

आयकर अपीलीय अधिकरण “G” न्यायपीठ मुंबई में।

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

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 805/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2008-09)

आयकर अपील सं./I.T.A. No. 3002/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

M/s Wockhardt Hospitals Ltd., Wockhardt Towers, Bandra-Kurla Complex, Bandra(E), Mumbai – 400051.	बनाम/ v.	Deputy Commissioner of Income Tax – Range 10(1), Aayakar Bhavan, Mumbai-400 020
स्थायी लेखा सं./PAN : AAACW3342G		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri Danesh Bafna
Revenue by :	Shri S.K. Bepari D.R.

सुनवाई की तारीख /**Date of Hearing** : 12.05.2016

घोषणा की तारीख /**Date of Pronouncement** : 08-08-2016

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

These two appeals filed by the assessee company for the assessment years 2008-09 and 2009-10 are directed against two separate orders of the learned Commissioner of Income Tax (Appeals), Mumbai (Hereinafter called “the CIT(A)”) dated 15-11-2010 and 09-01-2013 for assessment years 2008-09 and 2009-10 respectively , the appellate proceedings before the learned CIT(A) arising from the two separate assessment orders dated 16-04-2010 and 28-12-2011 for assessment years 2008-09 and 2009-10 respectively passed by the learned Assessing Officer (hereinafter called “the AO”) u/s

143(3)(ii) of the Income Tax Act, 1961 (Hereinafter called "the Act") . Both the appeals are heard together and disposed of by us by this common order.

2. First we shall take up the assessee company's appeal in ITA no. 805/Mum/2011 for the assessment year 2008-09. The following grounds of appeal are raised by the assessee company in ITA No. 805/Mum/2011 for the assessment year 2008-09 in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") which reads as under:-

"1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 22, Mumbai [CIT(A)] erred in confirming disallowance of depreciation of Rs. 14,76,563 on the 'Management Rights' acquired by the Appellant during the year ending 31 March 2005 and capitalised as intangibles.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of proportionate depreciation amounting to Rs. 12,29,860/- on the addition of assets such as UPS, switches and cables, to the block of "Computers".

The learned CIT(A) ought to have accepted the claim of depreciation @ 60% on these assets as against 15%, since these are peripherals and essential part of computers.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of interest amounting to Rs.92,83,374 paid on borrowings utilised for the purpose of acquisition of 100% share capital of Kanishka Housing Development Co. Ltd.

The learned CIT(A) ought to have allowed deduction for interest under the provisions of section 36(1)(iii) of the Income-tax Act, 1961 ('IT Act') being incurred for the purpose of business.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of interest on borrowing amounting to Rs. 21,52,125 on the presumption that borrowed fund were utilised for providing interest free funds to M/s. Palanpur Holdings and Investments Private Limited.

The learned CIT(A) further erred in observing that the appellant has not submitted any details to prove the nexus that owned funds were utilized for making the advance.

5. Without prejudice to ground no. 4 above, the learned CIT(A) erred in not appreciating that in the absence of any direct nexus of borrowed fund being utilised for amounts advanced, the appellant's contention has to be accepted that only owned funds are utilised for the purpose.

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of interest on borrowing amounting to Rs. 4,79,958 on the presumption that borrowed fund were utilised for non-business purpose, i.e. investment in mutual funds.

The learned CIT(A) further erred in observing that the appellant has not submitted any details to prove the nexus that owned funds were utilised for making investment.

7. Without prejudice to ground no. 6 above, the learned CIT(A) erred in not appreciating that in the absence of any direct nexus of borrowed fund being utilised for making investment, the appellant's contention has to be accepted that only owned funds are utilised for the purpose.

8. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the following additions made by to the book profit computed under section 115JB of the IT Act, on the premise that these are unascertained liabilities:

- a. provision for doubtful debts of Rs. 15,29,058
- b. provision for gratuity of Rs. 42,17,911
- c. provision for leave encashment of Rs. 17,53,115

The learned CIT(A) erred in observing that the appellant has not explained the balances as per the financial statements and actuarial valuation reports.”

3. The brief facts in this case are that the assessee company is engaged in the business of setting up and running a hospital and has expertise in management of health centres and facilities.

4. During the course of assessment proceedings, it was observed by the AO that the assessee company has claimed depreciation of Rs. 14,76,563/- on the management rights acquired by the assessee during the year ending 31st March, 2005 and capitalized as intangibles. The A.O. disallowed the same in this previous year also which claim was disallowed by the AO in the earlier years also on the same grounds that the assessee company claim of purchasing management rights of Nagpur Hospital is nothing but premium paid for management agreement, which was a non depreciable capital asset, which was confirmed by the Id. CIT(A) in the first appeal filed by the assessee company . It was submitted before the learned CIT(A) that as per terms of the agreement, the assessee company has acquired significant commercial and business rights from Dr. Bais Surgical and Medical Institute Private Limited for a period of 10 years , extendable for another two terms of 10 years at the option of the parties. The assessee company submitted that as per provisions of Section 32(1)(ii) of the Act, an tax-payer who has acquired intangible rights after 01-04-1998 being know-how, patents, copy rights, trade marks , licenses and franchise and any other business or commercial rights of similar nature is eligible to claim depreciation on such intangible. The learned CIT(A) rejected the contentions on the grounds that management rights are not specifically included in Section 32(1)(ii) of the Act and such rights cannot be claimed as commercial rights of similar nature. The learned CIT(A) also held that the assessee company has capitalized the payments made for the acquisition of management rights in its books of accounts and hence the same is not allowable as expenses u/s 37(1) of the Act.

5. Aggrieved by the order of the Id. CIT(A) , the assessee company is in appeal before the Tribunal.

6. At the outset, the Id. Counsel for the assessee company submitted that this ground is squarely covered by the decision of the Mumbai Tribunal in

assessee company's own case in ITA No. 2376-2378/Mum/2011 for the assessment years 2005-06 to 2007-08 vide consolidated orders dated 10th July, 2015 read with orders in M.A. No. 207 to 209/Mum/2015 arising out of ITA No. 2376 to 2378/Mum/2011 for the assessment years 2005-06 to 2007-08 vide orders in MA dated 04-02-2016 , whereby the Mumbai Tribunal allowed the claim of the assessee company for depreciation on management rights.

7. The ld. D.R. fairly submitted that the issue is covered against the Revenue by afore-stated orders of the Mumbai Tribunal in assessee company's own case for the assessment year 2005-06 to 2007-08.

8. We have considered the rival contentions and perused the material available on record including the afore-stated Mumbai Tribunal orders. We find that as submitted by the ld. Counsel for the assessee company , this ground is covered in favour of the assessee company by the decision of co-ordinate bench of this Tribunal in assessee company's own case in ITA no. 2376-2378/Mum/2011 vide orders dated 10-07-2015 read with orders in MA no. 207 to 209/Mum/2015 dated 04-02-2016. The Tribunal has noted the decision of Hon'ble Supreme Court in the case of Smifs Securities Ltd. reported in 348 ITR 302 whereby the Hon'ble Supreme Court held that intangible assets in the form of goodwill is eligible for claim of depreciation. The relevant portion of the afore-stated Mumbai Tribunal's order dated 04-02-2016 are reproduced below:-

"4. We have considered rival contentions and gone through the order of the Tribunal dated 10-7-2015, wherein at para 10, the Tribunal has restored assessee's ground for claim of depreciation on management rights for deciding as per the order of the Tribunal in assessee's own case in the preceding year. However, there is no order of the Tribunal in assessee's own case, therefore, it amounts to mistake apparent from record. The Tribunal in its order dated 10-7-2015 at para 9 has quoted

various decisions of the Hon'ble High Courts and Tribunal, wherein depreciation was allowed in case of intangible assets. Accordingly, we rectify the order dated 10-7-2015 to the extent of observation made in para 10 of the order and direct the AO to allow assessee's claim of depreciation following the decisions of Hon'ble High Court and Tribunal quoted in para 9 of our order, dated 10-7-2015. Before parting with the matter, it is pertinent to mention that recently the Hon'ble Supreme Court in the case of Smifs Securities Ltd., 348 ITR 302, held that intangible assets in the form of goodwill is eligible for claim of depreciation."

Respectfully following the afore-stated decision of the co-ordinate Bench of this Tribunal in afore-stated orders, we allow the claim of depreciation of Rs.14,76,563/- on management rights made by the assessee company. This disposes of ground no. 1 raised by the assessee company in the grounds of appeal filed in memo of appeal with the Tribunal. We order accordingly.

9. The next ground relates to disallowance of proportionate depreciation on fixed assets amounting to Rs. 12,29,860/- on the additions of assets such as UPS, switches and cables, to the block of "Computers".. During the course of assessment proceedings, the A.O. observed that the assessee company has claimed depreciation on the fixed assets in the block of computers including various assets which are in the nature of electrical switches, plant/machinery or office equipments, details of which are as under:-

Sr. No.	Particulars	Date	Amount (180 days)
i.	500VA UPS	30.11.2007	2,496
ii.	Cable DTE male	10.10.2007	4,068
iii.	Cable DTE male	30.11.2007	4,068
iv.	Cable DTE male	25.01.2008	4,068
v.	Cat Cable	30.11.2007	5,148
vi.	Cable Cat5	31.10.2007	5,350
vii.	Batteries for UPS	31.03.2008	32,868
viii.	Supply of UPS	31.10.2007	39,870
ix.	10KVA UPS	10.10.2007	40,378
x.	Modular Router	10.10.2007	56,740
xi.	Modular Router	30.11.2007	56,740

xii.	Modular Router	25.01.2008	59,010
xiii.	Projector	26.10.2007	66,375
xiv.	Modular Router	10.10.2007	78,384
xv.	6KVA UPS	31.10.2007	82,000
xvi.	6KVA UPS	26.10.2007	82,000
xvii.	6KVA UPS	30.11.2007	82,000
xviii.	6KVA UPS	10.10.2007	1,05,149
xix.	7.5 KVA UPS	25.10.2007	1,30,000
xx.	Pipes & Racks	10.10.2007	1,34,712
xxi.	UPS System	31.10.2007	1,81,641
xxii.	Cat-6 Cables	04.02.2008	3,99,636
xxiii.	Cable Trays	25.10.2007	4,75,437
xxiv.	Pipes & Racks	25.10.2007	5,43,251
xxv.	UPS system	30.11.2007	5,67,596
xxvi.	Batteries for UPS	31.03.2008	5,97,600
xxvii.	Switches	31.03.2008	7,84,462
xxviii.	UPS	10.10.2007	8,45,000
	Total		54,66,047
	Depreciation	@60%/2	16,39,814
	Depreciation	@15%/2	4,09,954
	Excess claim		12,29,860

As per the AO, the fixed items like UPS, Routers, Switches and cables, are not computers and hence ineligible for claim of depreciation @60%. The AO observed that the assessee company has claimed depreciation @60% depreciation instead of 15%. The A.O. was of the opinion that routers are used to connect different cable lines of telephone/internet and UPS is just a battery/inverter which supplies electric power to the computer in case of sudden power failure while cable and switches are electrical items , and hence the A.O. concluded that none of the items are in the nature of computer therefore the claim of 60% depreciation is unjustified. Aggrieved by the assessment order of the A.O., the assessee company filed its first appeal before the Id. CIT(A) and submitted that UPS, printer, modem, switches and routers are integral part of the computer and entitled for depreciation @ 60%. The assessee company relied on the decision of ITAT, Mumbai Bench in the case of DCIT v. Datacraft India Ltd., [2010] 40 SOT 295 (Mum) and ITAT, Delhi in the case of ACIT v. Cnicom Systems India Private Limited in ITA no. 1543(Del)/2008 dated 13.04.2009. The Id. CIT(A) considered the submission

of the assessee company and held that the assessee company is entitled to depreciation @ 60% on routers only , but however the items like UPS, cable, batteries, projector, pipes and racks, trays, switches etc. the assessee failed to prove that they are parts of the computer, hence, depreciation is not allowable @ 60%. Aggrieved by the appellate order of the ld. CIT(A), the assessee company is in second appeal before the Tribunal.

10. The ld. Counsel for the assessee company submitted that UPS, cables, electrical switches etc. are integral parts of the computer and should be considered to be peripherals which are required to run the computer and these assets are eligible for depreciation @ 60%. The ld. counsel relied on the following judicial decisions:-

1. DCIT v. Datacraft India (P) Ltd., [2010] 40 SOT 295 (Mum)(SB)
2. IBAHN India (P.) Ltd. v. DCIT, ITA No. 4932/Mum/2015
3. American Express Services India Ltd. v. DCIT, (2013) 57 SOT 22(Del-Trib).
4. GE Capital Business Process Management Services (P.) Ltd. v. ACIT, (2016) 136 ITD 239 (Del-Trib).
5. ACIT v. Global Healthline (P.) Ltd., ITA No. 3319/Del/2012 (Del-Trib.)

11. The ld. D.R., on the other hand, relied upon the order of the learned CIT(A).

12. We have considered the rival contentions and also perused the material available on record including the case laws. We have observed that the assessee company has claimed depreciation on certain assets which were acquired by the assessee company being in the nature of UPS, routers, switches and cables, projector, pipes and racks etc. for which the assessee

company is claiming depreciation @ 60%. However, the same was denied by the A.O. The ld. CIT(A) allowed depreciation @ 60% on routers. In our considered view, the assessee company acquired the fixed assets and if the same are forming an integral parts of the computer system which can be used along with a computer and when their functions can be integrated with a computer, depreciation is to be allowed @ 60%. However it should be segregated as indicated above and as such we set aside matter back to the file of the A.O. with a direction to review the entire list of fixed items and the items which are an integral parts of the computers which can be used along with a computer and when their functions can be integrated with a computer, the depreciation is to be allowed @ 60% and for the rest of the items in the list, depreciation @ 15% may be allowed. This disposes of ground no. 2 raised by the assessee company in the grounds of appeal filed in memo of appeal with the Tribunal. We order accordingly.

13. The next ground relates to disallowance by the A.O. of interest amounting to Rs. 92,83,374/- paid on borrowings for the purpose of acquisition of 100% share capital of Kanishka Housing Development Co. Ltd. (hereinafter called "Kanishka"), which were confirmed by the ld. CIT(A). It was observed by the AO that the assessee company has made investment of Rs. 13,93,90,000/- in a subsidiary company M/s Kanishka. The assessee company submitted that the said investment was made to acquire 100% shareholding of Kanishka which had a huge piece of land, which was required for constructing hospital. The said land has been utilized for constructing hospital and the same has been leased to the assessee company by Kanishka. The AO observed that Kanishka has constructed the hospital with interests free funds from assessee company by way of capital contribution to acquire 100% controlling interest, while assessee company borrowed interest bearing funds and charged the interest as revenue expenditure while computing income chargeable to tax. The said Kanishka leased back the hospital to the

assessee company for certain consideration. The AO disallowed the interest on proportionate basis as the assessee company had mixed pool of own funds and interest bearing borrowed capital, aggregating to Rs.92,83,374/-. The learned CIT(A) upheld the disallowance following the preceding year's order for assessment year 2004-05 passed by learned CIT(A).

14. At the outset, the ld. Counsel for the assessee company submitted that this issue is squarely covered by the decision of the co-ordinate Bench of this Tribunal in assessee company's own case in ITA No. 2376 to 2378/Mum/2011 for the assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015. The ld. D.R. relied upon the order of the learned CIT(A).

15. We have considered the rival contentions and also perused the material available on record including the afore-stated orders of the Tribunal dated 10-07-2015. We find that the Tribunal in assessee's own case in ITA No. 2376 to 2378/Mum/2011 for assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015 has set aside the matter back to the file of the A.O. for deciding the same afresh in accordance with law. The Tribunal in the afore-stated order observed as under:-

"4. The next issue pertains to disallowance of interest paid on borrowings utilized for purpose of acquisition of 100% share capital of Kanishka Housing Development Co. Ltd.

5. It was contended by ld. AR that no disallowance under section 14A can be made since the assessee has not earned any dividend income. For this purpose reliance was placed on the following decisions :-

- i) CIT Vs. Delite Enterprises, ITA No.110/2009(Bom)*
- ii) CIT Vs. Wisdom Textile Industries Ltd., 319 ITR 204(P&H)*
- iii) CIT Vs. Shivam Motors (P) Ltd., ITA No.88/2014(All)*
- iv) CIT vs. Mascot Footcare, ITA No.67/2014(P&H)*

- v) CIT Vs. Lakhani Marketing Inc., ITA No.970/2008 (P&H)
- vi) CIT Vs. Corretch Energy P.Ltd., ITA No.239/2014(Guj)
- vii) Holcim (India) Pvt. Ltd. Vs. DCIT, 37 CCH 423(Del)
- viii) Avshesh Mercantile P. Ltd., 148 TTJ 607(Mum)
- ix) Shree Shamkamal Finance & Leasing Co. P. Ltd., 21 SOT 42 (Mum) and
- x) ACIT Vs. Lafarge India Holdings (P) Ltd., 19 SOT 121 (Mum)

6. *It was further brought to our notice that assessee has acquired shares of Kanishka in order to acquire its land to build-up hospital on it. The investments were not made with the intention of earning dividend income nor any dividend was earned during the year as well as in future years. In these circumstances, by relying on the following the decisions, ld. AR contended that no disallowance should be made u/s.36(1)(iii) of the Act :-*

- i) ACIT vs. Choice Trading Corp.Ltd., 90 ITD 1
- ii) ATE Enterprises Ltd. Vs. JCIT, 102 ITD 110; and
- iii) ACIT Vs. Lafarge India Holdings (P) Ltd.

7. *We have considered rival contentions and perused the record. The assessee has claimed to have investment for acquiring land for constructing its hospital. On such investment, neither during the year nor in the future years assessee has earned any dividend income. Keeping in view the judicial pronouncements referred by the ld. AR, we restore the matter back to the file of AO for deciding afresh as per law.”*

16. Respectfully following the afore-stated decision of the co-ordinate Bench of this Tribunal in assessee's own case in preceding assessment year as detailed above, we set aside and restore the issue back to the file of the A.O. for deciding the issue afresh as per law as indicated in the afore-stated Tribunal's order in ITA No. 2376-78/Mum/2011 dated 10-07-2015. This disposes of ground no. 3 raised by the assessee company in the grounds of appeal filed in memo of appeal with the Tribunal. We order accordingly.

17. The next issue is with respect to the disallowance of interest on borrowing by the AO amounting to Rs. 21,52,125/- on account of interest free

funds being utilized for providing interest free funds to M/s Palanpur Holdings and Investments Pvt. Ltd. In this regard, the A.O. observed that a loan of Rs. 5,80,00,000/- was given to M/s Palanpur Holdings & Investments P. Ltd. on which no interest was charged by the assessee company. The assessee company submitted that the loan was given for the purpose of building a hospital in Palanpur and the funds were given out of assessee company's own funds. It was submitted that in the presence of mixed funds availability, the assessee company has option of beneficial appropriation . The A.O. was of the opinion that it was not proved by the assessee company that the said sum was given out of own funds, thus, the onus to prove any claim made by the assessee company lies on the assessee company, which the assessee company is not able to discharge. The A.O. also observed that in the preceding year, similar issue was discussed and it was held that the funds of the business were a mix of interest bearing borrowed funds as well as own funds and hence disallowance was computed on the basis of average rate of interest. In the appellate proceedings before the ld. CIT(A), the assessee submitted that the said amount was advanced not from any borrowings from the third party and the same had been sourced from assessee company's own funds. It was submitted that the intention of the assessee company was to assist in building a hospital in Palanpur and to get the rights for its operation and management. It was submitted that the A.O. has not proved any direct nexus between the interest bearing borrowed funds and the advanced amount. The assessee company has also furnished a chart wherein it was stated that the sources of funding were made out of remittances/ receipt from the customer by Bangalore branch. The ld. CIT(A) observed that these entries are neither supported by any bank statement or ledger account of the parties nor the name and details and nature of transaction. The ld. CIT(A) accordingly rejected the claim of the assessee company. The assessee company filed second appeal with the Tribunal.

18. Before the Tribunal, the ld. Counsel for the assessee company submitted that the assessee company has advanced a sum of Rs. 5.80 crores to M/s Palanpur Holdings & Investments Pvt. Ltd. as interest free funds for setting up a Hospital in Palanpur. The A.O. observed that the interest free advances were sourced from mixed funds only including the interest bearing funds hence disallowance was made on average rate of interest. The assessee company submitted that it has sufficient own funds which were reflected in the balance sheet, out of which the loans and advances were given. The assessee company drew our attention to paper book page 167 and submitted that the funds were received from various customers from the Bangalore branch and no interest was paid on these funds. The ld. Counsel also drew our attention to paper book page 6 which is Audited Balance Sheet of the assessee company as at 31-03-2008, whereby it contended that own funds amounting to Rs. 218 crores were available while loans and advances were to the tune of Rs. 65 crores and investments were to the tune of Rs. 13.93 crores as at 31-03-2008, which shows that the assessee company has sufficient own funds. The ld. D.R., on the other hand, relied on the order of the A.O.

19. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee company has stated that the assessee company had advanced an amount of Rs. 5.80 crores to M/s Palanpur Holdings & Investments Pvt. Ltd. as interest free funds for setting up a Hospital in Palanpur. The contention of the assessee company is that it is for the purpose of the business. The assessee company also submitted that it has deployed the said loan of Rs. 5.8 crores out of its own funds. To support the contention, the assessee company relied upon the decision of the Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Limited (2009) 313 ITR 340 (Bom. HC) as well as the decision of CIT v. HDFC Bank Limited in ITA no 330 of 2012 ((2014) 366 ITR 505 (Bom. HC)) and CIT v. HDFC Bank Limited (WP no. 1753 of 2016) ((2016)

67 taxmann.com 42(Bom.HC). Keeping in view of the facts and circumstances of the case, We are inclined to set aside and restore the matter to the file of the A.O. for verification of the contentions of the assessee company and the AO is directed to decide the matter in the light of the decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra) and HDFC Bank Ltd. (supra). This disposes of ground no. 4 and 5 raised by the assessee company in the grounds of appeal filed in memo of appeal with the Tribunal. We order accordingly.

20. The next ground i.e. ground No. 6 ad 7 relates to the disallowance of interest on borrowing of Rs. 4,79,958/- on the presumption that borrowed funds were utilized for non-business purpose i.e. investment in Mutual Funds. The assessee invested Rs.41,00,67,000/- during the year in Mutual Funds which was sold before the end of the year. It was submitted that the investments have been made out of internal accruals and the borrowed funds have not been utilized for the purpose. The assessee company could not prove that the interest free funds were utilised for making invetsment and it was a mixed pool of funds whereby the assessee company had interest bearing borrowed funds also and the AO made disallowance of Rs.4,79,958/- towards [interest@6.66%](#), which was confirmed by learned CIT(A).

21. At the outset, the Id. Counsel for the assessee company submitted that this issue is covered by the decision of the Tribunal in assessee company's own case in ITA No. 2376 to 2378/Mum/2011 for assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015. The Id. D.R. relied upon the order of the A.O.

22. We have considered the rival contentions and also perused the material available on record including the afore-stated order of the Tribunal dated 10-07-2015. We find that the Tribunal in assessee company's own case in ITA

No. 2376 to 2378/Mum/2011 for assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015 has set aside the matter back to the file of the A.O. for deciding the same afresh in terms of the judicial pronouncements cited therein. The Tribunal in the afore-stated order dated 10-07-2015 observed and held as under:-

“23. The next grievance of the assessee relates to disallowance of interest expenditure u/s.14A amounting to Rs.18,00,412/-. The AO applied rule 8D and computed the disallowance. It was brought to our notice that assessee’s owned funds are more than the investment made during the year, therefore, no disallowance is warranted. For this purpose reliance was placed on the decision of Reliance Utilities & Power Ltd., 313 ITR 340 and HDFC Bank Ltd., ITA Nos. 4529/Mum/2005 &ors.. Keeping in view the proposition of law laid down in above judicial pronouncements, we restore the matter back to the file of AO for deciding afresh in terms of above judicial pronouncements.

27. The ground taken for A.Y. 2007-08 are common as discussed in the assessment year 2005-06. With regard to the ground taken for disallowance of interest u/s 14A amounting to Rs. 3,54,011/- , following the reasoning given hereinabove, we restore the matter back to the file of AO for deciding afresh.”

Respectfully following the afore-stated decision of the co-ordinate Bench of this Tribunal, we set aside and restore the issue back to the file of the A.O. for de novo determination of the issue afresh in terms of the judicial pronouncements as indicated in the afore-stated Tribunal order dated 10-07-2015 in assessee company’s own case. This disposes of ground no. 6 and 7 raised by the assessee company in the grounds of appeal filed in memo of appeal with the Tribunal. We order accordingly.

23. The next ground relates to the additions made to the book profit computed u/s 115JB of the Act on account of provision for doubtful debts of

Rs. 15,29,058, provision for gratuity of Rs. 42,17,911 and provision for leave encashment of Rs. 17,53,115/-. The A.O. has disallowed the provision for doubtful debts of Rs. 15,29,058/-, and added the same to the net profit as per P&L A/c to arrive at the book profit u/s 115JB of the Act in view of amended provisions, which was confirmed by the ld. CIT(A) keeping in view amendment in the Act in Explanation 1 clause (i) to Section 115JB of the Act added by the Finance Act 2009 w.e.f. 1-4-2001. With respect to the provision for gratuity of Rs. 42,17,911/- and provision for leave encashment of Rs.17,53,115/-, it was contended before the ld. CIT(A) that the assessee company has made provision based upon the actuarial valuation carried out by the company's appointed actuary which is based on the mandatory accounting standard AS 15 issued by ICAI and these are ascertained liabilities to compute actual profit and is debited to Profit and Loss Account, which is determined keeping in view the employees retirement age, length of service, compensation etc. of the employees and cannot be categorized as unascertained liabilities, hence, the same cannot be added back as per Explanation 1 clause (c) to section 115JB of the Act. The ld CIT(A) rejected the contention of the assessee company on the ground that the liability was not ascertained properly by the assessee company as per the actuarial valuation report submitted by the assessee company.

24. On appeal before the Tribunal, the ld. Counsel for the assessee company submitted that this issue is covered in favour of the assessee company by the decision of the Tribunal in assessee's own case in ITA No. 2376 to 2378/Mum/2011 for assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015 as far as provision for gratuity and leave encashment is concerned, while ld counsel relied upon decision of Mumbai Tribunal in the case of Tainwala Chemicals and Plastics India Limited v. ACIT in ITA no. 3338/Mum/2008 for assessment year 2004-05 vide orders dated 27-4-2011 to contend that provision for doubtful debt cannot be added to the

profit and per Profit and Loss account to arrive at book profit u/s 115JB of the Act . The ld. D.R. relied upon the order of the learned CIT(A).

25. We have considered the rival contentions and also perused the material available on record including the orders of the Tribunal relied upon. We have observed that Income Tax Act, 1961 was amended by Finance Act, 2004 w.e.f 1-4-2001 by substitution of clause (i) of Explanation 1 to Section 115JB of the Act whereby the amount or amounts set aside as provision for diminution in the value of any asset is to be added back to the profit of the assessee as per Profit and Loss Account to arrive at Book Profit u/s 115JB of the Act which is clearly applicable to Provision for doubtful debt of Rs. 15,29,058/- debited to Profit and Loss Account by the assessee and the same is ordered to be added back to Profit as per Profit and Loss Account to determine book profit as per amended provision of Section 115JB of the Act. This ground of appeal raised by the assessee company is therefore dismissed. We order accordingly.

We find that the Tribunal in assessee company's own case in ITA No. 2376 to 2378/Mum/2011 for the assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015 had deleted the additions so made by the A.O. with respect to the Provision for gratuity and leave encashment by treating the same as ascertained liability. The relevant portion of the Tribunal order is reproduced below:-

20. The next grievance of revenue relates to deleting disallowance of provision for leave encashment and provision for gratuity. We found that provision was made for the liabilities pertaining to the years under consideration. These liabilities were crystalised during the year and were pertaining to the year under consideration. Since the provision was made on the basis of actual operation and is an ascertained liability allowable as business expenditure, therefore, there is no infirmity in the order of CIT(A) for considering the provision made for leave encashment and gratuity as ascertained liabilities not includible while computing profit

u/s.115JB. There is no infirmity in the order of CIT(A). Our view is supported by the following decisions :

- i) CIT vs. Enchjay Forgings Ltd., 251 ITR 15;*
- ii) CIT vs. National Hydro Electric Power Corporation Ltd., 45 DTR 117; and*
- iii) Dresser Value India Private Ltd. Vs.ACIT, 30 SOT 495.”*

Respectfully following the decision of the co-ordinate Bench of this Tribunal in afore-stated decision, we hold that provisions for gratuity of Rs.42,17,911/- and provision for leave encashment of Rs.17,53,115/- based on actuarial valuation conducted by the acturial is an ascertained liability which shall not be added to Profit of the assessee as per Profit and Loss Account to compute Book profit u/s 115JB of the Act , and we allow this ground raised by the assessee company with respect to provision for gratuity and leave encashment. We order accordingly.

26. In the result appeal filed by the assessee company in ITA no.805/Mum/2011 for the assessment year 2008-09 is partly allowed as indicated above.

27. The following grounds of appeal are raised by the assessee company in ITA No. 3002/Mum/2013 for the assessment year 2009-10 in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) which reads as under:-

“GROUND 1: DISALLOWANCE OF DEPRECIATION ON MANAGEMENT RIGHTS: RS. 11,07,422/-.

1. On the facts and in circumstances of the case and in law, the Hon'ble Commissioner of Income tax (Appeals) - 21 [CIT(A)] erred

in upholding the action of the Assistant Commissioner of Income Tax - 10(1), Mumbai (the AO") in disallowing depreciation of Rs. 11,07,422/- on the "management rights" acquired by the Appellant during the year ending March 31, 2005, on the alleged ground that such payment was nothing but premium paid for management agreement, which was a non-depreciable capital asset.

2. The Appellant prays that the addition of Rs. 11,07,422/- be deleted and the AO be directed to allow depreciation on the above as claimed by the Appellant.

GROUND 11: DISALLOWANCE OF DEPRECIATION UNDER SECTION 32 OF THE ACT, AT A HIGHER RATE ON ADDITIONS MADE TO FIXED ASSETS IN AY 2008-09 AMOUNTING TO RS. 15,37,326/-:

1. On the facts and in circumstances of the case and in law, the CIT(A) erred in disallowing depreciation at a higher rate (i.e. 60%) claimed u/s. 32 of the Act amounting to Rs. 15,37,326/- on addition of various fixed assets to the block of "computers", on the alleged premise that such additions were in nature of electrical switches, plant & machinery, office equipment or software.

2. The Appellant prays that the aforesaid disallowance u/s. 32 of the Act amounting to Rs. 15,37,326/- be deleted.

GROUND III: DISALLOWANCE OF DEPRECIATION UNDER SECTION 32 OF THE ACT AMOUNTING TO RS. 5,35,427/-, AT A HIGHER RATE ON ADDITIONS MADE TO COMPUTERS IN AY 2009-10:

1. On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in disallowing depreciation at a higher rate claimed u/s. 32 of the Act amounting to Rs. 5,35,427/- on addition of various fixed assets made to the block of "computers", on the alleged premise that such additions were for the items like UPS, routers, switches and cables, software, pipes and labour charges which cannot be added to the block of "computers".

2. The Appellant prays that the aforesaid disallowance u/s. 32 of the Act amounting to Rs. 5,35,427/- be deleted.

GROUND IV: DISALLOWANCE OF INTEREST EXPENDITURE UNDER SECTION 36(1)(iii) /14A OF THE ACT AMOUNTING TO RS. 1,66,96,008/-:

1. On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in disallowing the interest expenditure amounting to Rs. 1,66,96,008/-, on the alleged ground that the interest expenditure paid on borrowings and claimed under section 36(1)(iii) of the Act by the Appellant corresponds to the amounts utilized (in an earlier) towards purposes which are not in respect of the Appellant's business and hence are not allowable as deduction u/s. 36 (1)(iii) / 14A of the Act.

2. The Appellant prays that the aforesaid disallowance u/s. 36(1)(iii) / 14A of the Act, amounting to Rs. 1,66,96,008/- be deleted or be appropriately reduced.

GROUND V: DISALLOWANCE UNDER SECTION 14A OF THE ACT READ WITH RULE 8D OF THE INCOME TAX RULES (THE RULES") AMOUNTING TO RS. 6,96,950/-:

1. On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in disallowing a sum of Rs. 6,96,950/- as expenses incurred towards earning exempt income u/s. 14A of the Act read with Rule 8D of Income Tax Rules, 1962 ('the Rules').

2. The Appellant prays that the aforesaid disallowance u/s. 14A of the Act r.w.r. 8D of the Rules of Rs. 6,96,950/- be deleted or be appropriately reduced.

GROUND VI: DISALLOWANCE UNDER SECTION 36(1)(va) r.w.s. 2(24)(x) AND TAXING OF EMPLOYEES CONTRIBUTION TO PROVIDENT FUND UNDER THE HEAD INCOME FROM OTHER SOURCES AMOUNTING TO RS. 31,02,711/-:

1. On the facts and in circumstances of the case and in law, the CIT(A) erred in giving the direction that only if the payment is made within the grace period of five days, the same shall be allowed and implied holding that if payment is made beyond the grace period, it shall be disallowed.

2. The Appellant prays that the aforesaid addition of Rs. 31,02,711/- be deleted.

GROUND VII: DEDUCTION FOR PROVISION FOR FBT of Rs 82,01,157 FROM PROFIT BEFORE TAX:

1. On the facts and in circumstances of the case and in law, the CIT(A) , while computing the book profit u/s. 115JB of the Act, erred in upholding the action of the AO for not granting deduction of Rs 82,01,157 on account of provision for fringe benefit tax (FBT) as claimed in the Return of Income, to the Loss as per Profit & Loss account of Rs. 36,13,64,742/- without appreciating the fact that the loss of Rs. 36,13,64,742/- was before claiming the said provision.

2. The Appellant prays that the learned AO be directed to grant deduction for aforesaid provision for FBT amounting to Rs. 82,01,157/- while computing the book profit u/s. 115JB.

GROUND VIII: ADDITION OF PROVISION FOR WEALTH TAX FOR CALCULATION OF BOOK PROFIT UNDER SECTION 115JB OF THE ACT AMOUNTING TO RS. 95,938/-:

1. On the facts and in circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in adding back the provision for wealth tax amounting to Rs. 95,938/- to compute the Book Profit u/s 115JB of the Act.

2. The Appellant prays that the addition of aforesaid provision for wealth tax amounting to Rs. 95,938/- be deleted while computing the book profit u/s. 115JB.

GROUND IX: ADDITION OF PROVISION FOR DOUBTFUL DEBTS FOR CALCULATION OF BOOK PROFIT UNDER SECTION 115JB OF THE ACT AMOUNTING TO RS. 46,07,618/-:

1. On the facts and in circumstances of the case and in law, the (CIT(A) erred in upholding the action of the AO in adding back provision for doubtful debts amounting to Rs. 46,07,618/- to compute the Book Profit u/s 115JB of the Act.

2. The Appellant prays that the aforesaid addition of provision for doubtful debts amounting to Rs. 46,07,618/- made to compute book profit u/s. 115JB of the Act be deleted while computing the book profit u/s. 115JB.

GROUND X: ADDITION OF PROVISION FOR GRATUITY FOR CALCULATION OF BOOK PROFIT UNDER SECTION 115JB OF THE ACT AMOUNTING TO RS. 31,86,681/-:

1. On the facts and in circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in adding back provision for gratuity amounting to Rs. 31,86,681/- to compute the Book Profit u/s 115JB of the Act.

2. The Appellant prays that the disallowance of aforesaid provision for gratuity amounting to Rs. 31,86,681/- be deleted while computing the book profit u/s. 115JB.

GROUND XI: ADDITION OF PROVISION FOR LEAVE ENCASHMENT FOR CALCULATION OF BOOK PROFIT UNDER SECTION 115JB OF THE ACT AMOUNTING TO RS. 12,82,436/-:

1. On the facts and in circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in adding back provision for leave encashment amounting to Rs. 12,82,436/- to compute the Book Profit u/s. 115JB of the Act.

2. The Appellant prays that the addition of aforesaid provision for leave encashment amounting to Rs. 12,82,436/- be deleted while computing the book profit u/s. 115JB.

GROUND XII: ADDITION OF AMOUNT CALCULATED UNDER SECTION 14A OF THE ACT AMOUNTING TO RS. 1,73,92,958/- IN COMPUTING BOOK PROFIT UNDER SECTION 115JB OF THE ACT:

1. On the facts and in circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in adding back interest and other expenses disallowed u/s. 14A of the Act amounting to Rs. 1,73,92,958/- while computing the book profit u/s. 115JB of the Act.
2. The Appellant prays that the aforesaid addition of Rs. 1,73,92,958/- be deleted while computing the book profit u/s. 115JB.

GROUND XIII: LEVY OF INTEREST UNDER SECTION 234B AND 234C OF THE ACT:

1. The AO erred in levying interest u/s. 234B and 234C of the Act.
2. The Appellant prays that the aforesaid addition be deleted.”

28. With respect to ground No. I regarding disallowance of depreciation on management rights amounting to Rs.11,07,422/- acquired by the assessee during the year ended 31-03-2005, the facts and circumstances of the issue are similar to the issues in assessee company's appeal no. ITA no.805/Mum/2011 for the assessment year 2008-09 which is adjudicated by us in preceding para's vide this common order, hence, our decision in ITA no. 805/Mum/2011 for the assessment year 2008-09 vide this common order shall apply mutatis mutandis to the assessee company's appeal in ITA No. 3002/Mum/2013 for the assessment year 2009-10 wherein the facts are identical . We allow this ground of appeal filed by the assessee company in the memo of appeal filed with the Tribunal. We order accordingly.

29. With respect to ground No. II and III regarding disallowance of depreciation at higher rates i.e. 60% claimed u/s 32 of the Act on addition to fixed assets to the block of “computers” being items such as switches, UPS, plant and machinery , office equipments or software, the facts and circumstances of the issue are similar to the issues in assessee company’s appeal no. ITA no.805/Mum/2011 for the assessment year 2008-09 which is adjudicated by us in preceding para’s vide this common order, hence, our decision in ITA no. 805/Mum/2011 for the assessment year 2008-09 vide this common order shall apply mutatis mutandis to the assessee company’s appeal in ITA No. 3002/Mum/2013 for the assessment year 2009-10 wherein the facts are identical . Thus, this issue is restored back to the file of AO for fresh determination as indicated in our afore-stated order for assessment year 2008-09. We order accordingly.

30. Ground No. IV is with regard to the disallowance of interest expenditure u/s 36(1)(iii)/14A of the Act amounting to Rs. 1,66,96,008/- being expenses incurred which are not for business purposes with respect to investment of Rs.13,93,90,000/- in a subsidiary company Kanishka to acquire 100% controlling stake .The facts and circumstances of the issue are similar to the issues in assessee company’s appeal in ITA no.805/Mum/2011 for the assessment year 2008-09 which is adjudicated by us in preceding para’s vide this common order, hence, our decision in ITA no. 805/Mum/2011 for the assessment year 2008-09 vide this common order shall apply mutatis mutandis to the assessee company’s appeal in ITA No. 3002/Mum/2013 for the assessment year 2009-10 wherein the facts are identical . Thus, this issue is restored back to the file of AO for fresh determination as indicated in our afore-stated order for assessment year 2008-09. We order accordingly.

31. Ground No. V is with regard to the disallowance of indirect expenditure i.e. administrative and other expenditure incurred for earning exempt income

u/s14A of the Act read with Rule 8D(2)(iii) of Income Tax Rules, 1962 amounting to Rs. 6,96,950/- @ 0.50% of average investment of Rs.13,93,90,000/- . The Rule 8D of Income Tax Rules, 1962 is held to be applicable from assessment year 2008-09 by Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited reported in (2010) 328 ITR 81(Bom. HC) . We do not find any infirmity in disallowance as made by the AO and confirmed by the learned CIT(A). We confirm and sustain the addition and dismiss the ground raised by the assessee company. We order accordingly.

32. Ground No. VI is regarding disallowance of employees contribution to PF u/s 36(1)(va) r.w.s. 2(24)(x) of the Act and taxing the employee contribution to the tune of Rs.31,02,711/ under the head 'Income from other sources' . The A.O. observed that the employees provident fund payment has not been paid by the assessee company within the stipulated due date under the PF Act as per explanation to Section 36(1)(va) of the Act, hence, the payments made after the due date as provided under the PF Act were treated as income of the assessee u/s 2(24)(x) of the Act and taxed under the head Income from other sources amounting to Rs. 31,02,711/-. On appeal, the ld. CIT(A) directed the A.O. to re-compute the disallowance by allowing of payment of employees contribution made to the provident fund which had been made by the assessee company within the grace period of five days allowed under the PF Act. The assessee company challenged the order of the ld. CIT(A) before the Tribunal and submitted that this issue is covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in the case of Hindustan Organics Chemicals Ltd., ITA No.399 of 2012. The assessee company also submitted that this issue has been decided by the Tribunal in assessee company's own case in ITA No. 2376-2378/Mum/2011 for assessment years 2005-06 to 2007-08 vide order dated 10th July, 2015.

33. We find that the Tribunal in assessee company's own case in ITA No. 2376 to 2378/Mum/2011 for assessment years 2005-06 to 2007-08 vide orders dated 10th July, 2015 deleted the additions so made by the A.O. and confirmed by the ld. CIT(A). The relevant portion of the afore-stated Tribunal order is reproduced below:-

“21. The assessee in its appeal for A.Y.2006-07, is aggrieved for disallowance of employees contribution to the provident fund amounting to Rs.55,519/- is covered by the decision of Hon'ble Supreme Court in the case of Alom Extrusion and also by the decision of Hon'ble Bombay High Court in the case of Hindusthan Organics Chemicals Ltd., ITXA No.399/2012 and also by the decision of Hon'ble Delhi High Court in the case of Onward Technologies Ltd., ITA No.5235/Mum/2010. In view of these judicial pronouncements we do not find any merit for disallowance of employees' contribution of Rs.55,519/-.”

Respectfully following the decision of the co-ordinate Bench of this Tribunal, we allow this ground raised by the assessee company and direct that the employees contribution towards provident fund paid by the assessee company before the due date prescribed under the Income Tax Act, 1961 for filing return of income u/s 139(1) of the Act be allowed of which the payment details are duly reflected in the assessment order para 9.1. We allow this ground of appeal filed by the assessee company . We order accordingly.

34. The next issue relate to not granting of deduction for provision for Fringe Benefit Tax of Rs. 82,01,157/- as claimed in return of income , to the loss as per Profit and Loss account of Rs.36,13,64,762/- without appreciating the fact that the loss of Rs.36,13,64,762/- was before claiming the deduction of said provision of FBT. The AO added the FBT amount to the Profit as per P&L Account to arrive at Book Profit u/s 115JB of the Act. The ld. CIT(A), however, directed the A.O. to follow Circular No. 8 of 2005 dated 29th August, 2005 issued by the CBDT in question no. 103 where it is stated by the CBDT

that for the computation of book profit u/s 115JB of the Act, fringe benefit tax is an allowable deduction for computation of book profit u/s 115JB of the Act and accordingly allowed the ground raised by the assessee company before the Id. CIT(A). The Id. Counsel for the assessee company submitted that the assessee company has already reduced the FBT while computing the Book Profit u/s 115JB of the Act as per the return of income filed. He drew our attention to audited Profit and Loss Account which is placed at page 7 of paper book where loss before tax as per audited profit and loss account is Rs. 361364742/- and the assessee made adjustment of FBT which is reflected after 'profit before taxes' in audited Profit and loss to arrive at 'Profit after tax' and the assessee increased the loss as per profit and loss account by FBT amount of Rs.82,01,157/- of its own in computation of income to arrive at Book Profit u/s 115JB of the Act which was stated by the assessee to be correctly done as per circular no 8 of 2005 dated 29-08-2005 issued by CBDT to arrive at Book Profit u/s 115JB of the Act . The said circular no 08/2005 dated 29-08-2005 is reproduced hereunder:

“CIRCULAR

FINANCE ACT, 2005 - FBT

Finance Act, 2005 - Explanatory Notes on the Provisions relating to Fringe Benefit Tax

CIRCULAR NO. 8/2005, DATED 29-8-2005

The Finance Act, 2005 has introduced a new levy, namely, Fringe Benefit Tax (hereafter referred to as FBT) on the value of certain fringe benefits. The provisions relating to levy of this tax are contained in Chapter XII-H (sections 115W to 115WL) of the Income-tax Act, 1961. This circular seeks to provide a harmonious, purposive and contextual interpretation of

the provisions of the Finance Act, 2005 relating to the FBT so as to further the objective of this levy.

Whether FBT would be allowable deduction while computing 'book profit' under section 115JB?

103. *FBT is a liability qua employer. It is an expenditure laid out or expended wholly and exclusively for the purposes of the business or profession of the employer. However, sub-clause (ic) of clause (a) of section 40 of the Income-tax Act expressly prohibits the deduction of the amount of FBT paid, for the purposes of computing the income under the head 'profits and gains of business or profession'. This prohibition does not apply to the computation of 'book profit' for the purposes of section 115JB. Accordingly, the FBT is an allowable deduction in the computation of 'book profit' under section 115JB of the Income-tax Act."*

The computation of income is placed at paper book page 75 and it was submitted that the A.O. has adjusted the said amount of FBT in the Profit Before tax to reduce losses to arrive at Book Profit u/s 115JB of the Act which has led to double jeopardy i.e. instead of increasing loss before tax as per CBDT circular as set out above, the AO reduced the losses to arrive at Book Profit u/s 115JB of the Act , which has led to double addition of the same amount . We find merit in the contention of the assessee company after going through the records before us and have observed that the assessee company is entitled for deduction of FBT to arrive at the book profit for the purposes of computation of Book Profit u/s 115JB of the Act. On the other

hand the A.O. has reduced the losses by amount of FBT instead of increasing losses to arrive at Book Profit u/s 115JB which has led to double jeopardy to the assessee company. Thus, keeping in view of the afore-stated CBDT Circular, the A.O. is directed to re-compute the losses u/s 115JB of the Act whereby the FBT will be allowed to be added to the losses prior to tax as reflected in the audited Profit and loss account to increase the loss to arrive at the book profit u/s 115JB of the Act. We order accordingly.

35. The next ground is with respect to the addition of provision for wealth tax for computation of book profit u/s 115JB of the Act amounting to Rs. 95,938/-. The AO made adjustment to Profit(Loss) as per Profit and Loss account by adding the provision for wealth tax of Rs.95,938/-to arrive at Book Profit computed u/s 115JB of the Act , which ground of appeal was dismissed by the learned CIT(A) and the action of the AO was upheld/sustained by the learned CIT(A) . The assessee filed second appeal with the Tribunal. The assessee contended that it has correctly increased the provision for wealth tax to arrive at the book profit(loss) u/s 115JB of the Act as the same is to be allowed as deduction from profit(loss) before tax. The assessee drew our attention to audited Profit and Loss Account placed at paper book page 7 and computation of the income which is placed at paper book page 75. The A.O. disallowed the claim which has been confirmed by the ld. CIT(A) for computation of the Book Profit u/s 115JB of the Act. The ld. Counsel relied upon the following judicial pronouncements:-

1. CIT v. Echjay Forgings (P.) Ltd., (2001) 166 CTR 100 (Bom)
2. JCIT v. Usha Martine Industries Ltd., (2001) 251 ITR 15 (Bom)
3. DCIT v. Microlabs Ltd., (2015) 70 SOT 774 (Bang-Trib)

The learned DR relied upon orders of the authorities below. We have gone through the judgments relied upon by the assessee and we are inclined to

agree with the assessee on merits and this ground of appeal is therefore allowed. We order accordingly.

36. Ground No. IX is with respect to the addition of provision for doubtful debts for calculation of book profit u/s 115JB of the Act amounting to Rs.46,07,618/-. The facts and circumstances of the issue are similar to the issues in assessee company's appeal in ITA no.805/Mum/2011 for the assessment year 2008-09 which is adjudicated by us in preceding para's vide this common order, hence, our decision in ITA no. 805/Mum/2011 for the assessment year 2008-09 vide this common order shall apply mutatis mutandis to the assessee company's appeal in ITA No. 3002/Mum/2013 for the assessment year 2009-10 wherein the facts are identical . Thus, this ground of appeal raised by the assessee company lacks merit and is hereby dismissed and decided against the assessee company. We order accordingly.

37. Ground No. X is with respect to the addition for provision for gratuity for computation of book profit u/s 115JB of the Act amounting to Rs.46,07,618. The facts and circumstances of the issue are similar to the issues in assessee company's appeal in ITA no.805/Mum/2011 for the assessment year 2008-09 which is adjudicated by us in preceding para's vide this common order, hence, our decision in ITA no. 805/Mum/2011 for the assessment year 2008-09 vide this common order shall apply mutatis mutandis to the assessee company's appeal in ITA No. 3002/Mum/2013 for the assessment year 2009-10 wherein the facts are identical . Thus, this issue raised by the assessee company in grounds of appeal is allowed in favour of the assessee company. We order accordingly.

38. Ground No. XI is regarding addition of provision for leave encashment for computation of book profit u/s 115JB of the Act amounting to Rs.12,82,436/-. The facts and circumstances of the issue are similar to the

issues in assessee company's appeal in ITA no.805/Mum/2011 for the assessment year 2008-09 which is adjudicated by us in preceding para's vide this common order, hence, our decision in ITA no. 805/Mum/2011 for the assessment year 2008-09 vide this common order shall apply mutatis mutandis to the assessee company's appeal in ITA No. 3002/Mum/2013 for the assessment year 2009-10 wherein the facts are identical . Thus, this issue raised by the assessee company in grounds of appeal is allowed in favour of the assessee company. We order accordingly.

39. Ground No. XII is regarding addition of amount computed u/s 14A amounting to Rs. 1,73,92,958/- in computing book profit u/s 115JB of the Act. This ground is consequential to ground No. IV & V of this appeal, wherein we upheld the addition of Rs.6,96,950/- made by the AO and as sustained by learned CIT(A) u/s 14A of the Act read with Rule 8D(2)(iii) of Income Tax Rules, 1962 , while the addition of Rs.1,66,96,008/- is set aside and restored to the file of the AO for deciding afresh , as set out in preceding para's of this order. In principle we confirm the order of the learned CIT(A) that the disallowance computed u/s 14A shall be added to arrive at the book profit u/s 115JB of the Act. Hence, we set aside this issue to the file of the A.O. for quantum disallowance after deciding de-novo of the issue of allowability of interest expenditure of Rs.1,66,96,008/- as detailed above , while the addition to the tune of Rs.6,96,950/- already stood confirmed by us . We hold that the disallowance made u/s 14A of the Act will be added to the book profit u/s 115JB of the Act. We will also like to refer to the decision of Mumbai Tribunal in the case of DCIT v. Viraj Profiles Limited in ITA no. 4439/ Mum/2013 vide orders dated 21.10.2015 reported in (2015) 64 taxmann.com 52(Mum) where both of us were members of the Bench passing the said order , which upheld the above said proposition of law vide detailed order that disallowance made u/s 14A of the Act is to be added back for

arriving book profit u/s 115JB of the Act in view of clause(f) to explanation 1 to Section 115JB(2) of the Act. We order accordingly.

40. In the result appeal filed by the assessee company in ITA no.3002/Mum/2013 for the assessment year 2009-10 is partly allowed as indicated above.

41. In the result, both the appeals filed by the assessee in ITA NO. 805/Mum/2011 for the assessment year 2008-09 and ITA No. 3002/Mum/2013 for the assessment year 2009-10 are partly allowed as indicted above.

Order pronounced in the open court on 8th August , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08-08-2016 को की गई ।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 08-08-2016

I

व.नि.स./ R.K., Ex. Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai