

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 6807 and 6709/MUM/2010**

**Assessment Years: 2004-05 and 2005-06**

Deputy Commissioner of Income-tax, Central Circle – 38, Mumbai.	Vs.	UPL Limited (Formerly known as United Phosphorus Ltd.) Uniphos House, C.D. Marg, 11 <sup>th</sup> Road, Madhu Park, Khar(West), Mumbai – 400052  <b>(PAN : AABCS1698G)</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**C.O. No. 188/MUM/2011**

**(Arising out of ITA No.6709/MUM/2010)  
Assessment Year – 2005-06**

UPL Limited (Formerly known as United Phosphorus Ltd.) Uniphos House, C.D. Marg, 11 <sup>th</sup> Road, Madhu Park, Khar(West), Mumbai – 400052  <b>(PAN : AABCS1698G)</b>	Vs.	Assistant/Deputy Commissioner of Income- tax, Central Circle – 38, Mumbai.
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA Nos. 7027 and 7028/MUM/2010  
Assessment Years: 2004-05 and 2005-06**

**And**

**ITA Nos. 6950, 2172 and 5344/Mum/2013  
Assessment Years: 2004-05, 2005-06 and 2007-08**

UPL Limited (Formerly known as United Phosphorus Ltd.) Uniphos House, C.D. Marg, 11 <sup>th</sup> Road, Madhu Park, Khar(West), Mumbai – 400052  <b>(PAN : AABCS1698G)</b>	Vs.	Assistant/Deputy Commissioner of Income- tax, Central Circle – 38, Mumbai.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Ms. Vasanti Patel, Advocate  
and Ms. Saisudha Multani, CA

Revenue : Shri Abhishek Tharwal, Sr. DR

Date of Hearing : 07.05.2025

Date of Pronouncement : 27.06.2025

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

All these captioned seven appeals and one cross appeal filed by both, assessee and revenue are against the orders of Ld. CIT(A) passed against the assessment/penalty orders by ACIT/DCIT, CC-38, Mumbai. Consolidated details of these appeals and cross appeal are tabulated below:

Sr. No.	ITA No.	Order of CIT(A)		Assessment order			Assessment year	Appeal by
		No.	Date	Passed by	Date	Passed u/s.		
1.	6807/MUM/2010	CIT(A)-15/IT-205/DCIT/C-38/06-07	22.07.2010	DCIT, CC-38, Mumbai	20.12.2006	143(3)	2004-2005	Department
2.	6709/MUM/2010	CIT(A)-15/IT-326/DCIT/C-38/08-09	07.07.2010	DCIT, CC-38, Mumbai	18.12.2008	143(3)	2005-06	Department
3.	C.O.No. 188/MUM/2011	CIT(A)-15/IT-326/DCIT/C-38/08-09	07.07.2010	DCIT, CC-38, Mumbai	18.12.2008	143(3)	2005-06	Assessee
4.	7027/MUM/2010	CIT(A)-15/IT-205/DCIT/C-38/06-07	22.07.2010	DCIT, CC-38, Mumbai	20.12.2008	143(3)	2004-05	Assessee
5.	7028/MUM/2010	CIT(A)-15/IT-326/DCIT/C-38/08-09	07.07.2010	DCIT, CC-38, Mumbai	18.12.2008	143(3)	2005-06	Assessee
6.	6950/Mum/2013	CIT(A)-41/ACCC-38/IT-159/12-13	29.08.2013	ACIT, CC-38, Mumbai	04.05.2012 and 31.03.2012	154 and 271(1)(c)	2004-05	Assessee
7.	2172/Mum/2013	CIT(A)-39/IT-119/2011-12	12.12.2012	DCIT, CC-38, Mumbai	18.12.2008	143(3) r.w.s. 147	2005-06	Assessee
8.	5344/Mum/2013	CIT(A)-15/Arr.301/DCIT-CC-38/13-14	21.05.2013	DCIT, CC-38, Mumbai	15.02.2011	144C(3)(a)/144c(4)	2007-08	Assessee

2. Grounds taken by the revenue and the assessee in their respective appeals/cross objection are reproduced as under:

**ITA No. No.6807/Mum/2010 (A.Y.2004-05) by the Dept**

1. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that 90% of DEPB receipts is not to be reduced from the business income while computing the allowable deduction u/s. 80 HHC of the Income-tax Act, as the assessee has utilized the DEPB licenses in its own business, when no such contention was raised before the Assessing Officer."

2. "On the facts and in the circumstances of the case and in law, Ld. CIT(A) should have referred the issue of utilization of DEPB licenses to the file of the Assessing Officer, as the assessee never claimed before the Assessing Officer that it has utilized the DEPB licenses in its own business and this claim was made for the first time before CIT(A)."

**ITA No. 6709/Mum/2010 (A.Y.2005-06) by the Dept**

1. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 6,52,414/- made by the A.O. u/s.36(1)(va) read with section 2(24)(x) in respect of employee's contribution to Provident Fund paid after the due date but during the previous year without considering the fact that the due dates prescribed under respective Acts i.e. Provident Fund Act and ESIC Act are mandatory and can not be extended".

2. "On the facts and in the circumstances of the case and in law, Ld. CIT(A) ought to have held that allowability of deduction on account of employee's contribution is governed by provisions of section 36(1) (va) and hence, deduction is not allowable if the same are not paid within due dates.

**CO No. 188/Mum/2011 (A.Y.2005-06) by the assessee**

On the facts and in the circumstances of the case and in Law, it is submitted that the incentives received under the Industrial Policy introduced in the state of Jammu and Kashmir in the form of excise duty refund amounting to Rs 3,83,24,412 ought to be treated as a capital receipt not liable to tax.

**ITA No. 7027/Mum/2010 (A.Y.2004-05) by the assessee**

1. DISALLOWANCE UNDER SECTION 14A: Rs 14,87,500

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 in computing disallowance under section 14A of the Income-tax Act, 1961 ('the Act') in respect of expenditure incurred for earning tax-free income at Rs 14,87,500/- as per Rule 8D inserted by the Income-tax (Fifth Amendment) Rules, 2008

2. ADDITION UNDER SECTION 92C(4) IN RESPECT OF COMMISSION ON CORPORATE FINANCIAL GUARANTEES PROVIDED ON BEHALF OF ASSOCIATED ENTERPRISES. Rs 70,00,000

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 in making an addition under section 92C(4) on the basis of the order passed by the Transfer Pricing Officer under section 92CA(3) of Rs 70,00,000 being commission @0.6% on corporate financial guarantees amounting to Rs1,169,880,000 lacs provided on behalf of associated enterprises to meet with the arm's length principle*

### 3. DEDUCTION UNDER SECTION 80HHC

3.1. *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 the following respects while computing deduction under section 80HHC*

3.2. *While computing the 'profits of the business':*

*(i) In reducing 90% of the amounts relating to job work charges, management service charges, refund of sales tax and miscellaneous receipts;*

*(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.*

### **ITA No. 7028/Mum/2010 (A.Y.2005-06) by the assessee**

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 the Deputy Commissioner of Income-tax in computing disallowance under section 14A of the Income-tax Act, 1961 (the Act) in respect of expenditure incurred for earning tax-free income at Rs 11,18,645/- as per Rule 8D inserted by the Income-tax (Fifth Amendment) Rules, 2008.*

2. *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 in making an addition under section 92C(4) on the basis of the order passed by the Transfer Pricing Officer under section 92CA(3) of Rs 98,13,540 being commission @ 0.6% on corporate financial guarantees amounting to Rs1,633,500,000 provided on behalf of associated enterprises to meet with the arm's length principle*

3 *On the facts and in the circumstances of the case and in law, the appellant submits that an amount of Rs 193,037,733 transferred to debenture redemption reserve ought not to be added back while computing the book profit under section 115JB*

**ITA No. No.6950/Mum/2013 (A.Y.2004-05) by the assessee**

*1. 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 Assistant Commissioner of Income-tax in levying penalty under section 271(1)(c) of the Act.*

*2 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 Assistant Commissioner of Income-tax in levying penalty in respect of excess deduction claimed under section 80HHC due to adjustment made on account of reducing 90% of job work charges and management service charges while computing the profits of business for the purpose of deduction under section 80HHC.*

**ITA No. 2172/Mum/2013 (A.Y.2005-06) by the assessee**

1. Disallowance under section 14A

*On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the disallowance of Rs 2,02,612/- under section 14A of the Income-tax Act, 1961 in respect of expenditure incurred for earning tax-free income to the extent of 10% of exempt income amounting to Rs 20,26,113/-*

**ITA No. No.5344/Mum/2013 (A.Y.2007-08) by the assessee**

*1. On the facts and in the circumstances of the case and in law, the learned Commissioner of income-tax (Appeals) erred in confirming the action of the Assessing Officer in not excluding the refund of excise duty amounting to Rs. 18,51,08,685/- received as an incentive under the New Industrial Policy for the State of Jammu & Kashmir, 2002, from the total income as capital receipt not eligible to tax.*

3. Brief facts of the case are that assessee is engaged in manufacturing of phosphorous and its compounds, pesticides and its intermediates. Assessee was formerly known as Search Chem Industries Ltd (SCIL). Name of the assessee was changed to United Phosphorous Ltd. (UPL) for which a fresh certificate of incorporation dated 11.2010.13 was issued by the Registrar of Companies, Gujarat which is placed on record. Accordingly, Form 36 were revised bearing the new name as UPL.

3.1. It was submitted before us that most of the grounds of appeal raised by either parties including additional grounds are common and covered by the earlier decisions of Co-ordinate Bench in assessee's own

case or by judgments of Hon'ble High Court/Supreme Court. We deal with these sets of 8 appeals assessment year wise.

## **A. Assessment Year 2004-05**

### **I. ITA No. 7027/Mum/2010 and ITA No. 6807/Mum/2010:**

4. Appeal vide ITA No. 7027/Mum/2010 by the assessee is pursuant to assessment order passed u/s.143(3) dated 20.12.2006. Revenue is also in appeal vide ITA No. 6807/Mum/2010. Assessee has raised additional grounds vide application dated 29.04.2025 and prayed for their admission by placing reliance on the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC). There being no objection from the other side for their admission, the same were admitted for adjudication. The three additional grounds so raised are reproduced as under:

*"1. Without prejudice to ground no.5 of the income tax Appeal No.4099/Mum/2024 (Department's Appeal) for AY 2000-01, in case it is held that deduction in respect of the research and development expenses is to be allowed on proportionate basis over the period of years in the aforesaid then the appellant prays that proportionate deduction ought to be granted in the captioned assessment year.*

*2. Without prejudice to ground no.1 of the income tax Appeal No.1822/Mum/2006 (Departments appeal) for AY 2002-03, in case it is held that deduction in respect of the research and development expenses is to be allowed on proportionate basis over the period of year in the aforesaid appeal then the appellant prays that proportionate deduction out to be granted in the captioned assessment year.*

*3. Without prejudice to ground no.1 of the income tax Appeal No. 6236/Mum/2010 (Departments Appeal) for AY 2003-04, in case it is held that deduction in respect of the research and development expenses is to be allowed on proportionate it bases over the period of years in the aforesaid appeal than the appellant prays that proportionate deduction outgo to be granted in the captioned assessment year."*

5. We first take up grounds raised by the assessee in its appeal, seriatim. Ground No.1 relates to disallowance of Rs.14,87,500/-made u/s.14A in respect of attribution of interest cost for earning of exempt

income. During the year, assessee had earned dividend income amounting to Rs.14,87,500/- which was exempt u/s.10(34). Claim of the assessee is that it had not incurred any expense in earning the said dividend income and therefore, there is no question of apportioning any interest expense towards this earning. However, ld. AO estimated and disallowed part of interest expense towards this exempt income for making disallowance u/s.14A. Assessee had put forth its factual position by stating that total investments of the assessee as on 31.03.2004 stood at Rs.4,033.63 lacs as reported in its balance sheet. Assessee earned dividend income only on investment of Rs.150.54 lacs out of these total investments. Further, it was submitted that assessee had own funds including reserves and surplus amounting to Rs.45,277.45 lacs, against which total investments stood at Rs.4,033.63 lacs only. This comes to 8.91% only of the total own funds available with the assessee.

5.1. According to the assessee, no borrowed funds were utilized for making the investments which yielded exempt income since assessee had sufficient own funds including reserves and surplus. Hence, no disallowance towards interest expense is warranted. Assessee placed reliance on the decision of 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 340 (Bom) to fortify the submissions made. Further, reliance was placed on the decisions of Coordinate Bench in assessee's own case for AY 1999-2000 in ITA No. 4695/Mum/2005, for AY 2000-01 ITA No. 3456/Mum/2004 and for AY 2001-02 in ITA No. 2990/Mum/2005 wherein disallowance made on similar fact pattern was deleted.

5.2. Per contra, ld. CIT DR claimed that assessee has earned exempt income, but did not make *suo moto* disallowance for earning the same.

The disallowance made by ld. AO is reasonable in respect of the exempt income earned by the assessee. He thus placed reliance on the orders of the authorities below.

6. We have heard both the parties and perused the material on record. It is noted that disallowance made u/s.14A by the ld. AO is towards attribution of interest expense. According to the ld. AO, assessee has utilized interest bearing borrowed funds for making investments in the shares and thus, he disallowed the interest component to the extent of exempt income earned by the assessee. From the submissions made by the assessee, the factual position as emanates is that assessee has substantial own funds for making the investments which amounts to only a small percentage that is, 8.91% of the same. Further, assessee has factually demonstrated that only investments worth Rs.150.54 lacs yielded the exempt income as compared to the total investment of Rs. 4,033.63 lacs.

6.1. We find that similar issue had come up before Co-ordinate Bench in assessee's own case (supra) whereby the disallowance so made was deleted by holding that assessee had sufficient interest free funds in the forms of share capital including reserves and surplus for the purpose of making investments yielding exempt income. There has been no change in the facts and circumstances of the present case as well as applicable law when compared with the preceding years. Respectfully following the decision in the earlier years, disallowance made by the ld. AO is deleted. Accordingly, ground no.1 raised by the assessee is allowed.

7. Ground no.2 relates to addition made u/s.92C(4) in respect of commission on corporate financial guarantee provided on behalf of associated enterprises. The addition made is of Rs.70 lacs by adopting

the rate of 0.6% by the ld. AO. In this case, reference was made u/s.92CA(1) by the ld. AO to the ld. Transfer Pricing Officer (TPO) who passed an order u/s.92CA(3) dated 16.11.2006 for meeting the arm's length principle, and determined an upward adjustment towards guarantee commission of Rs.70 lacs by adopting a rate of 0.6% on the corporate guarantee of Rs.7511.60 lacs provided by the assessee. According to the assessee, extending corporate financial guarantee is not an international transaction. However, to mitigate litigation it was submitted by the assessee that the adjustment be recomputed by taking a rate of 0.3% as against 0.6%.

7.1. This issue had also come up before the Coordinate Bench of ITAT Mumbai in assessee's own case in the preceding years whereby ld. AO was directed to recompute the impugned addition by taking a rate of 0.5% in view of the decision of Hon'ble Jurisdiction High Court of Bombay in the case of CIT vs. Everest Kanto Cylinder Ltd. [2015] 58 taxmann.com 254 (Bom). Since this issue is no longer *res integra*, we direct the ld. AO to recompute the impugned addition by taking the guarantee commission @ 0.5% on the corporate financial guarantee. Accordingly, ground no.2 raised by the assessee is partly allowed.

8. Ground no.3 of the assessee's appeal and ground no.1 of the revenue's appeal relates to disallowance made towards claim of deduction u/s.80HHC. Ld. AO was of the view as to why 90% of the following tabulated items should not been reduced while computing the profits of the business:

<i>Job work Charges</i>	<i>12.42</i>
<i>Management service charges</i>	<i>688.80</i>
<i>Refund of sales-tax</i>	<i>6.46</i>
<i>Discount received</i>	<i>.28</i>
<i>Excess provision in respect of earlier years written back (net)</i>	<i>384.47</i>

<i>Miscellaneous receipts (50%)</i>	<i>37.91</i>
<i>Sundry Credit balance written back</i>	<i>57.20</i>

8.1. Assessee made its submission after which Ld. AO concluded that 90% of these receipts except for dividend income and cess equalisation credited were to be reduced from the profits of business. Further, in respect of DEPB licence to be treated as export incentive, Ld. AO held that no benefit is allowed to the assessee on the same for the purpose of computation of deduction u/s. 80HHC, in view of amendment to Section 80HHC with retrospective effect brought in by the assessee taxation laws (2) Amendment Act, 2005. Assessee had furnished its revised computation claiming deduction of Rs.3,87,70,453/- as deduction u/s.80HHC. Also, ld. AO is of the view that assessee had ignored loss on account of export trading while computing deduction u/s.80HHC. According to him, it has to be computed by setting off loss in export trading with profits from manufacturing activity. He thus, arrived at NIL deduction u/s. 80HHC as against claim of assessee of Rs.3,87,70,453/- . According to him, deduction u/s.80HHC is not allowable as the gross total income is negative and thus, the same is also not allowable while computing book profit u/s.115JB.

8.2. Revenue has come up in appeal vide ground no.1 for the relief granted by the Ld.CIT(A) in respect of DEPB benefit while computing the profits of the business for deduction u/s.80HHC. According to the assessee, DEPB benefit receivable is covered under clause (iiib) of Section 28 and deduction u/s.80HHC it to be computed as per the first proviso to Section 80HHC(3). In ground no. 2, revenue is contending that issue in respect of utilisation of DEPB license ought to have been restored back to the file of the Ld. AO since assessee never claimed it and was made for the first time at the first appellate stage.

8.3. Above stated issues had come up before Co-ordinate Bench in assessee's own case for AY 2001-02 in ITA No. 3251/Mum/2009, for AY 2002-03 in ITA No.1787/Mum/2006 and for AY 2003-04 in ITA No. 6236/Mum/2010. By following these precedents in assessee's own case, Co-ordinate Bench gave its finding in AY 2003-04 by restoring the issue back to the file of Ld. AO with limited purpose for verification and to allow the relief to the assessee after following the decision in assessee's own case in the preceding assessment years. The relevant observations and findings of the Co-ordinate Bench in respect of appeal for AY 2003-04 are extracted below for ready reference:

*"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 adjustments held that DEPB benefit is covered by section 28(iv) and not under section 28(iia) (iib) or (iic) and held that export incentive on account of DEPB licence amount into Rs. 26.94 crore will not be considered while adding 90% of the export incentive while calculating deduction under section 80 HHC. Aggrieved by the action of AO, the assessee filed appeal before CIT(A) and submitted that AO has not considered the first provision below section 80 HHC(3). In alternative it was argued that in excluding 90% of export incentives in spite of the fact that no reduction has been granted under the provision by holding the DEPB is not covered under section 28(iia) (iib) or (iic) 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 provision to section 80HHC and the decision of Supreme Court in Topman Export Limited in Civil Appeal No.1699 of 2012. In ITA no.3251/Mum/2009 by relying on the decision of Topman Export Limited (supra), similar issue for restored to the file of AO for recomputation of deduction of deduction the assessee has filed MA against such finding as there is favourable decision of Tribunal in assessee on case for AY 1994-95, 1995-96 and 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(iib) 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(iib) 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 submission 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 AY 1995-96 in ITA No. 1516/Ahd./2002 dated 23.12.2015 and again in AY 1998-99 in ITA No. 1519 & 1620/Ahd./2002 dated 12.03.2018 and again AY 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/M/2024 dated 14.12.2024 is restored to the file of assessing officer. Therefore, this issue is restored back to the file of assessing officer with limited purpose fro verification and to allow relief to the assessee by following the decision of tribunal in assessee's own case. In the result, this ground of appeal is allowed for statistical purpose."*

8.4. Accordingly, following the decision of the Co-ordinate Bench as extracted above, in the present case for AY 2004-05 also, the issue is restored back to the file of ld. AO with limited purpose for verification and to allow relief to the assessee by following the preceding decisions of Co-ordinate Bench in assessee's on case. This would also cover Ground No.3 raised by the assessee in its appeal since the issue in respects of claim of deduction u/s. 80HHC is to be taken up holistically though assessee has raised three different aspects for its claim u/s. 80HHC. In the said ground no.3, within its sub-ground, assessee has not pressed its claim in respect of job work charges and miscellaneous receipts for their respective treatment in computing permissible deduction u/s.80HHC. Accordingly, to that extent, the said ground is dismissed as not pressed. In respect of other aspects relating to the management service charges and sales tax refund, the same gets covered by our observations and finding of restoring the matter back to the file of Ld. AO as already noted above. Similar treatment is to be given on the other two aspects in ground no.3 whereby netting of interest is claimed by the assessee and net receipts to be reduced and not the gross receipts. Thus, for both ground no.3 in appeal by the assessee and ground nos.1 and 2 in the appeal by the revenue our above stated observations and finding applies. In the result, ground nos.1 and 2 in

revenue's appeal and ground no.3 in assessee's appeal are allowed for statistical purposes.

9. We now take up additional grounds raised by the assessee which are three in numbers, relating to claim of proportionate deduction in respect of research and development expenses incurred for three assessment years namely assessment years 2000-01, 2002-03 and 2003-04. This issue is also covered by the decision of Co-ordinate Bench in assessee's own case for AY 2002-03 and 2003-04. Assessee in the present appeal has sought for direction to be given to allow proportionate deduction in respect of research and development expenses which is in line with the direction given by the Co-ordinate Bench in assessee's own case for the preceding assessment years. For the purpose of consistency, by following the decisions of earlier years and considering the submission made by the Ld. Counsel for the assessee, ld. AO is directed to allow proportionate deduction of research and development expenses in similar manner as done in the preceding years. The observations and finding of the Co-ordinate Bench in appeals for AY 2002-03 in the ITA No. 1787/Mum/2006 is extracted below for ready reference:

*"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 the appeal are allowed."*

10. In the result, appeal of the assessee is ITA No. 7027/Mum/2010 and appeal of the revenue in ITA No. 6807/Mum/2010 are partly allowed for statistical purposes.

**II. ITA 6950/Mum/2013**

11. Appeal in ITA No.6950/Mum/2013 by the assessee for AY 2004-05 relates to imposition of penalty u/s. 271(1)(c) r.w.s. 154 of the Act. At the outset, ld. Counsel for the assessee pointed out that the notice issued u/s. 274 read with section 271(1)(c) for the proceedings relating to imposition of penalty did not specify the limb for which the penalty is to be imposed upon. Copy of the said notice dated 20.12.2006 was placed on record to demonstrate the said factual position. From the perusal of the said notice, it is noted that both the limbs as contained in section 271(1)(c), that is, limb concealments of particulars of income and limb furnishing of inaccurate particulars of income, are stated in the notice without striking off one of them.

11.1. The issue raised by the ld. Counsel on the validity of the notice so issued and proceedings undertaken thereafter, resulting in imposition of penalty on the assessee amounting to Rs.81,67,560/- is that it is bad in law, not in accordance with the provisions of the Act, liable to be deleted. Ld. Counsel placed reliance on the decision of Co-ordinate Bench of ITAT Mumbai in the case of Ritu Multitrade Services Pvt Ltd. vs. ITO [2024] 164 taxmann.com 121 (Mum) whereby it was held, where penalty notice issued u/s. 271(1)(c) did not specify charge under which penalty was initiated, the same was not a valid communication and penalty was to be deleted.

11.2. In the given set of facts as stated above and following the judicial precedents including that of Hon'ble jurisdictional High Court of Bombay in the case of Mohammed Farhan A. Shaikh vs. DCIT [2021] 125 taxmanno.com 253 (Bom), the penalty so imposed is deleted.

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

### **Assessment Year 2005-06**

#### **I. ITA No.7028/Mum/2010 along with ITA 6709/Mum/2010 and CO 188/Mum/2011**

13. We first take up appeal by the assessee as well as the revenue along with cross objection by the assessee against the appeal of the revenue arising out of assessment completed u/s. 143(3) dated 18.12.2008. In the appeal filed by the assessee, additional grounds have also been raised vide application dated 29.04.2025 by placing reliance on the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. (supra). There being no objection from the other side on the admission of additional grounds, the same are admitted for adjudication. The said two additional grounds raised are reproduce as under:

*"1. Without prejudice to ground no.1 of the income tax Appeal No.1822/Mum/2006 (Department's Appeal) for AY 2002-03, in case it is held that deduction in respect of the research and development expenses 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.*

*2. Without prejudice to ground no.1 of the income tax Appeal No.6236/Mum/2010 (Department's Appeal) for AY 2003-04, in case it is held that deduction in respect of the research and development expenses is to be allowed on proportionate basis over the period of years in the aforesaid then the appellant prays that proportionate deduction ought to be granted in the captioned assessment year.*

13.1. For Ground No.3, assessee has submitted that it is not pressed. Accordingly, Ground No.3 raised by the assessee is dismissed as not pressed. Ground No.1 and 2 raised by the assessee in its appeal have already been dealt with and adjudicated upon with similar fact pattern and applicable law as in appeal for AY 2004-05 in the above paragraphs.

14. For Ground No.1 relating to disallowance made by ld. AO u/s.14A of Rs.11,18,645/- is in respect of expenditure incurred for earning exempt income as per Rule 8D inserted by Income-tax (Fifth Amendment) Rules, 2008. It is noted that assessee earned exempt income by way of dividend, totalling to Rs.30,39,703/-, out of which dividend amounting to Rs.10,13,590/- was duly offered to tax. Balance amount of Rs.20,26,113/- was claimed as exempt u/s. 10(34).

14.1. Assessee claim that it had not incurred any expense for earning the aforesaid exempt income and therefore, question of apportioning any notional expenditure towards earning of this income does not arise. Assessee gave the factual position from its audited financial statements by submitting that total investments were at Rs.4,167.88 lacs as on 31.03.2005 out of which investments yielding exempt income amounted to Rs.975.35 lacs. Further, it was submitted that only investments worth Rs. 120.01 lacs yielded the exempt income out of the investments of Rs. 975.35 lacs.

14.2. Assessee also laid down the facts that it had its own funds including reserves and surplus amounting to Rs. 66,799.04 lacs against the total investments in shares yielding tax free income of Rs. 975.35 lacs which comes to only @ 1.46% of the assessee's own funds. Thus, assessee had sufficient funds of its own to make investments yielding exempt income. It was assertively submitted that no borrowed funds bearing interest charge were used for the purpose of making investments yielding exempt income. Hence, no disallowance ought to be made in respect of interest expenditure.

14.3. These fact patterns are identical to what we have already dealt with in appeal for AY 2004-05 on the same issue. Our observations and

findings in appeal of the assessee for AY 2004-05 apply mutatis mutandis. Accordingly, ground no.1 raised by the assessee is allowed.

15. In ground no.2, ld. AO has resorted to make an addition in respect of commission on corporate financial guarantee @ 0.6% of Rs.98,13,550/- on the corporate guarantee provided amounting to Rs. 16,355.90 lacs.

15.1. This issue has also been dealt with by us on identical fact patterns in the appeal for AY 2004-05 in the above paragraphs. Our observations and findings apply mutatis mutandis. Accordingly, ground no.2 raised by the assessee is partly allowed.

16. For the two additional grounds raised by the assessee in respect of claim of proportionate deduction for research and development expenses incurred in AY 2002-03 and 2003-04, it is stated that a direction may be given to the ld. AO to allow proportionate deduction for allowing the said claim. This issue has also been dealt by us in the appeal by the assessee for AY 2004-05 in above paragraphs for which appropriate directions have been issued to the ld. AO. Accordingly, in the identical fact patterns, our observations and findings in the appeal for AY 2004-05 apply mutatis mutandis. Thus, the additional grounds raised by the assessee are allowed for statistical purposes.

17. In the result, appeal of the assessee is partly allowed.

18. We now take up appeal by the revenue along with cross objection filed by the assessee. Revenue in the two grounds raised by it in its appeal has challenged the deletion of addition of Rs.6,52,414/- made by the Ld. AO u/s.36(1)(va) r.w.s. 2(24)(x) in respect of employees contribution to provident fund after the due date of filing of return u/s

139(1) but during the previous year. At the outset, it was submitted by the ld. Counsel for the assessee to point out that this appeal ought to be dismissed on account of low tax effect in view of CBDT Circular No.9/2024 dated 17.09.2024. This submission was confronted to the ld. CIT DR who accepted that the tax effect in respect of the disallowance made of Rs. 6,52,414/- is below the threshold limit of Rs.50 lacs prescribed in the said CBDT Circular. Accordingly, appeal by the revenue is dismissed as not maintainable on account of low tax effect.

19. In the cross objection filed by assessee, the ground raised is in respect of treating the incentive received under industrial policy introduced in the state of Jammu and Kashmir in the form of excise duty refund amounting to Rs.3,83,24,412/- as a capital receipts not liable to tax. Assessee has raised a fresh claim by way of filling a cross objection for the treatment of excise duty refund under the industrial policy introduced by the state of Jammu and Kashmir. For this, assessee has placed on record additional evidence vide application dated 05.05.2025. Further, assessee has placed on record, decision of Hon'ble Supreme Court in the case of CIT vs. Shree Balaji Industries Ltd. [2017] 80 taxmann.com 239 (SC) where by excise refund and interest subsidy received by the assessee in pursuance of industrial policy for the state of Jammu and Kashmir would be capital receipt. As held by the Hon'ble Court while dealing with the issue, in para 2 it noted that "*The issue raised in this appeal is covered against the revenue by the decision of this court in CIT vs. Ponni Sugars and Chemicals Limited [2008] 306 ITR 392/174 taxman 87, or in the alternate, in CIT vs Meghalaya Steels Limited [2016] 383 ITR 217/238 taxman 559 /67 taxmanno.com 158 (SC).*" Assessee thus claim that the issue is settled in view of the decision of the Hon'ble Supreme Court and therefore, excise duty refund is ought to be treated as capital receipt not liable to tax.

19.1. We have heard the matter and considered the submissions made before us. It is noted that assessee has raised this claim for the first time by way of filing cross objection. Since this issue came up for the first time, it needs to be examined, more particularly in the light of additional evidence placed on record. Accordingly, in the interest of justice and fair play, we find it appropriate to remit the matter on this issue, back to the file of ld. AO for examination and verification of the claim made by the assessee taking into account the additional evidence as well as judicial precedent referred by the assessee. Ld. AO is directed to consider the claim of the assessee in accordance with the provisions of law. Needless to say, that assessee be given reasonable opportunity of being heard and to make any further submissions, if so required. Accordingly, ground of cross objection raised by the assessee is allowed for statistical purposes.

20. In the result, appeal of the revenue is dismissed and cross objection of the assessee is allowed for statistical purposes.

## **II. ITA NO. 2172/Mum/2013**

21. We now take up appeal in ITA No. 2171/Mum/2013 filed by the assessee against the assessment order dated 23.12.2010 passed u/s.143(3) r.w.s 147. In Form 36, assessee has raised only one ground relating to disallowance u/s.14A of Rs.2,02,612/- which has been considered to the extent of @ 10% of exempt income of Rs.20,26,113/-. This issue has already been dealt with by us in the appeal against assessment completed u/s.143(3) for the year under consideration i.e. AY 2005-06. This issue has also been dealt with by us in appeal by the assessee for AY 2004-05. The fact pattern remains the same as well as the applicable law. Accordingly, our observations and findings arrived

at in the aforesaid two appeals apply mutatis mutandis to this issue. Thus, ground no.1 raised by the assessee is allowed.

22. Assessee has also raised additional grounds vide application dated 19.12.2024 for which no objection was raised for their admission from the other side and are therefore admitted and taken up for adjudication. The additional ground so raised are reproduce as under:

*“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 the Deputy Commissioner of income tax in making an addition under section 92C(4) on the basis of the order passed by the Transfer Pricing Officer under section 92C(3) of Rs. 98,13,540/- being commission @ 0.6.% on corporate financial guarantees amounting to Rs. 1,63,35,00,000/- provided on behalf of associated enterprises to meet with the arm’s length price principle.*

*2. on the facts and in the circumstances of the case and in law, the appellant submit that deduction under section 36(1)(va) r.w.s 2(24)(x) amounting to Rs. 6,52,414/- in respect of employees’ contribution to provident fund and pension fund paid after the due date but during the previous year ought to be allowed as deduction.*

*3. on the facts and in the circumstances of the case and in law, the appellant submits that the refund of excise duty amounting to Rs. 3,83,25,000/- received as an incentive under the new industrial policy for the state of Jammu and Kashmir, 2002 ought to be excluded while computing the total income as capital receipt not eligible to tax.”*

22.1. Additional Ground No.1 is in respect of addition of Rs.98,13,540/- towards commission @ 0.6% on corporate financial guarantee, made u/s.92C(4). This issue has already been dealt with by us in the aforesaid two appeals by the assessee for AY 2004-05 and AY 2005-06. There being no change in fact pattern and applicable law, our observations and findings in those two appeals apply mutatis mutandis. Accordingly, additional ground no.1 is partly allowed.

22.2. Additional Ground No.2 is in respect of disallowance made u/s.36(1)(va) r.w.s 2(24)(x) of Rs.6,52,414/- towards employees’ contribution to provident fund paid after the due date of filing of return

u/s.139(1). This issue is no longer *res integra* and has been settled against the assessee in the decision of Hon'ble Supreme Court in the case of Checkmates Services Pvt Ltd. vs. CIT 448 ITR 518 (SC). Respectfully, following the judgments of Hon'ble Supreme Court in the case of Checkmates Services Pvt Ltd (supra), additional ground no. 2 raised by the assessee is dismissed.

22.3. Additional ground no.3 raised by the assessee is in respect of treatment of refund of excise duty of Rs. 3,83,25,000/- received as incentives under the new industrial policy of the state of Jammu and Kashmir which according to the assessee is a capital receipt not liable to tax. We have dealt with this issue in the cross objection filed by the assessee against the appeal of the revenue for AY 2005-06 (CO No.188/Mum/2011 arising out of ITA No. 6709/Mum/2010). The issue is the same and therefore, our observation and findings while disposing of the ground of cross objection raised by the assessee applies *mutatis mutandis*. Accordingly, additional ground no.3 raised by the assessee is partly allowed for statistical purposes.

23. In the result, appeal of the assessee is partly allowed.

## **B. Assessment Year 2007-08**

### **I. ITA No. 5344/Mum/2013**

24. Appeal by the assessee vide ground no.1 is towards treatment of refund of excise duty received by it as incentive under the new industrial policy for the state of Jammu and Kashmir which according to the assessee is to be treated as capital receipt not liable to tax amounting to Rs.18,51,08,685/-.

24.1. We have already dealt with this issue in the cross objection filed by the assessee in CO No.188/Mum/2011 as well as appeal by the assessee in ITA No. 2172/Mum/2013 for AY 2005-06. The fact pattern and the submissions made are identical and therefore, our observations and findings in the aforesaid cross objection and appeal applies *mutatis mutandis* to this ground raised by the assessee. Accordingly, this ground is allowed for statistical purposes.

25. Assessee has also raised additional ground vide application dated 29.04.2025 for which admission was not objected upon by the other party. Accordingly, it is taken up for adjudication. The additional grounds so taken is reproduce as under:

*“1. Without prejudice to ground no.1 of the income-tax appeal no. 6236/Mum/2010 (department’s appeal) for AY 2003-04, in case it is held that deduction in respect of research and development expenses 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.”*

25.1. This additional ground has already been adjudicated upon by us in the aforesaid appeals. There is no change in fact pattern and the claim made by the assessee. Accordingly, the direction given by us in the aforesaid appeals on this issue apply *mutatis mutandis*. Thus, this additional ground is allowed for statistical purposes.

26. In the result, appeal filed by the assessee is allowed for statistical purposes.

27. In the result, appeals of both, assessee and revenue are decided as per the table below:

Sr. No.	ITA No.	Assessment Year	Appeal by	Result of the appeal
1.	6807/MUM/2010	2004-05	Revenue	Partly allowed for statistical purposes

2.	7027/MUM/2010	2004-05	Assessee	Partly allowed for statistical purposes
3.	6950/Mum/2013	2004-05	Assessee	Allowed
4.	7028/MUM/2010	2005-06	Assessee	Partly allowed
5.	6709/Mum/2010	2005-06	Revenue	Dismissed
6.	2172/Mum/2013	2005-06	Assessee	Partly allowed
7.	C.O. No.188/ MUM /2011	2005-06	Assessee	Allowed for statistical purposes
8.	5344/Mum/2013	2007-08	Assessee	Allowed for statistical purposes

Order pronounced in the open court on 27th June, 2025

Sd/-  
(Pawan Singh)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

**Dated: 27 June, 2025**

*Divya R. Nandgaonkar*  
*Stenographer*

Copy to:

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- 2 The Respondent
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- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai