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IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI J BENCH, MUMBAI

Before Shri Pramod Kumar (Accountant Member)
and Shri Vijay Pal Rao (Judicial Member)

ITA No. 7476/Mum/07 and 3201/Mum/10
Assessment year: 2003-04

Star India Limited ***……………………...Appellant***
Star House, Off Dr E Moses Road
Mahalaxmi, Mumbai 400 011
[PAN : AAACN1335Q]

Vs.

Additional Commissioner of Income Tax
Range 11(1), Mumbai ***……………………Respondent***

ITA No. 3315/Mum/2010
Assessment year 2003-04

Additional Commissioner of Income Tax
Range 11(1), Mumbai ***……………………...Appellant***

Vs.

Star India Limited ***……………………Respondent***
Star House, Off Dr E Moses Road
Mahalaxmi, Mumbai 400 011
[PAN : AAACN1335Q]

Appearances:

Porus F Kaka, along with Divesh Chawla, *for the assessee*
Kusum Ingle, *for the Assessing Officer*

Date of hearing : November 14, 2011
Date of pronouncement : November 30, 2011

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O R D E R

Per Pramod Kumar:

1. These three pertain to the same assessee. While in one appeal, the assessee has challenged correctness of the revision order dated 19th October 2007, passed by the learned CIT under section 263 r.w.s. 143(3) of the Income Tax Act, 1961 for the assessment year 2003-04, the remaining two appeals are cross appeals against CIT(A)'s appellate order in the matter of assessment framed to give effect to learned CIT's revision order. As these appeals involve somewhat interconnected issues arising out of common set of facts and as these three appeals were heard together, all the three appeals are being disposed of by way of this consolidated order.

2. We will first take up assessee's appeal against the revision order i.e. ITA No 7476/Mum/07.

3. While the assessee has raised as many as eleven grounds of appeal, the main grievances pressed before us pertain to CIT(A)'s initiating the revision proceedings (i) in respect of set off of loss from eligible profits of business for the purpose of computing deduction under section 80 HHF of the Act, and thus denying deduction under section 80 HHF amounting to Rs 9,51,70,949 ; (ii) in respect of deductibility of expenses incurred in foreign currency from export turnover and total turnover, for the purpose of computing deduction under section 80 HHF of the Act; and (iii) in respect of allowability of bad debts as a deduction.

3. To adjudicate on this appeal, only a few material facts need to be

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taken note of. The assessee is mainly engaged in the business of producing and procuring television programs and films/ film rights for supplying the same to Star Group Limited and other overseas media companies. The assessee also carries on channel subscription business and acts as marketing agents for, and renders services to, Star Group Limited and other overseas media companies. Its assessment under section 143(3) of the Income Tax Act, 1961 was finalized by the Assessing Officer on 24th March 2006. However, on subsequently perusing the assessment records, the Commissioner was of the view that the assessment so framed was erroneous, insofar as it was prejudicial to the interest of the revenue, *inter alia* in respect of allowing deduction under section 80 HHF before allowing set off of losses carried forward from earlier years. The view of the Commissioner was that, in view of Hon'ble Supreme Court's decision in the case of IPCA Laboratories Ltd Vs. DCIT (266 ITR 521), which was available to the Assessing Officer at the point of time when assessment was finalized, as it was delivered before the date the assessment was finalized. While computing the deduction under section 80 HHF, the Assessing Officer had not taken into account the brought forward business loss. The view of the Commissioner was that this action was incorrect and contrary to the law laid down by Hon'ble Supreme Court in IPCA's case (supra), and that the Assessing Officer ought to have reduced the brought forward business losses before computing the deduction under section 80 HHF. In the course of the proceedings before the Commissioner, it was explained by the assessee that IPCA decision is not applicable on the facts of this case inasmuch as the loss is not incurred in the business in the same year in some other activity, and is a brought forward business loss. It was explained that in respect of brought forward business losses, in view of Hon'ble Bombay High Court's judgment in the case of CIT Vs Shirke Construction Equipment Ltd (246 ITR 429) held field at the relevant point of time,

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and, for this reason, action of the Assessing Officer could not be said to be erroneous. It was also pointed out that an assessment framed on the basis of legally binding decision of Hon'ble jurisdictional High Court could not be said to be erroneous. None of these submissions, however, impressed the Commissioner. He noted that Hon'ble Supreme Court had reversed the Shrike Equipment decision *(supra)* in the case reported as CIT Vs Shrike Construction Equipment Ltd (291 ITR 380) and held that deduction under section 80 HHC has to be allowed only after set off of earlier year losses. Learned Commissioner observed that ".. the decision of IPCA Laboratories, which again is a Supreme Court decision, when the AO passed the original assessment order, and, therefore, the order passed by the AO is both erroneous and prejudicial to the interest of the revenue on the issue of brought forward loss/ set off of loss before allowing the deduction under section 80 HHC". Learned Commissioner further noted that in IPCA's case "Supreme Court has held that deduction under section 80 HHC is to be allowed after set off of brought forward loss of earlier years", and also referred to Hon'ble MP High Court's decision in the case of Vippy Solvex Products Ltd Vs CIT (273 ITR 107). With these observations, learned Commissioner rejected submissions of the assessee on this issue.

4. The next point which learned Commissioner picked up for revision proceedings, and which is being challenged before us now, was raised by the Commissioner during the course of the revision proceedings. Vide letter dated 24th September, 2007, learned Commissioner issued the show cause notice requiring the assessee to show cause as to why the assessment not be subjected to revision under section 263 on this point as well, and stated as follows:

> **In addition to the points covered by this office letter of even no. dated 18.7.2006, the assessment order is considered**

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erroneous insofar as it is prejudicial to the interest of the revenue on the following point also:

> **Perusal of the records indicate that while allowing deduction under section 80 HHF of the Income Tax Act, the expenses incurred in foreign currency for providing technical services outside India have not been reduced from export turnover and total turnover. The assessee has claimed expenses incurred in foreign currency in respect of advertisement/ licence fees, travel etc in foreign currency. In view of the specific definition of total turnover and export turnover given in Explanation below Section 80 HHF(6) – Explanations (c) and (j). The amount of expenditure incurred in foreign currency on this account is Rs 18,01,10,000.**

Since the Assessing Officer has allowed deduction under section 80 HHF in excess by Rs 22,04,96,097 due to ignoring such expenses in foreign currency, the order passed by the AO on this issue is also considered erroneous insofar as it is prejudicial to the interest of the revenue.

5. In response to this show cause notice, it was *inter alia* submitted by the assessee that no income has been earned by providing technical services such as dubbing, post production, technical consultancy services etc, and that it has not incurred any expenditure in foreign currency for providing technical services outside India. It was also submitted that none of the expenditure incurred in foreign currency are expenditure in providing technical services outside India. It was also pointed out that "out of total expenditure in foreign currency of Rs 1,800,110,000 as stated in your notice, majority of the expenditure incurred is in relation to licence fees paid by SIPL (i.e. the assessee) amounting to Rs 1,762,898,000, which is relation to distribution business and not export business". Learned Commissioner's attention was also invited to note 19(d) of the financial statements to support the submission of the assessee. While learned Commissioner did not reject these submissions, he did not deal with the submissions either.

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He simply proceeded to exercise revision powers in respect of this issue either and held as follows:

> **On the last issue of expenditure in the foreign currency amounting to Rs 18,01,10,000 also, the AO will examine the applicability of provisions of Explanation c and j below Section 80 HHF(6) of the Income Tax Act. The export turnover and total turnover will be worked out after making adjustments as provided in Explanations c and j referred to above. Deduction under section 80 HHF will be worked out accordingly after allowing the opportunity to the assessee.**

6. The third issue on which the assessment order was subjected to revision and which is challenged in this appeal is in respect of bad debts. The short reason for which the assessment was subjected to revision proceedings in respect of the Assessing Officer having allowed the bad debts was that "the assessee's claim of bad debt of Rs 13.82 crores was allowed without making any enquiry into the circumstances leading to the write off" and that "the bad debt in respect of foreign exchange to be received was allowed without proper inquiries". However, learned representatives fairly agree that in view of Hon'ble Supreme Court in the case of TRF Ltd Vs CIT (323 ITR 397), it is no longer necessary for the assessee to establish that the debt has actually become unrecoverable and as long as the assessee has actually written off the debt in the books of accounts, and upon fulfillment of other necessary preconditions – which are not subject matter of dispute before us anyway, the assessee is entitled to deduction in respect of the same. In this view of the matter, and for the reasons we will set out in a short while, it is not really necessary to go any deeper into the details so far as this issue is concerned. There were as well certain other issues in the impugned revision order, but learned counsel for the assessee has not disputed the same so far as challenge to revision proceedings is concerned. We, therefore, need not deal with the same.

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Aggrieved, inter alia, by the revision proceedings in respect of the above issues, the assessee is in appeal before us.

7. As far as issue in appeal, i.e. (i) in respect of set off of loss from eligible profits of business for the purpose of computing deduction under section 80 HHF of the Act, is concerned, the main plank of learned counsel's argument is that what is to be considered, in the context of examining legality of revision proceedings, is the law prevailing as on the time of passing the revision order, and that, the law in view of the legal position as it stood at that point of time, it was a possible view of the matter that the deduction of Section 80 HHF is to be computed before allowing the set off of brought forward losses. Learned counsel points out that the judgment dated 24th July 2000 passed by Hon'ble jurisdictional High Court in the case of CIT Vs Shrike Construction Equipment Ltd (246 ITR 429) held field till 17th May 2007 when it was reversed by Hon'ble Supreme Court by judgment of the said date in the case of CIT Vs Shirke Construction Equipment Ltd (291 ITR 380). Learned counsel the points out that while Hon'ble Supreme Court's decision in the case of IPCA Laboratories Ltd Vs. DCIT (266 ITR 521), was indeed delivered on a date earlier than the date on which assessment under section 143(3) was finalized on 24th March 2006, i.e. on 11th March 2004, but then there are decisions of the coordinate benches of this Tribunal to the effect that even after the IPCA decision (supra), Shrike Equipment decision (supra) by Hon'ble Bombay High Court held the field. Our attention is invited to this Tribunal's decision in the case of JCIT Vs Infocon International Ltd (2 SOT 444). In other words, even after IPCA decision, the view taken by the Assessing Officer, on this issue, could not be said to not a possible view of the matter. Not only this was a possible view of the matter, it was a view held by this Tribunal. It is submitted that the Assessing Officer cannot be said to be in error in taking the same view as was taken by a coordinate bench of this Tribunal, and the view taken by the

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coordinate bench of this Tribunal was that even post IPCA decision by Supreme Court, Shirke Equipment decision of Hon'ble Bombay High Court held good in law. Learned counsel then fairly accepts that Shrike Equipment decision by Hon'ble Bombay High Court has since been disapproved by Hon'ble Supreme Court on 17th May 2007, but then this event took place much after the assessment order was framed. He, however, hastens to add that what is to be seen for the purpose of exercise of powers under section 263 is the law as it stood at the point of time when assessment was framed. In support of this legal plea, learned counsel relies upon the judgment of Hon'ble Supreme Court in the case of CIT Vs G M Stainless Steel Pvt Ltd (263 ITR 255) wherein it is held that ".....Given the fact that the decision of the jurisdictional High Court was operative at the material time, the AO could not be said to have erred in law" and that "...The fact that this Court had subsequently reversed the decision of the High Court would not justify the CIT in treating the AO's decision as erroneous. The power of the CIT under s. 263 of the IT Act must be exercised on the basis of the material that was available to him when he exercised the power...". Learned counsel also took us through related judgments and tried to canvass the view that the issue before Hon'ble Bombay High Court in Shirke's case was altogether different and IPCA decision did not touch upon the same. In support of this distinction, he heavily relied upon the observations made by a coordinate bench in Infocon's case (supra), and made elaborate arguments on the actual issues which came up for consideration in these cases and how they were materially different. He, however, fairly accepted that this aspect of the matter is somewhat academic because the judgment of Hon'ble Supreme Court is binding anyway. Learned counsel then referred to Hon'ble Supreme Court's judgment in the case of CIT Vs Max India Ltd (295 ITR 282) in support of the proposition that when two views on a legal issue are possible, and the Assessing Officer one of these views, Commissioner

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cannot substitute such views of the AO by his views. Learned counsel then contends that in any case the Assessing Officer was under an obligation to follow the law laid down by Hon'ble jurisdictional High Court, and he cannot, therefore, said to be in error when he does so. He, however, did not elaborate this point further because he felt deserves to succeed on other grounds only. Learned counsel submits that without going into the correctness of views, as long as the view held by the Assessing Officer can be said to be a possible view of the matter, and it should be held to be a possible view of the matter for the short reason that Tribunal too held this view in Infocon's case (supra), revision powers cannot be exercised in respect of the same. Learned counsel then points out that in the present case, the assessee was all along a profit making company and the losses brought forward are not assessee's losses but that of another company as a result of demerger exercise. These losses, according to the learned counsel, can never form part of the computation of income, but have been taken into account in view of the provisions of Section 72. A reference is once again made to Infcon decision in support of the contention that not all types of brought forward losses are to be considered for the purpose of granting deduction. On the strength of these arguments, learned counsel urges to quash the impugned order on this point. Learned Departmental Representative, on the other hand, submits that IPCA decision was admittedly available to the Assessing Officer, and as a plain reading of the IPCA decision would show, post the stand so taken by Hon'ble Supreme Court, Shrike Equipment decision by Hon'ble Bombay High Court did not hold good law. It is also submitted than that all that Shirke Supreme Court decision does is to hold that in view of IPCA decision by Hon'ble Supreme Court, Shrike Equipment decision by Hon'ble Bombay High Court is no longer good law. In such a situation, according to the learned Departmental Representative, it could not be said that Bombay High Court's judgment in Shirke's case continued to

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be good law post IPCA decision. Learned counsel then submitted that the present revision order was not a frivolous revision order as evident from the fact that the assessee himself has conceded on some of the points. Once it is found that the revision order is sustainable in law at least on some grounds, we should not quash the same in respect of other parts also. It is a case in which revision was validly done, and we need not restrict the scope of the revision order. It is furthersubmitted that in any event all that the Commissioner has said that the Assessing Officer should examine the matter in accordance with the law, and there cannot be any infirmity in directions to follow the law of the land. Learned Departmental Representative then took us through the revision order passed by the Commissioner and vehemently relied upon the same. In his brief rejoinder, learned counsel reiterated his contentions. He also submitted that, unlike in the case of reassessment proceedings under section 147, in which once assessment is held to be validly reopened on any ground, the Assessing Officer can pick up any of the issues even though the reassessment may not have been reopened on that point, the revision proceedings are issue specific.

8. In our considered view, for the purpose of examining validity of revision proceedings, what we really need to examine is the legal position prevailing as on the time when revision powers are exercised by the Commissioner. In the case of Max India Ltd (supra), Hon'ble Supreme Court has said that, **"……we have to take into account the position of law as it stood at the point of time when CIT passed the order dated 5th March 1997 in purported exercise of his powers under section 263 of the Act…….".** In the case of GM Stainless Steel, on which so much of reliance is placed, the legal position as at the point of time when assessment order was finalized and as at the point of time when revision order was passed was materially the same, and the legal developments took place in between the time when revision

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order was passed and matter travelled in appeal before Their Lordships. However, so far as the crucial point of time on which legal position was to be examined, it is clear that the relevant point of time is when the Commissioner exercised the power and not when the Assessing Officer passed the order, as Their Lordships have observed that "…….**The power of the CIT under s. 263 of the IT Act must be exercised on the basis of the material that was available to him when he exercised the power. At that time, there was no dispute that the issue whether the power subsidy should be treated as capital receipt had been concluded against the Revenue. The satisfaction of the CIT, therefore, was based on no material either legal or factual which would have given him the jurisdiction to take action under s. 263 of the IT Act……….".** It is also specifically provided in the statute itself that the expression 'records' , for the purpose of Section 263, is deemed to include "all records under any proceedings under this Act available at the time of examination by the Commissioner". It is, therefore, futile to suggest that legal decisions available at the point of time when Commissioner is examining the matter for exercise of powers under section 163 can be ignored. As regards learned counsel's reliance on this Tribunal's order in the case of Gajendra Kumar T Agarwal Vs Income Tax Officer (11 ITR Trib 640), that once again was a situation in which there was no material difference in the legal position between the points of time when assessment was finalized and the revision order was passed. As a matter of fact, the issue was decided, on merits, in favour of the assessee, and then it was held that, notwithstanding the decision on merits in favour of the assessee, it could not have been a fit case for revision proceedings for the reason that the view adopted by the Assessing Officer was at least a possible view of the matter. The sentence relied upon by the learned counsel, on these facts, was on altogether different facts, and, in any event, it was no more than an

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obiter which has at best a persuasive value. However, the wordings of Hon'ble Supreme Court are clear and admit no ambiguity, and the law so laid down by Hon'ble Supreme Court binds us under Article 141 of the Constitution of India. What is to be seen is the legal position prevailing as on the point of time when revision order is passed. It is, therefore, wholly immaterial as to what was the legal position as at the point of time when the assessment was framed – particularly when there is significant difference in the legal position between the point of time when assessment is framed and when it is revised. A lot of emphasis has then been placed on the suggestion that the view adopted by the Assessing Officer was a possible view of the matter, as the same view was taken by a coordinate bench of this Tribunal in Infocon's case (supra), and, as an analysis of the related decisions, would unambiguously show. We see no merits in this plea either. In the case of Max India (supra), Hon'ble Supreme Court has observed as follows:

> **"At this stage, we may clarify that in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the Revenue" under s. 263 has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, when the ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or <u>where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the ITO is unsustainable in law</u>"**
>
> (Emphasis by underlining supplied by us)

9. The view taken by the Assessing Officer, therefore, need not only be a possible view of the matter but also a view which is not "unsustainable in law". A view which is clearly unsustainable in law, in our humble understanding, will include a view which is contrary to the

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law laid down by Hon'ble Supreme Court. Therefore, the view taken by the Assessing Officer, even though it may be a possible view of the matter at the point of time when the assessment order was passed, cannot be said to be a view which Commissioner cannot disturb in the revision proceedings.

10. As regards learned counsel's rather plea that the Assessing Officer was bound to follow Hon'ble Jurisdictional High Court judgment as long as the said judgment is not specifically overruled, we find no merits in this plea either. Learned counsel did not elaborate upon his arguments and we donot, therefore, have the benefit of his analysis of legal position. As we understand, an Assessing Officer is part of revenue machinery, even though his job involves exercise of certain quasi-judicial powers, and decisions of the appellate forums, in general, do not prevent him from raising demands on those issues, unless these decisions are accepted by the revenue. No doubt, the Assessing Officer should follow the judicial decisions as long as he can do so without sacrificing the legitimate interests of the revenue, but we cannot visualize a situation in which his not raising demands on those issues will not affect the interests of revenue. In case the Assessing Officer does not raise the demands on the issues which have been decided in favour of the assessee by jurisdictional High Court, even though the income tax department is in appeal against the same, interests of the revenue will be clearly prejudiced and remain unprotected. The orders of the higher judicial authorities bind the Assessing Officer to the extent that he is required to loyally execute the directions contained in these orders, but then these orders donot prevent him from taking the same stand, as he took in those assessments, in other cases; quite to the contrary, his abandoning that stand in other cases could prejudice his stand in the matters which are in appeal before the higher appellate authorities. The only difference these judicial

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decisions, which are decided in favour of the assessee and are in challenge before higher authorities, make to the other cases is that, in terms of the guidelines issued by the Central Board of Direct Taxes, the Assessing Officer may not collect demands on those issues till these demands are examined by the appellant authorities, which are, being part of the judicial machinery, anyway bound by those decisions. In terms of the CBDT guidelines, stay is normally granted by the Assessing Officer "(a) if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or Court earlier; or (b) if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or (c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment". It will, however, be stretching the things too far to suggest that the Assessing Officer should not raise demands on those issues at all, because it will result in a situation that in the assessments so framed, tax revenues in respect of an issue on which revenue is vigorously justifying its earlier stand before the higher judicial authorities, will be lost forever. The position of the Assessing Officer is very different from a judicial or even quasi-judicial authority; he is not only an adjudicator but also an investigator and it is also his duty to defend legitimate interests of the revenue. Merely because another demand raised on the same issue has not been approved by a judicial body, as long as the decision of that judicial body is in challenge before the higher judicial authority, does not prevent the Assessing Officer from raising demands on those issues in the cases of other taxpayers, even though, as we have seen earlier, he may not be in a position to enforce recovery of tax demands in such cases. We, therefore, see no merits in this plea of the assessee either.

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11. In view of the reasons set out above, we uphold the action of the Commissioner in invoking his revision powers in respect of in respect of set off of loss from eligible profits of business for the purpose of computing deduction under section 80 HHF of the Act.

12. As regards the second issue, i.e. in respect of deductibility of expenses incurred in foreign currency from export turnover and total turnover, for the purpose of computing deduction under section 80 HHF of the Act, we find that it has been a categorical stand of the assessee before the CIT that no income has been earned by providing technical services such as dubbing, post production, technical consultancy services etc, and that the assessee has not incurred any expenditure in foreign currency for providing technical services outside India. There are no findings by the CIT to the effect that any of these contentions are incorrect. We have also noted that while it was pointed out to the CIT that "out of total expenditure in foreign currency of Rs 1,800,110,000 as stated in your notice, majority of the expenditure incurred is in relation to licence fees paid by SIPL (i.e. the assessee) amounting to Rs 1,762,898,000, which is relation to distribution business and not export business", learned Commissioner has not disputed this aspect of the matter either. However, he proceeds to simply brush aside all these contentions and proceeds to direct the Assessing Officer to **"examine the applicability of provisions of Explanation c and j below Section 80 HHF(6) of the Income Tax Act".** While revision proceedings were initiated on the ground that these expenses were inadmissible, the revision order has been passed with a direction to the Assessing Officer that he should look into the applicability of Explanation c and j below Section 80 HHF, without there being any finding that these provisions can be invoked at all. Learned Commissioner has not rejected the submissions of the

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assessee on merits and yet allowed the Assessing Officer to reexamine the matter. The show cause notice is issued on the ground that the computation is incorrect but the revision is exercised on the ground that the matter was not examined on merits. As to whether such an action can be upheld, we find guidance from a decision of a coordinate bench in the case of Synergy Enterprenuer Solutions Pvt Ltd Vs DCIT (ITA No 3076/Mum/10; order dated 31.3.2011). The reason which can be inferred from the revision order under section 263 (that the AO has not verified the issue) is different from the reason set out in the show-cause notice (that such expenses cannot be allowed). If a ground of revision is not mentioned in the show-cause notice, it cannot be made the basis of the order for the reason that the assessee would have had no opportunity to meet the point. We also find guidance from a coordinate bench decision in the case of Maxpack Investments 13 SOT 67 (Del), by Hon'ble AP High Court decision in the case of CIT Vs G.K. Kabra 211 ITR 336 and of Hon'ble P & H High Court decision in the case of CIT Vs Jagadhri Electric Supply (140 ITR 490). For this short reason, therefore, the revision proceedings are not legally sustainable on this issue , i.e. the notice is issued on the ground of inadmissibility of deduction, and the revision is done on the ground that the matter needs to examined even as there are no findings about shortcomings in the proceedings before the Assessing Officer. In any case, the CIT has not given any findings against the assessee at all and yet he has proceeded to direct the Assessing Officer to examine the issue again. Unless the CIT points out any defect in the stand of the Assessing Officer, it cannot be open to him to exercise the revision powers. Such defects cannot be assumed or inferred. As held by Hon'ble Bombay High Court in the case of CIT Vs Gabriel India Ltd (203 ITR 108), unless Commissioner points out specific defects in the order of the Assessing Officer, he can not simply proceed to direct the Assessing Officer to re-examine the matter. No such defects have been pointed out in the

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impugned order. In this view of the matter, we see merits in the plea of the assessee on this issue and hold that revision of order, on this issue , was not justified.

13. We, therefore, quash the reassessment proceedings on the second issue, i.e. in respect of deductibility of expenses incurred in foreign currency from export turnover and total turnover, for the purpose of computing deduction under section 80 HHF of the Act. To this extent, the appellant indeed deserves to succeed.

14. As regards third issue which is agitated in appeal before us, i.e. in respect of allowability of bad debts as a deduction, learned representatives have fairly agreed that the issue is covered in favour of the assessee by Hon'ble Supreme Court's judgment in the case of TRF Ltd (supra). In this view of the matter, we vacate the revision order in respect of this issue as well.

15. In the result, ITA No. 7476/Mum/09, i.e. appeal against the revision order, is partly allowed in the terms indicated above.

16. We now take up ITA No. 3201/Mum/2010, i.e. assessee's appeal against CIT(A)'s order dated 12th February 2010, in the matter of assessment under section 143(3) r.w.s. 263, for the assessment year 2003-04.

17. The only grievance raised in this appeal is against CIT(A)'s denying the deduction under section 80 HHF on the ground that brought forward loss of earlier years is required to be set off from the eligible profits of the business.

18. Learned counsel for the assessee fairly admits that the issue is

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covered against him, on merits, by Hon'ble Supreme Court's judgment in the case of Shrike Construction Equipment (supra). His defence, however, is that since the CIT could not have subjected this deduction to the revisions proceedings, which are separately challenged in another appeal, the deduction cannot be disturbed in the impugned proceedings. As we have dismissed this challenge to the revision proceedings earlier in this order, that defence is not sustainable in law either. Learned Departmental Representative, on the other hand, submits that the issue being covered against the assessee by Hon'ble Supreme Court judgment in Shirke's case (supra), the grievance has no legally sustainable in merits.

19. In view of the above discussions, we see no merits in assessee's grievance. The challenge to revision proceedings on this issue has already been rejected, and, on merits, the issue is covered against the assessee by Hon'ble Supreme Court judgment in Shirke's case (supra). We, therefore, approve the conclusion arrived at by the CIT(A) and decline to interfere in the matter.

20. In the result, ITA No. 3201/Mum/10 is dismissed.

21. We now take up ITA No. 3315/Mum/2010.

22. Learned representatives fairly agree that the first four grounds of appeal, which deal with different facets of bad debts disallowance of Rs 13.82 crores, are now covered in favour of the assessee by Hon'ble Supreme Court's decision in the case of TRF Ltd (supra). In our order on assessee's challenge to revision proceedings on this issue, we have already upheld assessee's contentions on the issue of validity of revision proceedings and thus quashed the revision order to that extent. The quantum additions in respect of the said issue cannot,

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therefore, survive. The CIT(A) was, even on merits, justified in deleting the impugned addition.

23. Ground Nos. 1 to 4 are thus dismissed.

24. In the fourth ground of appeal, the Assessing Officer is aggrieved that the CIT(A) erred in deleting the addition of Rs 8,87,400 .

25. The subject addition was made by the Assessing Officer on the ground that there was nothing on record to suggest that the said income was already taxed in an earlier assessment year. In the proceedings before the CIT(A), however, this aspect has been examined and it is found that this income has already been offered to tax in this assessment year itself. The addition is deleted on the short ground that if this taxability is upheld, it will amount to the same income being taxed twice. The Assessing Officer is aggrieved and is in appeal before us.

26. Learned Departmental Representative rather dutifully relies on the order of the Assessing Officer and does not really dispute that the said income has already been offered to tax in this very assessment year itself. There is thus no question of evidence of its having been taxed in an earlier year. When relevant entries were explained by the learned counsel, learned DR did not have much to say except to place reliance on the order of the Assessing Officer.

27. In view of the above discussions, as also bearing in mind the fact that the said income has already been offered to, and brought to, tax in this assessment year separately, we see no merits in grievance of the Assessing Officer. We approve the action of the CIT(A) and decline to interfere in the matter.

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28. In the result, ITA No. 3315/Mum/2010 is dismissed.

29. To sum up, while ITA No. 7476/Mum/2007 is partly allowed, the ITA Nos. 3201/Mum/2010 and ITA No. 3315/Mum/2010 are dismissed. Pronounced in the open court today on 30th day of November, 2011.

Sd/-	*sd/-*
(Vijay Pal Rao)	**(Pramod Kumar)**
Judicial Member	Accountant Member

Mumbai; 30th day of ***November, 2011****.*

Copy forwarded to :

1. *The appellant*
2. *The respondent*
3. *Commissioner , Mumbai*
4. *Departmental Representative, bench, Mumbai*
5. *Guard File*

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By Order etc.

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai