

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.4213/M/2011

(निर्धारण वर्ष / Assessment Year: **1999-2000**)

M/s. Golden Tobacco Ltd, (Formerly GTC Industries Ltd), Tobacco House, S.V. Road, Vile Parle (W), Mumbai-056.	बनाम/ Vs.	ITO-8(1)(4) Aayakar Bhavan, Mumbai.
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आयकर अपील सं./I.T.A. No.4445/M/2011

(निर्धारण वर्ष / Assessment Year: **1999-2000**)

ITO-8(1)(4) Aayakar Bhavan, Mumbai.	बनाम/ Vs.	M/s. Golden Tobacco Ltd, (Formerly GTC Industries Ltd), Tobacco House, S.V. Road, Vile Parle (W), Mumbai-056.
स्थायी लेखा सं./PAN : AAACG 1421 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri Vinod Kumar Bindal, S.C. Gupta and Mr. Gaurav Bansal
प्रत्यर्थी की ओर से/ Revenue by :	Shri R.K. Sahu & Mr. Santosh Kumar, CIT-DR

सुनवाई की तारीख /Date of Hearing : 1.10.2013

घोषणा की तारीख /Date of Pronouncement : 11.10.2013

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two appeals under consideration and they are cross appeals. Both the appeals are filed against the order of CIT (A)-Mumbai, dated 16.3.2011 for the assessment year 1999-2000. Since, the identical issues are involved in both the appeals, for the sake of convenience they are clubbed, heard combinedly and disposed of this common order.

2. Firstly, we shall take up the **appeal ITA No.4213/M/2011** (AY: 1999-2000), which is filed by the assessee on 23.5.2011 and the only effective ground raised by the assessee in this appeal reads as under:

*"The CIT (A) has erred in confirming the disallowance made by AO of Rs. 8,97,108/- in respect of provisions for **doubtful debts / loans and advances**. It is submitted that CIT (A) erred in alleging that the debts are not trade debts but are the advances which are not allowable u/s 36(1)(vii) r.w.s. 36(2) of the Income Tax Act, 1961. It is submitted that such claim is allowable and said provision shall be allowed in full and necessary direction should be given in this regard."*

3. At the outset, Shri Vinod Kumar Bindal, Ld Counsel for the assessee mentioned that the solitary issues raised in this appeal by the assessee relates to the allowability of the doubtful debts as business **loss**. In this regard, Ld Counsel mentioned that the **identical issue was adjudicated** by the Tribunal in the assessee's own case for the AY 1998-1999 vide ITA No.3198/M/2011 & ITA No.3557/M/2011, dated 26.6.2011. Brief facts in this regard are that the AO made addition of Rs. 8,97,108/- on account of provision for doubtful debts / loans and advances. During the first appellate proceedings, CIT (A) adjudicated this issue and confirmed the addition vide para 14, page 41 of the impugned order. During the assessment proceedings, AO found that the said amounts are not covered either by the provisions of section 36(1)(vii) of the Act or by provisions of section 37 of the Act. He opined that the **advances involved are not trade debts** amounting to Rs. 8,97,108/-. They also did not constitute loss considering the capital nature of the advances. Assessee also failed to prove that these amounts have become irrecoverable. Thus, AO did not allow the claim of the assessee of Rs. 8,97,108/- has provision for bad debts / loans and advances and the same is added to the total income of the assessee. The decision of the AO is given in para 4.1 to 4.3 of the assessment order. Aggrieved with the decision of the AO, assessee filed an appeal before the first appellate authority.

4. During the proceedings before the first appellate authority, assessee reiterated the submissions made before the AO. After considering the submissions of the assessee and the order of the AO, CIT (A) observed that these amounts are not allowable under any of the provisions considering the fact that they are not connected to any sales and they are merely advances of capital nature. Accordingly, CIT (A) **affirmed** the above as per the discussion given in para 3.3.17 of the impugned order which reads as under:

*"3.3.17. Therefore, the law laid down as regard to the write off of bad debts is settled by the decision of the Hon'ble Supreme Court in the case of TRF Ltd (supra) which in turn, approves the decision rendered by the Hon'ble Bombay High Court in the case of Oman International and Star Chemicals (supra). In the case of appellant, the main ground of disallowance by the AO was that the appellant had failed to show that the debts have become bad. Secondly, the claim of the appellant that these are the amounts which are given as advances to parties from time to time during the business dealings cannot be entertained as those are not bad debts and thirdly, the appellant have not actually written off the bad debts. It was further stated by the AO that the Hon'ble CIT (A) has confirmed the disallowances of provisions for doubtful debts in the AY 1995-96 by his order dated 24.3.1999 on the ground that the conditions of section 36(2) are not satisfied. The facts of the appellant case revealed the amount given to these two parties is nothing but the trade advances and is thus losses incidental to business which are allowable as deduction despite there being no specific provision for the same. If there is a direct and proximate nexus between the business operation and the loss or it is the incidental to it, then the loss is deductible, as without the business operation and all that is incidental to it, no profit can be earned [Ramachandar Shivnarayan vs. CIT (1987) 111 ITR 263 (SC)]. I find that the case of the appellant falls under the business loss and not under the bad debts. The parameters for claim of business loss and the bad debts are different. In order to claim business loss, the appellant has to produce sufficient evidences as to how and under what circumstances, it had incurred such losses. However, the appellant neither before me nor before the AO, has adduced sufficient evidences to claim for the business loss. Therefore, the claim cannot be entertained at this stage and is accordingly rejected. This ground of appeal therefore, dismissed. The **addition made by the Ld AO is accordingly confirmed.**"*

4.1. Aggrieved with the above decision of the CIT (A), assessee is in appeal before the Tribunal by raising the above mentioned ground.

5. During the proceedings before us, Ld Counsel for the assessee filed a copy of the order of the Tribunal in the assessee's own case for the AY 1998-1999 and 2007-2008 vide ITA No.3198/M/2011 and 5213/M/2010, order dated 26.6.2013, wherein the Tribunal allowed the claim of the assessee in connection with an identical issue adjudicated by the Tribunal. He brought our attention to para 5 to 10 of the said order of the Tribunal and mentioned that the ground raised in this appeal may be remanded to the files of the AO for adjudicating the issue afresh after considering the cited decision of the Tribunal and also after examining the relevant facts of both the assessment years. Considering the concurrence of both the parties to remand the matter, we accept the same and accordingly remanded the matter to the files of the AO. During the remanding proceeding, AO is directed to afford a reasonable opportunity of being heard to the assessee decide the issue afresh. Accordingly, ground raised by the assessee is **allowed for statistical** purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

**आयकर अपील सं./I.T.A. No.4445/M/2011 (AY: 1999-2000)
(By Revenue)**

7. This appeal filed by the Revenue on 2.6.2011 against the order of the CIT (A)-16, Mumbai dated 16.3.2011 for the AY 1999-2000 and the grounds raised in this appeal as under:

- "1. On the facts and in the circumstances of the case and in law, the Id CIT (A) erred in deleting the addition of Rs. 9,28,13,355/- made **on account of inclusion of exercise duty in the violation of closing stock as per section 145A of the Act**, without appreciating that section 145A was inserted by the Finance (No.2) Act, 1988, w.e.f. 1.4.1999 and therefore, applicable to the year under consideration.
2. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the disallowance of Rs. 55,72,376/- on account of **proportionate interest expenditure u/s 36(1)(iii)**, without appreciating the fact that the assessee-company has given interest free advances from interest bearing funds for other tan business purposes.
3. On the facts and in the circumstances of the case and in law, the Id CIT (A) erred in deleting the **disallowance u/s 14A** of Rs. 65,29,778/- ignoring the decision of the Hon'ble ITAT, Special Bench New Delhi in the case of Cheminvest Ltd. vs. ITO (121 ITD 318) followed by ITAT, Mumbai in the case of Shree Shyam Kamal Finance & Leasing Co. Pvt. Ltd. (ITA No.438/Mum/2010 dated 4.2.2011) wherein, it has been held that disallowance u/s 14A is called for even in a year in which no exempt income has been earned or received by the assessee.
4. On the facts and in the circumstances of the case and in law, the Id CIT (A) erred in **restricting the addition on account of overstatement of value of opening stock** for AY 1999-2000 from Rs. 60,29,040/- to Rs. 30,94,680/-, without appreciating the fact that the CIT (A) himself vide his order No.CIT(A)-16/IT.321/2001-2002 dated 21.2.2011 for AY 1998-1999 has deleted the same addition made by the AO in value of closing stock for AY 1998-99 against which no second appeal has been filed."

8. **Ground no.1** relates to the adjustments to the closing stock *qua* the excise duty amounting to Rs. 9,28,13,355/-. The Revenue's objection to the relief granted by the CIT (A) in this regard is restricted to the argument that the **opening stocks account need not be adjusted** being the AY 1999-2000 is the first year after amendment to section 145A of the Act. Otherwise, both the parties mentioned that this issue has to be decided in line with the order of the ITAT in ITA No.3198/M/2011 (AY: 1998-1999) and ITA No.5435/M/2010 (AY: 2007-2008) dated 26.6.2013. In this regard Ld DR relied on the order of the coordinate Bench of ITAT in the case of Croydon Chemical Works Ltd vs. ACIT [2007] 11 SOT 295 (Mum.) and

another decision in the case of J.B. Chemicals & Pharmaceuticals Ltd [2006] 10 SOT 362 (Mum.). These decisions are relevant for the proposition that the Modvat credit available to assessee will have to be included while valuing stock, sales and purchase and it is not necessary that opening stock should be disturbed for the AY 1999-2000.

9. On perusal of the above cited decisions of the ITAT, we are of the opinion that, in principle, the issue is covered and therefore, we direct the AO to adjudicate the issue after considering the above mentioned decisions of the Tribunal. Accordingly, ground no.1 is adjudicated in the above mentioned manner.

10. **Ground no.2** raised by the Revenue in this appeal relates to the disallowability of proportionate interest expenditure of Rs. 53,72,376/- relating to the advances given to the sister concern u/s 36(1)(iii) of the Act. At the outset, Ld Counsel filed a copy of the order of the Tribunal in assessee's own case vide ITA No.3198/M/2011 (AY 1998-1999) & ITA No. 5213/M/2010 (AY 2007-2008), order dated 26.6.2013 and mentioned that the facts are identical to the present issue under consideration and the Tribunal affirmed the decision of the CIT (A) on this aspect of disallowance of proportionate interest disallowance. He also mentioned that the assessee has sufficient interest free advances for giving interest free loans / advances to the sister concerns namely M/s. **Luster Print Media Limited and M/s. Dalmia Fresenius Limited** and others. He further mentioned that the Tribunal deleted the addition on this account after appreciating the fact that the assessee has interest free advances on one side on the ratio of the Apex Court judgment in the case of S.A. Builders on the other. He also mentioned that the sister concerns who received the advances are more or less the same, therefore, the ratio of the said decision of the Tribunal discussed in para 12 to 14 should apply.

11. On the other hand, Ld DR relied on the order of the AO.

12. We have heard both the parties and perused the said order of the Tribunal in general and para 12 to 14 in particular which read as under:

12. There is one more ground in the appeal of department i.e. ground no.2, which is against deleting the disallowance of Rs. 53,72,376 on account of proportionate interest expenditure u/s 36(1)(iii).

13. During the course of assessment proceedings the Assessing Officer observed that the assessee has given interest free advances to various sister concerns or other concerns totaling to Rs. 2,68,61,882. Detail of interest free advances given is tabulated at page 52 of the order of the CIT(A). The assessee was asked to give interest charged from all these companies on the amount of Rs. 2,68,61,883. The explanations were provided by the assessee that they are advances for business expediency or given out of its own funds. However, the Assessing Officer did not accept the explanation of the assessee as interest expenditure incurred for making investment in shares is not deductible as dividend income is exempt u/s 10(33). The A.O. observed that no explanation has been given in respect of **Luster Print Media Limited and Dalmia Fresenius Limited**. Therefore, loans given to Dalmia Fresenius Limited of Rs. 26,50,000 and Luster Print Media Limited of `49,61,883 are considered as interest free loans given for the purpose other than business. In respect of other parties also the A.O. noticed that the assessee has not given satisfactory reply in respect of interest free advances / loans. Therefore, he disallowed at the rate of 20% on Rs. 76,11,833 and Rs. 1,92,50,000 which has resulted into an addition of Rs. 53,72,376 as interest paid for the purpose other than business as well as for earning exempt income and hence not allowable u/s 36(1)(iii) or 57(iii) of the Act. The A.O. also placed ITA No.3198/Mum/2011 & Ors. reliance on various case laws. It was explained before the CIT(A) that all the money given by the assessee-company which has been treated as interest free advances by the A.O. In fact the same was given as share application money. All the money was given to the subsidiary of the assessee-company or related company of the assessee company. The investment has been made out of profit of the company and no borrowed funds have been utilized for making this investment. It was also submitted that these moneys were given in earlier year and no disallowance has been made in earlier year. It was explained that the subsidiary company of GTC could not allot the shares in view of the restriction imposed by the Income-tax department. A copy of the prohibitory order was also enclosed. Accordingly it was submitted that no disallowance was warranted. In respect of M/s. Luster Print Media and M/s.Dalmia Fresenius Media, it was explained that all the amount of share application money given to group concerns is for business purposes. It was submitted that the Assessing Officer failed to appreciate that additions made are not of borrowed funds as the advances were given in earlier year when the assessee has sufficient interest free funds. It was further explained that the interest has been disallowed by the A.O. on the pretext of interest bearing borrowed funds which has been used for making loans and advances to these two concerns. Adhoc disallowance of interest at 20% on full amount was also not justified. Reliance was placed on various case laws as mentioned in page 55 of the appellate order. After considering the submissions and taking into consideration various case laws i.e. in the case of S.A.Builders 288 ITR 1 (SC), Phaltan Sugar Works v. CWT CIT v. Dalmia Cement Bharat Ltd. [(2009) 183 Taxmann 422 (Del.)] and the decision of the Gujarat High Court in Shree Digvijay Cement Co. Ltd. v. CIT (1982) 138 ITR 45 (Guj.), the CIT(A) found that the addition made by the A.O. cannot be sustained both on facts and in law as the loans were given in the earlier years and as pointed out by the learned AR that assessee had sufficient general reserves of Rs. 62.23 crore available for investment and secondly the A.O. did not make any efforts to show any nexus between borrowings and subsequent advancing the loan to the subsidiary company, deleted the disallowance made by the A.O. The learned Departmental Representative has placed reliance on the order of A.O.. On the other hand the learned A.R. has placed reliance on the order of the CIT(A).

*14. After considering the submissions and perusing the relevant material on record along with order of the authorities below, we found that there is no infirmity in the finding of the CIT(A). The finding of the CIT(A) has been recorded in para 12.3.1 to 12.3.6 at pages 55 to 59 of his order. The finding of CIT(A) are finding of fact which is quoted by the facts of the case along with various case laws. The CIT(A) has ascertained that no interest bearing funds were utilized for advancing the sum to the subsidiary company or its related company on account of share application money. It was also noticed by the CIT(A) that the assessee has sufficient reserves i.e. `62.23 crore with the assessee. The finding of the CIT(A) remained uncontroverted that the Assessing Officer failed to prove the nexus ITA No.3198/Mum/2011 & Ors. between borrowings and subsequent advancing of loan to subsidiary company, therefore, the **decision of the Apex Court in the case of S.A.Builders (supra) is fairly applicable** on the facts of the present case. Various other case laws relied upon by the CIT(A) has also applicable on the facts of the present case. In view of these facts and circumstances of the case and in view of the detailed reasoning given by the CIT(A), which remained uncontroverted, we confirm the order of the CIT(A) in this respect also."*

13. No contrary facts or decisions are brought to our notice by the Ld DR. Considering the above, we are of the opinion that, in principle, the issue is covered in favour of the assessee. Therefore, the order of the CIT (A) does not call for any interference. However, we direct the AO to compare the facts of the present case with that of the Tribunal's order before concluding the issue in favour of the assessee, once for all. Accordingly, the ground raised by the Revenue is **dismissed pro-tanto**.

14. **Ground no.3** relates to the applicability of **section 14A** to the disallowance of interest expenditure of Rs. 65,29,778/-. Relevant facts in this regard are that the assessee earned dividend income of Rs. 3,496/- out of shares purchased by the assessee. It is the claim of the assessee that the investment of Rs. 3,62,76,545/- in shares is the interest free funds lying with the assessee. Rejecting the assessee's claim and on considering the interest liabilities, AO estimated the relatable interest expenditure @ 18% on notional basis and made disallowance of Rs. 65,29,778/- a relatable expenditure for earning of the exempt income of Rs. 3,496/-. On appeal, CIT (A) deleted the addition vide para 9.3.3 of the impugned order. Aggrieved with the decision of the CIT (A), Revenue filed the present appeal before the Tribunal by raising the issue in ground no.3 of this appeal.

15. During the proceedings before us, Ld DR relied on the order of the AO.

16. On the other hand, Ld Counsel relied on the order of the CIT (A) and reiterated the submissions made before him.

17. We have heard both the parties on this issue and perused the orders of the Revenue Authorities as well as the papers filed before us. On perusal of the CIT (A) order in general and para 9.3.3 in particular, we find that the said para is relevant here and the same reads as under:

*"9.3.3 In the appellant's case, the appellant had earned a dn4 of Rs.3,496/- against which the AO had made a disallowances of Rs. 65,29,778/- stating inter alia that the amount of money borrowed for the purposes of investment was obtained from interest bearing loan. It is also a matter of fact that the appellant had made the investment on unquoted shares amounting to Rs. 2,31,79,980/- which are nothing but the investment in its subsidiary company against which the AO had made a separate disallowances which are agitated by the appellant in ground No.5. The same are deleted in the earlier assessment year as well as in the current asst. year following the decision of Hon'ble Supreme Court in the case of M/s. S.A. Builders (supra). These investments were not made by the appellant for the purposes of earning the dividend but for the purposes of maintaining its control over the subsidiary company which are **nothing but extended business organization of the appellant**. Therefore, even otherwise, this investment does not attract the provisions of section 14A. Further, the investment in quoted shares amounting to Rs.1,30,95,760/- has not been made in the year under consideration. These investments were made by the appellant in the earlier years when it had got sufficient reserves. The AO has computed the position of the reserves in the year under consideration without taking the fact into consideration that the investment was not made in this year. The Hon'ble Mumbai High Court in the case of **Reliance Utilities** has held that for the purposes of making **disallowances u/s. 14A a proximate nexus need to be established**. However, the Ld. AC has not been able to do so. The Hon'ble ITAT in the case of Godrej Aggravate Ltd. vs. ACIT has held that disallowance of interest on borrowed funds on the basis that the appellant ought to have used own funds to repay the loans and not invested in shares does not show that there is diversion of borrowed fund towards investment in shares to earn dividend is not acceptable position of fact. On the contrary, the position of law is different as held by the Hon'ble Mumbai High Court in the case of Reliance Utilities (supra) and in the case of Hero Cycles 323 ITR 518. Therefore, under the facts and circumstances of the case, I find that the addition made by the AO is not sustainable and are accordingly **deleted**."*

18. Considering the above settled position of the issue, we are of the opinion that the order of the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, ground no.3 raised by the Revenue is **dismissed**.

19. **Ground no.4** relates Modvat adjustments. Brief facts in this regard are that during the assessment proceedings, AO noticed that the assessee has increased the value of opening stock by duty / cess etc., amounting to Rs. 60,29,039/-. In

response to the query raised by AO, assessee submitted that the company follows a consistent practice of valuing the closing stock of such inventories net of Modvat Credit available / availed. Therefore, both opening as well as closing stock of such material are shown net of Modvat credit available. Not satisfied with the above explanation of the assessee, AO added the aforesaid amount of Rs. 60,29,039/- u/s 145A of the Act and relied on the judgment of the Bombay High Court in the case of Melmould Corporation vs. CIT (202 ITR 789). Aggrieved with the above decision of the AO, assessee filed an appeal before the first appellate authority.

20. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) restricted the addition of Rs. 60,29,039/- made by the AO to Rs. 30,94,680/- and partly allowed the assessee's appeal on this ground and the decision of the CIT (A) is given in para 8.3 to 8.3.3 of his order. Aggrieved with the above decision of the CIT (A), Revenue is in appeal before the Tribunal vide ground no.4 of this appeal.

21. During the proceedings before us, Ld DR relied on the order of the AO.

22. On the other hand, Ld Counsel relied on the order of the CIT (A) and reiterated the submissions made before the lower authorities.

23. We have heard both the parties and perused the orders of the Revenue Authorities and the material placed before us. The CIT (A)'s decision was given in para 8.3.1 to 8.3.3 of the impugned order which read as under:

*"8.3.1. I have carefully considered the contention of the appellant company as well as carefully gone through the available documents on record. It is matter of record that the appellant company has been consistently following the **exclusive method of valuation of its closing stock** where the unutilized Modvat credit is not taken into account. In terms of section 145A of the Act, the **additions cannot be made merely in the valuation of closing stock without any corresponding additions in the valuation of the opening stock**. Further, the adjustment in respect of purchases made is also to be given effect to, in case the adjustment in closing stock is required to be added.*

*8.3.2. the Hon'ble Supreme Court in the case of CIT vs. **Indo Nippon chemicals Ltd** reported in 261 ITR 275 has **held that it is not permissible for the AO to adopt different method of valuation of excise duty paid raw material** when purchased and the unconsumed raw material on hand at the end of the year. The AO was not justified in adopting the **gross method** at the time of purchase and the net method of valuation at the time of valuation of stock on hand. The Hon'ble Supreme*

Court further held that merely because Modvat credit is an irreversible credit available to the manufacturers upon purchase of duty paid raw material, it would not amount income which is liable to be taxed. However, the position has changed with the insertion of section 145A to the Act. Section 145A was inserted by Finance Act, 1998 w.e.f 1.4.1999 wherein it is incumbent upon the **AO to adjust the amount of any tax duty or assess** or fee actually paid or incurred by the assessee to bring the goods to the place of its locations and condition as on the date of valuation. The present case, which in appeal before me; is AY 1999-2000, which is after the insertion of section 145A of the Act. Therefore, **the provision of section 145A applied** to the appellant in this case.

8.3.3. In the case of CIT vs. Mahalaxmi Glass Works (P) Ltd (2009) 318 ITR 116 (Bom.) the question raised by revenue before the Hon'ble Bombay High Court was "whether, on the facts and circumstances of the case and in law, the Hon'ble Tribunal was justified in confirming the order of the CIT (A) whereby he directed the AO to make adjustment of unutilized Modvat credit to the opening stock and thus ignoring the ratio laid down in **Melmould Corporation vs. CIT** [1993] 202 ITR 789 (Bom) wherein it was held that **changing the value of opening stock will lead to chain reaction** and hence the same should not be done?" The Hon'ble High court held in this case that this question has been dealt with and answered by the Delhi High Court in the case of CIT vs. Mahavir Alluminium Ltd [2008] 297 ITR 77 (Del.). This question concerns the method of valuation of inventory as contemplated by Section 145A of the Act. In the case before the Delhi High Court, the AO contended that section 145A did not permit the assessee to make a change in the valuation of the opening stock as on March, 31, 1999. The question before the Delhi High court was that the adjustment of excise duty could be made in the opening stock also. In this connection, relying upon the decision of the Privy Council in the case of CIT vs. **Ahmadabad New Cotton Mills Co. Ltd** AIR 1930 PC 56, the Delhi High Court took a view that to give effect to section 145A, **if there is any change in the closing stock at the end of the year then there must necessarily be a corresponding adjustment made in the opening stock of the year.** It has been held that this would not amount to giving double benefit to the assessee and would be necessary to compute the true and correct profit for the purpose of assessment. The appellant also demonstrated that in case, the adjustment is made to both opening and closing stock, the adjustment would be tax neutral, though it is a fact that AO has taken into consideration the adjustment required to be made in the opening stock of this year but failed to take note of the adjustment required to be made in the previous year which become cumulative in case he accepts this proposition in this year. The appellant's alternative proposal is based on the correct position of law that if additions were made of Modvat credit availed or available, the quantum of addition should be restricted to Rs. 30,94,680/- (closing Modvat credit Rs. 91,23,719/- Less opening Modvat credit Rs. 60,29,040/-). Accordingly, the addition on this could is thus restricted to Rs. 30,94,680/- and this ground of appeal is partly allowed."

24. Considering the above, we are of the opinion that the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, ground no.4 taken by the Revenue is **dismissed**.

25. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 11th October, 2013.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 11.10.2013

व.नि.स./ OKK, Sr. PS

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**