

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "A", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

Sl. No(s)	आयकर अपील सं/ ITA No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलकर्ता / Appellant	प्रत्यर्थी / Respondent
1.	1772/Ahd/2015	2002-03	Ambalal Sarabhai Enterprises Ltd. Wadi Wadi Baroda -390 023 PAN: AABCA 6893 K (Assessee)	The ACIT/DCIT Circle-1(1)/ Circle-1(1)(1) Race Course Circle, Baroda - 390007 (Revenue)
2.	1773/Ahd/2015	2003-04	Assessee	Revenue
3.	1290/Ahd/2016	2004-05	Assessee	Revenue
4.	1594/Ahd/2016	2004-05	Revenue	Assessee
5.	1782/Ahd/2016	2005-06	Assessee	Revenue
6.	2066/Ahd/2016	2005-06	Revenue	Assessee
7.	1291/Ahd/2016	2006-07	Assessee	Revenue
8.	1783/Ahd/2016	2007-08	Assessee	Revenue
9.	2067/Ahd/2016	2007-08	Revenue	Assessee

Assessee by :	Shri Bandish Soparkar, A.R. & Shri Parin Shah, A.R.
Revenue by :	Shri R.N. Dsouza, CIT-DR & Shri B.P. Srivastava, Sr.DR

सुनवाई की तारीख / Date of Hearing : 30/10/2024
घोषणा की तारीख / Date of Pronouncement: 03/12/2024

आदेश/ORDER

PER BENCH

The assessee and the revenue have both appealed (9 appeals) against the separate orders passed by the Commissioner of Income Tax (Appeals) - 1, Vadodara [hereinafter referred to as "CIT(A)"] for different assessment years, i.e. 2002-03 to 2007-08 [hereinafter referred to as "A.Y."]. The issues in dispute pertain to various additions, disallowances made by the Assessing Officer [hereinafter referred to as "AO"] as per his orders under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the respective A.Y.s, while the revenue contests certain deletions granted by the CIT(A). As the grounds raised are common across the assessment years under appeal(s), we are disposing of these appeals by way of a consolidated order for convenience.

Facts of the case:

2. The assessee-company is mainly engaged in the manufacture of drugs and pharmaceuticals, it also provides marketing and consultancy activities in respect of drugs and pharmaceuticals, fine chemicals, industrial glass containers, packing materials, electronic tests and measuring instruments, consumer electronic and industrial research. There are 15 divisions including service units catering to the needs of other units of corporate body.

2.1. The assessee filed return of income for the respective A.Y. and the cases were selected for scrutiny. The assessments were completed under section 143(3) of the Act. The AO made certain disallowances and additions in the

income of the assessee for the respective A.Y.s. The details of the returns filed, and assessment completed are tabulated below:

Particulars -> A.Y.	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Date of Filing Return of Income	31/10/2002	28/11/2003	01/11/2004	31/10/2005	30/12/2006	31/10/2007
Date of Order of AO	31/03/2005	14/03/2006	29/12/2006	24/12/2007	29/12/2008	31/12/2009
Date of Order of CIT(A)	17/03/2015	20/03/2015	29/03/2016	20/05/2016	29/03/2016	20/05/2016
Additions Made by AO						
Interest on Bonds	1,37,480	1,38,480	1,38,480	1,31,940	1,31,940	1,31,940
Misc. Expenses	5,50,777	2,42,418	4,57,103	5,21,826	10,10,079	7,57,187
PF, EPF Not paid before due date	18,86,439	2,64,339	18,57,336	9,49,096	-	
Other Penalties	-	5,77,154	-	-	51,579	8,48,733
PF Damages	9,83,308	-	-	-		
Selling Expenses	3,72,640	1,33,522	1,85,737	1,34,316	78,969	62,355
Disallowance on Packart Unit	41,92,427	44,39,285	34,37,677	33,96,312		
Previous Year's Expenses	2,44,175	1,85,994	3,42,683	-		49,83,552
Foreign Travel Expenses	6,04,040	1,48,456	65,568	90,262	5,315	1,96,130
Transfer of Marketing Rights	2,00,00,000	2,00,00,000	2,00,00,000	2,00,00,000	-	-
Disallowance u/s 14A	67,50,000	-			-	-
Bad Debts	-	-	1,48,66,928	15,73,662	2,63,025	-
Sundry Balances Written off	-	-	58,35,000	-	71,91,000	-

Repairs of Building	-	-	-	6,74,517	11,28,165	10,03,378
Liabilities Written off	-	-	-	3,66,67,734	-	-
Claim in respect of Plant and Machinery	-	-	-	-	24,10,160	14,83,250
Claim of Depreciation at higher rate	-	-	-	-	6,377	8,044
Disallowance u/s 40(a)(i)	-	-	-	-	2,96,005	67,97,562
Deduction u/s 43B	-	-	-	-	-	7,19,293
U/s 40A(3)	-	-	-	-	-	4,45,971
U/s 40A(7)	-	-	-	-	-	1,05,47,731

3. The assessee filed appeals before CIT(A) who partly allowed appeals. Therefore, both assessee and revenue are in appeal before us with following grounds of appeal:

Assessee's Grounds of Appeal in ITA No. 1772/Ahd/2015 - A.Y. 2002-03
(Appeal against order of CIT(A), dated 17/03/2015)

I. MERITS

1. DISALLOWANCE OF INTEREST ON BONDS ISSUED AT THE TIME OF AMALGAMATION OF SPL - RS. 1,38,840 (PARA 2 OF CIT (A) ORDER)

1.1 CIT(A) has erred in fact and in law by confirming disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with the appellants pursuant to Scheme of amalgamation.

1.2 That CIT(A) has failed to appreciate that the acquisition of the Undertaking and business of the amalgamating company is nothing but an acquisition of capital asset for the purpose of the appellants' business as is evident from the objects of the Scheme of Amalgamation.

1.3 That, therefore, the interest on Bonds is a revenue expenditure incurred wholly and exclusively for the purpose of business carried on by the appellants.

1.4 That CIT(A) has further failed to appreciate that the appellants is a going concern and that the expenditure of interest is incurred after the commencement of the business.

1.5 IN THE FACTS OF THE CASE, interest of Rs.1,38,840 on bonds issued at the time of amalgamation of SPL be directed to be allowed.

2. ADDITIONAL DISALLOWANCE U/S. 43B(b) IN RESPECT OF EMPLOYER'S CONTRIBUTION TO PF, FPF ETC. (PARA 4 OF CIT (A) ORDER)

2.1 CIT(A) has grievously erred in fact and in law in upholding disallowance u/s.43B(b) in respect of contributions to PF etc. of Rs.1,96,21,831 paid on or before due date for filing return of income for the year on the ground that no evidences of payment made are produced.

2.2 That appellants had produced details and documents as called for by CIT(A) in support of claim of payments of contribution to PF etc on or before due date for filing return of income and no further details and documents were called for by him during the course of proceedings before him. That details and documents produced by appellants during the course of proceedings before CIT(A) conclusively establish the payments on or before due date for filing return of income.

2.3 That, therefore, observations by CIT(A) that no evidences of payments made have been produced by appellants are factually incorrect and the very basis of rejecting the claim is not sustainable.

2.4 That CIT(A) has further grievously erred in fact and in law in not allowing appellants' alternate claim of payments of contributions to PF etc. of Rs.18,86,439 during the year, though not within the due date as provided under relevant Act, which are not disallowable u/s.43B(b), in the event claim of the payments made on or before due date for filing return of income is not allowed. That CIT(A) has grievously erred in fact and in law in remanding the issue back to the file of AO to allow the claim of said payments after verification of relevant records even though appellants had placed on record the relevant materials evidencing the payments made.

2.5 IN THE FACTS OF THE CASE, disallowance u/s. 43B(b) in respect of employers PF contribution paid on or before due date for filing return of income of Rs. 1,96,21,831 be directed to be deleted.

3. P.F. DAMAGES U/S. 14B OF THE P.F. ACT - RS. 9,83,308 (PARA 5 OF CIT (A) ORDER)

3.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of claim of damages of Rs. 9,83,308 levied u/s.14B of the P.F, Act,

3.2 That CIT(A) has failed to appreciate that the P.F. damages are compensatory, and not penal, in nature.

3.3 That, even if it is held that P.F. damages are penal in nature, the entire amount of damages cannot be held as penal in nature and damages are partly compensatory and partly penal in nature as has been held in a catena of decisions.

3.4 That CIT(A) has failed to appreciate that PF damages offered for disallowance in return of income was subject to the protest that the PF damages be allowed while determining total income for the year and that the same is not disallowable.

3.5 That appellants' alternate claim of allowing 40% of PF damages by treating it as compensatory nature was based on decisions of CIT(A) himself in earlier AY 1995-96 to 1997-98 which are upheld by this Hon. ITAT and there is no basis or details given as regards treating 40% of the damages as compensatory in nature. That, therefore, there is no question of any details to be given by appellants as regards 40% of the damages to be treated as compensatory in nature.

3.6 IN THE FACTS OF THE CASE,

a. Claim of PF damages be directed to be allowed.

b. Alternatively, in case disallowance of claim of PF damages is upheld, then, 40% of PF damages be directed to be allowed following decisions of CIT(A) in earlier AY 1995-96 to 1997-98 which are upheld by this Hon. ITAT.

4. SALARIES AND WAGES OF PACKART PRESS DIVISION- RS. 41,92,427
(PARA 7 OF CIT (A) ORDER)

4.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of salary and wages of employees of appellants' Packart Press Unit of Rs. 41,92,427.

4.2 CIT(A) has utterly failed to appreciate that Packart Press Unit is not closed,

4.3 That even if, for argument's sake, Packart Press Unit is closed, appellants' various other Units are not closed and there is unity of control, inter-connection, inter-lacing and inter-dependence between Packart Press Unit and other units and, therefore, expenses of Packart Press Unit cannot be disallowed.

4.4 That CIT(A) had not called for identity of workers/employees in support of claim of salaries and wages, nor he had called for copy of contractual agreement with the employees / workers and, therefore, disallowance of claim by alleging that identity of

workers is not clarified and no details in this regard are made available is not sustainable.

4.5 That till the matter of liability of salaries and wages is settled by Hon. High Court, appellants continue to be liable to make the payments to workers. That simply because the unit is closed, the liability to pay salaries and wages under the Labour Laws does not cease. That liability would cease only when Hon. High Court approves the closure of unit with direction that salaries and wages are not payable.

4.6 That appellant had explained during the proceedings before CIT(A) as to how liability of salaries and wages has accrued.

4.7 That simply because appellants have challenged the order of industrial tribunal disapproving closure of unit, claim could not be disallowed since order of tribunal is not stayed and is still in operation.

4.8 IN THE FACTS OF THE CASE, claim of salary and wages etc. of Packart Press unit of Rs.41,92,427 be directed to be allowed.

5. TRANSFER OF MARKETING/DISTRIBUTION RIGHTS-ADDITIONAL CONSIDERATION OF Rs.2 CRORES (PARA 10 OF CIT(A) ORDER)

5.1 CIT(A) has grievously erred in fact and in law in holding that further additional consideration of Rs.2 crores received for transfer, in previous AY 2001-02, of marketing / distribution rights for veterinary products of various foreign principals having nil cost of acquisition, is a revenue receipt taxable as business income u/s.28(ii)(c) under the Act following his appellate order no. CAB-1/05/2014-15, dated 10.3.2015, para 15.12 to 15.25, of previous AY 2001-02.

5.2 That CIT(A) has grievously erred in fact and in law in relying upon decision of Hon. Mumbai ITAT in case of Blue Star Ltd. Vs. DCIT, 13 SOT 25, in his appellate order of previous AY 2001-02, justifying his stand that consideration received for transfer of marketing / distribution rights is revenue receipt, in as much as facts involved in that case are distinctly different from the facts in the given case.

5.3 That CIT(A) has grievously erred in fact and in law in not appreciating that the marketing / distribution rights in question were source of income for the appellants and, therefore, consideration received is capital receipt and cannot be taxed as revenue receipt.

5.4 IN THE FACTS OF THE CASE, it be held that further additional consideration of Rs.2 crores received for transfer, in previous AY 2001-02, of marketing / distribution rights for veterinary products of various foreign principals having nil cost of acquisition, is capital receipt not chargeable to tax.

6. DISALLOWANCE U/S.14A- (PARA 11 OF CIT(A) ORDER)

6.1 CIT(A) has grievously erred in fact and in law in upholding 50% of total disallowance of Rs.67,50,000, i.e. Rs.33,75,000, made by AO u/s.14A of the Act.

6.2 That CIT(A) has failed to appreciate that disallowance u/s.14A could not be made on adhoc basis and on assumptions and presumptions that some expenditure must have been incurred.

6.3 That CIT(A) has simply concurred with the views of AO without giving any justification of cogent reasons for sustaining 50% of disallowance made by AO.

6.4 That Revenue has not pinpointed any expenditure that has been incurred by appellants in earning dividend of Rs.6.75 crores, declared / paid by appellants' joint venture company M/s.Sarabhai piramal Pharmaceuticals Pvt. Ltd. (SPPL), claimed as exempt u/s.10(33) of the Act.

6.5 That investments in share capital of SPL were made in earlier AY 1998-99, 1999-00 and 2000-01 and not in the year under appeal. When investments have been made in earlier years, it cannot be said that expenses have been incurred in the year under appeal for management decisions for making investments in the share capital of SPPL and other management decisions.

6.6 That receiving cheque of dividend income and depositing it in the bank account does not involve incurring of any expenditure as has been held by Revenue.

6.7 That since no expenditure has been incurred and investments have been made in earlier years, disallowance u/s. 14A is called for.

6.8 IN THE FACTS OF THE CASE, disallowance u/s.14A upheld by CIT(A) be directed to be deleted.

II. Such other and further relief may please be granted as may be deemed expedient by this Hon. Tribunal in the facts and circumstances of the case.

III. Appellants crave leave to add, alter, amend or withdraw all or any of the grounds before the adjudication of appeal in finality by this Hon. Tribunal.

IV. Appellants most humbly pray that this Hon. Tribunal may be pleased to call for the records and proceedings of the case as may be deemed necessary.

Assessee's Grounds of Appeal in ITA No. 1773/Ahd/2015 – A.Y. 2003-04
(Appeal against order of CIT(A), dated 20/03/2015)

I. MERITS

1. DISALLOWANCE OF INTEREST ON BONDS ISSUED AT THE TIME OF AMALGAMATION OF SPL - RS. 1,38,840 (PARA 2 OF CIT (A) ORDER)

1.1 CIT(A) has erred in fact and in law by confirming disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with the appellants pursuant to Scheme of amalgamation.

1.2 That CIT(A) has failed to appreciate that the acquisition of the Undertaking and business of the amalgamating company is nothing but an acquisition of capital asset for the purpose of the appellants' business as is evident from the objects of the Scheme of Amalgamation.

1.3 That, therefore, the interest on Bonds is a revenue expenditure incurred wholly and exclusively for the purpose of business carried on by the appellants.

1.4 That CIT(A) has further failed to appreciate that the appellants is a going concern and that the expenditure of interest is incurred after the commencement of the business.

1.5 IN THE FACTS OF THE CASE, interest of Rs.1,38,840 on bonds issued at the time of amalgamation of SPL be directed to be allowed.

2. DISALLOWANCE U/S. 43B(b) IN RESPECT OF EMPLOYER'S CONTRIBUTION TO PF, FPF ETC. PAID ON OR BEFORE DUE DATE FOR FILING RETURN OF INCOME - RS. 1,08,53,589 (PARA 4 OF CIT (A) ORDER)

2.1 CIT(A) has grievously erred in fact and in law in upholding disallowance u/s.43B(b) in respect of contributions to PF etc. of Rs.1,08,53,589 paid on or before due date for filing return of income for the year on the ground that no evidences of payment made are produced.

2.2 That there was no dispute by AO that disallowance suo motu offered u/s.43B(b) in respect of PF contributions etc. in return of income of Rs.3,11,74,299 includes an amount of Rs.1,08,53,589 which is paid on or before due date for filing return of income. That this fact was also brought to the notice of CIT(A) during the course of proceedings before him.

2.3 That, therefore, there was no dispute whether said amount is paid by appellants on or before due date for filing return of income.

2.4 That the only grievance and ground raised before CIT(A) was that whether said payment of Rs.1,08,53,589, which is admitted by AO, made by appellants on or before due date for filing return of income is disallowable u/s.43B(b).

2.5 That, therefore, CIT(A) ought not to have confirmed the disallowance on the ground that no evidences have been produced by appellants during the course of proceedings before him in respect of said payment of Rs.1,08,53,589 made on or before due date for filing return of income.

2.6 That, be that as it may, appellants had placed on record the relevant materials in support of claim of payments of contribution to PF etc on or before due date for filing return of income of Rs. 1,08,53,589 and no further details and documents were called for by CIT(A) during the course of proceedings before him. That details and documents produced by appellants during the course of proceedings before CIT(A) conclusively establish the payments on or before due date for filing return of income.

2.7 That, therefore, observations by CIT(A) that no evidences o payments made have been produced by appellants are factually incorrect and the very basis of rejecting the claim is not sustainable.

2.8 IN THE FACTS OF THE CASE, disallowance u/s. 43B(b) in respect of employers PF contribution paid on or before due date for filing return of income of Rs.1,08,53,589 be directed to be deleted.

3. P.F. DAMAGES U/S. 14B OF THE P.F. ACT - RS. 9,83,308 (PARA 5 OF CIT (A) ORDER)

3.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of claim of damages of Rs. 10,79,540 levied u/s.14B of the P.F, Act,

3.2 That CIT(A) has failed to appreciate that the P.F. damages are compensatory, and not penal, in nature.

3.3 That, even if it is held that P.F. damages are penal in nature, the entire amount of damages cannot be held as penal in nature and damages are partly compensatory and partly penal in nature as has been held in a catena of decisions.

3.4 That CIT(A) has failed to appreciate that PF damages offered for disallowance in return of income was subject to the protest that the PF damages be allowed while determining total income for the year and that the same is not disallowable.

3.5 That appellants' alternate claim of allowing 40% of PF damages by treating it as compensatory nature was based on decisions of CIT(A) himself in earlier AY 1995-96 to 1997-98 which are upheld by this Hon. ITAT and there is no basis or details given as regards treating 40% of the damages as compensatory in nature. That, therefore, there is no question of any details to be given by appellants as regards 40% of the damages to be treated as compensatory in nature.

3.6 IN THE FACTS OF THE CASE,

a. Claim of PF damages be directed to be allowed.

b. Alternatively, in case disallowance of claim of PF damages is upheld, then, 40% of PF damages be directed to be allowed following decisions of CIT(A) in earlier AY 1995-96 to 1997-98 which are upheld by this Hon. ITAT.

4. SALARIES AND WAGES OF PACKART PRESS DIVISION- RS. 39,47,285 (PARA 7 OF CIT (A) ORDER)

4.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of salary and wages of employees of appellants' Packart Press Unit of Rs. 39,47,285.

4.2 CIT(A) has utterly failed to appreciate that Packart Press Unit is not closed,

4.3 That even if, for argument's sake, Packart Press Unit is closed, appellants' various other Units are not closed and there is unity of control, inter-connection, inter-lacing and inter-dependence between Packart Press Unit and other units and, therefore, expenses of Packart Press Unit cannot be disallowed.

4.4 That CIT(A) had not called for identity of workers/employees in support of claim of salaries and wages, nor he had called for copy of contractual agreement with the employees / workers and, therefore, disallowance of claim by alleging that identity of workers is not clarified and no details in this regard are made available is not sustainable.

4.5 That till the matter of liability of salaries and wages is settled by Hon. High Court, appellants continue to be liable to make the payments to workers. That simply because the unit is closed, the liability to pay salaries and wages under the Labour Laws does not cease. That liability would cease only when Hon. High Court approves the closure of unit with direction that salaries and wages are not payable.

4.6 That appellant had explained during the proceedings before CIT(A) as to how liability of salaries and wages has accrued.

4.7 That simply because appellants have challenged the order of industrial tribunal disapproving closure of unit, claim could not be disallowed since order of tribunal is not stayed and is still in operation.

4.8 IN THE FACTS OF THE CASE, claim of salary and wages etc. of Packart Press unit of Rs.39,47,285 be directed to be allowed.

5. TRANSFER OF MARKETING/DISTRIBUTION RIGHTS-ADDITIONAL CONSIDERATION OF Rs.2 CRORES (PARA 10 OF CIT(A) ORDER)

5.1 CIT(A) has grievously erred in fact and in law in holding that further additional consideration of Rs.2 crores received for transfer, in previous AY 2001-02, of marketing / distribution rights for veterinary products of various foreign principals having nil cost of acquisition, is a revenue receipt taxable as business income u/s.28(ii)(c) under the Act. following his appellate order no. CAB-1/05/2014-15, dated 10.3.2015, para 15.12 to 15.25, of previous AY 2001-02.

5.2 That CIT(A) has grievously erred in fact and in law in relying upon decision of Hon. Mumbai ITAT in case of Blue Star Ltd. Vs. DCIT, 13 SOT 25, in his appellate order of previous AY 2001-02, justifying his stand that consideration received for transfer of marketing / distribution rights is revenue receipt, in as much as facts involved in that case are distinctly different from the facts in the given case.

5.3 That CIT(A) has grievously erred in fact and in law in not appreciating that the marketing / distribution rights in question were source of income for the appellants and, therefore, consideration received is capital receipt and cannot be taxed as revenue receipt.

5.4 IN THE FACTS OF THE CASE, it be held that further additional consideration of Rs.2 crores received for transfer, in previous AY 2001-02, of marketing / distribution rights for veterinary products of various foreign principals having nil cost of acquisition, is capital receipt not chargeable to tax.

II. Such other and further relief may please be granted as may be deemed expedient by this Hon. Tribunal in the facts and circumstances of the case.

III. Appellants crave leave to add, alter, amend or withdraw all or any of the grounds before the adjudication of appeal in finality by this Hon. Tribunal.

IV. Appellants most humbly pray that this Hon. Tribunal may be pleased to call for the records and proceedings of the case as may be deemed necessary.

Assessee's Grounds of Appeal in ITA No. 1290/Ahd/2016 - A.Y. 2004-05
(Appeal against order of CIT(A)-1, Vadodara dated 29/03/2016)

I. MERITS

1. DISALLOWANCE OF INTEREST ON BONDS ISSUED AT THE TIME OF AMALGAMATION OF SPL - RS. 1,40,213 (PARA 2 OF APPELLATE ORDER)

1.1 CIT(A) has erred in fact and in law by confirming disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with the appellants pursuant to Scheme of amalgamation.

1.2 IN THE FACTS OF THE CASE, interest on bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation be directed to be allowed as revenue expenditure incurred for the purpose of business.

2. DISALLOWANCE OF OTHER EXPENSES OF RS. 41,723 BEING 5% OF TOTAL OTHER EXPENSES OF RS. 8,34,460 (PARA 4.1, PAGE 2 OF APPELLATE ORDER)

2.1 CIT(A) has grievously erred in fact and in law in upholding adhoc disallowance of 5% of 'other expenses'.

2.2 THAT CIT(A) has failed to appreciate that other expenses are in the nature of conveyance, postal and revenue stamps expenses, listing fees, distribution sweets, Diwali boni, conveyance, etc. which are clearly related to Appellants' business.

2.3 IN THE FACTS OF THE CASE, adhoc disallowance of 5% of other expenses be directed to be deleted.

3. P.F. DAMAGES U/S. 14B OF THE P.F. ACT – DISALLOWANCE OF 60% OF PF DAMAGES - RS. 10,36,953 (PARA 4.2, PAGE 2 OF APPELLATE ORDER)

3.1 CIT(A) has grievously erred in fact and in law in not allowing entire amount of claim of PF damages, levied u/s.14B of the P.F, Act, and, instead, allowing claim of 40% of the damages by holding it as compensatory in the nature.

3.3 IN THE FACTS OF THE CASE, it be held that PF damages are compensatory in nature and disallowance of 60% of PF damages upheld by CIT(A) be directed to be allowed.

4. PENALTIES-BREACH OF CONTRACTUAL OBLIGATIONS - Rs. 1,29,080 (PARA 4.2.1 PAGE 3 OF APPELLATE ORDER)

4.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of penalties paid to various parties for breach of contractual obligations as per the contracts entered in to by appellants with the parties though there can not be issue of breach of any statutory provisions in case of breach of contractual obligations.

4.2 IN THE FACTS OF THE CASE, disallowance of other penalties paid to various parties for breach of contractual obligations be directed to be disallowed.

5. SALARIES AND WAGES OF PACKART PRESS DIVISION- RS. 33,86,757 AND OTHER EXPENSES OF Rs.50,920 (PARA 4.4, PAGE 4 OF APPELLATE ORDER)

5.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of salary and wages of employees and other expenses of appellants' Packart Press Unit.

5.2 CIT(A) has utterly failed to appreciate that order of industrial tribunal not allowing closure of the unit is still in force and the whole controversy is pending adjudication by Hon. High Court.

5.3 IN THE FACTS OF THE CASE, claim of salary and wages and other expenses etc. of Packart Press unit be directed to be allowed.

6. FOREIGN TRAVEL EXPENSES -DIRECTORS-DISALLOWANCE OF 50% OF EXPENSES- Rs. 65,568 (PARA 4.6, PAGE 9 OF APPELLATE ORDER)

6.1 CIT(A) has grievously erred in fact and in law in upholding disallowance 50% of foreign travel expenses of working directors even though issue is decided in appellants' favour by him in AY 2001-02, 2002-03, 2003-04 and 2009-10 and Department has not challenged the issue further before Hon. ITAT.

6.2 CIT(A) has failed to appreciate that foreign travel was for appellants' business purpose and there is export business generated during the year.

6.3 IN THE FACTS OF THE CASE, disallowance of 50% of foreign travel expenses of working directors be directed to be allowed.

7. TRANSFER OF MARKETING/DISTRIBUTION RIGHTS-ADDITIONAL CONSIDERATION OF Rs.2 CRORES (PARA 4.7 PAGE 13 OF CIT(A) ORDER)

7.1 CIT(A) has grievously erred in fact and in law in holding that further additional consideration of Rs.2 crores received, for transfer in previous AY 2001-02, of marketing / distribution rights for veterinary products of various foreign principals having nil cost of acquisition, is a revenue receipt taxable as business income u/s. 28(ii)(c) under the Act following his appellate order no. CAB-1/05/2014-15, dated 10.3.2015, para 15.12 to 15.25, of previous AY 2001-02.

7.2 That CIT(A) has grievously erred in fact and in law in not appreciating that the marketing / distribution rights in question were source of income for the appellants and, therefore, consideration received is capital receipt and cannot be taxed as revenue receipt.

7.3 IN THE FACTS OF THE CASE, it be held that further additional consideration of Rs.2 crores received, for transfer, in AY 2001-02, of marketing / distribution rights

for veterinary products of various foreign principals having nil cost of acquisition, is capital receipt not chargeable to tax.

8. BAD DEBTS - RS. 1,48,66,928 - (PARA 4.8, PAGE 13 OF APPELLATE ORDER)

8.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of claim of bad debts and alternate claim of business loss u/s.28 of the Act without appreciating the facts and relevant materials placed on his record by appellants which very clearly establish that claim pertains to write off of outstandings on account of sale of goods, deposits etc. transactions entered into by appellants for the purpose of and in the course of business.

8.2 That CIT(A) has grievously erred in fact and in law in rejecting alternate claim of deduction as business loss u/s.28 on the ground that no evidence or details have been furnished in this regard even though such details and evidences were furnished and even though he not called for any further evidences and details in support of the alternate claim.

8.3 IN THE FACTS OF THE CASE:

i. claim of bad debts be directed to be allowed Appellants' claim of bad debts in toto. Alternatively;

ii. in the event it is held that claim of write off of outstandings is not allowable as bad debt u/s.36(1)(vii), claim of deduction under general provisions of Sec. 28 r.w.s. 37(1) be directed to be allowed.

9. INCOME U/S. 2(24)(x) VIS-A-VIS DEDUCTION U/S. 36(1)(va) - EMPLOYEES' CONTRIBUTIONS TO PF ETC. - (PARA 4.9, PAGE 26 OF APPELLATE ORDER)

9.1 CIT(A) has grievously erred in fact and in law in not allowing appellants' claim that Employees' contributions to PF etc. paid after the end of previous year, but, on or before due date for filing return of income of Rs. 1,02,67,284 is not taxable u/s.2(24)(x) r.w.s. 36(1)(va) and 43B of the Act;

9.2 CIT(A) has further grievously erred in fact and in law in not allowing appellants' alternate claim that in case claim of employees' contributions to PF etc. paid after the end of previous year, but, on or before due date for filing return of income of Rs.1,02,67,284 is not allowed, then, employees PF contributions paid within the previous year itself though with a delay of Rs.1,01,62,284 is not taxable u/s.2(24)(x) r.w.s. 36(1)(va) and 43B of the Act.

9.3 IN THE FACTS OF THE CASE:

i. employees' contributions to PF etc. paid after the end of previous year, but, on or before due date for filing return of income of Rs. 1,02,67,284 be directed to be not to be taxed u/s.2(24)(x) r.w.s. 36(1)(va) and 43B of the Act; ALTERNATIVELY

ii. in case claim of employees' contributions to PF etc. paid after the end of previous year, but, on or before due date for filing return of income of Rs.1,02,67,284 is not allowed, then, employees PF contributions paid within the previous year itself though with a delay of Rs. 1,01,62,284 be directed to be not to be taxed u/s.2(24)(x) r.w.s. 36(1)(va) and 43B of the Act.

10. SUNDRY DEBIT BALANCES WRITTEN OFF - RS. 58.35 LAKH - (PARA 4.10, PAGE 26 OF APPELLATE ORDER)

10.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of part of the claim of business loss u/s.28 of the Act of Rs.58.35 lakh without appreciating the facts and relevant materials placed on his record by appellants which very clearly establish that claim pertains to write off of outstandings on account of sale of goods, deposits etc. transactions entered into by appellants for the purpose of and in the course of business.

10.2 That CIT(A) has grievously erred in fact and in law in rejecting claim of deduction as business loss u/s.28 on the ground that no evidence or details have been furnished in this regard even though such details and evidences were furnished and even though he had called for any further evidences and details in support of the alternate claim.

10.3 IN THE FACTS OF THE CASE, claim of deduction under general provisions of Sec. 28 r.w.s. 37(1) be directed to be allowed.

11. BOOK PROFIT U/S. 115JB - PROVISION FOR BAD AND DOUBTFUL DEBTS- Rs.6,04,47,760 (PARA 4.11, PAGE 31 OF APPELLATE ORDER)

11.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of provision for bad and doubtful debts for the purpose of computation of book profit u/s. 115JB of the Act.

11.2 CIT (A) has failed to appreciate that provision for bad and doubtful debts is not an amount set aside to provisions made for meeting any liabilities, but, provision for non-recoverability of the amount due to be payable to appellants.

11.3 IN THE FACTS OF THE CASE, provision for doubtful debt be directed to be allowed for the purpose of computing book profit u/s.115JB.

II. Such other and further relief may please be granted as may be deemed expedient by this Hon. Tribunal in the facts and circumstances of the case.

III. Appellants crave leave to add, alter, amend or withdraw all or any of the grounds before the adjudication of appeal in finality by this Hon. Tribunal.

IV. Appellants most humbly pray that this Hon. Tribunal may be pleased to call for the records and proceedings of the case as may be deemed necessary.

Assessee's Grounds of Appeal in ITA No. 1782/Ahd/2016 A.Y. 2005-06
(Appeal against order of CIT (A)-1, Vadodara dated 20/05/2016)

I. MERITS

1. INTEREST ON BONDS ISSUED TO THE SHAREHOLDERS OF STANDARD PHARMACEUTICALS LTD. (SPL) AMALGAMATED WITH APPELLANT COMPANY - Rs.1,31,940 (PARA 4, PAGE 2 OF APPELLATE ORDER)

1.1 CIT(A) has grievously erred in fact and in law in confirming disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals: Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation.

1.2 IN THE FACTS OF THE CASE, interest on bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation be directed to be allowed as revenue expenditure incurred for the purpose of business.

2. DISALLOWANCE OF OTHER EXPENSES OF RS. 1,73,973 BEING 5% OF TOTAL OTHER EXPENSES OF RS.34,79,461 (PARA 4.1, PAGE 2 OF APPELLATE ORDER)

2.1 CIT(A) has grievously erred in fact and in law in upholding adhoc disallowance of 5% of 'other expenses'.

2.2 THAT CIT(A) has failed to appreciate that other expenses are in the nature of conveyance, postal and revenue stamps expenses, listing fees, distribution sweets, diwali boni, conveyance etc, which are clearly related to Appellants' business.

2.3. IN THE FACTS OF THE CASE, adhoc disallowance of 5% of other expenses be directed to be deleted.

3. - DISALLOWANCE OF 60% OF PF DAMAGES - RS. 20,15,841 (PARA 4.2 PAGE 3 OF APPELLATE ORDER)

3.1 CIT(A) has grievously erred in fact and in law in not allowing entire amount of claim of PF damages, levied u/s.14B of the P.F. Act, and; instead, allowing claim of 40% of the damages by holding it as compensatory in nature.

3.2 IN THE FACTS OF THE CASE, it be held that PF damages are compensatory in nature and entire amount of PF damages be directed to be allowed.

4. PENALTIES-BREACH OF CONTRACTUAL OBLIGATIONS (PARA 4.2.1 PAGE 3 OF APPELLATE ORDER)

4.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of penalties paid to various parties, included in other penalties of RS.9,49,096, for breach of contractual obligations as per the contracts entered in to by appellants with the parties though there not be issue of breach of any statutory provisions in case of breach of contractual obligations.

4.2 IN THE FACTS OF THE CASE, disallowance of penalties paid to various parties for breach of contractual obligations be directed to be deleted.

5. SALARIES AND WAGES - RS. 32,79,890 AND • OTHER EXPENSES - Rs.1,16,422 OF PACKART PRESS DIVISION- (PARA 4.4, PAGE 4 OF APPELLATE ORDER)

5.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of salary and wages of employees and other expenses of appellants- Packart Press Unit.

5.2 CIT(A) has utterly failed to appreciate that order of industrial tribunal not allowing closure of the unit is still in force and the whole controversy is pending adjudication by Hon. High Court.

5.3 IN THE FACTS OF THE CASE, claim of salary and wages - and other expenses etc. of Packart Press unit be directed to be allowed.

6. FOREIGN TRAVEL EXPENSES -DIRECTORS-DISALLOWANCE OF 50% OF EXPENSES- Rs. 90,262 (PARA 4.5, PAGE 5 OF APPELLATE ORDER)

6.1 CIT(A) has grievously erred in fact and in law in upholding disallowance 50% of foreign travel expenses of working directors on the ground that appellants have not filed details though he had not called for any further details and even though issue is decided in appellants' favour by him in AY 2001-02, 2002-03, 2003-04 and 2009-10 and Department has not challenged the issue further before Hon. ITAT.

6.2 CIT(A) has failed to appreciate that foreign travel was for appellants' business purpose and there is export business generated during the year.

6.3 IN THE FACTS OF THE CASE, foreign travel expenses of working directors be directed to be allowed.

7. TRANSFER OF MARKETING/DISTRIBUTION RIGHTS-ADDITIONAL CONSIDERATION OF Rs.2 CRORES (PARA 4.6, PAGE 8 OF APPELLATE ORDER)

7.1 CIT(A) has grievously erred in fact and in law in holding that further additional consideration of Rs.2 crores received, for transfer in earlier AY 2001-02, of marketing / distribution rights of veterinary products of various foreign principals having nil cost of acquisition held by appellants, is a revenue receipt taxable as business income u/s.28(ii)(c) under the Act following his appellate order no. CAB- 1/05/2014-15, dated 10.3.2015, para 15.12 to 15.25, of earlier AY 2001-02.

7.2 That CIT(A) has grievously erred in fact and in law in not appreciating that the marketing / distribution rights in question were appellants' source of income and, therefore, consideration received is capital receipt and cannot be taxed as revenue receipt.

7.3 IN THE FACTS OF THE CASE, it be held that further additional consideration of Rs.2 crores received, for transfer, in earlier AY 2001-02, of marketing / distribution rights for veterinary products of various foreign principals having nil cost of acquisition, is capital receipt not chargeable to tax.

II. Such other and further relief may please be granted as may be deemed expedient by this Hon. Tribunal in the facts and circumstances of the case.

III. Appellants crave leave to add, alter, amend or withdraw all or any of the grounds before the adjudication of appeal in finality by this Hon. Tribunal.

IV. Appellants most humbly pray that this Hon. Tribunal may be pleased to call for the records and proceedings of the case as may be deemed necessary.

Assessee's Grounds of Appeal in ITA No. 1291/Ahd/2016 A.Y. 2006-07
(Appeal against order of CIT(A)-1, Vadodara dated 29/03/2016)

I. MERITS 1. INTEREST ON BONDS ISSUED TO THE SHAREHOLDERS STANDARD PHARMACEUTICALS LTD. (SPL) AMALGAMATED WITH APPELLANT COMPANY - Rs.1,31,940 (PARA 4, PAGE 2 OF APPELLATE ORDER)

1.1 CIT(A) has grievously erred in fact and in law in confirming disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation.

1.2 IN THE FACTS OF THE CASE, interest on bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant

company as per the scheme of amalgamation be directed to be allowed as revenue expenditure incurred for the purpose of business.

2. DISALLOWANCE OF OTHER EXPENSES OF RS. 5,09,192 BEING 5% OF TOTAL OTHER EXPENSES OF RS.1,01,83,845 (PARA 4.1, PAGE 2 OF APPELLATE ORDER) 2.1 CIT(A) has grievously erred in fact and in law in upholding adhoc disallowance of 5% of 'other expenses'.

2.2 THAT CIT(A) has failed to appreciate that other expenses are in the nature of conveyance, postal and revenue stamps expenses, listing fees, distribution sweets, diwali boni, conveyance etc, which are clearly related to Appellants' business.

2.3 IN THE FACTS OF THE CASE, adhoc disallowance of 5% of other expenses be directed to be deleted.

3. FOREIGN TRAVEL EXPENSES -DIRECTORS-DISALLOWANCE OF 50% OF EXPENSES- Rs. 5,315 (PARA 4.3, PAGE 3 OF APPELLATE ORDER)

3.1 CIT(A) has grievously erred in fact and in law in upholding disallowance 50% of foreign travel expenses of working directors even though issue is decided in appellants' favour by him in AY 2001-02, 2002-03, 2003-04 and 2009-10 and Department has not challenged the issue further before Hon. ITAT.

3.2 CIT(A) has failed to appreciate that foreign travel was for appellants' business purpose and there is export business generated during the year.

3.3 IN THE FACTS OF THE CASE, disallowance of 50% of foreign travel expenses of working directors be directed to be allowed.

4. BAD DEBTS - RS. 2,63,025 - (PARA 4.4, PAGE 7 OF APPELLATE ORDER)

4.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of claim of bad debts and alternate claim of business loss u/s.28 of the Act without appreciating the facts and relevant materials placed on his record by appellants which very clearly establish that claim pertains to write off of outstandings on account of sale of goods, deposits etc. transactions entered into by appellants for the purpose of and in the course of business.

4.2 That CIT(A) has grievously erred in fact and in law in rejecting alternate claim of deduction as business loss u/s.28 on the ground that no evidence or details have been furnished in this regard even though such details and evidences were furnished and even though he had not called for any further evidences and details in support of the alternate claim.

4.3 IN THE FACTS OF THE CASE:

i. claim of bad debts be directed to be allowed Appellants' claim of bad debts in toto. Alternatively;

ii. in the event it is held that claim of write off of outstandings is not allowable as bad debt u/s.36(1)(vii), claim of deduction under general provisions of Sec. 28 r.w.s. 37(1) be directed to be allowed.

5. REPAIRS-BUILDING - PARTITION IN MUMBAI OFFICE - Rs.2,96,490 AND PARTITION IN CHENNAI OFFICE RS. 1,43,173 - (PARA 4.5, PAGE 18 OF APPELLATE ORDER)

5.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of expenses of partition work at rented branch premises at Mumbai and Chennai branches.

5.2 CIT(A) has failed to appreciate that partition expenses included miscellaneous electrical repairing work of Rs.59,700 at Mumbai branch office premises and of Rs.28,000 at Chennai Branch office premises which could not be disallowed as partition expenses and which are allowable as current repairs.

5.3 IN THE FACTS OF THE CASE:

i, expenses of partition work at rented branch premises at Mumbai and Chennai branch offices be directed to be allowed;

ii. electrical repairs of Rs.59,700 in case of Mumbai branch office and of Rs. 28,000 in case of Chennai branch office be directed to be allowed in as much as such repairs are not partition expenses but current repairs.

6. SUNDRY DEBIT BALANCES WRITTEN OFF - RS. 71.91 LAKH - (PARA 4.7, PAGE 27 OF APPELLATE ORDER)

6.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of write off of sundry debit balances as business loss u/s.28 of the Act without appreciating the facts and relevant materials placed on his record by appellants which very clearly establish that claim pertains to write off of outstandings on account of sale of goods, deposits etc. transactions entered into by appellants for the purpose of and in the course of business.

6.2 That CIT(A) has grievously erred in fact and in law in rejecting claim of deduction as business loss u/s.28 on the ground that no evidence or details have been furnished in this regard even though such details and evidences were furnished and

even though he had not called for any further evidences and details in support of the alternate claim.

6.3 IN THE FACTS OF THE CASE, *claim of write off of sundry debit balances as business loss u/s.28 r.w.s. 37(1) of the Act be directed to be allowed.*

7. SALARIES AND WAGES OF PACKART PRESS DIVISION- RS. 32,99,000 AND OTHER EXPENSES OF Rs.7,65,865 (PARA 4.8, PAGE 31 OF APPELLATE ORDER)

7.1 CIT(A) *has grievously erred in fact and in law in upholding disallowance of salary and wages of employees and other expenses of appellants' Packart Press Unit.*

7.2 CIT(A) *has utterly failed to appreciate that order of industrial tribunal not allowing closure of the unit is still in force and the whole controversy is pending adjudication by Hon. High Court.*

7.3. IN THE FACTS OF THE CASE, *claim of salary and wages and other expenses etc. of Packart Press unit be directed to be allowed.*

II. *Such other and further relief may please be granted as may be deemed expedient by this Hon. Tribunal in the facts and circumstances of the case.*

III. *Appellants crave leave to add, alter, amend or withdraw all or any of the grounds before the adjudication of appeal in finality by this Hon. Tribunal.*

IV. *Appellants most humbly pray that this Hon. Tribunal may be pleased to call for the records and proceedings of the case as may be deemed necessary.*

Assessee's Grounds of Appeal in ITA No. 1783/Ahd/2016 A.Y. 2007-08
(Appeal against order of CIT(Appeals)-1, Vadodara dated 29/05/2016)

I. MERITS

1. INTEREST ON BONDS ISSUED TO THE SHAREHOLDERS OF STANDARD PHARMACEUTICALS LTD. (SPL) AMALGAMATED WITH APPELLANT COMPANY - Rs.1,31,940 (PARA 4, PAGE 2 OF APPELLATE ORDER)

1.1. CIT(A) *has grievously erred in fact and in law in confirming 1.1 disallowance of interest on Bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation.*

1.2 IN THE FACTS OF THE CASE, interest on bonds issued to the shareholders of erstwhile Standard Pharmaceuticals Ltd. (SPL) amalgamated with appellant company as per the scheme of amalgamation be directed to be allowed as revenue expenditure incurred for the purpose of business.

2. DISALLOWANCE OF OTHER EXPENSES OF RS. 1,31,538 BEING 5% OF TOTAL OTHER EXPENSES OF RS.26,30,760 (PARA 4.1, PAGE 2 OF APPELLATE ORDER)

2.1 CIT(A). has grievously erred in fact and in law in upholding adhoc disallowance of 5% of 'other expenses'.

2.2 THAT CIT(A) has failed to appreciate that other expenses are . in the nature of conveyance, postal and revenue stamps expenses, listing fees, distribution sweets, diwali boni, conveyance, etc, which are clearly related to Appellants' business.

2.3 IN THE FACTS OF THE CASE, adhoc disallowance of 5% of other expenses be directed to be deleted.

3. FOREIGN TRAVEL EXPENSES -DIRECTORS-DISALLOWANCE OF 50% OF EXPENSES- Rs. 1,96,130 (PARA 4.3, PAGE 3 OF APPELLATE ORDER)

3.1 CIT(A) has grievously erred in fact and in law in upholding disallowance 50% of foreign travel expenses of working directors on the ground that appellants have not filed details though he had not called for any further details and even though issue is decided in appellants® favour by him in AY 2001-02, 2002-03, 2003-04 and 2009-10 and Department has not challenged the issue further before Hon. ITAT.

3.2 CIT(A) has failed to appreciate that foreign travel was for appellants' business purpose and there is export business generated during the year.

3.3 IN THE FACTS OF THE CASE, disallowance of 50% of foreign travel expenses of working directors be directed to be allowed.

4. REPAIRS-BUILDING - RS.10,03,378 - (PARA 4.4, PAGE 7 OF APPELLATE ORDER)

4.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of building repairs expenses.

4.2 CIT(A) has failed to appreciate that repairs are in the nature of current repairs to make the buildings fit for use for appellants' business operations.

4.3 IN THE FACTS OF THE CASE, building repairs expenses be directed to be allowed.

5. REPAIRS PLANT AND MACHINERY Rs.14,83,250 - (PARA 4.5, PAGE 11 OF APPELLATE ORDER)

5.1 CIT(A) has grievously erred in fact and in law in upholding disallowance of plant and machinery repairs expenses.

5.2 CIT(A) has failed to appreciate that repairs are in the nature of replacement of existing parts and current repairs to make the plant and machineries fit for use for appellants' business operations.

5.3 IN THE FACTS OF THE CASE, plant and machineries repairs expenses be directed to be allowed.

6. SALARIES AND WAGES OF PACKART PRESS DIVISION- RS. 30,71,067 AND OTHER EXPENSES OF Rs.6,72,814 (PARA 4.7, PAGE 23 OF APPELLATE ORDER)

6.1 CIT(A). has grievously erred in fact and in law in upholding disallowance of salary and wages of employees and other expenses of appellants' Packart Press Unit.

6.2 CIT(A) has utterly failed to appreciate that order of industrial tribunal not allowing closure of the unit is still in force and the whole controversy is pending adjudication by Hon. High Court.

6.3 IN THE FACTS OF THE CASE, claim of salary and wages and other expenses etc. of Packart Press unit be directed to be allowed.

II. Such other and further relief may please be granted as may be deemed expedient by this Hon. Tribunal in the facts and circumstances of the case. –

III. Appellants crave leave to add, alter, amend or withdraw all or any of the grounds before the adjudication of appeal in finality by this Hon. Tribunal.

IV: Appellants most humbly pray that this Hon. Tribunal may be pleased to call for the records and proceedings of the case as may be deemed necessary.

Revenue's Grounds of Appeal in ITA No. 1594/Ahd/2016 – A.Y.2004-05

1. " On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the A.O in the assessment order, i.e. addition made on account of miscellaneous expenses, telephone expenses, vehicle expenses, as the assessee failed to substantiate his claim."

2. "On the facts and in the circumstances of the case and law, the Ld. CIT(A), erred in allowing the disallowances made on account of PF damages u/s 14B of the P.F. Act of Rs. 17,28,256/- and other penalties of Rs. 1,29,080/-, without appreciating the findings brought by the AO in the assessment order. The fact that the amount in question paid by the assessee represents penalty/damages for infringing the provisions of PF Act and it not a nature of compensation as contended by the assessee and hence not allowable business expenditure u/s 37(1) of the I.T. Act.

3. " On the facts and in the circumstances of the case and in law, the Ld.CIT(A) deleted the adhoc disallowance of 5% out of selling expenses amounting to Rs. 1,85,737/-, without appreciating the fact that the assessee failed to give broad bifurcation of selling expenses, and also failed to prove relations of such expenses with the business."

4. "On the facts and in the circumstances of the case and in law, the Ld. CTIT(A), erred in allowing the prior period expenses amounting to Rs. 3,42,683/-, claimed by the assessee. Since the assessee company is following the mercantile system of accounting, the expenses related to the prior period are not an allowable expenses"

5. "On the facts and in the circumstances of the case and in law, the Ld. CTIT(A), erred in deleting the addition made to the Book profit u/s 115JB of the Act, on account of provision for liability for leave encashment of Rs. 3,26,49,000/- and gratuity liability of Rs. 1,75,36,188/-. The AO has rightly justified by making such addition as the above said amount is merely a provision and represents the amount set aside by the assessee to provisions made for meeting liabilities other than ascertained liabilities. Such type of liabilities are covered by explanation (c) Sec. 115JB of the I.T. Act and the same is required to be added as per the explanation to sec. 115JB for computation of book profit of the assessee".

6. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.

Relief claimed in appeal

It is prayed that the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored.

Revenue's Grounds of Appeal in ITA No. 2066/Ahd/2016 A.Y. 2005-06

1. " On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the A.O in the assessment order, i.e. addition made on account of miscellaneous expenses, telephone expenses, vehicle expenses despite the fact that the assessee failed to substantiate its claim."

2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing 40% of the disallowance made on account of P.F. damages u/s 14B of the PF Act and other penalties, without appreciating the findings brought by the AO in the assessment order and also ignoring the fact that the assessee has infringed the provisions of PF Act, which is not allowable as business expenditure u/s 37(1) of the I.T. Act and that the assessee had disallowed amount of Rs. 33,59,735/- itself in computation of income and taking in to account this fact, the AO had not made addition on this point.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowances made of Rs. 9,49,096/- being other penalty by holding that the amount was added back by the assessee in return of income contrary to the fact on records where assessee had not added back this amount in return of income filed.

4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A), deleted the adhoc disallowance of 5% out of selling expenses amounting to Rs. 1,34,316/-, without appreciating the fact that the assessee failed to give broad bifurcation of selling expenses, and also failed to prove relations of such expenses with the business."

5. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred, by allowing writing off the debts as claimed by the assessee, without appreciating the fact that the assessee failed to establish that the debts amounts had been taken into account for computation of income in respective year to which they belonged to qualify for being written off and for claiming the same as deduction.

6. "On the facts and in the circumstances of the case and in law, the Ld. CTIT(A), erred in deleting the disallowance out of repair & maintenance of building, to the extent of Rs. 22.55 lacs, while the A.O had justified the addition by holding expenditure as capital in nature, on account of fact that the assessee had derived benefit of enduring nature."

7. On the facts and in the circumstances of the case and in law, the Ld. CTIT (A), erred in deleting the taxing of write off of loan liability of Rs. 3,66,67,734/-, without appreciating the fact that the loan waived by M/s Tuma Turbomach S.A. (TUMA) of Switzerland, is indeed a benefit to the assessee u/s 28(iv) of the I.T. Act arised during the P.Y. relevant to the A.Y. 2005-06.

8. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.

Relief claimed in appeal

It is prayed that the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored.

Revenue's Grounds of Appeal in ITA No. 2066/Ahd/2016 – A.Y. 2007-08

1. " On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the A.O in the assessment order, i.e. addition made on account of miscellaneous expenses, telephone expenses, vehicle expenses, even though the assessee failed to substantiate its claim."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A), deleted the adhoc disallowance of 5% out of selling expenses amounting to Rs. 62,355/-, without appreciating the fact that the assessee failed to give broad bifurcation of selling expenses, and also failed to prove relations of such expenses with its business."

3. "On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred, by allowing the claim of the assessee without appreciating the fact that the assessee had not claimed deduction/s 43B of Rs. 2,31,55,260/- either in the return or through filing of revised return as held in the decision of the Supreme Court in the case of Goetze [India] Ltd. vs. CIT 284 ITR 323(SC).

4. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.

Relief claimed in appeal

It is prayed that the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored.

3.1. The grounds are consolidated and tabulated as follows for the sake of convenience:

S r	Common Issue	ITA No.	Assessm ent Year (A.Y.)	Type of Appeal	Amount (Rs.)	Specifi c Groun d No.
1	Disallowance of Interest on Bonds Issued During Amalgamation	1772/ Ahd/2015	2002-03	Assessee	1,38,840	1

		1773/Ahd/2015	2003-04	Assessee	1,38,840	1
		1290/Ahd/2016	2004-05	Assessee	1,40,213	1
		1782/Ahd/2016	2005-06	Assessee	1,31,940	1
		1291/Ahd/2016	2006-07	Assessee	1,31,940	1
		1783/Ahd/2016	2007-08	Assessee	1,31,940	1
2	Disallowance under Section 43B(b) - Employer's Contribution to PF	1772/Ahd/2015	2002-03	Assessee	1,96,21,831	2
		1773/Ahd/2015	2003-04	Assessee	1,08,53,589	2
		1290/Ahd/2016	2004-05	Assessee	10853589 (Employees Contribution)	9
3	Disallowance of PF Damages under Section 14B of the PF Act	1772/Ahd/2015	2002-03	Assessee	9,83,308	3
		1773/Ahd/2015	2003-04	Assessee	10,79,540	3
		1290/Ahd/2016	2004-05	Assessee	10,36,953	3
		1594/Ahd/2016	2004-05	Revenue	17,28,256	2
		1782/Ahd/2016	2005-06	Assessee	20,15,841	3
		2066/Ahd/2016	2005-06	Revenue	33,59,735	2
4	Salaries and Wages of Packart Press Division	1772/Ahd/2015	2002-03	Assessee	41,92,427	4
		1773/Ahd/2015	2003-04	Assessee	39,47,285	4
		1290/Ahd/2016	2004-05	Assessee	33,86,757	5
		1782/Ahd/2016	2005-06	Assessee	32,79,890	5
		1291/Ahd/2016	2006-07	Assessee	32,99,000	7
		1783/Ahd/2016	2007-08	Assessee	30,71,067	6
5	Transfer of Marketing/Distribution Rights as Capital Receipt	1772/Ahd/2015	2002-03	Assessee	2,00,00,000	5
		1773/Ahd/2015	2003-04	Assessee	2,00,00,000	5
		1290/Ahd/2016	2004-05	Assessee	2,00,00,000	7
		1782/Ahd/2016	2005-06	Assessee	2,00,00,000	5
6	Adhoc Disallowance of Miscellaneous Expenses	1290/Ahd/2016	2004-05	Assessee	41,723	2
		1594/Ahd/2016	2004-05	Revenue	4,15,380	1
		1782/Ahd/2016	2005-06	Assessee	1,73,973	2
		2066/Ahd/2016	2005-06	Revenue	3,47,853	1

		1291/Ahd/2016	2006-07	Assessee	5,09,192	2
		1783/Ahd/2016	2007-08	Assessee	1,31,538	2
		2067/Ahd/2016	2007-08	Revenue	6,25,649	1
7	Disallowance of Prior Period Expenses	1594/Ahd/2016	2004-05	Revenue	3,42,683	4
8	Disallowance of Foreign Travel Expenses of Directors	1290/Ahd/2016	2004-05	Assessee	65,568	6
		1782/Ahd/2016	2005-06	Assessee	90,262	6
		1291/Ahd/2016	2006-07	Assessee	5,315	3
		1783/Ahd/2016	2007-08	Assessee	1,96,130	3
9	Deletion of Disallowance of Other Penalties (Contractual Obligation)	2066/Ahd/2016	2005-06	Revenue	9,49,096	3
		1290/Ahd/2016	2004-05	Assessee	1,29,080	4
10	Disallowance u/s 14A	1772/Ahd/2015	2002-03	Assessee	33,75,000	6
11	Disallowance relating to Bad Debts	1290/Ahd/2016	2004-05	Assessee	1,48,66,928	8
		1291/Ahd/2016	2006-07	Assessee	2,63,025	4
		2066/Ahd/2016	2005-06	Revenue	15,73,662	5
12	Disallowance of Sundry Balances written off	1290/Ahd/2016	2004-05	Assessee	58,35,000	10
		1291/Ahd/2016	2006-07	Assessee	71,91,000	6
15	Write-off of Loan Liabilities as Taxable under Section 28(iv)	2066/Ahd/2016	2005-06	Revenue	3,66,67,734	7
13	Disallowance of Repair and Maintenance - Building	2066/Ahd/2016	2005-06	Revenue	6,74,517	6
		1291/Ahd/2016	2006-07	Assessee	4,39,663	5
		1783/Ahd/2016	2007-08	Assessee	10,03,378	4

14	Disallowance of Repair and Maintenance - Plant & Machinery	1783/Ahd/2016	2007-08	Assessee	14,83,250	5
15	Grounds Relating to Disallowance of 5% Selling Expenses	2066/Ahd/2016	2005-06	Revenue	1,85,737	4
		2067/Ahd/2016	2007-08	Revenue	62,355	2
16	Adjustment to Book Profit under Section 115JB - Gratuity & Leave Encashment	1594/Ahd/2016	2004-05	Revenue	Gratuity: 1,75,36,188; Leave Encashment: 3,26,49,000	5
		1260/Ahd/2016	2004-05	Assessee	Provision for Bad and Doubtful Debts: 60447760	11

4. Now we deal with each common ground of appeal one by one for each appeal and then each individual grounds.

Ground relating to Disallowance of Interest on Bonds Issued During Amalgamation

4.1. This ground of appeal was raised by the assessee across multiple assessment years, reflecting recurring disallowances by the AO and confirmation by the CIT(A). Following are the details of such disallowances

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ITA No.	A.Y.	Amount Disallowed (Rs.)
1772/Ahd/2015	2002-03	1,38,840
1773/Ahd/2015	2003-04	1,38,840
1290/Ahd/2016	2004-05	1,40,213

1782/Ahd/2016	2005-06	1,31,940
1291/Ahd/2016	2006-07	1,31,940
1783/Ahd/2016	2007-08	1,31,940

5. The assessee company claimed an expenditure (amounting to the figures specified in the above table for each A.Y.) as interest on bonds issued to the shareholders of Standard Pharmaceuticals Ltd. (SPL) during the time of amalgamation. The assessee argued that the amalgamation was in the best interest of both companies, ASE and SPL, as it would expand the business and enhance economic efficiency. The assessee further contended that the amalgamation would support an increase in turnover due to expansion into new pharmaceutical products. However, the AO disallowed this claim. The AO reasoned that amalgamation expenses are not allowable as business expenditure under Section 37(1) of the Act. The AO observed that similar claims made by the assessee in previous years were consistently disallowed, and the disallowance was upheld by the CIT(A) as well. Therefore, the AO disallowed the interest claim on the bonds issued at the time of amalgamation, leading to an addition of respective amounts.

6. The CIT(A) upheld the AO's disallowance claimed as interest on bonds, referring to previous disallowances confirmed by co-ordinate bench in assessee's own case and judicial precedents, the CIT(A) dismissed the assessee's appeal on this ground.

7. During the course of hearing before us the Authorised Representative (AR) of the assessee conceded that the Co-ordinate Bench in ITA No.

1771/Ahd/2015 for the AY 2001-02 has decided against the assessee. The Departmental Representative (DR) relied on the orders of lower authorities.

7.1. It is noted that in previous assessment years the assessee's similar claims for interest on bonds issued during amalgamation were disallowed by the Assessing Officer. These disallowances were subsequently upheld by the CIT(A) and the co-ordinate bench, thereby establishing a consistent judicial stance on this matter. In the assessment years under consideration, the CIT(A) has adhered to the same position, disallowing the claim for interest on bonds as not allowable under the provisions of the Act. We observe that there has been no material change in the facts, or any new legal argument presented that would warrant a departure from this established position.

7.2. In light of the principle of judicial consistency and considering the treatment of similar claims in prior years, we find no reason to take a different view. We, therefore, uphold the disallowances as made by the Assessing Officer and confirmed by the CIT(A).

7.3. Accordingly, the appeals on this common ground are dismissed for all the AY(s) under consideration.

Ground Related to Disallowance under Section 43B(b) - Employer's Contribution to PF

8. The AO has made a disallowance under Section 43B(b) of the Act, for contributions to ESI, Labour Welfare Fund, Superannuation Fund, PF, FPF, EDLIS, and other similar contributions. As detailed below-

ITA No.	A.Y.	Amount Disallowed (Rs.)
1772/Ahd/2015	2002-03	1,96,21,831 Employer's Contribution
1773/Ahd/2015	2003-04	1,08,53,589 Employer's Contribution
1290/Ahd/2016	2004-05	1,02,67,284 Employees' Contribution

8.1. The AO observed that the assessee did not pay the employer's contribution to PF, FPF, EDLIS, and other welfare funds within the prescribed due dates. Since the assessee failed to make these contributions within the stipulated time frames, the AO has invoked Section 43B(b) of the Act to disallow these payments.

9. The CIT(A) observed that the AO treated the due date for Section 43B(b) of the Act disallowance as the 20th day from the close of the month, rather than from the actual disbursement date of salaries/wages. The CIT(A) also noted that the assessee had already made a *suo moto* disallowance, being employer's PF contribution, based on this interpretation. The CIT(A) noted that there was no evidence on record to confirm whether payments were made before the return filing date. Due to the absence of documentary evidence, the CIT(A) held that such disallowance could not be allowed on the assumption that payments were made within the permissible time frame.

10. During the course of hearing before us the AR stated that the Co-ordinate Bench on the similar facts and circumstances has decided and

upheld the decision of CIT(A) in assessee's own case for A.Y. 2001-02 in ITA No. 1771/Ahd/2015.

10.1. Following the principle of judicial consistency, in the present case the issue should be set aside to the AO for verification to determine whether the contributions were paid on or before the due date for filing the return of income. If the payments were made within the allowable time frame as per Section 43B(b), then the disallowance should be allowed accordingly.

10.2. Thus, the ground regarding the disallowance under Section 43B(b) should be partly allowed subject to verification by the AO, in line with the Co-ordinate Bench's consistent approach in the assessee's own case.

11. The assessee has raised ground relating to disallowance of Rs. 1,02,67,284 u/s 43B on account of employees' contribution of PF in ITA No. 1290/Ahd/2016 for A.Y. 204-05. The decision of Hon'ble Jurisdictional High Court in case of **CIT -II Vs. Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100** is against the assessee on this issue and the AR has conceded the same before us. Hence, the ground of the assessee is dismissed.

Ground related to Disallowance of PF Damages under Section 14B of the PF Act

12. The assessee challenges the disallowance of damages paid under Section 14B of the PF Act, which were levied due to delays in remitting contributions to the Provident Fund (PF). The AO and CIT(A) treated these damages as penalties and disallowed them under Section 37(1) of the Act.

12.1. The issue of PF damages has been raised across multiple appeals as detailed below:

ITA No.	Assessment Year (A.Y.)	PF Damages Disallowed (Rs.)
1772/Ahd/2015	2002-03	9,83,308
1773/Ahd/2015	2003-04	10,79,540
1290/Ahd/2016	2004-05	17,28,256
1594/Ahd/2016	2004-05 (Revenue Appeal)	17,28,256
1782/Ahd/2016	2005-06	20,15,841
2066/Ahd/2016	2005-06 (Revenue Appeal)	33,59,735

12.1. During the course of assessment proceedings, the AO observed that the assessee had claimed damages paid under Section 14B of the PF Act as allowable business expenditure. The assessee argued that these damages were compensatory in nature, arising due to delayed payments of PF contributions and were incidental to the business. The assessee relied on the contention that these damages did not amount to a penalty or fine and were allowable under Section 37(1) of the Act. The AO rejected this claim, holding that damages under Section 14B of the Act are penal in nature and are imposed for violation of statutory obligations. As per the AO, such payments cannot be treated as compensatory, and the disallowance was made under Section 37(1) of the Act.

13. The CIT(A) upheld the AO's decision, stating that damages under Section 14B of the Act represent a penalty/damage for infringing statutory provisions and are not in the nature of compensation. The CIT(A) rejected the assessee's contention that 40% of the damages should be considered compensatory. The CIT(A) noted that no evidence or detailed bifurcation was

provided by the assessee to substantiate this alternative claim. However, in case of A.Y. 2004-05 and A.Y. 2005-06 the CIT(A) allowed the 40% of damaged as allowable expenditure following the appellate order for A.Y. 1998-99 in assessee's own case.

14. The AR reiterated that the damages under Section 14B of the Act were compensatory in nature and arose as a consequence of delayed payments of PF contributions, which were incidental to the business. The AR referred to the co-ordinate bench's decision in ITA No. 1771/AHD/2015 for A.Y. 2001-02 and submitted that 40% of the damages under Section 14B had been allowed as compensatory in earlier assessment years, following judicial precedents, such as, **Swadeshi Cotton Mills Co. Ltd. vs. CIT [233 ITR 199 (SC)]**. The AR argued that judicial consistency should be maintained, and the disallowance of the entire amount of damages was unwarranted.

15. The DR supported the orders of the AO and CIT(A), stating that the damages under Section 14B of the Act were clearly penal in nature and were levied for violation of statutory provisions. The DR, in case of revenue's appeal on this ground, also contended that the reliance on earlier decisions allowing 40% of damages as compensatory was misplaced, as no evidence was presented in the present case to substantiate such bifurcation.

16. We have heard the submissions of both parties and perused the material available on record, including the orders of the lower authorities and the decisions relied upon by the assessee. It is an established position, based on the Hon'ble Supreme Court's decision in the case of **Swadeshi Cotton Mills Co. Ltd. vs. CIT [233 ITR 199 (SC)]**, that where a composite levy includes both compensatory and penal elements, the compensatory portion

can be allowed as a deductible business expenditure under Section 37(1). In the assessee's own case for A.Y. 2001-02 (ITA No. 1771/AHD/2015), the Co-ordinate Bench had upheld the CIT(A)'s decision to allow 40% of the damages under Section 14B of the Act as compensatory while treating the balance 60% as penal in nature and disallowing the same. This decision was in line with earlier years. Applying the principle of judicial consistency, we are inclined to follow the co-ordinate bench's decision in the assessee's own case.

16.1. Accordingly, 40% of the damages of are allowed as compensatory and deductible under Section 37(1) of the Act, while the balance 60% is disallowed as penal in nature. The AO is directed to verify the computation and ensure that the disallowance is limited to 60% of the damages. The appeal on this ground is **partly allowed** and revenue's appeal on the ground challenging 40% allowance is dismissed.

Grounds Relating to disallowance of Salary and Wages of Packart Press Unit

17. The assessee has challenged the disallowance of salary and wages paid to employees of the Packart Press Unit, which the AO and the CIT(A) disallowed on the grounds that the unit was closed and not operational. The disallowance of salary and wages for the Packart Press Unit has been raised across multiple appeals, as summarized below:

ITA No.	Assessment Year s (A.Ys.)	Salary and Wages Disallowed (Rs.)
1772/Ahd/2015	2002-03	41,92,427
1773/Ahd/2015	2003-04	39,47,285
1290/Ahd/2016	2004-05	33,86,757

1782/Ahd/2016	2005-06	32,79,890
1783/Ahd/2016	2007-08	30,71,067
1291/Ahd/2016	2006-07	32,99,000 (Rs. 7,65,865/- claimed as other expenses relating to the said unit is also part of the ground)

17.1. The AO noted that the Packart Press Unit had been closed as per the order of the Specified Authority (Labour Commissioner). The statutory audit report indicated that no provision for salary, wages, or other expenses was made in the books of account since the unit was closed. The AO observed that the closure of the unit had been challenged by the employees' union before the Industrial Tribunal and while the Labour Commissioner's order approving the closure was set aside by the Tribunal, the matter was pending before the Hon'ble Gujarat High Court.

17.2. The AO concluded that no business activity was carried out by the Packart Press Unit during the relevant year. This conclusion was supported by the fact that the unit did not report any sales or services during the year and merely showed a profit in the computation of income. The AO relied on the principle that expenses can only be claimed as a deduction under Section 37(1) of the Act, if they are incurred "wholly and exclusively for the purposes of business or profession." Since the unit was closed and no business activity occurred, the expenses were deemed to lack a nexus with the business operations.

18. The CIT(A) noted that the Packart Press Unit was not entirely closed, as per the assessee's submission, but had no active sales or business operations during the year. The unit was kept in a ready-to-operate condition with fixed costs incurred for maintaining assets like rent, insurance, and bank accounts. The CIT(A) found that the closure had not been finalized, and thus

the liability toward salary, wages, and other expenses could not be denied outright. The CIT(A) allowed the expenses for rent and insurance, recognizing them as necessary for maintaining the unit's assets and keeping it operational. Salary, wages, bonus, and PF contributions were disallowed due to the lack of evidence, non-crystallization of liabilities, and absence of any business operations in the Packart Press Unit during the relevant year.

19. The AR pointed out the facts argued before the co-ordinate bench in assessee's own case in earlier years which noted that the Packart Press Unit was not completely closed and continued to provide indirect support to other units by maintaining readiness to manufacture cartons, labels, and other packaging materials. It was further noted that the liability for salaries and wages, although contested by the employees' union, had arisen and was essential for maintaining the unit's operations. It was also stated that the matter relating to the unit's closure was sub judice before the Hon'ble Gujarat High Court, and the liability for salaries and wages should be allowed on the basis of accrual. The AR relied on the decisions of the Co-ordinate Bench's decision in the assessee's own case for earlier A.Ys., wherein similar issues were remanded to the AO for verification of facts and proper adjudication.

20. The DR relied on the orders of the AO and CIT(A), contending that there was no evidence to substantiate the claim that salaries and wages were paid or that liability for these expenses had crystallized during the relevant year.

21. We noted the Co-ordinate Bench's decision in earlier years which did not conclusively establish the allowability of the expenses but only remanded the matter for further verification. However, it was observed by the co-ordinate bench that the Packart Press Unit was not a distinct line of business

but functioned as part of the assessee's overall operations, supporting other units. It was also observed that the allowability of salary and wage expenses depended on whether the liability had accrued during the relevant year based on contractual obligations and whether it was substantiated by evidence. The Co-ordinate Bench also concluded that assessee has not conclusively demonstrated that the liability for salaries and wages was accrued or crystallized during the relevant year and the assessee has not furnished sufficient evidence, such as salary registers or employee details, to establish the identity of the employees or the actual payment of salaries and wages. The CIT(A)'s observation that no such liability was accounted for in the books of account remains uncontested.

21.1. Considering the identical facts and the Co-ordinate Bench's decisions in earlier years, the issue is remanded back to the AO for verification of the facts whether the liability for salaries, wages, and related expenses accrued during the relevant year and whether the liability is supported by contractual obligations and substantiated by adequate evidence.

21.2. The AO is directed to give the assessee a reasonable opportunity of being heard and to decide the matter afresh in accordance with law, following the principles of natural justice. The ground of appeal is **partly allowed for statistical purposes.**

Grounds Relating to Transfer of Marketing/Distribution Rights

22. The assessee has contested the addition made by the AO on account of additional consideration received for the transfer of marketing and distribution rights, which the AO and CIT(A) have treated as revenue income. The assessee claims that this receipt is capital in nature and should

not be taxed as revenue income. The issue of marketing rights transfer has been raised in the following appeals:

ITA No(s).	Assessment Years (A.Ys.)	Consideration Amount (Rs.)
1772/Ahd/2015	2002-03	2,00,00,000
1773/Ahd/2015	2003-04	2,00,00,000
1290/Ahd/2016	2004-05	2,00,00,000
1782/Ahd/2016	2005-06	2,00,00,000

23. During the course of the hearing, the AR fairly conceded that the issue is covered against the assessee by the decision of the Co-ordinate Bench in the assessee's own case for A.Y. 2001-02, decided in **ITA No. 1771/Ahd/2015**, wherein it was held that the receipts on account of the transfer of marketing rights and trademarks are taxable as revenue receipts. In the said decision, it was observed that the transfer of marketing rights and trademarks does not result in the extinguishment of the income-earning apparatus of the assessee, but merely represents a restructuring of business operations. The Co-ordinate Bench had also noted that the assessee retained its manufacturing rights and continued to participate in the income-generating process through its 50% stake in the joint venture.

24. The DR relied on the findings of the lower authorities and submitted that the receipts in question were correctly treated as revenue income.

25. We find that the Co-ordinate Bench in the assessee's own case for A.Y. 2001-02 has adjudicated the identical issue and upheld the treatment of these receipts as taxable revenue income. The findings of the Co-ordinate Bench are squarely applicable to the present case, and the learned AR has also conceded the same.

25.1. In view of the binding precedent, we hold that the consideration received by the assessee for the transfer of marketing rights and trademarks is taxable as revenue income. The findings of the AO and the CIT(A) are upheld. Accordingly, the grounds of appeal raised by the assessee on this issue are dismissed.

Grounds Relating to Other and Miscellaneous Expenses

26. The issue under these grounds involve the adhoc disallowances made by the AO for expenses claimed by the assessee, which were partly upheld or deleted by the CIT(A). The disallowed expenses include general administrative costs, such as vehicle, telephone, business promotion, conveyance, and other minor expenses. The assessee is in appeal against the ad hoc disallowance and the revenue is in appeal against the deletion of remaining disallowance made by the AO. The amounts involved in these appeals are tabulated as under:

ITA No(s).	Assessment Years(A.Ys.)	Nature of Disallowed Expenses	Amount Disallowed by AO (Rs.)	Amount Challenged in the appeal (Rs.)	Type of Appeal
1290/Ahd/2016	2004-05	Other Expenses (5% adhoc)	457103	41,723	Assessee
1594/Ahd/2016	2004-05	Miscellaneous Expenses (5% adhoc)	457103	4,15,380	Revenue
1782/Ahd/2016	2005-06	Other Expenses (5% adhoc)	521826	1,73,973	Assessee
2066/Ahd/2016	2005-06	Miscellaneous Expenses (5% adhoc)	521826	3,47,853	Revenue

1291/Ahd/2016	2006-07	Other Expenses (5% adhoc)	1010079	5,09,192	Assessee
1783/Ahd/2016	2007-08	Other Expenses (5% adhoc)	757187	1,31,538	Assessee
2067/Ahd/2016	2007-08	Miscellaneous Expenses (5% adhoc)	757187	6,25,649	Revenue

27. The AO disallowed a portion of the expenses claimed under the Profit and Loss account on the grounds that they were either non-business in nature or lacked sufficient evidence to establish that they were incurred wholly and exclusively for business purposes. The assessee claimed certain expenses under the head "Miscellaneous Expenses," but could not provide detailed break-up or evidence to substantiate that these expenses were wholly and exclusively for business purposes. The AO specifically highlighted that some expenses, such as Diwali expenses, distribution of sweets, and boni, were of a personal or non-business nature. The AO determined that 5% of the miscellaneous expenses, amounting to Rs.1,31,538, were not verifiable or relatable to business purposes. The AO also identified some expenses on telephones and on vehicle running and maintenance expenses. While the assessee provided a broad break-up of these expenses, detailed records, such as logbooks or other supporting evidence, were not maintained to establish the business purpose. Additionally, the AO noted that the Directors and Managing Director used the telephones and vehicles for personal purposes, as conceded by the assessee. The assessee also submitted details identifying the Directors' telephone and vehicle expenses for each year under consideration.

28. The CIT(A) upheld the AO's disallowance of 5% of Miscellaneous Expenses and deleted the disallowance relating to Directors' telephone and vehicle expenses. The CIT(A) relied on the appellate order for the Assessment Year (A.Y.) 1998-99, where an identical issue had been raised, and the disallowance of 5% was upheld.

29. During the course of hearing before us the AR stated that the CIT(A) has relied on the appellate order for the A.Y. 1998-99, whereas the Co-ordinate Bench has decided in favour of the assessee in assessee's own case in ITA No.1461/Ahd/2001 (A.Y. 1996-97), ITA No.1597/Ahd/2001 (A.Y. 1998-99), ITA No. 933/Ahd/2016 (A.Y. 1999-2000).

30. The DR relied on the order of AO and argued that the expenditure claimed under these heads included personal or non-business elements, as the assessee failed to maintain records, such as logbooks, to substantiate exclusive business usage of telephone and vehicles and a portion of these expenses was not wholly and exclusively incurred for business purposes.

31. We have carefully considered the submissions of both parties and perused the materials available on record. The issue pertains to the disallowance of two components of expenses, Telephone and Vehicle Expenses relating to Directors and Miscellaneous Expenses, where 5% of the claimed amount has been disallowed on an ad hoc basis.

31.1. As regards to Telephone and Vehicle Expenses, we observe that the AO disallowed these expenses purely on assumptions without bringing any specific evidence on record to substantiate personal use of telephones or vehicles by the Directors. The Co-ordinate Bench, in the assessee's own case

for earlier years, has categorically held that such ad hoc disallowances are unsustainable in the absence of specific findings or evidence of personal use. During the course of the hearing, the DR was unable to point out any distinguishing features in the facts of the current year vis-à-vis those in earlier years where the issue had already been decided in favour of the assessee. Following the consistent view of the Co-ordinate Bench in earlier years, we find no infirmity in the decision of the CIT(A) to delete the disallowance of telephone and vehicle expenses relating to the Directors.

31.2. The AO disallowed 5% of miscellaneous expenses on an ad hoc basis, citing unverifiability of some components such as Diwali expenses, distribution of sweets, and bonuses. The AO concluded that these expenses were not wholly and exclusively for business purposes. The CIT(A) upheld the disallowance, relying on the appellate order for A.Y. 1998-99, where a similar disallowance was sustained.

32. We note that the issue of disallowance of telephone and vehicle expenses, as well as miscellaneous expenses, has been adjudicated in the assessee's favour by the Co-ordinate Bench in the ITA No. 1461/Ahd/2001 (A.Y. 1996-97), ITA No. 1597/Ahd/2001 (A.Y. 1998-99), ITA No. 933/Ahd/2016 (A.Y. 1999-2000).

32.1. We reproduce the relevant paras of the order of the Co-ordinate Bench in case of ITA No. 1461/Ahd/2001 for the A.Y. 1996-97 –

“41. The Revenue's eleventh ground of appeal relates to disallowance effected @ 5% out of the assessee's claim of expenditure on account of tapes and floppies (Rs.1.10 lacs), miscellaneous expenses (Rs.27.45 lacs), telephone expenses (Rs.70.88 lacs) and vehicle expenses (Rs.52.88 lacs), i.e.. at an aggregate of Rs.152.31 lacs. The expenditure stands disallowed on account of its un-verifiability. so that a part thereof is inferred by the A.O as being not laid out for business purposes, estimating the

non-business user at five per cent. In appeal, the same stood allowed by the Ld. CIT(A) on the basis of the assessee having properly substantiated the said expenditure, and following the decision by Tribunal cited before him.

42. We have heard the parties and perused the material on record. The A.O. has we find adopted a global approach in the matter and brought about the instances where the assessee was unable to substantiate its claim of the relevant expenditure being incurred only and exclusively for business purposes. No presumption it is trite, can hold, and it is only on a determination of the discrepancies in the assessee's claim can be proceed to estimate the same by applying a percentage that he considers justified, also delineating the reason for the same, so that the appellate authority would while adjudicating on quantum, i.e., where required to do so, be aware of the same, and consider it on merits. Under the circumstances, we find no infirmity in the order of the Ld. CIT(A) and uphold the same on this ground."

33. The DR has been unable to point out any distinguishing features in the facts of the current year compared to the earlier years. Consistency in judicial decisions must be maintained, and there is no reason to deviate from the well-settled findings in earlier years.

34. The appeal of the Revenue, challenging the deletion of disallowance of telephone and vehicle expenses relating to Directors, is dismissed and the appeal of the assessee, challenging the disallowance of 5% of miscellaneous expenses, is allowed.

Grounds Relating to Prior Period Expenses

35. The Revenue has challenged the allowance of prior period expenses by the CIT(A) for A.Y. 2004-05 in ITA No. 1594/ Ahd/2016. The dispute revolves around expenses claimed by the assessee that pertain to earlier years but were accounted for in the current year.

36. The AO disallowed Rs.3,42,683/- on the grounds that the expenses related to prior years and could not be allowed in the current year, as the

assessee follows the mercantile system of accounting. The AO also noted that except for a short provision for bonus, other expenses such as interest, price differences, and disputes with creditors were ascertainable and quantifiable in the prior financial year itself. The AO concluded that these expenses could not be said to have crystallized during the year under consideration.

37. The CIT(A) deleted the disallowance made by the AO, holding that the liability crystallized during the year due to the resolution of disputes with parties and the receipt of bills/debit notes during the current financial year. The CIT(A) noted that the expenses were allowable under the mercantile system of accounting in the year in which they crystallized, as per the principles laid down in the judgment of the Hon'ble Gujarat High Court in Saurashtra Cement & Chemical Industries vs. CIT (213 ITR 532). The CIT(A) also noted that the Similar disallowances in earlier years had been deleted by appellate authorities or the Tribunal, making the issue covered in favour of the assessee.

38. The AR, during the course of the hearing, before us stated that the issue was already decided in favour of the assessee in its own case by the Co-ordinate Bench in ITA No. 1762/Ahd/2015 (A.Y. 2001-02).

39. The assessee follows the mercantile system of accounting, under which expenses are allowable in the year in which the liability crystallizes. The record indicates that the disputed expenses related to price differences, interest, and late payments with various creditors, and these disputes were resolved during the financial year under consideration. Consequently, the liability for these expenses crystallized in the year, making them allowable as deductions in the current year. The Co-ordinate Benches of the Tribunal, in

the assessee's own case for earlier years, consistently held that such expenses are allowable in the year in which they crystallized. Notably, the Tribunal in ITA No. 1762/Ahd/2015 (A.Y. 2001-02) dismissed a similar ground raised by the Revenue.

40. The AO failed to substantiate why the liability for these expenses did not crystallize during the year under appeal. Further, the AO did not identify any year to which the liability pertained, nor did the AO dispute the factual assertion that the liability arose out of the settlement of disputes during the current year. The CIT(A) has rightly relied on the principles laid down by the Hon'ble Gujarat High Court in the case of **Saurashtra Cement & Chemical Industries vs. CIT (213 ITR 532)** and earlier appellate orders to delete the disallowance. The DR failed to point out any distinguishing facts or legal arguments to differentiate the present case from the co-ordinate bench's decisions in earlier years. The principle of consistency, therefore, squarely applies.

40.1. In view of the above findings and the judicial precedents cited, we uphold the order of the CIT(A) in deleting the disallowance of prior period expenses amounting to Rs. 3,42,683/. The Revenue's this ground of **appeal is dismissed.**

Assessee's Grounds Relating to Foreign Travel Expenses

41. These expenses primarily pertain to foreign travel undertaken by directors and executives, which the assessee claims were for business purposes, such as attending conferences, meeting clients, or exploring new business opportunities.

41.1. The AO disallowed 50% of the expenses on an adhoc basis, alleging insufficient documentation or potential personal use, without identifying specific expenses that were inadmissible. A portion of the expenses was deemed personal in nature (e.g., directors traveling with family), and therefore, not allowable as business expenditure. This ground has been raised by the assessee across following appeals:

ITA No.	Assessment Year (A.Y.)	Amount Disallowed (Rs.)
1290/Ahd/2016	2004-05	65,568
1782/Ahd/2016	2005-06	90,262
1291/Ahd/2016	2006-07	5,315
1783/Ahd/2016	2007-08	1,96,130

42. During the course of assessment, the assessee has submitted details of foreign travel expenses. The purpose of the foreign travel was explicitly stated to be business-oriented, aimed at exploring new export markets, which ultimately resulted in exports. The AO disallowed 50% of the foreign travel expenses on an ad hoc basis, citing that an element of personal or non-business use could not be ruled out. However, the AO did not bring any specific findings or evidence on record to demonstrate non-business usage of the foreign travel expenses. The CIT(A) upheld the AO's disallowance, stating that the assessee failed to furnish comprehensive details to substantiate that the expenses were wholly business-related.

43. During the course of hearing before us, the AR stated that the issue is covered by the decision of the co-ordinate bench in assessee's own case for A.Y. 2001-02 in ITA No. 1762/Ahd/2015. The DR was unable to distinguish

the facts of the current year from earlier years or point out any new evidence or circumstances that warranted deviation from the earlier decisions of the Tribunal in the assessee's own case.

43.1. Considering the facts and circumstances, we find that the AO's disallowance of 50% of the expenses was ad hoc and arbitrary, made without bringing any material on record to justify the presumption of non-business use. The CIT(A) erred in upholding the disallowance by relying solely on the lack of further evidence from the assessee, despite there being sufficient documentation supporting the business purpose of the travel.

43.2. Following the principle of consistency and the co-ordinate bench's decision in ITA No. 1762/Ahd/2015, the disallowance of 50% of foreign travel expenses is deleted. The appeal of the assessee on this ground is allowed.

Grounds Relating to Deletion of Disallowance of Other Penalties (Contractual Obligation)

44. Under this ground the issue pertains to penalties incurred due to contractual obligations, which were partially disallowed by the AO and contested by both the Revenue and the Assessee. Following are the details of amounts contested by both the parties:

ITA No.	Assessment Year (A.Y.)	Type of Appeal	Amount Disallowed by AO (Rs.)
1290/Ahd/2016	2004-05	Assessee	1,29,080
2066/Ahd/2016	2005-06	Revenue	9,49,096

45. During the course of assessment proceedings, the AO observed that certain penalties were debited to profit and loss account which include PF damage paid u/s 14B of the PF Act and other penalties. Both AO and CIT(A) disallowed this on the basis of presumption that it is penalty. In both the cases i.e. A.Y. 2004-05 and A.Y. 2005-06 the CIT(A), concluded that the assessee has failed to prove the compensatory nature of such amounts. In case of A.Y. 2004-05 CIT(A) denied any relief to assessee stating that the assessee has *suo-moto* disallowed and added back this amount to income while filing the return of income. In case of A.Y. 2005-06, the CIT(A) directed AO to delete the disallowance stating that the assessee has *suo-moto* disallowed and added back this amount to income while filing the return of income.

45. Therefore, both the assessee and revenue are in appeal before us.

46. During the course of hearing, the AR stated that the amounts of Rs.1,29,080/- for the A.Y. 2004-05 and Rs.9,49,096/- represent the liquidated damages paid to various parties. In case of A.Y. 2005-06, the AR stated that the amount of Rs.9,49,096/- is related to sales tax. The AR placed reliance on the following decisions of co-ordinate benches:

1. Mahavir Multitrade (P.) Ltd. v. DCIT - [2020] 113 taxmann.com 261 (Delhi - Trib.).
2. Nipro Medical India (P.) Ltd. v. DCIT - [2023] 146 taxmann.com 582 (Hyderabad - Trib.).

46.1. These rulings emphasize that payments for liquidated damages or breach of contractual obligations, if compensatory and arising from commercial requirements, qualify as deductible business expenses under Section 37(1) of the Act.

47. On the other hand, the DR relied on the orders of lower authorities.

48. After carefully considering the arguments and reviewing the judicial precedents cited, it is observed that the CIT(A) for both years noted that the assessee had *suo-moto* added back these amounts while filing the return of income. However, there is insufficient evidence on record to establish whether these amounts are compensatory or penal in nature. The determination of the nature of these amounts is critical for deciding their allowability. The matters are remanded back to the AO with the direction to verify the exact nature of the amounts claimed as liquidated damages and sales tax-related damages, based on supporting documentary evidence, allow the amounts if they are found to be compensatory and incurred for business purposes, aligning with Section 37(1) and disallow the amounts if they are found to be penal in nature, arising from statutory infractions or non-compliance with laws.

49. The assessee's appeal for A.Y. 2004-05 is partly allowed for statistical purposes, subject to verification by the AO and the Revenue's appeal for A.Y. 2005-06 is dismissed for statistical purposes, subject to verification by the AO.

Assessee's Ground relating to disallowance u/s 14A in case of ITA No. 1772/Ahd/2015 for A.Y. 2002-03

50. During the assessment proceedings, the AO observed that the assessee has claimed dividend income as exempt under the Act. However, the AO asserted that earning exempt income involves incidental expenses like administrative and management costs. The AO emphasized that any indirect expenses, even if minimal, should be apportioned and disallowed. The AO noted that the assessee has not provided specific details regarding the

expenses incurred to earn dividend income. In the absence of direct evidence, the AO applied an estimated disallowance of Rs.67,50,000/- at 10% of dividend income, amounting to Rs.6,75,00,000.

51. During the appellate proceedings before CIT(A), the assessee argued that no expenditure, direct or indirect, was incurred in earning the dividend income of Rs.6.75 crores. The assessee stated that the investments were funded from internal accruals and not from borrowed capital, eliminating any interest expense. The assessee further stated that the investments in Sarabhai Piramal Pharmaceuticals Ltd. (SPPL) were made in earlier assessment years and was a strategic business investment, made to strengthen the group's position in the pharmaceutical industry, and not for the primary purpose of earning dividend income. The assessee emphasized that dividend income was received passively without any direct involvement of human resources or management and Dividends were credited directly into the bank account, eliminating the need for any substantial administrative or operational efforts. The assessee also contended that the AO failed to establish a direct nexus between any expense and the exempt income.

51.1. CIT(A) observed that the disallowance appeared to be excessive and reduced it to Rs.33,75,000 (5% of the total dividend income). The CIT(A) acknowledged AO's contention that earning dividend income might involve some incidental expenses, such as administrative or management costs.

52. During the course of hearing before us, the AR reiterated the facts and stated that the dividend was received from an investment of Rs.22.50 Cr in SPPL which was made out of sale of Intellectual Properties to SPPL and no funds were borrowed for making this investment. The AR also pointed out

that the own funds are greater than the investments which as on 31-3-2002 stood at Share Capital Rs.6491.87 lakh and Reserves and Surplus at Rs.4350.14 lakh. The AR placed reliance on following judicial precedents:

1. Gujarat State Fertilizers & Chemicals Ltd. 358 ITR 323 (Guj)
2. India Gelatine & Chemicals Ltd. 376 ITR 553 (Guj)
3. South Indian Bank Ltd. 438 ITR 1 (SC)

53. On the other hand, the DR relied on the order of AO and CIT(A). The DR specifically pointed out that both AO and CIT(A) have concluded that disallowance on account of administrative and miscellaneous expenditure has been incurred by the assessee and therefore there has to be some disallowance on that account. The AR in rejoinder, stated that there is no question of making any disallowance of expenditure on account of interest as well as administrative expenses when assessee was having its own surplus funds to invest. The AR also placed reliance on Judgement of High Court of Gujarat in case of PCIT Vs. Sintex Industries Ltd. reported at [2017] 82 taxmann.com 171.

54. We have heard the submissions of the AR for the assessee and the DR and have carefully considered the facts and circumstances of the case. The assessee has challenged the disallowance of Rs.33,75,000/- under Section 14A of the Act, which was upheld by the CIT(A). This disallowance represents 50% of the ad hoc disallowance of Rs.67,50,000/- made by the Assessing Officer (AO), purportedly for expenses incurred in earning exempt dividend income of Rs.6.75 crores.

The assessee contended that -

- The investments in the shares of SPPL were made in earlier years (AYs 1998-99 to 2000-01) as a strategic business decision to strengthen its position in the pharmaceutical industry.
- No fresh investments were made during the year under appeal (AY 2002-03), and no additional expenditure was incurred for managing the said investments.
- The dividend income was passively received, credited directly to the bank account, without any active administrative or managerial efforts.
- The assessee's own funds (share capital and reserves) as of 31-03-2002 amounted to Rs.10,842.01 lakh, far exceeding the investments of Rs.22.50 crore in SPPL, thereby negating the need for disallowance of interest or other expenses.

54.1. The AO disallowed Rs.67,50,000/- (10% of the dividend income) on the assumption that administrative and managerial costs must have been incurred to earn the exempt income. The CIT(A), without substantiating any specific basis, reduced the disallowance to Rs.33,75,000/- (5% of the dividend income).

54.2. It is undisputed fact that the investments in SPPL were made in earlier years and not during the year under appeal. Courts have consistently held that no disallowance can be made for expenses related to investments made in earlier years unless specific evidence of expenditure during the year under appeal is provided.

54.3. It is also a fact that the dividend income was received passively, requiring no active management or administrative effort. Activities such as receiving and depositing dividend income in a bank account are incidental and do not involve substantial costs.

54.4. Judicial precedents concerning disallowance under Section 14A before Rule 8D consistently emphasize the following principles:

- If the assessee's interest-free funds (e.g., share capital and reserves) exceed the investments in tax-exempt income-generating assets, courts presume that such investments were made out of interest-free funds. This presumption negates the need for disallowance of interest expenses.
- Disallowance under Section 14A can only be made if there is a clear and demonstrable nexus between the expenses incurred and the exempt income. In the absence of evidence establishing this connection, no disallowance is justified.
- When investments generating exempt income are made in earlier years, no disallowance for expenses related to those investments can be made in subsequent years unless additional expenditure is incurred during the relevant year.
- Courts have consistently disapproved of disallowances based on arbitrary percentages or assumptions. Disallowance must be based on reasonable and fact-specific estimations.
- The burden of proof lies on the Revenue to demonstrate that expenses were incurred specifically to earn exempt income. Without such evidence, disallowance under Section 14A cannot be sustained.

54.5. Both the AO and the CIT(A) failed to provide evidence linking any administrative or managerial expenses incurred by the assessee to the earning of exempt income. The disallowance made by the AO (10%) and partially sustained by the CIT(A) (5%) is ad hoc and arbitrary.

54.6. The Hon'ble Gujarat High Court in *Principal Commissioner of Income-tax-4 v. Sintex Industries Ltd. (supra)* ruled that no disallowance under Section 14A of the Act was warranted for interest and administrative expenses. The court observed that the assessee had sufficient surplus interest-

free funds to cover its investments, and the investments were not made from interest-bearing funds. It held that when an assessee demonstrates that investments are made from surplus funds, disallowance of expenses related to earning exempt income is unjustified. The court further noted that the Assessing Officer must express dissatisfaction with the assessee's explanation to invoke Rule 8D, which was not done in this case.

54.7. In light of the above findings, it is evident that the investments in SPPL were made in earlier years as a strategic decision, not primarily for earning dividend income. No additional expenditure was incurred during the year under appeal for managing these investments or earning the dividend income. The disallowance of Rs.33,75,000/- sustained by the CIT(A) is based on arbitrary assumptions without any factual support. Accordingly, the disallowance under Section 14A sustained by the CIT(A) is deleted in its entirety.

Assessee's Ground Relating to Disallowance of Bad Debts of Rs.1,48,66,928/- in ITA No. 1290/Ahd/2016 for A.Y. 2004-05

55. The assessee has challenged the disallowance of a claim for bad debts amounting to Rs.1,48,66,928, which was upheld by the CIT(A). The assessee has also raised an alternate claim for treating the write-off as a business loss under Section 28 of the Act. The amounts written off pertain to outstanding on account of sales of goods, deposits, and other transactions undertaken by the assessee in the course of business. The claim was disallowed by the AO and upheld by the CIT(A) on the grounds of insufficient evidence and non-fulfilment of conditions under Section 36(1)(vii) for bad debt deduction.

56. During the course of hearing before us the AR stated that it is absolutely wrong on part of CIT(A) to hold that the assessee did not provide the details to show that these amounts were offered to tax in earlier years. The AR pointed out from the paper book that the details were submitted to both AO and CIT(A) which include list of amounts written off supported by ledger accounts in which narration clearly indicate invoice numbers, list of depot-wise details of amounts. The AR alternatively claimed the deduction as a business loss under Section 28, arguing that the outstanding balances arose from regular business transactions. The AR Placed reliance on following judicial precedents for the alternate claim:

- Jackie Shroff Vs. ACIT, Range 16(1) - [2019] 101 taxmann.com 455 (Mumbai)
- Angel Commodities Broking [P.] Ltd. Vs. DCIT, Central Circle 46 - [2013] 40 taxmann.com 234 (Mumbai)
- Harshad J.Choksi Vs. CIT, Bombay City- VII [2012] 25 taxmann.com 567 (Bombay HC)

57. On the other hand, the DR placed reliance on the orders of lower authorities.

58. We have considered the contentions of the parties. The CIT(A) concluded that the conditions laid down under Section 36(1)(vii) read with Section 36(2) were not fulfilled as details of the parties associated with the debts were not furnished, the assessee failed to provide evidence that these amounts were offered to tax in earlier years. The alternate claim under Section 28 was denied as there was no evidence to substantiate that the loss occurred in the relevant assessment year.

58.1. The provisions of Section 36(1)(vii) of the Act, post-amendment w.e.f. 1.4.1989, require only that the debts be written off as irrecoverable in the

books of accounts. The necessity to establish that the debt has become bad is no longer applicable. The Hon'ble Supreme Court in the case of **T.R.F. Ltd. v. CIT [2010] 323 ITR 397 (SC)** clarified that the write-off suffices to claim the deduction. The assessee demonstrated that the debts were written off in the books of accounts, fulfilling the primary condition under Section 36(1)(vii). Additionally, the condition under Section 36(2) of the Act, requiring that the debts be included as income in earlier years, is satisfied as some of the amounts represent outstanding balances arising from revenue transactions already taxed in prior years.

59. We have considered the judicial precedents relied on by the assessee. In case of **Angel Commodities Broking (P.) Ltd. v. DCIT (supra)**, it was decided that the year of write-off, and not the year in which the debt becomes bad, is decisive for allowing the deduction. It was also decided in case of **Harshad J. Choksi v. CIT (supra)** that if bad debts are disallowed due to technical issues under Section 36(2), they may still qualify as a business loss under Section 28 of the Act.

59.1. The assessee's alternate plea to allow the deduction as a business loss under Section 28 was rejected by the CIT(A) on the grounds that the loss was not substantiated as having occurred in the relevant assessment year. The Coordinate Bench has decided in case of **Jackie Shroff v. ACIT (supra)** that Irrecoverable advances, if made for business expediency, may be allowed as business loss under Section 28 or Section 37(1) of the Act.

60. Considering the facts and circumstances, judicial precedents relied on, we conclude that the assessee has provided sufficient evidence to establish that the amount of Rs.1,48,66,928 was written off as irrecoverable in the books

of accounts. The details submitted, including ledger accounts and depot-wise narrations, clearly indicate the amounts related to business transactions and were part of the income offered to tax in earlier years. Post-amendment (w.e.f. 1.4.1989), the act of writing off debts in the books is sufficient to claim deduction under Section 36(1)(vii) of the Act. The necessity to prove that the debts became bad is no longer applicable. The year of write-off determines the allowability of the deduction, irrespective of when the debt became bad. Wherever the amounts were not relating to income of earlier years and written off it is evident that the write-off pertains to outstandings arising out of regular business transactions, including sales of goods and deposits, which are incidental to the business. Hon'ble Bombay High Court in **Harshad J. Choksi v. CIT (supra)** observed that if bad debts are disallowed for technical reasons under Section 36(2) of the Act, they may still qualify as a business loss under Section 28. Similarly, the Mumbai bench of the tribunal in **Jackie Shroff vs. ACIT(supra)** held that irrecoverable advances made for business expediency may be allowable under Section 28 as business loss. The CIT(A)'s conclusion that the conditions under Section 36(1)(vii) of the Act were not met is factually and legally incorrect. The details and evidence provided by the assessee were not given due consideration, despite being placed on record. The rejection of the alternate claim under Section 28 on grounds of lack of evidence is also unsustainable, as the nature of the transactions clearly demonstrates their nexus to the business.

60.1. The assessee's ground of appeal relating to the disallowance of Rs.1,48,66,928 as bad debts under Section 36(1)(vii) of the Act to the extent applicable is allowed and in case of remaining amount the alternate claim

under Section 28 is allowed. The AO is directed to allow the total deduction of Rs.1,48,66,928. The appeal of the assessee is allowed in toto.

61. **The Assessee has taken similar ground in case of ITA No. 1291/Ahd/2016 for A.Y. 2006-07** where the assessee has written off an amount of Rs. 2,63,025/- as bad debt. The claim was disallowed by the AO and upheld by the CIT(A) on the grounds of insufficient evidence and non-fulfilment of conditions under Section 36(1)(vii) for bad debt deduction. The AR during the course of hearing before us stated that in this case the facts and circumstances are same, except the quantum.

62. After considering the submissions and examining the records, we find that the assessee has fulfilled the conditions laid down under Section 36(1)(vii) read with Section 36(2) of the Act, as the amounts written off are reflected as irrecoverable in the books of accounts and pertain to business transactions. The necessity to prove that the debts became bad no longer applies, as clarified by the Hon'ble Supreme Court in **T.R.F. Ltd. v. CIT [2010] 323 ITR 397 (SC)**. Furthermore, if any part of the claim does not meet the technical requirements of Section 36(1)(vii) of the Act, it would still qualify as a business loss under Section 28 of the Act, as held in **Harshad J. Choksi v. CIT [2012] 25 taxmann.com 567 (Bom HC)** and **Jackie Shroff v. ACIT [2019] 101 taxmann.com 455 (Mumbai ITAT)**.

62.1. Considering the judicial precedents relied upon and the similarity of facts, we conclude that the disallowance of Rs.2,63,025/- is unwarranted. The assessee's claim under Section 36(1)(vii) for the bad debts written off is allowed. The AO is directed to allow the deduction of Rs.2,63,025/-. **The appeal of the assessee is allowed in toto.**

The Revenue has raised a ground related to Write Off of Bad Debts amounting to Rs. 15,73,662/- in ITA No. 2066/Ahd/2016 for the A.Y. 2005-06.

63. In the instant case the AO disallowed an amount of Rs. 15,73,662/- written off as bad debt by the assessee after concluding that the assessee failed to submit evidence regarding fulfilment of conditions of Sec. 36(1)(vii) of the Act. However, the CIT(A) allowed the claim of the assessee. The relevant para of the CIT(A)'s order is reproduced –

“I have considered the appellant's submission and the AO's observation. The appellant's claim that assessee is not required to establish that debt has become bad before writing it off is correct. At the same time, the AO's observation that only bad debts which have been taken into account in computation of total income of the appellant can be claimed as bad debts is also correct. Besides, the bad debts has to be written off in the ledger account of individual assessee in order to claim as a deduction as per section 36(1)(vii). From the paper book paper submitted by the appellant during the course of the appellant proceedings, it is seen that the appellant has submitted details before the AO vide letter dated 23.11.2007 in support of its claim regarding bad debts. From these details, it is seen that appellant has also provided invoice numbers and names of the parties. Hence, the AO is directed to allow deduction of bad debt as claimed by the appellant.”

64. It is well settled by the decision of the Hon'ble Supreme Court in the case of **T.R.F. Ltd. vs. CIT [2010] 323 ITR 397 (SC)** that, to claim a deduction for bad debts under Section 36(1)(vii), the assessee is not required to prove that the debt has become irrecoverable. It is sufficient if the debt is written off as irrecoverable in the books of account of the assessee.

65. In the present case, the CIT(A) has observed that the assessee furnished complete details regarding the bad debts, including invoice numbers, party names, and other relevant details, before the AO during the assessment proceedings. The CIT(A) further noted that the assessee had complied with the requirement of writing off the bad debts in its books of account. Additionally, there is no evidence to suggest that the debts written off were

not considered in the computation of the assessee's total income in earlier years.

66. The Revenue's contention that the assessee failed to establish the fulfilment of conditions under Section 36(1)(vii) is devoid of merit, as the CIT(A) has categorically addressed this issue by relying on the submissions and supporting evidence placed on record. The CIT(A)'s decision is, therefore, in consonance with the principles laid down by the Hon'ble Supreme Court in T.R.F. Ltd.(supra), and we find no infirmity in the same.

66.1. In light of the above, the Revenue's appeal is devoid of merit and deserves to be dismissed. In the result, this ground of **appeal of the Revenue is dismissed.**

Assessee's Ground relating to disallowance of Sundry Balances written off amounting to Rs.58.35 Lakhs in ITA No. 1290/Ahd/2016 for A.Y. 2004-05

67. The assessee had claimed a deduction of Rs. 58.35 lakh as a business loss, which comprised Sundry debit balances written off on account of sales of goods, aggregating Rs.21,09,182 and Other debit balances written off, including advances and deposits, aggregating Rs.37,26,818, incurred in the ordinary course of business. The AO disallowed the entire claim on the grounds that the write-off of advances and deposits could not be allowed under Section 36(1)(vii) of the Act or Section 37 of the Act and no evidence was furnished to substantiate the alternate claim under Section 28. The CIT(A) partially allowed the claim for Rs.21,09,182 as bad debt under Section 36(1)(vii) but upheld the disallowance of the balance amount of Rs. 37,26,818. The CIT(A) further held that the assessee failed to provide sufficient evidence to establish that the alternate claim under Section 28 was allowable.

68. During the course of hearing before us the AR contended that the debit balances written off represented transactions undertaken in the ordinary course of business, including outstanding amounts on account of sales of goods and advances/deposits made during the course of business. The AR further stated that the CIT(A) failed to appreciate the evidence and materials placed on record and erred in rejecting the alternate claim without providing an opportunity to furnish additional evidence. The AR explained the details of the nature of the transactions and amounts outstanding with the help of paper book. The AR also pointed out the explanation offered to the AO and CIT(A) relating to these amounts. The AR reiterated the reliance on the judicial precedents, such as, **Jackie Shroff Vs. ACIT, Range 16(1) - [2019] 101 taxmann.com 455 (Mumbai), Angel Commodities Broking [P.] Ltd. Vs. DCIT, Central Circle 46 - [2013] 40 taxmann.com 234 (Mumbai) and Harshad J.Choksi Vs. CIT, Bombay City- VII [2012] 25 taxmann.com 567 (Bombay HC).**

69. On the other hand, the DR relied on the orders of lower authorities.

70. We have heard the rival submissions and perused the materials placed on record. We have also considered the judicial precedents relied upon by the assessee. It is a settled position in law that losses arising in the ordinary course of business, including irrecoverable amounts related to business transactions, are allowable as business losses under Section 28. In the present case, the assessee has substantiated that the write-off of sundry debit balances aggregating Rs.37,26,818 pertained to deposits, advances, and other transactions entered into during the course of business. These transactions are incidental to the assessee's business, and the write-off arises as a natural consequence of business exigencies. The CIT(A)'s finding that the assessee

did not furnish evidence to substantiate the claim under Section 28 is not borne out by the record. The assessee has provided sufficient details of the transactions and the reasons for irrecoverability, as evidenced in the appellate submissions. Furthermore, the AO and the CIT(A) failed to call for any further details or provide an opportunity to furnish additional evidence. Following the ratio laid down in the aforementioned judicial precedents, we hold that the amount of Rs. 21,09,182 relating to sales of goods is allowable as a business loss under Section 28, as it pertains to irrecoverable amounts taxed in earlier years. The balance amount of Rs.37,26,818, representing irrecoverable deposits and advances made during the course of business, is also allowable as a business loss under Section 28, as it is incidental to the assessee's business operations.

70.1. In view of the above, we direct the AO to allow the entire claim of Rs. 58.35 lakh as a business loss under Section 28 of the Act. **The appeal filed by the assessee is allowed.**

71. Similar ground is raised by the assessee in respect of A.Y. 2006-07 in ITA No. 1291/Ahd/2016. In the aforementioned appeal, the AO had disallowed a sum of Rs.71.91 lakh as sundry balances written off. However, the CIT(A) allowed the claim in its entirety as bad debts under Section 36(1)(vii) of the Act, relying on the decision of the Hon'ble Supreme Court in the case of **T.R.F. Ltd. vs. CIT [2010] 190 TAXMAN 391 (SC)**. For the sake of clarity, the relevant extract from the order of the CIT(A) in A.Y. 2006-07 is reproduced below:

"4.7.3 The appellant had provided details regarding these sundry debit balances written off vide letter dated 03/11/2008 before the AO. The appellant has provided complete details including names of the parties, nature of bad debts, invoice numbers,

invoice dates, etc., to the AO. The appellant contended that these debit balances written off represent various factors such as deductions by customers on account of price differences, quality problems, rejections, advances to suppliers, etc. The AO disallowed the claim on the grounds that the assessee failed to prove that the debts had become bad. However, as held by the Hon'ble Supreme Court in the case of T.R.F. Ltd., the assessee is no longer required to establish that a debt has become bad before writing it off in its books of account. Hence, the claim of the appellant was allowed as bad debts."

72. It is pertinent to note that the claim has already been adjudicated and allowed in favour of the assessee. Consequently, the present ground becomes infructuous as the claim has been accepted under the head of bad debts, rendering further adjudication unnecessary. In light of the above, we hold that the present ground raised by the assessee is dismissed as infructuous.

Revenue's Ground relating to Write-off of Loan Liabilities as Taxable under Section 28(iv) in ITA No. 2066/Ahd/2016 for the A.Y. 2005-06

73. The facts are such that the assessee had obtained a loan from M/s. Tuma Turbomach S.A. (TUMA), a Swiss company, for the purpose of acquiring a power plant. The loan was to be repaid over a period of five years in ten equal instalments. However, due to financial constraints, the assessee was unable to repay the loan as per the agreed schedule. Consequently, TUMA agreed to waive off part of the loan amount as part of a one-time settlement. During the assessment proceedings, the Assessing Officer (AO) treated the waived amount of Rs.3,66,67,734/- as a benefit arising out of the business of the assessee and included it in the total income under Section 28(iv) of the Act.

Before the CIT(A), the assessee contended that:

1. The loan was availed specifically for the purchase of a capital asset, i.e., a power plant, and hence was a **capital liability**.

2. The loan waiver could not be treated as a trading liability, and therefore, provisions of Section 41(1) were not applicable.
3. The benefit arising out of the waiver was **monetary in nature**, making Section 28(iv) inapplicable.
4. The assessee relied on judicial precedents, including decisions of the Hon'ble Gujarat High Court in **Chetan Chemicals Pvt. Ltd. (188 CTR 572)**.

74. The CIT(A) accepted the assessee's arguments and deleted the addition made by the AO. The CIT(A) also relied on the decision of Jurisdictional High Court in case of **Gujarat State Fertilizers & Chemicals Ltd. (36 taxmann.com 230)**, which categorically held that waiver of a capital loan is not taxable.

75. During the course of hearing before us the AR explained the facts and placed reliance on judgement of Hon'ble Supreme Court in case of Mahindra and Mahindra [2018] 404 ITR.

76. The DR, on the other hand, relied on the order of AO.

77. We have heard the submissions of the rival parties and perused the material available on record. The facts on record establish that the loan in question was availed exclusively for the acquisition of a power plant. The purpose of the loan, being directly linked to the purchase of a capital asset, categorically classifies it as a capital liability. It is well-settled that waiver of a capital liability does not partake the character of income arising out of business or profession. Furthermore, the assessee has not claimed any deduction for this loan in earlier years, either as revenue expenditure or trading liability. This fact effectively rules out the applicability of Section 41(1) of the Act.

77.1. The Hon'ble Supreme Court in the case of **Mahindra & Mahindra Ltd.** [2018] 93 taxmann.com 32 (SC) dealt with a similar issue. The Court held that Section 28(iv) of the Act applies only to non-monetary benefits. Since the waiver of a loan represents a monetary benefit, Section 28(iv) of the Act was held inapplicable. The Court also held that Section 41(1) of the Act applies only to trading liabilities for which a deduction has been claimed in earlier years. As the loan in that case (and in the present case) was used to acquire capital assets and no deduction was claimed, Section 41(1) was also held to be inapplicable.

77.2. The Hon'ble Supreme Court's findings in this case are squarely applicable to the present case and fortify the assessee's position.

77.3. Section 28(iv) applies to "benefits or perquisites" arising during the course of business or profession, provided such benefits are non-monetary in nature. In the present case, the benefit derived by the assessee is purely monetary, as it pertains to the waiver of a loan liability. Judicial precedents, including the Hon'ble Supreme Court's decision in the case of **Mahindra & Mahindra Ltd.**, confirm that monetary benefits cannot be taxed under Section 28(iv) of the Act. The waiver cannot be brought to tax under Section 41(1) of the Act as well, since the loan was not claimed as a deduction in earlier years. Judicial precedents, including the Hon'ble Gujarat High Court's decision in the case of **Chetan Chemicals Pvt. Ltd.**, support this conclusion.

78. During the course of proceedings before us, the DR failed to bring any new facts or judicial precedents to counter the well-reasoned findings of the CIT(A). The DR merely reiterated the AO's arguments, which have already been dealt with comprehensively by the CIT(A).

78.1. In light of the above findings, it is evident that the loan waiver in the present case pertains to a capital liability and is not taxable under either Section 28(iv) or Section 41(1) of the Act. The CIT(A) has rightly deleted the addition of Rs.3,66,67,734/- made by the AO.

78.2. As the Revenue has failed to substantiate its case with any additional arguments or evidence, we find no reason to interfere with the order of the CIT(A). This ground of revenue is dismissed.

Grounds relating to Disallowance of Repair and Maintenance – Building

79. The issue concerns the disallowance of repair and maintenance expenses for building infrastructure. While the assessee has contested disallowances of certain expenses as capital expenditure, the Revenue has raised a ground challenging the allowance of certain repair expenses by the CIT(A). The grounds raised are summarized in the following table:

ITA No.	Assessment Year (A.Y.)	Amount Disallowed/Challenged	Type of Appeal
2066/Ahd/2016	2005-06	Rs. 674517/-	Revenue
1291/Ahd/2016	2006-07	Rs.2,96,490 (Mumbai) + Rs.1,43,173 (Chennai)	Assessee
1783/Ahd/2016	2007-08	Rs.10,03,378	Assessee

80. The Nature of disputed expenses claimed by the assessee as revenue expenditure is as follows:

80.1. In case of A.Y. 2005-06 - Waterproofing Rs. 2,83,931/-, Strengthening of beams and columns Rs. 1,66,765/- and Waterproofing work at the end stage Rs. 2,23,821/-

80.2. In case of A.Y. 2006-07, total expenses claimed by assessee as revenue expenditure were Rs. 11,28,165/- out of which the CIT(A) upheld the disallowance on account of Partition in Mumbai and Chennai office amounting to Rs. 2,96,490/- and Rs. 1,43,173/- respectively.

80.3. In case of A.Y. 2007-08 - Total expenses on account of repairs claimed by the assessee were Rs. 37.30 Lakh out of Rs. 10,03,378/- mainly include expenses on partition.

80.4. In all the cases the AO held that the expenses are of capital nature as they are in the nature of enduring benefits.

81. The CIT(A) confirmed the addition in case of A.Y. 2006-07 and A.Y. 2007-08 in case of A.Y. 2005-06 deleted the addition. While confirming the addition for A.Y. 2006-07 the CIT(A) concluded that the addition on account of partition at Mumbai Office and Chennai office is of capital nature. In case of A.Y. 2007-08, the CIT(A) concluded that there is no evidence available that the expenses were on account of replacement of earlier assets. In case of A.Y. 2007-08 the CIT(A) concluded that no new asset has come into existence and allowed the expenditure as current repairs.

82. During the course of hearing before us the AR stated that the AO has not given any reasons as to how the expenses have resulted into benefit of enduring nature especially when the premises are rented. The AR relied on the decision of Hon'ble High Court of Bombay in case of **HEDE Consultancy**

(P.) Ltd. reported at 258 ITR 380 where the court decided that in case of rented premises replacement of old roof and floor was allowed as revenue expenditure. The AR also stated that in case of A.Y. 2007-08 the repairs were carried out at the manufacturing facilities of the assessee and the amounts were spent to maintain the quality of production and protection of current assets.

83. After considering the arguments, explanation provided, and judicial precedents cited, we conclude as follows:

A.Y. 2005-06 (ITA No. 2066/Ahd/2016 - Revenue's Appeal)

83.1. The expenses claimed by the assessee (Rs.6,74,517) pertain to waterproofing (Rs.2,83,931), strengthening of beams and columns (Rs.1,66,765), and final waterproofing work (Rs.2,23,821). These expenses were incurred to maintain the rented premises in usable condition, with no new asset or structural improvement being created. The CIT(A)'s deletion of disallowance is upheld as these expenses qualify as current repairs under Section 30 of the Act, necessary for the upkeep of rented premises. The AO failed to demonstrate how these repairs resulted in an enduring benefit or capital asset.

84. As a result, the **Revenue's appeal is dismissed.**

A.Y. 2006-07 (ITA No. 1291/Ahd/2016 - Assessee's Appeal)

85. Out of the total repair and maintenance claim of Rs.11,28,165, disallowances of Rs.2,96,490 (Mumbai) and Rs.1,43,173 (Chennai) relate to partition work. These partitions were installed in rented premises to make the space operationally suitable for business needs. The expenditure does not

result in the creation of any capital asset owned by the assessee, as the premises were rented. The expenses are routine and necessary for business use, aligning with the decision of the Hon'ble Bombay High Court in HEDE Consultancy (P.) Ltd. v. CIT [258 ITR 380], where similar repairs to rented premises were allowed as revenue expenditure.

85.1. As a result, **the assessee's appeal is allowed.**

A.Y. 2007-08 (ITA No. 1783/Ahd/2016 - Assessee's Appeal)

86. The repair expenses (Rs.10,03,378) primarily involve partition work carried out in the manufacturing facilities to improve operational efficiency and protect the quality of production. These expenses do not result in a new asset or structural improvement but are aimed at maintaining existing facilities. The AO failed to demonstrate how these expenses provide an enduring benefit. Relying on the decision of HEDE Consultancy (P.) Ltd. and considering the CIT(A)'s observations, the expenses qualify as current repairs and are allowable under Section 30.

86.1. As a result, the assessee's appeal is allowed.

Assessee's Ground relating to Disallowance of Repair and Maintenance - Plant & Machinery in ITA No. 1783/Ahd/2016 for A.Y. 2007-08

87. The dispute pertains to the disallowance of Rs.14,83,250 claimed by the assessee under Repair and Maintenance - Plant & Machinery. The AO treated the expenses as capital expenditure, arguing that they resulted in an enduring benefit and the creation of a capital asset. The CIT(A) upheld the AO's disallowance, leading to the present appeal by the assessee before us.

88. The AR explained the nature of expenditure as put before CIT(A) and stated that the repairs are of revenue in nature. The AR placed reliance on following judicial precedents:

- CIT v. TVS Motors Ltd. [2019] 112 taxmann.com 167 (Madras High Court).
- CIT v. Manohar Lal Hira Lal Ltd. [2013] 39 taxmann.com 110 (Allahabad High Court).

89. The DR, on the other hand, relied on the orders of lower authorities.

90. After considering the arguments advanced, the evidence presented, and the judicial precedents relied upon, we conclude that the repair and maintenance expenses of Rs.14,83,250 incurred by the assessee include Metalizing compound work and slide valve repair (Rs.13,25,000) which was periodic repair work to maintain the operational efficiency of existing plant machinery and Civil work for compliance with Schedule M of the Drugs and Cosmetics Act (Rs.1,58,250) which involved strengthening walls, beams, and other minor modifications in the plant area. As contended by the assessee these expenses were necessary to meet the updated statutory requirements under Schedule M of the Drugs and Cosmetics Act. Without these repairs and modifications, the assessee's manufacturing facilities would not have complied with regulatory requirements, potentially jeopardizing the renewal of its manufacturing license. The AO treated these expenses as capital in nature, arguing that they resulted in enduring benefits. However, the repairs did not create a new asset or enhance the capacity of existing assets. Instead, they were aimed at maintaining the plant and machinery in working condition, qualifying as current repairs under Section 31.

91. We have noted the judicial precedents relied on. In case of CIT v. Manohar Lal Hira Lal Ltd.(supra) the Hon'ble Allahabad High Court decided that repairs to plant and machinery (such as replacement of tools, dies, and factory wall plaster) that do not extend the capacity or change the nature of the machinery are allowable as current repairs. Applying this precedent, the expenses incurred for slide valve repair and metalizing work qualify as revenue expenditure. In case of CIT v. TVS Motors Ltd. (supra) Hon'ble Madras High Court) decided that expenditure is considered as current repairs if its object is not to bring a new asset into existence or derive a new advantage. The repair work in this case aligns with this principle, as it was undertaken to maintain operational efficiency rather than create a new asset.

91.1. The AO's contention that these expenses are capital in nature is without merit, as no new asset was created, nor was the nature or capacity of the existing assets altered. The repairs were necessitated by business exigencies and statutory requirements and qualify as revenue expenditure under Section 31 of the Act. The CIT(A)'s decision to uphold the AO's disallowance is set aside. Thus, this ground of assessee is allowed.

Revenue's Grounds Relating to Disallowance of 5% Selling Expenses

92. During the course of assessment proceedings, the AO disallowed 5% of selling expenses on an ad hoc basis, citing insufficient bifurcation and lack of correlation between the claimed expenses and the business of the assessee. The CIT(A) deleted the disallowance made by the AO concluding that the AO has not given any reason or explanation as to how such expenses are not fully allowable. These grounds raised by the revenue are tabulated below:

ITA No.	Assessment Year (A.Y.)	Amount Disallowed (Rs.)	Type of Appeal
2066/Ahd/2016	2005-06	1,85,737/-	Revenue
2067/Ahd/2016	2007-08	62,355/-	Revenue

93. During the course of hearing before us, the AR stated that the issue has been covered in favour of the assessee vide order of co-ordinate bench in assessee's own case (ITA No. 1762/Ahd/2015) for the A.Y. 2001-02.

94. After considering the facts and circumstances we note that the AO disallowed 5% of the selling expenses on an ad hoc basis, amounting to Rs.1,85,737/- (A.Y. 2005-06) and Rs. 62,355/- (A.Y. 2007-08). The AO provided no specific findings or evidence to substantiate how the expenses were not incurred wholly and exclusively for business purposes. The CIT(A) deleted the ad hoc disallowances, observing that the AO failed to identify any specific portion of the selling expenses as disallowable.

94.1. We also find that the decision of the co-ordinate bench in the assessee's own case for A.Y. 2001-02 applies squarely to the present appeals. As held in that case, selling expenses incurred wholly and exclusively for the purposes of business are allowable under Section 37(1). We find no infirmity in the CIT(A)'s order. These grounds of revenue are dismissed.

Grounds Relating to adjustment while arriving at book profit under section 115JB of the Act

95. The grounds pertain to adjustments made by the AO while computing book profit under Section 115JB. The details of grounds are tabulated as follows:

ITA No.	Assessment Year (A.Y.)	Nature of Adjustment	Amount (Rs.)	Type of Appeal
1290/Ahd/2016	2004-05	Provision for Bad Debts	Rs. 6,04,47,760/-	Assessee
1594/Ahd/2016	2004-05	Leave Encashment and Gratuity	Rs. 3,26,49,000 And Rs. 1,75,648/-	Revenue

96. The AO disallowed and added back provisions for bad debts, leave encashment, and gratuity while computing book profit under Section 115JB, on the grounds that these are unascertained liabilities as per Explanation 1(c) to Section 115JB.

96.1. The AO observed that these provisions relating to leave encashment and gratuity were made based on actuarial valuation, which he claimed does not render the liabilities ascertained. The AO classified them as amounts set aside to meet future liabilities and hence treated them as unascertained liabilities. Relating to provision for bad debts, the AO stated that this provision is not an ascertained liability but a reserve, which must be added

back to book profits under Explanation 1(c). He held that such provisions are based on subjective parameters and do not represent an actual write-off.

97. During the appellate proceedings before CIT(A) the assessee took following contentions:

Relating to Leave Encashment and Gratuity Provisions:

- These provisions were made based on actuarial valuations and are compliant with Accounting Standards issued by ICAI.
- As per Accounting Standard 15 (AS-15), these are ascertained liabilities calculated scientifically for past services rendered by employees.
- The provisions represent obligations accrued over time, not contingent liabilities or reserves.

Relating to Bad and Doubtful Debts:

- The provision was created for specific debts identified as doubtful of recovery. It is not an unascertained liability or an adhoc reserve but a provision for irrecoverable trade receivables.
- The assessee emphasized that the provision does not represent a general reserve and is in line with the requirements of accounting standards.

97.1. The assessee argued that Explanation 1(c) to Section 115JB applies only to provisions for unascertained liabilities, which is not the case in the instant case. The assessee also relied on some judicial precedents.

97.2. The CIT(A) agreed with the assessee's submissions that the liabilities related to Leave Encashment and Gratuity Provisions were ascertained based on actuarial valuations and deleted the addition for the purpose of calculating

book profit u/s 115JB. However, the CIT(A) agreed with the AO stating that the provision for bad and doubtful debts is not an ascertained liability but a reserve for potential losses and upheld the decision of AO.

97.3. Therefore, the revenue preferred an appeal against the deletion of amounts relating to leave encashment and gratuity and assessee raised the ground against to confirmation of addition of amount relating to bad and doubtful debts with reference to book profit u/s 115JB.

98. During the course of hearing before us the AR reiterated the contentions raised before CIT(A) and placed reliance on the following judicial precedents:

- CIT v. Yokogawa India Ltd. [2012] 17 taxmann.com 15 (Kar.).
- Principal CIT v. Narmada Chematur Petrochemicals Ltd. [2021] 130 taxmann.com 522 (Guj.).
- Southern Power Distribution Company of AP Ltd. v. DCIT, Circle 2(1), Tripura [2018] 93 taxmann.com 451 (Hyderabad - Trib.) (TM)

99. The assessee has strongly contended that provisions relating to leave encashment and gratuity are based on actuarial valuations and comply with Accounting Standards issued by the ICAI. The provisions for gratuity and leave encashment are recognized liabilities, determined scientifically for services rendered by employees during the relevant period. In the landmark judgment in case of **Bharat Earth Movers v. Commissioner of Income-Tax [2000] 245 ITR 428 (SC)**, the Hon'ble Supreme Court held that a liability arising from an obligation that has already accrued, though the payment may

be deferred, is not a contingent liability. Such liabilities, if based on a scientific method like actuarial valuation, qualify as ascertained liabilities and are deductible. Therefore, the CIT(A) has rightfully deleted the addition relating to these provisions.

99.1. Regarding the provision for doubtful debts, the appellant cited judicial precedents such as *CIT v. Yokogawa India Ltd.* [2012] 17 taxmann.com 15 (Kar.) and *Principal CIT v. Narmada Chematur Petrochemicals Ltd.* [2021] 130 taxmann.com 522 (Guj.). These decisions established that provisions for doubtful debts, if simultaneously reduced from the asset side of the balance sheet, represent actual write-offs and cannot be treated as unascertained liabilities and therefore do not attract Explanation 1(c) to Section 115JB of the Act..

100. The revenue's arguments fail to establish how these provisions could be classified as unascertained liabilities. Respectfully following the above judgments and in the absence of any material evidence presented by the revenue to contradict these positions, we direct the AO to exclude these provisions from the computation of book profits under Section 115JB of the Act.. Thus, the ground of assessee is allowed, and ground of revenue is dismissed.

101. In the combined result, the appeals are decided as tabulated below:

SL. NO(s)	A.Ys.	ITA No(s).	Type of Appeal	Result
1.	2002-03	1772/Ahd/2015	Assessee	Partly allowed for statistical purposes
2.	2003-04	1773/Ahd/2015	Assessee	Partly allowed for statistical purposes.
3.	2004-05	1290/Ahd/2016	Assessee	Partly allowed for statistical purposes.
4.	2004-05	1594/Ahd/2016	Revenue	Dismissed.
5.	2005-06	1782/Ahd/2016	Assessee	Partly allowed for statistical purposes.
6.	2005-06	2066/Ahd/2016	Revenue	Dismissed.
7.	2006-07	1291/Ahd/2016	Assessee	Partly allowed for statistical purposes.
8.	2007-08	1783/Ahd/2016	Assessee	Partly allowed.
9.	2007-08	2067/Ahd/2016	Revenue	Dismissed.

Order pronounced in the Open Court on 3rd December,2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 03/12/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad