IN THE INCOME-TAX APPELLATE TRIBUNAL"E" BENCH, MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.6857/MUM/2025
(A.Y. 2016-17)

ITA No.6858/MUM/2025
(A.Y. 2018-19)

Deputy Commissioner of Income Tax, Central Circle – 7(2) Room No. 637, Aaykar Bhavan, M.K. Road, Mumbai – 400020, Maharashtra	v/s. बनाम	**Time Technoplast Ltd.**, 2nd Floor, 55, Corporate Avenue, Saki Vihar Road, Andheri East, Mumbai – 400072, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACT3858L		
Appellant/अपीलार्थी	..	**Respondent**/प्रतिवादी

Assessee by :	Shri Rakesh Joshi,AR
Revenue by :	Shri Ritesh Misra, (CIT DR)

Date of Hearing	24.12.2025
Date of Pronouncement	02.02.2026

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeals preferred by the Revenue emanate from the orders passed by the Learned Commissioner of Income-tax, Appeal, CIT(A) 49, Mumbai [hereinafter referred to as "CIT(A)"] pertaining to assessment order u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Years [A.Ys.] 2016-17 and 2018-19. Since the issues are common and interlinked and also

the fact that the appeals were heard together, they are being taken up together for adjudication vide this composite order for the sake of brevity. We take up appeal in ITA No. 6857/Mum/2025 first.

2. The grounds of appeal are as under:-

ITA no.6857/MUM/2025(ay 2016-17)

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the disallowance of deduction u/s 80IC to the tune of Rs. 3,15,64,674/-was made by the AO on the basis of the fact that the assessee was involved in interunit purchase/transfer of pre used plant and machinery and its value was more than 20% of the total value of plant & machinery, which was in violation of the conditions stipulated u/s 80IC?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the addition made by the AO to the tune of Rs. 3,45,376/ was on the basis of discrepancies in the value of machinery found at the premises ie. Pantnagar Unit I and II and the amount appearing in 10CCB audit reports?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition of the bogus expense/accommodation entry made u/s 69C of the Act from Ms. Radhika Enterprises at the rate 12% by merely relying on the fact that the gross profit of the assessee during the earlier A.Ys. was @12% without considering the fact that the whole expense is bogus?"*

3. **Ground no.1** pertains to deduction u/s 80IC of the Act. The assessee filed its return of income for the year declaring total income at Rs. 45,38,34,990/- under the normal provisions of the Act and book profit at Rs. 97,72,09,302/- u/s 115JB of the Act. According to the

assessment order, the assessee is engaged in the business of manufacturing of plastic barrels/drums and other plastic products. In this case, survey action u/s 133A of the Act was carried out 02.01.2015 by DDIT (Inv.), Unit 2(1), Mumbai. During the course of survey, evidence of violations of conditions specified in section 80IB were gathered with respect to Pantnagar Unit-I and Pantnagar Unit-II of the assessee company. Physical inventory of the Plant & Machinery installed at the said two units was taken and various documents in this regard were also found and impounded. It was found that there was inter-unit purchase/transfer of pre-used plant & machinery in Unit-I & II of Pantnagar. It was also noticed that the value of pre-used plant & machinery in Pantnagar Unit I & II was more than 20% of total value of plant & machinery. Further, the assessee had taken accommodation entries from various parties. Discrepancies were also found in the value of machinery found at Pantnagar Unit I & II.

3.1 The AO noted that during the year under consideration, the assessee had claimed deduction u/s 80IC of Rs. 17,04,34,228/-.Similar claim had been disallowed under section 80IB and 80IC of the Act by the AO, both for Pantnagar Unit 1 and Pantnagar unit 2 in AY 2013-14 and AY 2014-15.Accordingly,the claim of deduction u/s 80IC of Rs.

3,15,64,674/- in respect of Pantnagar Unit I was disallowed during the year as well.

4. **Ground no.2** pertains to disallowance of depreciation. As per the AO during the assessment proceedings, the assessee was asked to show cause why depreciation claimed on plant & machinery which were physically not available during the survey should not be disallowed as done in earlier assessment years. In response to the same, the assessee submitted that this issue was covered by the order of CIT (A) in the case of assessee for the A.Y. 2013-14 in which it had been allowed in its favour. The submission of the assessee was not found acceptable by the AO as during survey, it was found that there were discrepancies in the value of machinery found at the premises i.e. Pantnagar Unit I & II and the amount appearing in 10CCB audit reports. In assessment for A.Y. 2013-14, the claim of depreciation of Rs. 10,38,145/- in respect of machinery at Pantnagar Unit I, was disallowed. Accordingly, the AO disallowed stating that in the course of survey proceedings, the assessee failed to explain the discrepancies with documentary evidences found at premises and that in Audit report Form 10CCB. Further, same was admitted by the director and employee after being confronted with evidences gathered. Also, the department had not accepted the decision of the Ld. CIT(A) and filed appeal to ITAT on this issue. Thus, the claim

of depreciation of Rs 3,45,376/- (Rs. 2,45,818/- + Rs 99,558) worked out was disallowed.

5. **Ground no.3** pertains to the disallowance of alleged bogus Purchases from M/s. Radhika Enterprises. According to the assessment order, on query in this regard it was explained that Radhika Enterprises was a labour supplier and it had supplied labour to the assessee and the assessee had deducted TDS on the same. Further, the CIT (A) had partly allowed the appeal of the assessee on this ground in favour of the assessee. The submission was not found acceptable. It was seen that the assessee made payment of Rs. 8,62,000/- to Radhika Enterprises on account of loading & unloading contractor charges. In the assessment for A.Y. 2013-14, addition on account of bogus expense with respect to M/s Radhika Enterprises to the tune of Rs. 23,61,381/- was made as the same were found to be in the nature of accommodation entries and hence, treated as sham expenses. With regard to the contention of the assessee that the CIT (A) has partly decided the issue in favour of the assessee for A.Y. 2013-14, it is stated that the department has filed further appeal against the order .Accordingly, the claim of labour charges paid to Radhika Enterprises of Rs. 8,62,000/- was not found to be genuine and represents accommodation entry in the garb of alleged

expenses claimed to have been made in the year under consideration. Hence, the amount was added back to the total income of the assessee.

6. In the subsequent appeal, the ld.CIT(A) observed that based on the findings of the survey action, the claim of the deduction made u/s 80IC with respect to the Pantnagar Unit -1 was disallowed for the AY 2008-09. Further, the claim of depreciation was also disallowed and added to the income for the AY 2008-09. The assessee was found to have taken accommodation bills of bogus purchases. The said amount was disallowed u/s 69 C of the Act. Identical additions were made to the income of the assessee in the subsequent AYs i.e 2009-10,2010-11, 2011-2, 2012-13 and 2013-14. The additions with respect to disallowance of deduction u/s 80IC and depreciation were deleted by the CIT(A). The order of the CIT(A) had been upheld by the Hon'ble ITAT, Mumbai in its common order dated 08.10.2021 passed in **ITA. Nos. 6207, 6208, 6209, 6210, 6211, 6212 & 6213/Mum/2017 for the A.Y. 2008-09 to 2014-15. Respectfully following the order of the Hon'ble ITAT, he held that the disallowance of deduction u/s 80IC and disallowance of depreciation** could not be sustained for the year under consideration. The AO was directed to delete the addition of Rs 3,45,376/- and to allow the deduction of Rs 3,15,64,674/- claimed by the assessee u/s 80IC of the Act.

6.1 Further, in the order referred to above, ITAT had restricted the addition u/s 69C to 12% of the total bogus purchases. Following the order of Hon'ble ITAT, the AO was directed to restrict the addition with respect to expenses from M/s Radhika Enterprises to 12%.

7. The ld.DR has placed reliance on the grounds of appeal and the assessment order. However, he has not controverted the factual aspects of the case as discussed in the preceding paras by the ld.CIT(A) placing reliance on the orders of ITAT in previous assessment years in assessee's own case involving identical facts involved and decided in favour of the assessee.

8. It is an admitted fact that all the issued raised in the grounds raised by the Revenue came up for adjudication before ITAT in **ITA. Nos. 6207, 6208, 6209, 6210, 6211, 6212 & 6213/Mum/2017 for the A.Y. 2008-09 to 2014-15** and ITAT by common order dated 08.10.2021 has decided all the issues in favour of the assessee which is placed on record. Further, in **ITA No.876/Mum/2021(AY 2015-16)** dated 14 July, 2022, hon'ble ITAT again decided the issues in favour of the assessee based on its earlier orders(supra).The ld.CIT(DR) did not controvert these facts. Therefore, considering the facts of the case as discussed in the preceding paras, we do not find any infirmity in the

appellate order which is therefore, upheld, dismissing all the above grounds of appeal of the Revenue.

9. In the result, appeal of the **Revenue is dismissed.**

10. **ITA No. 6858/MUM/2025**

Grounds of Appeal

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the assessee has claimed excess depreciation of Rs. 1,77,604/-in respect of Pantnagar Unit-1 and Rs. 71,931/- in respect of Pantnagar Unit-II on plant & machinery, which were physically not available during survey?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the assessee has failed to file its return of Income for relevant assessment year on or before the due date specified under subsection (1) of section 139 and hence the claim of deduction of amount of Rs. 2,82,81,492/- could not be allowed to it?*

11. **Ground no.1** pertains to disallowance of deprecation. Facts in brief are that the assessee filed return of income for relevant year declaring total income at Rs. 18,44,10,620/- under the normal provisions of the Act and Book Profit at Rs. 63,99,71,170/- u/s 115JB of the Act .The case of the assessee was taken up for scrutiny assessment. Additions were made to the income on account of improper claim of depreciation Rs 2,49,535/-. According to the assessment order, in earlier assessment years, depreciation claimed on plant & machinery which were physically not available during the survey, was disallowed. In

assessment for AY 2013-14, the claim of depreciation of Rs. 10,38,145/- in respect of machinery at Pantnagar Unit I, was disallowed as it was found that there were discrepancies in the value of machinery found at the premises i.e. Pant Nagar Unit I & II and the amount appearing in 10CCB reports.

11.1 Before the appellate authority, it was submitted that identical issue pertaining the disallowance of depreciation was raised by the department in the AY 2012-13, AY 2013-14 and AY 2014-15. Being aggrieved from the said disallowances, it preferred appeal before the ld.CIT(A) who vide the order dated 20.03.2017 and 30.05.2017 deleted the additions pertaining to depreciation made by AO. Subsequently, the issue was brought before the ITAT as well, that vide its common order passed for AY 2008-09 to AY 2014-15 in ITA Nos. 6207, 6208, 6209, 6210, 6211, 6212 & 6213/Mum/2017dated 08.10.2021, upheld the action of the CIT(A).The relevant para from the said ITAT order is reproduced as under:

> "10. We have heard the rival contentions of both the parties and perused the material on record. We find that the addition made by the AO on account of excess claim of depreciation of Rs.2,10,48,677/- on the inflated plant & machinery of Rs.6,01,39,077/- as found by the survey team the detail whereof is given in para 6 of the assessment order. We note that in this case in respect of unit No.1 the total value of plant & machinery as per form 10CCB was Rs.8,64,16,518/- whereas total value of machinery taken at the time of survey was Rs.2,62,77,441/- after providing depreciation of 20% which has resulted into this difference. We have also examined the yearwise details of plant &

machinery filed by the assessee along with details of addition, deletion, depreciation, additional depreciation and net WDV year wise and also the findings of the order of Ld. CIT(A) that no corroborative evidences were brought on records by the AO to support these additions, appear to be convincing and plausible. We do agree with the contentions of the Ld. A.R. that the unit No.1 at Pantnagar which was commissioned in A.Y. 2008-09, the total value of machinery reported therein and found at the time of survey that too in 2015 after approximately seven years cannot match with value reported in form 10CCB. Considering all these facts, we earnestly hold that the addition was rightly deleted by Ld. CIT(A). Similarly, in respect of unit No.2 the machinery as per form 10CCB was found as nil whereas physical inventory during survey showed value of machinery of Rs.1,93,23,298/- which was treated as unexplained by the AO. We find reasoning in the contentions of the assessee that form 10CCB is filed in respect of those units for which the profit is claimed under section 80IC/section 80IB of the Act and not the other units where no such claim was made. In unit No.2 the assessee has not claimed any deduction under section 80IC/section 80IB and therefore value of machinery was reported as nil in Form 10CCB. However, the unit was functional and operational and there was plant & machinery. So upon the physical inventory being taken by the survey team, the plant & machinery was bound to be there which was used in the manufacturing process of the unit. The Ld. CIT(A) has given a correct findings and passed reasoned order by deleting the addition by holding that the assessee has not doubted the genuineness of the books of accounts or rejected the books of accounts under section 145(3) of the Act. The Ld. CIT(A) also recorded that purported statements recorded during the course of survey which were not backed up by any corroborative evidences. In view of these facts, we are inclined to dismiss the ground No.1 by upholding the order of Ld. CIT(A)."

11.2 Furthermore, based on the identical facts, the issue pertaining to excess depreciation was raised in the proceedings initiated by the ld.PCIT, Mumbai u/s 263 of the Act for AY 2015-16 wherein he had set aside the assessment order passed u/s. 143(3) dated 27.12.2017 and directed the AO to make afresh assessment. Being aggrieved by the said order passed u/s 263, the assessee filed an appeal before hon'ble Mumbai ITAT. The Tribunal vide order dated 14.07.2022 (ITA NO.

876/MUM/2021) ruled in the favor of the assessee by placing the reliance on the aforementioned common order passed by the ITAT in its own case dated 08.10.2021. Thus, the 263 proceedings wherein the issue pertaining to the depreciation was raised, was also quashed in the AY 2015-16.

11.3 The AO had admitted that the issue pertaining to the excess depreciation had not been accepted by the department and it had filed an appeal before the ITAT. Thus, the issue under consideration has attained finality and had been decided by the Hon'ble ITAT in favour of the appellant. In view of the above ITAT order passed in appellant's own case for AY 2008-09 to 2015-16, the issue had been decided in favour of the assessee and hence the addition made on account of depreciation was liable to be deleted.

11.4 It was also submitted that, the AO in his order alleged that the assessee had been claiming improper depreciation on machinery amounting to Rs.2,49,535/-, being the difference between value of machinery recorded in books of accounts and value of machinery found at the time of survey. However, in doing so, he failed to appreciate that the assessee had claimed depreciation on machinery properly and in accordance with law and the figures of machinery on which the assessee

had been claiming depreciation were audited figures as per it's books of accounts and the complete details of same were available in Form 10CCB as well as the tax audit reports filed by the assessee. The AO had not doubted the authenticity of the books of accounts of the assessee and the books of accounts had not been rejected by him u/s 145 of the Act. It is a well decided judicial principle that the valuation of assets cannot be doubted by the AO without first rejecting books of accounts of the assessee. The Hon'ble Apex Court in the case of Sargam Cinemas v. CIT ([2010] 328 ITR 513) had held that the assessing authority cannot doubt valuation of assets without first rejecting the books of account.

11.5 Further, the AO did not even doubt the quantitative details of the machinery recorded by the assessee. He has merely doubted on the valuation of machinery, that too without providing any basis as to how the AO had arrived at the values of different machinery. The fact that AO was able to value all the machineries is particularly surprising in light of the fact that all invoices of the machineries are kept at the HO and very few invoices, if any could have been found by the department during course of survey at factory. It seemed that the different values of machinery computed by the AO were merely guess of survey party without any backing whatsoever. Thus, such a conclusion drawn by the AO was merely on the basis of surmises and conjectures that the value of

machinery recorded in books of accounts were more than that found during the course of survey proceedings. Entire back up of accounting system was impounded by the survey party but there was no allegation of wrong doing in the same, then merely on the basis of estimates made by the departmental officers that were not expert in valuation of machinery, the additions could not survive. Further, it was argued that all these invoices and issue of additions to the fixed assets were verified in each prior assessment years which were part of original assessment record and even otherwise complete details of addition to fixed assets are also available in tax audit report.

12. The ld.CIT(A) taking into account the arguments of the assessee finally observed and concluded that the addition was based on the findings of the survey action conducted. Identical additions were made in earlier years, which were deleted in the first appeal. In the order under appeal, the addition was made on the ground that the department had not accepted the decision of the CIT(A) for the earlier years and had filed appeal before Hon'ble ITAT. As on date, ITAT had decided the appeals for the earlier years, where the issue stood decided the issue in the favour of the assessee. Following the decision of ITAT, he held that the disallowance of depreciation of Rs 2,49,535/- could not be sustained. The AO was directed to delete the addition of Rs 2,49,535/-.

13. The ld.DR has relied on the grounds of appeal and the assessment order in this regard.

14. Having gone through the assessment and appellate orders as also the submissions of the assessee, we find no infirmity in the conclusion drawn by the assessee who has duly followed the decision of the coordinate bench in assesses own case where similar disallowance of depreciation has been deleted in the previous assessment years. Accordingly, the ground no.1 of the appeal is dismissed.

15. In **ground no.2**.the Revenue has claimed that the ld.CIT(A) was not justified in allowing claim of deduction without appreciating that the claim was not made by way of return filed on or before the due date specified under subsection (1) of section 139 and hence the claim of deduction of amount of Rs. 2,82,81,492/- could not be allowed to it.

16. The AO observed that on perusal of the return filed by the assessee, it was observed it had filed its return of income on 27.03.2019 voluntarily after the 'due date' under section 139(4) of the Act. The assessee was issued show cause notice why deduction under section 80-IC of amount of Rs. 2,82,81,492/- should not be disallowed under the provisions of section 80AC of the Act and should be added back to the total income of the assessee. Since the assessee was itself admitting that

return was not filed within the due date, so the claim of assessee of deductions under Chapter VI-A was disallowed under the provisions of section 80AC of the Act and added back to its total income. The assessee had failed to file its return for such assessment year on or before the due date specified under subsection (1) of section 139 of the Act , the claim of deduction of amount of Rs. 2,82,81,492/- was disallowed and added back to the total income of the assessee.

17. The ld.CIT(A) in the subsequent appeal observed that before him the appellant had emphasized on the fact that it had submitted the Form no 10CCB on 29/11/2018, i.e. within the due date for filing the return. However, it could not file the return of income within time due to unavoidable circumstances. It attributed the delay in filing the return to reasons such the AY 2018-19 being first year for implementation of GST and that the return filing utility being updated multiple times. He observed that the assessee had made the claim of the deduction u/s 80-IC in the Form 10CCB, which was filed on 29.11.2018. Even in the audit report u/s 44AB dated 29.11.2018, the deduction u/s 80IC of the Act had been quantified at Rs 2,82,81,492/-. However, the return of income couldn't be filed in time for which it has provided the explanation. In this context, the assessee relied upon the decision of Hon'ble Supreme

Court, in the case of **CIT vs. GM Knitting Industries Pvt. Ltd., reported as 376 ITR 456 (SC).,** wherein it is held that;

> "Section 32 of the Income-tax Act, 1961 - Depreciation - Additional depreciation - Assessment year 2005-06 - Even if form 3AA was not filed along with return of income but same was filed during assessment proceedings before final order of assessment was made, assessee was entitled for additional depreciation [In favour of assessee] Even if form 3AA was not filed along with the return of income but same was filed during assessment proceedings before final order of assessment was made, the assessee was entitled for the additional depreciation. Section 80-IB of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings (Condition as to number of workers) - Assessment year 2005-06 - Even though necessary certificate in Form 10CCB along with return of income had not been filed but same was filed before final order of assessment was made, assessee was entitled to claim deduction under section 80-IB [In favour of assessee]"

17.1 It was observed that even though necessary certificate in Form 10CCB along with return of income had not been filed but same was filed before final order of the assessment was made, the assessee was entitled to claim deduction under section 80-IB.The assessee further relied upon the decision of Hon'ble Delhi ITAT in the case of **Canadian Specialty Vinyls Vs ITO (ITAT Delhi) in ITA No.7612/Del/2019,** where identical issue was decided in the favour of the assessee by placing reliance on the hon'ble Supreme Court ruling of CIT vs. GM Knitting Industries Pvt. Ltd, PCIT vs. Wipro Ltd (446 ITR 1 (SC)) and High Court of Bombay in the case of CIT Vs. Shivanand Electronics (1994) 209 ITR 63.

17.2 It was noted by the ld.CIT(A) that the assessee had claimed deduction u/s 80IC for past 10 years, the AY 2008-09, being first year for deduction. The deduction u/s 80IC had been partly disallowed in earlier years on the grounds that one of the units was not eligible for the same. However, ITAT had decided the issue in the favour of the appellant and since then the claim of deduction u/s 80IC was allowed. For the year under consideration, the deduction was disallowed on technical grounds that the assessee had not filed the return of income in time. It had provided a reasonable cause for not filing return in time. It had filed the Form 10CCB in time where the amount of deduction claimed was quantified. The delay in filing of return of income constituted a procedural irregularity rather than a fundamental flaw in the claim itself. Considering the submission made by the assessee and the judicial pronouncements relied upon by it, he felt that a liberal view could be taken and that the assessee should not be denied the benefit of deduction u/s 80IC on technical grounds. The AO was directed to allow the claim of deduction of Rs 2,82,81,492/- and delete the said addition.

18. We have carefully considered all the relevant facts of the case and find no infirmity in the appellate order. We note that similar claims have been consistently allowed by several courts of law holding that filing of audit report is only directory and not mandatory. It is well

settled by a number of judicial precedents that before the assessment is completed, the declaration could be filed. No interference is, therefore, called for and we uphold the appellate order in this regard, dismissing the ground of appeal.

19. In the result, appeal of the Revenue is dismissed.

20. Consequently, both the appeals of the Revenue in **ITA No. 6857 & 6858/Mum/2025 are dismissed.**

Order pronounced in the open court on 02/02/2026.

Sd/-	**Sd/-**
ANIKESH BANERJEE	**PRABHASH SHANKAR**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai
दिनांक /Date 02.02.2026
Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.