IN THE INCOME-TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTAN MEMBER

ITA No.3456/Mum/2004
(A.Y. 2000-01)
ITA No. 2990/Mum/2005
(A.Y. 2001-02)

United Phosphorus Ltd (Now Known as Uniphos Enterprises Ltd) Uniphos House, 11-C.D. Marg, Opp Madhu Park, Khar (W), Mumbai – 400 052.	Vs.	DCIT, Central Circle – 38 Aayakar Bhavan, MK Road, Mumbai – 400 050.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACU3440P		
Appellant	**..**	**Respondent**

ITA No. 4099/Mum/2004
(A.Y. 2000-01)

DCIT, Central Circle – 38 Aayakar Bhavan, MK Road, Mumbai – 400 050.	Vs.	United Phosphorus Ltd (Now Known as Uniphos Enterprises Ltd) Uniphos House, 11-C.D. Marg, Opp Madhu Park, Khar (W), Mumbai – 400 052.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACU3440P		
Appellant	**..**	**Respondent**

Appellant by :	Ms. Vasanti Patel, Adv & Ms. Saisudha Multani, CA
Respondent by :	Shri Heera Ram Choudhary, Sr. DR

Date of Hearing	18.10.2024
Date of Pronouncement	24.12.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

These cross appeals are filed by the assessee and the revenue against the order u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as the Act] of the Ld. Commissioner of Income-tax (Appeals), Central-VI Mumbai dated 08.03.2004.

2. The grounds of appeal taken by the assessee in ITA No. 3456/Mum/2004 are as under:

I. TAXABILITY OF ADVANCE LICENCE BENEFIT RECEIVABLE, Rs.4,64,74,214/-

1.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax to include advance licence benefit receivable amounting to Rs.4,64,74,214/-, in the total income, particularly as no income had accrued to the appellant until the imports were made and the raw materials were consumed, which events took place in the subsequent year.

1.2 In doing so, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that it is a well established legal proposition that entries in the books of account were not material for determining the tax liability and if no income had accrued, the same could not be taxed even though the said item was accounted for as income in the books of account.

II. TAXABILITY OF PASS BOOK BENEFIT RECEIVABLE.

2.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of Deputy Commissioner of Income- tax to include Pass Book benefit receivable in the total income.

2.2 In doing so, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that no income had accrued to the appellant until credit was received in the Pass Book, which event took place in the subsequent year and that it is a well established legal proposition that entries in the books of account

were not material for determining the tax liability and if no income had accrued then the same could not be taxed even though the said item was accounted for as income in the books of account.

III. *PROPORTIONATE DEDUCTION IN RESPECT OF PREMIUM ON LEASEHOLD LAND Rs. 12,61,261/-*

3.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax of not allowing the claim for deduction of the proportionate premium of Rs 12.61.261/- in respect of premium paid on leasehold land in the assessment years 1992-93, 1993-94, 1995-96 and 1997-98, over the period of the lease, as per the ratio of the decision of the Supreme Court in the case of Madras Industrial Investment Corporation Limited vs. CIT (225 ITR 802).

IV. *REJECTION OF NON-CLAIMING OF DEPRECIATION IN RESPECT OF ALL BLOCKS EXCEPT THE BLOCK RELATING TO PLANT AND MACHINERY ELIGIBLE FOR DEPRECIATION AT THE RATE OF 25%*

4.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in thrusting upon the appellant, depreciation in respect of all the block of assets even though no claim was made by the appellant in respect of the same except in the case of the block pertaining to plant and machinery eligible for depreciation at the rate of 25%.

V. *INTEREST ATTRIBUTABLE TO EARNING OF EXEMPT INCOME.*

5.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action Deputy Commissioner of Income-tax of disallowing an amount of Rs. 19,92,012/- as expenditure incurred for earning tax free income in spite of the fact that as during the previous year, no additional investments were made and the dividend received related to the investment made in earlier years, no expenditure had been incurred for earning such tax free income.

5.2 The Commissioner of Income-tax (Appeals) erred in not appreciating the fact that earning of interest and dividend was a indivisible activity carried out by the appellant since there was commonness of management and control and accordingly the ratio of the decision of the Supreme Court in the case of Rajasthan Warehousing Corporation vs. CIT (242 ITR 450) was squarely applicable.

VI. *DISALLOWANCE OUT OF INTEREST PAID: Rs. 4.47.51.665/-*

6.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax in disallowing a sum of Rs.4,47,51,665 / out of interest paid by relying on the reasons given in the appellate order (bearing no. CIT(A)C VI/ROT-149/2002-03) dated 20TH March, 2003, without appreciating the following facts:

(a) interest payments were made wholly and exclusively for the purposes of the business;

(b) the Share Capital and Reserves and Surplus of the appellant amounted to Rs. 453.66 crores;

(c) there was no nexus between the borrowed funds and the advances given;

(d) there was no justification for computing notional interest @ 18%, on the closing balances of the loans and advances, deposits etc. given during the previous year;

(e) that the deposits given in respect of properties taken on rent were as per agreements;

(f) interest was charged in respect of advance to Search Chem Industries Limited on closing balance which included interest of Rs 39.59 crores /-.

VII. *AD-HOC DISALLOWANCE OUT OF SALES PROMOTION EXPENSES: Rs. 15,00,000/-*

7.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the disallowance of a sum of Rs. 15,00,000/- made on an ad-hoc basis by the Deputy Commissioner of Income-tax out of sales promotion expenses.

VIII. *CLAIM FOR DEDUCTION IN RESPECT OF EXPENSES TREATED AS DEFERRED REVENUE EXPENDITURE IN THE ACCOUNTS: Rs. 19,89,02,977/-*

8.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in allowing the claim for deduction of Rs 2,21,00,330/-only out of expenses amounting to Rs.22,10,03,307, being Data Access Fees paid Rs 14,41,77,000/- and Aluminum Phosphide Task Force Expenses Rs. 7,68,26,307/-, incurred during the year and accepted as deferred revenue expenditure in the accounts, on the ground that the entire liability for Data Access Fees had not accrued and the very nature of the expenses under both the heads is such that they are not confined to a particular year and accordingly, restricted the said deduction to only 1/10h of the said amounts.

IX. CLAIM FOR DEDUCTION IN RESPECT OF LEGAL FEES TREATED AS ADVANCE Rs 2,97,61,667/-

9.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellants' claim for deduction of Rs.2,97,61,667/- in respect of legal fees paid during the year but treated as an advance in the books of account on the ground that the appellant had failed to prove that the liability had crystallised during the relevant previous year.

X. CLAIM FOR DEDUCTION IN RESPECT OF SALARY AND WAGES CAPITALISED IN THE ACCOUNTS: Rs.30,81,245/-

10.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellants' claim for deduction in respect of salary and wages amounting to Rs.30,81,245/- capitalised in the books of account.

XI. DISALLOWANCE IN RESPECT OF EMPLOYER'S CONTRIBUTION TO E.SI.C UNDER SECTION 43B:Rs.31,739/-

11.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding disallowance of an amount of Rs.31,739/- in respect of employer's contribution to ESIC under section 43B without appreciating the fact that clause (b) of section 43B was not attracted to such contribution.

XII. DEDUCTION UNDER SECTION 80-IB: Rs.8.58.42.161/-

12.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in directing the Deputy Commissioner of Income-tax to compute deduction under section 80-IB as follows:

(a) to exclude the advance licence benefit receivable, the pass book benefit receivable and profit on sale of import licence from the profits and gains derived from the eligible undertakings;

(b) to include advance licence benefit reversal and the pass book benefit reversal as part of the cost of raw materials without excluding the corresponding notional reversals also from the cost for the purpose of working the profits of the eligible undertakings;

(c) to reduce depreciation under section 32 in respect of the assets of the concerned eligible industrial undertaking even in respect of those assets on which it had not been claimed;

(d) that items of other income like interest, refund of electricity duty, sales-tax refund, miscellaneous receipts, etc. were to be included without reducing corresponding and matching costs while computing the profits of the eligible undertaking;

(e) that gross amounts of items of other income like interest, etc. were to be excluded while computing the profits of the eligible undertaking;

(f) that items of other income' if to be excluded ought to be done on the same basis and in a like manner as done in respect of other common indirect expenses i.e. apportioning these expenses on a turnover basis irrespective of nexus with the eligible unit.

XIII. DEDUCTION UNDER SECTION 80HHC

13.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in directing the Deputy Commissioner of Income-tax to compute deduction under section 80HHC as follows:

13.2 While computing 'profits of the business' as per Explanation (baa) below section 80HHC(4A):

(a) to reduce 90% of the management service charges, job work charges, refund of electricity duty and discount received included in other income' of schedule 'N' of the Profit and Loss Account inspite of the fact that the said items were not specifically required to be reduced;

(b) that the gross amount of interest received had to be reduced ignoring the submission that as the appellant had credited in the Profit and Loss Account, an amount of Rs.2,93,19,740/- as interest received and had debited an amount of Rs. 35,31,54,603/- as interest paid, the interest paid being more than the interest received, no portion of the interest received ought to have been reduced for the purpose of working out deduction under section 80HHC;

(c) in rejecting the submission that the word "receipts" refers only to the net receipts and accordingly, gross receipts cannot be reduced from the profits of the business.

13.3 While computing the "total turnover" for the purpose of deduction under section 80HHC in directing not to exclude the unrealised sale proceeds and value of goods reimported / returned from the total turnover as claimed during assessment proceedings.

XIV. SUNDRY DEBIT BALANCES WRITTEN OFF:Rs. 26,65,302/-

14.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not allowing a deduction in respect of tender deposits and inter-corporate deposits written off amounting to Rs.23,65,302/- and Rs.3,00,000/- respectively without appreciating the fact that the aforesaid sundry debit balances written off amounting to Rs. 26,65,302/- represents business loss and are eligible for deduction under section 28.

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal.

3. Ground No. 1:**Taxability of Advance Licence Benefit Receivable** (Rs. 4,64,74,214/-)

3.1 Brief facts related to the issue are that the assessee excluded the amount of Rs. 4,64,74,214/- from the total income on the ground that the same being net benefit under the Import and Export Policy in respect of entitlement to export duty free raw materials and the income has not accrued until the imports are made and raw material is consumed. The AO did not accept the explanation of the assessee and added the aforesaid amount to the total income vide order u/s 143(3) of the Act dated 31.03.2003.

3.2 The Ld. CIT(A) has upheld the addition in view of the ITAT order for earlier assessment years in assessee's own case for A.Ys 1995-1996, 1996-97 & 1997-98.

3.3 Before us, the Ld. AR submitted that the issue is covered in assessee's favour by the decisions of the jurisdictional High Court in

assessee's own case as well as the Hon'ble Apex Court in **CIT Vs. Excel Industries Ltd, 358 ITR 295**. Relevant decisions in its own case cited in support of the claim are as under:

1. *Bombay High Court – Assessment Year 1994-95 (ITA no 1866 of 2013).*
2. *Gujarat High Court – Assessment Year 1995-96 (Tax Appeal No. 322 of 2001)*
3. *Gujarat High Court – Assessment Year 1997-98 (Tax Appeal No. 129 of 2003)*
4. *ITAT – AY 1998-99 (ITA No. 1519/A/2002)*
5. *ITAT – AY 1999-00 (ITA No. 4695/Mum/2005)*

3.4 On the other hand, Ld. DR relied upon the judgement of the Hon'ble Supreme Court in *M/s. Topman Exports v/s CIT, Mumbai (2012) 342 ITR 49* and made following submissions:

> *"1.3. The department respectfully submits that the Ld.CIT (A) has rightly upheld the action of the AO in including the advance license benefit receivable in the total income of the assessee for the relevant assessment year.*
>
> *1.4. For substantiating the above mentioned argument, department places reliance on the judgment of the Hon'ble Supreme Court in the case of M/s Topman Exports vs Commissioner Of Income Tax, Mumbai[1], wherein the Hon'ble Supreme Court while dealing with a similar issue of profit arising on the transfer of DEPB (Duty Entitlement Pass Book)' made an observation in para 12 which is relevant to the current dispute, that under Section 28 of the Income Tax Act, 1961, "cash assistance" received or receivable by any person against exports, such as DEPB, and "profit on transfer of DEPB" are treated as two distinct and separate items of income under clauses (iiib) and (iiid) of Section 28.*
>
> *1.5. The Hon'ble Supreme Court in para 16 further observed that:*
>
> > *"If accrual of DEPB and profit on transfer of DEPB are treated as two separate items of income chargeable to tax under clauses (iiib) and*

(iiid) of Section 28 of the Act, then DEPB will be chargeable as income under clause (iiib) of Section 28 in the year in which the person applies for DEPB credit against the exports and the profit on transfer of the DEPB by that person will be chargeable as income under clause (iiid) of Section 28 in his hands in the year in which he makes the transfer."

"Where, however, the DEPB accrues to a person in one previous year and the transfer of DEPB takes place in a subsequent previous year, then the DEPB will be chargeable as income of the person for the first assessment year chargeable under clause (iiib) of Section 28 and the difference between the DEPB credit and the sale value of the DEPB credit would be income in his hands for the subsequent assessment year chargeable under clause (iiid) of Section 28."

1.6. In the present case, the assessee receives benefits by way of advance licenses to import duty-free material, contingent upon fulfilling certain export obligations. Once the assesse fulfils these export obligations, the right to the benefit becomes absolute, and this right, which accrues at the end of the year, constitutes a valuable asset in the hands of the assessee.

1.7. It is submitted that, as per the judgment in M/s Topman Exports vs Commissioner Of Income Tax, Mumbai, such accrued benefits are taxable under clause (iiib) of Section 28 of the Income Tax Act, 1961, in the year in which they accrue. Therefore, the inclusion of the advance license benefit receivable in the total income of the assessee for the relevant assessment year is in accordance with the law.

1.8. In light of the above, it is respectfully submitted that this ground of appeal raised by the assessee lacks merit and ought to be dismissed. The decision of the Ld. CIT (A) should be upheld, confirming the inclusion of the advance license benefit and DEPB receivable in the assessee's total income for the relevant assessment year."

3.5. We have carefully considered the rival submissions. It is seen that on identical issue, the Hon'ble jurisdictional High Court has decided the matter in favour of the assessee for A.Y 1994-95. In the immediately preceding year i.e. A.Y 1999-2000, following observations have been made by the Coordinate Bench relying on Hon'ble Apex Court's decision in Excel Industries Ltd. (supra) while deciding this issue:

"9. We have heard rival submissions and perused the materials available on record. The Hon'ble Supreme Court in the matter of Excel Industries Ltd (supra) held that

value of any benefit or perquisite, arising from business or exercise of profession [Advance licence and duty entitlement pass book] until imports are actually made by assessee, benefits under advance license or under duty entitlement pass book represent only hypothetical income which cannot be brought to tax. In view of this, we decide the issue in favour of the assessee and ground no. 1 is allowed."

3.6 Respectfully following the decision of the Hon'ble Jurisdictional High Court as well as of the coordinate Benches in the assessee's own case for AYs 1998-99 and 1999-2000, we decide this issue in favour of the assessee and the addition made by the AO of Rs. 4,64,74,214/- on this account is hereby deleted.

4. Ground No. 2: **Taxability of Pass Book benefit receivable** (Rs. 21,89,25,469/-)

4.1 Brief facts in this regard are that an amount of Rs. 21,89,25,469/- being benefit accrued under Pass Book Scheme as per the Import and Export Policy was included in the Export Incentives. The assessee treated the same as not taxable on the ground that the income had not accrued until the credit is granted in the pass book. The AO treated the same as taxable and the order of the AO was upheld by the Ld. CIT(A) following the decisions of ITAT, Mumbai in earlier years in assessee's own case.

4.2 Before us the Ld. AR cited the decisions of Jurisdictional High Court in assessee's own case as well as the decision of the Hon'ble Apex

Court in **CIT Vs. Excel Industries Ltd, 358 ITR 295**in favour of the assessee. Other relevant decisions in its own case cited in support of assessee's claim are as under:

1. *Gujarat High Court – A.Y 1997-98 (Tax Appeal No. 129 of 2003)*
2. *ITAT – AY 1998-99 (ITA No. 1519/A/2002)*
3. *ITAT – AY 1999-00 (ITA No. 4695/Mum/2005)*

On the other hand, Ld. DR submitted written submissions which are reproduced in Para 3.4 hereinbefore.

4.3 We have carefully considered the rival submissions, it is seen that on identical issue, the Hon'ble Gujarat High Court has decided the matter in favour of the assessee for A.Y 1999-20 in **ITA No. 4695/Mum/2005**. In the immediately preceding year, following observations have been made by the Coordinate Bench of this Tribunal while deciding this issue:

> *11. We find that similar issue was decided in assessee's own case in ITA No.1519/Ahd/2022 wherein the Tribunal has decided the issue in favour of the assessee. We find in Tax Appeal No.129 of 2003, (Assessee's own case) Hon'ble High Court of Gujarat relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd (2013) 358 ITR 295 held that the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that no income had accrued to the appellant until credit was received in the Pass Book, which event took place in the subsequent year and that it is a well established legal proposition that entries in the books of account were not material for determining the tax liability and if no income had accrued then*

the same could not be taxed even though the said item was accounted for as income in the books of account. Respectfully following the same, ground No. II raised by the assessee is allowed.

4.4 Respectfully following the decisions of the Hon'ble High Court as well as the Coordinate Bench in the assessee's own case for earlier assessment years, we decided this issue in favour of the assessee and the addition made by the AO of Rs. 21,89,25,469/- on this account is hereby deleted.

5. Ground No. 3: **Proportionate Deduction in respect of Premium on Leasehold Land**(Rs. 12,61,261/-)

5.1 Ld. AR has submitted that ground relating to addition made on account of premium obtained on the leasehold land is not being pressed since deduction has been allowed in earlier years in which payment has been made on the entire amount. The ground of appeal become infructuous and is dismissed.

6. Ground No. 4: **Thrusting of depreciation in respect of all blocks except block relating to plant and machinery.**

6.1 While framing assessment the AO calculated depreciation in respect of the block of assets even though no claim made by the assessee in respect of the same except in the case of block of assets pertaining to plant and machinery eligible for depreciation @ 25%. Thus as against the claim of deprecation of

Rs. 25,51,90,741/-, the AO calculated and allowed the deprecation at Rs. 29,94,82,968/-. The assessee was aggrieved with the order of the AO and hence appeal was filed before the CIT(A). However, the Ld. CIT(A) observed that the AO was right in allowing the entire depreciation deduction while computing gross total income as also while determining the quantum of deduction u/s 80-IA.

6.2 Before us, the Ld. AR submitted that the issue is covered against the assessee in the following decisions:

1. *ITA No. 184/A/1998, in assessee's own case for A.Y 1994-95.*
2. *Plastibends India Ltd., Vs. ACIT (398 ITR 568) (SC).*

6.3 The coordinate Bench while deciding the issue against the assessee for A.Y 1994-95 has observed as under:

> *After hearing the rival contentions, we find that the issue is covered against the assessee by the judgment of Hon'ble Jurisdictional High Court in Plastiblends India Limited (supra). Respectfully following the same, we hold that for the purpose of deduction under Chapter VIA, gross total income has to be computed, Inter-alia, by deducting the deduction allowable under sections 30 to 43D, Including depreciation allowable under section 32 of the Act even though the assessee has computed the total income under Chapter-VI by disclaiming the current depreciation. Whether the assessee has claimed current depreciation or not has no bearing in determining the quantum of deduction allowable under section 801A, as the depreciation has to be allowed irrespective of whether claimed or not accordingly, this ground is decided against the assessee. Ground no.7, is, thus, dismissed*

6.4 Respectfully following the decisions of the Hon'ble High Court as well as the Coordinate Bench in the assessee's own case for earlier AY 1994-95, we decide this issue against the assessee and dismiss the ground raised by the assessee.

7. Ground No.5: **Disallowance of interest attributable to earning of exempt Income (**Rs. 19,92,012/-)

7.1 During the year under consideration, the assessee had received dividend income amounting to Rs. 19,92,012/-. It was claimed that no corresponding expenditure was incurred for earning the dividend income and accordingly no expenses are to be disallowed. The AO observed that total investments by the assessee were to the tune of Rs. 105.36 cr out of which Rs. 21.97 cr is invested in a foreign subsidiary whose interest is taxable. He further held that the dividend income is very minor compared to the total interest cost for earning the same. He, therefore, limited the interest claimed to the amount of dividend. The Ld. CIT(A) upheld the disallowance of Rs. 19,92,012/- on this account.

7.2 Before us, the Ld. AR submitted a statement showing script wise details of dividend income earned during the year. It has been stated that the assessee's own funds as on 31.03.2000 amount to Rs. 4536.61 crore whereas investments amount to Rs. 10536.94 lakhs out of which investments from which dividend is earned amount of Rs. 579.95 lakhs. It was, accordingly, claimed that the entire investments have been made out of the own funds and not out of borrowed funds. As no borrowed funds were used for the purpose of making investments in shares yielding exempt income, no disallowance ought to have been made in

respect of interest expenditure. Further, no disallowance on account of interest was made in the past, in the year in which investment was made.Following decisions were cited in support of this contention.

1. *CIT Vs. HDFC Bank Ltd 366 ITR 505 (Bom)*
2. *HDFC Bank Ltd Vs. DCIT 284 CTR 414 (Bom)*
3. *CIT Vs. Reliance Utilities and Power Ltd. (313 ITR 340)*
4. *ITA No. 4695/Mum/2005, A.Y 1999-20.*

7.3 Alternatively it was submitted by the Ld. AR that in respect of assessment years prior to A.Y 2008-09, Rule 8D was not applicable. The AO was required to apply reasonable method in quantifying expenditure attributable to earning exempt income. In support of this contention, the Ld. AR placed reliance on following decisions:

1. *Godrej Industries Ltd Vs. DCIT (ITAT), Godrej Agrovet Ltd Vs. ACIT.*
2. *Thirumalai Chemicals Ltd Vs. DCIT (ITA No. 2072/M/2009).*
3. *ACIT Vs. JP Morgan India P Ltd (46 SOT 250) (ITAT Mum)*
4. *DCIT Vs. M/s Philips Carbon Black Ltd (146 TTJ 175)*

Ld. DR, on the other hand, relied on the orders of the lower authorities.

7.4 After considering rival submissions, we are of the view that no disallowance was called for on this account as the issue is covered by the

decision of the coordinate Bench for A.Y 1999-2000. Relevant portion of the order is reproduced below:

> *We have heard both the parties and found that the own funds Rs. 42,261.47 lakhs far exceed the investments in shares of Rs. 813.52 lakhs, no disallowance should be made in respect of interest expenditure attributable to earning dividend income. We have also relied upon the Judgment of Reliance Industries Limited (supra) wherein The Hon'ble High Court held that interest free funds available to the assessee were sufficient to moot its investment Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. Respectfully following the judicial precedents, we decide the issue in favour of the assessee, accordingly, ground No. V is allowed.*

7.5 Respectfully following the decision of the coordinate Bench, we decide the issue in favour of the assessee and delete the addition made by disallowing interest attributable to earning of exempt income.

8. Ground No. 6 : Disallowance out of interest paid : Rs. 4,47,51,665/-

8.1 Brief facts in this respect are that total interest amounting to Rs. 3531.55 lacs has been debited to the P&L A/C during the year. The assessee has also earned interest income on loans, deposits, etc. amounting to Rs. 293.20 lacs which is shown as part of 'other income'. The appellant had given advances to Jai Research Foundation of Rs. 56,00,000/- and Search Chem Industries Ltd (SEIL) of Rs. 168,96,98,431/- on which the interest of Rs. 7,44,959/- and Rs.

21,17,90,584/- respectively was earned. Further, interest free lease rental deposits were given to following the parties:

1. Smt. Shilpa Sagar - Rs. 1,00,00,000/-
2. Shri Vikram Shroff – Rs. 1,00,00,000/-
3. Smt. Sandra Shroff - Rs. 1,00,00,000/-

8.2 The AO held that the assessee had diverted interest bearing funds as loans to its directors and relatives for non business purposes. On these loans either no interest was charged or it was charged at very low rate. Moreover, these loans were not advanced for the purpose of business. Accordingly, disallowance of Rs. 10,75,73,941/- was made out of interest paid on the ground that such interest was not paid exclusively for the purpose of business. The computation of disallowance made by the AO is reproduced below:

Sr No.	***Name of the party***	***Principal amount (Rs.)***	***Interest chargeable at 18%***	***Actual interest received***	***Short recovery of interest (Rs.)***
1	*Search Chem Industries Ltd.*	*1,68,96,98,431*	*30,91,07,448*	*21,17,90,584*	*9,73,16,864*
2.	*M/s Jay Research Foundation*	*56,00,000*	*13,40,925*	*7,44,959*	*5,95,966*
3.	*Deposit of directors*	*3,00,00,000*	*54,00,000*	-	*54,00,000*
	Total	***1,72,52,98,431***	***31,58,48,373***	***21,25,35,543***	***10,33,12,830***

8.3 The Ld. CIT(A) upheld the disallowance in respect of loan advanced to Jai Research Foundation and deposits to directors relying on the order of his predecessor for AY 1997-98. Ld. CIT(A) further held that interest at concessional rate has been charged from SCIL which is subsidiary of the assessee. He therefore considered interest rate of 16% as justified to be charged to SCIL and accordingly, recomputed the disallowance at Rs. 5,85,61,165/- in respect loan advanced to SCIL.

8.4 During the course of hearing, Ld. AR made the following submissions:

> *"6.8. At the outset, it is submitted that the aforesaid advance to Jai Research Foundation and deposits to directors were given in the earlier years. Further, the aforesaid loan amounting to Rs. 172.53 crores has been advanced out of the appellant's own funds and therefore, no interest ought to be disallowed. In this connection, attention is invited to the Balance Sheet as on 31st March 2000 . From, the perusal of the Balance Sheet, it can be seen that the Share Capital and Reserves and Surplus amounts to Rs. 453.66 crores whereas the total loans in respect of which disallowance of interest has been confirmed is Rs. 172.53 crores. Thus, it is evident that the appellant had sufficient interest free funds at its disposal for advancing the said loans and deposits.*
>
> *6.9. In view of the above, it is submitted that no part of the interest bearing funds have been utilized for advancing loans and accordingly, no interest ought to be disallowed as no borrowed funds were utilized for advancing the loans and deposits.*
>
> *6.10. It is submitted that the aforesaid issue is covered by the following orders passed in the appellant's own case for earlier years:*

(a) Bombay High Court AY 1995-96 (I.T.A No. 549 of 2017) Para 2-5 on Page 2-4 (refer compilation page nos. A226-A228)

(b) ITAT-AY 1998-99 (ITA No. 1519/A/02) - Para 3-3.3 on Page 1-4 (refer compilation page nos. A172-A175)

(c) ITAT-AY 1997-98 (ITA No. 4073/Mum/02) - Para 11-14 on Page 8-13 (refer compilation page nos. A204-A209)

(d) ITAT-AY 1999-00 (ITA No. 4695/Mum/2005) - Para 29 on Page 18 (refer compilation page no. A267)

6.11. Further, reliance is also placed on the following judicial precedents:

(a) CIT vs Reliance Utilities & Power Ltd (313 ITR 340) (Bom) Ltd (366 ITR 505) (Bom)

(b) CIT vs HDFC Bank (c) HDFC Bank vs DCIT (284 CTR 414) (Bom)

6.12. Further, it is submitted that SCIL is a subsidiary of the appellant and supplies power and raw materials to the appellant. The loan is advanced to SCIL out of commercial expediency which is supplementary to the business of the appellant. Thus, the loan has been utilised for the purpose of the business of the appellant. In this connection, reliance is placed on the following decisions:

a) SA Builders Ltd vs CIT (288 ITR 1) (SC)

b) Shiv Raj Gupta 425 ITR 420 (SC)

6.13. Without prejudice, it is submitted that the appellant's effective rate of interest on long term borrowingsis 13.16% for the financial year 1999-00 (refer compilation page no. 105). Thus, if at all disallowance of interest is to be made then the same ought to be made considering the appellant's interest rate on its borrowings at 13.16%."

Ld. DR, on the other hand, relied on the orders of the lower authorities.

8.5. It is seen that for AY 1999-00 as well as for earlier years, the issue has been decided by the co-ordinate benches in favour of the assessee. The relevant portion of the order in ITA No. 4695/Mum/2005 for AY 1999-00 is reproduced as under:

> "*29. We have heard both the parties at length and find that no part of the interestbearing funds have been utilized for advancing loans and accordingly, no interest should be disallowed as no borrowed funds were utilized for advancing the loans and deposits. We also relied upon the following judgments of Hon'ble Bombay High Court in ITA No.549 of 2017 and also following ITAT orders in assessee's own. case for A.Y.1998-99 in ITA No.1519/A/02 and for A.Y.1997-98 in ITA No.4073/Mum/02. Respectfully following the above the judgments of Hon'ble Bombay High Court and Tribunal Orders, we are allowing ground No.VI in favour of the assessee."*

8.6 Respectfully following the decision of the co-ordinate bench, this ground is allowed in favour of the assessee and disallowance made out of interest paid is hereby deleted.

9. Ground No. 7 Ad-hoc disallowance out of sales promotion expenses: Rs. 15,00,000/-

9.1 Facts in brief are that the total sales promotion expenses of Rs. 6.35 cr were debited to the P&L A/C during the year. Ld. AO made an ad-hoc disallowance of Rs. 25 lacs out of sales promotion expenses relying on the CIT(A)'s order for earlier years. In appeal, ad-hoc disallowance was reduced to 15,00,000/- by the Ld. CIT(A).

9.2 During the course of hearing before us, the Ld. AR has submitted that the disallowance of sales promotion expenses cannot be made relying on the appellant order for earlier years, since, the provisions under which the disallowance was made (i.e. Rule 6B) in earlier years has since been omitted and therefore, not applicable for AY 2000-01. It was also pointed out that no disallowance of sales promotion expenses had been made in AY 1999-2000. It has also been submitted that no disallowance has been made in subsequent years also out of sales promotion expenses. It was reiterated that the entire expenses were wholly and exclusively expended in relation to the business of the assessee and accordingly, no portion of the said expenses ought to have been disallowed. Reliance was placed on the following decision:

(a) ExxonMobil Company India (P.) Ltd. 92 taxmann.com 5 (Mumbai - Trib.)

(b) ACIT vs. Raj Kumar (2015) 44 CCH 0140 (Delhi Trib.)

(c) Symphony Comfort System Ltd. (35 taxmann.com 533) (Gujarat)

(d) Chryso India Pvt. Ltd. (ITA No. 2363/Kol/2017)

(e) Dynamix India Drill-Con Co. (ITA No. 6110/Del/2018)

Ld. DR has furnished written submission stating as under:

"6.1. The present submission is made in response to the grounds of appeal raised by the assessee, who has challenged the disallowance of Rs. 25,00,000/- on account of sales promotion expenses. The assessee has contended that the disallowance was made on an ad-hoc basis and that the expenses were wholly and exclusively incurred for the purpose of the business.

6.2. The department respectfully submits that the disallowance made by the Assessing Officer is justified, as the assessee has failed to establish a clear and direct nexus between the sales promotion expenses incurred and the business benefits derived therefrom.

6.3. From the details of the advertisement and sales promotion expenses provided by the assessee, it is evident that the assessee has not been able to demonstrate how these expenses have contributed to the business. In order to substantiate such claims, it is essential for the assessee to provide specific details with respect to:

a. Relationship with Beneficiary Parties: The assessee should have provided data indicating how many of the parties who benefited from the sales promotion expenses were engaged in business dealings with the assessee.

b. Criteria for Gifts: The criteria used by the assessee to determine which beneficiaries received gifts as part of the sales promotion expenses should have been clearly outlined.

c. Proportion of Expenses to Sales: The proportion of expenses incurred on each beneficiary party should have been compared with the sales generated by those parties for the assessee.

d. Long-Term Relationship Claims: If the assessee claims that these expenses were made to maintain long-term relationships with dealers or other business associates, such claims should be supported by evidence of ongoing business transactions with these parties.

e. Bifurcation: Bifurcation of Dealers conference/training expenses, Gift Expenses and Entertainment Expenses ought to be provided so as to get a clear picture of what was incurred by the assessee for its own business and what was incurred by the assessee for its employees at a place of work (i.e. A seminar which was held at a place outside the office or the factory for the business of the assessee, for demonstrating or imparting training to the employees to acquire skill and expertise for sales promotion).

6.4. In the interest of justice and fair play, and to provide the assessee with an additional opportunity to substantiate their claims, the department humbly submits that the matter be remanded back to the Assessing Officer. The assessee should be directed to furnish the aforementioned details to the Assessing Officer, who can then re-assess the allowability of the sales promotion expenses as per the provisions of the law.

6.5. The department further submits that the disallowance was not made arbitrarily but was based on the assessee's inability to establish the required nexus between the expenses and the business benefits. Without such evidence, the disallowance of Rs. 25,00,000/-was a reasonable decision by the Assessing Officer.

9.3 We have considered the rival submissions. We are of the view that no disallowance was called for on ad-hoc basis more so when no disallowable expenditure was pointed out by the AO. In view of the fact that no such disallowance was made for AY 1999-2000 and also from AY

2000-01 onwards, we are inclined to allow this ground in favour of the assessee as no useful purpose would be served by remanding it back to the AO as the matter is very old and it is not practically possible to carry our verification after a lapse of 24 years. This ground is accordingly allowed in favour of the assessee.

10. **Ground No. 8 : Allowing deduction only of 1/10th of data access fees and task force expenses treated as deferred revenue expenditure in the accounts.**

10.1 During the year, following expenses were incurred by the assessee in connection with the registration of the product in USA

(i) Data access fees: Rs. 14,41,77,000

(ii) Task force expenses: Rs. 7,68,26,307

These were claimed as revenue expenditure but Ld. AO held these to be capital expenditure and entirely disallowed the claim. The disallowance made by the AO was partly upheld by the Ld. CIT(A) who treated it as a deferred revenue expenditure and allowed 1/10th of the amount during the year.

10.2 Following submissions have been made by the Ld. AR before us.

> *"8.1. During the year under consideration, the appellant incurred following expenses in connection with the registration of product in USA:*

(i) Data access fees: Rs. 14,41,77,000

(ii) Task force expenses: Rs. 7,68,26,307

Data access fees:

The appellant) is a listed company engaged in the manufacture and sale of agrochemicals (including pesticides), industrial chemicals, chemical intermediates, seeds and specialty chemicals. The appellant sells its products in various countries. For the purpose of selling the products in United States of America ('USA'), there is a mandate that the product is required to be registered with a company based in USA. In this regard, the appellant has entered into a service agreement with its subsidiary United Phosphorus Inc. ('UPI'), a company incorporated in USA, for providing assistance in obtaining / maintaining registrations of products in USA (refer paper book page no. 198-200).

UPI had made an application for registration of pesticides containing Acephate as active ingredient with United States Environment Protection Agency ('USEPA'). The said registration is mandatory for sale and use of pesticides in USA USEPA requires pesticide data to register the product and requires additional data to maintain and defend such registrations. For the purpose of the registration, reliance was placed on the pesticide data owned developed by Valent U.S.A. Corporation ('Valent'). Based on the same, technical registration for Acephate was received from EPA on 3 February 1999 (refer paper book page no. 162-165). Further, registration for end-use of Acephate was received on 8 February 1999

As per section 3 of Federal Insecticide, Fungicide, and Rodenticide Act ('FIFRA'), UPI was required to pay compensation to Valent for placing reliance on their pesticide data in support of the registration obtained. Accordingly, vide settlement agreement dated 30 September 1999, UPI and Valent entered into mutual agreement for settling the compensation payable (refer paperbook page no. 166-197). As per the agreement, UPI agreed to pay compensation of USD 3.30 million equivalent to Rs.

14,41,77,000. This compensation is exchanged as a compromise and in settlement of disputed claims arising from UPI's data compensation obligations to Valent under section 3 of FIFRA with respectto Pesticide Data already submitted and relied by EPA to support the registration (refer para 2.2 at paperbook page no. 171).

8.2 Task Force Fees:

During the previous year relevant to the above assessment year, an amount of Rs. 7,68,26,307 was paid towards membership fees of 7,68,26,307 to three different task forces viz. Spray Drift Task Force, Agricultural Re-entry task force and Outdoor Residential Exposure Task Force (refer page no 157).

USEPA requires, pursuant to FIFRA, pesticide registrants to submit exposure data (i.e., how much pesticide residue contacts the clothing and skin of individuals) for the purpose of conducting risk assessments. The said task forces were created to conduct studies and make analysis of the environment effects of the products. Any and all primary registrants of any end use pesticide that is sprayed on farms around residential areas were required to become members of these task forces. It was a compulsory condition for registration of the products to be sold in USA. In order to access the data accumulated by such task force the appellant became the member of such task force by agreeing. to pay a certain amount of fees

8.3. The aforesaid expenses were treated as deferred revenue expense in the books of account to be amortised over a period of 10 years Accordingly, 1/10th of the same was debited to the Profit and Loss Account for the relevant previous year. In the return of income, the appellant claimed entire expense as revenue in nature since the same was incurred during the year under consideration and constituted revenue expenditure eligible for deduction under section 37(1)

8.4. In para no 26-28 of the assessment order passed under section 143(3), it was held that the aforesaid expenses are similar to product

registration expense and is incurred once and for all with a view to bring into an asset in the form of right to sale its products by obtaining product registration and it is an advantage of enduring nature. Hence, the same are capital expenditure. Thus, no deduction was granted of the aforesaid expenses in the assessment order.

8.5. In para 17.9.4-17.9.9 of the CIT(A)order, the CIT(A) has held that the expenditure incurred by the assessee on account of data access fees and task force expense should be treated as deferred revenue expenditure only as done by the assessee in its balance sheet. The benefits of the expenses are spread over number of years. Though it serves business purposes of the assessee and there is no doubt about it, yet the fact remains that the benefits of the same are enduring in nature. The assessee is well aware of this fact and for this purpose, the assessee itself has treated it as a deferred revenue expenditure and has decided to debit 1/10th of the expense every year. It has been the endeavor of the assessee to show correct results to the shareholders year after year. If the aforesaid expenses are debited in one year and allowed as deduction, then, it will not reflect the real profits of the assessee, so far as the year under consideration is concerned. Thus, the CIT(A) allowed deduction of 1/10th of the aforesaid expenses.

8.6. It is submitted that the aforesaid expenditure incurred by the assessee is for the purpose of registering the product in USA which is a condition mandatory for selling its product in USA. hence, the same is a revenue expenditure eligible for deduction under section 37(1).

8.7 .....

8.8 Further, the CIT(A) has allowed only 1/10th of the expenses considering that the appellant itself has treated the same as deferred revenue expense in the books of account so that it reflects correct profits of the assessee. In this regard, it is submitted that where the assessee is entitled to claim an expenditure then the legal right of the assessee is not self-estopped by the treatment given by the assessee in its own books of

accounts. In this connection, reliance is placed on the decision of the Calcutta High Court in case of Berger Paints (India) Ltd. (254 ITR 503) (Calcutta)."

Ld. DR has relied on the orders of the lower authorities.

10.3 It is seen that the issue has been decided in favour of the assessee in earlier assessment years. In particular, relevant part of the order of co-ordinate bench for 1999-00 in ITA No. 4695/Mum/2005 with regard to the issue is reproduced as below:

"61. In respect of registration expenses of Rs. 137, 93,917/-, Ld. CIT (A) has observed as under:-

> *The appellant submits that the Product Registration Expenditure was actually incurred during the year under consideration. It is urged that liability to tax cannot be decided on the basis of entries in the books of account, but has to be decided in accordance with the provisions of law. It is contended that the said expenditure is allowable u/s 37 of the Act. Reliance has been placed on decisions of the High Courts and also of the Supreme Court in the case of CIT vs. ShoorjiVallabhdas& Co. 46 ITR 144, Kedarnath Jute 82 ITR 363; Chowringhee Sales Bureau 87 ITR 542; Berger Paints 254 ITR 503. It is submitted that the registration of the product was compulsory to make sales in the respective countries. Without such registration, the appellant company could not have launched its product for sale in those countries. The expenditure was, therefore, of revenue nature. It is submitted that similar expenditure was allowed upto A.Y. 1996-97. Disallowance was made for the first time in AY 1997-98 and the same was deleted by CIT (A) and Department's appeal was dismissed by the ITAT.*

62. In view of the above, we respectfully follow the findings of coordinate bench in assessee's own case and sustain the findings of Ld. CIT (A) on the plea raised by the revenue as far as product registration expenses of Rs. 137,93,917/- is concerned."

10.4 Respectfully following the decision of the co-ordinate bench, this ground is allowed in favour of the assessee.

11. Ground No. 9. Claim for deduction in respect of legal fees treated as advance: Rs. 2,97,61,667/-

11.1 Facts in brief are that the assessee paid total amount of Rs. 2,97,61,667/- as legal fees to various attorneys/advocates during the year. In notes to computation of total income, it was submitted that since the legal fees were paid during the previous year relevant to the assessment year under consideration,the same is allowable as a deduction. Ld. AO disallowed the aforesaid claim by relying on the assessment order for AY 1998-99. The same was upheld by the CIT(A) on the ground that the liability had crystallised during the relevant earlier years.

11.2 During the course of hearing, the Ld. AR submitted that the issue is covered by the orders of co-ordinate benches in its own case for earlier assessment years.Specifically for AY 1999-00,the co-ordinate bench while deciding the issue in ITA No. 4695/Mum/2005 has held as under:

"73. We have carefully considered the matter. It is seen that the claim of the appellant in A.Y.s 1996-97 and 1997-98 was allowed on the basis that payment of legal fees had been made against the bills raised by the attorneys. As such, the payment was in discharge of accrued liability. However, during the assessment years 2000-2001 and 2001-2002, it had not been shown that the liability for legal fees had accrued and crystallized during the said years. Evidence of the same was not furnished before the AO despite specific requirement by him in this regard. Nor was the said evidence furnished at the appellate stage, In AY 2000-01 the Ld. CIT (A) had confirmed the disallowance for the reason that deduction cannot be allowed merely because payment has been made. No deduction is allowable for prepaid expenses. It has to be shown that payment was made against accrued liability. The position during the year 2001-2002 remained the same as in the preceding year. Accordingly, for the same reasons as in the preceding year, the disallowance of legal expenses of Rs 1, 47, 04,451/- was confirmed. However, during the A.Y. under consideration the bills of the attorneys along with full supporting evidence of remittance of payment through bank was furnished before the AO. It was explained to the AO that the said expense had been incurred for purposes of the business and the liability had accrued during the relevant previous year. However, the AO without appreciating the evidence furnished rejected the claim of the assessee on the tenuous plea that the liability will crystallize when the final bills are submitted by the assessee. Further, the assessee has failed to furnish adequate evidence regarding the nature of suits filed, the Structure of fee to be paid to the attorneys, the nature of liability arising in connection with the suits filed etc.

74. During the year under consideration all the essential conditions for deductibility of the legal fees have been established. Respectfully following the decisions of ITAT, Ahmedabad Bench in the case of appellant for A.Y. 1996-97 and 1997-98 we dismiss the ground of appeal raised by revenue."

11.3 Respectfully following the decision of the co-ordinate bench, we allow this ground regarding chaim of legal fee in favour of the assessee.

12. Ground No. 10 : Claim for deduction in respect of salary and wages capitalised in the accounts : Rs. 30,81,245/-

12.1 During the course of hearing, the Ld. AR has submitted that this ground is not being pressed as depreciation has been allowed on the amount capitalized and over a period of time it has no revenue impact.

12.2 In view of above, this ground is dismissed as withdrawn.

13. Ground No. 11: Disallowance in respect of employer's contribution to ESIC under section 43B: Rs. 31,739/-.

13.1 The Ld. AR has submitted as under:

> *"11.1. In the return of income, while computing disallowance under section 43B, employers' contribution to Employees' State Insurance Corporation debited to the Profit and Loss Account and paid during the previous year but after the due date as defined in the Explanation below section 36(1) (va) has not been considered for disallowance under section 43B.*
>
> *11.2. In Note No. 4 of the notes to computation of total income filed with the original return, it was submitted that clause (b) of section 43B is not attracted to employer's contribution to ESIC relying on the decision of the Income-tax Appellate Tribunal, Cochin Bench in the case of Deputy Commissioner of Income-tax vs. M/s M.W (ITA No.550/Cochin/88) reported in Bombay Chartered Accountant Journal, September, 1994 at page 502 (26 BCAJ 502).*

11.3. On page 34 of the assessment order passed under section 143(3), the submissions made by the appellant have been ignored and an amount of Rs.31,739/- in respect of employer's contribution to ESIC has been disallowed under section 43B.

11.4. In para 23.3 of the CIT(A)'s order, the CIT(A) upheld the disallowance made by the AO relying upon the order passed by the ITAT for AY 1997-98."

13.2 We have perused the order of the co-ordinate bench, on the same issue for 1999-2000 wherein it has been held as under:

"65. As far as employee's share of PF and ESIC is concerned, same has to be deposited before the due dates as defined in respective laws, these are not being governed by section 43B, hence the benefit as claimed by the assessee that the same has been deposited before the due date for filing of return u/s. 139(1) is not tenable. Hence, the same is disallowed and order of AO is confirmed on this aspect. As far as employer's share in PF and ESI is concerned, same is being governed by the provisions of section 43B and assessee can take advantage of the same by depositing before the due date as prescribed for filing of return u/s 139(1). This position is now being settled by the Hon'ble Apex Court in the case of CHECKMATE SERVICES P. LTD Vs. COMMISSIONER OF INCOME TAX-1 (CIVIL APPEAL NO. 2833 OF 2016). In view of this, ground no. 2 & 3 raised by the revenue is partly allowed."

13.3 In view of the above, the Ld. AR has not pressed above ground, the same is accordingly dismissed as withdrawn.

14 For the sake of convenience, next two grounds related to deduction u/s 80IB & 80HHC are discussed together.

Ground No. 12: Deduction under section 80-IB - While computing deduction u/s 80-IB, the Ld. AO discussed various items of other income, advance licence benefit, passbook benefit and profit on sale of import licence and held these to be not derived from the industrial undertaking. Thus, deduction u/s 80-IB was computed at nil as against Rs. 8,58,42,161/- claimed by the assessee. Ld. CIT(A) partly upheld the findings of the AO in respect of some of the items.

Ground No. 13 Deduction u/s 80HHC - Similarly, the assessee's claim of deduction of Rs. 5,77,90,160/- u/s 80HHC was computed at nil by the Ld. AO and partly upheld by the Ld. CIT(A).

Accordingly, the assessee and the revenue are in appeal against CIT(A)'s order in respect of deductions u/s 80IB and 80HHC.

14.1 It is seen that most of issues relating to computation of deduction u/s 80IB as well as u/s 80HHC relate to the interpretation of the term 'derived from'. It is noticed that the Ld. AO while deciding the issues relating to section 80IB has placed reliance on the Hon'ble Supreme Court's decision in the case of *CIT v/s Sterling Foods 237 ITR 579* and *National Organic Chemical Industries Ltd. v/.s Collector of Central Excise (1997) 106 STC 467* to interpret the term 'derived from'. Ld. CIT(A) partly allowed the assessee's appeal on this issue, based on his

own decision in earlier years' cases as well as decisions of the Hon'ble Apex Court cited above. Similarly, for deduction u/s 80HHC, the appeal of the assessee against the computation made by the Ld. AO has been partly allowed by the Ld. CIT(A).

14.2 Before us, Ld. AR has submitted a detailed chart relating to computation of deduction u/s 80IB & 80HHC regarding its claim of allowability of various items which were excluded by the Ld. AO on the ground that the same are not 'derived from' industrial undertakings/exports and which were partly upheld by the Ld. CIT(A).

14.3 Ld. DR has also made written submissions wherein he has requested for remand back of the claim of deductions u/s 80IB and u/s 80HHC for fresh computation on the ground that the AO did not have the benefit of Hon'ble Apex Court's ruling in *Liberty India v/s CIT (2009) AIR SCW 6721* as well as other decisions including *Shah Originals v/s CIT-24 Mumbai (2024) 459 ITR 385* which was pronounced in 2023 only. Relevant portion of the submissions is reproduced below:

> *"7.Ground 8: Deductions under section 80-IB:*
>
> *7.1. The Assessee has raised an objection to the disallowance of their claim for deduction under Section 80-IB, arguing that the deduction was wrongly denied by the Assessing Officer (AO).*
>
> *7.2. It is the humble submission of the department that at the time when the Assessing Officer passed the assessment order, the AO did not have the*

benefit of the Hon'bleSupreme Court's ruling in Liberty India v. CIT. This judgment is critical in determining the eligibility and scope of deductions under Section 80-IB, and it lays down important criteria that must be fulfilled for such deductions to be allowable.

7.3. Given that the AO did not have the benefit of this authoritative interpretation at the time of the original assessment, it is imperative that this matter be remanded back to the AO. The AO should be directed to reassess the Assessee's claim for deduction under Section 80-IB in light of the principles laid down by the Hon'ble Apex court in Liberty India v. CIT", Specifically, the AO should examine whether the profits for which the Assessee is claiming deduction have a direct and immediate nexus with the business operations of the eligible industrial undertaking, as required by the Supreme Court.

7.4. In view of the above, it is respectfully submitted that the Hon'ble Tribunal may remand the matter back to the AO for a fresh assessment. This approach would ensure that the correct legal principles are applied, and that the Assessee's claim for deduction underSection 80-IB is thoroughly and accurately scrutinized.

8. Ground 9: Deductions under section 80-HHC

8.1. The Assessee has raised an objection to the disallowance of their claim for deduction under Section 80-HHC, arguing that the deduction was wrongly denied by the Assessing Officer (AO).

8.2. It is the humble submission of the department that at the time when the Assessing Officer passed the assessment order, the AO did not have the benefit of the Hon'ble Supreme Court's ruling in Shah Originals Vs. Commissioner of Income Tax-24, Mumbai. This judgment is critical in determining the eligibility and scope of deductions under Section 80-HHC, and it lays down important criteria that must be fulfilled for such deductions to be allowable.

8.3. Given that the AO did not have the benefit of this authoritative interpretation at the time of the original assessment, it is imperative that this matter be remanded back to the AO. The AO should be directed to reassess the Assessee's claim for deduction under Section 80-HHC in light of the principles laid down by the Hon'ble Apex courtin Shah Originals Vs. Commissioner of Income Tax-24, Mumbai24. Specifically, the AO should examine whether the profits for which the Assessee is claiming deduction have a direct and immediate nexus with the business operations of the eligible industrial undertaking, as required by the Supreme Court.

8.4. In view of the above, it is respectfully submitted that the Hon'ble Tribunal may remand the matter back to the AO for a fresh assessment. This approach would ensure that the correct legal principles are applied, and that the Assessee's claim for deduction under Section 80-HHC is thoroughly and accurately scrutinized."

14.4 We have considered the rival submissions and material placed before us. It is seen that there have been several decisions of the Hon'ble Apex Court with regard to the computation of deduction to section 80IB as well as section 80HHC which clarify the legal position.In the course of its latest judgement in *Shah originals (supra)* the Hon'ble Apex Court has elaborately discussed the meaning of the expression 'derived from' which form the basis of computation of deduction under these sections. Other relevant decisions of the Hon'ble Apex Court relevant to these sections are as under:

1. *M/s. Topman Exports v/s CIT, Mumbai (2012) 342 ITR 49 (SC)*
2. *M/s. PlastiblendsIndia Ltd. v/s. ACITAIR(SC) (2017)5633*
3. *CIT v/s Meghalaya Steels Ltd. 383 ITR 217 (SC)*

14.5 We find that the order of the Ld. AO as well as of the Ld. CIT(A) is required to be examined in the light of principles laid down by the Apex Court in the above cited decisions. For example, the Hon'ble Apex Court in Shah Originals (supra) has held that *the gain from foreign exchange fluctuation did not fall within the meaning of 'derived from' export of garments by the assessee. The profit from exchange rate fluctuation was independent of export earnings.* However, the decision of the Ld. CIT(A) on the issue of exchange rate fluctuation in the instant case, is clearly contrary to the above decision of the Hon'ble Apex Court.

14.6 Similarly, with regard to various other items of miscellaneous income, their exclusion/inclusion while computing the deduction has to be decided in the light of tests prescribed by the Hon'ble Apex Court. We find that the requisite details regarding some of these items are not even discussed in the orders of the Ld. AO and Ld. CIT(A). We are, therefore, of the view that both the deductions u/s 80IB & u/s 80HHC are required to be recomputed afresh in the light of the above cited decisions of the Hon'ble Apex Court . We, accordingly, deem it appropriate to restore the matter relating to deduction u/s 80IB & 80HHC to the Ld. AO for re-computation in the light of settled legal position emanating from the relevant judicial pronouncements of Hon'ble Apex Court. The assessee is also directed to submit a fresh computation in respect of its claim u/s 80IB and 80HHC before the AO for examination of facts in the light of settled legal position.

15. Ground No. 14 : Sundry debit balances written off: 26,65,302/-

15.1 During the year under consideration, the assessee has debited following balances written off:

i.	Tender deposits:	23,65,302
ii.	Inter-corporate deposits:	3,00,000
	Total	**26,65,302**

15.2 Brief facts are that in the notes to computation of total income filed with the original return, it was stated that in the return of income, the said amount has been added back to the total income out of abundant caution. The aforesaid amount was claimed as allowable deduction u/s 28 during the course of assessment, which was not accepted by the AO. Ld. CIT(A) in his order observed that since the assessee itself has chosen not to claim deduction in respect of Rs. 26,65,302/-, it implies that the assessee is still hopeful of recovering these balances. Accordingly, the order of the AO was confirmed by Ld. CIT(A) after holding that the assessee is free to claim this amount in subsequent years on account of bad debts provided the conditions laid down in section 36(1)(vii) are satisfied.

15.3 We find that the issue is covered by the order of the co-ordinate bench in assessee's own case for AY 1999-2000. Relevant portion of the order is reproduced below:

> *"14.6. It is submitted that the deposits were made in the normal course of business and not for the purpose of acquiring any capital asset or advantage in the capital field and accordingly, allowable as a business loss under section 29 of the Act.*
>
> *14.7. Further, neither the AO nor the CIT(A) have doubted the veracity of the deposits and its nexus with business of the appellant. The CIT(A) has merely not allowed the claimed of the appellant on the ground that the appellant is hopeful of recovering the amount. In this regard, it may be kindly appreciated that the Income tax Act provides for taxing*

subsequent recovery of the amount which has been written off as irrecoverable under section 41(1).

14.8. The aforesaid issue in respect of tender deposit written off is covered by the following decisions in favour of the appellant

(a) Badridas Daga vs. CIT (34 ITR 10) (SC)

(b) Glaxo Smithkline Pharmaceutical Limited (ITA No. 6159/Mum/2003)

(c) Lord's Dairy Farm Ltd. vs. CIT (27 ITR 700) (Bombay)

14.9. Further, it is submitted that amount written off as irrecoverable is allowable as deduction in the year of it being debited to Profit and Loss Account. It is well settled position that it is not necessary for the appellant to prove that the debt is irrecoverable. In this connection, reliance is placed on the decision of the Supreme Court in case of TRF Ltd vs. CIT 323 ITR 297 (SC).

14.10. Further, as per the provisions of section 36(1) (vii), bad debt written off is allowable as deduction provided that the bad debt or part thereof is taken into account in computing the income of the assessee. It is submitted that the interest in respect of the aforesaid inter-corporate deposit written off has been offered to tax in earlier years. During the year under consideration, a total amount of debt of Rs. 4,65,311 comprising of principal amount of Rs. 3,00,000 and interest of Rs. 1,65,311 is written off. It is submitted that out of the total debt of Rs. 4,65,311, the appellant has considered the part of the debt i.e. interest component as income while computing the income for earlier years. Hence, the condition of section 36(1)(vii) is satisfied and appellant is entitled to deduction of the inter-corporate loan of Rs. 3,00,000. Further, it may be noted that the AO has duly allowed the deduction of the interest of Rs. 1,65,311 written off during the previous year relevant to AY 2000-01.

14.11. The aforesaid issue of inter-corporate deposit written off is covered by the following decisions in favour of the appellant

(a) PCIT vs. Mahindra Engineering and Chemical Products Ltd. (439 ITR 399) (Bombay) (b) CIT vs. Shreyas S. Morakhia (342 ITR 285) (Bombay)

(c) CIT v. Pudumjee Pulp & Paper Mills Ltd. (235 Taxman 451) (Bom.)"

15.4 With these observations, the claim of the assessee was held to be allowable by the coordinate bench in the immediately preceding year.

16.5 Thus, respectfully following the decision of the coordinate bench, we hereby allow the claim of sundry balances written off by the assessee during the year amounting to Rs. 26,54,302/-

16. Additional Ground No. 1: Computation of deduction under section 80HHC for the purpose of book profit under section 115JA.

16.1 The assessee has submitted that profits eligible for deduction under section 80HHC for the purpose of reduction as per clause (viii) of Explanation under section 115JA ought to be computed as per the book profit and not as per the provisions of the Act for computing book profit under section 115JA.

16.2 Ld. AR has placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT v/s Bharti Information Technology Systems (P.) Ltd. (2012) 340 ITR 593 wherein it has been held that for section 115JA and section 80HHC deduction is to be computed as per the P&L profit and not as per regular provisions.

16.3 In view of decision of the Hon'ble Apex Court, we allow this ground in favour of the assessee.

17. Additional Ground No. 2 : Proportionate deduction in respect of expenditure for service charges for computer software : Rs. 35,83,599/-

This ground of appeal is not pressed by the assessee as the same has been allowed in the order giving effect dated 31.12.2020 for AY 1997-98.

18. Additional Ground 3 : Proportionate deduction in respect of research and development expense:

Ld. AR has submitted that the issue is covered in its own case for AYs 1999-2000 and 1998-99 vide orders of co-ordinate benches wherein directions were given to allow proportionate deduction in respect of R&D expenses. We have gone through the orders and relevant portion of the order in ITA No. 4695/Mum/2005 is reproduced below:

> "63. In respect of research and development expenses Rs. 3,89,70,006/-, the Coordinate Bench of ITAT in ITA No. 4073/Mum/2023 for AY 1997-98 and ITA No. 1519/Ahd/2002 for AY 1998-99 has decided this ground in favour of assessee and allowed the expenses on proportionate basis. We also respectfully follow the same and direct the AO to allow the same on same basis. To that extent order of Ld. CIT (A) is modified and ground raised by the revenue is partly allowed as far as research and development expenses Rs. 389, 70,006/- is concerned"

Respectfully following the decision of the co-ordinate bench, we hereby direct Ld. AO to allow proportionate expenses computed in the same manner as in the preceding year.

II. ITA No. 4099/Mum/2004 for AY 2000-01 (Revenue's appeal)

The grounds of appeal taken by the revenue are as under:

1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was right in deleting addition made by the Assessing Officer on account of loss of Rs 1,51,67,500 incurred by the assessee on the cancellation of forward contract.
2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was right in deleting disallowance of Rs. 6,25,756 made by the Assessing Officer on account of penalty paid by the assessee Furthur, the Ld CIT(A) has not appreciated that assessee has not produced any evidence that such penalty was compensatory in nature.
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in restricting disallowance from Rs. 9,23,55,134 to Rs 5.85.61.165 on account of interest paid on the borrowed funds utilized for non-business purpose of advancing loan to M/s Search Chem Industries Ltd.
4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) as right in restricting disallowance made by the Assessing Officer on account of sales promotion expenses from Rs 25,00,000 to Rs 15,00,000.
5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in treating Product Registration expenses of Rs 33,53,154 and Research & Development expenses of Rs 4,67,31,101 as revenue in nature.
6. Whether on the facts and in the circumstances of the case and in law, the Lu CIT(A) was right in allowing 10% of Data Access fee of Rs. 14,41,77,000 and Task Force expenses of Rs 7,68,26,307.
7. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was right in directing to treat refund on electricity duty. exchange rate difference and discount as part of the profits derived from business for the purpose of computing deduction u/s 801B. He has failed to appreciate that these receipts were incidental to the business and there was no direct nexus between these receipts and earning of business profit.
8. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in directing to include refund on sales tax and 50% of miscellaneous receipts in the Profits of business" for computing deduction u/s 80HHC He has failed to appreciate that these receipts were incidental to the business and there was no direct nexus between these receipts and earning of business profit.
9. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in directing to exclude excise duty and sales tax from "total turnover" for computing deduction u/s 80HHC. He has failed to appreciate that

the decision of the jurisdictional High Court in the case of Sudarshan Chemicals Industries Ltd. vs. CIT (245 ITR 796) was not accepted by the revenue.
10.Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that in case net profits of trading activity and manufacturing activity is negative then the same is to be treated as nil and deduction u/s 80HHC to be computed on 90" of the export incentives. He has failed to appreciate the decision of jurisdictional High Court in the case of IPCA Laboratories Ltd. Vs CIT reported in 251 ITR 401.

19. Ground No. 1 : Loss on cancellation of forward contract : Rs. 1,51,67,500/-

19.1 Brief facts are that during FY 1996-97, the assessee had borrowed External Commercial Borrowings (ECB) of USD 18 million, which was repayable in 3 equal instalments of USD 6 million in February 2000, February 2001 and February 2002. The said ECB was taken for the purpose of repayment of working capital loans and ICDs. The statement giving details of utilization of ECB is enclosed at page no.221 of the paperbook.In October 1999 the appellant had taken a forward cover for USD 12 million for the ECB which was to be repaid in 2001 and 2002. This forward cover was taken at the rate of Rs.45.70 for a period of one year, as Reserve Bank of India did not allow forward cover to be taken for a period of more than a year. In March, 2000,the assessee took a conscious decision to cancel the forward contract and rebook it later. The contract was cancelled at the rate of Rs. 44.43 (the rate on the date of cancellation) as against Rs.45.70, resulting in loss of Rs. 151.67 lakhs in the FY 1999-2000 relevant to AY 2000-2001. It was held by the Ld. AO

that the loss arising on cancellation of forward contract amounting to Rs. 151.67 lakhs is a speculation loss, by applying the provisions of section 43(5) of the Act.

19.2 The Ld. CIT(A) after verifying the factual details held that the appellant had entered into forward contract to hedge against losses arising on account of foreign exchange fluctuation and the loss arising on cancellation of forward contract is not in the nature of speculative loss. Further, the Ld. CIT(A) has recorded a finding that theECB loan was not used for the purpose of acquiring any capital asset and was utilized to repay working capital loans. Accordingly, the said loss was in the nature of revenue loss and allowable as a business deduction.

19.3 In this regard, Ld. AR has made the following submissions before us:

> *"1.6 The forward contract was entered into by the assessee in the ordinary course of business for repayment of principal amount of ECB loan at a fixed rate and, thereby, minimize the loss arising on account of the fluctuation of foreign exchange rate. The contract was cancelled as the appellant was of the view that rupee would not depreciate to as low at Rs. 45.70. The decision of the appellant to cancel the forward contract was not with a view to suffer a loss or make profit but to minimize the loss it was likely to suffer. Further, the forward contract was rebooked in April 2000 for a much lower rate than the earlier rate. This resulted in the saving in incurring a much higher loss on account of exchange rate fluctuations in 2000-01 as during this period the rupee had depreciated a lot. In this connection, we wish to invite the attention of the Hon'ble Members to the statement giving details of utilization of ECB. On perusal of the said statement, it is evident that the ECB was not used for acquiring any capital asset but has been utilized for repayment of*

working capital loans and ICDs. Further, the appellant was not carrying on the business of speculating or trading in foreign exchange. Thus, the forward contract entered into by the appellant is in the nature of hedging contract and ought not to be regarded as a speculative transaction and the loss arising on cancellation of the forward contract ought to be treated as a business loss.

1.7 In this connection, reliance is placed on the decision of the Bombay High Court in the case of CIT vs. BadridasGauridas (P) Ltd. (261 ITR 256) wherein it has been held that loss sustained by the assessee due to fluctuation in foreign exchange while implementing export contract was incidental to carrying on assessee's business, therefore, such a loss was not a speculative loss but a business loss. The relevant extract is reproduced below:

> *"3. The assessee was not a dealer in foreign exchange. The assessee was a cotton exporter. The assessee was an export house. Therefore, foreign exchange contracts were booked only as incidental to the assessee's regular course of business. The Tribunal has recorded a categorical finding to this effect in its order. The Assessing Officer has not considered these facts. Under Section 43(5) of the Income-tax Act, "speculative transaction" has been defined to mean a transaction in which a contract for the purchase or sale of a commodity is settled otherwise than by the actual delivery or transfer of such commodity. However, as stated above, the assessee was not a dealer in foreign exchange. The assessee was an exporter of cotton. In order to hedge against losses, the assessee had booked foreign exchange in the forward market with the bank. However, the export contracts entered into by the assessee for export of cotton in some cases failed. In the circumstances, the assessee was entitled to claim deduction in respect of Rs. 13.50 lakhs as a business loss. This matter is squarely covered by the judgment of the Calcutta High Court, with which we agree, in the case of CIT v. SoorajmullNagarmull [1981] 129 ITR 169."*

Further, reliance is also placed on the following decisions:

(a) CIT vs. SoorajmullNagarmull (129 ITR 169) (Cal)

(b) CIT vs. Celebrity Fashion Ltd [2020] 428 ITR 470 (Madras)

(c) Indian Petrochemicals Corp. Ltd. vs. JCIT (123 ITD 293) (ITAT)"

On the other hand, Ld. DR relied on the order of the Ld. AO.

We have considered the rival submissions. We are in agreement with discussion of Ld. CIT(A) on this issue which is also covered by various High Courts in favour of the assessee. We, therefore, uphold the order of the Ld. CIT(a) on this issue.

Revenue's appeal on this ground is dismissed.

20. Ground No. 2 Disallowance of penal interest: Rs. 6,25,756:

20.1 Brief facts are that the assessee incurred expenditure in respect of penal interest aggregating to Rs. 6,25,756/- paid to the following entities.

Sr. No.	Particulars	Amount (Rs.)
1.	ESIC	2,765
2.	Gujarat Industrial Development	4,02,817
3.	Gujarat Gas Company Ltd.	1,65,119
4.	General Insurance Corporation of India	55,055
		6,25,756

20.2 The aforesaid amount of Rs. 6,25,756 was disallowed by the AO on the ground that the said penal interest is penal in nature and not allowable as business expenditure as per the explanation to section 37(1) of the Act.

20.3 The Ld. CIT(A) after verifying the factual details held that the aforesaid interest paid was not in the nature of penalty levied for

infraction of law and accordingly, deleted the disallowance of penal interest.

20.4 Before us, the Ld. AR made following submissions:

> *"2.4 In this connection, we wish to invite the attention of the Hon'ble Members to the copy of lease deeds entered into with GIDC it has been specifically mentioned that the appellant will be liable to pay penal interest for default in payment of lease instalments. Also, attention is invited to copy of agreement entered with Gujarat Gas Co. Ltd. wherein at para 11.2 of the agreement it has been mentioned that the appellant will be liable to pay interest for delay in payments.*
>
> *2.5 In view of the above, it is submitted that interest was paid in the ordinary course of the business on account of contractual arrangement involving no infraction of law and hence, the payments should be allowed as a deduction under section 37(1) of the Act. Further, the said interest is only compensatory in nature and ought to be allowed as a deduction.*
>
> *2.6 In this connection, reliance is placed on the following decisions wherein it has been held that interest on payment of arrears of sales tax is compensatory and not penal in nature and ought to be allowed as a deduction under section 37(1) of the Act:*
>
> *(a) Prakash Cotton Mills P Ltd vs. CIT(201 ITR 684)(SC)*
>
> *(b) LachmandasMathuradas vs. CIT (254 ITR 799)(SC)*
>
> *Further, reliance is also placed on the decision of the Bombay High Court in the case of Angel Capital & Debit Market Ltd (ITA(L) No. 475 of 2011) (Unreported) wherein it has been held that the amount paid as penalty to stock exchanges was on account of irregularities committed by assessee's clients and such payments were not on account of infraction of law and hence, allowable as business expenditure."*

20.5 Ld. DR has strongly relied on the order of Ld. AO.

20.6 We have heard both the parties and perused the material before us. We are in agreement with the reasoning given by the Ld. CIT(A) while deleting the addition.

20.7 Accordingly, the order of the Ld. CIT(A) is upheld and Ld. AO is directed to delete the disallowance of Rs. 6,25,756/- on account of penal interest.

21. Ground No. 3 Disallowance out of interest expenditure pertaining to loan advanced to Search Chem Industries Ltd. Rs. 3,87,55,699/-

21.1 Ground No. 4 : Disallowance out of sales promotion expenses Rs. 10,00,000/-.

21.2 Both the above grounds are already covered while deciding the assessee's appeal. Ground No. 3 regarding disallowance out of interest expenditure is covered in Para 8 relating to ground No. 6 of the assessee's appeal. Similarly, ground relating to disallowance out of sales promotion expenses is covered in the discussion in para 9 relating to ground No. 7 of the assessee's appeal.

22. Ground No. 5 Claim for deduction in respect of expenses treated as deferred revenue expenditure in the Accounts:

A. Product Registration Expenditure: Rs. 33,53,154/-.

22.1.1 Related facts are that the assessee incurred product registration charges of Rs. 33,53,154/- which was treated as deferred

revenue expenditure in the accounts. This expenditure was incurred to get its various products registered in foreign countries as registration of product was compulsory to make sales in respective countries. In the return, the entire expenditure was claimed as a deduction u/s 37(1) of the Act. The Ld. AO while finalizing the assessment u/s 143(3) held that the expenditure had been incurred once and for all with a view to bring an asset in the form of a right to sell which as an advantage of an enduring nature. Holding that the same is nothing but a capital expenditure and the amount of Rs. 33,53,154/- was disallowed.

22.1.2 Ld. CIT(A) decided the issue in favour of the assessee after following the order of his predecessor in assessee's own case for AY 1997-98.

22.1.3 Ld. AR has submitted that the issue has been decided by the co-ordinate benches in favour of the assessee for AYs 1998-99, 1999-00 & 2000-2001. Relevant portion of the order of the co-ordinate bench for AY 1999-00 in ITA No. 4695/Mum/2005 is reproduced below:

> *"61. In respect of registration expenses of Rs. 137, 93,917/-, Ld. CIT (A) has observed as under:-*
>
> > *The appellant submits that the Product Registration Expenditure was actually incurred during the year under*

consideration. It is urged that liability to tax cannot be decided on the basis of entries in the books of account, but has to be decided in accordance with the provisions of law. It is contended that the said expenditure is allowable u/s 37 of the Act. Reliance has been placed on decisions of the High Courts and also of the Supreme Court in the case of CIT vs. ShoorjiVallabhdas& Co. 46 ITR 144, Kedarnath Jute 82 ITR 363; Chowringhee Sales Bureau 87 ITR 542; Berger Paints 254 ITR 503. It is submitted that the registration of the product was compulsory to make sales in the respective countries. Without such registration, the appellant company could not have launched its product for sale in those countries. The expenditure was, therefore, of revenue nature. It is submitted that similar expenditure was allowed upto A.Y. 1996-97. Disallowance was made for the first time in AY 1997-98 and the same was deleted by CIT (A) and Department's appeal was dismissed by the ITAT.

62. In view of the above, we respectfully follow the findings of coordinate bench in assessee's own case and sustain the findings of Ld. CIT (A) plea raised by the revenue as far as product registration expenses of Rs. 137,93,917/- is concerned."

22.1.4 Respectfully following the decision of the co-ordinate bench, this ground is allowed in favour of the assessee.

B. Research and Development (R&D) Expenses: Rs. 4,67,31,101/-

23.2.1 Brief facts are that the assessee had incurred expenses on R&D amounting to Rs. 4,67,31,101/- which was treated as deferred revenue expenditure in the accounts. In the return of income, the entire expenditure was claimed as deduction u/s 37(1), on the ground that it was a revenue expenditure incurred for improving and

testing existing products and new products to meet market requirements.

22.2.2 Ld. AO did not allow the deduction u/s 37 on the ground that it was not a revenue expenditure as it was incurred for an enduring benefit.

22.2.3 Ld. CIT(A) decided the issue in favour of the assessee relying on his order for AY 1997-98.

22.2.4 Ld. AR has submitted before us that the assessee required to get toxicity studies carried out for the export products. These tests are required to be undertaken in the normal course of business of the assessee and no capital asset has been created. The research studies were got conducted through M/s. JRF and expenditure relates to the work done by it during the relevant to previous year. It was also pointed out that the issue stand covered in favour of the assessee by the orders of co-ordinate benches for AY 1997-98, AY 1998-99 and AY 1999-00.

22.2.5 We have heard the rival submissions and perused the material placed before us. Identical issue has been decided in the appeals for earlier years by the co-ordinate benches and the relevant

portion of the order for AY 1999-00 in ITA No. 4695/Mum/2005 is reproduced below:

> *"63. In respect of research and development expenses Rs. 3,89,70,006/-, the Coordinate Bench of ITAT in ITA No. 4073/Mum/2023 for AY 1997-98 and ITA No. 1519/Ahd/2002 for AY 1998-99 has decided this ground in favour of assessee and allowed the expenses on proportionate basis. We also respectfully follow the same and direct the AO to allow the same on same basis. To that extent order of Ld. CIT (A) is modified and ground raised by the revenue is partly allowed as far as research and development expenses Rs. 389, 70,006/- is concerned."*

22.2.6 Respectfully following the decision of the co-ordinate bench, this ground is allowed in favour of the revenue.

23. Ground No. 6 Allowance of 10% of Data Access Fees of Rs. 14,41,77,000/- and Task Force Expenses of Rs. 7,68,26,307/-.

Issue regarding allowance of 10% of data access fees and task force expenses is covered in Para 10 hereinbefore relating to ground No. 8 of the assessee's appeal.

26. Ground No. 7, 8, 9 & 10: Deduction under section 80IB and 80HHC:

All these grounds have been discussed and decided along with assessee's appeal relating to deduction u/s 80IB & 80HHC in para 14 hereinbefore.

III <u>ITA No. 2990/Mum/2005:- AY 2001-02</u>

The grounds of appeal taken by the assessee are as under:

I TAXABILITY OF ADVANCE LICENCE BENEFIT RECEIVABLE: Rs. 3,29,55,054/-

1.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax to include advance licence benefit receivable amounting to Rs.3,29,55,054/-, in the total income, particularly as no income had accrued to the appellant until the imports were made and the raw materials were consumed, which events took place in the subsequent year.

1.2 In doing so, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that it is a well established legal proposition that entries in the books of account were not material for determining the tax liability and if no income had accrued, the same could not be taxed even though the said item was accounted for as income in the books of account.

II TAXABILITY OF PASS BOOK BENEFIT RECEIVABLE: Rs 23,40,93,786/-

2.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of Deputy Commissioner of Income- tax to include Pass Book benefit receivable amounting to Rs.23,40,93,786/- in the total income.

2.2 In doing so, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that no income had accrued to the appellant until credit was received in the Pass Book, which event took place in the subsequent year and that it is a well established legal proposition that entries in the books of account were not material for determining the tax liability and if no income had accrued then the same could not be taxed even though the said item was accounted for as income in the books of account.

III PROPORTIONATE DEDUCTION IN RESPECT OF PREMIUM ON LEASEHOLD LAND: Rs.1,84,078/-

3.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax of not allowing the claim for deduction of Rs.1,84,078/- in respect of proportionate premium paid on leasehold land over the period of the lease, as per the ratio of the

decision of the Supreme Court in the case of Madras Industrial Investment Corporation Limited vs. CIT (225 ITR 802).

IV. REJECTION OF NON-CLAIMING OF DEPRECIATION IN RESPECT OF ALL BLOCKS EXCEPT THE BLOCK RELATING TO PLANT AND MACHINERY ELIGIBLE FOR DEPRECIATION AT THE RATE OF 25%:

4.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in thrusting upon the appellant, depreciation in respect of all the block of assets even though no claim was made by the appellant in respect of the same except in the case of the block pertaining to plant and machinery eligible for depreciation at the rate of 25%.

V. INTEREST ATTRIBUTABLE TO EARNING OF EXEMPT INCOME:Rs. 18,46,485/-

5.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Deputy Commissioner of Income-tax of disallowing an amount of Rs. 18,46,485/- as expenditure incurred for earning tax free income without appreciating the fact that no expenditure had been. incurred for earning such tax free income.

VI. CLAIM FOR DEDUCTION IN RESPECT OF LEGAL FEES TREATED AS ADVANCE: Rs. 1,47,04,451/-

6.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellants' claim for deduction of Rs.1,47,04,451/- in respect of legal fees paid during the year but treated as an advance in the books of account.

VII. CLAIM FOR DEDUCTION IN RESPECT OF SALARY AND WAGES CAPITALISED IN THE ACCOUNTS: Rs. 24,19,704/-

7.1On the facts and in the circumstances of the case and in law, the Commissioner of income-tax (Appeals) erred in rejecting the appellants' claim for deduction in respect ofsalary and wages amounting to Rs.24,19,704/- capitalised in the books of account without appreciating the fact that the said expenses represented revenue expenditure eligible for deduction under section 37(1).

VIII. DEDUCTION UNDER SECTION 80-IB:

8.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax in computing the deduction under section 80-IB as follows:

a) In reducing items of "other income" enumerated on page 29 of the aforesaid assessment order from the "profits and gains of the business", on the ground that the said income had no direct nexus with the eligible industrial undertaking,

b) In holding that items of other income like interest, refund of electricity duty, sales- tax refund, miscellaneous receipts, etc. were to be excluded without reducing the corresponding and matching costs which were deducted while computing the profits of the eligible undertakings;

c) In not appreciating that if items of other income like interest, etc. were to be excluded, then only the net amounts ought to have been reduced while computing the profits of the eligible undertaking:

d) In excluding the advance licence benefit receivable and the pass book benefit receivable from the profits and gains derived from the eligible undertakings.

8.2 The Commissioner of Income-tax (Appeals) further erred in not giving any finding in respect of the issue that since the appellant had included the advance licence benefit reversal and the pass book benefit reversal as part of the cost of raw materials and in case the said benefits were excluded, the corresponding notional reversals also ought to have been removed from the cost for the purpose of working the profits of the eligible undertakings;

IX. DEDUCTION UNDER SECTION 80HHC:

9.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Deputy Commissioner of Income-tax in holding that the deduction eligible under 80HHC(1) is not allowable as the profits derived from exports of goods computed under clause (c) of section 80HHC(3) has resulted in a negative figure by relying on the decision of the Bombay High Court in the case of IPCA Laboratories Ltd. vs. CIT (No.1) (251 ITR 401).

9.2 The Commissioner of Income-tax (Appeals) further erred in not giving any finding in respect of the following issues:

(A) While computing 'profits of the business' as per Explanation (baa) below section 80HHC(4A):

(i) In reducing 90% of the following items from the profits of the business inspite of the fact that the said items were not specifically required to be reduced from the profits of the business as per the definition given in clause (baa) of the Explanation below section 80HHC(4A):

Rs. in lacs

(i) Job Work Charges	*57.34*
(ii) Sales Tax Refund	*26.62*
(iii) Discount	*4.47*
(iv) Insurance Claim	*29.41*
(v) Excess provision written back	*62.79*
(vi) Sundry credits written back	*24.29*
(vii) Exchange rate difference	*211.59*
(viii) Miscellaneous receipts	*58.66*

(ii) In not appreciating the fact that only the net amount of interest received by the appellant ought to have been reduced as per Explanation (baa) below section 80HHC(4A) and in view of the fact that the appellant had credited in the Profit and Loss Account, an amount of Rs.296.97 lacs as interest received and had debited an amount of Rs.3,667.89 lacs as interest paid, the interest paid being more than the interest received, no portion of the interest received ought to have been reduced for the purpose of working out deduction under section 80HHC;

(iii) In not appreciating the fact that the word "receipts" as referred to in the Explanation (baa) below section 80HHC(4A) refers only to the net receipts and accordingly, gross receipts cannot be reduced from the profits of the business.

(B) In not considering the exclusion of unrealised sale proceeds and value of goods reimported / returned from the total turnover and export turnover as claimed during assessment proceedings while

computing the "total turnover" and "export turnover for the purpose of deduction under section 80HHC.

(C) In not recomputing the indirect cost of traded goods as claimed during assessment proceedings.

X. SHORT GRANTING OF INTEREST UNDER SECTION 244A:

10.1 The Commissioner of Income-tax (Appeals) erred in holding that no interest ought to be granted on delayed granting of interest

Additional grounds of appeal taken by the assessee are as under:

"1. The appellant submits that for the purpose of computing book profit under section 115JB, deduction under clause (iv) of the Explanation in respect of profits eligible for deduction under section 80HHC ought to be computed on the basis of the adjusted book profits and not on the basis of the profit and gains of business or profession as per normal provisions of the Act as held by the Hon'ble Supreme Court in the case of Al-Kabeer Exports Ltd. vs. CIT (Civil Appeal No. 1546 of 2012) and CIT vs. Bhari Information Technology Systems (Civil Appeal No. 33750/2009).

2 The appellant submits that deduction under section 80HHC ought to be granted in respect of Duty Entitlement Pass Book Benefit (DEPB) as per the first proviso to section 80HHC(3) in view of the decision of the Hon'ble Supreme Court in the case of Topman Exports Ltd. (Civil Appeal No. 1699 of 2012).

3. The appellant submits that deduction in respect of expenditure for service charges for computer software amounting to Rs 35,83,599/- being 1/5th of Rs.1,79,17,996/- incurred in assessment year 1997-98 ought to be allowed as per the order dated 20th March, 2003 passed by the Commissioner of Income-tax (Appeals) for the assessment year 1997-98."

25. Ground No. 1 : Taxability of Advance Licence Benefit Receivable: (Rs. 3,29,55,054/-)

25.1 This issue has been discussed hereinbefore in Para 3 on page 7 of the order for Ay 2000-01. Since facts in this year are identical, the decisions in AY 2000-01 will apply mutatis mutandis.

25.2 Accordingly, this ground is allowed in favour of the assessee and Ld. AO is directed to delete the addition of Rs. 3,29,55,054/- made on account of Advance Licence benefit receivable.

26 Ground No. 2 : Taxability of Pass Book Benefit Receivable: Rs. (23,40,93,786/-)

26.1 This ground being identical to the issue raised in AY 2000-01, the decision in Para 4 on page 9 will apply mutatis mutandis in this year also.

26.2 Accordingly, this ground is decided in favour of the assessee and addition on account of Passbook Benefit Receivable of Rs. 23,40,93,786/- is hereby deleted.

27 Ground No. 3 : Proportionate deduction in respect of Premium on Leasehold Land: (Rs. 1,84,078/-).

27.1 This ground has not been pressed as the deduction is allowed in earlier years.

28. Ground no. 4 : Rejection of non-claiming of depreciation in respect of all blocks except the block relating to plant and machinery eligible for depreciation at the rate of 25%.

28.1 This ground is identical to the issue covered in Para 5 of our order for AY 2000-01 at page 11 hereinbefore.

28.2 This issue has been decided against the assessee in earlier years has been fairly conceded by the Ld. AR. Accordingly, we uphold the order of lower authorities on this issue and assessee's appeal on this ground is rejected.

29. Ground No. 5 : Interest Attributable to earning of Exempt income: (Rs. 18,46,485/-)

29.1 This ground is identical to the ground raised in AY 2000-01. Since facts are similar in this year also, we, therefore, hold that the decision in AY 2000-01 vide Para 6 of this order in page No. 12 will apply this year mutatis mutandis.

29.2 Accordingly, this issue is decided in favour of the assessee and Ld. AO is directed to delete the addition made on this account.

30. Ground No. 6 : Claim for deduction in respect of Legal Fees Treated as Advance: (Rs. 1,47,04,451/-)

30.1 Similar ground has been decided for AY 2000-01 vide para 11 on page No. 28 hereinbefore. Accordingly, for this year also. The assessee's appeal on this ground is also allowed.

31. Ground No. 7 : Claim for deduction in respect of Salary and Wages Capitalised in the Accounts: (Rs. 24,19,704/-)

31.1 Before us, Ld. AR submitted that this ground is not being pressed as depreciation is already allowed on the amount capitalised over a period of time. Accordingly, this ground is dismissed as withdrawn.

32. Grounds No. 8 & 9 : Pertaining to deduction u/s 80IB and 80HHC.

32.1 These grounds for AY 2000-01 have been discussed and decided vide para 14 hereinbefore. Accordingly, following our decision for AY 2000-01, we restore the matter to the Ld. AO for computing the claims for deduction u/s 80IB and 80HHC afresh. The assessee is also directed to submit a fresh computation in respect of its claims before the AO in the light of settled legal position.

33. Ground No. 10 : Short granting of Interest u/s 244A.

33.1 The AO is directed to grant interest u/s 244A of the Act to the assessee as per applicable provisions.

34. Additional Ground No. 1 : Computation of deduction under Section 80HHC for the purpose of computing book Profits u/s 115JA.

34.1 This ground has also been dealt in AY 2000-01 vide Para 16 of our order hereinbefore. The decision therein will apply in this year also.

34.2 Accordingly, assessee's appeal on this ground is also allowed.

35. Additional Ground No. 2 : Deduction u/s 80HHC ought to be granted on DEPB as per first proviso to Section 80HHC(3).

35.1 Since deduction u/s 80HHC is to be computed afresh by Ld. AO as decided in para 14, we direct the AO to consider the claim of the assessee in accordance with the settled legal position.

35.2 This ground of the assessee is, therefore, allowed for statistical purpose.

36. Additional Ground No. 3 : Proportionate deduction in respect of expenditure for service charges for computer software: (Rs. 35,83,599/-).

36.1 This ground has not been pressed by the Ld. AR as the same has been allowed for AY 1997-98. Accordingly, the ground is dismissed as withdrawn.

37. Additional Ground No. 4 : Proportionate deduction in respect of R&D expenses of AYs 1998-99 & 1999-2000.

37.1 Similar ground was raised in AY 2000-01 and it has been decided in favour of the assessee, following the orders of the co-ordinate benches in earlier years.

37.2 Accordingly, for this year also, Ld. AO is directed to allow proportionate deduction in respect of R&D expenses of AYs. 1998-99 & 1999-2000.

38. Additional Ground No. 5 : Proportionate deduction in respect of R&D expenses of AY 2000-01.

38.1 In the ground No. 5 of department's appeal ITA No. 4099/Mum/2004 for AY 2000-01, it has been held that deduction in respect of R&D expenses is

to be allowed on proportionate basis vide Para No. 22B in view of the decision of co-ordinate benches for earlier years.

38.2 Accordingly, Ld. AO is directed to allow the R&D expenses for AY 2000-01 also on proportionate basis.

38.3 This ground of appeal is, thus, partly allowed in favour of the assessee.

39. Additional Ground No. 6 : Proportionate deduction in respect of data access fees and task force expenses.

39.1 This issue has been discussed in Para No. 10 (in ground No. 8) for the order for AY 2000-01 hereinbefore where it is decided in favour of the assessee. Accordingly, for this year also the issue is decided in favour of the assessee. Ld. AO is directed to allow proportionate deduction in respect of data access fee and task force expenses.

40. In the result, both the appeals of the assessee and the revenue are partly allowed

Order Pronounced in Open Court on 24.12.2024

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(RENU JAUHRI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place: Mumbai
Date 24.12.2024
ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.

3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

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

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