

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ' I', NEW DELHI**

**BEFORE SHRI G.E. VEERABHADRAPPA, VICE PRESIDENT
&
SHRI I.P. BANSAL, JUDICIAL MEMBER**

**ITA NO. 2050/Del/2006
Assessment Year: 2004-05**

DCIT,
Circle 15(1),
New Delhi.

(Appellant)

Vs. M/s Ranbaxy Laboratories Ltd.,
12th Floor, Devika Towers,
6, Nehru Place, New Delhi.
PAN No. AAACR0127N
(Respondent)

&

**ITA No. 1666/Del/06
Assessment Year: 2004-05**

M/s Ranbaxy Laboratories Ltd.,
12th Floor, Devika Towers,
6, Nehru Place, New Delhi.
(Appellant)

Vs. DCIT,
Circle 15(1),
New Delhi.
(Respondent)

Deptt. by : M. Mohsin Alam, DR
Assessee by : S/Sh. Ajay Vohra, Rohit Jain, Virender Sharma, CA &
Ms. Neha, CA

ORDER

PER I.P. BANSAL, J.M.

These are cross appeals and they are directed against the order of CIT(A) dated 28.03.06 for A.Y. 04-05.

2. Ground no. 1 of Revenue's appeal is as under: -

1. *"That Id. CIT(A) erred in law and on facts in deleting addition of Rs. 4,28,43,984/- being deferred employees compensation, and without*

appreciating that no such liability was paid or had arisen during the year.”

Ground no. 1 of Assessee's appeal is as under: -

1. “That on law, facts and in the circumstances of case, the Id. CIT(A) has erred in not allowing the deduction of Rs. 4,28,43,984/- during the year, being the deferred employees compensation on account of company's Employees Stock Option Scheme (ESOP) and by directing the AO to allow the same only in the year in which the shares are allotted to employees upon exercise of the option.”

3. The issues raised in both these grounds is common. This issue has been dealt with by the Tribunal while deciding the appeals in the case of assessee for assessment years 02-03 & 03-04 vide order dated 12.06.09, a copy of which is placed by the assessee at pages 589 to 637 of the paper book. This issue has been dealt with by the Tribunal in para 7 to 7.16. For the sake of clarity on facts, entire observations of Tribunal on this issue from that order are reproduced below: -

7. Ground No.2 in appeal by the assessee and ground No.4 in appeal by the revenue are against disallowance of deduction on account of shares of the company given under Employees Stock Option Scheme (ESOP). During the year the assessee granted stock option of 3,32,250 shares to its employees. The shares were to be issued at Rs.595/- per share as against face value of Rs.10 per share. The relevant market price on the date of grant was Rs.738.95 per share. The assessee treated the difference between Rs.738.95 and Rs.595/- as Employees compensation in the books of accounts and charged the same to the profit & loss account. The charge to P&L account was deferred over the vesting period which is 5 years. Thus prorate amount of

such amount was charged as deferred employees compensation.

Before the Assessing Officer it was contended that the shares are issued under ESOP Scheme in accordance with SEBI guidelines. As per guidelines issued by SEBI the amount of option amount has to be treated as employees compensation in the books and to be charged to Profit & Loss account over the vesting period. The assessee submitted ESOP Scheme. It was contended that any amenity benefit or perquisite allowed to an employee is taxable as perquisite under section 17(2) in the hands of the employee. Therefore, the cost of such benefit is allowable as business expenditure to the employer. The value of any benefit under ESOP Scheme was taxable as perquisite under section 17(2)(iiiia) for Assessment Year 2000-01 but after amendment with effect from Assessment Year 2000-01, such benefit is not taxable in the hands of employee. The option discount given to employee is a constructive payment as and when the employee will apply for allotment and delivery of shares by making payment of offer price. Therefore, the grant of shares during the year is a benefit provided to the employee and hence allowable deduction in the hands of the company. Reliance was placed on the decisions of Hon'ble Supreme Court in the cases of Metal Box Company of India Ltd. Vs. Their Workmen, 73 ITR 53; & Bharat Earth Movers vs. CIT, 245 ITR 428. The Assessing Officer held that the claim is made only on the basis of SEBI Guidelines but the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year. Therefore, the claim is not allowable as such. The learned CIT(A) held that the liability will be a certain liability only when the employees exercise their option by making payment of the offer price and get their share. He accordingly directed the Assessing Officer to

allow deduction in the year in which the option is exercised and allow deduction accordingly. The assessee as well as revenue, both are in further appeal before us.

7.1 The learned counsel for the assessee submitted that both the Assessing Officer and the CIT(A) failed to appreciate the true nature of the option discount arising on grant of options under the ESOP Scheme amortized and claimed as expenditure by the appellant, which is explained hereunder:-

- ESOP is an employee compensation scheme intended to inculcate a sense of belongingness and instill a feeling of ownership in the employees, to create partnership with the employees for a transition from being mere 'employees' to 'stake holders';*
- ESOP's are issued in terms of ESOP scheme framed as per the SEBI guidelines;*
- Once grants are issued by the assessee to its employees under the ESOP, in so far as the assessee is concerned the liability crystallizes inasmuch as the option to exercise such grant is with the employees on which the assessee has no control.*
- Since such liability towards employee compensation can be estimated with reasonable certainty, following the mercantile system of accounting as regularly followed by the assessee, a liability towards the said compensation has definitely arisen during the year and is allowable deduction as has been similarly held in the following cases:*

- i) Calcutta Co. Ltd. Vs. CIT, 36 ITR 1 (SC);*
- ii) Metal Box Company vs. Their Workmen, 73 ITR 53 (SC); &*
- iii) Bharat Earthmovers vs. CIT, 245 ITR 428 (SC).*

The CIT(A) appears to have been influenced by the fact that the employee may not, at a subsequent date,

exercise the option and hence came to the conclusion that liability would crystallize as and when option are exercised by the employees at a future date. The CIT(A), however, failed to appreciate that the crystallization of liability has to be seen from the point of view of the company. The fact that at a subsequent date the employees may not exercise their option would only have the effect of remission/cessation of the liability at a future date. The CIT(A), therefore, erred in holding that the liability would crystallize as and when options are exercised by the employees.

- *It will be appreciated that similar situation arises in provision for leave encashment, which was held to be allowable as revenue deduction in the case of Bharat Earthmovers Vs. CIT, 245 ITR 428 (SC).*
- *The aforesaid principle of crystallization of liability has also been recognized in the SEBI guidelines, which are mandatory on the appellant, requiring option discount to be recognized and amortized as employee compensation in the financial statements on the date of grant of options;*
- *The exercise of options by the employees at a future date neither has the effect of the liability on account of 'Option discount' being converted into a contingent liability nor requires deferment of amortization of option discount since as stated above in so far as the assessee is concerned the liability crystallized on the date of grant itself. Thus, following mercantile system of accounting, such liability has to be allowed as deduction as 'employee compensation' expense.*

It was further contended that identical issue has been decided by ITAT Chennai in the case of SSI Ltd. Vs. DCIT, 85 TTJ 1049 wherein the claim of the assessee has been upheld.

7.2 The learned DR on the other hand, submitted that the assessee has not incurred any expenditure in this regard nor

any liability to pay any expenditure has been incurred. The assessee merely granted stock option. The grant price was Rs.595/- per share as against prevailing market rate Rs.738.95 per share. Merely by granting stock option the assessee does not incur any expenditure. The difference between market price of share and the grant price will result into receipt of lesser amount towards share premium but the assessee does not incur any expenditure in this regard. The loss is a notional loss to the extent of receipt of lesser amount towards share premium. The share premium received by the assessee is not its income and hence if the assessee receives lesser amount by way of such share premium, the assessee does not incur any expenditure so as to claim the same as allowable. SEBI guidelines are relevant for the purpose of accounting or presentation of financial statement in respect of listed company but are not conclusive to determine the allowability of expenses. The expenses are allowable only as per the provision of Income-tax Act and the SEBI guidelines do not determine the allowability or otherwise of the sums. Even this benefit accruing to the employees are not considered as their income. Hence in view of the fact that merely stock options were granted and the loss if any, is towards lesser realization of share premium, the assessee has not incurred any expenditure and hence no part thereof is allowable.

7.3 We have considered relevant facts, arguments advanced and the case laws cited. The undisputed fact remains that the assessee granted stock option to its employees for 3,32,250 shares on 3rd December 2001 at Rs.595 per share. The prevailing market price on that date was Rs.738.95 per share. As per ESOP Scheme of the company, shares at 25% per annum of the total option granted to the vest on the expiry of one year from the date of grant of option. In other words, after completion of one year

from the date of grant of option, an employee would be entitled to exercise the option for allotment of shares at 20% per annum by making an application in writing and tendering the offer price in cash. However, during the year the assessee has merely granted option but the same were not exercised by making payment thereof.

The assessee was to issue share of face value of Rs.10/- by receiving a sum of Rs.595/- per share from its employees. Thus the assessee was entitled to receive Rs.585/- towards premium on issue of shares. The market price at Rs.738.95 per share would have resulted in realization of share premium. The assessee has not accounted for the difference between Rs.738.95 and Rs.10 as its income during the year. Thus there is no loss of income held to be taxable. What is loss to the assessee is by way of short receipt of share premium account and not by way of any expenditure or incurring any liability for such expenditure. By issuing shares at below market price does not result into incurring any expenditure rather it results into short receipt of share premium which the assessee was otherwise entitled to. Though the guidelines of SEBI requires the assessee to account for short receipt of share premium as employees compensation expense, for claiming such expense as allowable, the assessee has to clarify that expenses are incurred and the same are wholly and exclusively for the purpose of business. Here we find that by issuing shares at lesser than market price, the assessee cannot said to have incurred any expenditure rather it amounts to short receipt of share premium. The receipt of share premium is not taxable and hence any short receipt of such premium will only be a notional loss and not actual loss for which the liability is incurred. SEBI guidelines are relevant for the purpose of accounting but are not conclusive for the purpose of allowing the same as expenditure. In a

case where the e contracts for sale of goods say at Rs.100/- per share as against market price of Rs.150/- per share, whether, the loss of Rs.50 can be said to be allowable where the assessee accounts for only Rs.100/- as sales not at Rs.150/-. In such a situation, the loss will be only a notional loss or the loss of possible benefit but not the loss or liability incurred so as to be held as allowable under the scheme of Income-tax Act. Similarly in the present case what is loss to the assessee is short receipt of share premium and not incurring any liability or loss in the course of carrying on the business. Therefore, such notional losses are not allowable under the Act. The assessee is not to defray or pay any liability under the claim. Therefore, such notional loss cannot be held to be allowable under the scheme of the Act.

The decisions relied upon by the learned counsel for the assessee are distinguishable on facts. In the case of Calcutta Co. Ltd., 37 ITR 1, the Hon'ble Supreme Court was considering the allowability of estimated accrued liability to be discharged at a future date. In the said case the assessee undertook to carry out development within six months from the date of deeds of sale which was unconditional but the assessee bound itself absolutely to carry out the same. That undertaking imparted a liability on the appellant which accrued on the date of deeds of sale though to be discharged at a future date. In such circumstances, the Hon'ble Supreme court held that amount to be expended could be debited in accounts maintained in mercantile system of accounting before it was actually disbursed. Since the liability accrued and was estimated with reasonable certainty, discharging the same at future date is allowable.

In the case of Metal Box Company of India Ltd. Vs. Their Workmen, 73 ITR 53 the company was considering the liability incurred towards payment of gratuity for purpose of

computing profit under payment of Bonus Act. Though such gratuity liabilities were payable at a future date but since the liabilities were pertaining to the year and to be discharged at a future date, were held to be reducing the profit for purpose of computing surplus under the payment of Bonus Act.

In the case of Bharat Earth Movers vs. CIT, 245 ITR 428, the Hon'ble Supreme Court applying the decision in the case of Calcutta Co. Ltd. (supra) and Metal Box Co. of India Ltd. (supra) held that amount setting apart to meet liability on account of leave encashment of employees is not a contingent liability but an accrued liability though such liability is to be discharged at a future date.

However, in all the three above referred Supreme Court cases, it can be noticed that the assessee was required to discharge some sort of liability at a future date. In the present case the assessee is not to discharge any liability by making any sort of payment. The assessee merely granted stock option, though at a concessional rate but thereafter was not to discharge any liability in this regard. The loss if any, is notional and not actual liability incurred. Thus the cases of Hon'ble Supreme Court are distinguishable on facts.

Hon'ble Supreme Court in the case of Eimco K.C.P. Ltd. Vs. CIT, 242 ITR 659, was considering the claim of assessee towards expenditure on technical know-how. In the said case the assessee was a joint venture between an American company and an Indian company. The authorized capital of the assessee company was Rs.100 lacs. Each of the promoters agreed to subscribe Rs.4,70,000/- out of which each would have to pay initially a sum of Rs.2,80,000/- towards its contribution. The share of American promoter was contributed by way of technical know-how valued at a sum of Rs.2,35,000/- and in view of which the assessee allotted equity shares. The same was

considered as capital expenditure. The Hon'ble Supreme Court held –

“That what in effect was done by the appellant in allotting equity shares of Rs.2,80,000 to Eimco, was to reimburse the contribution by Eimco by way of know-how, which could never be treated as expenditure, much less an expenditure laid out wholly and exclusively for purposes of the business of the appellant. It was not a case where after the incorporation, the appellant-company in the course of carrying on its business, spent the said amount for acquiring any asset. The High Court had rightly concluded that allotment of equity shares by the appellant to Eimco, in the circumstances of the case, could not be termed as expenditure, much less revenue expenditure.”

Similar view was held by the Hon'ble Delhi High Court in the case of CIT vs. Reinz Talbros Pvt. Ltd., 252 ITR 637 wherein the Hon'ble Delhi High Court speaking through Shri Arijit Pasayat, Hon'ble Chief Justice (as his Lordship then was), held –

“A similar question came up before the apex court in Eimco K.C.P. Ltd v. CIT [2000] 242 ITR 659. It was held that where a foreign company gives a technical know-how and obtains equity shares in the new company, the amount attributable to technical know-how was not revenue expenditure under section 37 of the Act. However, it was treated to be of capital nature. It is clearly borne out from the various orders that the assessee was a new company. That being the position, the Tribunal was not justified in holding that the expenditure in question was revenue in character.”

The decision of ITAT Chennai in the case of SSI Ltd. (supra) relied upon by the learned counsel for the assessee is also distinguishable on facts. In the said case the

assessee claimed similar expenditure which was allowed by the Assessing Officer. The learned CIT(A) in his revision jurisdiction under section 263 held such expenditure as contingent in nature. The Tribunal held that in view of SEBI guidelines which the assessee was required to follow, such expenditure are in the nature of ascertained liability and not contingent liability upon happening of certain events. Hence, it was held that the order was not erroneous so as to be validly revised under section 263 of the Act. However, the Tribunal in the said case has not answered the issue whether the loss is a notional in nature or not. The Tribunal has also not considered the decision of Hon'ble Supreme Court in the case of Eimco K.C.P. Ltd. (supra) and that of Delhi High Court in the case of Reinz Talbros Pvt. Ltd. (supra) which is a jurisdictional High Court for us. We, therefore, hold that the expenses as claimed by the assessee are not allowable as such.

4. It was not disputed by both the parties that the facts relating to the present year and facts decided by Tribunal in the aforementioned order are similar. In this view of the situation, after hearing both the parties, respectfully following the aforementioned order (in which one of us J.M. is a party), we decide this issue against the assessee. In the result, it is held that assessee is not entitled to claim the amount of Rs.4,28,43,984/- claimed on account of deferred employees compensation. Therefore, the ground of assessee is dismissed and ground of the revenue is allowed.

5. Ground no. 2 of revenue's appeal is read as under: -

2. *"The Id. CIT(A) erred in law and on facts in deleting addition of Rs. 28,76,76,167/- made u/s 43B on account of provision for pension to*

employees and when no pension trust was constituted nor contributed the amount to any outside agency.”

6. It was submitted on behalf of assessee that this issue is covered in favour of assessee by the earlier decisions of Tribunal in assessee's own case for assessment years 2001-02, 02-03 & 03-04. Reference was made to the aforementioned order of Tribunal dtd. 12.06.09. Thus, it was pleaded that this issue is covered by the earlier order of the Tribunal. Reference was invited to the paras 13 to 17 wherein the Tribunal following earlier order for A.Y. 99-00 has decided this issue in favour of assessee. For the sake of completeness the relevant portion of the order dtd. 12.06.09 on this issue is reproduced: -

13. “Ground No. 2: -

A new pension scheme was introduced by the assessee w.e.f. 01.11.1997. According to the said scheme pension was payable to managerial employees who was to retire/resign after completing 10/20 years of service respectively so as to bring the total pension payable to 2.25% of basic salary for every complete year of service. The assessee estimated liability towards that pension fund for the year under consideration at Rs. 4,94,69,267/- which was claimed as deductible expenses. The AO though accepted that the above liability was computed on actuarial basis but held that absence of contribution of pension amount to any pension trust, the expenditure was not allowable deduction in the light of provisions of sec. 43B(b) of the Act and thus, disallowance was made. The CIT(A) has allowed the deduction. Hence, revenue is in appeal.

14. *At the outset it was pleaded by Id. AR that this issue is covered in favour of assessee by the aforementioned decision of Tribunal in the case of assessee for A.Y. 1999-2000 copy of which is placed at pages 267 to 285 of the paper book in ITA No. 2612/D/04 dated 31.12.08. The Tribunal has discussed this issue in para 25 to 27.*

15. *On the other hand, Id. DR relied on the order of AO.*

16. *We have carefully considered the rival submissions. This issue is found to be covered by the aforementioned decision of Tribunal in assessee's own case for A.Y. 1999-00. For the sake of clarity the relevant portion from the said order is reproduced below: -*

"The next dispute in the Revenue's appeal for A.Y. 1999-2000 relates to disallowance of Rs. 1,99,73,822/- made by the AO by applying the provisions of sec. 43B(b) on account of provision for pension.

We have heard both the sides and gone through the records. Earlier the assessee was having a superannuation scheme with the LIC wherein the contributions were made at certain percentage of salaries of the employees. The pension payable under the said superannuation scheme was found to be too low and the assessee found it difficult to attract and retain management of employees. A new pension scheme was introduced w.e.f. 01.11.1997. This pension was applicable to all management employees and was non funded. In other words, no separate fund was created and the pension was payable to the employees upon their resignation/retirement or to the family members in the event of death of the employee. The assessee got the fresh actuarial valuation. The incremental difference was debited to the P&L A/c. The CIT(A) allowed the provision and held

that there can no question of disallowance u/s 43B of the Act.

We have gone through the impugned order and in the light of the fact that there was no contribution of any pension to any fund and the assessee has only provided on the basis of the actuarial valuation, the additional liability. The question of disallowance of same u/s 43B is clearly mi-spelt. We, therefore, agree with the reasoning given by the CIT(A) and decline to interfere.”

17. In this view of the situation, respectfully following the aforementioned order of the Tribunal, we decline to interfere in the findings of Id. CIT(A) on this issue and this ground of revenue is dismissed.”

7. In this view of the situation, after hearing both the parties, respectfully following the aforementioned order dtd. 12.06.09, we decide this issue in favour of assessee and dismiss the ground of the revenue.

8. Ground no. 3 of revenue's appeal is as under: -

3. “The Id. CIT(A) erred in law and on facts in holding that the contributions of Rs. 35 lacs and Rs. 6 lacs made to RCHS and RSF are of revenue nature when they were merely donations u/s 80G of the I.T. Act.”

9. This issue is discussed by AO in para 6. A sum of Rs. 35 lakh was paid to Ranbaxy Community Health Care Society and Rs. 6 lakh was paid to Ranbaxy Science Foundation for which the deduction u/s 80G was claimed in the return but by way of note at Sl. No. 4 forming part of the return, the said payments were claimed as revenue

expenditure. The AO did not accept such claim and allowed deduction u/s 80G. Ld. CIT(A) has allowed the same and revenue is aggrieved.

10. It was claimed that similar contributions made by the assessee were also held allowable by the Tribunal in earlier years. Reference, inter-alia was made to the aforementioned decision of Tribunal dtd. 12.06.09 in which similar contribution was made by the assessee of Rs. 20 lakh to Ranbaxy Community Health Care Society and it was held that the same was allowable u/s 37(1) of the Act. The issue has been discussed in paras 28 to 32 of the said order which for the sake of convenience are being reproduced below: -

28. Ground No. 8: -

During the year under consideration, the assessee contributed a sum of Rs. 20 lacs to Ranbaxy Community Health Care Society, on which deduction @ 50% of contribution was claimed u/s 80G of the Act. However, in note no. 4 100% deduction was claimed as revenue expenditure as according to assessee this deduction was allowable either u/s 35 or u/s 37(1) of the Act. Ld. CIT(A) has allowed such claim of the assessee. The revenue is aggrieved hence in appeal.

29. Ld. DR relied on the order of AO.

30. On the other hand, it was pointed out by Id. AR that this issue is covered in favour of assessee by the aforementioned decision of Tribunal dated 31.03.08 in respect of A.Y. 97-98 and this issue of Tribunal is discussed in para 6 to 6.16.

31. We have carefully considered the rival submissions in the light of material placed before us. The contribution of Rs. 50 lacs was made by the assessee to Ranbaxy Communcisty Health Care Society in A.Y. 97-98 and the said issue was considered by the Tribunal in para 6 to 6.16. After discussing the issue in detail, it was held that such contribution was an expenditure incurred by the assessee to bring goodwill to the assessee or for the purpose of promoting its business and is an allowable expenditure. The conclusion of Tribunal is in para 6.9 to 6.16 and the same is reproduced below for the sake of convenience: -

“6.9. On going through the preamble of RSF, available at pages 71 to 77 of the paper book, it is noticed that the foundation was incorporated in 1985 by Ranbaxy Laboratories Limited with the implicit mission of giving impetus to research activity and help in reviving India's great scientific tradition. The foundation instituted Ranbaxy Research Awards to recognize original outstanding contributions in the field of Medical and pharmaceutical sciences. Later, Ranbaxy Research Foundation was reconstituted as a separate society and registered under the Societies Act in May 1994. The list of Governing Council of Ranbaxy Science Foundation contains various names. The name of Dr. Parvinder Singh, Chairman & Managing Director, Ranbaxy Laboratories Ltd., New Delhi figures on top in the list of members. The memorandum of Association of Ranbaxy Community Halthcare Society, available at page 86 to 93 of the paper book, lays down the objects of the Society. The main objects are to provide primary comprehensive health care and to initiate and provide necessary assistance to any programme for rural development. One of the objects of the Society is to establish community based scientific research for control of various endemic diseases. The another object is to organize,

convene, conduct, hold and participate in conferences, seminars, workshops and exhibitions etc. On going through the material placed in the paper book and on examining various activities carried out by the Society and the Foundation, it is found that these activities are closely linked with the business activities of the assessee company. It appears that the assessee company is the main source behind these two institutions, which have been created for promotion of its own business and for the larger objective to promote research work and for updating the knowledge in the field of medical science. The assessee company, therefore, is directly concerned with the activities of these two organizations, although the organizations have a separate entity of their own. It is true that these 4 organizations have been exempted u/s 11 or u/s 80G but the fact remains that the assessee company is incurring heavy expenditure in maintaining these institutions for its own business purposes and is being directly benefited by their activities. The provisions made by the assessee company cannot be said merely for carrying out philanthropic objects, rather the contributions are directly aimed for promoting business of the assessee company and also for advertising its name because various conferences and workshops are conducted under the banner of the Ranbaxy Laboratories Pvt. Ltd. Thus, on examination of the nexus between the activities of the Foundation and Society and those of the assessee company, following facts emerge:

- (1) The assessee has the main hands in establishing and promoting the Society and Foundation.*
- (2) It runs Foundation and Society by giving contributions.*
- (3) It takes business benefit out of the activities of the Society and the Foundation.*

- (4) *The name of the assessee company is published and advertised through the conferences and workshops conducted by these organizations.*
- (5) *The lectures delivered and articles published in eminent journals by the Society and the Foundation go directly to benefit the research activity of the assessee company, in updating its know-how etc.*
- (6) *The assessee being engaged in the business of pharmaceutical products, contributions are made for promoting the business interest of the assessee.*
- (7) *The activities of the Society and the Foundation are carried out under the banner of the assessee society i.e. 'Ranbaxy', which results in earning of goodwill to the assessee company.*
- (8) *The expenditure is also incurred as part of larger social as well as business responsibility of the assessee company, which is engaged in manufacture of drugs and in sale thereof.*

6.10. The issue regarding contribution to various foundations and societies has been considered by various courts in relation to allowability of deduction of expenditure. In the case of Sri Venkata Sataynarayana Rice Mill Contractors Co. Vs. CIT 223 ITR 101 (SC), the assessee claimed deduction of the amount paid by it to Andhra Pradesh Welfare Fund as a business expenditure u/s 37(1) of the I.T. Act. The case of the assessee was that it was carrying on business of exporting rice from the state of Andhra Pradesh and for this purpose, a permit was granted by the Collector who gave permits only if payment was made to a welfare fund. The ITO disallowed the deduction by holding that the payment was neither mandatory nor statutory, but was only discretionary. The CIT(A) also disallowed the claim of the assessee. The Special Bench of the ITAT came to the conclusion that though there was no

compulsion on the assessee to make contribution but still the contribution was made in pursuance of a scheme which was evolved by the Rice Millers' Association in consultation with the District Collector and therefore the deduction was allowable u/s 37(1) of the Act. The Tribunal also held that such contribution could not be held to be opposed to public policy. The department filed reference application u/s 256. The Hon'ble High Court answered the questions referred in favour of the assessee. The Hon'ble High Court, however, disallowed deduction by coming to the conclusion that the payment of this amount was opposed to public policy. The Hon'ble Supreme Court, after making reference to various decisions, allowed the claim of the assessee by observing as under:

"From the aforesaid discussion it follows that any contribution made by an assessee to a public welfare fund which is directly connected or related with the carrying on of the assessee's business or which results in benefit to the assessee's business has to be regarded as an allowable deduction under section 37(1) of the Act. Such a donation, whether voluntary or at the instance of the authorities concerned, when made to a Chief Minister's Drought Relief Fund or a District Welfare Fund established by the District Collector or any other fund for the benefit of the public and with a view to secure benefit to the assessee's business, cannot be regarded as payment opposed to public policy. It is not as if the payment in the present case had been made as an illegal gratification. There is no law which prohibits the making of such a donation. The mere fact that making of a donation for a charitable or public cause or in public interest results in the Government giving patronage or benefit can be no ground to deny the assessee a deduction of that amount under section 37(1) of the Act when such payment had been made for the purpose of the assessee's business."

6.11. *In the case of Mysore Kirloskar Ltd. Vs. CIT 166 ITR 836(Kar.), the assessee started school for education of children of its employees for attracting technocrat and men of managerial skill to its industry. Donations made by it to the school were claimed as business expenditure u/s 37(1). The Tribunal disallowed the deduction on the ground that the expenditure was not incurred wholly and exclusively for the purpose of the business of the assessee. The Hon'ble High Court did not approve the approach of the ITAT and allowed the claim of the assessee by observing as under:*

"Held,(i) that the words "for the purpose of the business" used in section 37(1) should not be limited to the meaning of "earning profit alone". Business expediency or commercial expediency might require providing facilities like schools, hospitals, etc., for the employees or their children or for the children of the e-employees. Any expenditure laid out or expended for their benefit, if it satisfied the other requirements, must be allowed as a deduction under section 37(1) of the Act. The fact that somebody other than the assessee was also benefited or incidentally took advantage of the provision made, should not come in the way of the expenditure being allowed as a deduction under section 37(1) of the Act. Nevertheless, it is an expenditure allowable as deduction under the Act.

(ii) That the word "expenditure" primarily denoted the idea of spending or paying out or away. It was something which was gone irretrievably, but should not be in respect of an unascertained liability of the future. It must be an actual liability in praesenti, as opposed to a contingent liability of the future.

(iii) That the reasons given by the Tribunal for rejecting the claim of the assessee were not sound. Moreover, since the Tribunal had not recorded a finding as to whether the donation made by the assessee to the trust could be considered as “expenditure”, the matter had to be remanded to the Tribunal for decision afresh in the light of the observations contained in the judgment.”

6.12. In the case of Mahindra and Mahindra Vs. CIT 261 ITR 501, the Hon’ble Bombay High Court allowed deduction of expenditure incurred by the assessee in making initial contribution to the approved superannuation fund to an educational society, which was running school for children of employees, as business expenditure u/s 37. It was held that the amount should be allowed as business expenditure because it was incurred predominantly for staff welfare.

6.13. The decision in the case of Mahindra & Mahindra(supra) was further followed by the Hon’ble Bombay High Court in the case of CIT Vs. Mahindra & Mahindra Ltd. 284 ITR 679.

6.14. In the case of CIT Vs. Chemicals and Plastics India Ltd. 292 ITR 115 (Mad.), the assessee claimed deduction in relation to contribution to the Madras Chamber of Commerce as business expenditure. The assessee was one of the members of the Chamber. It was contended that the maintenance of the trade chamber was for the furtherance of the business interest of the constituents of the chamber, hence the payment had to be treated as a business expenditure. The AO rejected this claim but the Tribunal allowed the claim of the assessee. The Hon’ble High Court approved the view taken by the ITAT by holding that since activities of the chamber of commerce were closely linked with the welfare of corporate entities who were its members and whose interests were taken care of by the Chamber of

Commerce, irrespective of whether the expense incurred was compulsory or otherwise, it was deductible.

6.15. The issue was also considered by Bombay Bench of the ITT in the case of Hindustan Petroleum Corpn. Ltd. Vs. DCIT 96 ITD 186. In that case the assessee company incurred certain expenditure towards implementation of 20 point programme. This expenditure was incurred to improve the conditions of SC/ST in pursuance of national policies and to help acceleration of all round development of villages by providing assistance to educated unemployed to earn a living. The AO held that since the item of expenditure was an item of donation, it could not be allowed. The CIT(A) upheld the order of the AO by holding that the expenditure incurred did not have any direct connection with the business of the assessee because the beneficiaries of the expenditure were not employees of the assessee nor the assessee had any statutory obligation to incur such obligation. On second appeal, by making reference to various authorities including the decision of Hon'ble Karnataka High Court in the case of Mysore Kirloskar Ltd. Vs. CIT (supra), the ITAT upheld the claim of the assessee. We consider it proper to reproduce the relevant findings of the ITAT which are as under:

"It had been held by the Karnataka High Court in the case of Mysore Kirloskar Ltd. Vs. CIT [1987] 166 ITR 836/30 Taxman 467, that while the basic requirements for invoking sections 37(1) and 80G are quite different, but nonetheless the two sections are not mutually exclusive. Thus, there are overlapping areas between the donations given by the assessee and the business expenditure incurred by the assessee. In other words, there can be certain amounts, though in the nature of donations, and nonetheless, these amounts may be deductible under section 37(1) as well. Therefore, merely because the expenditure in question was in the nature of donation, or, as per the words of the

Commissioner (Appeals), 'prompted by altruistic motives', it did not cease to be an expenditure deductible under section 37(1). In the case of Mysore Kirloskar Ltd. (supra), the High Court had observed that even if the contribution by the assessee is in the form of donations, but if it could be termed as expenditure of the category falling in section 37(1), then the right of the assessee to claim the whole of it as a deduction under section 37(1) cannot be declined. What is material in this context is whether the expenditure in question was necessitated by business considerations or not. Once it is found that the expenditure was dictated by commercial expediencies, the deduction under section 37(1) cannot be declined [para 7]

In the instant case, the expenditure on 20-Point Programme was incurred in view of specific directions of the Government of India. It could not but be the business interest of the assessee to abide by the directions of the Government of India which also owned the assessee. Further, the expenditure incurred for the implementation of 20-Point programme was solely for the welfare of the oppressed classes of society, for which even the Constitution of India sanctions positive discrimination and for contribution to all around development of villages, which has always been the central theme of Government's development initiatives. An expenditure of such a nature cannot but be, 'a concrete expression of care and concern for the society at large and an expenditure to discharge the responsibilities of a 'good corporate citizen which brings goodwill of with the regulatory agencies and society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill' [para 9].

Just because the expenditure was voluntary in nature and was not forced on the assessee by a statutory obligation, it could not cease to be a business expenditure. Therefore, the authorities below indeed erred in law in declining deduction of the expenditure incurred on 20 Point programme which was, beyond dispute or controversy, at the instance of the Government and was to discharge the assessee's obligations towards society as a responsible corporate citizen.[para 10].

6.16. In view of the above authorities, it is clear that even if there is no statutory obligation on the part of the assessee to incur the expenditure, but the expenditure has been incurred to bring good-will to the assessee or is for the purpose of promoting its business then such expenditure is to be allowed as business expenditure. In view of the above, we uphold the claim of the assessee and allow ground no. 5.”

32. In this view of the situation, as the above mentioned order of the Tribunal is regarding contribution to the same institution, respectfully following the above order we find no infirmity in the order of CIT(A) vide which it has been held that assessee is entitled to claim the said contribution as an expenditure. We decline to interfere and this ground of revenue is dismissed.

11. As the facts are same, after hearing both the parties, respectfully following the aforementioned order, we dismiss this ground.

12. Ground no. 4 of revenue's appeal read as under: -

4. *“The Id. CIT(A) erred in law and on facts in directing to re-compute deduction u/s 80HHC*

- i) *after excluding excise duty of Rs. 68,97,56,248/- from total turnover, and*
- ii) *after including foreign exchange gain of Rs. 78,13,22,338/- in the export turnover.”*

13. So as it relates to exclusion of excise duty of Rs. 68,97,56,248/- from the total turnover for computation of deduction u/s 80HHC, it was the contention of Id. AR that this issue is covered in favour of assessee by the decision of Hon'ble Supreme Court in the case of CIT Vs. Laxmi Machine Works 290 ITR 667(SC). It was also pointed out that Tribunal also following the aforementioned decision has upheld the order of CIT(A) in earlier years. Reference, inter-alia was made to the aforementioned decision of Tribunal dtd. 12.06.09 for AY 02-03 wherein this issue was decided vide paras 22 to 27 of the paper book.

14. For this component, after hearing both the parties, we find that Id. CIT(A) has rightly held that excise duty could not be added to the total turnover for the purpose of computation of deduction u/s 80HHC. This has so been held by Hon'ble Supreme Court in the aforementioned case of CIT Vs. Laxmi Machine Works (supra) that excise duty and sales tax are not includible in “total turnover” in the formula contained in sec. 80HHC(3).

15. Now coming to another component, which is a sum of Rs. 78,13,22,338/-, which is in the shape of foreign exchange gain on realization/discharge of sale/purchase. According to AO such gain has a direct nexus with the assessee's turnover and therefore, he has

increased the turnover by way of foreign exchange. This issue is discussed by Id. CIT(A) in para 5. He following the decision of Tribunal in the case of Smt. Sujata Grover Vs. DCIT 74 TTJ 347 held that foreign exchange gain shall not only form part of the total turnover but same would also form part of export turnover and thus, Id. CIT(A) has directed the AO to compute the deduction u/s 80HHC accordingly. It is against these observations of Id. CIT(A) the revenue is aggrieved, hence in appeal.

16. Ld. DR relied on the order of AO as against that Id. AR of the assessee has relied upon the following the decisions to contend order of CIT(A) on this issue should be upheld. -

- *Priyanka Gems Vs. ACIT 94 TTJ 557 (Ahd.)*
- *Sharp Credit Ltd. Vs. DCIT-ITAT, Delhi –83 TTJ 1056/4 SOT 880 (2005)*
- *Smt. Sujata Grover Vs. DCIT-ITAT, Delhi-74 TTJ 347*
- *ACIT Vs. Ashwini Fisheries Ltd. (2001) 72 TTJ (Mad.) 261*

17. We have carefully considered the rival submissions in the light of material placed before us. We have heard both the parties and their contentions have carefully been considered. The case law relied upon by Id. AR supports the case of assessee. It is seen that recently Mumbai Bench in the case of Shah Originals Vs. ACIT 112 TTJ (Mumb.) 754 has held that gain on foreign exchange rate fluctuation under EEFC account is to be included in profits of export business for the purpose of deduction u/s 80HHC. While holding so the decision of Delhi Tribunal in the case of Smt. Sujata Grover (supra) Vs. DCIT was followed. It is

seen that in the case of Smt. Sujata Grover Vs. DCIT it was held that foreign exchange fluctuation gain pertaining to exports affected in earlier years cannot be said to be “any other receipts of a similar nature” in terms of Explanation (baa) to sec. 80HHC for calculating “profits of the business”. Accordingly, we hold that Id. CIT(A) has rightly held that foreign exchange gain is part of total turnover as well as part of export turnover. We decline to interfere this ground of revenue is dismissed.

18. Ground no. 5 of the revenue's appeal read as under: -

5. “The Id. CIT(A) erred in law and on facts in deleting addition of Rs. 1,88,06,077/- made on account of demand raised by NPAA and without appreciating that the demand did not crystallize as the matter was subjudice, and pertained to a period not under consideration.”

19. The assessee is engaged in the business of manufacture and sale of pharmaceutical products. Some of the products manufactured by the assessee are governed by the Drug Price Control Order 1995 (DPCO) issued by the Central Government u/s 3 of Essential Commodities Act. National Pharmaceuticals Pricing Authority (NPPA) issued noticed to the assessee for over pricing of drug known as norfloxacin as according to the said department the assessee had over charged total amount of Rs. 1,88,06,077/-. A writ petition was filed challenging the fixation of price which was initially allowed. A special leave petition was filed against the order of High Court by the Government of India and order of Hon'ble High Court was reversed. Thus, the demands stood revived and assessee was directed to deposit a sum of Rs. 94,03,039/- being 50% of the entire demand against which

the assessee furnished bank guarantee of the said amount on 11.11.03. Vide note no. 8, which formed integral part of the statement of assessable income for A.Y. 04-05, the entire sum of Rs. 1,88,06,077/- was claimed to be allowable deduction u/s 37 read with sec. 28/29 of the Act. The AO did not accept such claim on the ground that assessee had filed writ petition in the Mumbai High Court and, therefore, expenditure were not incurred during the relevant financial year. Ld. CIT(A) has accepted the claim of the assessee following his order for A.Y. 03-04.

20. Ld. DR after narrating the facts relied upon the order of AO. He pleaded that liability was disputed by the assessee and hence, the same could not be claimed as deduction.

21. As against that it is the claim of the assessee that NPPA is being a statutory demand which was revived by the order of Hon'ble Supreme court passed on 1st August, 2003 falling within the relevant financial year. Mere filing of writ petition does not debar the assessee to claim the same. For this purpose reliance is placed on following decisions: -

- *CIT Vs. Bharat Carbon and Ribbon Manufacturing Co. P. Ltd.:* 239 ITR 505 (SC)
- *CIT Vs. Kalinga Tubes Ltd.:* 218 ITR 164 (SC)
- *Kedarnath Jute Manufacturing Co. Ltd. Vs. CIT :* 82 ITR 363 (SC)
- *CIT Vs. Jamnadass Ram Krishan:* 250 ITR 155 (Del.)
- *CIT Vs. Ganga Glass Works (P) Ltd.:* 276 ITR 394 (All.)
- *CIT Vs. Apollo Textiles Agency:* 142 Taxman 396 (All.)
- *CIT Central Circle 1 Vs. Century Enka Ltd.:* 130 ITR 267 (Cal.)

22. It is also claimed that for A.Y. 03-04 the order of CIT(A) vide which similar addition was deleted has been upheld by the Tribunal vide its order dtd. 12.06.09 in ITA No. 3871/D/04 and reference is made to paras 48 to 53 on pages 44 to 48. Thus, it was pleaded that addition deserves to be deleted.

23. On the other hand, Id. DR relied on the order of AO and pleaded that addition should be upheld.

24. We have carefully considered the rival submissions in the light of material placed before us. Similar issue was decided by the Tribunal wherein the similar claim of the assessee for a sum of Rs. 2,59,76,070/- was disallowed and on the similar arguments the Tribunal has upheld the order of CIT(A) vide which such addition for AY 03-04 was deleted. Reference can be made to para 51 to 53 of the said order which is reproduced below: -

51. "We have carefully considered the rival submissions in the light of material placed before us. It is not disputed that demand was raised against the assessee by NPPA. The said demand was also enforced but assessee approached Hon'ble High Court and part payment was also made during the year to fulfill the directions of Hon'ble High Court. Thus, the demand had not only arisen during the year but it was a quantified and crystallized demand enforceable in law. Thus, it was a statutory liability which was to be paid by the assessee within the stipulated time saved if otherwise directed by higher Court. Disputing the payment of liability by way of an appeal does not make

disentitle the assessee to claim that demand as an expenditure as what is sought by the assessee who is disputing the liability is a relief from higher court. Suppose if higher court give some relief to the assessee and deduction is already granted to the assessee in a particular year, sec. 41(1) is there to take care of the relief got by the assessee by way of an appellate order. Thus, there is no loss to the revenue when deduction with respect to statutory liability which has arisen and crystallized during the year is allowed.

52. *In view of above discussion, we find no infirmity in the order of CIT(A) vide which he has held that such liability being arisen and crystallized during the year should have been allowed to the assessee. The case law relied upon by Id. CIT(A) and by Id. AR duly support such claim.*

53. *In view of our discussion, this ground of revenue is dismissed.”*

25. Respectfully following the aforementioned order in which one of us (J.M. is a party), we dismiss this ground of the revenue.

26. Ground no. 6 of revenue's appeal read as under: -

6. *“The Id. CIT(A) erred in law and on facts in deleting addition of Rs. 46,94,01,495/- made on account of demand raised by NPPA and without appreciating that the demand did not crystallize as the matter was subjudice and pertained to a period not under consideration.”*

27. It was claimed that in principle the ground is same as ground no. 5 of the revenue. A demand of Rs. 46,94,01,495/- was raised by NPPA in respect of siprofloxacin and similarly the assessee had deposited 50% of the demand in pursuance to the same order of Hon'ble Supreme

Court dtd. 1st August, 2003 and as the facts as stated in ground no. 5 are similar, considering our decision given in ground no. 5, we decide this ground in favour of assessee after hearing both the parties. This ground of revenue is dismissed.

28. Ground no. 7 of revenue's appeal read as under: -

7. "The Id. CIT(A) erred in law and on facts in directing to allow weighted deduction u/s 35(2AB) on the cost of computer, motor-car and other assets provided to R&D employees."

29. The assessee company carries on in house research and development activities related to its business at the facilities approved by the department of science and industrial research u/s 35(2AB) of I.T. Act, 1961 (Act). In computing total income capital expenditure on assets provided to the employees working at such approved research and development facilities aggregating to Rs. 1,60,90,091/- were only considered for 100% deduction u/s 35(2)(ia) of the Act. Vide note no. 11 forming integral part of the return income, the assessee claim weighted deduction on such assets allowable at the rate of 50% of expenditure incurred, thereby claiming additional deduction by 50%. It was claimed that similar issue was considered by the Tribunal in earlier years also and reference was made to the decisions of Tribunal in assessee's own case for AY 99-00, 01-02, 02-03 & 03-04. The latest decision of Tribunal in this regard is for AY 03-04 which is aforementioned decision dtd. 12.06.09 and this issue is discussed in para 33 to 36. Reference is made to A.Y. 99-00 the relevant portion of which is read as under: -

36. *"The next dispute in assessee's appeal for A.Y. 99-00 relates to the claim of weighted deduction u/s 35(2AB) on the capital expenditure incurred by the assessee in respect of in-house R&D Center which is duly approved by the Govt. of India.*

The assessee is a pharmaceutical company and resgularly carries on in-house and research and development activity relating to its business at the facilities approved by the department of Science & Industrial Research, Govt. of India, u/s 35(2AB) of the Act. In the computation of the total income, the assessee claimed the entire expenditure, both of revenue and capital, as a deduction under the aforesaid section. The department accepted and allowed it as business expenditure. The assessee has relied on the following authorities in support of its claim for weighted deduction in respect of these expenses:

- 1. CIT Vs. SmithKline & French (Ltd.) 77 Taxman 153 (kar.) (SLP*
- 2. Vijay Seeds Pvt. Ltd. Vs. ACIT 79 ITD 233 (Pune)*
- 3. Claris Life Sciences Ltd. Vs. ACIT 112 ITD 307 (Ahd.)*
- 4. SmithKline Beecham Consumer Healthcare Ltd. (formerly known as HMM Ltd.) Vs. IAC 1089/Chd./87 (A.Y. 1983-84).*

The Id. DR, on the other hand, vehemently supported the impugned order.

We have gone through the records. The expenditure has been incurred by the assessee on vehicles, computers and other assets, provided to its employees working at the approved research facilities and directly engaged in the research and development activities. The AO, it may be pointed out, did not accept the claim of the assessee in respect of weighted deduction, without any discussion in his order. There is no dispute that the

expenditure in question was incurred by the assessee in respect of research & development facilities which have been duly approved by the prescribed authority u/s 35(2AB). Therefore, the assessee is clearly entitled for weighted deduction. It was also reported to us at the time of hearing that the CIT(A) directed weighted deduction u/s 35(2AB) while dealing with the claim of the assessee for A.Y. 01-02 in respect of similar expenses. There is no reason to deny the same in the year in question. Accordingly, we direct the AO to allow the weighted deduction in respect of these expenses u/s 35(2AB) of the Act.”

30. Respectfully following the same, we find no merit in this ground and this ground is dismissed.

31. Ground No.2 of assessee's appeal reads as under:-

“That on law, facts and in the circumstances of the case, the Ld. CIT (A) has erred in upholding the disallowance of Rs.4,16,84,678/- on account of demand raised by Department of Chemicals & Petrochemicals, Ministry of Chemical and Fertilizers, Government of India.”

32. Ground No.3 in assessee's appeal relates to disallowance of Rs.4,16,84,678/- on account of demand raised by the Department of Chemicals and Petro Chemicals, M/o of Chemicals and Fertilizers, Government of India. The assessee utilized its own production of bulk drugs in the manufacture of its formulation. According to Government, namely, M/o Chemicals and Fertilizers, the then prevailing market price of said drug utilized in manufacturing the formulations was lower than the price allowed to the assessee in computation of formulation pricing and,

therefore, the difference was to be deposited in the Drug Prices Equalization Account (DPEA). The Government of India had referred the matter of price fixation to three-member committee viz., Drug Price Liability Review Committee (DPLRC) which was headed by a Delhi High Court Judge. DPLRC had submitted its report to the Government on 14th January, 2004 quantifying the liability of the assessee company under the provisions of Drug Price Control Order, 1979 (DPCO) at Rs.4,16,84,678 which consisted as under:-

DPEA Liability	-	Rs.2,89,09,672/-
Interest	-	Rs.1,27,74,996/-
Total	-	Rs.4,16,84,668/-

33. In pursuance of DPLRC report, the Government of India, M/o Chemicals and Fertilizers, Deptt. of Chemicals and Petro Chemicals had passed an order No.11(8)/2003/DPEA dated 15th April, 2004 determining the drug prices equalization account liability of the assessee company at the above mentioned amount of Rs.4,16,84,678/-. The company was asked to deposit the said amount after giving adjustment of the earlier deposits. The assessee company filed a Writ Petition No.9699-9700 of 2004 against the said order of the government before the Hon'ble High Court of Delhi. A sum of Rs.50 lac was deposited with National Pharmaceutical Pricing Authority (NPPA) against the said demand of 7th June, 2004. It was claimed by the assessee that entire sum of Rs.4,16,84,678/- is allowable as the demand was crystalised by the report submitted by DPLRC to the Government of India on 14th January, 2004 which falls during the Financial Year under consideration. The

assessee submitted that the said amount was payable in pursuance of powers conferred to the Government by para 17(1)(a)(i) of Drug (Price Control) order 1979 and the said amount was payable to NPPA and, therefore, the entire amount is allowable as a deduction under section 37 read with Section 28 and 29 of IT Act, 1961. According to the Assessing Officer such claim of the assessee is not admissible for the reason that the assessee had disputed the liability to pay and the matter is subjudice with Hon'ble High Court of Delhi. It is further mentioned by the Assessing Officer that the assessee has challenged in the Writ Petition for the fixation of price of drug by NPPA. Thus, the assessee has totally denied its liability to pay the demand raised by NPPA claiming the actions of NPPA as arbitrary and illegal and has sought quashing of the show cause notice. Since the assessee has denied the liability there could not be any question of law being crystalised during the Assessment Year. The liability is only contingent in nature and Hon'ble Supreme Court in its order had remitted the matter back to the Hon'ble High Court for their consideration which means that the issue of liability to pay the demand raised by the authority is not decided and is contingent on the facts and interpretations of High Courts. The claim of the assessee was disallowed. The claim has been upheld by Ld. CIT (A) as per discussion found at pages 16 to 18 of the impugned order. The submissions made before the Assessing Officer were reiterated and reference was made to the decision of Hon'ble Supreme Court in the case of Bharat Earth Movers 245 ITR 428 to contend that such liability was allowable. It was submitted that liability of the assessee arose when

report was submitted by DPLRC to the Government of India on 14th January, 2004 quantifying the liability of the assessee company under the provisions of drug price control order, 1979 in pursuance to which the formal demand order was passed and, thus, the same is allowable. It was submitted that raising of dispute by the assessee by filing Writ Petition for quantifying or deduction of the said amount would not be a ground for holding that liability to pay the Excise Duty as per demand notice was not incurred. It was submitted that entries in the books of account are not conclusive. Reference was made to the decision of Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. vs. CIT 82 ITR 363 to contend that liability did not cease to be a liability because the assessee had taken proceedings before higher authorities for getting it reduced or wiped out so long as the contention of the assessee did not prevail. It was submitted that failure of the assessee to debit the liability in its books of account also does not debar the assessee from claiming the same as deduction. Reference was made to the decision of Hon'ble Supreme Court in the case of CIT vs. Kalinga Tubes Ltd. 218 ITR 164 in which it was held that appeal against Sales Tax assessment would not affect accrual of the liability.

34. Ld. CIT (A), considering these submissions has observed that keeping in view the decision of Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT (supra) the liability was allowable, but the same had arisen on 15th April, 2004 when the demand notice was issued quantifying the liability. He did not agree with the contention of the assessee that liability was crystalised on 14th January, 2004 when the

report was submitted by DPLRC to the Government of India. He observed that according to well settled law each year is a self-contained accounting period and liability arose after close of the year could not be taken into consideration for computing the income/profits for a particular year for levy of income-tax. The taxable profits have to be determined on commercial principles after deducting the expenses pertaining to the previous year or such liability which has been created or crystalised during the previous year. In the case of assessee the said liability had arisen only after the close of the accounting year by virtue of demand order dated 15th April, 2004 which admittedly falls outside the previous year ending on 31st March, 2004. Thus, he held that the Assessing Officer was right in disallowing the same and the ground of the assessee was dismissed. The arguments submitted before the Assessing Officer and Ld. CIT (A) were reiterated before us.

35. Reliance was placed on the Hon'ble High Court in the case of Addl. CIT vs. Rattan Chand Kapoor 149 ITR 1 to contend that the entire demand was deductible when it was demanded by the statutory authority. It was submitted that demand was raised during the year under consideration vide DPLRC report submitted to the Government on 14th January, 2004 and, thus, the entire amount was deductible. It was submitted that according to the decision of Hon'ble Bombay High Court in the case of CIT vs. Nagri Mills Company Ltd. 33 ITR 681 (Bom) when rate of tax for the years is same and deduction is obviously a permissible deduction Department will not be right in raising dispute as to the year in which the deduction should be allowed and it was observed that one

should have thought that the Department would not fritter away its energies in fighting matters of such kind. Thus, it was pleaded that the liability having been crystalised during the year under consideration and demand being raised by the report of DPLRC the entire amount was allowable during the year under consideration and Ld. CIT (A) was wrong in holding that for the year under consideration this liability could not be allowed. In the alternative, it was submitted that liability should be held to be allowable in the year when it is happened to arise.

36. It was submitted that the Tribunal is empowered to give a finding or direction in relation to an Assessment Year other than Assessment Year under appeal provided these are necessary for the disposal of the appeal and are not merely incidental and, therefore, a finding or direction in respect of any claim for expenditure relating to other Assessment Year can be given by the Tribunal subject of time limitation as contained in the scheme of the Act. Reference was made to the decision of the Tribunal in the case of Perfect Equipment vs. DCIT 85 ITD 50 (Ahd). Further reference was made to the decision of Hon'ble High Court of Delhi in the case of CIT vs. Shri Ram Pistons & Rings Ltd. (supra) to contend that liability incurred by the assessee following mercantile system of accounting under an incentive scheme to pay cash to its dealer on sales made by them which was initially valid upto 30th April, 1981, but was extended upto 30th June, 1981 was allowable in Assessment Year 1983-84 as the liability was crystalised on 30th June, 1981 when the assessee came to know of the actual sales made by the dealer. For the proposition that the Tribunal is empowered to give direction for other

years. Ld. AR also referred to the decision of Special Bench in the case of Joint Commissioner of Income-tax vs. Mukand Ltd. 291 ITR (AT) 249 (Mum) (SB).

37. It may be mentioned here that Ld. AR was requested to furnish the said report of DPLRC dated 14th January, 2004 so as to bring out the necessary facts on record. The said copy was furnished by Ld. AR. In the said report it has been mentioned that in pursuance of Government of India's notification dated 31st October, 1994, the case of the assessee was referred to DPLRC by the Department vide their letter dated 12th December, 1995 for necessary action. Accordingly, the DPLRC submitted a detailed report dated 25th May, 2001. Subsequently, vide Notification No.12(2)/99-DPEA dated 10th October, 2002 it was directed by the Government to quantify the liabilities of all the companies. Accordingly, liability of Ranbaxy is being quantified vide this report. It is further mentioned in para 2 that quantification has been done on the basis of certified data submitted to DPLRC by the petitioners relating to consumption and sale of bulk drug and data on retention price, pool price and allied price for the same drug supplied by the Department. Detailed computation are annexed as Annexure-A to C. Further, the liability period has been mentioned as April, 1979 onwards and upto 25th August, 1987. It has further been mentioned that the assessee company did not furnish any details of consumption of Ampicillin Trihydrate to the Department despite several letters and it was claimed by the assessee that they did not procure the drug from outside sources and it was internal manufacture to meet the requirement of

production of formulations and sales in the internal as well as export markets. The details of consumption of bulk drug Ampicillin Trihydrate were submitted to DPLRC by the assessee in the audited statements enclosed with the letter dated 20th February, 2001 containing the data related to period from January, 1979 to December, 1987. Taking note from those documents and keeping in view the trend of captive consumption of the bulk drug for the subsequent years consumption for the year 1979 was taken at 12130.1 Kgs. It was further noticed that for the year 1987 the combined figure was claimed for domestic sales and captive consumption of bulk drug. In the similar manner, the figure adopted for 1987 was 41328 Kgs. It is further observed that since the liability period is from April, 1979 upto 25th August, 1987, pro rata adjustments were given based on related number of days and figures and captive consumption and domestic sales and, in this manner, the liability of the assessee was computed at Rs.2,89,09,672/-. While considering the interest liability the assessee was required by the Department on 24th May, 1984 to furnish certain relevant details and such requirement was followed by several reminders. The requested details were not furnished. In view of the long delay, the Department worked out the company's liability *suo motu* at Rs.4.88 crores only by 21st April, 1995 and the same was communicated to them. Taking into account such liability the interest liability was taken from 21st April, 1995 which is the date of notice of the liability by the Department to the company and it was upto 31st December, 2003. It has been mentioned that as per guidelines of the Department simple interest @ 15% per

annum is recoverable irrespective of the fact that whether the order was made before or after the insertion of the Essential Commodities (Amendment) Act, 1984. It has also been mentioned that as per guidelines the manufacturer is liable to pay interest from the date of original notice of demand i.e., date of tentative quantification even if later on Government revises the liability figure downwards or upwards. In this manner, total interest liability as on 31st December, 2003 was worked out at Rs.1,27,74,996/- and it is mentioned that interest figure is required to be updated taking into account the date of actual payment by the Petitioner. In the summary, while calculating the amount due from the assessee as on 31st December, 2003, the DPEA liability before interest is mentioned at Rs.2,89,09,672/- which is enumerated in Annexure B. Interest upto 31st December, 2003 has been worked out at Rs.1,27,74,996/- as represented in Annexure –C and the total amount payable by the assessee has been worked out being aggregate of these two amounts at Rs.4,16,84,678/-. Reducing from the said demand amount deposited by the assessee being a sum of Rs.2,44,19,500/- further amount due was calculated at Rs.1,72,65,178/-. These are the brief contents of the report of DPLRC dated 14th January, 2004.

38. It was vehemently pleaded by Ld. AR that the said report dated 14th January, 2004 is outcome of the order of Hon'ble High Court dated 28th October, 1998 passed in Civil Writ Petition 106/97 and CM No.233/97 by the assessee wherein the assessee had challenged the liability created by DPLRC in the year 1995. Extract of the said order of Hon'ble High Court is as under:-

*"28.10.1998 Present : Mr. V.P. Singh, Senior Advocate,
with Mr. Anil Bhatnagar, Ms Kum
Kum Sen and Ms Sushmita
Banerjee for the petitioner.*

Mr. H.S. Phoolak with Mr. Lallan Chaudhary for the
respondent – UOI.

CWP No.106/97 and C.M. No.233/97

It is agreed between the parties that the petitioner will file representation before the Drugs Prices Liabilities Review Committee with regard to the questions raised in the writ petition. After hearing the parties the D.P.L.R.C will determine the liability, if any, of the petitioner. Learned counsel for the respondents states that the respondents shall not recover the balance amount alleged to be due from the petitioner in case the petitioner succeeds before the DPLRC. He further states that in case the petitioner succeeds in the matter the respondent shall refund the amount due to the petitioner in accordance with the orders of the DPLRC with interest at the rate of 15% per annum from the date of deposit till the date of refund.

I have no manner of doubt that the DPLRC will decide the matter expeditiously preferably within three months from the date of filing of the representation.

The writ petition is disposed of in the above terms.

*Sd/-
Anil Dev Singh,
Judge.*

October 28, 1998."

39. It was submitted that the day on which DPLRC submitted its report, the liability of the assessee was crystallized. It was a statutory liability, hence, should be allowed in the year under consideration itself.

It was submitted that by the above mentioned order of the Hon'ble High Court the earlier demand was set aside and the only demand subsisting was crystallized through the above report of DPLRC.

40. On the other hand, relying on the order of the Assessing Officer and Ld. CIT (A) it was pleaded by Ld. DR that liability did not pertain to the year under consideration as DPLRC merely submitted the report. The demand was not legally enforceable until the demand notice for enforcing the demand is issued. That event happened in the next year and, therefore, Ld. CIT (A) was right in upholding the addition and his order should be upheld.

41 We have carefully considered the rival submissions in the light of the material placed on record. The brief contents of the report have already been stated in earlier part of this order. The liability of the assessee, if any, pertains to period April, 1979 and upto 25th August, 1987. The demand has been raised against the assessee as per DPCO 1979. Paragraph 4 of DPCO provide that Government may fix a retention price for such bulk drug as well as common sale price for such bulk drug. "Retention Price" has been defined in para 2 (4) to mean a price in relation to bulk drugs fixed under paragraphs 4 and 7 for individual manufacturers and importers from distributors of such bulk drugs. Paragraph 7 provides that Government may fix by Notification a retention price for individual manufacturers of such bulk drug and also pooled this for sale of such bulk drugs. Paragraph 7 sub-clause (2) provides that where a manufacturer of formulation utilized in his

formulation in bulk drugs either from his own production or procured by him from any other source, the price of such bulk drug being lower than the price allowed to him in the price of such formulation, then the Government may require such manufacturer to deposit the said amount as may be determined with Drug Price Equalization Account referred to in paragraph 17, the excess amount as determined by the Government. Vide notice dated 13th December, 1995 received by assessee from Drug Price Liability Review Committee (DPLRC) it was informed that assessee had a liability of Rs.4,88,38,997/- in respect of bulk drug Ampicillin Trihydrate under the provisions of DPCO. Consequently, vide notice dated 25th July, 1996 a demand of Rs.12,37,26,920/- was raised which included aforementioned sum of Rs.4,88,38,997/- and interest of Rs.7,48,87,923/- (these facts are stated by the assessee in the Writ Petition filed by the assessee before Hon'ble High Court of Delhi in 2004 a copy of which is placed at pages 118 to 158 of the paper book). The assessee filed Writ Petition against the said demand in 1997 which was decided by the order of Hon'ble High Court of Delhi dated 28th October, 1998 which has been reproduced earlier in this order. It is in pursuance of that order, DPLRC has submitted its report which is dated 14th January, 2004, the contents of which have been discussed in detail in the earlier part of this order. The demand was computed at Rs.4,16,84,678/-. On the basis of such computation of DPLRC, the Government of India through Ministry of Chemicals and Fertilizers had informed the assessee vide letters dated 15th April, 2004 to deposit the amount of Rs.1,72,64,178/- within a period of 30 days as amount of

Rs.2,44,19,500/- was already deposited. It may be mentioned here that it has been stated by the assessee in the Writ Petition filed before Hon'ble High Court of Delhi in 2004 that in the above letter received from Government of India dated 15th April, 2004, there was mention of a report of DPLRC dated 14th January, 2004, but the same was not annexed with the letter dated 15th April, 2004 (para 25 of Writ Petition can be referred being page 135 and 136 of the paper book). In para 26 it has been mentioned that as with the letter dated 15th April, 2004 report dated 14th January, 2004 was not accompanied, a letter was written by the assessee company dated 5th May, 2004 in response to which the report dated 14th January, 2004 was supplied vide letter dated 7th May, 2004. Copy of order of Government of India, Ministry of Chemicals & Fertilizers, Deptt. of Chemicals & Petrochemicals dated 15th April, 2004 is placed at pages 116 and 117 of the paper book. This letter is issued by Government of India through M/o Chemicals and Fertilizers. It will be relevant to reproduce the contents of this letter:-

“

*New Delhi, the 15th
April, 2004.*

To

*M/s Ranbaxy Laboratories Ltd.,
19, Nehru Place,
New Delhi – 110 019.*

Subject: DPEA Liability of M/s Ranbaxy Laboratories Ltd. in respect of the bulk drug Ampicillin Trihydrate under the Para 7(2) of the Drugs (Price Control) Order 1979 read with Para 17(1)(a)(i) of the said order.

Sir,

Whereas your company had been manufacturing bulk drug Ampicillin Trihydrate and utilized the same for formulations purposes during 1.4.79 to 25.8.87 i.e., during the operation of DPCO, 1979 and;

Whereas your company utilize in its formulations bulk drug Ampicillin Trihydrate from its own production, the price of said bulk drug being lower than the price allowed in the price of formulations to your company; and

Whereas your company was communicated DPEA liability of Rs.4,88,38,997.00 under para 7(2) of the Drugs (Prices Control) Order 1979 vide letter no.6 (28-S)/86-D-11/388, 389 dated 21.4.1995; and

Whereas in pursuance of directions of the Hon'ble Supreme Court of India in the case of Union of India vs. M/s Cynamid India Ltd. (AIR 1987 SC 1802) upholding the right of the Government to fix price of essential drugs and formulations, your company has been given due opportunity, by the Government to be heard by the Three Member Committee namely Drug Prices Liability Review Committee (DPLRC) constituted in 1994 head by a Delhi High Court Judge (since retired) and;

Whereas the DPLRC based on the written submissions/representations made and arguments advanced by your company during the hearing has submitted its Report to the Government on 14.1.2004 quantifying the liability of your company under the provisions of DPCO, 1979 as Rs.4,16,84,678/- (Rs. Four crores sixteen lakhs eighty four thousand six hundred and seventy eight) DPEA liability Rs.2,89,09,672.00 + interest Rs.1,27,74,996.00 (upto 31.12.2003).

Whereas your company has already deposited an amount of Rs.2,44,19,500.00 with the Government and after adjusting this amount of Rs.2,44,19,500.00 deposited by your company, the balance liability is Rs.1,72,65,178.00 and ;

Whereas the Govt. of India, after due consideration, has accepted the report of DPLRC.

Now, therefore, in exercise of the powers conferred by Para 17(1)(a)(i) of Drugs (Prices Control) Order, 1979, read with para 14 of the Drugs (Prices Control) Order, 1987 and para 12 of the Drugs (Prices control) Order, 1995, it is hereby ordered that an amount of Rs.1,72,65,178.00 (Rs. One crore seventy two lakhs sixty five thousand one hundred and seventy eight only) be deposited by your company into the Drugs Prices Equalisation Account (DPEA) by sending a demand draft in favour of the Pay and Accounts Office, Depart of Chemicals & Petrochemicals, 3rd Floor, 'B' Wing, Janpath Bhavan, New Delhi within 30 days from the date of receipt of this letter, failing which further action by invoking relevant provisions of the law will be initiated.

Kindly acknowledge receipt of this letter.”

42. From the above order of Government of India dated 15th April, 2004 it can be seen that nowhere in the said letter it has been mentioned that the demand has been recalculated on the basis of above mentioned order of Hon'ble High Court of Delhi dated 28th October, 1998. Further, the said report of DPLRC dated 14th January, 2004 also has no reference to the order of Hon'ble High Court of Delhi dated 28.09.88. In this view of the situation it is difficult to accept the submissions of Ld. AR that the demand was re-quantified by DPLRC vide its report dated 14th January, 2004 in pursuance of order of the Hon'ble High Court dated 28th

October, 1998. Rather, the abovementioned letter of Government of India dated 15th April, 2004 clearly states that Hon'ble Supreme Court in the case of Union of India vs. M/s Cynamid India Ltd has upheld the right of the Government to fix price of essential drugs formulation. It is further mentioned in the said letter, which is in the shape of demand notice, that Government of India after due consideration has accepted the report of DPLRC. Thus, it can be observed that though the report was submitted by DPLRC on 14th January, 2004, but the same was yet to be accepted by the Government of India and the time taken between the submission of the report and creating the demand also suggests that such procedure was to be adopted. Thus, when demand was re-quantified by DPLRC, that event cannot be said to have created any enforceable demand against the assessee. The demand has to be considered to have accrued only vide letter dated 15th April, 2004 which does not fall within the financial year under consideration. No doubt, that the liability in the present case is a statutory liability. According to the decision of Hon'ble Supreme Court in the case of CIT vs. Kalinga Tubes Ltd. 218 ITR 164 (SC), which has been relied upon by Ld. AR while submitting the arguments in respect of ground No.5 of the Departmental appeal, when the assessee is following mercantile system of accounting the liability to pay the tax will arise at the stage of obligation to pay. This being statutory liability pertains to the period of April, 1979 till 25th August, 1987. The demand with regard to which was first raised vide notice dated 25th July, 1996 for a consolidated amount of Rs.12,37,26,920/- which included interest of Rs.7,48,87, 923/-.

Subsequently, in the financial year ending on 31st March, 1997 again notice was issued to the assessee on 8th January, 1997 insisting the payment of the said demand and it was stated that failing to make such payment, arrest warrant is to be issued under section 69 and proceedings would be initiated under Punjab Land Revenue Act, 1887. Thus, the first year when obligation to pay such statutory liability had arisen was Assessment Year 1997-98. The assessee did not claim such statutory liability in that year and contested that liability by way of filing Writ Petition before Hon'ble High Court. Again, demand was recalculated vide DPLRC report dated 14th January, 2004 wherein after considering the deposits of Rs.2,44,19,500/- net amount found due as on 31st December, 2003 was computed at Rs.1,72,65,178/-. This net recomputed liability was communicated by the Government of India to the assessee vide letter dated 15th April, 2004 after due consideration of the report of DPLRC. Thus, liability to pay statutory liability finally had arisen on 15th April, 2004 when such demand was intimated to the assessee by way of legally enforceable demand. The only event which happened during the year under consideration is the submission of report by DPLRC to the Government of India and such event cannot be held to be an event creating an obligation on the assessee to pay the required amount. Therefore, we are of the considered opinion that during the year under consideration, the assessee is not entitled to claim such liability simply on the basis of DPLRC report dated 14th January, 2004. Here reference can be made to the decision of Hon'ble High Court in the case of Addl. Commissioner of Income Tax vs. Rattan Chand

Kapoor (supra) wherein it has been held that a liability which is settled before the assessment is over can be appropriated to the relevant year but if the liability is raised, say, ten years later, then it cannot be appropriated to the year and could be claimed at a later date or not at all. It is further observed that the mercantile system of accounting visualises entries being made in the account books and claims being made in respect thereof when the income has either accrued or is receivable and similarly an expense has to be entered when the obligation arises or the liability to pay arises. The entries are made in anticipation of actual payments. It was further observed that in such a case the entry could be made only when the demand was raised and not earlier. It was found in the said case that the liabilities pertaining to earlier years, namely, Assessment Years 1953-54 to 1958-59, the demand was raised in 1964 and there being no occasion or possibilities of filing the revised return, even if the liability arises at the time of each sale, but where the assessee took the view that no liability arises and he could not even quantify the liability, it was difficult to see how an entry could be made earlier. Thus, it was observed that in any case the matter for the assessee was to be dealt with in its own way. It was observed that it was open to the assessee to make the entry either on the basis of accrual of liability or on the basis of demand raised by the Department. Keeping in view the fact that assessee was maintaining account on hybrid accountancy method and also taking note that the determination of liability was not earlier than 1964, the sales-tax demand was held to be deductible in Assessment Year 1964-65 when liability to pay the

obligation had arisen. Keeping in view that principle also the expenses on account of demand raised through letter of Government of India dated 15th April, 2004 is not allowable in the year under consideration as in the present year liability to pay has not arisen.

43. It has been the contention of Ld. AR that if a liability is considered to be allowable, then it is a wasteful exercise to consider the question that in which year it should be allowed. For raising such contention reliance has been placed on the decision of Hon'ble High Court in the case of CIT vs. Nagri Mill company Ltd. (supra) which decision has been further followed by Hon'ble High Court of Delhi in the case of Addl. Commissioner of Income-tax vs. Shri Ram Pistons and Rings 220 CTR (Del) 404. It is observed that Ld. AR was required to explain that whether tax payable by the assessee in the present year and Assessment Year 2005-06 is same. It was informed by Ld. AR that in the next year the taxes has been paid on the basis of MAT Provision. Thus, it can be seen that the tax liability of the assessee so as it relates to rate of income-tax is not same of the present year when it is compared with the Assessment Year 2005-06. The above decisions have been rendered on the basis that the tax rates for both the years were same and it has been observed by Hon'ble High Court of Bombay in their decision that the question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different. Here the rate of tax chargeable in both the years is different as assessee's income is not chargeable on the same pattern as it is chargeable for the year under

consideration where the net income has been shown by the assessee in its return at a sum of Rs. 330,64,05,014/- as compared to Assessment Year 2005-06 where the assessee is assessable on the basis of computed book profits, therefore, this argument of the assessee cannot be accepted for the present year.

44. In view of the above discussion, we find no infirmity in the order of the Ld. CIT (A) that for the year under consideration such liability cannot be claimed as an expenditure. So as it relates to the request of the Ld. AR for appropriate direction of the Tribunal for allowance of such claim in appropriate year, it is observed that assessee as per law can claim such deduction in the year when such deduction can legally be claimed and assessee can utilize its right accordingly in accordance with law by filing the appropriate claim with the revenue authorities.

45. A reference can also be made to the Full Bench decision of Hon'ble Supreme Court in the case of ITO vs. Murlidhar Bhagwan Das (1964) 52 ITR 335 (SC) wherein the Hon'ble Supreme Court after referring to the decision of Apex Court in the case of Kikabhai Premchand v. CIT (1953) 24 ITR 506 it has been held that for the income-tax purposes, each year is a self-contained accounting period and we can only take into consideration income, profits and gains made in that year and are not concerned with potential profits which may be made in another year any more than we are with losses which may occur in the future, it was observed that the decision should be confined to the

year of assessment. It will be relevant to reproduce the following observations from the said decision:-

“ Indeed. This court in Kikabhai Premchand v. CIT [1953] 24 ITR 506, 508; [1954] SCR 219, 222 accepted this legal position when it said :

"for income-tax purposes, each year is a self-contained accounting period and we can only take into consideration income, profits and gains made in that year and are not concerned with potential profits which may be made in another year any more than we are with losses which may occur in the future."

*the decision of an Income-tax Officer given in a particular year does not operate as res judicata in the matter of assessment of the subsequent years. **The jurisdiction of the tribunals in the hierarchy created by the Act is no higher than that of the Income-tax Officer. It is also confined to the year of assessment.** Under section 27 of the Act, the Income-tax Officer cancels the best judgment assessments made by him if the assessee shows that he was prevented by sufficient cause from making the return under section 22 of the Act. Section 31 prescribes the mode of disposal by an Appellate Assistant Commissioner of an appeal preferred to him : the appeal before him is certainly confined to an assessment year ; after hearing the appeal, he can either confirm, reduce, enhance or annul the assessment; he can set aside the assessment and direct the Income-tax Officer to make a fresh assessment. The various sub-sections of that section describe in detail the orders or directions that can be made or issued by him in respect of*

various matters ; but no power is conferred on him to make an order or issue directions in respect of an assessment of a year which was not the subject-matter of the appeal. It may, therefore, be held, on a construction of the provisions of section 31, that the jurisdiction of the Appellate Assistant Commissioner is strictly confined to the assessment orders of a particular year under appeal. Section 33, inter alia, deals with an appeal to the Tribunal against the order of the Appellate Assistant Commissioner under section 31 ; and section 33B confers power of revision on the Commissioner against an order of the Income-tax Officer. **The jurisdiction of the Appellate Tribunal or the revisional tribunal, as the provisions indicate, is confined only to the subject-matter which is under appeal or revision.** The jurisdiction of the High Court or the Supreme Court under section 66 or section 66B, as the case may be, is far more limited and it is confined only to the questions referred to them. **Obviously the questions referred by the Tribunal cannot exceed its jurisdiction. It is, therefore, manifest that assessment or reassessment made under the said sections or pursuant to the orders or directions made thereunder must necessarily relate to the assessment of the year under review, revision or appeal, as the case may be.** It is important to remember that the proviso does not confer any fresh power upon the Income-tax Officer to make assessments in respect of escaped incomes without any time-limit. It only lifts the ban of limitation in respect of certain assessments made under certain provisions of the Act and the lifting of the ban cannot be so construed as to increase the jurisdiction of the tribunals under the relevant section. The lifting of the ban was only to give effect to the orders that may be made by the appellate, revisional or reviewing tribunal within the scope of its jurisdiction. If the intention was to remove the period of limitation in respect of any

assessment against any person, the proviso would not have been added as a proviso to sub-section (3) of section 34, which deals with completion of an assessment, but would have been added to sub-section (1) thereof.

(emphasis ours)

46. In view of the above discussion, we cannot accept the contention of Ld. AR that this Tribunal should give direction to the Department to allow the impugned expenditure in any appropriate year. This ground of the assessee is dismissed in the aforementioned manner.

47. In the result, appeal filed by the revenue is partly allowed and appeal filed by the Assessee is dismissed.

Order pronounced in the Open Court on 24.07.09.

(G.E. VEERABHADRAPPA)
VICE PRESIDENT

(I.P. BANSAL)
JUDICIAL MEMBER

Dated:

dk

;;/Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

DEPUTY REGISTRAR