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

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No. 4700/Mum/2013 (AY :2006-07)
ITA No. 7799/Mum/2012 (AY :2007-08)
ITA No. 4699/Mum/2013 (AY :2004-05)

DCIT Cir 7(1)/ACIT Cir 7(1), Mumbai	Vs.	Novartis India Ltd., 6th & 7th Floor, Inspire BKC, G Block, BKC Main Road, Bandra East, Mumbai 400 051 PAN AAACH2914F
(Appellant)		(Respondent)

ITA Nos. 4573/Mum/2013 (AY :2004-05)
ITA Nos. 7733/Mum/2012 (AY :2007-08)
ITA Nos. 4574/Mum/2013 (AY :2006-07)
&
Co No. 187/Mum/2014
(Arising out of ITA No. 4700/Mum/2013 (AY :2006-07)
CO No. 34/Mum/2014
(Arising out of ITA No. 7799/Mum/2012 (AY :2007-08)
CO No. 186/Mum/2014
(Arising out of ITA No. 4699/Mum/2013 (AY :2004-05)

Novartis India Ltd., Mumbai 400 051 PAN AAACH2914F	Vs.	Addl. CIT 7(1)/ Asst CIT 7(1), Mumbai
(Appellant/Cross-Objector)		(Respondent)

For the assessee : Shri J D Mistry, Sr. Advocate
Shri Nitesh Joshi & Shri Brijesh Parmar
For the Revenue : Shri Kailash C Kanojiya, CIT-DR

Date of Hearing : 23.01.2025		Date of Pronouncement:21.03.2025

O R D E R

Per B.R.Baskaran (Accountant Member) :-

These are set of nine appeals relating to AY 2004-05, 2006-07 and 2007-08. Both the parties have filed cross appeals for these three years. The assessee has filed cross objections against the appeals filed by the revenue. Hence there are three appeals for each of the assessment year mentioned above. All these appeals are directed against the orders passed by Ld CIT(A). Since most of the issues are identical in nature, these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is a pharmaceutical company manufacturing pharmaceutical products, animal healthcare products, eye care products etc.

3. We shall take up the appeals filed by the assessee. The common issues urged either in all the three years or any of the two years shall be disposed of together.

4 The first issue urged in Ground no.1 in AY 2004-05, 2006-07 and 2007-08 (i.e., in all the three years under consideration) relates to the depreciation disallowed on the assets stood vested with Ciba Specialty Chemicals (India) Ltd pursuant to the scheme of demerger.

4.1 The assessee is having many divisions and depreciation was claimed by the assessee on assets of all the divisions together without segregating them

division wise. Under the concept of grouping all assets having similar rate of depreciation in a single block, individual identity of assets would be lost. The assessee transferred its Specialty Chemicals division to M/s Ciba Specialty Chemicals (India) Ltd under a scheme of demerger and the appointed date was fixed as 1st April 1996. However, the assessee continued to claim depreciation on the WDV of various block of assets, without excluding the assets so transferred under the scheme of demerger to the above said company. In the earlier years, the AO had disallowed proportionate depreciation attributable to the assets transferred to the above said company demerged. In the years under consideration also, the AO disallowed proportionate depreciation attributable to the assets to transferred to the above said company as done in the earlier years. The Ld CIT(A) confirmed the said disallowance, but accepted the alternative contention of the assessee, i.e., he directed the AO to adopt the consequential WDV of block of assets as per IT records for the AY 1997-98 for computing the depreciation in all these three years.

4.2 We heard the parties on this issue and perused the record. Identical issue was considered by the co-ordinate bench in AY 2003-04 in ITA No.2308/MUM/2012 in its order dated 27-05-2024. The co-ordinate bench noticed that it is a recurring issue every year. Further, it noticed that another co-ordinate bench has reached a compromise formula in AY 2008-09 in ITA No.7644/Mum/2012 dated 28th July, 2022), wherein the AO was directed to treat the opening WDV of assets transferred to the above said company as loss of assets. Hence, the co-ordinate bench held in AY 2003-04 that, in order to give effect to the above said direction given by the Tribunal in AY 2008-09, the depreciation claimed by the assessee in AY 2003-04 should be allowed. Accordingly, the co-ordinate bench deleted the disallowance of depreciation made by the AO in AY 2003-04. Accordingly, following the above said decision of the co-ordinate bench, we also direct the AO to delete the disallowance of

depreciation made on the assets transferred to M/s Ciba Specialty Chemicals (India) Ltd in this year also.

5. The next issue urged by the assessee in Ground no.2 in AY 2004-05 is relating to addition of Rs.60,29,327/- made by the AO by enhancing the value of closing stock as on 31.3.2004 by the amount of estimated secondary freight cost. The Ld CIT(A) upheld the same.

5.1 We notice that the AO had made identical addition in AY 2002-03 in the hands of the assessee. The co-ordinate bench, vide its order dated 20-03-2024 passed in ITA No.6772/Mum/2010, has deleted this addition following the decision rendered in the assessee's own case in AY 1997-98 (ITA No.5238/Mum/2003 dated 25.01.2017). The co-ordinate bench has held that the consistently followed method of valuation of stock, which has been accepted by the departmental authorities earlier, should not be disturbed, since a stray departure in one year tends to upset the calculations. Following the above said decision, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition.

6. The next issue urged by the assessee in Ground no.3 relates to disallowance of claim relating to Voluntary Retirement Scheme compensation. Identical issue has been raised by the assessee in AY 2006-07 as Ground No.5 and in AY 2007-08 as Ground No.4. Ld A.R submitted that the assessee has made provision for the incremental value of VRS compensation every year on the basis of actuary certificate. In AY 2004-05, it made provision amounting to Rs.1,23,09,463/- towards incremental liability and claimed it as deduction. The AO disallowed the same treating it as contingent liability. The Ld CIT(A) has allowed the claim of the assessee. Before Ld CIT(A) the assessee raised an alternative contention, i.e., the assessee submitted that the AO had disallowed similar provision claimed in the earlier year treating it as contingent liability. It

was submitted that, during the year under consideration, the assessee has made actual payment of Rs.3,89,26,463/- towards VRS compensation. Accordingly, it was submitted by the assessee that the actual payment to the extent of provision created by it should be allowed as deduction. The Ld CIT(A) rejected the above said alternative contention as infructuous, since the provision created by the assessee was allowed by him.

6.1 In AY 2006-07 and 2007-08, the AO has also invoked the provisions of sec.35DDA, which provided amortization of expenditure incurred under Voluntary Retirement Scheme (VRS) in five years. The above said section 35DDA was inserted in Statute with effect from 1.4.2001. The assessee submitted that the VRS scheme was implemented in the year 1993 and hence the new provision of sec.35DDA will not apply to it. The tax authorities did not accept the same. The provisions of sec. 35DDA used the expression "incurs any expenditure by way of payment of any sum to an employee". Hence, the AO took the view that the deduction of VRS payments should be allowed on payment basis only. Accordingly, on this count also, the AO disallowed the incremental liability of VRS claimed by the assessee. The Ld CIT(A) confirmed the same.

6.2 We heard the parties on this issue and perused the record. We notice that the VRS scheme of the assessee was instituted in the year 1993 and the deduction is being claimed from that year on accrual basis. We also notice that, as per the VRS scheme, a portion of compensation payable by the assessee could be commuted by the employees and for the balance portion held by the assessee, the amount is being paid by way of pension. The commuted amount of VRS compensation has been paid in the year 1993 itself. The incremental liability claimed by the assessee is related to the pension liability, which is recurring in nature. The contention of the assessee is that the new provisions of sec.35DDA have come into force from 1.4.2001 and hence it

would not apply to the scheme instituted in the earlier years. In our view, the provisions of sec.35DDA are related to lump sum compensation paid, since the question of amortization shall arise only in respect of lump sum payments. The purpose of spreading the deduction into five years is to avoid distortion of the profits in one year and also collection of income tax. Accordingly, we are of the view that the provisions of sec.35DDA shall not apply to the pension payments. In the instant case, the incremental liability is related to pension payments. Hence, we are of the view that the provisions of 35DDA shall not be applicable to pension payments, which are recurring in nature. Accordingly, we reject the view taken by the tax authorities on the applicability of sec.35DDA to the case of the assessee.

6.3 In respect of claim for deduction of incremental liability, we notice that the Ld CIT(A) has also taken different stand in the earlier years, i.e,, in some years, the Ld CIT(A) has confirmed the disallowance of provision for VRS compensation and in some other years, it has been deleted. A provision for expenses is created for a known liability under the accounting principles. Hence, the said claim made by the assessee is in principle allowable as deduction, since it is a provision created for a known liability. Hence the AO was not right in treating it as a contingent liability. Hence the Ld CIT(A) was right in allowing the same as deduction.

6.4 However, if the provision so made is not allowed as deduction in any of the years by the AO or the appellate authorities, then the actual payment made out of that provision is allowable as deduction. It is the submission of the assessee that Rs.3,89,26,463/- represents actual payment made in this year. Hence, if the relevant provision amount had been disallowed in any of the prior years, then the actual payment should be allowed as deduction. However, the relevant details are not available on record. Hence the claim of the assessee requires verification at the end of the AO. Accordingly, we restore this

alternative ground of the assessee in all the three years under consideration to the file of the assessing officer for examining the same in the light of discussions made supra.

7. The next issue urged by the assessee in Ground no.4 in AY 2004-05 relates to the disallowance of software expenses incurred by the assessee. Identical issue is being urged by the assessee in AY 2006-07 as Ground no.2 and in AY 2007-08 as Ground No.2.

7.1 The assessee claimed the software expenses as revenue in nature, but the AO considered it as capital in nature. Accordingly, he disallowed the claim of the assessee, but granted depreciation thereon. The ld CIT(A) also confirmed the same.

7.2 We heard the parties on this issue. We notice that an identical issue has been dealt with by the co-ordinate bench in the assessee's own case in AY 2003-04 (referred supra) and the same was decided in favour of the assessee following the decision rendered in AY 2002-03 in the assessee's own case in ITA Nos.6832 & 6772/Mum/2010. In AY 2002-03, the Tribunal has followed the decision rendered in the assessee's own case in AY 1991-92 (ITA No.9679/Mum/1995). The Tribunal has accepted the submission of the assessee that the application software usually become outdated in no time and hence they cannot be treated as capital expenditure. Accordingly, following the decision of co-ordinate benches rendered in the earlier years in the hands of the assessee, we set aside the order passed by Ld CIT(A) on this issue in all the three years and direct the AO to allow software expenses as revenue expenses.

8. The next issue urged in Ground no.5 in AY 2004-05 relates to disallowance of travel expenses on visit of foreigners. Identical issue has been raised in AY 2006-07 as Ground no.4. The AO disallowed 25% of the above said expenses holding the same as not related to the business of the assessee. Before Ld

CIT(A), the assessee contended that the same is in the nature of revenue expenses incurred for the purposes of business of the assessee. In the alternative, the assessee contended that if the said expenses are treated as capital in nature, then depreciation should be allowed thereon. The Ld CIT(A), following earlier year's orders of ITAT, deleted the disallowance. Hence, the alternative contention of the assessee is dismissed as infructuous.

8.1 We notice that disallowance of identical expenses has been made in the earlier years also. The Tribunal has deleted the identical disallowance made in AY 2002-03 in ITA No.6832/Mum/2010 dated 20-03-2024, wherein it has followed the decision rendered by the co-ordinate bench in the assessee's own case in AY 1997-98 in ITA No.5238/Mum/2003 dated 25.01.2017. In all these years, the Tribunal noticed that the foreigners are the executives specializing in the business carried on by the assessee and they visit India for business purposes only. Accordingly, the Tribunal has deleted the identical disallowance made in the earlier years. Accordingly, following the decision rendered by the co-ordinate benches, we set aside the order passed by Ld CIT(A) on this issue in AY 2004-05 and 2006-07 and direct the AO to delete the disallowance made in both the years mentioned above.

9. The next issue urged by the assessee in Ground no.6 in AY 2004-05 relates to the disallowance made u/s 14A of the Act. Identical issue is urged in Ground no.7 in AY 2006-07 and in ground no.6 in AY 2007-08.

10. The assessee had earned exempt income and hence the disallowance is required to be made u/s 14A of the Act. However, the provisions of Rule 8D has come into effect from AY 2008-09 onwards and hence in the earlier years, the provisions of Rule 8D cannot be applied as held by Hon'ble Bombay High Court in the case of Godrej Boyce Mfg Co Ltd (328 ITR 81)(Bom). We notice that the co-ordinate bench in the case of Godrej Agrovet Ltd vs. ACIT (ITA

No.1629/Mum/2009 dated 17-09-2010) has confirmed disallowance u/s 14A to the extent of 2% of the dividend income and the same has been upheld by Hon'ble Bombay High Court in ITA No.934/2011 in the very same case.

10.1 We notice that the Ld CIT(A) has confirmed disallowance to the extent of 2% of dividend income in AY 2004-05. Hence, his order does not call for any interference. In AY 2006-07, the ld CIT(A) has directed the AO to disallow such percentage of dividend income as applied in the earlier years. We modify the said order of Ld CIT(A) and direct the AO to disallow 2% of the dividend income. In AY 2007-08, the AO and Ld CIT(A) has applied the provisions of Rule 8D, which is contrary to the decision rendered by Hon'ble Bombay High Court in the case of Godrej Boyce Mfg co. (supra). Accordingly, we set aside the order passed by Ld CIT(A) on this issue in AY 2007-08 and direct the AO to restrict the disallowance u/s 14A to 2% of the dividend income.

11. The next issue urged by the assessee in Ground no.7 of AY 2004-05 relates to the addition made by loading unutilised Modvat credit amount to the value of closing stock. Identical issue has been raised in Ground no.3 in AY 2006-07 and in Ground no.3 in AY 2007-08.

11.1 The Ld A.R submitted that value of closing stock as on 31.3.2004 was determined by the AO by loading the unutilised modvat credit. He submitted that the AO should be directed to adopt the same method for the opening stock as on 1.4.2004. He submitted that the method of determining the value of stock should be identical both for closing stock and opening stock of any year. We find merit in the above said submissions of Ld A.R. Accordingly, we direct the AO to adopt the value of closing of one year as the opening stock of the succeeding year.

12. The next issue urged by the assessee in Ground no.8 of AY 2004-05 relates to the disallowance of advances written off. Identical issue has been raised in Ground no.8 of AY 2006-07.

13. The assessee wrote off irrecoverable advances amounting to Rs.28,84,126/- in AY 2004-05. The tax authorities disallowed the said claim on the reasoning that the assessee did not fulfill the conditions prescribed in sec.36(1)(vii) r.w.s 36(2) of the Act. The alternative claim that these advances so written off should be considered as business loss was also rejected. In AY 2006-07, the assessee wrote off Rs.25,25,413/-.

13.1 We heard the parties on this issue and perused the record. According to Ld A.R, these advances are in the nature of trade advances and the irrecoverable advances have been written off by the assessee. We notice that the amount so written off is allowable as deduction u/s 28 or u/s 37(1), if the said advances had been given for revenue purposes. In our view, the question of examining the amount so written off u/s 36(1)(vii) shall not arise in this case. The Ld A.R submitted that the assessee is having relevant details relating to the advances so written off. Under these set of facts, we are of the view that this issue requires fresh examination at the end of the AO in both AY 2004-05 and 2006-07. Accordingly, we set aside the order passed by Ld CIT(A) on this issue in both the years under consideration and restore the same to the file of the AO for examining afresh. The assessee is also directed to furnish the details of advances and show that those advances were given for revenue purposes.

14. Ground no.9 urged by the assessee in AY 2004-05 relates to the determination of "Profits of business" for the purposes of deduction u/s 80HHC of the Act. While computing the profits of business, the AO had excluded 90% receipts by way of interest on employee loans, sales tax set off claims, liabilities

written back, income from royalties, exchange gains, other miscellaneous income, cost of services recovered, profit u/s 41(3) on sale of R & D assets. According to AO, all these receipts are independent sources income and accordingly, he reduced 90% thereof while computing "Profits of business" for the purpose of computing deduction u/s 80HHC of the Act. The ld CIT(A) also confirmed the same.

14.1 The Ld A.R submitted that all receipts except "income from royalties" have been held to be part of "profits of business" by the Tribunal in the earlier years, since they cannot be considered as independent source of income. Accordingly, the Ld A.R submitted that there is no necessity to exclude them from the profits. With regard to "Income from royalties", the Ld A.R submitted that the same is also not required to be reduced, since it is also arising from the exercise of same business only. He also placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Pfizer Ltd (2011)(330 ITR 62)(Bom).

14.2 We heard Ld D.R and perused the record. With regard to "Income from Royalties', we are unable to accept the contentions of the Ld A.R. In our view, the income from royalties is received on licensing some rights to a third party and the same is not connected with the business or business of exports carried on by the assessee. The decision rendered by Hon'ble Bombay High Court in the case of Pfizer Ltd (supra) is related to the insurance claim received on stock in trade and hence it is not an independent source of income. Hence, the Hon'ble Bombay High Court held that the said insurance receipt is not required to be excluded. In the instant case, in our view, the royalty receipts are independent source of income. Accordingly, we are of the view that the Ld CIT(A) was justified in confirming the action of the AO in excluding 90% of royalty income from profits for the purpose of computing profits of business as per Explanation (baa) to sec.80HHC of the Act. With regard to other receipts,

the Ld A.R submitted that they are covered by the decisions rendered by the Tribunal in earlier years. Accordingly, we direct the AO to follow the decisions rendered by the Tribunal in respect of other receipts. The order passed by Ld CIT(A) is modified accordingly. The matter is restored to the file of the AO for computing deduction u/s 80HHC in terms of discussions made supra.

15. The next issue urged in Ground no.10 in AY 2004-05 relates to the assessment of notional value of rent for the property used by the demerged company. Identical ground has been urged in Ground no.9 of AY 2006-07.

15.1 The AO noticed that the assessee has allowed M/s Ciba Specialty Chemicals ltd (demerged company) to use some of its premises. It had recovered certain costs from the above said company. When questioned about the amount received from the above said company, the assessee submitted that certain residential flats belonging to the assessee were allowed to be used by the above said company. We noticed that the above said company was formed by demerging one of the divisions of the assessee company on 01-04-1996. It was stated that there was mutual understanding between both the companies to share the premises and all the costs incurred on those premises are recovered. The AO however took the view that the recovery of actual costs incurred on those premises is not relevant and the Annual letting value has to be computed and assessed under the head Income from house property. The AO noticed that the annual letting value was determined in AY 2002-03 by considering the market rate of rent at Rs,15/- per sq. ft. per month. The value so arrived at was increased by 5% in AY 2003-04. The AO adopted the same methodology and arrived at the fair rental value by increasing 5% of the rent determined in AY 2003-04 and assessed the same in AY 2004-05. The Ld CIT(A) also confirmed the same.

15.2 In the earlier years, the Tribunal had accepted the submission of the assessee that it has permitted use of its premises in order to facilitate the process of demerger, i.e., it was also considered as the use of premises for the purpose of business of the assessee. Accordingly, the addition of notional rent was deleted by the Tribunal.

15.3 Before us, same contentions were raised. We noticed that the demerger has taken place long back, i.e., on 1.4.1996 and hence, in our view, the question of facilitation of demerger should not arise in the years under consideration. Accordingly, we are of the view that there is change in facts and hence the decision rendered by the Tribunal in the earlier years need not be followed in the changed circumstances. There is no dispute that the demerged company is a separate person and carrying on business separately. Hence the use of premises by the demerged company cannot be considered as usage by the assessee for the purposes of its business.

15.4 It is stated that the assessee is recovering the actual costs incurred in respect of those premises like municipal taxes, water taxes and electricity charges. The recovery of water taxes and electricity charges are related to the facilities used by the demerged company and hence they cannot be equated with the rent and cannot be considered as rent payment. However, the payment of municipal taxes is the responsibility of the assessee and if it is recovered from the demerged company, it can be appropriated towards annual rental value. There is no dispute that the rental income has to be computed in respect of house property, which is owned, but not used by the assessee for the purposes of its own business. Accordingly, we are of the view that the notional rental income is required to be assessed.

15.5 However, we notice that the AO has adopted adhoc rate for determining the Annual letting value. We notice that the said methodology is not in

accordance with law laid down by Hon'ble Bombay High Court in some of the cases. We also notice that the assessee has also raised similar contentions before the tax authorities. Accordingly, we are of the view that the determination of Annual Letting value (ALV) requires fresh examination. Accordingly, we restore this issue to the file of AO in AY 2004-05 and 2006-07 for determining ALV in accordance with the decisions rendered by Hon'ble Bombay High Court. The recovery of municipal taxes paid towards the premises occupied by the demerged company should be appropriated towards the annual letting value so determined and the addition should be restricted to the excess amount, if any. The order passed by Ld CIT(A) in both the above said years would stand modified accordingly.

16. The next issue urged by the assessee in ground no.11 to 13 in AY 2004-05 relates to the determination of fair market value as on 1.4.1981 for the land sold by the assessee. Identical issue has been raised in ground no. 10 to 14 in AY 2006-07.

16.1 The assessee held certain parcel of lands in Goregaon area of Mumbai and it sold part of the same during the financial years relevant to AY 2004-05 and 2006-07. The assessee, while computing long term capital gain, adopted the fair market value as on 1.4.1981 on the basis of valuation reports given by a valuer. The AO, initially took the view that the valuer has determined the value of land at the "rate per square meter", but the Assessee has wrongly considered the same to be "rate per square feet". Accordingly, he recomputed the fair market value as on 1.4.1981 by converting the rate per square meter into rate per square feet. In the mean time, the assessee furnished valuation reports from two other valuers also. Hence, the AO referred the matter of determination of fair market value as on 1.4.1981 to the departmental valuation officer (DVO). However, the DVO did not furnish his report before the completion of assessment. Hence the AO completed the assessment by

adopting the rate per square feet, as determined by him. The Ld CIT(A) also confirmed the same in both the years, viz., AY 2004-05 and 2006-07.

16.2 We heard the parties on this issue and perused the record. We notice that an identical issue has been considered by the co-ordinate bench in AY 2002-03 and 2003-04 (referred supra). When the appeal of AY 2002-03 was pending, the DVO report was brought to the notice of the Tribunal. The DVO had determined the fair market value as on 1.4.1981 at Rs.71.12 per sq ft. Accordingly, the Tribunal directed the AO to compute the long term capital gains on sale of land by adopting the fair market value as on 1.4.1981 as per the rate determined by the DVO. The above said decision was followed by the Tribunal in AY 2003-04 also.

16.3 Since the co-ordinate benches have already directed the AO to adopt the fair market value determined by DVO, following the same, we also direct the AO to re-compute the long term capital gains in both AY 2004-05 and 2006-07 by adopting the fair market value as on 1.4.1981 at the rate determined by the DVO. The Ld A.R submitted that the area of land sold in AY 2004-05 was 41534.40 sq.ft and the AO has also computed the long term capital gains on the above said area only. The Ld A.R submitted that the DVO has reduced the area of the land sold by the assessee. There should not be any dispute that the long term capital gains has to be computed for the area of land, which is actually sold by the assessee. Accordingly, we direct the AO to compute the long term capital gains on the actual area sold by the assessee and for that purpose, the AO should adopt the fair market value of rate per square feet as on 1.4.1981 as determined by the DVO.

17. The next issue urged in AY 2004-05 in ground no.14 relates to the disallowance of adjustment by way of excess/short amount in respect of the year end provision made for expenses.

17.1 We notice that an identical issue has been considered by the co-ordinate bench in the assessee's own case in AY 2008-09 in ITA No.7644/Mum/2012 dated 28-09-2022. The co-ordinate bench has deleted the disallowance by following the decision rendered by the Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd (314 ITR 62)(SC), wherein the Hon'ble Supreme Court noticed that "a provision is a liability which can be measured only by using a substantial degree of estimation" and such provision can be allowed as deduction when

(a) an enterprise has a present obligation as a result of past event

(b) it is possible that an outflow of resources will be required to settle the obligation.

(c) a reliable estimate can be made of the amount of the obligation.

In the instant case, there is no dispute that the provision for expenses were made on the basis of estimates made with reliable data. Whatever may be the degree of estimation, there bound to be some difference when the actual bill is received and hence the same would require adjustment on account of excess/short provision. Such adjustment would be a recurring feature and they are considered as current year's expenses as per the accounting principles. Hence, there is no reason to disallow the same. Accordingly, following the order passed by the co-ordinate bench in the hands of the assessee in AY 2008-09, we set aside the order passed by Ld CIT(A) on this issue in all the three years, viz., AY 2004-05, 2006-07 and 2007-08 and direct the AO to delete this disallowance made in the above said three years.

18. The next issue urged in AY 2004-05 in Ground no.15 is the manner of charging of interest u/s 234C of the Act. As per the provisions of sec.234C of the Act, the interest under that section should be charged on the returned

income. The Ld AR submitted that the AO has charged interest on the assessed income and accordingly submitted that the same requires correction.

18.1 We heard the parties on this issue. There should not be any dispute that the interest u/s 234C is required to be computed on the returned income. Accordingly, we restore this issue to the file of the AO for computing interest u/s 234C as per the provisions of the Act.

19. The next issue urged in AY 2004-05 by way of additional ground numbered as Ground no.16 relates to the charging of Dividend Distribution Tax. Identical issue is urged in AY 2006-07 as Ground no.16 and in AY 2007-08 as Ground no.7. It is the contention of the assessee that the rate prescribed under relevant DTAA shall be applicable to Dividend distribution tax also. We notice that the above said claim of the assessee is against the decision rendered by the Special bench in the case of DCIT vs. Total Oil India (P) Ltd (2023)(149 taxmann.com 332)(Mum-SB). Accordingly, we reject this ground of the assessee.

20. The last issue urged by the assessee by way of additional Ground numbered as ground no.17 in AY 2004-05 relates to the jurisdiction of additional commissioner in passing the assessment order. Identical issue is urged in AY 2006-07 as ground no.17. The Ld A.R submitted that this ground may be left open in these two years and the assessee may be allowed to contest this issue in appropriate proceedings. Accordingly, we decline to adjudicate this ground and leave the same open in both the above said years.

21. We shall now take up other issues urged in AY 2006-07. In this year, we have to adjudicate only ground no.15 relating to the addition made u/s 50C of the Act. All other grounds have been adjudicated in the earlier paragraphs along with the similar grounds raised in AY 2004-05.

22. The facts relating to this addition are discussed in brief. The AO noticed that the assessee has sold a land and building located in Plot no.5 in Goregaon, Mumbai for a consideration of Rs.17.50 crores, vide Conveyance deed dated 12.9.2005. The AO noticed that the stamp duty authorities have determined the market value of above property at Rs.26.02 crores on the date of registration. Accordingly, the AO proposed to invoke the provisions of sec. 50C of the Act. The assessee submitted that the above said sale price determined on the date of entering of agreement has been approved by the Appropriate authority under Chapter XXC of the Act during the financial year 2001-02 itself and hence the conveyance deed has been executed on 12-09-2005 for the very same value, as approved by the Appropriate authority. It was further contended that the provisions of sec.50C has been inserted with effect from 1.4.2003 and hence it should not be applied to the agreements entered prior to that. Accordingly, it was contended that the provisions of sec.50C are not applicable to this transaction. The AO did not accept the above said contentions of the assessee. He noticed that the value of building has been determined at Rs.1,51,51,000/- and he reduced same from the stamp duty valuation of Rs.26.02 crores. Accordingly, the AO adopted the sale consideration as Rs.24,51,16,000/- in terms of sec.50C and accordingly computed long term capital gains. The Ld CIT(A) also confirmed the same.

22.1 The Ld A.R placed his reliance on the decision rendered by Visakhapatnam bench of ITAT in the case of M Siva Parvathi and others vs. ITO (2011)(7 ITR (Trib) 468)(Visakhapatnam) and contended that this decision would apply to the facts of the present case. The Ld A.R submitted that the sale price agreed between the parties have been approved by the Appropriate authority under Chapter XXC in the financial year 2001-02, i.e., prior to introduction of sec.50C. Accordingly, he contended that the provisions of

sec.50C should not be applied in the hands of the assessee in respect of above transactions.

22.2 We heard Ld D.R and perused the record. In the case of M Siva Parvathi (supra), which was relied upon by Ld A.R, we notice that the agreement for sale was entered prior to introduction of sec.50C, but the actual conveyance took place after the introduction. It was also noticed that the consideration for transfer has also been received by the sellers at the time of entering into agreement. The Tribunal further noticed that the delay in registering the sale deed was due to genuine reasons and the same was beyond the control of the assessee. Hence it was held that the provisions of sec.50C should not be applied. In any case, the provisos below sec.50C also state that the stamp duty value as on the date of entering into the agreement may be adopted, if the assessee had received part consideration through banking channels on that date.

22.3 However, in the instant case, we notice that the assessee did not explain the reasons, which have caused the delay in registering the conveyance deed in the financial year 2005-06, even though the agreement to sale was entered in the financial year 2001-02. It is also not clear as to whether the assessee had received part consideration through banking channels at the time of entering into agreement for sale.

22.4 We have gone through the provisions of Chapter XX-C of the Act. This chapter was introduced in the Act in those years in order to make provisions for purchase of immovable property by the Central Government at the value of apparent consideration entered between the parties, if the appropriate authority is of the view that the apparent consideration is less than the market value. Hence the certificate was issued by the Appropriate authority in the form of “no objection certificate” for transferring the property, if he is satisfied

that there was no understatement of sale consideration. Apparently, the appropriate authority would give no objection, only if he is satisfied that the apparent consideration is equal to or more than the market value. In the instant case, the no objection certificate was given by the appropriate authority in the financial year 2001-02 on the basis of market conditions prevailing in that year. We further notice that the scheme of pre-emptive purchase prescribed in Chapter XX-C has been discontinued with effect from 1st July, 2002 by Finance Act, 2002. After that, the provisions of sec.50C have been introduced w.e.f. 1.4.2003 by the very same Finance Act, 2002.

22.5 In the instant case, the actual registration of sale agreement has taken place on 12.09.2005. At that point of time, the provisions of sec.50C are very much applicable. The provisions of 50C are deeming provisions and hence they are required to be applied strictly. As noticed earlier, in the case of M. Sivaparvati (supra), the entire sale consideration was received in August, 2001 (prior to the introduction of sec.50C), but the actual registration was completed in October, 2004 (after introduction). It was further noticed that the delay in registration was on genuine reasons, which were beyond the control of the parties. Under these peculiar facts, the Tribunal held that the provisions of sec.50C should not be applied. On the contrary, in the instant case, no reason has been cited by the parties for the delay in completing the registration. It is also not clear as to whether the assessee has received any part of consideration in FY 2001-02, when the agreement was entered into as per the conditions prescribed in the proviso to sec.50C. If the assessee had received any part of consideration at the time of entering of agreement for sale, then the assessee would be covered by the provisos to sec.50C of the Act. Even in that case, what is required to be compared is the stamp duty value as on the date of entering agreement with the actual consideration. Hence, we are of the view

that the no-objection certificate issued by the appropriate authority is not relevant for the purpose of sec.50C of the Act.

22.6 We notice all the relevant factual aspects, which are necessary for the purposes of sec.50C, have not been furnished by the assessee to the tax authorities. Hence, we are of the view that this issue requires fresh examination at the end of the AO. If the assessee is able to show that it has received part consideration on the date of the entering of agreement for sale in the manner provided in the proviso to sec.50C of the Act, then the assessee would get the benefit of the proviso. In that case, the stamp duty value as on the date of agreement should be compared with the actual consideration. On the contrary, if the assessee has not received any part of the sale consideration in the manner provided in the proviso, then the provisions of sec.50C would get attracted. The AO may examine this issue afresh in the light of discussions made supra. The assessee may furnish all the information and explanations to support its case before the AO. The order passed by Ld CIT(A) on this issue would stand modified accordingly.

23. No other independent issue has been urged in AY 2007-08. Accordingly, with the adjudication of the above discussed independent issue in AY 2006-07, all the grounds urged by the assessee in its appeals filed for AY 2004-05, 2006-07 and 2007-08 are disposed of.

24. We shall now take up the appeals filed by the revenue and the cross objections filed by the assessee. We notice the grounds urged in all these appeals are identical with the issues adjudicated by us in the earlier paragraphs. Accordingly, they are disposed of together.

25. The first issue urged by the revenue in Ground no.1 & 2 in AY 2004-05 and 2006-07 and in Ground no.1 in AY 2007-08 relates to the decision of Ld CIT(A) in accepting the alternative claim for computing WDV consequent to the

demerger. In the ground no.1 urged by the assessee in the cross objection of all the three years, the assessee is contesting the decision of Ld CIT(A) in confirming the addition of depreciation.

25.1 This issue has been disposed of by us while adjudicating the appeals of the assessee, wherein we have directed the AO to allow depreciation as per the claim of the assessee. Accordingly, the order passed by Ld CIT(A) on this issue was reversed. Hence the relief granted by Ld CIT(A) accepting alternative contention of the assessee shall become infructuous. The ground urged in cross objection is also identical with the ground urged in the appeals of the assessee, which has already been disposed of. Hence this ground does not require separate adjudication.

26. The next issue urged by the revenue in ground no.2 in AY 2004-05 is related to the decision of Ld CIT(A) in directing the AO to allow deduction of incremental VRS liability of Rs.1,23,09,463/-. In Ground no.2 of cross objection relating to AY 2004-05, the assessee is contesting the decision of Ld CIT(A) in rejecting the alternative claim of the assessee.

26.1 The issue relating to VRS compensation has been discussed in detail while dealing with the appeals of the assessee and this issue has been restored to the file of the AO with certain directions. In view of the above, the grounds urged by the revenue and the assessee in cross objection do not require separate adjudication.

27. The next issue urged by the revenue in Ground no. 4 of AY 2004-05 and 2006-07 is related to disallowance of travel expenses incurred on foreigners. While adjudicating the appeal of the assessee in respect of the alternative contention on this issue, we have upheld the decision of Ld CIT(A) in deleting this disallowance. Accordingly, this ground of the revenue does not require separate adjudication.

28. The next ground urged by the revenue in ground no.3 of AY 2006-07 and Ground no.2 of AY 2007-08 relates to the deletion of the adjustment made to closing stock on account of secondary freight adjustment. The assessee is also supporting the decision of Ld CIT(A) on this issue by way of ground no.2 in AY 2006-07 and Ground no.3 in AY 2007-08.

28.1 The assessing officer made adjustment to the value of closing stock on account of freight charges in AY 2006-07 and 2007-08. The same was deleted by Ld CIT(A) with the direction to make similar adjustments to the opening stock also. Hence the revenue is in appeal before us.

28.2 However, in AY 2004-05, the Ld CIT(A) had confirmed the addition and hence the assessee was in appeal before the Tribunal. In the appeal of the assessee filed for AY 2004-05, we have deleted the similar addition made by the AO with the following observations:-

> "5. The next issue urged by the assessee in Ground no.2 in AY 2004-05 is relating to addition of Rs.60,29,327/- made by the AO by enhancing the value of closing stock as on 31.3.2004 by the amount of estimated secondary freight cost. The Ld CIT(A) upheld the same.
>
> 5.1 We notice that the AO had made identical addition in AY 2002-03 in the hands of the assessee. The co-ordinate bench, vide its order dated 20-03-2024 passed in ITA No.6772/Mum/2010, has deleted this addition following the decision rendered in the assessee's own case in AY 1997-98 (ITA No.5238/Mum/2003 dated 25.01.2017). The co-ordinate bench has held that the consistently followed method of valuation of stock, which has been accepted by the departmental authorities earlier, should not be disturbed, since a stray departure in one year tends to upset the calculations. Following the above said decision, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition."

Following the decision rendered by us in AY 2004-05 in the appeal of the assessee in the earlier paragraphs, we hold that this addition is liable to deleted. Accordingly, we set aside the order passed by Ld CIT(A) on this issue

in AY 2006-07 and 2007-08 and direct the AO to delete the addition in both the years under consideration.

29. The last issue urged by the revenue in Ground no.3 and 4 of AY 2007-08 is related to the addition made on account of excess/shortage of year end provisions.

29.1 While adjudicating the appeal of the assessee, we have upheld the decision rendered by Ld CIT(A) on this issue in deleting the similar addition made by the AO. Accordingly, the above said ground of revenue is liable to be rejected. In the CO, the assessee has raised an alternative contention, but it does not require adjudication, since the addition made by AO has been deleted.

30. In the result, all the appeals of assessee and revenue and the cross objections of the assessee are partly allowed in the aforesaid terms.

Order pronounced on 21st March 2025

Sd/-	Sd/-
[Justice (Retd.) C V Bhadang]	(B.R. Baskaran)
PRESIDEMT	ACCOUNTANT MEMBER

Mumbai.; Dated : 21/03/2025

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The PCIT
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

//True Copy//	(Assistant Registrar)
SA	ITAT, Mumbai