

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1041/MUM/2018
Assessment Year : 2004-05

Hindustan Unilever Ltd.

Unilever House

B.D. Sawant Marg, Chakala

Andheri (E),

Mumbai - 400099

PAN: AAACH1004N

..... Appellant

v/s

Deputy Commissioner of Income Tax -

1(1)(1),

Aayakar Bhavan,

Mumbai - 400020

..... Respondent

ITA No.929/MUM/2018
Assessment Year : 2004-05

Deputy Commissioner of Income Tax,

1(1)(2),

579, Aayakar Bhavan,

M.K. Road,

Mumbai - 400020

..... Appellant

v/s

M/s. Hindustan Unilever Ltd.

165/166, Backbay Reclamation,

Mumbai - 400020

PAN: AAACH1004N

..... Respondent

CO No.142/MUM/2019
(Arising out of ITA No.929/Mum/2018)
Assessment Year : 2004-05

Hindustan Unilever Ltd.

Unilever House, B.D. Sawant Marg,
Chakala, Off Western Express Highway,
Andheri (E),
Mumbai – 400099
PAN: AAACH1004N

..... Cross Objector
(Original Respondent)

v/s

**Deputy Commissioner of Income Tax,
1(1)(2),**

579, Aayakar Bhavan,
M.K. Road,
Mumbai – 400020

..... Respondent
(Original Appellant)

Assessee by : Shri Nishant Thakkar
Ms. Jasmin Amalsadvala
Revenue by : Shri Ajay Chandra, CIT-DR

Date of Hearing – 02/12/2025

Date of Order – 30/01/2026

ORDER

PER BENCH

Both the assessee as well as the Revenue are in appeal/cross objection before us against the impugned order dated 24/11/2017, passed under section 250 of the Income Tax Act, 1961 (“the Act”) by the learned Commissioner of Income Tax (Appeals)-56, Mumbai, [“learned CIT(A)”], for the assessment year 2004-05.

ITA No. 1041/Mum/2018
Assessee’s appeal - A.Y. 2004-05

2. In this appeal, the assessee has raised the following grounds: –

"Based on the facts and circumstances of the case, Hindustan Unilever Limited (hereinafter referred to as 'the Appellant') respectfully craves leave to prefer an appeal against the order passed by learned Commissioner of Income-tax (Appeals) - 56, Mumbai [hereinafter referred to as 'CIT(A)'] dated 24.11.2017 on the following grounds, each of which are without prejudice to one another.

On the facts and in the circumstances of the case and in law, the CIT(A) on fact and in law has:

Allocation of head office expenses unconnected with the undertakings for calculation of deduction under section 801B and section 10B

1. erred in holding that for the purposes of section 801B and section 10B the profits derived from the new industrial undertakings ought to be reduced by the amount of certain common expenses incurred at the Head Office on certain central departments which cannot be identified with any of the industrial undertakings of the appellant eligible for deduction under section 801B & 10B.

2. failed to appreciate that the appellant has allocated all the expenses including those common expenses which were relevant to compute the profit derived from the concerned industrial undertakings such as marketing, sales & distribution, purchasing, export department, etc.

3. failed to appreciate that the Head Office expenses, not allocated by the appellant, are only those overheads which in any case have to be incurred by the appellant irrespective of the existence of the new undertakings whose profits are eligible under section 801B & 10B and are in no way dependent on the said new industrial undertakings and therefore cannot be considered and allocated in arriving at the amount of profits derived from the said undertakings.

Expenditure attributable to earning of tax-free income - Section 14A disallowance

4. erred in confirming disallowance under section 14A in respect of expenditure in relation to tax free income.

CENVAT on closing stock - Section 145A

5. erred in confirming adjustment to the value of closing stock of raw materials and packing materials by Rs. 43,31,47,338/- representing the unutilised balance of Cenvat as on 31.3.2004.

Reduction in deduction under section 80 HHC

6. erred in reducing the export turnover by an amount of Rs. 9,26,74,373/- in respect of sales proceeds not realised.

7. erred in reducing the profits & gains from business by 90% of compensation received, discount on prepayment of sales tax and other miscellaneous income for the purposes of allowing deduction under Sec. 80HHC.

8. erred in reducing the interest on income tax refund from the profits of the business of the appellant company for computation of deduction u/s 80HHC.

9. erred in reducing deduction under section 80-IB from the "profits of the business" for the purposes of computing deduction under section 80HHC of the Act.

Deduction under section 10B - Miscellaneous income

10. erred in denying the exemption u/s 10B in respect of the miscellaneous income of Rs. 73,805/- (Rs.11,806/- at Etah and Rs.61,999/- at Chorwad) on the ground that it did not arise out of export / sales of an article or thing manufactured in the Industrial undertaking at Etah and Chorwad.

11. failed to appreciate that the miscellaneous income shown in the profit & loss account was directly related to the operations carried on at the industrial undertaking and was eligible for exemption u/s 10B of the Act.

Deduction under section 10B - Internal Transfer

12. erred in denying the exemption us 10B in respect of internal transfer of Rs. 5,42,40,340/-on the ground that the internal transfer included in the sales has no relevance to the export profit which is exempt u/s 10B of the Act.

13. failed to appreciate that the internal transfer shown in the profit and loss account was directly related to the operations carried on at the industrial undertaking and was eligible for deduction u/s 10B of the Act.

Premium received on termination of agreement for use of "Savion" trademark

14. erred in holding that the premium received by the appellant on termination of agreement for use of "Savlon" trademark is not capital in nature.

15. failed to appreciate that the appellant has lost its source of income (its right to use the brand) and therefore the compensation received by the appellant is capital in nature.

Discount on prepayment of loan

16. erred in holding that the discount on prepayment of loan is not a capital receipt.

17. erred in holding that the discount on prepayment of loan is a revenue receipt and is chargeable to tax u/s 41(1) of the Act.

18. failed to appreciate that the deferred sales tax liability in respect of the manufacturing unit at Khamgaon, Maharashtra was converted into loan as per the Sales Tax Deferment Scheme of the state and later on the loan was repaid at discount as per the prepayment scheme of the Government.

Capital Subsidy

19. erred in holding that the capital subsidy received by the appellant ought to be reduced from WDV for the purpose of computation of depreciation.

Interest under section 234D

20. erred in rejecting the claim of the appellant that interest under section 234D for the AY 2001-02 paid during the year ought to be allowed as a deduction u/s 37(1).

Interest under section 234C.

21. erred in charging interest under Sec. 234C of the Act.

22. failed to appreciate that the advance tax was sufficiently paid and that there was no shortfall in payment of any instalment of advance tax under section 234C of the Act."

3. Vide its application dated 09/01/2023, the assessee has raised the following additional ground of appeal: –

"On the facts and in the circumstances of the case and in law, the assessing officer ought to have held that the levy of the dividend distribution tax u/s 115-O of the Income-tax Act, 1961, on payment of the dividend to non-resident shareholders should be at the rate specified in the relevant article dealing with taxability of dividends in the agreement of Double Taxation Avoidance Agreement (DTAA) between India and the country of residence of the non-resident shareholders and ought to have consequently granted a refund for the tax paid in excess thereof."

4. Vide another application dated 16/06/2025, the assessee has raised the following additional ground of appeal: –

"Without Prejudice to the grounds 1 to 3 already raised in the Appeal Memo the Appellant submits that:

3A. Without prejudice to the above, and in the alternative, failed to appreciate that the same principles ought to be applied for treatment of income as well as expenditure, and therefore, if corporate expenses are allocated to the eligible new industrial undertakings, other similar income also ought to have been allocated to the said-undertakings."

5. Since the issues raised by way of additional grounds are legal issues, which can be decided on the basis of material available on record, these grounds are admitted for adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC vs. CIT, reported in (1998) 229 ITR 383 (SC).

6. Grounds no.1-3 and additional ground raised vide application dated 16/06/2025, pertain to allocation of common expenses and common income to the eligible units while computing deduction under section 10B and section 80-IB of the Act.

7. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is predominantly engaged in the manufacture, trading and marketing of Fast-Moving Consumer Goods, Specialised Chemicals, etc. For the year under consideration, the assessee filed its return of income on 29/10/2024, declaring a total income of Rs.939,16,19,420. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to show cause why the deduction under section 10B and section 80-IB of the Act should not be computed after allocating head office expenses and other common expenses. In response, the assessee submitted that the expenses incurred at the head offices at Mumbai and Bangalore, to the extent these relate to the eligible units, have already been allocated and taken into account while calculating the profits of the individual units. The assessee further submitted that the deduction under the aforesaid sections is on the basis of the profit "*derived from*" the industrial undertaking, which is a narrow scope as compared to the words "*attributable to*". It was also submitted that as the common unallocated head office expenses are not related to the units concerned, these cannot be allocated while computing profits "*derived from*" the unit. The assessee also submitted that the expenses, such as expenses

on central accounts, audit, legal and secretarial departments, etc., would have been incurred even if the concerned undertaking was not set up. Without prejudice to its aforesaid submission, the assessee submitted that in case the common allocated head office expenses are allocated to the unit, then the common income should also be allocated.

8. The Assessing Officer ("AO"), vide order dated 27/12/2006 passed under section 143(3) of the Act, disagreed with the submissions of the assessee following the approach adopted in the preceding years. The AO held that the expenditure incurred at the head office is for corporate advertisement, EDP charges, all the units concerned, and therefore, these head office expenses need to be apportioned to determine the quantum of profit derived from an industrial undertaking eligible under section 10B and section 80-IB of the Act. The AO also held that any expenditure, wherever incurred, having a nexus with the unit needs to be deducted to determine the profit of the unit. Accordingly, the AO allocated the common head office expenses while computing the deduction under section 10 B and section 80-IB of the Act.

9. The learned CIT(A), vide impugned order, following the order passed by its predecessor in assessee's own case in the preceding year, directed the AO to follow the same direction in the year under consideration and computed the deduction under section 10B and section 80-IB of the Act. Being aggrieved, the assessee is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. We find that while deciding a similar issue in assessee's own case in Hindustan Unilever Ltd v/s DCIT, in ITA No. 6783/Mum/2019, for the assessment year 2005-06, vide order dated 14/11/2024, the coordinate bench of the Tribunal, following the decision rendered in assessee's own case in the preceding year, observed as follows:

"3.2. We heard the parties on this issue and perused the record. We notice that the Tribunal is consistently restoring this issue to the file of the AO with certain directions. In this regard, the Ld A.R invited our attention to the order dated 21-08-2013 passed in assessee's own case for AY 1993-94 in ITA No.5579/Mum/1998. In this order, the Co-ordinate Bench has followed the order passed for AY 2006-07 in ITA No.7868/Mum/2010 in respect of deductions claimed u/s 80HH and 80I of the Act and restored the issue to the file of AO with the instruction to follow the directions given in AY 2006-07 with regard to allocation of common expenses incurred at the Head Office. It is also pertinent to note that the Co-ordinate Bench has also accepted the plea of the assessee that certain "common income" should also be allocated to the eligible units.

3.3. We notice that the Ld. CIT(A) has restored this issue to the file of the AO with the direction to follow the ITAT's order. Accordingly, we also direct the AO to allocate both common expenses and common income to the eligible units while computing deduction u/s 80IB/80IC and 10B of the Act as per the direction issued by the ITAT in the earlier years."

11. Thus, in the absence of any change in facts or law in the year under consideration, respectfully following the decision of the coordinate bench rendered in the assessee's own case cited supra, the AO is directed to allocate common expenses and common income to the eligible units, while computing the deduction under section 10B and section 80-IB of the Act as per the direction issued by the Tribunal in earlier years. Grounds no.1-3 and additional ground raised vide application dated 16/06/2025 are decided accordingly.

12. Ground no.4, raised in assessee's appeal, pertaining to the disallowance made under section 14A of the Act, was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

13. Ground no.5, raised in assessee's appeal, pertains to the adjustment to the value of closing stock of raw materials and packaging materials on account of the unutilised balance of CENVAT credit.

14. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee was asked to explain why the outstanding CENVAT credit, which has been carried forward in the balance sheet as per the tax auditor's report, be not added for the purpose of valuation of the closing stock of raw materials. In response, the assessee submitted that the CENVAT credit appearing in the balance sheet under the head "*loans and advances*" represents the credit to be availed from the Excise authorities, and this amount is not required to be added to the closing stock. The assessee further submitted that the provisions of section 145A of the Act would apply to the CENVAT credit on the purchase of raw and packaging material. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that in terms of the Explanation to the provision of section 145A of the Act, the closing stock of raw material is to be adjusted by an amount of any tax, duty, cess or fee is (by whatever name called) under any law and shall, inter-alia, include the CENVAT credit availed or utilised during the year. Accordingly, the AO held that the closing stock of raw material must be adjusted against the unutilised CENVAT credit.

15. The learned CIT(A), vide impugned order, following the decision of its predecessor in assessee's own case in the preceding year, dismissed the ground raised by the assessee. Being aggrieved, the assessee is in appeal before us.

16. We have considered the submissions of both sides and perused the material available on record. We find that while deciding a similar issue in assessee's own case for the assessment year 2005-06, vide order dated 14/11/2024 cited supra, the coordinate bench of the Tribunal, following the decision rendered in the preceding year, observed as follows: –

"5.2. We notice that the Co-ordinate Bench has considered an identical issue in AY 2006-07 in ITA No.7868/Mum/2010 and the matter has been restored to the file of the AO for examining it afresh. Since, it is a case of method of accounting and since it is stated that there will be no impact on the profit under both Exclusive method and Inclusive method of accounting, following the decision rendered by the Co-ordinate Bench in AY 2006-07, we restore this issue to the file of the AO for examining the claim of the assessee."

17. In the absence of any change in facts or law, respectfully following the aforesaid decision, we restore this issue to the file of the AO for examining the claim of the assessee in line with the aforesaid decision. Accordingly, the impugned order on this issue is set aside, and Ground no.5, raised in assessee's appeal, is allowed for statistical purposes.

18. Ground no.6, raised in assessee's appeal, pertains to reducing the export turnover by the amount of unrealised sales proceeds while computing deduction under section 80-HHC of the Act.

19. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee reported

that export proceeds to an extent of Rs.9,26,74,373 have remained unrealised within the prescribed time. Since the deduction under section 80-HHC of the Act is available only on the proceeds actually realised in convertible foreign exchange, the AO vide order passed under section 143 (3) of the Act excluded the amount of Rs.9,26,74,373 from the export turnover of the assessee for computation of deduction under section 80-HHC of the Act. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

20. We have considered the submissions of both sides and perused the material available on record. We find that while deciding a similar issue in assessee's own case in Hindustan Unilever Ltd v/s ACIT, in ITA No. 5431/Mum/2011, for the assessment year 2001-02, vide order dated 18/08/2023, following the decision rendered in assessee's own case for the assessment year 2000-01 restored similar issue to the file of the AO. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: –

"27. With regard to the issue of deduction u/s 80HHC on unrealised export profit, we notice that the coordinate bench in assessee's own case for 2000-01, has restored the issue back to the Assessing Officer for a de novo consideration by relying on the order of the ITAT for assessment year 1998-99, 1992-93 and 1993-94. Accordingly for the year under consideration also the issue is remitted back to the Assessing Officer with similar directions. The assessee is directed to furnish the relevant details pertaining to the realisation of the export proceeds and coordinate with the proceedings."

21. Therefore, respectfully following the decision rendered in assessee's own case cited supra, we restore this issue to the file of the AO for *de novo* consideration. Further, the assessee is directed to furnish the relevant details

pertaining to the realisation of the export proceeds. With the above directions, the impugned order on this issue is set aside, and Ground no.6, raised in assessee's appeal, is allowed for statistical purposes.

22. Grounds no. 8 and 9, raised in assessee's appeal, were not pressed during the hearing. Accordingly, these grounds are dismissed as not pressed.

23. Grounds no. 10 and 11, raised in assessee's appeal, pertain to the denial of the deduction claimed under section 10B of the Act in respect of the miscellaneous income earned by the assessee.

24. The brief facts of the case pertaining to this issue, as emanating from the record, are: In the computation of income, the assessee claimed a deduction under section 10B of the Act on the profits and gains from 100% Export-Oriented Unit ("EOU") at Etah and Chorwad. During the assessment proceedings, the assessee was asked to show cause why the miscellaneous income of the exempt unit may not be assessed to tax, as it does not qualify as income for exemption purposes. In response, the assessee submitted that the miscellaneous income, which has been credited to the profit and loss account of exempt units, relates to the activity carried out by the said unit, and the miscellaneous income mainly consists of amounts realised on the sale of scrap generated out of the normal manufacturing activity. The assessee further submitted that the income shown in the profit and loss account is directly related to the operations carried out at the industrial undertaking, and the same is eligible for deduction under section 10B of the Act. The AO, vide order passed under section 143(3) of the Act, following the approach adopted

in the preceding years, wherein the miscellaneous income was brought to tax, held that the nature of business income does not arise out of the export/sale of any article or thing manufactured in the industrial undertaking. Accordingly, the miscellaneous income of Rs. 61,999 in Chorwad Unit and Rs. 11,806 in Etah Unit was brought to tax, and the deduction under section 10B of the Act was accordingly reduced.

25. The learned CIT(A), vide impugned order, following the decision of its predecessor in assessee's own case, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

26. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the fact that the assessee's units at Etah and Chorwad are 100% EOUs, and the profits derived therefrom are eligible for deduction under section 10B of the Act. During the year under consideration, the assessee earned miscellaneous income amounting to Rs. 61,999 in Chorwad Unit and Rs. 11,806 in Etah Unit, primarily from the sale of scrap generated out of the normal manufacturing activity in these units. It is evident from the record that the lower authorities, following the precedent in assessee's own case, brought to tax the miscellaneous income earned by the assessee during the year under consideration from the aforesaid units and deduction under section 10B of the Act was accordingly reduced.

27. We find that in GE BE (P) Ltd v/s ACIT, reported in [2015] 371 ITR 32 (Karn.), the following question of law came up for consideration before the Hon'ble Karnataka High Court: –

"Whether the Tribunal was correct in holding that incidental income derived by the assessee from the sale of scraps would be entitled to exemption under Section 10B of the Act despite the same having been not derived from the export of articles or things?"

28. While deciding the aforesaid question of law in favour of the taxpayer, the Hon'ble Karnataka High Court observed as follows: –

"9. Question No.3:—

Learned counsel for the Revenue assailing the aforesaid finding contended that scraps is not derived from producing the articles of export. Having regard to the language in Section 10B of the Act, only for such profits and gains which are derived by the assessee from the export of articles or things, Section 10B is attracted. Admittedly, the scraps are not exported and therefore, he submits that the Tribunal was not justified in holding that the assessee is entitled to the benefit of Section 10B even in respect of the scraps.

Per contra, learned counsel appearing for the assessee submitted that the profit earned by sale of scraps constitutes profits and gains of the assessee and therefore Section 10B is attracted and the Tribunal was justified in extending the benefit of Section 10B to the assessee.

10. The Apex Court in the case of the CIT v. Sterling Foods [1999] 237 ITR 579/104 Taxman 204 (SC) while dealing with the deductions under Section 80HH explainer the meaning of the word "derived from" held as under:

The use of the word "derived from" suggests that the original sources of the product has to be found. As a matter of plain English, when it is said that one word is derived from another, often in another language, what is meant is that the source of that word is another word, often in another language. As an illustration, the word "democracy" is derived from the Greek word "demos", the people and most dictionaries will so state. That is the ordinary meaning of the word "derived from" and there is no reason to depart from that ordinary meaning here. There must be, for the application of the words "derived from", a direct nexus between the profits and gains and the industrial undertaking.'

11. Keeping in mind the principle laid down by the Apex Court, no doubt the assessee is not in the business of export of scraps but is in the business of export of X-ray equipments, high voltage tanks and detectors used in CT scanners and after manufacturing these products, they are exported. In the process of manufacturing, the unutilized raw materials forms part of scraps and that scraps also has value. But it is not exported and hence, they are eligible for the benefit under Section 10B of the Act. The assessee should have

care profits and gains from such export of articles or things. The said articles or things should have been manufactured or produced by the assessee. The Section does not require that the profits and gains derived should be from the articles or things which are exported only. It is the profits and gains derived by an 100% Export Oriented Undertaking from the export of articles. Therefore, when the assessee undertakes manufacturing activity or production activity and in the process it results in any scraps, the said scraps attract the nexus between the profits and gains derived from the assessee from export business. Therefore, it satisfies the requirements of Section 10B and the Tribunal has rightly held that the assessee is entitled to the benefit of Section 10B even in respect of the profits earned out of sale of scraps materials within the country. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the third substantial question of law is answered in favour of the assessee and against the Revenue."

29. We further find that while deciding a similar issue, the coordinate bench of the Tribunal in assessee's own case for the assessment year 2001-02 vide order dated 18/08/2023 cited supra, after considering the aforesaid decision, observed as follows: -

"35. During the course of assessment proceedings, the Assessing Officer noticed that assessee claimed exemption u/s 10B on the profit and gains from 100% of export oriented unit Etah amounting to Rs.5,03,65,774/- which included miscellaneous income of Rs.30,361. The assessee submitted that the miscellaneous income consists of realisation from scrap sale which is derived from the industrial undertaking. Therefore it was submitted that the said income should be eligible for deduction under section 10B. The Assessing Officer disallowed the said amount for the purpose of claiming exemption under section 10B. The CIT(A) upheld the disallowance by holding that sale of scrap is not generated by production or sale of any article or thing and therefore cannot be part of the profit eligible for deduction under section 10B.

36. The Ld.AR for the assessee before us submitted that identical issue was decided by the Tribunal for the earlier assessment year 2000-01 vide order in ITA No.3951/Mum/2008 & ITA No.4033/Mum/2008 order dated 16/05/2023 and the issue was restored to the file of the Assessing Officer for fresh consideration with the following observations:-

"26. During the course of appellate proceedings before us the Id. Counsel placed reliance on the decision of CIT. Hewlett Packard Global Soft Ltd. 87 taxcom. 182 (Kar) & GE BE P. Ltd. Vs. ACIT 49 taxman.com 348 (Kar). The Id. Counsel also submitted that ITAT in assessment year 1999-2000 vide ITA No. 1039/Mum/2005 has restored the issue to the file of the A.O for adjudicating afresh. We have perused the above referred order of the ITAT and found that the similar issue on identical facts has been restored back to the file of the A.O for deciding afresh as per provisions of Sec. 10B applicable at the relevant time after giving the assessee reasonable opportunity of being heard. Accordingly, we restore this issue to the file of the A.O for deciding afresh as per the direction of the ITAT given at para 69

of the above referred order. Therefore this ground of appeal is allowed for statistical purposes."

37. The facts being identical, consistent with the earlier decision of the Tribunal, we restore the issue to the file of the Assessing Officer for fresh consideration as per the directions of the Tribunal issued earlier."

30. Therefore, in the absence of any change in facts or law, respectfully following the decision rendered in the assessee's own case cited supra, this issue is restored to the file of the AO for consideration afresh in line with the directions issued by the Tribunal in preceding years. Accordingly, the impugned order on this issue is set aside, and Grounds no.10 and 11, raised in assessee's appeal, are allowed for statistical purposes.

31. Grounds no. 12 and 13, raised in assessee's appeal, pertain to the denial of deduction under section 10B of the Act in respect of internal transfer.

32. The brief facts of the case pertaining to this issue, as emanating from the record, are: In the computation of income, the assessee claimed profits and gains from 100% EOU at Chorwad and Etah as exempt under section 10B of the Act. From the computation of the income of the industrial undertaking at Chorwad, it was noticed that the sales of the unit include internal transfer of Rs. 4,37,05,770. Similarly, sales of unit at Etah include internal transfer of Rs. 1,05,34,570. Accordingly, the assessee was asked to explain why these amounts of internal transfer should not be excluded for determining the profit of the said unit for the purpose of deduction under section 10B of the Act. In response, the assessee submitted that the 100% EOU at Chorwad was set up for the manufacture of "crabsticks". It was further submitted that the raw material for the manufacture of "crabsticks" is the "fish paste" manufactured

at EOU at Chorwad. Thus, the assessee submitted that during the previous year, it transferred "*fish paste*" aggregating Rs. 4,37,05,770 to the new unit in Chorwad for the manufacture of "*crabsticks*", and the same was shown under the head "*internal transfer*". As regards the eligibility of deduction under section 10B of the Act in respect of this internal transfer, the assessee submitted that the "*crabsticks*" manufactured at the newly set up EOU is meant for exports and therefore the "*fish paste*", which has been transferred from the existing EOU, is actually being exported after it is further processed and converted into "*crabsticks*". Accordingly, the assessee submitted that the deduction under section 10B of the Act has been rightly claimed as the basic criterion that the article or thing manufactured at any EOU should be exported was fulfilled. The AO, vide order passed under section 143(3) of the Act, following the approach adopted in the preceding years, rejected the submission of the assessee and held that the amount of internal transfer included in the same has no relevance to the export profit of the assessee, which is exempt under section 10B of the Act. Accordingly, the amount of internal transfer was excluded from the sales of the respective unit for determining the export profits after taking into account the corresponding expenses against these internal transfers.

33. The learned CIT(A), vide impugned order, following the decision of its predecessor in the assessee's own case, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

34. We have considered the submissions of both sides and perused the material available on record. We find that a similar issue came up for

consideration before the coordinate bench of the Tribunal in the assessee's own case for the assessment year 2001-02. While deciding the issue in favour of the assessee, following the decision of the Hon'ble Karnataka High Court in Granite Mart Ltd v/s ITO, reported in [2020] 121 Taxmann.com 168 (Karn.), the coordinate bench of the Tribunal vide order dated 18/08/2023 cited supra, observed as follows: –

"41. We notice that during the year, the assessee has transferred fish paste which is the raw material for manufacturing crab sticks for an amount of Rs.29,91,890/-among the EOUs at Chorwad. The assessee claimed exemption under section 10B towards the transfer for the fish paste making unit on the ground that the crab stick making EOU has ultimately used this raw material for export and therefore, the basic criteria that the article or thing manufactured at an EOU should be exported is being fulfilled. The lower authorities rejected the claim for the reason that the internal transfer included in the sales has no relevance to the export profits of the assessee. Accordingly, the assessee was denied the benefit of section 10B to the extent of Rs.2,35,988/-. With regard to whether the transfer from one export unit to another can be considered as deemed export for the purpose of section 10B, we notice that the issue has been considered by Hon'ble Karnataka High Court in the case of Granite Mart Ltd vs ITO (supra) where the question of law raised and the decision of the Hon'ble High Court is extracted as below:-

(i) Whether the Tribunal was justified in law in holding that the exports made through third parties and inter unit transfers are not entitled for deduction under section 10B of the Act on the facts and circumstances of the case and consequently gave a perverse finding?

"12. Thus, from perusal of section 10A of the Act, it is evident that the intention of the legislature is to encourage establishment of export oriented industries with the object of receiving convertible foreign exchange. In order to claim deduction under section 10A of the Act, the conditions laid down under section 10A(2) have to be complied with. It is pertinent to mention here that in International Stones India (P.) Ltd. case (supra), a division bench of this court has held that a narrow and pedantic approach cannot be applied in construing the words "by an undertaking". And restricting the benefit under section 10B of the Act only in respect of direct export of such goods manufactured by such units. The deemed export by the assessee undertaking even through third party who has exported such goods to foreign country and has fetched foreign currency for India still remains a deemed export in the hands of the assessee undertaking also. The aforesaid decision was proved by another division bench of this court in the case of Metal Closures Steel Ltd. (supra), which has been affirmed by the Supreme Court. In view of aforesaid enunciation of law, it is evident that the appellant is entitled to benefit of deduction under section 10B of the Act in respect of export made to third parties and inter unit transfers. So far as submission made by learned counsel for the revenue that the matter requires factual adjudication and therefore, should be remitted is concerned, suffice it to say that there were in all approximately 40 parties with whom the appellant had entered into 398 transactions. Out of the aforesaid 2 parties, the Assessing Officer had examined 2 of the major parties viz., S.K. International, New Delhi and M/s. Glittek Granites

Ltd., who had stated before the Assessing Officer that they had not claimed any exemption. Under Rule 16E of the Income-tax Rules, 1962. The report of an accountant which is required to be furnished by the assessee along with the return of income, under sub-section (5) of section 10B shall be in Form No. 56G. The aforesaid report has been furnished by the appellants and it is not the case of the revenue the appellants have not furnished the aforesaid report. Besides this, it is pertinent to mention here that the question of duplications in the fact situation of the case does not arise as each person can claim only on the value addition by him and the presumption that there can be duplication is contrary to the principle of computation of the income under the Act.

In view of the preceding analysis, the substantial questions of law are answered in favour of the assessee and against the revenue. In the result the order passed by the Income-tax Appellate Tribunal as well as the Commissioner of Income-tax (Appeals) insofar as it disallows the claim of the appellant with regard to transactions through third parties and inter-unit transfers is hereby quashed and the assessee is held entitled to the benefit of deduction under section 10B of the Act in respect of third parties and inter unit transfers as well. In the result, the appeals are allowed."

42. We notice that the issue in assessee's case is similar to the one considered by the Hon'ble High Court in the above case. Accordingly, respectfully following the above decision, we hold that the amount of internal transfer between two EOUs of the assessee is to be considered for the purpose of arriving at the profit eligible for exemption under section 10B of the Act. It is also to be noted here that since the impugned amount is an internal transfer which is shown as sales in one EOU and as expenditure in the other EOU, there is merit in the contention that at entity level it is tax neutral. In view of the above discussion, we delete the addition made by the Assessing Officer denying the amount of internal transfer as claimed under 10B of the Act."

35. In the absence of any change in facts or law, respectfully following the aforesaid decision rendered in assessee's own case, we delete the impugned addition made by the AO and the amount of internal transfer is directed to be included in the sales of respective units for determining the export profits for computing the deduction under section 10B of the Act. As a result, Grounds no. 12 and 13, raised in assessee's appeal, are allowed.

36. Grounds no. 14 and 15, raised in the assessee's appeal, pertain to the taxability of the compensation received by the assessee on termination of the agreement for the use of the "Savlon" trademark.

37. The brief facts of the case pertaining to this issue, as emanating from the record, are: In its computation of income for the year under consideration, the assessee reduced an amount of Rs.12.50 crore received as compensation for premature termination of the agreement for the use of the trademark. In the notes to the computation of income, the assessee stated that in 1998, it entered into an agreement with M/s. NR Jet Enterprises Ltd. ("NR Jet") for the use of the trademark "Savlon" on payment of royalty. In 2003, NR Jet requested the assessee for premature termination of the earlier agreement for the use of the trademark, and the assessee agreed to such premature termination of the agreement for a consideration of Rs.12.50 crore. The assessee claimed that since it has given up a steady source of income, the compensation received for such termination is a capital receipt, not liable to tax. During the assessment proceedings, the assessee repeated the same contention. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the assessee is in the business of manufacturing several brands of soaps, cosmetics, etc., and it is not the case where the assessee is only manufacturing soap under the brand name of "Savlon". Thus, the AO held that the revenue earning capacity of the assessee is not solely dependent only on the use of the brand name "Savlon". The AO placing reliance upon the decision of the Hon'ble Supreme Court in Gillanders Arbuthnot & Co. Ltd. vs. CIT, reported in (1964) 53 ITR 283 (SC) and CIT vs. Best and Co. (Private) Ltd., reported in (1966) 60 ITR 11 (SC) held that every receipt of termination of agreement is not capital in nature and if such termination does not impair the revenue earning machinery of the assessee, it is not in the nature of capital receipt. Accordingly, the AO

held that the compensation of Rs.12.50 crore received by the assessee on termination of the agreement with NR Jet is revenue in nature.

38. The learned CIT(A), vide impugned order, dismissed the grounds raised by the assessee on this issue, after considering the relevant clauses of the agreement dated 01/01/1998 entered into between the assessee and NR Jet. The relevant findings of the learned CIT(A) on this issue are reproduced as follows:

"28. The agreement dated 01.01.1998 between appellant and M/S NR Jet Enterprises Ltd does contain clauses on premature termination. The literary meaning of compensation includes "that which compensate for loss or privation". The nomenclature "premium" given by the assessee is misleading. Here income though sales of soap by use of trademark SAVLON due upto 31.12.2007 ceased on a prior date. As part of securing against losses due to premature termination sums were received. The receipt was part of the relationship between the two parties involved in a commercial agreement that was in force. Any receipt as part of written or unwritten clauses of an agreement has to be of same character as of the overall agreement. The termination agreement dated 09.10.2003 flowed from the main agreement dated 01.01.1998. Therefore, all ingredients to establish that what flowed in from latter agreement is also of same character, to being revenue exists here. Here the licence was not purchased by the assessee [the phrase in para 2 of agreement dated 01.01.1998 is "... grants to the Licencee the exclusive non-assignable licence and permission to use the said trademark...."] and licence fee was being deducted as an item of expense. In short, compensation on account of loss of future revenue receipt always have character as revenue when the asset (in this case, trademark) is not purchased (only license to use), prior to cancellation and restoration to original owners by the appellant. No further analysis is needed to conclude that the impugned sum is not capital in nature.

29. In view of above I do not accept the claim that the receipt is a capital income as distinguished from revenue. Accordingly, I hold that the Assessing Officer is right in holding that the sum of Rs 125,000,000 as incometaxable in hands of assessee. Ground 27 stands dismissed."

Being aggrieved, the assessee is in appeal before us.

39. During the hearing, the learned AR, by referring to the relevant clauses of the agreement, submitted that under the agreement dated 01/01/1998

entered into between the assessee and NR Jet, the assessee was granted the exclusive right to use the trademark "Savlon" for a period of 10 years. The learned AR submitted that in pursuance of the aforesaid agreement, the assessee was manufacturing and marketing soaps under the brand name "Savlon" and created a separate identity for the brand due to its efforts in the market and was earning a steady income. It was submitted that subsequently vide agreement dated 09/10/2003, both the parties, i.e., NR Jet and the assessee, mutually agreed to prematurely terminate the agreement dated 01/01/1998 for a lump sum consideration of Rs.12.50 crore payable by NR Jet to the assessee. By referring to the clauses of the agreement dated 09/10/2003 entered into between the assessee and the NR Jet, the learned AR submitted that the consideration of Rs.12.50 crore was paid to the assessee not only for the premature termination of the agreement dated 01/01/1998, whereby exclusive right to use the trademark "Savlon" was granted to the assessee, but the payment of Rs.12.50 crore also includes consideration for the for the non-compete covenant and transfer of assessee's own proprietary formulation in respect of soap, which was transferred to NR Jet. Accordingly, the learned AR submitted that the receipt of Rs.12.50 crore by the assessee under the aforesaid agreement dated 09/10/2003 is capital in nature. In support of its contention, the learned AR also placed reliance upon the decision of the Hon'ble Supreme Court in P.H. Divecha vs. CIT, (1963) 48 ITR 222 (SC), and Oberoi Hotel Pvt. Ltd. vs. CIT, reported in (1999) 236 ITR 903 (SC). By distinguishing the decision relied upon by the AO, the learned AR submitted that in the facts of those cases, the agreement was terminated at Will and there was no definite tenure of the agreement, and

thus under these circumstances, the compensation received by the taxpayer was held to be revenue in nature.

40. On the other hand, the learned DR submitted that the assessee was pursuing various lines of business and upon termination of the agreement for exclusive use of the "Savlon" trademark, no loss of enduring nature was incurred by the assessee, and there was no impairment of the business of the assessee. Thus, the learned DR submitted that the compensation received by the assessee is revenue in nature and has been rightly brought to tax by the AO in the light of the decisions of the Hon'ble Supreme Court in Gillanders Arbuthnot & Co. Ltd. (*supra*) and Best and Co. (Private) Ltd. (*supra*).

41. We have considered the submissions of both sides and perused the material available on record. Thus, the question that arises for consideration is whether the compensation of Rs.12.50 crore received by the assessee pursuant to the agreement dated 09/10/2003 between NR Jet and the assessee is to be treated as a capital receipt or a revenue receipt.

42. It is trite that the question whether any particular receipt is income or not will depend on the nature of the receipt, the true scope and effect of the relevant taxing provisions. It is also trite that it is for the Revenue to prove that the receipt is chargeable to tax under the provisions of the Act, but once it is shown that the receipt is income under the Act, it is for the assessee to prove that the same is either exempt or that the assessee is eligible for deduction of the same. It is also well known that the definition of the term "income" under section 2(24) of the Act is an inclusive definition. Further, the

term "*income*" is a wide import and not confined only to the profits/gains. Therefore, in each case, the decision of the question as to whether the receipt is income or not must depend entirely upon the nature of the receipt and the scope of the relevant taxing provision.

43. In *Gillanders Arbuthnot & Co. Ltd. (supra)*, relied upon by the Revenue, the agency was terminated and by way of compensation, the Imperial Chemical Industries (Exports) Ltd. paid for the first three years after the termination of the agency, 2/5^{ths} of the commission accrued on its sales in the territory of the taxpayer's agencies computed at the rates at which the taxpayer had formerly been paid, and in addition, in the third-year full commission for the sale affected in that year at the same rates. The Imperial Chemical Industries (Exports) Ltd. had intended to take a formal undertaking from the taxpayer to refrain from selling or accepting any agency for explosives or other competitive commodities, but no such agreement in writing was taken or insisted upon. The question arose whether the amounts received by the taxpayer for those three years were of the nature of "*capital*" or "*revenue receipt*". The Hon'ble Supreme Court held that the amounts paid were of the nature of income and, therefore, assessable to tax on the following reasoning: -

"The appellant was conducting business as selling or distributing agent of numerous principals.... It may reasonably be held, having regard to the vast array of business done by the appellant as agents. that the acquisition of agencies was in the normal course of business and determination of individual agencies, a normal incident, not affecting or impairing the trading structure of the appellant. The appellant was compensated by payment to it, the loss of profit it suffered by the cancellation of its agency, leaving it free to conduct its remaining business."

It further held: -

"19. There is, in our judgment, no immutable principle that compensation received on cancellation of an agency must always be regarded as capital. In each case the question has to be determined in the light of the attendant circumstances. In the judgment in Kettlewell Bullen & Co.'s case [1964] 53 ITR 261 (SC) we have explained that the judgment of the Judicial Committee in the CIT v. Shaw Wallace and Co. L.R. 59 IndAp 206 was not intended to, and did not lay down that in every case, cancellation of an agency resulted in loss of a source of revenue or that amounts paid to compensate for loss of agency must be regarded as capital loss.

20. On a careful consideration of all the circumstances we agree with the High Court that cancellation of the contract of agency did not effect the profit-making structure of the appellant, nor did it involve a loss of an enduring trading asset; it merely deprived the appellant of a trading avenue, leaving him free to devote his energies after the cancellation to carry on the rest of the business, and to replace the contract lost by a similar contract. The compensation paid, therefore, did not represent the price paid for loss of a capital asset. We therefore dismiss the appeals with costs."

44. In Best & Co. (Private) Ltd. (*supra*), relied upon by the Revenue, the Hon'ble Supreme Court held that the compensation agreed to be paid to the taxpayer by its Principal, M/s, Imperial Chemical Industries (Exports) Ltd., Glasgow, was not only in lieu of giving up of the agency but also for the taxpayer accepting the restrictive covenant for a specific period. The Court, therefore, held that a part of the compensation attributable to the restrictive covenant was a capital receipt and hence not assessable to tax. The question whether the compensation paid was severable was answered as follows: -

"21. The next question is whether the compensation paid is severable. If the compensation paid was in respect of two distinct matters, one taking the character of a capital receipt and the other of revenue receipt, we do not see any principle which prevents the apportionment of the income between the two matters. The difficulty in apportionment cannot be a ground for rejecting the claim either of the Revenue or of the assessee. Such an apportionment was sanctioned by courts in Wales v. Tilley (1942] 25 Tax Cas. 136, Carter v. Wadman (1946) 28 Tax Cas. 41 and T. Sadasivam v. CIT. Madras (1955] 28 ITR 435 (Mad.). In the present case apportionment of the compensation has to be made on a reasonable basis between the loss of the agency in the usual course of business and the restrictive covenant. The manner of such apportionment has perforce to be left to the assessing authorities."

45. On the other hand, the assessee has placed reliance upon the decision of the Hon'ble Supreme Court in P.H. Divecha (*supra*), wherein the taxpayer, being the partner of the Firm, which was granted exclusive right within a demarcated territory to sell and deliver electricity bulbs by M/s. Philips Electrical Company (India) Ltd. ("*Philips Electrical*") under an agreement in June 1938. Subsequently, Philips Electrical sent a letter to the Firm informing that the earlier agreement would come to an end on 30/06/1954. As a gesture of goodwill, Philips Electrical agreed to pay in quarterly instalments to each of the three partners of the Firm, during the period of three years, a sum of Rs. 40,000/- per annum. The Revenue treated the receipt in the hands of each partner as revenue in nature and taxed the same in their hands. While deciding the issue whether the payment is in the nature of a revenue receipt or a capital receipt, the Hon'ble Supreme Court in the aforesaid decision held that the periodicity of the payment does not make the payment a recurring income because periodicity may be a result of convenience and not necessarily the result of the establishment of a source expected to be productive over a certain period. The Hon'ble Supreme Court took note of the fact that in the earlier agreement entered into between the parties, there was no covenant in respect of compensation to be payable to the Firm on the termination of the agreement. Further, for the temporary suspension of supplies also, no compensation was payable. Thus, it was noted that the Firm was not entitled to be compensated either for a temporary suspension of the benefits under the agreement or a complete suspension of those benefits. The Hon'ble Supreme Court further held that the agreement between the parties created a monopoly right of purchase and a monopoly right of sale in a certain

territory, which created an enduring nature. It was further held that the agreement constituted the source and a monopoly, which gave an enduring advantage to the assessee in his trade, and a loss of such agreement must be regarded as having fallen in the capital asset of the person affected and not in the course of his ordinary trade. The Hon'ble Supreme Court also held that this payment cannot also be related to any service that was likely to be performed in future. Thus, it was held that the payment was in token of appreciation and was not related to any business done or to loss of profits, and it was not recompense for services past or future. It was held that the payment was made out of gratitude and does not bear the character of income profits or gains, which alone are taxable under the Act. Accordingly, the Hon'ble Supreme Court held that the payment received by the partners from Philips Electricals is capital in nature.

46. In *Oberoi Hotel Pvt. Ltd. (supra)*, relied upon by the assessee, the taxpayer agreed to operate the hotel in Singapore for which it received a certain fee. Under the agreement, the taxpayer was granted the right to exercise an option to purchase the hotel in case the owner of the hotel desires to transfer the same during the currency of the agreement. Subsequently, an agreement was entered into, under which the taxpayer received a sum of Rs. 29,47,500/- as a consideration, inter alia, for the relinquishment of the right to exercise the option of purchasing the hotel. In view of the aforesaid facts and circumstances, the question came up for consideration before the Hon'ble Supreme Court whether the receipt is capital or revenue in nature. The Hon'ble Supreme Court deciding the issue in favour of the taxpayer held that

the amount received is for the consideration for giving up its right to purchase and/or to operate the property or getting it on lease before its transfer or let out to any person, which is an injury on the capital asset of the taxpayer and giving the contractual right, has resulted in loss of source of the assessee's income, which is capital in nature.

47. At this stage, it is also relevant to note the following test laid down by the Hon'ble Supreme Court in *Kettlewell Bullen & Co. Ltd. vs. CIT*, reported in (1964) 53 ITR 261 (SC): -

"Where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated) the receipt is revenue: Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt."

48. In light of these judicial pronouncements, we shall now examine the facts of the present case vis-à-vis the relevant clauses of the agreement under consideration before us to decide the issue involved. Under the agreement dated 01/01/1998 entered into between the assessee and NR Jet (hereinafter referred to as "*Assignment Agreement*"), the assessee was granted the exclusive right to use the trademark "*Savlon*" on the "*Personal Wash or Personal Clearing Products*" manufactured and sold by the assessee. Clause 1(a) of the Assignment Agreement dated 01/01/1998 defines "*Personal Wash or Personal Cleaning Products*" as Bathing Bar, Bar Soaps, Face Wash (including liquid), and Hand Wash (including liquid). Further, products such as antiseptic liquid, lotion, body wash (including liquid), cream, hair wash or

shampoos are explicitly excluded from the meaning of the term "*Personal Wash or Personal Cleaning Products*". Thus, under the Assignment Agreement, the assessee was authorised to use the trademark "*Savlon*" only on Bathing Bar, Bar Soaps, Face Wash (including liquid), and Hand Wash (including liquid) manufactured and sold by the assessee. Further, the "*Specified Category of Products*" under this Assignment Agreement also includes the aforesaid items manufactured and sold by the assessee. During the hearing, the learned AR laid emphasis on the aspect that the assessee was granted an exclusive non-assignable license and permission to use the trademark "*Savlon*" within the territory of India, by referring to Clause 2, which reads as follows: -

"2. Subject to the terms, conditions and stipulations herein contained, the Licensor hereby grants to the Licensee the exclusive non assignable licence and permission to use the said trademark within the territory of Union of India upon, or in relation to, or in connection with, the Specified Category of Products to be manufactured, sold, marketed or distributed in India and for export outside India to such countries as may be agreed in writing between the parties hereto from time to time."

49. Further, as per Clause 3, the assessee was not authorised to use the said trademark except in conformity with the provisions of the agreement. Clause 14 of the Assignment Agreement provides that the royalty for the use of the said trademark payable by the assessee shall be calculated on the net sales of the products. Clause 15 provides that the Assignment Agreement shall be in force w.e.f. 01/01/1998 and shall be in full force for a period of 10 years unless terminated as provided in the Assignment Agreement. This clause further provides that the term of the license may be extended upon terms mutually agreed upon between the parties. Clause 16 provides the circumstances under which NR Jet shall have the right to terminate the

agreement without being liable in any way for the payment of damages or other compensation. Clause 17 grants the assessee the right to terminate the agreement upon giving NR Jet 12 months' notice in writing, with a restriction that such right shall not be exercised during the initial period of 4 years. Clause 18(a) and 18(b) provide that upon expiry or early termination of any clause or any or all rights/licenses granted, the assessee shall discontinue the use of the trademark in connection with any goods or products. Further, any registration of the assessee as a permitted or Registered User of the trademark shall also be expunged on termination or expiry of this Assignment Agreement. It is further provided that upon termination of the Assignment Agreement for any reason, NR Jet may, at its option, purchase from the assessee all or any of the inventory of the goods.

50. Clause 18(c) of the Assignment Agreement, which was relied upon by the learned AR, during the hearing, is reproduced as follows: -

"(c) The Licensor hereby agrees that after the expiry of the term of this Agreement, it shall not use the said Trademark in respect of the said product, atleast for a period of four years. The Licensor hereby further agrees that in the event of termination for any cause, prior to the expiry of the term of Licence herein granted, it shall not use the said trademark in respect of the said product, for a period specified hereunder:-

(i) In case of termination, prior to expiry of 7.5 years, atleast for a period of three years.

(ii) In case of termination, after the expiry of 7.5 years, atleast for 40% of the total duration of the Licence period"

51. Clause 18(c) thus provides that the Licensor, i.e. NR Jet, after the expiry of the term of this agreement, shall not use the trademark in respect of the products, at least for a period of 4 years. Therefore, the restriction on the use

of the trademark after the expiry of the term of the Assignment Agreement is on NR Jet (i.e. the Licensor).

52. Pursuant to the aforesaid Assignment Agreement, the assessee was using the trademark "Savlon" for the sale and marketing of soap from the date of the agreement, i.e. 01/01/1998. However, before the expiry of the term of the aforesaid Assignment Agreement, i.e. 10 years, the assessee and NR Jet by way of mutual agreement agreed to prematurely terminate the Assignment Agreement dated 01/01/1998. Accordingly, vide agreement dated 09/10/2003 (hereinafter referred to as "Termination Agreement"), the NR Jet reclaimed the license granted to the assessee to use the trademark "Savlon" and the assessee agreed to relinquish its licensed user rights under the Assignment Agreement prematurely in consideration of a compensation of Rs. 12.50 crore agreed to be paid by NR Jet to the assessee. In this regard, it is relevant to note Clause 2 of the Termination Agreement, which reads as follows: -

"2. In consideration of HLL relinquishing its licensed user rights granted to HLL by NRJ under the terms and conditions of the said Agreement dated 1st January 1998, and in consideration of HLL releasing NRJ from various obligations cast upon NRJ under the terms and conditions of the aforesaid Agreement, NRJ has agreed to pay HLL a lumpsum compensation of Rs. 12,50,00,000/- (rupees twelve crore fifty lakhs only), all inclusive. Any taxes or levies applicable, if any, to the transaction shall be borne by HLL, save and except levy of income tax, if any, which shall be borne by the respective Parties."

53. From the perusal of the aforesaid Clause, it is evident that the compensation of Rs.12.50 crore was agreed to be paid by NR Jet to the assessee as a consideration of the assessee relinquishing its licensed user rights granted under the Assignment Agreement and as a consideration of the

assessee releasing NR Jet from various obligations casted upon the NR Jet under the terms and conditions of the Assignment Agreement.

54. Further, as per Clause 4 of the Termination Agreement, the assessee confirmed that they have stopped fresh manufacturing of soap with the trademark "Savlon" as on 20/08/2003 and have also discontinued the business of sale and distribution of soap under the trademark "Savlon" with effect from 30/09/2003. Further, Clause 5 of the Termination Agreement bars the assessee from using the trademark in respect of a specified category of products. We find that these clauses are in conformity with Clause 18(a) of the Assignment Agreement, which provided that the assessee shall discontinue the use of the trademark in connection with any goods or products upon expiry or early termination of rights/licenses granted.

55. Clause 7 and Clause 9 of the Termination Agreement provide that all usable and exclusive raw materials, packaging materials, which were intended to be used in the manufacture of "Savlon" soap were agreed to be transferred to NR Jet on a cost-inclusive basis, including taxes. Further, all usable stocks of perfume used for "Savlon" soap were agreed to be transferred to NR Jet at a price of Rs. 950 per kg plus Excise Duty and Sales Tax as applicable, while the soap dies will be transferred at the book value plus taxes as applicable. These clauses of the Termination Agreement are in line with Clause 18(b) of the Assignment Agreement, wherein NR Jet agreed to purchase, at its option, from the assessee all or any part of the inventory of the goods.

56. Clause 10 of the Termination Agreement provides that "*Own Proprietary Formulation*" developed by the assessee in respect of soap, which has been sold under the trademark "*Savlon*" shall be permitted to be used by NR Jet for the manufacturing, selling and promotion of "*Savlon*" soap. It was further agreed that NR Jet shall hold these formulations and technology associated with the manufacturing of "*Savlon*" soap in strict confidence, and in the event of NR Jet discontinuing the manufacturing/sourcing of "*Savlon*" soap, such formulation and technology will be handed over to the assessee with all relevant documentation.

57. As noted in the foregoing paragraphs, during the hearing, the learned AR submitted that the consideration of Rs.12.50 crore paid to the assessee was not only for the premature termination of the Assignment Agreement dated 01/01/1998, but the said compensation also includes the consideration for the non-compete covenant and transfer of the assessee's own proprietary formulation. However, from the perusal of the Termination Agreement, forming part of the assessee's appeal set from pages 518-523, we find that none of the clauses of the agreement prohibit the assessee from carrying on the business of manufacturing soap in any of the areas covered under the Assignment Agreement. In the present case, it is an admitted fact that the assessee is in the business of manufacturing several brands of soaps, cosmetics, etc. Further, the only prohibition on the assessee under the Termination Agreement was the bar from using the trademark "*Savlon*" upon termination of the license. Therefore, we are of the considered view that the assessee was not prevented from carrying on its business of manufacturing

and sale of soap within any part of the territory of India or outside India. Thus, we do not find any merit in the contention of the assessee that the compensation of Rs.12.50 crore included consideration for the non-compete covenant.

58. As regards the other contention of the learned AR that the said compensation included the consideration for transfer of assessee's own proprietary formulation in respect of soap, from the perusal of Clause 10 of the Termination Agreement, it is evident that the NR Jet was only entitled to hold the formulation and technology specifically associated with "Savlon" soap, which was developed by the assessee, till it is manufacturing/sourcing, selling and promoting of "Savlon" soap. Once NR Jet discontinues the manufacturing/sourcing of "Savlon" soap, under Clause 10 of the Termination Agreement, it was required to not only intimate such discontinuance to the assessee but was also required to hand over the formulation and technology, along with all relevant documents, to the assessee. Therefore, from the perusal of the aforesaid clause, it cannot be said that the assessee's own proprietary formulation was sold to NR Jet.

59. In any case, we cannot be oblivious to the clear terms of Clause 2 of the Termination Agreement, as noted in the foregoing paragraph, that the compensation of Rs.12.50 crore was only a consideration for relinquishment of licensed user rights granted to the assessee and releasing NR Jet from various obligations casted on it under the terms and conditions of the Assignment Agreement. Therefore, we are of the considered view that apart from the above, i.e., relinquishment of licensed user rights and release of

various obligations, the compensation of Rs.12.50 crore received by the assessee from NR Jet cannot be said to be a consideration for any other aspect of the matter.

60. As regards the emphasis of the learned AR on the exclusive non-assignable license and permission granted to the assessee to use the trademark "Savlon" within the territory of India, it is pertinent to note that such a right was granted to the assessee in its ordinary course of business and both the parties were granted right to terminate in the circumstances as noted in Clause 16 and Clause 17 of the Assignment Agreement, which does not indicate that such an assignment of exclusive non-assignable license was in perpetuity.

61. As regards the reliance placed by the assessee on the decision of the Hon'ble Supreme Court in P.H. Divecha (*supra*), it is pertinent to note that as a gesture of goodwill, Philips Electricals agreed to pay quarterly instalments to each of the three partners of the Firm, which was granted exclusive right within a demarcated territory to sell and deliver electricity bulbs by Philips Electricals. Thus, noting these facts, the Hon'ble Supreme Court held that the payment was in token of appreciation and was not related to any business done or to loss of profit or to compensate for any services past or future. However, in the present case, the payment was not a gesture of goodwill, but rather a compensation to the assessee for the relinquishment of its licensed user rights in the trademark and for the release of the obligations cast on the Licensor, i.e. NR Jet. Further, from the perusal of the decision of the Hon'ble Supreme Court in P.H. Divecha (*supra*), it is also pertinent to note that there

are no findings of fact that the Firm was in the business of selling and delivering electricity bulbs of other companies apart from Philips Electricals. However, in contrast, in the present case, the assessee was not solely manufacturing and selling the soaps under the trademark "Savlon". Further, we are of the considered view that the right granted on 01/01/1998 and relinquished on 09/10/2003 cannot result in creation of any monopoly right of enduring nature in favour of the assessee, as compared to in P.H. Divecha (*supra*), wherein the contract was terminated after 16 years. Thus, we are of the considered view that the decision of the Hon'ble Supreme Court in P.H. Divecha (*supra*) was rendered in a factual matrix which is completely different from the present case, and therefore, the reliance on the same by the assessee is completely misplaced.

62. As regards the reliance placed upon the decision of the Hon'ble Supreme Court in Oberoi Hotel Pvt. Ltd. (*supra*), we find that the taxpayer was granted the right to exercise an option to purchase the hotel in Singapore in case the owner of the hotel desire to transfer the same during the currency of the agreement. Accordingly, as a consideration, *inter alia*, for the relinquishment of such right, the taxpayer received an amount of Rs.29,47,500/-. In such circumstances, the Hon'ble Supreme Court deciding the issue in favour of the taxpayer held that the amount received is for the consideration for giving up its right to purchase and/or to operate the property or getting it on lease before its transfer, which is an injury to the capital asset of the taxpayer. However, in the present case, from the various clauses of the Assignment Agreement, as noted in the foregoing paragraphs, it is evident that the

assessee was not given any right to exercise the option to purchase the trademark "Savlon" from NR Jet. Therefore, we are of the considered view that the decision of the Hon'ble Supreme Court in Oberoi Hotel Pvt. Ltd. (*supra*) was rendered in a different factual matrix and thus the same is not applicable to the present case.

63. Therefore, applying the test laid down by the Hon'ble Supreme Court in Kettlewel Bullen and Co. Ltd. (*supra*), we are of the considered view that the compensation paid to the assessee pursuant to the Termination Agreement dated 09/10/2003 was in the ordinary course of business and there was no loss to the profit-making apparatus of the assessee and rather it was a compensation for loss of profit itself. Further, the Assignment Agreement was entered into by the assessee in the ordinary course of its business. Thus, the amount received was in the course of business as the contract with NR Jet was part of the assessee's business of manufacturing and selling soaps, and any receipt on account of such contract being terminated can only be a trading receipt. It is further pertinent to note that the termination of the assignment of the trademark did not affect the trading structure of the assessee's business, as the assessee is in the business of manufacturing several brands of soap, and the termination of the contract was a normal incident of the assessee's business. Therefore, we are of the considered view that the receipt of compensation of Rs.12.50 crore by the assessee for relinquishment of its licensed user rights of the trademark "Savlon" and for releasing NR Jet obligations under the Assignment Agreement is a revenue receipt and is

assessable to tax. Accordingly, Grounds no.14 and 15, raised in assessee's appeal, are dismissed.

64. Grounds no. 16 and 17, raised in assessee's appeal, pertain to the taxability of a discount on the repayment of a loan.

65. The brief facts of the case pertaining to this issue, as emanating from the record, are: In respect of its manufacturing unit in Maharashtra, the assessee availed a Sales Tax Deferral Scheme, and accordingly, the deferred Sales Tax liability was converted into a loan. Later, the State Government introduced a scheme of prepayment of such loan at discount. Accordingly, in the year under consideration, the assessee availed the scheme and earned a discount of Rs. 703.27 lacs, and the same is credited in the profit and loss account as "*Miscellaneous Income*". During the assessment proceedings, the assessee filed a letter and made a fresh claim that the discount received on prepayment of Sales Tax liability should be treated as "*capital receipt*" instead of "*revenue receipt*" as treated in its return of income. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the Sales Tax liability was claimed by the assessee earlier and, as per the incentive scheme, this was converted into a loan. The AO held that this loan is on a revenue account, and if a part of such loan is waived off in the form of a discount, then it amounts to cessation of liability, which is taxable under section 41(1) of the Act. Accordingly, the AO held that the assessee, in its return of income, has correctly treated the discount on prepayment of Sales Tax liability as part of its taxable income, and the new

claim of the assessee that it is in the nature of a capital receipt is not in accordance with law.

66. The learned CIT(A), vide impugned order, directed the AO to call for necessary details and decide whether the disallowance should be retained. Being aggrieved, the assessee is in appeal before us.

67. We have considered the submissions of both sides and perused the material available on record. We find that while deciding a similar issue in favour of the taxpayer, the Hon'ble Supreme Court in CIT v/s Balakrishna Industries Ltd., reported in [2017] 88 taxmann.com 273 (SC), observed as follows: –

" 9. In a very detailed and exhaustive judgment rendered by the High Court, it has discussed the view taken by the Assessing Officer, which was confirmed by the Commissioner of Income Tax (Appeals). Thereafter, the High Court noted in detail the manner in which the Tribunal has dealt with the issue. A perusal of the judgment would show that the High Court took into consideration the provisions of Section 41 of the Act and the conditions which are required to be satisfied for bringing a particular receipt as "income" within the ambit thereof and found that those conditions are not satisfied in the present case. The High Court also repelled the contention of the Revenue that the assessee obtained the benefit of reduction of sales tax liability under Section 43B of the Act as per the CBDT Circular No. 496 dated 25th September, 1987. The relevant portion of the discussion in this behalf reads as under:

"It is not possible to agree with Mr. Gupta. Because, premature payment of Sales Tax already collected but its remittance to the Government, as Mr. Gupta envisages, is not covered by this provision else the subsections and particularly section 43B(1) would have been worded accordingly. Therefore Section 43B has no application. Insofar as applicability of section 41(1)(a), there also the applicability is to be considered in the light of the liability. It is a loss, expenditure or trading liability. In this case, the scheme under which the Sales Tax liability was deferred enables the Assessee to remit the Sales Tax collected from the customers or consumers to the Government not immediately but as agreed after 7 to 12 years. If the amount is not to be immediately paid to the Government upon collection but can be remitted later on in terms of the Scheme, then, we are of the opinion that the exercise undertaken by the Government of Maharashtra in terms of the amendment made to the Bombay Sales Tax Act and noted above, may relieve the Assessee of his obligation, but that is not by way of obtaining remission. The worth of the amount which has to be remitted after 7 to 12 years has been determined prematurely. That has been done by find out its NPV. If that is the value of the money that the State

Government would be entitled to receive after the end of 7 to 12 years, then, we do not see how ingredients of sub section (1) of section 41 can be said to be fulfilled. The obligation to remit to the Government the Sales Tax amount already recovered and collected from the customers is in no way wiped out or diluted. The obligation remains. All that has happened is an option is given to the Assessee to approach the SICOM and request it to consider the application of the Assessee of premature payment and discharge of the liability by finding out its NPV. If that was a permissible exercise and in terms of the settled law, then, we do not see how the Assessee can be said to have been benefited and as claimed by the Revenue. The argument of Mr. Gupta is not that the Assessee having paid Rs. 3.37 crores has obtained for himself anything in terms of section 41(1), but the Assessee is deemed to have received the sum of Rs. 4.14 crores, which is the difference between the original amount to be remitted with the payment made. Mr. Gupta terms this as deemed payment and by the State to the Assessee. We are unable to agree with him. The Tribunal has found that the first requirement of section 41(1) is that the allowance or deduction is made in respect of the loss, expenditure or a trading liability incurred by the Assessee and the other requirement is the Assessee has subsequently obtained any amount in respect of such loss and expenditure or obtained a benefit in respect of such trading liability by way of a remission or cessation thereof. As rightly noted by the Tribunal, the Sales Tax collected by the Assessee during the relevant year amounting to Rs. 7,52,01,378/- was treated by the State Government as loan liability payable after 12 years in 6 annual/equal installments. Subsequently and pursuant to the amendment made to the 4th proviso to section 38 of the Bombay Sales Tax Act, 1959, the Assessee accepted the offer of SICOM, the implementing agency of the State Government, paid an amount of Rs. 3,37,13,393/- to SICOM, which, according to the Assessee, represented the NPV of the future sum as determined and prescribed by the SICOM. In other words, what the Assessee was required to pay after 12 years in 6 equal installments was paid by the Assessee prematurely in terms of the NPV of the same. That the State may have received a higher sum after the period of 12 years and in installments. However, the statutory arrangement and vide section 38, 4th proviso does not amount to remission or cessation of the Assessee's liability assuming the same to be a trading one. Rather that obtains a payment to the State prematurely and in terms of the correct value of the debt due to it. There is no evidence to show that there has been any remission or cessation of the liability by the State Government. We agree with the Tribunal that one of the requirement of section 41(1)(a) has not been fulfilled in the facts of the present case."

10. After hearing the counsel for the parties at length, we are of the view that the aforesaid approach of the High Court is without any blemish, inasmuch as all the requirements of Section 41(1) of the Act could not be fulfilled in this case.

11. We, therefore, do not find any merit in these appeals which are accordingly, dismissed."

68. Therefore, respectfully following the aforesaid decision, we are of the considered view that the discount earned by the assessee on prepayment of Sales Tax liability under the Sales Tax Deferment Scheme floated by the State

of Maharashtra is a capital receipt, and thus, is not exigible to tax. As a result, Grounds no. 16-18, raised in assessee's appeal, allowed.

69. Ground no. 7, raised in assessee's appeal, pertains to reducing the profits and gains of the business by 90% of compensation received, discount on prepayment of Sales Tax and other miscellaneous income for the purpose of computation of deduction under section 80-HHC of the Act.

70. Having considered the submissions of both sides and perused the material available on record, we find that the AO, vide order, passed under section 143(3) of the Act, reduced 90% of the compensation receipt, discount on prepayment of sales tax and other miscellaneous income for the purpose of computation of deduction under section 80-HHC of the Act. Before proceeding further, it is relevant to note the provisions of Explanation (baa) to section 80-HHC of the Act, which reads as follows:

(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by—

(1) ninety per cent of any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits ; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India ;

71. Thus, as per Explanation (baa) to section 80-HHC of the Act "*profit of the business*" means profits of the business as computed under the head "*Profits and Gains of Business or Profession*" as reduced by the receipts of the nature mentioned in Clauses (1) and (2) of Explanation (baa). Thus, profits of the business of an assessee will have to be first computed under the head

"Profits and Gains of Business or Profession" in accordance with the provisions of sections 28 to 44D of the Act. In the computation of such profits of business, receipts of income which are chargeable as profits and gains of business under section 28 of the Act will have to be included. Similarly, different expenses which are allowable under sections 30 to 44D have to be allowed as expenses. After including such receipts of income and after deducting such expenses, the total of net receipts are profits of the business of the assessee computed under the head *"Profits and Gains of Business or Profession"* from which deductions are to be made under Clauses (1) and (2) of Explanation (baa) to section 80-HHC of the Act.

72. As regards the discount on prepayment of Sales Tax, we have arrived at the conclusion in the foregoing paragraphs that the same is capital in receipt. Therefore, we do not find any merit in the findings of the lower authority in reducing 90% of the discount on prepayment of Sales Tax while computing the deduction under section 80-HHC of the Act. Insofar as the compensation received by the assessee upon termination of the trademark license agreement and other miscellaneous income, we are of the considered view that even though these receipts are revenue in nature, but it has to be firstly determined whether they fall under the head *"Profits and Gains of Business or Profession"*. Only thereafter, the question of deduction as provided under Clause (1) and (2) of Explanation (baa) to section 80-HHC of the Act arises. Since this exercise has not been conducted by the AO as to whether the compensation received and other miscellaneous income fall under the head *"Profits and Gains of Business or Profession"*, we restore this issue to the

file of the AO for necessary examination of this aspect. Accordingly, Ground no.7, raised in the assessee's appeal, is allowed for statistical purposes.

73. Ground no.19, raised in the assessee's appeal, pertains to the computation of depreciation after reducing the capital subsidy received by the assessee from the Written Down Value ("WDV").

74. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee received Rs. 10.97 lakh as capital subsidy against its plant and machinery. Accordingly, during the assessment proceedings, the assessee was asked to explain how the subsidy has been treated in its books of accounts. In response, the assessee submitted that this capital subsidy has not been reduced from the WDV of relevant assets for the computation of depreciation. The AO, vide order passed under section 143(3) of the Act, held that the action of the assessee is not in conformity with the provisions of Explanation-10 to section 43 of the Act, which has been inserted with effect from 01/04/1999. Accordingly, the AO held that the amount of subsidy received by the assessee has to be reduced from the WDV for the purpose of computation of depreciation. Accordingly, the excess depreciation claimed with reference to capital subsidy was worked out at Rs. 2.75 lakh and the same was added to the total income of the assessee.

75. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

76. Having considered the submissions of both sides and perused the material available on record, it is evident that the learned CIT(A) dismissed the ground raised by the assessee on this issue as the assessee failed to produce the details of the scheme under which capital subsidy was received against its plant and machinery. Therefore, in the interest of justice and fair play, we deem it appropriate to grant one more opportunity to the assessee to place on record necessary evidence in support of its claim that the subsidy was granted for the purpose of inducing the industry to set up units in certain selected backward areas and not for the purpose of meeting a portion of the cost of assets. Accordingly, this issue is restored to the file of the AO for *de novo* adjudication, with a direction to the assessee to produce the details of the scheme under which capital subsidy was received. Needless to mention, no order shall be passed without affording reasonable and adequate opportunity of hearing to the assessee. With the above directions, the impugned order on this issue is set aside, and Ground no. 19, raised in assessee's appeal, is allowed for statistical purposes.

77. Grounds no. 20-23, raised in assessee's appeal, were not pressed during the hearing. Accordingly, these grounds are dismissed as not pressed.

78. The additional ground of appeal raised by the assessee, vide its application dated 09/01/2023, pertains to the applicability of the rate of tax on dividend specified in the Double Taxation Avoidance Agreement ("DTAA") between India and the country of residence of the non-resident shareholders,

while levying Dividend Distribution Tax (“DDT”) under section 115-O of the Act on payment of dividend by the assessee to the non-resident shareholder.

79. During the hearing, the learned Departmental Representative (“*learned DR*”) submitted that this issue is covered in favour of the Revenue by the decision of the Special Bench of the Tribunal in DCIT v/s Total Oil India Private Ltd, reported in [2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB). On the other hand, the learned AR submitted that this issue has recently been decided in favour of the taxpayer by the Hon’ble Bombay High Court in Colorcon Asia (P.). Ltd. v/s JCIT, reported in [2025] 181 taxmann.com 301 (Bom.).

80. Having considered the submissions of both sides and perused the material available on record, we find that the Hon’ble Bombay High Court in Colorcon Asia (P.). Ltd. (supra), after considering the decision of the Special Bench of the Tribunal in Total Oil India Private Ltd (supra), held that where an Indian company, paid dividend to its non-resident shareholder company, since such payment was in nature of dividend covered under definition of “*dividend*” under the DTAA and section 115-O, the taxpayer was entitled to restrict tax rate on dividends distributed by it to its non-resident shareholder company to the rate of tax provided under the DTAA. The relevant findings of the Hon’ble Bombay High Court in Colorcon Asia (P.). Ltd. (supra), are reproduced as follows: -

" *D* : CONCLUSION

55. We find ourself fortified by the observation of Delhi Tribunal in Giesecke & Devrient (India) (P.) Ltd. (supra), where with reference to the legislative history of Section 115-O, it emerges with clarity, that DDT, is a levy on the

dividend distributed by payer company, being an additional tax is covered within 'Tax' as defined in Section 2(43) of Act and, hence, is chargeable as per Section 4, which is subject to other provisions, which include Section 90 and sub-clause (2) thereof, then specially in case of Avoidance of Double Tax, the provisions more beneficial to assessee must be preferred. Considering that the international treaties involve extensive negotiations between two nations, and definitely being conscious of the respective Nation's power to tax, the benefits and detriments of a treaty and particularly a double tax treaty and its avoidance, can only be reciprocal when the law of trade and investment between treaty partners rests on balance and it is not allowed for one treaty partner to secure benefit to detriment of other. When a treaty is entered into, it is expected to have considered its impact on trade and investment and since it is mutual arrangement, it must be given full effect to and merely because there are unilateral amendments made on domestic front, the treaty cannot be made ineffective by construing the same in light of domestic law. The Parliament, is not within its power to change the terms of a bilateral treaty, which is a result of negotiated economic bargain between India and UK. A party may not follow the treaty, it may choose to renege from its obligations thereunder, but it cannot amend the treaty on the guise of its domestic law, having undergone change. Amendments to domestic law, cannot be read into treaty provisions, without amending Treaty itself. Since it is necessary for the contracting party to fulfill their obligations under a Treaty in good faith and this includes its accountability under it and act in a manner, not to defeat its purpose and object, we find that the benefit accruing under the DTAA, and Article 11 thereof, cannot be denied as Revenue is of the opinion that the Treaty do not cover 'Dividend' or it is not applicable to a domestic company.

56. In Tata Tea Co. Ltd (supra), while pronouncing upon the constitutional validity of Section 115-O of the Act of 1961, which is a provision for declaration, distribution or payment of dividend by domestic company and imposition of additional tax on dividend, it is held by the Apex Court that the source of the income may be agriculture, but when dividend is declared to be distributed and paid to shareholder of a company, its source is not relevant, as it remains dividend income. Nor does the fact that it is share of the company's profit, is held to be interfere with character of profit, from which it reaches hands of shareholder.

57. BFAR has based its decision on the definitional and conceptual framework of DDT holding that if it paid by the petitioner to its shareholder, it falls outside scope of DTAA as, (a) Dividend is an amount declared, distributed or paid by the Domestic Company out of the current or accumulated profits; (b) Dividend is additional income tax payable over and above the income tax chargeable in respect in total income of such company. BFAR has concluded that incidence of tax under Section 115-O is only upon domestic company and not shareholder i.e. Colorcon U.K. and DTAA is not triggered and, therefore, there is no question of its being taxed @ 10% as per DTAA. It also render a finding that Article 11(2) is not triggered at all, as there is no mutual agreement settling the mode of application of tax rates.

On perusal of the impugned Ruling by BFAR and on its detail analysis, according to us BFAR has failed to appreciate that section 4 of the Act of 1961 levies income-tax, including additional income tax, in respect of the 'total income' of the previous year of every person. Thus, it is the earning of the

'income' that attracts the charge. 'Income' has been defined under Section 2(24) of the Act to include 'dividend'. Therefore, the Authority has erred in not appreciating that Section 115-0 levies additional tax on the company on the "amounts declared, distributed or paid by way of dividends ". According to us, the declaration, distribution or payment of dividend by company cannot in any manner be regarded as 'income ' of the company distributing the dividend. Even Section 2(24) has not been amended by the Legislature inasmuch as regarding the "amounts declared, distributed or paid by way of dividends" as "income" of the company distributing dividends. Moreover, the Hon'ble Supreme Court in *Tata Tea Co. Ltd (supra)*, has, in no uncertain words, held that "income as defined in Section 2(24) of the 1961, Act is the inclusive definition including specifically 'dividend' and that "section 115-O pertain to declaration, distribution or payment of dividend by company and imposition of additional tax on dividend is thus clearly covered by subject as embraced by Entry 82 ". Once the Hon'ble Supreme Court has held that dividend connotes 'income ', the natural corollary is that as per section 4, the said income should be chargeable to tax in the hands of the person earning such income. **However, from a combined reading of Section 115-0 and 10(34), alongwith the legislative history narrated earlier, it is evident that DDT is a tax on the dividend income of the shareholder, though the incidence of tax has shifted from the shareholder to the company paying the dividend. Any other interpretation of the provisions will render the section 115-0 of the Act unconstitutional as it will fall foul of Entry 82, since what is sought to be taxed by the Respondent is not 'income' of the company.**

58. The Board of Advanced Ruling has further failed to appreciate that in view of the statutory provisions and legislative background of Section 115-0 of the Act, DDT paid by a company distributing dividend is not an income tax on profits or income of the company, but, is a tax on the dividend, which is income of the shareholder of the company. **Hence, DDT is tax on the dividend income of the shareholder, which is merely, for administrative convenience, charged in the hands of, and recovered from the company distributing dividend.** There is no denying that dividend income is not chargeable to tax and is exempt in the hands of the shareholders in light of the provisions of Section 10(34) of the Act, since the burden of taxation has been shifted to the company distributing the dividend, from the shareholder. **While the DDT is a tax payable by the company, and not the shareholders, in pith and substance, it is a tax on dividends that is income of the shareholders.**

59. We must also note that BFAR has grossly erred in rejecting the distinction and has failed to consider the binding dictum of the Apex Court in *Tata Tea Co. Ltd (supra)* and on the other hand its reliance upon *Godrej & Boyce Mfg. Co. Ltd. (supra)* is misplaced. The decision in *Godrej & Boyce Mfg. Co. Ltd. (supra)* was rendered on an issue as to whether expenses incurred in relation to earning an exempt income by way of dividend was to be disallowed under Section 14A of the Act. The Assessee argued that dividend income could not be treated as 'exempt' as the income suffered tax under Section 115-0 in hands of the company distributing dividend. It was argued that DDT under Section 115-0 was nothing but tax paid on behalf of the shareholder and such income which had attracted tax could not be said to be 'exempt'. The conclusion was therefore arrived that Section 14-A of the Act would apply to

dividend income on which tax is payable under Section 115-O of the Act. The decision in *Godrej & Boyce* is, therefore, in a completely different context as the issue before the Court was whether the dividend income not forming part of shareholders income attract Section 14-A qua the shareholder, but the issue before the BFAR was as to what could be taxed under Section 115-O and the answer is to be found in *Tata Tea Co. Ltd (supra)*, where it is held that DDT is a tax on dividend income of shareholder and it would fall in Entry 82 of the Union List.

Further reliance on decision by special bench in *Tata Oil* is also not well founded as the Apex Court in *Godrej & Boyce Mfg. Co. Ltd. (supra)* observed that even if it assumed that the additional income tax under the aforesaid provision is on the dividend and not on the distributed profits of the dividend paying company, it would not have made any material difference to the applicability of Section 14-A.

The BFAR also erred in not appreciating that as per Section 90(2) of the Income Tax, the provision of DTAA would prevail over the domestic law to the extent they are more beneficial to the assessee who is subjected to tax in India and as per Article 1 of the DTAA, it shall apply to the persons who are residents of one or both of the Contracting States. Further, Article 2 of the Treaty apply in respect of income tax and also to any identical or substantially similar taxes which are imposed after DTAA is brought into force.

Since DDT is an 'Income Tax' as per the provisions of the Act, it definitely fall within ambit of Article 2 of DTAA as income tax includes surcharge and dividend and Article 2 (2) clearly apply to any identical or substantially similar tax in addition to or in place of tax. **DDT is squarely covered under Article 11 of the DTAA. On its plain reading the payment being covered under definition of dividend under Article 11(3) which is paid by the Company, resident of India to a resident of UK and therefore, in our view, Article 11(1) is automatically triggered, consequently triggering the restriction in rate of tax under Article 11(2).**

60. Thus, the BFAR erred in not appreciating that the tax under Section 115-O is an additional tax under its sub section (4) which in turn is a part of the Income tax statute and legislation subject to section 90 read with the relevant DTAA. **Therefore, levy of tax on dividend paid/distributed by the Appellant in excess of 10% would squarely be contrary to the provision of India- UK DTAA.**

The BFAR therefore erred in overlooking the settled legal principle that with respect to taxability of dividend income tax under India-UK DTAA, Article 11 allocates the taxing rights between the two contracting states. Para 1 thereof gives the primary right to tax dividend income to the state of residence. However, para 2 entitles the source state to tax the dividend paid in accordance with its domestic laws, but imposes a fetter viz. the tax so charged cannot exceed the rate of 10% under Article 11(2) (b) if the resident of UK is the beneficial owner of the dividend in all cases other than the case falling under Article 11(2)(a) where dividend is being paid out of income derived directly or indirectly from immovable properties, subject to such income from immovable property being exempt from tax. Article 11 therefore, restricts the right of India, as a source State, to levy tax in accordance with its domestic

laws, that is, Section 115-O, but instead of the rate prescribed for therein, the tax has to be levied at the minimum rate of 10% to the extent the dividend is paid to a resident of UK. **The BFAR erred in holding the respondent's submission by merely following the special bench's ruling stating that in order to invoke Article 11, the shareholder has to be taxed in India on the dividend earned from India.** On a plain reading of the said Article, it is evident that the person on whom the tax on dividend is levied is an irrelevant and extraneous consideration for its application. There is nothing in the Article which suggests that the income has to be taxed in India in the hands of the shareholders. It merely deals with the nature of income, viz. dividend, which cannot be taxed in India at a rate exceeding 10%, if other stipulated conditions are met. The nature of income is a *apropos* element to invoke the said Article, and not the person who is subjected to tax, in whose hands the tax is levied, is not relevant for application of Article 11, as DDT is a 'tax on dividend income of the shareholder'. The entire legislative history of Section 115-O corroborates this. More importantly, the Apex Court in the case of *Tata Tea Co. Ltd (supra)* too has confirmed the nature of income being dividend income, which is subject to DDT and under Section 115-O the dividend income is sought to be taxed at a rate of 20.36%.

Section 90(2) of the Act of 1961 allow the appellant to apply the lower rate under the DTAA and Article 11(2) restrict tax rate of such dividend income to 10% and there is no embargo in Article 11 of the DTAA on the Appellant to apply the lower tax rate stipulated in Article 11(2).

61. In the wake of the above, the Authority has erred in not appreciating that DDT erroneously collected in excess of 10% as provided by India-UK DTAA is erroneous and contrary to law and retention of excess tax would be contrary to Article 265 of the Constitution of India.

As a result of the above, the Appeal is allowed by setting aside the Ruling dated 27/06/2024 passed by the Board For Advanced Rulings, New Delhi, by declaring that, on the facts and circumstances of the case and in law, Colorcon Asia Pvt. Ltd ("Colorcon India" or "the Applicant" or "Company") is entitled to restrict the tax rate on dividends distributed by it to Colorcon Ltd, United Kingdom (UK), at 10% under Article 11 of the India -UK Tax Treaty.

Upon the said question being answered the Department is at liberty to gross up the tax rate in an appropriate manner."

(Emphasis supplied)

81. Thus, we restore this issue to the file of the AO for *de novo* adjudication, in light of the decision of the Hon'ble Bombay High Court in *Colorcon Asia (P.) Ltd. (supra)*, after necessary examination of various aspects, such as applicability of the DTAA, rate of DDT levied under section 115-O of the Act vis-à-vis the rate of tax on dividend provided in the respective DTAA, etc.

Accordingly, the additional ground raised by the assessee, vide its application dated 09/01/2023, is allowed for statistical purposes.

82. In the result, the appeal by the assessee is partly allowed for statistical purposes.

ITA No. 929/Mum/2018
Revenue's appeal - A.Y. 2004-05

83. In its appeal, the Revenue has raised the following grounds: –

"1. Whether on the facts and circumstance of the case and in law, the Id. CIT(A) has erred in holding that the provisions of clause (baa) of explanation to section 80HHC of the Act, are not applicable to Royalty, which is independent income like rent, brokerage, Commission, etc.?"

2. Whether on the facts and circumstances of the case, and in law, the Id CIT(A) has erred in directing the AO to allow the claim of deduction u/s 10B of the Act in respect of Kidderpore Unit by overlooking the fact that the Explanation 1 to sub section 9 of section 10B was amended by Finance Act 2001 w.e.f 1.4.2001?"

3. Whether on the facts and circumstances of the case, and in law, the Id CIT(A) has erred in directing the AO to decide the issue of taxability of discount received from Sales Tax Department after obtaining supporting evidence, verifying the same and then decide the issue. which is akin to setting aside that issue to the AO, in contravention to the provisions of sec. 251(1) of the Act?"

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in admitting additional ground after a very long delay without recording his satisfaction that the omission of this ground from the form of appeal was not willful or unreasonable, and without seeking comments of the Assessing Officer/TPO on the same.

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in admitting additional ground which required verification of the facts relating to suitability of the comparable and of computation of the operating margin of the assessee and those of the comparables at the entity level, since these had not been examined during the TP proceedings.

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in admitting and allowing additional ground by accepting the computation of the operating margins in the submissions of the assessee himself without TPO's verification.

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing additional ground without taking into account the

objections of the TPO mentioned in the TP orders against the application of TNMM at entity level.

8. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing additional ground without appreciating that the international transactions of the assessee were very small in comparison with the total turnover of the assessee and that comparison at the entity level therefore implied that controlled transaction were aggregated with a large value of uncontrolled transactions, which aggregation was not permissible under the Income Tax Rules and which would vitiate determination of the margin of the controlled transaction being tested.

9. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that all the adjustments stands subsumed once the entity level benchmarking is found to be at arm's length, which goes against the basic principle of transaction by transaction approach to be followed in Transfer Pricing which is also upheld by Punjab and Haryana High Court in case of M/s. Knor Bremse India Pvt, Ltd Vs ACIT Faridabad 2016)380 ITR 307) in para 40 and 41. where Hon'ble High Court has rejected the contention that comparison at entity level margin will take care of the various transactions.

9(a) Without prejudice, in the facts and in the circumstances of the case the Ld. CIT(A) has erred in granting relief to assessee following entity level approach without appreciating that various transactions are independent of each other and there are no facts and findings to suggest that various transactions forming part of entity are inextricably interrelated and intertwined in such a way that they cannot be separated.

10. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing additional ground by placing reliance on the orders of the Hon'ble ITAT and of the Hon'ble High Court in the assessee's case for AY-2006-07 even though those orders were on the issue of proportionate adjustment at the entity level without specifically approving the application of TNMM at the entity level in circumstances where the controlled transaction is a small portion of the overall entity level transactions.

11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment of Rs.2,24,25,000/- on account of intra group services on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. The reliance placed on the Hon'ble Punjab and Hararyana High Court decision in case of M/s. Knor Bremse India Pvt. Ltd Vs ACIT Faridabad ((2016) 380 ITR 307).

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment of Rs.68,93,000/- on account of corporate audit services on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. The reliance

placed on the Hon'ble Punjab and Harayana High Court decision in case of M/s. Knorr Bremse India Pvt. Ltd Vs ACIT Faridabad (2016)380 ITR 307).

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment of Rs.5,50,49,740/- on account of royalty paid to Unilever Pic on the turnover of beauty or make up preparations on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. The reliance placed on the Hon'ble Punjab and Harayana High Court decision in case of M/s. Knorr Bremse India Pvt. Ltd. Vs ACIT Faridabad (2016)380 ITR 307).

14. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment of Rs. 16,33,74,580/- on account of royalty paid to Unilever Pic on the turnover of toilet soaps and bathing bars on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. The reliance placed on the Hon'ble Punjab and Harayana High Court decision in case of M/s. Knorr Bremse India Pvt. Ltd. Vs ACIT Faridabad (2016)380 ITR 307).

15. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment of Rs.7,81,77,000/- on account of royalty paid by the assessee on royalty on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. The reliance placed on the Hon'ble Punjab and Harayana High Court decision in case of M/s. Knorr Bremse India Pvt. Ltd. Vs ACIT Faridabad ((2016)380 ITR 307).

16. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment of Rs.25,02,886/- on account of royalty receivable from Nepal Lever Ltd. on the ground that this adjustment stood subsumed once the entity level benchmarking is found to be at arm's length, even though the TPO did not carry out any entity level benchmarking and the entity level benchmarking is not suitable to the facts of this transaction. The reliance placed on the Hon'ble Punjab and Harayana High Court decision in case of M/s. Knorr Bremse India Pvt. Ltd. Vs ACIT Faridabad ((2016)380 ITR 307)."

84. While the assessee has raised the following grounds in its Cross-Objection no.142/Mum/2019: -

"Based on the facts and circumstances of the case and in law, Hindustan Unilever Limited (hereinafter referred to as 'the Respondent' or 'Assessee' or 'HUL') respectfully craves leave to prefer cross-objections against the appeal filed by the Deputy Commissioner of Income-tax, Range -1(1)(2) ('the Learned AO') before the Hon'ble Income-tax Appellate Tribunal ('Hon'ble ITAT') against

the order passed by the Hon'ble Commissioner of Income-tax (Appeals) - 56 ['Hon'ble CIT(A)], Mumbai [in pursuance of the order passed by the Additional Commissioner of Income-tax, Range -1(1) after incorporating the order passed by the Transfer Pricing Officer - IV, West zone, India ('the Learned TPO')], on the following grounds, each of which are without prejudice to one another:

On the facts and in the circumstances of the case as well as in law:

Disallowance under Section 10B

1. The Learned AO erred in denying the deduction under Section 10B of the Income-tax Act, 1961 ('the Act') in respect of the Kidderpore unit by invoking the provisions of Section 10(9) of the Act, without appreciating that the same was omitted w.e.f. 1 April 2004 and hence, should be considered as it never existed on the statute.

Admission of the additional ground of appeal

2. The Learned AO erred in challenging the admission of the additional ground (ie, Ground number 33), which was filed basis the order of the Hon'ble ITAT and the Hon'ble High Court in Assessee's own case for AY 2006-07, which was pronounced at a later point of time, which has been duly recorded by the Hon'ble CIT(A) while admitting said ground.

3. The Learned AO failed to appreciate that for determination of the arm's length price of the international transactions of the Assessee, the Hon'ble CIT(A) has considered the operating margin of the Assessee at an entity level vis-à-vis the operating margins of comparable companies submitted before the Learned TPO during the course of the transfer pricing assessment proceedings.

Adjustment on account of corporate audit services and other intra-group services

4. The Learned TPO erred in considering companies engaged in non-comparable activities for the purpose of benchmarking of the international transaction provision of corporate audit services and other intra-group services.

5. The Hon'ble CIT(A) erred in not giving any finding on the supplementary analysis submitted by the Assessee for the purpose of benchmarking of the international transaction of provision of corporate audit services and other intra-group services.

Adjustment on account of royalty paid on Beauty and Make-up preparations and Toilet Soaps and Bathing Bars

6. The Learned TPO erred in stating that no royalty is payable by the Assessee in respect of turnover of Beauty, Make-up preparations, Toilet Soaps and Bathing Bars and the entire technology required in connection with these products is owned and developed by the Assessee, without appreciating the material on record.

7. *The Learned TPO erred in determining arm's length price of royalty as 'Nil', without applying any of the methods prescribed under the Act.*

8. *The Learned TPO does not have jurisdiction under Chapter X of the Act to decide whether royalty should be payable, given that the payment is covered by an agreement which was duly approved by the Reserve Bank of India as well as the Government of India, Ministry of Industry.*

Adjustment on account of income-tax paid on royalty

9. *The Learned TPO erred in bifurcating the total royalty cost of INR 59,93,57,000 (being 1.15 percent of turnover) into net royalty and tax.*

10. *The Learned TPO failed to appreciate that if the royalty is bifurcated then the tax payment made by the Assessee cannot be regarded as an international transaction and consequently, will fall outside the purview of Chapter X of the Act.*

11. *The Learned TPO failed to appreciate that the Technical Collaboration Agreement dated 12 August 1999, under which the Assessee is required to pay royalty at 1 percent of turnover of specified products, net of tax, was duly approved by the Reserve Bank of India as well as the Government of India, Ministry of Industry.*

12. *The Learned TPO failed to appreciate that the amount of royalty payable by Fine Tea Company at 2.50 percent was higher vis-à-vis the royalty of 1.15 percent (inclusive of taxes) incurred by the Assessee and accordingly, there was no excess royalty payment.*

Adjustment on account of royalty receivable from Nepal Lever Limited

13. *The Learned TPO failed to appreciate that Nepal Level Limited did not receive the requisite approval from the Government of Nepal for payment of royalty to the Assessee."*

85. Ground no.1, raised in Revenue's appeal, pertains to computation of deduction under section 80-HHC of the Act after reducing royalty income.

86. We have considered the submissions of both sides and perused the material available on record. The AO, vide order passed under section 143(3) of the Act, held that 90% of royalty income is to be reduced from the profit of the business for computing deduction under section 80-HHC of the Act. The learned CIT(A), vide impugned order, following the decision of the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 1995-

96 and the decision of its predecessor in assessee's own case for the assessment years 2002-03 and 2003-04 held that the royalty income is not to be reduced from the profit and gain of business and profession for calculating deduction under section 80-HHC of the Act. Since the issue is recurring in nature and has been decided in favour of the assessee, following the judicial precedent in assessee's own case for the preceding year, we do not find any infirmity in the findings of the learned CIT(A) on this issue. Accordingly, Ground no.1, raised in Revenue's appeal, is dismissed.

87. Ground no.2, raised in Revenue's appeal, pertains to the allowability of the deduction claimed under section 10B of the Act in respect of the Kidderpore Unit acquired by the assessee from Lipton India Exports Ltd.

88. We have considered the submissions of both sides and perused the material available on record. During the hearing, the assessee vide letter dated 20/12/2006 made a fresh claim that profit of Kidderpore Unit is eligible for exemption under section 10B of the Act. The assessee acquired the said unit from Lipton India Exports Ltd. with effect from 01/04/2000 and Lipton India Exports Ltd. had claimed exemption under section 10B in respect of profit derived by the said unit, which started commercial production in the financial year 1997-98. The AO, vide order passed under section 143(3) of the Act, rejected the claim of the assessee by placing reliance on the provisions of sub-sections 9 and 9A of section 10B of the Act. The learned CIT(A) vide impugned order, following the decision of its predecessor in assessee's own case for the assessment year 2002-03, directed the AO to

follow the similar directions passed in the earlier years. Being aggrieved, the Revenue is in appeal before us.

89. We find that while deciding similar issue in assessee's own case for the assessment year 2001-02, the Coordinate Bench of the Tribunal in assessee's own case in ACIT vs. Hindustan Unilever Ltd., in ITA No.5549/Mum/2011, for the assessment year 2001-02 vide order dated 18/08/2023, following the decision of the Hon'ble Karnataka High in GE Thermometrics India Pvt. Ltd., in ITA No.876/2008, vide judgment dated 25/11/2014, held that the assessee is entitled for claiming deduction with respect to, *inter alia*, Kidderpore Unit acquired from Lipton India Exports Ltd. for the unexpired period since sub-sections 9 and 9A of section 10B of the Act were omitted without saving clause, and therefore, the same are not applicable to the case of the assessee. The relevant findings of the Coordinate Bench of the Tribunal, in the aforesaid decision, are reproduced as follows: -

"69. The assessee had acquired the tea export business of Lipton India Exports Ltd (LIEL) with effect from 01/04/2000. Business comprised of certain industrial undertaking which included EOUs at Pune and Kidderpur which commenced the commercial production in financial years 1992-93 and 1997-98, respectively. LIEL had claimed exemption under section 10B in respect of profits derived by these EOUs. After the acquisition of business by the assessee, the assessee claimed exemption under section 10B with respect to these EOUs for the unexpired period. The Assessing Officer held that the assessee cannot claim exemption under section 10B with respect to these units as per the Explanation to sub section (9) which is inserted to section 10B Inserted by the Finance Act, 2001, w.e.f. 1-4-2001. The assessee preferred further appeal before the CIT(A). The CIT(A) allowed the claim of the assessee on the ground that Explanation to sub section (9) of section 10B provides that the section is not applicable to companies in which public are substantially interested. Since the assessee as well as LIEL are companies in which public are substantially interested, the CIT(A) held that the Assessing Officer has incorrectly applied the provisions of section 10B(9).

70. In this regard, the Ld.AR submitted that sub section 9) is omitted by the Finance Act, 2003 without any saving clause and, therefore, the disallowance made by the Assessing Officer by invoking sub section (9) is no longer valid. The Ld.AR submitted that when a section is omitted without any saving clause,

then it has to be taken that the section never existed and accordingly, the disallowance made is riot tenable. The Ld.AR in this regard relied on the decision of the Hon'ble Karnataka High Court in the case of GE Thermometrics India Pvt. Ltd (ITA No.876 of 2008 C/W ITA No.877 of 2008) judgement dated 25th November, 2014 for A.Y. 2002-03. The Ld.AR submitted that in the above decision, the Hon'ble Karnataka High Court has held that sub section (9) of section 10B is not applicable to the assessee for A.Y. 2002-03 which is prior to the Finance Act, 2003 which omitted the said sub section (9). The Ld.AR therefore submitted that in assessee's case for A.Y. 2001-02, the ratio laid down by the Hon'ble Karnataka High Court is squarely applicable.

71. The Ld. DR, on the other hand, submitted that the CIT(A) is not correct in deleting the disallowance and supported the order of the AO.

72. We heard the parties and perused the material on record. We notice that the Hon'ble Karnataka High Court in the case of GE Thermometrics India Pvt. Ltd (supra) has considered a similar issue in which the question of law raised and the decision of the Hon'ble High Court is as extracted below-

"Whether the Tribunal was correct in holding that in view of the omission of sub section (9) to Section 10B of the Act, w.e.f. 01.04.2004, it should be understood that the said section never existed in the statute book and therefore the benefit claimed by the assessee w/s 10B should be allowed?"

"8. Admittedly, in the instant case, there is no saving clause or provision introduced by way of an amendment while omitting nub-section (9) of Section 10B. Therefore, once the aforesaid section is omitted from the statute book, the result is it had never been passed and be considered as a law that never exists and therefore, when the assessment orders were passed in 2006, the Assessing Officer was not justified in taking note of a provision which was not in the statute book and denying benefit to the assessee. The whole object of such omission is to extend the benefit under Section 10B of the Act irrespective of the fact whether during the period to which they are entitled to the benefit, the ownership continues with the original assessee or it is transferred to another person. Benefit is to the undertaking and not to the person who is running the business. We do not see any merit in these appeals. The substantial question of law is answered in favour of the assessee and against the revenue. Accordingly, the appeals are dismissed."

73. Respectfully following the above decision of the Hon'ble Karnataka High Court, we hold that the assessee is entitled for claiming deduction with respect to the EOUs acquired from LIEL for the unexpired period since sub section (9) is omitted without saving clause, and therefore, is not applicable in assessee's case. Even otherwise, Explanation (1) to sub section (9) of section 10B states that the sub-section is not applicable to companies in which public are substantially interested. The assessee and LIEL being companies in which public are substantially interested, the Assessing Officer is not correct in making the disallowance by applying sub section 9) of section 10B. This ground of the Revenue is dismissed."

90. In the absence of any change in facts or law, respectfully following the decision of the Coordinate Bench of the Tribunal in assessee's own case cited *supra*, Ground no.2, raised in Revenue's appeal, is dismissed.

91. Ground no.3, raised in Revenue's appeal, pertains to the direction of the learned CIT(A) in respect of the computation of deduction under section 80-HHC of the Act. Since this issue has already been adjudicated in Ground no.7 raised in the assessee's appeal for the year under consideration, accordingly, this ground is rendered academic and therefore is dismissed.

92. Grounds nos. 4-7, raised in Revenue's appeal, pertain to the admission of additional grounds of appeal by the learned CIT(A) in respect of the Transfer Pricing Adjustment.

93. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A), vide impugned order, while admitting the additional grounds of appeal filed by the assessee, observed as follows: -

"22. The above additional ground was duly forwarded to Assessing officer. The effect of adjudicating the ground is that if the ground is allowed, certain other grounds of appeal would stand allowed. I find the same ground was raised in AY 2003-04 and was admitted. I also find that the issue raised emanates from decision of Hon. ITAT in ITA No. 7868/Mum/2010 date 10.12.2012 in case of appellant itself.

23.

After perusing the same, I am satisfied that good and sufficient reasons exist in not including same at time of filing appeal. The decision of ITAT came after filing of this appeal and prima facie applies squarely. Hence I admit the same and allow the ground relying on decision of Hon. ITAT."

94. We find that identical grounds were raised by the Revenue in its appeal in assessee's own case for the assessment year 2005-06. While dismissing these grounds, the Coordinate Bench of the Tribunal, vide order dated 14/11/2024, in ITA No.6913/Mum/2019, observed as follows: -

"14. We notice that an identical additional ground had been admitted in the earlier years by the Ld. CIT(A) and further, the said additional ground has been raised on the basis of decision rendered by the Tribunal in the assessee's own case in the subsequent year. We also notice that the Ld. CIT(A) has duly forwarded the additional ground to the AO for his comments. The additional ground is related to the transfer pricing adjustment, which was anyway disputed before the Ld. CIT(A). Hence, it cannot be said that the additional ground urged by the assessee before the Ld. CIT(A) is an altogether new ground. Accordingly, we do not find any merit in the objections raised by the Revenue in Ground Nos. (ii) to (vi)."

95. Thus, in the absence of any change in facts, and since an identical issue has been raised by the Revenue in the year under consideration, respectfully following the decision of the Coordinate Bench of the Tribunal rendered in assessee's own case cited *supra*, Grounds no.4-7, raised in Revenue's appeal, are dismissed.

96. Grounds no. 8-10, raised in Revenue's appeal, pertain to the deletion of the Transfer Pricing Adjustment made by the TPO.

97. We have considered the submissions of both sides and perused the material available on record. For the year under consideration, the assessee, by adopting the Transactional Net Margin Method ("*TNMM*") as the most appropriate method, benchmarked the international transactions entered into by it with associated enterprises at an entity level. Since the operating margin of the assessee was at 16.93% as compared to the mean operating margin of comparable companies at 11.96%, the assessee claimed that its transactions

are at arm's length price. The TPO, vide order dated 20/12/2006 passed under section 92CA(3) of the Act, accepted the entity level TNMM benchmarking for most of the international transactions entered into by the assessee. However, in respect of certain transactions, the TPO proceeded to compute the arm's length price separately.

98. During the hearing, the learned AR submitted that the Coordinate Bench of the Tribunal in assessee's own case for the assessment years 2005-06 and 2006-07 has rejected the cherry-picked segregation of transactions and upheld the entity level TNMM benchmarking of the very same international transactions entered into by the assessee in the year under consideration. The learned AR submitted that for the assessment year 2006-07, the findings of the Tribunal, insofar as they held entity level benchmarking subsumes within it separate adjustments made by the TPO, were accepted by the Revenue, and no appeal was filed before the Hon'ble High Court. The learned AR submitted that only in respect of issue of TP adjustments be restricted to associated enterprises' transaction, the Revenue challenged the findings of the Tribunal before the Hon'ble High Court in assessee's own case for the assessment year 2006-07. The relevant portion of the written submissions filed by the assessee in respect of these grounds are reproduced as follows: -

"Grounds 8 to 10 – Challenge the deletion of decision of CIT(A) to follow the decision of the Hon'ble Tribunal for AY 2006-07 to adopt entity level benchmarking.

a. The Ld. Departmental Representative argued that finding of the Hon'ble Tribunal in AY 2006-07 as affirmed by the Hon'ble High Court and the Supreme Court only related to whether the arm's length margin is to be applied only to the AE Transactions or to all the transactions and therefore the decision of the Hon'ble Tribunal does not settle the controversy raised in the present appeal, i.e. whether entity level benchmarking subsumes within it the separate adjustments on account of royalty paid to Unilever Plc., TDS on royalty, royalty

receivable from Nepal Lever Ltd., intra group services, R&D services, and therefore it was open to the Hon'ble Tribunal to look into the grounds raised. The DR placed reliance on the decision of Faurecia Automotive Seating India (P) Ltd. vs ACIT (141 taxmann.com 126) (Pune) in support.

b. At the very outset it is pertinent to note that the TPO's order for AY 2005-06 reads identical to that of AY 2004-05 and in fact relies on the findings of the TPO for AY 2004-05 (i.e. of the year under consideration) insofar as the adjustments made in the year under consideration. Moreover, the grounds raised by the Revenue in their appeal for the year under consideration are identical to that raised in the Revenue's appeal for AY 2005-06. That being so, when the Hon'ble Tribunal has rejected the cherry-picked segregation of transactions and upheld the entity level TNMM as the most appropriate method for benchmarking the very same international transaction of the Assessee for AY 2005-06, it is most humbly submitted that the Hon'ble Tribunal's decision for AY 2005-06 squarely covers the dispute for the year under consideration and following the same, it is prayed that the appeal of the Revenue ought to be dismissed.

c. The Assessee submitted that the finding of the Hon'ble Tribunal in AY 2006-07 insofar as it held entity level benchmarking subsumes within it the separate adjustments made by the TPO, was accepted by the department and admittedly had not be challenged by Revenue before the Hon'ble High Court or the Hon'ble Supreme Court which conclusively demonstrates that finding of entity level TNMM being the most appropriate method in the facts of the Assessee's case has attained finality, and with there being no change in facts and circumstances of the case, the principle of law lay down by the Hon'ble Tribunal would apply. The assessee submitted that the grounds raised in the departments appeal stand clearly covered by the decision of the Tribunal for AY 2006-07, as affirmed by the Hon'ble Bombay High Court and thereafter by the Hon'ble Supreme Court, and, also by the decision of the Tribunal for AY 2009-10 and AY 2005-06. The Assessee placed reliance on the decision of the jurisdictional High Court in the case of PCIT vs Vishay Components India Pvt. Ltd. (103 taxman.com 421) to support its argument that although the doctrine of res judicata is not applicable to tax proceedings, but at the same time where there is no change in the facts in respect of an issue or proceedings, then it is the requirement of law that consistency should be maintained and the methodology adopted by the assessee for benchmarking its international transaction should not be disturbed when the same has been accepted in the subsequent years. For ease of reference the said decision of PCIT vs Vishay Components India Pvt. Ltd. (103 taxman.com 421) is annexed hereto and marked as "Exhibit F."

99. We find that the Coordinate Bench of the Tribunal in assessee's own case, for the assessment year 2005-06, vide order dated 14/11/2024 cited *supra*, deleted the similar transfer pricing adjustment, by observing as follows: -

"15.3. We heard the parties on this issue and perused the record. Before us, the assessee has filed a written submission, wherein the above said issues have been discussed in a detailed manner. Accordingly, we prefer to extract the same, for the sake of convenience:-

"12. Grounds (ii) to (xviii) – Transfer Pricing Grounds. The brief facts relating to these 17 grounds are as follows:

a. The Assessee's Transfer Pricing Study and Form 3CEB has entered into international transactions with its Associated Enterprises ("AE") by adopting entity level TNMM as the most appropriate method.

b. The operating margin of the Assessee was arrived at 11.91%. The arithmetical mean of the comparable companies selected by the Appellant Assessee worked out to 10.38%. In the circumstances, the Assessee contended that its transactions were at length.

c. The TPO, however, disagreed with the use of entity level TNMM for benchmarking all the international transactions. The TPO held that certain royalty paid to Unilever Plc. under the Technical Collaboration Agreement dated 12 August 1999 and the intra group services should be benchmarked separately.

d. The TPO thereafter held that no royalty was payable by the assessee in respect of the turnover of Beauty and Make-up preparations, and, on Toilet Soaps and Bathing Bars since the entire technology required in connection with those products was owned and developed by the assessee. The TPO held that an embargo under the laws of Nepal on Nepal Lever Ltd. from paying royalty to the assessee was no reason why the assessee did not receive royalty of Rs.24,15,710 from Nepal Lever Limited. The TPO further held that the TDS of 8,66,48,000 (0.15%) on the 1% royalty paid to Unilever Plc., the Service Tax of Rs.1,69,12,000 borne under section 66A of the Finance Act, 1994, and R&D Cess of Rs.1,33,00,000 under the Research & Development Cess Act, 1986 though leviable on the payer of royalty, ought not to have been borne by the assessee and therefore ought to be disallowed.

e. Insofar as advertisement and sales promotion, the TPO held that since Unilever Plc. was benefiting by increased royalty, owing to increased sales, resulting from such advertisement and sales promotion, a portion thereof (Rs.20,37,000) would have been recovered from Unilever Plc. Accordingly, characterizing such recovery as an 'International Transaction' between Assessee and Unilever Plc.

f. Being aggrieved, the Assessee carried the matter in Appeal before the CIT(A).

g. Pending the hearing of the Appeal before the CIT(A), the Appeal for immediately subsequent year, i.e., AY 2006-07, where almost identical adjustments were made by the TPO, came to be heard by the Hon'ble Tribunal. The Hon'ble Tribunal by its Order dated 10 December 2012 in ITA No.7868/Mum/2010, insofar as the transfer pricing adjustments were concerned, while applying entity level TNMM, held that the arm's length margin must be applied only to AE transactions, and when that is done, the margin earned by the assessee falls within the safe harbor of +/- 5%. The tribunal further held that insofar as the separate adjustments on account of royalty paid to Unilever Plc., TDS service tax and R&D Cess on royalty, royalty receivable from Nepal Lever Ltd., adjustment on account of advertisement and sales promotion, intra group services, R&D services – the same stood subsumed in the entity level TNMM benchmarking, observing thus:

"35. It has been admitted by both the parties that if bench marking is being done at the entity level either for the A.E. transaction or for the entire transactions, then there is no requirement of any further adjustments as all the adjustments

made by the TPO / Assessing Officer including that of Research Innovation and Development Related Services and Undercharging for Common Corporate Audit and Intra Group Services will get automatically subsumed including those adjustments also relating to royalty, etc. as done by the TPO. 36. In view of the above findings, the other arguments with regard to the segmental accounts vis-a-vis internal comparables and that the assessee's profit margin on A.E. transactions are far more than the non A.E. transactions and various other adjustments like payment of royalty, receiving of royalty, advertisement and sales promotion and advertisement, adjustment out of R&D cess, payment of service tax, research and innovation development related services and undercharging for central services, have become purely academic and, hence, the same are not adjudicated upon even though both the parties have argued at length. Thus, on this preliminary ground itself, the entire transfer pricing adjustment of 368,79,26,000 stands deleted and, accordingly, grounds no.1 to 15, technically speaking, stands allowed."

h. The Department carried the above order of the Tribunal in Appeal before the Hon'ble Bombay High Court. It is most important to note here that the department did not challenge the finding of the Hon'ble tribunal in so far as it held that the other adjustments like payment of royalty, receipt of royalty, advertisement, and sales promotion, and adjustment on account of R&D services, payment of service tax, undercharging of central services, etc. had become purely academic in view of the entity level benchmarking carried and method adopted. The department only agitated the issue of whether the tribunal was right in holding that the arm's length margin must be applied only to AE transactions. The Hon'ble Bombay High Court by order dated 26 July 2016 (374 ITR 73) dismissed the Appeal of the department. Not satisfied, the department carried the matter before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order dated 29 October 2018 in SLP (C) No. 22381/2017(259 Taxman 218), dismissed the challenge raised by the department. In the circumstances, the Assessee submits that the Order of the Tribunal has attained finality.

i. In view of the above, the Assessee raised an additional ground before the CIT(A), requesting the CIT(A) to decide the transfer pricing adjustment in line with the order passed by the Hon'ble Tribunal for AY 2006-07.

j. The CIT(A) admitted the additional ground and following the Order of the Hon'ble Tribunal for AY 2006-07, remanded the matter to the file of the TPO for verification of the calculation submitted by the Assessee. It is pertinent to note here that pursuant to the demand raised by the CIT(A), the TPO by his order dated 31 October 2009 has verified and approved of the working filed by the Assessee before the CIT(A).

k. Further, the Appeal for AY 2009-10 in ITA No.1321/Mum/2014 came to be disposed of by the Hon'ble Tribunal vide each order dated 5 January 2018. Once again, the Hon'ble Tribunal has set aside the adjustment made by the TPO observing thus:

"2. First effective ground of appeal (Gs.OA-4to11) is about Transfer Pricing Adjustment of Rs.3,68,00,000/-. During the assessment proceedings, the AO found that the assessee had entered in to various International transactions (IT.s) with its Associated Enterprises (AE.s). He made a reference to the Transfer Pricing Officer (TPO) to determine the arm's length price (ALP) of such transactions. After receiving the order of the TPO, the AO made an adjustment of Rs.5.09 crores in the draft assessment order. The assessee filed objections before the DRP challenging the proposed adjustments.

2.1. After considering the submissions of the assessee and the order of the TPO, the DRP held that the AO was justified in making TP adjustment for the amount

charged for business auxiliary services, that a mark-up of 30.56% was rightly charged in respect of such services as against the mark-up charged by the assessee, that that business auxiliary services rendered by the assessee were functionally comparable with the seven comparable companies, namely Ajcon Global Services Ltd., Brescon Corporate Advisors Ltd., Epic Energy Ltd., Sumedha Fiscal Services Ltd, Integrated Enterprises (India) Ltd. and NIS Sparta Ltd., that no royalty was payable by the assessee in respect of turnover of Beauty, Make-up preparations, Toilet Soaps and Bathing Bars, that the entire technology required in connection with those products was owned and developed by the assessee, that the AO had rightly determined arm's length at NIL for those transactions, that that the assessee ought to have received royalty of Rs. 26,22,000/- from Nepal Lever Ltd. The DRP further held that the TDS @15% amounting to Rs. 14.08 crores service tax amounting to Rs 7.94 crores and R&D Cess amounting to Rs. 2.49 crores, paid by the assessee, on royalty remitted to Unilever Plc. under the Technical Collaboration Agreement, between the assessee and the AE-was excessive. It alternatively held that if royalty were to be bifurcated then the tax payment made by the assessee could not be regarded an IT. It also upheld the adjustment, made by the AO, on account of Advertising & Sales promotion expenses amounting to Rs.5,09,00,000/-. The DRP observed that the assessee had not raised any ground about business auxiliary services.

2.2. During the course of hearing before us, it was brought to our notice, by the Authorised Representative (AR) that in the AY.2006-07, the TPO had applied entity level approach for benchmarking the IT.s entered into by the assessee with its AE, that the said approach of entity level benchmarking was accepted by the Tribunal, that the margin shown by the assessee fitted within (+/-)5% i.e. within permissible arm's length range (Para 34 to 36 on page 30 to 31 of ITA/7868/M/2010, dtd.10/12/2012), that the Hon'ble Jurisdictional High Court had upheld the order of the Tribunal. The DR stated that matter could be sent back to the AO/TPO.

2.3. We find that the Tribunal had dealt with all the issues of TP adjustments in detail, that the TPO had benchmarked the IT.s of the assessee at entity level, that the Tribunal found that the benchmarking was within the permissible limit(+/-5%), that the IT.s were held to be at arm's length, that it was further held that all other adjustments like payment of royalty, receiving of royalty, advertisement and sales promotion and advertisement, adjustment out of R&D cess, payment of service tax, research and innovation development related services and under-charging for central services were subsumed once assessee's margin at entity level for AE's transactions was at arm's length, that the ITAT had deleted the entire transfer pricing adjustment of Rs 368.79 crores made for that year, that the Hon'ble Bombay High Court dismissed the appeal filed by the departments on this issue of deletion of adjustment of Rs. 3,68,79,26,000/- (ITA No.1873 of 2013-Para 2, Pg. 66, Para 3-Pg.68-69, dtd.26/07/2016). Nothing has been brought on record that the facts for the year under consideration are different in any manner, except for the amount involved, from the facts of the last AY. Therefore, following the order of the Tribunal for that year, and the aforesaid judgment of the Hon'ble Bombay High Court for the same year, we decide the effective ground of appeal in favour of the assessee.

Annexed hereto and marked "Exhibit K" is a copy of the Order of the Tribunal for AY 2006-07, marked "Exhibit L" is a copy of the Order of the Hon'ble High Court for AY 06-07 (394 ITR 73 (Bom.)) and marked "Exhibit M" is a copy of the Order of the Hon'ble Supreme Court dismissing the SLP there against (259 Taxman 218). Also annexed and marked "Exhibit N" is a copy of the order of the Tribunal for AY 2009-10 in ITA 1321/Mum/2014."

15.4. Since the Ld. CIT(A) has followed the decision rendered by the Co-ordinate Bench in the assessee's own case in AY.2006-07, we do not find any

reason to interfere with the order passed by the Ld. CIT(A) on Transfer Pricing issues urged before us.”

100. Having considered the findings of the Coordinate Bench of the Tribunal rendered in the assessee's own case in a similar factual matrix on a similar Transfer Pricing Adjustment by the TPO, we do not find any infirmity in the findings of the learned CIT(A) in deleting the impugned adjustment. Accordingly, Grounds no.8-10, raised in Revenue's appeal, are dismissed.

101. Grounds no.11-16 and Cross-Objection filed by the assessee pertains to the correctness of the adjustment made by the TPO to various international transactions. In view of our findings rendered in respect of other grounds raised by the Revenue related to Transfer Pricing Adjustment, Grounds no.11-16 and grounds raised in Cross-objection are rendered academic, and therefore, are dismissed.

102. In the result, the appeal by the Revenue and cross-objection by the assessee are dismissed.

103. To sum up, the appeal by the assessee is partly allowed for statistical purposes, while the appeal by the Revenue and cross-objection by the assessee are dismissed.

Order pronounced in the open Court on 30/01/2026

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 30/01/2026
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai