

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

BEFORE PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 2308/MUM/2012
(A.Y.2003-04)

&

CO 76/MUM/2013
(A.Y 2003-04)

Novartis India Limited Inspire BKC, 7 th Floor, Bandra Kurla Complex, Bandra (E) Mumbai-400051.	Vs.	Deputy Commissioner of Income-Tax-14(1)(1) Room no 432, Aaykar Bhawan, M.K. Marg, Mumbai-400020.
PAN/GIR No. AAACH2914F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

ITA No. 2188/MUM/2012
(A.Y.2003-04)

Deputy Commissioner of Income-Tax-14(1)(1) Room no 432, Aaykar Bhawan, M.K. Marg, Mumbai-400020	Vs.	Novartis India Limited Inspire BKC, 7 th Floor, Bandra Kurla Complex, Bandra (E) Mumbai-400051
PAN/GIR No. AAACH2914F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri J.D. Mistry & Shri BrijeshParmar,AR
Revenue by	Shri Himanshu Sharma.Sr.DR

सुनवाई की तारीख/Date of Hearing	22.04.2024
घोषणा की तारीख/Date of Pronouncement	27.05.2024

ORDER

PER BENCH:

The Cross Appeal is filed by the assessee and the revenue against the order of the Commissioner of Income Tax (Appeals) (CIT(A))- 15, Mumbai passed u/sec143(3) and U/sec250 of the Act, and the Cross Objection (C.O) is filed by the assessee in the revenue appeal.

2. Since the issues involved in these appeals and CO are common and identical, hence are clubbed, heard and a consolidated order is passed. For the sake of convenience, we shall take up the assessee appeal ITA No.2308/Mum/2012 for A.Y 2003-04 as a lead case and facts narrated. The assessee has raised the following grounds of appeal:

Each of the grounds of appeal and the sub-grounds there under are without prejudice to, and independent of one another.

GROUND NO. 1

(a) The Commissioner of Income Tax (Appeals) -15 (hereinafter referred to as the "CIT(A)") erred in holding that the appellant would not be eligible for depreciation on assets that stood vested in Ciba Specialty Chemicals (India) Ltd., (CSCIL) pursuant to the scheme of demerger.

(b) The CIT(A) erred in holding that a consideration had flowed to the appellant for the transfer of the assets to CSCIL

GROUND NO. 2

The CIT(A) erred upholding the action of the Assessing Officer (hereinafter referred to as the "AO") of disallowing the expenditure on computer software/licence fees of Rs.

1,22,12,738 in nature of application software on the ground that the same is capital expenditure of enduring nature.

GROUND NO. 3

(a) The CIT(A) erred in upholding the action of the AO in disallowing advances written off pre predominantly MODVAT credit claims receivable from parties towards purchase of finished goods amounting to Rs. 16,68,997 charged to the profit and loss account.

(b) Without prejudice, the CIT(A) ought to have allowed the above under section 37(1) as business expenses.

GROUND NO. 4

(a) The CIT(A) erred in confirming the action of the AO in excluding 90 per cent of receipts from Interest on employee loans, Interest on overdue debtors, Sales tax set off claims, Insurance claims realized, Scrap sales income, cash discount, exchange gains, other miscellaneous write back of liabilities, discounts, etc, cost of services recovered, Profit under Section 41(3) on sale of R & D assets while working out the 'profits of the business'

(b) Without prejudice, it is submitted that 90% of net amount, as applicable of the aforesaid receipts should be excluded while computing "profits of business" for the purpose of deduction under section 80HHC.

GROUND NO. 5

(a) The CIT(A) erred in confirming the action of the AO in computing the income from house property at a notional value.

(b) The CIT(A) further erred in not considering the Municipal Rateable Value for the purpose of arriving at the annual value of the property.

(c) Without prejudice to above and in any event, as the amount recovered towards Municipal taxes, water charges, etc. was Rs. 8,33,181 the amount to be considered for the purpose of annual value of the property cannot exceed the said amount.

(d) Without prejudice, the CIT(A) erred in upholding the action of the AO in adopting the notional rental rate per square feet without furnishing any evidence to the appellants.

(e) Without prejudice, the CIT(A) erred in upholding the action of the AO in increasing the total annual value by 5%.

GROUND NO. 6

(a) The CIT(A) erred in holding that the capital gains arising from the transfer of Plot no. 2 amounted to Rs. 17,99,02,095 by adopting the fair market value of the asset transferred as at 01.04.1981 at the rate of Rs.5.85 per sq.ft. (Rs.63 per sq.mtr.)

(b) The CIT(A) ought to have directed the AO to compute capital gain of Rs. 53,52,891 or such other lesser figure than has been assessed as is held correct as a result of the transfer of Plot no.

GROUND NO. 7

The learned CIT(A) has with respect to the international transaction pertaining to export of Rifampacin to associated enterprises, erred in not adopting the 'class of transactions approach' and rejecting the arithmetic mean of the third party rates for sale of Rifampacin as Comparable Uncontrolled Price ('CUP') to determine the arm's length price of the said international transaction.

Further, the learned CIT(A) while determining the arm's length price of the said international transaction has erred in using the CUP method by taking the third party rates for sale of Rifampacin as on the date of sale of Rifampacin to associated enterprises without making appropriate adjustments for differences between the international transactions and the uncontrolled transactions on account of quantity of products sold.

GROUND NO. 8

The Learned CIT(A) erred in computing the arm's length price of the international transaction pertaining to export of Rifampacin by not considering the +/-5% variation from the arm's length price permitted to the Appellant under the provisions of section 92C(2) of the Act.

GROUND NO. 9

The CIT(A) ought to have directed the AO to charge interest under section 234C per Revised Return of Income.

The appellants crave leave to add to, amend, alter, vary, omit or substitute the above grounds of appeal or add a new ground or grounds at any time before or at the time of the hearing of the appeal.

3. The brief facts of the case are that, the assessee company is engaged in the Life sciences business consisting of manufacture and sale of Pharmaceuticals, Animal Health Products, eye care products. And the assessee company operates through four divisions namely, Pharmaceuticals, Animal Health, OTC and Generic. The assessee has filed the return income for the A.Y.2003-04 on 22.10.2003 disclosing a total income of Rs. 74,41,88,785/- under normal provisions of income tax and the Book profits computed u/sec 115JB of the Act are Rs.93,49,35,328/-.Subsequently the assessee has filed the revised return of income on 31.03.2005 disclosing a total income of Rs.74,54,35,786/- and Book profits u/sec 115JB of the Act of Rs.93,49,35,328/-.Whereas the assessee has filed the revised return for revising deduction u/sec 80HHC of the Act by excluding losses from traded goods exported from manufactured export profits, claim amortization of leasehold land as revenue expenses and recomputed capital loss on sale of land at Goregaon. The return of income was processed u/sec 143(1) of the Act. Subsequently the case was selected for scrutiny and notice

u/sec143(2) and U/sec142(1) of the Act along with questionnaire are issued. In compliance to the notice, the Ld.AR of the assessee appeared from time to time and submitted the details and explanations. Whereas the Assessing Officer(A.O), On the first disputed issue in respect of transfer of assets to M/s Ciba speciality Chemicals (India) Ltd under the scheme of arrangement sanctioned by the Bombay High Court, find that the assessee company has transferred its fixed assets pertaining to the Speciality Chemicals business to M/s Ciba Speciality Chemicals Ltd as per Schedule A to the scheme of arrangement, whereas in the course of assessment proceedings of the A.Y 1997-98, for the purpose of claiming depreciation under the Income Tax Act the assessee company has not reduced from its block of assets, the value of assets transferred to M/s Ciba Speciality chemicals(India) Ltd. The assessee has filed the various details and explanations on 24.11.2005 referred at Para 3.3 of the assessment order. Whereas the AO has considered the facts, submissions and dealt on the provisions of the demerger and information at Para 3.4 to 3.10 of the order and has restricted the claim of depreciation referred at Para 3.11 of the order as under:

“3.11 In view of the above, since the assets have been transferred by the assessee at book value and depreciation has been claimed by the transferee company on the said book value, it is the book value (i.e. book WDV) of transferred assets and not IT WDV which has to be reduced from the assessee's block of assets for the purpose of depreciation. The book WDV of the assets transferred to M/s Ciba Speciality

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Chemicals India Ltd comes to Rs 20,7868,221/-. On reduction of the above book WDV from the assessee's block of assets, the depreciation admissible under the I.T. Act for this year comes to Rs 114,544,180/- as per the 'without prejudice depreciation chart' submitted by the assessee vide letter dated 24.11.05, as against depreciation of Rs.122,132,992/- claimed by the assessee in its computation of Income filed with the Return. The depreciation allowance is accordingly allowed at Rs.114,544,180/- only. Net addition on this account comes to Rs.7,588,812/-. Needless to say, in subsequent years also depreciation will be allowed on the reduced WDV as per this order after exclusion of the book WDV of transferred assets at Rs.20,98,08,221/- from the block of assets as discussed above. Penalty proceedings u/s.271(1)(c) for furnishing inaccurate particulars of income are initiated separately”

4. The A.O. on the second disputed issue, with respect to claim of production of advertisement films expenses found that the assessee has claimed advertisement expenses which includes expenses towards purchase cost of films and other production expenses for producing advertisement films, slides, CD's and commercials to be used as TV spots & promotional films for advertisement. Whereas the assessee has submitted the details of expenses vide letter dated 16.12.2005 aggregating to Rs. 64,61,771/- and claimed as revenue expenditure. Whereas the AO has dealt on the facts and information and is of the opinion that such expenses has enduring benefits and treated as capital expenditure at Para 4.3 & 4.4 of the order as under:

4.3 It is also to be noted that on similar issues, in the case of the assessee for AY 1991- 92 the addition made in the assessment by treating the advertisement film production expenses as capital expenditure has been confirmed by the CIT(A

4.4 In view of the discussion above and following the Bombay High Court ruling in the case of Patel International Film Ltd., (supra) the expenditure on production of TV films/commercial being Rs.64,61,771/- is treated as capital in nature and added back to the assessee's income. Penalty u/s.271(1)(c) is initiated separately for furnishing inaccurate particulars of income.

5. The A.O on the third disputed issue in respect of inclusion of freight components in the valuation of closing stock. It was found that the assessee has not included proportionate amount of freight component in the valuation of closing stock of finished goods and the assessee is claiming full expenditure on account of freight expenses as deduction from its taxable income. Whereas the AO has considered the facts of the opening stock and increase in value and freight component and made addition observing at Para 5.1 of the order as under:

“5.1 In the course of assessment proceeding, it is found that the assessee has not included proportionate amount of freight component in the valuation of closing stock of finished goods. It is pertinent to mention that while the assessee is claiming full expenditure on account of freight as deduction from its taxable income, proportionate amount thereof, has not been included in the valuation of closing stock. It may be mentioned here that as laid down by the apex court in CIT Vs. British Paints 1991 188 ITR 44, it is the real cost of stock-in-trade which has been taken into account to determine the taxable income of the assessee for the relevant year. It is held by the apex court that in this regard section 145 of the IT Act not only confers the relevant powers of the AO but also imposes duty upon him to make such computation in such a manner so as to ensure that all costs involved in bringing the stock-in-trade which forms part of the closing stock have to be included in the valuation of such closing stock. Exclusion of any part of cost would result in distorted picture so as computation of taxable income of the assessee for this year is concerned. On

being confronted, the assessee vide letter dated 09.12.2005 submitted a without prejudice statement of freight component on closing stock of finished goods at depots which comes to Rs.60,29,327/-. It is further submitted by the assessee that an amount of Rs.44,45,792/- was added in assessment order for A.Y.2002-03. Therefore, there would be an increase in the value of the opening stock for A.Y.2003-04 by an amount of Rs.44,45,792/-. Therefore, the net amount of freight component as per assessee's without prejudice statement thus works out to Rs.15,83,535/-. On the basis of the same, the amount of Rs.15,83,535/- is added to assessee's income for this year. Penalty u/s.271(1)(c) is initiated separately for furnishing inaccurate particulars of income”.

6. The fourth disputed issue is with respect to incremental VRS interest. The AO found that the assessee has claimed an amount of Rs.3,28,52,834/- towards incremental Voluntary Retirement Scheme interest for Bhandup Unit. However the claim of the assessee was based on the basis of actuarial valuation. Therefore the AO relying on the earlier year order has restricted the relief dealt at Para 6.1 of the order as under:

“6.1 Similarly the assessee has also claimed an amount of Rs.3,28,52,834/- towards incremental VRS (Voluntary Retirement Scheme) interest for Bhandup unit. However, the claim of the assessee has been made on the basis of actuarial valuation. Therefore, as discussed in previous years assessment order, this claim of the assessee is also disallowed being an unascertained contingent liability. It is also to be mentioned that similar disallowance for A.Y.1993-94 in the case of the assessee has been confirmed by the CIT(A). Similar disallowance have also been made in assessment order for AY 94-95, to AY 2000-01 although actual payment of VRS interest made during the relevant years have been allowed. In its letter dated 24.11.2005 the assessee has submitted without prejudice that actual payment of Rs.3,94,74,834/- made during this year on above count be

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allowed. Following the stand adopted by the revenue in earlier year, the above amount on the basis of actual payment is allowed. The incremental liability of Rs.3,28,52,834/- on VRS is therefore disallowed. However, the assessee is given credit of payment of Rs.3,94,74,834/- on VRS made during the year. The net relief to the assessee is Rs.66,22,000/-."

7. The fifth disputed issue is with respect to purchase of computer software and software development cost. The A.O found that the assessee has incurred an expenditure of Rs.1,37,60,267/- under computer software and supplies including license to use software. Whereas the assessee has submitted the information vide letter dated 16.12.2005, the A.O found that out of the above details Rs.1,32,45,017/- has been stated to be on account of off the shelf computer software packages and treated as revenue expenditure. The AO has dealt on the facts and submissions of the assessee and is of the opinion that the claim cannot be fully allowed and observed at Para 7.4 of the order as under:

"7.4 It was, however, submitted that depreciation may be allowed in respect of similar treatment to the computer software expenses in the earlier years. The assessee filed a working of the depreciation allowable on the amounts capitalised in the earlier years. As per this working, the assessee claimed depreciation of Rs.29,18,517/- on the items capitalised in the earlier years. This working is not acceptable as it does not account for the items pertaining to the demerged division have not been excluded by the assessee. A revised working was by the assessee as per which, the depreciation allowable on items capitalised in the earlier years and which are continued to be owned by the assessee and used in the business of the assessee, is Rs.24,83,645/-. The same is allowed to the assessee"

8. The A.O on the sixth disputed issue with respect of Foreign Travel expenses, found that the assessee has claimed foreign travel expenses as revenue expenditure. Whereas from the A.Y 1993-94 onwards, 25% of foreign travelling expenses incurred by the assessee have been disallowed on the ground that the assessee has not proved that the time and energy spent by the Directors and executives on the foreign tour. The A.O considering the assessee submission dated 9-12-2005 has restricted the claim and made disallowance of Rs.54,40,692/-.

9. The seventh disputed issue is with respect to expenditure on foreign visitors, the AO found that the assessee has claimed expenditure of Rs.67,142,-/ on account of travel and other expenses. Wherea the assessee could not submitted the details. The A.O relied on the earlier year orders and dealt on the factual aspects at Para9.1 of the order and made disallowance of Rs.67,142/-

10. The eighth disputed issue being claim of excess / short provisions. The AO found that the assessee has claimed excess provisions of expenses and dealt on the claims of the assessee and disallowed the expenses observing at Para10.1 of the order as under:

“10.1 It is submitted by the assessee vide letter dated 16.12.2005 that excess provision during A.Y 03-04 amounts to Rs. 19,934/- under telephone expenses Rs.20,398/- under printing and stationery, under IT Service charges Rs.99,550/-, under Lab supplies Rs.530/-, under water charges Rs.14,94,516/-, under Market Research expenses Rs 8,26,296/-, under Employee related payables Rs. 18,075/-,

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under Distributors expenses Rs.5,81,382/-, under Electricity expenses Rs.3,380/-. The total of the excess provisions comes to Rs.30,64,061/-. Further it is stated by the assessee that in the assessment order for A.Y.2002-03 excess provision of Rs.27,70,089/- was disallowed which has to be allowed this year as per the stand taken by the department in assessment orders for earlier years. A perusal of the record indicates that out of the total excess provision of Rs.27,70,089/- has been written back in the books of account for A.Y.2003-04 and the same has been offered for tax. Therefore, allowance is given to the extent of Rs.27,70,089/-. Similarly, it is noticed that some expenses have been incurred in A.Y.2004-05 pertaining to A.Y.2003-04 amounting to Rs.24,50,173/-, the same are allowed. Further, some expenses relating to AY 2002-03 have been incurred in AY 2003-04 Rs.9,73,318/-but were allowed in AY 2002-03. These are now, therefore, disallowed. Considering the above and the past history of the case, the net effect will be a relief of Rs.11,82,883/-on account of excess provision.”

11. The ninth disputed issue with respect to expenditure on tax free bonds / dividends. The AO found that the assessee has claimed deduction u/sec 80M of the Act in respect of the dividend income received. The assessee has filed the details explaining the reasons and the basis of claim of deduction vide letter dated 24.11.2005, whereas the AO considered the facts, submissions and made disallowance observing at Para 11.5 of the order as under:

11.5 In view of the above and since no details in this regards have been filed by the assessee, 2% of the gross dividend earned at Rs.93,43,470/- being Rs.1,86,869/- is reasonably estimated as the proportionate expenditure for earning the above exempted income. u/s 80M is, therefore, to be limited to Rs.91,56,601/-. Based on this finding, the expenditure claimed by the assessee in its profit and loss account towards administrative and other overheads is to be disallowed u/s. 80M read with section 80AB to the extent of Rs. 1,86,869/- as

only net dividend is exempt u/s 80M. In view of the above, the amount of Rs. 1,86,869/- is added to assessee's income

12. The tenth disputed issue is in respect of claim of depreciation on DLP projector, the AO found that the assessee has claimed an amount of Rs.3,50,000/- incurred on DLP projector and has treated/classified as computer Item and depreciation claimed @ 60%. Whereas the AO is of the opinion that the projector is in the nature of plant and machinery and relied on the earlier year order and restricted the claim @25% and made disallowance of Rs.49,219/-

13. The eleventh disputed issue with respect to delayed payments to provident fund and labour welfare fund to Maharashtra Labour Welfare fund, the AO considered the nature of the delayed payment and provisions of section 43B of the Act and has made the disallowance of Rs. 1,87,786/-.

14. The twelfth disputed issue is with respect to unavailed modvat credit. The AO on perusal of the tax audit report found that the unavailed Modvat credit as on 31.03.2003 is Rs. 29,32,469/- and was not included in the valuation of closing stock even though the assessee was following exclusive method of accounting for valuation of stock. Whereas the AO had dealt on the provisions of Sec145A of the Act and considered the facts and submissions and made addition of Rs.40,89,753/- and similarly made adjustment to the closing stock.

15. The thirteenth disputed issue being the claim of bad and doubtful debts. the AO found that the assessee has claimed bad debts and advances written off of Rs. 16,68,997/- by way of trade advances and advance to contract manufacturer. Whereas the assessee has filed the explanations vide letter dated 24.11.2005. But the the AO has dealt on the facts and provisions u/sec 36(1)(vii) and U/sec36(2) of the Act and was not satisfied with the explanations and has disallowed the claim and dealt at Para 16.2 of the order as under:

“16.2 The allowability of bad debts is governed by the provisions of Sec.36(1)(vii) and Sec.36(2). As per these provisions, the debt or part thereof should have been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year or represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee. The debt represented by the amount of Rs. 16,68,997/- as receivable from the above mentioned parties has neither been taken into account in computing the income of the assessee for any previous year nor does it represent money lent in the ordinary course of business of banking or money lending as the assessee does not carry on any such business. Therefore, the claim of bad debts of Rs, 16,68,997/- is disallowed and added to the total income of the assessee. Penalty u/s271(1)(c) is initiated separately for furnishing inaccurate particulars of income.”

16. The fourteenth disputed issue, being computation of claim of deduction U/sec80HHC of the Act. The AO found that that assessee has claimed deduction u/sec 80HHC to the extent of Rs.14,61,000/-, whereas while calculation of the total turnover, the assessee has not included sales tax

and also the excise duty. The AO has dealt on the facts, provisions, elaborate submissions, CBDT circular and has restricted the claim dealt at Para 17.16 to 17.23 of the order as under:

"17.16 In view of the discussion above the amount to be reduced from the profits for the purpose of Sec. 80HHC are as follows.

Therefore, 90% of 212,311,111/- i.e. Rs. 191,080,000/- is reduced from the profits and gains of business to work out profits of the business for the purpose of deduction u/s.80HHC

17.17 During the year the assessee company had profits from sale of DEPB licenses amounting to Rs. 4,66,000/-. During the course of assessment the assessee was informed that the sale proceeds of DEPB is not export incentive envisaged u/s.28(iia), 28(iib) and 28(iic) and hence asked to show cause why the same should not be reduced from the export incentives eligible for deduction u/s.80HHC. In response to the same, the assessee vide its letter dtd. 23/12/2005 has submitted its explanation which is reproduced below:

"In the computation for deduction u/s.80HHC the company has reduced 90% of Rs.85,87,000/- ie. Rs.77,28,300/- being customs duty drawback and 90% of Rs. 4,66,000/- Le. Rs.4,19,000/- from the profits eligible for deduction u/s.80HHC. Rs. 85,87,000/- pertains to DEPB incentive accrued to the company for the year ended 31/3/2003 and transfer of DEPB license Rs. 4,66,000. The company contends that the incentive on account of DEPB is an export incentive covered u/s.28(a), (b) and (ic) and hence carried out adjustment accordingly."

Regarding premium received on transfer of DEPB license the contention of the company is supported by recent amendment

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passed by the parliament wherein a new sub-section 28(vid) has been introduced to include Export incentive on account of transfer of DEPB license. It is further confirmed that Export turnover related to the Business Unit claiming DEPB incentive is Rs. 4.22 crores

17.18 The reply of the assessee has been considered. In view of Circular no 2/2006, dated 17.01.2006 issued by CBDT clarifying that incentives under DEPB Scheme are eligible export incentives and in view of the export turnover of assessee being Rs.5.32 crores as per 10CCAB report that is below Rs. 10 crores the contention of the assessee is accepted.

17:23 After considering the above discussions and taking the total income as per this order, the deduction u/s 80HHC is computed at Rs. 16,33,834/- as per Annexure-I to this order instead of Rs. 14,61,000/- as claimed by the assessee in its return.”

17. The fifteenth disputed issue is with respect to claim from Income from House property. the AO found that in the profit and loss account filed along with the return of income, the assessee has claimed expenditure. The assessee has explained the recovery of cost of services vide letter dated 16.12.2005. Further the AO has dealt on the facts of the case and has estimated the valuation of the house property and determined the notional income of house property dealt at Para 18.10 of the order as under:

“18.10 As the assessee has failed to indicate the exact area in respect of the residential buildings as per the details filed by the assessee, 58% of the total area of 26,342 Sq.ft. is being used by M/s Ciba Speciality Chemicals Ltd. Therefore, total residential area let out is 15,278 Sq.ft. Applying the market rate Rs.15/- per Sq.ft. per month for residential property, the annual value is determined Rs.2,750,105/- for the residential

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property The total annual value of the let out property is therefore, held to be Rs.2,750,105/-. Further considering the inflation and other factors, the total annual value of the let out property is increased by 5% i.e. Rs.1,37,505/-. Therefore, the total annual value of the let out property is, therefore, held to be Rs.2,887,610/-.

Since the assessee has not indicated the depreciation claimed in the return of income in respect of the let out property or the expenditure by way of repairs and maintenance incurred on this property, deduction, u/s.24 is not allowed for separately as depreciation and repairs expenditure in respect of the said property have already been claimed in the computation of income. The income of house property is therefore determined at Rs.2,887,610/-. Penalty u/s 271(1)(c) is initiated separately for furnishing inaccurate particulars of income”

18. The sixteenth disputed issue with respect to computation of income from capital gains. The AO found that the assessee in the revised return of income has computed the long term capital gains on sale of plot at Goregaon and working of the long term capital gain was also considered. Whereas the AO has dealt on the facts, provisions of the Act, cost of acquisition and recomputed the capital gains observing at Para 19.7 &19.8 of the order read as under:

“The assessee has further submitted vide aforesaid letter dated 16.12.2005 a valuation report of M/s. Shah & Shah which contends in their opinion the rate of Land at Goregaon as at 01.04.1981 at Rs. 80/- per Sq. ft.

19.8 The valuation reports of M/s. Poonager Bilimoria company and M/s Shah & Shah has been perused carefully. These reports gives three instances of sale and Report of M/s Poonager Billimoria has worked the rate 83.65 per sq.ft. as on 1/4/81 in

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one instance. The rate worked out by Knight Frank filed alongwith the return of income has taken 12 instances of sale. The only mistake for arriving the rate of Rs.63 per sq.ft. was in making the wrong conversion of the rates. This has just been corrected by applying the correct conversion rate and the rate works out at Rs.5.85 per sq.ft. The assessee company cannot have any objection to such a correction, which is nothing but a mistake apparent from records. Hence the later justification forwarded by the assessee company for adopting the rate of Rs.80/- per sq.ft. as fair market value as on 1/4/81 is not acceptable as the rate of Rs.5.85 per sq.ft. as mentioned above is based on actual sale instances of 12 cases in respect of sale of land and by applying the correct conversion rate. Thus, the value of land as on 1/4/81 is adopted at Rs. 5.85 per sq.ft. i.e. Rs. 63/- per sq. mtr as in Assessment Year 2002-2003.

(i) Capital Gains on sale of plot no.2

The capital gains on sale of plot no.1 would be recomputed as under:

<i>Sale consideration received</i>	<i>19,65,45,000</i>
<i>Less: Expenses incurred on sale of land</i>	<i>28,59,250</i>
<i>Less: Cost of acquisition</i>	

<i>48945.90Sq.mtrX63X447/100=</i>	<i><u>1,37,83,655</u></i>
<i>Long term Capital Gain</i>	<i>17,99,02,095</i>

19. The seventeenth disputed issue being the claim of amortization charges of leasehold land, the AO found that the assessee has made claim of amortization expenses of leasehold land Rs.2,14,000/- in the revised return of income, whereas the AO found that the assessee has amortized the leasehold charges of land at Mahad Factory and cannot be treated as revenue expenditure.

20. The eighteenth disputed issue with respect to international transactions with Associates Enterprises (AE). The AO has referred to the Transfer Pricing Officer(TPO) for determination of ALP of the international transactions. The TPO having considered the facts and submissions has made a transfer pricing adjustment of Rs. 5,57,400/- and passed the order u/sec 92CA(3) of the Act dated 20.01.2006. The AO has dealt on the TP adjustments at Para 21.3 of the order as under:

“21.3 The reply submitted by the assessee company has been examined with due care. On consideration, I find that in the reply the assessee company has more or less reiterated the submissions made to the additional CIT-Transfer Pricing II. Since, these arguments / submissions have been duly taken note of by the concerned authority, I do not see any occasion for me to interfere with the findings of the Addl. CIT, Transfer Pricing-II, Mumbai. Accordingly, an addition of Rs. 5,57,400/- is-being made to the total income of the assessee company. Necessary penalty proceedings u/s.271(1)(c) read with explanation No.7 are also being initiated separately.”

21. Finally the AO has assessed the total income of Rs. 945,592,812/-and passed the order u/sec 143(3) of the Act dated 21.02.2006.

22. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and earlier year Hon'ble Tribunal order and has sustained the action of the Assessing officer on the disputes (i) the assessee is not eligible for depreciation on assets in the scheme of demerger (ii) the computer

software claim is in the nature of capital expenditure(iii) the advance written off predominately modvat credit claims receivable(iv) excluding certain claims while computing profits of the business in determining the deduction U/sec80HHC of the Act (iv)addition of income from house property at a notional value (v) the adoption of the fair market value for asset transferred(vi) transfer pricing adjustment on international transactions. Further the CIT(A) has granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee and the revenue have filed an appeal before the Honble Tribunal.

23. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the additions and disallowance of the claims on the issues overlooking the submissions in the appellate proceedings and ignoring the principles of accountancy and the judicial decisions in the assessee own case. Further Ld. AR submitted that the disputed issues in appeal are covered in favour of the assessee by the Hon'ble Tribunal order for the A.Y 2002-03. The Ld.AR substantiated the submissions with the factual paper book, chart and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld. DR relied on the order of the CIT(A) to some extent and submitted that the revenue has filed the cross appeal.

24. We heard the rival submissions and perused the material on record. On the first ground of appeal, where

the CIT(A) has erred in not allowing the depreciation on assets transferred to Ciba Speciality Chemicals(India) Ltd pursuant to the scheme of demerger. The Hon'ble Tribunal in ITA No.6832 & 6772/Mum/2010 & C.O.190/Mum/2011 for the A.Y 2002-03 dated 20-03-2024 has allowed the ground of appeal observing at Page 51to 60 Para No.22 to 33 of the order read as under:

"22. At the time of hearing, Ld.AR of the assessee brought to our notice the relevant facts relating to the issue arising in this ground of appeal are on allowability of depreciation under section 32 of the Income-tax Act, 1961 ('Act') on the assets relating to the specialty chemicals division after demerger of the said undertaking by the Appellant to Ciba Specialty Chemicals (India) Ltd. The Assessee was initially carrying on business of manufacture and/or sale of Pharmaceuticals, Specialty Chemical, Animal Health products, eye-care products and generics products. Based on section 2(11) and section 32 of the Act, it had common block of assets of all its business. The Assessee had transferred the Specialty Chemicals division to Ciba Specialty Chemicals (India) Ltd. by way of a demerger with the appointed dated as 1 April 1996 pursuant to the order of the Hon'ble Bombay High Court dated 25 July 1997.

23 It was submitted that as per section 32 of the Act, depreciation is allowable on the written down value of the block of assets. Section 43(6) defines the expression written down value as under: -

"written down value" means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed 63 to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:

Provided that in determining the written down value in respect of buildings, machinery or plant for the purposes of clause (ii) of sub-section (1) of section 32, "depreciation

actually allowed" shall not include depreciation allowed under sub-clauses (a), (b) and (c) of clause (vi) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (vi)

and Section 43(6)(c)(i) (B) provides for the circumstances in which the written down value can be reduced and manner thereof as under:

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased;

24 Since, the Assessee's case did not fall within any of the circumstances mentioned above, it continued to claim depreciation on the written down value of the block of assets including those relating to the demerged undertaking.

25 The Assessing Officer denied Assessee's depreciation claim for the first time in the previous year relevant to assessment year 1997-98, whereby he reduced the book written value of the demerged assets from the written down value of the block of assets. Upon further appeal, the Ld.CIT(A) has accepted the conclusion of the Assessing Officer however directed the reduction of the tax written down value of the block of assets as against book value. Thereafter, the same stand has been taken by the Assessing Officer / Ld.CIT(A) in all the later years including the year under consideration.

26 In this regard, it was submitted before us that disallowance of depreciation on assets transferred on account of demerger has been deleted by the Hon'ble Income-Tax Appellant Tribunal in the Assessee's own case for AY 1997-98 in ITA No 5283/Mum/2003 and ITA No 6224 and 6225/Mum/2004, Ld AR brought to our notice the relevant paras 8.2 and 8.3 of the Order.

27 Further, it was submitted that aforesaid order has been followed in the orders for AY 2000-01 (ITA 6226 & 5981/ MUM/2004) and AY 2001-02 (ITA 3379 & 3046/MUM/2009). The relevant Para no. 3.7 of AY 2001-02 was brought to our notice in which the coordinate benches have allowed the relevant grounds raised by the assessee and the relevant orders are placed on record.

28 Further, it was submitted that in respect of similar issue arising in Assessee's own case for the subsequent year i.e. **AY 2008-09 (ITA No. 7644/MUM/2012 dated 28 July 2022)**, the Tribunal has directed a one time allowance of depreciation carried forward by the assessee towards the non existing assets in the block of assets in the opening balance of the written down value of such assets as on 1 April 2007 as loss arising due to discarding of assets. The relevant extract of the said order is reproduced as under:

"22. We intended to follow the same, however, we considered reading the section 43(6) of the Act and observe that as per provisions contained in section 43(6)(c) with regard to block of assets, it says that in respect of any previous year relevant to the assessment year, the aggregate of the written down values of all assets falling within that block of assets at the beginning of the previous year and adjusted, --

(A) by the increase of the actual cost of assets falling within that block, acquired during the year.

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

(C)

From the above provision, it is clear that every year the block of assets has to be adjusted in case if there are any changes in the composition of the assets within the block. This exercise has to be done every assessment year. In the given case, it is fact on record that the impugned assets are not in existence with the organization. The ITAT has come to the conclusion in A.Y.2000-01 interpreting the provisions as applicable at that point of time. In our view the assets in the block has to be evaluated every assessment year and as per provision 43(6)(C)(B), it clearly indicates that the value has to be reduced of the moneys payable in respective of any assets falling within that block which is sold/discarded/demolished or destroyed. In the given case, the block does not consist the assets, which are transferred in the demerger in the A.Y. 1997-98. However, these

particular assets are not in existence in the beginning of the year and it can be considered as discarded in the provisions with "NIL" value. **This issue needs to end some point of time. In that case, the value of the assets has to be written off this year and to be claimed as loss in the statement of income (instead of depreciation). Therefore, we are inclined to direct the Assessing Officer to treat the opening balance of the assets to the extent of assets, which was already transferred to the demerged company as loss of assets or discarded.** Accordingly, this ground of appeal filed by the assessee is partly allowed.

29 It was submitted before us that in order to effectively follow the above direction given in the order for the AY 2008-09, it was prayed that the claim of depreciation for the period 2002-03 be allowed by following the earlier order of Tribunal in AY 2000-01 and 2001-02, the Assessee must be granted depreciation on written down value of the demerged assets so that the opening written down value as on 1 April 2007 can be allowed as a loss for the AY 2008-09 in compliance of the Tribunal's order. Further it was also submitted that the Assessee has not accepted the ruling of Tribunal for AY 2008-09 in respect of treatment of allowing the opening written down value as on 1 April 2007 as one-time loss and have filed further appeal before the Bombay High Court against the same which is pending for admission. However, it was prayed before us that the order for AY 1997-98 may be followed for the subsequent assessment years till AY 2007-08. Further it was submitted that even otherwise, in order to compute the opening written down value of the assets transferred for the AY 2008-09 and claim the same as one-time loss/ allowance, for the AY 2002-03 to AY 2007-08, the Tribunal may kindly direct the Assessing Officer to allow the depreciation claimed on assets vested in Ciba Specialty Chemicals (India) Ltd pursuant to demerger amounting to ₹.73,68,241.

30 On the other hand, Ld. DR relied on the order of the lower authorities.

31 Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1997-98. While deciding the issue, the Coordinate Bench in ITA.No. 5238/Mum/2003 dated 25.01.2017 held as under: -

"8. Ground No.8 deals with non eligibility of the assessee for depreciation on assets that stood vested in Ciba Speciality Chemicals (India) Ltd.(CSCIL).During the

assessment proceedings the AO came to the conclusion that the book value of the transferred assets shall be adopted from block of assets for the purpose of depreciation. He was of the opinion that since consideration had flowed to the assessee for the transfer of assets to CSCIL the assessee was not entitled to claim of depreciation.

8.1. Before the FAA, the assessee contended that Demerger was not a sale-transaction, that consequently no money was payable as defined u/s.41(4) of the Act, that no adjustment was to be made to WDV of block of assets while computing depreciation claims. It further argued that what was required to be reduced from the block was money value received from the sale of assets. It relied on the decision of Kasturi & Sons(237ITR24) of the Hon'ble Supreme Court wherein the Hon'ble Court had defined the words "moneys payable" and had held that the phrase included actual currency form and not money's worth. It was, therefore, contended that since no money in actual currency was received by the assessee on account of demerger, no adjustment was required to be done to the WDV with reference to assets in question. It further submitted that reliance placed by the AO with regard to the treatment given by another assessee in its own case was irrelevant and also that the observation made by the AO that the assessee had fraudulently claimed excess depreciation was wholly unjustified, that it had fully disclosed the stand taken by it in the return filed. After considering the submissions of the assessee and the order of the AO, he held ,that an assessee had to be the owner of a particular asset on which depreciation had been claimed, that the said assets had to be used for the purpose of its business, that the assessee was neither the owner of the assets transferred nor were same used for the business purposes during the year under consideration, that it had failed to satisfy the basic condition prescribed u/s.32 of the Act on the assets transferred to CSCIL, that the assessee was not justified in claiming that nothing should be reduced from its block of assets and that depreciation should be granted on the full block of assets as existing prior to the transfer of assets, that the reliance placed by the assessee on section 43(6)(c)(i)(B) of the Act was no help to it, that it could not be said that it had not

received any consideration or moneys payable as envisaged under section 43 (6), that the AO had rightfully held that the assets transferred by the assessee were not without any consideration, that the shareholders of the assessee company received shares of CSCIL as per the scheme of arrangement sanctioned by the Hon'ble, High Court, that CSCIL had paid consideration to the shareholders of assessee, that the transfer of shares was in respect of the assets transferred by the assessee. He further held that AO was not justified in adopting the book value of the assets transferred while reducing the assessee's claim for depreciation, that he should have reduced from the block of asset that the WDV of the transferred assets as per the income tax records and not as per the book value of the assets. He directed the AO to substitute the written down value of the transferred assets by the WDV of the book value of such assets while reducing the value of assets from the block before allowing the assessee's claim for depreciation.

8.2. *During the course of hearing before us, the AR argued that whole business was transferred under the scheme of demerger, that the assessee did not receive any money, that the share holders of the company had received the shares in pursuance of the merger, that the arrangement was about whole business and not in respect of any asset, that nothing was sold/ discarded, that for claiming depreciation the ownership of a particular asset is not mandatory, that after the block concept has come into existence, individual assets would lose their independent character, that the provisions of section 43(6) were not applicable to the facts of the case. He relied upon the cases of Kastur i& Sons (supra), Motors and General Stores(66ITR692)and Bharat Bijlee Ltd.(46taxmann.com 257). The DR supported the order of the FAA. The DR stated that entire chemical business was not transferred, that only one division was transferred , that the AO had made enquiry with other concern, that he found that the assets were taken on book value, that requirement of ownership of assets was a must, that it was not a case of slump sale, that the cases relied upon by the assessee were distinguishable on facts.*

8.3. We find that in the case of *Kastur i& Sons(supra)* the Hon'ble Apex Court has interpreted the phrase money's worth and applicability of section 41(2) of the Act as under:

“ 19. We are unable to accept the contention that the word 'money' should be interpreted as 'money's worth'. The reasons given by us earlier are sufficient and we need not add to them. The reason for introducing a fiction in S.41 (2) of the Act as explained in *Bipinchandra Maganlal& Co. Ltd.* (41 I.T.R. 290) quoted in *Artex Manufacturing Co.* (1997) 6 S.C.C. 437 that it is for the purpose of recoupment by the Revenue of the benefit allowed to the assessee in the previous years does not alter the situation.

20. In the result, we do not find any error in the view expressed by the High Court in the judgment under appeal. We are in agreement with the reasoning and conclusion of the High Court in this case.”

Respectfully, following the above, we reverse the order of the FAA. We find that what was transferred, in the transaction in question, was not money. In our opinion, facts of the above case are quite similar to the case under appeal. We have also taken note of fact that it is a case of demerger, not of sale or exchange. Last ground of appeal, raised by the assessee, is decided in its favour.”

32 The above decision of the coordinate bench was followed by the other benches for the subsequent assessment years upto AY 2001-02. However, while dealing with the same issue in AY 2008-09, the coordinate bench has modified the decision as under:

“22. We intended to follow the same, however, we considered reading the section 43(6) of the Act and observe that as per provisions contained in section 43(6)(c) with regard to block of assets, it says that in respect of any previous year relevant to the assessment year, the aggregate of the written down values of all assets falling within that block of assets at the beginning of the previous year and adjusted, --

(A) by the increase of the actual cost of assets falling within that block, acquired during the year.

(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or

demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

(C)

From the above provision, it is clear that every year the block of assets has to be adjusted in case if there are any changes in the composition of the assets within the block. This exercise has to be done every assessment year. In the given case, it is fact on record that the impugned assets are not in existence with the organization. The ITAT has come to the conclusion in A.Y.2000-01 interpreting the provisions as applicable at that point of time. In our view the assets in the block has to be evaluated every assessment year and as per provision 43(6)(C)(B), it clearly indicates that the value has to be reduced of the moneys payable in respective of any assets falling within that block which is sold/discarded/demolished or destroyed. In the given case, the block does not consist the assets, which are transferred in the demerger in the A.Y. 1997-98. However, these particular assets are not in existence in the beginning of the year and it can be considered as discarded in the provisions with "NIL" value. **This issue needs to end some point of time. In that case, the value of the assets has to be written off this year and to be claimed as loss in the statement of income (instead of depreciation). Therefore, we are inclined to direct the Assessing Officer to treat the opening balance of the assets to the extent of assets, which was already transferred to the demerged company as loss of assets or discarded.** Accordingly, this ground of appeal filed by the assessee is partly allowed."

33 In the above decision, the coordinate bench has directed the Assessing Officer to allow the outstanding value of block of assets as on 1.4.2007 as loss in the AY 2008-09. In order to follow the above recent decision on this issue, the depreciation disallowed by the Assessing Officer has to be allowed in favour of the assessee relying on the earlier decision of the coordinate bench prior to AY 2001-02 and issue involved in this appeal is relating to AY 2002-03, therefore, we direct the Assessing Officer to allow the depreciation similar to the decision in the case of the assessee in the AY 2001-02. Accordingly, the ground raised by the assessee is allowed."

25. We found that the issue in respect of value of block of assets has been already considered in the assessee's own case for the A.Y 2002-03. Accordingly, we follow the judicial precedence and direct the AO to allow depreciation and the ground of appeal is allowed in favour of the assessee.

26. The second ground of appeal raised by the assessee challenging the action of the CIT(A), on disallowance of expenditure on computer software licence fees. We found that the CIT(A) has dealt on the facts at Para 7 page 20 to 26 of the order and has confirmed the action of the AO. The Hon'ble Tribunal in ITA No.6832 & 6772/Mum/2010 & C.O.190/Mum/2011 for the A.Y 2002-03 has allowed the ground of appeal observing at Page 61 to 64 Para No.38 to 42 of the order read as under:

"38. At the time of hearing, Ld.AR brought to our notice relevant facts relating to the ground and submitted that the Hon'ble Tribunal in its own case for AY 1991-92 in ITA No.9679/Mum/1995, in AY 2001-02 as well as in AY 2008-09 in ITA No 7644/Mum/2012 held in favour of the assessee and he brought to our notice the relevant paras 28 to 33 of the order. In view of the above, Ld.AR of the assessee prayed to direct the Assessing Officer to allow the expenditure incurred on computer software / license fees as revenue expenditure for the captioned AY relying on Assessee's own orders for similar nature of software / license fees.

39 On the other hand, Ld. DR relied on the order of the lower authorities.

40 Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 1997-98. While deciding the issue, the Coordinate Bench in ITA.No. 5238/Mum/2003 dated 25.01.2017 held as under: -

"12. Fourth ground of appeal is with regard to expenditure incurred on computer software of Rs. 25.54

lakhs. The AR and the DR agreed that similar issue was decided in favour of the assessee by the Tribunal while deciding the appeals for the AY.s.1991-92,1995-96 and 1996-97 and that the Department had not challenged the orders of the Tribunal before the Hon'ble High Court. The AR further referred to the cases of Raychem RPG Ltd.(346ITR148) and Asahi India Safety Glass Limited(245CTR529)

12.1 We find that while deciding the appeal for the AY.1996-97 the Tribunal has dealt the issue as under:

“11. First ground of appeal is about expenditure incurred on computer software, amounting to Rs.19.45 lakhs. First ground of CO also deals with the identical issue. During the assessment proceedings, A.O held that the expenditure incurred by the assessee was of capital nature, whereas FAA was of the opinion expenditure was of revenue nature.

11.1. Before us, DR supported the order of the AO.AR contended that similar issue was decided in favour of the assessee by the Tribunal while deciding the appeal for the year 91-92 and 95-96.He referred to pages 236-37 of the paper book. He relied upon the case of Ashi Glass safety India Ltd.(245CTR)delivered by the Delhi High Court.

11.2. We find that while deciding the appeal for the year 1995-96(ITA/1749/mum/2003-25.09. 2013),Tribunal has dealt the issue as under:

“The AO was of the opinion that the benefits of the software are long term or of enduring nature and accordingly treated this expenditure as capital and allowed the depreciation and disallowed the remainder. Assessee strongly agitated this issue before CIT(A). The CIT(A) has considered this grievance of the assessee at para 8 and para 30 of its order. The CIT(A) was convinced that the application software of computers get outdated in no time. Hence, such expenditure cannot be treated as capital expenditure. The CIT(A) further observed that in immediately two preceding assessment years , his predecessors have treated similar expenditure as revenue expenditure, following the findings of his predecessors, the CIT(A) directed the AO to delete the entire disallowance. However, at the same time he directed the AO to withdraw the depreciation allowed. Aggrieved by this

revenue is before us. The ld.DR strongly supported the findings of the AO, Counsel for the assess strongly relied upon the decision of the Hon'ble Delhi High Court in the case of Asahi India safety glass limited 245 CTR 529. We have considered the rival submissions and perused the orders of the lower authorities. It is not in dispute that the expenditure has been incurred on application software The Hon'ble Delhi High Court in the case of Asahi Safety Glass ltd.(Supra) has held that application software arc of revenue in nature as the AO has not doubted that the expenses were on application software therefore respectfully following the decision of the Hon'ble Delhi High Court, findings of the CIT(A) are confirmed. Appeal of the revenue is dismissed.”

Following the same, ground no.1 filed by the AO, is decided against him. As the ground has been decided in favour of the assessee, so, first ground of CO become infructuous.”

Respectfully following the orders of the Tribunal for the earlier years and judgment of Raychem RPG Ltd.(supra) of the Jurisdictional High Court, we decide Ground No.4 against the AO.”

41. Further, in assessee's own case for the A.Y. 2001-02 the Coordinate Bench of the Tribunal in ITA.No. 3379/Mum/2009 dated 30.04.2021, held as under: -

“8.1 The assessee incurred an amount of Rs.27.31 Lacs towards purchase of various computer software packages as detailed in the assessment order. Majority of the expenses consisted of license fee or use of Microsoft packages (excel sheet, word document, power point presentation etc.) and Oracle software for developing accounting software at C & F locations. The assessee submitted that software expenses were for software packages which get frequently outdated and have to be replaced and therefore, the expenditure was revenue in nature. The assessee further stated that operating software is treated as capital expenditure whereas application software which gets outdated early, is revenue in nature. However, following the stand taken in AYs 1995-96 to 2000-01, the expenditure was said to be enduring in nature and thus capital expenditure. Accordingly, depreciation of 25% was allowed against the same. The action of Ld. AO resulted into an addition of Rs.20.48 Lacs.

Consequently, similar depreciation of earlier years for Rs.18.98 Lacs was allowed to the assessee disregarding the depreciation on assets pertaining to demerged division.

8.2 The Ld. CIT(A) noted that the payments were in the nature of license fees or for right to use certain packages which have normally longer periods of life, usage and validity and therefore, the benefits would be enduring in nature. Accordingly, the action of Ld. AO was upheld. Aggrieved, the assessee is in further appeal before us.

8.3 We find that this issue has been adjudicated in Tribunal's order for AY 2000-01, para nos.2 to 5. The bench, following earlier years, held that the expenditure was revenue in nature. Upon perusal, we find that this ground is covered in assessee's favor in several earlier years and the department has accepted the ruling of the Tribunal in those years and has not preferred further appeal, on this issue. This being the case, we direct Ld. AO to allow the expenditure fully and reverse the depreciation adjustment thus made in the assessment order. Ground No.1(a) of assessee's appeal stands allowed whereas Ground No.1(b) has been rendered infructuous."

42 Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in assessee's case for the preceding assessment years are respectfully followed, accordingly, ground raised No.2 raised by the assessee is allowed.

27. We respectfully follow the decision of the Hon'ble Tribunal in the earlier year A.Y. 2002-03 and direct the AO to allow the deduction of expenditure on computer software licence fees and this ground of appeal of the assessee is allowed.

28. The third ground of appeal envisaged by the Ld.AR that the CIT(A) has erred in sustaining the advance written off predominantly Modvat credit claims receivables. We find that the CIT(A) has dealt on the facts and submissions at Page 34 to 35 at Para 14 of the order but the fact

remains that the assessee could not submit the details of modvat credit claims before the Assessing officer in the assessment proceedings. Whereas the The Hon'ble Tribunal in ITA No.6832 & 6772/Mum/2010& C.O.190/Mum/2011 for the A.Y 2002-03 in respect trade advance written off has allowed the ground of appeal observing at Page 87 Para No.86 to 87 of the order read as under:

86. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02. While deciding the issue, the Coordinate Bench in ITA.No. 3379/Mum/2009 dated 30.04.2021 held as under: -

14.4 From factual matrix, it is quite discernible that the assessee made a claim of irrecoverable advances u/s 37(1) of the Act since the loss suffered by the assessee was in the course of carrying out its business. However, both the lower authorities adjudged the assessee's claim merely in terms of Sec. 36(1)(vii) r.w.s. 36(2) which was not the case. The perusal of the details filed before us would show that the amounts written-off by the assessee was mostly in the nature of advance payments for procurement of goods from third parties, which have become irrecoverable over a period and are under dispute. Few of the write-offs represent MODVAT claims outstanding against third party manufacturers for more than 5 years. Majority of these amounts are stated to be outstanding prior to 01/04/1996. This being the case, we are of the considered opinion that the claim is allowable in terms of Sec. 37(1) as business expenditure or alternatively as business loss u/s 28.

*For the same, we draw support from the decisions of Hon'ble Bombay High Court in **Lord Dairy Farm***

Ltd. V/s CIT (1955 27 ITR 700); IBM World Trade Corpn. V/s CIT (48 Taxman 11); the decision of Mumbai Tribunal in ACIT V/s Sodexo Food Solutions India Private Ltd. (ITA Nos.5781/Mum/2016 &ors. dated 03/10/2018). The ratio of all the stated decisions support the conclusion that advances lost during the course of business would be business losses. Therefore, we are inclined to delete this addition. Ground No. 8 stands allowed.”

87 Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in assessee’s case for the preceding assessment year is respectfully followed, accordingly, ground raised No.7 raised by the assessee is allowed.

29. Whereas the advance written off predominantly Modvat credit claims receivables was first time raised by the assessee in this assessment year in comparison to A.Y.2002-03, where the claim was only for advances written off and was allowed by the Honble Tribunal as discussed above. The Ld.AR relied on decision of the Honble High Court Of Bombay in the case of CIT vs Wackhardt International Ltd.(2009)314 ITR 11 (Bombay). We are of the opinion that the assessee should not suffer for non filing of material information and the Assessment order does not disclose these facts of Modvat issue. Accordingly, to meet the ends of justice, we restore the disputed issue to the file of the Assessing officer to examine, verify and allow the claim taking into consideration the assessee own case and judicial decisions. The assessee should be provided adequate opportunity of hearing and shall cooperate in

submitting the information and we allow this ground of appeal of the assessee for statistical purposes.

30. On the fourth ground of appeal, the Ld.AR submitted that The CIT(A) has erred in confirming the action of the AO in excluding 90 per cent of receipts from Interest on employee loans, Interest on overdue debtors, Sales tax set off claims, Insurance claims realized, Scrap sales income, cash discount, exchange gains, other miscellaneous write back of liabilities, discounts, etc, cost of services recovered, Profit under Section 41(3) on sale of R & D assets while working out the 'profits of the business'. We find The Hon'ble Tribunal in ITA No.6832 & 6772/Mum/2010 & C.O.190/Mum/2011 for the A.Y 2002-03 has allowed the ground of appeal observing at Page 92 to 103 Para No.96 to 98 of the order read as under:

“96 Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2000-01. While deciding the issue, the Coordinate Bench in ITA.No. 6226/Mum/2004 dated 07.07.2017 held as under: -

“35. The next issue in ITA No. 5981/Mum/2004 for AY 2000-01 of Revenue's appeal is against the order of CIT(A) in directing the AO to exclude sale tax and excise duty and scrap sale from the total turnover for the purpose of computing deduction under section 80HHC of the act. For this Revenue has raised following ground No.5: -

“5(a) On the facts and in the circumstances of the case and in law, the CITA) erred in directing the AO to exclude the sales tax of Rs.23,06,07,000/- and excise duty of Rs.30,58,34,000/- and scrap sale of

Rs.76,29,000/- from the total turnover for the purpose of computing the deduction u/s.80HHC.

5(b) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing that 90% of the net machinery hire receipts are to be excluded for computing the business for the purpose of deduction u/s. 80 HHC as against the action of the AO in reducing 90% of the gross machinery hire receipts.”

36. At the outset, the learned Counsel for the assessee stated that this issue of exclusion of excise duty and sales tax is squarely covered in favour of assessee and against Revenue by the jurisdictional High Court in the case of CIT vs. Sudarshan Chemicals Industries Ltd. (2000) 245 ITR 769 (Bom), wherein it is held as under: -

“6. We find merit in the contentions of the assessee. Under section 80HHC, the Legislature intends that the profits from exports should not be taxed. For this purpose, a formula has been introduced whereby if the business is of composite nature then the proportionate profit relatable to the export business is to be found out by multiplying the profits of a business by export turnover and dividing the product by total turnover. This formula finds place in section 80 HHC (3) as it stood at the relevant time. Under clause (b) to the Explanation of section 80HHC, export turnover is defined to mean sale proceeds received in India by the assessee in foreign exchange. Under the said definition, export turnover is defined to mean the sale proceeds of any goods which are exported out of India but which will not include freight or insurance. Clause (ba) defines total turnover to exclude freight or insurance. This clause (ba) explains the turnover in a negative manner so as to exclude freight or insurance. Therefore, a combined reading of the above two clauses show that they include anything which has nexus with the sale proceeds. Correspondingly, they show that they exclude everything which has no nexus with the

sale proceeds. Further, the meaning of export turnover in clause (b) of the Explanation to section 80HHC, therefore, clearly show that export turnover did not include excise duty and sales tax. Export turnover is the numerator in the above formula whereas total turnover is the denominator.

The above formula has been prescribed to arrive at profits from exports. In the circumstances, the above two items, namely, sales tax and excise duty cannot form part of total turnover. In fact, if the denominator was to include the above two items and if the numeration excluded the above two items then the formula would become unworkable. In the circumstances, we are of the view that in order to ascertain the export profits, the above two items cannot be introduced to inflate total turnover artificially in order to reduce the benefit which an assessee is entitled to. Ultimately, the object of section 80HHC is required to be kept in mind in order to encourage exports. The Legislature has applied the above formula in order to find out profits derived from the exports. In this connection, section 80 HHC (1) may also be noticed. Under section 80 HHC (1), it is, inter alia, provided that where an assessee is engaged in business of exports of any goods, there shall be allowed in computing the total of income of the assessee, a deduction of the profits derived by the assessee from the export of such goods. In other words, in computing the total income of such an assessee, profits derived by the assessee from the exports are deductible. The above expression, namely, 'profits derived from exports' also finds place in section 80HHC(3)(a). It says that where the export is of goods, the profits derived from such export shall be the amount which bears to the profits of the business the same proportion as the export turnover in respect of such goods bears to the total turnover of the business. In fact, the earlier section 80 HHC (3) consisted of two parts, namely, whether the assessee carried on business as 100% exporter

and, secondly, whether the assessee carried on composite business. In the latter case, it was provided that the profits derived from exports shall be the amount which bears to the profits of the business as computed under the head 'Profits and gains of business or profession', the same proportion as the export turnover to the total turnover. The emphasis is on the words 'profits derived from the exports'. Therefore, weightage must be given to such profits. Such profits cannot be reduced artificially by including statutory levies in the denominator, namely, total turnover. Therefore, the turnover should be restricted to such receipts which have element of profit in it. It is the only actual sale price which is relevant. Anything charged by the assessee by way of excise duty and sales tax cannot be taken into account as they do not have any element of profit. Even according to the accounting principles, such levies do not form part of profit and loss account. In fact, they are shown as liability in the balance sheet. In the circumstances, the above two items cannot be included in the total turnover. We prefer this interpretation as it advances the object sought to be achieved by the Legislature. Lastly, we are of the view that sales tax and excise duties are levied under separate enactments which have different objects. We are concerned with section 80HHC which is a separate code by itself.

Hence, the general definition of the word 'turnover' or the case law dealing with the said definition under Sales Tax Act which is a State levy, cannot be imported into section 80HHC of the Act. Hence, we do not find any merit in these appeals."

37. The learned Counsel for the assessee similarly in respect to scrap sale argued that the issue is covered by Hon'ble Supreme Court decision in the case of CIT vs Punjab Stainless Steel Industries (2014) 364 ITR 144 (SC), wherein it is held as under:

“22. So far as the scrap is concerned, the sale proceeds from the scrap may either be shown separately in the Profit and Loss Account or may be deducted from the amount spent by the manufacturing unit on the raw material, which is steel in the case of the respondent-assessee, as the respondent-assessee is using stainless steel as raw material, from which utensils are manufactured. The raw material, which is not capable of being used for manufacturing utensils will have to be either sold as scrap or might have to be re-cycled in the form of sheets of stainless steel, if the manufacturing unit is also having its re-rolling plant. If it is not having such a plant, the manufacturer would dispose of the scrap of steel to someone who would re-cycle the said scrap into steel so that the said steel can be re-used.

23. When such scrap is sold, in our opinion, the sale proceeds of the scrap cannot be included in the term 'turnover' for the reason that the respondent unit is engaged primarily in the manufacturing and selling of steel utensils and not scrap of steel. Therefore, the proceeds of such scrap would not be included in 'sales' in the Profit and Loss Account of the respondent-assessee.

24. The situation would be different in the case of the buyer, who purchases scrap from the respondent-assessee and sells it to someone else. The sale proceeds for such a buyer would be treated as "turnover" for a simple reason that the buyer of the scrap is a person who is primarily dealing in scrap. In the case on hand, as the respondent-assessee is not primarily dealing in scrap but is a manufacturer of stainless steel utensils, only sale proceeds from sale of utensils would be treated as his "turnover"”

35. According to the learned Counsel both the issues is covered in favour of assessee and against Revenue. We find that the issue is squarely covered in favour of assessee on both the grounds and against Revenue. Respectfully, following the

Hon'ble Bombay High Court decision in the case of Sudarshan Chemicals Industries Ltd. (Supra) and Hon'ble Supreme Court decision in the case of Punjab Stainless Steel Industries (Supra). We allow the claim of the assessee and confirm the order of CIT(A). This issue of Revenue's appeal is dismissed."

97. Further, in assessee's own case for the A.Y. 2001-02 the Coordinate Bench of the Tribunal in ITA.No. 3379/Mum/2009 dated 30.04.2021, held as under: -

"17.1 The assessee claimed deduction u/s 80HHC for Rs.177.76 Lacs. It transpired that for the purpose of computation, the assessee did not include sales tax and excise duty in total turnover. The Ld.AO opined that these components would be includible as per the decision of Mumbai Tribunal in **Ponds India Ltd. V.s DCIT (164 ITD 33)**. The department was in further appeal against the favorable decision of Hon'ble Bombay High Court in **Sudarshan Chemical Industries Ltd. (245 ITR 769)**. Therefore, these items were to be included in computing the figure of total turnover in denominator.

17.2 It was further seen that while working out profits of the business, the assessee failed to exclude 90% of the following items on the ground that the same were not in the nature of receipts mentioned in explanation (baa) of Sec.80HHC: -

No.	Item	Amount (Rs.)
1.	Interest on Employee Loans	14.09 Lacs
2.	Interest on overdue debtors	19.91 Lacs
3.	Interest on MSEB deposits	2.03 Lacs

No.	Item	Amount (Rs.)
4.	<i>Interest on MIDC deposits</i>	<i>0.18 Lacs</i>
5.	<i>Interest on Sales Tax Refund</i>	<i>2.69 Lacs</i>
6.	<i>Interest on Income Tax Refund (gross)</i>	<i>158.18 Lacs</i>
7.	<i>Sales Tax Set-off</i>	<i>553.86 Lacs</i>
8.	<i>Insurance Claims realized</i>	<i>20.61 Lacs</i>
9.	<i>Cash Discount</i>	<i>2.36 Lacs</i>
10.	<i>Scrap Sales Income</i>	<i>13.58 Lacs</i>
11.	<i>Misc. Claims</i>	<i>0.26 Lacs</i>
12.	<i>Excise duty Refund</i>	<i>54.95 Lacs</i>
13.	<i>PDC equipment Lease</i>	<i>53.34 Lacs</i>
14.	<i>Conversion Charges</i>	<i>4.83 Lacs</i>
15.	<i>Other Misc. write backs</i>	<i>136.38 Lacs</i>
16.	<i>Profit on Sale of R & D Assets</i>	<i>37.62 Lacs</i>
17.	<i>Cost of Services</i>	<i>92.24</i>

No.	Item	Amount (Rs.)
	recovered from CSCIL	Lacs
	Total	2527.38 Lacs

The assessee claimed that all these receipts were business receipts and not the receipts as mentioned in explanation (baa) of Sec.80HHC. Any income which necessarily flows from assessee's business is not required to be reduced. All the receipts were stated to be arising out of assessee's business activities and hence, not covered by explanation (baa) to Sec.80HHC. However, Ld. AO, interpreting the said explanation in the light of various juridical decisions, held that the items mentioned in explanation (baa) were only illustrative in nature and not exhaustive one. Reliance was also placed on CBDT Circular No. 621 dated 19/12/1991. Accordingly, all such receipts which do not have element of turnover would be excluded and all these items would fall under the expression "any other receipt of similar nature" as mentioned in explanation (baa) to Sec.80HHC. Accordingly 90% of above items aggregating to Rs.2527.38 Lacs was to be reduced while working out eligible profits for the purpose of Sec.80HHC. The said adjustment reduced the deduction u/s 80HHC from Rs.177.76 Lacs to Rs.167.14 Lacs. The working of the same has been made part of assessment order as „Annexure-1“. From the perusal of the same, it could be observed that the adjusted total turnover (net of export of trading goods) has been computed at Rs.46693.69 Lacs after adding back Sales Tax, excise duty and scrap sales. The profits of the business (after reducing profit from export of trading goods) and 90% of receipts (as tabulated above) has been computed at Rs.3038.16 Lacs. The adjusted export turnover of manufactured goods

has been computed at Rs.423.05 Lacs. Finally, the deduction available u/s 80HHC(3)(c)(i) on export of manufactured goods has been computed at Rs.27.52 Lacs which is further increased by profit on trading goods for Rs.178.35 Lacs. Finally, deduction against 90% of export incentive has been added to arrive at total deduction of Rs.167.14 Lacs.

17.3 The Ld. CIT(A), following decision of Hon'ble Apex Court in **Lakshmi Mills (290 ITR 667)** directed Ld. AO not to include sales tax and excise duty in total turnover for the purpose of computing deduction u/s 80HHC. Regarding scrap sales, if the proceeds were out of scrap sales of raw material then they were to be excluded from total turnover. However, scrap sale of packing material was to be included as per the decision of Hon'ble Bombay High Court in **Sudarshan Chemical Industries Ltd. (245 ITR 769)**.

17.4 Proceeding further, Ld. CIT(A), relying upon the decision of Hon'ble Apex Court in **Pandian Chemicals Ltd. V/s CIT (262 ITR 278)** which held that the term „derived from“ must be understood as something which has a direct or immediate nexus with the assessee's industrial undertaking, held that the tabulated receipts were not directly derived from export activities and therefore, the same should not form part of the eligible profits. Another plea that only net receipts should be reduced was also dismissed. Aggrieved, the assessee is in further appeal before us.

Our findings & adjudication

18.1 Upon perusal of statutory provisions, we find that sub-section (1) of Sec. 80HHC provides for certain deduction to a person who is engaged in the business of exports. Such deduction is of profits derived by the assessee from the export of goods or merchandise. Sub-section

(3) thereof provides the formula for determining such profits derived from exports. Clause (c) as

applicable to manufacturer exporter as well as trading exporter, provides that profits derived from such exports shall be the amount which bears to the profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee. "Adjusted profits of the business" would mean the profits of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-section (3). Finally, the profits of the business as defined in Explanation (baa) below sub-section (4C) would mean as follows: -

(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by—

- (1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and*
- (2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India ;*

In this appeal, the expressions „profits of the business“ fall for our adjudication. The Ld.AO has opined that tabulated items do not have element of turnover and therefore, these would stand excluded from profits of the business as „any other receipt of similar nature“ as mentioned in explanation (baa) to Sec.80HHC. The stand of the assessee is that these items, being arising out of operational business, would form part of profits of the business.

18.2*The Hon'ble Bombay High Court in **CIT V/s Pfizer Ltd. (2010 233 CTR 521)**, considering its*

earlier decision in **CIT V/s Dresser Rand India (P) Ltd. (2010 232 CTR (Bom.) 52—Ed.)** as well as the decision of Hon^{ble} Apex Court in **CIT V/s K.Ravindranathan Nair (2007 165 Taxman 282)**, held as under: -

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3. The assessee engages in the manufacture of Pharmaceuticals and animal health products. For the assessment year in question the assessee claimed a deduction under section 80HHC. The AO, while computing the deduction excluded 90 per cent of the amount of an insurance claim which was related to the stock-in-trade of the assessee. The CIT(A) confirmed the order of the AO. The Tribunal noted that for assessment year 1998-99 it had come to the conclusion that there was no justification to exclude 90 per cent of the insurance claim. Besides this, the Tribunal held that the insurance claim formed part of the income of the business of the assessee and was liable to be considered as part of the profits of the business in view of Explan. (baa) to section 80HHC. The Tribunal was of the view that the insurance claim was not in the nature of brokerage, commission, interest, rent or charges, and therefore, was not any other receipt of a similar nature within the meaning of Explan. (baa). The Tribunal, therefore, held that 90 per cent of the insurance claim could not be excluded.

4. Counsel appearing on behalf of the Revenue submits that an insurance claim constitutes an independent income which is not relatable to the export turnover. Hence, it has been urged that 90 per cent of the insurance claim is liable to be excluded from the profits of the business under Explan. (baa) to section 80 HHC. Reliance was sought to be placed in this regard on the judgment of the Supreme Court in *CIT v . K. Ravindranathan Nair [2007] 213 CTR (SC) 227 : [2007] 165 Taxman 282 (SC)*. On the other hand it was urged on behalf of the assessee that a contract of insurance

indemnifies the insured for a loss that has occurred, in the present case to the stock-in-trade. Learned counsel submitted that the claim for insurance on account of the stock-in-trade, hence, did not constitute an independent item of income similar to commission, interest, rent, brokerage or other charges: On this foundation it has been urged that the insurance claim would not be susceptible to a deduction of 90 per cent under Expln. (baa).

5. *At the outset it would be necessary for the Court to advert to the judgment of this Division Bench dt. 8th April, 2010 in the CIT v. Dresser Rand India (P) Ltd. (IT Appeal No. 2186 of 2009) [reported at [2010] 39 DTR (Bom) 169: [2010] 232 CTR (Bom.) 52—Ed.]. The question of law which was formulated in the appeal by the Revenue was as follows:*

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that 90 per cent of recovery of freight, insurance and packing receipts amounting to Rs. 49,14,076, sales-tax set off refund amounting to Rs. 38,33,148 and service income of Rs. 2,89,17,545 are not to be excluded from profits of business within the meaning of clause (baa) of Explanation to section 80HHC of the Act for the purpose of computation of deduction under section 80HHC of the IT Act, 1961?"

6. *This Court by its decision held that in terms of the judgment of the Supreme Court in Ravindranathan Nair (supra) the issue of processing charges would stand covered by the decision. This Court noted that the Supreme Court had held that the processing charges, though they form a part of the gross total income, constitute independent income like rent, commission and brokerage and that hence 90 per cent of the same had to be reduced from the gross total income to arrive at business profits. The concluding para of the judgment of this Court records the concession of counsel appearing on behalf of the assessee that*

the discussion in respect of the issue in regard to processing charges as an independent income unrelated to export, would similarly apply to the other issues raised in the question of law framed by the Revenue viz. in regard to recovery of freight, insurance and packing receipts, sales-tax refund and service income. The question of law was therefore answered in favour of the Revenue and against the assessee. From this it is apparent that insofar as the insurance claim was concerned, Dresser Rand (supra) proceeded on a concession by counsel appearing on behalf of the assessee. That apart the facts do not contain an elaboration of the nature of the insurance claim in that case. The judgment of the Division Bench in Dresser Rand (supra) would therefore not conclude the issue which has fallen for determination in this appeal.

7. *Sub-section (1) of section 80HHC contemplates a deduction to an assessee, being an Indian company or a person resident in India and engaged in the business of export out of India of any goods or merchandise to which the section applies. The deduction is to be allowed in computing the total income of the assessee to the extent of the profits derived by the assessee from the export of such goods or merchandise. Clause (a) of sub-section (3) of section 80HHC provides the formula for determining the profits derived from the export of goods or merchandise to which the section applies. Where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export "shall be the amount which bears to the profits of the business", the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. In other words, the proportion between the export turnover and the total turnover of the business is applied to the profits of the business in order to determine the extent to which the profits are to be regarded as being derived from export.*

8. *It would be necessary to advert to Explan. (baa) which defines the profits of business as follows :*

"(baa) 'profits of the business' means the profits of the business as computed under the head 'Profits and gains of business or profession' as reduced by—

(1) ninety per cent of any sum referred to in clauses (iia), (iib) and (iic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India."

9. *Under Explan. (baa), the profits of business are defined to mean the profits of business as computed under the head of profits and gains of business or profession. This has to be reduced under clause (1) by ninety per cent of any sum referred to in clauses (iia), (iib) and (iic) of section 28 which are in the nature of incentive incomes or "of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits". Receipts by way of brokerage, commission, interest, rent or charges have been held, by the judgment of the Supreme Court in Ravindranathan Nair case (supra) to constitute independent incomes. Being independent incomes unrelated to export, Parliament contemplated that ninety per cent of such receipts would have to be reduced from the profits of business as defined in Explan. (baa). The rationale is explained in the following observations of the Supreme Court :*

"That, profit incentives and items like rent, commission, brokerage, charges etc., though formed part of gross total income had to be excluded as they were 'independent incomes' which had no element, of export turnover. That, the said items distorted the figure of export profits."

Again, in para 21 the Supreme Court observed as follows :

"The said clause stated that 90 per cent of incentive profits or receipts by way of brokerage, commission, interest, rent, charges or any other receipt of like nature included in business profits, had to be deducted from business profits computed in terms of sections 28 to 44D of the IT Act. In other words, receipts constituting independent income having no nexus with exports were required to be reduced from business, profits under clause (baa). A bare reading of clause (baa)(1) indicates that receipts by way of brokerage, commission, interest, rent, charges, etc. formed part of gross total income being business profits. But for the purposes of working out the formula and in order to avoid distortion of arriving export profits clause (baa) stood inserted to say that although incentive profits and "independent incomes" constituted part of gross total income, they had to be excluded from gross total income because such receipts had no nexus with the export turnover."

10. In determining in each case as to whether a receipt which forms part of the profits of business is liable to undergo a reduction of ninety per cent as stipulated in clause (1) of Expln. (baa), it is necessary for the Court to consider whether the receipt is "of a similar nature included in such profits". The rationale for excluding ninety per cent of the receipts by way of brokerage, commission, interest, rent or charges is that these are independent incomes and their inclusion in the profits of business would result in a distortion. In determining whether any other receipt is liable to undergo a reduction of ninety per cent the basic prescription which must be borne in mind is whether the receipt is of a similar nature and is included in the profits of business. To be susceptible of a reduction the receipt must be of a nature similar to brokerage, commission, interest, rent or charges.

11. *In the present case, the insurance claim, it must be clarified, related to the stock-in-trade and it is only an insurance claim of that nature which forms the subject matter of the appeal. Now, it cannot be disputed that if the stock-in-trade of the assessee were to be sold, the income that were to be received from the sale of goods would constitute the profits of the business as computed under the head of profits and gains of business or profession. The income emanating from the sale would not be sustainable to a reduction of ninety per cent for the simple reason that it would not constitute a receipt of a nature similar to brokerage, commission, interest, rent or charges. A contract of insurance is a contract of indemnity. The insurance claim in essence indemnifies the assessee for the loss of the stock-in-trade. The indemnification that is made to the assessee must stand on the same footing as the income that would have been realized by the assessee on the sale of the stock-in-trade. In these circumstances, we are clearly of the view that the insurance claim on account of the stock-in-trade does not constitute an independent income or a receipt of a nature similar to brokerage, commission, interest, rent or charges. Hence, such a receipt would not be subject to a deduction of ninety per cent under clause (1) of Expln. (baa).*

11A. *Counsel appearing on behalf of the Revenue submitted that the insurance claim has no element of export turnover and that consequently it must sustain a reduction of ninety per cent under Expln. (baa). Now it is necessary to note that Expln. (baa) in terms does not refer to export turnover. Sub-section (1) of section 80HHC contemplates a deduction to the extent of profits derived by the assessee from the export of goods or merchandise to which the section applies. The basic issue therefore is to determine the extent of profits derived by the assessee from the export of such goods or merchandise. The formula in sub-section (3) of section 80HHC has been provided by the*

Parliament, for the purposes of sub-section (1) to compute the profits derived from the export of goods. Clause (a) of sub-section (3) specifies that where the export is of goods or merchandise manufactured or processed by the assessee the profits derived from the export shall be the amount which bears to the profits of business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. In other words, in determining the profits derived from the export of goods or merchandise the proportion of the export turnover to the total turnover of the business is applied to the profits of the business. The profits of the business in turn are defined in Explan. (baa) to section 80HHC. Hence, the element of export turnover is a facet which has been taken care of by the legislature in the application of the formula which is referred to in sub-section (3) of section 80HHC. In determining the profits of the business for the purposes of Explan. (baa), the incomes which are susceptible to a reduction of ninety per cent are those which are specifically prescribed by the legislature. These are inter alia the incomes referred to in clauses (iiia), (iiib) and (iiic) of section 28 and receipts by way of brokerage, commission, interest, rent, charges or receipts of a similar nature included in such profits. Therefore, before a receipt is liable to be excluded to the extent of ninety per cent, it must be a receipt of a nature similar to brokerage, commission, interest, rent or charges. For the reasons which we have already indicated, we have come to the conclusion that the claim on account of insurance for the stock-in-trade did not constitute a receipt of a similar nature within the meaning of Explan. (baa) and was therefore not liable to be reduced to the extent of ninety per cent. The first question will therefore not raise any substantial question of law.

In terms of above decision, the vital test to determine the exclusion or inclusion of an item

would be whether it was an independent income having no nexus with export turnover. The objective was to avoid distortion in the figure of export profits.

18.3 In the background of statutory provisions as well as the principle laid down by Hon^{ble} Courts as above, our adjudication to each of the item would be as follows: -

Interest on employee's loan-The interest arises from the fact that the assessee has granted loans to its employees as an incentive to retain their loyalty towards business enterprises. The employees are connected with the business of manufacture and sale of pharmaceuticals.

Interest on overdue debtors- This income has arisen to the assessee because the customers have delayed the payment of debts within the stipulated credit period allowed to them. The interest so charged could not be said to be an independent source of income but could be said to have arisen only out of normal business operations only.

Interest on deposit with MSEB & MIDC- The income arises on account of deposit placed by the assessee with MSEB for obtaining power connections to run the manufacturing facility. Similarly, deposits with MIDC have been placed for obtaining land on which manufacturing facility would be set up. Unless the deposits are placed the assessee would not be able to manufacture the goods. Thus, the deposits have been placed only out of business compulsion.

Insurance Claims- These represents claims allowed by insurance company in respect of loss of trading goods. A contract of insurance is in the nature of indemnity and indemnifies the assessee for loss of stock-intrade. Had the goods not been destroyed, the same would have been sold at profits and therefore, the insurance claims are compensatory in nature. The claims could not be said to be an independent source of income for the

assessee and could not be equated with „receipts of similar nature“ as mentioned in explanation (baa).

Scrap Sales Income- This income arises from the sale of packing material and other material realized during manufacturing process and directly related with manufacturing activities of the assessee.

Cash Discount- This represent discount received by the assessee on early payment to suppliers in respect of purchase of goods. These are directly related to normal trading operations and could not be said to be an independent source of income.

Equipment lease rentals- represent amount received by assessee on lease of packing machines & other equipment to licensed manufacturers who are carrying on the manufacturing activity for the assessee.

Conversion Charges- These charges are directly related to assessee“s manufacturing activity.

Write back of liabilities- These are the write-back of expenditure which were early shown payable but no longer required to be paid. The writebacks are not in the nature of actual receipts but reversal of early provisions.

Cost of Services Recovered- The cost of services refers to recovery of costs in the nature of Municipal Taxes, Security and Electricity Charges of a shares premises between the assessee and CSCIL. These expenses have first been paid by the assessee and later on recovered from CSCIL. These are mere recoveries of expenses from associate concern.

Profit u/s 41(3) on sale of R & D Assets – The research & development activity is directly connected with manufacturing activities and could not be said to be independent source of income for the assessee.

Misc. Claims- These are petty claims arising out of business activity.

We are of the considered opinion that all these items would form part of Profits of business and accordingly, not required to be reduced while computing deduction u/s 80HHC.

18.4 The remaining items have been dealt with as under: -

Interest on Sales Tax Refund & Income Tax Refund (Gross)- It has been argued that these receipts would not be an independent source of income. Reliance has been placed on the decision of SMC bench of Jaipur Tribunal in **Wolkem India Ltd. V/s CIT (65 TTJ (JP) 68)**. However, we are of the considered opinion that interest on Income Tax Refund arises to the assessee only because it has paid more taxes than what was required to be paid. The same accrues to the assessee as compensation for excessive payment to the revenue and has nothing to do with business operations. Similar is the situation with interest on sales tax refund. Both these items, in our opinion, would be covered by explanation (baa) and accordingly, required to be reduced to the extent of 90% while computing profits of the business. However, as per the decision of Hon^{ble} Apex Court in **ACG Associates Capsules Pvt. Ltd. V/s CIT (334 ITR 89)**, netting-off would be available to the assessee. The Ld. AO is directed to re-work the same.

Sales Tax Set-off & Excise Duty refund- These two items would stand excluded in view of the fact that as per the impugned order, sales tax as well as excise duty would not form part of total turnover in the denominator. When denominator has been reduced by these two components, similar connected items would stand excluded from the numerator also.

18.5 The Ld. AO is directed to re-compute the deduction available to the assessee u/s 80HHC in the light of our adjudication on various issues effecting computations u/s 80HHC. Ground No.9 of assessee's appeal stand partly allowed."

98 Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in assessee's own case for the preceding assessment years are respectfully followed, accordingly, ground raised No.8 raised by the assessee is partly allowed as indicated above.

31. We find in the A.Y.2003-04, the exchange gains was first time appearing in the financial statements and the A.O has excluded 90% of receipts of exchange gains in compare to earlier years receipts dealt in the A.Y.2002-03, while working out profit of the business for the purpose of claim of deduction u/sec80HHC of the act. The Ld.AR relied on the decision of the Honble High Court of Bombay in the case of CIT Vs Gem Plus Jewellery India Ltd(2011)(330 ITR 175(Bombay)). We considering the submissions and judicial decision relied by the Ld.AR, the exchange gains are realised in export transactions and are directly related to assessee activities. We respectfully follow the decision of the Hon'ble Tribunal in the earlier year A.Y.2002-03 and judicial decision and partly allow this ground of appeal of the assessee.

32. The Ld.AR submitted that the CIT(A) has erred in confirming the action of the AO in computing the income from house property at a notional value that, the property is owned by the assessee and used by the demerged company and rent is not collected/reflected in the assessee's financial statements and the assessing officer has invoked the provisions of Section 22 of the Act and calculated the notional rent. We find the Hon'ble Tribunal in ITA No.6832 & 6772/Mum/2010 & C.O.190/Mum/2011 for the A.Y

2002-03 dated 20-03-2024 has allowed the ground of appeal observing at Page 105 to 109 Para No.103 to 107 of the order read as under:

*“103. At the time of hearing, Ld.AR of the assessee brought to our notice the decision of the Tribunal in assessee’s own case for the **AY 2001-02 (ITA 3379 & 3046/MUM/2009) (Page no. 854 to 859 of Legal Paper-book -2)** following the rule of consistency for the earlier AYs he submitted that it was not a case where the property was actually let out by the assessee to a third-party but was a case wherein to facilitate demerger and to ensure smooth running of existing business, an arrangement was made between the assessee and its demerged entity so that the business premises would be shared with an understanding that the proportionate cost would be recovered from the demerged entity till the time an alternative facility was arranged by the demerged entity. This being the case, the ITAT held that it could very well be said that the premises was being used by the assessee only in furtherance of its business interest, the objective of which was to facilitate demerger. Therefore, the ITAT concluded that on the peculiar facts and circumstances, the action of Assessing Officer in bringing to tax notional rental value of the common premises was not justified and hence, the addition ought to be deleted.*

104. In view of the above submissions, Ld.AR of the assessee prayed for deletion of the notional house property income levied by the Assessing Officer as the facts remain the same as in AY 2001-02.

105. On the other hand, Ld. DR relied on the order of the lower authorities.

106. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee for the A.Y. 2001-02. While deciding the issue, the Coordinate Bench in ITA.No. 3379/Mum/2009 dated 30.04.2021 held as under: -

“16.1 Upon perusal of Profit & Loss account, it transpired that assessee reduced expenditure by Rs.92.24 Lacs by way of recovery of cost of services rendered. The same was stated to be recovery of expenses from third parties towards share of administrative and other expenses like water, electricity, security charges, municipal taxes, garden maintenance etc. as these expenses were stated to have been incurred on premises jointly occupied by the company with third parties. These were recovered at actual cost and claimed to be not in the nature of income.

16.2 On the basis of said submission Ld. AO formed an opinion that part of assessee's immovable property was let out to third parties and accordingly show-caused assessee as to why rent receivable should not be taxed as rental income. The assessee explained that the assessee and Ciba Specialty Chemicals (India) Limited (CSCIL) jointly own the property. However, in the rejoinder, it was submitted that the assessee as well as CSCIL bears the costs related to the shared premises in the ratio of occupation of the premises. The assessee incurs the cost and recovers the proportionate expenditure from CSCIL. As a part of mutual agreement, the respective companies had occupied the property jointly and shared the respective costs. The assessee by recovering the cost of shared premises does not stand to lose since occupation cost is recovered. However, Ld. AO opined that property owned by assessee was used by CSCIL for which no rent was reflected in the accounts of the assessee. The assessee owned the property and let out the same to CSCIL without charging any rent. No agreement was produced by assessee for use of premises by CSCIL. Therefore, the exact commercial consideration or the benefit other than rent, being derived by the assessee from the letting out of the premises, could not be ascertained. In the above background, Ld.AO

proceeded to work out notional rent in terms of Section 22 of the Act.

The assessee, without prejudice, contended that Municipal Rateable Value (MRV) of the premises was Rs.88,088/- for approx. 50,000 square feet of commercial and residential premises being used by CSCIL. However, Ld. AO opined that since the assessee had let out the property but did not charge the rent then in terms of decision of Hon^{ble} Bombay High Court in **M.V. Sonavala Vs. CIT (177 ITR 246) Bom.**), it was possible for AO to take into consideration the amount for which the property might be let from year to year or AO could also consider the annual ratable value. Considering the market rate for commercial premises at Goregaon, the rates would be in the region of Rs.30/- per square feet per month and that of residential premises being Rs.15/- per square feet. Applying these rates to commercial area of 34,570 square feet and residential area of 15,278 square feet, Ld. AO arrived at ALV of Rs.124.45 Lacs for commercial space and Rs.27.50 Lacs for residential space. The total ALV was thus determined at Rs.151.95 Lacs. The statutory deduction u/s 24 would not be allowed separately since the assessee did not indicate depreciation claimed in respect of let out property and also did not indicate quantum of repairs & maintenance claimed for this property. Further, both these expenditure were already claimed in the computation of income.

16.3 The Ld. CIT(A), while confirming the stand of Ld. AO, directed him to grant statutory deduction u/s 24(a). Aggrieved, the assessee is in further appeal before us.

16.4 The Ld. Counsel explained that assessee prior to its merger with Sandoz (India) Limited in 1997 was known as M/s Hindustan CibaGeigy Limited and it was carrying on the business at various locations in Mumbai & Goa including residential and office premises at Goregoan (Mumbai). The

assessee had various business units among them being Chemical business unit. In the year 1997, the chemical business unit was demerged to form Ciba Specialty Chemicals (India) Limited (CSCIL). Earlier all the businesses of assessee were being carried out jointly at various premises utilizing common facilities and infrastructure. As per the arrangement of demerger, the immoveable property situated at Goregaon came to the assessee. However, since the speciality chemical business was also carried on from the same premises, CSCIL was allowed to occupy the residential and office premises earlier used by them for a certain period till CSCIL was able to identify and acquire alternate facility. As per the arrangement, CSCIL was to pay to the assessee share of expenses incurred for the maintenance of the property. The total recovery of such costs for the year stood at Rs.92.24 Lacs which actually goes to reduce the expenditure debited to Profit & Loss Account. It was further explained that from AYs 1997-98 to 200001, the same arrangement continued and Ld. AO did not dispute the fact that the property stood occupied by the assessee for the purposes of its business and hence, was not liable to be assessed as "Income from House Property". For this, the attention was drawn to the assessment orders for AYs 1997-98 to 2000-01. Therefore, there being no change in facts, it was not open for Ld. AO to take a different view in the matter. In terms of Sec. 23(1), the income could not be assessed as „Income from House Property“ if the property was occupied by the assessee for its business. The buildings have been used by both the entities for their respective businesses. Upon demerger, CSCIL could not have been asked to vacate the said premises immediately. They were allowed to occupy the premises for the purpose of their business for a reasonable time till they were able to find an alternate facility. Therefore, the arrangement should be viewed as occupation of the property by assessee for its own business. In the alternative,

Ld. Sr. Counsel submitted that the annual value could not exceed municipal retable value in terms of various judicial decisions and not in the manner as estimated by Ld. AO. Another alternative argument was that the amount of Rs.92.24 Lacs recovered by the assessee from CSCIL ought to have been reduced from notional rental value as computed by the Ld. AO.

16.5 We have carefully considered the peculiar facts of the case. It is noted that prior to its demerger, the assessee was carrying on various businesses from various premises including premises at Goregaon (Mumbai). In 1997, the chemical business got demerged from the assessee and new entity i.e. CSCIL came to existence to carry out the chemical business. Since the business was continuing, as a part of demerger arrangement, CSCIL was allowed to use the said premises on the basis that costs would be shared. M/s CSCIL has paid proportionate cost of Rs.92.24 Lacs to the assessee during the year which has actually gone to reduce the assessee's expenditure under the head municipal taxes, water charges and security charges. Therefore, it was not a case where the property was actually let out by the assessee to a third-party but was a case wherein to facilitate demerger and to ensure smooth running of existing business, an arrangement was made between the assessee and its demerged entity that the business premises would be shared with an understanding that the proportionate cost would be recovered from the demerged entity till the time an alternative facility was arranged by the demerged entity. This being the case, it could very well be said that the premises was being used by the assessee only in furtherance of its business interest, the objective of which was to facilitate demerger. It is quite discernible that this similar arrangement is continuing since AYs 1997-98 onwards and such an arrangement has never been disturbed by Ld. AO while framing assessment for AYs 1997-98 to

2000-01 which is evident from extract of assessment orders of those years as placed on record. Therefore, rule of consistency would operate in assessee's favor and the facts being identical, Ld. AO was not justified in disturbing such an arrangement. Therefore, on the peculiar facts and circumstances, the action of Ld.AO in bringing to tax notional rental value of the common premises was not justified. We order so. Ground No. 10(a) stands allowed which makes Ground Nos. 10(b) & 10(c) infructuous."

107. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in assessee's own case for the preceding assessment year is respectfully followed, accordingly, ground raised No.9 raised by the assessee is allowed".

33. We respectfully follow the decision of the Hon'ble ITAT in the assessee's own case for earlier year assessment year and direct the AO to delete the addition and we allow this ground of appeal in favour of the assessee.

34. On the ground of appeal no.6, the Ld. AR submitted that the CIT(A) has erred in holding that the capital gains arising from transfer of the plot adopting the fair market value lower than the value adopted by the assessee. We find these facts are dealt by the Hon'ble Tribunal in ITA No.6832 & 6772/Mum/2010 & C.O.190/Mum/2011 for the A.Y 2002-03 dated 20-03-2024 and has allowed the ground of appeal observing at Page 114 to 116 Para No.119 to 125 of the order read as under:

"119. At the time of hearing, Ld.AR of the assessee submitted that even in subsequent assessment year (for AY 2003-04 to AY

2006-07) for sale of land from the big parcel of land admeasuring to 2,96,713.20 sqmtr , the assessee continued placing reliance on the valuation of report of M/s Knight Frank which determined cost of acquisition as on 01.04.81 at ₹.63 sq feet which was later revised with appropriate reasoning by M/s Knight Frank at ₹.80-90 per sq feet as supplemented by the fresh value report from Poonager Billimoria & Co to justify the fair market value as on 1 April 1981 at Rs 63 per sq feet.

120 It is submitted that similar to the captioned assessment year, even in subsequent assessment years from AY 2003-04 to AY 2006-07, the Assessing Officer rejected both valuations furnished by the assessee. However, to bring finality to the issue, in AY 2004-05, the Assessing Officer made a reference to the District Valuation officer ('DVO') for obtaining the fair market value of the plot as on 1.04.1981.

121 Basis the valuation undertaken by the DVO vide report dated 13 July 2007 (copy of the same is placed on record), the fair market value of open area land is determined at **INR 765.21 Sq meter i.e. INR 71.12 sq feet (765.21/10.76 conversion factor)**.

122 Ld AR submitted that to put an end to prolonged litigation and considering the DVO valuation report determining the rate at ₹.71.12 per sq feet (765.21/10.76 conversion factor) for same big land parcel, it was prayed to direct the Assessing Officer without prejudice to the various reports of Knight Frank (dated 8 March 2002, 28 February 2005 and letter filed thereto dated 11 March 2005) and Poonager Bilimoria & Co dated 17 March 2005, as sale is arising out of the same land parcel which is valued by DVO, direct the Assessing Officer to accept the valuation at INR 71.12 per sq feet as determined by the DVO in his report dated 10 May 2007.

123 On the other hand, Ld. DR relied on the order of the lower authorities and submitted that the submissions of the assessee are not consistent.

124 Considered the submissions and material placed on record, we observe from the record that the assessee has initially relied on the valuation report from Knight Frank, which was found to be defective and to substantiate the assessee once again filed the revised reports from Knight Frank and Poonager Billimoria & Co. The same was not acceptable to the assessing officer and the reasons recorded by the AO may be proper but in the subsequent AY 2004-05, the AO had referred and collected the DVO valuation, as per which the value of land is determined at Rs. 71.12 per sq. feet. Since, the valuation was conducted by the DVO, the same can be applied for the purpose under consideration considering the fact the valuation was conducted for the same land under the same vicinity of assessee own land. That means the valuation report submitted by the DVO to evaluate the same pieces of land which the assessee had sold on piecemeal basis. The valuation was done by the neutral agency, there should not be any issue for adopting the same in the assessment year under consideration. Therefore, we direct the AO to adopt the Fair Market value as on 01.04.1981 as determined by the DVO for the year under consideration and determine the capital gains accordingly. In the result the grounds raised by the assessee are accordingly allowed.”

35. We considered the facts, submissions and follow the judicial precedence as in earlier year A.Y.2002-03 and direct the AO to adopt the fair market value as determined by the D.V.O as on 1-04-1981. Accordingly, we allow the ground of appeal of the assessee.

36. The ground of appeal No. 7 is in respect of international transactions exports to A.E, but due to the smallness of amount/ addition, the addition is not contested by the assessee and treated as not pressed. And this ground of appeal is dismissed.

37. The ground of appeal No. 8 is in respect of computing of ALP of international transactions in not considering the

+/-5% variation from the ALP. but due to the smallness of amount/ addition, the addition is not contested by the assessee and treated as not pressed. And this ground of appeal is dismissed.

38. On the last ground of appeal, the Ld.AR submitted that the interest u/sec 234C of the Act has to be calculated based on the revised return of income filed. The Ld. AR has filed a computation of income and the acknowledgement of revised return of income. We considering the facts and information direct the Assessing officer to recompute the interest u/sec 234C of the Act and allow this ground of appeal.

39. The appeal filed by the assessee is partly allowed for statistical purposes.

ITANO.2188/MUM/2012(A.Y.2003-04)REVENUE APPEAL

C.O.NO.76/MUM/2013(A.Y.2003-04) ASSESSEE APPEAL

40. The Revenue has raised the ground of appeal.no.1:

"1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the AO to adopt the WDV of the block of assets as per the IT. records for the A.Y.1997-98 for computing the depreciation during the relevant A.Y.2002-03 consequent to the decision of the orders of the CIT(A) for A.Y. 1997-98 to 2001-02 on the issue overlooking the fact that the issue has not attained finality and the departments appeal on the same issue is pending before the ITAT for the earlier assessment years."

41. This ground is similar to Ground No.1 of grounds of appeal raised by the assessee for the A.Y.2003-04 and we have adjudicated the issue in favour of the assessee by following the orders of the ITAT in the assessee's own case for the earlier years. Accordingly, the ground of appeal raised by the revenue is dismissed.

42. The revenue has raised the ground of appeal.no-2: -

2.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of assessee's claim of Rs.64,61,771/- incurred towards cost of advertisement films holding that the expenditure of the assessee is covered by the decision of the Bombay High Court in the case of M/s Geoffery Manners & Co. Ltd., dated 09.02.2009 overlooking the fact that the facts of the assessee's case are distinguishable and the revenue has not accepted the decision of the Bombay High Court in the aforesaid case.

43. Further, in the cross objections filed by the assessee, the assessee has raised following ground: -

"1.The respondents submit that the A.O has directed to allow depreciation applicable to Plant & Machinery if the action of AO of holding expenditure of Rs.64,61,771/-incurred on purchase cost of films and other production expenses for producing advertisement films and commercials is upheld as capital in nature."

44. The Ld.DR submitted that the CIT(A) has erred in deleting the disallowance of purchase cost of films and other production expenses for producing advertisement films overlooking the findings of the Assessing officer. Per Contra Ld.AR submitted that the disputed issue is covered in favour of the assessee, in its own case for the earlier

years and the CIT(A) has relied on the assessee own case for the A.Y.1994-95 to A.Y.2002-03 and dealt at Para 4.1 to 4.4 of the order and deleted the addition. The Ld.AR emphasized that the Hon'ble Tribunal in ITA No.3379 & 3046/Mum/2009 & C.O.218/Mum/2009 for the A.Y 2001-02 dated 30-04-2021 has dismissed the ground of appeal of the revenue with the findings at Para No.4.1 to 4.3 of the order. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent information and relied on the findings of the Assessing Officer. Accordingly, we do not find infirmity in the order of CIT(A) on this disputed issue and uphold the same and dismiss the ground of appeal of the revenue.

45. We respectfully follow the decision of the Hon'ble ITAT in the assessee's own case for earlier year and follow the judicial prudence. Accordingly, the ground of appeal no 2 of the revenue is dismissed and the C.O ground.no.1 of the assessee is infructuous.

46. The revenue has raised following ground of appeal:

"3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 60,29,327/- to the valuation of the closing stock towards estimated prorata freight on the stock lying at the depots, on the ground that the assessee has been allowed relief by the appellate authorities in the earlier A.Ys. without appreciating the facts and merits of the addition and the fact that the revenue has not accepted the decision of the appellate authorities on this issue for earlier years."

47. Further, in the cross objection filed by the assessee, the assessee has raised following ground:

“2.The respondent submits that the AO be directed to increase the value of the opening stock of the subsequent year ie, assessment year 2004–05 by a similar amount in case the AO's action of enhancing the value of closing stock on account of estimated pro- rate freight on stocks lying at depots is upheld.”

48. At the time of hearing, Ld. DR submitted tha the issue under consideration is similar to the issues raised in the earlier assessment years. Per Contra the Ld.AR submitted that the disputed issue in appeal has been considered by the Honble tribunal in the assessee's own case and decided the issue in favour of the assessee.

49. We have considered the submissions and material available on record, we find the identical issue is decided in favour of the assessee for the A.Y. 1997-98 by the Honble Tribunal in ITA.No.5238/Mum/2003 dated 25.01.2017 observed at Page10 Para 13 &14 as under: -

“13. Fifth Ground deals with deletion of an addition of Rs.71.70 lakhs made by the AO on account of estimated freight components in the closing stock. It was brought to our notice that identical issue was decided against the department by the Tribunal while adjudicating the appeals for the earlier AY.s(1992-93 to 1996-97).We are reproducing page 12-13 of the order of the Tribunal for 1996-97,dealing with the issue and it reads as under:

“14. Ground no.4 is about deletion of Rs.33.58 lakhs on account of freight component of closing stock.Ground no.3 of CO also deals with same issue.Beforeus,DR supported the order of the AO.AR stated that similar issue arising in the earlier years had been decided in favour of the assessee by the Tribunal.

14.1. We find that in the year 1993-94 identical issue was raised by the Department before the Tribunal. Deciding the

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appeal, Tribunal (ITA.No.213/Mum/1997,AY.1993-94, dated 19/08/ 2005) held as under:

“First issue is regarding the deletion of addition of Rs. 21,85,160/made to the valuation of closing stock as on 31.03.1993 attributable to estimate pro-rata freight on stock dispatched to various depots on the reasoning that the assessee company is regularly following the method of accounting and also the addition to the closing stock consequently increase the opening stock of next year which ultimately no benefit to revenue. As far as this issue is concerned, the Mumbai Bench ‘B’ of the Tribunal, vide Paras3,4 & 8, in ITA.No. 7894/Mum/1995, the issue was been decided in favour of the assessee by holding as under:

“We have considered the facts and the rival contentions. It is not disputed before us that the assessee has been consistently following the method of valuing the closing stock by excluding the expenses incurred pm freight and cartage outwards and packing of the goods for the purpose of enduring the transport from central distribution depot on various depots across the country. Now, the departmental authorities are entitled to discord the consistent method following by the assessee, but only if the true profits of the business cannot be deducted therefrom. In the case of British Paints Ltd. (188 ITR 44), on which heavy reliance was placed by the departmental authorities as well as the ld.DR before us, the factory costs, which are undisputedly to be considered as part of the cost of the product, were not included in the closing stock valuation. It is for this reason that the Supreme Court held that the method adopted by the assessee in that case was not an acceptable or sound method from which the true profits could be deducted. It is in this context, that they held that a method of valuation of closing stock has been adopted by, it is erroneous or unsound or unacceptable or is against accounting or commercial practice, the same can be discarded. In case, this principle is not attracted because the incurring expenses on freight or cartage outward or packing expenses purposes of transporting the goods have not added any stock. They are post manufacturing expenses are to be as selling expenses. Normally, the

manufacturing are debited to the manufacturing account whereas the expenses are debited to the profit & loss account. According to the Advanced Accounts by R.N.Carter (1939 Rev.Edn.,Page-32),carriage inwards increases the cost of the goods purchased and is hence debited to trading account whereas carriage outwards is a selling expenses and is debited to profit & loss account. In the present case, the goods manufactured by the assessee had to be distributed to the depots across the country from the centralized distribution depot at Bombay and the transporting cost is purely for the purpose of selling the goods. The packaging expenses are not the expenses are not expenses incurred in the primary wrapping of the products, but they have been incurred in packing them in boxes so as to facilitate easy transport to the various depots. The primary packing which makes the product marketable is no doubt part of the cost, but the further packaging carried out for the purpose of transporting the products is part of the selling. William Pickles in his 1960 edition of Accountancy has recognized this by observing at Page 88 of the his treatise that the direct and indirect expenses actually incurred, "having regard to the stage of manufacture condition or location of the goods may be added to the cost (underlining ours). It may possibly be argued that the carriage outwards and packaging expenses incurred for facilitation of the transport of the goods can be excluded from cost only if the goods have already been sold and that in the present case, the goods have not been sold, and therefore, such costs cannot be excluded. The answer to this argument is that these costs have been incurred after the manufacture of the products and though the goods have not been sold, the expenses will have to be considered as part of the selling expense. Certainly, while fixing ;the price, the assessee will take into account the selling expenses and recover the same in the pricing of the products, but that is not a satisfactory reason to hold that such expenses or costs should be taken into account even while valuing the closing stock. In our opinion, there is no impediment to the deduction of true profits and gains of the business because of the method of valuation followed by the assessee consistently and which has also been accepted by the departmental authorities. A stray departure just for one year tends to upset the calculations. When the method has not been found fault with for a long period of years. It acquires fundamental character and forms a

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sound basis for the assessment of the profits especially when the method followed is not patently false or unacceptable, and any accepted fundamental feature of an assessment cannot be lightly tinkered with as held by the Supreme Court in the case of Radhasaomi Satsang Sabha (1993 ITR 321).”

The same, was followed in ITA.No.7458/Mum/1997. The learned Departmental Representative did not dispute the same. In view of discussion, we are not inclined to interfere with the finding of The same is upheld.”

In the year 1994-95 and 1995-96 identical issue was decided against the AO. Respectfully following the order of the Tribunal for earlier years, ground no.4, filed by the AO stands dismissed. Ground no.3 of CO is treated as infructuous.”

Respectfully following the above Ground No.5 is dismissed”

50. Similarly in the assessee’s own case for the A.Y. 2001-02, the Honble Tribunal in ITA.No. 3379/Mum/2009 dated 30.04.2021 held as under: -

*“5.1 The assessee did not include proportionate amount of freight component while valuing closing stock of finished goods. As against this, the assessee claimed full expenditure of freight as deduction. The AO opined that as per the decision of Hon’ble Apex Court in **CIT Vs. British Paints (1991; 188 ITR 44)**, it is the real cost of stock which was to be taken into account to determine real income of the assessee. All costs incurred towards stock-in-trade were to be considered while valuing the closing stock and exclusion of any cost would result in distorted picture of taxable income. The freight component on closing stock came to be Rs.44.09 Lacs. However, similar adjustment made in AY 2000-01 resulted into increase in valuation of closing stock of that year by Rs.147.46 Lacs and therefore, opening stock for this year was to be increased by that amount.*

Consequently, the differential of the two i.e. Rs.103.36 Lacs was reduced from assessee's income.

5.2 The Ld. CIT(A), relying upon Tribunal's decision for AY 1993-94 and appellate orders for AYs 1994-95 to 2000-01, deleted the adjustment made by Ld. AO.

5.3 We find that this issue is squarely covered in assessee's favor by the various decisions of Tribunal right from AYs 1992-93 to AY 2000-01.

The Ld. CIT(A) has also followed the appellate orders of earlier years.

Therefore, this adjudication in the impugned order, on this issue, would not require any interference on our part. Ground No.3 of revenue's appeal stand dismissed which render ground no.2 of assessee's cross objections infructuous."

51. We respectfully follow the decisions of the Hon'ble ITAT in assessee's own case for earlier years and follow the judicial prudence. Accordingly, the ground of appeal no 3 of the revenue is dismissed and the C.O ground.no.2 of the assessee is infructuous.

52. The Revenue has raised the ground of appeal.no.4: -

"4."On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the AO to allow the incremental liability for VRS amounting to Rs.3,28,52,834/- and also to allow that part of actual payment out of Rs.4,05,06,586/- which related to the provisions created during the F.Y.1992-93 but disallowed in A.Y.1993-94, by merely

following the appellate orders of the earlier years without appreciating the facts and circumstances of the case."

53. Further, in the cross objection filed by the assessee, the assessee has raised following ground, no.3.

"3.. The respondent submits that the AO be directed to allow deduction for the payment of Rs. 3,94,74,834/- (wrongly mentioned as Rs. 4,05,06,586/- in Annexure-A of departments appeal papers) if the action of the AO in not allowing deduction of Rs. 3,28,52,834/- accrued on account of pension under the Voluntary Retirement Scheme to the erstwhile workers of the respondents Bhandup unit is upheld."

54. At the time of hearing, Ld. DR submitted that the issue under consideration is similar to the issues raised in the earlier assessment years. Per Contra the Ld.AR submitted that the disputed issue in appeal has been considered by the Honble tribunal in the assessee's own case and decided the issue in favour of the assessee.

55. We have considered the submissions and material available on record, we find the identical issue is decided in favour of the assessee for the A.Y.1997-98 by the Honble Tribunal in ITA.No.5238/Mum/2003 dated 25.01.2017 observed at Page 1 Para 2 as under: -

"2.First ground of appeal, raised by the assessee, deals with upholding the disallowance on account of incremental liability (Rs.3,21,03,537/-)for payment of pension created on an actuarial basis.

It was brought to our notice that while deciding the appeal for the AY.1995-96(ITA/ 498/ Mum/2003,dt.25.09.2013)Tribunal had dealt with the same issue. We would like to reproduce the relevant portion of the said order and it reads as under:-

ITA. No. 2308&2188/Mum/2012 &C.O.76/Mum/2013(A.Y.: 2003-04)

Novartis India Limited, Mumbai

“36. Ground no. 6 relates to the disallowance of Rs.3,90,12,431/- on account of incremental liability for payment of pension under the Voluntary retirement scheme (VRS) created on an actuarial basis in computing the assessee’s total income. The AO has discussed this issue on para 12 on page 32 of his order, wherein the AO followed order of 1993-94 and 1994-95 for disallowing the incremental liability of Rs.3.90 crores. When the matter was agitated before the CIT(A), the CIT(A) has considered this issue of the assessee at para 13 of page 33 of his order wherein the CIT(A) has followed the decision of his predecessors for A.Y. 1993-94 and 1994-95 and confirmed the disallowance made by the AO. Before us, the counsel for the assessee drew our attention to page 134 of the paper book which is internal page 15 of order of the Tribunal in assessee’s own case for A.Y. 1994-95 in ITA No. 2874/Mum/1999 and ITA No.2720/Mum/1999. It is a say of the counsel that the Tribunal in that order has restored this issue back to the file of AO. Following the findings of the Tribunal for A.Y. 1993-94, the Ld. DR also agreed to the submission of the counsel, we have carefully gone through the orders of the lower authorities and the order of the Tribunal. We find that the Tribunal in its order at para 40 has followed the findings given by the Tribunal in A.Y. 1993-94 and has restored this issue back to the file of AO to examine and verify the actuary valuation certificate and the agreement with the company and the employee and if he finds that the liability has been calculated on a scientific basis, may allow the claim of the assessee. Facts and circumstances being identical, respectfully following the afore stated direction of the Tribunal in assessee’s own case for A.Y. 1994-95, this issue is restored back to the file of AO. The AO is directed to decide in the light of A.Y. 1993-94 and 1994-95. Ground no. 6 is allowed for statistical purposes.”

Respectfully, following the above order of the Tribunal, Ground of appeal No.1 is decided in favour of the assessee.”

56. Similarly in the assessee’s own case for the A.Y. 2001-02, the Honble Tribunal in ITA.No. 3379/Mum/2009 dated 30.04.2021 observed at Page15 Para 61 to 6.3 as under:

“6.1 The assessee claimed an amount of Rs.253.73 Lacs towards incremental VRS (Voluntary Retirement Scheme) for Bhandup unit which was on the basis of actuarial valuation. As held in earlier years, the liability was a contingent liability. Similar disallowance made in AY 1993-94 was confirmed by Ld. CIT(A). Similar disallowance was in assessment order for AYs 1994-95 to 2000-01. However, actual payment of VRS payment made during relevant year was to be allowed. In this year, assessee made payment of Rs.417.76 Lacs which was to be allowed whereas the claim of Rs.253.72 Lacs as per actuarial valuation was to be disallowed. The said adjustment resulted into net relief of Rs.164.04 Lacs to the assessee.

6.2 The Ld. CIT(A) noted that in appellate order for AYs 1998-99 to 2000-01, Ld.AO was directed to allow the deduction of incremental liability of VRS and also allow that part of actual payment made during the year relating to the provision created during financial year 1992-93 but disallowed in AY 1993-94. Similar directions were given by Ld. CIT(A) for this year, against which revenue is in further appeal before us.

6.3 We find that this issue has been adjudicated in Tribunal's order for AY 2000-01, para nos.31 to 34. In concluding para-34, the bench restored the issue to the file of Ld. AO for re-adjudication as per directions given in Tribunal order for AY 1995-96. The assessee sought rectification of the directions vide MA No.50/Mum/2018. The Learned Judicial Member concurred with the submissions that Tribunal order for AY 1995-96 stood amended by MA order dated 27/02/2015 wherein deduction was allowed to the assessee. Accordingly, applying the amended order, the deduction would be allowable to the assessee. However, the Learned Accountant Member, vide separate order, opined that the issue was to be recalled and placed before regular bench for fresh adjudication. Keeping in view the contrary views, a reference was made u/s 255(4) to Hon'ble Vice President (third member) who concurred with the view of Hon'ble Judicial Member. Finally, following majority view, confirmatory order was passed by the bench on 27/09/2019 allowing assessee's miscellaneous application. Thus, this issue has already attained finality in assessee's favor in AY 2000-01 wherein the bench has upheld the stand of Ld. CIT(A). Respectfully following the same, we confirm the

impugned order, on this issue. Ground No.4 of revenue's appeal stand dismissed which renders ground no.3 of assessee's cross-objection infructuous. The assessee's cross objection stands dismissed as infructuous."

57. We respectfully follow the decision of the Hon'ble ITAT in the assessee's own case for earlier years and follow the judicial prudence. Accordingly, the ground of appeal no 4 of revenue is dismissed and the C.O ground.no.3 of the assessee is infructuous.

58. The Revenue has raised the ground of appeal.no.5:

5. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in directing the Assessing Officer to delete the disallowance of Rs.37,97,052/-, being 25% of total foreign expenses, without appreciating the fact that the disallowance was made for assessee's failure to prove that the time and energy spent by the Directors and executives on the foreign tour was devoted wholly and exclusively for assessee's business and not in connection with the business of the parent foreign company or the foreign shareholders."

59. The Ld.DR submitted that the CIT(A) has erred in deleting the disallowance of foreign travelling expenses, overlooking the findings of the Assessing officer. Per Contra Ld.AR submitted that the disputed issue is covered in favour in the assessee own case for the earlier years and the CIT(A) has relied on the assessee own case for the A.Y.2001-02 & A.Y. 2002-03 dealt at 8.1 to 8.4 of the order and deleted the addition. The Ld.AR emphasized that the Hon'ble Tribunal in ITA No.3379 & 3046/Mum/2009 & C.O.218/Mum/2009 for the A.Y 2001-02 dated 30-04-2021 has allowed the ground of appeal of the assessee with the findings at Para No.9.1 to 9.3 of the

order. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent information and relied on the findings of the Assessing Officer. Accordingly, we do not find infirmity in the order of CIT(A) on this disputed issue and uphold the same and dismiss the ground of appeal of the revenue.

60. In the result, (i) the appeal filed by the assessee is partly allowed for statistical purpose (ii) the appeal filed by the revenue is dismissed and (iii) the Cross Objections filed by the assessee is infructuous.

Order pronounced in the open court on 27.05.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 27/05/2024

KRK

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai