IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.7124/Mum/2004	**-**	**A.Y. 2000-01**
ITA No.2564/Mum/2005	**-**	**A.Y. 2001-02**
ITA No.4823/Mum/2006	**-**	**A.Y. 2002-03**

M/s Marico Industries Ltd Rang Sharda, K.C. Marg, Bandra (W), Mumbai-400 050 **PAN: AAACM7493G**	**vs**	**Deputy Commissioner of Income-tax, Central Circle-35,Mumbai** Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020
APPELLANT		**RESPONDENT**

I.T.A No.7397/Mum/2004	**-**	**A.Y. 2000-01**
I.T.A No.1678/Mum/2005	**-**	**A.Y. 2001-02**
I.T.A No.4680/Mum/2006	**-**	**A.Y. 2002-03**

Deputy Commissioner of Income-tax, Central Circle-35, Mumbai Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020	**vs**	**M/s Marico Industries Ltd** Rang Sharda, K.C. Marg, Bandra (W), Mumbai-400 050 **PAN: AAACM7493G**
APPELLANT		**RESPONDENT**

Assessee by : Shri Nitesh Joshi & Shri Milin BakhaiRespondent by : Ms. Monica H Pande,SR AR

Date of hearing : 17/02/2025
Date of pronouncement : 07/03/2025

O R D E R

PerBench:

Instant appeals by the assessee and the cross appeals by the revenue were filed against the order of the Learned Commissioner of Income-tax (Appeals), Central-VI, Mumbai, order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 29-07-2004 for A.Y. 2000-01; date of order 16-12-2004 for A.Y. 2001-02; and date of order 01-05-2006 for A.Y. 2002-03. The impugned orders are emanated from the order of the Learned Deputy Commissioner of Income-tax, Central Circle-35, Mumbai order passed under section 143(3), date of order 31/03/2003 for AY.2000-01 /Ld. Assistant Commissioner of Income-tax, Central Circle 35, Mumbai, order passed under section 143(3), date of order 25/03/2004 for AY 2001-02 & date of order 11/03/2005 for AY 2002-03.

2. At the outset, all the appeals havesame nature of facts and have common issue, so **ITA No.7124/Mum/2004** for A.Y. 2000-01 (Assessee's appeal) and **ITA No.7397/Mum/2004** (Revenue's appeal) are taken as lead case.

2.1 The following are the grounds raised by the assessee and the revenue: -

ITA No.7124/Mum/2004 (Assessee's Appeal)

> *"1. Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer that while working out the profits of the Goa and Kanjikode undertaking for claiming a deduction u/s 801B corporate office expenses and depreciation on assets installed at corporate office ought to be allocated.*

Without prejudice to the above, Learned Commissioner of Income Tax (Appeals) has erred in not accepting the alternative contention of the Appellant that the corporate office expenses and depreciation on assets installed at the corporate office, if allocable, ought to be allocated on an incremental basis. The learned Commissioner of Income Tax (Appeals) ought to have allocated the corporate office expenses and depreciation on assets installed at the corporate office on the basis of the ratio laid down by the Income tax Appellate Tribunal in the case of Food Specialties Ltd (54 ITD 352).

2. Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in:

a. allocating finance cost to Goa unit at Rs.18,16,455 and Kanjikode unit at Rs.13,41,059 inspite of the fact that no borrowed funds utilised in these units as they were admittedly cash surplus.

b. further allocating Miscellaneous expenses of Rs.95,17,404 to the Goa undertaking and Rs.67,51,405 to Kanjikode undertaking in addition to Rs.1,43,29,847/- and Rs.1,08,54,635/- allocated by the assessee.

c. allocating research and development expenses to Goa unit at Rs. 89,34,626 and to Kanjikode unit at Rs. 65,66,803.

The learned Commissioner of Income-tax (Appeals) ought to have held that if at all any part of these expenses have to be allocated, it could not exceed.

Nature of expenses	***Allocation to Goa Unit (Rs.)***	***Allocation toKanjikode unit(Rs.)***
Finance Cost	*15,94,645*	*12,82,909*
Miscellaneous expenses	*1,43,29,847*	*1,08,54,635*
Research	*78,43,600*	*63,10,264*

&Development expenses		

3. The Learned Commissioner of Income Tax (Appeals) has erred in holding that 90% of gross interest received of Rs.2,25,19,000/- be reduced while working out "Profits of the Business" for the purpose of granting deduction u/s 80HHC and in doing so erred in holding that the appellant had failed to prove the nexus between the interest expenditure incurred and the interest income earned.

4. The Learned Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs.3,73,03,344/-, being provision for Advertisement and Sales promotion expenses while computing book profit u/s 115JA of the Income-tax Act by holding that the appellant had failed to prove the existence of any liability. Provision for Advertisement and Sales promotion expenses not being an unascertained liability as per clause (c) to the Explanation to section 115JA(2), the same ought not to be added while computing book profit u/s 115JA of the Act.

5. The appellant craves leave to add, alter, amend and / or rescind any grounds of appeal during the course of the hearing."

Additional ground vide letter dated 01/05/2024

"The appellant is desirous of taking the following grounds of appeal of as additional ground of appeal:

1. *The Learned AO erred in reducing Rs. 77,63,717 while computing section 80HHC of the Income Tax Act, 1961 ("the Act")in view of the provisions of 80IA(9) of the Act.On the facts and circumstances of the case and in les, the said reduction, not being in accordance with the provisions of section 80IA(9), should not be made while computing deduction under section 801 HC of the Act.*

2. "Leaned AO has erred in not allowing deduction of Advertisement & Sales Promotion expenses of Rs. 3,73,03,344/-considering it mere provision.

On the facts and circumstances of the case and in law, the deduction of said expenses ought to have been allowed while computing the total income."

Additional ground vide letter dated 25/05/2007

"Without prejudice to the contention of the appellant that the assessee is entitled to the depreciation in AY 1995-96 and AY 1996-97 on the shunt capacitor (the equipment) leased to RSEB, in the event it has held that the assessee is not entitled to depreciation on the equipment by reason of it being held that it is not the owner of the property or otherwise, then it ought to be held that the part of the lease rent of Rs. 64,46,400/- received during the year which represents recovery of the capital sum expended by the appellant ought not to be taxed. "

ITA No. 7397/Mum/2004 (Revenue's Appeal;)

1. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.5,85,298/ being 10% of expenses for recreation, picnic, sports and other misc, expenses, inspite of the fact as stated in the assessment order that the assessee has not furnished any evidence for its claim".

2. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.5,92,578/- being 1/5th of misc expenses in spite of the fact as stated in the assessment order that the assessee has not furnished any evidence for its claim".

3. "Whether in the facts and in the circumstances of the case and law, the CIT(A) erred in deleting the addition of Rs.72,07,913/- out of shortage and leakage expenses inspite of the fact as stated in the assessment order by the A.O. as well as in the appellate order passed by the CIT(A) that no supporting material has been produced before them in respect of its claim.

4. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in allowing the allocations made by the assessee on the basis of the

packing material actually used and expenses actually incurred thereon though, as clearly stated in the assessment order, the quantity manufactured in both the units are somewhat same but the difference in expenses claimed for packing material used in both the units are huge; the assessee has not furnished quantity wise details of packing done and that the transfer of packing material from one undertaking to another proves, beyond doubt, that the packing materials used in both the units are same disqualifying the arguments of the assessee that different materials are used".

5. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the sales tax, general sales tax and marketing Cess does not constitute part of the total turnover inspite of the fact that the rejection of the SLP of the Department against the Bombay High Court's decision was not on merit and that the issue did not really receive the consideration of the Supreme Court".

6. "The appellant craves leave to add, to amend and/or to alter any of the grounds of appeal, if need be."

3. The brief facts of the case are that the assessee is a manufacturer and distributor of various consumer products being sold in market in the brand name of Parachute,Revive, Marco's Hair & Care, Saffola, Sweekar and Sil and having its manufacturing units at Kanjikode and Goa. The head office and corporate office of the company is at Rang Sharda, KC Marg, Bandra Reclamation, Bandra (W), Mumbai-400 051. The manufacturing unit of Kanjikode was set up in 1983, which is eligible for deduction under section 80IB @30% and Goa unit was set up in 1997-98 which is eligible for deduction under section 80IB @100% of its profit. During the impugned assessment year, the assessment was completed with additions under the different heads, and which is adjusted with the profit in

respect of Goa and Kanjikode under section 80IB and 80HHC of the Act for the purpose of computation of income under section 115JA of the Act. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) partly allowed the appeal of the assessee. Being aggrieved on the appeal order, both the assessee and revenue filed appeal before us.

ITA No.7124/Mum/2004

4. **Ground No.1: Allocation of Corporate overheads and headoffice depreciation to Goa and Kanjikode**.

4.1 The corporate expenses and depreciation relating to the assets installed at the corporate office was not directly related to the operations of eligible units. As per provisions of section 80IA, the income has to be derived from eligible unit, which means that the income has to be derived from eligible unit and expenses incurred by specified eligible units and no other outside cost has to be included unless there is a direct nexus. The issue is squarely covered by the order of the co-ordinate bench of ITAT, Mumbai Bench in **ITA No.2800/Mum/2003** in assese's own case, date of pronouncement **03/04/2024**. The relevant paragraph 27 is reproduced as below:-

> *"27. With regard to corporate expenses and depreciation relating to the assets installed at the corporate office, as discussed earlier these costs are not directly relating to the operation of eligible units. As per the provisions of section 80IA, income has to be derived from the eligible unit, that means the income has to be determined on the basis of revenue generated by the eligible unit and expenses incurred in the specific eligible unit and no other outside cost to be included unless there is direct nexus to it. In the given case, the assessee has already submitted stand alone revised profit and loss account to demonstrate that the*

eligible unit has already absorbed all the relevant expenses like manufacturing, marketing and relevant finance cost. The AO tries to allocate the general corporate expenses which has no direct nexus to the operation of the eligible units. Therefore, we direct the Assessing Officer delete the allocation of corporate office expenses and depreciation. Accordingly, the ground raised by the assessee is allowed."

4.2 The Ld.AR submitted that the impugned issue was also re-affirmed by the order in assessee's own case in **ITA No.1621/Mum/2004** A.Y. 1999-2000, date of pronouncement **05/09/2024** by the co-ordinate bench of ITAT, Mumbai Bench- "B".

4.3 The Ld.DR filed written submission and argued. The relevant paragraph of the written submission is as below: -

"Revenue's Submission: The Revenue emphasizes that the corporate office provides critical support, supervision, and management services to all manufacturing units. The allocation of Rs. 15,94,645 to Goa and Rs. 12,82,909 to Kanjikode as corporate office expenses, along with proportionate depreciation on corporate assets, was based on the turnover ratio of each unit. The Revenue argues that the corporate office handles key functions such as financial management, HR, procurement, and overall strategic planning, without which these units cannot function independently. Ignoring these expenses would inflate the profits of these units, leading to excessive deductions under section 80IB. The CIT(A) upheld the allocation as essential for fair profit computation, and the Revenue submits that this approach is consistent with established accounting standards and judicial precedents."

5. We heard the rival submission and considered the documents available in the record and we find that in allocation, the depreciation and the corporate office expenses to Goa and Kanjikode units was unjustified as these units are

operated independently. We find that the Act very specifically states that there should be a nexus in between the expenses and the operations. We respectfully follow the order of the co-ordinate bench of ITAT, Mumbai Bench.

Accordingly, **ground no.1** of the assessee's appeal is allowed.

Ground 2(a): Allocation of Finance cost in Goa- Rs.18,16,455/-and KanjikodeUnit – Rs.13,41,059/-

6. The Ld.AR stated that there are no borrowed funds utilized in these units as they are admittedly cash surplus units. It is submitted that the network of the dealer existed even before the setting up of Goa and Kanjikode units and accordingly, interest paid on deposits received from them cannot be held to be directly related to these units. In regard to commission on bank guarantee, it is submitted that bank guarantee was towards statutory dues and accordingly it had no direct nexus with these units. Related to bill discounting, it is opened to meet the working capital requirement which funds have been utilized by other undertaking as Goa and Kanjikode units were cash surplus. The Goa and Kanjikode units were having sufficient cash surplus which can take care of their working capital requirements. Hence, it cannot be held that the above sources of financing were utilised by these units.

7. The Ld.DR argued that the finance cost amounting to Rs.18,16,455/- for Goa and Rs.13,41,059/- for Kanjikode was correctly allocated. The highlights with the company's financial activities including dealer deposit bank guarantee and bill discounting charges benefits all units equally. So, both the units, despite being

cash surplus benefited from company's overall structure. The Ld. DR ensures that these costs are equitably distributed preventing in undue advantage to specific units. The Ld.CIT(A) supported the same view. So, the same financial cost is taken as an collective burden that all units must share.

8. We heard the rival submissions and considered the documents available in the record. We find that the issue was duly considered by the co-ordinate bench of ITAT, Mumbai in assessee's own case in **ITA No.2800/Mum/2003** and the relevant para 32 is reproduced as below: -

> *"32. Considered the rival submissions and material placed on record, we observe that, Assessing Officer observed that assessee has shortage of working capital in the month of October, November and December and charged interest @18% to allocate the finance cost towards the working capital requirement of the Goa unit and to that extent he made adjustment while giving deduction under section 80IA of the Act. After careful consideration, we observe that the Goa unit has shown working capital deficit in the above said months. However, Assessing Officer has not discussed the working surplus declared by the Goa unit between January 1998 to March 1998. The Assessing Officer cannot cherry pick the working capital requirements only to working capital deficit overlooking the surplus. In our considered view the method adopted by the Assessing Officer is not proper. He has to see the overall working capital requirement for the period and in case at the end of the period if there is any deficit in working capital requirement, he may proceed to disallow the same. He has to analyze the whole period under consideration. In the given case it is not so. He has only focused on deficit of working capital overlooking the surplus of working capital during the subsequent period. Therefore, we do not see any reason to follow the method adopted by the Assessing Officer. Accordingly, in our considered view the assessee also demonstrated that it has sufficient non-interest borrowing funds at its own disposal. Therefore, there is no necessity for the Assessing Officer to allocate*

working capital finance cost to the Goa unit. Accordingly, Ground No. 3 raised by the assessee is allowed."

Accordingly, we find that there is a surplus of working capital which was duly admitted by the revenue. We find that the method adopted by the Ld.AO is unjustified by ignoring the correct fact. The allocation was made by the Ld. AO on proportionate turnover. We respectfully follow the order of the co-ordinate bench of ITAT, Mumbai which was also duly affirmed by the co-ordinate bench of ITAT, Mumbai Bench "B" in ITA No.1521/Mum/2024 for A.Y. 1999-2000.

Accordingly, **ground no. 2(a)** of the assessee's appeal is allowed.

Ground 2(b): Allocation of Miscellaneous expenses of Goa and Kanjikodeundertaking.

9. The assessee allocated the expenses on directly identifiable basis and in case of common expenses allocation was made on suitable ratio. The allocation of expenses is duly submitted in APB page 135. The relevant chart is reproduced below:-

"(Amount in Rs.lacs)

Particulars	Cost Centers										
	Corporate	Sales	Parachute Common	Naturecare Common	Kanjikode	Goa	Copra Buying	Export Division	Healthcare Division	Other Products	Total
Labour Charges	-	9.19	0.54	0.05	1.32	10.32	-	2.51	23.91	17.37	65.22
Hire Charges	-	0.09	-	0.36	0.02	-	-	0.06	0.67	1.52	2.72
Training & Seminar Expenses	59.94	57.77	0.73	10.41	3.66	1.88	0.20	0.36	12.66	1.42	149.04
Outside Services	44.33	5.64	0.02	0.07	8.25	6.07	0.04	0.16	12.42	9.21	86.21
Product Development Expenses	-	-	-	11.58	-	0.06	-	0.19	4.69	0.06	16.58
Agri. Development	-	-	0.11	-	0.83	-	-	-	4.15	0.00	5.09

Expenses											
Other Selling Expenses	-	-	50.05	-	-	-	-	-	-	7.33	57.37
Legal & Professional Charges	136.63	5.75	4.54	10.69	8.22	4.79	0.82	9.95	6.58	7.13	195.11
Payment to Auditors	9.43	0.47	-	0.06	0.10	0.07	-	-	-	-	10.13
Other Misc.Expenses	94.20	41.29	43.44	5.88	1.48	2.16	0.36	2.89	222.32	130.10	544.12
Total	**344.55**	**120.21**	**99.43**	**39.10**	**23.88**	**25.36**	**1.42**	**16.11**	**287.41**	**174.14**	**1,131.59**

Principal of allocation of Expenses:

(a) Expenses pertaining to sales is allocated toGoa and Knjikode in the ratio of domestic PCNO sales of undertaking to PCNO domestic sales.

(b) Expenses pertaining to parachute common is allocated to Goa and Kanjikode in the ratio of domestic PCNO sales of undertaking to PCNO domestic sales.

(c) Expenses pertaining to Nature Care common is allocated to Goa and Kanjikode in the ratio of domestic PCNO sales of undertaking to total Nature Care Sales.

(d) Expenses pertaining to Calicut is allocated to Goa and Kanjikode in the ratio of copra purchased by each undertaking to the total copra purchases."

10. On similar basis, the allocation was upheld by CIT(A) in A.Y. 1999-2000 and the department has not contested the matter before the Tribunal, though they have filed appeal on other issues. The assessee filed a breakup before he Ld.AO, which is enclosed in APB-I, pages 15-17.

11. The Ld. DR has relied on the order of the Ld.AO and the relevant paragraph of the assessment order, para 6.5 on page 9, is reproduced as below: -

*"6.5. **Miscellaneous Expense***

Assessee has claimed miscellaneous expenses amounting to Rs. 11,31,59,003/-during this year. This was allocated by the assessee towards corporate office expense at Rs.3,44,55,204/-, Goa undertaking Rs. 1,43,29,847/- and Kanjikode undertaking Rs. 1,08,54,635/-. The assessee claims that the

miscellaneous expenses related to Goa and Kanjikode are separately recorded and are allocated to them. However, no supporting details are filed as to how the miscellaneous expense related to other units is higher than that of Goa and Kanjikode Undertakings. Hence, the miscellaneous expenses are allocated in proportion to the turnover of these two undertakings as under.

Total Miscellaneous Expenses	*11,31,59,003*
Less: Allocated to Corporate Office	*3,44,55,204*
Balance	*7,87,03,799*
Allocation in proportion to the turnover	
Goa Unit @30.30%	*2,38,47,251/-*
Kanjikode Unit @22.37%	*1,76,06,040/-*

The difference of Rs. 95,17,404/- (23847251-14329847) in respect of Goa Undertaking and Rs. 67,51,405/- (17606040-10854635) in respect of Kanjikode undertaking are further added to the expenses of the undertakings. "

The Ld.DR submitted a written submission dated 07/02/2025 and mentioned that the allocation of miscellaneous expenses that Ld.AO already allocated Rs.95,17,404/- for Goa and Rs.67,51,405/- for Kanjikode was justified due to lack of details break down provided by the assessee. The miscellaneous expenses have a wide range of operational cost including administrative overheads and employee welfare and maintenance expenses, all of which benefits each unit. But without proper documentation, the assessee's allocation is duly rejected.

12. We heard the rival submission and considered the documents available in record. The matter was addressed by the Ld. CIT(A) for the Assessment Year 1999-2000 in favour of the assessee, and no challenge was raised by the revenue in this ground. Furthermore, the assessee's allocation was not rejected by the Ld. AO

during the assessment proceedings, and consequently, the Ld. AO cannot, suomotu, take cognizance of the said calculation.

In view of the foregoing, the issue is hereby remitted to the file of the Ld. AO for fresh determination. The matter is restored to the file of the Ld. AO, with directions that the assessee shall be afforded a reasonable opportunity of being heard and permitted to submit any documents deemed necessary by the Ld. AO in the set-aside proceedings. The assessee is further directed to cooperate fully with the set-aside assessment proceedings.

Accordingly, **ground no. 2(b)** of assessee's appeal is allowed for statistical purpose.

Ground no. 2(c): Allocation of R&D cost to Goa & Kanjikode units

13. The Ld.AR in argument placed that the assessee is carrying on business of fast-moving consumer goods (FMCG). The assessee manufacturers and markets products of various brand names like, Saffola,Sweekar, Marico's Hair & Care, Revive, etc. Only two unitsi.e. Goa and Kanjikode manufactured Parachute coconut oil. The R&D projected is related to this FMCG goods for innovating and new product managed. But the company was incorporated in 1989 and turnover consumer product business division of Bombay Oil Industries which was carrying on the business since 1949 with brands, Parachute and Saffola. So, for both these undertakings, no such R&D was paid. We respectfully relied on the decision of ITAT, Mumbai Bench in assessee's own case in **ITA No.1621/Mum/2004**, date of

pronouncement **05/09/2024**. The relevant paragraph 5.4 is duly reproduced as below: -

> *"5.4) After hearing both sides, it was decided to follow decision of Hon'ble ITAT in appellant's own case for A.Y. 1995-96 in principle, but the Ld. AO is directed to see whether in these two units, only parachute oil is manufactured and if the R&D expenditure claimed by the appellant does not relate to Parachute oil manufacturing then appellant would succeed in his argument. After verifying the factual position, Ld. AO is directed to take decision accordingly."*

14. The Ld.DR vehemently argued and submitted the written submission dated 17/02/2025. The relevant paragraph is reproduced as under: -

"1.2.4 Ground 4: Allocation of Research and Development Expenses

Assessee's Claim: The assessee argued that R&D expenses pertained to new products, not the existing products of the Goa and Kanjikode units.

Revenue's Submission: The Revenue asserts that R&D activities enhance the company's overall product portfolio, including products manufactured at Goa and Kanjikode. The allocation of Rs. 89,34,626 to Goa and Rs. 65,66,803 to Kanjikode ensures that all units contribute to innovation costs. The AO's allocation method, based on turnover, aligns with sound accounting principles and ensures that no unit benefits disproportionately from the company's R&D efforts. The CIT(A) rightly confirmed this allocation, recognizing the interdependence of R&D and manufacturing operations."

15. We find that the issue is squarely covered by the decision of the co-ordinate bench of ITAT in assessee's own case in **ITA No.1621/Mum/2004**, date of pronouncement 05/09/2024. We follow the said precedence.

Accordingly **ground no. 2(c)** of theassessee's appeal is allowed.

Ground no. 3: Reduction of 90% interest while computing 80HHC.

16. A computation is annexed in Form 10CCAC showing computation of deduction under section 80HHC of the Act and assessee submitted the said calculation of finance charges as annexed in Schedule P in PB page 179. The schedule is reproduced as below:-

"SCHEDULE 'P'
FINANCE CHARGES

		Year ended March 31, 2000 Rs.million		*Year ended March 31, 1999 Rs.million*
Interest on fixed loans		*1.050*		*7.407*
Other interest	*25.180*		*19.984*	
Bank charges and others	*28.535*		*31.292*	
		54.765		*58.593*
Less: Interest earned	*22.519*		*21.525*	
(Tax deducted at source Rs.4.643 million (Rs.4.815 million)		*32.246*		*37.068*
		=======		*========="*

17. The assessee paid the interest or Rs.54.76 million whereas the interest earned is Rs.22.51 million and the said amount of Rs.22.519 million is also covered under Explanation (baa) of section 80HHC (4) of the Act. The Ld. AO noted that the assesseehas reduced 90% of lease income, export incentive and agency commission. But the assessee has not reduced 90% of IT interest and 90% of other interest receipts of Rs. 2,25,19,000/- which also comes under Explanation

(baa) to Section 80HHC(4) of the Act. So, 90% of interest received are also considered for arriving at business profit for the purpose of deduction under section 80HHC. Accordingly, the recalculation was made by reducing the interestearned amount to Rs.2,02,67,100/-.

The Ld. AR invited our attention in "Schedule-P", as stated above and the total interest is netting off after adjusting interest paid & received. So, the 90% reduction is not applicable for calculation of 80HHC. He stated that the issue is squarely covered by the order of Hon'ble Supreme Court in **ACG Associated Capsules (P.) Ltd. v. CIT, Central-IV, Mumbai (2012) 343 ITR 89 (SC),** held as follows:

"8. Before we deal with the contentions of learned counsel for the parties, we may extract Explanation (baa) to Section 80HHC of the Act.

"Explanation:- For the purposes of this section,-

(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by-

(1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India".

9. Explanation (baa) extracted above states that "profits of the business" means the profits of the business as computed under the head "Profits and Gains of Business or Profession" as reduced by the receipts of the nature mentioned in clauses (1) and (2) of the Explanation (baa). Thus, profits of the business of an assessee will have to be first computed under the head "Profits and Gains of Business or Profession" in accordance with provisions of Section 28 to 44D of the Act. In the computation of such profits of business, all receipts of income which are chargeable as profits and gains of business under Section 28 of the Act will have to be included. Similarly, in computation of such profits of business, different expenses which are allowable under Sections 30 to 44D have to be allowed as expenses. After including such receipts of

income and after deducting such expenses, the total of the net receipts are profits of the business of the assessee computed under the head "Profits and Gains of Business or Profession" from which deductions are to made under clauses (1) and (2) of Explanation (baa).

10. Under Clause (1) of Explanation (baa), ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in any such profits are to be deducted from the profits of the business as computed under the head "Profits and Gains of Business or Profession". The expression "included any such profits" in clause (1) of the Explanation (baa) would mean only such receipts by way of brokerage, commission, interest, rent, charges or any other receipt which are included in the profits of the business as computed under the head "Profits and Gains of Business or Profession". Therefore, if any quantum of the receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is allowed as expenses under Sections 30 to 44D of the Act and is not included in the profits of business as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of receipts cannot be reduced under Clause (1) of Explanation (baa) from the profits of the business. In other words, only ninety per cent of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining "profits of the business" of the assessee under Explanation (baa) to Section 80HHC."

18. We heard the rival submissions and considered the documents available in the record. The Ld.AR agitated the issued related to reduction of 90% interest while computing deduction under section 80HHC by the Ld.AO during the assessment proceedings. The assessee paid interest of 54.765 million whereas the assessee received interest from Income-tax amounting to Rs.4.463 million and the rest is other than income-tax interest. So the total interest earned is Rs.22.519 million. Related to the said interest, the assessee took the plea that the interest was adjusted with the interest paid, so interest credited and debited are duly adjusted and finally, the amount comes to Rs.32.346 million. In any case, the interest earned is not the part of receipt as provided in clauses (i) & (ii) of Explanation

(baa) to section 80HHC(4) and respectfully relied on the judgement of the Hon'ble Supreme Court in the case of **ACG Associate Capsules (P) Ltd** (supra). The Hon'ble Apex Court observed that considering the income on the part of the interest, if any, quantum of receipt by way brokerage, commission, interest, rate, charges of any other receipts of a similar nature is allowed as expenses under section 30 to 44D of the Act, is not included in the Profits of business as computed under the head "Profit and gains of business or profession", 90% of such quantum of receipts cannot be reduced as per clause (i) of Explanation (baa) of section 80HHC of the Act, from profits of the business. So we find that the said amount is adjusted with the interest debited by the assessee. So, it is not a part of the income at all. We follow the order of the Hon'ble Apex Court and so deduction of 90% of interest of Rs.22.519 million which works out to Rs.2,02,67,100/- is adjusted arbitrarily and is unjustified. So, the ground of the assessee is allowed. Accordingly, **ground no-3** of the assessee's appeal is allowed.

19.**Additional Ground-1, filed on dated 01/05/2024- regarding reduction from export profits eligible for deduction U/s 80HHC, in view of the provisions of Sec 80IA(9).**

Assessee claims deduction for profits of Goa unit, which is engaged in domestic as well as export sales. It is also eligible for deduction U/s 80HHC of the Act. It is also, eligible for deduction U/s 80HHC. It is submitted that while computing deduction U/s 80HHC, no reduction for profits of Goa unit ought to made U/s 80IA(9) of the Act. The assessee filed the additional ground before the bench. The issue covered

by assessee's own case for AY 1999-2000 in ITA No. 1521/Mum/2004date of pronouncement 05/09/2024. We remand the matter to the file of the Ld. AO and directed to verify the fact & figure in light of the order of coordinate bench ITAT-Mumbai in ITA No. 1521/Mum/2024.

Accordingly, the **Additional ground no-1** is allowed for statistical purpose.

20. **Additional ground-2** filed on dated 01/05/2024 is not pressed. So, it stands as withdrawn.

Accordingly, the **Additional ground-2** is dismissed as withdrawn.

Ground 4 : Addition for provision of Advertisement and Sales promotion while computing book profit under section 115JA of the Act.

21. The Ld.AR stated that as is aware, the company is engaged in the business of Fast-Moving Consumer Goods. The key characteristic of this industry is that Advertisement and Sales Promotion expenses are integral part of its business and compulsory for its survival. FMCG companies are incurring expenses on Advertisement and Sales Promotion expenses (ASP) on various advertisements and sales promotions schemes through advertisement agencies.As per common business practices of advertising industry, detailed television estimate with schedules is prepared for the period of three months. These estimates include details of various channels, programmes, etc. Subsequently after the telecast, the media agencies are submitting advertisement bill to the Company for various spots aired. All the spots which are provided in the original estimate may not be aired on account ofnon-availability of time slot on a particular program. Hence

there is always bound to be an inherent difference between the media estimates and invoices.Since there is time gap between the approval of the media estimates and final advertisement invoices, the assesseewas making provision at the year-endon the basis of media / advertisement estimates available with it as approved by the concerned brand / marketing manager. The media estimates for the month of February and March are received & approved by the assessee in last week of January whereas the final advertisement invoices/bills are received by the assessee in the month of May only. The assessee's distribution system comprises 28 depots and 4 regional offices catering to around 12,000 distributors all over India. As submitted earlier each geographical segment is different from others in terms of its consumer behavior. The assessee has to resort to different sales promotion scheme for different market segments.

22. The Ld.AR further submitted that considering the above market dynamics, the concerned sales / marketing managers are issuing various sales promotion schemes to different sales territories for the development of market shares as well as sales promotion. These sanction letters are sent to the Territory Sales Executives (TSE) or Territory Sales In-charge (TSI), who are operating this scheme in the different segment of the Market. The status reports on the actual utilisation of each of the sanction letter is prepared by each TSE or TSI based on claims received from the distributors or retailers. The retailers or distributors claims are based on the actual amount spent by them on running a particular scheme to the end consumers. This process of receipt of claims from distributors and retailers

take time period of 75 to 90 days. Actual utilisation report for the sanction letter issued in the month of February & March is received only in the month of May.

23. Further the Ld.AR submitted, as a measure of good corporate governance, the assessee is finalizing the annual accounts by mid of April and audited accounts are being approved in the meeting of Board of Directors of the company in the third week of April. The audited annual accounts of the company for the year ended 31 March 2000 were approved at the meeting of Board of Directors of the company, on 26th April 2000. The Ld.AR also submitted that there is a difference between accounting estimates and contingent liabilities (i.e. unascertained liabilities). The contingent liability does not create any obligation to any amount whereas the accounting estimates presuppose that liability is certain but the quantum will vary. The word liability has bigger meaning as compared to accounting estimates. All the accounting estimates put together make the liability.

24. It was also submitted that the company has provided for advertisement and sales promotion expenses on the principle of accounting estimates based on obligation. Since there is time gap between the approval of the media estimates and final advertisement invoices, the assessee-company is making provision at the year-endon the basis of media / advertisement estimates available with it as approved by the concerned brand / marketing manager. The media estimates for the month of February and March are received & approved by the assessee-company in last week of January whereas the final advertisement invoices/bills

are received by the Company in the month of May only.The Company's distribution system comprises 28 Depots and 4 regional offices catering to around 12,000 distributors all over India. As submitted earlier each geographical segment is different from others in terms of its consumer behavior. The Companyhas to resort to different sales promotion scheme for different market segments.

25. It was therefore, submitted that considering the above market dynamics, the concerned sales / marketing managers are issuing various sales promotion schemes to different sales territories for the development of market shares as well as sales promotion. These sanctions letter is sent to the Territory Sales Executives (TSE) or Territory Sales In-charge (TSI), who are operating this scheme in the different segment of the Market. The status reports on the actual utilisation of each of the sanction letter is prepared by each TSE or TSI based on claims received from the distributors or retailers. The retailers or distributors claims are based on the actual amount spent by them on running a particular scheme to the end consumers. This process of receipt of claims from distributors and retailers also take time period of 75 to 90 days. Actual utilisation report for the sanction letter issued in the month of February & March is received only in the month of May.

26. The Ld.AR also submitted that as a measure of good corporate governance, the Company is finalizing the annual accounts by mid of April and audited accounts are being approved in the meeting of Board of Directors of the Company in the third week of April. The audited annual accounts of the Company for the

year ended 31 March 2000 were approved at the meeting of Board of Directors of the Company on 26th April 2000.

27. The Ld.AR continued, the company has provided for advertisement and sales promotion expenses on the principle of accounting estimates based on obligationtaken by the company. The company has undertaken an obligation from advertising agencies by approving the estimates. Once the estimates are approved, the company is legally bound to pay the amount in receipts of the invoices. The liability of the company is ascertained, and it cannot be said to be contingent since the obligation is already undertaken.

28. The scenario of contingent liability will arise only where the advertising agent incurs the expenses without any prior approval of the company. In that case, company is not legally bound to pay any amount to such agencies. The provisions for ASP expenses are made in the books of accounts based on the companies' obligations and the amounts are estimated based on best of information available at the time of closure of financial statements. Since the amounts of ascertained liabilities are estimated based on information available at the time of preparation of final accounts, the variation between the actual amount and estimate cannot make the liability as unascertained.Hence, the above provisions for ASP expenses in the financial accounts are for the ascertained liability for which the company has taken the obligation by approving the estimates received from advertising agencies and promotion schemes sanction to the sales field mangers. Hence, the amount is unutilized provisions as

on 31st March 2000 cannot by any stretch of imagination considered as unascertained liability.

29. The Ld.AR thus concluded that it will be appreciated that provision of Section 115JA start with a non obstante clause and provides that book profit is to be worked out as per the provisions of part II & III of Schedule Sixth to the Companies Act, 1956. This section derives interfaces on various provisions of CompaniesAct, the determination of a particular liability, whether the same is a ascertained liability or a contingent is to be determined based on Information available as on date on which financial statements are prepared under the provision of Companies Act 1956. In the case of assessee, the financial statements are prepared as on 31 March 2000, hence the date of determination of particular liability being ascertained liability or not will be only on 31 March 2000 and not on any other date.The company has offered the unutilized amount of accounting estimates for ASP out of abundant caution considering the provisions of the Income Tax Act, 1961. The Companies offer of said amount for taxation in computation of total income does not have bearing on working of book profit under the provision of section 115JA since this section has an non obstante clause and the liabilities for which amounts are provided are ascertained.

30. The Ld.AR submitted that based on above, it will be appreciated that the amount of Rs. 3,73,03,344 being unutilized amount for ASP expenses as of 31st March 2000 are not an unascertained liability. The liability for ASP was ascertained liability and the amount varies based on actual claims received.

Considering the above, no adjustment is required to be made in book profit as worked out by the Company under section 115JA of the Act."

31. The Ld.DRargued, submitted a written submission and relevant part is reproduced as below:- as below:-

"4.1.3 Ground 3: Reallocation of Advertisement and Sales Promotion Expenses

Assessee's Claim: The assessee opposed the AO's reallocation of Rs. 15,78,620/-towards advertisement and sales promotion expenses.

Revenue's Submission: The Revenue submits that advertisement expenses benefit all manufacturing units equally. The AO's reallocation based on turnover ensures each unit bears its fair share, preventing artificially inflated profits for tax-exempt units. The Revenue argues that the CIT(A)'s rejection overlooks the AO's fair approach, which is consistent with past assessments and judicial principles."

32. We considered the submission of both the parties and perused the documents available in record. In light of the above submissions, it is evident that the provision made by the assessee for Advertisement and Sales Promotion (ASP) expenses is based on accounting estimates, which are necessary due to the inherent time gap between the approval of media estimates and the receipt of final invoices. The liability incurred is an ascertained liability and not contingent in nature, as it arises from legally binding obligations undertaken by the company through approval of estimates and sanctioning of sales promotion schemes. Furthermore, the computation of book profits under Section 115JA of the Act must align with the provisions of the Companies Act, 1956, which governs the determination of liabilities based on the financial position as on 31st March 2000.

The offer of unutilized ASP provisions for taxation was made out of abundant caution and does not affect the ascertained nature of the liability. Therefore, no adjustment is warranted to the book profit computation under Section 115JA, and the assessee's claim regarding the non-contingent nature of ASP expenses remains justified.

Accordingly, appeal of the assessee **ground no-4** is allowed.

33. **Additional ground dated 25/05/2007- related non-taxability of lease rental on purchase and lease back of shunt capacitor.**

This issue is duly dealt with by the order of the ITAT, Mumbai Bench in assessee's own case in ITA 1251/Mum/2003, date of order 30/08.2007 where in the Tribunal for adjudicating that assessment year 1995-96 has taken the lease transaction as finance lease and once it is accepted and the assessee had challenged this issue before the jurisdictional High Court. The assessee has taken an alternative ground and relied on the order of the Tribunal in assessee's own case in ITA No.1251/Mum/2003 where this lease rent is taken as finance lease, so the principal amount should be deducted from this lease rent. The assessee received the lease rent amount of Rs.68,62,308/-. The relevant para No.16 of the order of the Tribunal in ITA No.1251/Mum/2003 is reproduced below:-

"Learned DR of the revenue has raised an objection that this alternative claim of the assessee cannot be considered by the Tribunal and reliance was placed by him on the Judgement of Hon'ble Delhi High Court rendered in the case of CIT Vs. La Medica (supra). Learned Counsel of the assessce has relied upon the Judgement of Hon'ble Jurisdictional High Court rendered in the case of Ciba of India Ltd. (supra). He has also distinguished the facts in the present case with the

facts in the case of La Modica (supra). We find that in the case of La Medica (supra), the issue involved was regarding chain that the purchase were made from Kalpana Enterprises, to whom payments were allegedly have boon made and it was accepted by the Tribunal that supplies were not made by Kalpana Enterprises. After accepting this, the Tribunal proceeded to decide as to whether purchases were made from some other sources. In that case, the issue was regarding the claim of the assesseefor purchase which wasfound bogus. In the present case, the transaction is not found bogus, but it is held by the Tribunal in A.Y. 1995-96 that lease transaction isa finance lease.Once, it is accepted that it is a finance lease, consequently, directionshas to be given by the Tribunal as per the Judgement of Hon'ble High Court rendered in the case of Ciba of India Ltd.(supra). In the case of Ciba of India Ltd. (supra), it was held by Hon'ble Jurisdictional High Court that it is the duty of the Tribunal even without an alternative submission, to pass necessary consequential orders suo moto to give such further direction in the matter as the situation may warrant. In the present case, we have held that this lease transaction is a finance lease transaction; and hence the assessee is not entitled to depreciation. As a consequences of the same, it has to be held that the lease rental receipt by the assessee has to be bifurcated into interest component and principal component. We, therefore, direct the Assessing Officer that while disallowing the claim of the assessee regarding depreciation; he should also examine and bifurcate the lease rental receipt of the assessee from this party into interest component and principal component and only interest component should be added to the income of the assessee instead of entire lease rental receipt. The Assessing Officer should pass necessary order as per law after providing adequate opportunity of being heard to the assessee."

34. Accordingly, the issue is sent back to the file of the Ld.AO. the Assessing Officer is directed to pass the order in the light of the order of the ITAT, Mumbai

Bench. In the result, this additional ground is accepted and allowed for statistical purpose.

ITA No.7397/Mum/2004 (Revenue's Appeal)

35. In this appeal, the revenue has taken the following grounds:-

1. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.5,85,298/- being 10% of expenses for recreation, picnic, sports and other misc. expenses, inspite of the fact as stated in the assessment order that the assessee has not furnished any evidence for its claim".

2. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.5,92,578/-being 1/5th of misc. expenses in spite of the fact as stated in the assessment order that the assessee has not furnished any evidence for its claim".

3. "Whether in the facts and in the circumstances of the case and law, the CIT(A) erred in deleting the addition of Rs.72,07,913/- out of shortage and leakage expenses inspite of the fact as stated in the assessment order by the A.O. as well as in the appellate order passed by the CIT(A) that no supporting material has been produced before them in respect of its claim".

4. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in allowing the allocations made by the assessee on the basis of the packing material actually used and expenses actually incurred thereon though, as clearly stated in the assessment order, the quantity manufactured in both the units are somewhat same but the difference in expenses claimed for packing material used in both the units are huge; the assessee has not furnished quantity wise details of packing done and that the transfer of packing material from one undertaking to another proves, beyond doubt, that the packing materials used in both the units are same disqualifying the arguments of the assessee that different materials are used".

5. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the sales tax, general sales tax and marketing Cess does not constitute part of the total turnover inspite of the fact that the rejection of the SLP of the Department against the Bombay High Court's decision was not on merit and that the issue did not really receive the consideration of the Supreme Court".

6. "The appellant craves leave to add, to amend and/or to alter any of the grounds of appeal, if need be".

Ground no 1:

36. The disallowance of recreational expenses by the Ld.AO is related to non production of evidence and alleged that the assessee was unable to co-relate the expenses with the business activities. The Ld.DR argued and submitted the written submission vide paragraph No.1.1.1 has taken same view as the Ld.AO had taken note in the impugned assessment order. The observation of the Ld.CIT(A) is as under: -

"6. In ground of appeal No.3, the appellant states that the assessing officer erred in disallowing a sum of Rs. 5.05:29 being 1/10 of expenses of Rs. 58.32.982/Incurred on recreation, picnic, sports and other miscellaneous expenses included in staff welfare expenses. The assessing officer has discussed this sue in para 9.1 of the assessment order. The disallowance is made on the ground that the absence of detach of these expenses it cannot be said that the expenses e incurred wholly and exclusively for the purpose of business Counsel of the appellant submits that necessary details were furnished before the assessing officer, that in the earlier year's disallowance made on similar grounds was deleted by the CIT(A.)

6.1 I have carefully considered the facts of the case and submission trade by the counsel of the appellant. It is seen that the details were furnished by the

appellant vide letter dated 6.1.2003 and also vide submissions dated 28.1.2003 in my considered opinion, in view of the facts and the circumstances of the case, there is no justification on the part of the assessing officer to make an estimated disallowance a 10% and that too stating that the details of these expenses were not submitted before him. Letters dated 6/1/2003 and dated 28/1/2003 of the appellant addressed to the assessing officer make it clear that necessary details were furnished. Accounts of the appellant company are audited. The assessing officer has not found any defect in the accounts maintained. He has not pointed out any single item of expenditure which is not covered by section 37(1) of the Act. It appears that the above disallowance has been made by the assessing officer on ad-hoc basis and, therefore, he resorted to an estimate. The assessing officer has not brought on record any material in support of the above stated disallowance. The addition of Rs.5,85,295, therefore, cannot be sustained and the same is deleted. Ground of appeal No. 3 is allowed."

37. We find that the issue was squarely covered by the order of the Tribunal in assessee's own case for AY 1998-99 in ITA No.2800/MUM/2003, dated of pronouncement 03/04/2024 wherein the Bench has stated that the said expenditure is incurred wholly for the purpose of business and the Ld. AO cannot resort to disallow certain expenditure on adhoc basis. In the impugned appeal order, the Ld.CIT(A) has specifically mentioned that the assessee's letters dated 06/01/2003 and 28/01/2003 addressed to the Assessing Officer made it clear that necessary details were furnished. No specific finding was recorded in the assessment order. Accordingly, we uphold the view taken by the Ld.CIT(A). **Ground no. 1** of the revenue is dismissed.

Ground 2: Addition of miscellaneous expenses

38. This disallowance of Rs.5,92,578/- being 1/5th of 29,62,893/- claimed as 'other miscellaneous expenses.' On appeal, the Ld.CIT(A) considered that the observation made by the Ld.AO i.e. 1/5th of expenses are disallowed treating the same as not wholly and exclusively incurred for the purpose of business, is a general observation. The Ld.DR submitted a written submission and vide para 1.1.2 submits that this is not at all related to business expenditure. But the issue is squarely covered by the order of the ITAT, Mumbai Bench in assessee's own case bearing ITA No.1521/Mum/2004& 8713/Mum/2011 for A.Y. 2007-08 and accordingly, the additions were deleted by the ITAT. We respectfully follow the order of the co-ordinate bench of ITAT, Mumbai Bench.

Accordingly, the **ground no.2**taken by the revenue is dismissed.

Ground no. 3:

39. In ground no. 3, the revenue challenges the deletion of addition of Rs.72,07,913/- out of shortage and leakage expenses. The Ld.AO alleged that there is increase of 0.16% in the shortage and leakage compared to earlier years. There is no documentary evidence filed for the abnormal increase under this head and accordingly, the addition of Rs.72,07,913/- is made by the Ld.AO. On appeal, the Ld.CIT(A) deleted the same with the following observations: -

> *"8.2 I have carefully considered the order of assessment, and submission of the counsel. In my considered opinion, there is no justification to make the disallowance merely on the ground that there was increase in the value of shortages and leakages. Disallowance made is in the nature of an ad-hoc addition without there being any supporting material to suggest that increase in*

shortage or leakages was for the reasons which are not commercial reasons. The assessing officer has also ignored the other relevant details basic to the issue such as increase in the turnover and increase in profits. Considering all these facts, the addition of Rs. 72,07,913/- is deleted."

40. In the argument, the Ld. AR for the assessee submitted that the justification of such expenses was submitted before the Ld.AO that there was no evidence for shortage or leakage and therefore, was for non commercial purpose and there is an increase of turnover from 551 crores to 648 crores and there is increase of profit from 50.09 crores to Rs.60.7 crores. So, accordingly, the expenses for shortage and leakages increased.

41. The Ld.DR submitted a written submission and vide paragraph 1.1.3 stated that the said shortage and leakage has no financial value, but there is no such comparative turnover was discussed, as submitted by the assessee. The Ld.CIT(A) has taken his view in favour of the assessee. The same issue was agitated before the Tribunal for A.Y. 1999-2000 and the co-ordinate bench of ITAT, Mumbai Bench in ITA No.1621/Mum/2004 has taken the view in favour of the assessee. We respectfully follow the order of the co-ordinate bench and there is justification in increase of the turnover of the assessee which is fully related for business purpose.

So accordingly, the **ground no. 3** of the revenue is dismissed.

Ground 4 :Allocation of packing material cost to Goa and Kanjikode

42. The addition was confirmed related to allocation of packing material expenses. It is contended that the Ld. AO erred in allocating such expenses of packing of coconut oil manufacturing units at Goa and Kanjikode in the ratio of production of Parachute oil at the respective units, instead of packing material expenses allocated on the basis of actual consumption of packing material determined by the assessee. The Ld.AO had accepted the allocation of packing material as done by the assessee. But it is seen that in the dispute for A.Y. 1999-2000, the grievance of the Ld.AO is that the assessee in this year has apportioned in proportion to coconut oil manufactured by these two units and the difference of Rs.1,94,32,857/- is added to the packing material expenses at Goa unit and the same expense is reduced from Kanjikode unit for the purpose of working out profit from the unit for the purpose of deduction under section 80IB. The assessee submitted that different methods of stock keeping are used in Goa and Kanjikode units. The Kanjikode unit stores oils, majority of which are in tins whereas the Goa unit stores oil, majority of which are in round bottles and some portion in tins. Accordingly, packing material costs did not correspond to the same quantity effected by both the units. The Ld.AO, however, allocated these expenses in the ratio of turnover. The details of submission wereplaced and unit-wise packing material consumed in **APB pages 118-119**. The issue was also placed before the ITAT, Mumbai Bench and in assessee's own case bearing ITA No.1621/Mum/2004, the co-ordinate bench has settled this issue in favour of the assessee.

The Ld.DR argued and submitted the details in paragraph 1.1.4 of written submission but was unable to bring on record any new material in support of the contention of the revenue.

Accordingly, we uphold the order of the Ld.CIT(A) and **ground no. 4** taken by the revenue is dismissed.

Ground no. 5: Inclusion of Sales Tax, General Sales Tax and Marketing Cess in Total Turnover for the purpose of computation of deduction under section 80HHC

43. The assessee has excluded various indirect taxes from turnover. In form 10CCAC containing computation of deduction under section 80HHC which is enclosed in **APB pages 32 to 37**. However, the Ld.AO has included the same as part of the turnover while computing the deduction under section 80HHC of the Act. The Ld.CIT(A) has taken a view in favour of the assessee and Ld.CIT(A) has directed the Assessing Officer not to treat the above stated sales-tax, Central Sales-tax and marketing cess amount to Rs.33,13,50,679 as part of total turnover. The issue is duly covered by the order of the Hon'ble Jurisdictional High Court in the case of **Sudarshan Chemicals Ltd 245 ITR 761 (Bom)**, where the Hon'ble Supreme Court has not accepted the SLP filed by the department. The issue is further decided by the co-ordinate bench of ITAT, Mumbai Bench in assessee's own case for A.Y. 1999-2000 bearing **ITA No.1621/Mum/2004**, wherein it has been held as under: -

"7.2) After perusing the material on record, the Bench decides that this issue stands concluded by the decision of Hon'ble Supreme Court in the case of CIT vs Laxmi Machine Works 290 ITR 667 and hence the order of the Ld.CIT(A) is upheld. Accordingly, the addition made by the Ld.AO in this regard is deleted. The Revenue's appeal is dismissed on this issue."

44. The Ld.DR argued and submitted written submission vide para 1.1.5, the issue is explained. But was unable to bring on record any contrary judgement against the submission of the assessee. Accordingly, we follow the order of the Hon'ble jurisdictional High Court and the order of the co-ordinate bench of the Tribunal. Accordingly, the addition deleted by the Ld.CIT(A) in this regard is upheld.

The **ground no 4** taken by the revenue is dismissed.

45. In the result, the Revenue's appeal bearing **ITA No.7397/Mum/2004** is dismissed.

ITA No.2564/Mum/2005 (AY2001-02 Assessee's Appeal);

ITA No.4823/Mum/2005 (A.Y. 2002-03 Assessee's Appeal);

46. The facts and circumstances in the above appeals as also grounds raised, are identical to **ITA No.7124/Mum/2004** (A.Y. 2000-01); therefore, the decisions arrived at therein shall apply *mutatis mutandis* to these appeals also.

ITA No.1678/Mum/2005 (AY 2001-02 Revenue's Appeal); and

ITA No.4680/Mum/2006 (AY 2002-03 Revenue's Appeal)

47. The facts and circumstances in the above appeals as also grounds raised, are identical to **ITA No.7397/Mum/2004**(A.Y. 2000-01); therefore, the decisions arrived at therein shall apply mutatis mutandis to these appeals also.

48. In the result, assessee's appeals in ITA No.7124/Mum/2004; 2564/Mum/2005; & 4823/Mum/2006 are allowed;additional ground no-1 dated 01/05/2024& 25/05/2007 are allowed for statistical purpose, additional ground-2 dated 01/05/2024 is dismissed; revenue's appeals in ITA Nos.7397/Mum/2004; 1678/Mum/2005; & 4680/Mum/2006 are dismissed.

Order pronounced in the open court on 07th day of March 2025.

Sd/- sd/-

(AMARJIT SINGH) (ANIKESH BANERJEE)
ACCOUNTANT MEMBER JUDICIAL MEMBER
Mumbai,दिनांक/Dated: 07/03/2025
Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**