IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

The Dy. Commissioner of Income Tax,
Circle – 1, Nashik
Vs.
ThyssenKrupp Electrical Steel India Pvt. Ltd.,
Gonde Village, Wadivarhe,
Taluka – Igatpuri,
Dist – Nashik – 422403

The Dy. Commissioner of Income Tax,
Circle – 1, Nashik
Vs.
ThyssenKrupp Electrical Steel India Pvt. Ltd.,
Gonde Village, Wadivarhe,
Taluka – Igatpuri,
Dist – Nashik – 422403

PAN:AAACE7791B

Date of Hearing : 20.04.2017
Date of Pronouncement: 31.05.2017

PER SUSHMA CHOWLA, JM:

This bunch of three appeals filed by the Revenue are against separate orders of CIT(A)-I, Nashik, dated 07.01.2015, 31.12.2014 and 31.12.2014 relating to assessment years 2006-07 to 2008-09 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

The three appeals filed by the Revenue on similar issue were heard together and are being disposed of by this consolidated order for the sake of
convenience. However, reference is being made to the facts and issue in ITA No.225/PUN/2015, relating to assessment year 2006-07 to adjudicate the issue.

3. The Revenue in ITA No.225/PUN/2015 has raised the following grounds of appeal:-

1. Whether in the facts and in the circumstances of the case the Ld. CIT(A)-I, Nashik was justified in deleting the addition made of Rs.9,76,27,031/- on account of Sales Tax Repayment?

2. Whether in the facts and in the circumstances of the case the Ld. CIT(A)-I, Nashik was justified and correct in holding that, the above receipt is a capital receipt not chargeable to tax relying on Bombay High Court decision in CIT Vs. Sulzer India Ltd.?

3. The appellant prays the order of the Assessing Officer may be restored.

4. The issue which arises in the present appeal is in respect of treatment of sales tax repayment of Rs.9.76 crores and its assessability in the hands of assessee.

5. Briefly, in the facts of the case, the assessee was engaged in the manufacturing of low carbon cold rolled electrical and mild steel. The assessee had for the year under consideration filed the return of income showing the business income at Nil after adjustment of brought forward business losses and unabsorbed depreciation amounting to Rs.70.49 crores. The assessee had written back an amount of Rs.9.78 crores under the head ‘Other income’. However, in the computation of income, the said amount was reduced from the gross total income. As per the Note No.2 attached to the computation of income, the assessee stated as under:-

"This amount represents difference between the amount payable as shown in the books of account under the sales tax deferral scheme of Government of Maharashtra, availed by the company and that paid under the Pre-payment scheme on the basis of Net Present value of the amount due, as per the
scheme announced by the Government in the year 2002. The said difference written-back in the Profit and Loss Account for the year and arising in relation to sales tax deferral, represents a ‘Capital Receipt’, not liable to income tax.”

6. During the course of assessment proceedings, the assessee explained that The Government of Maharashtra has a sales tax deferral scheme similar to various other State Governments. Under this scheme a new industry being set up in a designated backward area, is exempt from depositing sales tax collected by it in the State Government Account for a period of 10 years from commencement of business. The amount of sales tax so collected remains with this industrial undertaking for 10 years, following which it has to be paid in 5 equal annual installments from the 10th to 15th year. In the year 2002, Government of Maharashtra announced a Pre-payment scheme under which such industrial undertaking could pay the sales tax collected by it prior to the completion of 10 years on the basis of net present value. This means that the industrial undertaking, instead of paying the whole amount collected would pay a discounted sum since it was paying the amount prior to the due date. In the case of the assessee the amount of discount has worked out to Rs.9,78,27,031/- i.e. out of the sales tax collected, it has paid the net present value and this amount of Rs. 9,78,27,031/- is the discount given by the Government of Maharashtra. The assessee claimed the said amount as capital receipt. The Assessing Officer was of the view that where the assessee from the time of commencement of business was collecting sales tax of every sale bill and where the said sales tax so collected had to be paid into the Government account every year, where the receipt was revenue receipt, then the payment of sales tax to the Government account was revenue expenditure. He further observed that failure to pay the sales tax would lead to the claim of expenditure being disallowed under section 43B of the Act. Since the assessee was allowed to retain the sales tax collected for 10 years under the
Government of Maharashtra deferral scheme and vide CBDT Circular No.496, dated 25.09.1987, it was deemed to have been paid, the Assessing Officer observed that it was deemed that the assessee had paid the sales tax collected, even though no payment was actually made for 10 years. Hence, where the assessee had carried the liability to pay the amount collected, which was revenue in nature, then the cessation of part of liability would become income in the year of cessation as per section 41(1) of the Act. Accordingly, the said sum of Rs.9.78 crores was added to the gross total income of assessee.

7. The CIT(A) allowed the claim of assessee, in view decision of Special Bench of Mumbai Tribunal in Sulzer India Ltd. Vs. JCIT in ITA No.2944/MUM/2007, order dated 10.11.2010, which had also considered similar scheme of deferral sales tax issued by the State Government. The CIT(A) also noted that the Hon’ble Bombay High Court had approved the said decision of Special Bench vide its decision dated 05.12.2014 in ITA No.450 of 2013. Accordingly, the CIT(A) held that the receipts were capital receipts not chargeable to tax.

8. The Revenue is in appeal against the order of CIT(A) and the learned Departmental Representative for the Revenue placed reliance on the order of Assessing Officer with special reference to para 3 and the provisions of section 41(1) of the Act to point out that the amount which has been remissioned under deferral sales tax scheme is revenue receipt in the hands of assessee, is taxable in the hands of assessee.
9. The learned Authorized Representative for the assessee on the other hand, pointed out that the scheme before the Hon'ble Bombay High Court in CIT Vs. Sulzer India Ltd. (2014) 369 ITR 717 (Bom) is identical to the scheme of assessee and consequently, the receipts are capital receipts in the hands of assessee. Our attention was drawn to section 38 of the Bombay Sales Tax Act at page 96 and also reference was made to the similar provision which was considered by the Hon'ble Bombay High Court in Sulzer India Ltd. in para 40 of the said decision. The learned Authorized Representative for the assessee also referred to the Circular No.496 of CBDT, dated 25.09.1987, wherein the issue raised was in connection with the provisions of section 43B of the Act, the assessee was collecting sales tax but was not paying the amounts to the Government during the relevant years under deferral scheme provided by the State Government. The learned Authorized Representative for the assessee also pointed out that the remission of sales tax liability is not covered under section 41(1) of the Act as held by the Hon'ble Bombay High Court. He further pointed out that in any event, it was the discharge of loan, so provisions of section 41(1) of the Act were not attracted.

10. We have heard the rival contentions and perused the record. The State Government of Maharashtra in order to achieve disbursal of industries outside the Bombay, Thane, Pune has issued package scheme of incentives as against earlier schemes issued from time to time. The State Government issued 1993 scheme under Government Resolution dated 07.05.1993. Pursuant to the said scheme, Raymond Ltd., a different entity on satisfaction of eligibility criteria, opted for the said scheme and was granted certificate on 01.03.1997 and accordingly, it deferred its sales tax payment. Under the scheme, the assessee was allowed to collect sales tax and retain on certain domestic sales for period
of 10 years. After the expiry of said period, the amount was to be paid to the Government in 5 yearly installments. The assessee which was incorporated on 19.07.2000 took over the steel division of Raymond Ltd. effective from September, 2000, which comprised of Nashik plant, which has started operations in 1995 as unit of Raymond Ltd. Under an agreement, the unit along with all its assets and liabilities were transferred by Raymond Ltd. to the assessee. By virtue of said agreement and Addenda to the Eligibility Certificate dated 27.05.1997 under the package scheme of 1993, the assessee became eligible to sales tax incentives under the above package scheme. In 2002, the Bombay Sales Tax Act, 1959 was amended with corresponding changes in the Bombay Sales Tax Rules, 1959 and the State Government allowed the eligible units, which came under the incentive scheme to make premature payment of sales tax so collected at its Net Present Value (NPV). During the financial year, 2005-06, the assessee opted for that scheme and repaid sum of Rs.13,30,19,429/- being deferred sales tax collected at its NPV amounting to Rs.3,51,92,398/- and credited the difference of Rs.9,78,27,031/- in its books of account. Sum of Rs.3.51 crores was paid to the Government vide Certificate dated 30.04.2005 and 10.11.2006. The liability of Rs.13.30 crores which was payable after 10 years in 5 equal installments, was fully discharged by an early payment of Rs.3.51 crores being NPV as on the date of payment. The difference between deferred sales tax and its NPV amounting to Rs.9.78 crores was written back by the assessee under the head ‘Other income’. However, the assessee in the computation of income had excluded the said amount being in the nature of capital receipt. The Assessing Officer had treated the said amount as gain arising due to cessation of trading liability chargeable to tax under section 41(1) of the Act.
11. The Hon’ble Bombay High Court in CIT Vs. Sulzer India Ltd. (supra) has elaborately considered the packaging scheme of State Government of Maharashtra and the amendments to section 38 of the Bombay Sales Tax Act and the assessability of difference between sales tax collected under the deferral sales tax scheme and its NPV and the balance thereon and has held the same to be capital receipt. The Hon’ble Bombay High Court has referred to the findings of Special Bench of Mumbai Tribunal in this regard and held that the amounts are not chargeable to tax under section 41(1) of the Act. The relevant findings of the Hon’ble Bombay High Court are as under:-

"31. In the present case, it is not in dispute that the assessee collected the total amount towards the sales tax of Rs. 7,52,01,378 and in paragraph 76, the Tribunal holds that it was collected from 1989-90 to 2001-02. The assessee treated this liability as unsecured loans in its books of account. After amendment to section 38 of the Bombay Sales tax Act, a notification was issued by the State Government on November 16, 2002, introducing rule 31D in the Bombay Sales tax Rules, 1959. That laid down the procedure for determination of net present value. Once the proviso was inserted and the Rules were published, the deferral units can exercise the option and of paying prematurely the sales tax. There was a table provided in rule 31D of the Bombay Sales tax Rules. The Tribunal extensively referred to this aspect in paragraph 77 of the order under challenge and found that the payment of sales tax was deposited in some period four months before the due date and that is how the discounted percentage of deferred sales tax to be paid as the net present value was prescribed. The net present value amount of Bombay sales tax dues and the Central sales tax dues was worked out as per the certificate dated December 27, 2002. The amount under the certificate was paid on December 30, 2002. That is also evident by a further certificate dated August 25, 2003. This amount was paid by the assessee as per the offer made by the State Government and after the State appointed SICOM for settlement of deferred sales tax liability by immediate one-time payment. The assessee paid a sum of Rs. 3,37,13,393, which, according to the assessee, represented the net present value as determined by SICOM. This amount was paid by the assessee, as evidenced by the above certificates. The Revenue placed no material on record to show that the value does not reflect the net present value or that the net present value is yet to be calculated. The Tribunal found that the Revenue has not put up a case that there is no conversion provided under the BST or the table provided for determination of the net present value is not applicable to the case of the assessee. It is in these circumstances that it accepted the contentions of the assessee and rejected that of the Departmental representative.

32. The Tribunal made detailed reference to the decided cases and brought to its notice by both, the assessee and the Revenue. The Tribunal found that the principle in the decided cases pertains to the subsidy received by the assessee and whether it is capital receipt or revenue in nature. The controversy before the Tribunal is entirely different. That is whether the difference of deferred sales tax liability is chargeable to tax as business income under section 41(1) being
remission or cessation of trading liability or the same is exempted as capital receipt. Therefore, the Tribunal held that the cases cited by the Revenue are distinguishable and on facts.

33. In paragraph 85, a detailed reference is made to the decision of the hon'ble Supreme Court in the case of Polyflex (India) Pvt. Ltd. (supra). The Tribunal also referred to the judgments of the Karnataka High Court, the Rajasthan High Court, the Punjab and Haryana High Court, the Madras High Court and equally the judgment of this court in the case of Solid Containers Ltd. (supra). The Tribunal also referred to certain orders passed by its co-ordinate Benches. The Tribunal, therefore, held, when the entire loan amount, which was payable after 12 years in 6 annual/equal instalments, was repaid as per the net present value prescribed by the State Government and no refund was received by the assessee, it means, it did not get any benefit in respect of the trading liability by way of remission or cessation thereof. The Tribunal referred to the case of Mahindra and Mahindra Ltd. v. CIT reported in [2003] 261 ITR 501 (Bom). This is a judgment of this court. It also referred to another judgment of the Delhi High Court in the case of CIT v. Tosha International Ltd. reported in [2011] 331 ITR 440 (Delhi) ; [2009] 176 Taxman 187 (Del). It also referred to a judgment in the case of S. I. Group India Ltd. (supra) of the Bombay High Court, its Special Bench decision in Deputy CIT v. Reliance Industries Ltd. reported in [2005] 273 ITR (AT) 16 (Mumbai) [SB] ; [2004] 88 ITD 273 (Mum) (SB) and other Tribunal decisions and that continues up to paragraph 103 of its order.

34. In paragraph 104, the Tribunal held as under (page 680 of 6 ITR (Trib)) :

"Having regard to the aforesaid law laid down by the hon'ble Supreme Court and High Courts, we find that to invoke the provisions of section 41(1) of the Act, the first requirement is as to whether in the assessment of the assessee, an allowance or deduction has been made in respect of loss, expenditure or the trading liability incurred by the assessee. In the case of the present assessee the Revenue's plea is that the assessee has obtained the benefit of deduction of sales tax liability under section 43B of the Act as per Central Board of Direct Taxes Circular No. 496, dated September 25, 1987*. However, we find that in the said circular it has been clearly stated, vide paragraph 5 that '...the statutory liability shall be treated to have been discharged for the purposes of section 43B' (emphasis supplied). Thus, the benefit of deduction was allowed for the purpose of section 43B of the Act only and not under any other provisions of the Act. There is no dispute that the Assessing Officer has also applied the aforesaid Board Circular while giving the benefit of deduction under section 43B of the Act. It is settled law that the circulars are binding on the Department, vide a number of decisions of the hon'ble apex court (see in Navnit Lal C. Jhaveri v. K. K. Sen, AAC [1965] 56 ITR 198 (SC), Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC), K. P. Varghese v. ITO [1981] 131 ITR 597 (SC) and UCO Bank v. CIT [1999] 237 ITR 889 (SC)). It is also settled law that the court cannot add words to statute or read words into it which are not there, vide Union of India v. Deoki Nandan Aggarwal [1992] Supp (1) SCC 323. The similar view has been reiterated recently in CIT v. Tara Agencies [2007] 292 ITR 444 (SC). This being so we are of the view the first requirement of section 41(1) has not been fulfilled in the facts of the present case."

35. A perusal of these findings shows that the Tribunal concluded that it is incorrect or erroneous to hold that the assessee obtained the benefit of reduction of sales tax liability under section 43B of the Income-tax Act as per the Central Board of Direct Taxes Circular No. 496, dated September 25, 1987*.
36. A copy of this circular was produced before us by Mr. Gupta. That circular refers to the issue of sales tax liability converted into loans and whether that may be allowed as deduction in assessment for previous year in which such conversion has been permitted by or under Government orders. In paragraphs 1 and 2 of this circular, the Department refers to the introduction by the Finance Act, 1983, with effect from April 1, 1984, of section 43B. Then, in paragraph 3, it refers to several representations received from various State Governments and others that cases of deferred sales tax payments should be excluded from the purview of section 43B as the operation of this provision has the effect of diluting the incentive offered by the deferral schemes. In paragraph 4, the circular refers to the consultation with the Ministry of Law, Government of India and the various State Governments and very opinion of the Law Ministry. It has also made reference to the Bombay Sales Tax (Amendment) Act, 1987, and directs that where amendments are made in the sales tax laws on the lines indicated in the circular, the statutory liability shall be treated to have been discharged for the purpose of section 43B of the Income-tax Act. Section 43B of the Income-tax Act reads as under:

"43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) any sum referred to in clause (ii) of sub-section (1) of section 36, or

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing; or

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee,

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him: . . ."

37. Thus, notwithstanding anything contained in any provisions of the Income-tax Act, a deduction otherwise allowable under the Act in respect of any sum payable by the assessee by way of tax, duty, cess or fee by whatever name called under any law for the time being in force, shall be allowed irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.
38. The Tribunal also refers to another Circular No. 674, dated December 29, 1993*, and that is in relation to the steps taken to issue Government orders notifying schemes under which sales tax is deemed to have been actually collected and disbursed as loan. Besides amendments to the Sales tax Act, if any, such Government orders are issued, then, they are also brought within the purview of the Circular.

39. In relation to this aspect, the Tribunal held that the benefit of deduction was allowed for the purpose of section 43B only and not under any other provisions of the Act. The Tribunal held that the Assessing Officer applied the Circular while giving benefit of deduction under section 43B of the Income-tax Act. Thus, if the sum is actually paid by the assessee in the previous year, then, in computing income referred to in section 28 of that previous year, the deduction under section 43B shall be allowed. Mr. Gupta relies upon this Circular and to urge that this Circular contemplates deemed payment of sales tax dues. That is on the footing that the payment was made earlier than 7 to 12 years, it will discharge the assessee of the liability. If payment of lesser amount discharges the assessee of his liability in full, then, the argument of Mr. Gupta is this is deemed payment of sales tax dues.

40. It is not possible to agree with Mr. Gupta. Because the premature payment of sales tax already collected but its remittance to the Government, as Mr. Gupta envisages, is not covered by this provision else the sub-sections and particularly section 43B(1) would have been worded accordingly. Therefore, section 43B has no application. In so far as the applicability of section 41(1)(a), there also the applicability is to be considered in the light of the liability. It is a loss, expenditure or trading liability. In this case, the scheme under which the sales tax liability was deferred enables the assessee to remit the sales tax collected from the customers or consumers to the Government not immediately but as agreed after 7 to 12 years. If the amount is not to be immediately paid to the Government upon collection but can be remitted later on in terms of the scheme, then we are of the opinion that the exercise undertaken by the Government of Maharashtra in terms of the amendment made to the Bombay Sales tax Act and noted above, may relieve the assessee of his obligation but that is not by way of obtaining remission. The worth of the amount which has to be remitted after 7 to 12 years has been determined prematurely. That has been done by finding out its net present value. If that is the value of the money that the State Government would be entitled to receive after the end of 7 to 12 years, then we do not see how ingredients of sub-section (1) of section 41 can be said to be fulfilled. The obligation to remit to the Government the sales tax amount already recovered and collected from the customers is in no way wiped out or diluted. The obligation remains. All that has happened is an option is given to the assessee to approach the SICOM and request it to consider the application of the assessee of premature payment and discharge of the liability by finding out its net present value. If that was a permissible exercise and in terms of the settled law, then, we do not see how the assessee can be said to have been benefited and as claimed by the Revenue. The argument of Mr. Gupta is not that the assessee having paid Rs. 3.37 crores has obtained for himself anything in terms of section 41(1) but the assessee is deemed to have received the sum of Rs. 4.14 crores, which is the difference between the original amount to be remitted with the payment made. Mr. Gupta terms this as deemed payment and by the State to the assessee. We are unable to agree with him. The Tribunal has found that the first requirement of section 41(1) is that the allowance or deduction is made in respect of the loss, expenditure or a trading liability incurred by the assessee and the other requirement is the assessee has subsequently obtained any amount in respect of such loss and expenditure or obtained a benefit in respect of such trading liability by way of a remission or cessation thereof. As rightly noted by the Tribunal, the sales tax collected by the assessee during the relevant year amounting to Rs.
7,52,01,378 was treated by the State Government as loan liability payable after 12 years in 6 annual/equal instalments. Subsequently and pursuant to the amendment made to the fourth proviso to section 38 of the Bombay Sales tax Act, 1959, the assessee accepted the offer of the SICOM, the implementing agency of the State Government, paid an amount of Rs. 3,37,13,393 to the SICOM, which, according to the assessee, represented the net present value of the future sum as determined and prescribed by the SICOM. In other words, what the assessee was required to pay after 12 years in 6 equal instalments was paid by the assessee prematurely in terms of the net present value of the same. That the State may have received a higher sum after the period of 12 years and in instalments. However, the statutory arrangement and, vide section 38, fourth proviso does not amount to remission or cessation of the assessee’s liability assuming the same to be a trading one. Rather that obtains a payment to the State prematurely and in terms of the correct value of the debt due to it. There is no evidence to show that there has been any remission or cessation of the liability by the State Government. We agree with the Tribunal that one of the requirements of section 41(1)(a) has not been fulfilled in the facts of the present case.”

12. The Hon’ble Bombay High Court further held as under:-

“41. The alternate argument which was noted in paragraph 106 of the Tribunal’s order has not been canvassed before us. We have also not been taken through the entire procedure by which the conversion of deferred sales tax liability into interest-free loan takes place. In such circumstances, we do not think that the amount of sales tax collected from November 1, 1989, to October 31, 1996, payments of which were deferred under the scheme and the amounts were payable after 12 years in 5 equal instalments commencing from May 1, 2003, means that the liability was a future one. Assuming it to be so, later on, the State Government came with a scheme and by which it gave an option to parties like the assessee of payment of that liability at a discounted value or net present value immediately. In this case, and in such a situation, the exercise cannot be construed as remission of liability. The State Government has not waived the liability as noted by us above. The State Government would have received the money from May 1, 2003, to May 1, 2008. However the amount of Rs. 3,37,13,393 was paid to SICOM on December 30, 2002. An amount which could have been received only between 5 years from 2003 to 2008 having been paid on December 30, 2002, this is not a case of a remission. Therefore, we do not see how the reasons assigned by the Tribunal in paragraph 108 would enable us to hold otherwise.

42. In such circumstances, the Tribunal’s conclusion in paragraph 109 that the difference between the net present value Rs. 3,37,13,393 against the future liability of Rs. 7,52,01,378 credited by the assessee under the capital reserve account in its books of account, is a capital receipt is correct. It cannot be termed as remission or cessation of a trading liability and subsequently no benefit has arisen to the assessee in terms of section 41(1) of the Income-tax Act.”

13. The issue arising in the present bunch of appeals is identical to the issue before the Hon’ble Bombay High Court (supra) and following the same parity of
reasoning, we uphold the order of CIT(A) and dismiss the grounds of appeal raised by the Revenue.

14. The Revenue in assessment year 2007-08 has raised another ground of appeal No.3, which reads as under:

“3. Whether in the facts and in the circumstances of the case the Ld. CIT(A)-I, Nashik was justified in deleting the addition made on account of disallowance of interest on late payment of advance tax MAT u/s 115JB of Rs.15,77,233/-?

15. The issue raised vide ground of appeal No.3 is against the order of CIT(A) in deleting addition of Rs.15,77,233/- made by the Assessing Officer on account of disallowance of interest on late payment of advance tax under section 115JB of the Act.

16. Briefly, the facts relating to the issue are that the assessee had claimed sum of Rs.15,77,233/- for interest on late payment of advance tax as allowable expenditure under section 115JB of the Act. The Assessing Officer disallowed the claim of assessee and the CIT(A) reversed the order of Assessing Officer.

17. The Revenue is in appeal against the order of CIT(A).

18. The learned Departmental Representative for the Revenue stressed that the order of CIT(A) needs to be reversed.

19. The learned Authorized Representative for the assessee placed reliance on the order of CIT(A).

20. We have heard the rival contentions and perused the record. The order of CIT(A) in this regard needs to be set aside as the interest paid on late
payment of advance tax is not allowable expenditure under section 115JB of the Act. We find no merit in the order of CIT(A) in holding that the said expenditure is allowable under section 37(1) of the Act and the same is reversed. Accordingly, we uphold the addition of Rs.15,77,233/-. 

21. In the result, appeals of Revenue in assessment years 2006-07 and 2008-09 are dismissed and appeal of Revenue in assessment year 2007-08 is partly allowed.

Order pronounced on this 31st day of May, 2017.

Sd/- (ANIL CHATURVEDI) Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER न्यायाधीश सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 31st May, 2017.

GCVSR

आदेश की प्रतिलिपि अग्रेपषतCopy of the Order is forwarded to :
1. अपीलयार्थी / The Appellant;
2. प्रत्यक्षी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Nashik;
4. आयकर आयुक्त / The CIT-I, Nashik;
5. विभागीय प्रतिलिपि, आयकर अपीलय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाइल / Guard file.

आदेशकार्यकर्ता / BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकर्ता / Assistant Registrar,
आयकर अपीलय अधिकरण, पुणे / ITAT, Pune