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

BEFORE SHRI SAKTIJIT DEY, VP AND SHRI N.K. BILLAIYA, AM

ITA No. 5982/Mum/2011
(Assessment Year: 2008-09)

Grasim Industries Ltd. (Corporate Finance Division) A-2, Aditya Birla Centre, S.K. Ahire Marg, Worli, Mumbai - 400030	Vs.	Asst. CIT, Circle 6(3), 5th Floor, Room No.522, Aayakar Bhavan, Mumbai.
(**Appellant**)	:	(**Respondent**)
PAN NO. AAACG 4464B		

ITA No. 6758/Mum/2011
(Assessment Year: 2008-09)

ACIT, Circle-6(3), Mumbai	Vs.	Grasim Industries Ltd. Aditya Birla Centre, 'A' Wing, 2nd Floor, S.K. Ahire Marg, Worli, Mumbai-25
Appellant by	:	Shri J.D. Mistri, Sr. Advocate, Shri Madhur Agarwal, And
Respondent by	:	Shri Dr. Kishor Dhule, CIT(DR)
(Appellant)		**(Respondent)**

Date of Hearing	:	24.02.2025
Date of Pronouncement	:	21.05.2025

O R D E R

Per Saktijit Dey, VP:

The Captioned cross appeals arise out of order dated 02.08.2011 of learned Commissioner of Income Tax (Appeal)-12, Mumbai, pertaining to Assessment Year (AY) 2008-09.

ITA No. 5982/Mum/2011 Assessee's Appeal (A.Y. 2008-09)

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

3. In Ground No.2, assessee has contested the disallowance of deduction claimed of Rs.9,119/- being employees' contribution to the provident fund.

4. Briefly the facts are, in course of assessment proceeding, the AO noticing that employees' contribution to PF was not paid within the due date prescribed in terms with Section 36(1) (va) of the Income Tax Act, 1961 (in short the 'Act') disallowed the deduction claimed. Learned First Appellate Authority confirmed the disallowance.

5. Before us, learned counsel appearing for the assessee fairly conceded that the issue is covered against the assessee by virtue of the decision of the Hon'ble Supreme Court in case of Checkmate Service Pvt. Ltd. vs. CIT [2022] 143 taxmann.com 178 (SC).

6. Learned Departmental Representative (DR) agreed with the aforesaid submission of learned counsel for the assessee.

7. Having considered rival submissions, we are of the view that the issue in dispute is squarely covered against the assessee by the decision of the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. (Supra). Accordingly, we uphold the disallowance. This ground is dismissed.

8. In Ground No.3, assessee has contested the disallowance of expenses incurred of Rs.5,03,37,991/- towards SAP-ERP expenses by treating as capital expenditure.

9. Briefly the facts are, in the year under consideration, the assessee had claimed deduction of an amount of Rs.5,03,37,991/- towards implementation of SAP-ERP. Though, the assessee had claimed the expenses as revenue expenditure, however, the AO did not accept assessee's claim and treated it as capital expenditure. The view expressed by the Assessing Officer was also upheld by learned First Appellate Authority.

10. We have heard the parties and perused the materials on record. It is observed, this is a recurring issue between the parties since Assessment Year 2002-03 onwards. In A.Ys. 2002-03 and 2003-04, the Tribunal had allowed assessee's claim. While deciding the issue in A.Y. 2007-08, the Tribunal in ITA No.5925/Mum/2010 dated 18.02.2025, following its earlier order had allowed assessee's claim, observing as under:

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

11. Respectfully following the consistent view of the Coordinate Bench, we allow assessee's claim with a rider that depreciation, if any, allowed to the assessee should be withdrawn. Ground is treated as allowed.

12. In Ground No.4, assessee has raised the issue of taxability of interest on Income Tax refund.

13. At the time of hearing, learned counsel appearing for parties agreed that the issue was decided in favour of the assessee in A.Y. 2007-08.

14. Having considered rival submission and perused the materials on record, we find, while deciding the identical issue in assessee's own case in A.Y. 2007-08 in the order referred to above, the Tribunal has held as under:

> *"35. We have considered rival submissions and perused the materials on record. It is observed, while considering identical nature of dispute in case of DIT vs. Bank of America NT and SA (Supra), the Hon'ble Jurisdictional High Court has held as under:*
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> > *"3. Even with regard to the question No.2 we do not find that it is a substantial question of law. The Tribunal found that the Assessee Bank received interest on refund of taxes paid. It also paid interest on the taxes which were payable. The Assessee sought to set off the interest paid against the interest received and offered the net interest received to tax. We do not see that such findings of the Tribunal are vitiated in law. All that the Tribunal has done earlier and now is that in the case of this Assessee simply because the exercise carried out by it does not result in loss of revenue and there could not be any prohibition for the same, allowed it. That is how the Assessing Officer's order is set aside. We do not see how any larger controversy or question arises for our consideration. Mr.Pinto would refer to Section 57 of the Income Tax Act, 1961 in that regard and submit that this course would be adopted by other Assessees as well and in that event the order passed by this Court would come in the way of the Revenue in investigating and probing such exercise by other Assessees.*
> >
> > *4. We do not see how this order can be cited as precedent inasmuch as the Assessee before the Tribunal and before us paid interest to the Income Tax Department amounting to Rs.10,26,906/- . The Assessee claimed that this was business expenditure and this should have been allowed. The Assessee has received the interest of Rs.1,07,57,930/-. It was submitted that the amount of interest paid by the Assessee should have been allowed to be set off against the interest deposited with the Department and taxed in the hands of the*

Assessee. The argument was that the interest paid to and received from is the same party i.e. Government of India and therefore, both transactions should be taken together.

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

36. Identical issue was also considered by the Hon'ble Jurisdictional High Court in case of CIT vs. M/s Credit Agricole Corporate and Investment Bank in ITA No. 27 of 2016. While deciding the issue, the Hon'ble Jurisdictional High Court following the decision in case of DIT vs. Bank of America (Supra), decided the issue in favour of the assessee. Even the other decisions cited by learned counsel for the assessee are in line with the ratio laid down by the Hon'ble Jurisdictional High Court in case of Bank of America (Supra). In so far as the decision relied upon by learned DR are concerned, on careful examination, we are of the view that they are factually distinguishable as the issue of netting off of interest paid with interest received was not involved. Thus, respectfully following the decision of Hon'ble Jurisdictional High Court referred to above, we allow the ground in favour of the assessee."

15. Facts being identical, respectfully following the decision of the Coordinate Bench, we allow the ground in favour of the assessee.

16. In Ground No.5, the assessee has challenged the taxability of an amount of Rs.7,09,592/-, being surplus and on pre-payment of sales tax loan. In response to query raised by the AO in course of assessment proceeding regarding the nature of aforesaid receipts, assessee submitted that the amount received is capital receipt, hence, not chargeable to tax. However, the AO did not accept assessee's claim. Treating the receipt as revenue in nature, the AO added back to the income of the assessee. The addition so made was confirmed by learned First Appellate Authority.

17. Before us, learned counsel appearing for the assessee submitted that issue has been decided in favour of the assessee in A.Ys. 2005-06 and 2007-08. Though, learned D.R. accepted the aforesaid factual position, however, he dutifully relied upon the observation of the AO and learned First Appellate authority.

18. Having considered rival submissions and perused the materials on record. We find identical issue came up for consideration before the Coordinate Bench in an appeal of the assessee for A.Y. 2007-08 (Supra). While deciding the issue, the Bench has held as under:

> *"19. Having considered rival submissions, we find, while deciding assessee's appeal against the order passed order u/s. 263 of the Act in A.Y. 2005-06, the Tribunal vide order dated 11.03.2011 passed in ITA No. 3104/Mum/2008 has not only quashed the revision order but has held as under:*
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> > *"6. We have heard both the sides, perused the records and gone through the orders of the authorities below. The Rajasthan Government gave an option to the assessee availing the benefit under the scheme to repay the loan liability even before the stipulated repayment date. Pursuant to the government offer, the assessee company opted to make repayment of loan liability of Rs.106.47 Crores. During the previous year, relevant to the Asst. Year 2005-06, the assessee-company paid an amount of Rs.72.12 Crores to the State Government in discharging of total liability of Rs.106.47 Crores resulted in extinguishment of loan liability of Rs.34.35 Crores being the excess of loan liability over the amount paid. The surplus arising out of payment of loan amounting to Rs.34.35 Crores was credited to the profit and loss account and the assessee has filed all the details in respect of the above and credited the amount to the profit and loss account (Paper book pages 32, 35 to 37). The Assessing Officer has allowed the claim of the assessee on the ground that surplus on payment of sales tax loan being a capital receipt in nature. According to the Commissioner, the surplus amount of loan amounting to Rs.34.35 Crores taxable u/s.41(1) of the Act because the loan liability which is in the nature of sales tax liability is only a trading liability and not capital in nature, therefore, the remission on such liability cannot be 8 ITA 3104/Mum/08 treated as a capital receipt. The*

Assessing Officer has treated the receipt as capital receipt. The Special Bench of ITAT in the case of M/s. Suzler India Limited (supra) in similar set of facts has held that section 41(1) has no application. In the case of Malabar Industrial Co. Ltd. (supra), the Hon'ble Supreme Court observed as under :

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

prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law."

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

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

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

19. Keeping in view the parity in facts, we respectfully follow the decision of the Coordinate Bench in assessees's case, as referred to above, and direct the Assessing Officer to delete the addition. This ground is allowed.

20. In so far as Ground No.6 is concerned, learned counsel appearing for the assessee submitted that as the AO has granted the desired relief to the assessee vide rectification order dated 17.12.2012, the ground has become infructuous.

21. Keeping in view such submission of the assessee, we dismiss the ground.

22. In ground No.7, the assessee has raised the issue of disallowance of employee's stock option cost amounting to Rs.4,89,82,986/-.

23. Briefly the facts are, while verifying the computation of income filed by the assessee, the Assessing Officer noted that though the assessee had added an amount of Rs.4,89,82,986/- to profit as per books towards employees' compensation cost under ESOS scheme, however, in the note to the computation of income the assessee had claimed that employee's stock option cost is allowable as deduction. Further, in course of assessment proceeding, the assessee furnished employees' stock option scheme and made detailed submission justifying the claim of deduction. However, relying upon the decision of the Coordinate Bench in case of Ranbaxy Laboratory Pvt. Ltd., the Assessing Officer rejected assessee's claim. Learned First Appellate Authority upheld the decision of the Assessing Officer.

24 Before us, learned counsel appearing for the assessee submitted that employees' stock option cost being revenue expenditure has to be allowed. Proceeding further, he submitted that issue stands covered in favour of assessee by plethora of orders passed by the Tribunal including the decision of the ITAT Bangalore Special Bench in case of Biocon Ltd. vs. DCIT (2013) 35 taxmann.com

335, which stood affirmed by the Hon'ble Karnataka High Court (276) taxman.com 1. He further relied upon the following decisions:

1. Aditya Birla Novo Ltd. in ITA No.5848/Mum/2017
2. Grasim Industries Ltd. vs. Addl. CIT in ITA No. 1065/Mum/2017
3. Aditya Birla Nuvo Ltd. vs. Addl. CIT in ITA No.4220/Mum/2015
4. DCIT LTU vs. Aditya Birla Nuvo Ltd. in ITA No. 3178/Mum/2012.
5. Aditya Birla Nuvo Ltd. vs. DCIT in ITA No.563/Mum/2018
6. Bicon Ltd. vs. DCIT [2013] 35 taxmann.co, 335 (Bang.Trib) (SB)
7. DCIT vs. CBRE South Asia (P.) Ltd. [2024] 163 taxmann.co, 256 (Del.Trib)
8. Bhartiya International Ltd. [2024] 158 taxmann.com 239 (Del. Trib)
9. Lemon Tree Hotels Ltd. vs. Addl. CIT in ITA No.4588/Del/2013 (Del.Trib).
10 CIT vs. PVP Ventures 23 taxmann.co. 286 (Mad. HC).

25. Learned DR relied upon the observations of the AO and learned First Appellate Authority.

26. We have considered rival submissions and perused the materials on record. We have also applied our mind to the Judicial precedents cited before us. It is observed, in case of Aditya Birla Nuvo Ltd. (Supra) which amalgamated with the assessee company, the Tribunal has consistently taken the view that these expenses have to be allowed as Revenue expenditure. In the latest order passed in ITA No.1885/Mum/2018 dated 25.07.2024, the Tribunal has followed its earlier decision in assessee's case and upheld the order of learned First Appellate Authority allowing deduction. Facts being identical, respectfully following the consistent view of the

Coordinate Bench, we direct the Assessing Officer to allow assessee's claim. This ground is allowed.

27. In Ground No.8, the assessee has contested the disallowance of depreciation on assets forming part of the block of assets subsequently let out.

28. Before us, learned counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the decisions of the Tribunal in assessee's own case in A.Y. 2005-06 and 2007-08.

29. He drew our attention to the relevant observations of the Tribunal in the orders passed in A.Ys. 2005-06 and 2007-08. Though learned DR agreed that the issue has been decided in favour of the assessee in A.Ys. 2005-06 and 2007-08, however, he submitted that the decision taken by the Tribunal in earlier assessment years should not be followed and the matter may be referred to Special Bench.

30. Having considered rival submissions and perused the materials on record. We are of the view that identical issue stands decided in favour of the assessee by the decisions of the Tribunal in A.Y. 2005-06 and 2007-08. While deciding the issue in A.Y. 2007-08, the Tribunal has held as under:-

> *"8. We have considered rival submissions and perused the materials on record. We have also applied our mind to the decisions relied upon. It is observed, identical issue came up for consideration before Coordinate Bench in A.Y. 2005-06. While dealing with the issue, the coordinate Bench in ITA No.3517/Mum/2006, dated 04.07.2023 has held as under:*
>
> > *"23. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that the property under question was purchased by the assessee in the assessment year 1987-88. Since its acquisition, the said property forms part of the block of assets for the purpose of claiming depreciation under the Act. It is the claim of the assessee*

that in the preceding years the assessee used this property as one of its office premises. In the year under consideration, the said property was let out and the rental income was offered to tax under the head "Income from House Property", after claiming a deduction under section 24 of the Act. The AO, vide assessment order, worked out the disallowable depreciation in respect of the aforesaid property while allowing deduction claimed under section 24 of the Act.

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

> *"block of assets" means a group of assets falling within a class of assets comprising—*
>
> *(a) tangible assets, being buildings, machinery, plant or furniture;*
>
> *(b) intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed;"*

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

> *—Depreciation*
>
> *32.(1) In respect of depreciation of—*
>
> > *(i) buildings, machinery, plant or furniture, being tangible assets;*
> >
> > *(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,*
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> *owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—*
>
> > *(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;*

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

……..

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

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

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

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

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

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

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

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

(b) by the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets,

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

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

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

6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture.

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

"32. Another significant and contemporaneous development, which needs to be noticed is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which was previ- ously allowable under section 32(1) (iii) and also taxing of balancing charge under section 41(2) in the year of sale. Instead of these two provisions, now whatever is the sale-proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This

amendment was made because now the assessees are not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1) (iii) . This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

33. Having regard to this legislative intent contained in the aforesaid amendment, it is difficult to accept the submission of the learned counsel for the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of 'block of assets'. Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the 'block of assets' even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short-term capital gain, which would be exigible to tax and for this reason, we say that there is no loss to revenue either."

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

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

31. We do not find any convincing and justifiable reasons not to follow the earlier decisions of the Tribunal on the issue. Hence, we are not persuaded by the submission of learned DR to make a reference for constitution of Special Bench to resolve the issue. Respectfully following the decision of the Coordinate Bench in assessee's case in A.Ys. 2005-06 and 2007-08, we allow assessee's claim of depreciation. AO is directed to delete the disallowance.

32. In Ground No.9, the assessee has contested disallowance of Rs.71,56,170/- u/s. 40(a)(ia) of the Act representing provision of expenses made at the year end. At the time of hearing, ld. Counsel appearing for the assessee submitted, since the claim of the assessee has been allowed in toto in the year of actual payment i.e. Assessment Tear 2009-10, ground has become infructuous. Keeping in view the submission of the assessee, ground is dismissed.

33. In Ground No.10, assessee has challenged disallowance of Rs.1,59,140/- representing retirement benefit trust administration expenses.

34. Briefly the facts are, while computing assessee's income under the head profit and gains of business and profession, the Assessing Officer added back an amount of Rs.1,59,140/- representing administrative expenses of gratuity and Provident Fund Trust. The assessee contested the disallowance before learned First Appellate Authority. While deciding the issue, learned First Appellate Authority observed that

while granting approval to the gratuity and PF trusts, the Commissioner of Income Tax has put a condition that expenses incurred on administration of funds will be borne by the company. Hence, the same will not be allowed as deduction in tax assessment of the assessee. Referring to the aforesaid condition imposed by the Commissioner of Income Tax, learned First Appellate Authority upheld the disallowance.

35. Before us, learned counsel appearing for the assessee submitted that as per Section 36(1)(iv) of the Act, in absence of any such condition prescribed by the Board, the PCIT cannot by himself imposed, conditions. He submitted, even the provision contained u/s. 36(1)(v) of the Act does not empower the CIT to put any condition while grating approval. Thus, he submitted, the CIT has acted wholly without jurisdiction.

36. In this context, ld. Counsel drew our attention to the Part-A to 4th Schedule under the Income Tax Act and submitted that as per Rule-4, there is no such condition prescribed by the Board. Proceeding further, he submitted, when the statutory provisions do not vest jurisdiction on the approving authority to impose fresh conditions other than conditions already provided under the provision, the approving authority cannot issue the approval imposing conditions other than those prescribed in the statutory provision. In support of such contention, he relied upon the decision of the Hon'ble Supreme Court in the case of Continental Construction Ltd. vs. CIT [1992] 195 ITR 81 (SC).

37. Per contra, learned Departmental Representative (DR) submitted, only the contribution paid or payable are to be allowed.

38. We have considered rival submissions and perused the materials on record. Undoubtedly, the Commissioner of Income Tax has granted separate approvals to employees' gratuity fund and provident fund created by the assessee. However, while granting approval, the CIT has observed that the expenses borne by the assessee for administration of the funds/trusts shall not be allowed as deduction while computing the profit and gains from business. The issue arising for consideration, is whether the aforesaid condition imposed by CIT is valid. On a reading of Section 36(1)(iv) of the Act, it appears that any sum paid by the assessee as an employer by way contribution towards recognized provident fund is to be allowed as deduction subject to such condition as the Board may prescribe. Whereas, Section 36(1)(v) of the Act says any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund has to be allowed as deduction. Unlike Section 36(1)(iv) Section 36(1)(v) is not subject to any condition.

39. According of approval for recognized provident fund and gratuity fund are provided under Part-A and Part-B of the 4th Schedule to the Income Tax Act. While Rule-4 under Part-A to the 4th Schedule prescribes the condition for approval of recognized provident fund, Rule-2 and 3 prescribes conditions for approval of gratuity fund.

40. On going through these provisions, we were unable to locate any condition prescribing that the expenses incurred by the company in managing the fund/trust

shall not be allowed as deduction in computing the profit and gains from business/profession. There is no dispute regarding either the incurring of the expenditure or its genuineness. Thus, when the assessee has incurred certain expenses in course of its business it has to be allowed as deduction. The provisions contained in the statute empower the approving authority to grant approval strictly in terms with the prescribed rules. The rules nowhere suggest that approval has to be granted by putting a limitation on the allowability of administrative expenses. That being the factual and legal position, in our view, the approving authority cannot impose conditions in addition to the condition prescribed under the Rules. In this context, we refer to the following observations of the Hon'ble Supreme Court in case of Continental Construction Ltd. vs. CIT(Supra):-

> *"…….. Section 80-O only empowers the Board to approve of a contract on being satisfied that it gives rise to receipts qualifying for deduction under section 80-O and nothing more. In fact the various terms and conditions of the Board's letter of approval (in relation to which arguments have been addressed before us) are totally redundant and unnecessary. All that the Board has to do is to approve of an agreement for the purposes of section 80-O. It has nothing more to do. Its approval cannot be tentative or provisional or qualified. It cannot be hedged in with conditions and restrictions of the nature set out in the Board's letter. It cannot limit the relief to certain assessment years only; it cannot restrict or enlarge the scope of the relief that can be granted under the section. The assessment years for which relief is available, the extent of the receipts that qualify for deduction and all other incidents flow from the language of the section."*

41. Applying the ratio laid down by the Hon'ble Supreme Court referred to above, we hold that the disallowance made by the AO is unsustainable. Accordingly, we direct the AO to delete the disallowance. This ground is allowed.

42. In Ground No.11, the assessee has contested the disallowance of deduction claimed u/s. 80IA of the Act in respect of other income.

43. Having heard the parties, we find that it is recurring dispute between the parties from earlier assessment years. While deciding the issue in the latest order passed in assessee's case in A.Y. 2007-08(Supra), the Coordinate Bench has held as under:

> *"30. Having considered rival submissions and perused the materials on record. We find that the coordinate Bench has decided the issue in favour of the assessee in Assessment Year 2002-03. Whereas, in Assessment Years 2004-05 and 2005-06, issue was restored back to the Assessing Officer for verification. While giving effect to the order of the Tribunal, the Assessing Officer has allowed assessee's claim.*
> *31. Considering the above, we direct the Assessing Officer to allow assessee's claim of deduction u/s. 80IA of the Act in respect of rental income. This ground is allowed."*

44. Factual position being identical in the impugned assessment year respectfully following the consistent view of the Coordinate Bench, we decide the issue in favour of the assessee by directing the Assessing Officer to allow claim of deduction u/s. 80IA of the Act.

45. In Ground No. 12, assessee has contested the disallowance of Rs.47,63,853/- on account of bad debt written off.

46. Having considered rival submissions, we find, this is a recurring issue between the parties from earlier assessment years. In the latest order passed for A.Y. 2007-08 (Supra) in assessee's case, the Tribunal has held as under:

> *"38. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decision of Tribunal in its own case in A.Y. 2002-03.*
>
> *39. On perusal of facts on record, we are convinced that the issue is squarely covered in favour of the assessee by virtue of the ratio laid down by the Hon'ble Supreme Court in the cases of M/s Vijya Bank vs. CIT [2010] 323 ITR 166 (SC) and T. R. F. Ltd. v. CIT (2010) 323 ITR 397 (SC).*
>
> *40. In view of aforesaid, we are inclined to allow the ground in favour of the assessee."*

47. Respectfully following the view expressed by the Coordinate bench, we allow assessee's claim. This ground is allowed.

48. In Ground No.13, assessee has challenged disallowance of cost of acquisition of share while computing capital gain.

49. Briefly the facts are, in the financial year relevant to A.Y. 1999-2000, the assessee had incurred certain expenses towards acquisition of shares of Shri Digvijay Cement Company Ltd. (SDCCL). In the return of income filed for A.Y. 1999-2000 the assessee had claimed deduction towards expenses incurred for acquisition of shares. However, while computing the taxable income of the assessee in the assessment order for A.Y. 1999-2000, the AO added back the expenditure claimed amounting to Rs.1,18,34,608/- treated it as capital expenditure. In the current assessment year, the assessee had sold the shares of SDCCL. While computing capital gain, assessee had claimed the expenditure incurred at the time of acquisition

of shares as cost of acquisition. However, deduction claimed has not been allowed to the assessee.

50. We have considered rival submissions and perused the materials on record. In principle, we accept the submission of learned counsel for the assessee that while computing capital gain on sale of shares, cost of acquisition of shares has to be allowed as deduction u/s. 48 of the Act. Therefore, AO is directed to factually verify assessee's claim based on facts and material on record and allow deduction towards cost of acquisition, if has not been allowed in any other assessment year. Ground is allowed for statistical purposes.

51. In addition to main ground, assessee has raised three additional grounds. Considering the fact that additional grounds raised do not require investigation into freshs facts and can be decided based on facts and material available on record, we admit the additional grounds.

52. In Additional ground No.1, the assessee has raised the issue of non-taxability of dividend received from M/s. Alexandria Carbon Block Company amounting to Rs.4,98,92,170/-.

53. We have heard the parties and perused the materials available on record. Learned counsel appearing for the assessee fairly submitted that in past assessment years, the issue has been decided against of the assessee.

54. On perusal of record, it is observed, while deciding identical issue in the latest order passed for Assessment Year 2007-08 (Supra), the Tribunal has held as under:

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

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

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

55. Respectfully following the consistent view of the Coordinate bench, we decide the issue against the assessee. This ground is dismissed.

56. In additional Ground No.2, the assessee has raised the issue of disallowance of Rs.94,34,608/- on being cost of acquisition of SDCCL shares on sale of which the assessee has declared capital gain in the impugned assessment year. This ground is identical to Ground No.13 divided by us earlier, hence, does not require separate adjudication.

57. In additional Ground no.3, the assessee has raised the issue of taxability of subsidy received from the Central Government under Technology Upgradation Fund Scheme (TUF) as revenue receipt.

58. We have considered rival submissions and perused the materials on record. It is observed, this is a recurring issue between the parties. While deciding the issue in earlier assessment years, the Tribunal has taken a view favourable to the assessee. In the latest order passed for A.Y. 2007-08 (Supra), the Tribunal, while deciding the issue has held as under:

> "*47. Having considered rival submissions and perused the materials on record, we find, identical issue came up for consideration before the Tribunal in assessee's own case in Assessment Year 2005-06 (Supra). While deciding the issue, the Tribunal has taken a view in favour of the assessee by holding that the subsidy received under the TUF scheme is capital in nature. The observations of the Tribunal in this regard are as under:*
>
> > *"52. As per the assessee, the TUF subsidy is provided by the Central Government to sustain and improve the competitiveness and overall long-term viability of the Textile Industry and as an incentive for technology upgradation of the textile industry. It was submitted that the subsidy is granted via - Resolution on TUFS on Techno-Operational parameters by the Ministry of Textiles in March 1999. We, at the outset, find that while deciding a similar issue the coordinate bench of the Tribunal in the case of subsidiary of the assessee held the interest subsidy received under the TUF scheme is capital in nature. The relevant findings of the coordinate bench of the Tribunal in DCIT v/s M/s Grasim Industries Ltd (successor to Aditya Birla Novo Ltd.), ITAs No. 84/Mum./2023 and 356/Mum./2023, vide order dated 12/06/2023, observed as under:-*
> >
> > > *"06. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the decision of the coordinate bench. During the course of hearing before the*

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

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

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

further buttress his submissions placed reliance on the following decisions:-

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

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

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

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

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

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

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

07. Therefore in view of the above decision of the coordinate bench the issue is squarely covered in favour of the assessee wherein it has been held that interest subsidy received under technology upgradation fund scheme, though credited in the net off against the interest

expenditure in the books of account is still capital in nature and therefore not chargeable to tax. Further the argument of the learned departmental representative has also been negated about the applicability of explanation 10 to section 43 (1) of the act by the decision of the coordinate bench in case of orbit exports (supra). In view of this both the grounds of appeal raised by the learned assessing officer are dismissed."

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

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

59. Finding parity in facts, we respectfully follow the view expressed by the Coordinate Bench in earlier assessment years and direct the AO to delete the addition. This ground is allowed.

60. In additional Ground No.4, the assessee has claimed deduction of Rs.27,74,87,168/- representing payment of education cess.

61. We have heard the parties and perused the materials on record. At the outset, learned counsel appearing for the assessee submitted that in assessee's own case, the issue has been decided against the assessee in A.Ys. 2005-06 and 2007-08. It is observed, while deciding identical issue in the latest order passed in A.Y. 2007-08 (supra) the Coordinate Bench has held as under:

"50. Before us, learned counsel appearing for the assessee submitted that as per Section 40(a)(ii) tax levied on the profits or gains of business and profession or assessed as proportion of or otherwise on the basis of such profits or gains cannot be allowed as deduction. He submitted,

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

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

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

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

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

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

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

62. Respectfully following the decision of the Coordinate Bench, we disallow assessee's claim by dismissing this Ground.

63. In the result, appeal is partly allowed.

ITA No. 6758/Mum/2011 (Revenue's Appeal) A.Y. 2008-09

64. In Ground No.1, the Department has contested the deletion of disallowance made u/s. 43B of the Act in respect of certain payments aggregating to Rs.46,45,04,024/- stated to be covered under Clauses (b) to (f) of Section 43B of the Act.

65. Having considered rival submissions and perused materials on record, we find, this is a recurring issue between the parties for past many assessment years. In the latest order passed for A.Y. 2007-08 (Supra), the Tribunal, while deciding the issue, has held as under:-

> *"59. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decisions of the Tribunal in its own case in past assessment years.*
>
> *60. Having considered rival submissions, we find, it is a recurring issue continuing since AY 1986-87 onwards. It is further observed, in past assessment years, the Tribunal has consistently decided the issue in favour of the assessee. The latest order being for AY 2005-06 (Supra). There being no change in the factual position, respectfully following the decisions of the Tribunal in assessee's own case, we uphold the decision of learned First Appellate Authority. This ground is dismissed."*

66. Fact being identical, respectfully following the decision of the Coordinate Bench, we uphold the order of learned First Appellate Authority by dismissing the ground.

67. In Ground No.2, Revenue has contested the deletion of the disallowance made of Rs.16,31,418/-, being contribution to local organization.

68. Before us, it is a common point between the parties that in earlier assessment year in assessee's own case issue has been decided in favour of the assessee.

69. Having considered rival submissions, we find, while deciding the issue in the latest order for A.Y. 2007-08 (supra) in assessee's case, the Tribunal has held as under:

> *63. We have considered rival submissions and perused the materials on record. It is a common point between the parties that the issue has been consistently decided in favour of the assessee by the Tribunal in past assessment years.*
>
> *64. Having perused the materials on record, we find that from AY 1988-89 onwards identical issue has been decided in favour of the assessee not only by the Tribunal but even by the Hon'ble High Court. In fact in the latest order passed for AY 2005-06. The Tribunal has decided the issue in favour of the assessee.*
>
> *65. Respectfully following the consistent view of Hon'ble Jurisdictional High Court and coordinate Bench, we uphold the decision of learned First Appellate Authority by dismissing the ground."*

70. Respectfully following the decision of the Coordinate bench, we uphold the decision of the learned First Appellate Authority by dismissing the ground.

71. In Ground No.3, the Revenue has contested deletion of disallowance of rural development expenses amounting to Rs.2,46,94,199/-.

72. Before us, it is a common point between the parties that issue is covered by earlier decision of the Tribunal and Hon'ble Jurisdictional High Court in assessee's own case. In the latest order passed for A.Y. 2007-08 (Supra) the Tribunal has held as under:

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

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

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

73. Respectfully following the decision of the Coordinate Bench, we dismiss the ground raised.

74. In Ground No.4, Revenue has contested the deletion of disallowance of Rs.1,00,26,098/- representing cost of production of advertisement films.

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

76. Having considered rival submissions and perused materials on record, we find, while deciding the issue in the latest order passed for A.Y. 2007-08 (Supra) the Coordinate Bench has held as under:

"75. Having perused the material on record, we find that the issue first time came up for consideration before the Tribunal in assessees's own case in AY 1976-77. While deciding the issue, the Tribunal allowed assessee's claim. Subsequently, the Tribunal reiterated the same view in AYs 1976-77 in AYs 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06. Learned counsel further brought to our notice that up to AY 2002-03, the Department has accepted the decision of the Tribunal.

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

77. Facts being identical, respectfully following the consistent view, the Tribunal in assessee's case, we uphold the decision of learned First Appellate Authority by dismissing the ground.

78. In Ground No.5, the Department has contested the decision of learned First Appellate Authority holding the sales tax subsidy received amounting to Rs.80,68,88,471/- as capital receipt.

79. Before us, it is a common point between the parties that this is a recurring issue from the earlier assessment years and the Tribunal has consistently decided the issue in favour of the assessee.

80. Having considered rival submissions, we find, while deciding identical issue in assessee's case in the latest order passed in Assessment Year 2007-08 (Supra), the Coordinate Bench has held as under:

> *"79. Before us, it is a common point between the parties that the issue is squarely covered in favour of the assessee by the decisions of the Tribunal in assessee's own case in past assessment years. On perusal of material on record, we find that this is a recurring issue between the parties since the AY 1996-97 up to AY 2005-06. In each of these assessment years, the Tribunal has taken a consistent view that the receipts on account of sales tax subsidy are in the nature of capital receipt, hence, not liable to tax. Respectfully following the consistent view of the Tribunal, we uphold the decision of learned First Appellate Authority by dismissing this ground."*

81. Facts being identical, respectfully following the consistent view of the Tribunal in assessee's case, we uphold the decision of learned First Appellate Authority by dismissing the ground.

82. In Ground No.6, the Department has challenged deletion of addition of Rs.2,68,74,193/-.

83. Briefly the facts are, on 04.12.2007, assessee had entered into a share purchase agreement with M/s Cimpor Inversiones S.A. (CISA) for sale of its equity holding Shri Digvijay Cement Company Ltd. (SDCCL). After execution of share purchase agreement CISA transferred funds equivalent to the sale proceeds of the share in an offshore Escrow Account. Before the actual transfer of shares, certain actions were to be taken by CISA and the assessee. On completion of all such actions, the parties were required to inform each other and such date of notification is referred as 'unconditional date' in the Share Purchase Agreement (SPA). The said notification was issued on 18.03.2008 and the shares were transferred to CISA on 18.03.2008. The assessee received sale consideration along with the sale consideration interest of Rs.2,68,74,193/- for the period from 07.01.2008 to 17.03.2008 from escrow agent. Though, the assessee accounted for the interest income in its books of account and offered it to tax, however, before the Assessing Officer assessee submitted that the interest income is capital in nature. Hence, should not be made taxable. The AO, however, did not agree with the submission of the assessee and treated the interest earned as revenue receipt. Assessee contested the aforesaid decision before learned First Appellate Authority. While deciding the issue learned First Appellate authority relied upon the decision of the ITAT, Mumbai Special Bench in the case of Narang Overseas P. Ltd. vs. ACIT, 300 ITR (AT) 1-Mum. and held that interest income from escrow account till the date of transaction is to be treated as capital receipt and part of the sale proceed of share. Accordingly, he deleted the addition.

84. Before us, learned Departmental Representative (DR) submitted that because of non-functioning and non-fulfilment of condition, the sale of shares got delayed resulting in payment of interest to the assessee. Thus, he submitted, such interest being compensatory in nature has to be treated as revenue receipt. Whereas, learned counsel appearing for the assessee drew our attention to the share purchase agreement and other documentary evidences to emphasise that the payment of interest was directly linked to transfer of capital assets hence has to be treated as capital receipt. He submitted the interest arising in the escrow account is for depravation of capital. In support of such contention, learned counsel relied upon the following decisions:

i. Narang Overseas P. Ltd. vs. ACIT, 300 ITR (AT) 1-Mum.

ii. Fujitsu Ltd. vs. ACIT, ITA No. 2607/Del/2022, dated 14.11.2024.

85. We have considered rival submissions and perused materials on record. The share purchase agreement and other evidences on record clearly establish that the interest earned by the assessee was directly linked to transfer of shares. Though, the share purchase agreement was executed on 04.12.2007 and the sale consideration was transferred to escrow account, however, the transactions was ultimately completed on 18.03.2008. Since the assessee was deprived of the sales consideration which was lying in the escrow account, the interest accrued thereon was also received along with the sales consideration on completion of the transaction. Thus, the interest received has to be treated as part of sales consideration. In case of the Narang Overseas P. Ltd. (Supra), the Special Bench of the Tribunal has observed as under:

> *"50. The next question for our adjudication is whether interest awarded from the date of termination of lease agreement till the date of consent*

decree can be said; to be capital in nature. The learned Senior DR has heavily relied on the decision of the apex court in the case of Dr. Shamlal Narula v. CIT 53 ITR 151 (SC) for the proposition that interest on compensation is always revenue in nature. On the other hand, the learned Counsel for the assessee has relied on the Kerala High Court decision in the case of Periyar & Pareekanni Rubber Ltd. (supra) and A.P. High Court decision in the case of J.D. Italia (supra). According to him, interest up to the date of determination of mesne profit would be in the nature of damages and therefore, capital in nature while the interest received after such date would be revenue in nature since it would be deprivation of use of money.

51. We are in agreement with the contention of the learned Counsel for the assessee. The hon'ble A.P. High Court as well as the Kerala High Court in the cases referred to by the assessee's counsel have considered this issue. The judgement of hon'bie Supreme Court in the case of Dr. Shamlal Narula (supra) was referred to and considered by the above High Courts. The hon'ble Kerala High Court in the case of Periyar & Pareckanni Rubber Ltd. (supra) considered the situation where the interest was paid to the assessee up in the date of award under Land Acquisition Act, 1894. Their Lordships held as under:

A distinction has been drawn in relation to possession assumed under the provisions of the Act and possession otherwise taken. In the former case, Sections 16 and 17 of the Land Acquisition Act stipulate that on possession being taken, the property will vest in the Government In the absence of any such statutory provision, even when possession is assumed by the Government, whether under some provision of law or by agreement or even sometimes unauthorisedly, the view is that there has been deprivation of property and the interest paid by the Government is merely compensation for deprivation of such property. The fact that compensation that is payable for such deprivation is calculated on a percentage of interest on that amount does not affect the question. It is still compensation for deprivation of property. This is the distinction that has been drawn by the Supreme Court in the decision of Dr. Shamlal Narula v. Commissioner of Income-tax referred to by the Tribunal That this distinction is real, cannot be disputed and in a later decision of the Supreme Court in T.N.K. Gvindarajulu Chetty v. Commissioner of Income tax the earlier decision is referred to and approved. In the nature and in the circumstances of this case, we are unable to hold that the amount paid to the assessee and allowed by the Tribunal as a deduction represented anything other' than compensation for deprivation of property. The property was not vested in the Government till the award was passed on August 31, 1962. The nature of the possession changed from that date and, we think, the Tribunal refused to allow deduction of interest payable from that date till September 6, 1962, rightly. But, as regards the payment of interest for the anterior period, the view taken is in consonance with the Supreme Court decision. The principle

is that slated by the Privy Council in Vallabhdas Naranji v. Development Officer, Bandra and in Jnglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission. The latter decision has been approved by the Supreme Court in Dr. Shamlal Narula v. Commissioner of Income-tax.

52. In the later judgement in the case of CIT v. Mrs. Annamma Alexander (supra), the hon'ble Kerala High Court again considered this issue. Their Lordships made a distinction between "interest proper" and "damages by way of interest" by approving the view of the author Law of Income Tax by A.C Sampath Iyengar, Seventh Edition, Volume I page 518, which is reproduced, even at the cost of repetition, as under:

If the quality of the claim for interest is compensation, for this reason that the claimant has been deprived of the use of the money and has not had his money at the due date, if would be income in his hands. It may be regarded either as representing the profit he might have made if he had had the use of the money in time, or, conversely, the loss he had suffered, because he had not had that use. If on the other hand, the claim is for toss of property or loss of goods, or some other injury to capital and the element of interest comes in by way of estimating the compensation to be granted for such capital loss or capital injury, then, the receipt would be capital.

In view of the above, the High Court held that interest up to the date of award of mesne profits is nothing but damages for deprivation of use and occupation of the property and thus receipt is in the nature of capital not chargeable to lax. It may also be mentioned that their Lordships dissented from the view of hon'ble Madras High Court in the case of P. Mariappa Gounder (supra) which has been relied upon by the Revenue.

53. The hon'ble A.P. High Court in the case of J.D. Italia (supra) also held that interest awarded was in the nature of damages and therefore, capital receipt not chargeable to tax. The decision of the Supreme Court in the case of Dr. Shamlal Narula was also considered by the court.

54. The judgement of hon'ble Supreme Court in the case of Dr. Shamlal Najrula (supra) is quite distinguishable on facts. In that case, the interest under the Land Acquisition Act was awarded from the date of possession till the date of payment of compensation. Their Lordships observed that under the provisions of the Land Acquisition Act, the ownership of land is vested in the Government the moment the possession is taken by the Govt. Thus the money by way of compensation becomes due on the date of possession taken by the Government and thus interest is for deprivation of use of use of money and therefore, character of such receipt is revenue in nature. After considering this judgement of hon'ble Supreme Court, the hon'ble Kerala High Court and hon'ble Andhra Pradesh High Court in the cases mentioned in the preceding paragraphs held that interest for the period up to the date of decree was capital in nature since till such date,

the interest was by way of damages for deprivation of use and occupation of property.

55. The above discussion clearly reveals that if the interest is paid for deprivation of use of money fallen due to them it is revenue receipt chargeable to tax. On the other hand, if the interest is paid on account of the injury to the capital i.e., deprivation of use and occupation of the property then it is capital receipt not chargeable to tax In the present case, it. has already been held by us that mesne profit was for deprivation of use and occupation of the property. The interest received by the assessee is also for the same period as it is awarded up to the date of decree. The money has become due on the date of decree. Accordingly, it is held that interest from the date of termination of lease till the date of decree would be capital receipt not chargeable to tax. However, if any interest is received by the assessee beyond that period then, it would be revenue receipt chargeable to tax."

86. Further in case of Fujitsu Ltd. vs. ACIT (Supra), the Coordinate Bench has held as under:

"18. Now coming to the taxability of interest received on the compensation arising out of an Arbitral Award in the sum of Rs 2,80,03,480/- , though the assessee had voluntarily offered the same to tax in the return of income, the same , in our considered opinion, would not be chargeable to tax at all, in view of the decision of Hon"ble Supreme Court in the case of CIT vs Govinda Choudhary & Sons reported in 203 ITR 881 (SC) wherein it was held that such interest is only an accretion to the asesssee"s receipts from the contracts. It is obviously attributable and incidental to the business carried on by it. The Hon"ble Supreme Court specifically made an observation in Para 6 of its order that interest can be assessed under the head „income from other sources" only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to it de hors the business which is carried on by it. In our view, the interest payable to it certainly partakes of the same character as the receipts for the payment of which it was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the award and treated as „income from other sources". Respectfully following the same, the interest portion of Rs 2,80,03,480/- also had to be treated as business income of the assessee and in the absence of PE in India, the same would not be chargeable to tax in India as per Article 7 of India Japan Tax Treaty."

87. The ratio laid down in the aforesaid judicial precedents clearly apply to the present issue. In view of aforesaid, we do not find any infirmity in the decision of learned First Appellate Authority. Accordingly, this ground is dismissed.

88. In Ground No.7, Revenue has raised the issue of allocation of head office expenses while computing deduction u/s. 80IA of the Act.

89. Before us, it is a common point between the parties that this is a recurring issue between the parties since A.Y. 2002-03 onwards and in A.Ys. 2002-03, 2003-04 and 2005-06, the Tribunal has decided the issue in favour of the assessee. Further, the Department has accepted the decision by not filing appeal before the Hon'ble High Court.

90. Keeping in view the aforesaid factual position, we uphold the decision of the learned First Appellate Authority on the issue.

91. In Ground No.8, the Department has challenged allowance of claim of deduction u/s. 80IA of the Act on Rail System at Raipur and Hotgi.

92. Briefly the facts are, in course of assessment proceeding, the AO noticed that the assessee has claimed deduction of Rs. 39,28,28,076/- u/s. 80IA of the Act in respect of Rail System at Raipur and Hotgi. He observed that while considering identical claim of the assessee in assessment order passed for A.Y. 2003-04, the AO had rejected such claim on the finding that the Rail System is neither independent undertaking nor infrastructure facility to become eligible for

deduction u/s.80IA of the Act. He noted, in A.Y. 2003-04, the AO had further observed that the Rail System did not came up as whole at a time but was put in place at different point of time. The AO further observed that in A.Ys. 2004-05, 2005-06 and 2006-07, identical claim made by the assessee was rejected in assessment proceeding. Thus, following the decision taken in past assessment years the AO disallowed assessee's claim of deduction. The disallowance was contested before learned First Appellate Authority. Having found that while deciding the appeals for A.Ys. 200304 to 2007-08, the First Appellate Authority had allowed the claim, he followed the view taken in those assessment years and allowed assessee's claim.

93. Before us, learned Departmental Representative (DR) submitted that in September, 1999, when the assessee furnished Form No.10CCB, there was no agreement with the Indian Railway. He submitted agreement with the Indian Railways was entered in the year 2000.

94. Drawing our attention to Section 80IA of the Act, he submitted that the claim of eligibility has to be examined in the year of initial operation. He submitted, since in the year of initial operation, the assessee did not fulfil the conditions, deduction could not have been allowed to the assessee. Thus, he submitted, the decision of the Tribunal in earlier assessment years should not be followed and issue has to be examined afresh.

95. Per contra, learned counsel for the assessee strongly relied upon the observations of learned First Appellate Authority and submitted that since the

issue has been consistently decided in favour of the assessee. On identical facts, no contrary view can be taken in the impugned assessment year. He submitted, in fact in A.Y. 2007-08, the decision of leaned First Appellate Authority allowing claim of deduction was accepted by the Department and no appeal was filed. Further, referring to Circular No.1/2016 dated 15.02.2016 issued by the Central Board of Direct Taxes (CBDT) he submitted that the initial assessment year for claim of deduction u/s. 80IA of the Act has to be at the option of the assessee. He submitted, once option of such initial assessment has been exercised it cannot be changed afterward. In support of such contention, learned counsel relied upon the orders passed by the Tribunal in A.Ys. 2003-04, 2004-05 and 2005-06.

96. We have carefully considered rival submissions and perused materials on record. Factual matrix reveals that A.Y. 2003-04 was the initial assessment year wherein, the assessee claimed deduction u/s. 80IA of the Act in respect of Rail System. Though, the AO rejected assessee's claim, however, learned First Appellate Authority allowed it. When the dispute reached Tribunal, after taking note of enter factual position, the Tribunal in order dated 13.06.2023 in ITA No. 4754/Mum/2004 and ITA No. 5978/Mum/2004, not only held that the initial assessment year of claim is A.Y. 2003-04 but the assessee is entitled to claim deduction u/s. 80IA of the Act. The same view was reiterated by the Tribunal while deciding appeals for A.Y. 2004-05 vide ITA Nos. 3439 and 4337/Mum/2005 order dated 23.06.2023 and in A.Y. 2005-06 vide ITA No. 3517 and 3854/Mum/2006, order dated 04.07.2023. There is nothing new in the submissions now advanced by learned Departmental Representative, as we find,

the very same submissions were made before the Tribunal in A.Ys. 2003-04 to 2005-06. Interestingly, though in A.Y. 2007-08, learned First Appellate Authority had granted similar deduction to the assessee, however, the Department has not filed any appeal against the Tribunal. Such selective approach of the Department cannot be understood.

97. Be that as it may on careful analysis we have found that factual position relating to the issue in dispute in the impugned assessment year is identical to the facts involved in A.Ys. 2003-04 to 2005-06. Therefore, we do not find any justifiable reason to deviate from the view expressed consistently by the Coordinate Bench in assessee's own case in discussed above. In view of aforesaid, we uphold the decision of learned First Appellate Authority by dismissing the grounds raised.

98. In the result Revenue's appeal is dismissed.

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

Order pronounced in the open court on 21/05/2025

Sd/-	Sd/-
(N.K. Billaiya)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 21/05.2025
Aks/-

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai