

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
6783/Mum/2019	2005-06	M/s. Hindustan Unilever Limited, Unilever House, BD Sawant Marg, Chakala, Andheri East, Mumbai. PAN: AAACH1004N	Dy.CIT-1(1)(2), R.No. 579, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.
6913/Mum/2019	2005-06	Dy.CIT-1(1)(2), R.No. 579, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.	M/s. Hindustan Unilever Limited, Unilever House, BD Sawant Marg, Chakala, Andheri East, Mumbai. PAN: AAACH1004N

C.O. No. 96/Mum/2021
(Arising out of ITA No. 6913/Mum/2019)
Assessment Year : 2005-06

M/s. Hindustan Unilever Limited, Unilever House, BD Sawant Marg, Chakala, Andheri East, Mumbai. PAN: AAACH1004N	vs.	Dy.CIT-1(1)(2), R.No. 579, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.
(Cross-Objector)		(Respondent)

For Assessee :	Shri Nishant Thakkar a/w Ms. Jasmin Amalsadwala
For Revenue :	Shri Azhar Zain Vayal Parambath, CIT-DR

Date of Hearing :	21-08-2024
Date of Pronouncement :	14-11-2024

ORDER

PER B.R. BASKARAN, A.M :

The cross appeals by the parties and the cross objection filed by the assessee are directed against the order dated 30-08-2019 passed by the Ld. Commissioner of Income Tax (Appeals)-56, Mumbai [Ld.CIT(A)] and they relate to the Assessment Year (AY.) 2005-06.

2. The assessee is a leading consumer products manufacturing company. It filed its return of income for the year under consideration declaring a total income of Rs.420.68 crores. The AO, however, completed the assessment determining the total income of the assessee at Rs.480.27 crores. Aggrieved by the additions made by the AO, the assessee preferred an appeal before the Ld.CIT(A) and it was partly allowed. Aggrieved by the decisions taken by the Ld.CIT(A) against each of them, both the parties have preferred appeals before the ITAT. The assessee has also filed Cross Objection against the appeal filed by the Revenue.

3. We shall first take up the appeal filed by the assessee. Ground Nos.1 to 4 urged by the assessee are related to the computation of deduction u/s 80IB/80IC and 10B of the Income Tax Act, 1961 ('the Act'). The assessee

is having its manufacturing units at various locations, of which certain units are eligible for deduction u/s 80IB/80IC and 10B of the Act (eligible units). The assessee has prepared Profit and Loss account for each of the units. It also prepared a separate Profit and Loss account for its Head Office consisting of certain common income and common expenses like Research expenses, Head office expenses, interest expenses etc., i.e., those items of income/expenditure, which were not connected with any of the units were included in the Profit and Loss account of Head office. However, while computing deduction u/s 80IB/80IC and 10B of eligible units, the assessee did not allocate proportionate common expenses incurred at the Head office to those eligible units. The AO took the view that the assessee has increased the profits of eligible units by not allocating common expenses. Accordingly, he allocated Head office expenses to various units eligible for deduction and resultantly, the deduction u/s 80IB/80IC and 10B of the Act came to be allowed at a lower figure.

3.1. The Ld.CIT(A) noticed that an identical adjustments were made by the AO in the earlier years also and the ITAT had restored this issue to the file of the AO with certain directions. Accordingly, the Ld.CIT(A) directed the AO to follow the directions given by the ITAT. The assessee is still aggrieved.

3.2. We heard the parties on this issue and perused the record. We notice that the Tribunal is consistently restoring this issue to the file of the AO with certain directions. In this regard, the Ld A.R invited our attention to the order dated 21-08-2013 passed in assessee's own case for AY 1993-94 in ITA No.5579/Mum/1998. In this order, the Co-ordinate Bench has

followed the order passed for AY 2006-07 in ITA No.7868/Mum/2010 in respect of deductions claimed u/s 80HH and 80I of the Act and restored the issue to the file of AO with the instruction to follow the directions given in AY 2006-07 with regard to allocation of common expenses incurred at the Head Office. It is also pertinent to note that the Co-ordinate Bench has also accepted the plea of the assessee that certain “common income” should also be allocated to the eligible units.

3.3. We notice that the Ld.CIT(A) has restored this issue to the file of the AO with the direction to follow the ITAT’s order. Accordingly, we also direct the AO to allocate both common expenses and common income to the eligible units while computing deduction u/s 80IB/80IC and 10B of the Act as per the direction issued by the ITAT in the earlier years.

4. Ground Nos.5 & 6 urged by the assessee are related to the issue whether the miscellaneous income earned on sale of scraps and by products in eligible units are eligible for deduction u/s 80IB/80IC of the Act. We notice that the AO did not allow deduction in respect of these kinds of receipts, without making any specific discussion. The Ld.CIT(A) also did not adjudicate this issue specifically.

4.1. It was brought to our notice that the Mumbai Bench of Tribunal has examined an identical issue in the context of deduction u/s 80IC of the Act in the case of Addl.CIT vs. Sterlite Technologies Ltd (ITA Nos. 2139, 2140,2029 and 2020/Mum/2014 dated 20-01-2017) and the Co-ordinate Bench has followed the decisions rendered by the Hon’ble Delhi and Gujarat High Courts in the following cases, wherein it was held that the income arising on sale of scraps is held to be eligible for deduction u/s 80IB/80IC of the Act:-

- (a) CIT vs. Sadhu Forging Ltd (336 ITR 444)(Del)
- (b) CIT vs. Harjivandas Juthabhai Zaveri (258 ITR 785)(Guj)

Accordingly, the Co-ordinate Bench directed the AO to allow deduction u/s 80IC of the Act in respect of income from sale of scrap:-

4.2. The Ld D.R, on the contrary, placed reliance on the decision rendered by Mumbai Bench of Tribunal in the case of Parekh Plast India P Ltd (2012) (23 taxmann.com 407) (Mum), wherein the deduction u/s 80IB of the Act was denied to the storage charges received from the buyer for the delay in taking delivery of goods. However, we notice that the facts prevailing in the above said case are different. The deduction u/s 80IB/80IC of the Act is allowed on the profits derived from the industrial undertaking, i.e., the profits should arise out of operation of the industrial undertaking itself. The storage charges received by that assessee from the customer is for the delay on the part of the customer in taking delivery of goods and hence, it cannot be considered as profits and gains “derived from” industrial undertaking, since it is distinct receipt unconnected with the manufacturing activity of the industrial undertaking. Accordingly, the above cited case law, in our view, does not support the case of the Revenue.

4.3. In the instant case, the amount received by the assessee is on account of sale of scraps and by products and they are generated out of manufacturing process. Hence, the scrap & by-products are inextricably connected with the manufacturing activities carried on by the eligible units. Accordingly, we are of the view that there is merit in the submission of the assessee that the sale value of scraps/by-products, in fact, will go to

reduce the cost of materials used in manufacturing and hence it should be considered as 'profits and gains derived from' industrial undertaking. The decision rendered by the Co-ordinate Bench in the case of Sterlite Technologies Ltd (supra) support the case of the assessee.

4.4. Even though the above said issue has not been specifically adjudicated by the Ld.CIT(A), since the claim of the assessee is covered by the decision rendered by the Co-ordinate Bench, Hon'ble Delhi and Gujarat High Courts, we prefer to adjudicate this issue in order to avoid multiplicity of proceedings. Accordingly, following the above said decisions, we direct the AO to allow deduction u/s 80IB/80IC of the Act in respect of sales value of scraps/by-products generated in the eligible units.

5. Ground No.7 urged by the assessee is related to the adjustment made by the AO on account of CENVAT credit. Since the assessee followed exclusive method of accounting, it did not adjust the value of opening stock, purchases, sales and closing stock with CENVAT amount. The AO, following sec.145A of the Act, assessed the unutilized CENVAT amount as income of the assessee. The Ld.CIT(A) also confirmed the same.

5.1. The submission of Ld.A.R is that sec.145A of the Act prescribes Inclusive method of accounting, wherein the value of opening stock, purchases, sales and closing stock have to be adjusted with CENVAT amount. However, the assessee has followed Exclusive method of accounting, wherein the CENVAT component is kept in a separate account without adjusting the same with opening stock, purchases, sales and closing stock. The contention of the assessee is that the "Net profit" of the assessee will remain the same under Exclusive method of accounting of CENVAT or under Inclusive method of accounting of CENVAT.

5.2. We notice that the Co-ordinate Bench has considered an identical issue in AY 2006-07 in ITA No.7868/Mum/2010 and the matter has been restored to the file of the AO for examining it afresh. Since, it is a case of method of accounting and since it is stated that there will be no impact on the profit under both Exclusive method and Inclusive method of accounting, following the decision rendered by the Co-ordinate Bench in AY 2006-07, we restore this issue to the file of the AO for examining the claim of the assessee.

6. The Ground No.8 urged by the assessee is related to the disallowance made u/s 14A of the Act. At the time of hearing, the Ld A.R did not press this ground. Accordingly, this ground is dismissed as not pressed.

7. The Ground Nos.9 and 10 urged by the assessee are related to claim for deduction of cost of Relief materials given to Tsunami victims. The assessee claimed an expenditure of Rs.5.00 crores on distribution of nutritional and personal hygiene products to the families of the people affected in Tsunami. The AO took the view that the assessee has failed to show that this expenditure was laid out or expended wholly and exclusively for the purposes of business. Accordingly, he disallowed the above said claim.

7.1. Before the Ld.CIT(A), the assessee also contended that this expenditure can also be treated as sales promotion expenses, since after recovery from natural calamity, the people may start using the company's products. The Ld.CIT(A) held that this expenditure is in the nature of donation expenses, as it has been incurred for philanthropic purposes. The Ld.CIT(A) observed that the donation as such is not an eligible item of

deduction, unless business compulsion is established. With regard to the claim of Sales promotion expenses, the Ld.CIT(A) asked the assessee to furnish evidences in support of the claim, but the assessee could not furnish them due to passage of time of more than 13 years. However, it furnished copies of certain news paper reports to show that the assessee had, indeed, distributed those materials at free of cost to victims of the Tsunami, which were found by the Ld.CIT(A) to be insufficient to prove the claim of incurring of expenses. The assessee also alternatively contended that this expenditure is a CSR (Corporate social responsibility) expenses. The Ld.CIT(A) took the view that the CSR expenses is expressly held to be not allowable as deduction u/s.37 of the Act from AY.2015-16 and the intention of the amendment should be applied in the earlier years also.

7.2. We heard the parties on this issue and perused the record. In December, 2004, Southern part of our Country was badly affected by Tsunami and people across India and World poured in various types of relief materials including construction of houses to the victims of Tsunami. The assessee, being manufacturer of nutritional and hygiene products, have also distributed its own products to the victims of Tsunami at free of cost. The aggregate value of products so distributed by the assessee was quantified as Rs.5.00 crores and the same were claimed as business expenditure.

7.3. The assessee has claimed this amount u/s 37(1) of the Act as business expenses. Sec.37(1) of the Act reads as under:-

*“Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee **laid out or expended wholly and exclusively for the purposes of business or profession** shall be*

allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Any expenditure is allowable u/s 37(1) of the Act, only if it is, *inter alia*, laid out or expended wholly and exclusively for the purposes of business or profession. We noticed earlier that the AO did not accept it as an expense laid out or expended wholly and exclusively for the purposes of business. We notice that the assessee has raised various contentions before the Ld. CIT(A), but all those contentions were rejected by him. The very same contentions were reiterated before us also. We shall consider all of them in the ensuing paragraphs.

7.4. The assessee has relied upon various case law in support of its contentions that the expenditure incurred for the welfare of public at large would be allowable as business expenditure, however, a perusal of those case law would show that there was some business connection between the assessee and the beneficiaries or there was a specific direction from the Government authorities to incur those expenses or it was incurred towards corporate social responsibility. We notice that the CSR expenses are incurred under the statutory compulsion provided under the Companies Act. We may dwell upon some of the case laws:-

(a) In the case of Sterlite Industrial (India) Ltd (2017)(56 ITR (T) 377 (Chennai Trib), the assessee donated Rupees One crore to Rajiv Gandhi Relief and National Welfare Trust and claimed the entire amount as deduction. The Tribunal noted that the above said assessee was carrying on business in the district of Tuticorin, Tamil Nadu and the said part of the Country was affected by Tsunami. Hence, the Tribunal noted down that there was an obligation on the part of the assessee to give donation to the rehabilitation work so

that the assessee can carry on its business activity in a peaceful atmosphere.

(b) In the case of *NMDC vs. JCIT* (68 SOT 199) (Hyd), the contribution of Rs.5.00 crores to a medical college towards CSR expenses was held to be allowable as deduction. In all other decisions referred in paragraph 8.7 referred to in page 11 of the order of Ld CIT(A), the CSR expenses incurred prior to insertion of Explanation 2 in sec.37(1) were held to be allowable as deduction.

(c) In the case of *PCIT vs. Gujarat Narmada Fertiliser and Chemicals Ltd* (2020) (121 taxmann.com 82) (Guj) (relied upon before ITAT), the expenditure was incurred on behalf of and at the behest of State Government of Gujarat.

7.5. In the instant case, the assessee has voluntarily distributed relief materials consisting of nutritional and hygiene products manufactured by it to the victims of Tsunami. It was not shown that there was any compulsion from any of the Government authorities. When relief materials were distributed voluntarily to the victims of Tsunami, the same is done out of genuine philanthropy only. During the Tsunami calamity, the assessee has also decided to distribute the relief materials to the victims like any other citizens, who were giving various types of assistance to the victims. All those assistance was done out of genuine philanthropy only. Accordingly, when the dominant objective is philanthropic in nature, the same cannot be considered as an expenditure laid out or incurred wholly and exclusively for the purposes of business. It is pertinent to note that the assessee has not shown that there existed any business connection in incurring this expenditure.

7.6. The assessee has also taken a plea that this expenditure should be considered as Sales promotion expenses. We are unable to accept the same. It is inconceivable that a business man would promote its products amongst the badly affected Tsunami victims, who have been rendered penny less. Hence, this plea of the assessee deserves rejection.

7.7. The assessee has also taken a plea that this expenditure should be considered as CSR expenditure. It was not shown that this expenditure has been incurred as per the requirement of Companies Act as CSR expenditure. It may be akin to CSR expenses, but it would not qualify as CSR expenses. Hence, we are of the view that the assessee cannot take support of the decisions rendered in respect of CSR expenses.

7.8. In view of the foregoing discussions, we are of the view that the Ld. CIT(A) was justified in confirming the disallowance of Rs.5.00 crores incurred on the relief materials given to the victims of Tsunami.

8. Ground Nos.11 and 12 urged by the assessee is related to the claim of enhancement of Written Down Value (WDV) of assets by the amount of Insurance claim not received. Since the Ld.CIT(A) granted partial relief to the assessee in this matter, both the parties are in appeal before the Tribunal.

8.1. The facts relating to this issue needs elaboration. A company named M/s International Best Foods Ltd., was owned by its American Parent named M/s Conopco Inc. The above said M/s International Best Foods Ltd., was having Salt pans and they were destroyed by an earthquake during the year relevant to AY 2001-02. It claimed insurance of Rs.22.44 crores on the loss of salt pans. Accordingly, it reduced the above said

insurance claim amount from WDV of assets and accordingly claimed depreciation on the reduced WDV in AY. 2001-02.

8.2. The assessee herein entered into an agreement with M/s Conopco Inc for purchasing 44,08,908 shares of M/s International best Foods Ltd for a consideration of Rs.57.75 crores. The Ld A.R stated that the above said consideration was determined, after taking into account the insurance amount receivable. Subsequently, M/s International Best Foods Ltd was amalgamated with the assessee company w.e.f 1st July, 2021, as per the order passed by the Hon'ble Bombay High Court. Consequent to the amalgamation, as stated earlier, the assessee filed return of income for the above said company for AY 2001-02 and claimed depreciation on the assets of M/s International Best Foods Ltd at the reduced WDV. It also filed a letter along with return of income stating that it reserves its right to enhance the WDV depending upon the outcome of Insurance claim.

8.3. The Ld A.R submitted that during the year under consideration, i.e, in the year relevant to AY 2005-06, the insurance claim in so far as assessee's entitlement was rejected and hence no money was received by the assessee. Hence it turned out that the assessee should not have reduced amount of insurance claim from WDV in AY 2001-02. Accordingly, the assessee increased the amount of WDV of AY 2005-06 by adding the insurance claim amount of Rs.22.44 crores, i.e., the amount that was originally reduced from WDV in AY.2001-02 was added to the WDV of AY 2005-06.

8.4. The AO did not accept the above said claim of the assessee. He referred to the definition of WDV given in sec.43(6) of the Act, wherein it is provided that the WDV could be enhanced only by the cost of new assets

acquired during the year. Since the assessee has not purchased any new asset, the AO held that the WDV cannot be increased by any other mode.

8.5. Before the Ld.CIT(A), the assessee furnished a new/additional information. The earlier parent of M/s International Best Foods Ltd, viz., M/s Conopco Inc., had received a sum of USD1,733,143.67 equivalent to Rs.8.00 crores from Insurance Company. We noticed that above said M/s Conopco Inc had sold the shares held by it in M/s International Best Foods Ltd for a sum of Rs.57.75 crores. Consequent to the receipt of Insurance claim amount mentioned above, an agreement was reached between the assessee and M/s Conopco Inc, as per which the seller of shares (M/s Conopco Inc) would refund part of sale consideration to the assessee on the reasoning that the sale consideration for transfer of shares has been determined incorrectly. Refund amount was equivalent to the amount of insurance claim received by M/s Conopco Inc. Accordingly M/s Conopco Inc repaid a sum of USD 1,733,143.67 equivalent to Rs.8.00 crores to the assessee company. The assessee claimed before Ld.CIT(A), the above said amount of Rs.8.00 crores represents refund of part of purchase consideration only and hence the same constitute capital receipt.

8.6. The Ld.CIT(A), in principle, agreed with the contention of the assessee that the amount of insurance claim not received will result in enhancement of WDV. However, the Ld.CIT(A) took the view that the enhancement of WDV will be to the extent of net amount, i.e., Rs.22.44 crores less Rs.8.00 crores received back from M/s Conopco Inc. Accordingly, he directed the AO to enhance WDV of machinery of AY 2005-06 by Rs.14.44 crores. Both the parties are aggrieved by the decision so rendered by the Ld.CIT(A) on this issue.

8.7. We heard the parties on this issue and perused the record. This issue is related to the determination of WDV of block of assets of Plant & Machinery. Sec.43(6)(c) of the Act defines the "Written Down Value" as under:-

(6)"written down value" means-

.....

(c) in the case of any block of assets,-

(i) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year;

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

.....

A perusal of Clause (A) of the above said provision would show that the WDV of block of assets could be increased by the actual cost of any asset falling within that block, acquired during the previous year. In the instant case, the assessee seeks to increase the WDV by the amount of insurance claim not received by it. However, the same does not result in acquisition of any new asset, which is a condition prescribed in sec.43(6)(c) of the Act. Accordingly, we are of the view that the AO was right in law in holding that the WDV cannot be increased by the amount of insurance claim not received by the assessee.

8.8. As per Clause (B) of the above said provision, the WDV of block of assets should be reduced by the 'moneys payable' in respect of any asset which is falling within that block, which is sold or discarded or demolished or destroyed. We noticed that the assessee's Salt Pans were destroyed in the year relevant to AY 2001-02 and an insurance claim was lodged by M/s International Best Foods Ltd., and/or by its then Parent Company. The amount of insurance claim was Rs.22.44 crores and the said amount was treated as "moneys payable" in respect of destruction of Salt Pans by the assessee, even though it was not aware of the fate of the claim so made. Accordingly, the above said amount of Rs.22.44 crores was reduced from the WDV by the assessee as per Clause (B) of sec.43(6)(c) of the Act. However, it is stated that the Insurance Company has rejected the Insurance claim and hence the assessee seeks to increase the value of WDV by an amount of Rs.22.44 crores in AY 2005-06, which was reduced incorrectly in AY 2001-02. We noticed that the Ld CIT(A), in principle, agreed with the above said claim of the assessee.

8.9. In the mean time, one more development took place, i.e., the then parent company received an insurance claim to the extent of Rs.8.00 crores and the said amount was refunded by the then Parent (seller of shares in M/s International Best Foods Ltd) to the assessee (Buyer of those shares). The assessee claims that the same represents adjustment of purchase/sale price of shares and it cannot be linked to "moneys payable" for the asset destroyed. The Ld.CIT(A) did not accept the above said contention of the assessee. He took the view that the above said amount of Rs.8.00 crores represented part of "moneys payable for destruction of assets" and accordingly held that the WDV should be increased by Rs.14.44 crores (Rs.22.44 crores less Rs.8.00 crores) in AY 2005-06.

8.10. We, after examining the provisions of sec.43(6)(c) of the Act, earlier held that the WDV could be increased only by the actual cost of any asset falling within the block, acquired during the year. Hence, in our view, the Ld.CIT(A) was not justified in directing the AO to increase the value of WDV by Rs.14.44 crores in AY 2005-06, since no new asset was acquired in that year.

8.11. At the same time, the WDV could be reduced only by the amount of “moneys payable” for destruction of assets falling within the block. In our view, the expression “moneys payable” should refer to the amount over which the assessee got a right to receive. When the assessee made insurance claim of Rs.22.44 crores, it was merely a claim only and the assessee did not acquire any right to receive the same. Hence, in our view, the assessee was not right in reducing the amount of Rs.22.44 crores from the WDV in AY 2001-02. The assessee should have reduced the ‘moneys payable for destruction of asset’ as finally determined as payable by the Insurance Company. In the instant case, the insurance claim of 22.44 crores was rejected, but a claim of Rs.8.00 crores was granted to the then parent company by the Insurance Company. In our view, the above said amount of Rs.8.00 crores would be the “moneys payable for destruction of asset and the same is required to be reduced from the WDV in AY.2001-02. The WDV of AY 2005-06 should be recomputed accordingly from assessment AY 2001-02 onwards. The depreciation for AY 2005-06 should accordingly be allowed on the enhanced WDV. The net result is that the WDV of the block should be increased by Rs.14.44 crores in AY 2001-02 and the WDV of AY 2005-06 should be arrived at accordingly.

8.12. We do not find any merit in the contentions of the assessee that the insurance claim amount of Rs.8.00 crores refunded to the assessee should be considered as refund of part of purchase consideration, since the insurance claim of Rs.8.00 crores was received by the then parent company in connection with destruction of Salt Pans and the said amount only was refunded to the assessee. Hence, in our view, it would fall within the meaning of "moneys payable". In this connection, we are of the view that the mode or manner of paying the insurance compensation by M/s Conopco Inc to the assessee is irrelevant. In Ground No.12, the assessee is contending that the above said amount should be treated as capital receipt, which is liable to be rejected for the reasons discussed above.

8.13. In view of the foregoing discussions, we modify the order passed by Ld.CIT(A) on this issue and direct the AO to increase the WDV of AY 2005-06 in the following manner:-

- (a) Increase the WDV of AY 2001-02 of the relevant block by Rs.14.44 crores.
- (b) Re-compute the WDV of AY 2005-06 of that block by reducing the depreciation amount of AY 2001-02 to 2004-05.
- (c) Allow depreciation in AY 2005-06 on the WDV so computed.

We order accordingly.

9. Ground No.13 urged by the assessee is related to the reduction of Capital subsidy amount from the WDV of assets.

9.1. The assessee received a sum of Rs.2.52 lakhs as State Capital Investment Subsidy from the Government of West Bengal under West

Bengal Incentive Scheme, 2000. The Ld A.R submitted that this subsidy is granted to promote industrialization in selected backward areas of West Bengal. He submitted that though the subsidy is computed on the basis of value of assets invested in West Bengal, yet the purpose of giving subsidy is not to fund any part of cost of assets, but to promote industrialization in Backward areas. Further, it is stated that the subsidy is not linked to any specific asset. Accordingly, the assessee did not reduce the subsidy amount from WDV of any of the assets while claiming depreciation. However, the AO reduced the above said amount from the WDV of assets and accordingly allowed depreciation. In this regard, the AO placed reliance on Explanation 10 to sec.43(1) of the Act. The Ld.CIT(A) also confirmed the same.

9.2. The Ld A.R submitted that an identical issue came to be examined by the Kolkata Bench of Tribunal in the case of Gloster Ltd vs. CIT (ITA No.828/Kol/2012). In the above said case, the subsidy had been received by the above said assessee under the very same Scheme of West Bengal Government. The Tribunal, vide its order dated 15th January, 2016, has held that the Explanation 10 to sec.43(1) will not apply to the subsidy granted under the above said scheme and hence the amount of subsidy is not required to be deducted from the value of WDV. The Ld A.R also relied upon some other case laws in which identical view has been expressed.

9.3. We heard the parties on this issue and perused the record. Following the decision rendered by the co-ordinate bench of Kolkata in the case of Gloster Ltd (supra), we hold that the amount of subsidy referred above is not required to be deducted from the WDV for the purpose of computing depreciation, since the objective of subsidy scheme is to

promote industrialization of backward areas and not to fund part of cost of assets. We also notice that identical view has been expressed by Hon'ble Bombay High Court in the case of Harinagar Sugar Mills in IYXA 1132 of 2014 dated 4th January, 2017. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO not to reduce the amount of subsidy from WDV while computing depreciation.

10. The Ld A.R did not press Ground Nos. 14 and 15. Hence, both these grounds do not require adjudication.

11. Ground No.16 is related to dispute of rate of tax applicable to the dividend distributed to Non-resident shareholders. The assessee paid Dividend Distribution Tax (DDT) as per provisions of sec.115O of the Act on the amount of dividend declared by it. Before us, it has raised an additional ground contending that the DDT has to be charged on the dividend distributed to Non-resident shareholders at the rate applicable to dividend income under the treaty between India and the country of residence of non-resident shareholders.

11.1. We heard the parties on this issue and perused the record. We notice that this issue has been decided against the assessee by the Special Bench of ITAT in the case of Total Oil India P Ltd (ITA No.6997/Mum/2019 and C.O. No.57/Mum/2019 dated 20-04-2023). Following the decision of Special bench, we reject this ground of the assessee.

12. We shall now take up the appeal filed by the Revenue. The grounds of appeal urged by the Revenue read as under:-

“(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O to re compute the depreciation on account

of cancellation of insurance claim made by the amalgamating company, M/s. International Bestfoods Ltd. in absence of any statutory provision in this regard.

(ii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in admitting additional ground after a very long delay without recording his satisfaction that the omission of this ground from the form of appeal was not willful or unreasonable, and without seeking comments of the AO/TPO on the same.

(iii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in admitting additional ground which required verification of the facts relating to suitability of the comparable and of computation of the operating margin of the assessee and those of the comparables at the entity level, since these had not been examined during the TP proceedings.

(iv) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in admitting and allowing additional ground by accepting the computation of the operating margins in the submissions of the assessee himself without TPO's verification.

(v) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing additional ground without taking into account the objections of the TPO mentioned in the TP orders against the application of TNMM at entity level.

(vi) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing additional ground without appreciating that the international transactions of the assessee were very small in comparison with the total turnover of the assessee and that comparison at the entity level therefore implied that controlled transaction were aggregated with a large value of uncontrolled transactions, which aggregation was not permissible under the Income Tax Rules and which would vitiate determination of the margin of the controlled transaction being tested.

(vii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in holding that all the adjustments stands subsumed once the entity level benchmarking is found to be at arm's length, which goes against the basic principle of transaction by transaction approach to be followed in Transfer Pricing which is also upheld by Punjab and Haryana High Court in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad [(2016)380 ITR 307] in para 40 and 41, where Hon'ble High Court has rejected the contention that comparison at entity level margin will take care of the various transactions.

(viii) Without prejudice, in the facts and in the circumstances of the case the Ld. CIT (A) has erred in granting relief to assessee following entity level approach without appreciating that various transactions are independent of each other and there are no facts and findings to suggest that various transactions forming part of entity are inextricably interrelated and intertwined in such a way that they cannot be separated.

(ix) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing additional ground by placing reliance on the orders of the Hon'ble ITAT and of the Hon'ble High Court in the assessee's case for AY2006-07 even though those orders were on the issue of proportionate adjustment at the entity level without specifically approving the application of TNMM at the entity level in circumstances where the controlled transaction is a small portion of the overall entity level transactions.

(x) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 8,66,48,000/- on account of intra group services on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016)380 ITR 307).

(xi) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 39,34,000/- on account of corporate audit services on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016) 380 ITR 307).

(xii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 5,73,36,130/- on account of royalty paid to Unilever Plc on the turnover of beauty or make up preparations on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision

in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016)380 ITR 307).

(xiii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 17,53,11,080/- on account of royalty paid to Unilever Pic on the turnover of toilet soaps and bathing bars on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016)380 ITR 307).

(xiv) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs 8,09,96,000/- on account of tax paid by the assessee on royalty on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad (2016)380 ITR 307).

(xv) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 24,15,710/-on account of royalty receivable from Nepal Lever Ltd. on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016)380 ITR 307).

(xvi) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 1,33,00,000/-on account of proportionate amount of R&D cess on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016) 380 ITR 307).

(xvii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 1,69,12,000/- on account of service tax paid on the ground that this adjustment stood subsumed once

the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016) 380 ITR 307).

(xviii) In the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the adjustment of Rs. 20,37,000/- on account of advertising and sales promotion expenses on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. Reliance placed on the Hon'ble Punjab and Haryana High Court decision in case of M/s Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016) 380 ITR 307).

The appellant craves leave to add to, amend or withdraw the aforesaid grounds of appeal.”

13. Ground No.(i) urged by the Revenue is related to the determination of WDV on account of non-receipt of Insurance claim. This issue has been decided by us while adjudicating the Ground Nos. 11 & 12 urged by the assessee. The decision rendered against those grounds in the assessee's appeal shall apply to this ground of the Revenue.

14. In Ground Nos. (ii) to (vi), the Revenue is contending that the Ld. CIT(A) should not have admitted additional ground urged before him.

14.1. We heard the parties and perused the record. With regard to admission of additional ground, we notice that the Ld.CIT(A) has given proper reasons for admitting the additional ground urged by the assessee and in this regard, he has observed as under in paragraph 36 of his order:-

“36. The above additional ground was duly forwarded to the Assessing Officer on 21.08.2017. The effect of adjudicating the additional ground is that if allowed, certain other grounds of appeal would stand allowed. I

find the same ground was raised in AY 2003-04 and 2004-05 and was admitted. I also find that issue raised emanates from decision of Hon'ble ITAT in ITA No.7868/Mum/2010 dated 10-12-2012 in case of appellant itself.....”

We notice that an identical additional ground had been admitted in the earlier years by the Ld.CIT(A) and further, the said additional ground has been raised on the basis of decision rendered by the Tribunal in the assessee's own case in the subsequent year. We also notice that the Ld. CIT(A) has duly forwarded the additional ground to the AO for his comments. The additional ground is related to the transfer pricing adjustment, which was anyway disputed before the Ld.CIT(A). Hence, it cannot be said that the additional ground urged by the assessee before the Ld.CIT(A) is an altogether new ground. Accordingly, we do not find any merit in the objections raised by the Revenue in Ground Nos.(ii) to (vi).

15. Ground Nos. (vii) to (xviii) are related to Transfer Pricing adjustment made by TPO/AO on various items of international transactions. The Ld. DR supported the order passed by the AO/TPO.

15.1. The assessee had selected TNM Method as most appropriate method and bench marked the international transactions at entity level. The margin of the assessee was within the tolerance limits *vis-a-vis* the margin of comparable companies. The TPO did not accept entity level bench marking and accordingly, proceeded to make Transfer Pricing adjustment in respect of each of the international transactions. The Ld A.R submitted that the entity level bench marking under TNM Method has been accepted by the Tribunal in the assessee's own case in AY.2006-07 in ITA No.7868/Mum/2010 dated 10-12-2012. He submitted that the Revenue preferred appeal before the Hon'ble High Court of Bombay against the

order passed by the Tribunal. However, the Revenue raised only one issue, viz, whether TP adjustments should be restricted to AE transactions only or not?. The Hon'ble Bombay High Court decided the above question against the Revenue.

15.2. The Ld A.R submitted that the decision rendered by the Tribunal in AY 2006-07 has attained finality, since the Revenue did not challenge the same before the Hon'ble Bombay High Court. He submitted that the Ld. CIT(A) has followed the decision rendered by the Tribunal in AY 2006-07 and hence his order does not require interference on the Transfer Pricing issues.

15.3. We heard the parties on this issue and perused the record. Before us, the assessee has filed a written submission, wherein the above said issues have been discussed in a detailed manner. Accordingly, we prefer to extract the same, for the sake of convenience:-

"12. Grounds (ii) to (xviii) – Transfer Pricing Grounds. The brief facts relating to these 17 grounds are as follows:

- a. The Assessee's Transfer Pricing Study and Form 3CEB has entered into international transactions with its Associated Enterprises ("AE") by adopting entity level TNMM as the most appropriate method.*
- b. The operating margin of the Assessee was arrived at 11.91%. The arithmetical mean of the comparable companies selected by the Appellant Assessee worked out to 10.38%. In the circumstances, the Assessee contended that its transactions were at length.*
- c. The TPO, however, disagreed with the use of entity level TNMM for benchmarking all the international transactions. The TPO held that certain royalty paid to Unilever Plc. under the Technical Collaboration Agreement dated 12 August 1999 and the intra group services should be benchmarked separately.*

- d. *The TPO thereafter held that no royalty was payable by the assessee in respect of the turnover of Beauty and Make-up preparations, and, on Toilet Soaps and Bathing Bars since the entire technology required in connection with those products was owned and developed by the assessee. The TPO held that an embargo under the laws of Nepal on Nepal Lever Ltd. from paying royalty to the assessee was no reason why the assessee did not receive royalty of Rs.24,15,710 from Nepal Lever Limited. The TPO further held that the TDS of 8,66,48,000 (0.15%) on the 1% royalty paid to Unilever Plc., the Service Tax of Rs.1,69,12,000 borne under section 66A of the Finance Act, 1994, and R&D Cess of Rs.1,33,00,000 under the Research & Development Cess Act, 1986 though leviable on the payer of royalty, ought not to have been borne by the assessee and therefore ought to be disallowed.*
- e. *Insofar as advertisement and sales promotion, the TPO held that since Unilever Plc. was benefiting by increased royalty, owing to increased sales, resulting from such advertisement and sales promotion, a portion thereof (Rs.20,37,000) would have been recovered from Unilever Plc. Accordingly, characterizing such recovery as an 'International Transaction' between Assessee and Unilever Plc.*
- f. *Being aggrieved, the Assessee carried the matter in Appeal before the CIT(A).*
- g. *Pending the hearing of the Appeal before the CIT(A), the Appeal for immediately subsequent year, i.e., AY 2006-07, where almost identical adjustments were made by the TPO, came to be heard by the Hon'ble Tribunal. The Hon'ble Tribunal by its Order dated 10 December 2012 in ITA No.7868/Mum/2010, insofar as the transfer pricing adjustments were concerned, while applying entity level TNMM, held that the arm's length margin must be applied only to AE transactions, and when that is done, the margin earned by the assessee falls within the safe harbor of +/- 5%. The tribunal further held that insofar as the separate adjustments on account of royalty paid to Unilever Plc., TDS service tax and R&D Cess on royalty, royalty receivable from Nepal Lever Ltd., adjustment on account of advertisement and sales promotion, intra group services, R&D services – the same stood subsumed in the entity level TNMM benchmarking, observing thus:*

“35. It has been admitted by both the parties that if bench marking is being done at the entity level either for the A.E. transaction or for the entire transactions, then there is no requirement of any further

adjustments as all the adjustments made by the TPO / Assessing Officer including that of Research Innovation and Development Related Services and Undercharging for Common Corporate Audit and Intra Group Services will get automatically subsumed including those adjustments also relating to royalty, etc. as done by the TPO. 36. In view of the above findings, the other arguments with regard to

the segmental accounts vis-a-vis internal comparables and that the assessee's profit margin on A.E. transactions are far more than the non A.E. transactions and various other adjustments like payment of royalty, receiving of royalty, advertisement and sales promotion and advertisement, adjustment out of R&D cess, payment of service tax, research and innovation development related services and undercharging for central services, have become purely academic and, hence, the same are not adjudicated upon even though both the parties have argued at length. Thus, on this preliminary ground itself, the entire transfer pricing adjustment of 368,79,26,000 stands deleted and, accordingly, grounds no.1 to 15, technically speaking, stands allowed."

- h. The Department carried the above order of the Tribunal in Appeal before the Hon'ble Bombay High Court. It is most important to note here that the department did not challenge the finding of the Hon'ble tribunal in so far as it held that the other adjustments like payment of royalty, receipt of royalty, advertisement, and sales promotion, and adjustment on account of R&D services, payment of service tax, undercharging of central services, etc. had become purely academic in view of the entity level benchmarking carried and method adopted. The department only agitated the issue of whether the tribunal was right in holding that the arm's length margin must be applied only to AE transactions. The Hon'ble Bombay High Court by order dated 26 July 2016 (374 ITR 73) dismissed the Appeal of the department. Not satisfied, the department carried the matter before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order dated 29 October 2018 in SLP (C) No. 22381/2017(259 Taxman 218), dismissed the challenge raised by the department. In the circumstances, the Assessee submits that the Order of the Tribunal has attained finality.*
- i. In view of the above, the Assessee raised an additional ground before the CIT(A), requesting the CIT(A) to decide the transfer pricing adjustment in line with the order passed by the Hon'ble Tribunal for AY 2006-07.*

- j. *The CIT(A) admitted the additional ground and following the Order of the Hon'ble Tribunal for AY 2006-07, remanded the matter to the file of the TPO for verification of the calculation submitted by the Assessee. It is pertinent to note here that pursuant to the demand raised by the CIT(A), the TPO by his order dated 31 October 2009 has verified and approved of the working filed by the Assessee before the CIT(A).*
- k. *Further, the Appeal for AY 2009-10 in ITA No.1321/Mum/2014 came to be disposed of by the Hon'ble Tribunal vide each order dated 5 January 2018. Once again, the Hon'ble Tribunal has set aside the adjustment made by the TPO observing thus:*

"2.First effective ground of appeal (Gs.OA-4to11) is about Transfer Pricing Adjustment of Rs.3,68,00,000/-.During the assessment proceedings, the AO found that the assessee had entered in to various International transactions(IT.s)with its Associated Enterprises (AE.s). He made a reference to the Transfer Pricing Officer(TPO)to determine the arm's length price (ALP)of such transactions.After receiving the order of the TPO, the AO made an adjustment of Rs.5.09 crores in the draft assessment order. The assessee filed objections before the DRP challenging the proposed adjustments.

2.1.After considering the submissions of the assessee and the order of the TPO, the DRP held that the AO was justified in making TP adjustment for the amount charged for business auxiliary services,that a mark-up of 30.56% was rightly charged in respect of such services as against the mark-up charged by the assessee,that that business auxiliary services rendered by the assessee were functionally comparable with the seven comparable companies, namely Ajcon Global Services Ltd.,Brescon Corporate Advisors Ltd., Epic Energy Ltd.,Sumedha Fiscal Services Ltd ,Integrated Enterprises (India) Ltd. and NIS Sparta Ltd.,that no royalty was payable by the assessee in respect of turnover of Beauty, Make-up preparations, Toilet Soaps and Bathing Bars,that the entire technology required in connection with those products was owned and developed by the assessee, that the AO had rightly determined arm's length at NIL for those transactions, that that the assessee ought to have received royalty of Rs. 26,22,000/- from Nepal Lever Ltd.The DRP further held that the TDS @15% amounting to Rs. 14.08 crores service tax amounting to Rs 7.94 crores and R&D Cess amounting to Rs. 2.49 crores, paid by the assessee, on royalty remitted to Unilever Plc.under the Technical Collaboration

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Agreement, between the assessee and the AE-was excessive. It alternatively held that if royalty were to be bifurcated then the tax payment made by the assessee could not be regarded an IT. It also upheld the adjustment, made by the AO, on account of Advertising & Sales promotion expenses amounting to Rs.5,09,00,000/-. The DRP observed that the assessee had not raised any ground about business auxiliary services.

2.2. During the course of hearing before us, it was brought to our notice, by the Authorised Representative (AR) that in the AY.2006-07, the TPO had applied entity level approach for benchmarking the IT.s entered into by the assessee with its AE, that the said approach of entity level benchmarking was accepted by the Tribunal, that the margin shown by the assessee fitted within (+/-)5% i.e. within permissible arm's length range (Para 34 to 36 on page 30 to 31 of ITA/7868/M/2010, dtd.10/12/2012), that the Hon'ble Jurisdictional High Court had upheld the order of the Tribunal. The DR stated that matter could be sent back to the AO/TPO.

2.3. We find that the Tribunal had dealt with all the issues of TP adjustments in detail, that the TPO had benchmarked the IT.s of the assessee at entity level, that the Tribunal found that the benchmarking was within the permissible limit (+/- 5%), that the IT.s were held to be at arm's length, that it was further held that all other adjustments like payment of royalty, receiving of royalty, advertisement and sales promotion and advertisement, adjustment out of R&D cess, payment of service tax, research and innovation development related services and under-charging for central services were subsumed once assessee's margin at entity level for AE's transactions was at arm's length, that the ITAT had deleted the entire transfer pricing adjustment of Rs 368.79 crores made for that year, that the Hon'ble Bombay High Court dismissed the appeal filed by the departments on this issue of deletion of adjustment of Rs. 3,68,79,26,000/- (ITA No.1873 of 2013-Para 2, Pg.66, Para 3-Pg.68-69, dtd.26/07/2016). Nothing has been brought on record that the facts for the year under consideration are different in any manner, except for the amount involved, from the facts of the last AY. Therefore, following the order of the Tribunal for that year, and the aforesaid judgment of the Hon'ble Bombay High Court for the same year, we decide the effective ground of appeal in favour of the assessee.

*Annexed hereto and marked "**Exhibit K**" is a copy of the Order of the Tribunal for AY 2006-07, marked "**Exhibit L**" is a copy of the Order*

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of the Hon'ble High Court for AY 06-07 (394 ITR 73(Bom.) and marked "Exhibit M" is a copy of the Order of the Hon'ble Supreme Court dismissing the SLP there against(259 Taxman 218). Also annexed and marked "Exhibit N" is a copy of the order of the Tribunal for AY 2009-10 in ITA 1321/Mum/2014."

15.4. Since the Ld.CIT(A) has followed the decision rendered by the Coordinate Bench in the assessee's own case in AY.2006-07, we do not find any reason to interfere with the order passed by the Ld.CIT(A) on Transfer Pricing issues urged before us.

16. We shall now take up the Cross Objection filed by the assessee. The Ld A.R submitted that the Cross Objection will be relevant only if the Hon'ble Tribunal allows the appeal of the Revenue in respect of Transfer Pricing issues. In the earlier paragraphs, we have dismissed the grounds urged by the Revenue on Transfer Pricing issues. Hence, the Cross Objection filed by the assessee shall become infructuous.

17. In the result, the appeal filed by the assessee and Revenue are partly allowed. The Cross Objection filed by the assessee is dismissed.

Order pronounced in the open court on 14-11-2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 14-11-2024

TNMM

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "H" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai