

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JM &
SHRI OMKARESHWAR CHIDARA, AM**

I.T.A. No.4551/Mum/2023

(Assessment Year: 2011-12)

I.T.A. No.4552/Mum/2023

(Assessment Year: 2012-13)

I.T.A. No.4553/Mum/2023

(Assessment Year: 2013-14)

I.T.A. No.4554/Mum/2023

(Assessment Year: 2014-15)

I.T.A. No.4555/Mum/2023

(Assessment Year: 2015-16)

Larsen & Toubro Ltd. (successor to L&T Valdel Engineering Ltd.) L&T House, N.M. Marg, Mumbai-400001. PAN : AAACLO140P	Vs.	ACIT, CC-5(4) (earlier AO DCIT, Circle-11(5), Bangalore), Room No. 1927, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
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I.T.A. No.4684/Mum/2023

(Assessment Year: 2015-16)

I.T.A. No.4767/Mum/2023

(Assessment Year: 2011-12)

DCIT, CC-5(4) , Room No. 1927, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	L and T Valdel Engineering Ltd. RMG Galleria, 5 th Floor, Opp. To Yelahanka Police Station, Bangalore Bellary Road, Yelahanaka, Bangaluru-560064. PAN : AABCL0552G
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I.T.A. No.4682/Mum/2023

(Assessment Year: 2012-13)

DCIT, CC-5(4) , Room No. 436, 4 th Floor, Kautilya Bhawan, Bandra Kurla Complex, Mumbai-400051.	Vs.	Larsen & Toubro Ltd. (earlier known as L&T Valdel Engineering Ltd.) L&T House, N.M. Marg, Mumbai-400001. PAN : AABCL0552G
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I.T.A. No.4715/Mum/2023

(Assessment Year: 2013-14)

ACIT, CC-5(4) (earlier AO DCIT, Circle-11(5), Bangalore), Room No. 1927, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	L and T Valdel Engineering Ltd. RMG Galleria, 5 th Floor, Opp. To Yelahanka Police Station, Bangalore Bellary Road, Yelahanka, Bangaluru-560064. PAN : AABCL0552G
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I.T.A. No.4683/Mum/2023

(Assessment Year: 2014-15)

DCIT, CC-5(4) , Room No. 436, 4 th Floor, Kautilya Bhawan, Bandra Kurla Complex, Mumbai-400051.	Vs.	Larsen & Toubro Ltd. (earlier known as L&T Valdel Engineering Ltd.) L&T House, N.M. Marg, Mumbai-400001. PAN : AABCL0552G
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Appellant / Assessee by : Shri Nitesh Joshi, AR

Revenue / Respondent by : Shri Pravin Salunkhe, , Sr. DR

Date of Hearing : 14.10.2024

Date of Pronouncement : 30.10.2024

ORDER

Per Bench:

Present case appeals filed by the assessee as well as revenue arises out of the consolidated order passed by the Ld. CIT(A) dated 16/10/2023 for the years under consideration.

2. The Ld. AR at the outset submitted that, the appeal filed by the assessee in all the years under consideration is on one issue, regarding disallowance of the amount paid to Larson & Toubro Ltd.,

towards cost of ESOP benefits given by it to the assessee's employees or by the employees deputed by Larson & Toubro Ltd. to the assessee.

2.1. The Ld. AR submitted that, assessee having PAN No.AABCL0552G merged with the parent company being Larson & Toubro Hydro Carbon Engineering Ltd. having PAN No.ABBCL5967D with effect from 01/04/2016, as per the scheme approved by *National Company Law Tribunal*, Bangalore Bench vide its order dated 31/05/2017 and by the order passed by *Hon'ble Bombay High Court* vide its order dated 29/09/2016.

2.2. He further submitted that, Larson & Toubro Hydro Carbon Engineering Ltd further merged with its ultimate holding company being Larson & Toubro Ltd. having PAN No.AAACL0140P with effect from 01/04/2021 as per the order passed by *National Law Tribunal, Mumbai* dated 28/01/2022.

2.3. The Ld. AR submitted that, at the time of passing of the assessment orders, the assessee was known as Larson & Toubro Valdel Engineering Ltd. He submitted that, at the time its assessment orders under consideration were pending before the Ld. CIT(A). A request was made vide letter dated 06/10/2023, wherein, the representation was made to consider Larson & Toubro Veldel Engineering Limited as a part of Larson & Toubro Ltd. He submitted that in view of the above submissions and the facts that prevailed on the relevant time the orders passed for each of the assessment year is issued to have been passed in case of Larson &

Toubro Ltd. The Ld. AR emphasized that, the impugned orders for all the assessment years under consideration was passed on 16/10/2023 in a consolidated way.

2.4. We are therefore of the opinion that, it would be convenient to pass consolidated order for all the years under consideration in appeals filed by the assessee as well as revenue.

Accordingly, we first take up Assessee appeal :- We shall refer to the facts and figures for A.Y. 2012-13

3. The only one issue contested by the assessee arising out of order passed by the Ld.CIT(A) is regarding disallowance of deduction of Rs.3,35,38,024/- on account of payment made to L & T Ltd. in respect of reimbursement of such Employee related option scheme.

3.1. The issue raised in assessee's appeal is tabulated as under:-

Sr. No.	Issues	A.Y.2011-12 ITA No. 4767/M/2023	A.Y.2012-13 ITA No. 4682/M/2023	A.Y.2013-14 ITA No. 4715/M/2023	A.Y.2014-15 ITA No. 4683/M/2023	A.Y.2015-16 ITA No. 4684/M/2023
1.	Disallowance of amount paid to Larsen & Toubro Limited towards cost of ESOP benefit given by it to the assessee's employees or by the employees deputed by them to it.	Gr. No. 1	Gr. No. 1	Gr. No. 1	Gr. No. 1	Gr. No. 1

3.2. Both sides submitted that, facts for all the years under consideration regarding these issues are similar except for some difference in the amount of the claim raised by the assessee.

Brief Facts leading to the above issue are as under:

3.2.1.The Ld.AR submitted that the assessee during the year under consideration paid certain amount towards reimbursement of cost to M/s. L & T Ltd. towards cost incurred on stock options issued to eligible employees of L & T Ltd. deputed with the assessee being L & T Valdel Engineering Ltd. The Ld.AR submitted that Ld.AO disallowed expenses related to reimbursement on the ground that the ESOP Scheme, the employees are allowed to opt for equity share of the holding company under satisfaction of certain condition. He submitted that the assessee (L & T Valdel Engineering Ltd.) was a subsidiary of L & T Ltd. being ultimate holding company and had deputed certain employees to work fulltime with the assessee who were always on the payroll of ultimate holding company. It was submitted that the expenditure in relation to such deputed employees incurred by the ultimate holding company was charged to the assessee on a cost to cost basis and on an ongoing basis.

3.2.2. The Ld. AR submitted that as per the ESOP scheme framed by the ultimate holding company, the employees deputed to the assessee were entitled to equity shares of the ultimate holding company. He submitted that the understanding between the assessee and the ultimate holding company was that the

proportionate cost related to the employees deputed to the assessee were to be charged by the ultimate holding company.

3.2.3. Accordingly, the ultimate holding company raised debited notes to the assessee under the contractual obligation to bare all the expenditure as determined by the ultimate holding company. The Ld.AR submitted that assessee had filed copies of debit notes raised by the ultimate holding company at the time of assessment proceedings vide letter dated 30/12/2014.

3.2.4. The Ld.AR emphasised that the understanding between the assessee and its holding company was on oral contract and was valued enforceable in the eye of law which was legally binding on the parties. Since there was a relationship of holding and subsidiary with the assessee, both did not insist at a formal contract on writing and therefore in the absence of a written contract such a reimbursement of cost by the assessee cannot be treated as void. He submitted that as per the understanding between assessee and the holding company, the assessee made following expenditure for the year under consideration.

L&T-Valdel Engineering Ltd. Bangalore
Details of ESOP Debits and Credits for FY 2011-12

Sl. No.	DN/CN No.	Date	ESOP Charges
1	2011-12PACDN/438	14-Sep-11	1,63,81,670.00
2	2011-12PACDN/437	14-Sep-11	82,78,718.00
3	HRP/ETDS/05	14-Sep-11	55,837.00
4	2011-12PACDN/856	19-Dec-11	65,71,646.00
5	2011-12PACDN/842	19-Dec-11	10,59,377.00
6	20027	14-Sep-11	1,70,000.00
7	2011-12PACDN/1761	31-Mar-12	43,41,035.00
8	2011-12/PACCN/159	31-Mar-12	(33,20,259.00)
Grand Total			3,35,38,024.00

3.2.5. The A.R. submitted that, the expenditure incurred by the assessee is one of the form of reimbursement of expenses towards the deputed employees and that the assessee had not issued any equity shares to such employees. He emphasized that the payment made by the assessee is only the reimbursement of cost incurred by the ultimate holding company on these employees who were deputed with the assessee and were actually on the payroll of the ultimate holding company. It is submitted that the assessee deducted tax at source against the payment made to the holding company and further assessee issued Form 16 A to the ultimate holding company for deducting TDS on the amounts reimbursed by the assessee.

3.2.6. It is submitted by the assessee that, the holding company gave confirmation regarding the same and has offered to tax, such cost reimbursed the assessee treating the same as other income in its books of accounts has paid necessary taxes on it. The Ld.AR submitted that, the assessee in its books of accounts treated the said reimbursement of charges made to its holding company as professional fees and deducted taxes as per the provision of section 194J of the Act.

3.2.7. The Ld. AR submitted that, the expenditure incurred by the assessee on cost to cost basis in such manner on behalf of deputed employees are allowable as deduction u/s. 37 of the Act and that the Ld. AO cannot doubt the necessity of incurring expenditure as it is not in the domain of the assessment.

3.2.8. The A.R. emphasized that deputation of employees by L & T Ltd. to assessee has not been disputed by the revenue authorities. However, only in the absence of the written contract the expenditure claimed by the assessee was denied. The Ld. AR submitted that L & T Ltd. confirmed that the reimbursement was on cost to cost basis in respect of the employees deputed to the assessee and the amortised ESOP cost of such employees was charged on quarterly basis. It was submitted that issue relating to ESOP was considered by the *Hon'ble Special Bench of this Tribunal in case of Biocon Ltd. vs. DCIT* reported in [2013] 35 taxmann.com 335. The Ld.AR submitted that, this decision was upheld by *Hon'ble Karnataka High Court* reported in [2020] 121 taxmann.com 351. The Ld. AR submitted that, though the decision in respect of ESOP shares is not directly linked with the issue under consideration in the present facts, however, since the deputed employees of the holding company were in receipt of ESOP from the holding company, and were employed during the years under consideration with the assessee, the principle laid down by Hon'ble Special Bench would be applicable to the holding company who issued ESOP to these employees.

3.2.9. It was submitted that there was a need as per the oral understanding between the holding company and the assessee that the assessee would reimburse the cost incurred by the holding company. The Ld. AR thus relied on the principles laid down by the *Hon'ble Special Bench* in case of *Bicon Ltd. (Supra)* to support the contention that, the expenses incurred by the holding company was

to motivate its employees who were deputed with the assessee during the relevant period was actually reimbursed on cost to cost basis by the assessee. He this submitted that these expenses were incurred by the assessee for the purposes of the business and therefore is an allowable expenditure in the hands of the assessee.

3.2.10. The Ld. AR placed reliance on the decision of the *coordinate bench* of this *Tribunal* in case of *DCIT vs. M/s. Accenture Services Pvt. Ltd.* in *ITA No. 4540/M/2008 vide order dated 23/03/2010.* The Ld. AR placed reliance on the details of expenses incurred by the assessee placed in the paper book that was debited to the Profit & Loss A/c. He also referred to employee wise breakup for ESOP Stock and the certificate issued form the holding company to support his submission that the expenditure is not claimed twice i.e. by the assessee and the L & T Company being the holding company. The Ld. AR further submitted that, the salary paid by the assessee to these deputed employees, were never doubted by the revenue authorities, wherein, ESOP expenses are considered as perquisite in the hands of the such employee. Under such circumstances, the Ld. AR prayed that, the expenditure incurred by the assessee towards the reimbursement of cost to the ultimate holding company being L & T Ltd. is an allowable expenditure in the hands of the assessee.

3.3. On the contrary, the Ld. DR placed reliance of the orders passed by the authorities below, however, could not controvert the categorical evidences furnished by the assessee.

We have perused the submission advanced by both sides in the light of the records placed before us. The Ld. CIT(A) in the impugned orders referred to the order of coordinate bench of this Tribunal for assessment year 2010-11 wherein the issue was remanded with following directions.:

26. Grounds 2 and 3 in A. Y. 2008-09 and grounds 3, 4 and 5 in A. Ys. 2009-10 and 2010-11 are allowed.

27. Vide its grounds 5 and 6 for A. Y. 2008-09 and grounds 6 and 7 for A. Ys. 2009-10 and 2010-00 assessee assails disallowance of debit notes raised by its parent company for defraying the ESOP charges of employees deputed by it. Amount disallowed was of Rs.2,70,99,347/- for A. Y. 2008-09 Rs.5,27,68,682/- for A. Y. 2009-10 and Rs.2,48,75,779/- for A. Y. 2010-11.

28. Facts apropos are that assessee had debited the above amounts under the head 'professional charges. Assessee was a subsidiary of L & T Ltd which had deputed certain employees of it to the assessee. AO required from the assessee details of the payments made by it to the employees sent by L & T Ltd, on deputation. In so far as the amounts paid to these employees in relation to allotment of shares under ESOP scheme, the AO was of the opinion that assessee had no such contractual obligation and assessee was unable to provide any contract between it and its holding company, for supporting such payments. Though the assessee claimed that payments were effected based on debit notes raised by M/s. L & T Ltd., AO was of the opinion that there was no proof for actual payment and it was not a genuine expenditure supported with necessary calculation. He treated the outgo as capital in nature and disallowed the claim.

29. In its appeal before the CIT (A) argument of the assessee was that employees deputed by its holding company were working full time for it. According to assessee, all the expenditure incurred by the holding company for such employees were charged on the assessee on a cost-to-cost basis. Employees of L & T Ltd, were given the benefit of ESOP framed by M/s. L & T Ltd. As per the assessee, such employees who were having ESOP benefit of the parent company when deputed to the assessee, and when they were working for the assessee, having received the benefit of labour of the employees, cost incurred for the employees by the principal, had to be defrayed by it to the holding company. Assessee also filed before the CIT (A) an abstract of the ledger book and debit notes. Assessee also submitted that noting in the tax audit report for the impugned assessment

year could not be considered as a basis for concluding that the expenditure by way of reimbursement of ESOP charges of the employees deputed by its holding company was a capital outgo.

30. CIT(A) after going through the submissions of the assessee and after obtaining a remand report from the AO was of the opinion that there was nothing wrong in defraying the discount relating to the ESOP, which had to be borne by the employer over its vesting period. However, he was of the opinion that the scheme of ESOP was between the employees of holding company and M/s. L & T Ltd. CIT (A) noted that the debit notes issued by the holding company did not have the names of the employees. There was no written agreement between the assessee and its holding company with regard to the contractual obligation assessee had in relation to those employees who were deputed by the holding company to the assessee. As per the CIT (A), though the liability under ESOP scheme would be deductible in the hands of the holding company in accordance with the decision of the Special Bench in the case of Biocon Ltd, v. DCIT [(2013) 144 ITD 21], this would not entitle a person who was not a direct employer to claim such benefit. He thus upheld the disallowance.

31. Now before us, Ld. AR submitted that the payments effected by the assessee to L & T Ltd, its holding company were based on debit notes placed at paper book pages 111 to 123. As per the Ld. AR assessee was obliged to reimburse the claims made by L & T since the employees deputed by L & T were working for the assessee. Assessee was supposed to reimburse the holding company on cost to cost basis. It had produced a letter from L & T Ltd, placed at page 124 which would show that the payments were reimbursement of cost incurred by L & T Ltd. As per the Ld. AR, L & T Ltd, had shown such receipts from the assessee as a part of its income: Discount in the value of shares under an ESOP scheme was held to be allowable by the Special Bench in the case of Biocon Ltd, (supra), over the period of vesting. When the employees were being used by the assessee for its own business, the benefit of the ESOP which would have otherwise been that of the holding company was actually enjoyed by the assessee. According to him, nature of such expenditure was not doubted, but a disallowance was made on an erroneous reasoning that it was a capital outgo.

32. Per contra, Ld. DR strongly supporting the order of CIT (A) submitted that on mere debit notes a claim could not be allowed. As per the Ld. DR the debit notes produced were dumb without any details. Claim for revenue expenditure should be based on tangible evidence which support the business need of such expenditure. Assessee had not demonstrated this. Disallowance therefore was rightly made according to the Ld. DR.

33. We have perused the materials on record and heard the rival contentions. Details of the debit notes and the findings of the AO in this

regard, as reproduced by the CIT (A), at para 6.1 of his order for A. Y. 2009-10, is once again reproduced by us for brevity:

"6.1 The AO noted that the appellant had debited a sum of Rs.5,27,68,682/- under the head 'professional charges' being payments made to employees sent on deputation to the holding company i.e. M/s. Larsen & Toubro Ltd. From the reply of the appellant dated 02/11/2011, the AO noted that it was a payment made to the holding company viz. M/s. Larsen & Toubro Ltd. For purposes of allotment of shares under Employees Stock Option Scheme (ESOP). According to the AO, no contract evidencing payments on account of contractual obligation was produced; no proof of actual payment was furnished; the claim that the payment is not optional but an actual expenditure is not supported with calculations; and the intention of allotting equity shares under the ESOP was clear from the nature of payment made. The AO, therefore, treated the same as a capital expenditure and brought the corresponding amount of Rs.5,27,68,682/- to tax as an inadmissible expenditure."

34. It is the undisputed fact that assessee was not able to produce any contract it had entered with L & T Ltd, its holding company for reimbursement of employee cost. However, it is also not disputed that the employees were deputed to the assessee and they worked for the assessee. Reimbursement for this to M/s. L & T Ltd, claimed by the assessee were all allowed by the Revenue, but for the ESOP. No doubt necessity of incurring an expenditure cannot be questioned by the Revenue, for it is in the domain of a businessman. However, production of evidence to show that the expenditure was incurred for the purpose of business is the onus of the assessee. What the assessee had produced before the lower authorities is only certain debit notes with narrations which did not give any details. No doubt before the CIT (A), it had produced a letter dt. 13.12.2012 from L & T Ltd, which stated as under:

"To whomsoever It may Concern

This is to confirm that Larsen & Toubro Limited has deputed its employees to L & T-Valdel Engineering Limited on cost- recovery basis. The amortized ESOP costs of such employees are being recovered on a quarterly basis. For the Financial Year 2007-08 an amount of Rs.29,397,155/- has been recovered and the same has been treated as "Other income" in the books of Larsen & Toubro Limited and has also been offered to tax.

For Larsen & Toubro Limited
Sd/-
Arun Kirtania
Deputy General Manager

Absence of a written contract by itself might not be fatal to the claim of an expenditure especially when such expenditure is based on an

understanding between a Holding company and a subsidiary company, but nevertheless, it is the duty of the assessee to show that what has been reimbursed as amortised ESOP cost by its holding company were actually charged by such holding company in its P & L account as expenditure and the reimbursements made by the assessee were shown as a part of its income. Assessee has to demonstrate that the services received by it from such employees were commensurate with the payment. We are, therefore, of the opinion that the claim of the assessee requires a fresh look by the AO. We, therefore, set aside the orders of the lower authorities on this issue and remit it back to the AO for fresh consideration. Assessee will be free to produce fresh evidence to justify the incurrance of such expenditure and also show that the expenditure was not claimed twice, i.e., both by the assessee as well as by its holding company. Grounds 5 & 6 for A. Y. 2008-09, grounds 6 & 7 of the assessee for A. Ys. 2009-10 and 2010-11 are allowed for statistical purposes.”

3.4.1. On a query being raised by the bench to the Ld. AR, regarding the status of the remand, it was informed that Ld. AO has not passed any remand order in respect of the same till date. The Ld. AR emphasized on the confirmation given by ultimate holding company of having received the reimbursed cost and that the same has not been doubly claimed by assessee as well as holding company for the sake of convenience. The said confirmation scan and reproduced here under:-

This is to confirm that M/s. Larsen & Toubro Limited has issued its shares under approved ESOP schemes

a) To the employees deputed to M/s. L&T-Valdel Engineering Limited (a 100% Subsidiary of Larsen & Toubro Limited) amounting to Rs.60,17,836/-. This amount has been treated as "Other Income" in the books of M/s. Larsen & Toubro Limited and has been offered to tax, and,

b) To the eligible employees of M/s. L&T-Valdel Engineering Limited amounting to Rs.2,75,20,188/-. The said cost has been recovered from M/s. L & T-Valdel Engineering Limited through debit advises.

The amortized cost of such ESOPs is recovered on a quarterly basis and for the FY 2011-12 an amount of Rs.3,35,38,024/- has been recovered from M/s. L & T-Valdel Engineering Limited.”

3.4.2. He submitted that similar confirmation was given by the holding company for each assessment years under consideration. The assessee has placed at page 33 the extract of TDS certificate u/s.203 of the Act, wherein TDS u/s. 194 J of the Act is deducted by the assessee, in the name of L & T Ltd.

3.4.3. The assessee has filed in the paper book with details of salary, allowances paid by the assessee to such deputed employees, wherein the reimbursement made by the assessee to the ultimate holding company *qua* such employees considered as ESOP charges. For the sake of convenience the annexure referred for assessment year 2012-13 is scanned and reproduced as under:

Annexure 2		XI A 1
SALARIES, ALLOWANCES & CONSULTANCY		
Particular	Sch	Amount (in Rs.)
	XI A 1	2,28,116
BONUS ACCOUNT	XI A 1	7,91,11,952
CONSULTANCY FEES ICO BLR	XI A 1	6,45,66,681
CONSULTANCY FEES ICO FBD	XI A 1	3,35,38,024
ESOP CHARGES ICO	XI A 1	16,77,256
INSURANCE MEDICLAIM	XI A 1	1,99,470
INSURANCE MEDICLAIM ICO	XI A 1	4,52,635
INSURANCE WORKMEN COMPENSATION	XI A 1	3,03,493
LEASE RENTALS VEHICLES ICO	XI A 1	35,33,735
LEAVE ENCASHMENT	XI A 1	82,81,655
LEAVE TRAVEL ALLOWANCE	XI A 1	21,16,566
LEAVE TRAVEL ALLOWANCE ICO	XI A 1	17,77,410
MEDICAL REIMBURSEMENT	XI A 1	13,20,096
MEDICAL REIMBURSEMENT ICO	XI A 1	3,50,00,000
PERFORMANCE INCENTIVES	XI A 1	14,77,634
PETROL & MAINTENANCE	XI A 1	1,82,250
PAINT SUBSIDY ICO	XI A 1	83,06,542
PETROL & MAINTENANCE ICO	XI A 1	3,76,480
RENT LEASED ACCOMODATION	XI A 1	17,67,47,519
SALARIES & ALLOWANCES	XI A 1	82,82,140
SALARIES & ALLOWANCES ABUDHABI ICO	XI A 1	2,80,465
HOLIDAY HOMES PERKS	XI A 1	1,28,93,436
ECAL EXPENSES	XI A 1	9,36,426
TELEPHONE EXPENSES REIMBURSEMENTS	XI A 1	9,84,598
TELEPHONE EXPENSES REIMBURSEMENTS ICO	XI A 1	
TOTAL		44,25,74,579

3.4.4. Further at page 35 of the paper book, the salary and payments made by assessee based on the invoices raised by the L & T Ltd. are placed and on verifying the same with the invoices placed in the paper book the amount paid by assessee is verifiable. For the sake of convenience the details of the payments made is scan and reproduced as under :-

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L&T-VALDEL ENGINEERING LIMITED
FY - 2011-12
AY - 2012-13

Annexure 3
Summary of Payments

Date of Booking	Voucher No	Gross Value	TDS	Net Payment	Date of Payment
30-09-2011	SEP0395/11	55,837	5,580	50,257	19-10-2011
20-09-2011	Sep0197/11	82,78,718	8,27,870	74,50,848	15-01-2013
20-09-2011	Sep0195/11	1,63,81,670	16,38,170	1,47,43,500	15-01-2013
22-12-2011	Dec0283/11	65,71,646	6,57,160	59,14,486	15-01-2013
27-12-2011	DEC0327/11	10,59,377	1,05,940	9,53,437	15-01-2013
31-03-2012	MAR0590/11	1,69,959	17,000	1,52,959	15-01-2013
31-03-2012	Mar0613/11	43,41,035	4,34,100	39,06,935	15-01-2013
Gross Debits		3,68,58,242	36,85,820	3,31,72,422	
Less : Reversal					
31-03-2012	MAR0614/11	-33,20,218	-	-33,20,218	15-01-2013
Total Reversal		-33,20,218	-	-33,20,218	
Amount as per Profit & Loss		3,35,38,024	36,85,820	2,98,52,204	

3.4.5.The payments made by the assessee has never been doubted by the Ld. AO/Ld. CIT(A). It is also not case of the revenue that, the same has not been subjected to the TDS by the assessee or by the holding company. The confirmation of L & T in respect of treating the reimbursed cost received from assessee under the head other

income has never been questioned. There is no contrary evidences/documents placed by the revenue on record before us to doubt the evidences filed by the Ld. AR. Under such circumstances we do not find any reason to doubt the expenditure incurred by the assessee on cost to cost basis. It is also not the case of the revenue that the mark-up has been charged by the assessee has these documents are made by the assessee in respect of those employees who were deputed by the parent company to assist the assessee. It has to be therefore considered to have been incurred for the purposes of business. We therefore of the opinion that this expenditure is allowable u/s. 37 (1) of the Act.

We thus held that this issue in favour of the assessee and Ground No. 1 raised in the assessee's appeals for all the years under consideration stands allowed.

5. Departmental appeal:

In the appeals filed by the revenue, it is submitted that, all the issues are common for the years under consideration. Accordingly all grounds raised by the revenue in their appeals are categorised issue wise and adjudicated as under. The issues are tabulated by the assessee based on grounds raised as under:-

Sr. No.	Issues	A.Y.2011-12 ITA No. 4767/M/2023	A.Y.2012-13 ITA No. 4682/M/2023	A.Y.2013-14 ITA No. 4715/M/2023	A.Y.2014-15 ITA No. 4683/M/2023	A.Y.2015-16 ITA No. 4684/M/2023
1.	Allowance of Software expenditure as revenue in nature	Gr. Nos. 1 & 2	Gr. Nos. 1 & 2	Gr. Nos. 1 & 2	Gr. Nos. 1 & 2	Gr. Nos. 1 & 2
2.	Denial of	Gr. No. 3				

	deduction under section 10A of the Act.					
3.	Increase of book profits by provision for leave encashment and provision for bonus as being made towards unascertained liabilities					
4.	Treatment of loss arising on forward contracts as regular business loss and not speculation.			Gr. Nos. 3 & 4		

A.Issue 1: Software License Fee held to be revenue expenditure by Ld.CIT(A)

Both sides submitted that, facts for all the years under consideration regarding these issues are similar except for some difference in the amount of the claim raised by the assessee.

Brief facts of this issue are as under:

A.1. During the course of assessment proceedings the Ld.AR noted that, the assessee claimed expenses towards licensing of software, AMC charges and other expenses as revenue in nature. The Ld.AO invoked provisions of section 37 of the Act, and was of opinion that, there is enduring benefit to the assessee resulting in improved performance, generating income due to usage of software

products/programs developed and sold by the assessee. The Ld.AO opined that, they are therefore part of profit-making apparatus of the assessee that helps assessee in carrying its business more efficiently and the same needs to be capitalised. The Ld. AO thus applied both ownership test and functional test in order to disallow the expenditure and treated the same as capital expenditure resulting in disallowance for years under consideration. The Ld.AO however allowed depreciation at 60%.

A.2. On an appeal before the Ld.CIT(A), and upon going through the submissions of the assessee, the Ld.CIT(A) was of the opinion that the expenditure incurred towards purchase of software are revenue in nature that brought greater efficiency and functioning of assessee is business.

A.3. Before us, the Ld.DR vehemently opposed the argument of the assessee and the observations of the Ld.CIT(A). He submitted that the expenditure incurred by the assessee towards purchase of software resulted in enduring benefit to the assessee. The Ld.DR thus placed reliance on the orders passed by the Ld.AO.

A.4. On the contrary the Ld.AR submitted that, the assessee is engaged in the activity of engineering consultancy in the upstream domain of oil and gas sector. It is submitted that, THE assessee needs to use sophisticated modelling and analysis software and rendered consultancy services. It is submitted that the software required by the assessee for its activities are generally very high-end applications that carry very high price tag. The Ld.AR specifically

mentioned that the licenses that are purchased on perpetual model are being capitalised in the books as is evident from the depreciation schedule. He brought our notice the depreciation schedule of the audited financials at the pages in the paper book filed before us for the years under consideration.

A.5. The Ld.AR submitted that, the assessee is also procuring software for short periods like a month or quarter, under revenue model to handle the spikes in project requirements. It is submitted that periodic maintenance fee is also paid in respect of such short term license and are charged as revenue expenditure. The Ld.AR the submitted that, the expenditure considered as revenue in nature are basically licenses purchased for short durations and maintenance charges of the same. Referring to the audit report, the Ld.AR submitted that, these are incurred on month-to-month basis and annual subscriptions are paid in respect of the same. The details of the expenses incurred by the assessee is placed at page 7-12 of the paper book brought to our notice by the Ld.AR.

A.6. The Ld.AR placed reliance on following decisions in support of his argument:

1. *Decision of Hon'ble Bombay High Court in case of P CIT vs Holcim Services (South Asia) Ltd reported in (2018) 93 taxman.com 270*
2. *Decision of Hon'ble Bombay High Court in case of CIT vs Raychem RPG Ltd reported in (2012) 21 taxman.com 507*
3. *Decision of Hon'ble Madras High Court in case of Southern Roadways Ltd., reported in 282 ITR 379 & 288 ITR 15*

We have perused the submissions advanced by both sides in the light of records placed before us.

A.7. Admittedly, the assessee capitalised such software that are purchased on perpetual license model. However there is no denial of the fact that, there are certain software purchased by the assessee which are useful only for short period of time or that requires regular update, for which subscription fee is to be paid. The revenue has not doubted the fact that, software is used by the assessee depending upon the project and therefore cannot be treated as being held by the assessee for enduring benefit. In fact it is noted that, in respect of such software the assessee is not acquiring any right embedded therein. It is also noted that such short term license software basically facilities for effective running of the assessee's business, and is not in the nature of profit-making apparatus. It is also noted that assessee has not been benefited by bringing into existence any new asset to these software licenses purchased and therefore purely qualifies for being considered as revenue expenditure.

A.8. At this juncture we refer to the observations of *Hon'ble Bombay High Court* in case of *PCIT vs Holsim services (South Asia) Ltd (supra)* as under:

We find that in this case both the CIT (Appeals) as well as the Tribunal have rendered a finding of the fact that the software purchased from M/s. C.A.India Technologies Pvt. Ltd. brought about better efficiency in the appellant's business as it enabled it to meet specifically user problem faced by the Respondent-Assessee. The impugned order also records the fact that in view of fast changing technology, software has to be regularly updated so as to keep pace with the changing technology. On the

aforesaid facts the view taken by the Tribunal that the expenditure of Rs.38.90 Lakhs is on Revenue account is an entirely possible view. So far as the Revenue's grievance that once the CIT(A) has recorded the fact that benefit obtained is of enduring nature ipso facto it must be held to be capital and not revenue in nature is contrary to the decision of the Supreme Court in Empire Jute Co. Ltd. v. CIT (1980) 3 Taxman 69. In the above case, while dealing with a similar submission, the Court has observed as under:

".....There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only whether the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

A.9. Respectfully following the above view of honourable Bombay High Court in the above referred decisions, we do not find any infirmity in the view taken by the Ld. CIT(A) (A) and the same is upheld. **Accordingly this issue raised by the revenue in ground number 1 and 2 for the years under consideration stands dismissed.**

B. Issues 2: Revenue is challenging the deduction allowed under section 10A of the act by the Ld. CIT(A).

The Ld.AR submitted that this issue arises only for assessment A 2011-12.

Brief facts leading to this issue are as under:

B.1. The STP undertaking was initially setup by M/s. Valdel Engineers and Constructors Pvt. Ltd in the year 2002-03. During the assessment Year 2005-06 and pursuant to scheme of arrangement as per section 391-394 of the Companies act 1956, a portion of the business of M/s.Valdel Engineers and Constructors Pvt.Ltd., along with the STP unit was demerged and transferred to the assessee. The demerger was approved by the *Hon'ble Karnataka High Court* vide its order dated 23/02/2005. As a consequence of the demerger the effective date was from 01/10/2004, the STP undertaking along with its income became the property of the assessee with effect from 01/10/2004. For the year under consideration the assessee claimed deduction under section 10A of the act in respect of the profits of STP undertaking. It is also submitted that this is the last of exemption available to the assessee under section 10A of the act.

B.2. It was submitted that assessment year 2002-03 being the 1st year of the deduction under section 10 A, THE CLAIM and was disallowed by the Ld.AO holding that the STP unit was set up in the portion of the same premises where the assessee was already carrying on its business and that it constituted spitting up of the existing business. It was also denied for the reason that no plant and machinery was acquired during the initial year and that the existing infrastructure was split and hence undertaking has been formed by splitting up the business already in existence. The Ld.AR submitted that findings based on identical disallowance of deductin was made in subsequent assessment years also.

B.2.1. However from assessment year 2008-09, the deduction was denied on additional ground that, the assessee is engaged in research and analysis being in the nature of information technology assisted, and does not fall under the category of information technology enabled product and services as notified by CBDT by notification dated 26/09/2000.

B.3. The Ld.AR submitted that, in line with the disallowance made for assessment year 2002-03 the disallowance u/s.10A as made in all the subsequent assessment year with the additional condition that was included from assessment year 2008-09. The Ld.AR submitted that, the demerged company appealed against the disallowances before the Ld.CIT(A) from assessment years 2002-03 to 2004-05 and the present assessee preferred appeal before the Ld.CIT(A) from assessment years 2005-06 to 2010-11. It is submitted that, the Ld. CIT(A) disposed of the appeals by allowing the deduction under section 10A of the act for assessment A 2005-06 to 2010-11 against which the revenue preferred appeal before *Hon'ble Bangalore Tribunal* considered this issue on the issue of *Hon'ble Bangalore Tribunal* in favour of the assessee. The Ld.AR drew our attention to the relevant orders of Ld.CIT(A) as well as the orders passed by *Hon'ble Bangalore Tribunal* placed at page is 268-438 of paper book for assessment year 2011-12.

B.4. The Ld.AR submitted that, for assessment year 2007-08, revenue also preferred appeal before *Hon'ble Karnataka High Court*. *Hon'ble Court vide order dated 18/09/2020 in ITA number 57/2012.*

Hon'ble High Court upheld the factual observations of *Hon'ble Bangalore Tribunal*, and the opined that, the assessee was entitled to deduction under section 10A of the act. He the submitted that the criteria to disallow the deduction under section 10A of the act has already been analysed in the preceding assessment years as upheld by *Hon'ble Karnataka High Court*.

B.5.In respect of the condition rendered by the revenue regarding acquisition of land and machinery not being fulfilled, it is submitted by the Ld.AR that, the unit acquired plant and machinery in all the subsequent assessment years including the current year. He submitted that, the details of addition of assets to the STP unit have been filed during the course of the assessment proceedings for all the years from assessment A 2003-04 onwards. It is submitted by the Ld.AR that, there were additions made during the year also which is categorically noted. The Ld.AR also submitted that acquisition of land or building is not a prerequisite for admissibility of benefits under section 10A of the act. He submitted that, this aspect was considered by *Hon'ble Bangalore Tribunal* deduction under section 10A was allowed which has been upheld by *Hon'ble Karnataka High Court*.

The Ld.AR thus submitted that the claim under section 10A of the act therefore cannot be denied to the assessee year under consideration being the last year of claim.

B.6. On the contrary the Ld.AR relied on the observations of the Ld. AO. We have perused the submissions advanced by both sides in the light of records placed before us.

B.7. It is an admitted position that assessee is a sophisticated hardware/software to produce and export engineering designs, drawings, plans, analysis reports et cetera. Assessee is governed by the directorate of software technology Parks of India being the STP registered unit. It is not doubted that the assessee has received consideration in convertible foreign exchange and has made declaration before the exchange control for conversion of the foreign exchange into Indian currency. We refer to the decisions of coordinate bench of *Hon'ble Delhi Tribunal* in case of *Outsourcing Services Pvt.Ltd vs ITO* in *ITA No.1204/Del/2011 vide order dated 27/05/2011* wherein, it has been held that export of customised electronic data as required by the definition of computer software would make an assessee eligible to claim the deduction under section 10A of the act.

B.7.1. Further the CBDT issued circular no. 2/2013 dated 17/01/2014, wherein more has been clarified that as regards the issue relating to export of computer software, direct tax benefit under section 10 A, 10AA and 10 B of the act is available. As regards the primary conditions based on which the Ld.AO denied the claim, we note that, *Hon'ble Karnataka High Court* upheld the observations of *Hon'ble Bangalore Tribunal* for assessment years 2008-09 to 2010-11 allowing the claim by observing as under:

“Facts leading to filing of the appeal briefly stated are that assessee is a Design Engineering Company. The assessee filed its return of income for the Assessment Year 2007-08 on 19.06.2008 and thereafter, files a revised return on 04.11.2008, in which total income of Rs.1,04,49,130/- was declared. The return was processed under Section 143(2) of the Act on 07.03.2009. The case was selected for scrutiny and a notice under Section 143(2) of the Act was issued. The Assessing Officer vide order dated 17.12.2009 inter alia held that though the assessee has claimed deduction under Section 10A of the Act, yet from the statement filed by the assessee, it is evident that changes have been made to the existing unit and no new unit is set up. It was further held that even from perusal of assets, the assessee has purchased few computers for the use of STPI unit and the assessee has not purchased any land for the use of STPI unit. The Assessing Officer therefore, concluded that the assessee has only split the existing infrastructure and business already in existence and rejected the claim of the assessee for deduction under Section 10A of the Act. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by an order dated 16.09.2011 followed the order of the Tribunal in ITA No.616 to 618/2008 dated 18.02.2008 and held that assessee is entitled to deduction under Section 10A of the Act. In the result, the appeal preferred by the assessee was allowed. Being aggrieved, the revenue filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short). The Tribunal vide order dated 13.09.2012 dismissed the appeal preferred by the revenue. In the aforesaid factual background, this appeal has been filed.

3. Learned counsel for the revenue submitted that in order to claim the benefit of deduction under Section 10A of the Act, an assessee is required to satisfy the requirements mentioned in Section 10(2)(l) & (m) of the Act. It is further submitted that the eligibility of the assessee has to be ascertained in the first year itself and since, the assessee has not set up a new unit, it cannot claim the benefit of deduction under Section 10A of the Act. It is further submitted that the Tribunal erred in proceeding on the assumption that the nature of the business of the assessee does not require any infrastructure. In support of aforesaid submission, reliance has been placed on decision of the Supreme Court in 'DEPUTY COMMISSIONER OF INCOME TAX 11(1), BANGALORE VS. ACE MULTI AXES SYSTEMS LTD., (2017) 88 TAXMANN.COM 69 (SC).

4. On the other hand, learned counsel for the assessee submitted that the assessee is registered as STPL and was granted approval on 14.09.2001. It is further submitted that concurrent findings of fact have been recorded by the Commissioner of Income Tax (Appeals) as well as the Tribunal with regard to eligibility of the assessee to claim benefit of deduction under Section 10A of the Act, which have not been challenged as perverse. It is

further submitted that the assessee was engaged on site development of software program and the programs were delivered at the premises of clients at the work site in South Korea and therefore, there was no need of a full fledged infrastructure facility and the assessee has therefore, rightly been held entitled to deduction under Section 10A of the Act. It is further submitted that newly established undertaking does not mean a new company or a partnership but means an undertaking independent of all the undertakings of the assessee. In support of aforesaid submissions, reliance has been placed on the decisions in 'CIT VS. WIPRO GE MEDICAL SYSTEM LTD., 50 TAXMANN.COM 181 (KAR), 'CIT VS. EXPERT OUTSOURCE PVT LTD', 358 ITR 518 (KAR), 'CIT VS. QUEST INFORMATICS PVT LTD', 372 BITR 526 (KAR) and 'PCIT VS. MACQUARIE GLOBAL SERVICES PVT LTD, 102 TAXMANN.COM 272 (DEL).

5. We have considered the submissions made by learned counsel for the parties and have perused the record. Section 10A has been subject matter of interpretation by this court as well as Delhi High Court. It has been held that in order to claim deduction under Section 10A of the Act, the pre test is not whether a new industrial undertaking connotes expansion of the existing business of the assessee but, whether it is all the same and a new identifiable undertaking separate and distinct from existing business. It has further been held that a new activity may produce the same commodities of the old business or it may produce some other distinct marketable products. It has also been held that newly established undertaking is an undertaking of the assessee independent of all the undertakings that he is already possessing. In the instant case, the assessee was engaged on site development of software program. The programs were delivered at the premises of the client at the work site in South Korea. The activities of the assessee finally culminated at the work site of the clients at South Korea and there was no need for full fledged infrastructure facilities in India. Thus, the industrial undertaking of the assessee was independent of all the undertakings which it was already possessing. Therefore, the assessee has rightly been held entitled to deduction under Section 10A of the Act by the Commissioner of Income Tax (Appeals) as well as the Tribunal. The aforesaid concurrent findings of fact by no stretch of imagination can be said to be perverse.

6. It is the cardinal principle of law that tribunal is fact finding authority and a decision on facts on the tribunal can be gone into by the High Court only if a question has been referred to it, which says the finding of the tribunal is perverse. [SEE: 'SUDARSHAN SILKS & SAREES VS. CIT', 300 ITR 205 SCC 211 and 'MANGALORE GANESH BEEDI WORKS VS. CIT', 378 ITR 640 (SC) @ 648]. A three judge bench of the Supreme Court in HAZARI 'SANTOSH VS. PURSHOTTAM TIWARI', (2001) 3 SCC 179 while dealing with the expression to be a question of law involving in the case' held that 'to be a question of law involving in the case', there must be first

a foundation for it laid in pleadings and the questions emerged from sustainable findings of fact arrived at by courts of fact and it must be necessary to decide that question of law for a just and proper decision of the case. It has been held that entirely a new point raised for the first time before the High Court is not a question involved in a case unless, it goes to the root of the matter. In 'HERO VINOTH (MINOR) VS. SESHAMMAL', (2006) 5 SCC 545 while dealing with the scope of Section 260A of the Act, it was held that this court will not interfere with findings of the court, unless the courts have ignored material evidence or acted on no evidence or have drawn wrong inferences from proved facts by applying the law erroneously or the decision is based on no evidence. The aforesaid decisions were referred to with approval in VIJAY KUMAR TALWAR supra as well as in 'UNION OF INDIA V. IBRAHIM UDDIN', (2012) 8 SCC 148 and has been followed by a division bench of this court in 'CIT VS. SOFT BRANDS (P.) LTD.,' (2018) 406 TYR 513.

7. The findings of fact have not been assailed as perverse. it is also pertinent to mention that even in memo of appeal neither any grounds have been urged nor any material has been placed on record to demonstrate that the concurrent findings of fact recorded by the Commissioner of Income Tax (Appeals) and Tribunal are perverse”.

B.8. Based on the above discussions and categorical observations of Hon'ble Karnataka High Court, we do not find any infirmity in the view taken by the Ld.CIT(A) in allowing the claim of assessee.

Accordingly Ground No.3 for assessment A.Y. 2011-12 raised by revenue stands dismissed.

C. Issue 3: Increase of Book profits by provision for leave encashment and provision for bonus as being made towards unascertained liabilities.

C.1. The Ld.AR submitted that this issue is academic at this stage as the normal profits are more than book profits. Not find any reason to adjudicate this ground.

Accordingly Ground No.5 for assessment year 2011-12 stands dismissed.

D. Issue 4: Revenue is alleged by the treatment of loss arising on forward contracts to be held as regular business loss by the Ld. CIT(A) as against speculation

The Ld.AR submitted that this issue arises only for assessment A 2013-14 in Ground No.3 & 4 of revenues appeal.

Brief facts of the case that leads to this issue are as under:

D.1.The assessee entered into forward contracts to hedge the risk of exchange fluctuations. For assessment A 2013-14, assessee debited Rs.1,57,80,246/-under the head loss on forward contracts. The Ld. AO disallow the same treating it is speculative in nature, since there was no actual delivery of foreign-exchange. The Ld.AR relied on the decision of *Hon'ble Bangalore Tribunal* in case of a *CIT vs K. Mohan & company (Exports) Pvt. Ltd. reported in (2010) 130 TTJ 719*.

Aggrieved by the disallowance made, assessee preferre appeal before the Ld. CIT(A)

D.2. It is submitted that the Ld. CIT(A) noted that the assessee entered into foreign-exchange forward contracts with banks to safeguard itself against future fluctuation in foreign exchange rates of foreign currency for the future receipts from its customers. It was noted that such forward contracts were incidental to carrying on its business. The Ld. CIT(A) placed reliance on the decision of *Hon'ble*

Bombay High Court in case of CIT vs Badridas reported in (2003) 261 ITR 256 in support of the view.

Aggrieved by the observations of the Ld.CIT(A), the revenue raised this issue before this *Tribunal*.

D.3. The Ld.AR at the outset submitted that assessee does not deal in commodities or foreign-exchange contracts and therefore provisions of section 43 (5) of the act does not apply. It is submitted that the claim is made on the principles of matching concept and is based on the accounting standard as per the Income tax Act. It is submitted that, the assessee takes forward cover which is incidental to the regular business of the assessee to hedge against losses or cover the losses arising due to the difference in foreign exchange fluctuation rates. The Ld.AR placed reliance on following decisions in support of this contention:

Decision of Hon'ble Bombay High Court in case of CIT vs D. Chetna and Co.Ld reported in (2016) 75 taxman.com 300

Decision of this tribunal in case of the CIT vs GBTL Ltd reported in (2021)128 taxman.com 417

Decision of this Tribunal in case of S. Vinodkumar Diomands Pvt. Ltd vs DCIT reported in (2020) 118 taxman.com 317

D.4. The Ld.DR on the contrary relied on the observations of the Ld.AO.

We have perused the submissions advanced by both sides in the light of records placed before us.

D.5. From the records placed before us, we note that the Ld. AO has not raised any allegation against the assessee that it is a dealer in foreign exchange. In fact the assessee carries out engineering and design activities and the output or deliverables are exported out of India that consists mainly of engineering drawings, charts models, layout drawing, etc. Admittedly, the assessee receives its remuneration from the services rendered in foreign exchange. It is also not disputed by the authorities below that all the foreign-exchange transactions are carried out by the assessee with the permission of reserve Bank of India. It is also not case of the revenue that assessee is dealing in commodities as per section 43 (5) of the act in order to treat the forward contracts to be speculative in nature.

D.5.1. The Ld. CIT(A) observed that, the total hedged transaction is less than the total turnover of the assessee and is also less than the FOB value of the exports amounting to ₹44,16,99,649/-as mentioned in the notes forming part of the accounts. As per Accounting Standard 14, all forward contracts entered to hedge foreign currency risk or under executed form commitments and highly probable forecast transaction, are to be recognised in the financial statements at fair value, as on the balance sheet date in pursuance to accounting standard 30.

D.5.2. Under section 43 (5) of the act, speculative transaction has been defined to mean a transaction in which a contract for the purchase or sale of commodities settled otherwise than by the actual delivery or transfer of such commodity. However in the

present facts of the case, THE assessee being neither a dealer in foreign exchange or the any, other commodities, but was an exporter of the software services, in order to hedge against any losses, booked foreign-exchange in the forward market with the bank. As some of the contracts entered into by assessee for export of services failed in some cases loss was earned. Thus in our opinion the loss so earned by the assessee was in the course of rendering its services outside India and has to be treated as a business loss. In support of this view reliance was placed on the decision of *Hon'ble Bombay High Court* in case of *CIT vs Vishindas Holaram* reported in (2014) 50 taxman.com 337, wherein, *Hon'ble Court* observed and held as under:

“9. With the assistance of Mr.Malhotra and Mr.Pardiwalla, we have perused the memo of appeal and all necessary annexures thereto. We have also perused the relevant statutory provisions. In our view, the concurrent findings of the Commissioner and the Tribunal with regard to the nature of the transaction that it not being speculative in character is not perverse or vitiated by an error of law apparent on the face of record. The Division Bench held that once the main business is identified, if some incidental activities or transaction or dealing in foreign exchange is undertaken but that is also related to some extent to the main business activity, then, it could not be said that the assessee is in speculative business or speculative dealings is ordinarily a part of his business. We find that any larger question or controversy need not be addressed in the facts of the case before us. Once it is undisputed that the assessee is in the business of exports of diamonds and he credited the exchange difference which is for the purpose of a transaction which was undertaken in foreign exchange and that transaction fell within the parameters of law

as laid down by the Division Bench, then, this is not a fit case for interference in further appellate jurisdiction. In para 17 & 18 of the order under challenge, the Tribunal noted the rival contentions and relied on the Division Bench judgment of this Court. After reverting to the finding of the assessing officer, what the Tribunal held is that the factual position which emerges from the record, satisfies the conditions laid down in the Division Bench judgment. The conclusion, therefore, is based on facts which cannot be said to raising any substantial question of law.”

D.6. Based on the above decision, we do not find any infirmity in the view taken by the Ld. CIT(A) (A) and the same is upheld.

Accordingly Ground No.3 & 4 for assessment years 2013-14 stands dismissed.

In the result, all appeals filed by the assessee stands allowed and appeals filed by the revenue stands dismissed for all assessment years under consideration.

Order pronounced in the open court on 30/10/2024.

Sd/-
OMKARESHWAR CHIDARA
ACCOUNTANT MEMBER

Sd/-
BEENA PILLAI
JUDICIAL MEMBER

Mumbai, Dated: 30.10.2024.
Snehal C. Ayare, Stenographer/ Dragon

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai