IN THE INCOME TAX APPELLATE TRIBUNAL,
'K' BENCH MUMBAI
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 1787/Mum/2006 (AY: 2002-03)(Appeal in quantum assessment)

CO No. 257/MUM/2006(AY: 2002-03)

(Arising out of ITA NO 1822/MUM/2006)

ITA No. 6224/Mum/2010 (AY: 2003-04) (Appeal in quantum assessment)

ITA No. 3878/Mum/14 (AY: 2003-04) (Appeal in penalty levied u/s 271(1)(c))

(*Physical hearing*)

M/s. United Phosphorous Ltd. Uniphos House, Madhu Park, 11th Road, Khar (W), Mumbai. PAN: AAACU 3440 P	Vs.	ACIT, CC-38, Room no. 32(1), Ayakar Bhavan, Maharishi Karve Road, Mumbai-400020.

ITANo.1822/Mum/2006(AY 2002-03)(Appeal in quantum assessment)

ITA No. 6236/Mum/2006 (AY: 2003-04) (Appeal in quantum assessment)

ITA No. 3534/Mum/2014 (AY: 2003-04) (Appeal in penalty levied u/s 271(1)(c))

ACIT, CC-38, Room no. 32(1), Ayakar Bhavan, Maharishi Karve Rd., Mumbai-400020.	Vs.	M/s. United Phosphorous Ltd. Uniphos House, Madhu Park, 11th Road, Khar (W), Mumbai. PAN: AAACU 3440 P

(Appellant)	..	**(Respondent)**

Assessee by	Ms. Vasanti Patel Advocate
Revenue by	Shri. Kiran Unavekar, Sr. DR
Date of Hearing	18/03/2025
Date of Pronouncement	30/05/2025

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This group of seven appeals/cross appeals are directed against the separate orders of learned Commissioner of Income Tax Appeal (Ld. CIT(A)) for A.Y. 2002-03 and 2003-04. In all appeals the assessee as well as revenue has raised certain common and interconnected grounds of appeal. Certain facts in all the

appeal are common and interconnected. Therefore, with the consent of both the parties, all the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decisions. For appreciation of facts, facts in A.Y. 2002-03 is treated as lead case. The assessee in its appeal in ITA No. 1787/Mum/2016 has raised following grounds of assessee:

"I. TAXABILITY OF ADVANCE LICENCE BENEFIT RECEIVABLE: Rs.9,79,19,084/-

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax to include advance licence benefit receivable amounting to Rs.9,79,19,084/- in the total income, particularly as no income had accrued to the appellant until the imports were made and the raw materials were consumed, which events took place in the subsequent year.

II. TAXABILITY OF PASS BOOK BENEFIT RECEIVABLE. Rs 21,20,29,429/-

2.1 On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of Deputy Commissioner of Income-tax to include Pass Book benefit receivable amounting to Rs.21,20,29,429/- in the total income.

2.2 In doing so, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that no income had accrued to the appellant until credit was received in the Pass Book, which event took place in the subsequent year and that it is a well established legal proposition that entries in the books of account were not material for determining the tax liability and if no income had accrued then the same could not be taxed even though the said item was accounted for as income in the books of account.

III. CLAIM FOR DEDUCTION IN RESPECT OF DATA ACCESS FEES TREATED AS DEFERRED REVENUE EXPENDITURE IN THE ACCOUNTS: Rs. 88,70,985/-

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in restricting the claim for deduction in respect of Data Access

Fees to Rs 17,74, 197/- as debited in the Profit and Loss Account being 1/5th of the total expenditure amounting to Rs.88,70,985/- instead of allowing the entire expenditure of Rs.88,70,985/- incurred during the year

IV. CLAIM FOR DEDUCTION IN RESPECT OF SALARY AND WAGES CAPITALISED IN THE ACCOUNTS: Rs.66.43,098/-

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellants' claim for deduction in respect of salary and wages amounting to Rs.66,43,098/- capitalised in the books of account without appreciating the fact that the said expenses represented revenue expenditure eligible for deduction under section 37(1).

V .INTEREST ATTRIBUTABLE TO EARNING OF EXEMPT INCOME: Rs.9,57,490/-

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Deputy Commissioner of Income-tax of disallowing an amount of Rs. 9,57,490/- as expenditure incurred for earning tax free income.

Vl. DEDUCTION UNDER SECTION 80-IB:

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in following respects:

(a) On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that "profits and gains derived from the business of an industrial undertaking is eligible for deduction under section 80-1B and not only "profits and gains derived from an industrial undertaking":

(b)In reducing items of "other income" from the "profits and gains of the business", on the ground that the said income was not "derived from an industrial undertaking," without considering the costs, etc. debited in the accounts in respect thereof and deducted while computing the profits of the industrial undertakings;

(c) In not appreciating the fact that the appellant had included the advance licence benefit reversal and the pass book benefit reversal as part of the cost of raw materials and in case the said benefits were excluded, the corresponding notional reversals also ought to have been removed from the cost for the purpose of working the profits of the eligible undertakings,

(d) In holding that items of "other income other than sales tax set off ought to be excluded from the "profits and gains of the business", on the ground that the said income had no direct nexus with the eligible industrial undertaking;

(e) In not appreciating that if items of other income like interest, etc. were to be excluded, then only the net amounts ought to have been reduced while computing the profits of the eligible undertaking.

VII. DEDUCTION UNDER SECTION 80HHC

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in the following respects:

(a) In holding that 90% of the 'gross interest and other receipts' and not the 'net interest and other receipts' ought to be considered for exclusion from the 'profits of the business' for the purpose of computing deduction under section 80HHC;

(b) In upholding the exclusion of 90% of Rs. 26,94,63,584/- in respect of DEPB benefit while computing the 'profits of the business'

(c) In not appreciating the fact that as per the Taxation Laws (Amendment) Act, 2005 only 90% of the profit on transfer of DEPB covered under section 28(iiid) is to be excluded from the 'profits of the business'

VIII. INTEREST UNDER SECTION 234D:

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Deputy Commissioner of Income-tax in levying interest under section 234D amounting to Rs.8,84,153/- without appreciating the fact that section 234D had been inserted by the Finance Act, 2003 with effect from 1 June, 2003 and accordingly, interest under the said section could not be levied in respect of refunds granted prior to 1" June, 2003.

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal

ADDITIONAL GROUNDS

1. The appellant submits that for the purpose of computing book profit under section 115JB, deduction under clause (iv) of the Explanation in respect of profits eligible for deduction under section 80HHC ought to be computed on the basis of the adjusted book profits and not on the basis of the profit and gains of business or profession as per normal provisions of the Act as held by the Hon'ble Supreme Court in the case of Al-Kabeer Exports Ltd. vs. CIT (Civil Appeal No. 1546 of 2012) and CIT vs. Bhari Information Technology Systems (Civil Appeal No. 33750/2009).

2. The appellant submits that deduction under section 80HHC ought to be granted in respect of Duty Entitlement Pass Book Benefit (DEPB) as per the first proviso to section 80HHC(3) in view of the decision of the Hon'ble Supreme Court in the case of Topman Exports Ltd. (Civil Appeal No. 1699 of 2012).
"

2. The assessee vide its application dated 16th March 2012, raised following additional grounds of appeal;

(1) The appellant submits that for the purpose of computing book profit under section 115JB, deduction under clause (iv) of the Explanation in respect of profit of eligible deduction under section 80HHC ought to be computed on the basis of adjusted book profit and not on the basis of the profit and gain of business or profession as per normal provisions of the Act as held by Hon'ble Supreme Court in case of Al-Kabeer Export Ltd Vs CIT (Civil Appeal No. 1546 of 2012) and CIT Vs Bhari Information Technology Systems (Civil Appeal No. 33750/2009).

(2) The appellant submits that the deduction under section 80HHC ought to be granted in respect of Duty Entitlement Passbook Benefit (DEPB) as per first proviso to section 80 HHC (3) in view of decision of the Hon'ble Supreme Court in case of Topman Export Ltd (Civil Appeal No. 1699 of 2012).

3. Further, again vide application dated 17th March 2025, the assessee has raised following additional ground of appeal;

"*On the facts and circumstances of the case and in law, the appellant prays that proportionate deduction in respect of the research and development expenses ought to be granted in the captioned assessment year as per the direction given by the Hon'ble Tribunal in order passed for AY 2000-01 (ITA No. 3456/Mum/2004).*

4. The revenue in its Cross appeal in ITA No. 1822/Mum/2006 has raised following grounds of appeal:

"*1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was not correct in deleting the additions by treating Product Registration expenses of Rs 20,07,684/-and Research & Development expenses of Rs.3,05,38,830/- as revenue in nature.*

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was not correct in directing the AO to allow 1/5 of Rs 88,70,985/- by treating Data Access Fees as revenue expenditure.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in deleting the disallowance on account of delayed payment of employee's contribution towards PF & ESIC of Rs.57,00,023/- disallowed u/s. 36(1)(va) and employer's contribution of Rs.40,24,927/- disallowed u/s. 438 respectively, by directing the AO to consider the payments made before the filing of return of income without appreciating the fact that Sec.43B of the I.T. Act, 1961 is an overriding provision and the due date as per Explanation below clause (va) of sub section (1) of section 36 means the due date by which the assessee was required to pay the PF & ESIC and cannot be extended to filing of return of income.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the AO to treat sales tax refund of Rs.13,06,862/- as part of the profit eligible for deduction u/s. 801B.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the AO not to consider the amount of excise duty and sales tax totaling to Rs.37,83,51,575/- as a part of total turnover for the purpose of deduction u/s. 80HHC.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the AO not to exclude 90% of job work charges, sales tax refund, discount, excess provision written back, sundry credits written back, exchange rate difference and 50% of miscellaneous receipts (sale of scrap only) from the business profits while computing profits of the business for the purpose of deduction U/s 80HHC of the Act.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the AO not to exclude 90% of the exchange difference amounting to Rs.593.06 lacs while computing the profits of the business for the purpose of deduction u/s. 80HHC."

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the AO to re-work indirect cost by reducing ad-hoc 10% of such income, 90% of which has been reduced from the profits of the business computed for the purpose of deduction u/s, 80HHC."

5. On service of memorandum of appeal by revenue, the assessee also filed its CO by raising following grounds of appeal:

" *1. On the facts and in the circumstances of the case and in law, the respondent submits that no interest could be levied under section 234D since no refund was granted to the respondent under section 143(1) of the Act.*

2. On the facts and in the circumstances of the case and in law, the respondent submits that in case the Ground No. 2 of the Departmental appeal (ITA No. 1822/Mum/2006) is allowed and Data Access Fees are treated as capital in nature, then depreciation on the same ought to be allowed as a deduction."

6. Rival submissions of both the parties have been heard and record perused. The learned authorized representative (ld AR) of the assessee submits that majority of grounds of appeal raised by assessee in its appeal and additional grounds of appeal or by grounds of appeal revenue in Cross appeal or C.O. by assessee is

covered in favor of assessee either by the decision of Tribunal or by various High Court or of Hon'ble Supreme Court. First, we are considering various grounds of appeal raised by the assessee in its Appeal in **ITA No. 1787/Mum/2006 (AY 2002-03).** Ground no. 1 in assessee's appeal relates to taxability of the advance license benefit receivable of Rs. 9.79Cr. The Ld. AR of the assessee submits that this ground of appeal is covered in favor of assessee by the order of Tribunal in assessee's own case for A.Y. 1998-99 in ITA No. 1519/Ahd/2002, in A.Y. 1999-00 in ITA No. 4695/2025, A.Y. 2000-01 in ITA No. 3456/2004 and in A.Y. 2001-02 in ITA No. 2990/M/2005 and by the decision of Gujarat High Court in A.Y. 1997-98 in tax appeal number 302/2001 as well as by the decision of Hon'ble Apex Court in CIT V Excel Industries Limited reported in 358 ITR 295(SC).

7. On the other hand, the Ld. DR for the revenue supported the order of lower authorities.

8. We have considered the rival submission of both the parties and have gone through the orders of lower authorities and the decisions relied by the ld of the assessee carefully. The AO made addition by taking view that such benefit availed by assessee is a result of self-serving certification scheme. The assessee acquires the right to receive the import licenses for importing duty free raw material in advance even prior to export of goods in question. The AO took his view on the basis of treatment in earlier years assessment orders wherein it was held that licence benefit was taxable in the year of export. Before CIT(A) the assessee submitted that similar addition was made in earlier years, however on further appeal before Tribunal such claim was allowed to the assessee in all

earlier years. The Ld. CIT(A) on considering the decision of earlier years and held that his predecessor in A.Y. 2000-01 and 2001-02, decided such issue against assessee. We find that in all earlier years the assessee filed appeal before Tribunal wherein, the coordinate bench in A.Y. 2001-02 in ITA No. 2990/MUM/2005 by following the order in A.Y. 2000-01 allowed the relief in fair of assessee. The relevant part of order of Tribunal in A.Y. 2000-01 is extracted below:

> "3.5. We have carefully considered the rival submissions. It is seen that on identical issue, the Hon'ble jurisdictional High Court has decided the matter in favour of the assessee for A.Y 1994-95. In the immediately preceding year i.e. A.Y 1999-2000, following observations have been made by the Coordinate Bench relying on Hon'ble Apex Court's decision in Excel Industries Ltd. (supra) while deciding this issue:
>
> *"9. We have heard rival submissions and perused the materials available on record. The Hon'ble Supreme Court in the matter of Excel Industries Ltd (supra) held that value of any benefit or perquisite, arising from business or exercise of profession [Advance licence and duty entitlement pass book] until imports are actually made by assessee, benefits under advance license or under duty entitlement pass book represent only hypothetical income which cannot be brought to tax. In view of this, we decide the issue in favour of the assessee and ground no. 1 is allowed."*
>
> 3.6 Respectfully following the decision of the Hon'ble Jurisdictional High Court as well as of the coordinate Benches in the assessee's own case for AYs 1998-99 and 1999-2000, we decide this issue in favour of the assessee and the addition made by the AO of Rs. 4,64,74,214/- on this account is hereby deleted."

9. Considering the consistent decision of coordinate bench of Tribunal in assessee's own case wherein the decision of Gujarat High court and of Jurisdictional High Court in earlier years was followed. Thus, respectfully following the same, the addition of advance licence benefit of Rs. 9.79 Crore made by AO is deleted. In the result, ground no. 1 in assessee's appeal is allowed.

10. Ground No. 2 relates to taxability of passbook benefit receivable of Rs. 21.20 Crore. The Ld. AR of the assessee submits that this ground of appeal is covered by the order of Tribunal in assessee's own case for A.Y. 1998-99 in ITA No. 1519/Ahd/2002, in A.Y. 1999-00 in ITA No. 4695/2025, A.Y. 2000-01 in ITA No. 3456/2004 and in A.Y. 2001-02 in ITA No. 2990/M/2005 and by the decision of Gujarat High Court in A.Y. 1997-98 in tax appeal number 302/2001 as well as by the decision of Hon'ble Apex Court in CIT V Excel Industries Limited reported in 358 ITR 295(SC).

11. On the other hand, the Ld. DR for the revenue supported the order of lower authorities.

12. We have considered the rival submissions of the parties and have gone through the orders of lower authorities and the decisions relied by the ld AR of the assessee. The AO made addition of DEPB receivable by taking view that similar addition was made in earlier assessment years. Before ld CIT(A) the assessee submitted that no income had accrued to the assessee until the imports were made and the raw material is consumed, which event took place in subsequent years. The entries made in the profit and loss accounts were notional in nature, which represent the notional values of benefits under import and export policy. The ld CIT(A) not accepted the contention of the assessee and held that in AY 1995-96, 1996-97 & 1997-98, the said issue was decided by Ahmedabad Tribunal again the assessee. Further, similar issue is decided against the assessee in AY 2000-01 and in 2001-01. We find that in assesses own case the coordinate bench of Tribunal in AY 2000-01 and 2001-02 by following the order of Gujarat High Court in earlier years has passed the following order;

"4.3 We have carefully considered the rival submissions, it is seen that on identical issue, the Hon'ble Gujarat High Court has decided the matter in favour of the assessee for A.Y 1999-20 in ITA No. 4695/Mum/2005. In the immediately preceding year, following observations have been made by the Coordinate Bench of this Tribunal while deciding this issue:

> *11. We find that similar issue was decided in assessee's own case in ITA No.1519/Ahd/2022 wherein the Tribunal has decided the issue in favour of the assessee. We find in Tax Appeal No.129 of 2003, (Assessee's own case) Hon'ble High Court of Gujarat relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd (2013) 358 ITR 295 held that the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that no income had accrued to the appellant until credit was received in the Pass Book, which event took place in the subsequent year and that it is a well established legal proposition that entries in the books of account were not material for determining the tax liability and if no income had accrued then the same could not be taxed even though the said item was accounted for as income in the books of account. Respectfully following the same, ground No. II raised by the assessee is allowed.*

4.4 Respectfully following the decisions of the Hon'ble High Court as well as the Coordinate Bench in the assessee's own case for earlier assessment years, we decided this issue in favour of the assessee and the addition made by the AO of Rs. 21,89,25,469/- on this account is hereby deleted."

13. Considering the consistent decisions of Gujarat High Court in assesses own case, which has been followed by this bench in earlier years as quoted above, and respectfully following the same disallowance / addition of pass book benefit receivable is deleted. In the result, ground no.2 of the appeal is allowed.

14. Ground no. 3 relates to allowing deduction of 1/5 of data access fee treated as differed revenue expenditure. The Revenue has also challenged the action of ld. CIT(A) in allowing 1/5th of data access fee. The ld AR of the assessee submits

that notes in respect of amount treated as deferred revenue expenses was given in the accounts. The details of such deferred revenue expenses were also furnished during assessment. Such expenses were incurred for the purpose of registration of product in other country to enable the assessee to export to those countries. Thus, such expenditure ought to be allowed as deduction under section 37 of the Act. This ground of appeal as well as ground no. 2 in Revenue's appeal is also covered in favour of the assessee by the decisions of Tribunal in assesses own case for AY 1999-00 in ITA No. 4695/Mum/2005 and in AY 2000-01 in ITA No. 3456/Mum/2004.

15. On the other hand, the ld Sr DR for the revenue supported the orders of lower authorities.

16. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. During the financial year under consideration the assessee incurred the aggregate expenses of Rs. 4.14 Crore, which consist of the following expenditure;

a	Product registration expenses	Rs. 20,07,684/-
b	Research and development expenses	Rs.3,05,32,830/-
c	Data access Fees	Rs.88,70,985/-
	Total	Rs.4,14,11,499/-

17. The AO treated the expenses incurred on product registration research and development expenses as capital expenditure and not allowed such expense in totality. The ld CIT(A) by following the decisions of his predecessor allowed only 1/5 of the total expense incurred by the assessee. We find that against the order of earlier years in not allowing data access fee and Task force expenses, the assessee filed appeal before Tribunal in AY 2000-01, wherein in ITA No.

3456/Mum/2004, the coordinate bench of this Tribunal passed the following order;

"10.3 It is seen that the issue has been decided in favour of the assessee in earlier assessment years. In particular, relevant part of the order of coordinate bench for 1999-00 in ITA No. 4695/Mum/2005 with regard to the issue is reproduced as below:

"61. In respect of registration expenses of Rs. 137, 93,917/-, Ld. CIT (A) has observed as under:- The appellant submits that the Product Registration Expenditure was actually incurred during the year under consideration. It is urged that liability to tax cannot be decided on the basis of entries in the books of account, but has to be decided in accordance with the provisions of law. It is contended that the said expenditure is allowable u/s 37 of the Act. Reliance has been placed on decisions of the High Courts and also of the Supreme Court in the case of CIT vs. Shoorji Vallabhdas& Co. 46 ITR 144, Kedarnath Jute 82 ITR 363; Chowringhee Sales Bureau 87 ITR 542; Berger Paints 254 ITR 503. It is submitted that the registration of the product was compulsory to make sales in the respective countries. Without such registration, the appellant company could not have launched its product for sale in those countries. The expenditure was, therefore, of revenue nature. It is submitted that similar expenditure was allowed upto A.Y. 1996- 97. Disallowance was made for the first time in AY 1997-98 and the same was deleted by CIT (A) and Department's appeal was dismissed by the ITAT.

62. In view of the above, we respectfully follow the findings of coordinate bench in assessee's own case and sustain the findings of Ld. CIT (A) on the plea raised by the revenue as far as product registration expenses of Rs. 137,93,917/- is concerned."

10.4 Respectfully following the decision of the co-ordinate bench, this ground is allowed in favour of the assessee."

18. Considering the consistent decisions of the Tribunal on similar expenses and taking in the note that all the expenses incurred by the assessee are revenue expenditure, the disallowances restricted by ld CIT(A) to the extent of 1/5 is also deleted. In the result, this ground of appeal is allowed. Resultantly, ground no. 2 in Revenue's appeal is dismissed.

19. Ground No. 5 relates to deduction of salary and wages capitalized. The ld AR of the assessee, while making her submissions not pressed this ground of appeal. Hence, this ground of appeal is dismissed as not pressed.

20. Ground No. 6 relates to disallowance of interest attributable to earning of exempt income. The ld AR of the assessee submits that during the assessment year under consideration, the assessee received exempt income of Rs. 9,57,490/-. The AO estimated and added amount of interest expenses for earning exempt income. The assessee was having sufficient interest free funds of Rs. 42,991.66 lakhs available with it, whereas investment of Rs.20,178.88 lakhs was made on which only dividend income was earned. No borrowed funds were utilized for making investment in shares yielding exempt income. Thus, no disallowance of interest expenses was warranted. To support her submissions the ld AR of the assessee also relied on the decision of Hon'ble Supreme Court in CIT Vs Reliance Industries Ltd (86 taxmann.com 24 SC), CIT Vs HDFC Bank Ltd (366 ITR 505 Bom), CIT vs Reliance Utilities and Power Ltd (313 ITR 414 SC) and assessees own case for AY 2000-01 in ITA No. 3456/Mum/2004. In alternative submissions, the ld AR of the assessee submits that the AO has to apply reasonable method for qutifying the expenditure attributable for earning exempt income.

21. On the other hand, the ld CIT-DR for the revenue relied on the orders of lower authorities. The assessee has shown exempt income but not made *suo moto* disallowance for earning exempt income. The AO made reasonable disallowance.

22. We have considered the rival submissions of the parties and have perused the orders of lower authorities carefully. We find that AO made disallowance of

interest expenses on the basis of his observation that the assessee has taken secured and unsecured loan of Rs. 27413.01 lakhs and Rs5296.42 lakhs respectively. The assessee has debited financial cost of Rs.5644.80 lakhs. Total investment in shares of various companies is Rs. 19718.65 lakhs. The percentage of total capital deployed is 43.21%. As no actual expenses details are provided by the assessee, the AO estimated investment of Rs. 19718.65 lakhs and worked out proportionate interest expenses of Rs. 1470.36 lakhs. Since, the disallowance worked out by AO was in excess of exempt income, thus, he restricted the interest disallowance for earning exempt income to the extent of exempt income. The ld CIT(A) confirmed the action of AO by taking view that in earlier assessment years i.e. in AY 2000-01 & 2001-02 his predecessor decided similar issue against the assessee. We find that on similar issue, and on similar disallowance coordinate bench of Tribunal is assessees own case in AY 2000-01in ITA No. 3456/Mum/2004 allowed relief to the assessee on following the ratio of law that when interest free funds with the assessee are sufficient to meet its investment, hence, it could be presumed that investments were made from interest free funds available with the assessee. Thus, following the same ratio of law and the decisions of Tribunal in assessees own case in earlier years, the disallowance made by AO is deleted. In the result, this ground of appeal is allowed.

23. Ground No. 6 relates to deduction under section 80IB. The AO while passing assessment order under section 143(3) excluded the following four items from the profit derived from eligible industrial undertaking;

1	Interest from debtors	Rs. 61,38,876/-
2	Sales tax set off	Rs. 13,06,862/-

3	Misc Receipts	Rs. 5,63,040/-
4	Exchange Rate difference	Rs. 5,97,76,096/-

24. On appeal before ld CIT(A), sales tax refund was allowed by holding that it is inextricably connected with the business of the assessee. Now only three items are left for our consideration. The ld AR of the assessee submits that she is not pressing item No.3, shown in the above list, which relates to Misc receipts. Thus, to that extent the ground of appeal is dismissed. So far as other remaining two items are concerned, the ld AR of the assessee submits that interest from debtors was allowed to be included in the eligible profit in assessees own case for AY 1999-00 in ITA No.4695/Mum/2005, by Gujarat High Court in CIT Vs Nirma Ltd (367 ITR 12 Guj) and Delhi High Court in CIT Vs Advance Detergents Ltd (339 ITR 81 Delhi). So far as exchange rate difference on export of Rs. 5.97 Crore is concerned, such item was also allowed in in the eligible profit in assessees own case for AY 1999-00 in ITA No.4695/Mum/2005 and by the decision of Bombay High Court in CIT Vs Vinati Organics Ltd (2013) 36 CCH 123 (Bom).

25. On the other hand, the ld DR for the revenue supported the orders of the AO and ld CIT(A) for exclusion of both the items for eligible industrial undetaking.

26. We have considered the rival submissions of the parties and perused the order of lower authorities. We have also deliberated on the case laws relied by the ld AR of the assessee. We find that that interest from debtors was not allowed to be included in the eligible profit in assessee own case for AY 1999-00, however, on appeal before Tribunal it was allowed in ITA No.4695/Mum/2005. Further, we find that Gujarat High Court in CIT Vs Nirma Ltd (supra) also allowed similar income for computation of eligible income. So far as exchange rate difference is

concerned, we find that similar relief was allowed to the assessee in AY 1999-00 in ITA No. 4695/MUM/2005. Further, jurisdictional High Court CIT Vs Vinati Organics Ltd (supra) also held that assessee is eligible for exchange rate fluctuation difference eligible for 80IA. Thus, following the same ratio the assessee is allowed such benefit of exchange rate difference for the purpose of benefit under section 80IB. In the result, this ground of appeal is partly allowed.

27. Ground No.7 relates to deduction under section 80HHC. The assessee claimed deduction of Rs. 18.64 Crore under section 80HHC. The AO computed deduction under section 80HHC of Rs. 6.84 Crore after making certain adjustment. The ld AR of the assessee submits that the AO while making adjustment held that DEPB benefit is covered by section 28(iv) and not under section 28(iiia),(iiib) or (iiic) and held that export incentive on account of DEPB licence amounting to Rs. 26.94 crore will not be considered while adding 90% of the export incentive while calculating deduction under section 80HHC. Aggrieved by the action of AO, the assessee filed appeal before CIT(A) and submitted that AO has not considered the first proviso below section 80HHC(3). In alternative it was argued that in excluding 90% of export incentives inspite of the fact that no deduction has been granted under the proviso by holding the DEPB is not covered under section 28(iia), (iiib) or (iiic) of the Act. The ld CIT(A) dismissed the plea of the assessee and held that DEPB income arises out of the scheme of the Government and not out of the business of the assessee. The assessee in its additional grounds of appeal also raised the plea that deduction under section 80HHC ought to be granted in respect of DEPB as per the first proviso to section 80HHC and the decision of Supreme Court in Topman Export Ltd in Civil Appeal

No. 1699 of 2012. In AY 2001-02 in ITA No. 3251/Mum/2009, by relying on the decision of Topman Export Ltd (supra), similar issue was restored to the file of AO for recomputation of deduction. The assessee has filed MA against such finding, as there is favorable decisions of Tribunal in assesses own case for AY 1994-95, 1995-96, 1998-99 and AY 1999-00 (in ITA No. 4695/Mum/2005). The ld AR of the assessee submits that by following decision of Topmen Export Ltd (supra), the DEPB benefit received of Rs. 26.54 Crore ought to be considered as covered under section 28(iiib) and 90% of the same to be excluded from the profit of the business and to be added back as per first proviso to section 80HHC(3). And profit on sale of DEPB amounting to Rs. 39,82,682/- to be considered as covered under section 28(iiid) and 90% of the same to be excluded from the 'profit of the business' but will not be added back as the condition prescribed in the third proviso to section 80HHC(3).

28. On the other hand, the ld DR for the revenue supported the order of AO/ CIT(A). In alternative he submits that similar issue in AY 2000-01 has been restored back to the file of AO, thus, following the same may be restored to the file of AO.

29. We have considered the rival submissions of the parties and have gone through the orders of lower authorities. We find that on similar ground of appeal in assessee's own case in A.Y. 1995-96 in ITA No. 1516/Ahd./2002 dated 23.12.2015 and again in A.Y. 1998-99 in ITA No. 1519 & 1620/Ahd./2002 dated 12.03.2018 and again A.Y. 1999-2000 in ITA No. 4695 & 4699/M/2005 dated 20.09.2023, similar ground of appeal was allowed in favour of assessee. On the contrary in appeal for 2000-01 in ITA No. 3456/m2004 dated 24.12.2024 is

restored to the file of assessing officer. Therefore, this issue is restored back to the file of assessing officer with limited purpose for verification and to allow relief to the assessee by following the decision of Tribunal in asessee's own case. In the result, this ground of appeal is allowed for statistical purpose.

30. In the result, this ground of appeal is allowed for statistical purpose.

31. Ground No. 8 relates to interest under section 234D. The assessee has also raised ground in its CO. The ld AR of the assessee fairly accepted that these grounds are against the assessee in earlier years. However, the assessee has raised alternative ground in its C.O. as ground No.1 and would submits that when no refund was granted in the intimation under section 143(1), thus, interest under section 234D ought not be levied. To support such contention, the ld AR of the assessee relied on the decision of Bangalore Tribunal in 24/7 Customer (P) Ltd Vs DCIT (2023) 153 taxmann.com 185 (Bang-Trib).

32. On the other hand, the ld DR of the revenue supported the view of AO.

33. On considering alternative plea of ld AR of the assessee, we direct the AO to examine the fact that if no refund is granted to the assessee while issuing intimation under section 143(1), no interest under section 234D be charged. The assessee succeeded in alternative plea. In the result, this ground in C.O. of assessee of appeal is allowed for statistical purpose. Now turning to additional grounds of appeal raised by the assessee.

34. Additional Ground No.1 relates to the computation of deduction under section 80HHC for the purpose of book profit under section 115JA. The ld AR of the assessee submits that his ground of appeal is also covered in favour of the assessee by the decision of Tribunal in assesses own case for AY 2000-01 &

2001-02 (supra) and decision of Supreme Court in CIT Vs Bharti Information Technology System (P) Ltd (2012) 340 ITR 593 (SC).

35. The ld DR of the revenue supported the action of AO.

36. On considering the submissions of the parties, we find in AY 2000-01 and 2001-02, the coordinate bench by following the order of Apex Court CIT Vs Bharti Information Technology System (P) Ltd (supra) allowed relief to the assessee, thus, by following the same direction the AO is directed to follow the decision of earlier years in AY 2000-01 & 2001-02. In the result, this ground of appeal is allowed.

37. Additional Ground No.2 relates to deduction under section 80HHC ought to be granted in respect of DEPB as per first proviso to section 80HHC (3). We find that this ground of appeal is consequential with ground No. 7 of the appeal, thus, our decision on such ground of appeal would apply as it is.

38. Additional ground No. 3 of appeal relates to proportionate deduction in respect of research and development expenses for AY 1998-99 and 1999-00. And Additional Ground No.4 is with regard to deduction in respect of research and development expenses incurred for AY 2000-01. The ld AR of the assessee submits that direction may be given to AO to allow proportionate deduction in respect of research and development expenses for AY 1998-99 and 1999-00 by following the direction in said years. Considering the decisions of earlier years and submissions of ld AR of the assessee the AO is directed to allow proportionate deduction of expenses in the same manner as in earlier years. In the result, both these additional grounds of appeal are allowed.

39. Next ground of appeal raised by the assessee in its CO relates to depreciation on data access fee. The ld AR of the assessee submits that she is not pressing this ground of appeal. In the result, this ground of CO is dismissed as not pressed.

40. In the result, the appeal of the assessee is partly allowed. Grounds of CO are also partly allowed. Now adverting to adjudication of various ground of appeal raised by revenue.

ITA No. 1822/Mum/2006 (A.Y. 2002-03) by Revenue.

41. Ground No. 1 relates to product registration expenses of Rs. 20,07,684/- and research and development expense of Rs. 3.05 crores. The ld. AR of the assesses submits that this ground of appeal is covered in favour of assessee and against the Revenue by the decision of Tribunal in assessees own case for A.Y. 2000-01 in ITA No. 4099/Mum/2004.

42. On the other hand, the ld. Sr. DR for the Revenue supported the order of AO.

43. We have considered the submission of both the parties and have gone through the lower authorities carefully. We find that both the disallowances are recurring issue in earlier years as well. The ld. CIT(A) while deleting the additions by following the orders of his predecessor in A.Y. 1998-99 & 2000-01. We find that Co-ordinate Bench of this Tribunal in assessee's own case confirmed the order of ld. CIT(A) in A.Y. 2000-01 in ITA No. 4009/Mum/2004. Thus, respectfully following the same, we affirmed the order of ld. CIT(A). In the result, this ground of appeal is dismissed.

44. Ground No. 3 in Revenue's appeal relates to deleting the disallowance on account of delayed payment of employee's contribution to PF&ESI. This ground of appeal has two parts, first relates to delayed payment of employee's

contribution to PF&ESI of Rs. 57,00,023/- and second part relates to employers' contribution to ESIC & PF of Rs. 40,24,927/- under section 43B. The ld. AR of the assessee submits that so far as first part of this ground of appeal is concerned the same is against the assessee by the latest decision of Hon'ble Supreme Court in case of Checkmate Services Private Limited vs CIT 448 ITR 518 (SC). However, second part which relates to delay in deposits of employers' contribution of ESIC & PF is in favour of assessee by the decision of various High Courts including of Bombay High Court in CIT vs Ghatge Patil Transports Ltd. 368 ITR 749 (Bom).

45. On the other hand, the ld. CIT DR for the Revenue supported the order of AO. The ld. CIT DR submits that Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. Vs CIT (supra) confirmed the disallowance on account of delay of deposits of employees as well as employers' contribution of ESI & PF.

46. We have considered the submission of both the parties and find that Hon'ble Supreme Court in Checkmate Services Pvt. Ltd (supra) upheld the disallowance on account of delay in payment of ESI & PF either of employee contribution or employer contribution. Thus, the order of ld CIT(A) is reverse and the order of AO is restored. Hence, this ground of appeal is allowed in favour of revenue.

47. Ground No. 4 relates to treating sale tax refund as a part of profit for deduction under section 80IB. The ld. AR of the assessee fairly accepted that this ground of appeal is against the assessee by the decision of Tribunal in assessee's own case of A.Y. 1997-98 in ITA No. 4073/Mum/2003 and in A.Y. 1999-2000 ITA No. 4695/Mum/2005. Considering the submission of assessee that in earlier year similar issue was decided in favour of Revenue, thus respectfully following the

order of Co-ordinate Bench of Tribunal in assessee's own case on similar issue, the action of assessing officer is upheld and order of ld. CIT(A) is reversed. Hence, this ground of appeal is allowed.

48. Ground No. 5 relates to not allowing excise duty and sales tax to be a part of total turnover for the purpose of deduction under section 80HHC. The ld. AR of the assessee submits that since export turnover does not include any excise duty or sales tax, the 'total turnover' should be considered not of excise duty and sales tax so that the two terms became comparable. To support such contention, the ld. AR of the assessee relied upon the decision of Hon'ble Supreme Court in CIT vs Catapharma (India) (P) Ltd. 292 ITR 641 (SC) and Sudarshan Chemicals Industries Ltd. Vs CIT 245 ITR 769 (Bom).

49. On the other hand, the ld. CIT DR for the Revenue supported the order of AO.

50. We have considered the rival submission of both the parties. We find that AO while passing the assessment order included excise duty and sales tax amount of Rs. 37.83 crore as a part of total turnover. Before ld. CIT(A) the assessee submitted that excise duty and sales tax ought not to be included in the total turnover and relied on decision of Bombay High Court in Sudarshan Chemicals Industries Ltd. (supra). The ld. CIT(A) on the basis of decision of Bombay High Court in Sudarshan Chemical Industries Ltd (supra) directed the assessing officer not to consider the amount excise duty and sales tax as a part of total turnover. We find that Hon'ble Supreme in case of CIT vs Catapharma (India)(P) Ltd. (supra) held that excise duty and sales tax do not have any element of 'turnover'. It was also held that it is to be kept in mind that excise duty and sales tax are direct taxes, they are recovered by the assessee on behalf of the

Government. If they are made relatable to exports, the formula under section 80HHC would become unworkable. Thus, in view of the aforesaid legal position, we affirmed the order of ld. CIT(A) with our additional observation. In the result, ground no. 5 of Revenue's appeal is dismissed.

51. Ground no. 6 relates to allowing inclusion of various items like job work charges, sales tax return, discount, excess provision written back. Sundry creditors written back, exchange rate difference and 50% of miscellaneous receipts from business receipts. The ld. AR of the assessee submits that she is not pressing for inclusions of receipt of job work receipt. Considering the submission of ld. AR of the assessee the item of job work charges of Rs. 55.49 lakhs is held against the assessee. So far as other items are concerned that is sales tax refund of Rs. 13.95 lakhs, discount of Rs. 4.48 lakhs, excess provision written back of Rs. 119.78 lakhs, sundry credits written back of Rs. 108.24 lakhs, exchange rate difference of Rs. 593.06 lakhs and 50% of miscellaneous receipts of Rs. 168.01 lakhs are concerned, the ld. AR of the assessee submits that all these items as to the part of are to be included as a part of business profit while computing profit of the business for the purpose of deduction under section 80HHC, as has been held in favour of assessee in various decisions of Tribunal in earlier years and thus supported the order of ld CIT(A).

52. On the other hand, the CIT DR for Revenue supported the order of assessing officer (AO).

53. We have considered the rival submission of both the parties and have gone through the lower authorities carefully. We find that ld. CIT(A) allowed relief to the assessee by following the decision of his predecessor in earlier year or by the

decision of Tribunal. Thus, ongoing through the nature of various receipts and the decisions of Tribunal in assessees own cases in earlier assessment years, we do not find any infirmity in the order of ld. CIT(A). In the result, ground no 6 of appeal is dismissed.

54. Ground no. 7 relates to inclusion of 90% of exchange rate of Rs. 593.06 lakhs. We find that this item has already been covered while considering ground no 6 of Revenue's appeal, thus, this ground of appeal is dismissed as infructuous.

55. Ground no. 8 relates to direction to AO to rework indirect cost by reducing 10% of such income, 90% of which has been reduced from profit. The ld. CIT DR for the Revenue supported the other assessing officer.

56. On the other hand, the ld. AR of the assessee submits that 10% of the expenses deemed to be incurred for earning income which has been reduced to arrive the profits of the business ought to be reduced while computing the indirect cost of traded goods. The ld. AR of the assessee submits that this ground of appeal is also covered in favour of assessee by the decision of Tribunal in assessee's own case for A.Y. 1999-2000 in ITA No. 4695/Mum/2005 and decision of Hon'ble Apex Court in Hero Exports vs CIT 295 ITR 454 (SC).

57. We have considered the submission of both the parties and perused the order of lower authorities and deliberated on the case law relied by ld AR of the assessee. We find that Hon'ble Apex Court in Hero Exports vs CIT (supra) while considering similar question of law held that under section 80HHC, one has to balance the principle of attribution, with the concept of allocation. The concept of allocation is meant to reduce the incentive. However, when allocation has to be balanced with the principle of attribution, the object it so reduce the incentive

and not to eliminated, thus, the Revenue Authorities were not right in disallowing the claim of assessee for adjustment for 10% of other income against indirect cost of traded goods while allowing deduction under section 80HHC. Thus, in view of the aforesaid legal position we affirmed the order of ld. CIT(A) with this additional observation. In the result, ground no. 8 of Revenue's appeal is dismissed.

58. In the result, the appeal of Revenue is partly allowed.

ITA No. 6224/Mum/2010 by assessee & ITA No.6232/Mum/2010 By revenue for (AY2003-04)

59. The assessee has raised following grounds of appeal;

I. TAXABILITY OF ADVANCE LICENCE BENEFIT RECEIVABLE. Rs 103,686,304

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) ['CIT(A)] erred in upholding the action of the Additional Commissioner of Income-tax ('ACIT') to include advance license benefit receivable amounting to Rs 103,686,304 in the total income, particularly as no income had accrued to the appellant until the imports were made and the raw materials were consumed, which events took place in the subsequent year.

II. TAXABILITY OF D.E.P.B BENEFIT RECEIVABLE: Rs 209,237,167

On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of ACIT to include D.E.P.B benefit receivable amounting to Rs 209,237,167 in the total income, particularly as no income had accrued to the appellant until credit was received in the Pass Book, which event took place in the subsequent year.

III. CLAIM FOR DEDUCTION IN RESPECT OF DATA ACCESS FEES TREATED AS DEFERRED REVENUE EXPENDITURE IN THE ACCOUNTS: Rs 172,935,565.

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in restricting the claim for deduction in respect of Data Access Fees to Rs 34,587,113 as debited in the Profit and Loss Account being 1/5th

of the total expenditure amounting to Rs 172,935,565 instead of allowing the entire expenditure of Rs 172,935,565 incurred during the year.

IV. CLAIM FOR DEDUCTION IN RESPECT OF SALARY AND WAGES CAPITALISED IN THE ACCOUNTS, Rs 2,261,933.

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in rejecting the appellants' claim for deduction in respect of salary and wages amounting to Rs 2,261,933 capitalised in the books of account without appreciating the fact that the said expenses represented revenue expenditure eligible for deduction under section 37(1).

V. ADDITION UNDER SECTION 92C(4) OF THE ACT IN RESPECT OF COMMISSION ON CORPORATE FINANCIAL GUARANTEES PROVIDED ON BEHALF OF ASSOCIATED ENTERPRISES: Rs 45,00,000/-

On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of ACIT in making an addition under section 92C(4) of the Act of an amount of Rs 45,00,000 being commission @ 0.6% on corporate financial guarantees provided amounting to Rs 7,511.60 lacs on behalf of associated enterprises to meet with the arm's length principle on the basis of the order passed by the Transfer Pricing Officer under section 92CA(3) of the Act.

VI. DEDUCTION UNDER SECTION 80-1B:

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the ACIT in the following respects:

(a)(1) In reducing items of "other income" except job work charges and sales tax refund from the "profits and gains of the business on the ground that the said income was not "derived from an industrial undertaking."

(ii) Without prejudice to the above, in case items of "other income" are excluded from the "profits and gains of the business" on the ground that the said income was not "derived from an industrial undertaking" then the corresponding costs debited in the accounts in respect thereof should also be excluded while computing the profits of the eligible industrial undertakings;

(b) In not appreciating the fact that the appellant had included the advance licence benefit reversal and the pass book benefit reversal as part of the cost of

rawmaterials and in case the said benefits were excluded, the corresponding notional reversals also ought to have been removed from the cost for the purpose of working the profits of the eligible undertakings;

(c) In not appreciating that if items of other income like interest, etc. were to be excluded, then only the net amounts ought to have been reduced while computing the profits of the eligible undertaking.

VII. DEDUCTION UNDER SECTION 80HHC;

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the ACIT in the following respects:

(a) While computing the 'profits of the business' for the purpose of deduction under section 80HHC:

(i)In reducing 90% of the amounts relating to Job work charges, Management service charges, Refund of sales tax, Excess provision written back and Miscellaneous receipts from the 'profits of the business inspite of the fact that the said items were not specifically required to be reduced from the profits of the business as per the definition given in clause (baa) of the Explanation below section 80HHC(4A):

(ii) In not appreciating the fact that only the net amount of interest received by the appellant ought to have been reduced as per Explanation (baa) below section 80HHC(4A), and in view of the fact that the interest paid being more than the interest received, no portion of the interest received ought to have been reduced for the purpose of working out deduction under section 80HHC;

(iii) In not appreciating the fact that the word "receipts" as referred to in the Explanation (baa) below section 80HHC(4A) refers only to the net receipts and accordingly, gross receipts ought not to be reduced from the profits of the business,

(iv) In reducing the entire deduction under section 80IB of Rs. 13,78,40,035 from the 'profit of the business' inspite of the fact that the said deduction was not

specifically required to be reduced from 'profits of the business' as per the definition given in clause (baa) of the Explanation below section 80HHC(4A);

(v) Without prejudice to point (iv) above, in not appreciating the fact that if at all the deduction under section 80IB was to be reduced as per section 80IA(9A) only the pro-rata amount could have been reduced.

ADDITIONAL GROUNDS OF APPEAL:

1. The appellant submits that for the purpose of computing book profit under section 115JB, deduction under clause (iv) of the Explanation in respect of profits eligible for deduction under section 80HHC ought to be computed on the basis of the adjusted book profits and not on the basis of the profit and gains of business or profession as per normal provisions of the Act as held by the Hon'ble Supreme Court in the case of Al-Kabeer Exports Ltd. vs. CIT (Civil Appeal No. 1546 of 2012) and CIT vs. Bhari Information Technology Systems (Civil Appeal No. 33750/2009).

2. The appellant submits that deduction under section 80HHC ought to be granted in respect of Duty Entitlement Pass Book Benefit (DEPB) as per the first proviso to section 80HHC(3) in view of the decision of the Hon'ble Supreme Court in the case of Topman Exports Ltd. (Civil Appeal No. 1699 of 2012).

ADDITIONAL GROUNDS OF APPEAL

1. Without prejudice to ground no. 8.1 of the Income-tax Appeal No. 3456/Mum/2004 (assessee's appeal) for AY 2000-01, in case it is held that deduction in respect of the data access fees and task force expenses are to be allowed on proportionate basis over the period of years in the aforesaid appeal then the appellant prays that proportionate deduction ought to be granted in the captioned assessment year.

2. Without prejudice to ground no. 3 of the Income-tax Appeal No. 1787/Mum/2006 (assessee's appeal) for AY 2002-03, in case it is held that deduction in respect of the data access fees is to be allowed on proportionate basis over the period of years in the aforesaid appeal then the appellant prays that proportionate deduction ought to be granted in the captioned assessment year.

The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal.

The revenue in its Cross Appeal has raised following grounds of appeal

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in deleting the additions by treating Product Registration expenses of Rs. 16,03,765/- and Research & Development expenses of Rs.2.12,12,857/- as revenue in nature."

2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the A.O to allow 1/5th of Rs17,29,35,565/- by treating Data access Fees as revenue expenditure."

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not correct in directing the A.O to treat sales-tax refund of Rs. 1,78,754/- and job work charges of Rs.13,75,000/- as part of the profit eligible for deduction u/s.801B."

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O not to exclude entire amount of DEPB proceeds of Rs.20.58 crores from the profits of the business but only the profit arising on the transfer of the DEPB for computation of deduction u/s.80HHC relying on the decision of ITAT, Mumbai Special Bench in the case of M/s. Topman Exports vs. ITO (125 TTJ 298) whereas Bombay High Court has reversed this decision by their order in the case of CIT vs. Kalpataru Colours and Chemicals [ITA (TEC) Lodging No.2887 of 2009]."

60. Ground No.1 of the appeal relates to taxability of advance licence benefit receivable of Rs. 10.36 Crore. We find that this ground of appeal is similar to the ground No.1 in assessees appeal for AY -2002-03, which we have already allowed vide para-8 & 9 of this order, thus, this ground of appeal is allowed with similar directions.

61. Ground No.2 of the assessees appeal relates to taxability of DEPB benefit receivable of Rs. 20.92 lacs. We find that this ground of appeal is similar to the ground No.1 in assessees appeal for AY-2002-03, which we have already allowed

vide para-12 & 13 of this order, thus, this ground of appeal is allowed with similar directions.

62. Ground No.3 of the appeal relates to claim of deduction in respect of data access fees treated as differed revenue expenditure. The revenue in its cross appeal has also raised ground No.2 on similar issue. We find that this ground of appeal is similar to the ground No.3 in assessees and ground No.2 of revenues appeal for AY- 2002-03, which we have already allowed vide para- 16 to 18 of this order, thus, following the principal of consistency, this ground of appeal is allowed with similar directions. Resultantly, ground No.2 in revenues appeal is dismissed.

63. Ground No.4 of the appeal relates to claim of salary and wages and other expenses capitalized in the accounts. The ld AR of the assessee at the time of making her submissions stated that she has instruction for not pressing this ground of appeal. Considering the submissions of ld AR of the assessee, this ground of appeal is dismissed as not pressed.

64. Ground No. 5, relates to addition under section 92C(4)on account of corporate financial guarantee on behalf of associated enterprises (AE) of Rs. 45.00 lacs being commission @0.6% on the amount of guarantee provided. The ld AR of the assessee submits that extending corporate financial guarantee is not an international transaction, yet to avoid future litigation, the TPO/ AO may be directed to re-compute addition @ 0.3% on the corporate financial guarantee provided.

65. On the other hand, the ld CIT-DR for the revenue submits that the TPO/ AO made reasonable addition @ 0.6% of corporate financial guarantee amounting to Rs. 7511.60 lacs. The assessee TPO /AO applied internal CUP to determine

the rate which is fair and reasonable. The assessee has undertaken a substantial risk by providing guarantee on behalf of its AE. Th ld CIT-DR for the revenue prayed for dismissal of this grounds of appeal.

66. We have considered the rival submissions of both the parties and perused the orders of lower authorities. There is no mush dispute on the facts. The only difference on point is the percentage of addition on such corporate guarantee extended by the assessee in support of its AE. We find that Hon'ble Jurisdictional High Court in CIT Vs Everest Kanto Cylinder Ltd [2015] 58 taxmann.com 254 (Bombay) upheld the action of that assessee in charging 0.5 per cent as guarantee commission from its subsidiary. Thus, following the order of jurisdictional High Court, the AO/TPO is directed to recompute the addition @ 0.5% per annum on corporate financial guarantee. In the result, this ground of appeal is partly allowed.

67. Ground No. 6 of assessees appeal and ground No.3 of revenues relates to deduction under section 80IB. The assessee has challenged non-inclusion of various items of income, which consist of Management services charges of Rs.2.60 Crore, discount received of Rs. 4,81,283/-, interest from customer of Rs. 38.25 lacs and miscellaneous receipt of Rs.23.58 lacs. On the other hand, the revenue has challenged the action of ld CIT(A) in allowing for inclusion of sales tax refund of Rs. 1.78 Crore and job work charges of Rs. 13.75 lacs. The ld AR of the assessee for inclusions of all five items / receipts submits that all these items were the subject matter of appeal in AY 1997-98 & 1999-2000 in ITAs No. 4073/Mum/2023 and 4695/Mum/20225 respectively and were allowed in favour of assessee. Similarly, sales tax refund, which is part of revenues appeal was

also subject matter in appeal for AY 1997-98 & 1999-2000, which was also allowed in favour of the assessee. On the receipt of management services fee, the ld AR of the assessee in addition to reliance on assessees own case also relied on the decision of Hon'ble Apex Court in CIT Vs Meghalaya Steels Ltd (383 ITR 217 SC). On the issue of job work charges submits that in AY 2000-03 she has not pressed such item for inclusion in eligible for 80IB, however, this item is also covered in favour of assessee by the decision of Punjab & Haryana High Court in CIT Vs Impel Forge & allied Industries Ltd (326 ITR 27 P&H), Madras High Court in CIT Vs Light Alloy Product Ltd (373 ITR 322 Mad) and Mumbai Tribunal in ACIT Vs Nagendra Polyplast (69 SOT 718 Mumbai).

68. On the other hand, the ld CIT-DR for the revenue, on various items supported the order of ld CIT(A) and in revenues appeal supported the stand of AO. In without prejudice submissions, it was argued that in reducing the items of 'other income' except of job work charges and sales tax refund form the profit and gain of the business on the basis that said income was not derived from industrial undertaking without considering the corresponding cost which were deducted while computing said profit.

69. We have considered the rival submissions of the parties and have gone through the orders of lower authorities carefully. We find that during assessment the assessee claimed that all the receipts are inextricable linked with the business of undertaking and cannot be considered as a part of income from 'other sources'. All the items of income are directly relates to the industrial undertaking and ought to be qualified as a profit while computing deduction under section 80IB. AO not allowed inclusion of all items by taking view that these receipts of income

are not derived from the undertaking. The ld CIT(A) allowed relief in respect of job work receipt and sales tax refund by holding that word 'derived from' is narrower in connotation as compared to the word 'attributable to' and exclusion rest of the items were upheld. The ld CIT(A) in para 9.8 of his order also recorded that except sales tax refund all other items were decided against the assessee by his predecessor in AY 2002-03 by following order for AY 2000-01 & 2001-02 at his level. We find that in assessees appeal, the coordinate bench of this Tribunal in appeal for AY 1999-2000 in ITA No. 4695/Mum/2005 allowed relief in respect of management services charges, discount received, interest received from customer and excess provision written back, however, miscellaneous receipt was allowed by Tribunal in AY 1997-98 and in 1998-99 in ITS No. 4073/Mum/2003 and ITA No. 1519/Mum/2002 respectively. So far as sales tax refund is concerned, it was also allowed by Tribunal in appeal for AY 1999-2000 in para 36 of said order. And job works charges are allowed as eligible profit of undertaking by Punjab & Haryana High Court in CIT Vs Impel Forge and Allied industries (supra) wherein it was held that where assessee was engaged in business of manufacturing and trading of tractor and auto parts and also in doing job work of similar nature, it would be entitled to deduction under section 80-IB in respect of both incomes, i.e., income derived from its own manufacturing and income derived from job work done for others. Thus, all the items which were excluded by AO from the profit of eligible underrating are allowed in favour of assessee. Hence, the order of ld CIT(A) is so far as allowing sales tax refund and job work charges are confirmed and in so far as confirming the order of AO in excluding five items which are part of ground of assessees

appeal is reverse. In the result, the ground No. 6 of the assessees appeal is allowed and Ground No. 3 of revenues appeal is dismissed. Once, we have allowed relief to the assessee on primary submissions of their ld AR, hence, adjudication on without prejudice submission has become academic.

70. Ground No. 7 of assessees appeal and Ground No.4 of revenues appeal relates to deduction under section 80HHC. The ld AR of the assessee submits that

71. On the other hand, the ld CIT-DR for the revenue authorities.

72. We have considered the rival submissions and orders of lower authorities carefully. We find that this ground of appeal is similar to ground no. 7 in assessee's appeal for A.Y. 2002-03 as well as additional ground of appeal and ground no. 4 of revenue's appeal in A.Y. 2002-03. As we have already restored the similar issue to the file of assessing officer for limited verification as per our finding in para 29 above, therefore, this grounds of appeal are allowed for statistical purpose.

73. In the result, these grounds of appeal by assessee as well as by revenue are allowed for statistical purpose.

74. Additional ground No.1 of assessees appeal relates to computation of deduction under section 80HHC for the purpose of book profit. We find that the assessee has raised similar additional ground of appeal in appeal for AY 2002-03, which we have allowed in para 36 (supra), thus, our direction in appeal for AY 2002-03, shall apply mutatis mutandis. In the result, this ground of appeal is allowed.

75. Additional ground No.2 of assessees appeal relates to deduction under section 80HHC ought to be granted in respect of DEPB as per first proviso to section 80HHC(3) of the Act. We find that the assessee has raised similar additional

ground of appeal in appeal for AY 2002-03, which we have allowed in para 37 (supra), thus, our direction in appeal for AY 2002-03, shall apply mutatis mutandis. In the result, this ground of appeal is allowed.

76. Additional ground No.3 of assessees appeal relates to deduction in respect of research and development expenses for AY 1998-99 & 1999-2000. We find that the assessee has raised similar additional ground of appeal in appeal for AY 2002-03, which we have allowed in para 39 (supra), thus, our direction in appeal for AY 2002-03, shall apply mutatis mutandis. In the result, this ground of appeal is allowed.

77. Additional ground No.4 of assessees appeal relates to deduction in respect of research and development expenses for AY 2000-01. We find that the assessee has raised similar additional ground of appeal in appeal for AY 2002-03, which we have allowed in para 17 & 18 (supra), thus, our direction in appeal for AY 2002-03, shall apply mutatis mutandis. In the result, this ground of appeal is allowed.

78. Additional ground No.5 of assessees appeal relates to deduction in respect of research and development expenses for AY 2002-03. We find that in appeal for AY 2002-03, which we have already directed to allow proportionate deduction, therefore, the AO is directed to allow similar proportionate deduction in this assessment year as well. In the result, this ground of appeal is allowed.

79. Ground No.1 in revenues appeal relates to deduction in respect of expenses which were treated deferred revenue expenses, which consist of product registration expenditure of Rs. 20.07 lacs and research and development expenses of Rs.2.12 crore. We find that in appeal for AY 2002-03, the revenue

has also raised similar ground of appeal which we have adjudicated in para- 43 (supra), which shall apply mutatis mutandis. In the result, this ground of appeal is dismissed.

80. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

ITA No. 3534/Mum/2014 by revenue for AY 2003-04 [in the matter of penalty levied under section 271(1)(c)].

81. We find that the AO levied penalty under section 271(1)(c) on the issue reducing the profit eligible for deduction under section 80IB from Rs. 14.80 Crore to Rs. 13.78 Crore. The AO also levied similar penalty on non-exclusion of certain items from the profit of business for the purpose of deduction under section 80IB, e.g. job work charges, management service charges, refund of sales tax, discount received, interest and excess provision of earlier years written back amounting to Rs. 97.07 lacs, vide order dated 30.03.2012. The AO levied aggregate penalty of Rs.5.52 Crore. On appeal before ld CIT(A) deleted entire penalty by taking view that the question whether the items of income can be treated as directly relating to the undertaking had been a debatable issue in the captioned year, when return of income was filed, and on which two views are possible. We endorse the view of ld CIT(A) that no penalty under section 271(1)(c) is leviable on the debatable issues. Moreover, we find that on all items we have allowed full relief to the assessee either in the appeal filed by the assessee or in the cross appeal of revenue. Thus, penalty under section 271(1)(c) order will not survive. Hence, the grounds of appeal raised by the revenue are dismissed.

82. In the result, the appeal of the revenue is dismissed.

ITA No. 3878/Mum/2014 by assessee for AY 2003-04 in the matter of penalty levied under section 271(1)(c).

83. We find that the AO also levied penalty of Rs. 5.52 Crore under section 271(1)(c) vide his order dated 31.03.2012. The AO levied penalty on disallowance of deduction claimed in respect of date access fee of Rs. 13.83 Crore by treating it as deferred revenue expenditure. The AO also levied similar penalty on disallowance of deduction in respect of salary and wage of Rs. 22.61 lacs capitalized in books of account and claimed as revenue expenditure in the return of income. The AO levied aggregate penalty of Rs.5.52 Crore on all three disallowance. On appeal before ld CIT(A) confirmed the action of AO. Hence, this appeal before this Tribunal.

84. We have heard the submissions of both the parties and have seen the orders of lower authorities. The ld AR of the assessee submits that apart from original grounds of appeal, she has raised additional grounds of appeal vide application dated 18.03.2015. In the additional grounds of appeal, the assessee the assessee has raised legal plea that in the show cause notice issued under section 274 rws 271(1)(c) dated 28.02.2006, the AO has no strike out inappropriate portion of notice by specifying as to whether the penalty has been initiated for concealment of income or filing inaccurate particulars of income. The ld AR of the assessee submits that she has already filed copy of such show cause notice on record and additional copy is filed again. It was argued that no new facts are required to be brought o record for adjudication of additional grounds of appeal. On merits, the ld AR of the assessee submits that assessee has neither filed inaccurate particulars of income nor concealed the income all the facts were duly disclosed in the Notes to the computation of income that such expenditures are

allowable expenditure and claimed on the basis of order or Tribunal in earlier years in AY 1996-97.

85. On the other hand, the ld CIT-DR for the revenue supported the order of lower authorities. The ld CIT-DR for the revenue further submits that the assessee capitalized such expenditure in books of account and claimed as revenue expenditure in the return of income, so it is a fit case to confirm the penalty levied under section 271(1)(c). On the admission of additional ground of appeal, the ld CIT-DR for the revenue submits that no such ground of appeal was raised before lower authorities. The assessee has not disclosed as to what prejudice is caused to the assessee by not specifying the specific charges in the show a cause notice. The impugned notice is non-statutory notice, the section 274 speaks about allowing opportunity of hearing to the assessee by AO before levying penalty under section 271(1)(c).

86. We have considered the rival submissions of both the parties and seen the penalty order and the order passed by ld CIT(A). We find that while considering the grounds of appeal in appeal against quantum assessment, we have already allowed relief to the assessee on the issue of data assessee fee, therefore, penalty under section 271(1)(c) on such issue will not survive. So far as other issue related with salary and wages are concerned, which is the subject matter of ground No.4 in appeal against the quantum assessment, the ld AR of the assessee not pressed on such deduction. However, we find merit in the submissions of ld AR of the assessee that the assessee in its Notes to the computation of total income disclosed that such expenditure are allowable expenses under section 37 of the Act, further, such expenditure was claimed on

the basis of order of Tribunal in AY 1995-96 and order of ld CIT(A) in AY 1996-97 and 1997-98. Thus, on considering such facts we find that the assessee acted in a bonafide way and there was no concealment of income of furnishing inaccurate particulars of income. Hence, no penalty is sustainable on this issue as well. Thus, the assessee succeeded on the primary submissions of ld AR of the assessee. Once, we have allowed relief to the assessee on merit, therefore considering and adjudication of additional ground of appeal has become academic.

87. In the result, the appeal of assessee is allowed.

Order pronounced in open court on 30.05.2025.

Sd/-	**Sd/-**
(GIRISH AGRAWAL)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 30/05/2025
self
Copy of the Order forwarded to:
1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai