आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.486/Ind/2024 (AY:2012-13)
ITA No.444/Ind/2024 (AY:2016-17)
ITA No.489/Ind/2024 (AY:2017-18)

MAPAEX Remedies Pvt. Ltd. E-7, HIG, 500, Arera Colony, Bhopal **(PAN: AAECM2274P)**	बनाम/ Vs.	DCIT / ACIT 2(1), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)

ITA No. 508/Ind/2024 (AY:2012-13)
ITA No. 509/Ind/2024 (AY:2016-17)
ITA No. 510/Ind/2024 (AY:2017-18)

DCIT, Circle 5(1), Bhopal	बनाम/ Vs.	Mapaex Remedies Pvt. Ltd. E-7, HIG, 500, Arera Colony, Bhopal **(PAN: AAECM2274P)**
(Revenue/Appellant)		(Assessee/Respondent)

Assessee by	Shri Sumit Nema, Sr. Adv. with Shri Gagan Tiwari
Revenue by	Shri Ram Kumar Yadav, CIT DR

Date of Hearing	10.09.2024
Date of Pronouncement	10.09.2024

आदेश/O R D E R

Per Bench:

This bunch of six cross-appeals by assessee and revenue for three assessment-years ["AYs"] 2012-13, 2016-17 and 2017-18 are directed against three separate orders of first-appeal all dated 30.04.2024 and all

passed by Commissioner of Income-tax (Appeal), NFAC, Delhi ["CIT(A)"] which in turn arises out of respective assessment-orders dated 30.12.2019/ 23.12.2018 passed by DICT/ACIT, 2(1), Bhopal ["AO"] u/s 147/143(3) for AY 2012-13 and u/s 143(3) for AYs 2016-17 & 2017-18 of the Income-tax Act, 1961 ["the Act"].

2. Learned Representatives of both sides made vehement arguments and also filed Written-Synopsis/Paper-Books. We have heard them at length and considered their submissions made before us during hearing.

3. Since these appeals involve identical issues, they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity. For a smooth adjudication, we proceed year-wise.

AY 2012-13:

4. This is 2nd Round of appeal before ITAT for AY 2012-13. The brief facts are such that the assessee is a company engaged in manufacturing pharmaceutical products for Proctor & Gamble Hygience and Health Ltd. ["P&G"] in terms of Agreement dated 22.12.2006 at Village - Baddi in the State of Himachal Pradesh. Since Ay 2008-09, the assessee had been claiming deduction u/s 80-IC available to 'manufacturing activity' and the deduction claimed by assessee was allowed by AO. For AY 2012-13 under consideration, the assessee filed original return declaring a total income of

Rs. Nil after claiming deduction u/s 80-IC. The regular/original assessment was completed by AO u/s 143(3) vide order dated 13.11.2014 after making certain additions but allowing deduction u/s 80-IC. Thereafter, the regular assessment of subsequent AY 2014-15 was completed vide order dated 29.12.2016 wherein the deduction u/s 80-IC was denied for the first time. Based on denial of deduction in AY 2014-15, the case of AY 2012-13 was re-opened u/s 147 through notice dated 30.03.1999 u/s 148. In response the assessee filed return of income repeating the claim of deduction u/s 80-IC as allowed in original assessment. The assessee demanded copy of reasons recorded for re-opening of assessment which the AO supplied. Then, the assessee filed objections against re-opening of assessment which the AO rejected vide order dated 05.11.2019. The AO then proceeded to go ahead with re-opened assessment through notices u/s 143(2)/142(1). Ultimately, the AO completed re-opened assessment vide order dated 30.12.2019 u/s 147/143(3) after making two adjustments, namely (i) the deduction of Rs. 1,62,04,760/- u/s 80-IC was disallowed and (ii) the business expenses of Rs. 9,11,95,669/- claimed by assessee were also disallowed. Aggrieved, the assessee filed first-appeal to CIT(A) but the CIT(A) dismissed appeal for non-prosecution. The assessee challenged CIT(A)'s order before ITAT, Indore in *ITA No. 18/Ind/2023* whereupon the ITAT, vide order dated 26.09.2023, remanded matter to CIT(A) for a fresh adjudication on merit. In pursuance of direction of ITAT, the CIT(A) passed a fresh order dated 30.04.2024. The CIT(A) dismissed assessee's legal ground against validity of re-assessment as

general; allowed deduction u/s 80-IC and upheld disallowance of expenses. This way, the CIT(A) granted part-relief to assessee. Now, the assessee and revenue both have come in cross-appeals before us for redressal of their respective grievances.

Assessee's ITA No. 486/Ind/2024 for AY 2012-13:

5. The grounds raised by assessee are as under:

1. That the Ld. CIT(A) was not justified in upholding the order of the Ld. AO in view of the fact that the order passed u/s 143(3) r/w section 147 was illegal, void and without jurisdiction.

1.1 That on the facts and circumstances of the case, the notice dated 30.03.2019 issued u/s 148 for assessment year 2012-13 by the ld. AO was illegal, bad in law & without jurisdiction since there was no failure on the part of the assessee to disclose all material facts necessary for his original assessment framed u/s 143(3) and, accordingly, the reassessment proceedings commenced after four years from the end of relevant assessment year is not sustainable under the law.

2. That on the facts and circumstances of the case the order of the Ld. CIT(A) is perverse and vitiated on several grounds.

3. That the finding of Ld. CIT(A) and AO, is perverse and are contrary to the facts as both the lower authorities failed to consider the documents and submission made by the assessee in true perspective.

4. That Ld. CIT(A) and AO erred in law and facts of the case in not allowing expenses/deduction of Rs. 9,11,95,669/- claimed by the assessee under profit and loss account under the head "cost of material consumed".

4.1 That the Ld. CIT(A) and AO was not justified in holding that the direct and production expenses claimed under various heads were to borne by the M/s. Procter and Gamble and not by assessee without looking into facts and audited balance sheet submitted during the hearing before both authorities.

4.2 That the Ld. CIT(A) and AO erred in not considering the aspect that M/s. Procter and Gamble only provides raw material and packing material for production and remaining all the production activity such as manpower cost, labour works, consumable, repair and maintenance, consultancy, testing power and fuel are to be incurred by the appellant. Thus, the impugned disallowance is perverse, arbitrary and unlawful.

Ground No. 1 to 3:

6. In these grounds, the assessee basically claims that the re-opening of assessee's case through notice dated 30.03.2019 u/s 148 after expiry of four years from end of relevant assessment year and consequently the order of re-assessment passed by AO u/s 147/143(3) were illegal, void and without jurisdiction.

7. At first, Ld. AR fairly submitted that this issue was very much raised by assessee before CIT(A) through Ground No. 1 & 2 of first-appeal reading as under:

"1. That on the facts and in the circumstances of the case, the assessment order is vitiated on several grounds, hence the same may kindly be quashed.

2. That the assessment-order is bad in law, illegal and unjustified and deserves to be quashed."

But the CIT(A) dismissed these issues summarily by passing following order:

"Ground No. 1 & 2

7. These grounds of appeal are related to Assessment Order being vitiated on several grounds, bad in law and unjustified and deserves to be quashed. These grounds of appeal are general in nature. The issues raised in these grounds are covered by other grounds of this appeal which are specific in nature. Therefore, these grounds of appeal do not require separate adjudication."

8. Therefore, according to Ld. AR, the CIT(A) ought to have decided the issue of legality raised by assessee which has not been done. However, as an alternative submission, Ld. AR expressed that if the Bench feels that the Ground No. 1 to 3 raised in present appeal were not before CIT(A) for adjudication, then also these Grounds challenge the jurisdiction of AO which goes to the root of matter and can be decided on the basis of material available on record. Therefore also, the Ground No. 1 to 3 raised in present appeal are permissible as per decision in ***National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)***. Ld. DR for revenue did not show any objection to the submission of Ld. AR. After due consideration, we find sufficient merit in the submission of Ld. AR. We agree that the issue of jurisdiction or legality can be raised at any time as per decision of Hon'ble Supreme Court. Therefore, we proceed to adjudicate the Ground No. 1 to 3 in subsequent discussions.

9. The issue for our adjudication is whether or not the re-opening of assessment by AO through notice dated 30.03.2019 u/s 148 and consequently the assessment-order passed by AO u/s 147/143(3) was illegal, invalid and without jurisdiction?

10. In this regard, Ld. AR firstly submitted some basic data of case. He submitted that the case relates to AY 2012-13 for which the regular assessment was finalised by AO u/s 143(3) vide order dated 13.11.2014. Thereafter, the AO issued notice u/s 148 on 30.03.2019 to re-open

completed assessment. The four years' period from end of AY 2012-13 expired on 31.03.2017 and as such the notice u/s 148 dated 30.03.2019 was issued after expiry of four years from end of the relevant AY 2012-13.

11. Then, Ld. AR carried us to the legal provision of first proviso to section 147 reading as under:

> *"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year, by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:"*

12. Ld. AR submitted that the aforesaid proviso bars the AO from taking action u/s 147 after expiry of four years from end of the assessment-year in a case where original assessment of assessee had been made u/s 143(3) except in two exceptions. The *first exception* where the AO could act against assessee after four years would be a case of failure on the part of assessee to make a return u/s 139/142(1)/148 which is not a situation in present case of assessee and the revenue cannot have any dispute so far this is concerned. The *second exception* would be a case where the escapement of income is because of assessee's failure to disclose fully and truly all material facts necessary for assessment which, according to Ld. AR, is again not a situation in present case of assessee. To show the non-existence of second exception, Ld. AR straightaway carried us to the reasons recorded by AO

before taking action u/s 147, copy at Page 11-13 of Paper-Book of AY 2012-13, re-produced here:

"Annexure

Name of the assessee	*M/s Mapaex Remedies Pvt. Ltd*
Address of the Assessee	*HIG-500, E-7, Arera Colony, Bhopal*
PAN of the Assessee	*AAECM2274P*
Assessment Year	*2012-13*
Details of the Assessing Officer having jurisdiction over the assessee	*ACIT-2(1), Bhopal*

Reasons for reopening of the assessment in case of M/s Mapaex Remedies Pvt. Ltd for A.Y. 2012-13 u/s 147 of the Income Tax Act, 1961

The assessee filed the return of income for A.Y. 2012-13 on 26.09.2019 declaring income at Rs. Nil after claiming deduction u/s 80IC for Rs. 1,49,22,361/-, the tax was paid as per book profit. The regular assessment u/s 143(3) of the Act was completed on 13/11/2014 at assessed income at Rs. 39,60,607/- after allowing deduction under section 80IC amounting to Rs. 1,62,04,760/-.

As per provisions of section 80IC, where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, deduction from such profits and gains.

Further, sub-section 2(b)(ii) of section 80IC provides that, which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial during the period beginning on 7th day of January 2003 and ending before the 1st day of April, 2012, in the state of Himachal Pradesh or the state of Uttaranchal.

(1) It is not formed by splitting up, or the reconstruction, of a business already in existence.

(ii) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation: - The provisions of explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

Explanation 1 of sub-section (3) of section 80-IA provides that - For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:-

(a) Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) Such machinery or plant is imported into India from any country outside India; and

(c) No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the

Now, it has been found in this case that the assessee had executed an agreement with M/s Procter & Gamble Hygiene and Health Care Ltd. (hereinafter referred to as company) on 22nd December, 2006 in which assessee was an operator. As per agreement, the company and operator are the joint owners having undivided interest in a piece of land at Baddi (hereinafter referred to as the land) to the extent of 90% by the company and 10% by the Operator respectively.

As per agreement with the consent of the operator, the company has constructed a building on the land and installed plant and machineries for the manufacture of the products.

As per agreement the operator has offered to operate the plant for the manufacture of the products as loan licensees under the Drugs & Consmetics Act 1940 and the company has agreed to have the products manufactured by the operation of the plant through the operation in accordance with the specifications given by the company from time to time on the terms and conditions.

The company shall supply all of the operator's requirements of the raw materials and packaging material necessary for the manufacturing and packaging of the products.

The company will reimburse the all expenses to the operator on actual during tenure of this agreement on monthly basis. All the expenses need to be pre-agreed time bound on lapse of which these will reviewed from continuation.

In addition to the above the company will pay the compensation to the operator.

All equipment and tooling required to manufacture company's product will be maintained in good operating condition by the operator, including any equipment owned or leased by the company which is used by the operator. Operator agrees that company's equipment and tooling will be identified as the property of the company and where possible will be stored separately from other materials.

It is clear from the above conditions enumerated in the agreement that the assessee had neither invested in the building nor in the plant & machinery. The assessee was neither owner nor manufacturer and it was only engaged as an operator of plant and machinery in the premises of company building. The Company M/s Proctor & Gamble Hygiene and Health Care Ltd. has reimbursed all the expenses incurred by the operator and compensation paid for in manufacturing of products.

It is further to note that the assessee was a service provider as operator which proved from the service tax return in which assessee had paid service tax. The company M/s Procter & Gamble Hygiene and Health Care Ltd. has paid Job Work and Operation Charges in which Service Tax included in the total bill amount. As per details available on record, if the assessee was a manufacturer, the Excise Duty was leviable on the manufacturing product. However, the assessee has furnished the return of VAT in which it has shown that the M/s Procter & Gamble Hygiene and Health Care Ltd. Has deducted and deposited the VAT. Thus it is clear that the assessee is a service provider only and not a manufacturer and thus, the deduction claimed by the assessee u/s 80-IC for Rs. 1,19,22,361/- is not allowable as per the provisions of section 80-IC of the Income Tax Act, 1961.

In view of the above facts, I have the reasons to believe that the income to the extent of Rs. 1,49,22,361/-chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 in the case of assessee firm for the A.Y. 2013-14.

In this case, a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 13/11/2014.

In this case more than four years have lapsed from the end of the assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Act.

Sd/-
(Ashish Kumar Rai)
Assistant Commissioner of Income Tax,
Circle-2(1), Bhopal"

13. Reading the above word by word in open court, Ld. AR submitted that the AO has mentioned at length about the non-allowability of deduction u/s 80-IC to assessee and thereby escapement of income from taxation but nowhere in the reasons the AO has recorded allegation that the escapement was because of assessee's failure to disclose fully and truly all materials facts necessary for assessment. In fact, Ld. AR contended, the AO could not

record so because he was very much aware that the details/points mentioned in the reasons for non-allowability of deduction were already available with AO during regular assessment u/s 143(3) and there was no failure on the part of assessee to disclose any material fact necessary for regular assessment.

14. Then Ld. AR submitted that the assessee, immediately after receiving copy of aforesaid reasons from AO, filed a strong objection to AO vide letter dated 28.06.2019 raising following issues:

(i) that there was no allegation in the reasons recorded that the assessee had failed to disclose truly and fully any material fact necessary for assessment.

(ii) that all details mentioned in the reasons recorded and source thereof were part of the record of assessee already available with AO during regular assessment and there was in fact no failure on the part of assessee to disclose all material facts necessary for assessment.

(iii) that there was a clear-cut disclosure in the audited Balance-Sheet qua the nature, activity and facts of assessee's business and the audited Balance-Sheet was very much available with and scrutinised by AO during regular assessment. Thus, there was adequate disclosure during regular assessment. (This point shall be meticulously discussed in subsequent para also).

(iv) that the regular assessment was made after detailed enquiries, and

(v) that the reassessment now sought to be done was merely a change in opinion.

15. However, the AO turned down objections of assessee through letter dated 05.11.2019, copy at Page 26A-26C of Paper-Book. Ld. AR submitted in this letter, the AO has basically mentioned that the case had been re-opened on the basis of subsequent scrutiny-assessment of AY 2014-15 but the AO has not mentioned anything about the allegation of assessee's failure in disclosing all facts fully and truly necessary for assessment. This shows, Ld. AR contended, that the AO himself knows that there was no failure on the part of assessee in disclosing material facts necessary for assessment and hence the bar provided in first proviso to section 147 applies.

16. Ld. AR then submitted that all details mentioned in the reasons recorded were part of the multiple records available with AO in regular assessment like the submissions filed, audited financial statements, tax auditors' report, etc. To illustrate, Ld. AR carried us to the following disclosure made in assessee's audited Balance-Sheet dated 15.07.2012, copy at Page 1-20 of Paper-Book, which was available with and duly scrutinized by AO during regular assessment:

"2. OTHER NOTES AND DISCLOSURES:

a) The freehold land is jointly owned by the company with M/s Procter and Gamble Hygiene and Healthcare Limited, in which companies share of investment is Rs. 28,09,740/- (10% ownership).

The leasehold land is jointly owned by the company with M/s Proctor and Gamble Hygiene and Healthcare Limited, in which companies share of investment is Rs. 2,70,000/- (10% ownership).

(c) The Company has not shown any amount as preliminary expenses / pre-operative expenses as all such expenses have been reimbursed by M/s Proctor and Gamble Hygiene and Health Care Limited.

(e)(i) ***The Company is carrying on manufacturing on Job Work basis*** *for which material is supplied by the principal and finished goods supplied to principal, therefore information regarding raw, packing and finished material is not available. However, production of Vicks Cough Drops and Vicks Inhaler on job work basis were 5178.71 MT and 13138230 Nos. respectively."*

[Emphasis supplied]

17. Ld. AR next carried us to the original assessment-order dated 13.11.2014 passed by AO in regular assessment u/s 143(3), copy at Page 4-7 of Paper-Book, to show the specific noting made therein by AO as under:

"3. ***The assessee is a company engaged in the Manufacturing of Pharmaceutical Products on Job work basis. The company is doing job work for Proctor & Gamble Ltd.*** *The Gross Total Income of the assessee company. During the year assessment was Rs. 1,49,22,361/- against which the assessee company has claimed deduction u/s 80IC of Rs. 1,49,22,361/- and the Total Income was reduced to Nil. The assessee company has paid MAT on the Book Profit of Rs. 1,77,91,315/-. The assessee has got his books of accounts. Audited as per the provisions of section 44AB of the I.T. Act."*

[Emphasis supplied]

Ld. AR also drew us to the last para of assessment-order where, while computing total income of assessee, the AO has allowed deduction of Rs. 1,62,04,760/- u/s 80-IC and completed regular assessment.

18. This way, Ld. AR submitted and contended that there is no new material which has come to the knowledge of AO subsequent to regular

assessment to form a belief that the income had escaped assessment. The present re-assessment is merely based on change of opinion.

19. Ld. AR lastly submitted that the judicial view is very clear that the bar prescribed in proviso to section 147 applies in such a situation. Ld. AR quote a few case laws as under:

(a) Purity Techtextile (P) Ltd. ACIT (2010) 189 Taxman 21 (Bombay HC):

"13. The assessee made a claim for deduction under section 80-IB of the Act, initially for A.Y. 2001-02, which was allowed. The benefit of a deduction under Section 80IB was also granted for A.Y. 2002-03. The assessment order for A.Y. 2001-02 was passed under Section 143(3) of the Act, upon scrutiny. During the course of assessment proceedings for A.Y. 2003-04, the assessee filed an Audit Report in Form 10CCB in which relevant particulars of the license to work that was granted to the unit of the assessee was disclosed. The license to work dated 14th August 2000, copy of which was filed before the Assessing Officer, contains a disclosure of the fact that the plans have been approved by Sarpanch by his letter dated 12-9-1988. The basis on which the assessment the assessment for A.Ys 2003-04 and 2004-05 has been sought to be reopened is that it was during the course of assessment proceedings for subsequent years that the Revenue had obtained a copy of the license which showed that the plans have been approved as far back as on 12th September 1988. This statement which is contained in the reasons, on the basis of which the assessment is sought to be reopened, is belied by the record which shows that the Revenue was in possession of the material produced by the assessee during the course of the assessment proceedings for A.Y. 2003-04 which showed that the plans had been approved in the year 1988. Therefore, the basis on which the assessment has been sought to be re-opened is factually incorrect. The Assessing Officer granted the assessee a deduction under Section 80IB after being appraised of all the relevant details, including those in Form 10CCB which showed that plans had been approved in 1988.

14. Moreover, the fact that plans for the building were approved in the year 1988 would make no difference to the claim of the assessee to a deduction under Section 80IB of the Act. Both in the notice reopening the assessment and in the order disposing of the objections of the assessee, reliance has been sought to be placed on the provisions of sub-clause (i) of Clause (1) of sub-section (2) of Section 80IB. Sub-clause (i) postulates that the industrial

undertaking ought not to have been formed either by splitting up or reconstruction of a business already in existence. On the basis of the facts and circumstances and as recorded by the Assessing Officer, it cannot possibly be postulated that the industrial undertaking of the assessee was formed either by the splitting up or by the reconstruction of a business already in existence. As already noted, it is an admitted position that the land and building was sold by MSFC in exercise of its statutory powers and the purchaser in turn has leased out the land and building to the assessee. It is not the case of the Revenue in the reasons for reopening the assessment that the plant and machinery installed by the assessee has been previously used. Section 80IB(2)(ii) provides that the industrial undertaking should not be formed by transfer to a new business of plant and machinery or a plant previously used for any other purpose. It is not the case of the Revenue in the reasons for re-opening the assessment that the industrial undertaking of the assessee has been formed by transfer of plant and machinery which has been previously used for any other purpose. The assessee has annexed to the petition before the Court a copy of the Deed of Conveyance under which MSFC transferred the right of the defaulter only in respect of the land and building. The plant and machinery was not the subject matter of the sale. The Deed of Conveyance contains a specific recital that the machinery was not being sold. In these circumstances, it is apparent from the record before the Court that there was no failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment so as to justify the invocation of the powers under Section 148 of the Act beyond the expiry of a period of four years from the end of the relevant assessment year.

15. We may also note in addition that the assessee has filed together with its affidavit in rejoinder, a copy of the information received during the course of a query under the Right to Information Act. The information includes a letter by the Assessing Officer to the Commissioner of Income Tax dated 24th March 2009 seeking permission to the proposal for reopening the assessment under Section 151(1) of the Act. The Assessing Officer has noted, while seeking approval of the Commissioner of Income Tax, that during the course of Revenue audit proceedings, an audit objection has been raised on the ground that the assessee was not eligible to a deduction under Section 80IB from A.Y. 20022003. The Assessing Officer notes that the audit objection was not accepted but that as a precautionary measure the assessment was reopened under Section 147. There is merit in the submission urged on the part of the assessee that the Assessing Officer had no reason to believe that income had escaped assessment. We clarify that we have not regarded this circumstance namely, the information which was divulged during the course of a query and the Right to Information Act as the only and exclusive circumstance for coming to a conclusion that the power has not been validly exercised. Basically, the validity of the exercise of the powers to reopen an assessment has to be decided with reference to the reasons recorded while reopening the assessment. The reasons recorded while reopening the assessment do not justify the exercise of the power in the facts of this case.

16. In so far as the companion writ petition is concerned (Writ Petition No.268 of 2010), the reopening of the assessment has taken place within a period of four years from the expiry of the relevant assessment year. However, so far as this case is concerned, it is apparent that the Assessing Officer did not have before him any additional material at all to form a belief that income had escaped assessment. The assessee had admittedly placed on record before the Assessing Officer for A.Y. 2003-04 the circumstance that the plans have been approved for the building on 12th September 1988. There was no material before the Assessing Officer, that would lead to a formation of belief that the income had escaped assessment. We may also note that in the present case as well the Assessing Officer appears to have relied exclusively on an audit objection, which has already been dealt with while considering the facts of Writ Petition no. 269 of 2010. There was hence a total absence of "tangible material", as explained in the judgment of the Supreme Court in Kelvinator (supra) to justify the conclusion that income had escaped assessment. Finally, it would be necessary to note, as we have observed earlier, that mere existence of the land and building since 1988 is not a circumstance which would disentitle the assessee to the benefit of a deduction under Section 80IB of the Act, once other requirements of the provisions are fulfilled.

17. For all these reasons, we quash and set aside the notices dated 24th March 2009 and 31st March 2009. Rule is made absolute accordingly. In the circumstances of the case, there shall be no order as to costs. "

(b) CEAT Ltd. Vs. ACIT (2023) 146 Taxmann.com 107 (Bombay HC) order dated 22.12.2021:

In this case, the Court held that where revenue had miserably failed to point out any facts or material which had not been disclosed by the assessee during original assessment and the entire basis for re-opening after expiry of four years from end of relevant assessment year was due to mistake of the Assessing Officer that resulted in under-assessment, reopening of assessment being on change of opinion was impermissible in law.

The Hon'ble Supreme Court has already approved above order of Bombay High Court by dismissing revenue's SLP, reported in **ACIT Vs. CEAT Ltd. (2022) SCC Online SC 1627,** by passing a following order:

"2. It is not in dispute that the assessment was sought to be re-opened beyond four years. Therefore, all the conditions under Section 148 of the Income Tax Act for re-opening the assessment beyond four years are required

to be satisfied. Having gone through the reasons recorded for re-opening, we are of the opinion that the conditions precedent for re-opening of the assessment beyond four years are not satisfied. The re-assessment was on change of opinion. There are no allegations of suppression of material fact. Under the circumstances, no error has been committed by the High Court in setting aside the re-opening notice under Section 148 of the Income Tax Act. We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed."

(c) Susheel Kumar Shankar Lal Vs. ITO, W.P. 2036 of 2007, latest order dated 20.08.2024 of Hon'ble M.P. High Court:

"08. As per Section 147 of the Income Tax Act, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any Assessment Year or any other income chargeable to tax which has escaped the assessment, as per Proviso, wherein assessment under sub-Section (3) of section 143 of the Income Tax Act or this section has been made for the relevant Assessment Year, no action shall be taken under this Section after the expiry of four years unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of the failure on part of the assessee to make a return under Section 139 of Income Tax Act, ***therefore, the Assessing Officer has to record the reasons that it was a failure on part of the assessee to disclose the income chargeable to tax has escaped.***

09. As stated above, there is no allegation that the petitioner suppressed the income or did not disclose the income from unrecorded sales, the petitioner disclosed all his income and all unrecorded transactions and claimed the income by way of gross profit @ 7.2%, but the authority was of the opinion that it should be 8% which the petitioner accepted and paid the taxes. Now, the Assessing Officer in the exercise of power under Sections 147 and 148 of the Income Tax Act cannot reopen that in its opinion, the 8% rate is on the lower side. The Explanation - 2 as relied on by learned counsel appearing for the Income Tax Act Department cannot be read in isolation, it has to be read along with the Proviso of Section 147 of the Income Tax Act. Explanation - 2 says that the following cases shall be deemed to be cases where the income chargeable to tax has escaped assessment where the income chargeable to tax has been under- assessed and such income has been assessed at a too-low rate, but for which there has to be a failure on part of the assessee to make a return under Section 149 of Income Tax Act to disclose fully or truly all material facts necessary for assessment for the relevant Assessment Year.

10. For the sake of repetition, the petitioner had disclosed all his undisclosed sale transactions of both years, but the Assessing Authority has assessed the gross profit @ 8%, thus, there was no failure on the part of the petitioner which can give reasons to believe to the Assessing Officer to reopen the assessment, hence, relying on a judgment passed by the Hon'ble Apex Court in case of Kelvinator of India (supra) that Section 147 of Income Tax Act would give

arbitrary power to the Assessing Officer to reopen the assessment on the basis of mere change of opinion which cannot be per se reasons to reopen. A similar view has been taken in the case of ***CEAT Ltd. (supra)*** *and well as in Financial Software & Systems (supra)."*

Ld. AR submitted that **Susheel Kumar Shankar's** case is from Jurisdictional High Court of M.P. and it has followed **CEAT Ltd.** of Bombay High court which was ultimately approved by Hon'ble Supreme Court.

20. With these submissions, Ld. AR prayed that the re-assessment proceeding assumed by AO after expiry of four years from end of the assessment-year was clearly barred by first proviso to section 147. Therefore, the entire re-assessment proceeding conducted by AO as well as the order of re-assessment passed therein is invalid and illegal and must be quashed.

21. Per contra, Ld. DR submitted that the CIT(A) has passed impugned order of first-appeal as ex-parte due to non-submission by assessee. Therefore, the assessee's appeal may be remanded back to CIT(A) for a more detailed and appropriate adjudication.

22. In rejoinder, Ld. AR submitted that the Ld. DR for revenue has not given any submission *qua* legal ground.

23. In reply, Ld. DR left this issue for the wisdom of bench while re-iterating that the order of first appeal passed by CIT(A) is ex-parte and hence the appeal of assessee including this issue may be restored to CIT(A).

24. We have considered rival submissions of both sides and perused the submissions of both sides as also the orders of lower authorities and the documents held in Paper-Book to which our attention has been drawn. In this issue, the assessee is objecting to the legality of re-assessment proceedings conducted by assessee. It is an undisputed fact that the AO has issued notice u/s 148 after expiry of four years from end of assessment-year. Now, in this circumstance, the assessee is pressing the bar imposed in first proviso to section 147 according to which the AO cannot take action against assessee unless there is a case of assessee's failure to disclose fully and truly all material facts necessary for assessment. The proviso is worded in negative form and hence a strong burden lies upon the AO to show that there existed a situation which enabled him to take action after expiry of four years. In present case, the AO has recorded reasons before issuing notice to assessee. The reasons have already been re-produced in earlier part of this order. On perusal of reasons, we find that the AO has made categorical mentions about the situation contemplated by proviso to section 147 i.e. a return of income was filed for the year; that the original assessment of assessee was made by way of regular assessment u/s 143(3); that more than four years have elapsed from end of relevant assessment-year. But the AO has nowhere recorded the most important requirement i.e. the allegation or satisfaction that there was any failure on the part of assessee to disclose fully and truly any material fact necessary for assessment. This is the first aspect of the case. Then, we find that during

regular assessment, the assessee has made disclosures to the AO regarding its activity and business model. The assessee's audited Balance-Sheet available with AO during regular assessment was itself containing enough disclosures, as re-produced in foregoing para of this order, that the lands were jointly owned with P&G; that the expenses were reimbursed by P&G and more importantly that the assessee was carrying on manufacturing on job work basis for which material was supplied by P&G and finished goods was supplied to P&G. The AO has consciously taken note of assessee's line of business and made a categorical mention in Para 3 of regular assessment-order, re-produced earlier, that the assessee is a company engaged in manufacturing pharmaceutical products on job work basis and that the assessee is doing job work for P&G. When these are the facts, how can it be a case of non-disclosure of material facts by assessee qua the points mentioned by AO in the reasons for non-allowability of deduction u/s 80-IC? Therefore, in the situation, we agree that the case of assessee certainly falls within the ambit of first proviso to section 147 and the AO was barred from taking action against assessee. The decision of ***Hon'ble Jurisdictional High Court in Susheel Kumar (supra)*** which in turn follows the decision in ***CEAT Ltd. (supra) as approved by Hon'ble Supreme Court***, is applicable to assessee's case. Therefore, we are inclined to hold that the AO in present case has wrongly taken action u/s 147 against the mandate of proviso to section 147 and hence the entire proceedings of re-assessment undertaken by AO as well as the order passed

therein is invalid and illegal. Accordingly, the AO's order is hereby quashed and this issue is allowed.

Ground No. 4:

25. In this ground, the assessee claims that the lower-authorities have erred in not giving deduction of expenses of Rs. 9,11,95,669/- claimed by assessee under the heading "cost of material consumed".

26. Although we have already quashed assessment-order of AY 2012-13 as illegal and there is no necessity to decide this ground which is on merit of a disallowance, yet we proceed to adjudicate the same as this very issue is also involved in other years.

27. The AO has dealt this issue in Para 8 of assessment-order. The AO perused Agreement dated 22.12.2006 made by assessee with P&G and observed that the Agreements contains clauses stating (i) that P&G shall supply all requirements of raw materials and packaging material necessary for manufacturing and packing and (ii) that P&G shall reimburse all expenses to assessee on monthly basis. Therefore, the AO framed a view that the expenses claimed by assessee as deduction were in fact not incurred by assessee. When the AO sought explanation from assessee in this regard, the assessee filed a copy of Minutes of Meeting dated 18.12.2009 wherein a decision was taken to change the terms with P&G which then followed execution of MOU effective from 01.01.2010. The assessee claimed that there was a change in terms whereby the rates of job charges were

increased and the reimbursement of several expenses was stopped. However, the AO rejected assessee's submission and concluded that all raw material and packing material cost shall be borne by P&G and also all other expenses shall also be reimbursed by P&G. Accordingly, the AO disallowed expenses.

28. Ld. AR for assessee carried us to Page 27-28 of Paper-Book where the reply-letters dated 15.11.2019 & 26.11.2019 filed by assessee in response to the queries raised by AO in notices u/s 142(1) dated 09.11.2019 & 20.11.2019 during the course of re-assessment proceedings are placed. Ld. AR showed that the assessee filed all details/documents to AO in response to the queries asked for:

(i) The initial Agreement dated 22.12.2006 (Page 88-98 of Paper-Book) and Minutes of Meeting dated 18.12.2009 (Page 83-84 of Paper-Book) followed by MOU titled "Normative Price" effective from 01.01.2010 (Page 85-87 of Paper-Book), were referred. Ld. AR compared certain clauses of initial Agreement in contrast to MOU to demonstrate that there were revision in terms and conditions between assessee and P&G effective from 01.01.2020 whereby the rates of job charges were increased and the reimbursement of expenses would not be given. For example, originally the rates of job charges were Rs. 1.10 per Kg upto 1050 MSUs / Rs. 0.90 per Kg above 1050 MSUs for the product 'Vicks Cough Drops' and Rs. 0.12 per tube for 'Vicks Inhaler' which were

increased to Rs. 16.75 per Kg *"all inclusive ex-factory"* and Rs. 0.60 per Kg. *"all inclusive ex-factory"* respectively for two products. Further, the Clause 5 of MOU clearly sets out a list of various expenses which are included in the new prices agreed and hence those expenses shall not be reimbursed to assessee. Ld. AR, however, submitted that there was subsequent modification in MOU also to the effect that P&G shall reimburse @ Rs. 1 per Kg. of Viscose Cough Drops manufactured towards Annual Maintenance Contracts and Repairs & Maintenance of Building & Machinery and also Service-tax, copy of modification-document is filed at Page 87 of Paper-Book.

(ii) Page 133-169 of Paper-Book containing Ledger A/c of P&G extracted from audited books of assessee, is referred. This Ledger A/c shows mainly debit entries of job charges. Ld. AR explained that the Ledger A/c also shows some other debit entries of the expenses which were reimbursable by P&G. Ld. AR pointed that those reimbursable expenses have been debited to P&G a/c and not debited in assessee's P&L A/c. Ld. AR submitted that the Ledger A/c was duly filed before AO and the sanctity of Ledger A/c has never been in dispute by AO.

(iii) Page 170 of Paper-Book reflecting Note No. 21 to the Audited P&L A/c for the year ended 31.03.2012, is referred. This contains the details of expenses with main title "Cost of material consumed" but there is Nil cost of material consumed because material was provided by P&G.

Thereafter, it contains the details of expenses of Rs. 9,11,95,669/- under various sub-headings like Manpower cost, Indirect Labour, Power & Fuel, Freight & Forwarding, Repair & Maintenance, Consumable, Pest control, Housekeeping, Testing/certification charges, Consultancy & Other charges, etc. It was submitted to AO that the expenses claimed as deduction were those which were not reimbursed by P&G in terms of MOU effective from 01.01.2010 and those expenses were incurred for business purpose and hence no disallowance was called for. The details Ledger A/cs of expenses were also filed to AO during assessment and the same are part of Paper-Book.

29. With these submissions, Ld. AR made a strong submission that the original arrangement with P&G was modified from 01.01.2010. However, the AO has not taken into account the same and disallowed deduction of expenses to assessee. Ld. AR prayed to allow the deduction as claimed by assessee.

30. Per contra, Ld. DR made the very same submission that the CIT(A) has passed impugned order of first-appeal as ex-parte due to non-submission by assessee. Therefore, the assessee's appeal may be remanded back to CIT(A) for a more detailed and appropriate adjudication.

31. We have considered rival submissions of both sides and perused the orders of lower-authorities as well as the documents filed in Paper-Book to

which our attention has been drawn. The issue here is the disallowance of various expenses claimed by assessee under the heading "cost of material consumed" in P&L A/c. The details of expenses are available in Note No. 21 to the audited P&L A/c. On perusal of sub-headings of expenses comprised therein, one can find that "Purchase of raw material and Stores" is Rs. Nil and there is a sub-heading titled "direct/production expenses" of Rs. 9,11,95,660/- which in turn comprises of various expenses such as Manpower cost, Indirect Labour, Power & Fuel, Freight & Forwarding, Repair & Maintenance, Consumable, Pest control, Housekeeping, Testing/certification charges, Consultancy & Other charges, etc. The corresponding figures for the preceding financial year 2010-11 relevant to AY 2011-12 are also given. The AO has disallowed the claim of these expenses clubbed under the heading "direct/production expenses" on the footing that P&G has reimbursed all expenses to assessee. However, the assessee's stand is such that initially there was an Agreement dated 22.12.2006 under which lower-rates of job charges were paid but the expenses were reimbursed by P&G. But subsequently the arrangement was modified w.e.f. 01.01.2010 whereunder the rates of job charges were increased and simultaneously P&G stopped reimbursement of expenses. The assessee has filed Minutes of Meeting as well as MOU entered with P&G as documents giving effect to such change. Ld. AR has also pointed out that the MOU was again modified whereunder the P&G agreed to reimburse towards Annual Maintenance Contracts and Repairs & Maintenance of

Building & Machinery and also Service-tax. Thus, with the MOU coming into effect from 01.01.2010, P&G started paying higher rate of job charges but at the same time stopped reimbursement of majority of expenses except a few items of Annual Maintenance Contracts and Repairs & Maintenance of Building & Machinery and also Service-tax. Therefore, several expenses started falling upon assessee and its is only those expenses which the assessee debited in P&L A/c and claimed deduction. We find that the newer arrangement has come into effect from 01.01.2010 and that is why the expenses of Rs. 9,11,95,660/- claimed by assessee as deduction in current financial year 2011-12 have corresponding figures of financial year 2010-11 aggregating to Rs. 9,27,33,849/- in the very same Note No. 21 of audited P&L A/c. The expenses claimed in preceding financial year relevant to AY 2011-12 have been allowed by department as deduction to assessee. It is further discernible that Clause No. 5 of the MOU enumerates the expenses of all manpower required to produce goods, electricity, loading and unloading charges, pest control, housekeeping, security, transportation, uniform, canteen expenses, telephone expenses, travelling expenses, administrative expenses and grardening expenses for which P&G stopped reimbursement from 01.01.2010. The expenses claimed by assessee in P&L A/c vide Note No. 21 are Manpower cost, Indirect Labour, Power & Fuel, Freight & Forwarding, Repair & Maintenance, Consumable, Pest control, Housekeeping, Testing/certification charges, Consultancy & Other charges, etc. Thus, the expenses claimed by assessee are in line with what is

enumerated in Clause 5 of MOU. Furthermore, the assessee has filed Ledger A/cs of all expenses to AO and the AO has not questioned the sanctity of expenses. We also note that the department has taxed the higher rates of job charges declared by assessee under the same MOU but disallowed deduction of expenses only. We may also mention here that the assessee has claimed deduction of identical expenses aggregating to Rs. 16,29,23,333/- in AY 2016-17, as is evident from Note No. 21 of audited P&L A/c placed at Page 82 of Paper-Book for AY 2016-17 and the AO has allowed deduction in regular assessment of that year without any objection. Therefore, looking into all aspects, we are of the considered view that the assessee cannot be denied its legitimate deduction of expenses. Therefore, the disallowance made by AO is not tenable. The same is hereby deleted. This ground is accordingly allowed.

Revenue's ITA No. 508/Ind/2024 for AY 2012-13:

32. The Revenue has raised following grounds:

1. *Whether on the facts and circumstances of the case, the order of Ld. CIT(A) is perverse in so much so that the Ld. CIT(A) has deleted the addition amounting to Rs. 1,62,04,760/- as disallowance of deduction u/s 80-IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 30.12.2019 merely relying upon the judgement of ITAT in assessee's own case for assessment year 2014-15 in I.T.A. No. 214/Ind/2019 dated 26.12.2022 and not even discussing the facts of the case?*

2. *Whether on the facts and circumstances of the case, the order of Ld. CIT(A) is perverse in so much so that the Ld. CIT(A) has deleted the addition amounting to Rs. 1,62,04,760/- as disallowance of deduction u/s 80-IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 30.12.2019 merely relying upon the judgement of ITAT in assessee's own case for assessment year 2014-15 bearing I.T.A. No. 214/Ind/2019 dated 26.12.2022, however, the ITAT held in the*

captioned order that the AO has disallowed deduction for the first time during the assessment year 2014-15 without even pointing out any change in the activity of assessee or the applicable law and it is matter of fact that the AO had comprehensively recorded the reasoning for disallowance of deduction u/s 80-IC of the Act that the assessee is a service provider and not a manufacturer ?

3. *Whether on the facts and circumstances of the case, the order of Ld. CIT(A) is perverse in so much so that the Ld. CIT(A) has deleted the addition amounting to Rs. 1,62,04,760/- as disallowance of deduction u/s 80-IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 30.12.2019 and circumvented the provisions of section 80-IC of the Act by allowing the deduction u/s 80-IC of the Act to a service provider, however, it is matter of fact that deduction is aimed at businesses engaged in manufacturing or production activities and service providers, whose primary business activity involves rendering services, do not fall within the scope of Section 80-IC of the Act.*

4. *Whether on the facts and circumstances of the case, the order of Ld. CIT(A) is perverse in so much so that the Ld. CIT(A) has deleted the addition amounting to Rs. 1,62,04,760/- as disallowance of deduction u/s 80-IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 30.12.2019 and circumvented Golden Rule of Interpretation, which is widely adopted as Rules for interpretation of the documents in India by the Apex Court in many cases, some of the examples are Ramji Missar v. State of Bihar and U.P. Bhoodan Yagna Samiti v. Brij Kishore, by misinterpreting the plane and lucid meaning of section 80-IC of the Act and allowing deduction u/s 80-IC to a service provider, however, the same is available only for taxpayers involving in manufacturing activities?*

5. *Whether on the facts and circumstances of the case, the order of Ld. CIT(A) is perverse in so much so that the Ld. CIT(A) has deleted the addition amounting to Rs. 1,62,04,760/- as disallowance of deduction u/s 80-IC of the Act made in the order u/s 143(3) r.w.s. 147 of the Act dated 30.12.2019 and circumvented the intention of legislature towards deduction u/s 80-IC of the Act, by misinterpreting the plane and lucid meaning of section 80-IC of the Act and allowing deduction u/s 80-IC to a service provider, however, the same is available only for taxpayers involving in manufacturing activities and service providers, whose primary business activity involves rendering services, do not fall within the scope of Section 80-IC?*

6. *Whether on the facts and circumstances of the case, the order of the Ld. CIT(A) is perverse in so much so that the Ld. CIT(A) has deleted the captioned addition by relying upon the judgement of ITAT in I.T.A. No. 214/Ind/2019 dated 26.12.2022, which is ipso facto established to be perverse in so much so as the ITAT has circumvented the judgement passed by the Apex Court in the case of British Paints India Ltd. Vs. CIT, wherein it is held by the Apex Court that all the income offered and*

> *expenditure deduction booked by the taxpayer in that assessment year shall be carefully examined by the AO in order to ascertain that the books of the assessee discloses the correct income and the AO is not bound to allow a deduction which is unwarranted in the case of the assessee merely on the basis of the claim of the assessee that the same deduction was allowed in earlier assessment year?*

33. Although we have already quashed assessment-order of AY 2012-13 as illegal and therefore this appeal of revenue become infructuous yet we proceed to adjudicate this appeal as the very same issue is also involved in other years of revenue's appeals.

34. The sole issue raised by revenue by means of these grounds is that the CIT(A) has erred in giving deduction to assessee u/s 80-IC. The revenue is insisting that the deduction u/s 80-IC was available only to a 'manufacturer' whereas the assessee's activity was in the nature of 'job work' for P&G, therefore the assessee was not entitled for deduction.

35. Ld. AR for assessee/respondent taking lead for submissions, pointed out that the issue of deduction u/s 80-IC is not a new issue in assessee's case for the first time for AY 2012-13. In fact, the assessee had been consistently claiming this very deduction for the very same activity since AY 2008-09 and the deduction claimed by assessee was always allowed by AO. However, for the first time in AY 2014-15, the AO denied deduction in regular assessment and thereafter the same tune of disallowance has been applied for AYs 2012-13 onwards either by way of re-opening of completed assessments or in regular assessments.

36. Having said so, Ld. AR submitted that even for AY 2014-15 the assessee carried matter in first-appeal whereupon the CIT(A) reversed AO's order and granted deduction to assessee. The revenue filed next appeal to ITAT, Indore in ***ITA No. 214/Ind/2019.*** The ITAT, vide order dated 26.12.2022, has already dismissed revenue's appeal while upholding the CIT(A)'s order. Thereafter, following the order of ITAT, the CIT(A) in AY 2012-13 with which were are concerned in this appeal, has granted deduction to assessee in impugned order. Therefore, there is nothing wrong in CIT(A)'s order which is based on assessee's own case decided by ITAT. Hence, the order of CIT(A) must be upheld and the revenue's present appeal must be dismissed.

37. Additionally, Ld. AR also relied upon following judicial rulings wherein the job worker has been given deduction:

(a) *ITO, Delhi Vs. Zeon Life Sciences Ltd. (2015) 59 taxmann.com 299 (Delhi Trib) – Para 7.1. to 7.4* – On further appeal by revenue, the order of ITAT in so far it held that job charges are eligible for deduction u/s 80-IA has been approved by Hon'ble Delhi High Court in *ITA 763/2015 order dated 24.02.2016*.

(b) *ITO Vs. M/s Himalayan Autoera (India) Pvt. Ltd. ITA No. 5787/Del/2012 order dated 16.08.2017* – Para 8 to 13

(c) *ACIT Vs. M/s Wings Pharmaceuticals Pvt. Ltd., ITA NO. 3287/Del/2012 order dated 07.02.2014* – Para 72 to 74

38. Per contra, Ld. DR for revenue/appellant made following submissions and claimed that the assessee is not entitled to deduction:

(i) The AO has noted that 90% of land on which the industrial undertaking is situated is owned by P&G while only 10% is owned by assessee. Further, the agreement between assessee and P&G stipulates that upon termination of agreement, the assessee is obligated to sell its 10% share to P&G at prevailing market price. P&G has constructed factory building on land and also installed plant and machinery. The plant and machinery does not belong to assessee but to P&G. Reimbursement of expenses is also made by P&G. The assessee is working for P&G, not for anybody else. These factors clearly show that the assessee is just an operator of the plant, doing job work for P&G and cannot be said to be engaged in manufacturing.

(ii) The intention of Parliament is to give deduction only to an investor in industrial undertaking as is clearly mentioned in Explanatory Memorandum to Finance Bill, 2003.

(iii) P&G has also claimed deduction u/s 80-IC for the very same assessment-year.

39. In rejoinder, Ld. AR for assessee made following submissions:

(i) The assessee did 'manufacturing' activity but for P&G. The AO has not doubted 'manufacturing' activity but he only expects assessee to carry out manufacture activity for own and not for others which is not correct.

(ii) Explanation 13 to section 80-IA excludes 'work contract' but there is no such prohibitory provision in section 80-IC.

(iii) Section 80-IC(4) prescribed only two conditions, viz. (a) the undertaking should not be formed by splitting up or by reconstruction of an undertaking already in existence, and (b) the undertaking should not be formed by transfer of machinery from an existing undertaking. These conditions are very much satisfied by assessee. There is no further condition that the plant and machinery must be owned by assessee.

(iv) That the ITAT has already decided same issue in assessee's case for AY 2014-15 and the CIT(A) has adopted the ITAT's order while passing impugned order. There is no change in facts of issue or the applicable provisions of law. Therefore, there is no mistake in impugned order of CIT(A).

40. We have considered rival contentions of both sides and perused the orders of lower-authorities. After a careful consideration, we find that the issue is already settled by ITAT, Indore in assessee's own case ***ITA No.***

214/Ind/2019 for AY 2014-15 against revenue and in assessee's favour. The relevant paras of the order of ITAT are re-produced below for an immediate reference:

5. Presently the controversy between parties is with regard to the deduction u/s 80-IC.

6. The Ld. CIT(A) has allowed deduction after elaborately discussing the facts of the case, the findings of Ld. AO, the submissions of assessee and applicable legal provisions at length, thereby holding thus:

"7. Ground no. 2 is against disallowance of deduction under section 80IC of the Act.

7.1 During the year, the assessee was manufacturing pharmaceutical products on job work for Proctor & Gamble at Baddi in State of Himachal Pradesh which was the area notified for deduction u/s 80IC. The assessee had been claiming deduction u/s 80IC since A.Y 2008-09 and the deduction had been allowed in all years. It has been informed that the assessment in all the years had been completed u/s 143(3). The assessments of the assessee were also completed u/s 153A pursuant to a search and the deduction u/s 80IC was allowed to the assessee in that assessment also. However during the year the AO disallowed the deduction on following reasons:-

i. The manufacturing unit including the building, plant & machinery and major portion of the land is owned by M/s P&G.

ii. The raw material for manufacture and the technology required is supplied by P&G.

iii. The assessee is simply a operator of the plant on behalf of P&G for which job work charges has been paid to it.

iv. M/s P&G has also claimed deduction u/s 80-IC with respect to the production at the Unit.

7.2 The relevant portion of appellant's submissions is reproduced below:

XXX

7.3 It has been submitted that the manufacturing unit including the building, plant & machinery and major portion of the land is owned by M j s P&G. The assessee was manufacturing the pharma products required by using its own manpower, staff, power and consumables for which a fixed per kg job work charges of quantity manufactured is received by the assessee. It has been argued that for eligibility of deduction u/s 80IC the law does not require that the assessee should own the infrastructure and

that the law simply requires that the assessee should earn income from a new manufacturing business which should not use plant and machinery being already in use. It has been contended that the section does not require that the assessee should be doing the manufacture on its own accountj or the assessee should own plant and machinery or building.

7.4 The provisions of section 80IC and section 2(29BA) of the act are summarized below:

8OIC(1): The profits or gains should be derived by an undertaking ... from any business referred to in sub section (2).

Provisions of sub section (2) provide that the undertaking should:

(a) Begin manufacture or production of any article or thing .....

Provision of sub section (4) prescribes various other conditions which are required to be fulfilled by the undertaking to become eligible for deduction, namely:

(i) It is not formed by splitting or reconstruction of a business already in existence

(ii) It is not formed by transfer to a new business of machinery or plant previously used for any purpose

7.5 It is not the case of the A.O. that the assessee was a company formed by splitting or reconstruction of any existing business. As the assessee company did not own the plant and machinery rather it was a loan licensee of Proctor & Gamble and availed manufacturing facilities owned by a licensee in Form 25, there was no question of transfer of plant and machinery from any other business.

7.6 Section 2(29BA) of the act defines manufacture as

" ... means a change in a non-living physical object or article or thing-

(a) Resulting In the transformation of the object or article or thing into a new and distinct object or article or thing having different name, character and use or

(b) Bringing into existence of a new and distinct object or article or thing with a different chemical component or integral structure.

7.7 In this case, the assessee used to receive raw material in the shape of sugar, flavors, colors, menthol, camphor, glucose etc which was utilized by the assessee for manufacture of Vicks cough drops which was distinct and different commodity from the raw material consumed and thus the fact that the assessee was manufacturing article or thing is not in dispute.

7.8 From the definition of manufacturing as provided in the Act, it is observed that the law does not require that use of self owned plant and

machinery is mandatory for any manufacturing activity. Further, provisions of section 80IC also do not require that use of self owned plant and machinery is a must.

7.9 It has been held by Hon 'ble Madras High Court in CIT v. Taj Fire Works Industry (2006) 204 CTR (Mad) 108 that use/availability of self owned Plant and Machinery is not necessary for manufacture of goods. Thus the reasoning of disallowance that the assessee is not the owner of the manufacturing unit is not relevant as the law does not require that the manufacturing can be done only by aid of machinery and further in this case the manufacturing was done by the assessee under a license obtained for conducting manufacturing activity using the infrastructure of a third party.

7.10 Another ground of disallowance is that the raw material for manufacture and the technology required was supplied by P&G. It is observed that the manufacturing is done by using raw material and technology as may be required for the purpose. The source of these raw materials and technology is not relevant to determine whether the assessee has carried on any manufacturing or not. It is very common in the business that the customers for whom goods are manufactured, with an object to ensure the quality and to take advantage of the most competitive rates available in the market procure the raw material required and supply it to the person manufacturing the goods. Thus no adverse inference could be drawn by the A.O. from this fact.

7. 11 Another ground of disallowance is that the assessee was simply an operator of the plant on behalf of P&G for which job work charges had been paid to it. In the succeeding paragraphs it is seen that the inference drawn by the A.O. was erroneous.

7.12 The assessee was doing manufacturing activities as a Loan Licensee under the Drugs Act under which the assessee was duly registered as the manufacturer which is a fact confirmed by the AO herself in the assessment order. The Loan license is issued u/s 69A of the Drugs & Cosmetic Act and the relevant provisions relied upon by the appellant are reproduced below:

> *69-A. Loan Licences. [(1) Application for the grant or renewal of loan licences to manufacture for sale or for distribution of drugs other than those specified in Schedule C.*
>
> *Explanation. _ For the purpose of this rule a loan licence means a licence which a licensing authority may issue to an applicant who does not have his own arrangements for manufacture but who intends to avail himself of the manufacturing facilities owned by a licensee in Form 25.*

It is observed that as per the above provision, any person intending to carry on any manufacturing and does not have infrastructure available for such manufacture can manufacture the goods by availing of the manufacturing facilities owned by third party by obtaining registration as

Loan Licensee. Thus the assessee had been awarded a license for manufacture of drugs by using the manufacturing facilities owned by some other party.

7.13 A copy of the factory License was issued by the Chief Inspector of Factories Himachal Pradesh, in the name of the assessee. Copy of license and copy of registration certificate showing that the assessee was registered with the Department of Industries H.P. has been submitted.

7.14 It has also been shown that the power used for the purpose of manufacturing was in the name of the assessee and the power charges were paid by the assessee.

7.15 The appellant has also shown that the labour used for the manufacturing were employed by it. Copy of profit & loss account showing labour charges and copy of returns submitted before PF authorities have been filed.

7.16 Similarly, the consumable required for maintenance of the machinery is borne by the assessee.

7.17 All these facts clearly show that the assessee had been carrying out the manufacturing activity by availing the infrastructure facility not owned by it for which a valid license as required by law had been obtained by it.

7.18 Another ground of disallowance is that Mis P&G has also claimed deduction u/s 80IC with respect to the production at the Unit. The appellant has shown that there is no Bar in the Act that the deduction cannot be allowed to more than one person. The only condition which needs to be verified is whether the assessee has manufactured the goods and whether the income offered to tax was earned out of such manufactured goods and whether the terms and conditions of section 80IC have been complied with. It is observed that here the manufacturing had been done by the assessee as a contractor. However, there is no bar in the Act prohibiting claim of deduction by the contractor.

7.19 It is observed that in CIT v Northern Aeromatics Ltd (2005) 196 CTR 0479 (Delhi), the Hon 'ble High Court on similar facts has held that it will be regarded as manufacturing activity irrespective of the fact whether the products manufactured therein are for its own business or it is done for others on job work basis.

7.20 In view of the above discussion, it is found that the A.O. was not justified in disallowing deduction u/s 80IC. It has been shown by the appellant that the deduction had been allowed in earlier years and the assessments were finalized u/s 143(3) or 153A. It is observed that the production in the case of the assessee first started in A.Y 2008-09. The details of the assessment of the assessee for the years since then are as under:

A.Y	Returned Income	Date Of filing return	Assessment Completed u/s	Assessing Officer	Date of order
2008-09	6341188	27.09.08	143(3) & also *u/s* 153A	ACIT 2(1), Bhopal & DCIT (C) 1 (3) Ahmadabad	29.12.10 & 22.03.13
2009-10	1541590	29.09.09	153A	DCIT (C) I (3) Ahmadabad	22.03.13
2010-11	169166	27.09.10	153A	DCIT (C) 1(3) Ahmadabad	22.03.13
2011-12	6471370	26.09.11	153A	DCIT (C) 1(3) Ahmadabad	22.03.13
2012-13	0	26.09.12	143(3)	ITO 2(2), Bhopal	13.11.14
2013-14	25666390	28.09.13	143(3)	ACIT 2(1), Bhopal	11.02.16

7.21 It is, therefore, observed that the assessments in all the years were completed under scrutiny u/s 143(3)/153A of the Act and the deduction claimed by the assessee u/s 80IC was allowed in all the years. Copies of assessment orders have been submitted. As these activities were being done since last over 6 years by the assessee and there was no change in the same during the year and it was never the case of the A.O. that the activities of the assessee during the year were different from the activities of the assessee done in past, the abrupt disallowance in A.Y. 2014-15 without any change in facts is clearly arbitrary and unreasonable. Reliance in this regard is placed on following decisions:-

Radhasoami Satsang Saomi Beas v. CIT, [1992] 193 ITR 321 (SC)

CIT v Excel Industries Ltd (2013)358 ITR 295(SC)

DCIT vs Sulabh Intemational Social Service Organisation (2011) 57 DTR 0008 (Patna HC)

7.22 Further, on identical facts, the Delhi High Court in the case of CIT v. A. K. J. Security Printers, (2003) 264 ITR 276 has held as follows:-

"we are of the view that having accepted at least in three assessment years that the assessee's business activity fell within the ambit of S. 80-1 of the Act, the Revenue cannot be allowed to now tum around and contend that deduction under the said section is not available to them in respect of the present assessment years. "

7.23 In view of the overall discussion made above, it is held that the A.O. was not justified in disallowing deduction u/s 80IC as on facts the appellant was eligible for the deduction and considering that the deduction was consistently been allowed to the appellant in earlier years. The AO is directed to allow the claim of deduction u/s 80IC.

7.28 This ground of appeal is allowed."

7. Before us, Ld. DR vehemently supported the assessment-order passed by Ld. AO. He argued that the Ld. AO has disallowed deduction after a careful consideration and by assigning valid reasoning. Ld. DR, accordingly, prayed to uphold the action of Ld. AO.

8. Ld. AR submitted that the assessee has been in the same line of business and claiming deduction year after year since A.Y. 2008-09 and the revenue-authorities have completed assessment by way of scrutiny-assessment/special-assessment u/s 143(3)/153A and thoroughly examined the claim of assessee and allowed the same in all years. Ld. AR has also filed copies of assessment-orders of earlier years in the form of a Paper-Book running over 21 pages to demonstrate this. The details of past assessments completed by various assessing authorities are also mentioned in the order of Ld. CIT(A), as under:

A.Y	Returned Income	Date Of filing return	Assessment Completed u/s	Assessing Officer	Date of order
2008-09	6341188	27.09.08	143(3) & also *uls* 153A	ACIT 2(1), Bhopal & DCIT (C) 1 (3) Ahmedabad	29.12.10 & 22.03.13
2009-10	1541590	29.09.09	153A	DCIT (C) I (3) Ahmadabad	22.03.13
2010-11	169166	27.09.10	153A	DCIT (C) 1(3) Ahmadabad	22.03.13
2011-12	6471370	26.09.11	153A	DCIT (C) 1(3) Ahmadabad	22.03.13
2012-13	0	26.09.12	143(3)	ITO 2(2), Bhopal	13.11.14
2013-14	25666390	28.09.13	143(3)	ACIT 2(1), Bhopal	11.02.16

Ld. AR drew our specific attention to Page No. 13 to 15 of the Paper-Book containing assessment-order of AY 2012-13 where in Para No. 3, the Ld. AO has categorically mentioned that the assessee is engaged in the manufacturing of pharmaceutical products on job work basis and that the assessee has claimed deduction u/s 80-IC and thereafter on Page No. 15 of the Paper-Book allowed deduction u/s 80-IC as well. Then the Ld. has carried us to Page No. 17 to 21 of the Paper-Book containing assessment-order of AY 2013-14 where in Para No. 1, the Ld. AO has categorically analysed the deduction under the heading "Claim of deduction as per section 80IC" and allowed deduction.

9. This way, the Ld. AR claimed that the assessee had been claiming the same deduction over the years on the same set of facts and there is no change in the activity of assessee, despite such admitted position, the Ld. AO has disallowed deduction for the first time framing a different view. Ld. AR

submitted that in absence of change in facts or circumstances or law, the Ld. AO cannot disallow deduction. To support his submissions, Ld. AR placed a heavy reliance on the decision of Hon'ble ***ITAT, Delhi Bench "F" in the case of Vimoni India (P) Ltd. Vs. DCIT (2012) 143 taxmann.com 136, order dated 14.07.2022*** *where it was held thus:*

> *"7. Before us, Sh. Ajay Wadhwa, learned Counsel appearing for the assessee, submitted, the assessee had commenced its manufacturing process in the financial year relevant to the assessment year 2005-06 and deduction was claimed for the first time in assessment year 2005-06. He submitted, assessee's claim of deduction under section 80IC of the Act has been allowed from assessment year 2005-06 till 2009-10. He submitted, in the financial year 2006-07, the assessee had undertaken substantial expansion of the unit by investing an amount of Rs. 3,99,49,251/-. He submitted, all relevant and necessary documents relating to setting up of unit, the investment made in substantial expansion of the unit, approval of the competent authority, registration under the Central Excise Act as well as returns filed under the Central Excise Act were also furnished before the departmental authorities. Drawing our attention to section 80IC of the Act, learned Counsel submitted that all the conditions of the said provision, including the conditions relating to substantial expansion have been fulfilled by the assessee. He submitted, fulfillment of conditions for claiming deduction under section 80IC of the Act has to be examined in the first year of claim of deduction. He submitted, once, the issue is examined in the first year of claim and the Assessing Officer, having factually examined the issue, if comes to a conclusion that all the conditions of section 80IC of the Act are satisfied, the matter ends there and fulfillment of conditions under section 80IC cannot be examined in any future assessment year. He submitted, assessee's claim of deduction under section 80IC of the Act was not only examined in assessment year 2005-06, the first year of claim, but, was also examined in subsequent assessment years. Rebutting the observations of the departmental authorities that in subsequent years, the assessments have been made under section 143(1) and not under section 143(3), learned counsel drew our attention to the assessment order passed under section 143(3) of the Act for the assessment year 2007-08, wherein the Assessing Officer, after examining assessee's claim of deduction under section 80IC of the Act, has allowed. Thus, he submitted, deduction claimed under section 80IC of the Act should be allowed. In support of such contention, learned counsel relied upon the following decisions:*
>
> *1. CIT Vs. International Tractor Ltd. {2017} 397 ITR 696 (Delhi High Court)*
>
> *2. CIT Vs. Tata Communications Interned Services Ltd. [2012] 251 CTR 290 (Delhi High Court)*
>
> *3. CIT Vs. Delhi Press Patra Prakashan Ltd. [2013] 355 ITR 14 (Delhi High Court)*
>
> *4. M/s. Hughes Communications India Ltd. Vs. DCIT (ITA No.2346/Del/2014 along with other appeals, dated 14.09.2021)*
>
> *5. Shree Veer Aromatics Herbs Products Vs. ITO [2014] 147 ITD 86 (Delhi ITAT)]*
>
> *6. ACIT Vs. M/s. LVP Foods Pvt. Ltd. (ITA No. 937/Del/2017).*
>
> *7. M/s. Ace Multi Axes Systems Ltd. Vs. DCIT (ITA No. 477 of 2013)*

8. DCIT Vs. Selvel Advertising (P.) Ltd. [2015] 58 taxmann.com 196 (Kolkata -Trib.)

8. Learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

9. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Undisputedly, the assessee has set up a manufacturing unit for manufacture of PET, HDPE bottles etc. at Barotiwala, Himachal Pradesh. As per form No. 10CCB, a copy of which, is placed at page 61 of the paper-book, the date of commencement of manufacturing activity is 17.06.2004 and the first year of claim of deduction under section 80IC of the Act is assessment year 2005-06. It is further evident, the assessee had undertaken expansion of the unit in financial year 2007-08 and has invested an amount of about Rs. 4 crores in plant and machinery. On a careful reading of the assessment order, it is evident, the only reason on which the Assessing Officer has rejected assessee's claim of deduction under section 80IC of the Act is, the products manufactured by the assessee come within Schedule 13 of the Act, hence, do not fulfill the condition of section 80IC(2)(a) of the Act. The Assessing Officer has not specifically assigned any other reasons for denying assessee's claim of deduction under section 80IC of the Act. While deciding the issue in appeal, learned Commissioner (Appeals) has held that the finding of the Assessing Officer that the products manufactured by the assessee come within Schedule 13 of the Act is unsustainable in view of the decision of the Hon'ble Delhi High Court. Admittedly, against the aforesaid observation of learned Commissioner (Appeals), the Revenue has not come in appeal.

10. Be that as it may, there is no other specific reason or observation by the departmental authorities for denial of assessee's claim of deduction under section 80IC of the Act. Of course, learned Commissioner (Appeals) has made a general observation that the assessee failed to furnish required details without specifying, what are the details required to be furnished by the assessee. Of course, one more reason learned Commissioner (Appeals) has assigned for denying assessee's claim of deduction is, on earlier assessment years the fulfillment of condition of section 80IC were not examined as the returns of income filed by the assessee were processed under section 143(1) of the Act. From the materials placed before us, the aforesaid finding of learned Commissioner (Appeals) and the Assessing Officer are found to be not borne out from record.

11. On the contrary, it is a fact on record that assessee's claim of deduction under section 80IC of the Act was not only examined in the first year of claim, i.e., assessment year 2005-06 but also in assessment year 2007-08, wherein, the assessment was completed under section 143(3) of the Act vide order dated 31.12.2009. A reading of the aforesaid assessment order would clearly reveal that the Assessing Officer has specifically examined the issue relating to assessee's claim of deduction under section 80IC of the Act. Thus, when assessee's claim of deduction under section 80IC of the Act was thoroughly examined in the preceding assessment years and after getting satisfied that the conditions prescribed for claiming deduction have been fulfilled, the Assessing Officer allowed the deduction claimed, such claim of deduction in a subsequent assessment year cannot be rejected without bringing any new fact and material on record, that too, purely on general observations. The decisions cited before us by learned counsel for the assessee support this view.

> *12. In view of the aforesaid, we hold that the disallowance of deduction claimed by the assessee under section 80IC of the Act is unsustainable. Accordingly, we direct the Assessing Officer to allow assessee's claim of deduction under section 80IC of the Act. This ground is allowed."*

> *10. We have considered submissions of both sides. On a careful consideration, we observe that the assessee has been engaged in the same line of business and claiming deduction year after year regularly from AY 2008-09. We further observe that the assessing authorities have all along allowed the deduction during scrutiny/ special assessment and not simply by way of summary-assessment. We also observe that the Ld. AO has disallowed deduction for the first time during current-year even without pointing out any change in the activity of assessee or the applicable law. We further observe that in* ***Vimoni India (P) Ltd. (supra)****, the Hon'ble ITAT, Delhi has allowed identical deduction on exactly same set of facts. During hearing before us, Ld. DR is neither able to report any change in the activity of assessee or the relevant facts or law, nor been able to contradict the applicability of the aforesaid decision in Vimoni India (P) Ltd. Being so, we do not find any good reason for not allowing deduction to the assessee. We also observe that the Ld. CIT(A) has rightly, elaborately and after due consideration, allowed deduction to assessee and no infirmity can be found in his action. Thus, in our view the assessee is entitled to the deduction u/s 80-IC and the Ld. AO had not justification to disallow the same. Being so, we uphold the action of Ld. CIT(A) whereby he has allowed deduction to the assessee. The revenue fails in this appeal."*

41. The Ld. AR for assessee has submitted that there is no change in facts or in law and the order of ITAT for AY 2014-15 is squarely applicable to AY 2012-13 under consideration. In foregoing para, we have already recorded the arguments/objections made by Ld. DR which are broadly same as raised by revenue in AY 2014-15. Those objections have been adequately dealt in CIT(A)'s order for AY 2014-15 and stand confirmed by ITAT in the order re-produced above. Therefore, in the situation, we have no reason to deviate from the view already taken by Co-ordinate Bench. Respecting following the consistency, we too hold that the assessee was entitled to the deduction u/s 80-IC. Being so, we uphold the impugned order passed by CIT(A). The revenue's appeal is accordingly dismissed.

AY 2016-17:

42. This is 2nd Round of appeal before ITAT for AY 2016-17. The facts are such that the assessee filed return declaring a total income of Rs. 18,19,42,940/- after claiming deduction u/s 80-IC. The case was selected for scrutiny and assessment was completed u/s 143(3) vide order dated 23.12.2018 after making two adjustments, namely (i) the deduction of Rs. 7,99,47,699/- u/s 80-IC was disallowed and (ii) an addition of Rs. 25,00,000/- was made on account of personal expenses. Aggrieved, the assessee filed first-appeal to CIT(A) but the CIT(A) dismissed appeal for non-prosecution. The assessee challenged CIT(A)'s order before ITAT, Indore in *ITA No. 19/Ind/2023* whereupon the ITAT, vide order dated 26.09.2023, remanded matter to CIT(A) for a fresh adjudication on merit. In pursuance of direction of ITAT, the CIT(A) passed a fresh order dated 30.04.2024. The CIT(A) allowed deduction u/s 80-IC and upheld disallowance of personal expenses. This way, the CIT(A) granted part-relief to assessee. Now, the assessee and revenue both have come in cross-appeals before us for redressal of their respective grievances.

Assessee's ITA No. 444/Ind/2024 for AY 2016-17:

43. The grounds raised by assessee are as under:

1. *On the facts and circumstances of the case the order of the ld. lower authorities are vitiated on several grounds, hence the same may kindly be quashed.*
2. *That the order of the ld. lower authorities passed are unlawful and illegal.*

3. *That the ld. lower authorities were not justified in not allowing proper and meaningful opportunity of being heard.*
4. *That the various findings of the ld. lower authorities are opposed to the facts, hence the same may kindly be quashed.*
5. *The ld. lower authorities erred and was not justified in making addition of Rs. 25,00,000/- on account of personal expenses.*
6. *That the above grounds are independent to each other.*

44. Ld. AR for assessee submitted that the assessee has single grievance as is clearly mentioned in Ground No. 5 i.e. the disallowance of Rs. 25,00,000/- made by AO and upheld by CIT(A) on account of personal expenses.

45. Ld. AR submitted that the issue is very simple and straight forward and can be understood immediately. He firstly carried us to Para 5.2 and 5.3 of assessment-order wherein the AO has made addition of Rs. 25,00,000/- on account of 'personal expenses'. Then, he carried us to Tax Audit Report in Form No. 3CD issued by auditors of assessee (Page 87 of Paper-Book of AY 2016-17) to show that auditors reported a sum of Rs. 2,50,00,000/- on account of "Donation" in "Item 21(a) – Personal expenditure" and that is precisely the basis of addition made by AO. He submitted that the AO has picked a wrong figure of Rs. 25,00,000/- as against correct figure of Rs. 2,50,00,000/- reported by auditors. Further, the AO has picked only the heading 'personal expenses' without going into the nature of expenditure being 'donation' reported by auditors under that heading. Ld. AR next submitted that the assessee *suo moto* made suitable adjustments of donation of Rs. 2,50,00,000/- before filing return of income which is evident from "Computation of Total Income" filed at Page 16 of

Paper-Book. Drawing our attention to same, Ld. AR demonstrated that the assessee firstly made a disallowance of Rs. 1,25,00,000/- with the caption "35AC donation" (+) 1,25,00,000/- with the caption "donation" = Rs. 2,50,00,000/- and thereafter claimed deduction of Rs. 1,25,00,000/- u/s 35AC and Rs. 62,50,000/- (equal to 50% of Rs. 1,25,00,000/-) u/s 80G as permissible under respective provisions. In nutshell, Ld. AR submitted that the appropriate adjustments have already been made by assessee for Rs. 2,50,00,000/- before filing of return and the addition of Rs. 25,00,000/- made by AO is patently wrong which needs to be deleted.

46. Per contra, Ld. DR submitted that the CIT(A) has passed ex-parte order due to non-submission by assessee. Therefore, the assessee's appeal may be remanded back to CIT(A).

47. In rejoinder, Ld. AR submitted that the issue is very clear from the documents itself and does not leave any ambiguity. Therefore, it should be decided at this stage itself.

48. After a careful consideration, we find a sufficient merit in the submission of Ld. AR. We find that the AO has made addition of a wrong amount of Rs. 25,00,000/- and that too on account of 'personal expenses' which is basically a heading picked from Tax Audit Report. The auditors of assessee have, however, mentioned "donation" of Rs. 2,50,00,000/- below that heading. Further, the assessee has made suitable adjustments of Rs. 2,50,00,000/- before filing return of income. The adjustments made by

assessee are not disputed by revenue. Therefore, the disallowance made by AO is not tenable. We therefore delete the same. This issue is accordingly allowed.

Revenue's ITA No. 509/Ind/2024 for AY 2016-17:

49. The revenue has taken identical grounds as in AY 2012-13 except change of figures and the details of original proceedings. Since the issue involved is same, our adjudication in foregoing part of this order for AY 2012-13 in revenue's appeal shall apply and following the same tune, this appeal is also dismissed.

AY 2017-18:

50. Facts of this year are such that the assessee filed return declaring a total income of Rs. 12,37,73,960/- after claiming deduction u/s 80-IC. The case was selected for scrutiny and assessment was completed u/s 143(3) vide order dated 30.12.2019 after making three adjustments, namely (i) the deduction of Rs. 4,92,45,833/- u/s 80-IC was disallowed, (ii) expenses of Rs. 1,37,47,029/- under the heading "cost of material consumed" were disallowed, and (iii) one more expenditure of Rs. 54,44,689/- claimed by assessee on account of education of director's son was also disallowed. Aggrieved, the assessee filed first-appeal to CIT(A). The CIT(A) allowed deduction u/s 80-IC but upheld disallowances of expenses. This way, the CIT(A) granted part-relief to assessee. Now, the assessee and revenue both

have come in cross-appeals before us for redressal of their respective grievances.

Assessee's ITA No. 489/Ind/2024 for AY 2017-18:

51. The grounds raised by assessee are as under:

> *1. That on the facts and circumstances of the case the order of the Ld. CIT(A) is perverse and vitiated on several grounds.*
>
> *2. That the finding of Ld. CIT(A) & AO is perverse and are contrary to the facts as both the lower authorities failed to consider the documents and submission made by the assessee in true perspective.*
>
> *3. That Ld. CIT(A) & AO erred in law and facts of the case in not allowing expenses/deduction of Rs. 1,37,47,029/- claimed by the assessee under profit and loss account under the head "cost of material consumed".*
>
> *3.1 That the Ld. CIT(A) & AO was not justified in holding that the direct & production expenses claimed under various heads were to borne by M/s. Procter and Gamble and not by assessee without looking into, facts and audited balance sheet submitted during hearing before both authorities.*
>
> *3.2 That the Ld. CIT(A) and AO erred in not considering the aspect that M/s. Procter and Gamble only provides raw material and packing material for production and remaining all the production activity such as manpower cost, labour works, consumable, repair and maintenance, consultancy, testing power and fuel are to be incurred by the appellant. Thus, the impugned disallowance is perverse, arbitrary and unlawful.*
>
> *4. That the Ld. CIT(A) and AO erred in not allowing the expenses of Rs. 54,44,689/- incurred on education of Mr. Shivam Patel by giving the erroneous finding that expenditure is not incurred for business and profession.*

52. Ld. AR for assessee submitted that the assessee has two grievances only as are clearly mentioned in Ground No. 3 relating to the disallowance of expenses of Rs. 1,37,47,029/- claimed by assessee under the heading "cost of material consumed" and Ground No. 4 relating to the disallowance of

expenditure of Rs. 54,44,689/- on education of Mr. Shivam Patel (director's son).

53. So far as the first issue of disallowance of expenses of Rs. 1,37,47,029/- claimed by assessee under the heading "cost of material consumed" is concerned, identical issue except change of figures has already been decided by us in Ground No. 4 of assessee's appeal for AY 2012-13. Therefore, same adjudication will apply to AY 2017-18 and following same tune, this issue is allowed.

54. For the second issue of disallowance of Rs. 54,44,689/- on education of Mr. Shivam Patel (director's son), Ld. AR fairly submitted that the assessee has not filed details before CIT(A) although the relevant details were very much filed before AO. Therefore, in the interest of justice, the assessee may be sent back to CIT(A) for filing details and CIT(A) be directed for adjudication afresh of this issue after considering assessee's submission. Ld. DR instantly agreed. We, therefore, restore this particular issue at the level of CIT(A) for a fresh adjudication after hearing assessee. **Accordingly, this issue is allowed for statistical purpose.**

Revenue's ITA No. 510/Ind/2024 for AY 2017-18:

55. The revenue has taken identical grounds as in AY 2012-13 except change of figures and the details of original proceedings. Since the issue involved is same, our adjudication in foregoing part of this order for AY

2012-13 in revenue's appeal shall apply and following the same tune, this appeal is also dismissed.

56. Resultantly, assessee's appeals for AY 2012-13 and 2016-17 are allowed. Assessee's appeal for AY 2017-18 is allowed for statistical purpose. Revenue's all three appeals are dismissed.

Order pronounced in open court on 10.09.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore
दिनांक/ Dated : 10.09.2024
CPU/Sr. PS
Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore