IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER

ITA No.790 and 791/Bang/2008
Assessment Year : 2002-03 and 2003-04

M/s. ABB Ltd., II Floor, East Wing, Khanija Bhavan, Race Course Road, Bengaluru-560 001. **PAN : AAACA 3834 B**	Vs.	The Deputy Commissioner of Income Tax (LTU), Bengaluru.
APPELLANT		**RESPONDENT**

ITA No.896 and 897/Bang/2008
Assessment year : 2002-03 and 2003-04

The Assistant Commissioner of Income Tax (LTU), Bengaluru.	Vs.	M/s. ABB Ltd., Bengaluru-560 001. **PAN : AAACA 3834 B**
APPELLANT		**RESPONDENT**

Assessee by	:	Shri. Percy Pardiwala, Sr. Advocate
Revenue by	:	Shri. K. V. Aravind, Standing Counsel

Date of hearing	:	15.07.2021
Date of Pronouncement	:	23.07.2021

O R D E R

Per Bench

ITA No.896/Bang/2008 a0 n appeal by the Revenue while ITA No.790/Bang/2008 is an appeal by the assessee. Both these appeals are

directed against the order of the CIT(A), LTU, Bengaluru, relating to Assessment Year 2002-03.

2. **ITA No.896/Bang/2008 (Revenue's Appeal):** Ground Nos.1 and 10 of the grounds of appeal raised by the Revenue are general in nature and does not call for any specific adjudication. Ground No.2 raised by the Revenue reads as follows:

> *2. The Id. CIT(A) erred in directing the AO to allow deduction under sec. 80HHB when no separate books in respect of foreign project were maintained.*

3. The assessee is a company engaged in the business of various engineering, fabrication and manufacturing and trading of mechanical, electrical and other engineering items. At the time of hearing, learned Counsel for the assessee submitted that the issue raised by the Revenue in Ground No.2 is identical to the issue raised by the Revenue in Assessment Year 2001-02 in ITA No.3959/Mum/2004 which has already been decided by this Tribunal by order dated 18.03.2020. The facts in relation to the aforesaid ground are that the assessee claimed deduction of a sum of Rs.10 lakhs under section 80HHB of the Income Tax Act, 1961 (hereinafter called 'the Act'). The aforesaid deduction is allowed to assessee executing foreign projects in pursuance to foreign contracts entered into by it with a foreign enterprise. The expression foreign project is defined in clause (b) of sub-section 2 to section 80HHB of the Act to *inter alia* to mean a project for the assembly or installation of any machinery or plant outside India. The AO did not allow the claim for the assessee by following his own order in Assessment Year 1999-2000 and 2000-01 on similar claim made by the

assessee. In those Assessment Years, the deduction under section 80HHB of the Act was not allowed to the assessee for the reason that the assessee did not maintain separate books of accounts in respect of the profits and gains derived from the business of executing foreign projects. On appeal by the assessee, the CIT(A) allowed the claim of the assessee by following his predecessors' order on an identical issue for Assessment Year 2001-02. The conclusion of the CIT(A) was that it is enough if separate accounts are maintained and it is not necessary that separate books of accounts are to be maintained.

4. Aggrieved by the order of the CIT(A), the Revenue has raised ground No.2. Learned Counsel for the assessee pointed out that identical issue was decided by this Tribunal in Assessment Year 2001-02 in ITA No.755/Bang/2007, order dated 04.03.2021 and the Tribunal in paragraph 57 of the order, followed the Tribunal's decision for Assessment Year 1999-2000 in ITA No.3330/Mum/2004. The Tribunal noticed that though separate books of accounts were not maintained separate accounts were maintained in respect of each foreign project and audit certificates in Form No.10CCAH have also been furnished in respect of each project. In these circumstances, we are of the view that the decision rendered by the Tribunal in assessee's own case for the earlier Assessment Years on identical ground would apply and therefore the assessee cannot be denied the benefit of deduction under section 80HHA of the Act on the ground that separate books of accounts were not maintained for the foreign projects. Ground No.2 raised by the Revenue is accordingly dismissed

5. Ground No.3 raised by the Revenue reads as follows:

> *3. The Id. CIT(A) erred in allowing the claim of expenses towards entrance and the subscription fees paid by the assessee to clubs holding them to be revenue expenditure.*

6. As far as the above ground is concerned, the law is well settled that entrance fee and membership fees paid where the employees become members is allowable as a business expenditure and was allowed as deduction in Assessee's own case in AY 1999-2000. When membership of a club is taken in the name of director, it is for the assessee-company to prove that membership was obtained solely for the purpose of business. [New India Extrusions (P) Limited v ACIT 10 Taxmann.com 165]. Further Entrance fees paid towards corporate membership of the club is an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account as it only facilitates smooth and efficient running of a business enterprise and does not add to the profit earning apparatus of a business enterprises and accordingly CIT (A) was justified in deleting the disallowances of entrances fee made by the Assessing Officer. [Dy. CIT vs. Bank of America Securities (India) (P) Ltd. 136 TTJ 441]. Again, Corporate membership fees payable to club is revenue exp. [CIT v Samtel Colour Limited 326 ITR 425]. Ground No.3 is accordingly dismissed.

7. Ground No.4 raised by the Revenue reads as follows:

> *4. The ld. CIT(A) erred in allowing the claim of the assessee amounting to Rs.9,33,995 being R & D expenditure under section*

35(1)(iv) when the activity claimed to be the R & D activity is part of normal business of the assessee.

8. The facts with reference to this ground are that the assessee had incurred an expenditure of Rs.9,33,995/- on research and development. The expenditure was incurred at the assessee's research and development centre, was in the nature of capital expenditure. The break-up of the expenditure incurred on acquisition of various assets was given to the AO by the assessee. The kind of research activities that were carried out at the units was also explained before the AO.

9. These units have been approved by the Ministry of Science & Technology of the Government of India as in-house research units. The AO, for the reasons given in paragraph 9 of his order, has come to the conclusion that the assessee has not carried out any research & development activities, which would enable deduction under section 35 to be granted to it. It was the case of the assessee that the AO has no jurisdiction to determine whether the assessee was carrying out any research activities. Sub-section (iii) of section 35 makes it clear that if any question arises as to whether, and if so, to what extent, any activity constitutes or constituted or any asset is or was being used for, scientific estimate research, it is not for the AO, who has jurisdiction to determine the issue; but the issue would have to be determined either by the Central Government or the prescribed authority. Rule 5 prescribes that the authority is to be Director General in concurrence with the Secretary, Dept. of Scientific and Industrial Research, Government of India. Having regard to the fact that the authority has renewed the approval granted to the assessee’s research & development units, it was

submitted by the Assessee that the assessee's activities constitute scientific research activities and the AO was not justified in his conclusion. In this regard reliance was placed on the judgement of the Allahabad High Court reported in 105 ITR 854 at pages 834-837 wherein the High Court held that if the Income-tax Officer does not accept the assessee's claim for deduction under section 35B, he has no option, but to refer the issue to the prescribed authority and in the event such option is not exercised, the deduction ought to be allowed as claimed.

10. The CIT(A) allowed the claim of the Assessee. The revenue is in appeal against the order of the CIT(A).

11. At the time of hearing, it was brought to our notice that identical issue was decided by the Hon'ble Karnataka High Court in the case of Tejas Network Ltd. Vs. DCIT (2015) 60 taxmann.com 309 (Karn.) and it was held that where assessee claimed deduction under section 35(2AB) pursuant to certificate issued by prescribed authority, i.e., Department of Scientific & Industrial Research (DSIR), approving such claim, Assessing Officer could not have denied weighted deduction under section 35(2AB) in respect of scientific expenditure. It was held that Assessing Officer cannot sit in judgment over report submitted by prescribed authority . It was held that where Assessing Officer does not accept claim of assessee made under section 35(2AB), he should refer the matter to Board, which will then refer question to the prescribed authority. In view of the aforesaid decision, we are of the view that there is no merit in ground No.4 raised by the Revenue.

12. Ground No.5 raised by the Revenue reads as follows:

5. The Id. CIT (A) erred in allowing the claim of expenses on the basis of purchase of packing materials, loose tools and consumables in the year of purchase without regard to actual consumption thereof.

13. The facts with regard to this ground are that the assessee consistently used to follow the method of writing off the packing materials, loose tools and consumables that are purchased in a year without taking an inventory of the same at the end of the year. This method has always been accepted in the past. According to the assessee, the method is also in accordance with accounting principles. The AO for the first time whilst completing the assessment for AY 2000-01, has come to the conclusion that this methodology is not permissible and in the present AY estimated the closing inventory of the aforesaid items at 18.8% of the amounts charged to the profit and loss account. In determining this percentage, the AO took the basis as ratio of Inventory of finished goods in relation to consumption of raw materials.The action of the AO resulted in an addition of Rs.2,65,15,000/- to the total income of the assessee as value of closing stock.

14. On appeal by the assessee, the CIT(A) deleted the addition made by the AO by following the order of the CIT(A) on identical issue for Assessment Year 2000-01 and 2001-02. At the time of hearing, it was brought to our notice that identical issue was decided by the Tribunal in Assessment Year 2000-01 in ITA No.3959/Mum/2004 order dated 08.03.2020 and the Tribunal held as follows:

"We have given a careful consideration to the rival submissions and are of the view that the order of the CIT(A) on this issue has to be upheld. Admittedly the method of accounting followed by the Assessee

was consistent and accepted in the past by the Revenue authorities. There is no reason why the same should be disturbed. The decision in the case of Abdul Latif (supra) supports the plea of the Assessee. In the said decision, the facts were that the Assessee was engaged in business of manufacture of papers. In return of income for AY 2005-06, assessee had shown, inter alia, purchases of packing material as on 31-3-2005, but no amount of packing material was shown in closing stock. The Assessee submitted before Assessing Officer that; (i) packing material shown as purchases as on 31-3-2005 was actually purchased in earlier months and such packing material was consumed during process; (ii) on account of some computer problem, bills were posted on 31-3-2005, and (iii) entire packing material left after end of year became obsolete and, therefore, it was not shown in closing stock. The Assessing Officer rejected account books of assessee and made certain addition to his income. The Tribunal held that:- (i) it was not case of revenue that purchases as debited as on 31-3-2005 were not genuine, and (ii) assessee was following a consistent method of valuing closing stock by including packing material as consumed at time of purchase. Rejection of account books of assessee and addition to his income was held to be not justified. We therefore uphold the order of CIT(A) on this issue and dismiss ground No.5 raised by the Revenue."

15. Respectfully following the order of the Tribunal rendered on identical facts and circumstances, we uphold the order of the CIT(A) and dismiss ground No.5 raised by the Revenue.

16. Ground Nos.6 and 9 raised by the Revenue are identical and they can be disposed together and these grounds read as follows:

6. The Id. CIT(A) erred in directing exclusion of the amount of excise duty and sales tax from the 'total turnover' for the purpose of computing deduction under section 80HHC as such direction is opposed to the provisions of section 145A of the Act introduced w.e.f. 1.4.1999.

9. The ld.CIT(A) erred in directing exclusion of the amount of excise duty and sales tax from the 'total turnover' for the purpose of computing deduction under section 80HHE as such direction is opposed to the provisions of section 145A of the Act introduced w.e.f. 1.4.1999.

17. As far as ground Nos.6 and 9 raised by the Revenue is concerned, the issue is as to whether sales tax and central excise duty collected by the assessee should be taken as forming part of the turnover for the purpose of calculating deduction under section 80HHC of the Act. The AO held that sales tax and central excise duty is to be regarded as a part of the turnover for computing deduction under section 80HHC of the Act. The CIT(A), however, following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Lakshmi Machine Works (290 ITR 667) (SC) held that the sales tax and central excise duty should not be included as a part of the total turnover while computing deduction under section 80HHC of the Act. In view of the aforesaid decision of the Hon'ble Supreme Court in the case of Lakshmi Machine Works (supra), which has settled the issue, we are of the view that there is no merit in ground Nos. 6 and 9 raised by the Revenue. We may also mention that the provisions of 80HHC which is the applicable provision for ground No. 6 and the provisions of section 80HHC of the Act which is the applicable section for ground No.9, are identical.

18. Ground No.7 raised by the Revenue reads as follows:

7. The Id. CIT(A) erred in directing exclusion of amount of deduction allowed under section 801A from the business profits for the purpose of computation of deduction under section 80HHC if the export divisions have not claimed deduction under section 80IA as such direction is opposed to the provisions of section 80IB(13) rws

80IA(9) in as much as the profits of the units claiming deduction under section 80IA stand included in' business profits' for the purpose of computing deduction under section 80HHC irrespective of the fact that no deduction under section 80IA may have been claimed in respect of export divisions of the assessee.

19. The assessee had claimed deduction under section 80IA of the Act as well as 80HHC of the Act. While computing deduction under section 80HHC of the Act, the assessee had not reduced deduction claimed under section 80IA of the Act. According to the AO, in view of the provisions of section 80IA(9) of the Act, where deduction under section 80IA of the Act is allowed to an industrial undertaking in any Assessment Year, deduction to the extent of such profits and gains of the industrial undertaking shall not be allowed under any other provisions of Chapter VI-A of the Income Tax Act for the very same Assessment Year. The AO accordingly reworked the deduction under section 80HHC of the Act by excluding deduction allowed under section 80IA of the Act from the profits of business while allowing deduction under section 80HHC of the Act. On appeal by the assessee, the CIT(A) directed the AO to allow the deduction under section 80HHC of the Act without reducing the deduction under section 80IA of the Act. In coming to the aforesaid conclusion, the CIT(A) has given a finding that none of the export division which have claimed deduction under section 80HHC of the Act have also claimed deduction under section 80IA of the Act.

20. Aggrieved by the aforesaid order of the CIT(A), the Revenue has raised ground No.7 before the Tribunal. As can be seen from the grounds of appeal raised by the Revenue, the Revenue has not disputed the factual findings rendered by the CIT(A) that none of the export division which have

claimed deduction under section 80HHC of the Act have also claimed deduction under section 80IA of the Act. Learned Counsel for the assessee submitted that the Hon'ble Karnataka High Court in the case of Millipore India Pvt. Ltd., 341 ITR 219 (Karnataka) has taken a view that in arriving at profits on business under sub-section 3 of section 80HHC of the Act, the legislature has specifically set out what are the receipts which are to be excluded from such computation. In arriving at profits of business under sub-section 3 of section 80HHC to find out the profits and gains of export business, the exclusion of deduction claimed under section 80IA is not contemplated or included. The learned DR on the other hand submitted that on identical issue, a Division Bench of the Hon'ble Supreme Court in the case of ACIT Vs. Microlab Ltd., 380 ITR 1 (SC) has rendering conflicting decisions, one judge taking the view that an assessee who has claimed deduction in respect of profits under section 80IB of the Act cannot be allowed deduction in respect of the same profit under section 80HHC of the Act, the other Hon'ble Judge taking a contrary view. The matter has been placed before the Hon'ble Chief Justice for a reference to a larger Bench. According to him, therefore, the issue should be remanded to AO to await the decision of the larger Bench of the Hon'ble Supreme Court on the issue.

21. We have considered the rival submissions. We find that in the case of Microlabs Ltd., the factual background of the case was that the assessee had claimed deduction under section 80HHC as well as 80IA of the Act in respect of the same profits. As we have already observed, the CIT(A) has given the clear finding that none of the export division of the assessee which claimed deduction under section 80HHC of the Act have also claimed

deduction on the same profits under section 80IA of the Act. In the grounds of appeal, the Revenue has not disputed this factual aspect. The grievance projected in ground of appeal by the Revenue is that the profits of the 80-IA units will stand included in the business profits of the 80HHC unit and deduction will be computed on the business profits of the 80HHC unit. Reading of the provisions of section 80IA(9) of the Act would show that the prohibition contained therein is only against inclusion of profits and gains of an industrial undertaking which was claimed and allowed as deduction under section 80IA of the Act being included and allowed deduction under any other provisions of Chapter VI-IA of the Act. Therefore when the deduction under section 80IA has not been claimed on the profits of the industrial undertaking, there was no question of applying the provisions of section 80IA(9) of the Act. In this factual background of the case, we are of the view that the relief allowed by the CIT(A) is in order and does not call for any interference. We may also add that the decisions referred to by the parties before us do not require any consideration in view of the factual background of the present case. Accordingly, ground No.7 raised by the Revenue is dismissed.

22. Ground No.8 raised by the Revenue reads as follows:

> *8. The Id. CIT (A) erred in directing the AO to exclude 90% of the 'net interest income'instead of 'gross interest receipts' from the profits and gains of business or profession' to arrive at 'business profit under clause (baa) for the purpose of computation of deduction under sec.80HHC particularly in view of use of expression `receipt' and not 'income' in the said clause.*

23. While computing deduction under section 80HHC of the Act, the AO excluded 90% of the interest income from the profits and gains of business to arrive at the business profits for the purpose of computing deduction under section 80HHC of the Act. The AO did so by relying on clause baa of explanation to section 80HHC of the Act. On appeal by the assessee, the CIT(A) took the view that it is only the net interest income that has to be reduced under explanation baa to section 80HHC of the Act and not the gross interest as has been done by the AO. The CIT(A) also observed that the assessee has to establish the nexus between the interest received and the interest paid to claim the benefit of netting. The following are the observations of the CIT(A):

> *"12.5 As far as interest income is concerned, it is the appellant's claim that what is to be reduced is the 'net interest, and not 'gross interest' as has been done by the AO. For this claim the appellant had relied on the decision of the Delhi High Court reported in 289 ITR 475, in the appeal for the assessment year 2004-05. It is further argued that in view of the decision relied on, the question of making reduction on this count does not arise as the interest paid is far in excess of the interest earned. In effect, the appellant is not contesting the issue of reducing the interest from the profits, but what is contested is the reduction of 'gross interest'. I have gone through the decision of the Delhi H.0 relied upon by the appellant. Respectfully following this decision, the AO is directed to reduce only the 'net interest' and not 'gross interest' for the purpose of computing deduction u/s 80HHC. However, the AO should keep in mind the observations of the Delhi High Court cited above and the relevant portion of which has been reproduced in the appellate order for the assessment year 2004-05 at pages 27 to 29. It has been observed by the Hon' ble High Court that the nexus between obtaining the loan and paying interest thereon for the purpose*

of earning the interest on the fixed deposits, to draw an analogy from section 37, will be required to be shown by the assessee for application of the netting principle."

24. Aggrieved by the order of the CIT(A), the Revenue has raised ground No.8 before the Tribunal. At the time of hearing, learned Counsel for the assessee brought to our notice decision of the Tribunal rendered on an identical year for Assessment Year 2001-02 in ITA No.562/Bang/2007 order dated 04.03.2021 wherein the Tribunal accepted a similar decision rendered by the CIT(A) in Assessment Year 2001-02. Learned DR reiterated the stand of the Revenue as reflected in the grounds of appeal. Learned Counsel for the assessee relied on the order of the Tribunal in assessee's own case on an identical issue for Assessment Year 2001-02.

25. We have considered the rival submissions and are of the view that the principle of netting has been recognized by the various decisions of Hon'ble High Courts and has also been affirmed by the Hon'ble Supreme Court in the case of ACG Associated Capsules Vs. CIT 343 ITR 89 (SC). The principle of netting is however applicable only on the assessee establishing nexus between the interest paid and the interest earned. If such nexus is proved, it is only the net interest that has to be excluded under explanation baa to section 80HHC of the Act.

26. In view of the aforesaid legal position, we are of the view that there is no merit in ground No.8 raised by the Revenue and accordingly the same is dismissed.

27. In the result, Revenue's appeal is dismissed.

28. <u>ITA No.897/Bang/2008 Revenue's appeal for AY 2003-04:</u> In this appeal, the grounds of appeal raised by the Revenue are identical to grounds of appeal raised by the Revenue in Assessment Year 2002-03. For the sake of ready reference, the grounds of appeal are reproduced:

1. *The order of the Id. CIT (Appeals) is opposed to law and facts of the case*

2. *The ld. CIT(A) erred in directing the AO to allow deduction under sec. 80HHB when no separate books in respect of foreign project were maintained.*

3. *The ld. CIT(A) erred in allowing the claim of expenses towards entrance and the subscription fees paid by the assessee to clubs holding them to be revenue expenditure.*

4. *The ld. CIT (A) erred in allowing the claim of expenses on the basis of purchase of packing materials, loose tools and consumables in the year of purchase without regard to actual consumption thereof.*

5. *The ld. CIT (A) erred in directing exclusion of the amount of excise duty and sales tax from the 'total turnover' for the purpose of computing deduction under section 80HHC as such direction is opposed to the provisions of section 145A of the Act introduced w.e.f. 1.4.1999.*

6. *The ld.CIT(A) erred in directing exclusion of amount of deduction allowed under section 80IB from the business profits for the purpose of computation of deduction under section 80HHC if the export divisions have not claimed deduction under section 80IB as such direction is opposed to the provisions of section 80IB(13) rws section 80IA(9) in as much as the profits of the units claiming deduction under section 80IB stand included in 'business profits' for the purpose of computing deduction under section 80HHC irrespective of the fact that no deduction under section 80IB may have been claimed in respect of export divisions of the assessee.*

7. *The Id. CIT (A) erred in directing the AO to exclude 90% of the 'net interest income' instead of 'gross interest receipts' from the profits*

and gains of business or profession' to arrive at 'business profit under clause (baa) for the purpose of computation of deduction under sec.80HHC particularly in view of use of expression 'receipt' and not 'income' in the said clause.

8. *The ld.CIT (A) erred in directing exclusion of the amount of excise duty and sales tax from the 'total turnover' for the purpose of computing deduction under section 80HHE as such direction is opposed to the provisions of section 145A of the Act introduced w.e.f. 1.4.1999*

9. *The appellant craves to leave to add/alter/amend/and/or delete any of the grounds on or before the hearing of appeal.*

29. The grounds of appeal raised by the revenue arise under identical facts and circumstances as it prevailed in AY 2002-03 as was submitted by the parties before us. The reasons given for decision rendered on identical grounds for AY 2002-03 would therefore equally apply to the grounds raised by the revenue in AY 2003-04 also. For the reasons given while deciding identical grounds for Assessment Year 2002-03, we find no merits in any of the grounds raised by the Revenue for Assessment Year 2003-04 also and accordingly the appeal by the Revenue for Assessment Year 2003-04 is also dismissed.

30. In the result, both the appeals of the Revenue are dismissed.

31. We shall now take up the appeals filed by the assessee for assessment years 2002-03 & 2003-04.

Grounds of appeal for the A.Y. 2002-03:

Your appellant being dis-satisfied with the order passed by the Learned Commissioner of Income Tax (Appeals) LTU, Bangalore KIT (A)') dated March 27, 2008, presents this appeal on the following grounds :-

1. *The learned CIT(A) erred in confirming the disallowance made by the Assessing Officer of Rs. 18,387,232/- (Rs. 869,160/- + Rs. 17,518,072/-) being advances written off.*

   It is submitted that the Company had made advance to M/s. National Switchgear Limited (NSL), which is promoted by appellant to complement manufacturing facility. The company was making losses and as appellant was the promoter of the company, appellant had to finance the loss and it had been shown as advance to the National Switchgear Limited. Ultimately National Switchgear Limited went into liquidation.

   As regards disallowance of write off of advance of Rs. 869,160/- is concerned appellant had made payment of customs duty due to non-fulfillment of export obligation under EPGC scheme. At the time of payment it was shown as advance to the customs but when it became certain that customs duty is payable, company has written off this amount being a charge on revenue.

   It is submitted that these advances were made during the course of the business and written off during the year. Further, it is submitted that considering the nature of advances, the Learned CIT (A) ought to have allowed the deduction.

   It is further submitted that above write off is allowable as deduction while computing total income. The appellant rely on the ITAT decision in it's own case for the Assessment Year 1987-88.

2. *The Learned CIT(A) erred in confirming disallowance of the claim for deduction for a sum of Rs. 635,578/- being deduction claimed under section 80-0 of the Income-tax Act, 1961 (`the Act'), at 30% of fees received for supply of engineering designs and drawings outside India.*

   *It is submitted that the claim is for fees received for developing and providing designs and drawings. As per the provision of section 80-0 of the Act, design**and drawings need not be registered for availing the deduction under the aforesaid section. In facts and circumstances of the case your appellant is entitled for deduction u/s. 80-0 of the Act for fees received in foreign currency.***

3. ***The Learned CIT(A) erred in granting partial relief and confirming the balance disallowance made under section 14A of the Act being expenses incurred for earning the dividend from the investment made out of the interest bearing funds.***

   It is submitted that no investment has been made out of the interest bearing funds and therefore the CIT(A) ought to have held as such.

4. ***The Learned CIT(A) erred in holding that the expenditure of Rs. 23,826,327/-being amount spent towards Repairs and Maintenance of leasehold premises is capital expenditure.***

5. ***The Learned CIT(A) erred in confirming that while arriving at business income for the purpose of deduction u/s 80HHC of the Act, 90% of other income should be excluded under clause (baa) of the explanation below section 80HHC of the Act which includes receipts like rental income, insurance claim received, refund of sales tax, miscellaneous operating income, commission and notice pay. It is further submitted that while computing income from business, dividend and tax free interest income, profit on sale of fixed assets have already been reduced and excluding the same again will amount to double exclusion of it from business income.***

6. ***The Learned CIT(A) erred in confirming that while arriving at business income for the purpose of deduction u/s 80HHE of the Act, 90% of other income should be excluded under clause (baa) of the explanation below section 80HHE of the Act which includes receipts like rental income, insurance claim received, refund of sales tax, miscellaneous operating income, commission and notice pay. It is further submitted that while computing income from business, dividend and tax free interest income, profit on sale of fixed assets have already been reduced and excluding the same again will amount to double exclusion of it from business income.***

7. ***The Learned CIT(A) erred in confirming that Head Office expenses is required to be allocated while arriving at the profit of the industrial undertaking for the purpose of allowing deduction u/s 80-IA of the Act.***

   Without prejudice, it is further submitted that allocation of expenditure is on a very higher side and it should be reduced substantially.

Grounds of appeal for the A.Y. 2003-04:

Your appellant being dis-satisfied with the order passed by the Learned Commissioner of Income Tax (Appeals) LTU, Bangalore (CIT (A)) dated March 27, 2008, presents this appeal on the following grounds :-

1. *The learned CIT(A) erred in confirming the disallowance made by the Assessing Officer of Rs. 9,676,411/- being advances written off.*

   It is submitted that the Company had made advance to M/s. National Switchgear Limited (NSL), which is promoted by appellant to complement manufacturing facility. The company was making losses and as appellant was the promoter of the company, appellant had to finance the loss and it had been shown as advance to the National Switchgear Limited. Ultimately National Switchgear Limited went into liquidation.

   It is submitted that these advances were made during the course of the business and written off during the year. Further, it is submitted that considering the nature of advances, the Learned CIT (A) ought to have allowed the deduction.

   It is further submitted that above write off is allowable as deduction while computing total income. The appellant rely on the ITAT decision in it's own case for the Assessment Year 1987-88.

2. *The Learned CIT(A) erred in granting partial relief and confirming the balance disallowance made under section 14A of the Act being expenses incurred for earning the dividend from the investment made out of the interest bearing funds.*

   It is submitted that no investment has been made out of the interest bearing funds and therefore the CIT(A) ought to have held as such.

3. ***The** Learned CIT(A) erred in holding that the expenditure of Rs. 10,805,804/-being amount spent towards Repairs and Maintenance of leasehold premises is capital expenditure.*

4. *The Learned CIT(A) erred in confirming that while arriving at business income for the purpose of deduction u/s 80HHC of the Act, 90% of other income should be excluded under clause (baa) of the explanation below section 80HHC of the Act which includes receipts*

like rental income, insurance claim received, refund of sales tax, miscellaneous operating income, commission and notice pay. It is further submitted that while computing income from business, dividend and tax free interest income, profit on sale of fixed assets have already been reduced and excluding the same again will amount to double exclusion of it from business income.

Further, the Learned CIT(A) erred in not opining on the issue of indirect cost attributable to trading goods exported outside India.

It is submitted that the Assessing Officer erred in arriving at indirect cost attributable to trading goods exported at Rs.53,942,380 as against Rs.13,635,340 calculated by the appellant and arriving at loss from export of trading goods at Rs.18,043,053 as against profit of Rs.22,263,987 calculated by the Appellant.

5. *The Learned CIT(A) erred in confirming that while arriving at business income for the purpose of deduction u/s 80HHE of the Act, 90% of other income should be excluded under clause (baa) of the explanation below section 80HHE of the Act which includes receipts like rental income, insurance claim received, refund of sales tax, miscellaneous operating income, commission and notice pay. It is further submitted that while computing income from business, dividend and tax free interest income, profit on sale of fixed assets have already been reduced and excluding the same again will amount to double exclusion of it from business income.*

6. *The Learned CIT(A) erred in confirming that Head Office expenses is required to be allocated while arriving at the profit of the industrial undertaking for the purpose of allowing deduction u/s 80-IA of the Act.*

7. *Without prejudice, it is further submitted that allocation of expenditure is on a very higher side and it should be reduced substantially.*

32. Since identical grounds are being in urged in both the years, except one additional ground raised in AY 2002-03, common grounds are adjudicated together. The first common issue urged in both the appeals relate

to disallowance of claim made by the assessee towards write off of advances amount. In assessment year 2002-03, the assessee wrote off two advances namely:

a. Customs Duty paid due to non-fulfillment of export obligation under EPCG scheme -Rs.8,69,160/-
b. Advance given to M/s. National Switchgear Ltd. (NSL) being a company promoted by the assessee - Rs.1,75,18,072/-

In assessment year 2003-04, the assessee has written off advance of Rs.96,76,471/- given to NSL.

33. With regard to claim of write off of Rs.8,69,160/-, the A.O. equated the same as write off on bad debts and accordingly held that the assessee has no6t proved that the above said amount was declared as income of the assessee in any of the years, which is condition imposed u/s 36(2) for allowing bad debts u/s 36(1)(vii) of the Act. He also took the view that the assessee has not able to substantiate as to why the above said amount was shown as receivable and under what circumstances the amount has been actually written off. Accordingly, he disallowed the claim of Rs.8,69,160/-. The Ld. CIT(A) also concurred with the view taken by A.O.

34. The Ld. A.R. submitted that the assessee had imported certain capital goods at concessional rate of customs duty under 'Export Promotion of Capital Goods Scheme' (EPCG scheme). The concession in customs duty amounting to Rs.8,69,160/- was shown as receivable. One of the conditions

imposed in order to avail such concessional rate was that the appellant should fulfill certain export obligation within a period of 5 years. Since the assessee could not fulfill the condition of meeting export obligation, it got extension for completing the export obligation. In the mean while, the Government announced certain amendments in the EPCG, according to which Government agreed to consider "deemed exports" also as part of export obligation to be fulfilled under EPCG scheme. As per relaxation so given, it was provided that the assessee could avail this benefit only if it has not claimed any deemed export benefit like duty drawback. Since the assessee had already availed benefit of deemed export and shown the same as income, it became ineligible for the benefits of relaxed schemealso. Hence the amount of Rs.8,69,160/- became no longer receivable from the Government and accordingly, the assessee chose to write off the above said amount by following due procedure. Inviting our attention to pages 159, 224 & 225 of the paper book, the Ld. A.R. submitted that the assessee has furnished relevant details before Ld. CIT(A) in respect of this claim. Accordingly, the Ld. A.R. submitted that the same is in the nature of expenditure incurred in the normal course of business. Alternatively, it is allowable as business loss.

35. We heard Ld. D.R. on this issue and perused the record. We notice that the assessee has furnished a note on the above said claim before Ld. CIT(A) and the same is placed at page 159 of the paper book. We notice from the explanation furnished by the assessee that the assessee had customs duty concession to the tune of Rs.8,69,160/- at the time of importing of certain capital goods under EPCG scheme. It appears that the same was

shown as “Receivable” in the books of account, since it had to comply with the condition of meeting export obligations. Since the assessee has not complied with the conditions imposed for getting the above said amount, the assessee chose to write off the above said amount in its books of accounts. We notice that the assessee has furnished explanations before the Ld. CIT(A) and also furnished certain details relating to export benefits. Be that as it may, we notice that the transactions relate to business activities carried on by the assessee and further the explanations furnished by the assessee would show that the same was considered as no longer receivable by the assessee, since it has failed to meet the mandatory conditions. Hence, we are of the view that the above said claim of the assessee is in the nature of business loss incurred in the normal course of the business and hence allowable as deduction. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance of Rs.8,69,160/- in AY 2002-03.

36. The next issue relates to disallowance of claim of write off of amount given to NSL. This issue arises in both the years under consideration. As stated earlier, the assessee had claimed a sum of Rs.1,75,18,072/- in assessment year 2002-03 and Rs.96,76,411/- in assessment year 2003-04, being write off of advances given to its subsidiary M/s. National Switchgear Ltd (NSL). It was submitted before the A.O. that the amount advanced to M/s. NSL could not be recovered since NSL went into liquidation. The A.O. took the view that the claim is in the nature of bad debt and since the assessee has not declared this amount as its income in any of the years, it cannot be allowed u/s 36(1)(vii) of the Act. He also noticed that the above

said amount represents advances given by the assessee to promote the business of another company in which assessee was apparently interested. Accordingly, the A.O. took the view that the advance so given cannot be treated as an expenditure. Before the A.O., the assessee put up an alternative claim that the above said amount may be treated as capital loss and allowed to be carried forward. The same was also rejected by the A.O. Accordingly, the A.O. held that the amount receivable by the assessee from NSL and written off by the assessee is neither allowable as a bad debt nor as revenue expenditure.

37. Before Ld. CIT(A), the assessee submitted that M/s. NSL was promoted by the assessee for manufacture of switchgears which are used by the assessee in its business of manufacturing of turbines. Accordingly, it was submitted that M/s. NSL was promoted by the assessee in order to complement its manufacturing facility. Accordingly, it was submitted that, in the interest of assessee's business, it has ensured that the manufacturing activities of M/s. NSL are not affected in any manner and therefore as and when the need arose, the assessee advanced money to M/s. NSL. Advances so given are agreed to be adjusted from time to time against purchase of switchgears. However, M/s. NSL could not sustain itself and incurred huge losses and ultimately it was liquidated. Since there was no hope of recovery of the amount advanced to M/s. NSL, the assessee has written off the same and claimed it as business expenditure. The assessee also placed his reliance on the decision rendered by the ITAT in the case of M/s. Asea Ltd. Vs. Deputy Commissioner of Income-tax (ITA Nos.1511 & 1512/Bang/1991 dated 12.6.1998 passed by the Bangalore Benches of Tribunal). The

assessee also contended before Ld. CIT(A) that the same should be allowed as business loss. The Ld. CIT(A) however, rejected the contentions of the assessee with the following observations:

> *".....It is an admitted fact that the appellant, being a promoter, has been advancing money to National Switchgear Ltd. from the beginning. It is clear from the facts that these advances have been made by the appellant more as a promoter who is interested in seeing that the said company's business is not affected than as a customer of NSL making advances against the purchases. The appellant has been discharging on behalf of NSL routine expenses like payment of salary, interest, professional fees, travel etc., which also form part of theadvances written off. The appellant has continued making advances even when the liquidation proceedings were going on and after discontinuance of the business by NSL. These facts support the above view that the advances are more in the nature* ***of*** *promoting the business of the other company(NSL) than in the natureof business advances/expenditure, to entitle the appellant* ***to*** *claim the same as business loss. Therefore, the alternative claim of the appellant also cannot be entertained. The decision of the ITATin the case of Asea Ltd. in ITA No. 1511 & 1512 relied on by the appellant cannot be applied to the facts of the appellant's case because, in the case before the Hon'ble ITAT the amount written offwasthe advance made for purchases only, unlike in the appellant's case where advances are for running the business of the other company, although purchases made from NSL were adjusted against the advances so made. In view of the above discussion, the disallowance made by the AO is confirmed."*

38. The Ld A.R reiterated the contentions made before Ld CIT(A). He submitted that the assessee has given advances to its subsidiary in order to

enable it to meet its liabilities with the understanding that those advances shall be adjusted against the switch gears purchased by the assessee from M/s NSL. Accordingly, he submitted that those advances have been given by the assessee in the course of carrying on its business activities. He also submitted that M/s NSL was promoted by the assessee and hence, it is the obligation of the assessee that its reputation is not spoiled in the market circles. Accordingly he submitted that there was commercial expediency in giving advances to M/s NSL. He further submitted that the Hon'ble Supreme Court has held in the case of S.A Builders Ltd (2007)(158 Taxman 74)(SC) that, if the advances have been given as a measure of commercial expediency, then there is no necessity to disallow part of interest expenditure on the borrowed loans diverted to subsidiaries as interest free loans. He submitted that the co-ordinate bench has allowed write off advances given for purchase of machinery in the case of Asea Limited (supra). He submitted that the Hon'ble Karnataka High Court has held in the case of ACE Designers Ltd vs. Addl CIT (2020)(120 taxmann.com) that the loss of investment made in equity of foreign subsidiary is allowable as deduction. He submitted that the Hon'ble Karnataka High Court has followed the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Colgate Polmolive (India) Ltd (370 ITR 728)(Bom). Accordingly, the Ld A.R contended that the claim of write off advances given to M/s NSL is allowable either as revenue expenditure or as business loss.

39. On the contrary, the Ld D.R submitted that the claim of the assessee is not allowable as bad debt, since the assessee has not complied with the provisions of sec,36(2), i.e., it has not offered the amounts so written off as

its income in any of the years. He submitted that the Hon'ble Supreme Court has observed in the case of S A Builders (supra) that the assessee has to show the measure of commercial expediency and further the decision would depend upon facts and circumstances of each case. He submitted that the Hon'ble Supreme Court was concerned with the disallowance of interest expenditure, since loan funds were advanced as interest free loans to the subsidiary companies. He submitted that, in the instant case, the assessee has given advances to its sister concern, which was under liquidation, for meeting day to day expenses. Hence there is no commercial expediency or business compulsion or business necessity in giving such advances. Accordingly, the Ld D.R submitted that all the case laws relied upon by the assessee are not applicable to the facts of the present case.

40. We have heard rival contentions on this issue and perused the record. The fact is that M/s NSL is the subsidiary of the assessee company. The Ld CIT(A) has given finding that the assessee, by giving impugned advances, has been discharging routine expenses of M/s NSL like payment of salary, interest, professional fees, travel expenses etc. He has also observed that the assessee has continued to give advances to M/s NSL even when the liquidation proceedings were going on. These facts show that there was no necessity for the assessee to give such advances in the course of carrying on its own business. The assessee, being promoter of M/s NSL, has been advancing money in its capacity as promoter/share holder. In view of this fact only, the assessee has put up an alternative claim before the AO that the amount so written off should be considered as "Capital loss" and allowed to be carried forward. Since there is no provision under the Income tax Act to

support the above said claim of the assessee, the AO has rejected the same. These facts, in our view, would show that there was no business compulsion or commercial expediency vis-a-vis business carried on by the assessee. The Ld CIT(A), in our view, has rightly observed that the advances have been given more as a promoter than as a customer of M/s NSL. The Ld A.R contended that it is imperative for the assessee to maintain its reputation in business circles and hence the assessee has given money to M/s NSL. The said contention may support the assessee as the promoter. However, the question that needs to be answered is whether there was business necessity/compulsion or is there any commercial expediency in given advances to M/s NSL to meet its day to day expenses even when M/s NSL was under liquidation?. In our view, the answer would be negative. The various case laws relied upon by Ld A.R are distinguishable from the facts prevailing in the instant case. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A) on this issue in both the years under consideration.

41.The next common issue urged in both the years relate to disallowance made u/s 14A of the Act. The assessee had earned dividend income of Rs.10,20,002/- in assessment year 2002-03 and Rs.2,85,000/- in assessment year 2003-04. The assessee did not make any disallowance u/s 14A of the Act. The A.O. disallowed a sum of Rs.2,08,000/- out of interest expenditure in assessment year 2002-03 and a sum of Rs.14,016/- out of interest expenditure in assessment year 2003-04. The Ld. CIT(A) also confirmed the same.

42. We heard the parties on this issue and perused the record. The Ld. A.R. submitted that own funds available with the assessee are in far excess of the value of investment in both the years and hence no disallowance out of interest expenditure is called for u/s 14A of the Act as per the decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. (Income Tax Appeal No.471/2015 dated 11.3.2016).

43. We heard Ld. D.R. on this issue and perused the record. We notice that the A.O. has extracted interest free funds available with the assessee as well as the value of investments in both the years under consideration. We notice that the own funds available with the assessee as on 31.3.2002 was Rs.440.92 crores as against the value of investments of Rs.12.95 crores. Similarly, as on 31.3.2003, the assessee was having own funds of Rs.505.51 crores as against value of investments of Rs.0.95 crores. Accordingly, we notice that the own funds available with the assessee in both the years are in far excess of the value of investments. Accordingly, as per the decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. (supra), no disallowance out of interest expenditure is called for. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in both the years under consideration and direct the A.O. to delete disallowance made u/s 14A of the Act in both the years under consideration.

44. The next common issue relates to disallowance of repairs and maintenance claimed by the assessee. The A.O. noticed that the assessee has incurred repairs & maintenance expenses on the premises taken on lease. The assessee has claimed a sum of Rs.2.38 crores in assessment year

2002-03 and Rs.1.08 crores in assessment year 2003-04. The A.O. noticed that identical claims made in assessment year 2000-01 & 2001-02 had been disallowed. Accordingly, following the above said order passed by the A.O. for earlier years, the A.O. disallowed the claim of repairs & maintenance on leased premises in both the years under consideration.

45. Before Ld. CIT(A), the assessee contended that the expenditure incurred on improvement made in the lease hold premises should be allowed as revenue expenditure. It was submitted that in A.Y. 2000-01 & 2001-02, the assessee had put up an alternative claim before Ld. CIT(A) that depreciation should be granted on the disallowed amount, if the contention of the assessee for deduction as revenue expenditure was not accepted. It was submitted that Ld. CIT(A) had accepted the alternative contention of the assessee and directed the A.O. to allow depreciation. The Ld. CIT(A), following his decision rendered for assessment years 2000-01 & 2001-02 accepted the alternative contention of the assessee and directed the A.O. to allow depreciation on the disallowed amount.

46. The Ld A.R submitted that an identical issue was examined by the co-ordinate bench in AY 2000-01. The Ld D.R supported the order passed by Ld CIT(A) on this issue.

47. We heard the parties on this issue and perused the record. We notice that the coordinate bench has considered an identical issue in assessment year 2000-01. The same was decided as under:

> 2. *"We have considered the rival submissions. In our view, going by the nature of expenditure and area in occupation by the assessee and the acceptance by the AO in the order of assessment that the expenditure was not of capital nature [in this regard we observe that the AO only expressed his opinion that the cost was high, but never stated that the expenditure was capital expenditure], we are of the view that the expenditure on carrying out interiors, cabling, wire work, civil work, water proofing, entrance canopy, IT cabling, blinds, civil and plumbing, carpet laying, work stations, interior work and electrical work should be allowed as a revenue expenditure. The other items of expenditure are required to be treated as capital expenditure and depreciation allowed. We hold and direct accordingly. The decisions cited by the ld. DR have already been dealt with by the Tribunal in the earlier assessment year and require no fresh consideration."*

48. We notice that the assessee has not furnished break-up details of repairs & maintenance expenses claimed in both the years under consideration. However, it was stated that the expenditure was incurred on wooden partition, false ceiling, panelling, etc. Hence,in the absence of break-up details of expenses, we are not able to give decision. Accordingly, we restore this issue in both the years to the file of the A.O. with a direction to follow the decision rendered in assessment year 2000-01 on this issue, which is extracted above. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in both the years under consideration.

49. The next issue relates to computation of deduction u/s 80HHC of the Act. As per explanation (baa) to section 80HHC of the Act, while computing profits of business, receipts by way of brokerage, commission, interest, rent, charges or any other receipts of similar nature included in such profits should be excluded to the extent of 90% of the amount so included.

The A.O. noticed that the "other income" declared by the assessee stood at Rs.15,47,89,000/-. He took the view that the entire amount of Rs.15,47,89,000/- would becovered by Explanation (baa) to sec. 80HHC of the Act. Accordingly, the A.O. excluded 90% of the above said amount from the net profit declared by the assessee in order to arrive at "profits of business" for the purpose of computing deduction u/s 80HHC of the Act.

50. Before Ld. CIT(A), the assessee furnished the details of other income categorizing the items into those covered by clause (baa) and items not covered by clause (baa). For the sake of convenience, we extract below the table extracted by the Ld. CIT(A) in assessment year 2002-03:

Nature of expense	***Total***	***Covered under (baa)***	***Not covered under (baa)***
Scrap sales	*2,03,09,116*	-	*2,03,09,116*
Rent income	*55,01,265*	*55,01,265*	-
R&D Income	*7,23,493*	*7,23,493*	-
Sales Tax refund	*12,957*	-	*12,957*
Insurance claims	*92,57,875*	*92,57,875*	-
Commission income	*2,55,48,241*	*2,55,48,241*	-
Duty drawback	*15,49,923*	*15,49,923*	-
Compensation in lieu of notice	*2,70,275*	*2,70,275*	-
Fees from group companies	*5,60,501*	-	*5,60,501*
Others	*1,12,47,407*	*1,12,47,407*	-
Dividend	*5,05,000*	-	*5,05,000*
Dividend – non-trade	*5,75,000*	-	*5,75,000*
Interest	*26,00,000*	*26,00,000*	-
Interest – bank	*1,89,57,000*	*1,89,57,000*	-
Interest – others	*18,33,000*	*18,33,000*	-

Profit on sale of FA1	*5,53,38,000*	*5,53,38,000*	-
Total	***15,47,89,053***	***13,28,26,479***	***2,19,62,574***

The Ld CIT(A) accepted the chart prepared by the assessee and held that the items mentioned in last column of the table are not required to be excluded for computing "profits of business" in terms of clause (baa).

51. As a consequence of order passed by Ld. CIT(A), we have to decide whether the items mentioned in third column of the above said table are required to be excluded or included while computing profits of business as per clause (baa). In assessment year 2000-01, the coordinate bench followed the decision rendered in assessment year 1999-2000 in ITA No.3330/Mum/2004 and directed as under:

> *"16. That leaves for consideration only first part of ground No.2 raised by the assessee viz., considering rental income, commission, notice pay, income from cancellation of orders and miscellaneous income as income falling within the ambit of Explanation (baa) of the Act. As far as notice pay, rental income, commission income, income from cancellation of order is concerned, similar issue was considered in assessee's own case in AY 1999-2000 in ITA No.3330/MUM/2004 (supra) and the Tribunal held as follows:-*
>
> > "12. As far as **rent** is concerned, it is the plea of the assessee that it takes on rent premises for use of employees and recovers a part of the cost from the employees. The amount recovered from the employees was shown as receipts in the P&L account and 90% of that was excluded from the profits of the business. It is the

plea of assessee that only net income, after reducing the expenses, should be taken for the purpose of exclusion under clause (baa) of the Act. We are of the view that the rent expenses would have already been debited in the P&L account and would have gone to reduce the business profits of the assessee. Therefore, **what has to be reduced under Explanation (baa) of the Act and is only the net rent income after reducing the expenses**. We hold and direct accordingly. The AO is directed to compute the amount to be excluded under Explanation (baa) of the Act accordingly.

13. As far as **notice pay** shown as income by the assessee is concerned, it has to be regarded as business income and it cannot be considered as income of similar nature like interest, rent, etc. **Therefore, the action of the revenue authorities in this regard is held to be not justified**.

14. As far as **insurance claim and income from cancellation of orders is concerned**, it has been held by the Hon'ble Bombay High Court in the case of Pfizer Ltd., 330 ITR 62 (Bom) that nexus of the income with the business has to be seen. The ld. counsel for the assessee pointed out that insurance claim is relatable to its business and income from cancellation of contracts is also relatable to its business being damages for breach of contract.

15. **We are of the view that the plea made by the assessee deserves to be accepted, subject to verification by the AO with regard to receipts on account of insurance claim and income from cancellation of order and its nexus with the business of assessee.**

18. As far as **commission** is concerned, the plea of ld. counsel of the assessee is only for **netting of the commission expenses** against commission receipts and only **excluding 90% of net commission**. The plea made in this regard is accepted, subject to verification of the

> nexus between commission payment and commission receipt. **The ld. counsel did not press for adjudication of exclusion of 90% of miscellaneous income** of Rs.1,41,71,000 under explan.(baa) to Sec.80HHC of the Act because of the absence of break-up of this item of income. ”
>
> *17. The facts and circumstances in the present assessment year being similar, we direct that the directions given in the order of Tribunal for AY 1999-2000 (supra) should be followed and deduction u/s. 80HHC be computed accordingly.*
>
> *18. As far as **miscellaneous income** is concerned, it was admitted by the parties before us that the said issue was decided against the assessee in the order of Tribunal for AY 1999-2000 (supra). The grievance projected by the assessee in the first part of ground No.2 is decided accordingly **against the assessee**.*
>
> *19. There are certain new items of other income which are excluded by the AO under Explanation (baa) of section 80HHC viz., fees from group companies and networking charges. These are receipts for providing facilities to group companies and have to be regarded as falling within the ambit of Explanation (baa) to section 80HHC.*
>
> *20. There is another item of income which is **drawback** on export. This is an item which will get reduced under the proviso to section 80HHC of the Act and will be again added after such exclusion. Therefore, **this cannot be treated as an item of income falling within Explanation (baa) to section 80HHC.”***

52. Accordingly, following the above said decision, we decide this issue in the following manner. There are eleven items in column 3 of the Table.

(a) The rental income, compensation in lieu of notice, insurance claim and commission income are decided in the similar manner as decided in AY 2000-01.

(b) So far duty drawback is concerned, the coordinate bench has held in para 20 of its order passed for assessment year 2000-01 that the same will get reduced under the proviso to section 80HHC of the Act and will be again added after such an exclusion. Accordingly, it was held that duty drawback cannot be treated as an item of income falling within explanation (baa) to section 80HHC of the Act. We also hold accordingly.

(c) It is the contention of the assessee that the profits of sale of fixed assets has already been excluded while computing business income of the assessee and hence the same is not required to be excluded while computing profits of business as per explanation (baa). The A.O. is directed to verify the claim of the assessee.

(d) The Tribunal has held in assessment year 2000-01 that "other income" has to be regarded as falling within the ambit of explanation (baa) to section 80HHC of the Act, since the Ld A.R did not press the same. We also hold accordingly.

(e) In this year, the assessee has earned "R & D Income". It is not shown to us that it is intricately related to the business carried on

by the assessee. Accordingly, we hold that this item of income shall fall within the ambit of Explanation (baa).

(f) The only remaining item is interest income received by the assessee from bank and others. There are three items of interest income shown in column 3 of the table. This income is expressly stated to be excluded in explanation (baa) to section 80HHC of the Act. Accordingly, we uphold the order of Ld. CIT(A) on this issue.

53. In assessment year 2003-04 also, the assessee has raised an identical issue. The Ld. CIT(A) has extracted the details of miscellaneous income furnished by the assessee in a tabular form:

Nature of expense	***Total***	***Covered under (baa)***	***Not covered under (baa)***
Scrap sales	*41,78,000*	-	*41,78,000*
Rent income	*57,27,000*	*57,27,000*	-
R&D Income	-	-	-
Sales Tax refund	*3,27,000*	-	*3,27,000*
Insurance claims	*1,31,70,000*	*1,31,70,000*	-
Commission income	*6,03,01,000*	*6,03,01,000*	-
Octroi refund	-	-	-
Duty drawback	-	-	-
Compensation in lieu of notice	*2,59,000*	*2,59,000*	-
Fees from group companies	-	-	-
Others	*6,76,58,000*	*6,76,58,000*	-
Dividend	*4,000*	-	*4,000*
Dividend – non-trade	*2,81,000*	-	*2,81,000*

Interest	-	-	-
Interest – bank	*10,46,22,000*	*10,46,22,000*	-
Interest – others	*1,97,77,000*	*1,97,77,000*	-
Profit on sale of FA	*11,50,000*	*11,50,000*	-
Total	***27,74,54,000***	***27,26,64,000***	***47,90,000***

54. All the items mentioned in the column 3 of the table cited above are identical with the items decided by us in assessment year 2002-03 in the earlier paragraph. Accordingly, we direct the A.O. to follow our decision in respect of the above said items rendered in assessment year 2002-03 in this year also.

55. The next issue relates to computation of deduction u/s 80HHE of the Act. In both the years, the assessee has submitted in its grounds of appeals that the "miscellaneous income" has been excluded by the A.O. for computing profits of business, even though certain items are not liable to be excluded. However, we notice some thing else in the order of Ld CIT(A).

56. In assessment year 2002-03, the assessee had claimed deduction u/s 80HHE of the Act at Rs.3,27,998/- and the A.O. has restricted it to Rs.2,44,804/-. The Ld. CIT(A) has dealt with this issue in paragraph 14 of his order. According to the Ld. CIT(A), the A.O. has included "excise duty and sales tax" in the total turnover and accordingly computed deduction u/s 80HHE of the Act. The Ld. CIT(A) held that the excise duty and sales tax should not be included in total turnover

and accordingly directed the A.O. to recompute deduction u/s 80HHE of the Act. Thus, we notice that there is no discussion about the other income by Ld. CIT(A). Similar is the case with AY 2003-04 also. Accordingly, we are of the view that the impugned ground of the assessee raised in assessment year 2002-03 as well as in 2003-04 does not emanate from the order passed by Ld. CIT(A). Accordingly, we reject the grounds raised by the assessee relating to deduction u/s 80HHE of the Act.

57. The last common issue relates to deduction u/s 80IA of the Act. The A.O. deducted proportionate "head office expenses" while computing deduction u/s 80IA of the Act and the Ld. CIT(A) also confirmed the same. The Ld. A.R. submitted that this issue has been decided against the assessee in assessment year 2000-01. We also notice that the coordinate bench has decided the issue against the assessee by following the decision rendered in the assessee's own case in assessment year 1997-98 and 1999-2000. For the sake of convenience, we extract below the discussion made by the Tribunal in assessment year 2000-01.

> *2. We shall first take up for consideration the appeal by the assessee in ITA No.3959/Mum/2004. As far as ground No.1 raised by the assessee is concerned, the same reads as follows:-*
>
> > "1. The learned CIT(A) erred in confirming that head office expenses is required to be allocated while arriving at the profit of the industrial undertaking for the purpose of allowing deduction u/s 80-I / 80-IA of the Income Tax Act."

2. *The assessee is a company engaged in the business of various engineering fabrication, manufacture and trading of mechanical, electrical and other engineering items. The dispute raised by the assessee in ground No.1 is with regard to deduction u/s. 80IA of the Act. It is not in dispute that the assessee was entitled to deduction u/s. 80IA. The AO while allowing deduction u/s. 80IA allocated Head Office expenses on the basis of turnover of the various undertakings of the assessee. Consequent to such allocation, deduction u/s. 80IA of the Act was allowed at a much lesser figure than what was claimed by the assessee. It is not in dispute before us that identical issue came up for consideration in assessee's own case in AY 1988-89 in ITA No.3809/MUM/2003, order dated 19.10.2012. In para 12.4, the Tribunal followed its decision in assessee's own case for the AY 1995-96. The issue was considered by the Mumbai Bench of the Tribunal in assessee's own case in AY 1997-98 in ITA No.2555/MUM/2003 by order dated 05.04.2007 and on identical issue it was held as follows:-*

> *"The case of the assessee, however, is that the subject matter of deduction u/s. 80IA is the profits derived from the business of industrial undertakings and hence it is only that expenditure which is directly attributable to the earning of the said profits that can be the subject matter of deduction for computing the aforesaid profits and not head office expenses. We are unable to agree with the aforesaid submission for two reasons. First reason is that it is the profit derived by the assessee from the business of industrial undertaking which has been made eligible for deduction u/s. 80IA d not any other profit. Second reason is that the computation of profits eligible for deduction u/s. 80IA has to be done in accordance with the provisions of section 28 to 43. Perusal of the aforesaid provisions reveals that all those expenses, which are incurred for the purposes of the business of the industrial undertaking, are to be allowed while computing the business profit. It cannot be said that Head Office expenses or common expenses are not incurred or are uncommon for the purposes of the business of the industrial undertaking. What is now required to be computed is the profits derived from the business of industrial undertaking Therefore, there is no warrant for the proposition that only those expenses, which are directly*

attributable to earning of profits derived from the business of industrial undertaking alone should be considered. As already stated above the profits eligible for deduction u/s. 801A are net profits derived from the industrial undertaking and therefore they will have to be netted afteradjusting all the expenses attributable to them in terms of the provisions contained in sections 28 to 43 of the I.T. Act. Therefore all expenses, whether they are direct or indirect or fixed, semi-fixed or variable, must be adjusted to determine the profits derived from the industrial undertaking. Of course, any component of Head Office expenses, which has been incurred exclusively for the purposes of the business of any particular unit/undertaking/division will have to be adjusted against the receipts of that particular unit/undertaking/division only. Similarly, Head Office expenses or expenses which are common to all the units/undertakings/divisions expenses will have to be spread over and charged against the receipts of all the units/undertakings/divisions. If this course is not followed, then what would stand allowed u/s 80IA would be inflated profits and not the net profits derived from the industrial undertaking in terms of the provisions of sections 29 to 43. In this view of the matter and in the absence of any better alternative, the CIT(A) is justified in holding assessee is entitled to deduction of the eligible amounts in respect of the profits derived from the eligible undertakings ***after the allocation of head officeexpenses in the ratio of turnover****. We see no valid reason to take a view contrary to the one taken by the CIT(A) in this behalf. Ground no. 5 is dismissed."*

3. This Tribunal following the aforesaid decision upheld similar allocation of head office expenses in Assessee's case for AY 1999-2000 in ITA No.3330/Mum/2004 order dated 5.4.2019 with the following observations:-

"7. We have given a careful consideration to the rival submissions. We are of the view that the decision of the Tribunal in AY 1995-96 which was extracted in the earlier part of this order is applicable to the present assessment year also. We find no grounds to take a contrary view. The decision in the case of Zandu Pharmaceuticals Works Ltd. (supra) is with reference to

apportionment of R&D expenses and no parity of facts exist with the present case. As far as the decision of the Hon'ble Madras High Court in the case of Hindustan Lever (supra) is concerned, that decision rests on the facts of that case, where it was found that common head office expenses were simple administrative expenses for running the business. In that view of the matter, we uphold the order of CIT(Appeals) and dismiss ground No.1 raised by the assessee."

4. In the light of the aforesaid decision of the Tribunal, we are of the view that there is no merit in ground No.1 raised by the assessee and accordingly the same is dismissed."

Following the above said decision of the Tribunal, we decide this issue against the assessee.

58. The only surviving issue in assessment year 2002-03 relates to deduction u/s 80O of the Act. The Ld. A.R. fairly admitted that this issue has been decided against the assessee by the coordinate bench in assessment year 2001-02.

59. We heard Ld. D.R. and perused the record. We notice that the issue relating to deduction u/s 80O of the Act has been decided against the assessee by the coordinate bench in assessment year 2001-02 by following the decision rendered by the Tribunal in assessment year 1999-2000. For the sake of convenience, we extract below the order passed by the coordinate bench in the assessment year 2001-02:-

"14. Ground No.3 by the assessee is as follows:-

"3. The Learned CIT (A) erred in confirming disallowance of the claim for deduction for a sum of Rs. 6,74,600/- being deduction claimed under section 80-0 at 50% of fees received for supply of engineering designs and drawings.

It is submitted that the claim is for fees received for developing and providing designs and drawings, As per the provision of section 80 0 of the Income Tax Act design and drawings need not be registered for availing the deduction under the aforesaid section. In the facts and circumstances of the case your appellant is entitled for deduction u/s 80-0 for fees received in foreign currency."

15. This issue came up for consideration before the Tribunal in ITA No.3330/Mum/2004 for AY 1999-2000 and vide order dated 5.4.2019 it was held as under:-

"28. We have given a careful consideration to the rival submissions. As far as the evidence filed by the assessee to show that it had supplied designs for use outside India by a foreign enterprise, the assessee filed copy of invoices at pages 21-23 of PB. The same is as under:-

INVOICE (dated 23.06.98)

Consignee
Asea Brown Boveri Ltd. (Taiwan),
Air Pollution Control Group (PES),
6F, Nanhing E Road, Sec.4,
P.O. Box 81 54, Taipei.
Taiwan R.O.C.

Description of Goods	Quantity	Amount USD
TECHNICAL SERVICE CHARGE Charges for Mechanical Design Drawing FAA-5*45M-2*24M-150M-A2	1 Lot.	

Total order value is USD 45,000.00.

60% amount on USD 45,000.00 is Payable against this invoice through ABB netting arrangement.		27,000.00

INVOICE (dated 24.07.98)

Consignee
Asea Brown Boveri Ltd. (Taiwan),
Air Pollution Control Group (PES),
6F, Nanhing E Road, Sec.4,
P.O. Box 81 54, Taipei.
Taiwan R.O.C.

Description of Goods	Quantity	Amount USD
TECHNICAL SERVICE CHARGE Charges for Mechanical Design Drawing FAA-5*45M-2*24M-150M-A2	1 Lot.	
Total order value is USD 45,000.00.		
60% amount on USD 45,000.00 is received.		27,000.00
Balance 40% amount now payable …		18,000.00
Additional charges as per MOM dated 01.07.98 to 07.07.98		8,500.00
	Total	26,500.00

-

INVOICE (dated 28.07.98)

Consignee
Asea Brown Boveri Ltd. (Taiwan),
Air Pollution Control Group (PES),
6F, Nanhing E Road, Sec.4,
P.O. Box 81 54, Taipei.
Taiwan R.O.C.

Description of Goods	Quantity	Rate USD	Amount
TECHNICAL SERVICE CHARGE Charges for Mechanical Design Drawing FAA-5*45M-2*24M-150M-A2	1 Lot.		
Service Charges of our Mr S K Datta who visited your office in connection with cited business and as per your lotus note dated 15.06.98			
a) Agreed charges [as per above LN] for the period from 01.07.98-07.07.98	7 days	200/day	1,400.00
b) Out of pocket expense @ USD 25/day	7 days	25/day	175.00
b) Air Ticket Cost INR 33,205.00 @ USD1 = Rs.42.25.	-	-	786.00
	Total		2,361.00

29. It appears from the invoices, especially the third invoice (dt. 28.07.98) that one Mr. S.K. Datta visited Taiwan in connection with the mechanical design drawing. It thus appears to be a case where the assessee was only rendering technical services for which it received consideration and did not supply any design for use by the foreign enterprise outside India. In fact, on similar grounds, the Tribunal in ITA No.3089/Mum/2003 in assessee's own case for the AY 1998-99,

upheld the order of CIT(Appeals) with the following observations:-

> *"10.5 We have heard the rival submissions and perused the materials on record. On a close observation of the reasoning of the CIT(A) in rejecting the assessee's claim, it is observed that the assessee's representative was specifically asked to furnish a copy of agreement entered into Swiss Company. However, the learned AR admitted that no such agreement existed in respect of services rendered and what has been claimed as deduction was merely on the basis of invoices raised for the purpose, The main contention of the assessee all along was that it had provided certain engineering designs for the power plant(s) which Swiss company was, according to the assessee, to set up in India. However, no copies of engineering designs purported to have been provided to the foreign company were furnished for verification/examination even at this stage. As admitted by the learned AR before the first appellate authority, no agreement worth the name has been entered into with Swiss company to provide designs etc. It is rather surprising as to how the assessee - a Limited Company - had agreed to provide certain expertise such as engineering designs that too for setting up of power plant(s) without reducing the terms and conditions such as payment details etc., in writing. The learned A. R's argument that what has been claimed as deduction was on the basis of invoices raised for the purpose of receipt, in our considered view, doesn't have arty merit. Merely raising invoices for the purpose of having provided engineering designs cannot be a yardstick to determine the exact amounts received by the assessee for the services rendered by it. Mere raising of invoices and on the basis of which claiming deduction u/s 80-0 of the Act running into crores of rupees can neither be justified nor allowed without any sheer of documentary proof. In view of the above facts and circumstances of the issue, we inclined*

to agree with the reasoning of the CIT (A), which does not require our intervention. It is ordered accordingly."

30. The facts of the case in the present assessment year being identical to the facts in the aforesaid decision of the Tribunal for AY 1998-99, We are of the view that there is no material before us in the present AY to take a contrary view. We are also of the view that in view of the aforesaid conclusion, the question as to whether; to claim deduction u/s. 80-O, the person claiming deduction should be the owner of the IPR or not, is academic and therefore does not call for any adjudication in the facts and circumstances of the present case.

31. In the result, ground No.3 raised by the assessee is dismissed."

16. Since the facts in the present assessment year are similar to those considered by the Tribunal in AY 1999-2000, this ground is rejected."

60. Accordingly, following the decision rendered in 1999-2000 and 2001-02 on an identical issue, we decide this ground against the assessee.

61. In the result, both the Revenue's appeals are dismissed and assessee's appeals are partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(B. R. BASKARAN)	**(N.V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore,
Dated, the 23rd July, 2021.
/NS/VG

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.