judise."

23.1 Having perused the order passed u/s 271(1)(c) of the Act, it is noted that the AO had levied penalty with reference to the addition/s made on account of (i) disallowance of ESOP expenses & (ii) disallowance of foreign exchange fluctuation loss. It is noted that these addition/s were confirmed by the Ld. CIT(A) in the quantum appeal decided vide order dated 12.06.2017. However, the penalty which was later on levied u/s 271(1)(c) of the Act qua these addition/s, were deleted by the Ld. CIT(A). The Ld. CIT(A) had observed that, even after making these addition/s to the total income, the tax payable on the income assessed under normal provisions was lower than the tax payable on the book profit u/s 115JB of the Act, as originally returned u/s 139 of the Act and therefore the amount of tax sought to be evaded was held to be NIL. Following the decision of Hon'ble Delhi High Court in the case of **CIT Vs Nalwa Sons Investments Ltd (327 ITR 543)**, the Ld. CIT(A) is noted to have deleted the penalty which was levied with reference to addition/s confirmed under normal provisions. Aggrieved by this order of the Ld. CIT(A), the Revenue is in appeal before us.

23.2 Heard both the parties. While adjudicating the assessee's appeal in ITA No. 320/Mum/2023 above, we have already deleted the addition/s made on account of (i) disallowance of ESOP expenses &

(ii) disallowance of foreign exchange fluctuation loss and therefore the impugned penalty order passed by the AO now has no legs to stand on. Since the quantum addition/s itself has been deleted, the consequential levy of penalty is held to be unjustified. On this score, we uphold the order of Ld. CIT(A) deleting the levy of penalty. Hence, these grounds of the Revenue stands dismissed.

24. In the result, the appeal and cross objections of the assessee are partly allowed and the appeals of the revenue are dismissed.

Order pronounced in the open court on this 05/04/2024.

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

मुंबई Mumbai; दिनांक Dated : 05/04/2024.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**