

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

**ITA No. 7934/Mum/2014
(Assessment Year 2009-10)**

**ITA No. 3906/Mum/2015
(Assessment Year 2010-11)**

**ITA No. 6775/Mum/2016
(Assessment Year 2011-12)**

**ITA No. 395/Mum/2018
(Assessment Year 2012-13)**

**Sumitomo Chemical India
Limited
Excel Crop Care Ltd.
184-187, Excel Estate,
S.V. Rd, Jogeshwari (W),
Mumbai-400108
(Appellant)**

Vs.

**ACIT
R. No.32(1), GR Floor,
Aaykar Bhavan
M.K. Road,
Mumbai-400020
(Respondent)**

PAN No. AAAC3810D

**ITA No. 7140/Mum/2014
(Assessment Year 2009-10)**

**ITA No. 4762/Mum/2015
(Assessment Year 2010-11)**

**ITA No. 6665/Mum/2016
(Assessment Year 2011-12)**

**ACIT
R. No.32(1), GR Floor,
Aaykar Bhavan
M.K. Road,
Mumbai-400020
(Appellant)**

Vs.

**Sumitomo Chemical India
Limited
Excel Crop Care Ltd.
184-187, Excel Estate,
S.V. Rd, Jogeshwari (W),
Mumbai-400108
(Respondent)**

PAN No. AAAC3810D

**Assessee by : Shri Jeet Kamdar, AR
Revenue by : Shri Suresh Periasamy, DR**



Date of hearing: 12.10.2022
Date of pronouncement : 09.01.2023

ORDER

Per bench:-

01. This is the bunch of 7 appeals pertaining to one Assessee namely Excel crop care Ltd. It has now merged by absorption by the scheme of amalgamation with Sumitomo chemical India Ltd as per the order of the National company law Tribunal, Mumbai dated 27 June 2019 and therefore assessee has reinstated the name of amalgamated company as appellant by filing new form number 36.
02. The appeals are pertaining to the Assessee from assessment year 2009 - 10 to 2012 - 13 involving similar issues. The parties have argued them by filing the chart of appeals identically. Therefore, for the sake of simplicity and conciseness, all these appeals are disposed of by this common order.
03. For assessment year 2009 - 10 both parties have filed appeals against the appellate order passed by the Commissioner of income tax (appeals) - 41, Mumbai dated 25/8/2014, the ITA number 7140/M/2014 is filed by the Learned Assistant Commissioner of income tax - 1 (3) (1), Mumbai (The learned AO) and ITA number 7394/M/2014 is filed by the assessee.
04. Precise facts found from the assessment order shows that Assessee is a company engaged in manufacturing and trading of agrochemicals having various manufacturing facilities. It filed its return of income electronically on 30/9/2009 at a total income of Rs. 411,759,360/- and computing book profit under section 115JB of the act at Rs. 445,383,369/-. This return was revised on 29/3/2011 at a total income of Rs. 405,573,552 as a normal profit and book profit at Rs. 445,320,638/-. Subsequently ROI of Assessee was subjected to scrutiny

assessment and assessment order under section 143 (3) of The Income Tax Act, 1961 (The Act) was passed on 8/3/2013 determining total income at Rs. 497,783,830 as per normal computation of total income. The learned assessing officer made several additions to the total income as under: -

- i. Addition/ disallowance of subscription expenditure of Rs. 2,859,772/-
- ii. Addition made on the basis of annual information return of Rs. 6748/-
- iii. Addition made on interest expenses attributable to the capital expenditure not capitalized but claimed as a revenue expenditure of Rs. 2,61,99,916/-
- iv. Claim of double deduction of excise duty expenditure of Rs. 6,957,393/- made on account of difference between excise duty contained in opening stocks and excise duty contained in closing stock claimed as a deduction of Rs. 6,957,393
- v. Disallowance of prior period Expenditure of Rs. 2,959,408/-
- vi. Addition made on adjustment under section 145A of the act of Rs. 33,398,840/-

05. Against the assessment order, assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals) who passed an appellate order on 25/8/2014, he confirmed disallowance of interest expenditure of ₹ 26,199,960, disallowance of excise duty debited to the profit and loss account amounting to ₹ 3,319,431 and adjustment under section 145A of the act of ₹ 28,684,800. Therefore, assessee is aggrieved with those issues and is in appeal before us.

06. Similarly the learned CIT - A has granted relief to the assessee by deleting disallowance of subscription expenses on Endosulfan as business expenditure, deleting disallowance of prior period



expenditure , deleting disallowance u/s 14A and allowing deduction u/s 80 IA of the Act and against which learned AO is in appeal.

07. Grounds of appeals for assessment year 2009 - 10 in ITA No. 7140/Mum/2014 in appeal of the learned assessing officer are as under:-

"1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of subscription expenses amounting to Rs. 28, 59,772/ while the assessee has neither during the assessment proceedings nor during the appellate proceedings established that this expenses has been incurred wholly and exclusively for the purpose of the business of the assessee.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in granting deduction under section 80-IA of the Act amounting to Rs. 1,96,92,795/ while the profit of the 'eligible business' should only be considered for the deduction u/s. 801A and not the profit of the whole business.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the deduction in respect of prior period expenses amounting to Rs. 29,59,408/- while the assessee, who is following mercantile system, cannot be allowed to book any expenses on cash basis as and when they are incurred.

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance under section 14A an amount of Rs. 2,42,928/- while the disallowances



should be calculated u/s. 14A r.w.s. 8D of the IT Act, 1961 as done by the assessing officer.”

08. Grounds of appeal for assessment year 2009 - 10 in ITA No. 7394/Mum/2014 for A.Y. 2009-10 raised by the assessee are as under:

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“1. on the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assistant Commissioner of Income-tax in disallowing interest amounting to Rs 2, 61, 99,960 on the ground that it is attributable towards capital expenditure.

2. on the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assistant Commissioner of Income-tax in disallowing excise duty debited to profit and profit and loss account amounting to Rs 33, 19,431.

3. on the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in confirming the action of the Assistant Commissioner of Income-tax in restricting adjustment under section 145A of the Act to Rs 2, 86, 84,800.

09. Assessee has filed an application for admission of additional grounds of appeal on 14 July 2022 wherein it has raised following grounds:-

- i. Without prejudice to the ground number 3 of the appeal, the appellant prays that in case the adjustment under section 145D of the act of ₹ 28,684,800 is not deleted, then the same ought to be considered as cost of opening stock for assessment year 2010 - 11.



- ii. The appellant prays that in case the disallowance of subscription expenses pertaining to financial year 2009 - 10 amounting to ₹ 11,650,728 is prior period expenses is upheld in assessment year 2010 - 11, then the same ought to be allowed as deduction in the year to which it pertains i.e., assessment year 2009 - 10
 - iii. On the facts and in the circumstances of the case and in law, the appellant prays that the assessing officer be directed to allow deduction in respect of education cess on income tax paid during the year.
 - iv. On the facts and in the circumstances of the case and in law, the appellant prays that the subsidy received under be focused market scheme under the foreign trade policy is a capital receipt and therefore not chargeable to tax in the hands of the appellant.
010. Assessee submitted that these additional grounds of appeal are legal issues and therefore same ought to be admitted and decided on the merits of the case relying on the decision of Honourable Supreme Court in case of National Thermal Power Co Ltd versus CIT (1998) 229 ITR 383 (SC), JUTE CORPORATION OF INDIA Ltd versus CIT (1991) 187 ITR 688 (SC) and full bench decision of the Honourable Bombay High Court in case of Ahmadabad electricity Co Ltd versus CIT (1993) 199 ITR 351 (Bombay).
011. The learned authorized representative reiterated the above arguments for admission of these additional grounds.
012. The learned departmental representative vehemently opposed those grounds and submitted that with respect to ground number 1 - 2 are alternative in nature and ground number 3 and 4 are not arising out of the assessment or appellate order. These grounds require fresh investigation of facts, are not legally nature, and therefore should not be admitted. He further submitted that ground number 1 and 2 are merely alternative claims.

013. In the rejoinder, the learned authorized representative submitted that due to changes in the available judicial precedents with respect to the allowance of deduction of education cess, it is not pressed. With respect to other grounds, he reiterated the original submission. He submitted that ground number 4 is a fresh claim of the assessee and the facts of this claim are already available on record with the assessing officer and judicial precedents are also in favour of the assessee and therefore this is merely legal in nature and hence it should be admitted.
014. We have carefully considered the rival contention and perused the orders of the lower authorities as well as judicial precedent for admission of additional evidence raised before us.
- i. Ground number 1 and 2 are the alternative claims of the assessee, therefore, those cannot be considered as the additional ground of appeal but alternative claim, which can be raised by the assessee. Hence, same are admitted.
 - ii. Ground number 3 is not pressed by the learned authorized representative hence it is not admitted.
 - iii. Ground number 4 of the appeal is a fresh claim raised by the assessee with respect to the claim that the subsidy received under the focused market scheme of the foreign trade policy by the assessee is in the nature of capital receipt and not chargeable to tax in the hands of the appellant. It is an accepted fact that the above facts are available on record. Therefore, there is no bar that the assessee cannot raise such claim. Therefore, ground number 4 is admitted.
015. Identically in appeals of the assessee, identical grounds are raised and those are admitted or rejected as per reason given by us hereinabove.
016. We first now start the appeal of the assessee in ITA number 7394/M/2014. The first ground of appeal is against confirmation of disallowance of interest expenditure attributable to capital



expenditure of ₹ 26,199,960/-. The learned AO noted that assessee has incurred capital expenditure of ₹ 2183.33 Lacs. The assessee was asked to establish direct Nexus of source of funds which were utilized for such capital investment before such asset is put to use and also asked to show cause that in absence of such proof by the assessee why the proportionate interest expenditure should not be considered as attributable to such capital expenditure before assets were put to use and consequently be disallowed as revenue expenditure claimed by the assessee as same is in the nature of capital expenditure.

017. The assessee submitted that the addition to the fixed assets are made out of internal accruals only and not from any funds borrowed by the Assessee on interest. Assessee also submitted that no interest expenses are attributable to such capital expenditure. The learned AO rejected the claim of the assessee and found that assessee has paid bank interest to the bankers of the assessee at the rate of 12% - 15% per annum and therefore a reasonable interest expenditure at the rate of 12% is attributable to the capital expenditure and accordingly Rs. 2,61,99,960/- was considered as capital expenditure pertaining to the acquisition of capital asset till those assets are put to use.

018. Assessee challenged the same before the learned CIT - A. Assessee submitted that the assessee in accordance with the accounting policy regularly followed by it already capitalizes interest cost incurred on a qualifying asset up to the date it is put to use. It was further stated that even otherwise the acquisition of the fixed assets has been financed through internal accruals and nobody funds have been used. Assessee claimed that by submitting a cash flow statement. Assessee further stated that if the funds are available to the assessee which are interest-bearing and interest free, then the presumption would arise that the investment would be out of interest-free funds generated or available with the company, and if such funds are sufficient to meet the investment, no addition/disallowance can be made in the hands of the assessee on the pretext that interest-bearing funds have been used for financing such asset. The learned CIT - A rejected the contention of the assessee and confirmed the disallowance as assessee



did not furnish the bank account statement to the assessing authority that whether there was a debit or credit balance in the bank account on those dates when investment in capital assets were made. Accordingly, the addition was confirmed.

019. The learned authorized representative vehemently submitted that when the assessee has higher interest free funds available than the amount of investment, the addition cannot be made. It was further submitted that in assessee's own case for assessment year 2006 - 07 in ITA number 4042/M/2014 identical addition made by the lower authorities were deleted. It was further stated that capital expenditure was financed out of internal accruals and no borrowed funds were utilized. To demonstrate that a statement showing own funds utilized for addition of fixed assets on which no interest is paid was also demonstrated. The learned authorized representative also took as to the accounting policy of the assessee where any fixed asset is purchased or acquired; the interest expenditure of such qualifying asset is capitalized to the cost of those assets till the assets are first put to use. Accordingly, it was stated that the learned lower authorities failed to consider the explanation of the assessee. It was further submitted that the learned and CIT - A has confirmed the addition on the flimsy ground that assessee has failed to show the bank statement before the lower authorities. The learned authorized representative referred to the annual accounts of the assessee placed at page number 98 of the paper book to show that assessee has shareholders fund of ₹ 13,939 lakhs whereas the capital work in progress and acquisition of those fixed assets amount to only ₹ 2016 lakhs. Therefore assessee has you interest free funds available are exceeding the amount of investment in fixed assets. It was further submitted that the borrowings made by the ASSESSEE on which interest expenditure is incurred are for the purpose of working capital loans and cash credit account, which are tied up in the current assets of assessee. Therefore, the interest disallowed by the lower authorities is not sustainable.

020. The learned departmental representative vehemently supported the order of the lower authorities. It was submitted that when the assessee has failed to show the Nexus of the amount invested in acquisition of fixed assets out of the interest free funds available with it, now it could not say that the presumption is available in its favour that the amount utilized for acquisition of fixed assets is out of interest-free funds. It was further stated that assessee has also failed to show the bank statement before the lower authorities therefore the learned that lower authorities are prevented from finding out the source and Nexus of the amount invested in the fixed assets. Accordingly, the orders of the lower authorities deserve to be confirmed.
021. We have carefully considered the rival contention and perused the orders of the lower authorities. On the basis of the fact that assessee has huge non-interest-bearing loan funds in the form of shareholders fund are available with the assessee then the amount of investment made in the fixed assets, we do not find any reason to confirm the disallowance. Further, the identical disallowance made by the learned lower authorities in the case of the assessee has already been deleted by the ITAT; the issue is also covered in favour of the assessee. However, on the simple fact that assessee has higher non-interest-bearing fonts available compared with the amount of investment in fixed assets, the issue is squarely covered in favour of the assessee by the decision of the Honourable jurisdictional High Court as well as the Honourable Supreme Court in case of Reliance Industries Ltd. Accordingly ground number 1 of the appeal of the assessee is allowed.
022. Parties also submitted before us that identical issue is also in the appeal of the assessee for assessment year 2010 - 11 in ITA number 3906/M/2015 and for assessment year 2011 - 12 in ground number 1 - 2 - 3 of the appeal. Both the parties also confirmed that there is no change in the facts and circumstances of the case.
023. On careful consideration, we find that identical issue are also raised by the assessee in its appeal for assessment year 2010 - 11 as per

ground number 2 of the appeal and for assessment year 2011 - 12 as per ground number 1 - 3 of the appeal with alternative arguments. As we have allowed the ground of appeal number 1 in case of the assessee for assessment year 2009 - 10 wherein we have held that when the assessee is having higher non-interest-bearing loan funds available with it and the amount of investment is made out of the mix funds, the presumption would be available in favour of the assessee that amount of investment in fixed assets are made out of the non-interest-bearing funds. Accordingly, no amount of interest can be attributable to the amount of investment in fixed assets made by the assessee till those assets are forced put to use. Accordingly, the respective grounds of appeal in appeal of the assessee for assessment year 2010 - 11 in ground number 2 and for assessment year 2011 - 12 in ground number 1 - 3 of the appeal of the assessee are allowed.

024. Alternative grounds raised by the assessee for assessment year 2010 - 11 in ground number 3 and 4 as well as in ground number 4 for assessment year 2011 - 12 are infructuous and therefore dismissed.
025. Ground number 2 of the appeal is with respect to the disallowance made by the learned lower authorities in respect of excise duty debited to the profit and loss account of ₹ 3,319,431/-. Facts relating to the above issue shows that learning assessing officer noted from the profit and loss account of the assessee that assessee have claimed deduction on account of excise duty expenses twice in the profit and loss account. Firstly as deduction from sales in the credit side of profit and loss account thereby showing only the net value of shares and secondly, by debiting excise duty paid as expenses in debit side of the profit and loss account on account of difference of excise duty contained in opening stock and closing stock. The AO was of the view that it amounts to double deduction. Hence, AO disallowed ₹ 69 57,393. The breakup of this expenditure is that excise duty included in the closing stock valuation is of ₹ 546.82 lakhs reduced by the excise duty included in the opening stock valuation of ₹ 517.55 lakhs resulting into balance of ₹ 29.27 lakhs thereto the excise duty paid on sample is added of ₹ 3.92 lakhs resulting into the amount debited to

the profit and loss account of ₹ 33.19 lakhs. A sum of ₹ 3,637,962/- is written back as the same was disallowed under section 40 3B in assessment year 2008 - 09 when the provision was originally created, the assessee did not offer the same for taxation during this year. Accordingly, the learned assessing officer disallowed the total of these two sums amounting to ₹ 6,957,393 on the ground that assessee has claimed double deduction of the above sum.

026. The assessee challenged the same before the learned CIT - A. The main arguments of the assessee were that on the treatment of excise duty paid based on the guidance note issued by the Institute of chartered accountant of India the difference between the excise duty in the closing stock and opening stock is considered as expenditure. The assessee is following the exclusion method of the accounting for the excise duty and therefore the sales are of excise. The differences of ₹ 33.19 lakhs have been debited to the profit and loss account. Further the sum of ₹ 3,637,962 is allowed as a deduction for assessment year 2009 - 10 as the same was a provision made in the earlier years for assessment year 2008 - 09 which was disallowed under section 43B of the act and same on its written back cannot be added to the total income.
027. The learned CIT - A disallowance of excise duty of ₹ 3,319,431 stating that the above excise duty cannot be considered as paid by the appellant on or before the due date of filing of the return of income in terms of the provisions of section 43B. Further he deleted the addition of ₹ 3,637,962/-, the excise duty which was pertaining to assessment year 2008 - 09 holding that same is not taxable as income in this year.
028. The learned authorized representative submitted that that excise duty of ₹ 3,319,431/- debited to the profit and loss account was in respect of difference between the excise duty included in the opening stock and closing stock of the finished goods and excise duty paid on sample is and the same is not been reduced from the sales value. He further referred to the note on accounting treatment for excise duty and guidance note issued by the Institute of chartered accountants of India



on accounting treatment for excise duty. He further referred to the tax audit report and copy of the revised computation of income for assessment year 2009 - 10 stating that the disallowance confirmed by the learned CIT - A is not proper relying on the decision of tribunal in case of Hyundai motor India Ltd (2012) 19 ITR (T) 778 (Chennai).

029.

The learned departmental representative vehemently supported the orders of the lower authorities. We have carefully considered the rival contention and perused the orders of the lower authorities. We have carefully considered the tax audit report furnished by the assessee. According to the details furnished before the learned assessing officer, the selling price of the assessee is inclusive of excise duty and excise duties paid to the government at the time of dispatch of the material from the factory and recovered through sales from the customer. It is not charged to the company's profit and loss account. In the profit and loss account, the sales have been shown as gross and then the excise duty on the same is reduced from it to credit the net sales to the profit and loss account, which is the requirement of the accounting standard 9 of revenue recognition. The assessee has also valued its closing stock inclusive of the excise duty. The value of the opening stock as well as the closing stock was therefore inclusive of the excise duty. The element of amount debited to the profit and loss account of ₹ 33.19 lakhs is the difference between excise duty included in the opening and closing stock. The same amount is debited to the profit and loss account. As per the tax audit report assessee also submitted a revised statement wherein the amount of excise duty incurred is in expenditure during the year was shown at ₹ 10,402 Lacs out of which a sum of ₹ 7888 lakhs have been paid on or before the due date of filing of the return. Subsequently a sum of ₹ 2,513,989, which was not paid before the due date of filing of the return of income, was disallowed. The above fact also evident from the revised computation of income submitted before the learned assessing officer. Identical issue also arose in the sister concern of the assessee in case of Excel industries limited wherein on identical facts and circumstances we have deleted the disallowance confirmed by the lower authorities, which was made by them on the misunderstanding

of the accounting treatment of the excise duty. Therefore we do not find any reason to uphold the disallowance made by the learned that lower authorities of ₹ 3,319,431/-. Accordingly, ground number 2 of the appeal of the assessee is allowed.

030. In assessment year 2010 - 11 ground number 5 in the appeal of the assessee in ITA number 3906 - M - 2015 and ground number five in appeal of the assessee for assessment year 2011 - 12 in ITA number 6775 - M - 2016 was raised where identical disallowance of been made by the learned assessing officer and confirmed by the learned CIT - A. Both the parties confirmed that there is no change in the facts and circumstances of the case with respect to the above to assessment years compared to the facts in the case of assessment year 2009 - 10. Their arguments were also similar. Accordingly, for the similar reasons, we allow ground number 5 of the appeal of the assessee for assessment year 2010 - 11 and 2011 - 12 and Ground no 1 of the Appeal of Assessee for AY 2012-13 in ITA No 6775/M/2016.

031. Now we come to ground number 3 of the appeal of the assessee for assessment year 2009 - 10 wherein the disallowance of adjustment under section 145A of the act of ₹ 28,684,800 made by the learned assessing officer is confirmed. The facts shows that as per the note on competition of total income submitted by the assessee was noted that during the previous year relevant to the assessment year under consideration, the assessee has adopted the guidance note on tax audit under section 44AB should by the Institute of chartered accountants of India in respect of valuation of inventory is as per the provisions of section 145A of the act. Assessee claimed that there is no impact on the profit and loss account of the assessee as well as on the total income of the assessee with respect to the computation made under section 145A of the act. It was stated that there is a decrease in the profit of rupees 3,33,98,840 on account of the adjustment under section 145A to the value of the opening stock of finished goods and semi-finished goods is the same was taken into account while computing the net effect on the profit for the assessment year 2008 - 09. It was further stated that if the appellant had followed the earlier

practice of working out the net effect on the profit the net increase in the profit for the year would have been ₹ 28,684,800. The learned AO asked the assessee to explain the above situation and why some of ₹ 33,398,840/- should not be treated as its income on account of changing the method of valuation as per the note given in the computation of the total income. The assessee submitted that it has adopted the aforesaid guidance note issued by the Institute for violation of its inventory/stock. It was stated that no adjustment has been made to the purchases, sales and closing stock of inventory is for the year on account of any tax etc. The learned assessing officer rejected the submission of the assessee and made an addition of ₹ 333,98,840.

032. Assessee aggrieved with the above adjustment/addition challenge the same before the learned CIT - A. It was stated that in addition of ₹ 33,398,840 is resulted into double taxation in case of the appellant because the tax impact of the same has already been taxed in assessment year 2008 - 09. The assessee also relied upon the decision of the Honourable Supreme Court in 261 ITR 275.
033. The learned CIT - A, the explanation of the assessee and thereafter held bad as per the computation of total income they assessee itself is stated that if it had followed the practice of earlier years of working out the net effect on the profit and loss account, the net effect on the profit for the year would have been a net increase of a sum of ₹ 28,684,840/-. Therefore he deleted the addition of ₹ 33,398,840 but upheld the addition of ₹ 28,684,800/-.
034. Contesting the above addition to learned authorized representative submitted a note on the valuation of inventory is under section 145A as well as the annexure of tax audit report wherein the adjustment of 145A was also explained. He further referred to the guidance note issued by the Institute of chartered accountants of India as well as the copy of the revised computation of income from assessment year 2008 - 09 wherein the value of closing stock of semi-finished goods and finished goods was increased by a sum of ₹ 33,398,840. Thus according

to him the above addition will result into double addition. With respect to the claim that the above sum of ₹ 286,54,800 shall also not be taxable, he submitted that the identical explanation of the assessee has been accepted by the learned AO for assessment year 2010 - 11 wherein no addition has been made. He therefore submitted that in the assessment year 2010 - 11, the learned AO has correctly understood the implication of the provisions of section 145A and has not made the addition. He specifically referred to the assessment order passed under section 143 (3) dated 20/3/2013. According to him therefore the learned CIT - A is incorrect in upholding the addition of ₹ 28,684,800 confirmed by the learned CIT - A.

035. The learned departmental representative vehemently supported the orders of the lower authorities.
036. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that there is no impact on the impact of the income to be offered under the income tax act as per the provisions of section 145A of the act. On careful consideration of the revised statement furnished by the assessee for the year ended on 31st of March 2009 being statement giving details of deviation from the method of valuation prescribed under section 145A and the fact there are not on the profit and loss as per the tax audit report we find that the above adjustment is tax neutral. If this fact has been accepted by the revenue for assessment year 2010 - 11 as demonstrated in the assessment order passed under section 143 (3) of the act dated 20/3/2013 that no addition is made to the total income of the assessee on the above ground. It is very important to look at dated December 17/2012 of the assessee address to the learned assessing officer on the issue of notice valuation of inventory is as per the provisions of section 145A of the act. By this letter, the assessee has disclosed the accounting entries made in the books of account as well as the accounting entries shown in the tax audit report. The assessee has categorically reiterated that the taxable profits remain the same under both the scenario of inclusive as well as exclusive method of accounting. At page number 40 assessee has mentioned in note

number 5 that during the year the company has complied with the requirement of the guidance note on tax audit issued by the Institute of chartered accountants of India with respect to the provisions of section 145A. If the company had followed its earlier practice of working out the net effect on the profit for the year as per section 145A then the net increase in the profit for the year would have been a sum of ₹ 286 lakhs. Subsequently assessee has also submitted the revised computation of income as well as the explanation before the lower authorities that there is no impact on the taxable income of the assessee for the reason that the accounting for inclusive method or exclusive method of the duties and taxes does not increase the profit of the assessee. Accordingly, we find that the learned that lower authorities were incorrect in making an addition to the total income of the assessee. Accordingly, ground number 3 of the appeal of the assessee is allowed.

037. Consequent to finding in ground number 3 of the appeal of the assessee, the additional ground fire by the assessee becomes redundant and hence dismissed.
038. Assessee has filed an additional ground of appeal the deduction in respect of prior period expenses debited to profit and loss account in assessment year 2010 - 11 of Rs. 160,50,728 which has been disallowed in the financial year 2008 - 09 (assessment year 2009 - 10) is held to be appropriate expenses then in the year to which the expenses pertain to should be allowed as a deduction.
039. We find that this issue is connected with the appeal of the learned assessing officer and it has been raised for all the three years, therefore, it would be dealt with at the time of deciding the appeal of the learned assessing officer for that respective year.
040. No we come to the ID number 7140/M/2014 filed by the learned assessing officer for assessment year 2009 - 10. The first ground of appeal is with respect to the disallowance in respect of subscription expenses of ₹ 2,859,672/-. Facts related to the issue shows that assessee's claim the above amount is subscription expenses debited



the same under the head other expenses which profit and loss account. The assessee was asked to furnish the proof of these expenditure and also to show cause with justification about the allowability of the said expenditure.

041. Assessee submitted letter dated 8/1/2013 stating that assessee is one of the leading generic manufacturer of crop protection products and has been servicing needs of Indian and global agriculture. Over the years the company has focused its efforts on offering affordable crop protection solutions for farmers in India endorses. Endosulfan is a generic insecticide used globally for over 50 years is one of the major products of the company. This is the product which gives major contribution to the company's profit ranging from 40% - 50%. It is an important product for Hindustan insecticide Ltd and Coromandel fertilizers Ltd. It has been facing opposition and threat of ban through adverse publicity by several non-governmental organizations. It has been banned in Kerala recently in the state of Karnataka as well. It was also facing a threat of Pop Listing by Stockholm Convention and PIC Listing at Rotterdam Convention, which would severely curtail export offered and also domestic sales. Therefore, it was decided to form an Association of Manufacturers of Endosulfan to defend the product against the adverse publicity as well as international forum of Stockholm's and Rotterdam convention. EMFWA [Endosulfan Manufacturers and formulators welfare Association) was formed in 2002 and has been registered under the societies registration act 1860. It is a trade association representing its manufacturers and formulators in India. The association is formed with an objective to promote collectively the interest of all its members and to educate the farmers the usage of Endo in the scientific and responsible manner, also to scientifically address the various misconception on its toxicity profile amongst the public, non-government organization, government officials and others. The association is taking various steps to protect and safeguarding interest of its manufacturers. Some of the effective steps are (i) conducting scientific studies on Endo shall solicitor you in different rivers/water bodies in India and to file writ petition challenging ban in Karnataka, (ii) it is a member of



international stewardship Centre which is representing endosulfan and its global manufacturers before Stockholm and Rotterdam convention (iii) finally support pesticides manufacturers and formulators Association, a larger body representing the manufacturers of pesticides in India for illegally defending Endosulfan in the Honourable Supreme Court against the writ petition demanding ban on the product. During the fiscal year 2008 - 09 the members of the association held several rounds of meeting in various parts of the country at the high-level including a meeting convened by the Sec (agricultural) government of India at New Delhi with a view to scientifically addresses the various misconceptions on the toxicity profile of Endosulfan. The association has undertaken various projects to educate about the use of the product in integrating pest management and integrated crop management. Various legal as well as technical advice/support was taken whenever required. The association is giving technical support to various farmers 'organization in their campaign to promote the use of Endosulfan. To counter the false propaganda against the product, members of established contacts with the officials of health and agricultural Department of Central and State governments and also with agriculture universities and research institutions. Association was actively interacting with Kerala government to make them understand positive aspects of Endosulfan. To carry out the above activities required money is funded by its members by way of contribution. Association makes estimates of yearly expenditure and the same is presented to its governing council for approval. The expenses are recovered by way of contribution from its members from the three technical manufacturers based on actual production of Endosulfan in immediately preceding year. The contribution made to association is not donation to be claimed under section 80 G hence submission of certificate under section 80 G is not required. This is in the nature of business expenses and assessee claims it under section 37 since as explained above this organization is working exclusively for the protection of the major molecule Endosulfan. Accordingly, assessee claimed it is a deductible expenditure under section 37 of the Act.

042. The learned assessing officer found that assessee has not submitted any proof of income and sausage expenditure. He further noted that such expenditure was incurred not for business of the assessee but for the purpose of convincing government officials and Department to promote usage of the product ‘Endosulfan’. The product itself is been banned in many countries in cases pending in Supreme Court of India decided by on such productive India also. Therefore, expenditure incurred for blogging with government officials and Department is stated by assessee itself and for promotion of any product, whose production itself seems to be legal is not allowable as per the provisions of law. Therefore, the same is not an allowable expenditure hence entire subscription expenses claimed amounting to ₹ 2,859,772/- was disallowed.
043. The assessee challenged the same before the learned CIT - A. Before him the assessee submitted the details of subscription expenses stating that out of the above sum ₹ 1,235,243/- pertains to contribution made to association whereas the balance amount of ₹ 1,624,529/- 14 to subscription expenses paid to other trade -related organizations. He noted that the learned assessing officer has not drawn any adverse inference against payment of subscription amount into ₹ 1,624,529 and therefore there is no justification in disallowance of the same. With respect to the balance sum of ₹ 1,235,243/- he held that it is a trade association constituted to protect promote the business interest of its members comprising the manufacturer of the particular product and assessee is one of such member. The contribution is paid to such organization. Such organization is also registered under section 12 of the income tax act and engaged in promotional protect of business interest of its members. Therefore, he held that same is allowable under section 37 (1) of the act.
044. Therefore, now learned assessing officer challenged the order of the learned CIT - A. The learned departmental representative submitted that assessee has not produced any evidence failed to show that these expenses as wholly and exclusively for the purpose of the business of the assessee.



045. The learned authorized representative referred to note on the liability of subscription expenses listed page number 86 to 89 of the paper book. It was further stated that out of the total subscription expenses of ₹ 2,859,672/- ₹ 1,235,243/- is a contribution to any association. It was further stated that to save the money of the major product of the company which is been opposed and has a ban threat was required to be countered against the false propaganda and therefore the expenditure incurred by the assessee was essentially for the purpose of the business and therefore it is claimed as expenditure. It was further stated that the assessing officer is not disputed the allowability of appellant subscription expenses of ₹ 16,24,429/- . Therefore, the order of the learned CIT - A requires to be upheld.
046. We have carefully considered the rival contention and perused the orders of the authorities. Undisputedly Endosulfan was the major product manufactured by the assessee, which is facing a public outcry, and an order of the Honourable High Court has banned this product. The reasons itself says that writ petition is pending before the Honourable Supreme Court. The learned CIT - A has allowed the claim of the assessee looking at the form of the issue and on hyper-technical grounds. He passed an order on 25/8/2014. We find that the order dated 13/file/2011 Honourable Supreme Court has banned production of the above product. Honourable Supreme Court noted that the writ petition says that it has harmful effects caused by the continued use of Endosulfan on human beings and on the environment. Endosulfan is now used as a pesticide for the production of crops like paddy, sugarcane, cotton, mango, cashew, etc. Few studies have been conducted in this area and its adverse effects on human health and environment has been reported. Some of the studies also indicate that Endosulfan is significantly associated with neuro-behavioral disorders, cognitive disorders, hydrocephalus, mental retardation, cortical blindness, seizure disorders, Parkinson's disease, etc. Therefore, without going into the merits of the claim of the assessee, we reverse the order of the learned CIT - A granting deduction of such expenditure for furtherance of the product, which has been banned by Hon. Supreme Court and has such a huge threat to human life. It is

opposed to the principle enunciated under section 37 (1) of the grant of deduction of such expenditure to the assessee. We find that neither the order of the Honourable Supreme Court was placed before the learned CIT - A and nor before us. Had that been placed before the learned CIT - A, we are sure that such claim would not have been allowed. The decisions relied upon by the learned CIT - A, in view of the decision of the Honourable Supreme Court on the product itself, are of no help to the assessee. The claim of the authorized representative that the assessing officer has not disputed the allowability of balance subscription expenses of ₹ 1,624,429 is also not correct because the AO has challenged the total deduction allowed by the learned CIT - A. On all other contentions of the assessee, we simply stated that none of them appeal to us in view of a serious threat to the human life by the product as acknowledged by the Honourable Supreme Court. Now it is also immaterial, whether the assessee produces the evidence of incurring such expenditure. We are not inclined to agree at all that expenses for promotion of product of the company, which is considered as threat to human life, can be allowed to assessee as deduction. Accordingly, we reverse the order of the learned CIT - A allowing the deduction of subscription expenditure of ₹ 2,859,672/- to the assessee under section 37 of the income tax act and restore the order of the learned assessing officer. Ground number 1 of the appeal of the AO is allowed.

047. Identical issue has been raised by the learned assessing officer in ITA number 4762/M/2015 for assessment year 2010 - 11 and ITA number 6665/M/2016 for assessment year 2011 - 12 by raising ground number 1 in those appeals. For the reasons given by us in disposing off the appeal of the learned assessing officer for assessment year 2009 - 10, we do not have any hesitation in allowing the ground number one of the appeal of the learned assessing officer for assessment year 2010 - 11 and 2011 - 12.

048. Ground number 2 of the appeal of the assessing officer is against the deduction granted under section 80 IA of the income tax act by the learned CIT - A wherein the learned assessing officer with respect to

the profits of the eligible undertaking or windmills. He has claimed deduction under section EPA of the act amounting to ₹ 19,692,795/-. The learned assessing officer noted that assessee has incurred losses as a result of power generating activity for the year ended on 31/3/2009. In nutshell, assessee was asked to justify as to why deduction under section 80 IA ought to be allowed without setting of brought forward losses and unabsorbed depreciation for earlier years. Assessee has submitted that it has an option to claim the deduction in a block of 15 years for any 10 consecutive years from the initial year. The learned AO disallowed the claim of the assessee for the purpose of computing deduction under section 80 IA as unabsorbed depreciation and accumulated losses of earlier years were to be adjusted first. After that, there was no profit left. Therefore, the deduction of the assessee was denied. The learned additional officer relied upon the earlier assessment order is for assessment year 2005 - 6 to 2008 - 09.

049. Assessee approached the learned CIT - A, who allowed the claim of the assessee following the decision of the coordinate bench in assessee's own case dated 25/7/2014 for assessment year 2005 - 06 to 2008 - 09.
050. The learned departmental representative supported the order of the learned assessing officer. Whereas the learned authorized representative referred to circular number 1/2016 dated 15 February 2016 issued by the civility in respect of classification of the term initial assessment year and further the order of the coordinate bench in assessee's own case for assessment year 2005 - 06 and 2008 - 09 in ITA number 3100, 3101, 8741 and 7155/M/2010. Thus, it was submitted that issue is squarely covered in favour of the assessee.
051. We have carefully considered the rival contentions and values the orders of the lower authorities. We find that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for earlier years based on which the learned assessing officer has made the disallowance. The learned CIT -



A as followed decision of the coordinate bench in assessee's own case of earlier years while allowing the claim of the assessee. Accordingly, ground number 2 of appeal filed by the learned assessing officer deserves to be dismissed.

052. Identical ground number 2 is raised by the learned assessing officer for assessment year 2010 - 11 in ITA number 4762/M/2015 and for assessment year 2011 - 12 in ITA number 6665/M/2016. For the reason given by us in dismissing ground number 2 of the appeal of the learned assessing officer for assessment year 2009 - 10, ground number two of both these appeals of assessment year 2010 - 11 and 2011 - 12 are also dismissed.
053. Ground number three of the appeal is with respect to deduction in respect of prior period expenses. The learned AO noticed that assessee has claimed a sum of ₹ 2,959,408 as prior period expenses. AO noticed that assessee is following mercantile system of accounting and therefore, expenses, which are not pertaining to the current year, should not be allowed. Assessee submitted that it has debited a net amount of ₹ 884,303/- to its profit and loss account as prior period Expenditure. The nature of the expenditure were also given and submitted that assessee did not claim these expenditure in the year to which they pertain to because these expenditure have crystallized during the year. The AO rejected the argument of the assessee and disallowed the above sum stating that assessee is following mercantile system of accounting and therefore these expenses should have been claimed by the assessee in the year to which they pertain.
054. Assessee challenged the same before the learned CIT - A who deleted the disallowance holding that the expenditure has been crystallized during the year; it has accrued to the assessee during this year. Therefore, the expenditure incurred by the assessee in this year itself as the liability for such payment has been accepted in this year.
055. The learned departmental representative supported the orders of the learned assessing officer whereas the learned authorized representative referred to several judicial precedents wherein it has

been held that where the expenditure have been crystallized in debited to the profit and loss account of the previous year relevant to the above assessment year, the same is allowable in which the liability for payment of such expenditure is incurred.

056. We have carefully considered the rival contention and perused the orders of the lower authorities. The identical issue is covered in favour of the assessee for assessment year 2006 - 07 in ITA number 4042/M/2014 in assessee's own case wherein the expenditure were held to be incurred by the assessee as it crystallized when it is accounted for in the books of account. The decision of the Honourable Bombay High Court in case of CIT versus Mahanagar gas Ltd as well as the decision of the Honourable Gujarat High Court in case of Saurashtra cement and chemical industries Ltd versus CIT 213 ITR 523 also supports the case of the assessee. Accordingly, ground number 3 of the appeal of the AO is dismissed. Identical ground number three is also raised for assessment year 2010 - 11 by the learned assessing officer in ITA number 4762/M/2015, which is also dismissed.
057. Accordingly, additional ground raised by the assessee on this aspect has also become academic and hence dismissed.
058. Ground number four relates to disallowance under section 14 A of the act. The learned AO found that assessee has earned exempt income of ₹ 170,299 and also had offered ad hoc disallowance of expenditure of ₹ 170,568 under section 14 A of the act. The learned AO was the details of such expenditure disallowed by the assessing officer along with the proof and further noted that assessee has claimed huge expenditure of ₹ 60 crores in its profit and loss account and therefore the expenditure claimed by the assessee for disallowance is not correct. He adopted rule 8D and disallowed the sum of ₹ 242,928/- being 0.5% of the average value of investment. As assessee has disallowed sum of ₹ 170,568 the balance disallowance of ₹ 135,360 was made.
059. The assessee aggrieved with disallowance preferred an appeal before the learned CIT - A. The learned CIT - A-based on the decision of the



coordinate bench in assessee's own case for assessment year 2005 - 06 to 2008 - 09 deleted the above disallowance as the coordinate bench directed the learned assessing officer to disallow the 10% of the salary paid to general manager finance for all those years. Based on the same reasoning the learned CIT - A held that for assessment year 2008 - 09 also the learned assessing officer has already accepted the disallowance of 10% of the salary paid to the general manager finance under section 14 A, following the principles of consistency, disallowance offered by the assessee should be accepted.

060. The learned departmental representative vehemently supported the order of the learned assessing officer and submitted that the rule 8D is mandatory where the satisfaction of the learned assessing officer is already recorded about the incorrect method of the claim of the assessee.
061. The learned authorized representative supported the order of the learned CIT - A as well as the order of the coordinate bench in assessee's own case for assessment year 2008 - 09 wherein 10% of the disallowance of salary of general manager was accepted as adequate disallowance.
062. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the exempt income earned by the assessee is a dividend income of Rs 4294/- and profit from tax-free units of ₹ 165,375/-. Assessee has offered the disallowance of ₹ 170,568. In any case, the disallowance cannot exceed the exempt income. Even otherwise, for assessment year 2009 - 10, the provisions of rule 8D has been correctly applied by the learned assessing officer. It is incorrect to say that if the learned assessing officer is accepted the same in the earlier year, may be because of the smallness of amount, the same incorrect methodology of disallowance should be continued indefinitely. We are of the view that that is the gross aberration of the principle of the consistency. Accordingly, we direct the learned assessing officer to restrict the disallowance under section 14 A of the act to the extent of exempt

income. Accordingly, ground number 4 of the appeal of the learned assessing officer is allowed to that extent.

063. Ground number four of the appeal for assessment year 2010 - 11 of the learned assessing officer, ground number seven and 12 of the appeal of the assessee for assessment year 2011-12 and ground number two and three of the appeal of the assessee for assessment year 2012-13 are also allowed to that extent that disallowance under section 14 A cannot exceed the exempt income or during the year by the assessee.
064. Now the last ground that remains to be decided is with respect to claim of the assessee, that subsidy received by it in terms of warranted policy of focus market scheme is capital receipt and therefore same cannot be charged to tax. It is claimed that issue is squarely covered in favour of the assessee by the decision of the Honourable Rajasthan High Court in case of principal Commissioner of income tax versus Nitin spinners Ltd (2020) 116 taxmann.com 26 (Rajasthan).
065. The learned departmental representative submitted that to examine whether it is a capital receipt or revenue receipt one has to look at the object and purpose of the scheme. As that object and purpose of the scheme is not available on record, the matter should be restored back to the file of the learned assessing officer for verification of the same.
066. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the Honourable Rajasthan High Court has already dealt with the above issue holding that subsidy received by the assessee under the focus market scheme of the foreign trade policy is capital receipt not chargeable to tax. In view of this, there is no point in setting aside the claim of the assessee back to the file of the learned assessing officer. Therefore, this additional ground is allowed. The learned assessing officer is directed to exclude the subsidy received by the assessee under focus market scheme it is not an income but capital receipt.



067. In the result, all 7 appeals pertaining to the assessee are disposed of by partly allowing the appeal is of the assessee and the learned assessing officer for assessment year 2009 - 10, 2010 - 11 and 2012 - 13. The appeal of the learned assessing officer for assessment year 2011 - 12 is dismissed.

Order pronounced in the open court on 09/01/2023.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09/01/2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai