

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VP AND SHRI N.K. BILLAIYA, AM

ITA No. 5925/Mum/2010
(Assessment Years: 2007-08)

Grasim Industries Ltd. (Corporate Finance Division) A-2, Aditya Birla Centre, S.K. Ahire Marg, Worli, Mumbai - 400030	Vs.	Addl. CIT, Range 6(3), 5 th Floor, Room No.505, Aayakar Bhavan, Mumbai
(Appellant)	:	(Respondent)

ITA No. 6307/Mum/2010
(Assessment Year: 2007-08)

ACIT, Circle-6(3), Mumbai	Vs.	Grasim Industries Ltd. Century Bhavan, 3 rd Floor, Dr. AB Road, Worli, Mumbai - 400025
Appellant by	:	Shri J.D. Mistri, Sr. Advocate, Shri Madhur Agarwal, And Shri Fenil Bhatt, Advocates
Respondent by	:	Shri Dr. Kishor Dhule, CIT(DR)
		PAN/GIR No. AAACG 4464B
(Appellant)		(Respondent)

Date of Hearing	:	30.01.2025
Date of Pronouncement	:	18.02.2025

ORDER

Per Saktijit Dey, VP:

The captioned cross appeals arise out of order dated 18.06.2010 of learned Commissioner of Income Tax (Appeals)-12 [in short ‘CIT(A)']-Mumbai, pertaining to Assessment Year (A.Y.) 2007-08.

ITA No. 5925/Mum/2010 -Assessee's Appeal (A.Y. 2007-08)

2. So far as Ground No.1 is concerned, at the outset, Shri J.D. Mistri, learned counsel appearing for the assessee submitted that it has become infructuous. Accordingly, ground is dismissed.

3. In Ground No.2, the assessee has contested the disallowance of claim of depreciation amounting to Rs.5,29,658/-.

4. Briefly the facts are, the assessee is a resident corporate entity engaged in manufacturing and trading activities. For the assessment year under dispute, assessee had filed its return of income on 30.10.2007, declaring income of Rs.1920,40,47,165/-. Subsequently, assessee filed its revised return of income on 17.03.2009, declaring income of Rs.1923,71,32,402/-. In course of assessment proceeding, the Assessing Officer (AO) noticed that the assessee had claimed depreciation on let out office premises. He further observed that the rent received from such let out office premises was offered to tax under the head 'income from house property'. He further noticed that, though, the assessee had reduced the Written Down Value (WDV) of the let-out premises from the value of block of assets, however, in course of assessment proceeding, the assessee claimed that it is entitled to depreciation on the entire block of assets without reducing WDV of the let out premises. In support of such contention, assessee furnished a detailed note supported by judicial precedents. The Assessing Officer, however, did not accept assessee's claim. He observed that while computing 'income from house property', the assessee has claimed 30% deduction towards maintenance charges out of the annual rental value. Hence, assessee cannot be allowed further deduction by way of depreciation. Accordingly, he disallowed assessee's claim.

5. Though, assessee contested the disallowance in appeal preferred to learned First Appellate Authority, however, the disallowance was sustained.

6. Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the Tribunal in its own case in A.Y. 2005-06. Further, he relied upon the following decisions:

1. G.R. Shipping Ltd. vs. DCIT in ITA No. 822/Mum/2005.
2. Bhavani Gems Pvt. Ltd. vs. Pr. CIT in ITA No. 766/Mum/2021.
3. Bodal Chemical Ltd. [2019] 112 taxmann.com 217.

He also referred to CBDT Circular No. 469 dated 23.09.1986.

7. Per contra, learned Departmental Representative (DR) strongly relied upon the observations of the Departmental Authorities. He submitted, for claiming depreciation, two conditions have to be fulfilled. Firstly, the assessee must be owner of the assets and secondly the assets must be used for business. He submitted, since the property was let out and not used for the purpose of business, the assessee would not be entitled to claim depreciation. In support, he relied upon the decision of the Coordinate Bench in case of Emco Dyestuff (P.) Ltd. vs. DCIT, Mumbai [2019] 108 taxmann.com 206 (Mumbai-Trib).

8. We have considered rival submissions and perused the materials on record. We have also applied our mind to the decisions relied upon. It is observed, identical issue came up for consideration before Coordinate Bench in A.Y. 2005-06. While dealing with the issue, the coordinate Bench in ITA No.3517/Mum/2006, dated 04.07.2023 has held as under:

“23. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that the property under question was purchased by the assessee in the assessment year 1987-88. Since its acquisition, the said property forms part of the block of assets for the purpose of claiming depreciation under the Act. It is the claim of the assessee that in the preceding years the assessee used this property as one of its office premises. In the year under consideration, the said property was let out and the rental income was offered to tax under the head “Income from House Property”, after claiming a deduction under section 24 of the Act. The AO, vide assessment order, worked out the disallowable depreciation in respect of the aforesaid property while allowing deduction claimed under section 24 of the Act.

24. Before proceeding further, it is pertinent to note certain provisions of the Act that are relevant to the issue at hand. The term “block of assets” is defined in section 2(11) of the Act, as under:-

"block of assets" means a group of assets falling within a class of assets comprising—

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed;”

25. Further, the relevant provisions of section 32, reads as under:-

—Depreciation

32.(1) In respect of depreciation of—

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such

percentage on the actual cost thereof to the assessee as may be prescribed;

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

.....

Explanation 2.—For the purposes of this sub-section "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43.

26. Section 43(6)(c) of the Act reads as under:-

“(c) in the case of any block of assets,—

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

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

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

(C) in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced—

(a) by the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(b) by the amount of depreciation that would have been allowable to the assessee for any assessment year

commencing on or after the 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets,

so, however, that the amount of such decrease does not exceed the written down value;]

- (ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i).*

27. It is the plea of the assessee that since the property was acquired in the assessment year 1987-88 and forms part of the block of assets, therefore, the lower authorities have erred in carving out the depreciation for this property and disallowing the same. Since the assessee is the owner of the property from the assessment year 1987-88 and the same was also used as one of its office premises in preceding years, therefore, we are of the view that the conditions laid down in section 32 of ownership of the asset and usage for the purpose of business are satisfied in the present case. We find that the only basis on which the AO/learned CIT(A) disallowed the depreciation is that the assessee has rented out the property during the year and offered the income under the head "Income from House Property", after claiming deduction under section 24 of the Act. In this regard, it is pertinent to note that the property in question forms part of the block of assets since the assessment year 1987-88 and the depreciation on the entire block was also allowed. The Revenue has also not disputed this fact. It is settled that once any asset forms part of the block of assets, it loses its individual identity, and thus for the purpose of depreciation, only the block of assets has to be considered. This aspect is sufficiently evident from Circular No.469 issued on 23/09/1986, which reads as under:-

6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more

disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture.

28. Further, as per section 43(6)(c)(i)(B) of the Act, the written down value in the case of any block of assets is reduced by the money payable when the asset is sold or discarded or demolished or destroyed. However, in the present case, the assessee continued to own this property, and the same was only let out during the year. In any case, this section also does not provide for carving out depreciation for disallowance, as is done by the AO in the present case. We find that the Hon'ble Delhi High Court in CIT v/s Oswal Agro Mills Ltd. [2012] 341 ITR 467 (Delhi), observed as under:-

“32. Another significant and contemporaneous development, which needs to be noticed is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which was previously allowable under section 32(1) (iii) and also taxing of balancing charge under section 41(2) in the year of sale. Instead of these two provisions, now whatever is the sale-proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assessee are not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1) (iii) . This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

33. Having regard to this legislative intent contained in the aforesaid amendment, it is difficult to accept the submission of the learned counsel for the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of 'block of assets'. Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately

and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the 'block of assets' even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short-term capital gain, which would be exigible to tax and for this reason, we say that there is no loss to revenue either."

29. Thus, in view of the above, once the property forms part of the block of assets, carving out the depreciation for the said property and disallowing the same goes against the spirit of allowing depreciation on the entire block of depreciable assets. Before concluding, we may note that in this appeal the Revenue has not disputed the claim of deduction under section 24 of the Act in respect of the property which forms part of the block of assets. Thus, merely because the Revenue has accepted the claim of deduction under section 24 of the Act doesn't mean that the property which forms part of the block of assets will cease to be so. Therefore, the disallowance of depreciation of Rs. 45,681 made by the AO is deleted. As a result, ground No. 4 raised in assessee's appeal is allowed."

9. Keeping in view the parity in factual position and also the fact that the issue has been decided in assessee's own case, we respectfully follow the decision of the Coordinate Bench, as referred to above, and direct the Assessing Officer to allow the claim of depreciation. This ground is allowed.

10. So far as Ground No.3 is concerned, learned counsel appearing for the assessee submitted, since the assessee has got the desired relief in AY 2008-09, this ground does not require adjudication and may be treated as not pressed. In view of above, ground is dismissed as not pressed.

11. In Ground No.4, the assessee has contested the disallowance of Rs.1,66,328/- representing delayed payment of employees' contribution to provident fund.

12. At the outset, learned counsel appearing for the assessee conceded that though the payment was made before the due date of filing of return of income, however, now the issue is settled against the assessee by virtue of the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd vs Commissioner of Income Tax 143 taxmann.com 178 (SC).

13. Learned Departmental Representative (DR) agreed with the submissions of the assessee.

14. Thus, in view of the ratio laid down by the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd (Supra), we uphold the disallowance made by the AO and sustained by learned First Appellate Authority. This ground is dismissed.

15. In Ground No.5, assessee has contested the addition of Rs.6,14,717/- being surplus arising out of prepayment of sales tax loan.

16. Briefly, the facts are, in course of assessment proceeding, while verifying the computation of income filed by the assessee, the AO noticed that in Note No. 19, the assessee has stated that surplus arising on prepayment of sales tax loan amounting to Rs.6,14,717/- is in the nature of capital receipt hence not chargeable to tax. Noticing this, the AO called upon the assessee to justify the claim and also to explain why such surplus should not be treated as revenue in nature. In response, assessee filed detailed reply in support the claim. However, relying upon an order passed u/s. 263 of the Act by the CIT in assessee's case in AY 2005-06, the AO treated the receipt as revenue in nature and added to the income. The additions so made was also confirmed by learned First Appellate Authority.

17. Before us, learned counsel appearing for the assessee submitted that the issue is covered in favour of the assessee by the decision of the coordinate Bench in assessee's own case in AY 2005-06. He submitted, not only the order passed u/s. 263 of the Act was quashed but the Coordinate Bench also decided the issue on merits by holding that the receipts are capital in nature. In this context, he also relied upon the Special Bench decision of the Tribunal in the case of M/s Sulzer India Ltd. vs. Jt. CIT, in ITA No. 2871 & 2944/Mum/2007 confirmed by the Hon'ble Jurisdictional High Court 369 ITR 717.

18. Learned Departmental Representative (DR) fairly agreed with the submissions made by the learned counsel.

19. Having considered rival submissions, we find, while deciding assessee's appeal against the order passed order u/s. 263 of the Act in A.Y. 2005-06, the Tribunal vide order dated 11.03.2011 passed in ITA No. 3104/Mum/2008 has not only quashed the revision order but has held as under:

“6. We have heard both the sides, perused the records and gone through the orders of the authorities below. The Rajasthan Government gave an option to the assessee availing the benefit under the scheme to repay the loan liability even before the stipulated repayment date. Pursuant to the government offer, the assessee company opted to make repayment of loan liability of Rs.106.47 Crores. During the previous year, relevant to the Asst. Year 2005-06, the assessee-company paid an amount of Rs.72.12 Crores to the State Government in discharging of total liability of Rs.106.47 Crores resulted in extinguishment of loan liability of Rs.34.35 Crores being the excess of loan liability over the amount paid. The surplus arising out of payment of loan amounting to Rs.34.35 Crores was credited to the profit and loss account and the assessee has filed all the details in respect of the above and credited the amount to the profit and loss account (Paper book pages 32, 35 to 37). The Assessing Officer has allowed the claim of the assessee on the ground that surplus on payment of sales tax loan being a capital receipt in nature. According to the Commissioner, the surplus amount of loan amounting to Rs.34.35 Crores taxable u/s.41(1) of the Act because the loan liability which

is in the nature of sales tax liability is only a trading liability and not capital in nature, therefore, the remission on such liability cannot be 8 ITA 3104/Mum/08 treated as a capital receipt. The Assessing Officer has treated the receipt as capital receipt. The Special Bench of ITAT in the case of M/s. Suzler India Limited (supra) in similar set of facts has held that [section 41\(1\)](#) has no application. In the case of [Malabar Industrial Co. Ltd.](#) (supra), the Hon'ble Supreme Court observed as under :

"A bare reading of [section 263](#) of the Income Tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them, is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if ;it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to [section 263\(1\)](#) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law; will satisfy the requirement of the order being erroneous. In the same category full orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law."

Subsequently, in case of [CIT Vs. Max India Limited](#) (supra), by following the aforesaid decision of the Malabar Industrial Co. Ltd. Has observed that "under [section 263](#) has to be read conjunction with expression erroneous order passed by the A.O., every loss of revenue as a consequence of an order of the A.O. cannot be treated as prejudicial to the interests of revenue. For example, when an ITO has adopted one course permissible in law and it has resulted in loss of revenue or where two views are possible and the ITO has taken one view, if the Commissioner does not agree, it cannot be treated as erroneous or prejudicial to the interest of revenue unless the view taken by the A.O. is unsustainable in law."

In the present case, in our opinion, the view taken by the A.O. is one of the possible view and it is not a case to invoke [section 263](#) of the Act. It is not even revenue's case that Assessing Officer not applied the mind with regard to taxability on account of remission of liability, but all that it is contended before us is Assessing Officer reached incorrect conclusion. However, not only that the Assessing Officer had formed a possible view of the matter but also the view so formed by him in the light of the Special Bench decision in the case of [Sulzer India Limited](#) (supra) which is binding precedent for us reflects correct legal position. In view of the facts and circumstances of the case and also following the aforesaid decisions of the Hon'ble Supreme Court, we set aside the order passed by the Commissioner [u/s.263](#) and restore the order of the Assessing Officer."

20. Respectfully following the decision of the Coordinate Bench as also the other decisions cited by learned counsel for the assessee, we hold that the receipts are in the nature of capital receipt hence not taxable. The Assessing Officer is directed to delete the addition. This ground is allowed.

21. In Ground No.6, the assessee has contested the disallowance of SAP ERP expenses claimed as revenue expenditure.

22. Briefly the facts are, in the year under consideration, the assessee had incurred expenditure of Rs.5,79,04,479/- towards implementation of SAP ERP. In the notes appended to the computation of income, the assessee claimed it as revenue expenditure. In course of assessment proceedings, while responding to the query raised by the Assessing Officer, the assessee filed a detailed submission justifying the claim. The

Assessing Officer, did not accept assessee's claim and treated it as capital expenditure. Of course, the Assessing Officer computed depreciation at the rate of 60%. The aforesaid decision of the Assessing Officer was also confirmed by learned First Appellate Authority.

23. Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decisions of the Coordinate Bench in assessee's own case as well as various other decisions.

24. The learned D.R. agreed with the submissions of learned counsel of the assessee.

25. Having considered rival submissions, we find, in assessee's own case in Assessment Years 2002-03- and 2003-04, the Tribunal had allowed assessee's claim of revenue expenses. Facts being identical, respectfully following the decisions of the Coordinate Benches, we allow assessee's claim and direct the Assessing Officer to delete the disallowance. Of course, the depreciation allowed has to be withdrawn. This ground is allowed.

26. In Ground No.7, the assessee has challenged the disallowance of deduction of Rs.65,090/- u/s. 80IA of the Act qua rental income.

27. Briefly the facts are, while verifying assessee's claim of deduction u/s. 80IA of the Act in course of assessment proceeding, the Assessing Officer noticed that the assessee had not excluded miscellaneous/other income not derived from the profits of the undertaking, while claiming deduction u/s.80IA of the Act. On further examination, he found that the assessee had claimed u/s.80IA in respect of rental income of Rs.65,090/-. Being of the view that rental income cannot form part of profit derived

from the undertaking, the Assessing Officer disallowed assessee's claim. Such disallowance was also confirmed by the First Appellate Authority.

28. Before us, learned counsel appearing for the assessee submitted that issue is squarely covered in favour of the assessee in its own case in earlier assessment years. He submitted, in A.Ys. 2004-05 and 2005-06, while giving effect to the order of the Tribunal, the Assessing Officer has allowed claim of deduction u/s. 80IA of the Act in respect of rental income.

29. The learned D.R. agreed with the submission of the assessee.

30. Having considered rival submissions and perused the materials on record. We find that the coordinate Bench has decided the issue in favour of the assessee in Assessment Year 2002-03. Whereas, in Assessment Years 2004-05 and 2005-06, issue was restored back to the Assessing Officer for verification. While giving effect to the order of the Tribunal, the Assessing Officer has allowed assessee's claim.

31. Considering the above, we direct the Assessing Officer to allow assessee's claim of deduction u/s. 80IA of the Act in respect of rental income. This ground is allowed.

32. The dispute in Ground No.8 is with regard to taxability of interest on income tax refund.

33. Briefly the facts are, in the year under consideration, the assessee had received certain amount towards interest on income tax refund. Whereas, it had also paid interest to the Department under various provisions of the Act. In the computation of income, the assessee had set off the interest paid against the interest received and offered net interest income of Rs.3.94 crores. While verifying assessee's claim, the Assessing Officer was of the view that interest paid on income tax is not an allowable deduction

u/s. 40(a)(ii) of the Act. Accordingly, he added back an amount of Rs.2.35 crores to the income of the assessee. Though, the assessee contested the aforesaid addition before learned First Appellate Authority, however, it was unsuccessful.

34. Before us, learned counsel appearing for the assessee submitted that the interest paid to the Department and received from the Department is on a single account, as the parties are same. Therefore, the payment and receipt of interest has to be netted off. In support of such contention, learned counsel relied upon the following decisions:

1. Director of Income Tax vs. Bank of America NT and SA in ITA No. 177 of 2012 (Bom) judgment dated 03.07.2014.
2. ACIT, Mumbai vs. M/s. Tata Sons Ltd., Mumbai in ITA No. 4630/Mum/2016.
3. Arthur Anderson & Co. vs. ACIT [2010] 324 ITR 240 (Bombay).
4. Lupin Ltd. vs. ACIT [2018] 94 taxmann.com 282.

34.1 Whereas, learned DR submitted, netting off of interest received against the interest paid essentially results in allowing deduction of interest paid by the assessee as business expenditure u/s. 37(1) of the Act, which is not permissible. In support of such contention learned counsel relied upon following decisions:

1. Bharat Commerce & Industries Ltd. vs. CIT [1998] 230 ITR 733 (SC)
2. Aruna Mills Ltd. vs. CIT [1957] 31 ITR153 (Bombay).

35. We have considered rival submissions and perused the materials on record. It is observed, while considering identical nature of dispute in case of DIT vs. Bank of America NT and SA (Supra), the Hon'ble Jurisdictional High Court has held as under:

“3. Even with regard to the question No.2 we do not find that it is a substantial question of law. The Tribunal found that the Assessee Bank

received interest on refund of taxes paid. It also paid interest on the taxes which were payable. The Assessee sought to set off the interest paid against the interest received and offered the net interest received to tax. We do not see that such findings of the Tribunal are vitiated in law. All that the Tribunal has done earlier and now is that in the case of this Assessee simply because the exercise carried out by it does not result in loss of revenue and there could not be any prohibition for the same, allowed it. That is how the Assessing Officer's order is set aside. We do not see how any larger controversy or question arises for our consideration. Mr.Pinto would refer to Section 57 of the Income Tax Act, 1961 in that regard and submit that this course would be adopted by other Assesseees as well and in that event the order passed by this Court would come in the way of the Revenue in investigating and probing such exercise by other Assesseees.

4. *We do not see how this order can be cited as precedent inasmuch as the Assessee before the Tribunal and before us paid interest to the Income Tax Department amounting to Rs.10,26,906/-. The Assessee claimed that this was business expenditure and this should have been allowed. The Assessee has received the interest of Rs.1,07,57,930/-. It was submitted that the amount of interest paid by the Assessee should have been allowed to be set off against the interest deposited with the Department and taxed in the hands of the Assessee. The argument was that the interest paid to and received from is the same party i.e. Government of India and therefore, both transactions should be taken together.*

5. *We do not find that the Tribunal has, in permitting this exercise, in any way violated any of the provisions of the Income Tax Act, 1961. It was a peculiar situation between the Assessee and the Department. The Tribunal has followed the similar exercise in the case of very Assessee on the prior occasion as well. In such circumstances we are of the opinion that the second question also does not raise any substantial question of law.”*

36. Identical issue was also considered by the Hon'ble Jurisdictional High Court in case of CIT vs. M/s Credit Agricole Corporate and Investment Bank in ITA No. 27 of 2016. While deciding the issue, the Hon'ble Jurisdictional High Court following the decision in case of DIT vs. Bank of America (Supra), decided the issue in favour of the assessee. Even the other decisions cited by learned counsel for the assessee are in line with the ratio laid down by the Hon'ble

Jurisdictional High Court in case of Bank of America (Supra). In so far as the decision relied upon by learned DR are concerned, on careful examination, we are of the view that they are factually distinguishable as the issue of netting off of interest paid with interest received was not involved. Thus, respectfully following the decision of Hon'ble Jurisdictional High Court referred to above, we allow the ground in favour of the assessee.

37. In Ground No.9, the assessee has contested the disallowance of provision made for doubtful debts written off.

38. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decision of Tribunal in its own case in A.Y. 2002-03.

39. On perusal of facts on record, we are convinced that the issue is squarely covered in favour of the assessee by virtue of the ratio laid down by the Hon'ble Supreme Court in the cases of M/s Vijya Bank vs. CIT [2010] 323 ITR 166 (SC) and T. R. F. Ltd. v. CIT (2010) 323 ITR 397 (SC).

40. In view of aforesaid, we are inclined to allow the ground in favour of the assessee.

41. In so far as Ground No.10 is concerned, learned counsel appearing for the assessee did not press it. Accordingly, ground is dismissed as not pressed.

42. Besides the main grounds, the assessee has raised three more additional grounds. Since, the additional grounds do not require investigation into fresh

facts and can be decided based on facts and material available on record. We admit them.

43. The additional Ground No.1 is on the issue of taxability of dividend received of Rs.4,47,43,736/- from Alexandria Carbon Black Company incorporated and registered in Egypt. It is the case of the assessee that prior to amendment to Section 90 of the Act by Finance Act, 2003 dated 01.04.2004, as per the meaning of the term “may be taxed” would mean that only the source country has the right to tax income earned in such country and the resident country does not have any taxing rights. Thus, it was pleaded by the assessee that the dividend received from the Egyptian Company is taxable in source country i.e. Egypt. Notably, in assessee’s case in A.Y. 2002-03, the Tribunal had decided the issue in favour of the assessee. However, while deciding the issue in assessee’s case in A.Y. 2004-05, the Tribunal took a contrary view and held that the dividend received is taxable in India. Identical view was reiterated by the Tribunal while deciding the issue in assessee’s case in Assessment Year 2005-06 vide order dated 04.07.2023 in ITA No. 3517/Mum/2006. Learned counsel appearing for the assessee fairly conceded that in view of the subsequent decisions of the Tribunal, the issue has to be decided against the assessee. However, he added that the issue is now pending for adjudication before the Hon'ble High Court.

44. Be that as it may, on perusal of the record, we find that in assessee's own case in A.Ys 2004-05 and 2005-06, the Tribunal has held that the dividend received from the Egyptian company is taxable in India.

45. Respectfully following such consistent view of the coordinate Bench, we decide the issue against the assessee. This ground is dismissed.

46. In additional Ground No.2, the assessee has challenged the taxability of subsidy received from the Central Government under technology upgradation and fund (TUF). It is the case of the assessee that the subsidiary received, being of capital nature, is not taxable.

47. Having considered rival submissions and perused the materials on record, we find, identical issue came up for consideration before the Tribunal in assessee's own case in Assessment Year 2005-06 (Supra). While deciding the issue, the Tribunal has taken a view in favour of the assessee by holding that the subsidy received under the TUF scheme is capital in nature. The observations of the Tribunal in this regard are as under:

“52. As per the assessee, the TUF subsidy is provided by the Central Government to sustain and improve the competitiveness and overall long-term viability of the Textile Industry and as an incentive for technology upgradation of the textile industry. It was submitted that the subsidy is granted via - Resolution on TUFs on Techno-Operational parameters by the Ministry of Textiles in March 1999. We, at the outset, find that while deciding a similar issue the coordinate bench of the Tribunal in the case of subsidiary of the assessee held the interest subsidy received under the TUF scheme is capital in nature. The relevant findings of the coordinate bench of the Tribunal in DCIT v/s M/s Grasim Industries Ltd (successor to Aditya Birla Novo Ltd.), ITAs No. 84/Mum./2023 and 356/Mum./2023, vide order dated 12/06/2023, observed as under:-

“06. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the decision of the coordinate bench. During the course of hearing before the coordinate bench in ITA number 2525/M/2014 for assessment year 2009 - 10, assessee raised an additional ground stating that interest subsidy received under technology upgradation fund scheme amounting to ₹ 83,426,992/- is revenue receipt. The coordinate bench as per paragraph number 12 of that decision remanded back this issue to the file of the learned assessing officer for de novo adjudication in accordance with the law. This decision was arrived at by in the earlier years also this issue was remanded back to the file of the learned assessing officer. Therefore based on this the learned AO proceeded to examine the claim of the assessee that whether the interest subsidy received under technology upgradation fund scheme is revenue receipt or capital receipt. It is also to be noted that assessee itself has reduced the above subsidy from the interest expenditure debited to the profit and loss account. Thus, assessee itself treated it as a revenue income and not capital expenditure. However in assessee's own case in ITA number 4220 and 4704/M/2014 dated 24/2/2020 it has been held that the subsidy received by the appellant company under technology upgradation fund scheme is capital receipt. The coordinate bench held as under:-

“8. Ground No. 11: 11. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing to treat the interest subsidy of ₹ 15,23,25,727/- as capital in nature."

38.1 In ground No.11 the Revenue has assailed the findings of CIT(A) in holding interest subsidy from Technology Up gradation Fund(TUF) ₹ 15,23,25,727/- as capital in nature. The Id. Authorized Representative for the assessee submitted that the Hon'ble Rajasthan High Court in the case of PCIT vs. Nitin Spinners Ltd. in DB Income Tax appeal No.31/2019 decided on 19/09/2019 has held subsidy received under TUF as capital in nature. Similar view has been taken by Mumbai Tribunal in the case of [ACIT vs. SVG Fashions Ltd.](#) in ITA No.704/Mum/2016 for assessment year 2012-13 decided on 17/07/2018. The Id. Authorized Representative for the assessee to further buttress his submissions placed reliance on the following decisions:-

(1) [CIT vs. Gloster Jute Mills Ltd.](#), 96 taxmann.com 303

(2) CIT vs. Sshyam Lal Bansal, 200 Taxman 14 (P&H)

38.2 The Id. Authorized Representative for the assessee further submitted that CIT(A) has decided this issue after seeking remand report of Assessing Officer and examining TUF scheme in details. The Id. Authorized Representative for the assessee further submitted that the Tribunal in assessee's appeal for assessment year 2009-10 (supra) has admitted this issue raised in additional ground of appeal and has restored to Assessing Officer for fresh adjudication.

39. The Id. Departmental Representative submitted that the issue may be restored to Assessing Officer for reconsideration in line with Tribunal order in assessee's appeal for Assessment Year 2009-10.

40. Both sides heard. The assessee has received subsidy under TUF scheme.

The assessee has claimed the subsidy as capital receipt, whereas, the Department treated the subsidy as Revenue in nature. We find that the Hon'ble Rajasthan High Court in the case of PCIT vs. Nitin Spinners Ltd.(supra) examined the scheme in the light of various decisions and held the subsidy under TUF scheme as capital in nature. Similar view has been taken by the Hon'ble Calcutta High Court in the case of CIT vs. [Gloster Jute Mills Ltd.](#)(supra). Thus, in view of above judgements of Hon'ble High Courts, we see no infirmity in the findings of CIT(A). The same are upheld and ground No.11 of the appeal is dismissed.

41. In the result, appeal of the Revenue is partly allowed for statistical purpose.¶

07. Therefore in view of [the above decision](#) of the coordinate bench the issue is squarely covered in favour of the assessee wherein it has been held that interest subsidy received under technology upgradation fund scheme, though credited in the net off against the interest expenditure in the books of account is still capital in nature and therefore not chargeable to tax. Further the argument of the learned departmental representative has also been negated about the applicability of explanation 10 to [section 43 \(1\)](#) of the act by the decision of the coordinate bench in case of orbit exports (supra). In view of this both the grounds of appeal raised by the learned assessing officer are dismissed.”

53. Therefore, respectfully following the decision of the coordinate bench cited supra, we direct the AO to treat the subsidy received under the TUF Scheme as capital in nature. As a result, the additional grounds raised by the assessee vide application dated 06/04/2015 are allowed.”

48. Facts being identical, respectfully following the decision of the Coordinate Bench, we direct the Assessing Officer to delete the addition.

49. In additional Ground No.3, the assessee has claimed deduction of education cess.

50. Before us, learned counsel appearing for the assessee submitted that as per Section 40(a)(ii) tax levied on the profits or gains of business and profession or assessed as proportion of or otherwise on the basis of such profits or gains cannot be allowed as deduction. He submitted, education cess is not a tax levied on the profits or gains of business or profession or assessed as a proportion of or otherwise on the basis of any such profits or gains. Drawing our attention to the Finance Act, he submitted, education cess is computed on percentage basis on the tax levied on profits of business and not on profits of business. Therefore, he submitted, education cess would not be covered u/s. 40(a)(ii) of the Act. However, he fairly conceded that the issue has been decided against the assessee in its own case in Assessment Year 2005-06.

51. Learned D.R. opposed the contentions of learned counsel for the assessee.

52. We have considered rival submissions and perused the materials on record. It is relevant to observe, Section 40(a)(ii) of the Act reads as under:

“(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

53. Explanation-3 was inserted to Section 40(a)(ii) by Finance Act, 2022 retrospective effect from 01.04.2005 which reads as under:

“Explanation 3.—For the removal of doubts, it is hereby clarified that for the purposes of this sub-clause, the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax;”

54. As could be seen from a reading of Explanation-3, the term ‘tax’ as contemplated u/s. 40(a)(ii) of the Act includes cess and surcharge, by whatever name called. Therefore, education cess, partakes the character of tax, which is on profits or gains of business. Merely, because tax is taken as a quantifiable measure to determine the quantum of education cess, it cannot be said that education cess is not a tax on profits of business. Once, as per the provisions of the Act, tax includes cess and surcharge, it directly relates to the profits or gains because the quantum of tax liability is ultimately determined on the profits or gains of business. Therefore, in our view assessee’s contention that education cess is not a tax on profits and gains of business or profession is without merit. In any case of the matter, the Coordinate Bench, in assessee’s own case in AY 2005-06 (Supra), rejected identical claim made by the assessee through an additional ground. Consistent with the view taken therein, we dismiss the ground raised by the assessee. This ground is dismissed.

55. In the result, the appeal is partly allowed.

ITA No. 6307/Mum/2010 (A.Y. 2007-08) Revenue’s appeal

56. In Ground No.1, Revenue has challenged deletion of disallowance made u/s. 43B of the Act.

57. Briefly the facts are, in course of assessment proceeding, the AO noticed that certain payment aggregating to Rs.9,60,89,112/-, though were covered under Clause-(b) to (f) of Section 43B of the Act, however, assessee has not disallowed them while computing its income. He, therefore, called upon the assessee to explain why such payments should not be disallowed. In response, assessee submitted that such payments are not covered u/s. 43B of the Act. It was submitted by the assessee that as per Explanation-2 to Section 43B of the Act, which only refers to Clause (a) of Section 43B “any sum payable” would mean a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law. It was submitted by the assessee that since Explanation-2 does not refer to Clause (b) to (f) of Section 43B, the meaning of any sum payable as provided under Explanaiton-2 will not cover the payments falling under clause (b) to (f) of Section 43B. The AO, however, did not accept the contention of the assessee that disallowed the deduction claimed. Assessee contested the disallowance before learned First Appellate Authority.

58. After considering the submissions of the assessee in the context of facts and material on record, learned CIT(A) noticed that identical issue has been decided in favour of the assessee in the preceding assessment year. Following the decision taken therein be deleted the disallowance.

59. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decisions of the Tribunal in its own case in past assessment years.

60. Having considered rival submissions, we find, it is a recurring issue continuing since AY 1986-87 onwards. It is further observed, in past assessment years, the Tribunal has consistently decided the issue in favour of the assessee. The latest order being for AY 2005-06 (Supra). There being no change in the factual position, respectfully following the decisions of the Tribunal in assessee's own case, we uphold the decision of learned First Appellate Authority. This ground is dismissed.

61. In Ground No.2, the, Revenue has challenged the deletion of disallowance of contribution to local organizations.

62. Briefly the facts are, in course of assessment proceeding, the AO noticed that under the head miscellaneous expenses, the assessee had claimed expenses of Rs.19,08,941/-. On further verification, we found that the payments were made towards contribution to various local organizations located in and around the areas where the plant / office of the company is situated. Holding that such payment did not come within the purview of Section 37(1) of the Act, the AO disallowed the claim. While deciding the issue, learned First Appellate Authority allowed assessee's claim.

63. We have considered rival submissions and perused the materials on record. It is a common point between the parties that the issue has been consistently decided in favour of the assessee by the Tribunal in past assessment years.

64. Having perused the materials on record, we find that from AY 1988-89 onwards identical issue has been decided in favour of the assessee not only by the Tribunal but even by the Hon'ble High Court. In fact in the latest order passed for AY 2005-06. The Tribunal has decided the issue in favour of the assessee.

65. Respectfully following the consistent view of Hon'ble Jurisdictional High Court and coordinate Bench, we uphold the decision of learned First Appellate Authority by dismissing the ground.

66. In Ground No.3, Revenue has challenged the deletion of disallowance of rural development expenses.

67. Briefly the facts are, in course of assessment proceeding, the AO noticed that the assessee has claimed deduction towards Rural Development expenses amounting to Rs.1,20,40,455/-. When called upon to justify such claim, assessee submitted that the expenses were incurred on rural development activities, such as construction of roads in nearby villages and schools, water supply, women empowerment program, self help training, food expenses, help in mass marriage, medical camp, eye camp, tree plantation, ration distribution during flood, family planning camp, *sulabh* toilets at villages etc. It was submitted by the assessee, since the expenditure incurred is purely for the purpose of business of the assessee it was allowable. The AO, however, did not agree with the claim of the assessee and held that such expenses are not for the purpose of business. Accordingly, he disallowed.

68. Before us, it is a common point between the parties that the issue is squarely covered by the earlier decisions of the Tribunal and Hon'ble Jurisdictional High Court in assessee's own case.

69. Having considered rival submissions, we find, this is a recurring issue between the parties from AY 1998-99 onwards. We have further observed that the Tribunal has taken a consistent view and decided the issue in favour of the assessee up to AY 2005-06 (Supra).

70. Respectfully following the consistent view of the Coordinate Benches, we uphold the decision of learned First Appellate Authority. This Ground is dismissed.

71. In Ground No.4, the Department has challenged deletion of disallowance of cost of production of advertisement films.

72. Briefly facts are, in course of assessment proceeding, the AO noticed that the assessee had debited Rs.45,26,190/- towards cost of production of advertisement films.

73. Being of the view that such expense is of capital nature, the AO disallowed it. While deciding the issue, learned First Appellate Authority followed the decision taken in earlier assessment year and allowed assessee's claim.

74. Before us, it is a common point between the parties that the issue has been consistently decided in favour of the assessee in past assessment years.

75. Having perused the material on record, we find that the issue first time came up for consideration before the Tribunal in assessee's own case in AY 1976-77. While deciding the issue, the Tribunal allowed assessee's claim. Subsequently, the Tribunal

reiterated the same view in AYs 1976-77 in AYs 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06. Learned counsel further brought to our notice that up to AY 2002-03, the Department has accepted the decision of the Tribunal.

76. Be that as it may, respectfully following the consistent view of the Tribunal in assessee's own case, we uphold the decision. Ground is dismissed.

77. In Ground No.5, the Department has raised the issue of taxability of sales tax subsidy as revenue.

78. Briefly the facts are, in course of assessment proceeding, the AO noticed that in the year under consideration, the assessee had received an amount of Rs.83,76,01,203/- towards sales tax subsidy under sales tax exemption scheme and industrial policy resolution. Whereas, the assessee has not offered such receipt to tax by treating it as capital in nature. The AO, while rejecting the assessee's claim, held that the receipt from account of sales tax subsidy are of revenue nature. While doing so, he followed the view taken by him in earlier assessment years. The assessee contested the addition before learned First Appellate Authority. Following the decision taken in past assessment years in appellate proceeding, learned First Appellate Authority deleted the addition.

79. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decisions of the Tribunal in assessee's own case in past assessment years. On perusal of material on record, we find that this is a recurring issue between the parties since the AY 1996-97 up to AY 2005-06. In each of these assessment years, the Tribunal has taken a consistent view that the receipts on

account of sales tax subsidy are in the nature of capital receipt, hence, not liable to tax. Respectfully following the consistent view of the Tribunal, we uphold the decision of learned First Appellate Authority by dismissing this ground.

80. So far as Ground No.6 is concerned, learned counsel for the assessee at the outset submitted that the ground is wrongly taken as the CIT(A) in reality was disallowed assessee's claim.

81. Learned DR agreed with the aforesaid submission.

82. In view of the aforesaid, we hold that Ground No.6 this ground being infructuous has to be dismissed.

83. In the result, appeal of the Department is dismissed.

84. To sum up, assessee's appeal is partly allowed and Revenue's appeal is dismissed.

Order pronounced in the open court on 18 / 02/2025

Sd/-
(N.K. Billaiya)
Accountant Member

Sd/-
(Saktijit Dey)
Vice President

Mumbai; Dated : 18/02.2025

Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai