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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER & SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 3043/Mum/2010
(A.Y. 2002-03)

Bajaj Holdings & Investment Ltd. Erstwile Bajaj Auto Ltd.) Bajaj Bhavan, 226, Nariman Point, Mumbai – 400 021	Vs.	Additional Commissioner of Income-tax, Range 3(1) Aayakar Bhavan, M.K. Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACB3370K		
Appellant	..	Respondent

ITA No. 2899/Mum/2010
(A.Y. 2002-03)

DCIT-3(4) Room No. 481-2, 4th Floor, Aaykar Bhavan, Mumbai – 400020	Vs.	M/s Bajaj Holding and Investment Limited (Erstwhile Bajaj Auto Ltd) 226, Bajaj Bhavan, 2nd Floor, Jamnalal Bajaj Marg, Nariman Point Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACB3370K		
Appellant	..	Respondent

Appellant by :	Percy Pardiwala & Vasanti Patel
Respondent by :	Ankush Kapoor

Date of Hearing	01.04.2024
Date of Pronouncement	24.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

Both these cross appeals filed by the assessee and the revenue are pertained to assessment year 2002-03 and these appeals are adjudicated together by this common order.

ITA No. 3043/Mum/2010 (Assessee's Appeal)

2. The fact in brief is that return of income declaring total income of Rs.345,79,90,970/- was filed on 30.10.2002. The case of the assessee was subject to scrutiny assessment and order u/s 143(3) of the Act was finalised on 24.02.2005. The assessee is a public limited company engaged in the business of manufacture and sale of two wheelers and three wheelers under the brand name of Bajaj. Further facts of the case are discussed while adjudicating the issue arised in this appeal as follows:

Ground No. 1: Taxability of surplus on redemption of treasury bills as Interest Income under the head "Income from Other Source" instead of "Capital Gains" Rs.10,17,750:

3. In the return of income the assessee has offered the amount of Rs.10,17,750/- being surplus of repayment of treasury bills under the head capital gains. However, the AO has taxed the surplus as interest income under the head income from other sources.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellate proceedings before us, the ld. counsel at the outset submitted that identical issue on similar facts in the earlier years has been decided in favour of the assessee by the ITAT in the following cases:

(a) ITAT-AY 2001-02 (ITA No. 4236/Mum/2005)
(b) ITAT-AY 1999-00 (ITA No. 2125/Mum/2005)
(c) ITAT-AY 2000-01 (ITA No. 3055/Mum/2005)
(d) ITATAY 1998-99 (ITA No. 9564/Mum/2004)
(e) ITATAY 1997-98 (ITA No. 5030/Mum/2001)

On the other hand, the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. With the assistance of the ld. Representative we have perused the decision of the ITAT vide ITA No. 4236/Mum/2005 wherein identical issue on similar fact has been adjudicated in favour of the assessee. The relevant extract of the decision is reproduced as under:

> *"47. With regard to Ground No. 1 which is in respect of taxability of surplus on redemption of treasury bills as interest under the head "Income from other sources" instead of "Capital Gains", Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.*
>
> *48. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.*
>
> *49. 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. 5030/Mum/2001 dated 13.04.2023 held as under: -*
>
>> *"65. With regard to Ground No. (l) of grounds of appeal, which is in respect of redemption of treasury bills, Ld. AR of the assessee brought to our notice the letter dated 10.03.2000. He submitted that Surplus on redemption was shown as short- term capital gains in the return of income out of abundant caution. Redemption results in total extinguishment of securities other than by way of transfer and is not be covered within the definition of transfer as per section 2(47). In support of the above contentions, he relied on the decision of the Hon'ble Supreme Court in the case of Vania Silk Mills Pvt. Ltd. v. CIT (191 ITR 647) (SC).*
>>
>> *66. On the other hand, Ld. DR relied on the order of the Assessing Officer.*
>>
>> *67. Considered the rival submissions and material placed on record, we observe from the record that the issue involved in this ground of appeal is similar to the grounds of appeal raised in Ground No. (K). However, the surplus received on redemption of treasury bills was shown as short term capital gain in the return of income out of abundant caution by the assessee itself and the same was sustained by the Ld.CIT(A). However, before us in the grounds of appeal revenue has raised this issue that the above said surplus has to be treated as "interest income" substantiating the views of the AO and not under the head "capital gain". After considering submissions of both the parties, we are not inclined to accept the submissions raised by the revenue that the surplus earned by the*

> > *assessee cannot be treated as interest income and it is fact on record that assessee has held the treasury bills for certain period of time as investment and the surplus has to be taxed under the head "capital gain" and the same was sustained by the Ld.CIT(A). Therefore, the contention of the Assessing Officer is accordingly rejected and we observe that Ld.CIT(A) has rejected claim made by the assessee that the redemption of such treasury bills is not a transfer.*
> >
> > *68. Similar issue was considered by the Coordinate Bench in favour of the revenue for the A.Y. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -*
> >
> > > *"21. In the books of account for the period relevant to the assessment year under appeal, the assessee has shown Rs.1,48,47,037/- as surplus on redemption of treasury bills. The Assessing Officer held the aforesaid amount as short term capital gains. The claim of the assessee is, that redemption of treasury bills result in total extinguishment of the treasury bills other than by way of transfer, hence, does not cover by the definition of 'transfer u/s 2(47) of the Act so as subjected to short term capital gains. The CIT(A) following the ratio laid down in the case of Vania Silk Mills Pvt. Ltd. vs. CIT, 191 ITR 647(SC) held that in redemption, the asset in the form of treasury bills stood extinguished without transfer. Therefore, the surplus arising out of redemption of treasury bills cannot be subject to capital gains. The treasury bills being capital asset, the surplus arising out of its redemption can neither be taxed as revenue receipt. The learned Counsel for the assessee fairly admitted LA that this issue is decided against the assessee by the Tribunal in assessee's own case for assessment year 1995-96. We find that the Co-ordinate Bench in assessee's own case for assessment year 1995-96 in appeal by the Revenue after placing reliance on the decision of Hon'ble Supreme Court of India in the case of CIT vs. Grace Collis, 248 ITR 323 has decided the issue in favour of the Revenue. Thus, in view of uncontroverted findings of the Co-ordinate Bench in assessee's own case in the immediately preceding assessment year, ground No.8 in appeal by the Revenue is allowed."*
> >
> > *69. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, grounds raised by the revenue is allowed. Therefore, we are not inclined to sustain the findings of the Ld.CIT(A), accordingly, ground raised by the revenue is dismissed."*
>
> *50. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, accordingly, ground raised by the assessee is allowed."*

Following the decision of ITAT as referred supra this ground of appeal of the assessee is allowed.

Ground No. 2: Disallowance of Fines and Penalties Rs.1,80,900/-:

7. During the previous year relevant to the assessment year under consideration the assessee has incurred expenditure in respect of fines and penalties aggregating to Rs.1,80,900/-. The assessee claimed that such expenditure was incidental to carrying of the business, therefore should be allowed as deduction.

8. The assessee filed the appeal before the CIT(A). However, the ld. CIT(A) held that fines and penalties were not compensatory in nature, therefore, the same was not allowed as deduction.

9. Heard both the sides and perused the material on record. The ld. representative have brought to our noticed that the similar issue on identical facts has been adjudicated by the ITAT in the earlier years against the assessee. We find that the identical issue on similar facts has been adjudicated in the various decisions of the ITAT in the case of the assessee itself against the assessee as follows:

> *"(a) ITAT AY 1999-00 (ITA No. 2125/Mum/05)*
> *(b) ITAT AY 2000-01 (ITA No. 3055/Mum/05)*
> *(c) ITATAY 1998-99 (ITA No. 9564/Mum/2004)*
> *(d) ITATAY 1997-98 (ITA No. 5030/Mum/2001)*
> *(e) ITAT-AY 1994-95 (ITA No.3175/Mum/1999)*
> *(f) ITAT-AY 1993-94 (ITA No.2739/Mum/1999)*

Further we have perused the decision of the ITAT Mumbai in the case of the assessee vide ITA No. 2125/Mum/2005 dated 28.11.2023. The relevant extract of the decision is reproduced as under:

> *"14. During the year the assessee incurred expenditure in respect of fines and penalties aggregating to Rs.55,500/-. The AO has disallowed the claim of this expenditure and the Ld. CIT(A) has sustained the disallowance.*
>
> *15. After hearing both the sides and perusal of material on record, we find that similar claim of expenses was decided against the assessee by the co-ordinate bench of ITAT in the case of the assessee itself vide ITA No. 9564/Mum/2004 (A.Y. 1998-99), ITA No. 5030/Mum/2005 (A.Y. 1997-98). Following the decision of the co-ordinate benches this ground of appeal of the assessee stand dismissed."*

Following the decision of ITAT as referred supra this ground of appeal of the assessee stand dismissed.

Ground No.3: Deduction for amount written off against leasehold Land Rs.42,10,566/-:

10. During the relevant previous year the assessee has debited proportionate premium written off in respect of leasehold land amounting to Rs.42,10,566/- in the profit and loss account. The assessee claimed that leasehold premium was advance rent, therefore, proportionate premium should be allowed as a deduction. The AO has not allowed the claim of the assessee.

11. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the ground of appeal of the assessee.

12. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that identical issue on similar fact has been adjudicated by the ITAT in the earlier years in favour of the assessee. He mentioned the following decision of the ITAT:

> *"(a) ITAT-AY 1999-00 (ITA No. 1933/Mum/2005)*
> *(b) ITAT-AY 1998-99 (ITA No. 8952/Mum/2004)*
> *(a) ITAT-AY 1997-98 (ITA No. 5030/Mum/2001)*
> *(d) ITAT-AY 1996-97 (ITA No. 1781/Mum/2000)*
> *(e) ITAT – AY 1995-96 (ITA No. 3493/Mum/1999)*

The ld. D.R supported the order of lower authorities.

13. Heard both the sides and perused the material on record. With the assistance of ld. representative we have perused the decision of ITAT Mumbai in the case of the assessee itself vide ITA No. 3055/Mum/2005 dated 28.11.2023. The relevant extract of the decision is reproduced as under:

> *"40. The assessee claim annual rent payable as per the lease agreement as deduction which was not allowed by the AO. However, the Ld. CIT(A) allowed the claim of the assessee. We find that similar issue on identical fact has been decided by the co-ordinate bench of ITAT in the case of assessee itself vide ITA No. 3493/Mum/1999 (A.Y. 1995-96), 1781/Mum/2000 (1996- 97), 5030/Mum/2001 (A.Y. 1997-98), 8952/Mum/2004 (1998- 99).*

> *41. Following the decision, we do not find any merit in the appeal of the revenue. Therefore, this ground of appeal of the revenue stand dismissed.*

Following the decision of the ITAT as referred supra we allow this ground of appeal of the assessee.

Ground No.4(a): Disallowance of Interest attributable to earning of exempt Income of Rs.7,35,812/-:

14. During the course of assessment the assessing officer noticed that assessee received exempt income in the form of dividend of Rs.59,23,06,473/- and income from mutual funds amounting to Rs.784,92,422/- claimed as exempt u/s 10(33) of the Act. The assessee explained that investment yielding tax free income was made out of the non-interest bearing funds of the assessee. However, assessing officer has not agreed with the submission of the assessee and stated that assesse has utilised funds from a common pool of funds therefore, AO has worked out an amount of Rs. 1,02,87,455/- as disallowance u/s 14A of the Act.

15. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the ground of appeal of the assessee.

16. During the course of appellate proceedings before us the ld. Counsel submitted that the Rule 8D cannot be applied in the case of the assessee since assessee has not borrowed any amount for making investment from which it has earned the exempt income. The assessee also submitted that it was having own funds of Rs.286,55.77 crores against investment of Rs.1966 crores. He further submitted that assessee has borrowed funds of Rs.626.09 crores out of which Rs.588.96 crores represented sale tax deferral liability under the package scheme of incentives which was not interest bearing. The ld. Counsel also referred the decision of ITAT in the case of assessee vide

ITA No.2125 & 1399/Mum/2005 & ITA No.3055 & 2655/Mum/2005 dated 28.11.2023 wherein similar issue has been adjudicated in favour of the assessee.

17. We have perused the decision of the ITAT as referred supra. The relevant extract of the decision is reproduced as under:

> *"53. This is undisputed fact that the assessee company was having sufficient own interest free fund which were more than investment made on which exempt income was earned. However, during the course of assessment the AO has disallowed the interest expenses amounting to Rs.1,07,79,990/- and treated as attributable to earning exempt income.*
>
> *54. The Ld. CIT(A) has deleted the addition. After hearing both the sides and perusal of the material on record we find that the same issue on identical fact has been decided in favour of the assessee itself by the coordinate of ITAT for the A.Y. 1998-99 (ITA No. 8952/Mum/2004). The relevant extract of the decision of ITAT is reproduced as under:*
>
>> *"24.0 Ground no.11 raised by the revenue relates to disallowance of interest expenses relatable to exempt income. The AO noticed that the assessee has borrowed funds and paid interest thereon. The assessing officer took the view that common funds have been used to make investments and accordingly disallowed proportionate interest expenses. The ld CIT(A) noticed that own funds available with the assessee was more than the value of investments. Accordingly, he held no disallowance out of interest expenses is called for.*
>>
>> *24.1 We heard the parties and perused the record. We notice that the view taken by Ld CIT(A) gets support from the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505)(Bom). The jurisdictional Bombay High Court has held in the above said case that the interest disallowance u/r 8D(2)(ii) of I T Rules is not called for when the own funds available with the assessee is in excess of the value of investments. In our view, the ratio of the said decision shall apply to the facts of the present issue. Accordingly, we confirm the order passed by Ld CIT(A) on this issue."*
>
> *55. Since, the assessee was having more interest free funds then the amount of investment made on which the exempt income was earned, therefore, following the decision of coordinate bench on the identical issue on similar fact as discussed supra we don't find any merit in this ground of appeal the revenue, therefore, this ground of appeal of the revenue is dismissed."*

The assessee was having more interest free funds than amount of investment made on which the exempt income was earned, therefore, following the decision of ITAT as discussed supra, this ground of appeal of the assessee is allowed.

Ground No. 4(b): Disallowance of Administrative expenditure attributable to earning of exempt income of Rs.27,388,373/-:

18. During the relevant assessment year the assessing officer has computed administrative expenditure towards earning exempt income in accordance with Rule 8D of the I.T. Rule of the amount of Rs.2,73,88,373/-:

19. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

20. During the course of appellate proceeding before us the ld. Counsel submitted that the case of the assessee is pertained to assessment year 2002-03 and the Rule 8D of the Income Tax Rule has come into existence only w.e.f assessment year 2007-08, therefore, the disallowance cannot be made in accordance with rule 8D of the I.T. Rule. The ld. Counsel has referred the decision of the Hon'ble Bombay High Court in the case of CIT Vs. M/s Godrej Agronet Ltd. Income Tax Appeal No. 934 of 2011 dated 08.01.2013 wherein it is held that rule 8D of the Income Tax Rule 1962 is applicable prospectively w.e.f assessment year 2008-09 and such disallowance was restricted to 2% of the exempt income.

On the other hand, the ld. D.R supported the order of lower authorities.

21. Heard both the sides and perused the material on record. We consider that Rule 8D is applicable prospectively w.e.f assessment year 2008-09 as held by the Hon'ble Bombay High Court in the case of CIT Vs. M/s Godrej Agronet Ltd. as discussed supra, therefore, following the decision of the Bombay High Court we direct the assessing officer to restrict the disallowance of administrative expenses to the extent of 2% of the total exempt income in the case of the assessee pertained to

assessment year 2002-03. Therefore, this ground of appeal of the assessee is partly allowed.

Ground No. 5: Disallowance of Wealth-tax paid to Rs.17,39,524/-:

22. During the course of assessment the AO noticed that assessee has claimed deduction of wealth-tax payment to the amount of Rs.17,39,524/- for A.Y. 2002-03. The AO has not allowed the claim of wealth Tax payment on the ground that allowability of such deduction is not specifically provided in Sec. 40(a)(iia) of the Act.

23. During the course of appellate proceedings before us the ld. Counsel contended that same issue on identical fact has been adjudicated in favour of the assessee in the earlier year in the various decisions of the ITAT which is as under:

(a) ITAT-AY 2001-02 (ITA No.4236/Mum/05)
(b) ITAT-AY 1999-00 (ITA No. 2125/Mum/05)
(c) ITAT-AY 2000-01 (ITA No. 3055/Mum/05)
(d) ITAT-AY 1998-99 (ITA No. 9564/Mum/2004)
(e) ITAT-AY 1997-98 (ITA No. 5030/Mum/2001)
(f) ITAT-AY 1996-97 (ITA No. 1781/Mum/ 2000)
(g) ITAT AY 1995-96 (ITA No. 3493/Mum/1999)
(h) Punj Sons (P) Ltd. vs. DCIT (74 TTJ 596) (Del)

The ld. D.R supported the order of the lower authorities.

24. Heard both the sides and perused the material on record. We have perused the decision of the ITAT vide ITA No. 4236/Mum/2005. The relevant extract of the decision is reproduced as under:

> *"52. With regard to Ground No. 4 which is in respect of disallowance of wealth-tax payment, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department."*

It is evident that same issue on identical facts has been adjudicated in favour of the assessee in the earlier years therefore following the decision of the ITAT we allow this ground of appeal of the assessee.

Ground No. 6: Disallowance deduction under section 80-O of the Act in respect of 40% of royalty amount received Rs.16,825/-:

25. The assessee has claimed deduction u/s 80-O amounting to Rs.16,825/- being 30% of Rs.56,083/- being royalty under technical know-how agreement with M/s Auto Technicia Columbia. However, the Assessing officer was of the view that the amount received was not in the nature of drawing, designing, invention, patents and trademark, therefore, the deduction u/s 80-O was declined.

26. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed this ground of appeal of the assessee.

27. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that identical issue on similar fact in the earlier years in the case of the assessee itself has been adjudicated by the ITAT, Mumbai in favour of the assessee. He referred the following cases:

> *"(a) ITAT-AY 2001-02 (ITA No.4236/Mum/05)*
> *(b) ITAT-AY 1999-00 (ITA No. 2125/Mum/05)*
> *(c) ITAT-AY 2000-01 (ITA No. 3055/Mum/05)*
> *(d) ITAT - AY 1998-99 (ITA. No. 9564/Mum/2004)*

On the other hand, the ld. D.R supported the order of lower authorities.

28. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above we have perused the decision of ITAT vide ITA No.4236/Mum/2005. The relevant extract of the decision of the ITAT is reproduced as under:

> *56. With regard to Ground No. 5 which is in respect of disallowing deduction under section 80-O of the Act in respect of 40% of royalty amount received. Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department."*

This is a recurring issue and following the decision of the ITAT on the similar issue and facts as decided in the earlier years as referred supra this ground of appeal of the assessee is allowed.

Ground No.7: Non-granting of deduction in respect of software expenses Rs.2,79,10,569/-:

29. The assessee has debited an amount of Rs.279,10,569/- to the profit and loss account being expenditure incurred for the purchase and upgradation of various softwares. However, the assessing officer has treated the software expenses as capital expenditure and allowed depreciation @ 25% thereon.

30. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has sustained the action of the assessing officer for treating the software expenses as capital expenditure.

31. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that software expenses are allowable as revenue expenditure u/s 37(1) of the Act. He also submitted that the decision of special bench in the case of Amway India Enterprises 111 ITD 112 relied upon by the ld. CIT(A) was reversed by the Hon'ble Delhi High Court in the case of Amway India Enterprises (2012) 22 taxmann.com 22 (Delhi). The ld. counsel has also referred the decision of Asahi Safety Glass Ltd. Vs. CIT(2011) 15 taxmann.com 382 (Delhi). The ld. Counsel also referred page no. 193-194 of the factual paper book and submitted that list placed in the paper book showed that all the software expenses are of the nature of revenue expenditure.

On the other hand, the ld. D.R supported the order of lower authorities.

32. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above we have perused the page no. 193-195 pertaining to software expenses placed in the paper book it is noticed that most of the expenses are pertained to software maintenance charges and renewal of internet connections annual charges, purchase and upgradation of software etc. There are more than 50 transactions of small amount of such software expenses made by the assessee with the different parties as reflected in the details of software expenses referred above filed by the assessee. The assessee has demonstrated from the aforesaid submission that such software expenses are not of enduring nature and same were incurred for maintenance, upgradation and purchase and renewable of the existing software etc. We find that the lower authorities has not established that now such kind of software expenses have been treated of the nature of the capital expenes. Further we have perused the decision of the Hon'ble Delhi High Court in the case of Amway India Enterprises (2012) as discussed supra has overruled the decision of special bench by holding that the expenditure of purchase of software application is revenue expenditure. We have also considered the decision of Hon'ble Delhi High Court in the case of Asahi India Safety Glass Ltd. Vs. CIT(2011) 15 taxmann.com 382 (Delhi) on the similar proposition wherein it is held that such software expenses were recurring in nature expended either to upgrade system or run system. In the light of the above facts and findings we consider that decision of ld. CIT(A) in sustaining the addition after relying on the special bench in case of Amway India Enterprises as discussed supra is not justified. Therefore, the claim of the assessee is allowed. This ground of appeal of the assessee is allowed.

Ground No. 8: Taxability of the premium received as goodwill under the head "Capital Gains" Rs.58,50,00,000/-:

33. During the course of assessment the AO noticed that assessee has claimed deduction of Rs.117 crores as non-compete fees under the head "Premium on Insurance Venture" received from Allianz A.G. Germany. The assessee submitted that Allianz A.G. Germany paid Rs.45 crores for general insurance business and Rs.72 crores for Life Insurance Business for the following purposes:-

> *"(i) prevent Bajaj Auto from competing insurance business either on its own or in partnership with others, in India and Nepal.*
>
> *(ii) associate with the reputation and image of the "Bajaj name in the Indian market and*
>
> *(iii) to get a 26% participation in the insurance business.*
>
> *It is submitted that since the amounts have been received for*
>
> *(i) restrictions to carry on insurance business either on our own or in partnership with others resulting in non-compete covenants in the said business and*
>
> *(ii) to give a 26% participation in the insurance business*
>
> *the entire amount represents a non-taxable "Capital Receipt" and hence has been excluded from the total income."*

After considering the agreement dated 31.03.2001 executed by the assessee with Allianz A.G. Germany the assessing officer observed that the assessee was not in a position to bifurcate the amount it received from Allianz A.G. Germany under the various heads. The AO stated that amount has been received on account of the goodwill of the assessee and for using its sales and service infrastructure and referred para 17 of the notes forming part of the Accounts read as under:

> *"Premium on Insurance Venture' represents the sum received from Allianz AG, the overseas partner in the new Insurance Companies set up by the Company. This sum was received, under an agreement prior to the Joint Venture, from Allianz AG to secure its participation in the Insurance Venture of the Company, for the company's commitment to associate in the Joint Venture with repute, value and goodwill and other consideration specified therein. Upon entering into*

> *the Joint Venture agreement and the Subscription of the Equity Shares by both the parties, during the year, the rights and obligations of the company under the said agreement stand discharged and hence the same has been accrued during the year and accordingly been recognized as a separate item of income in the profit and loss account."*

After perusal of the aforesaid information the AO stated that a certain sum was paid on account of goodwill which was connected with the name of the assessee i.e Bajaj Auto Limited. He further stated that one of the reason for such payment was that it was associated with the reputation and image of 'Bajaj' name in the Indian Market and in the notes forming part of the accounts the assessee has considered the fact that the payment was on account of 'goodwill'. He further stated that assessee should have itself allocated a certain amount of the payment received towards 'Goodwill' when the terms of the agreement was clear that payment has to be made on account of 'Goodwill'. The AO also stated that according to the memorandum of understanding dated 14.10.2000, Allianz A.G. had agreed to pay to Bajaj Auto Limited a sum of Rs.55 crores for sale of 2.86 cores shares of BICL by BAL to Allianz A.G. Germany. The assessing officer was of the view that entire amount of Rs.117 crores claimed as exempt as "Non-Compete Fees" was not genuine and same was paid on account of 'Goodwill' for using the name of Bajaj. However, the assessee has also received a sum for the use of its sales and service infrastructure and the assessee has not done any bifurcation, therefore, the AO considered that this amount of Rs.117 crores is to be divided into two equal parts of Rs.58.5 crores each as receipt on account of 'Goodwill' and use of sale and service & infrastructure by the new company. Therefore, the amount of Rs.58.5 crores received on account of 'Goodwill' was taxed under the head "Capital Gains" and the amount of Rs.58.5 crores received on account of sales and service infrastructure was treated as business income of the assessee.

34. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) stated that the right of using the name of 'Bajaj' has got associated with Allianz, therefore, to that extent it constantly transfer of 'goodwill' and accordingly, portion of the consideration can rightly be appropriated towards goodwill which would be taxed under the head capital gain. Therefore, the ld. CIT(A) held that the amount of Rs.117 crores will have to be bifurcated between non-compete and transfer of goodwill. The ld. CIT(A) further stated that in the absence of break-up of the consideration received the assessing officer has rightly divided the total consideration equally into two parts. However, after considering he nature of payment and material available on record the ld. CIT(A) has reduced the amount allocated towards goodwill to the amount of Rs.33.60 crores as under:

Nature of Payment	For general Insurance Business (Amt. In crores)	For Life Business (Amt. in Crores)	Total
For Non Compete Covenants	15.4	45	60.4
Associate the word 'Bajaj' (Goodwill)	5	10	15
For agreeing not to make available Sales and Service infrastructure (Non-compete covenants)	6	17	23
Difference between Draft MOU and Actual receipt considered towards Goodwill	18.6	-	16.60
Total	45	72	117

Accordingly, as per the aforesaid allocation the ld. CIT(A) held that an amount of Rs.83.40 crores (60.4 + 23) was received towards non-compete covenants whereas the balance amount of Rs.33.60 croes (15 + 18.60) was received towards goodwill and taxed under the head capital gains.

35. During the course of appellate proceedings before us the ld. Counsel submitted that amount of Rs.117 crores was received by the

assessee from Allianz A.G. Germany under the agreement prior to the joint venture of the company with Allianz A.G. Germany and said amount was received from the following purposes:

> 2. *The amount received represents:*
>
> i. *Restrictions to carry on Insurance business either on our own or in partnership with others resulting in non-compete covenants in the said business and*
>
> ii. *To give a 26% participation in the Insurance Business.*

The ld. Counsel further submitted that the said amount received was excluded from the total income as the entire amount represents a non-taxable 'capital receipts'. The ld. Counsel has also referred the decision of Hon'ble Bombay High Court 116 ITR 758 page no. 771 and also referred decision of Bombay High Court vide 249 ITR 266. He also referred the decision of Hon'ble Supreme Court in the case of Guffic Chem (P) Ltd. Vs. CIT (2011) 198 Taxman 78 (SC). He also submitted that there is no transfer of goodwill made in the case of the assessee, therefore, same is not to be treated as goodwill.

On the other hand, the ld. D.R supported the order of lower authorities.

36. Heard both the sides and perused the material on record. We have perused the copies of agreement and other details with respect to taxability of amount received from Allianz AG by the assessee company placed at pages 198 to 499 of the paper book filed by the assessee. As per agreement dated 13.03.2011 for General & Insurance executed on 13.03.2001 between the assessee and Allianz AG and as per Article 2 of the agreement Allianz agreed to pay a sum of Rs.45 crores as consideration to Bajaj for the following purposes:

> "(i) *Allowing Allianz to participate in the general insurance business of the Company in India by associating itself with the reputation, value and goodwill of bajaj which is of strategic advantage to the success of the Company*

(iii) *The commitment by Bajaj to make Allianz its partner in general insurance business, in India and Bhutan.*

(iv) *Agreeing not to enter into any agreement or arrangement with any other party for carrying out any general insurance business in India and Bhutan during the subsistence of the proposed JV Agreement between the Parties.*

(v) *Subject to the governing laws, agreeing to make Allianz an equal partner as and when permitted.*

Article 3 of the agreement say that the Bajaj agreed that in consideration for receiving a sum of Rs.45 crores from Allianz AG it will allow the Allianz in general insurance business as under:

"(i) *allow Allianz to participate in the general insurance business of he Company in India by associating itself with the reputation, value and goodwill of Bajaj which is of strategic advantage to the success of the Company.*

(ii) *commit to make Allianz its partner in general insurance business in India and Bhutan.*

(iii) *agree not to enter into any agreement or arrangement with any other party for carrying out any general insurance business in India and Bhutan during the subsistence of the proposed JV Agreement between the Parties.*

(iv) *subject to the governing laws, agree to make Allianz an equal partner as and when permitted.*

Similarly the agreement for Life Insurance between Allianz AG and Bajaj Auto Ltd. made on 13.03.2001. As per Article 2 of the agreement Allianz agreed to pay sum of Rs.72 crores as consideration to Bajaj for:

(i) *Allowing Allianz to participate in the life insurance business of the Company in India by associating itself with the reputation, value and goodwill of 'bajaj' which is of strategic advantage to the success of the Company*

(ii) *The commitment by Bajaj to make Allianz its partner in life insurance business, in India and Bhutan.*

(iii) *Agreeing not to enter into any agreement or arrangement with any other party for carrying out any life insurance business in India and Bhutan*

during the subsistence of the proposed JV Agreement between the Parties.

(iv) *Subject to the governing laws, agreeing to give Allianz 74% shareholding in the Company as and when permitted."*

Bajaj agrees that in consideration for receiving a sum of Rs.72 crores from Allianz, it will:

"(i) *allow Allianz to participate in the life insurance business of the Company in India by associating itself with the reputation, value and goodwill of 'Bajaj which is of strategic advantage to the success of the Company.*

(ii) *commit to make Allianz its partner in life insurance business in India and Bhutan.*

(iii) *agree not to enter into any agreement or arrangement with any other party for carrying out any life insurance business in India and Bhutan during the subsistence of the proposed JV Agreement between the Parties.*

(iv) *Subject to the governing laws, agreeing to give Allianz 74% shareholding in the Company as and when permitted.*

It is clearly evident from the two separate joint ventures agreement executed by the assessee company with Allianz Ag that assessee had received consideration for 'Goodwill' of Bajaj for having its presence over 50 years in the subcontinent at the time of the agreement executed for joint venture with the Allianz AG. The Judicial pronouncement referred by the ld. Counsel are distinguishable from the facts of the case of the assessee. In spite of providing repeated opportunities as demonstrated from the findings of the AO and CIT(A) the assessee had failed to provide bifurcation of the total amount received for the different purposes including the amount towards the "Goodwill". The assessee has not brought any material on record to disprove that the component of 117 crores of rupees not included any amount towards value and goodwill of 'Bajaj' provided by the Allianz as specified in the agreements executed for insurance business in India. The assessee had itself not carried out any business of Insurance independently from the joint venture but

allowed the use of value and Goodwill of 'Bajaj' as a strategic advantage on the formation of Joint Venture in the Insurance business against the consideration received as discussed above. In the light of the above facts and circumstances we do not find any reason to interfere in the decisions of ld. CIT(A). Therefore, this ground of appeal of the assessee stand dismissed.

Ground No. 9: Including wind power generated captively consumed in the total turnover while computing deduction under Sec. 80HHC: Rs.21,14,53,394/-:

37. During the course of assessment the assessing officer included the amount of Rs.21,14,53,394/- pertaining to wind power generated captively consumed as part of total turnover against the submission of the assessee that it did not form part of any goods sold by the assessee but represented only the cost of wind power generated which has been captively consumed. The assessee also submitted that same cannot be treated as part of turnover since it merely represents a credit in the windwill division which was ultimately set off as electricity charges in the manufacture division and consequently had no effect on the consolidated accounts of the assessee.

38. In the appeal the ld. CIT(A) has dismissed the appeal of the assessee holding that same ought to be included in the turnover.

39. During the course of appellate proceedings before us the ld. Counsel submitted that the issue in the appeal is covered in favour of the assessee by the decision of the ITAT, Mumbai in the case of The West Coast Paper Mills Vs. ACIT vide ITA No. 3802/Mum/2006.

On the other hand, the ld. D.R supported the order of lower authorities.

40. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above we find that identical issue on similar fact has been adjudicated by the ITAT in the case of West Coast

Paper Mills as referred supra. The relevant extract of the decision is reproduced as under:

> *"60. After carefully considering the rival submissions, we find that the Tribunal, with regard to the exclusion of internal consumption of power for the total turnover, had decided the same in favour of the assessee by holding that such an inclusion in the total turnover will result into double addition, because it is already included in the computation of the profit thus, respectfully following the earlier year's order, we also hold that the internal consumption of power will not form part of the total turnover for the purpose of computing the relief under section 80HHC. Insofar as the exclusion of the scrap sale is concerned, though this issue has been decided against the assessee by the Tribunal in earlier years, however, the Hon'ble Supreme Court in its latest judgment in Civil Appeal no. 5592 of 2008, vide judgment and order dated 10th May 2014, rendered in CIT v/s Punjab Stainless Steel Industries, has held that sale proceeds of scrap cannot be included as part of the total turnover for the purpose of section 80HHC. The Hon'ble Supreme Court has discussed this exclusion of the scrap sales from the turnover in a very detail manner. Thus, respectfully following the aforesaid judgment of the Hon'ble Supreme Court, we set aside the impugned order passed by the learned Commissioner (Appeals) and direct the Assessing Officer to exclude the scrap sale from the total turnover while computing the deduction under section 80HHC. Thus, ground no.18 is treated as allowed."*

Following the decision of ITAT as referred supra we find that decision of ld. CIT(A) in sustaining of disallowance is not justified, therefore, after following the decision of ITAT this ground of appeal of the assessee is allowed.

Ground No.10: Including miscellaneous receipts in respect of scrap sales, miscellaneous scrap sales and sundry sales in the total turnover while computing deduction u/s section 80HHC: Rs.21,16,24,544/-:

41. The assessing officer has included the miscellaneous receipts like scrap sales, miscellaneous scrap sale and sundry sales aggregating to Rs.21,16,24,544/- in the total turnover.

42. On appeal the ld. CIT(A) as rejected the claim of the assessee.

43. During the course of appellate proceedings before us the ld. Counsel submitted that such receipt had no element of turnover and same ought to be excluded from the total turnover. The ld. Counsel

submitted that similar issue on identical fact has been decided in favour of the assessee. He placed reliance on the following judicial pronouncements:

a. ITAT-AY 1995-96 (ITA No.3144/Mum/1999)
b. ITAT-AY 1996-97 (ITA No. 1781/Mum/1999)
c. ITAT-AY 1997-98 (ITA No. 5030/Mum/2001)
d. CIT vs. Punjab Stainless Steel Industries Ltd. [2014] 364 ITR 144 (SC)

On the other hand, the ld. D.R supported the order lower authorities.

44. Heard both the sides and perused the material on record. The assessee claimed that such miscellaneous receipts do not form part of the sales of manufacture goods to represent cost of goods manufactured for the purpose of calculating the deduction u/s 80HHC and same ought to be excluded from total turnover. We have perused the decision of ITAT, Mumbai in the case of the assessee itself for A.Y. 1997-98 vide ITA No. 1781/Mum/2000. The relevant extract of the decision is reproduced as under:

> *"5.2 A perusal of the impugned order shows that the Assessing Officer had Included scrap sales generated out of raw material used in manufacturing Rs.43,92,32,708/, miscellaneous scrap sales consisting of packing material like empty barrels, steel covers, etc. amounting to Rs.4,82,77,276/- and sundry sales not covered in Items above amounting to Rs.2,44,358/- In the first appellate proceedings, the CIT(A) held that the sale of aforesaid items should be excluded from total turnover for the purpose of calculating deduction u/s 80HHC of the Act, as in Assessment Year 1995-96 these very items were excluded from total turnover while computing deduction u/s 80HHC of the Act. In assessment year 1995-96, the assessee carried the issue in appeal before the Tribunal in ITA No.3144/Mum/1999 (supra). The Co-ordinate Bench after placing reliance on the decision rendered by Hon'ble Supreme Court of India in the case of CIT vs Punjab Stainless Steel Industries Ltd. 364 ITR 144 decided the issue in favour of assessee. Since, in the impugned assessment year there is no distinguishing feature, we see no reason to take a different view. Consequently, additional ground No.1 of the appeal is allowed."*

Following the decision of ITAT this ground of appeal of the assessee is allowed.

Ground No.11: Exclusion of 90% of the following from the profits of the business while computing deduction under section 80HHC:

a. **Technical know-how: Rs.1,87,25,795**
b. **Insurance claims: Rs. 31,17,549**
c. **Miscellaneous receipts: Rs.13,92,02,699**
d. **Sundry Credit Balance: Rs.69,42,424**
e. **Provision no longer required: Rs.13,24,46,978**
f. **Bad Debts recovered: Rs.1,08,074**

45. During the course of assessment the assessing officer has reduced 90% of the following items from profit of the business for computing deduction u/s 80HHC of the Act.

(i) Technical know-how fees -	*Rs.1,87,25,795/-*
(ii) Insurance claims -	*Rs.31,17,549/-*
(iii) Miscellaneous Receipts -	*Rs.13,92,02,699/-*
(iv) Sundry credit balance appropriated -	*Rs.69,42,424/-*
(v) Provision no longer required -	*Rs.13,24,46,978/-*
(vi) Bad Debts recovered -	*Rs.1,08,074/-*

46. The assesse filed the appeal before the ld. CIT(A). The action of the assessing officer was confirmed by the ld. CIT(A).

47. During the course of appellate proceedings before us the ld. Counsel submitted that identical issue on similar fact has been adjudicated by the ITAT in the case of the assessee itself for the earlier years and referred the following decisions:

(a) ITAT – AY 1999-00 ITA No. 2125/Mum/05)
(b) ITAT - AY 2000-01(ITA No. 3055/Mum/05)
(c) ITAT – AY 1998-99 (ITA No. 8952/Mum/2004)
(d) ITAT AY 1997-98 (ITA No. 5030/Mum/2001)
(e) ITAT – AY 1996-97 (ITA No.1781/Mum/2000)
(f) ITAT – AY 1995-96 (ITA No. 3493/Mum/1999)

48. Heard both the sides and perused the material on record. We have perused the aforesaid judicial pronouncements of the ITAT, Mumbai in the case of the assessee itself for the earlier years. The relevant extract

of the decision of ITAT Mumbai vide ITA No.3055/Mum/2005 for A.Y. 2000-01:

> *"107. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the ground no. 11 of appeal vide ITA No. 1933/Mum/2005 as adjudicated supra in this order, therefore, applying the finding of ITA No. 1933/Mum/2005 as mutatis mutandis this ground of appeal of the revenue is dismissed."*

Following the decision of the ITAT as discussed supra this ground of appeal of the assessee is allowed.

Ground No. 12: Including the following while computing the Indirect cost in respect of traded goods in spite of the fact that the aforesaid costs had no connection with export activity:

- **a. Interest: Rs.3,38,17,261**
- **b. Depreciation under section 32 Rs. 2,98,42,2,289**
- **c. Overhead expenses having no connection with export activity**

49. This ground of appeal was not pressed by the assessee, therefore, the same stand dismissed.

Ground No. 13: Taxability of DEPB benefit: Rs.22,05,92,100/-:

50. The assessee has raised the additional ground of appeal before the ld. CIT(A) to direct the AO to not exclude the export benefit received as they do not fall within Sec. 28(iiid) and Sec. 28(iiie) of the Act. The assesse submitted that in view of retrospective amendment to Sec. 28(iiid) and Sec. 28(iiie) by the Taxation Law Amendment Act 2005 w.e.f 01.04.1998 only profit on transfer of duty entitlement passbook is deductible to tax.

51. However, the ld. CIT(A) has dismissed the ground of appeal filed by the assessee.

52. During the course of appellate proceedings before us the ld. Counsel submitted that the issue in appeal is decided in favour of the assessee by the Hon'ble Supreme Court in the case of Excel Industries Ltd. (2013) 358 ITR 295 (SC).

On the other hand, the ld. D.R supported the order of lower authorities.

53. Heard both the sides and perused the material on record. The facts and findings on the issue of taxability is not fully discussed in the order of the assessing officer and the CIT(A) therefore we restore this issue to the file of the assessing officer to decide the same after examination in accordance with the decision of Hon'ble Supreme Court in the case of Excel Industries Ltd. (2013) 358 ITR 295 (SC). Therefore this ground of appeal of the assessee is allowed for statistical purpose.

ITA No. 2899/Mum/2010 (Revenue's appeal)

Ground No.1: Allowing deduction under Sec. 35D of the Act in respect of GDR issue expenses: Rs.1,17,19,960/-:

54. The assessee incurred expenses in connection with the issue of Global Depository Receipts (GDR) in the previous year relevant to assessment year 1995-96 to the amount of RS.3,45,06,99,697/-. The assessee made alternative claim to allow proportionate deduction of such expenditure u/s 35D of the Act. The assessee claimed that deduction u/s 35D in respect of the aforesaid expenses amounting to Rs. 11,71,99,600/- ought to be allowed from assessment year 1997-98 onward.

55. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has rejected the claim of the assessee. The ld. CIT(A) held that such expenditure was covered u/s 35D and allowed the claim of prorata deduction u/s 35 of the Act.

56. Heard both the sides and perused the material on record. The ld. Counsel submitted that identical fact and similar issue has been constantly decided in favour of the assessee in the case of the assessee itself in the earlier years by the ITAT, Mumbai and also referred some other decision of Hon'ble Court as under:

(a) ITAT- AY 2001-02 (ITA Nos. 4236/Mum/05, Para no. 6-7, page no. 4-7)
(b) ITAT -AY 1999-00 (ITA No. 2125/Mum/05, para no. 32, page no. 18-19)
(c) ITAT - AY 2000-01 (ITA No. 3055/Mum/05, para no. 94, page no. 46)
(d) ITAT -AY 1998-99 (ITA 8952/Mum/2004, para no. 14, pg. no 8) No.
(e) ITAT -AY 1997-98 (ITA No. 5030/Mum/2001, para no. 51 to 52, Pg. no. 37 to 38)
(f) CIT vs. Shree Synthetics Ltd. (162 ITR 819) (Madhya Pradesh High Court) (g) Gujarat Narmada Valley Fertilizers Co. Ltd. vs. DCIT (ITA No. 1463/Ahd/2007)
(h) S.S.I. Limited vs. DCIT (85 TTJ 1049) (Chn)

We have perused the decision of ITAT vide ITA No. 4236 & 4372/Mum/2005. The extract of the relevant decision is reproduced as under:

> *"6. Considered the rival submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1997-98. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 5030/Mum/2001 dated 13.04.2023 held as under:-*
>
> > *"48. With regard to Ground No. (k) which is in respect of allowing expenses on GDR issue as covered in section 35D, Ld. AR of the assessee submitted that Expenses amounting to ₹.11,71,99,600 incurred in connection with issue of GDR of USD 109,999,983 in the previous year relevant to A.Y.1995-96. Expenditure claimed u/s.37(1) in AY 1995-96 disallowed relying on the decision of the Supreme Court in the case of Brooke Bond India Ltd. (225 ITR 795) - Alternative claim for deduction u/s. 35D not considered in AY 1995-96 since expansion of industrial undertaking was not completed. Copy of Assessment Order for AY 1995-96 is placed on record, Letter dated 11 February 2000 submitted before the Assessing Officer.*
> >
> > *49. Ld. AR of the assessee relied on the following case laws: -*
> > *a) CIT vs. Shree Synthetics Ltd. (162 ITR 819)*
> > *b) Gujarat Narmada Valley Fertilizers Co. Ltd. vs. DCIT (ITA No. 1463/Ahd/2007*
> > *c) S.S.I. Limited vs. DCIT (85 TTJ 1049) (Chn)*
> >
> > *50. On the other hand, Ld. DR relied on the order of the Assessing Officer.*

51. Considered the submissions and material placed on record, from the submissions of the parties, we observe that the assessee has incurred expenses in connection with the issue of GDR and these expenses are allowable only when new or expansion of industrial undertaking. During the current Assessment Year, the assessee has completed the expansion of the Industrial undertaking, the expenses are allowable deduction u/s 35D of the Act, since the expenses are incurred during previous AY and expansion was completed only this AY, the relevant expenses are allowable in this Assessment Year. In the similar facts, the ITAT Ahmedabad Bench has decided the issue in favour of the assessee, in the case of Gujarat Narmada Valley Fertilizers Co. Ltd., v. DCIT (supra), the same reproduced below:

> *"24. As regards Ground no.10 of the assessee's appeal, the assessee has claimed deduction u/s 35D amounting to Rs.87,73,000/- which was restricted to Rs.13,50,000/- by the AO. The brief facts are that during the previous year relevant to AY 1995-96 the company made an Euro Issue of the Global Depository Receipts (GDRs) for its Acetic Acid Expansion Project and collected Rs.191.72 crores inclusive of premium. The company incurred expenditure of Rs.8.77 crores for this issue. It was submitted by the assessee inassessment proceedings that subscribed and paid up capital of the company increased to Rs.146.48 crores and that coupled with debenture and long term borrowings of Rs.583.77 crores the total capital employed was Rs.730.25 crores and 2.5 % of such capital employed is Rs.18.26 crores. It was further stated that the cost of project of Ascetic Acid Expansion project was Rs.188.31 crores and that the said project was commissioned on 30.5.1995. It was stated that the expenditure of Rs.8.77crores was less than 2.5 % of the cost of the project and capital employed and thus the assessee was entitled to deduction of Rs.87.7 lakhs as claimed u/s. 35D. The Assessing Officer was of the view that GDR issue was admittedly in connection with the extension of industrial undertaking and only the incremental capital employed which is attributable to the new project should be considered as capital employed. The increase in share capital and debenture between 31.3.1994 and 31.3.1995 was Rs.37.53 crores and thus 2.5% of such capital employed was Rs.93.82 lacs. Further it was stated that cost of Acetic Acid Expansion Project was Rs.188.31 crores whereas the net proceeds of GDR issue was Rs.182.95 crores (191.72 crores being gross proceeds - 8.77 crores being expenses). Further from the proceedings for A.Y. 2001-02 it was noticed that Rs.128.93 crores was invested in UTI Unit 65 scheme out of the GDR issue proceeds and since this investment was 70% of the GDR issue process, 70% of the expenses of Rs.87.73 lacs written off in that year by the assessee amounting to Rs.62 lacs was disallowed u/s. 14A as the dividend income in respect of UTI was exempt under the Act. It is mentioned by the Assessing Officer that excluding the investment in UTI the amount invested towards the cost of project is Rs.54.02 crores (182.95 crores - Rs.128.93 crores) and 2.5% of such cost works out to Rs.1.35 crores. Therefore 10 % of this amount of Rs.1.35 crores at Rs.13.5 lacs was allowed by the Assessing Officer under section 35D.*

25.The learned CIT(A) confirmed the action of the AO.

26.The learned counsel for the assessee argued that the assessee has been allowed the identical claim since 1995-96 by the Income-tax Department and it is only in the impugned year where the Department has doubted its decision when there is no change of the facts and circumstances of the case.

27.The learned DR, on the other hand, argued that res judicata does not apply.

28.We have heard the rival contentions and perused the facts of the case. From the reading of the provisions contained in section 35D and the arguments of both the parties, we are of the view that there are no change in the facts as in the last 7 years and, therefore, relying upon the decision of the Hon'ble Supreme Court in the case of RadhaSoamiSatsang vs. CIT 193 ITR 321, it would not be at all appropriate to allow the position to be changed in a subsequent year. Therefore, in the circumstances and facts of the case, we direct the AO to allow the claim of the assessee and accordingly the order of the learned CIT(A) is reversed. Thus, Ground no.10 of the assessee' appeal is allowed."

52. Respectfully following the above said decision, we direct assessing officer to allow the claim made by the assessee relating to deduction u/s. 35D of the Act."

7. Respectfully following the above decisions and following the principle of consistency, the view taken by the Tribunal in A.Y. 1997-98 is respectfully followed, ground raised by the revenue is accordingly dismissed."

Following the decision of the ITAT this ground of appeal of the revenue is dismissed.

Ground No.2: Deduction allowed in respect of sale and lease back transaction with JCT Limited: Rs.35,93,359/-:

57. The assessee had entered into sale and lease back transaction with JCT Limited during the previous year relevant to the assessment year 1996-97 for lease of new Textiles Machineries amounting to Rs.6,99,22,335/-. The assessee has claimed depreciation @ 25% to the amount of Rs.35,93,359/- during the year under consideration. The assessing officer rejected the claim of the assessee by stating that lease transaction was not genuine.

58. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee.

59. Heard both the sides and perused the material on record. The ld. Counsel has submitted that similar claim of depreciation in the case of the assessee has been allowed by the ITAT in the earlier years as under:

(a) ITAT-AY 2001-02 (ITA No. 4236/Mum/05)
(b) ITAT-AY 1999-00 (ITA No. 2125/Mum/05)
(c) ITAT-AY 2000-01 (ITA No. 3055/Mum/05)
(d) ITAT-AY 1998-99 (ITA No. 8952/Mum/2004)
(e) ITAT - AY 1997-98 (ITA No. 5030/Mum/2001)

We have perused the decision of ITAT vide 4236/Mum/2005. The relevant extract of the decision is reproduced as under:

> *"10. Considered the submissions and material placed on record, we observe from the record that identical issue is decided in favour of the assessee in the A.Y. 1997-98. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 5030/Mum/2001 dated 13.04.2023, held as under: -*
>
> *"56. With regard to Ground No. (j) which is in respect of holding that the lease agreement with JCT Ltd is genuine and the assessee company is entitled to depreciation on the assets leased to JCT Limited. Ld. AR of the assessee submitted that Lease agreement with JCT Limited dated 26 March 1996 - BAL purchased assorted items of equipments at the original cost of purchase, i.e.₹.6,92,22,335/-- The assets were leased back to JCT. Further, he brought to our notice the decision of the Coordinate Bench in assessee's own case for the Assessment Year 1996-97 and by referring to Para No.24 he submitted that depreciation on such assets claimed and allowed by the order of the Tribunal in the earlier year by dismissing the revenue ground in AY 1996-97. During the year under consideration, BAL has claimed depreciation on the opening written down value of the block which includes the above assets. Once depreciation allowed in earlier year and such asset forms part of block of assets, depreciation ought to be allowed in subsequent years. for the above proposition he relied on the following case law:*
>
> > *(a) Director of Income-tax (International Taxation) - II v. HSBC Asset Management India Private Limited [2014] 47 taxmann.com 286 (Bombay)*
> >
> > *(b) Commissioner of Income-tax 7 v. Sonic Biochem Extractions Private Limited (ITA No. 2088 of 2013) (Bombay)*
> >
> > *(c) CIT V. G.N.Agrawal (Individual) 217 ITR 250*
>
> *57. On the other hand, Ld. DR relied on the order of the Assessing Officer.*
>
> *58. 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. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in ITA.No. 2230/Mum/2000 dated 20.06.2022 following various judicial*

pronouncements dismissed the ground raised by the revenue. The Relevant portion is extracted below: -

> *"25:3 We have heard the submissions made by rival sides and have examined the orders of authorities below. In the light of findings given by Assessing Officer to reject assessee's claim following points were considered by the CIT(A).*
>
> > *"(a) Whether the assessee can be said to have acquired ownership of the assets in question from the Electricity Boards for purpose of claiming depreciation.*
> > *(b) Whether the transactions entered into with the Electricity Boards were genuine lease transactions.*
> > *(c) Whether the transactions can be characterized as loan transactions against security of the assets in question*
> > *(d) Whether the transactions can be treated as hire-purchase agreements"*
> > *The CIT(A) after considering the facts of the case and lease agreement threadbare answered the first two issues in affirmative holding that the assessee had acquired the ownership of the assets purchased from Electricity Board and hence, eligible to claim depreciation on the said assets. The CIT(A) further held that the lease agreements with the State Electricity Board i.e. HSEB and PSEB are genuine lease transactions.*
> >
> > *As regards the issue raised in (c) & (d) above, the CIT(A) answered the question in negative holding that the transaction of purchase of assets from HSEB and PSEB and leasing it back to the State Electricity Board is not a hire purchase agreement nor it is a loan transaction against security of the assets. We, concur with the detailed and reasoned findings of the CIT(A) on this issue, they are not reproduced for the sake of brevity. The Hon'ble Supreme Court of India in the case of CIT vs. K.Y.Pillah& Sons, 63 ITR 411 and Hon'ble Delhi High Court in the case of CIT vs. Global Vantedge P. Ltd., 354 ITR 21 held that where the Tribunal concur with the view of CIT(A), the findings of CIT(A) need not be reproduced.*
> >
> > *25.4 We find that in the case of CIT vs. Punjab State Electricity Board, wherein after the sale of asset the same asset was leased back to the Punjab State Electricity Board and the Electricity Board claimed deduction in respect of lease rental, the Department allege that sale of asset to third party and the same asset being taken on lease for claiming deduction in respect of lease rental is a colorable device to reduce tax liability and have denied the same. The Tribunal decided the issue in favour of the assessee holding the transaction of sale and lease back of asset as genuine. The Revenue carried the issue in appeal before the Hon'ble High Court raising following substantial question of law:*
> >
> > *Whether on the facts and in the circumstances of the case, the income-tax Appellate Tribunal is legally correct in holding that in the present case/ no colourable device has been adopted by the assesses, even when the intention of the assessee behind drafting*

the agreements between the assessee and the financial institution was to reduce the tax liability artificially of both the parties and as such the ratio of the decision of the hon'bleapexcourt in the case of McDowell Ltd. v, CTO [1985] 154 ITR 148 (SC) has wrongly been, interpreted"

The Hon'ble High Court rejected the appeal of Revenue by holding as under:

3. "Only contention raised by the learned counsel for the Revenue is that the machinery was integral part of the bollers and the same continued to be with the assessee in spite of sale. The fact remains that the sale consideration was received by the assessee and lease rental was paid by the assessee. Merely because tax liability was reduced could not be conclusive of arrangement being sham or a device. As regards the observations of the-hon'ble Supreme Court in McDowell [1985] 154 ITR 148, the matter has. been explained in subsequent judgments including in Union of India v. AzadiBachaoAitdokn [2003] 263 ITR 706 (SC); AIR 2004 SC 107. Reiterating the view that the assessee was entitled to arrange his affairs to reduce his tax liability, without violating the law, it was observed in AzadiBachaoAndolan [2003] 263 ITR 706 (SQ; AIR 2004 SC 107 that the principle laid down in IRC v. Duke of Westminster [1936) AC 1 was still valid.

4. It was further observed that the above principle had been approved in India in the Judgment of the hon'ble Supreme Court in CZT v, A. Roman and Co. [1968] 67 ITR 11 (Mad) and the observations of Chinnappa Reddy J. in McDowell could not be treated as the ratio of the Judgment in view of opinions of majority to the effect (headnote of 154 TR 148):

Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

5. The hon'ble Supreme Court affirmed the view token by the Madras High Court in M. V. Valliappan v. TTO [1988] 170 ITR 238 and the Gujarat High Court in Banyan and Deny vs. CIT (1996) 222 ITR 831. Reference was also made to the judgment in CWT v. Arvind Narottam [1988] 173 FIR 479 and Mathuram Agrawal v. State of Madhya Pradesh (1999) 8 SCC 667. It: was further observed that the word "device" or "sham" could not be used to defeat the effect of a legal situation.

6. In view of the finding recorded by the Tribunal in the facts of this case, no substantial question of law arises. The appeal is dismissed."

25.5 Thus, the Hon'ble Court held that lease agreement where the asset is leased back to the vendor is not a ploy to reduce tax

> > > *incidence and is an accepted arrangement. In view of our above findings, we see no merit in Ground No.11 raised by the Revenue, hence, the same is dismissed."*
>
> > *59. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed and the issue involved in relation to transaction with JCT Ltd are similar to the above findings in relation to transaction with PSEB, accordingly, ground raised by the revenue is dismissed."*
>
> *11. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y.1997-98 is respectfully followed, accordingly, ground raised by the revenue is dismissed."*

Following the decision of ITAT as referred supra we don't find any error in the decision of ld. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 3: Allowing deduction in respect of expenditure incurred on dies and moulds as revenue expenditure: Rs.30,84,63,681/-:

60. During the under consideration the assessee has claimed expenditure on dies and moulds amounting to Rs.30,84,63,681/-. However, the assessing officer treated such expenditure as being capital in nature and did not allow the claim of deduction in the computation of total income.

61. The assesse filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee.

62. Heard both the sides and perused the material on record. The ld. Counsel at the outset brought to our notice that similar issue on identical facts has been adjudicated in favour of the assessee by the ITAT constantly in the earlier years as under:

> *(a) ITAT-AY 2001-02 (ITA No. 4236/Mum/05)*
> *(b) ITATAY 1999-00 (ITA No. 2125/Mum/05)*
> *(c) ITAT-AY 2000-01 (ITA No. 3055/Mum/05)*
> *(d) ITAT AY 1998-99 (ITA No. 8952/Mum/2004)*
> *(e) ITAT AY 1997-98 (ITA No 5030/Mum/2001)*

(f) ITAT AY 1996-97 (ITA No. 1781/Mum/2000)
(g) ITAT AY 1995-96 (ITA No. 3493/Mum/1999)
(h) ITAT AY 1994-95 (ITA No. 6964/Mum/2014)
(i) ITATAY 1993-94 (ITA No.6963/Mum/2014)
(j) CIT vs. TVS Motors Ltd [2014] 364 ITR 1 (Mad)
(k) Malerkotla Steels & Alloys P Ltd (336 ITR 49) (P&H)
(l) CIT vs. Sunbeam Auto Ltd [2012] ITA 351 of 2012 (Delhi)

We have perused the decision of ITAT vide ITA No. 4236/Mum/2005. The relevant extract of the decision is reproduced as under:

> *"34. During the course of assessment, the AO has disallowed the deduction of expenditure incurred on dies and moulds as revenue expenditure to the amount of Rs28,04,53,641/-. The Ld. CIT(A) has allowed the claim of the assessee. We consider that similar issue on identical fact has been adjudicated by the coordinate bench of ITAT in the case of the assessee itself vide ITA No. ITA No. 3493/Mum/1999 (A.Y. 1995-96), 1781/Mum/2000 (1996-97), 5030/Mum/2001 (A.Y. 1997-98), 8952/Mum/2004 (1998-99). The relevant extract of the decision of the ITAT for A.Y. 1997-98 vide ITA No. 8952/Mum/2004 is reproduced as under :-*
>
> > *16.0 Ground No.3 raised by the revenue relates to the disallowance of expenses incurred on Dies and Moulds amounting to Rs.30.47 crores. The assessee treated the above said expenses as Capital in nature in the books of account, but claimed the same as revenue expenditure for income tax purposes. This is a recurring issue. The co-ordinate bench has decided this issue in favour of the assessee by confirming the decision rendered by Ld CIT(A) in holding that the expenditure incurred in purchase of dies and moulds are allowable as revenue expenditure in AY 1990-91. The said decision is being followed year after year. In AY 1997-98 also in ITA No.5030/Mum/2001 dated 13.04.2023, the Tribunal has upheld the identical decision taken by Ld CIT(A). Consistent with the view taken by the co-ordinate benches year after year, we confirm the order passed by Ld CIT(A) in holding that the expenditure incurred on Dies and Moulds is allowable as deduction.*
>
> *35. Therefore, following the decision of ITAT, we do not find any infirmity in the CIT(A) order. Therefore, this ground appeal of the revenue stand dismissed."*

Following the decision of ITAT as discussed above, we don't find any merit in this ground of appeal the revenue therefore the same stand dismissed.

Ground No. 4: Allowing penalty charges recovered from suppliers of capital goods as capital receipts and therefore not chargeable to tax: Rs.22,64,550/-:

63. During the year under consideration the assessee has recovered a sum of Rs.22,64,550/- on account of penalty charges for breach of contractual obligation from supplier of capital goods for delay in execution of orders. The assessee claim that such receipts were capital in nature. However, the AO has not agreed with the claim of the assessee.

64. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) after following the orders of the ITAT in the case of the assesse itself held that such penalty charges recovered was capital receipt.

65. Heard both the side and perused the material on record. The ld. counsel submitted that similar issue on identical fact has been adjudicated by the ITAT, in the case of the assessee itself for the earlier years as under:

(a) ITAT-AY 2001-02 (ITA No. 4236/Mum/05)
(b) ITAT-AY 1999-00 (ITA No. 2125/Mum/05)
(c) ITAT-AY 2000-01 (ITA No. 3055/Mum/05)
(d) ITAT AY 1998-99 (ITA No. 8952/Mum/2004)
(e) ITAT AY 1997-98 (ITA No. 5030/Mum/2001)
(f) ITAT AY 1996-97 (ITA No. 1781/Mum/2000)
(g) ITAT AY 1995-96 (ITA No. 3493/Mum/1999)
(g) ITAT- AY 1994-95 (ITA No. 6964/Mum/2014)
(i) ITAT - AY 1993-94 (ITA No.6963/Mum/2014)
(j) CIT vs. Barium Chemicals Ltd. [1987] 168 ITR 164 (AP)

We have perused the decision of ITAT vide ITA No. 4236/Mum/2005. The relevant extract of the decision is reproduced as under:

> *"16. With regard to Ground No. 4 which is in respect of allowing penalty charges recovered from suppliers of capital goods as capital receipts, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal and decided the issue in favour of the assessee and against the revenue."*

Following the decisions of ITAT as referred above, we don't find any merit in this ground of appeal the revenue therefore the same stand dismissed.

Ground No.5: Allowing deduction of expenditure incurred in respect of jigs and fixtures as revenue expenditure: Rs.5,68,24,513/-:

66. During the year under consideration the assessee claimed expenditure of Rs.5,68,24,513/- in respect of jigs and fixtures. The assessee claimed that every year it purchased jigs and fixtures for using in the production process. However, the AO treated this expenditure as capital expenditure and disallowed the claim of deduction as revenue expenditure.

67. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) following the decision of earlier years of the Tribunal allowed the claim of the assessee by treating the same as revenue in nature.

68. Heard both the sides and perused the material on record. The ld. counsel also submitted that similar claim on identical fact has been adjudicated in favour of the assessee by the coordinate bench of the ITAT in the earlier years as under:

(a) ITAT-AY 2001-02 (ITA No. 4236/Mum/05)
(b) ITATAY 1999-00 (ITA No. 2125/Mum/05)
(c) ITATAYA 2000-01 (ITA No. 3055/Mum/05)
(d) ITAT AY 1998-99 (ITA No. 8952/Mum/2004)
(e) ITAT-AY 1997-98 (ITA No. 5030/Mum/2001)
(f) ITAT AY 1996-97 (ITA No. 1781/Mum/2000)
(g) ITAT AY 1995-96 (ITA No.3493/Mum/1999)
(h) ITAT-AY 1994-95-(ITA No.6964/Mum/2014)
(i) ITAT-AY 1993-94-(ITA No.6963/Mum/2014)
(j) ITAT-AY 1991-92-(ITA No.6324/Mum/2010)
(k) ITAT-AY 1990-91-(ITA No.6325/Mum/2010)
(l) CIT vs. TVS Motors Ltd [2014] 364 ITR 1 (Mad) (Ratio applied)
(m) Malerkotla Steels & Alloys P Ltd [2011] 336 ITR 49 (P&H) (Ratio Applied)

We find that this is recurring issue and same is decided in favour of the assessee by the ITAT in the earlier years. The relevant extract of the decision is reproduced as under:

"20. With regard to Ground No. 5 which is in respect of allowing deduction of expenditure incurred in respect of jigs and fixtures as revenue expenditure, Ld.

AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the assesse and against the department.

Following the decision of ITAT as discussed above, we don't find any merit in this ground of appeal the revenue therefore the same stand dismissed.

Ground No.6: Allowability of deduction in respect of foreign travelling expenses: Rs.4,94,656/-:

69. During the course of assessment the assessing officer has disallowed the claim of foreign travelling expenses Rs.4,94,656/- of Ms. Rupa Bajaj wife of managing director accompanying the managing director for business meeting during his travelling abroad.

70. The assesse filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assssee.

71. Heard both the sides and perused the material on record. The ld. Counsel submitted that in the earlier years this issue has been decided in favour of the assessee by the ITAT is as under:

a) ITAT-AY 2001-02 (ITA No. 4236/Mum/05, A Para no. 30-31, page no. 28-30)
b) ITAT-AY 1999-00 (ITA No 2125/Mum/05, A para no.49, page no. 51-52)
c) ITAT-AY 2000-01 (ITA No. 3055/Mum/05, para no. 103, page no. 52)
d) ITAT AY 1998-99 (ITA. 8952/Mum/2004, para 25, page 14-16)

We find that this is recurring issue and same is decided in favour of the assessee by the ITAT in the earlier years. The relevant extract of the decision is reproduced as under:

"28. With regard to Ground No. 7 which is in respect of allowability of deduction in respect of foreign travelling expenses, Ld. AR of the assessee brought to our notice that the issue in appeal has been considered by the Co-ordinate Bench of this tribunal in assessee's own case and decided the issue in favour of the revenue and against the assessee."

Following the decision of ITAT as referred above, we don't find any merit in this ground of appeal the revenue therefore the same stand dismissed.

Ground No. 7: Allowing deduction for Prior period expenses: Rs.2,93,02,863/-:

72. During the year under consideration the assessee has claimed expenditure of Rs.2,93,02,863/- pertaining to earlier years but debited to the profit and loss account in the previous year relevant to the year under consideration. The AO has rejected the claim of the assessee on the ground that each year is a self-contained unit and only expenses of that year can be claimed or allowed as a deduction.

73. In the appeal, the ld. CIT(A) held that such expenses had always been allowed in the year in which these were debited. Therefore, keeping in view the similar issue of earlier year, the ld. CIT(A) has allowed the claim of deduction.

74. Heard both the sides and perused the material on record. During the course of appellate proceedings before us the ld. Counsel submitted that these expenses were crystalised during the year and accordingly, the same was debited to the profit and loss account for the year under consideration. He also referred that similar issue was decided in the case of the assessee itself in the earlier year by the ITAT and in other cases by the various courts as under:

(a) ITAT-AY 1999-00 (ITA No. 2125/Mum/05)
(b) ITAT AY 1998-99 (ITA No. 8952/Mum/2004)
(c) Maharastra State Electricity Distribution Co. Ltd vs. DCIT (ITA NO.3383/MUM/2019)
(d) CIT vs. Nagri Mills Co. Ltd. [1958] 33 ITR 681 (Bom)
(e) CIT vs. M/s. Vishnu Industrial Gases P. Ltd (ITR No. 229/1988) (Delhi High Court)
(f) John Fowler (India) Pvt. Ltd. vs. THIS (ITA No. 4691/Mum/2005)
(g) Escorts Limited Vs. DCIT (ITA No.4673/Del/2005) (Delhi Tribunal)
(h) Saurashtra Cement & Chemical Industries Ltd. Vs. CIT [1995] 213 ITR 523 (Gujarat)"

We find that this is recurring issue and same is decided in favour of the assessee by the ITAT in the earlier years. The relevant extract of the decision is reproduced as under:

> *"56. During the course of assessment assessee claimed expenditure amounting of Rs.2,29,71,289/- pertaining to assessment year 1998-99 debited in assessment year 1999-2000. The AO has rejected the claim of deduction on the ground that these expenditure was not pertaining to the year under consideration. The ld. CIT(A) has allowed the claim of the assessee following the earlier years orders on the basis of which similar claim of expenditure were allowed.*
>
> *57. During the course of appellate proceedings before us the ld. Counsel submitted that these expenditure pertaining to assessment year 1998-99 were crystalized during the year under consideration, therefore, the same was correctly debited to the profit and loss account. The ld. Counsel has also submitted that identical issue on similar fact has also been adjudicated by the ITAT for assessment year 1998-99 vide ITA No. 8952/Mum/2004. We have perused the decision of ITAT as referred above wherein the claim of such expenses pertaining to assessment year 1997-98 were allowed during the assessment year 1998-99 on the ground that same were crystallized during the assessment year 1998-99. Following the decision of ITAT and considering the fact that impugned expenses were crystallised during the year under consideration we don't find any infirmity in the decision of ld. CIT(A) on this issue, therefore, this ground of appeal of the revenue is dismissed."*

Following the decision of ITAT as discussed above, we don't find any merit in this ground of appeal the revenue therefore the same stand dismissed.

Ground No.8: Disallowance under section 40(a)(i) in respect of expenditure incurred in foreign currency:

75. During the year the assessee has incurred expenditure in foreign currency of Rs.10,50,842/- on which tax was not deducted at source. The assessing officer has disallowed the same u/s 40(a)(i) of the Act.

76. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee holding that due to nature of expenditure no deduction of any tax at is required.

77. Heard both the sides and perused the material on record. We find that assesse has incurred expenditure in foreign currency in respect of drawing and designing charges of Rs.6,35,107/- and annual maintenance contract for software related R & D activity of Rs.4,15,735/- on which TDS was not deducted. We find that ld. CIT(A) has considered this fact that in both the cases the payments were made to the parties who were non-resident and were not having any permanent establishment in India, therefore, no TDS was deducted. We have also considered that similar issue on identical fact has been decided in favour of the assessee by the ITAT in the earlier years:

(a) ITAT-AY 2001-02 (ITA No.3383/MUM/2019)
b) ITAT- AY 2000-01 (ITA No.3055/Mum/05)

In the aforesaid cases the ITAT held that since the payment were made to the non-resident who were having no business connection in India, therefore, appeal of the revenue was dismissed.

78. In view of above facts and findings we don't find any merit in this ground of appeal of the revenue therefore, the same stand dismissed.

Ground No.9: Allowing deduction in respect of electricity services connection charges: Rs.8,86,00,000/-:

79. During the previous year relevant to the assessment year 2002-03 the assessee claimed expenses for electricity service connection charges amounting to Rs.8,86,00,000/-. The assessee claimed the same as the revenue expenditure as no capital asset was created out of such expenditure. However, the AO has rejected the claim of the assessee.

80. In the appeal, the ld. CIT(A) after following the order of the ITAT on the similar assessment for the earlier years in the case of the assessee itself has allowed the appeal of the assessee.

81. Heard both the sides and perused the material on record. Assessee has incurred the aforesaid expenditure in connection with the electricity service connection charges and submitted that no capital asset was created out of such expenditure of Rs.4,20,00,000/- and Rs.4,66,00,000/- paid to Maharashtra State Electricity Board (MSEB) and Maharashtra Energy Development Agency (MEDA) respectively. The company has installed windmills for captive consumption. The power generated is transported to MSEB grid. The MSEB in order to connect the locations of wind farms with the grid, lays cables for which it takes outright contribution. The cables laid down were property of MSEB. We have also perused the following decision of ITAT referred by the ld. Counsel which is reproduced as under:

"(a) ITAT-A.Y.-1984-85
(b) ITAT-AY-1985-86- (ITA No. 7037/Bom/88)
(c) ITAT-A.Y.-1986-87-(ITA No. 7058/Bom/88)
(d) ITAT-A.Y.-1987-88- (ITA No. 49/Bom/1991)
(e) CIT vs. Excel Industries (122 ITR 995) (Bom)"

The extract of decision of ITAT pertaining to assessment year 1987-88 vide ITA No. 49/Mum/2011 which is reproduced as under:

"55. We have carefully considered the arguments of both the sides and perused the material placed before us, From the perusal of the assessment order, it is evident that the AO has nowhere mentioned that the assessee is the owner of the extended electricity line to the assessee's Waluj unit. On the other hand the AO observed "the capital contribution was made for creating special EHV supply facilities to assessee's requirements. The expenditure is certainly in the nature of providing enduring advantage' over a period of several years". The learned DR has not brought on record any evidence to establish that the assessee is the owner of the electricity line from Aurangabad sub-station to the assessee's unit. The learned counsel for the assessee made a statement at Bar that the assessee is not the owner of the said electricity line and has not claimed any depreciation on this payment of Rs. 1,40,00,000/-. This statement made at Bar remain uncontroverted. In view of these facts, we hold that the assessee is not the owner of the electricity line, for which the assessee made the payment of Rs. 1,40,00,000/-."

After considering the above facts and finding we don't find any reason to interfere in the decision of ld. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

Ground No.10: Allowing deduction in respect of Inter Corporate Deposits written Off:

82. During the previous year relevant to the assessment year under consideration the assessee had written off bad debt and other irrecoverable debit balance amounting to Rs.37,61,71,451/- to the profit and loss account. The amount written off included the principle amount of inter corporate deposits amounting to Rs.23,65,47,398/- and Rs.13,96,24,053/- towards interest receivable thereon. The assessing officer was of the view that the advances made by the assessee were of capital account, therefore, the loss arising on account of such write off was a capital loss and could not be allowed as a revenue expenditure. The AO also stated that giving of loans and advances was not the business of the assessee.

83. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee.

84. During the course of appellate proceedings before us the ld. Counsel submitted that assessee carries on business of money lending and the interest received on such deposit offer to tax as income under the head profit and loss account from business or provision. Therefore, the principle amount written off was allowable as deduction u/s 36(1)(vii) r.w.s 36(2) of the Act. The ld. Counsel has also referred the following judicial pronouncements:

(a) *Poysha Oxygen (P) Ltd. Vs. ACIT in 19 SOT 711 (Delhi Tribunal)*
(b) *ITW Signode India LTD [2007] 110 TTJ 170 (HYD.)*
(c) *Shreyas S. Morakhia (2012) 342 ITR 0285 (Bombay High Court)*
(d) *Pudumjee Pulp & Paper Mills Ltd ITA No. 1590 of 2013 dated 5 August 2015 (Bombay High Court)*
(e) *Mahindra Engineering and Chemical Products Ltd. [2022] 136 taxmann.com 183 (Bombay)*

Allowability of deduction under section 36(1)(vii) read with section 36(2) of the Act even when the company is not in the money lending business.

(a) *Turner Morrison & Co. Ltd [2000] 245 ITR 724 (Calcutta High Court)*

(b) *Crescent Films (P.) Ltd. [2001] 248 ITR 670 (Madras High Court)*

If company is in the business of money lending then second condition u/s 36(2)(i) is also satisfied.

(a) *Sicom Limited (ITA No. 8040 and 8055/M/2010 dated 2014) (Mumbai Tribunal) 15 January*

(b) *Smt. Padma S Bora in (2015) 54 Taxmann.com 319 (Bombay High Court)*

(c) *Vivek Engineering & Casting Ltd [2016] 383 ITR 480 (Calcutta)*

85. Heard both the sides and perused the material on record. It is undisputed fact that interest income of inter corporate deposit had been assessed as business income. Further as per object clause of the memorandum of association produced at para 8.2 of the assessment order it is clear that money lending was a part of the business activity of the assessee. Further ld. CIT(A) has also referred in his finding that the assessee has constantly shown interest received on inter corporate deposit as business income and same was assessed as business income. The relevant extract of the decision of CIT(A) is reproduced as under:

> *"20.12 I have considered the facts of the case and I have also gone through the facts on record. In the return of income and even in the assessment order passed for current year and earlier years the interest received on inter corporate deposits was assessed as 'Business Income'. Thus it cannot be disputed that the appellant is in the business of the money lending Merely because the appellant was not required to be registered with RBI as NBFC and was not liable to pay interest tax, it cannot be concluded that granting of loans is not business activity of the Appellant. Further from sub-clause 35, 37 and 43 of the Memorandum of Association of the Company it is clearly evident that lending of money is one of the business activity of the appellant company*
>
> *20.13 In view of the above facts, I hold that monies were lent by the appellant in the ordinary course of the business. Further interest received from monies lent was assessed as business income in earlier years and even in the year in which it has been written off. Accordingly, the write- off of the principal amount of inter corporate deposit is to be allowed as deduction under section 36(2)(1).*
>
> *This ground is therefore treated as allowed."*

In the light of the above facts and findings we don't find any reason to interfere in the decision of ld. CIT(A) therefore, this ground of appeal of the revenue is dismissed.

Ground No.11: Allowing premium on insurance venture as capital receipts:

86. Since we have adjudicated the similar issue on identical facts vide ground no. 8 of the appeal of the assessee as supra in this order therefore applying the finding as mutatis mutandis the aforesaid ground of appeal of the revenue is also dismissed.

Ground No. 12: Exclusion of 90% of the following from the profits of the business while computing deduction under section 80HHC:

a. **Technical know-how**
b. **Insurance claims**
c. **Miscellaneous receipts**
d. **Sundry Credit Balance**
e. **Provision no longer required**
f. **Bad debts recovered**

87. This ground of appeal of the revenue is misconceived as ld. CIT(A) has rejected the ground of appeal of the assessee and upheld the order of the AO. Therefore, this ground of appeal of the revenue stand dismissed.

Ground No.13: Exclusion of 10% of other income and export incentives while computing the indirect cost and deduction under Sec. 80HHC:

88. During the course of assessment the assessing officer computed indirect cost attributable to trading goods without reducing therefrom expenses attributable to items of other income and export incentives.

89. However, the ld. CIT(A) after following the decision of ITAT for assessment year 2000-01, assessment year 2003-04 and A.Y. 2004-05 directed the AO to reduce 10% of such income while computing the

indirect cost and thereafter to re-compute the trading profits for the purpose of deduction u/s 80HHC.

90. Heard both the sides and perused the material on record. We find that similar issue on identical fact has been adjudicated in favour of the assessee by the ITAT, Mumbai in the case of the assessee itself in the earlier years referred by the ld. Counsel as under:

"(a) ITAT-AY 1999-00 (ITA No. 2125/Mum/05)
(b) ITAT-AY 2000-01 (ITA No. 3055/Mum/05)
(c) ITAT AY 1997-98 (ITA No. 5030/Mum/2001)
(d) ITAT AY 1996-97 (ITA No. 1781/Mum/2000)
(e) ITAT AY 1995-96 (ITA No. 3493/Mum/1999)
(f) Surendra Engg. Corprn. vs. ACIT [2003] 86 ITD 121 (Mum) (SB)
(g) Hon'ble Supreme Court in the case of Hero Exports vs. CIT [2007] 295 ITR 454 (SC)"

The extract of the decision of ITAT for AY 2000-01vide ITA No. 3055/Mum/2005 is reproduced as under:

"108. During the course of appellate proceeding before us at the outset the ld. Counsel submitted that identical issue and similar fact has been adjudicated by the ITAT in favour of the assessee in the preceding assessment year as under:

a. ITAT – AY 1995-96 (ITA No. 3493/Mum/1999, para no. 19-22, page nos. 16-18
b. ITAT – AY 1996-97 (ITA No. 1781/Mum/2000, para no. 5.3, page no. 5)
c. ITAT – AY 1997-98 (ITA No. 5030/Mum/2001, para no. 93

The relevant decision of ITAT vide ITA No. 5030/Mum/2001 is reproduced as under:

"93. 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. 1996-97. While deciding the issue, the Coordinate Bench of the Tribunal in the immediately preceding assessment year in ITA. No. 1781/Mum/2000 dated 20.06.2022 following the decision in assessee's own case for the A.Y. 1995-96, held as under: -

"5.3 In additional ground No.2 of the appeal the assessee has assailed exclusion of certain expenses i.e. "indirect cost" attributable to export of trading goods for the purpose of deduction u/s 80HHC of the Act. In first appellate proceedings the CIT(A) directed the Assessing Officer to exclude expenses attributable to other Income and export incentive, estimated at 10%. We find that similar issue had come up before the Coordinate Bench in assessee's own case for the Assessment Year 1995-96 (supra). The Tribunal after examining the issue placed reliance on the decision of Hon'ble Supreme Court of India in the case of Hero

Exports vs. CIT 295 ITR 454 and the decision of Special Bench of the Tribunal in the case of Surendra Engineering Corporation vs. ACIT, 86 ITD 121 and decided the issue in favour of assessee. For the sake of brevity the findings of the Co-ordinate Bench are not reproduced hereunder. The Revenue could not controvert the findings of Coordinate Bench on the issue. Following the decision of Tribunal in assessee's own case for the immediately preceding Assessment Year, the additional ground No.2 of the appeal is allowed."

94. Respectfully following the above decision and following the principle of consistency, the view taken by the Tribunal in A.Y. 1996-97 is respectfully followed, accordingly, ground raised by the assessee is allowed."

Following the decision of the ITAT we don't find any merit therefore, this ground of appeal of the revenue stand dismissed."

Following the decision of ITAT as referred above we don't find any merit in the appeal of the revenue, therefore the same stand dismissed.

Ground No. 14: Inclusive of the following in overhead expenses while computing deduction under section 80HHC:

91. The assessee has filed the additional ground of appeal before the ld. CIT(A) that assessing officer has included the various indirect expenses attributable to export of traded goods while computing deduction u/s 80HHC of the Act without considering the fact that said expenses were already disallowed by the assessing officer in the order passed u/s 143(3) or in the return of income filed by the assessee.

92. The ld. CIT(A) held that only those expenses which were allowed while computing the profit of the business ought to be considered for the purpose of determining indirect cost in respect of traded goods. Further the ld. CIT(A) has included the items of expenditure on which addition made by the assessing officer was deleted while computing the indirect cost of traded goods and excluded the item of expenditure in respect of which ld. CIT(A) has sustained the addition made by the assessing officer.

93. Looking to the above facts and circumstances we don't find any reason to interfere in the decision of ld. CIT(A) therefore, the appeal of the revenue stand dismissed.

94. In the result, the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 24.06.2024

Sd/-	Sd/-
(Vikas Awasthy) Judicial Member	(Amarjit Singh) Accountant Member

Place: Mumbai
Date 24.06.2024
Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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