Income Tax Appellate Tribunal - Mumbai
Chicago Pneumatic India Ltd. vs Dy. Cit on 23 March, 2007
Bench: R Yadav, V Gupta
ORDER V.K. Gupta, Accountant Member

1. These appeals belong to same assessee and involve common issues, therefore, these were heard together and are being disposed of through this consolidated order for the sake of convenience.

2. We have heard both the parties and have also perused the material on record.

3. We shall first take-up the assessee's appeal in ITA No. 5144/Bom./1994 which arises out of order of Commissioner (Appeals) dated 17-2-1994 for assessment year 1986-87.

4. In this appeal, following effective grounds have been raised :

1. The learned Commissioner (Appeals) V, Bombay Commissioner (Appeals) has erred in law and on facts in holding that your appellants have failed to produce M/s. Drill Rock Engineers, Hyderabad along with their books, bank statements and statement of details of services rendered by them and that the commission paid to M/s. Drill Rock Engineers Pvt. Ltd. was only an adjustment in the accounts and that agents were not informed whenever the commission amount was credited to their account and thereby in upholding the disallowance of the commission of Rs. 12,94,673 made by the DC.

2. The Commissioner (Appeals) has erred in law and on facts in stating that out of the total amount of Rs. 4,69,865 paid as commission to M/s. Mindril Services, only Rs. 1,67,801 was paid by cheque and the balance was mere adjustment entry since your appellants have neither sent any credit notes or debit notes nor have the agents raised any bills for the commission and thereby upholding the disallowance made by the DC.

3.1 The Commissioner (Appeals) has erred in law and on facts in holding that your appellants had not been able to produce any evidence as proof for the services rendered by the business agents.

3.2 The Commissioner (Appeals) has erred in law and on facts in holding that your appellants have failed to submit the details that can prove the manner in which the agents have booked the orders from the Government agencies and public undertaking.

3.3 The Commissioner (Appeals) has erred in law and on facts in adding back the amount of Third Party Commission to the total income of your appellants.

4.1 The Commissioner (Appeals) has erred in law and on facts in holding that the amount of Third Party Commission was reduced in the computation of income under Section 154 with the remark, Third Party Commission set aside for further examination'.

4.2 The Commissioner (Appeals) has erred in law and on facts in upholding the decision of DC that after the set aside order, the order has to be passed under Section 143(3) and not under Section 154.

5.1 The Commissioner (Appeals) has erred in law and on facts in rejecting your appellants submissions that the issue of commission was already decided in your appellants favour vide the order dated March 21, 1991 passed by the DC.

5.2 The Commissioner (Appeals) has erred in law and on facts in rejecting your appellants A submissions that the order dated March 29, 1993 passed by the DC is tantamounting to readjudicating an issue because of change in the opinion of the incumbent in the office of the DC.

6.0 The Commissioner (Appeals) has erred in law and on facts in holding that your appellants ground on the (wrongful) initiation of penalty proceedings under Section 271(l)(c) of the Act is irrelevant at his stage.

7.0 Relief : Your appellants, therefore, respectfully pray that : the order dated 17-2-1994 passed by the Commissioner (Appeals) be held bad in law and be quashed; the issuance of show-cause notice under Section 274 read with Section 271(l)(c) of the Act be quashed; and any other reliefs deemed necessary may please be granted.

5. The facts, in brief, are that the assessee-company is engaged in manufacture of pneumatic compressors, spares, tools and the said products are sold throughout the length and breadth of the country. Order under Section 143(3) for assessment year 1986-87 was passed on 28-11-1988 by the DCIT, Special Range-4 wherein the assessing officer disallowed the claim of the assessee in respect of commission of Rs. 12,94,673 paid to M/s. Drill Rock Engineers and Rs. 4,69,842 paid to M/s. Mindrill Services for the reason that the assessee failed to prove the genuineness of these transactions. The assessee filed an appeal before the Commissioner (Appeals) against the said order of DCIT wherein certain evidences were produced for the first time and the learned Commissioner (Appeals) vide its order dated 26-3-1990 restored the matter regarding the point of third party commission to assessing officer with the directions to examine further and reframe the assessment accordingly. The learned Commissioner (Appeals) gave specific directions to assessing officer to make local enquiries to verify the fact of rendering of services.

6. In the assessment proceedings, in compliance to Commissioner (Appeals)'s directions under Section 250, the assessing officer required the assessee to furnish the details regarding nature of services rendered by M/s Drill Rock Engineers and M/s Mindrill Services. The assessee furnished the necessary details. The assessing officer noted that as against payment of commission of Rs. 12,94,673 and Rs. 4,69,842 respectively to Drill Rock Engineers and M/s Mindrill Services, these parties confirmed the amount of Rs. 8,64,709 and Rs. 2,49,634 respectively. Interim report from the assessing officer of these entities was also received, however, in the meanwhile, the ld. Commissioner (Appeals) had set aside this issue to assessing officer, but no final report was received from Hyderabad till the completion of assessment proceedings under Section 143(3) read with Section 250 of the Act. The assessing officer also noted that commission was adjusted by making book entries without informing the party concerned and no debit/credit note were raised, hence

these were merely book entries. The assessing officer also noted that the parties had purchased goods directly from assessee-company and the assessee failed to submit details regarding services rendered by these parties and it was also a known fact that Government Agencies/departments were procuring the materials directly from manufacturers, hence, there appeared no requirement of services of these parties. The assessing officer further observed that the assessee was a well-known company and a market leader in respect of products manufactured by it, it also had Sales department and Stockists were also appointed by the assessee all over the country who were paid fixed discount and commission for the sales executed by them. The assessing officer also observed that the third party commissions were made only for spare parts and because the purchaser of machinery had to buy it from the assessee compulsorily to keep those machines running as such, hence, these intermediaries were not required. Accordingly, the assessing officer held that these expenses were not allowable because these could not be said to have been in any way connected with the business and as per the scheme of the sections in computation of profit or gains from business or profession, the necessity of expenses for earning such income or gain was pre-supposed. Aggrieved by this, the assessee carried the matter into appeal before the learned Commissioner (Appeals) who confirmed the order of assessing officer agreeing with the reasoning of the assessing officer, hence, no need to repeat the same again. Aggrieved by this, the assessee is in appeal before us.

7. The learned counsel appearing on behalf of the assessee, initiated his arguments by pointing out the fact that interim report received from the concerned assessing officer of these two parties was in favour of the assessee and final report was not received yet, hence, on the basis of this report, a presumption could be drawn in favour of the assessee. The learned counsel, thereafter, contended that the learned Commissioner (Appeals) directed the assessing officer to carry out local enquiry which had not been done by the assessing officer, hence, the assessing officer in making the additions again did not comply with the directions of the learned Commissioner (Appeals). The learned counsel, thereafter, contended that all the material documents and evidences were furnished to the assessing officer though these were not considered by the assessing officer and wherever these were considered, these were misconceived e.g., the assessing officer noted that the assessee was having stockists, so there was no necessity to pay commission, however, the fact was that both these parties were stockists who earned commission on sales directly made by assessee-company as a result of their efforts and profit by way of discount on the purchases/ sales made by them. The learned counsel, thereafter, took us to various pages of the paper book and in particular to pages 37, 42 to 48, 67 to 71, 118 and 119 to establish the fact of services rendered by these parties, the methodology of settlement of accounts adopted by the assessee, criteria for fixing rate of commission and internal correspondences regarding the nature of services being rendered and other evidences establishing the genuineness of the transactions. The learned counsel further contended that in the past, commission paid to such parties in the similar manner had A been allowed and there was no difference in the factual matrix of the case in the year under consideration from the facts of those years, hence, there were no reasons to reject the claim of the assessee in this year. The learned counsel further pointed out that sales made by the assessee through these parties had been accepted as genuine. The learned counsel also referred to relevant pages of the paper book containing reasons for termination of agencies in 1987. Finally, the learned counsel contended that the assessee's claim was genuine and, hence, allowable as deduction.

8. The learned D.R., on the other hand, contended that nature of services was not known and no bills were raised by any of the agents, hence, there were prima facie reasons to doubt the genuineness of the transactions. The learned D.R. also contended that Government Organisations could not involve the middle man and also the assessee was having its own net work of sales and after-sales service, therefore, there was no justification for payment of commission. The learned D.R. also pointed out that the C Agents were very frequently changed and rate of commission also varied between 5 to 15% without any basis, therefore, the commission was not justified on this count also. Finally, the D.R. placed strong reliance on the order of revenue Authorities.

9. The learned counsel of the assessee, in the rejoinder, contended that none of these parties were related to the assessee either directly or indirectly, hence, the possibility of getting the money back did not exist. The learned counsel, thereafter, narrated the modus operandi of the business operations and contended that commission agents/stockists were appointed at all geographical locations so as to develop the business and provide after sales services and the functions of the sales/marketing department of the company was to plan the marketing and achieve the business targets through these stockists. The learned counsel also con tended that the supplies were made at DGS&D's approved rates and the functions of these agents were of such nature were to get the business due to intense competition between various players in this segment and made a categorical statement that provisions of Explanation to Section 37(1) were not attracted. Regarding frequent change of stockists/commission agents, the learned counsel contended that these decisions were commercial decisions and fell outside the jurisdiction of assessing authorities, however, to substantiate its claim, the learned counsel further explained that the machinery sold by the assessee was movable and shifted to different locations by the parties who purchased the same and depending upon the requirements of that locations, new agents were appointed and in other locations, where there was no business, the agreements were terminated.

10. We have considered the submissions made by both sides, material on record and orders of authorities below. Admittedly, the assessee is a leading manufacturer of the products. The assessee, is in this line of business for the number of years and allowance of commission in the earlier years paid by the assessee in the same manner is not in dispute. It is also not in dispute that sales made by the assessee in these locations through such parties directly or indirectly have been accepted as genuine. The assessee has established the fact of rendering of services by these parties by adducing ample evidences which have been placed on record, hence, genuineness of transactions cannot be doubted for this reason. We have also noted that the assessee, in case of goods purchased by these agents from the assessee, has sold such goods at a discounted price and these parties earned their profit by selling these goods at a higher price. In respect of commission payable to them, with regard to direct sales, the assessee has credited the accounts of these parties and made payment or adjusted the same from the amounts due from such parties, which, in our opinion, is a normal accounting practice, hence, merely for this reason the genuineness of transactions cannot doubted. The other reasons given by the revenue authorities for disallowing the payment, in our considered opinion, are in the nature of directions to the assessee as to how he should conduct his business and such directions are beyond the scope of the jurisdiction of revenue Authorities. Even otherwise, the assessee has established the fact that it's business policies are commercially sound and are as per prevalent business models at the relevant time. Further, the interim report received from the

concerned assessing officer also supports the case of the assessee. We also do not find any substance in the contention of revenue that agreements of appointment of commission agents should have been executed on legal documents instead of letter form because this not so required under any law. Thus, taking into consideration of the facts and circumstances of the case, we find no justification for making the disallowance. Accordingly, we reverse the order of learned Commissioner (Appeals) and direct the assessing officer to allow the commission as claimed by the assessee. Thus, Ground Nos. 1 & 2 stand accepted. Ground Nos. 3.1 to 5.1 are in the nature of arguments related to aforesaid ground Nos. 1 & 2, hence, no decision is required thereon as these have already been taken into consideration while deciding ground Nos. 1 & 2.

11. Ground No. 6 is against the rejection of the claim of the assessee with regard to penalty proceedings initiated under Section 271(l)(c).

12. The decision of the learned C1T(A) cannot be said to have caused any prejudice to the interests of the assessee, and claim of the assessee, which, in our opinion, has been correctly rejected by the learned Commissioner (Appeals), hence, this ground is dismissed.

13. In the result, the appeal filed by the assessee stands partly allowed. ITA No. 7280/Bom./95 for assessment year 1986-87

14. In this appeal, following effective grounds are raised:

1.1 The learned Commissioner (Appeals) V, Bombay (hereinafter referred to as 'Commissioner (Appeals)') has erred in law and on facts in holding that your appellants had not been able to produce any details/evidence as proof for services rendered by the Third Party Commission agents and A have thereby claimed bogus expenses in the sum of Rs. 17,64,538 in the name of Third Party Commission.

1.2 The Commissioner (Appeals) erred in law and on facts in stating that the Third Party Commission agents have not made any correspondence with the purchaser of goods of your appellants and thereby arriving at an arbitrary conclusion that the intention of your appellants was to conceal the income to the tune of Rs. 17,64,538 and has arrived at a conclusion that mens rea is proved insofar as the purpose of claiming bogus expenses is concerned and in thereby confirming the order passed by the assessing officer levying penalty in the sum of Rs. 18,52,764.

1.3 The Commissioner (Appeals) has erred in law and on facts in stating that the enquiries made by the assessing officer under Sections 133 and 131 of the Income Tax Act, 1961 was brought to the notice of your appellants.

1.4 The Commissioner (Appeals) has erred in law and on facts in rejecting your appellants submissions, the reliance placed on statutory judicious, binding precedents, C and treating the same as not applicable to your appellants case on an arbitrary suo motu basis.

1.5 The Commissioner (Appeals) has erred in law and on facts in illegitimately stretching and unduly expanding the scope of the penal sections via the imaginative order imposed by the DC, of being more concerned with the colour, the content, the context of thestatute rather than with its literal importance and the circumstances surrounding your appellants.

1.6 The Commissioner (Appeals) has consequently erred in law and on facts in confirming the agreeing to the justification of the order passed by the assessing officer levying penalty in the sum of Rs. 18,52,764.

2. Relief : Your appellants, therefore, respectfully pray that a. the appellate order dated January 25, 1995 passed by the Commissioner (Appeals) be held bad in law and be quashed; and b. any other reliefs deemed necesssarymay please be granted.

14A. In this appeal, the assessee is aggrieved by the decision of the learned Commissioner (Appeals) in confirming the levy of penalty under Section 271(1)(c) in respect of commission disallowed by the assessing officer. The issue of disallowance of commission so disallowed, being a subject-matter of appeal, has been decided by us in ITA No. 5141/Bom./94 for assessment year 1986-87 decided by us herein before, hence, the penalty levied under Section 271(l)(c) has no legs to stand. Accordingly, these grounds have become infructuous.

15. Thus, the appeal of the assessee dismissed as infructuous. ITA No. 5142/Bom./94 for assessment year 1988-89

16. The grounds raised in this appeal read as under:

1.1 The learned Commissioner (Appeals) V, Bombay Commissioner (Appeals) has erred in law and on facts in holding that the amount of Third Party Commission was reduced in the computation of income under Section 154 with the remark, Third Party Commission set aside for further examination'.

1.2 The Commissioner (Appeals) has erred in law and on facts in upholding the decision of DC that after the set aside order, the order has to be passed under Section 143(3) and not under Section 154.

2.1 TheIT(A) has erred in law and on facts in rejecting your appellants submissions that the issue of commission was already decided in your appellants favour vide the order dated March 21, 1991 passed the DC.

2.2 The Commissioner (Appeals) has erred in law and on facts in rejecting your appellants submissions that the order dated March 29, 1993 passed by the DC is tantamounting to readjudicating an issue because of change in the opinion of the incumbent in the office of the DC.

3.1 The Commissioner (Appeals) has erred in law and on facts in holding that the amount of Third Party Commission payable by your appellants is not for any services rendered by the business agent.

3.2 The Commissioner (Appeals) has erred in law and on facts in holding that your appellants had not been able to produce any evidence as proof for the services rendered by the business agents.

3.3 The Commissioner (Appeals) has erred in law and on facts in holding that your appellants have failed to submit the details that can prove the manner in which the agents have booked the orders from the Government agencies and public undertaking.

3.4 The Commissioner (Appeals) has erred in law and on facts in adding back the amount of Third Party Commission to the total income of your appellants.

4.0 The Commissioner (Appeals) has erred in law and on facts in holding that the business agents have neither sent any credit notes or debit notes nor have the agents raised any bills for the commission and thereby in upholding the disallowance made by the DC.

5.0 The Commissioner (Appeals) has erred in law and on facts in holding that your appellants ground on the (wrongful) initiation of penalty proceedings under Section 271(l)(c) of the Act is irrelevant at this stage.

6.0 Relief : Your appellants, therefore, respectfully pray that

(a) the order dated 17-2-1994 passed by the Commissioner (Appeals) be held bad in law and be quashed;

(b) the issuance of show-cause notice under Section 274 read with Section 271(l)(c) of the Act be quashed; and

(c) any other reliefs deemed necessary may please be granted.

16A. The issues raised in Ground No. 1.1 are identical to the issue raised in Ground Nos. 1 &2 of ITA No. 5141 /Bom./94 for assessment year 1986-87 read with arguments raised in ground Nos. 3 to 5 of that appeal, hence, following the same, these grounds of the assessee stand accepted.

17. Ground No. 5 is identical to the issue raised in ground 6 of ITA No. 5141/Bom./94, hence, following the same, this ground is dismissed.

18. In the result, the appeal is partly allowed.

IA No. 7281/Bom./95 for assessment year 1988-89 19-20. Now, we shall appeal in ITA No. 7281/Bom./1995 arises out of order of Commissioner (Appeals), Bombay, dated 29-1-1995 for assessment year 1988-89. The proceedings arise out of penalty order passed under Section 271(l)(c) of the Income Tax Act, 1961.

21. The following effective grounds have been raised in this appeal :

1.1 The learned Commissioner (Appeals) V, Bombay (hereinafter referred to as 'Commissioner (Appeals)') has erred in law and on facts in holding that your appellants had not been able to produce any details/evidence as proof for services rendered by Third Party Commission agents and have thereby claimed bogus expenses in the sum of Rs. 19,96,038 in the name of Third Party Commission.

1.2 The Commissioner (Appeals) has erred in law and on facts in stating that the Third Party Commission agents have not made any correspondence with the purchaser C of goods of your appellants and thereby arriving at an arbitrary conclusion that the intention of your appellants was to conceal the income to the tune of Rs. 19,96,038 and in thereby confirming the order passed by the assessing officer levying penalty in the sum of Rs. 20,95,840.

1.3 The Commissioner (Appeals) has erred in law and on facts in stating that the enquiries made by the assessing officer under Sections 133 and 131 of the Income- tax Act, 1961 was brought to the notice of your appellants.

1.4 The Commissioner (Appeals) has erred in law and on facts in rejecting your appellants submissions, the reliance placed on statutory judicious binding precedents, and in treating the same as not applicable to your appellants case on an arbitrary suo motu basis.

1.5 The Commissioner (Appeals) has erred in law and on facts in illegitimately stretching and unduly expanding the scope of the penal sections via the imaginative order imposed by the DC, of being more concerned with the colour, the content, the context of the statute rather than with its literal importance and the circumstances surrounding your appellants.

1.6 The Commissioner (Appeals) has consequently erred in law and on facts in confirming and agreeing to the justification of the order passed by the assessing officer levying penalty in the sum of Rs. 20,95,840.

2. Relief : Your appellants, therefore, respectfully pray that :

a. the appellate order dated 25, 1995 passed by the CTT(A) be held bad in law and be quashed;

b. any other reliefs deemed necessary may please be granted.

22. The issues raised in this appeal are identical to the Grounds raised in ITA No. 5142/Bom./94 for assessment year 1988-89 which we have already dealt with herein before and in view of our decision in that appeal, these grounds have become infructuous, hence dismissed as infructuous.

23. In the result, appeal is dismissed as infructuous.

ITA No. 7282/Bom./95 for assessment year 1991-92 24-25. Now, we would take-up ITA No. 7282/Bom./1995 which arises out of order of Commissioner (Appeals), Mumbai, dated 20-1-1995 for assessment year 1991-92.

26. In the abovesaid appeal following effective grounds have been raised :

1.1 The Commissioner (Appeals) V, Bombay (hereinafter referred to as 'the Commissioner (Appeals)') has erred in law and on facts in confirming the decision of the Deputy Commissioner of Income-tax (hereinafter referred to as 'the DC in disallowing the deduction amounting to Rs. 27,032 being the excess of provision made over the payments made for warranty claims. The Commissioner (Appeals) thereby erred in rejecting your appellants contention that the provision made in the accounts for the liability on account of warranty claims is an admissible deduction.

2.1 The Commissioner (Appeals) has erred in law and on facts in upholding the decision of the DC that excise duty, sales-tax and conversion charges collected by your appellants forms part of the total turnover for the purpose of calculating deduction under Section 80HHC and thereby in adding a sum of Rs. 6,85,135 to the total income of your appellants.

2.2 The Commissioner (Appeals) ought to have accepted your appellants submissions that excise duty and sales tax collected by your appellants do not and cannot for part of the total turnover for the purpose of calculating deduction under Section 80HHC of the Act. He has thereby failed to appreciate that the taxes collected by your appellants are only in the capacity of agents and that it does not and cannot for part of your appellants total turnover.

2.3 The Commissioner (Appeals) has failed to appreciate that since no excise duty sales-tax element is included in exports and therefore, while comparing the total turnover to export turnover for the purpose of computation of export profits, the two turnovers should be comparable with each other.

3.1 The Commissioner (Appeals) has erred in law and on facts in upholding the decision of the DC that for the purpose of calculating deduction under Section 80HHC, Rs. 63,83,390 should be considered as 'Business Profits' instead of Rs. 1,31,21,990 as determined by the DC in his assessment order.

4.1 The Commissioner (Appeals) has erred in law and on facts in holding the contention of the DC that the CCS claim of your appellants is still alive and that if rejected, then the same shall be considered in the year, in which the claim is rejected.

4.2 The Commissioner (Appeals) ought to have accepted your appellants submissions and considered the evidence furnished by your appellants that the CCS claim of Rs. 21,44,937 was rejected by the authorities concerned already and thereby the same was not as income at all for the previous year under consideration.

5.1 The Commissioner (Appeals) has erred in law and on facts in not deleting the addition made in the sum of Rs. 39,94,951 by the DC on account of th third party commission paid to various business agents in consideration of the A services rendered by them in spite of the voluminous evidence produced to prove the genuineness of the service rendered. Your appellants had fully discharged the onus regarding bona fide of commission expense incurred during the course of business.

5.2 The Commissioner (Appeals) has also failed to take congnizance of the fact that your appellants had, during the course of the proceeding, before the DC, furnished voluminous information, setting out the realities of the trade.

5.3 The Commissioner (Appeals) has erred in law and on facts in upholding the contention of the DC and thereby adding a sum of Rs. 13,42,438 being expenses of commission paid to Project and Equipment Corporation of India. The Commissioner (Appeals) ought to have appreciated the fact that the liability for payment of the said commission has crystallized in the previous year relevant to the assessment year under consideration.

6.1 The Commissioner (Appeals) has erred in law and on facts in holding that Rs. 13,299 (being 75% of Rs. 53,366) incurred on lunch for sales conferences of C Managers of your appellants is in the nature of entertainment expenditure and thereby in disallowing the same.

6.2 The Commissioner (Appeals) has also erred in lav/ and on facts in confirming the disallowance of Rs. 88,540 by stating that your appellants have not been able to prove that the said expenditure was incurred by the employees of the company. The Commissioner (Appeals) ought to have appreciated the fact that these expenses were incurred purely for business purposes details of which were never called for by the DC.

7.1 The Commissioner (Appeals) has erred in law and on facts in not taking cognizance of the revised claim of deduction made by your appellants under Section 80HH of the Act.

8.1 The Commissioner (Appeals) has erred in law and on facts in not taking cognizance of the revised claim of deduction made by your appellants under Section 80-I of the Act.

9.1 The Commissioner (Appeals) has erred in law and on facts in holding that the amount of Rs. 2,07,855 has already been allowed as a deduction from the total income. The Commissioner (Appeals) has failed to take note of the DCs contentions that the same will be allowed as a deduction only in the year in which your appellants actually write off the amount.

10.1 Relief : Your appellants, therefore, respectfully pray that -

the appellate order dated January 20, 1995 passed by the Commissioner (Appeals) may please be modified to the above extent, and any other reliefs deemed necessary may please be granted.

27. The facts relating to Ground No. 1, in brief, are that the assessee made a provision of Rs. 6,49,239 of warranty claims of the customers. The figure of warranty claims was arrived at on the basis of claims lodged by customers and on the basis of report of Service Engineers. However, actual claims were settled at Rs. 6,22,007, hence, the assessing officer disallowed Rs. 27,032 being the difference between the two. The learned Commissioner (Appeals) also confirmed the same.

28. The learned counsel for the assessee contended that provision was made for claims lodged by the customers and registered by the assessee on the basis of Service Engineer's report, hence, the

liability to pay had crystallised in the year under consideration and was allowable as business liability. The actual amount of claims settled subsequently was less than the amount provided for. The learned counsel further contended that the assessee followed the method of making provision in a scientific manner based upon the terms and conditions of warranty agreement, hence, it was an ascertained liability and deductions were made subsequently only when the claims were found in excess or not in accordance with the terms of warranty agreement. It was also brought to our notice that excess provision written back was added to the income in the year of write back. It was also contended that this method was consistently followed by the assessee, which was in accordance with generally accepted accounting principles, therefore, no disallowance was warranted.

29. The learned D.R., on the other hand, placed strong reliance on the order of learned Commissioner (Appeals).

30. We have considered the submissions made by both the sides, material on record and orders of authorities below. Admittedly, the assessee has made provision for warranty claims lodged and registered by the company on the basis of preliminary report of the Service Engineer. Hence, it has become an admitted liability of the company for the year under consideration. The amount short paid against the amount of claim is not an contingent liability because there may be situations where in some cases the assessee is required to incur more expenses and in real life business situations, these things happen. Further, the amount of excess provision had been subsequently offered for taxation by the assessee and the amount of provision written back is less than 5% of the total provision made, hence, the genuineness of the provision cannot be doubted. Accordingly, we accept this ground of the assessee.

31. In ground Nos. 2 & 3, the assessee has challenged the inclusion of Excise Duty, Sales Tax and charges in the total turnover of the assessee for the purpose of computation of deduction under Section 80HHC. Both the parties agreed that Excise duty/Sales Tax could not be included into the total turnover of the assessee in accordance with the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Sudarshan Chemicals Industries Ltd. (2000) 245 ITR 7691 (Bom.). Accordingly, this part of the ground is accepted. As far as conversion charges are concerned, the same have been included in the profits of the business and are an integral part of export activities and also have an element of turnover, therefore, the same are includible in the total turnover of the assessee as held by Hon'ble Bombay High Court in the case of CIT v. Bangalore Clothing Co. A . Accordingly, the contentions raised by the learned counsel in this regard are rejected and this part of the ground is decided against the assessee. In the result, ground No. 2 stands partly allowed.

32. In Ground No. 3, the issue is regarding whether the assessee should get deduction under Section 80HHC on the returned profit or assessed profit. In our considered opinion, the assessee should get deduction the basis of assessed income as the basis for the levy of tax has to be arrived at after taking into consideration the deductions under Chapter VI-A and the total income can be computed correctly only after giving deduction on income as computed by the assessing officer after making various disallowances. Accordingly, we direct the assessing officer to grant the deduction under Section 80HHC to assessee on the assessed income as determined by the assessing officer. Thus, this ground of the assessee stands accepted.

33. In respect of Ground No. 4, the facts, in brief, are that the assessee made exports through Project Equipment Corporation of India to the tune of Rs. 2.68 crores and lodged a claim of Rs. 21,44,937 to the Joint Controller of Imports and Exports under Cash Compensatory Scheme. The assessee accounted for this CCS claim as income of the previous year relevant to assessment year under consideration. However, this claim was not settled till 15-12-1993 as the proof of realisation of export proceeds had not been submitted to Joint Controller of Imports and Exports. The assessee claimed for exclusion of the same from total income, however, the assessing officer held that the assessee was following mercantile system of accounting and its entitlement for the claim to CCS was still alive, hence, it was the income of the assessee for the year under consideration. The assessing officer further held that if the claim of the assessee was rejected subsequently, then, in that year the same would be considered. Aggrieved by this, the assessee carried the matter into appeal before the learned Commissioner (Appeals) who up-held the action of assessing officer and also directed the assessing officer to consider the claim of the assessee for deduction as and when this claim was rejected by the concerned authori ties. Aggrieved by this, the assessee is in appeal before us.

34. The learned counsel for the assessee referred to the decision of the Tribunal in the case of Gupta Garments v. Assistant Commissioner (1995) 53 ITD 362 (Mad.) to contend that the assessee had merely lodged the claim which was not sanctioned by the concerned authority, hence, the assessee did not acquire any legal right to receive the amount because mere lodging of claim could not amount to assessee's right to receive the amount unless the claim of the assessee was accepted by the concerned authorities. Accordingly, the learned counsel contended that CCS had not accrued to the assessee and, therefore, the same was not liable to be taxed in the year under consideration.

35. The learned D.R., on the other hand, placed strong reliance on the order of assessing officer.

36. We have considered the submissions made by both sides, material on record and orders of authorities below. Admittedly, the assessee is following mercantile system of accounting but merely on this basis every claim cannot be set to have accrued to the assessee rather it is the accrual of income based upon specific terms and conditions of a claim/or contract which is offered as income on accrual basis under the mercantile system of accounting. Therefore, if an income has not accrued, the same cannot be taxed even though the assessee is following mercantile system of accounting. From the perusal of the orders, it appears that the assessee have not received the CCS amount only because of non-realisation of sale proceeds or submission of proof thereof, hence, prima facie the assessee's claim appears to have been accepted by the concerned authorities. Having stated so, however, the factum is that none of the revenue authorities have examined the terms and conditions of the scheme so as to determine the aspect of accrual and time thereof. It is also not clear from the records whether it is only quantification which is pending or certain other conditions are to be complied before actual disbursement of the same by the concerned authority although the assessee's right to receive the CCS have accrued and it is a legally enforceable right. This appears to be more proximate or real because the assessee has admittedly exported the goods and that too through a Public Sector Undertaking, hence, on the face of it the assessee appears to have become entitled to CCS in the year under consideration. The fact of claim lodged by the assessee cannot be ignored as a claim simplicitor because the assessee has itself arrived at specific amount based upon the terms and conditions of the Scheme and has credited the same in the P&L Account and these facts

certainly indicate the true nature of claim. In the case law relied on by the assessee, the assessee was following cash basis of accounting for all export incentives which was disturbed by the revenue authorities, which is not the case here, hence the ratio of that decision is not applicable. Further, no material has been brought on record even during the course of hearing regarding final outcome of this claim, hence, it can be logically presumed that the assessee has either received and if not so, the same would have been allowed as deduction by the revenue authorities in the year of rejection as is evident from the orders of the revenue authorities. In this view of the matter, we are of the opinion that no useful purpose would be served by restoring this issue to the file of learned Commissioner (Appeals). Accordingly, we dismiss this ground of the assessee.

37. The issue raised in Ground No. 5 is identical to Ground Nos. 1 & 2 of ITA No. 5141 /Bom./94 except new fact that the assessing officer directly confirmed from some of the purchasers who denied the involvement of any commission agent. The assessee explained that most of the parties approached by the assessing officer were not Government departments whereafter signing of rate contracts with the assessee-company, tenders were not floated and it was the duty of the commission agent/stockist to A track their necessities and follow up with such authorities which resulted into placement of orders directly to the assessee-company. However, the assessing officer for the reasons mentioned in the earlier years, disallowed the claim of the assessee. The learned Commissioner (Appeals) also confirmed the same.

38. The learned counsel took us to the voluminous documentary evidences filed in the form of paper book to substantiate its claim. It was also contended that these parties also claimed Modvat on direct purchases. It was also contended that sales was made in this year, hence, liability to pay commission was also incurred in this year. Besides making these pleadings, the learned counsel reiterated the submissions made in assessment year 1986-87.

39. The learned D.R., on the other hand, put strong reliance on the orders of revenue Authorities.

40. We have dealt with the issues in detail and also covered all the aspects while deciding assessee's appeal in ITA No. 5141 /Bom./1994 hereinbefore, hence, there is no need to repeat the same reasonings; here again. We would like to add that in this year the assessee has furnished additional documentary evidences which further support the claim of the assessee. Accordingly, ground No. 5 stands accepted.

41. In respect of Ground No. 6, the facts, in brief, are that the assessing officer made disallowances of Rs. 3,35,507 under Section 37(2A) of the Act. In the appellate proceedings, the assessee contended that Rs. 62,601 had been incurred on employees accompanying guests, Rs. 13,299 were incurred on stay expenses and Rs. 53,866 were incurred for sales confer ence of Managers at Hotel Oberoi. In the appellate proceedings before the learned Commissioner (Appeals), it was contended that the addition of Rs. 88,540 made by the assessing officer on the ground that necessary details were not furnished, was in correct because required details were filed during the course of assessment proceedings. The learned Commissioner (Appeals) held that Rs. 13,299 were purely in the nature of entertainment and out of Rs. 55,366, further deduction of 25 per cent for the staff could be given. The learned Commissioner (Appeals), however, confirmed the addition of Rs.

88,540 as the assessee failed to prove that the said expenditure was incurred by the employees of the company. Aggrieved by this, the assessee is in appeal before us.

42. The learned counsel for the assessee contended that the expenses of Rs. 53,866 were incurred only in connection with the conference involving employees, hence, there was no question of entertainment expenditure involved. With regard to disallowance of Rs. 88,540, the learned counsel reiterated the submissions made before the revenue Authorities.

43. The learned D.R., on the other hand, placed strong reliance on the order of revenue Authorities.

44. On due consideration of facts and circumstances of the case, we find that the assessee deserves to succeed in respect of disallowances of Rs. 13,299 and Rs. 40,025 as these have incurred only on employees. However, for the other disallowance of Rs. 88,540, the assessee has not furnished any details, hence, this disallowance made by the revenue Authorities is confirmed. Accordingly, Ground Nos. 6.0, 6.1 stand allowed and Ground No. 6.2 stands rejected.

45. In Ground Nos. 7.1 and 8.1, the assessee is aggrieved by the decision of the learned Commissioner (Appeals) in not taking the cognizance of the revised claim of deduction made by the assessee for deduction under Sections 80HH and 80-I of the Act.

46. The facts, in brief, are that the assessee revised its claim for deduction under Sections 80HH and 80-I of the Act during the course of assessment proceedings subsequent to filing of revised return. However, the Assessing Officer did not take cognisance of these claims made by the assessee. The learned Commissioner (Appeals) also confirmed the action of assessing officer.

47. The learned counsel narrated the factual matrix of the case and contended that the learned Commissioner (Appeals) ought to have accepted the claims of the assessee.

47A. At this stage, the learned D.R. pointed out that the assessee filed revised return before the assessing officer wherein this claim was not revised, hence, the assessee missed the opportunity as provided in the law and for its fault he could not get the benefits which were against the provisions of law. The learned D.R. further contended that this issue was covered against the assessee by the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT .

48. The learned counsel for the assessee in the rejoinder, contended that the ratio of that decision was applicable to the assessment proceedings and the learned Commissioner (Appeals) have taken cognizance of the claims made by the assessee which was very much within the powers of the Commissioner (Appeals).

49. The assessee claimed deduction in the original return of income. Though the assessee revised its original return, however, claim under Sections 80HH and 80-I was not revised. Subsequently, during the course of assessment proceedings, the assessee revised its claim, which the assessing officer did not take into cognisance as the assessee had not filed revised return to this effect. The learned Commissioner (Appeals) also confirmed the action of assessing officer. Prima facie, the ratio

of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra) is squarely applicable to the facts of the case because as per the law, the onus lies on the assessee to make right claim and such claim must be made within the framework of provisions of Act. However, this situation, though, it is perfectly in consonance with the position of law may result into genuine hardship to the assessees as the assessee would be left with the option only to proceed under Section 264 that too in case they have not gone into A appeal before the learned Commissioner (Appeals) on the same issue or the learned Commissioner (Appeals) has not admitted those issue. Other option would be to approach Central Board of Direct Taxes under Section 119 of the Act for getting the specific relief. Both these options involve time as well as engagement of other administrative authorities which can be otherwise devoted to other important issues. This situation has compelled us to look into the duties of the assessing authorities rather than powers of assessing authorities because Government is entitled to collect only the tax legitimately due to it otherwise the tax not so collected would be violative of the Article 265 to the Constitution of India. In such pursuit, we have found that the CBDT as back as in 1955 issued Circular No. 14 (XL-35), dated 11-4-1955 as to what should be a departmental attitude towards refund and reliefs to the assessees. The subject circular is reproduced below for the purpose of ready reference :

V. Miscellaneous - Refund and reliefs due to assessees - departmental C attitude towards - The Board have issued instructions from time to time in regard to the attitude which the Officers of the department should adopt in dealing with assessees in matters affecting their interest and convenience. It appears that these instructions are not being uniformly followed.

2. Complaints are still being received that while Income Tax Officers are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under Section 48 or due to appellate, revisional, etc. orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should:

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs;

(c) Public Relation Officers have been appointed at important centres, but by the very nature of their duties, their field of activity is bound to be limited.

The following examples (which are : by no means exhaustive) indicate the attitude which officers should adopt :

(a) Section 17(1): While dealing with the assessment of a non-resident assessee the officer should bring to his notice that he may exercise the option to pay tax on his Indian income with reference to his total world income if it is to his advantage.

(b) Section 18(3), (3A), (3B) and (3D) : The officer should in every appropriate case bring to the assessee's notice the possibility of obtaining a certificate authorising deduction of income-tax at a rate less than the maximum or deduction of super tax at a rate lower than the flat rate, as the case may be.

(c) Section 25(3) and 25(4): The mandatory relief about exemption from tax must be granted whether claimed or not; the other relief about substitution, if not time-barred, must be brought to the notice of taxpayer.

(d) Section 26A : The benefit to be obtained by registration should be explained in appropriate cases. Where an application for registration presented by a firm is found defective, the officer should point out the defect to it and give it an opportunity to present a proper application.

(e) Section 33A : Cases in which the Income Tax Officer (now Assessing Officer) or Assistant Commissioner (now Deputy Commissioner) thinks that an assessment should be revised, must be brought to the notice of the Commissioner of Income-tax.

(f) Section 35 : Mistakes should be rectified as soon as they are discovered without waiting for an assessee to point them out.

(g) Section 60(2) : Cases where relief can properly be given under this sub-section should be reported to the Board.

In this Circular, the Board has recognised the fact that responsibility for claiming refunds and reliefs rests with the assessee. AS IMPOSED BY LAW even then the Board has directed the officers to draw the attention of the assessees in respect of any refunds or reliefs to which they are eligible, which they have not claimed for some reason or the other. The Board has also given few examples in this regard and has specifically clarified that, these examples are not exhaustive. Further, the Board also issued Circular F. No. 81/27/65-IT(B), dated 18th May, 1965 defining the duties of P.R.Os. in providing assistance to the public . In this circular, the Board has also advised the P.R.O. to visit the Government/commercial establishments to provide them assistance in filing correct returns and making eligible claims. These Circulars issued by the Board almost 4-5 decades before cast a duty on the assessing authorities to collect only the legitimate tax. Starting from late 1980s, the Government has focussed as voluntary compliance by the assessees and, therefore, Government has reduced the

number cases selected for compulsory scrutiny and has also reduced the tax rates. This policy of the Government has resulted into higher tax revenues and simplification of laws. It is a settled position that the Circulars issued by the Board are binding on the subordinate income-tax authorities and if C.B.D.T. issues directions which arc beneficial to the assessees although the same may not be directly in consonance with the provisions of law, even then these instructions have to be given effect and adhered to by the concerned authorities. Thus, there is a strong case for reciprocity to be shown by the revenue Authorities while completing assessments and to avoid administrative hardships to the assessee. As far as the decision of the Hbn'ble Apex court in the case of Goetze (India) Ltd. (supra) is concerned, there is no dispute that the same is binding on everybody concerned. In the said decision, the Hon'ble Apex court has also ruled that Appellate Tribunal may adjudicate the issue if a claim is made by any party subject to satisfaction of prescribed rules, hence, even the Hon'ble Apex court has not barred the assessee raise it's legal claim before Appellate Authorities. However, such process would result into undue hardships, delay and multiplicity of proceedings. The Hon'ble Apex Court, on numerous occasions has laid the proposition that the Assessing Authorities are bound to compute the correct income only and collect only legitimate tax, hence, merely for a procedural lapse or technicalities, in our opinion, the assessee should not be compelled to pay more tax than what is due from him. Therefore, this situation has necessarily to be looked upon from the angle of duties of Assessing Authorities as stated earlier, CBDT is the Apex body for tax administration and it can also issue directions which are for the benefit of the assessee's though such directions may not be inconsonance with the provisions of law, hence, if a circular is now issued directing the assessing authorities to grant reliefs/ refunds while completing the assessment proceedings, even though such circular may be at variance with the law, as pronounced by the Hon'ble Supreme Court, but the same would be binding on the subordinate income-tax authorities. In our opinion, therefore, circulars of same nature which have been already issued would not become irrelevant or can be ignored. Admittedly, the circular issued in 1995 has not been withdrawn, hence, it has got binding force on the subordinate authorities even as on date. Accordingly, we hold that the assessing officer is bound to assess the correct income and for this purpose, the assessing officer may grant reliefs/refunds suo motu or can do so on being pointed out by the assessee in the course of assessment proceedings for which assessee has not filed revised return, although, as per law, the assessee is required to file the revised return. Having stated so, in our view, the learned Commissioner (Appeals), having co-terminus powers with the powers of assessing officer and the fact that appellate proceedings are the continuation of original proceedings, should have entertained the claim of assessee and allowed if other conditions of the provisions of the law were satisfied. In this view of the matter, we accept both the grounds of the assessee and direct the learned Commissioner (Appeals) to consider the claim of the assessee at the revised figures on merits and decide the same according to the provisions of Sections 80HH and 80-I of the Act after hearing the assessee. Thus, this ground of the assessee stands accepted.

50. Ground No. 9.1 - The facts relating to ground No. 9.1 are that the assessee wrote back a provision of Rs. 2,07,855 which was not required anymore, however, the assessee contended that this was not chargeable to tax as the provisions so made was not allowed as a deduction in the year in which such provision was made. The assessing officer rejected the claim of the assessee and the learned Commissioner (Appeals) dismissed the ground by holding that no adjustment was made in the assessment order by the assessing officer by increasing the total income by this disallowance hence,

this ground was mis-conceived.

51. The learned counsel contended that as far as the effect on total income was concerned, there was no effect. However, this issue required decision on merits as it was having implications for future years. It was also pointed out that it was a case of write back of excess provision made in earlier years and such provision was not allowed as a deduction, hence, such write back was not taxable.

52. The learned D.R., on the other hand, preferred to rely on the orders of revenue Authorities.

53. We find that this issue is of academic in nature because the assessing officer has not added the same to the total income of the assessee though he has given a finding in the assessment order. On merits, the issue is required to be decided in favour of the assessee because once the provision made in an earlier year was not allowed as a deduction, hence the write back of the same provision in the subsequent year, when such provision is no longer required, cannot become an income of an assessee as the contentions specified in the Section 41(1) of the Act are not met. For academic purposes, this ground of the assessee stands allowed.

54. In the result, appeal of the assessee stands partly allowed.

ITA No. 3315/M/99 for assessment year 1995-96 55-56. Now, we shall take ITA No. 3315/Mum./1999 which arises out of order of Commissioner (Appeals), Mumbai, dated 27-4-1998 for assessment year 1995-96.

57. In the abovesaid appeal following effective grounds have been, raised. which read as under :

1.1 The Commissioner (Appeals) has erred in law and on facts in upholding the decision of the JC that excise duty, sales tax and conversion charges and sale of scrap collected by your appellants forms part of the total turnover for the purpose of calculating deduction under Section 80HHC.

1.2 The Commissioner (Appeals) ought to have accepted your appellants submissions that excise duty and sales tax collected by your appellants do not and cannot for part of the total turnover for the purpose of calculating deduction A under Section 80HHC of the Act. He has thereby failed to appreciate that the taxes collected by your appellants are only in the capacity of agents and that, it does not and cannot for part of your appellants total turnover. Similarly conversion charges and income from sale of scrap do not form part of total turnover for the purposes of deduction under Section 80HHC of the Act.

1.3. The Commissioner (Appeals) has failed to appreciate that since no excise duty sales-tax element, conversion charges and income from sale of scrap was included in exports and therefore, while comparing the total turnover to export turnover for the purpose of computation of export profits, the two turnovers should be comparable with each other.

2.1 The Commissioner (Appeals) has erred in law and on facts in confirming the addition made in the sum of Rs. 19,82,293 by the JC out of total amount of third party commission paid to various

business agents in consideration of the services rendered by them in spite of the voluminous evidence produced to prove the genuineness of the services rendered. Your appellants had fully discharged the onus regarding bona fide of commission expenses incurred during the course of business.

2.2 The Commissioner (Appeals) has also failed to take cognizance of the fact that your appellants had, during the course of the proceeding, before the JC, furnished voluminous information, setting out the realities of the trade.

3.1 On the facts and in law, the Commissioner (Appeals) erred in remanding the matter back to the JC in relation to third party commission to agents for non-Government customers. On the facts and in the circumstances of the case and in law, the CTT(A) ought to have decided the matter in favour of the appellant.

58. The Ground Nos. 1.1, 1.2 & 1.3 in this appeal are identical to the ground No. 2.1 of ITA No. 7282/Bom./95 for assessment year 1991-92. However, the issue of inclusion of sale of scrap in the total turnover is also involved. The sale of scrap has inherently imbibe the element of turnover and it is also related to the basic operations carried on by the assessee, hence, the same is to be included in the total turnover of the assessee for the purpose of computation of deduction under Section 80HHC. Thus, the assessee's contentions are rejected in this regard. Accordingly, grounds 1.1, 1.2 & 1.3 stand partly allowed.

59. Ground Nos. 2.1, 2.2 and 3.1 are covered by the decision of ground Nos. 1.1 & 1.2 of ITA No. 5141/Bom./94 and Ground Nos. 5.1, 5.2, 5.3 of ITA No. 7282/Bom./95.

60. In the result, appeal filed by the assessee stands partly allowed.

ITA No. 152/Mum./ 03 for assessment year 1992-93 61-62. Now, we shall take ITA No. 152/Mum./2003 which arises out of order of Commissioner (Appeals), Mumbai, dated 28-10-2002 for assessment, year 1992-93.

63. The following grounds have been raised in this appeal :

1. The learned Commissioner of Income tax (Appeals) has erred in law and on facts in upholding the disallowance made by the assessing officer in respect of third party commission expenses of Rs. 32,55,203.

2. The learned Commissioner (Appeals) has erred in law and on facts in not considering the ground of appeal of your appellant in respect of non-consideration by the assessing officer of the export proceeds billed and received in Indian Rupees from foreign customers for the purpose of forming part of the Export turnover for calculating deduction under Section 80HHC of the Act.

3. The learned Commissioner (Appeals) has erred in law and on facts in upholding the disallowance by the assessing officer in respect of export commission of Rs. 1,81,228.

4. The learned Commissioner (Appeals) has erred in law and on facts in not considering the ground of appeal of your appellant in respect of non-allowance by the assessing officer in respect of deduction under Section 35D of Rs. 61,500 towards debenture issue expenses.

64. Ground No. 1 is identical to ground No. 1.1 in ITA No. 7280/B/95 for assessment year 1986-87 which we have decided in favour of assessee, hence this ground also decided accordingly.

65. Ground Nos. 2 & 4 are not pressed, hence, dismissed as not pressed.

66. In respect of Ground No. 3, the facts, in brief, are that a disallowance of Rs. 13,42,438 was made in assessment year 1991-92 on account of commission payable to Project & Equipment Corporation of India on export made through it because the commission had not become payable as the sale proceeds had not realised. Out of this, Rs. 11,61,210 was allowed in this year as it became payable on receipt of sale proceeds. However, the balance sum of Rs. 1,81,228 was not allowed as sale proceeds were not realised. The learned Commissioner (Appeals) also confirmed the action of Assessing Officer following the appellate order for assessment year 1990-91. Still aggrieved, the assessee is in appeal before us.

67. The learned counsel appearing on behalf of the assessee reiterated the submissions made before the revenue authorities.

68. The learned D.R. placed strong reliance on the order of assessing officer.

69. Admittedly, this issue is occurring in different assessment years and similar disallowance was also made in assessment years 1990-91 and 1991-92. However, the assessee's appeal in assessment year 1991-92 is not before us and we are also not aware of the ultimate fate of this issue. However, based upon the findings of the assessing officer, it is evident that the assessee is liable to pay commission to Project & Equipment Corporation of India only when the sale proceeds in respect of exports made to them are realised. Since the impugned receipts have not been realised, the assessee is not liable to pay any commission. Accordingly, we do not find any merit in this ground of the assessee, the same is, therefore, dismissed.

70. In the result, this appeal stands partly allowed.

ITA No. 1978/Mum./97 for assessment year 1993-94 71-72. Finally, we shall take-up ITA No. 1978 /Mum./1997 which arises out of order of Commissioner (Appeals), Mumbai, dated 30-1-1997 for assessment year 1993-94.

73. The following effective grounds have been raised in this appeal by the assessee :

1.1 The Commissioner (Appeals) XXXIII (hereinafter referred as 'the Commissioner (Appeals)') has erred in law and on facts in upholding the decision of the Deputy Commissioner of Income-tax (hereinafter referred to as 'the DC) that disallowance under Rule 6D of the Income-tax Rules, 1962 (hereinafter referred to as (the Rules)) is to be computed on the basis of individual trip undertaking

by the employee and not on the aggregate C trip basis undertaken by each of them.

2.1 The Commissioner (Appeals) has erred in upholding the decision of DC in disallowing deduction amounting to Rs. 1,23,213 on pro rata basis being 1/7th of the amount of premium payable on maturity of debenture in future years claimed during the previous year.

3.1 The learned Commissioner (Appeals) has erred in law and on facts in confirming the decision of the DC in disallowing the deduction amounting to Rs. 1,82,494 out of provision made for warranty claims. The Commissioner (Appeals) thereby erred in rejecting your appellants contention that the provision made in the accounts for the liability on account of warranty claims is an admissible deduction.

4.1 The Commissioner (Appeals) has erred in law and on facts in upholding the decision of the DC that excise duty and sales-tax paid by your appellants forms part of the Total turnover for the purpose of calculating deduction under Section 80HHC and thereby adding a sum of Rs. 98,74,34,390 to the total turnover of your appellants.

4.2 He failed to appreciate that excise duty and sales tax collected by your appellants cannot form part of total turnover as the taxes are collected by your appellants only in their capacity as agents.

5.1 The Commissioner (Appeals) has erred in law and on facts in not deleting the addition made in the sum of Rs. 24,13,096 by the DC on account of the Third Party Commission paid to various business agents in consideration of the services rendered by them in spite of the voluminous evidence produced to prove the genuineness of the services rendered. Your appellants had fully discharged the onus regarding bona fide of commission expenses incurred during the course of business.

5.2 The Commissioner (Appeals) has also failed to take cognizance of the facts that your appellants had, during the course of the proceeding, before the DC, furnished voluminous information, setting out the realities of the trade.

5.3 The Commissioner (Appeals) has erred in law and on facts in upholding the order of the DC that commission agents did not play any role in the transactions or rendered any services for procuring the orders and that there is no proof of the services rendered by the agents.

5.4 The Commissioner (Appeals) also erred in not appreciating the fact that the services of the agents were not illegal and violative of public policy as imagined by him.

6.1 The Commissioner (Appeals) erred in setting aside the action of the assessing officer in disallowing a loss of Rs. 22.65 lakhs being long-term capital loss incurred on sale of land instead of allowing it as per appellants prayer.

6.2 He failed to appreciate that on the facts and in the circumstances of the case your appellants claim had to be allowed.

7.1 Relief : Your appellants, therefore, respectfully pray that :

(a) the appellant order dated 13-1-1997 passed by the Commissioner (Appeals) may please be modified to the above extent; and

(b) any other reliefs deemed necessary may please be granted.

74. Ground No. 1.1: The learned counsel fairly accepted that this issue was covered against the assessee, hence, this ground is dismissed.

75. Ground No. 2 is covered in favour of assessee by the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corpn. Ltd. v. CIT (1997) 225 ITR 8021, hence, the same is accepted.

76. Ground No. 3.1 is identical to the issues raised in ITA No. 7282/Bom./ 95 for assessment year 1991-92 of ground No. 1.1, hence following our decision there, this claim of the assessee is accepted.

77. Ground No. 4.1 is covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Sudarshan Chemicals Industries Ltd. (2000) 245 ITR 7692 (Bom.). Hence, this ground is accepted.

78. Ground Nos. 5.1 to 6.2 are identical to grounds raised in ITA No. 5141/ Bom./94 for assessment year 1986-87, hence, the same are allowed.

79. In the result, appeal filed by the assessee stands partly allowed.

80. To sum up, all the 8 appeals filed by the assessee stand partly allowed.