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

BEFORE SHRI PAWAN SINGH, JM &
MS PADMAVATHY S, AM

I.T.A. No.3533/Mum/2008
(Assessment Year: 2004-05)

M/s Marico Ltd., Rang Sharda, K.C. Marg, Bandra (W), Mumbai-400050. **PAN: AAACM7493G**	Vs.	**ACIT, CC-35,** Pratyaksha Kar Bhavan, Bandra Kurla Complex, Mumbai-400051.
Appellant)	:	**Respondent**)

I.T.A. No.3152/Mum/2008
(Assessment Year: 2004-05)

ACIT, CC-35, Room No. 104, 1st Floor, Aayakar Bhavan, Mumbai-400020.	Vs.	**M/s Marico Ltd.,** Rang Sharda, K.C. Marg, Bandra Reclamation, 2nd Floor, Mumbai-400050. **PAN: AAACM7493G**
Appellant)	:	**Respondent**)

I.T.A. No.7044/Mum/2008
(Assessment Year: 2005-06)

M/s Marico Ltd., Rang Sharda, K.C. Marg, Bandra (W), Mumbai-400050. **PAN: AAACM7493G**	Vs.	**DCIT, CC-35,** Pratyaksha Kar Bhavan, Bandra Kurla Complex, Mumbai-400051.
Appellant)	:	**Respondent**)

Appellant /Assessee by	:	Shri Nitesh Joshi a/w Milin Bakhai, AR
Revenue / Respondent by	:	Shri Asif Karmali- Sr. DR
Date of Hearing	:	07.04.2025
Date of Pronouncement	:	11.04.2025

O R D E R

Per Bench:

These cross appeals by the assessee and the revenue are against the order of the Commissioner of Income Tax (Appeals), Central-VI, Mumbai [In short 'the CIT(A)'] for AY 2004-05 dated 29.02.2008 and the appeal of the assessee for AY 2005-06 is against the order dated 09.09.2008.

2. The assessee is a company and engaged in the business of manufacturing and distributing various Fast Moving Consumer Goods (FMCG) being sold in market in the brand name of Parachute, Revive, Marico's Hair & Care, Saffola, Sweekar, SIL, etc. The assessee is having manufacturing undertaking in Kanjikode, Goa, Pondicherry, Daman, Jalgoan, Dehradun and Saswad which are eligible for deduction under section 80IB/80IC of the Income Tax Act, 1961 (the Act). The facts pertaining to AY 2004-05 is that the assessee filed the return of income for AY 2004-05 on 01.11.2004 declaring a total income of Rs. 9,92,16,326/-. The assessee filed the revised return on 04.10.2006 declaring the total income of Rs. 13,22,38,635/- under the normal provisions of the Act and a book profit of Rs. 62,69,31,436/- under section 115JB of the Act. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) made various disallowances/ additions against which the assessee preferred further appeal before the CIT(A). The CIT(A) gave partial relief to the assessee and both

the assessee and the revenue are in appeal against the order of the CIT(A). The AO made similar additions for AY 2005-06 which are confirmed by the CIT(A). The assessee is in appeal against the order of the CIT(A) before us.

3. The issues contended by the assessee through various grounds for AY 2004-05 and AY 2005-06 are as tabulated.

Issue	AY 2004-05	AY 2005-06
Disallowance of Recreational Expenses	Ground No.1	Ground No.1
Disallowance of Miscellaneous Expenses	Ground No.2	Ground No.2
Disallowance of Depreciation on Non-compete Fees	Ground No.3	Ground No.3
Allocation of Corporate Overheads and Head Office deprecation to Units eligible for 80IB deduction	Ground No.4	Ground No.4
Allocation of finance cost to undertakings eligible for deduction under section 80IB	Ground No.5(a)	Ground No.5(a)
Allocation of Research & Development Expenses (R&D) to undertakings eligible for deduction under section 80IB	Ground No.5(b)	Ground No.5(b)
Allocation of Foreign Travelling Expenses undertakings eligible for deduction under section 80IB	Ground No.5(c)	-
Exclusion of Other Income for the purpose of deduction u/s. 80HHC	Ground No.6	
Reduction from export profits eligible for deduction u/s. 80HHC in view of provisions of section 80IA(9)	Ground No.7	
Primary Adjustment in respect of guarantee commission	Ground No.8	Ground No.6

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Disallowance of Recreational Expenses

4. During the year under consideration, the assessee has claimed Staff Welfare Expenses to the tune of Rs. 2,65,46,162/- which included Rs. 7,09,443/- incurred under Recreation Expenses, Picnic, Sports, etc. and Rs. 44,98,305/- under Other Staff Welfare Expenses. The AO disallowed 1/10th of the aforesaid expenses for the reason that from the Ledger extract furnished by the assessee it was not possible to ascertain the correct nature of the expenses. The CIT(A) confirmed the disallowance made by the AO.

5. We heard the parties and perused the material on record. The ld. AR at the outset submitted that this issue is recurring in nature and that the Co-ordinate Bench in assessee's own case has been consistently holding the issue in favour of the assessee. In this regard out attention is drawn to the relevant observations of the Co-ordinate Bench in assessee's own case for AY 1998-99 (ITA No. 2800/Mum/2003 dated 03.04.2024) where it has been held that

> *"11. Considered the rival submissions and material placed on record, we observe that during the current assessment year assessee has incurred an expenditure on staff welfare like lunch, refreshment, tea, coffee etc., and the Assessing Officer chose to disallow 10% of the above expenditure as not substantiated by the assessee during assessment proceedings. We observe from the record that Assessing Officer followed similar pattern of disallowance from the preceding assessment years and also Ld. CIT(A) has followed the same by restricting the disallowance @5% relying on the order of preceding assessment year. It is rightly brought to our notice by the Ld.AR of the assessee that in the preceding assessment year there was a specific section under section 37(2) of the Act to disallow the entertainment expenditures incurred by the assessee. Since section 37(2) was omitted from the A.Y. 1998-99, the expenditure on the welfare of the employees is recognized as an allowable expenditure. Therefore, the expenses incurred by the assessee on the welfare of the employees are allowed as expenditure. Since the expenditure incurred are relating to lunch, refreshment, tea, coffee etc., which was also confirmed by the Assessing Officer, therefore, this expenditure is purely relating to refreshment expenditure incurred by the assessee for the benefit of the employees. Therefore, in our view, this expenditure is incurred*

wholly for the purpose business and Assessing Officer cannot resort to disallow certain expenditure on adhoc basis. Accordingly, we direct the Assessing Officer to allow the expenses incurred by the assessee for the benefit and welfare of the employees. Accordingly, Ground No. 1 raised by the assessee is allowed."

6. For the year under consideration the revenue did not bring any new material on record and did not controvert that the facts for the year are identical. Accordingly we see no reason to take a different view and therefore respectfully following the above decision, we direct the AO to delete the disallowance made in this regard.

Disallowance of Miscellaneous Expenses

7. The assessee during the year under consideration has claimed a sum of Rs. 10,64,11,695/- as Miscellaneous Expenditure which included other Miscellaneous Expenditure amounting to Rs. 24,48,823/-. The AO disallowed 1/5th of the said expenditure for the reason that the assessee did not furnish the details of the said expenditure as to whether it is wholly and exclusively incurred for the purpose of business.

8. We heard the parties and perused the material on record. We notice that the issue is considered by the Co-ordinate Bench in assessee's own case for AY 1999-2000 (ITA No. 1621/Mum/2004 dated 05.09.2024 where it has been held that

"5. Ground No. 2: Adhoc disallowance of miscellaneous expenses:

5.1) The Ld. AO made 1/5th of the miscellaneous expenses claimed by the appellant company on adhoc basis. Before the Ld. CIT(A), appellant company has said that these expenses actually comprises of advances given to the parties and unrealsed cheques which were effectively written off as old outstanding balances and decided the case in favour of the appellant company as the expenditure is allowable u/s. 37 of the Act.

5.2) Before Hon'ble ITAT, the Revenue has not given any further reasoning for making an adhoc disallowance of 1/5th of total claim of miscellaneous expenses. In view of the above, the Bench decides that the advances written off relates to advances being given in the ordinary course of business for which suppliers have neither provided goods or services nor retuned back. Since balances are outstanding for a very long period, the same were written off by the appellant company and hence the amount is deductible. As there is no scientific basis and any evidence for such adhoc disallowance, the addition made by the Ld. AO is deleted."

9. The facts for the year under consideration are identical and that the revenue did not bring any new material on record for us to take a different view. Therefore respectfully following the above decision, we direct the AO to delete the disallowance made towards Miscellaneous Expenditure.

Depreciation on Non-compete Fees

10. The assessee has acquired Trademark 'Meal Maker' from Plastomech during the Financial Year relevant to AY 2003-04. Along with the purchase of Trademark the assessee has entered into a non-compete agreement with M/s Sonic Biochem Extractions Pvt. Ltd. (Sonic Biochem) for a period of 20 years since the Trade Mark was earlier assigned by Plastomech to Sonic Biochem. The assessee in this regard made a payment of Rs. 1,55,66,250/- to Sonic Biochem towards non-compete fee. The assessee in the books of accounts capitalized the said amount as intangible asset and claimed deprecation on the same @ 25%. The AO while completing the assessment for AY 2003-04 held that the amount paid towards non-compete fees cannot be treated as intangible asset and therefore depreciation cannot be allowed under section 32(1)(ii) of the Act. However, the AO allowed 5% of the expenses to be claimed as a deduction considering the fact that the agreement is entered for a period of 20 years. For the year under consideration the AO followed its own order

to make a disallowance of Rs. 26,26,804/-. On further appeal, the CIT(A) confirmed the disallowance made by the AO.

11. The ld. AR submitted that Sonic Biochem was using the Trademark 'Meal Maker' as per the agreement entered into with Plastomech who is the owner of the Trademark. Therefore, when the assessee bought the Trademark it was essential for the proper use of the Trademark to enter into a non-compete agreement with Sonic Biochem in order to restrain the company from the competing with the assessee. The ld. AR also submitted that Plastomech while assigning the Trademark has terminated the usership agreement with Sonic Biochem. The ld. AR argued that the payment of non-compete fee is part of the composite transaction of acquiring the Trademark and therefore, the assessee has capitalized the non-compete fee along with the consideration paid towards acquisition of Trademark. The ld. AR further argued that the acquisition of Trademark will not be of any use to the assessee unless Sonic Biochem was restrained from using the Trademark since Sonic Biochem has acquired the technical knowledge of manufacturing product sold under the name 'Meal Maker'. Accordingly the ld. AR submitted that the assessee has rightly capitalized the non-compete fees and has claimed depreciation. The ld. AR relied on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Piramal Glass Limited (ITA No. 556 of 2017 dated 11.06.2019), ACIT vs. M/s India Medtronic Pvt. Ltd. (ITA No. 1453 of 2017 dated 30.09.2021) and PCIT vs. Music Broadcast Pvt. Ltd. [2023] 155 taxmann.com 277 (Bom).

12. The ld. DR on the other hand relied on the order of the lower authorities.

13. We heard the parties and perused the material on record. During the financial year relevant to AY 2003-04 under consideration the assessee acquired the Trademark of 'Meal Maker' which owned by Plastomech for a consideration of Rs.

26,11,250/- and has capitalized the same in the books of account claiming depreciation at 25%. Since the Trademark was earlier used by Sonic Biochem vide a registered agreement entered into with Plastomech, the assessee had to enter into a non-compete agreement with Sonic Biochem to restrict Sonic Biochem from using the Trademark. As part of the agreement the assessee has paid a sum of Rs. 1,55,66,250/-. The assessee in AY 2003-04 capitalized the said amount and claimed depreciation at 25%. The AO disallowed the depreciation in AY 2003-04 for the reason that non-compete fee does not fall within the meaning of intangible asset as given in section 32(1)(ii) of the Act and that the assessee cannot claim depreciation on the same. The AO however allowed 5% of the amount capitalized as a deduction. Therefore, the issue for our consideration is whether the non-compete fee will fall within the definition of intangible asset qualified for depreciation under section 32 of the Act. In this regard we notice that the Hon'ble Bombay High Court in the case of Piramal Glass Ltd. (supra) has considered a similar question of law where it has been held that

> *"3. Question No. (a) noted above pertains to the decision of the Tribunal to grant depreciation on the Assessee's payment of non-compete fees. According to the Revenue, this being an intangible asset, no depreciation under Section 32 of the Income Tax Act, 1961 ('the Act' for short) was available.*
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> *4. We however notice that similar issue has been considered by the different High Courts and held in favour of the Assessee. A reference can be made to the decision of the Division Bench of the Gujarat High Court in the case of Principal Commissioner of Income Tax v. Ferromatice Milacron India (P.) Limited. It was also the case where the Assessee had incurred expenditure pursuant to the non-compete agreement and claimed depreciation on such asset. While dismissing the Revenue's Appeal against the Judgment of the Tribunal, following observations were made:*
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> > *"We may recall the Assessing Officer does not dispute that the expenditure was capital in nature since by making such expenditure, the assessee had acquired certain enduring benefits. He was, however, of the opinion that to claim depreciation, the assessee must satisfy the requirement of Section*

32(1)(ii) of the Act, in which Explanation 3 provides that for the purpose of the said sub-section the expression "assets" would mean (as per clause (b)) intangible assets, being known-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial rights of similar nature. In the opinion of the Assessing Officer, the description on-compete fee would not satisfy this discrimination. Going by his opinion, no matter what the rights acquired by the assessee through such non-compete agreement, the same would never qualify for depreciation in section 32(1)(ii) of the Act as being depreciable intangible asset. This view was plainly opposed to the well settled principles. In case of Techno Shares & Stocks Limited (supra) the Supreme Court held that payment for acquiring membership card of Bombay Stock Exchange was intangible assets on which the depreciation can be claimed. It was observed that the right of such membership included right of nomination as a license which was one of the items which would fall under Section 32(1)(ii). The right to participate in the market had an economic and money value. The expenses incurred by the assessee which satisfied the test of being a license or any other business or commercial right of similar nature

In case of Areva T & D India Limited (supra) Division Bench of Delhi High Court had an occasion to interpret the meaning of intangible assets in context of section 32(1)(ii) of the Act. It was observed that on perusal of the meaning of the categories of specific intangible assets referred to in section 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature" it is seen that intangible assets are not of the same kind and are clearly distinct from one another. The legislature thus did not intend to provide for depreciation only in respect of the specified intangible assets but also to other categories of intangible assets which may not be possible to exhaustively enumerate. It was concluded that the assessee who had acquired commercial rights to sell products under the trade name and through the network created by the seller for sale in India were entitled to deprecation.

In the present case, Mr.Patel was erstwhile partner of the assessee. The assessee had made payments to him to ward off competence and to protect its existing business. Mr.Patel, in turn, had agreed not to solicit contract or seek business from or to a person whose business relationship is with the assessee. Mr. Patel would not solicit directly or indirectly any employee of the assessee. He would not disclose any confidential information which would include the past and current plan, operation of the existing business, trade secretes lists etc.

It can thus be seen that the rights acquired by the assessee under the said agreement not only give enduring benefit, protected the assessee's business against competence, that too from a person who had closely worked with the assessee in the same business. The expression "or any other business or commercial rights of similar nature" used in Explanation 3 to sub-section 32(1)(ii) is wide enough to include the present situation."

5. No question of law in this respect therefore arises."

14. We notice that the a similar view has been held in the case of India Metronic Pvt. Ltd. (supra) and M/s Music Broadcast Pvt. Ltd. (supra). We also notice that the Co-ordinate Bench in the case of M/s Abbott Healthcare Pvt. Ltd. vs. DCIT (ITA No. 570/Mum/2018 dated 06.01.2020) and in the case of WNS Global Services Pvt. Ltd. vs. ACIT (ITA No. 2450 & 2451/Mum/2022 dated 26.07.2023) have held that a similar view. The facts in assessee's case being identical respectfully following the above judicial precedents, we hold that the non-compete fee would fall within the definition of intangible asset as per Explanation to section 32(1)(ii) and therefore the assessee is eligible for depreciation @ 25% on the amount paid towards non-compete fee. The AO is directed to allow depreciation as per directions in this order.

Allocation of Corporate Overheads and Head Office deprecation to Units eligible for 80IB deduction

15. The AO held that the Corporate Overheads and Head Office depreciation should be allocated to the Units eligible for deduction under section 80IB in the ratio of domestic sales to total sales of the undertaking. The ld. AR during the course of hearing submitted that the issue is covered by the decision of Co-ordinate Bench in assesee's own case for AY 1998-99 (supra) and the facts being identical for the year under consideration.

16. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in assessee's own case for AY 1998-99 have considered the similar issue and held that

> *"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 801A, 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."*

17. Respectfully following the above decision of the Co-ordinate Bench we direct the AO to delete the allocation made towards corporate office expenses and head office depreciation.

Allocation of finance cost to undertakings eligible for deduction under section 80IB

18. During the year under consideration the assessee has incurred total finance charges of Rs. 2,29,74,317/- out of which an amount of Rs. 1,89,64,156/- is allocated to the undertakings in Dehradun, Goa, Pondicherry and Daman. The AO noticed that the balance amount of Rs. 40,10,151/- is not allocated and in this regard called on the assessee to provide reasons as to why the same should not be allocated in proportion to their turnover. The assessee submitted that out of the unallocated amount of Rs. 4,71,995/- pertains to interest paid on dealership deposits and that the dealership deposits are not utilized by these undertakings and therefore the interest

paid thereon is not claimed as a deduction. The assessee further submitted that the undertakings eligible for 80IB are having cash surplus and therefore no finance cost is attributable to these undertakings. The AO did not accept the submissions of the assessee and proceeded to allocate the balance fiancé cost in the ratio of the undertaking turnover to the total turnover of the assessee.

19. We heard the parties and perused the material on record. The ld. AR submitted that the issue stands covered by the decision of the Co-ordinate Bench in assessee's own case in earlier years and that the Co-ordinate Bench for AY 1999-2000 (ITA No. 1521/Mum/2004 dated 05.09.2024) has remitted the issue back to the AO for verification of the claim of the assessee that the undertakings eligible for 80IB deductions are having surplus cash and delete the allocation of finance cost accordingly. The ld. AR prayed for a similar direction for the year under consideration also. In this regard our attention is drawn to the Profit & Loss A/c of undertakings eligible for 80IB deduction to submit that the undertakings are having surplus cash (page 26 to 77 of PB). We notice that the Co-ordinate Bench has made the following observations while considering the similar issue for AY 1999-2000 where it has been held that

> *"6.1) The Ld. AO is of the opinion that a portion of interest on dealership deposits and bank guarantee commission should be allocated to the Goa and Kanjikode Units while computing profits eligible for deduction u/s. 801A of the Act. Accordingly he has allocated a portion of interest while computing interest u/s. 801A of the Act. The Ld. CIT(A) agreed with the argument of the Ld. AO and confirmed the addition. Aggrieved by the orders of the Ld. AO and the Ld. CIT(A), the appellant company came on appeal before the Bench on this issue.*
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> *6.2) Ld. AR of the appellant company has argued that these two undertakings were generating cash surplus month after month and they have not utilised any part of the dealership deposits, in fact, these two undertakings are providing funds to the head office and not seeking funds from the head office and hence deduction u/s. 801A should not be restricted as mentioned by the*

Ld. AO in the assessment order. The Ld. AR of the appellant has mentioned that this issue is covered in its favour by the order of Hon'ble ITAT in earlier year vide paragraph 28 to 32 at pages 22 to 26. Hence, it was pleaded that the addition made by the Ld. AO should be deleted.

6.3) The Ld. DR has supported the orders of the Ld. AO and the Ld. CIT(A).

6.4) After hearing both sides, it is decided to respectfully follow the order of the ITAT of the earlier year in principle in this year also. But, the Ld. AO is directed to verify these units are generating surplus in this year also and if so, the order of Hon'ble ITAT of earlier year had to be followed by him. Accordingly, Ld. AO may take a decision based on facts."

20. Respectfully following the above decision of the Co-ordinate Bench, we direct the AO to examine the claim that these units are generation cash surplus and delete the allocation of finance cost accordingly.

Allocation of Research & Development Expenses (R&D) to eligible for deduction under section 80IB

21. The AO during the course of hearing noticed that the assessee has incurred R & D Expenses to the tune of Rs. 68,74,015/- and that the said expenses have not allocated to eligible undertakings. The assessee submitted that no part of the R&D Expenses are related to the products manufactured in the eligible units and that the expenses entirely relates to new products. The assessee accordingly submitted that the R&D Expenses do not pertain to the eligible undertakings and therefore not allocated to them. However, the AO did not accept the submissions of the assessee and allocated the expenses to all the eligible undertakings in proportion to their turnover.

22. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in assessee's own case for AY 1999-2000 (supra) has considered a similar issue where it has been held that

"5.2) At the time of hearing, Ld. AR of the appellant brought to the notice of the Bench that research and development expenses were not related to the products which are being manufactured at the Goa and Kanjikode units and hence restriction u/s. 801A cannot be made by the Ld. AO. In Goa and Kanjikode Units, only parachute coconut oil was being manufactured whereas research and development expenses related to other products like saffola, sweekar, hair and care etc. The Ld. CIT(A) has confirmed the addition made by the Ld. AO for the reasons mentioned in his order. Ld. AR of the appellant brought to the notice of the Bench that this issue was covered in his favour for A.Y. 1995-96 by the Hon'ble ITAT, Mumbai order dated 28.2.2007, where it was held that the research and development cost is to be allocated eligible units, where research and development is carried out with respect to the product manufactured at that unit. Ld. AR of the appellant contended that this issue was covered by Hon'ble Bombay High Court in the case of Zandu Pharmaceuticals Works Pvt. and in the case of Hindustan Unilever Ltd. also. In view of the same, it was pleaded that the addition made by the Ld. AO, confirmed by the Ld. CIT(A) should be deleted.

5.3) Ld. DR relied on the orders of the lower authorities.

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."

23. The facts for the year under consideration being identical we remit the issue back to the AO respectfully following the above decision of the coordinate bench with similar directions. It is ordered accordingly.

Allocation of Foreign Travelling Expenses

24. The AO during the course of hearing allocated the Foreign Travel Expenses to the tune of Rs. 12,57,998/- to the Goa Unit for the reason that the Goa Unit has made exports for an amount of Rs. 7,30,53,572/-. The ld. AR in this regard submitted that a similar addition was made by the AO during the AY 1999-2000 and

that the CIT(A) has deleted the said addition. The ld AR drew our attention to the relevant observations of CIT(A) in the appellate order for AY 1999-2000 which is extracted below -

> *"In my considered opinion, the assessing officer is not justified in ignoring the allocation of expenses under the above stated heads on actual basis as incurred by the two eligible units. As the appellant company is maintaining accounts for each and every item of expense separately for all its businesses and service divisions, allocation made on the basis of actuals cannot be rejected without pointing out any manipulation and defect in the accounts of the two eligible undertakings. So far as the expenses of Health Care Division are concerned, in my opinion, there is no need to allocate the same to the two eligible undertakings for the simple reason that division-wise accounts are maintained and, therefore, only those expenses should be allocated to the two eligible undertakir.gs which are common to all the businesses and service divisions of the appellant company. As discussed above, every eligible undertakings has to be considered on stand alone basis while working out the profits and gains of the industrial undertaking for the purpose of determining quantum of deduction u/s 80-IA. Similarly, for the Nature Care Division also, there is no justification to allocate expenses to the two eligible units for the reason that the expenses incurred under the above stated heads on account of PCO stand allocated to the two units by the appellant. The other products of Nature Care Division are Hair & Care, Amla, Herbal, Lite, Nutrisheen Liquid, Nutrisheen Cream, Jasmine, Revive Starch, Revive Spray, Revive Colour Fix, Active Herbs and Active Plants do not have any connection with the production of PCO which is the business of the two eligible industrial undertakings. In view of the above discussion, in my opinion, the assessing officer is not justified in making the allocation in the impugned fashion. Grounds of appeal No.7(a)(iii), 7(a)(v), 7(a)(vi) & 7(a)(vii) are allowed."*

25. The ld. AR further submitted that the revenue has not preferred further appeal against the order of the CIT(A). Accordingly, the ld. AR prayed that the decision of the revenue not to allocate the foreign travel expenses based on the export turnover has reached finality and therefore the allocation made by the AO for the year under consideration cannot be sustained.

26. We heard the parties and perused the material on record. From the observations of the CIT(A) for AY 1999-2000 as extracted hereinabove, we notice that the revenue has accepted the claim of the assessee that every item of expenses is tracked business and service division-wise and that allocation is made on actual amount spent. For the year under consideration we notice that the assessee has already allocated a sum of Rs. 19,95,421/- incurred on foreign travel expenses to the eligible unit. The AO has made further allocation for the reason that the ratio of export turnover made by the eligible unit as compared to the total export turnover is much more than the amount allocated and accordingly made the additional allocation of Rs. 12,57,998/-. In our considered view making allocation of foreign expenses merely for the reason that eligible unit has made exports cannot be accepted more so when the foreign travel expenses actually incurred by the undertaking is already allocated to the eligible unit. The AO other than taking the proportion of export turnover of the undertaking to the total export turnover of the assessee did not bring any other factual finding with regard to the allocation. In view of this discussion, we are of the view that the additional allocation of foreign travel expenses made by the AO cannot be sustained and we direct the AO to delete the same.

Exclusion of Other Income for the purpose of deduction u/s. 80HHC

27. The AO held that miscellaneous income to the tune of Rs. 52,32,797/- should not be included for the purpose of computing the income eligible for deduction under section 80HHC. The breakup of the said amount is a given below:

Particulars	***Amount***
Amount received from Chandrika	*46,40,750*
Octroi Refund	*1,39,246*
Interest Income	*1,36,163*
Marketing Fee Rebate	*1,21,380*

Sale of Empty Barrel	*52,280*
Penlaty from employee	*4,725*
Scrap Sale	*34,663*
Other Incomes	*1,04,550*
Total	***52,32,397/-***

28. We heard the parties and perused the material on record. The ld. AR during the course of hearing submitted that the amount received from Chandrika is a compensation receipt and hence fairly conceded that the same may be excluded for the purpose of computing deduction under section 80HHC. With regard to the rest of the amount, the ld. AR submitted that considering the smallness of the amount the inclusion of the same for the purpose of deduction under section 80HHC is not pressed. Accordingly, we dismissing the ground as not pressed. However, the decision will not impact if the assessee wishes to raise contentions with regard to the inclusion of the similar income for deduction under section 80HHC in any other AY.

Reduction from export profits eligible for deduction u/s. 80HHC in view of provisions of section 80IA(9)

29. We heard the parties and perused the material on record. The AO while working out the deduction under section 80HHC restricted the deduction in view of the provisions contained in 80IA(9). The ld. AR submitted that in the computation of income the assessee claimed deduction under section 80HHC after reducing the proportionate profits of the Goa Unit based to the total turnover of the Goa Unit. The ld. AR further submitted that the AO is not right in reducing the entire amount of deduction under section 80IB while computing the eligible profit for the purpose of section 80HHC deduction. The ld. AR also submitted that while computing the profit eligible for the purpose of section 80HHC no deduction of profits ought to be

made under section 80IA(9) r.w.s. 80IB(13). We notice that a similar issue has been considered by the Co-ordinate Bench in assessee's own case for AY 1999-2000 where it has been held that

> *"8.4) After hearing both sides, it is seen that the Ld. AO has not given any reasoning for reducing deduction claimed u/s. 80HHC of the Act. Here, the facts are not very clear. The Ld. AO is directed to see facts and figures submitted by the appellant company in this connection and follow the decision of Hon'ble Bombay High Court in the case of Associated Capsules (P) Ltd. (supra) as mentioned above."*

30. Respectfully following the above decision of the Co-ordinate Bench we remit the issue back to the AO with a similar direction. It is ordered accordingly.

Primary Adjustment in respect of guarantee commission

31. The AO noticed that the assessee in the Transfer Pricing Report furnished under section 92E relating to International Transaction entered by the assessee with its Associated Enterprises (AE) that the assessee has not charged commission on guarantee given to its AE in Bangladesh. The AO based on the T.P. Report filed by the assessee for AY 2006-07 made an addition by applying 0.8% as Guarantee Commission.

32. The ld. AR during the course of hearing fairly conceded that the impugned transactions are international transactions and made an alternate plea that the guarantee commission be restricted to 0.5% by relying on the following decisions:

a. Cadilla Pharmaceuticals Ltd. vs. ACIT [2024] 164 taxmann.com 52 (Ahmedabad Trib.)
b. Zee Enterprises Ltd. vs. Addl. CIT [2017] 81 taxmann.com 379 (Mumbai)
c. Apar Industries Ltd. vs. DCIT [2019] 102 taxmann.com 78 (Mumbai)
d. DCIT vs. Piramal Enterprises Ltd. [2020] 117 taxmann.com 970 (Mumbai)

33. We heard the parties and perused the material on record. The ld AR fairly conceded that the guarantee extended to AE is an international transaction. We notice that the AO has made the addition by considering the guarantee commission offered by the assessee @ 0.8% for AY 2006-07. However in our considered view, the AO cannot make the addition merely based on the TP report filed for subsequent year and the AO should have examined the issue based on facts pertaining to the year under consideration bench marking the transaction accordingly. Therefore we remit the issue back to the AO to consider the issue afresh keeping in mind the binding judicial pronouncements with regard to the guarantee commission. Needless to say that the assessee be given a proper opportunity of being heard. It is ordered accordingly.

ITA No. 3152/Mum/2008- Revenue's Appeal – AY 2004-05

34. The ld. AR submitted that the tax effect of the issues contended by the revenue towards the relief given by the CIT(A) is less than the monetary limit as per Circular No.9/2024 dated 17.09.2024 and therefore the appeal filed by the revenue is not sustainable. The ld. AR in this regard presented the following table:

Issues & Grounds in Revenue's appeal	**Amount**	**Amount**
Misc. expenses – **Ground No.1**		2,44,882
Rent & storage charges – **Ground No.2**		
Goa	2,75,966	
Pondicherry	10,97,001	13,72,967
Deduction u/s 80HHC – **Ground No.3**		
As claimed by assessee in revised computation	54,94,979	
As allowed by AO in assessment	11,11,832	43,83,147
Total Disputed Income		**60,00,996**
Basic Tax @ 35%		21,00,349
Surcharge @ 2.5%		52,509
Total Disputed tax		**21,52,857**

35. The ld. DR did not raise any objection to the contention of the ld. AR. Accordingly, we dismiss the appeal of the revenue on the ground that the tax effect is below the monetary limit as prescribed in Circular No.9/2024 dated 17.09.2024.

ITA No. 7044/Mum2008 – Assessee's appeal - AY 2005-06

36. From the perusal of the issues contended & the grounds for AY 2005-06 as tabulated in the earlier part of this order, we notice that all the issues contended are identical to the issue contended in AY 2004-05, therefore, in our considered view our decision on the impugned issues in AY 2004-05 are mutatis mutandis applicable for the AY 2005-06 also.

37. In result, the appeal of the assessee for AY 2004-05 and 2005-06 are partly allowed and the appeal of the revenue for AY 2004-05 is dismissed.

Order pronounced in the open court on 11-04-2025.

Sd/-	***Sd/-***
(PAWAN SINGH)	**(PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai