IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1673/Mum./2019
(Assessment Year : 2015–16)

Asian Paints Ltd.
Asian Paints House
6A, Shanti Nagar, Santacruz (East)
Mumbai 400 055 PAN – AAACA3622K ……. Appellant

v/s

Dy. Commissioner of Income Tax
Large Taxpayer Unit, Mumbai ..... Respondent

ITA no.2959/Mum./2019
(Assessment Year : 2015–16)

Dy. Commissioner of Income Tax
Large Taxpayer Unit-2, Mumbai ……. Appellant

v/s

Asian Paints Ltd.
Asian Paints House
6A, Shanti Nagar, Santacruz (East)
Mumbai 400 055 PAN – AAACA3622K ..... Respondent

Assessee by : Shri Fenil Bhatt a/w
Shri Harshad Panchal
Revenue by : Shri Vachashpati Tripathi

Date of Hearing – 01/02/2024	Date of Order – 08/03/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present cross-appeal has been filed challenging the impugned order dated 19/02/2019, passed under section 250 of the Income Tax Act, 1961

(*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–1, Mumbai, [*"learned CIT(A)"*], for the assessment year 2015–16.

2. The brief facts of the case are that the assessee is a company and is engaged in the business of manufacturing paints and enamels. For the year under consideration, the assessee filed its return of income on 27/11/2015 declaring a total income of Rs.1687,44,80,830 under the normal provisions of the Act. Subsequently, the assessee revised its return of income declaring a total income of Rs.1693,93,81,100. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) were issued and served on the assessee. The Assessing Officer ("*AO*") vide order dated 28/12/2017 passed under section 143(3) of the Act assessed the total income of the assessee at Rs.1973,66,56,516, under normal provisions of the Act, after making certain additions/disallowances. The learned CIT(A), vide impugned order, granted partial relief to the assessee. Being aggrieved, both the assessee as well as the Revenue are in appeal before us.

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3. In its appeal, the assessee has raised the following grounds:–

"1. The Learned Commissioner of Income tax (Appeals) - 01, Mumbai, erred in applying rule 8D and confirming disallowance to the tune of Rs. 167.23 lacs.

2. The Learned Commissioner of Income tax (Appeals) - 01, Mumbai, erred in disallowing Rs.54.06 Lacs being expenditure incurred for evaluation of various business opportunities considering it as capital in nature.

3. The Learned Commissioner of Income tax (Appeals) - 01, Mumbai, erred in disallowing Rs.72.69 lacs being Prior period expenditure claimed u/s 37(1) of Income Tax Act 1961.

4. The Learned Commissioner of Income tax (Appeals) - 01, Mumbai, erred in disallowing Rs.159.37 lacs being Provision for Doubtful Debts.

5. The Learned Commissioner of Income tax (Appeals) - 01, Mumbai, erred in disallowing Rs.3244.46 lacs (before considering depreciation) Colour Idea Store expenditure by treating it as capital in nature.

6. The Appellant craves leave to add, amend,alter, modify, delete or change all or any of the above ground on or before the date of hearing of the appeal."

4. The issue arising in ground no.1, raised in assessee's appeal, pertains to disallowance under section 14A of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee earned dividend income from domestic companies/mutual funds of Rs.68.85 crore, which was claimed as exempt under section 10 of the Act and also earned interest on tax-free bonds amounting to Rs.1.79 crore. The assessee suo-moto made a disallowance of Rs.23,96,476 as an expense incurred for earning the aforesaid exempt income. The AO vide order passed under section 143(3) of the Act by applying the provisions of Rule 8D of the Income Tax Rules, 1962 ("*the Rules*") computed the disallowance of Rs.2,97,28,588 under section 14A of the Act after considering the suo-moto disallowance of Rs.23,96,476 made by the assessee. The learned CIT(A), vide impugned order, restricted the disallowance made under section 14A read with Rule 8D to Rs.167.23 lakh after granting relief to the assessee with respect to the proportionate interest amount computed on interest incurred for the normal running of the business, following the approach adopted by its predecessor in earlier years in assessee's own case. Being aggrieved, both the assessee as well as the Revenue are in appeal before us.

6. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that recording of satisfaction is a prerequisite for invoking the provisions of section 14A of the Act. However, in the present case, the AO did not record any satisfaction regarding the rejection of assessee's plea. The learned AR further submitted that in preceding years disallowance made under section 14A of the Act has been deleted in the absence of any satisfaction being recorded by the AO.

7. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the AO.

8. We have considered the submissions of both sides and perused the material available on record. Undisputedly, in the present case, the assessee earned a dividend income of Rs. 68.85 crore from domestic companies/mutual funds and also earned interest on tax-free bonds amounting to Rs.1.79 crore, which has been claimed as exempt under section 10 of the Act. Further, there is also no dispute regarding the fact that the assessee while computing its taxable income suo-moto disallowed an amount of Rs.23,96,476 as an expenditure incurred for earning the aforesaid exempt income. As per the assessee, the aforesaid suo-moto disallowance is based on the report obtained from the accountant, who after verifying assessee's books of accounts and relevant records has estimated the amount of disallowance. The working of aforesaid suo-moto disallowance made by the assessee, forms part of the paper book on page 331, as under:

"Classe 21(h)

Amount of deduction inadmisible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income:

Sr. No.	*Particulars (refer note below)*	*Amount in Rs.*
1.	*Interest on borrowed funds directly attributable to income which does not form part of total income.*	
2.	*Interest on funds borrowed which is not directly attributable to any particular income or receipt.*	*2,21,575*
3.	*Expenditure indirectly attributable to the investment activity.*	*2,174,901*
	Total:	*2,396,476*

"

9. We find that while deciding a similar issue in favour of the assessee, the coordinate bench of the Tribunal in assessee's own case in Asian Paints Ltd. v/s ACIT, in ITA No.5363/Mum./2017, vide order dated 01/03/2024, for the assessment year 2012-13, observed as under:-

"8. We have considered the submissions of both sides and perused the material available on record. Undisputedly, in the present case, the assessee earned a dividend income of Rs.40.57 crore, which has been claimed as exempt under section 10 of the Act. Further, there is also no dispute regarding the fact that the assessee while computing its taxable income suo-moto disallowed an amount of Rs.24,45,540 as an expenditure incurred for earning the aforesaid exempt income. As per the assessee, the aforesaid suo-moto disallowance is the salary cost in respect of the time spent by its employees on carrying out the investment-related activity, which has been computed as under:

Disallowance u/s 14A of Income Tax Act (Estimated allocable expenses)			
Employee Designation	*Percentage*	*Cost to Company*	*Value of disallowance*
Chief Financial Officer	*5%*		
Senior Manager-Finance	*25%*	*1,62,88,500*	*8,14,425*
Finance Executive	*50%*	*30,28,400*	*7,57,100*
Total Proportionate salary		*10,30,600*	*5,15,300*
Proportionate Interest amount			*20,86,825* *3,58,715*
Total Section 14A disallowance			*24,45,540*

9. It is the plea of the assessee that it has not engaged any specific staff for investment activity and the same is being carried out by the existing staff. Further, no incremental expenditure has been incurred on staff and other administrative activities for earning the exempt income. It is evident from the record that the AO disagreed with the correctness of the claim of expenditure made by the assessee and held that adequate interest and administrative expenses have not been disallowed for earning the exempt income. Accordingly, the AO proceeded to compute the disallowance of Rs.1,51,24,084/- under section 14A read with Rule 8D of the Rules, after considering the suo-moto disallowance made by the assessee.

10. Before proceeding further, it is pertinent to note certain relevant provisions of the Act, which are necessary for adjudication of the issue at hand. Section 10 of the Act deals with income which does not form part of the total income of the assessee. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. Further, section 14A(2) of the Act, reads as under:

> *"(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does in form part of the total income under this Act". (emphasis supplied)*

11. Thus, if the AO is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income, after having regard to the accounts of the assessee, the AO can determine the amount of such expenditure. The Hon'ble Supreme Court in Maxopp Investment Ltd v. CIT: [2018] 402 ITR 640 (SC), while emphasising the aspect of recording satisfaction by the AO, observed as under:

> *"41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer."*

Further, the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. Vs DCIT: [2017] 394 ITR 449 (SC), observed as under:

> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (emphasis supplied)*

12. Therefore, the satisfaction as required to be recorded under the provisions of section 14A of the Act is not limited to merely disagreeing with the submission of the assessee and requires that the AO should also provide the basis for reaching such a conclusion, after having regard to the accounts of the assessee. However, as noted above, in the present case the AO merely proceeded to compute the disallowance under section 14A read with Rule 8D without examining the correctness of the claim of the assessee regarding expenditure incurred for earning the exempt income. It is evident from the record that the assessee's own funds, i.e. share capital and reserves & surplus, are Rs.2487.78 crore, while investment in tax-free securities is only limited to Rs.165.07 crore and therefore it can be presumed that the assessee had sufficient own funds for making the aforesaid investment in tax-free securities. Further, it is also evident from the record that the assessee has computed the suo-moto disallowance on the basis of the salary cost of the designated employees, however, there is no material available on record to show that the AO has recorded the requisite satisfaction to the effect that the computation made by the assessee is incorrect having regard to the accounts of the assessee.

13. We find that the Hon'ble jurisdictional High Court in CIT v/s M/s Asian Paints Ltd., in ITA No. 1564 of 2016, vide order dated 06/04/2019, for the assessment year 2008-09, while dismissing the appeal filed by the Revenue on a similar issue held that in the absence of recording of non-satisfaction in terms of section 14A(2) of the Act, invocation of Rule 8D is not permissible. The relevant findings of the Hon'ble jurisdictional High Court, in the aforesaid decision, are reproduced as under:-

> *"4. Regarding question no.(c) :-*
>
> *(a) In its return of income, the respondent made a suo-moto disallowance of Rs.15.21 lakhs being the expenditure incurred to earn exempt income under Section 14A of the Act. The Assessing Officer disregarded the same and proceeded to disallow an amount of Rs.1.10 crores under Section 14A of the Act read with Rule 8D of the Rules as expenditure incurred to earn exempt income. Thus, adding Rs.1.10 crores to the income of the respondent.*
>
> *(b) Being aggrieved, the respondent filed an appeal to the CIT(A) but without success.*
>
> *(c) On further appeal, the impugned order of the Tribunal while allowing the appeal held that before invoking the provisions of Rule 8D of the Income Tax Rules, the Assessing Officer has to record his non satisfaction with the suo moto disallowance of expenditure made towards earning exempt income by the respondent. This exercise not having been carried out by the Assessing Officer before applying Rule 8D of the Income Tax Ru'es, the disallowance of expenditure to earn exempt income cannot be sustained.*
>
> *(d) This issue is no longer res integra as the Apex Court in Gorej & Boyce Mfg. Co. Ltd. Vs. Dy. CIT, 394 ITR 449 decided the issue in favour of the respondent. In the above case, the Supreme Court has while considering the issue of disallowing of expenditure incurred to earn exempt income observed as under :-*
>
> > *"Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14A (2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."*
> >
> > *Thus, Rule 8D of the Rules cannot be invoked where the suo moto disallowance made by the respondent assessee is not found to be satisfactory by the Assessing Officer having regard to the accounts of the assessee. In the absence of recording the aforesaid fact of non- satisfaction in terms of Section 14A(2) of the Act, invocation of Rule 8D is not permissible.*
>
> *(e) Therefore, in view of the above decision of the Apex Court, this question also does not give rise to any substantial question of law. Thus, not entertained."*

14. Since, in the present case, no proper satisfaction has been recorded by the AO in terms of the provisions of section 14A(2) of the Act, having regard to the accounts of the assessee, about the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income, respectfully following the aforesaid decisions, we do not find any reason for upholding the

disallowance made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted. As a result, ground no.1 raised in assessee's appeal is allowed."

10. In the present case, it is evident from the record that the AO without recording any satisfaction regarding the claim of the assessee in respect of expenditure incurred in relation to exempt income proceeded to compute the disallowance of Rs.2,97,28,588 under section 14A read with Rule 8D of the Rules. Therefore, respectfully following the decision rendered in assessee's own case cited supra, we do not find any reason for upholding the disallowance made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted. As a result, ground no.1 raised in assessee's appeal is allowed.

11. The issue arising in ground no.2, raised in assessee's appeal, pertains to the disallowance of expenditure incurred for the evaluation of various business opportunities.

12. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee debited an amount of Rs.54.06 lakh on account of expenditure incurred on account of professional and consultancy fees paid to various consulting firms to carry out due diligence/market survey, legal fees for drafting agreements and scheme valuation of target company and also consultancy service for business opportunities in the area of home decor/improvements and overseas acquisition, etc. During the assessment proceedings, the assessee was asked to show cause why the claim of the aforesaid expenditure should not be disallowed. In response thereto, the assessee submitted that the aforesaid expenditure is in the nature of revenue expenditure and allowable under section 37(1) of the Act.

13. The AO vide assessment order did not agree with the submissions of the assessee and held that the assessee has been in the field of paints business for more than 50 years and is entering into a completely new line of business, i.e. home decor/home improvement and acquisition of overseas company.

Accordingly, the AO held that such an expenditure is liable to be treated as capital expenditure and disallowed the amount of Rs.54.06 lakh paid by the assessee to various professionals and consultants for the evaluation of various business opportunities.

14. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue by following the approach adopted by its predecessor in assessee's own case for the assessment years 2012-13 and 2014-15. Being aggrieved, the assessee is in appeal before us.

15. Having considered the submissions of both sides and perused the material available on record, we find while considering a similar issue, the coordinate bench of the Tribunal in assessee's own case in Asian Paints Ltd v/s ACIT, in ITA No. 269/Mum./2018, for the assessment year 2014-15, vide order dated 06/03/2024, after examining the engagement letters entered between the assessee and the consultants held that the entire expenditure incurred by the assessee cannot be disallowed and the disallowance should be restricted to the expenditure which has been incurred for evaluation of business opportunities that cannot be said to be in line with the existing business or an extension of the existing business of the assessee of manufacturing of paints and enamels. The relevant findings of the coordinate bench, in the aforesaid decision, are as under:-

> *"15. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR by placing reliance on the summary of expenditure incurred on exploring various business opportunities, forming part of the supplementary factual paper book, submitted that the entire expenditure of Rs.8.60 crore was incurred on exploring various business opportunities such as furniture space, home improvement, kitchen space, bathroom space, decorative paints business in Indonesia and Turkey, acquisition of paints manufacturing company in Ethiopia, etc. We, at the outset, find that while examining the allowability of expenditure incurred by the assessee for obtaining feasibility report in respect of home improvement and home decor business, the coordinate bench of the Tribunal in assessee's own case in the assessment year 2012-13 cited supra, vide order dated 01/03/2024, held that home improvement and home decor business is completely a new line of business, which is different from the existing business of manufacturing paints and enamels and therefore the expenditure incurred for obtaining feasibility study report is capital in nature. The relevant findings of the coordinate bench, in the aforesaid decision, are as under:-*

"18. We have considered the submissions of both sides and perused the material available on record. From the perusal of the proposal submitted by Avalon Consulting, forming part of the supplementary factual paper book, it is evident that since the assessee was keen to explore various diversification opportunities in India and wanted to undertake a quick market opportunity assessment exercise in certain specific sectors in order to prioritise opportunities, it invited Avalon Consulting to submit a proposal on quick assessment of opportunities. As part of the aforesaid study, Avalon Consulting, inter-alia, submitted its report regarding the home improvement market (including home decor) in India to the assessee. The consideration of Rs.1,74,40,000 paid by the assessee to Avalon Consulting was partly towards the feasibility report for entry into the home improvement segment. As per the assessee, the expenses on exploratory exercise are incurred out of commercial expediency in as much as they are incurred to expand the existing business by exploring new markets, products, etc.

19. In order to determine whether the home improvement and decor segment is a new line of business or an extension of the existing business conducted by the assessee, it is pertinent to note that the assessee has claimed itself to be the largest manufacturer of paints and enamels in India and a market leader in the Indian paint industry. Further, from the perusal of the annual report of the assessee as well as submissions filed before the AO, we find that home improvement and decor were considered as one such area which offers tremendous growth opportunities by the assessee. Accordingly, the assessee amended its object clause in the Memorandum and Articles of Association on 17/12/2012. Further, it is also evident from the aforesaid documents that in January 2013, the assessee's board granted in-principle approval to enter into an arrangement with the promoters of the Sleek Group for acquiring a 51% stake in the Sleek Group, which is engaged in manufacturing, selling, and distribution of modular kitchens as well as kitchen components including wire baskets, cabinets, appliances, accessories, etc., with a pan-India presence. Thus, from the perusal of the documents available on record, it is sufficiently evident that the assessee ventured into altogether a new line of business, which is different from the existing business of manufacturing paints and enamels. We agree with the conclusion of the learned CIT(A) that the new line of business operates completely on different domains, as the infrastructure, expertise, workforce and all other connected things engaged and involved are completely different. During the hearing, the learned DR placed reliance upon the decision of the Hon'ble jurisdictional High Court in CIT v/s Zenit Steel Pipes and Industries Ltd, [2009] 315 ITR 95 (Bom.), wherein following the earlier decision of the Hon'ble High Court in CIT v/s JK Chemicals Ltd, [1994] 207 ITR 985 (Bom.) it was held that expenditure incurred on obtaining market survey for setting up new line of business is a capital expenditure. Therefore, respectfully following the aforesaid decision and in view of the aforementioned findings, we find no infirmity in the findings of the learned CIT(A) on this issue. However, from the details of expenditure, as available on page no.258 of the paper book, we find that the entire expenditure of Rs.1,74,40,000 was not incurred on obtaining a feasibility report in respect of home improvement and decor business, therefore we direct the AO to restrict the disallowance only to the extent of expenditure pertaining to home improvement and decor business. As a result, ground no.2 raised in assessee's appeal is partly allowed."

16. Therefore, in view of the aforesaid findings of the coordinate bench of the Tribunal, we find no merits in the submission of the assessee in respect of expenditure incurred for obtaining a feasibility report in respect of home improvement/decor and kitchen space business and accordingly, the aforesaid expenditure is held to be capital in nature.

17. As regards the expenditure incurred by the assessee on exploring business opportunities in furniture and furnishings, from the perusal of the engagement letter entered into between the assessee and its consultants, forming part of the supplementary factual paper book from pages 2-30, we find that the consultant agreed to assist the assessee in developing a deep understanding of the furniture and furnishings category and develop the business strategy for roll-out. Further, the consultant agreed to assist the assessee in understanding how the capability platform proposed to be developed as part of this exercise can be leveraged for building the overall home improvement business. From the description of the furniture and furnishing, as provided in the aforesaid engagement letter, we find that the same includes beds, cupboards, sofas and seatings, tables, kids' furniture, wall shelves, furniture upholstery, and curtains. From the perusal of the description of the furniture and furnishings, in respect of which the assessee explored business opportunity with the help of the consultant, we are of the considered view that same constitutes a completely new line of business and the same is not an extension of the existing business of manufacturing of paints and enamels by the assessee. Accordingly, the expenditure incurred on exploring business opportunities in furniture and furnishings is held to be capital in nature.

18. Similarly, from the summary of expenditure incurred by the assessee on exploring various business opportunities, we find that the assessee also incurred expenditure on exploring business opportunities in bathroom space, which includes tiles, sanitary ware, bath fittings, and accessories like sliding glass partitions, glass doors, shower stalls, etc. In view of our aforesaid findings, the same cannot be said to be an extension of the existing line of business of the assessee of manufacturing paints and enamels. Accordingly, this expenditure is held to be capital in nature.

19. From the summary of expenditure incurred by the assessee, we further find that the assessee also incurred expenditure on exploring the decorative paints market in Turkey and Indonesia, since the assessee wishes to expand its geographical presence worldwide and wants to develop its operational understanding of the decorative paints market in Turkey and Indonesia. From the perusal of the agreement in respect of the aforesaid market survey, forming part of the supplementary factual paper book from pages 67-87, we find that the same includes mapping and trends of the coating market and decorative paints market in Turkey and Indonesia, understanding pricing scheme of decorative paints, market and product segments, major market players and understanding the channel structure of decorative paints and commercial aspects of distribution. Thus, from the agreements, it is sufficiently evident that the scope of the market survey is in line with the existing business of the assessee of manufacturing paints and enamels. Therefore, we are of the considered view that the expenditure incurred on exploring the decorative paints market in Turkey and Indonesia is for the extension of the existing line of business of the assessee and thus is in the nature of revenue expenditure. Accordingly, the AO is directed to delete the addition in respect of this expenditure.

20. Further from the summary of expenditure incurred by the assessee, we find that the assessee incurred expenditure on pre-acquisition due diligence of the paint manufacturing company in Ethiopia. It is pertinent to note that the expenditure was not incurred on exploring the decorative paints market in Ethiopia but the same was in relation to pre-acquisition due diligence of a

company, i.e. Kadisco Chemical Industry PLC., Ethiopia, which is manufacturing and selling paints, other coatings and adhesives in Ethiopia. From the perusal of the annual report of the assessee, we find that in April 2014, the assessee's wholly owned subsidiary in Mauritius, Asian Paints (International) Ltd., signed an agreement with shareholders of Kadisco Chemical Industry PLC., Ethiopia to acquire, either directly or through its subsidiaries, 51% of its share capital. Therefore, from the documents available on record, it is evident that the impugned expenditure was incurred towards the process of acquisition of majority shareholding in Kadisco Chemical Industry PLC., Ethiopia, which is a capital transaction. In any case, the expenditure cannot be said to be in line with the existing business of the assessee of manufacturing paints and enamels or an extension of the existing line of business of the assessee, as the expenditure was incurred on pre-acquisition due diligence of the company which cannot be equated with market survey or preparing feasibility report for extension of the business. Accordingly, this expenditure is held to be capital in nature.

21. In view of our aforesaid findings, we are of the considered view that the entire expenditure of Rs.8.60 crore incurred by the assessee cannot be disallowed and the disallowance should be restricted to the expenditure which has been held to be capital in nature. Further, the other expenditures in the summary, which are in relation to the expenditures found to be capital in nature are also to be disallowed. We order accordingly. As a result, ground no.2 raised in assessee's appeal is partly allowed."

16. In the year under consideration, the assessee has filed the summary of expenditure incurred on exploring various business opportunities. From the perusal of the aforesaid summary, we find that the entire expenditure was incurred on home improvement projects, furniture and furnishings business, bathroom space business, modular kitchen, market research in Saudi Arabia project, etc. Unlike the assessment year 2014-15, the assessee has not furnished the copy of engagement letters/scope of work in respect of the exploration of various business opportunities by the consultants. However, since in the preceding year, the coordinate bench has examined each business evaluation separately, which appears to have also been undertaken during the year under consideration, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication in light of the decision of the coordinate bench of the Tribunal in assessee's own case in the assessment year 2014-15 cited supra. The AO is directed to decide on the allowability of each expenditure after duly examining the engagement letter with the consultants and the scope of work, in light of the aforesaid decision of the coordinate bench cited supra. Before concluding, from the perusal of the aforesaid

summary of expenditure, we note that the assessee has reversed the provision made in the preceding year. Since in the preceding year, the other expenditure, which is in relation to the expenditures found to be capital in nature, has been directed to be disallowed, therefore we direct the AO that the provision disallowed in the previous year be not again disallowed in the year under consideration as it would result in taxing the same amount twice. With the above directions, the impugned order on this issue is set aside and ground no.2 raised in assessee's appeal is allowed for statistical purposes.

17. The issue arising in ground no.3, raised in assessee's appeal, pertains to the disallowance of prior period expenditure.

18. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee debited prior period expenses of Rs.72,69,693 in the Profit and Loss account. Accordingly, during the assessment proceedings, the assessee was asked to justify the allowability of aforesaid prior period expenses. The AO did not agree with the submissions of the assessee and after perusing the breakup of prior period expenses noted that prior period expenses claimed by the assessee are on account of rectification of mistakes of earlier years. The AO further held that only such expenses which have been crystalised during the current year because of events not in the control of the assessee can be allowed as a deduction and no deduction of prior period expenses can be allowed in the computation of income of the assessee because the assessee did not make adequate efforts to reconcile the accounts in proper time. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that in the year under consideration the assessee has claimed prior period expenses, which has resulted from the rectification of accounts of earlier years, and debited the same to the Profit and Loss account despite the fact that such expenses were not crystallised or become payable in the year under consideration.

19. Undisputedly, the assessee is following the mercantile system of accounting, and therefore only such expenses which are crystallised during the

year can be allowed as a deduction while computing the income. Since the issue pertains to the reconciliation of expenses vis-à-vis the year of crystallisation, therefore in the interest of justice we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication. The assessee is directed to furnish all the details in support of its claim that the expenses claimed as prior period expenses were crystallised during the year under consideration. With the above directions, the impugned order on this issue is set aside and ground no.3 raised in assessee's appeal is allowed for statistical purposes.

20. The issue arising in ground no.4, raised in assessee's appeal, pertains to the disallowance of provision for doubtful debts.

21. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee debited an amount of Rs.1,59,37,355 (net) on account of provisions for doubtful debts. Accordingly, during the assessment proceedings, the assessee was asked to explain why the same should not be disallowed being just a provision. In response thereto, the assessee submitted that the provision was created by debiting the Profit and Loss account and corresponding credit has been reflected under the sundry debtors account in the balance sheet. The assessee further submitted that until the assessment year 2009-10, the assessee was not claiming deduction in respect of provision for doubtful debts debited to the Profit and Loss account and only subsequent to the decision of the Hon'ble Supreme Court in Vijaya Bank v/s CIT, (2010) 323 ITR 166 (SC), the assessee started claiming deduction in respect of provision for doubtful debts and similarly any reversal is also offered for taxation. The AO, vide assessment order, did not agree with the submissions of the assessee and held that the reliance placed by the assessee on the decision of the Hon'ble Supreme Court in Vijaya Bank (supra) is misplaced as the provision for bad and doubtful debts is allowed only to the banking companies in compliance of section 36(1)(vii) and section 36(1)(viia) of the Act, in light of the guidelines of the Reserve Bank of India. However, in the present case, the provision is created on an estimated basis considering the percentage of the total value of receivables

and moreover, the individual debtors' accounts have also not adjusted with the provision amount. The AO further held that as per section 36(1)(vii) of the Act, the amount should be written off in the accounts of the assessee as irrecoverable, however, the assessee has only made the provisions. Accordingly, the claim of provision for doubtful debts of Rs. 1,59,37,355 was disallowed and added to the total income of the assessee.

22. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that for the provisions of section 36(1)(vii) to be applicable, it is essential that the amount of any bad debt or part thereof is written off as irrecoverable in the accounts of the assessee for the previous year in question. However, in the case of the assessee, it is seen that it has only created an account for "*provision for doubtful trade receivables*" on an estimated basis and has reduced such provision from the "*sundry debtors*" but such provisions created for doubtful trade receivables have not been obliterated as the same has been shown by the assessee in the balance sheet on the assets side as "*provision for doubtful trade receivables*". Thus, it was held that the provisions so created have neither been obliterated by crediting the same to the sundry debtors' accounts nor the individual debtors' accounts have been credited by the respective individual amounts. Therefore, even as per the decision of the Hon'ble Supreme Court in Vijaya Bank (supra), there is no actual write-off done by the assessee of such provision created. Being aggrieved, the assessee is in appeal before us.

23. We have considered the submissions of both sides and perused the material available on record. From a plain reading of section 36(1)(vii) of the Act, it is evident that the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year is allowable as deduction while computing the income. Further, Explanation-1 to section 36(1)(vii) of the Act specifically clarifies that any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee. In the present case, admittedly deduction has been claimed by the assessee in respect of provision for doubtful debts, without any

write-off of irrecoverable debt. Since the claim of the assessee is contrary to the provisions of section 36(1)(vii) of the Act, for this short reason, we find no merits in the submissions of the assessee. Further, we agree with the findings of the lower authorities that the decision of the Hon'ble Supreme Court in Vijaya Bank (supra) is not applicable in the case of the assessee, as the aforesaid decision was rendered in the case of a banking company after considering the guidelines issued by the Reserve Bank of India. Accordingly, we are of the considered view that the provision for doubtful debts, as claimed by the assessee, has rightly been disallowed by the lower authorities. During the hearing, the learned AR, on a without prejudice basis, submitted that if the assessee's claim is not acceptable then a direction may be issued for the bad debts to be allowed in the year in which it has been actually written off. We are of the considered view that the assessee's claim for allowance of bad debts written off can be considered in the appropriate year if the same is found to be in accordance with the law and thus no specific direction in this regard is required. Accordingly, ground no.4 raised in assessee's appeal is dismissed.

24. The issue arising in ground no.5, raised in assessee's appeal, pertains to the disallowance of expenditure incurred by the assessee on "*Colour Idea Stores*" by treating the same as capital expenditure.

25. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, upon perusal of the details furnished by the assessee, it was observed that the assessee has incurred an amount of Rs.32,44,46,533 towards "*Colour Idea Stores*" and debited this expense in the Profit and Loss account under the head "*Advertisement and Sales Promotion Expenses*". Accordingly, the assessee was asked to justify the allowability of the expense as revenue expenditure. In response thereto, the assessee submitted that every year it incurs various expenditures on advertisement on sales promotion expenses. It was further submitted that in order to enhance the dealer network and to provide premium service to customers the concept of "*Colour Idea Stores*" has been introduced and the expenses represent the expenses relating to setting up of "*Colour Idea Stores*", transition cost, store upgradation cost, etc. The assessee submitted

that "*Colour Idea Stores*" helps to promote brands and products through a network of retail outlets, wherein, the end customers can have a complete experience of the various products, and their attributes, educate themselves through the colour consultants and other literature on paints by way of installing its decor, designs, creatives, and concepts. It was further submitted that it is a concept store, which is owned and operated by the dealer, and the total cost incurred for the interior look is shared between the assessee and the dealer. It was further submitted that "*Colour Idea Stores*" helps the dealer in giving a new look to the store to drive the retailing concept, which is the need of the modern era and it also helps the dealer increase the customers' footfalls, which ultimately generates the business for the assessee.

26. The AO, vide assessment order, did not agree with the submissions of the assessee and held that the expenditure incurred towards "*Colour Idea Stores*" by the assessee is capital in nature, as the assessee has entered into an agreement with the dealer to create fixed assets for promoting the business interest under the concept of "*Colour Idea Stores*". Accordingly, the expenditure incurred on "*Colour Idea Stores*" was treated as capital expenditure and capitalised as "*Furniture and Fixture*". As a result, the amount of Rs.32,44,46,533 was disallowed and depreciation of Rs.3,24,44,653 was allowed to the assessee.

27. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that when a company spends money on a concept store that provides a long-lasting impression on the customers, in particular, and the public in general the same has to be seen from the perspective of benefit/mileage drawn by the company from such expenses/investment. The learned CIT(A) further held that such an innovative marketing idea when put in place, gives rise to a specific kind of marketing intangibles, the benefit of which is reaped by the company that owns such marketing intangibles. The learned CIT(A) further held that "*Colour Idea Stores*" is a different marketing intangible, which is a brand and concept that remains with the assessee, for lasting benefit to it. Accordingly, the CIT(A) came to the conclusion that the concept of "*Colour Idea Stores*" is to be

treated as a marketing intangible, and expenses incurred for creating such intangible has to be treated as capital in nature. Being aggrieved, the assessee is in appeal before us.

28. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee claimed expenditure incurred on "*Colour Idea Stores*" under the head advertisement on sales promotion expenses. In its annual report, the assessee has declared that during the financial year 2014-15, the count of "*Colour Idea Stores*" has increased to more than 200 with the record installation of 70 new stores. It is further stated that in-store colour consultancy is a key feature of these stores, which benefited more than 1,25,000 customers across these "*Colour Idea Stores*" during the year. As per the assessee, in order to promote its brand and products through a network of retail outlets, wherein the customers can have a complete experience of assessee's paints and colour and can also understand various products, and their attributes, educate themselves through colour consultants and other literature on paints, the assessee has entered into an agreement with certain dealers, whereby the dealers provide designated space in the dealer's shop to be exclusively used by the assessee for installing its decor, designs, creative and concepts, which is referred to as "*Colour Idea Stores*". It is further the submission of the assessee that the said arrangement provides an opportunity to the assessee to showcase luxury products and the exclusive range, finish books, brochures, literature, advertisements, counters called as "*Try and Decide*", "*Be inspired area*", and "*Choose your finish bar*". As per the assessee, the aforesaid expenditure helps in increasing customers' footfall and family walk-ins thereby ultimately generating business for both the assessee as well as the dealers.

29. From the perusal of the clauses of the agreement entered into by the assessee with the dealer, as noted on pages 47-50 of the assessment order, we find that in order to promote its brands and products, the assessee entered into an arrangement with the dealers, whereby the dealers shall provide the assessee a space in the dealer's shop to be exclusively used by the assessee for installing its decor, designs, creative and concepts. Further, we find that

the dealer has represented the assessee that it has the necessary infrastructure, financial resources, inter-alia, space, shop, storage facilities, personnel, and experience to undertake the intended arrangement and business of paints. Accordingly, the dealer has approached the assessee and agreed to stock, promote, and sell the products of the assessee from the Designated Shop Area, by installing assessee's paint decor, design, creatives, and concepts. As per the agreement, the parties agreed that the said arrangement under the agreement is for the brand promotion activity of the assessee, through which the dealer shall also benefit by way of consumer mileage. Under the agreement, the parties agreed to share the cost incurred for setting up the Designated Shop Area. As per the agreement, the dealer shall get his shop premises and the Designated Shop Area constructed, designed, and decorated in accordance with and in the manner suggested by the assessee and its consultants/contractors, for which peaceful and vacant possession shall be also be handed over by the dealer. The dealer further agreed that it must neither use the Designated Shop Area in any other manner than as specified by the assessee nor any other products or display material shall be kept out at the Designated Shop Area unless specified by the assessee. Further, it was agreed that the dealer shall not be entitled to any special privileges, prerogatives, benefits, discounts, or rebates as compared to other dealers by virtue of this agreement nor the dealer shall charge in excess of the MRP declared by the assessee for the facilities provided to the customers and the Designated Story Area. At the outset, we are of the considered view that none of the clauses of the agreement lead to the conclusion that any fixed asset of enduring nature is created by incurring the aforesaid expenditure on "*Colour Idea Stores*".

30. The assessee is in the business of manufacturing paints and enamels and therefore in order to promote its brands and products, through a network of retail outlets, wherein the customers can have a complete experience of assessee's products, apart from having the literature and pamphlets pertaining to its various types of products which include wall finishes for interior and exterior use, enamels, wood finishes and ancillary products such as primers,

putties, etc., the assessee set up "*Colour Idea Stores*" at the shops of its dealers. It is pertinent to note that for any customer, who wishes to buy the assessee's products, touch, texture, and appearance either on the wall (exterior or interior), wood, etc. are material for making the decision, as these aspects of assessee's products cannot be better appreciated from the brochures and pamphlets available at the retail store. Considering the expenditure incurred by the assessee on "*Colour Idea Stores*", having the above aspect in perspective, we are of the considered view that the same was only for the purpose of having a better reach to its customers so as to increase the sales of its products and therefore, the expenditure is nothing but a brand promotion expenditure. The learned CIT(A), vide impugned order, treated the "*Colour Idea Stores*" as a different marketing intangible having lasting and enduring benefits. However, it is pertinent to note that "*Colour Idea Stores*" is one of the marketing strategies of the assessee to showcase its products to the customers in a better manner so that the sales of its products increase. Thus, we are of the considered view that "*Colour Idea Stores*" is not in itself a marketing intangible but the same is a marketing strategy of the assessee to enhance its brand value. In this regard, it is also pertinent to note that the "*Colour Idea Stores*" can be at any shop of the dealer so long as the dealer is representative of the assessee and is in the business of sale and distribution of assessee's products. Thus, once the agreement between the dealer and the assessee concludes, even the dealer cannot use the "*Colour Idea Stores*" for products of any other company. Therefore, the entire exercise is a joint sales promotion activity by the assessee and the dealer, wherein both parties would benefit from the brand promotion and resultant increase in the sale of the products. Accordingly, we are of the considered view that the expenditure incurred by the assessee on "*Colour Idea Stores*" is in the nature of revenue expenditure and the AO is directed to allow the same. Since the AO has granted the depreciation to the assessee by treating the expenditure as capital in nature, the same may be reversed in view of the aforementioned findings. As a result, ground no.5 raised in assessee's appeal is allowed.

31. During the hearing, the applications dated 16/03/2021 seeking admission of additional grounds of appeal were not pressed by the assessee. Accordingly, these applications are dismissed as not pressed.

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

ITA No.2959/Mum./2019
Revenue's Appeal – A.Y. 2015–16

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

1. Whether, on the facts and in the circumstances of R the case and in law, the Ld. CIT(A) was right in directing the A.O. to verify the allowability of expenditure incurred u/s 35(2AB) without appreciating the fact that the expenditure was disallowed by DSIR (as per Certificate in Form No. 3CL) as the same was not incurred for R & D purpose?

2. Whether, on the facts and in the circumstances R of the case and in law, the ld. CIT (A) was right in restricting the disallowance u/s 144 r.w. Rule 8D to Rs. 1,67,23,000/-, without appreciating the facts of the case?

3. Whether, on the facts and in the circumstances of the case and in law, the ld. CIT (A) was right in allowing Rs. 286.47 lacs on account of balance 10% additional depreciation on additions made in A.Y. 2014-15, without appreciating the facts of the case?

4. Whether, on the facts and in the circumstances of the case and in law, the ld. CIT(A) was right in allowing Rs. 111,18,55,552/- on account of expenditure incurred on PC Club Trip & other Trip Schemes without appreciating the fact that the trip expenditure was not expended wholly and exclusively for the purpose of the business?

5. Whether, on the facts and in the circumstances of Rs the case and in law, the ld. CIT(A) was right in deleting the addition of Rs.5,73,43,542/- being waiver of royalty for two subsidiaries situated in Bangladesh and Srilanka, without appreciating the facts of the case?

6. Whether, on the facts and in the circumstances of R the case and in law, the Ld. CIT (A) was right in allowing Rs. 2.38 Crores on account of various sundry balance written off during the year without appreciating the fact that such claim/deduction of expenses is not allowed under any provision of the Income-tax Act?

7. Whether, on the facts and in the circumstances of Rs.3 the case and in law, the ld. CIT(A) was right in deleting the addition of Rs. 31.49 lakhs being subsidy received from Maharashtra Government under Package Scheme of incentives 2007, without appreciating the facts of the case?

8. Whether, on the facts and in the circumstances Rs. of the case and in law, the ld. CIT(A) was right in deleting the addition of Rs.30,00,000/- being electricity grant received from Haryana Government, without appreciating the facts of the case?"

34. The issue arising in ground no.1, raised in Revenue's appeal, pertains to allowability of expenditure under section 35(2AB) of the Act.

35. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has claimed weighted deduction under section 35(2AB) of the Act. Accordingly, the assessee was asked to furnish the certificate issued by the Department of Science and Industrial Research ("*DSIR*") in Form No.3CL and reconciliation of the expenditure allowed by the DSIR with the deduction claimed in the computation of income. In response thereto, the assessee submitted that it has recognised R&D Unit at Turbhe (Navi Mumbai) and during the year claimed weighted deduction under section 35(2AB) of the Act with respect to expenditures incurred for R&D activities. The assessee furnished the copy of approval received from DSIR obtained in Form No.3CM during the assessment proceedings. The assessee also furnished a copy of the certificate of expenditure in Form No.3CL received from the DSIR. The assessee also provided a copy of the reconciliation between the amounts claimed in the return of income vis-a-vis the claim allowed by the DSIR. During the assessment proceedings, the assessee was also asked to show cause why the differential amount as per Form No.3CL be not disallowed, which was not allowed by the DSIR. In response thereto, the assessee submitted that except for the expenditure in the nature of land and building, all other expenditures incurred on scientific research will be eligible for the weighted deduction under section 35(2AB) of the Act. The assessee further submitted that all the expenditures incurred by it are eligible for weighted deduction since they are incurred in the approved R&D facility.

36. The AO vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and restricted the weighted deduction on

R&D expenditure under section 35(2AB) of the Act on the basis of the certificate issued by the DSIR in Form No.3CL.

37. The learned CIT(A), vide impugned order, following the decision of the coordinate bench of the Tribunal rendered in assessee's own case in earlier years directed the AO to verify the nature of expenditure, which has been disallowed by the DSIR and if upon verification, the AO finds that such expenditure was incurred for the purpose of R&D, then the AO is directed to allow such expenditure to the assessee. However, if the AO finds that such expenditure was not incurred for the purpose of research and development, then the addition made by the AO will stand confirmed. Being aggrieved, the Revenue is in appeal before us.

38. Having considered the submissions of both sides and perused the material available on record, we find that while deciding a similar issue the coordinate bench of the Tribunal in assessee's own case in Asian Paints Ltd v/s Addl. CIT, in ITA No. 2178/Mum./2012, vide order dated 20/12/2013, for the assessment year 2007-08, restored the issue to the file of the AO with a direction to decide the same afresh after verifying whether the expenditure in question has been incurred by the assessee on research and development, which is eligible for deduction under section 35(2AB) of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

> *"13. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. In support of the assessee's case, the Id. Counsel for the assessee has relied on the decision of the Hon'ble Gujarat High Court in the case of CIT vs Cadila Health Care Itd. 87 DTR 56. A perusal of the judgment passed by the Hon'ble Gujarat High Court in this case, however, shows that the expenditure on R & D was bifurcated by the prescribed authority as per it's certificate in two parts, one incurred in-house and the other incurred outsider. Relying on the said certificate, the Revenue disallowed the expenditure incurred by the assessee outside its in-house facilities while the Tribunal allowed the same. The Hon'ble Gujarat High Court upheld the decision of the Tribunal holding that merely because the prescribed authority segregated expenditure into two parts by itself could not be sufficient to deny the benefit to the assessee u/s 35(2AB). The issue involved the in the case of Cadila Health Care ltd. (supra) thus was entirely different and even the facts involved in the said case were different from the facts of the assessee's case in as much as the entire expenditure incurred by the assessee in that case on R & D was duly*

certified by the prescribed authority whereas in the case of the assessee, the same is not certified to be eligible R & D expenditure to the extent of Rs.54.34 lakhs.

14. The le Counsel for the assessee has also relied on the decision of the Ahmedabad bench of ITAT in the case of ACIT vs Torrent Pharmaceuticals Ltd. in ITA No.3569/Ahd/2004 dated 13.11.2009 in support of the assessee's case on the issue under consideration. In the said case, weighted deduction claimed by the assessee u/s 35(2AB) on account of R & D expenditure was partly disallowed by the AO relying on the figure contained in the certificate issued by DSIR and the same was held to be unsustainable by the Tribunal holding that There was no justification in harping upon the figure contained in the certificate issued by DSIR as was done by the Assessing Officer. It was held by the Tribunai that the relevant provisions of the Act did not contain any specific condition that the deduction u/s 35(2AB) and accordingly the claim of the assessee for deduction u/s 35(2AB) will be restricted to the amount of R & D expenditure as contained in the certificate. The Tribunal found on verification of the relevant details that even the expenditure is not included in the said certificate was eligible for deduction u/s 35(2AB) in respect of the said expenditure was allowed by the Tribunal. In our opinion, the issue involved in the case of Torrent Pharmaceuticals itd. thus is similar to the one involved in the present case and this position is not disputed even by the Id. DR at the time of the hearing before us. He, however, has contended that the claim of the assessee of having incurred the expenditure in question on R & D which is eligible u/s 35(2AB) has not been examined either by the AO or by the ld. CIT(A). He has urged that the matter may therefore be restored to the file of AO for giving him an opportunity to verify the same. We find merit in this contention of the Id. DR and since the Id. Counsel for the assessee has also not raised any objection in this regard we restore this issue to the file of the AO with a direction to decide the same afresh after verifying whether the expenditure in question has been incurred by the assessee on research and development which is eligible for deduction u/s 35(2AB). The appeal of the assessee is accordingly treated as allowed for statistical purpose."

39. We find that similar directions were rendered by the coordinate bench of the Tribunal in assessee's own case in subsequent assessment years, i.e. 2009-10 to 2014-15. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Since the learned CIT(A) has decided the issue keeping in view the aforesaid directions of the Tribunal, therefore we find no infirmity in the findings of the learned CIT(A) on this issue. Accordingly, ground no.1 raised in Revenue's appeal is dismissed.

40. The issue arising in ground no.2, raised in Revenue's appeal, pertains to disallowance under section 14A of the Act. In view of our findings rendered in

assessee's appeal on a similar issue, ground no.2 raised in Revenue's appeal is dismissed.

41. The issue arising in ground no.3, raised in Revenue's appeal, pertains to the allowance of balance additional depreciation.

42. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has claimed additional depreciation @10% on the fixed assets acquired during the financial year 2013-14 amounting to Rs.2,86,47,976 under section 32(1)(iia) of the Act. Accordingly, the assessee was asked to explain the allowability of additional depreciation so claimed. In response thereto, the assessee submitted that as per section 32(1)(iia) of the Act, the assessee is entitled to claim 20% additional depreciation on any new plant and machinery acquired after 31/03/2005. It was further submitted that as per the provision to section 32(ii)(b), if the assets are put to use for less than 180 days in the previous year, then the deduction in respect of depreciation shall be restricted to 50%. Accordingly, the assessee could claim only 10% of the additional depreciation for additions made in the second half of the financial year 2013-14 and the balance 10% additional depreciation was claimed in the year under consideration. The AO vide assessment order did not agree with the submission of the assessee and accordingly, disallowed the additional depreciation of Rs.2,86,47,976 claimed by the assessee in the year under consideration and added the same to the total income of the assessee.

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

44. We have considered the submissions of both sides and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Addl. CIT v/s Asian Paints Ltd., in ITA No. 749/Mum./2017, for the assessment year 2011-12, vide order dated 28/07/2022, decided the similar issue in favour of the assessee by following

the earlier decisions rendered in assessee's own case. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

> *"35. Considered the rival submissions and material placed on record, we observe that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2010-11 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -*
>
> > *"035. Ground number 6 is in relation to allowing the additional depreciation at the rate of 10% amounting to Rs 1,51,65,251/-. The claim of the assessee is that according to the provisions of Section 32 (1) (iiia) the assessee is eligible to claim 20% additional depreciation on any Machinery or plant, acquired after 31st of March 2005. As per the proviso to Section, if the assessee has put to use it for less than 1 80 days in a previous year, the deduction in respect of depreciation shall be restricted to 50%. The assessee has already claimed 10% of the additional depreciation in financial year 2008-2009 (assessment year 2009-10) and therefore it claimed that balance 10% of the depreciation should be allowed to the assessee in financial year 2010-11.*
> >
> > *036. The learned assessing officer rejected the claim of the assessee holding that there is no such provision to claim balance 10% additional depreciation in subsequent years for addition made in earlier year. In past year learned CIT -A who allowed the claim of the assessee following the decision of coordinate bench in Cosmo films Ltd 24 taxmann 189 and SIL Ltd 26 taxmann 78, The learned assessing officer did not followed order of the learned CIT - A in earlier year also and made disallowance of Rs 1,51,65,251/-.*
> >
> > *037. On appeal before the learned CIT -A, he allowed the claim of the assessee based on his own decision for assessment year 2008- 2009 in case of the assessee. We find that the identical issue has been decided in favour of the assessee in the assessee's own case for assessment year 2009-10 in ITA number 2754/M/2014 and ITA number 4203/M/2014 by coordinate bench as Under:-*
> >
> > > *"38. In ground No. 5, revenue has challenged the decision of learned Commissioner (Appeals) in allowing assessee's claim of additional depreciation.*
> > >
> > > *39. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed carried over amount of additional depreciation relating to the immediately preceding assessment year. Therefore, he called upon the assessee to justify the claim. However, the assessee furnished a detailed submission stating that the balance portion of additional depreciation, which could not be claimed in the preceding assessment year, has to be allowed in the impugned assessment year; however, the Assessing Officer was not convinced. Accordingly, he disallowed the additional depreciation claimed of ₹ 1,72,86,752/-. Assessee contested the disallowance before learned Commissioner (Appeals). Taking note of the decision cited by the assessee including the decision of the Tribunal in assessee's own case for Assessment Year 2008 09, learned Commissioner (Appeals) deleted the disallowance made by the Assessing Officer.*
> > >
> > > *40. The learned Departmental Representative supporting the decision of the Assessing Officer submitted, additional depreciation is a onetime allowance granted to the assessee for installing new v plant and machinery. Any unclaimed amount cannot be set off in the subsequent assessment year 41. The learned Counsel for the assessee strongly relying upon the decision of the first appellate authority submitted, the issue is now squarely covered by a number of judicial precedents including the decision of the Tribunal in assessee's own case.*

> *42. We have considered rival submissions and perused materials on record. The facts on record clearly reveal that assessee had purchased and installed new plant and machinery in the preceding assessment year, which is eligible for additional depreciation @20%. However, since the new assets were put to use for less than 180 days in the preceding assessment year, the claim of additional depreciation allowable at 20% was restricted to half of it, l.e. 50%. Thus, in effect, the assessee was allowed additional depreciation of 10%. Now, it is well settled by a number of judicial precedents that if for use of new plant and machinery for a period of less than 180 days the entire amount of additional depreciation cannot be claimed in the subject assessment year, the balance unclaimed amount can be claimed in the subsequent assessment year. It is also a fact on record, against similar claim allowed by learned Commissioner Appeals) in assessee's own case in Assessment Year 2008- 29, the revenue has not preferred any appeal before the bunal. In view of the above, we uphold the decision of Jeaned Commissioner (Appeals) on the issue. Ground raised is dismissed.*
>
> *038.Therefore, respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2009- 10, ground number 6 of the appeal is dismissed holding that the learned CIT appeal is correct in allowing additional depreciation at the rate of 10% for asset purchased in the earlier year amounting to Rs.151,65,251/-*
>
> *36. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2010-11 and also following the principle of "Rule of consistency" we dismiss the ground raised by the revenue holding that Ld.CIT(A) is correct in allowing the additional depreciation at the rate of 10% for asset purchased in the earlier year. Ground raised by the revenue is dismissed."*

45. We find that similar findings were rendered by the coordinate bench of the Tribunal in assessee's own case in the assessment years 2012-13, 2013-14 and 2014-15. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedents in assessee's own case cited supra, ground no.3 raised in Revenue's appeal is dismissed.

46. The issue arising in ground no. 4, raised in Revenue's appeal, pertains to the allowance of expenditure incurred on the Trip Scheme.

47. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, on perusal of the details furnished by the assessee, it was observed that the assessee has incurred trip scheme expenses amounting to Rs.111,18,55,552 during the year under

consideration. As per the assessee, these expenses are mainly in the nature of providing freebies to the dealer in the form of luxury foreign/local tours and travels. It was further noticed that in earlier years, disallowance on account of "*Trip Scheme expenses*" has been made during the assessment. Accordingly, the assessee was asked to show cause why these expenses should not be disallowed. After considering the submissions of the assessee, the AO vide assessment order disallowed the aforesaid expenditure on the basis that during the entire trip of the dealers, there was no conference, exhibition, or meeting abroad to justify that the expenses were for business purposes. The AO held that the expenditure was incurred for the pure leisure trip for the dealers and accordingly cannot be said to have been expended wholly and exclusively for the purpose of the business. Accordingly, the AO disallowed the entire expenditure of Rs. 111,18,55,552. Further, in the alternative, the AO held that even if these expenditures are considered in the nature of commission paid by the assessee directly to its dealers, in the absence of deduction of TDS under section 194H, these expenses are disallowable under section 40(a)(ia) of the Act.

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

49. 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 assessee the coordinate bench of the Tribunal in assessee's own case in ACIT v/s Asian Paints Ltd., in ITA No. 4675/Mum/2015, for the assessment year 2010-11, vide order dated 23/02/2022, observed as under:-

> *"041. It is also stated before us that the issue squarely covered in favour of the assessee for assessment year 2009 10 in ITA number 2754/M/2014 and ITA number 4203/M/2014 wherein the coordinate bench held as Under: -*
>
> > *"43. In ground 6, the revenue has challenged deletion of disallowance of 1,610.45 lakhs on account of expenditure incurred on trip scheme.*
> >
> > *44. Briefly the facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee had debited an of amount 16,10,45,094/- towards expenditure incurred on account of trip scheme. Noticing this, he called upon the*

assessee to justify the claim. After verifying the details furnished by the assessee, the Assessing Officer observed that the amount was paid to SOTC for foreign trip of its dealers. Being of the view that the expenditure incurred was not for the purpose of assessee's business, he held the same as not allowable. Further, he held that since the assessee has not deducted tax at source on the expenditure incurred, which is nothing but in the nature of commission paid to dealers and distributors, the same has to be disallowed under section 40(a)(ia) of the Act. Accordingly, he disallowed the deduction claimed by the assessee. Assessee contested the disallowance before the first appellate authority. considering After the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) deleted the disallowance made by the Assessing Officer.

45. Strongly relying upon the observations of the Assessing Officer, the learned Departmental Representative submitted, the expenditure incurred by the assessee for trip scheme is nothing but commission paid to dealers and distributors; hence, subject to deduction of tax under section 194H Act. The assessee having failed to do so, the amount has to be disallowed under section 40(a) (ia) of the Act.

46. The learned Counsel for the submitted, there is no question of payment of any commission to the dealers and distributors as there is no principal agent relationship between the assessee and them. He submitted, the transactions with the distributors were carried out purely on principal-to-principal basis. Therefore, there is no liability to deduct tax under section 194H of the Act. In support, the learned Counsel relied upon the following decisions:-

1. CIT, Pune vs. Intervet India Pvt. Ltd. (ITA 1616/2011-Bombay High Court

2. Pr. GT vs. Reliance Communication Infrastructure Ltd. (ITA No. 702 of 12017-Bombay High Court

3. DOT vs. BCH Electric Ltd. (ITA 1336/Kol/2012)

4. ACIT vs. Raymond Ltd. ITA 5889/M/10

5. CIT vs. Piramal Healthcare Ltd. 230 Taxman 505 (Bom)

6. CIT vs. Qatar Airways 332 ITR 253 (Bom)

7. Radhasaomi Satsang vs. CIT (193 ITR 321 (SC)

47. Without prejudice, the learned Counsel submitted, since no amount has been paid or credited to the distributors, question of deduction of tax at source does not arise. Further, he submitted, whatever amount the assessee has paid to SOTC has been subjected to TDS provisions. Therefore, there cannot be any further disallowance under section 40(a)(ia) of the Act. Further, he submitted, the expenditure incurred is purely for the purpose of business as it is in the nature of an incentive linked to quantum of purchases made by the dealer. Finally, he submitted, the assessee is claiming such deduction for past 20 years. Except the impugned assessment year, the expenditure has never been disallowed. Therefore, there is no reason to deviate in the impugned assessment year.

48. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, to expand its business the assessee has devised a trip scheme wherein it organized foreign trips to its dealers and distributors based on achieving a specific target assigned by the assessee. On achieving such target, the dealer/distributor is entitled to undertake the trip organized by the assessee through SOTC. Thus, from the aforesaid facts it is very much clear that the entire trip scheme is for the purpose of expanding assessee's business by encouraging the dealers and distributors to achieve a specific target of

purchase. Thus, the scheme is closely linked to assessee's business activity. It is also a fact that the assessee has not paid any amount to the dealers and distributors, but amount spent has been paid to SOTC for organizing the trip. It is also a fact on record that the amounts paid to SOTC has been subjected to TDS as per the relevant provision. Therefore, the allegation of the Assessing Officer that the amount has not been subjected to deduction of tax is without any basis. As regards the applicability of section 194H of the Act, by no means, the Assessing Officer has established on record that dealers/distributors are agents of the assessee. Further, as we find, the trip scheme has been introduced by the assessee from past 20 years and the deduction claimed by the assessee on account of such trip scheme has never been disallowed by the Assessing Officer except for the impugned assessment year. Therefore, even applying the rule of consistency, the expenditure claimed by the assessee has to be allowed. Accordingly, we do not find any infirmity in the decision of learned Commissioner (Appeals). Ground raised is dismissed."

042. Therefore respectfully following the decision of the coordinate bench in assessee's case own for assessment year 2009 10, in absence of any contrary evidence, we uphold the order of the learned CIT A deleting the above disallowance of Rs.252,660,686/-. Accordingly, ground number 7 of the appeal is dismissed."

50. We find that similar findings were rendered by the coordinate bench in assessee's own case for the assessment years 2011-12 to 2014-15. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedents in assessee's own case cited supra, ground no.4 raised in Revenue's appeal is dismissed.

51. The issue arising in ground no.5, raised in Revenue's appeal, pertains to the deletion of addition on account of waiver of Royalty received from two subsidiaries.

52. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee has various associated enterprises all over the globe situated in various countries from which income in the form of Royalty is received for providing them with "*Brand Name*" along with other technical support. The Royalty is calculated @3% of associated enterprises' sales as per the agreement duly signed and executed. However, for the year under consideration, the assessee partly waived the Royalty income receivable from two of its subsidiary companies situated in Bangladesh and Sri Lanka. During

the assessment proceedings, the assessee submitted that it had an agreement with its indirect overseas subsidiaries in Bangladesh and Sri Lanka, according to which the assessee has to receive a Royalty of 3% of net sales of other units. However considering the financial position of the subsidiaries, the assessee agreed to waive part of the Royalty and therefore during the year has credited 1% of the Royalty amount to the Profit and Loss account instead of 3% as per the agreement. The assessee further submitted that under the Act as well as the Double Taxation Avoidance Agreement ("*DTAA*") entered with the aforesaid countries, the assessee is liable to pay tax only on the amount of Royalty received by it. The AO vide assessment order did not agree with the submissions of the assessee and by following the approach adopted in the assessment years 2011-12 to 2014-15 proceeded to make the addition of the balance Royalty, i.e. 2%, which was waived by the assessee.

53. The learned CIT(A), vide impugned order, held that a similar waiver was granted to the subsidiaries from the assessment year 2008-09 till 2010-11 and the AO/TPO has not made any addition with respect to the same. Following its decision rendered in assessee's own case for the assessment years 2011-12 and 2014-15, the learned CIT(A) allowed the ground raised by the assessee on this issue. Being aggrieved, the Revenue is in appeal before us.

54. Having 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 assessee, the coordinate bench of the Tribunal in assessee's own case cited supra, for the assessment year 2012-13, observed as under:-

> *"64. We have considered the submissions of both sides and perused the material available on record. The assessee provides technical data, together with trademarks and also allied services for the manufacture of decorative paints to its overseas subsidiaries. In this connection, the overseas subsidiaries are charged Royalties depending on the package offered and also taking various factors into consideration. As per the transfer pricing study report, forming part of the paper book, it is claimed that the overseas subsidiaries are charged a Royalty of 1% to 3% on net sales realised product manufactured using the technology transferred by the assessee. The assessee entered into an agreement with its indirect subsidiaries, i.e. Asian Paints (Bangladesh) Ltd and Asian Paints (Lanka) Ltd, according to which the assessee was to receive a Royalty of 3% of net sales. However, considering the financial position of the group companies, the assessee agreed to waive the charges of the Royalty until*

the subsidiary company achieves breakeven. As a result, during the year under consideration, the assessee has accounted for Royalty income at 1% net sales basis and received Royalty income of Rs.24,18,244 from Asian Paints (Lanka) Ltd and Rs. 92,54,784 from Asian Paints (Bangladesh) Ltd. It is pertinent to note that the assessee declared the aforesaid international transaction pertaining to the receipt of Royalty income from its subsidiaries in Bangladesh and Sri Lanka in Form 3CEB and benchmarked the same by comparing it with the rate of Royalty charged to overseas subsidiaries. Undisputedly, the TPO vide order passed under section 92CA(3) of the Act did not make any transfer pricing adjustment on account of the aforesaid international transaction. However, the AO, by placing reliance upon the findings of its predecessor in assessee's own case for the assessment year 2011-12, held that the legitimate right to receive corresponding income (Royalty) cannot be waived off through an arbitrary decision, particularly till such time as the original written and duly signed agreement is in place. Accordingly, the AO made the addition of the balance of 2% royalty waived off by the assessee as the income receivable in the hands of the assessee. Even though no adjustment was made by the TPO on account of the transaction of receipt of Royalty from the subsidiary companies in Bangladesh and Sri Lanka.

65. Before proceeding further, it is pertinent to note that as per section 5(1) of the Act in the case of a resident, the total income, inter-alia, includes all income from whatever sources derived which accrues or arises to him outside India during the year. As per the assessee, it is entitled to receive the Royalty from its overseas subsidiaries @3% on the net sales price of products sold by the overseas subsidiaries. Thus, the net sale price of the products sold can only be determined at the end of the financial year and accordingly, the amount of Royalty payable to the assessee can only be computed thereafter. Therefore, prior to the end of the financial year, no amount accrues or arises to the assessee outside India. In the present case, prior to the determination of the net sale price of the products sold, the assessee had decided to waive Royalty by 2%. No material has been brought on record to show that there is no understanding between the assessee and its overseas subsidiaries to waive the Royalty. Such being the facts, we are of the considered view when only 1% Royalty is payable by the overseas subsidiaries, therefore the AO has no authority to make an addition of the balance 2% Royalty waived by the parties, which is nothing but a notional income considered taxable by the AO in assessee's hands. Before concluding, it is pertinent to note that in the assessment year 2011-12, the coordinate bench of the Tribunal decided a similar issue in favour of the assessee. Accordingly, in view of the aforementioned findings, we find no basis in the impugned addition made by the AO. As a result, ground no. 7 raised by the Revenue is dismissed."

55. We find that this issue is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. Thus, respectfully following the judicial precedent in assessee's own case cited supra, ground no.5 raised in Revenue's appeal is dismissed.

56. The issue arising in ground no.6, raised in Revenue's appeal, pertains to sundry balances written off.

57. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee has written off various old balances lying in its books of accounts. During the assessment proceedings, the assessee was asked to show cause about its allowability. In response thereto, the assessee submitted that during the year it has written off certain balances amounting to Rs.3,72,94,330 and debited the same to the Profit and Loss account. The assessee also furnished the breakup of the same in treatment given in his return of income. The AO vide assessment order noted that till the assessment year 2011-12, the assessee itself is disallowing the sundry balances written off in its books of accounts. However, from the assessment year 2012-13, the assessee has changed its practice and started claiming the same as allowable expenditure. It was further held that the assessee could not prove that the alleged advances were made in the ordinary course of the business and such advances written off cannot be treated at par with the bad debts written off.

58. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee on this issue by following the approach adopted in the assessment years 2012-13 and 2014-15. Being aggrieved, the Revenue is in appeal before us.

59. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case cited supra, for the assessment year 2012-13, restored this issue to the file of the AO by observing as under:-

> *"71. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it has changed its practice from the assessment year 2012-13, where sundry balances written off is claimed as deduction, and sundry balances written back is offered for tax in its return of income. The assessee submitted that the expenditure is normal business expenditure and allowable as deductible expenditure. However, from the perusal of the record, we find that neither there is an examination of the aforesaid claim of the assessee nor any details were furnished. Accordingly, we deem it appropriate to restore this issue to the file of the AO for de novo*

adjudication. The assessee is directed to file necessary details/documents in support of its claim of deduction of sundry balances written off. As a result, ground no.9 raised in Revenue's appeal is allowed for statistical purposes."

60. Since a similar issue has already been restored to the file of the AO in a similar factual matrix, therefore, we deem it appropriate to restore this issue to the file of the AO with similar directions as rendered by the coordinate bench in the preceding year. As a result, ground no.6 raised in Revenue's appeal is allowed for statistical purposes.

61. The issue arising in ground no.7, raised in Revenue's appeal, pertains to the deletion of the addition of subsidy received from the Government of Maharashtra under Package Scheme of Incentives, 2007.

62. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee credited a sum of Rs.108.93 crore in its Profit and Loss account as a subsidy received from the Government of Maharashtra but the same was not considered as taxable. During the assessment proceedings, the assessee was asked the reason for its non-taxability. In response thereto, the assessee submitted that the Government of Maharashtra had announced the Package Scheme of Incentives, 2007 to encourage the dispersal of industries to the less-developed areas of the State. It was further submitted that the assessee has put up a manufacturing facility that satisfies the criteria of "*Mega Project*" under the Package Scheme of Incentives, 2007. It was submitted that the assessee has credited a sum of Rs. 108.93 crore as a subsidy received from the Government of Maharashtra under the Package Scheme of Incentives, 2007. The AO vide assessment order did not agree with the submissions of the assessee and held that the nature of subsidy appears to be revenue in nature as it is only when the assessee had set up its industry and commenced production that various incentives were given for the limited period of five years. The AO also held that in this case subsidy granted is for running the business more efficiently and profitably. Accordingly, the AO made the addition of the subsidy of Rs. 108.93 crore received by the assessee.

63. The learned CIT(A), vide impugned order, by following the decision of the Hon'ble Supreme Court in CIT v/s Ponni Sugars and Chemicals Ltd., [2008] 306 ITR 392 (SC) allowed the ground raised by the assessee on this issue and held that the subsidy received by the assessee is capital in nature. Being aggrieved, the Revenue is in appeal before us.

64. Having considered the submissions of both sides and perused the material available on record, we find that while deciding a similar issue pertaining to the taxability of subsidy received by the assessee under Package Scheme of Incentives, 2007 of the Government of Maharashtra, the coordinate bench of the Tribunal vide order dated 05/03/2024 passed in assessee's own case in ACIT v/s Asian Paints Ltd., in ITA No.841/Mum./2018, for the assessment year 2013-14 held that the subsidy received by the assessee is capital in nature as the incentives/subsidy granted was only to encourage the setting up of industries in the less developed areas of the State and the same was not for the purpose of running the business more profitably. The relevant findings of the coordinate bench, in the aforesaid decision, are as under:-

> *"67. We have considered the submissions of both sides and perused the material available on record. From the perusal of the Package Scheme of Incentives, 2007, forming part of the paper book from pages 182-210, we find that in order to encourage the dispersal of industries to the less-developed areas of the State, Government gave package of incentives to new/expansion units set up in the developing region of the State. The object of the Scheme is to achieve higher and sustainable economic growth with the emphasis on balanced regional development and employment through greater public and private investment. Further, the Scheme classifies different areas within the State as Group A to Group D+ depending on the development and the specified areas. The Scheme also provides for various types of companies/products for setting up manufacturing facilities in the State of Maharashtra classified as Micro, Small, Medium Enterprises, LSI units, Mega Projects, etc. The Scheme also provides for various promotional and financial incentives, such as industrial Promotion Subsidy, Interest Subsidy, Exemption from Electricity Duty, Waiver of Stamp Duty, Royalty Refund, Refund of Octroi/Entry Tax in lieu of Octroi, etc. We find that as the assessee proposed to manufacture paints and intermediates at Kesurdi MIDC Area, District Satara, falling in "D" zone under the Package Scheme of Incentives, 2007, wherein the assessee proposed to invest Rs.735 crores and provide employment to 300 persons, the Government of Maharashtra vide letter dated 30/06/2009, forming part of the paper book from pages 211-212, conferred the status of "Mega Project" on the proposed project. We find that in this regard the assessee also entered into a Memorandum of Understanding dated 31/05/2010 with the Government of Maharashtra, forming part of the paper book from pages 213-215, under which*

the assessee was granted Electricity Duty Exemption, Exemption from payment of stamp duty, and Industrial Promotion Subsidy.

68. We find that the Hon'ble jurisdictional High Court in CIT v/s Kirloskar Oil Engines Ltd. [2014] 364 ITR 88 (Bombay) after considering the decision of the Hon'ble Supreme Court in Ponni Sugars and Chemicals Ltd. (supra) and Sahney Steel & Press Works Ltd. v. CIT [1997] 228 ITR 253 (SC), observed as under:-

> *"6. …..We are unable to accept this stand. In the case of in Sahney Steel & Press Works Ltd. v. CIT [1997] 228 ITR 253/94 Taxman 368 (SC) and in Ponni Sugars & Chemical Ltd.'s. case (supra), the honourable Supreme Court has emphasized that the character of receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. The purpose test has to be applied. The point of time at which the subsidy is given is not relevant. The source is immaterial. The form of subsidy is immaterial. The main condition and with which the court should be concerned is that the incentive must be utilized by the assessee to set up a new unit or for substantial expansion of the existing unit. If the object of the subsidy scheme is to enable the assessee to run the business more profitably then the receipt is on the revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit then the receipt of subsidy was on the capital account.*
>
> *7. We do not find any justification for the Revenue questioning the con-current findings of fact in the present case. The concurrent findings of fact do not raise any substantial question of law. There is no perversity in rendering such findings and the purpose of assistance given by the Government through SICOM. In such circumstances the Revenue should not have questioned the concurrent orders in the case of the present assessee. Once the undisputed facts point towards the object and that being to enable the assessee to set up a new unit then the matter is squarely covered by the judgments of the Division Bench of this court and equally that of the honourable Supreme Court.*
>
> *8. We are afraid that if the Revenue persists with such stand and as has been turned down repeatedly, that would defeat the very object and purpose of the schemes and packages devised by the States. That would also result in frustrating the entrepreneurs and defeating the purpose of setting up new industries and particularly in backward areas. The Revenue, there-fore, should bear in mind that in every such case and whenever the funds or receipts are from the schemes and packages devised by the State, it should note the object and purpose of the same. If that is of the nature specified in the judgments of this court and equally that of the honourable Supreme Court then the Revenue must act accordingly. We hope that this much is enough so as to dissuade the Revenue from bringing such matters repeatedly to this court. Ordinarily and for wasting judicial time and which is precious, we would have imposed heavy costs on the Revenue while dismissing this appeal but we refrain from doing so by giving last opportunity to the Revenue. This appeal does not raise any substantial question of law. It is dismissed. No order as to costs."*

69. Upon analysing the incentives/subsidy received by the assessee under the Package Scheme of Incentives, 2007, in light of the purpose test as envisaged by the Hon'ble Supreme Court in Ponni Sugars and Chemicals Ltd. (supra) and Sahney Steel & Press Works Ltd. (supra), we are of the considered view that incentives/subsidy granted was only to encourage the setting up of industries in the less developed areas of the State and the same was not for the purpose of running the business more profitably. Accordingly, respectfully following the aforesaid decisions, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue in treating the subsidies as capital in nature. As a result, ground no.10, raised in Revenue's appeal is dismissed."

65. Since in the year under consideration, the assessee received the impugned subsidy under under Package Scheme of Incentives, 2007 of the Government of Maharashtra, therefore, respectfully following the decision rendered in assessee's own case cited supra, we find no infirmity in the impugned order on this issue in treating the subsidies as capital in nature. As a result, ground no.7 raised in Revenue's appeal is dismissed.

66. The issue arising in ground no.8, raised in Revenue's appeal, pertains to the deletion of the addition of the electricity grant received from the Government of Haryana.

67. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee credited a sum of Rs.13 lakh in its Profit and Loss account as electricity grants receivable from the Government of Haryana but the same was not considered as taxable. During the assessment proceedings, the assessee was asked the reason for its non-taxability. In response thereto, the assessee submitted that the State Government of Haryana had come out with the Industrial Policy, 2005 which envisages grant of fiscal incentives to re-establish industry and dispersal of economic activities particularly in economically and socially backward regions of the State. It was submitted that assessee's plant in IMT Rohtak village, Haryana is entitled to financial assistance under the aforesaid Industrial Policy, 2005, and accordingly, the assessee credited a sum of Rs.13 lakh towards the electricity grant receivable from the Government of Haryana under Mega Project in Backward Area of the State Government of Haryana. The assessee

also submitted that the object of the subsidy/incentives/grant was to encourage the setting up of industries in the backward area.

68. The AO, vide assessment order, did not agree with the submissions of the assessee and held that the nature of the subsidy received by the assessee appears to be revenue in nature as the availability of the incentive was linked to a period of five years from the date of commencement of production. Accordingly, the AO treated the electricity grant of Rs.13 lakh as a revenue receipt and added the same to the total income of the assessee.

69. The learned CIT(A), vide impugned order, by following the decision of the Hon'ble Supreme Court in CIT v/s Ponni Sugars and Chemicals Ltd., [2008] 306 ITR 392 (SC) allowed the ground raised by the assessee on this issue and held that the subsidy received by the assessee is capital in nature. Being aggrieved, the Revenue is in appeal before us.

70. Having considered the submissions of both sides and perused the material available on record, we find that while deciding a similar issue pertaining to the taxability of electricity grant received from the Government of Haryana under Industrial Policy, 2005, the coordinate bench of the Tribunal vide order dated 06/03/2024 passed in assessee's own case in ACIT v/s Asian Paints Ltd., in ITA No.840/Mum./2018, for the assessment year 2014-15 held that the incentives/subsidy received by the assessee is capital in nature as the same has been received under the Industrial Policy, 2005 of the Government of Haryana for setting up a project at Industrial Model Township, Rohtak for the manufacturing of paints and the same was not to enable the assessee to run its business more profitably. The relevant findings of the coordinate bench, in the aforesaid decision, are as under:-

> *"61. We have considered the submissions of both sides and perused the material available on record. From the perusal of the Industrial Policy, 2005 of the Government of Haryana, forming part of the paper book from pages 224-256, we find that the key objective of the Industrial Policy was, inter-alia, to re-establish the industry as a key driver of economic growth and to facilitate spatial dispersal of economic activities particularly in economically and socially backward regions of the State. Under the aforesaid Industrial Policy, incentives and privileges were provided by way of exemption from electricity duty, preferential allotment of land for the IT industry, continuous-uninterrupted*

power supply for the IT industry, relaxation in floor area regulation, rebate on registration and transfer of property charges, etc. We find that vide letter dated 20/07/2007, forming part of the paper book on page 257, the assessee was granted the following special package of incentives/concessions for setting up a project at Industrial Model Township, Rohtak for the manufacturing of paints:-

> *"i) Financial assistance in the form of Interest Free Loan (IFL) on 50% of the tax paid on the sale of goods in the State of Haryana, under the Haryana Value Added Tax Act, 2003 for a period of 7 full financial years. The 7 full financial years of financial assistance stated above to begin with the financial year following the year of start of commercial production. IFL for each financial year would be repayable after a period of 5 years from the date of the respective IFL. In case of an unified GST regime roll-out befote the end of the 7 financial years, the above stated financial assistance should continue to be protected.*
>
> *ii) Full 100% exemption from LADT for a period of 8 full financial years, beginning with the financial year after the year of start of commercial production.*
>
> *iii) Full 100% exemption from electricity duty for a period of 5 full financial years.*
>
> *iv) Allotment of land at bulk rate of Rs.62 lacs per acre."*

62. The issue that arises for our consideration is whether the 100% exemption from electricity duty received by the assessee is capital or revenue in nature. While deciding ground no.7, raised in Revenue's appeal, we noted that the Hon'ble Supreme Court in Ponni Sugars and Chemicals Ltd. (supra) and Sahney Steel & Press Works Ltd. v. CIT [1997] 228 ITR 253 (SC) laid down the purpose test. Thus, if the purpose of the subsidy is to set up a new unit or substantial expansion of the existing unit then the subsidy is treated as capital in nature. However, if the purpose of the subsidy is to enable the assessee to run the business more profitably then the receipt is revenue in nature. Analysing the incentives/subsidy received by the assessee under the Industrial Policy, 2005 of the Government of Haryana, it is sufficiently evident that the incentives/subsidy was received for setting up a project at Industrial Model Township, Rohtak for the manufacturing of paints and the same was not to enable the assessee to run its business more profitably. Accordingly, we find no infirmity in the impugned order in treating the electricity grant received by the assessee as capital in nature. As a result, ground no.8 raised in Revenue's appeal is dismissed."

71. Since in the year under consideration, the assessee received the electricity grant under the Industrial Policy, 2005 of the Government of Haryana, therefore, respectfully following the decision rendered in assessee's own case cited supra, we find no infirmity in the impugned order on this issue in treating the electricity grant as capital in nature. As a result, ground no.8 raised in Revenue's appeal is dismissed.

72. In the result, the appeal by the Revenue is partly allowed for statistical purposes.

73. To sum up, the appeal by the assessee as well as by the Revenue are partly allowed for statistical purposes.

Order pronounced in the open Court on 08/03/2024

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 08/03/2024

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.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai