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IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.7287/Mum./2018
(Assessment Year : 2014–15)

Mahindra & Mahindra Ltd.
Corporate Taxation, P.K. Kurne Chowk
Worli, Mumbai 400 018
PAN – AAACM3025E

……. Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle–2(2)(2), Mumbai

.....Respondent

Assessee by : Shri H.P. Mahajani
Revenue by : Smt. Mahita Nair

Date of Hearing – 16/09/2022	Date of Order – 07/11/2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned final assessment order dated 29/10/2018, passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 ("*the Act*") for the assessment year 2014–15, pursuant to the directions dated 18/09/2018 issued by the learned Dispute Resolution Panel (DRP)–III, Mumbai ("*learned DRP*") under section 144C(5) of the Act.

2. In its appeal, the assessee has raised following grounds:–

"1. Expenditure debited to Profit and loss account Rs. 18.81.14.927/–

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in

confirming disallowance of the following sums treating the same as capital expenditure:

no.	Particular	Amount	Amount
A	Automotive Division – Marketing		
	i) Professional Fees		
	Professional Fees – Project Ssangyong	1,06,87,955	
	Project – Constellation	6,00,000	
	Land Valuation Charges	5,61,800	
	Commission	2,00,000	
			1,20,49,755
B	Farm Equipment Sector – Kandivali		
	i) Professional Fees		
	Due Diligence for Nu genes Pvt. Ltd.	3,19,150	
	Due Diligence for Hi–Gene Seeds P. Ltd.	6,48,221	
	Due Diligence – SSC Acquisition	8,14,610	
			17,81,981
C	Head Office		
	i) Legal Fees		
	Project Marshal	74,78,792	
	Project Moon	18,42,700	
	Legal Fees – Other	1,69,101	
	Total Legal Fees	94,90,593	
	ii) Professional Fees		
	Project Moon	14,30,59,371	
	Professional Fes in connection with NCD issue	209,97,990	
	Professional Fees – Others	21,236	
	Total Professional Fees	16,40,78,597	
	Head Office Total [(B)(i) _ B(ii)]		17,35,69,190
D	MSB		
	Professional fees for Jaipur land		714001
	TOTAL		188114927

The learned ACIT/DRP ought to have upheld the Appellant's contention that the expenses were incurred wholly and exclusively for the purpose of business of

the Appellant and were revenue in nature and therefore were allowable as deduction as claimed.

Without prejudice to the above, the Appellant contends that the learned ACIT should have allowed depreciation thereon at the appropriate rate.

The claims of the Appellant be allowed.

2. Provision for Warranties- Rs. 12.20.26.102/–

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in confirming treatment of the provision for warranties made as at 31-03-2014 as inadmissible expenditure on the ground that this provision is in the nature of contingent liability and hence not an ascertained liability. The learned ACIT/DRP erred in coming to the conclusion that the Appellant had not made provision on a reasonable or scientific basis which conclusion is perverse and, being contrary to facts, is bad in law.

The Claim of the Appellant be allowed.

3. Disallowance U/s, 14A-Rs. 37,82,95,454/–

On the facts and in the circumstances of the case and in law the learned ACIT erred in applying and the DRP erred in confirming the enhancement to addition under section 14A read with Rule 8D by an amount of Rs. 37,82,95,454/-. The ACIT and DRP ought to have accepted that the suo moto addition to the total income made by the Appellant Company of Rs. 2,31,72,000/- under section 14A based on the various contentions provided in the Return of Income/Tax Audit Report.

Without prejudice to above, while applying Rule 8D the ACIT further erred in proposing disallowance without accepting the contention of the Appellant that investments on which no dividend has been received should be excluded from total investments while calculating disallowance u/s. 14A.

4. Adjustment u/s 92CA(3) to Arm's Length Price of international transactions - Adjustment of Rs. 4,44.74.866/–

A. Corporate Guarantee Fee Adjustment of Rs. 1,41,46,850/-.

On the facts and in the circumstances of the case and in law, the learned ACIT/TPO erred in proposing and the DRP erred in confirming addition to the income of the Appellant a sum of Rs. 1,41,46,850/- being adjustment in respect of Corporate Guarantee rejecting the contention of the Appellant that the same was not warranted on facts and in law. The order passed by the learned TPO u/s 92CA is contrary to the provisions of the Act dealing with determination of ALP. Addition be deleted.

Without prejudice to the aforesaid ground, the learned ACIT/DRP erred in confirming addition to total income on account of guarantee fees at 3%. If at all any adjustment was required, the ACIT should have restricted the addition of

guarantee fees to the minimum based on several recent tribunal decisions/judicial decisions.

B. Interest on Loan to AF Adjustment of Rs. 3,03,28,016/–

On the facts and in the circumstances of the case and in law, the learned ACIT/TPO erred in rejecting the contentions of the Appellant in this regard and in proposing and the DRP erred in directing addition to the income of the Appellant a sum of Rs. 3,03,28,016/- being adjustment in respect of Interest on Loan to Associated Enterprise applying LIBOR rate in the financial year in which loan was granted plus 5% as ALP for interest on Loan borrowed by AE.

The addition be deleted or suitably reduced.

5. Disallowance under section 40a(ia) in respect of year end provisions Rs. 32.75.21.640/–

On the facts and in the circumstances of the case and in law the learned ACIT erred in proposing and the DRP erred in confirming disallowance of Rs. 32,75,21,640/- u/s 40a(ia) rejecting the contention of the Appellant that the provisions of the said section were not applicable to the facts of the case.

In any event, the learned ACIT/DRP ought to have appreciated that unless the Appellant is held to be an assessee in default u/s 201 of the Act, it cannot be held that the Appellant had failed to deduct tax at source in accordance with the provisions of the Act so as to merit disallowance u/s 40a(ia) of the Act.

In any event, the learned ACIT/DRP ought not to have made disallowance u/s 40a(ia) in those cases where the payees had filed their returns of income and paid tax due there under for the relevant assessment year, there being thus no subsisting tax liability of the payee which would entitle the Appellant to claim deduction under the proviso to the section at any subsequent point of time.

The addition be deleted.

6. Allowance of weighted deduction under section 35(2AB) in respect to Amount certified as per Form 3CL Rs. 10,15,82,72,000/- (Amount certified in 3CL and also claimed as per Return of Income.

On the facts and in the circumstances of the case and in law, for the reasons adduced in the assessment order, the learned ACIT erred in proposing and the DRP erred in allowing deduction u/s 35(2AB), with reference to expenditure of Rs. 480,09,66,019/– only, as against Rs.10,15,81,66,019/- claimed by the Appellant in its return of income, rejecting the contentions of the Appellant in this regard.

In particular, the learned ACIT erred in not allowing weighted deduction with reference to Rs. 10,15,82,72,000/- being the amount approved by DSIR in form 3CL.

Without prejudice to the generality of the above grounds, for the reasons adduced byhim in the assessment order, the learned ACIT erred in not granting weighted deduction with reference to product development expenses of Rs.

466,55,66,981/- and other expenses aggregating to Rs. 69,16,33,019/- referred to by him in the assessment order, forming part of the aforesaid expenditure claimed by the Appellant, rejecting the contentions of the Appellant in this regard.

In particular, for so doing, the learned ACIT erred in applying DSIR Guidelines of May 2014, which could not have been applied in respect of the year ended March 31 2014.

In any event, the said Guidelines are ultra vires the provisions of the Income tax Act.

Also, the aforesaid actions of the learned ACIT have resulted in double disallowance of Rs. 169,53,00,000/- considering the amount already disallowed by the Appellant in the Return of income.

The claim of the Appellant in this regard be allowed in toto.

7. Disallowance of claim that Industrial Promotional Subsidy Incentive of Rs. 13.74.90,999/- was a capital receipt

On the facts and in the circumstances of the case and in law the learned ACIT erred in proposing and the DRP erred in not accepting the contention of Appellant that Industrial Promotion Subsidy of Rs.13,74,90,999/- received from Directorate of Industries pursuant to the Package Scheme of Incentives 2001 was not taxable on the ground that it was a capital receipt.

The learned ACIT be directed to exclude the said sum from the income of the Appellant.

8. Disallowance of claim that Industrial Promotional Subsidy Incentive of Rs. 123,74,18,233/- was a capital receipt

On the facts and in the circumstances of the case and in law the learned ACIT erred in proposing and the DRP erred in not accepting the contention of Appellant that Industrial Promotion Subsidy of Rs.123,74,18,233 received from Directorate of Industries pursuant to the Package Scheme of Incentives 2007 was not taxable on the ground that it was a capital receipt.

The learned ACIT be directed to elude the said a from the top of the Appellant

9. Disallowance of claims that Industrial Promotional Subsidy Incentive of Ra 15,32,80,80 was a capital receipt

On the facts and in the circumstances of the case and in law the learned ACIT erred in proposing and the DRP erred in it accepting the contention of Appellant that Industrial Promotion Subsidy of Rs 15,39,80,606/– received from Directorate of Industries pursuant to Andhra Pradesh Industrial Investment Promotion Policy (IPP) 2010-15 was not taxable on the ground that it was a capital receipt.

The learned ACIT be directed to exclude the said sum from the income of the Appellant.

10. Disallowance of deduction for Difference in Exchange of Rs 186,98.66.142/–

On the facts and in the circumstances of the case and in law, for the reasons adduced in the assessment order, the learned ACIT erred in proposing and the DRP erred in not allowing deduction for difference in exchange of Rs. 186,98,66,142/- as claimed by the Appellant in the computation of income, rejecting the contentions of the Appellant in this regard.

Without prejudice to the aforesaid contention that the difference in exchange was allowable as revenue deduction, the learned ACIT/DRP ought to have allowed depreciation on such difference in exchange treated by him as being capital in nature.

11. Expenses on Employees' stock Options - Rs. 50,18,77,346/–

On the facts and in the circumstances of the case and in law, for the reasons adduced in the assessment order, the learned ACIT erred in proposing and the DRP erred in confirming disallowance of deduction of Rs. 50,18,77,346/ claimed by the Appellant being the difference between the fair market value of the shares offered to employees on the date of the grant of option and the price at which they are offered to employees under the ESOP Scheme of the Appellant rejecting the contentions of the Appellant in this regard.

On the contrary, the learned ACIT ought to have allowed deduction for Rs.–––– being the amount referable to the stock options exercised during the year as claimed during the course of the assessment proceedings.

The claim of the Appellant as aforesaid be allowed.

12. Provision for post retirement scheme for housing - Rs. 1,67.70.806/- and for post retirement medical scheme Rs. 128,87.729/–

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in confirming treatment of the provision for post-retirement scheme for housing and post retirement medical scheme made as at 31-03-2014 as inadmissible expenditure on the ground that these provisions are in the nature of contingent and benefit will be given to retiring employee and not working employee.

The learned ACIT/DRP ought to have accepted the contention of the Appellant that the liability has been determined scientifically on the basis of actuarial valuation and is incurred wholly and exclusively for the purpose of the business of the Appellant and hence allowable while computing the income of the Appellant.

The Claim of the Appellant be allowed.

13. Interest on Tax Free Bonds - Rs. 5,02,46,380/–

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in

confirming treatment of taxing the interest income of Rs. 5,02,46,380 disregarding the fact that the said interest was earned on the Tax Free Bonds held by the Appellant. The learned ACIT be directed to exempt the said interest income while computing the taxable income of the Appellant.

14. Claim of Development expenses - Rs. 45,32,800/- of Construction Equipment unit

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in rejecting the claim the Appellant that the Development expenses, which remained to be claimed in the Return of Income, but claimed during the course of assessment proceedings be allowed as the same are in the nature of revenue expenditure allowable under section 971) other appropriate provisions of the Income Tax Act, 1961.

15. Credit for Tax deducted at Source is not given

A) In respect of TDS-Rs. 2.38.16.303/−:

On the facts and in the circumstances of the case, the ACIT/DRP erred in giving lower TDS credit of Rs. 55,26,49,695/- as against Rs. 57.64.65,998/- which is as per Form 26AS of the Appellant as well as of MTBD division being merged entity (MTBL This has resulted into reduced tax credit of Rs. 2,38,16,303/−.

The learned ACIT be directed to give tax credit in respect of TDS as per Form 26AS of Rs. 2,38,16,303/−

16. Disallowance of deduction under section 80 IC-Rudrapur Unit

On the facts and in the circumstances of the case and in law, for the reasons adduced in the assessment order, the learned ACIT erred in restricting the claim for deduction w's 80-IC to Rs. 61,76,52,764/- as against Rs. 172,39,52,059/- claimed by the Appellant in the Return of income.

The said conclusion of the lower authorities is based on mere conjectures and surmises and is contrary to the material on record and the submissions made before the said lower authorities.

The learned ACIT ought to have accepted the computation of profits and the audited accounts submitted by the Appellant and should have allowed deduction under section 80-IC accordingly.

The claim of the Appellant be accepted in toto.

17. Set off of brought forward Business loss and unabsorbed depreciation relating to demerged business of Mahindra Trucks and Buses Limited (MTBL)

The learned ACIT has allowed set off for brought forward business loss and unabsorbed depreciation of Rs. 5,36,09,83,914/- relating to demerged business of MTBL instead of brought forward business loss and unabsorbed depreciation of Rs. 11,43,84,65,793/- as claimed in the Return of income based on the

assessment orders passed in the case of MTBL by Income Tax Authorities at relevant point of time.

On the facts and in the circumstances of the case and in law, the learned ACIT be directed to allow further losses in case MTBL receives favorable orders/ rectifications subsequently.

18. Disallowance of deduction in respect of Development expenditure relating to demerged business of Mahindra Trucks and Buses Limited (MTBL)

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in confirming the disallowance of deduction claimed which remained to be claimed in the Return of Income but submitted during the course of assessment in respect of Development Expenses of Rs.20,37,55,308/- in respect of Truck and Buses Division (MTBD") be allowed under section 35(1) or under section 37(1) of the Income Tax Act, 1961.

19. Disallowance of deduction in respect of Research and Development expenditure claimed u/s. 35(1)(iv) in respect of Truck and Buses Division ("MTBD") which is demerged business of Mahindra Trucks and Buses Limited (MTBL)

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in confirming the disallowance of deduction claimed in respect of Truck and Buses Division (MTBD") of Rs. 6,00,42,220 and allowed depreciation @ 25% on it thereby disallowed Rs. 4,50,31,665 on net basis. Appellant contends that the said expenditure be allowed under section 35(1)(i) and 35(1)(iv) of the Income Tax Act, 1961.

20. Claim in respect of Industrial Promotion Subsidy (IPS) from book profit u/s 115JB

On the facts and in the circumstances of the case and in law the Appellant tends that the learned ACIT erred in proposing and the DRP erred in rejecting the claims of the Appellant that the IPS of Rs 152,88,89,838 be considered as Capital receipt and be reduced for the purpose of computing the look profit w 115JB The claim of the Appellant be accepted.

21. Disallowance u/s. 14A to book profits us. 115IB

On the facts and in the circumstances of the case and in law the Appellant contends that the learned ACIT erred in proposing and the DRP erred in rejecting the claim of the Appellant that section 115JB does not provide for disallowance under section 14A of Rs.40,14,67,454 for the purpose of computing the Book profit u/s 118JB The claim of the Appellant be accepted.

22. Interest under Section 234A:

The ACIT erred in levying interest of Rs. 7.31,570 under section 234A without considering the fact that the Appellant had filed the Return of Income within

the due date u/s. 139 of the Act. Therefore, the Company is not liable to pay any interest us 234A of the Act and the same merits deletion.

23. Interest under Section 234C:

The ACIT erred in levying the interest of Rs 8,98,38,802 under section 234C without considering the fact that there was no deferment in payment of advance tax Therefore, the Company is not liable to pay any interest us 2340 of the Act and the same merits deletion.

24. Arithmetic error in notice of demand:

The ACIT erred in computing the demand of Rs. 86,17,67,050 while issuing the demand notice under section 156 instead of computing refund of Rs. 7,28,51,108. Therefore, the same merits for rectification."

3. The brief facts of the case are: The assessee is engaged in the business of manufacturing and sale of on-road automobiles, agricultural tractors and implements, engine parts and accessories of motor vehicle, rendering services, property development activity, financing and investment and transport solutions. For the year under consideration, assessee filed its return of income on 29/11/2014 declaring total income of Rs. 791,37,13,420. The assessee revised its return of income on 31/03/2016 declaring total income of Rs. 533,73,34,270. The assessee filed modified return of income under section 92CD of the Act on 17/08/2018 declaring total income of Rs. 533,97,84,190 pursuant to Unilateral Advance Pricing Agreement dated 31/05/2018. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued. In respect of international transactions entered into by the assessee, reference was made to the Transfer Pricing Officer (`*TPO*'). Vide order dated 31/10/2017 passed under section 92CA(3) of the Act, transfer pricing adjustment of Rs. 8,44,82,507 in respect of international transactions entered into by the assessee was proposed. Draft assessment order dated 31/12/2017 was passed by the Assessing Officer ("*AO*") under section 143(3) r/w section 144C(1) of the Act after making various additions and including the adjustment proposed by the TPO. The detailed objections filed by the assessee against various additions/adjustments made by the AO/TPO were rejected by the learned DRP vide its directions dated 18/09/2018 issued under section

144C(5) of the Act. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

4. The issue arising in ground No. 1, raised in assessee's appeal, is pertaining to allowance of expenditure debited to profit and loss account.

5. The brief facts of the case pertaining to this issue are: During the course of assessment proceedings, it was observed that assessee has debited various expenditures, which are capital in nature. Accordingly, assessee was asked to furnish the details. As regards, following expenditure amounting to Rs. 18,81,14,927 assessee claimed the same to be revenue in nature:

no.	*Particular*	*Amount*	*Amount*
A	*Automotive Division – Marketing*		
	i) Professional Fees		
A1	*Professional Fees – Project Ssangyong*	*1,06,87,955*	
A2	*Project – Constellation*	*6,00,000*	
A3	*Land Valuation Charges*	*5,61,800*	
A4	*Commission*	*2,00,000*	
			1,20,49,755
B	*Farm Equipment Sector – Kandivali*		
	i) Professional Fees		
B1	*Due Diligence for Nu genes Pvt. Ltd.*	*3,19,150*	
B2	*Due Diligence for Hi–Gene Seeds P. Ltd.*	*6,48,221*	
B3	*Due Diligence – SSC Acquisition*	*8,14,610*	
			17,81,981
C	*Head Office*		
	i) Legal Fees		
C1	*Project Marshal*	*74,78,792*	
C2	*Project Moon*	*18,42,700*	
C3	*Legal Fees – Other*	*1,69,101*	
	Total Legal Fees	*94,90,593*	
	ii) Professional Fees		
C4	*Project Moon*	*14,30,59,371*	
C5	*Professional Fes in connection with NCD issue*	*209,97,990*	

C6	Professional Fees – Others	21,236	
	Total Professional Fees	16,40,78,597	
	Head Office Total [(B)(i) _ B(ii)]		17,35,69,190
D	MSB		
D1	Professional fees for Jaipur land		7,14,001
	TOTAL		18,81,14,927

6. Assessee submitted that in the course of expanding operations / manufacturing activities, it had incurred expenditure on acquiring entities which are engaged in similar business in India as well as overseas. For this purpose it had incurred expenditure such as professional fees, legal charges, due diligence fees etc., and treated the same as revenue in nature. As per the assessee, the aforesaid expenditures are incurred in connection with business and the said expenditures are allowable deduction under section 37(1) of the Act. The AO did not agree with the submissions of the assessee and held that expenditure have been incurred in investment for getting enduring benefit and for the purpose of expanding the business in future. The AO following the approach adopted in assessment years 2012–13 and 2013–14 held the expenditure to be capital in nature and also disallowed the depreciation on same.

7. The learned DRP following its directions rendered in assessee's own case for assessment year 2013–14 rejected the objections filed by the assessee on this issue. Further, with regard to availability of depreciation in respect of these expenditure, the learned DRP by following its directions rendered in assessee's own case for assessment year 2012-13 held that assessee was not able to show what capital asset has come into existence on incurring the above expenses and unless a capital asset, on which depreciation is admissible under section 32 of the Act comes into existence and a definite cost of acquisition of such asset is determined, the depreciation could not be allowed. In conformity, the AO treated the expenditure to be part of cost of investment wherever

applicable and denied the depreciation on same. Being aggrieved, the assessee is in appeal before us.

8. We have considered the rival submissions and perused the material available on record. As per the synopsis dated 24/05/2022, assessee wishes not to press expenditure at Sl. No. B2, B3, C2, C3 and C4 of aforesaid table. Accordingly, assessee's claim in respect of these expenditures is dismissed. In respect of other expenditures, we find that the coordinate bench of the Tribunal in assessee's own case in Mahindra and Mahindra Ltd vs DCIT, in ITA No. 1449/Mum./2016 etc., for assessment years 2011–12 to 2013–14, vide order dated 19/06/2020, observed as under:

> *"2.5. We find that on perusal of the facts narrated hereinabove and by placing reliance on the various judicial precedents relied upon hereinabove in assessee's own case and in the case of other parties, we hold:*
>
> *(a) A sum of Rs.771,46,633/- shall have to be treated as capital expenditure and shall form part of cost of investment which the assessee could claim as cost at the time of sale of investment.*
>
> *(b) A sum of Rs.9,74,09,230/- represent expenditure incurred in respect of acquisitions which never materialised and hence, squarely allowable as revenue expenditure in as much as no capital asset came into existence of the assessee which would derive enduring benefit of the assessee."*

9. We further find that coordinate bench of the Tribunal vide another order in Mahindra and Mahindra Ltd vs ACIT, in MA No. 50/Mum/2021 arising out of ITA No. 149/Mum/2016, vide order dated 22/04/2022 allowed the expenditure in the nature of professional, legal fees, directors travelling expenditure etc. as revenue expenditure. The coordinate bench also allowed deduction claimed under section 35DD of the Act in respect of the professional charges pertaining to demerger. We further find that in another decision in assessee's own case in Mahindra and Mahindra Ltd vs DCIT, in ITA No. 8597/Mum/2010, for assessment year 2006–07, the coordinate bench of the Tribunal vide order dated 06/06/2012 following the earlier decision rendered in assessee's own case, allowed the expenditure incurred with regard to FCCB as Revenue in nature.

10. Since, similar issues have already been decided in assessee's own case for preceding assessment years, therefore, we see no reason to deviate from the view so taken by the coordinate bench of the Tribunal, in absence of any allegation of change in facts and law. Therefore, respectfully following the findings rendered by the coordinate bench of the Tribunal in assessee's own cases cited supra, expenditure of Rs. 1,21,63,756 (at serial No. A1, A3, A4, D1 of aforesaid table) is held to be capital in nature and should form part of cost of investment, which the assessee could claim as cost at the time of sale of investment. Further, as regards the expenditure of Rs. 77,97,942 (at serial No. B1 and C1 of aforesaid table), same are in respect of acquisitions, which did not materialise and therefore be allowed as revenue expenditure as no capital asset came into existence. Insofar as expenditure of Rs. 2,10,19,226 (at serial No. C5 and C6 of the aforesaid table) is concerned, same are in nature of revenue expenditure. As regards expenditure of Rs. 6 lakhs (i.e. serial No. A2 of aforesaid table) pertaining to demerger, same is allowable as deduction under section 35DD of the Act. With above directions, ground No. 1 is partly allowed.

11. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to disallowance of provision for warranties.

12. The brief facts of the case pertaining to this issue are: During the course of assessment proceedings, it was observed that assessee has claimed the provision for warranty at Rs. 25,702 lakhs. On perusal of Note to annual accounts, it was noticed that the provision relates to 'warranty' made in respect of certain products, the estimated cost of which accrued at the time of sale. The products are generally covered under a free warranty period ranging from one year to three years. The assessee was asked to show cause as to why the above provision should not be treated as contingent and be disallowed accordingly. In reply, assessee submitted that each and every vehicle/tractors sold by the company is covered by warranty clause and the buyer is entitled to enforce this clause within specified period/mileage provided defects in vehicles/tractors noted by the buyer are covered by the warranty. The

assessee further submitted that the provision for warranty expenditure on vehicles/tractors sold during the accounting year is ascertained on the basis of actual expenses incurred on settlement of warranty claims. For this purpose, actual expenses incurred in earlier years on major models of vehicles/tractors are analysed to arrive at the average rate of warranty expenditure incurred on each of such model. This rate has been applied to vehicle/tractors sold during the current year to arrive at the warranty expenditure of the year. The expenditure incurred during the current year in settlement of warranty claims related to the sale of the year is deducted from the gross warranty expenditure figure worked out as stated above and the balance is considered as provision for warranty expenditure. The AO vide draft assessment order did not agree with the submissions of the assessee and held the provision made for warranty claim being contingent in nature and accordingly disallowed the same. The learned DRP upheld the proposed disallowance by placing reliance upon its directions rendered in assessee's own case for assessment year 2013 – 14. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

13. Having heard both the parties and perused the material available on record, we find that similar issue was decided by the coordinate bench of the Tribunal in assessee's own case in Mahindra and Mahindra Ltd (supra), for assessment years 2011–12 to 2013–14, by observing as under:

> *"3.3. We find that there is no dispute that the product sold by the company carry the warranty obligation, cost of which is already included / embedded in the sale price. We find from the workings for provision of warranty submitted by the assessee before the lower authorities, that the said extensive workings duly demonstrate the scientific basis carried out by the assessee for making such provision. We further find that out of the available opening balance of provision for warranties, a sum of Rs.216.34 Crores had been settled / utilised during the year which worked out to 80% of the opening provision. We also find from the accounts of the assessee with regard to the provision for warranty, that the sum of Rs.30.56 Crores has been reversed towards provision by the assessee during the year. It is not in dispute that the sale of vehicles were carried out on a daily basis and incurrence of warranty expenditure thereon was also carried out on a daily basis. Hence, it could be safely concluded that the assessee making provision for warranty is done on a regular basis year on year in respect of vehicle/tractor sold during each year; such claims getting settled / utilised during each year as and when the warranty clause is enforced by the buyers pointing out specific defects contained in the warranty clause within the*

warranty period and wherever the existing provision already made requires reversal due to the fact that the claim is made beyond the warranty period or the claim is not covered within the warranty clause etc, the same is reversed. This scientific exercise of making provision for warranty clause for each and every vehicle / tractor sold is made on a regular basis year on year by the assessee which is duly proved in the extensive workings provided before the lower authorities and hence, we find that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd., vs CIT in 314 ITR 62. We also find that this issue has been allowed by the Tribunal in assessee's own case for the A.Y.1989-1990 to A.Y.1998-1999. Later in A.Y.2009-10, this issue was remitted back to the file of the ld. AO to decide the same in the light of the aforesaid Supreme Court decision. We find that the decision for A.Y.2009-10 was rendered by this Tribunal by placing reliance on the decision rendered in assessee's own case for the A.Y.2006-07 to 2008-09. For A.Y.2006-07 to 2008-09, the ld. AR submitted that the ld. AO had duly accepted the fact that the provision for warranty schemes have been made based on the analysis of past data of actual warranty expenditure incurred but repeated the same disallowance on the reason that details of reversal of provision made in earlier years were not provided. The appeal against that order is pending. Meanwhile, against the order passed by this Tribunal for A.Y.1997-98 allowing the claim of warranty, the revenue had preferred the appeal to the Hon'ble Jurisdictional High Court and the same was dismissed in ITA No.901/11 dated 15/04/2014. Following this order of Hon'ble Jurisdictional High Court, the ld. AO himself had allowed the claim of the assessee for warranty in the scrutiny assessment proceedings framed in the hands of the assessee for the A.Y.2015-16 on 31/10/2019. In view of this, it could be safely concluded that there is no dispute with regard to the claim of deduction for provision for warranty based on scientific working and analysis made by the assessee and in order to avoid multiplicity of proceedings and especially in view of the fact that the issue is squarely covered by the decision of the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court supra, we are inclined to allow the claim of provision for warranty in the sum of Rs.50,11,63,331/- at our end itself. Accordingly, the concise ground No.2 raised by the assessee is allowed."

14. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedent in assessee's own case, we uphold the plea of the assessee and allow the claim of provision for warranty. Accordingly, ground No. 2 raised in assessee's appeal is allowed.

15. The issue arising in ground No. 3, raised in assessee's appeal, is pertaining to disallowance under section 14A read with Rule 8D.

16. The brief facts of the case pertaining to this issue are: During the year under consideration, the assessee suo moto disallowed Rs. 2,31,72,000 under section 14A of the Act based on allocable expenses relating to the exempt income. The AO did not agree with the submissions and suo moto disallowance offered by the assessee. Following the approach adopted in preceding assessment year i.e. 2013–14, AO computed the disallowance as per Rule 8D. The AO made the disallowance under section 14A of the Act read with Rule 8D at Rs. 37,82,95,454 by considering 50% of the tax-free investments and reducing the suo–moto disallowance already offered by the assessee. The learned DRP rejected the objections filed by the assessee against the aforesaid disallowance. In conformity, the AO passed the impugned final assessment. Being aggrieved, the assessee is in appeal before us.

17. Having considered the submissions of both parties and perused the material available on record, we find that coordinate bench of the Tribunal in assessee's own case in Mahindra and Mahindra Ltd (supra), for assessment years 2011–12 to 2013–14, while deciding similar issue, in respect of disallowance made by application of Rule 8D, directed the AO to only consider those investments which had actually yielded exempt income during the year. The relevant findings of the coordinate bench of the Tribunal, in aforesaid decision, are as under:

> *"4.1. We have heard rival submissions. We find that the assessee had claimed exempt income of Rs.39,21,13,994/-. We find that the assessee had disallowed a sum of Rs.20.94 Crores in the return of income which was supported by workings filed along with return of income and was also filed during the assessment proceedings. The ld. AO ignored the said workings and resorted to make disallowance by applying the third limb of Rule 8D(2) of the Rules and arrive at the disallowance in the sum of Rs.39,21,14,000/- which was confirmed by the ld. DRP. At the time of hearing, both the parties before us fairly agreed that only those investments which had actually yielded exempt income during the year to the assessee are to be considered for the purpose of working out the disallowance made in the third limb of Rule 8D(2) of the Rules. This issue is now very well settled by the decision of the Hon'ble Supreme Court and accordingly, we direct the ld. AO to consider only those investments which had actually yielded exempt income during the year while working out the disallowance under third limb of Rule 8D(2) of the Rules. Accordingly, the concise ground No.3 raised by the assessee is partly allowed for statistical purposes."*

18. Since, similar issue has already been decided in assessee's own case for preceding assessment years, therefore, we see no reason to deviate from the view so taken by the coordinate bench of the Tribunal, in absence of any allegation of change in facts and law. Thus, respectfully following aforesaid judicial precedent in assessee's own case, we direct the AO to only consider those investments which had actually yielded exempt income while computing disallowance under section 14A read with Rule 8D. As a result, ground No. 3 raised in assessee's appeal is allowed.

19. The issue arising in ground No. 4(A), raised in assessee's appeal, is pertaining to transfer pricing adjustment on account of corporate guarantee fee.

20. The brief facts of the case pertaining to this issue are: The assessee had given guarantee/letter of comfort to Mahindra Overseas Investment Company (Mauritius) Ltd (`*MOICML*'), Jiangi Mahindra Yueda Tractor Company Ltd (`*JMYTCL*') and Mahindra Forgings Europe AG (`*MFEA*') to expand the business operations and achieve overall growth in the business of the assessee. MOICML needed funds to make equity investment in other group companies and JMYTCL & MFEA needed the loan for working capital and to augment the growth of business operations. The financial guarantees so extended by the assessee were against borrowing facilities availed by each of the associated enterprises from the lending financial institutions. The assessee on conservative basis made the suo moto adjustment of 1% on guarantee given. During the transfer pricing assessment proceedings, assessee was asked to justify as to why adjustment should not be made similar to that in the last year at 3%. In response, assessee submitted that in its own case arm's length rate of corporate guarantee commission was upheld at 3%, however, the ruling pertains to only corporate guarantee of USD 9.5 million extended by assessee on behalf of MOICML to Standard Chartered Bank and the same has ceased to exist as on October 2013. The assessee further submitted that other corporate guarantees for the year under consideration are invariably different than the one for which order has been passed formerly and therefore same

rate of commission for other corporate guarantee be not applied. The TPO vide order dated 31/10/2017 passed under section 92CA(3) of the Act did not agree with the submissions of the assessee and benchmarked the corporate guarantee commission/fees at the rate of 3% from the associated enterprises. Accordingly, the TPO proposed adjustment of Rs. 7,17,79,482. The DRP vide its directions upheld the findings of the TPO by following its directions rendered in assessee's own case in earlier year. While giving effect to learned DRP's directions, the TPO vide order dated 12/10/2018 revised the TPO adjustment on this issue to Rs. 1,41,46,850. Being aggrieved, the assessee is in appeal before us.

21. We have considered the rival submissions and perused the material available on record. It is the plea of the assessee that in respect of old guarantees, which were issued prior to year 2009 the arm's length rate should be arrived at 3% in line with the decision of coordinate bench of the Tribunal in assessee's own case for assessment year 2009–10. However, in respect of fresh guarantees issued after 2009, the arm's length rate should be determined at 1%. It is further the submission of assessee that in the present case apart from one guarantee, which was issued in the year 2006 and which expired during the year under consideration, all other guarantees were issued during the year under consideration or the preceding financial year and therefore, in respect of these guarantees arm's length rate of 1% be applied. We find that the coordinate bench of the Tribunal in assessee's own case in Mahindra and Mahindra Ltd (supra), for assessment years 2011–12 to 2013–14, vide order dated 19/06/2020, while deciding similar issue, observed as under:

> *"5.2. In view of the aforesaid facts, we deem it fit and direct the ld. AO as under:-*
>
> *a) ALP of corporate guarantee fee in respect of old guarantees to be determined at 3% in line with the decision take by this Tribunal for A.Y.2009-10 as the matter is pending before the Hon'ble Jurisdictional High Court in assessee's own case ;*
>
> *b) In respect of fresh guarantees issued during the year, the ALP of the same should be determined at 1%, being the same rate already disallowed by the*

assessee in the return of income, despite the aforesaid jurisdictional High Court decision holding the rate to be at 0.5%.

c) While recomputing this disallowance, it is needless to mention that the ld. AO should reduce the amount already disallowed towards guarantee fee by the assessee in the return of income.

Accordingly, the concise ground No.4A is partly allowed for statistical purposes."

22. Thus, from the perusal of aforesaid order passed by the coordinate bench of the Tribunal it is evident that in respect of old corporate guarantees, the arm's length rate was determined at 3% in line with the decision in assessee's own case for assessment year 2009–10, while in respect of fresh guarantees issued during the year the arm's length rate was directed to be determined at 1%. As per the information available on record, we find that apart from old guarantee, which was issued in the year 2006 and has ceased to exist as on October 2013, all the other guarantees have been recently issued. From the table at page 18 of TPO's order, we further find that out of the recently issued corporate guarantees only one guarantee was issued in the preceding financial year and rest are issued during the year under consideration. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we direct the TPO/AO to only consider arm's length rate of 3% in respect of old corporate guarantee i.e. issued prior to assessment year 2009–10. In respect of freshly issued corporate guarantees, including the guarantee issued in preceding financial year, the arm's length rate of 1% being the rate which was already suo-moto offered by the assessee be applied. With the above directions, ground No. 4(A), raised in assessee's appeal is partly allowed.

23. The issue arising in ground No. 4(B), raised in assessee's appeal, is pertaining to transfer pricing adjustment on account of interest on loan to associated enterprises.

24. The brief facts of the case pertaining to this issue are: During the year under consideration, assessee had given loan is to its associated enterprises viz. Bristlecone Ltd, Mahindra Overseas Investment Company (Mauritius) Ltd,

Mahindra Gears International Ltd at the rate of interest of 6%, 6.25% to 9% and 6.25% to 8.25% respectively. The assessee benchmarked the aforesaid transaction by adopting Comparable Uncontrolled Price (`*CUP*') method and the interest rate charged by the assessee to its associated enterprises was compared to the prevailing LIBOR at the time of granting such loan. Accordingly, the assessee claimed the international transaction to be at arm's length. The TPO vide order passed under section 92CA(3) of the Act held that benchmarking of loans given to associated enterprises by the assessee is to be done on LIBOR plus basis and accordingly made an adjustment of Rs. 1,27,03,025. The DRP, following its directions rendered in assessment year 2012-13 in assessee's own case, directed the AO/TPO to apply LIBOR rate +5% as arm's length price for interest on loan borrowed by the AE. The DRP further directed that the LIBOR rate to be applied in case the loan has been granted at fixed rate for the entire tenure of loan is the LIBOR rate of the year in which loan was given. However, if the loan has been granted at floating/flexible rate of interest, the LIBOR rate to be applied is LIBOR rate for the year under consideration. Accordingly, vide impugned final assessment order the adjustment on this issue was enhanced to Rs. 3,03,28,016. Being aggrieved, the assessee is in appeal before us.

25. We have considered the rival submissions and perused the material available on record. It is the plea of the assessee that only LIBOR rate at the relevant time be considered for determination of arm's length price of the transaction of interest on loan to associated enterprise. In support of its submission, reliance is placed upon decision of coordinate bench of Tribunal in assessee's own case cited supra for assessment year 2011–12 to 2013–14. From the perusal of the aforesaid decision, we find that the coordinate bench, for coming to conclusion, placed reliance upon earlier decision rendered in assessee's own case for assessment year 2009–10.

26. We find that in a recent decision in Oriental Aromatics Ltd vs DCIT, in ITA No. 6331/Mum/2019, the coordinate bench of the Tribunal vide order dated 10/03/2022 held that while ascertaining arm's length price of a loan

transaction, the interest rate at which normal borrowing and lending transaction have to take place needs to be ascertained and these rates are admittedly certain points above the inter-bank offer rates, unless of course the transactions are between the banking institutions. The relevant findings of the coordinate bench of the Tribunal, in aforesaid decision, are as under:

> *"10. In view of the above discussions, what has been approved by Hon"ble High Court is that the LIBOR based arm"s length price cannot be challenged by the revenue authorities, and this decision is certainly not a proposition for holding that LIBOR simpliciter is to accepted as the arm"s length rate. In any event, the LIBOR, or for that purpose any interbank rate, cannot be treated as an arm"s length interest, except for inter-banking transactions. As we hold so, at the cost of stating the obvious, we must bear in mind the fact that LIBOR, by definition, is London inter-banking offer rate at which essentially banks lend to each other, and the interest rate for end consumers is certain points above this inter-banking rate. If banks borrow at x rate, even simply meeting the basic costs of administrating the business, the rate at which they give loans, has to be x plus something. In the transfer pricing benchmarking, when we ascertain arm"s length price of a loan transaction, we have to ascertain the interest rate at which normal borrowing and lending transactions have to take place, and these rates are admittedly certain points above the inter-bank offer rate- unless, of course, the transactions are between the banking institutions. That is the reason the benchmarking of loan transactions is on the basis of inter-bank offer rate, plus certain basis points above that. The critical question, however, is how many points above the inter-bank rate is the typical arm"s length rate, and that is what a benchmarking analysis should essentially focus on, apart from examining which inter-bank offer rate should be adopted, i.e. Indian inter-bank rate reflected by the RBI rate, LIBOR rate for US Dollar-denominated loans or some other inter-bank offer rate dealing with a particular currency such as Euro etc. The point in dispute in the cases referred to by Hon"ble jurisdictional High Court were the cases where the dispute was confined to which inter-bank offer rate should be adopted, and not the spread or the bps above that. The coordinate bench thus clear in error, and inadvertent error at that, in understanding the impact of this decision, and, in any event, there was no decision on merits or on first principles by the coordinate bench.The understanding of the coordinate bench, quite clearly, is per incuriam, and as is the settled legal position, the per incuriam decisions cease to be binding judicial precedents. The authority, if needed, is contained in the oft-quoted Andhra Pradesh Full bench decision in the case of CIT Vs BR Constructions [(1993) 202 ITR 222 (AP-FB)]. We, therefore, decline to be persuaded by the coordinate bench"s understanding about the decision of the Hon"ble jurisdictional High Court. No other judicial precedent in support of the proposition that an inter-bank rate could be accepted as an arm"s length price forbenchmarking a commercial loan transaction was cited before us. 11. In all fairness, however, whether 300 bps above the LIBOR rate is an arm"s length price for interest on the transaction in question is still an open issue for adjudication. There are no specific findings on this aspect. We, therefore, remit this limited aspect of the matter for fresh adjudication by the learned CIT(A) and direct the assessee to place all the material and arguments in support of adopting an arm"s length interestrate lower than 300 bps above the LIBOR, if so advised, before the*

CIT(A). In taking his call, learned CIT(A) has to adjudicate the matter on the merits of the case rather than being simply guided by the observations of the DRP in the immediately preceding assessment year. While doing so, he will give a due and reasonable opportunity of hearing to the assessee, and decide the matter by way of a speaking order in accordance with the law. Ordered, accordingly."

27. In the present case, as is evident from the record the transaction of the assessee is with its AEs, which cannot be said to be transaction between banking institutions and thus arm's length rate of interest should be the rate at which normal borrowing and lending transaction take place and as held by the coordinate bench in aforesaid decision, these rates are certain points above the inter-bank offered rate. In all fairness, the assessee, without prejudice to its main contention that the LIBOR rate for the year under consideration should be adopted, submitted that the interest rate of LIBOR rate, for the year under consideration, plus 200 basis points be adopted for determination of arm's length price of the international transaction, by placing reliance upon various decisions of the coordinate bench of the Tribunal (mentioned at page 296 of its submission), wherein LIBOR rate plus 150 to 200 bps has been considered to be arm's length interest rate. Thus, accepting the without prejudice plea of the assessee in light of aforesaid findings and judicial pronouncements, we direct the TPO/AO to compute the arm's length price of international transaction pertaining to interest on loan to associated enterprises by considering LIBOR rate, for the year under consideration, plus 200 basis points. As a result, ground No. 4(B) is partly allowed.

28. The issue arising in ground No. 5, raised in assessee's appeal, is pertaining to disallowance under section 40(a)(ia) in respect of year end provisions.

29. The brief facts of the case pertaining to this issue are: During the course of assessment proceedings, it was observed that the assessee is not deducting the TDS on certain year end provisions as the assessee is of the view that the liability of deducting TDS arises in subsequent year when the bill of the party is booked. Accordingly, assessee was asked to show cause as to why due to non-

deduction of TDS on year end provisions, same are not to be disallowed as per provisions of section 40(a)(ia) of the Act. In response thereto, assessee submitted that it makes year end provisions based on services rendered by various vendor/professionals. These provisions represent cost of various activities carried out by the assessee during the relevant financial year. Since the assessee is following mercantile system of accounting, it is required to account for such expenses even though the concerned parties have not submitted their bills or such bills are pending for approval based on the internal system. The assessee further submitted that the obligation to deduct tax at source from the accounts of a specific party arises only at the time the bill is passed and not before that. Accordingly, assessee submitted that no tax is required to be deducted in respect of year end provisions and in terms of 2nd proviso to section 40(a)(ia), and therefore no disallowance should be made on year end provisions. The AO vide draft assessment order did not accept the submissions of the assessee and held that expenses are liable to TDS and are squarely covered by the provisions of chapter XVIIB of the Act. The AO further held that the submission of the assessee that it is not crediting the party account during the year, which would have made the payments liable to TDS, is not tenable on the grounds that once the assessee is debiting its P&L account, it automatically is crediting the party account based on matching principle. Accordingly, AO disallowed Rs. 32,75,21,640 under section 40(a)(ia) of the Act for non-deduction of tax at source. The learned DRP, following its directions rendered in assessee's own case for preceding assessment year, rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

30. Having considered the submissions of both parties and perused the material available on record, we find that this is a recurring issue and has been decided in favour of the assessee in preceding assessment years. We further find that in assessment years 2011-12 to 2013-14, the coordinate bench of the Tribunal vide order dated 19/06/2020, decided this issue in favour of assessee by following the order passed in assessee's own case for assessment year

2009–10. Thus, respectfully following the judicial precedents rendered in assessee's own case cited supra, we direct the AO to delete the disallowance made under section 40(a)(ia) of the Act. Accordingly, ground No. 5 raised in assessee's appeal is allowed.

31. The issue arising in ground No. 6, raised in assessee's appeal, is pertaining to allowance of weighted deduction under section 35(2AB) of the Act.

32. The brief facts of the case pertaining to this issue are: The assessee has several R&D units, which have been approved by the Department of Scientific and Industrial Research (`*DSIR*') for the purpose of weighted deduction under section 35(2AB). Form 3 CM has been issued in respect of all of the R&D units. During the year under consideration the assessee has incurred expenditure of Rs. 1185 crores on R&D activities. The total claim in respect of all the R&D centres under section 35(2AB) of the Act works out to Rs. 2370.69 crores (200%) in respect of both capital and revenue expenditure aggregating to Rs. 1185.34 crores incurred by the respective R&D units. Out of Rs. 1185.34 crores the company itself considered Rs. 169.53 crores as not eligible for weighted deduction and hence claimed weighted deduction with respect to expenditure of Rs. 1051.82 crores. As per Form 3 CL issued by DSIR, an amount of Rs. 1015.81 crores was certified. While issuing the report in Form 3 CL, the DSIR has classified the expenditure under two broad heads – capital expenditure and revenue expenditure. While doing so, DSIR included product development expenditure under the head revenue expenditure and allowed Rs. 897.54 crores as revenue expenditure. With respect of expenditure on unqualified staff aggregating to Rs. 24.65 crores and consultancy expenses of Rs. 134.51 crores, these expenses were treated by the auditor as not eligible for deduction under section 35(2AB) of the Act by applying the revised guidelines issued by the DSIR in May 2014. As per the assessee, DSIR is approving authority for the expenditure eligible for weighted deduction and they have examined balance of the expenditure and disallowed Rs. 169 crore and issued From 3CL for the balance of expenditure. Accordingly, assessee

relied upon the said Form issued by DSIR and claimed the deduction. The AO vide draft assessment order considered the capital expenditure certified by DSIR of Rs. 126 crore only for weighted deduction under section 35(2AB) of the Act and the assessee was denied weighted deduction on amount of Rs. 466.55 crores under section 35(2AB) of the Act. The AO by further reference to the auditor's report, which has some qualifying remarks based on revised guidelines issued by DSIR in May 2014 further disallowed deduction under section 35(2AB) of the Act on amount of Rs. 69.17 crores. Thus, the total disallowance made under this head by the AO was Rs. 535.72 crores. The learned DRP vide its directions held that the revised guidelines are duly taken into consideration by the tax auditor for correct applicability of law and therefore, the objection filed by the assessee are dismissed. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

33. Having considered the submissions of both sides and perused the material available on record, we find that in assessment years 2011–12 to 2013 – 14, the coordinate bench of the Tribunal, vide order dated 19/06/2020, allowed weighted deduction under section 35(2AB) of the Act in respect of the amount certified by DSIR vide Form 3 CL. In the present case, the weighted deduction of the entire amount of Rs. 1015.83 crores, certified by DSIR vide Form 3 CL, was not allowed to the assessee, by referring to the auditor's report wherein revised guidelines issued by DSIR in May 2014 were applied and certain expenditures were treated as not eligible for deduction under section 35(2AB) of the Act. As is evident from the record, there is no dispute on the fact that the DSIR vide Form 3 CL certified amount of Rs. 1015.81 crores being the amount incurred on R&D. Further, it is also not in dispute that these revised guidelines were issued by DSIR after 1st day of the relevant assessment year i.e. 01/04/2014 in this case. Therefore, in view of above, we are of the considered opinion that these revised guidelines issued by DSIR in May 2014 has no relevance, insofar as, for purpose of determining the amount eligible for deduction under section 35(2AB) of the Act for the year under consideration. Accordingly, we direct the AO to allow weighted deduction under

section 35(2AB) of the Act with reference to the entire amount of ₹ 1015.83 crores being the amount certified by DSIR vide Form 3 CL. As a result, ground No. 6 raised in assessee's appeal is allowed.

34. The issue arising in ground No. 7, raised in assessee's appeal, is pertaining to treating the Industrial Promotion Subsidy Incentive received under Package Scheme of Incentives 2001 as revenue receipt.

35. The brief facts of the case pertaining to this issue are: The assessee received an amount of Rs. 1374.91 lakh as Industrial Promotion Subsidy from the Government of Maharashtra in respect of investment in Project Ingenio (Xylo, Quanto and its variants) at Nasik and granted status as megaproject under Package Scheme of Incentives, 2001. The AO vide draft assessment order following the approach adopted in assessment year 2013–14 disallowed the claim stating that the Industrial Promotional Subsidy as Revenue in nature and cannot be construed as capital receipt. The AO also relied upon Hon'ble Supreme Court's decision in Sahney Steels and Press Ltd (228 ITR 253) and decision of Hon'ble Punjab and Haryana High Court in case of Abhishek industries Ltd (286 ITR 1). The learned DRP relying upon its directions rendered in assessee's own case for assessment year 2013–14 rejected the objections filed by the assessee. In conformity, the AO vide final assessment order added an amount of Rs. 13,74,90,999 to total income of the assessee being the Industrial Promotion Subsidy. Being aggrieved, assessee is in appeal before us.

36. Having considered the rival submissions and perused the material available on record, we find that the coordinate bench of Tribunal in assessee's own case cited supra, vide order dated 19/06/2020, for assessment years 2011–12 to 2013–14, treated the Industrial Promotion Subsidy received under Package Incentive Scheme 2001 declared by the Government of Maharashtra in respect of manufacturing unit at Nasik as capital receipt. The relevant findings of the coordinate bench of Tribunal, in aforesaid decision, are as under:

"10.1. We have heard rival submissions and perused the materials available on record. We find that in the return of income, the Company had claimed Rs. 45,36,95,084/- as capital receipt not chargeable to tax being Industrial Promotion Subsidy (IPS) receivable under incentive scheme 2001 announced by the Government of Maharashtra in respect of its manufacturing unit at Nashik. The said subsidy is payable under the 'Package Scheme of Incentives 2001 announced by the Government of Maharashtra for moving industries into certain backward areas of Maharashtra, in this case Nashik. The main objective of the Package Scheme 2001 was to intensify and accelerate the process of dispersal of industries to the less developed regions and promoting high tech industry in developed areas of the State of Maharashtra, coupled with the object of generating mass employment opportunities. 2001 Scheme was a modification of the 1993 Scheme.

10.2. IPS is payable in respect of the new assembly line for XYLO vehicle started at its Nashik plant. The assessee receives IPS from the Directorate of Industries, Government of Maharashtra. It is restricted to 50% of the eligible fixed capital investment or the amount payable by way of Maharashtra Value Added Tax (MVAT) and Central Sales Tax (CST) in sale of finished goods, plus the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp Duty, refund of royalty and any other benefits (as may be specified by the Government) availed by the eligible Mega Projects under PSI 2001 / 2007, whichever is lower. The copy of the said incentive scheme are enclosed in page 278 to 318 of the paper book filed before us. We find that assessee treated the amount of incentive received under Industrial Promotion Subsidy as capital receipt in the return of income on account of the following reasons:-

(a) The main objective of the Scheme was to ensure sustained industrial growth through innovative initiatives for development of key potential sectors and further improving the conducive industrial climate in the State, for providing the global competitive edge to the State's industry. The policy envisages grant of fiscal incentives to achieve higher and sustainable economic growth with emphasis on balanced regional development and employment generation through greater private and public investment in industrial development. In other words, the Scheme was meant to correct regional imbalance in the industrial development of the State and also achieve higher and sustainable economic growth.

(b) It is clear from the scheme that IPS incentive was granted not for carrying on day-to-day business of the unit more profitably but to ensure sustainable economic growth with emphasis on balanced regional development and employment generation. The Sales Tax Payment is only a measure or yardstick to determine the quantum of incentive.

10.3. We find that the ld. AO placed reliance on the decision of Hon'ble Supreme Court in the case of Sahney Steel and Press Ltd., reported in 228 ITR 253 and the decision of Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Ltd., reported in 286 ITR 1 and rejected the claim of the assessee of treating the industrial promotion subsidy as capital receipt.

10.4. The ld. AO also observed that this subsidy was available to the assessee from the date of commencement of commercial production suggesting that the

subsidy was not given for the setting up of business but for carrying on of its business. He also observed that similar additions were made in assessee's own case for A.Yrs. 2008-09 to 2011-12. With these observations, the ld. AO treated the receipt of subsidy as the revenue receipt. This action was upheld by the ld. DRP. We find that the ld. AR before us submitted that the same Maharashtra 2001 package scheme of incentives has been examined by the Co-ordinate Bench of Delhi Tribunal in the case of LG Electronics India Pvt. Ltd., in ITA No.2163/Del/2015 dated 19/04/2017 wherein by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Ponni Sugars and Chemicals Ltd., reported in 306 ITR 392 had held that Industrial Promotion Subsidy received under Maharashtra 2001 package scheme of incentives to be capital receipt. The copy of the said Delhi Tribunal decision was placed on record by drawing specific reference to paras 4-7 thereof by the ld. AR. We are in agreement with the argument advanced by the ld. AR herein that the purpose for which subsidy was given under Maharashtra 2001 package scheme of incentives has been duly examined by the Delhi Tribunal and they had held that the purpose for which the subsidy was given is relevant and not the form in which it is given or the source from which it is given nor the time at which it is given, would be relevant for the purpose of determining the taxability of receipt of the said subsidy. We also find that this issue has been addressed in the following decisions of Hon'ble Supreme Court in favour of the assessee as under:-

(a) Chaphalkar Brothers, case reported in (2017) 88 Taxmann.com 178 (SC);

(b) Shree Balaji Alloys and others, case reported in (2017) 80 Taxmann.com 239 (SC).

10.5. Respectfully following the said decision, we hold that the subsidy in the sum of Rs.45,36,95,084/- is to be treated as capital receipt. Accordingly, the concise ground No.8 raised by the assessee is allowed."

37. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedent in assessee's own case, we uphold the plea of the assessee and direct the AO to delete the addition on account of Industrial Promotion Subsidy. Accordingly, ground No. 7 raised in assessee's appeal is allowed.

38. The issue arising in ground No. 8, raised in assessee's appeal, is pertaining to treating the Industrial Promotion Subsidy Incentive received under Package Scheme of Incentives 2007 as revenue receipt.

39. The brief facts of the case as emanating from the record are: In the return of income, the assessee has claimed Rs.12,374.18 lakh being Industrial Promotion Subsidy received under Package Scheme of Incentives, 2007 announced by Government of Maharashtra as capital receipt not chargeable to tax. The AO vide draft assessment order following the approach adopted in assessment year 2013–14 disallowed the claim stating that the Industrial Promotion Subsidy as revenue in nature and cannot be construed as capital receipt. The AO also relied upon Hon'ble Supreme Court's decision in Sahney Steels and Press Ltd (228 ITR 253) and decision of Hon'ble Punjab and Haryana High Court in case of Abhishek industries Ltd (286 ITR 1). The learned DRP relying upon its directions rendered in assessee's own case for assessment year 2013–14 rejected the objections filed by the assessee. In conformity, the AO vide final assessment order added an amount of Rs. 123,74,18,233 to total income of the assessee being the Industrial Promotional Subsidy. Being aggrieved, assessee is in appeal before us.

40. Having considered the rival submissions and perused the material available on record, we find that the coordinate bench of Tribunal in assessee's own case cited supra, vide order dated 19/06/2020, for assessment years 2011–12 to 2013–14, treated the Industrial Promotion Subsidy received under Package Incentive Scheme 2007 declared by the Government of Maharashtra in respect of setting up of industry in certain backward areas (Chakan) as capital receipt. The relevant findings of the coordinate bench of Tribunal, in aforesaid decision, are as under:

> *"11.1 We have heard rival submissions and perused the materials available on record. We find that assessee had claimed a sum of Rs.119,85,01,118/- for the industrial promotion subsidy incentive received on the basis of 'Package Scheme of incentive 2007 declared by Government of Maharashtra' for setting up of industry in certain backward areas (Chakan). The said incentive was given by Directorate of Industries for locating in a backward area and sales tax payment is only a measure or yard stick to determine the quantum of incentive. We find that the main objective of the Scheme was to ensure sustained industrial growth through innovative initiatives for development of key potential sectors and further improving the conducive industrial, climate in the State, for providing the global competitive edge to the State's industry. The policy envisages grant of fiscal incentives to achieve higher and sustainable economic growth with emphasis on balanced regional development and*

employment generation through greater private and public investment in industrial development. In other words, the Scheme was meant to correct regional imbalance in the industrial development of the State and also achieve higher and sustainable economic growth. Under the eligibility for Mega project it specifies criteria of investment of more than Rs. 500 crores or generation of employment for more than 1000 persons in A&B area or investment more than Rs 250 crores or generating employment for more than 500 persons in rest of Maharashtra. It also provides that the Mega projects claiming the benefits based on employment criteria will have to employ the qualifying number of employees throughout the year and 75% of such employees should be local persons. Thus, the scheme has much larger purpose of industrial growth and therefore any incentive received in this regard is in the nature of capital receipt.

11.2. It is clear from the scheme that IPS (Industrial Promotion Subsidy) incentive was granted not for carrying on day-to-day business of the unit more profitably but to ensure sustainable economic growth with emphasis on balanced regional development and employment generation. The Sales Tax Payment is only a measure or yardstick to determine the quantum of incentive.

11.3 In this case the amount of subsidy is equal to 100% of the fixed capital investment or amount of MVAT payable on sale of finished products. We find that the ld. AO sought to treat the said receipt of the subsidy as the revenue receipt on the ground that the said subsidy has been given for carrying on the business of the assessee and also on the ground that the same was given after the date of commencement of commercial production. This action of the ld. AO was upheld by the ld. DRP. We find that the same subsidy scheme had been adjudicated by the co-ordinate Bench of this Tribunal in assessee's subsidiary company's case i.e. Mahindra Vehicle Manufacturers Ltd., in ITA No.6919 & 6920/Mum/2016 dated 28/11/2018 wherein the receipt of subsidy had been held to be capital receipt as the same had been held to be capital receipt as the same had been granted for either setting up new unit or for expanding the existing unit in certain regions of the State. It was further held that the subsidy was granted in the form of sales tax payable on finished goods and spares sold by the assessee. This Tribunal decision was rendered by duly considering the decision of Hon'ble Supreme Court in the case of Ponni Sugars and Chemicals Ltd., reported in 306 ITR 392. Respectfully following the same, we direct the ld. AO to treat the receipt of industrial promotion subsidy incentive of Rs.119,85,01,118/- under the 2007 incentive scheme as capital receipt. Accordingly, the concise ground No.9 raised by the assessee is allowed."

41. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedent in assessee's own case, we uphold the plea of the assessee and direct the AO to delete the addition on account of Industrial Promotion Subsidy. Accordingly, ground No. 8 raised in assessee's appeal is allowed.

42. The issue arising in ground No. 9, raised in assessee's appeal, is pertaining to treating the Industrial Promotion Subsidy Incentive received from Directorate of Industries pursuant to Andhra Pradesh Industrial Investment Promotion Policy 2010 – 2015 as revenue receipt.

43. Having considered the rival submissions and perused the material available on record, we find that during the year under consideration assessee received Rs. 15,39,80,606 being Industrial Promotion Subsidy Incentive under Andhra Pradesh Industrial Investment Promotion Policy ('IIPP') 2010 – 15. In the return of income filed by the assessee the aforesaid amount was claimed as capital receipt not chargeable to tax. Andhra Pradesh Government had extended incentive to the assessee, Medak District, under the IIPP 2010-15 for their proposed tractor manufacturing facility with minimum investment of Rs. 250 crore for producing 80,000 units per annum. Assessee has set up in industrial undertaking at the specified area viz Medak District, in the state of Andhra Pradesh with the investment cost of Rs. 350 crore for producing 1 lakh tractors per annum and commence commercial production in the previous year ended 31/03/2014. Accordingly, assessee's new tractor plant in Andhra Pradesh falls under Mega project and has become eligible for incentive equivalent to the amount of Sales Tax (VAT and CST) under the IIPP 2010-15. As per the assessee, the main object of the scheme was to ensure sustained industrial growth through innovative initiatives for development of key potential sectors and further improving the conducive industrial climate in the state, for providing the global competitive edge to the state's industry. Further, the policy envisages ground of fiscal incentives to achieve higher and sustained economic growth with emphasis on balanced regional development and employment generation through greater private and public investment in industrial development.

44. It is clear from the scheme that Industrial Promotion Subsidy Incentive was granted not for carrying on day-to-day business of the unit more profitably but to ensure sustainable economic growth with emphasis on balanced regional development and employment generation. The Sales Tax

payment is only a major yardstick to determine the quantum of incentive. In this case, the amount of reimbursement is 100% gross VAT and CST for a period of 10 years from the date of commencement of commercial production or up to realisation of enhanced investment of Rs. 350 crore, whichever is earlier and subject to assessee investing minimum of Rs. 250 crore from the internal accruals within 6 months from the date of commencement of production.

45. The AO by following the approach adopted in assessment year 2013 – 14 in respect of another incentive scheme treated the receipt of Industrial Promotion Subsidy as revenue in nature. Similarly, the learned DRP also following its directions rendered in assessee's own case for preceding assessment year, in respect of Package Incentive Scheme of Government of Maharashtra, rejected the objections filed by the assessee.

46. We find that the coordinate bench of Tribunal in Thermo Cables Ltd vs ACIT, in ITA No. 1177/Hyd./2017, for assessment year 2013–14, vide order dated 29/08/2018 while dealing with IIPP 2010 – 15 declared by the State of Andhra Pradesh held the Industrial Promotion Subsidy incentive to be capital in nature. As noted above, similar subsidy under package scheme of incentive declared by the Government of Maharashtra has been treated as capital in nature, therefore, the AO is directed to treat Industrial Promotion Subsidy Incentive received under IIPP 2010-15 as capital in nature and delete the addition in this regard. As a result, ground No. 9 raised in assessee's appeal is allowed.

47. The issue arising in ground No. 10, raised in assessee's appeal, is pertaining to disallowance of deduction for difference in exchange.

48. The brief facts of the case as emanating from the record are: During the course of assessment proceedings, it was observed that the difference in exchange arising out of the repayment of foreign currency loans/revaluation of foreign currency loans as at 31/03/2014 amounting to Rs. 186,98,66,142 was claimed as deductible revenue expenditure. The assessee has taken foreign

currency loans from Hong Kong and Shanghai Banking Corp Ltd, Bank of America, Sumitomo Mitsui Banking Corp, State Bank of India–Hong Kong, Mizho Corporate Bank for acquisition of capital assets and working capital purposes. The assessee has also given inter-corporate deposits to Bristlecone Ltd., Mahindra Overseas Investment Company (Mauritius) Ltd and Mahindra Gears International Ltd for general purpose. As on 31/03/2014, in the books of account, the assessee has re-evaluated the loan liabilities and inter corporate deposits given and part of loss arising thereon due to difference in exchange of Rs. 92,85,73,751 to fixed assets, Rs. 1,67,78,997 to capital work in progress and Rs 92,45,13,394 was carry forward in the '*Foreign Currency Monetary Item Translation Difference Account*' as per notification on Accounting Standard – 11. The AO vide draft assessment order did not agree with the submissions of the assessee and following the approach adopted in assessment year 2013–14 disallowed the assessee's claim stating that the expenditure is contingent in nature and has not been crystalised. The learned DRP following its directions rendered in assessee's own case for assessment year 2013–14 rejected the objections filed by the assessee. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

49. Having considered the submissions of both sides and perused the material available on record, we find that in assessee's own case in assessment year 2011–12 to 2013–14, the coordinate bench of the Tribunal vide order dated 19/06/2020, while deciding similar issue observed as under:

> *"12.12. We have gone through the order of the Tribunal for A.Y.2009-10 and we find force in the argument advanced by the ld. AR in this regard. We find that this Tribunal had held that the exchange loss need to be adjusted to the cost of fixed assets / cost of capital work in progress. Hence, we hold that assessee is entitled for depreciation on such capital portion of the exchange fluctuation loss.*
>
> *12.13. The another related issue involved in this regard is what is the period for which such loss should be capitalised. In this regard, the ld. AR argued that under the Income Tax Act, any item that is added to the fixed asset need to be capitalised till the asset is put to use. This is supported by Explanation 8 to Section 43(1) and proviso to Section 36(1)(iii) of the Act. Any cost incurred beyond that period should be charged off as revenue expenditure. Accordingly,*

he argued that irrespective of the accounting treatment given by the assessee in the books, the exchange loss could be added to the cost of fixed assets only till such time, the assets were not put to use. Thereafter, such exchange loss should be allowed as revenue expenditure. We find that this line of argument was not taken up by the assessee for A.Y.2009-10 while addressing this issue before the Tribunal for A.Y.2009-10. Accordingly, there was no occasion for this Tribunal to adjudicate this aspect of the issue. The ld AR submitted that this exchange loss that is debited to FCMITA is not related to acquire fixed assets and hence, the same should be allowed as revenue expenditure. The ld. AR further stated that, in any event, the process of capitalisation of such exchange loss should end with the commencement of overseas investments utilizing foreign currency loans. Exchange loss for the period after acquisition of investments and therefore, be allowed as revenue expenditure according to the ld. AR. We find that the decision taken by this Tribunal in A.Y.2009-10 may not be fully applicable to the facts of the instant case and we hold that the said decision would hold good with some modifications as suggested below based on factual developments that had happened later:-

(a) Foreign currency loans utilised for acquiring fixed assets and overseas investments is to be capitalised and correspondingly depreciation need to be granted to the assessee. In this, the exchange loss pertaining to the period till the asset was put to use should alone be capitalised and thereafter, the same should be allowed as revenue expenditure.

(b) Foreign exchange loss attributable to other monetary items debited to FCMITA as per AS 11 of ICAI should be allowed as revenue expenditure.

Accordingly, the concise ground No.10 raised by the assessee is disposed off in the aforesaid manner."

50. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedent in assessee's own case, ground No. 10, raised in assessee's appeal, is decided with similar directions as rendered in preceding assessment year.

51. The issue arising in ground No. 11, raised in assessee's appeal, is pertaining to allowability of expenses on Employees' Stock Options (ESOP).

52. The brief facts of the case pertaining to this issue are: In the computation of income, assessee has claimed Rs. 50,18,77,346 as expenses incurred on ESOP scheme. During the course of assessment proceedings, the assessee company was asked as to why the expenses should not be disallowed

being incurred towards expansion of capital base of the assessee company. In response thereto, assessee submitted that expenditure was laid out for services obtained which were wholly and exclusively for the purpose of business. The assessee further submitted that the expenses are part of staff welfare/employee cost. The assessee also submitted that the objective of scheme is not to raise share capital but to earn profit by securing the consistent and concentrated efforts of its dedicated employees during the vesting period. The assessee also placed reliance upon decision of special bench of the tribunal in case of Biocon Limited vs DCIT (LTU) [(2013) 35 Taxmann.com 335 (SB)(Bang)]. The AO vide draft assessment order did not agree with the submissions of the assessee and following the approach adopted in assessment year 2013–14 held that expenses on ESOP as related to increase in share capital of the company and therefore, disallowable. The learned DRP following its directions rendered in assessee's own case for assessment year 2013–14 rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

53. Having considered the submissions of both sides and perused the material available on record, we find that in assessee's own case in assessment year 2011–12 to 2013–14, the coordinate bench of the Tribunal vide order dated 19/06/2020, while deciding similar issue observed as under:

> *"13.1. We have heard rival submissions and perused the materials available on record. We find that during the Financial Year 2012-13 pertaining to assessment year 2013-14, the company has claimed deduction towards ESOP expenditure of Rs. 47,03,67,525/- on the basis of options exercised. Options granted under ESOP scheme vest in 5 equal installments from date of the grant. During the year under consideration, options exercised was for 6,46,308 shares out of options granted on 28th January, 2011 and 14th December, 2011. The exercise price of options granted on 28th January 2011 and 14th December 2011 was Rs. 5/- per share and market price per share was Rs. 733.05 on 28th January, 2011 and 729.90 on 14th December 2011. ESOP cost working for the year under consideration is as under:*

Sr. no.	*Grant Date (A)*	*Market price on grant date*	*Exercise Price (C)*	*no. of options*	*ESOP Cost*

		(B)		exercised (D)	[(B–C)*d]
1.	28.01.2011	733.05	5	590,113	42,96,31,770
2.	14.12.2011	729.90	5	56,195	4,07,35,755
	Total			646,3018	47,03,67,525

13.2. This sum of Rs.47,03,67,525/- was claimed as deduction by the assessee in the return of income, which was sought to be disallowed by the ld. AO in the assessment on the ground that the said expenditure was incurred for increasing share capital of the assessee company. The ld. AO also observed that employees stock option will give enduring benefit to the assessee company from the employees who have availed the scheme. The ld. AO by placing reliance on the decision of Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd., reported in 225 ITR 792 and Brooke Bond India Ltd., reported in 225 ITR 798 held that the said expenditure would be capital in nature. This action was upheld by the ld. DRP. We find that this issue is now settled by the Special Bench of the Bangalore Tribunal in the case of Biocon Ltd., in favour of the assessee, wherein it has been held that the deduction is to be allowed for the difference between the exercise price of the option and the market price at the time of exercise of the option. We find that in the return of income, the assessee had claimed deduction for the difference between the exercise price and the market price on the date of grant of option. This Tribunal while rendering the decision for the A.Y.2009-10 in assessee's own case had restored this issue to the file of the ld. AO to consider the claim of deduction in the light of the Special Bench decision in the case of Biocon Ltd., We find that the ld. AR fairly submitted that in principle, this issue is decided in favour of the assessee by the Special Bench in the case of Biocon Ltd., but still in the interest of justice, a specific direction need to be given to the ld. AO to allow deduction in respect of all options exercised during the year equal to the difference between the exercise price and the market price at the time of exercise of the option, as held in the case of Biocon Ltd, instead of the market price at the time of grant of option. We find lot of force in the said argument of the ld. AR and direct the ld. AO accordingly. Accordingly, the concise ground No.11 raised by the assessee is allowed for statistical purposes."

54. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. We also find that the aforesaid decision of Special Bench of Tribunal has also been affirmed by Hon'ble Karnataka High Court in CIT v. Biocon Ltd.: 430 ITR 151. Thus, respectfully following the judicial precedent in assessee's own case, the AO is directed to allow deduction in respect of all options exercised during the year equal to the difference between the exercise price and the market price at the time of exercise of the option, as held in the case of Biocon Ltd (supra),

instead of market price at the time of grant of option. As a result ground No. 11 raised in assessee's appeal is allowed for statistical purpose.

55. The issue arising in ground No. 12, raised in assessee's appeal, is pertaining to deduction of provision for post retirement scheme for housing and for post retirement medical scheme.

56. The brief facts of the case pertaining to this issue are: The assessee claimed an amount of Rs. 1,67,70,866 towards provision for post retirement scheme for housing and Rs. 1,28,87,729 for post retirement medical scheme. The scheme titled as 'Post Retirement Scheme' is in respect of select cadre of employees who meet certain criteria at the time of retirement from the assessee company and thereafter. The benefit is payable to those employees who have completed at least 10 years of service with the company and 5 years of service in Group Management Board. Further, the post-retirement medical scheme is a benefit available to the officers who superannuate from the services of company in grade L5 M and above. The benefit is in form of reimbursement of hospitalisation expenses of the officer and their spouse till they reach the age of 75 or death, whichever is earlier. The reimbursement is arranged through the medical claim policy taken by the company in respect of each of the officer and spouse at the time officer retires. The assessee made provision for the amounts that would be payable under the post retirement scheme to the present employees in relation to the services rendered in the year under assessment. The provision was made to retain pool of talent and to prevent them from moving to competitors. As per the assessee, the liability in respect thereof was scientifically determined based on actuarial valuation of the same as at the end of each year. Since, the liability accrued during the year under consideration, accordingly, the assessee claimed the deduction. The AO vide draft assessment order did not agree with the submissions of the assessee and held that the provision is contingent in nature and therefore is not allowable. The AO further held that the benefit will be given to retiring employee and not working employee and therefore it is not allowable as business expenditure as it is not expended fully and exclusively for the

purpose of business of the assessee. The learned DRP following directions rendered in assessee's own case for assessment year 2013–14 rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

57. Having considered the submissions both sides and perused the material available on record, we find that in assessee's own case in assessment years 2011–12 to 2013–14 the coordinate bench of the Tribunal vide order dated 19/06/2022, while deciding similar issue observed as under:

> *"14.4. We find that the issue under dispute is squarely covered in favour of the assessee by the coordinate bench decision of this Tribunal in the case of Hindustan Petroleum Corporation Ltd., in ITA No.1294/Mum/2011 vs. JCIT dated 26/09/2012. We have gone through the said Tribunal order and find that this issue is squarely decided in favour of the assessee on similar facts and circumstances. We also find that assessee had filed a modified ground of appeal before us on 'without prejudice basis' that in any case, at least the actual payment made during the year towards post retirement scheme for housing and post retirement medical benefit should be allowed as deduction. We find that assessee is indeed entitled for deduction on provision basis itself and hence, it is not required to adjudicate the modified ground of appeal filed before us and the ld. AO is hereby directed to grant deduction for provision for post retirement scheme for housing in the sum of Rs.7,51,45,000/- and post retirement medical scheme in the sum of Rs.2,06,30,000/- while giving effect to this order. Accordingly, the concise ground No.12 raised by the assessee is allowed."*

58. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the judicial precedent in assessee's own case, we uphold the plea of the assessee and direct the AO to allow the deduction of provision for post retirement scheme for housing and for post retirement medical scheme. Accordingly, ground No. 12 raised in assessee's appeal is allowed.

59. The issue arising in ground No. 13, raised in assessee's appeal, is pertaining to taxability of interest on tax free bonds.

60. The brief facts of the case pertaining to this issue are: During the year under consideration, the assessee wrongly offered to tax interest on tax free bonds amounting to Rs. 5,02,46,380, which during the course of assessment proceedings was claimed an exclusion from interest income i.e. from '*income from other sources*'. The claim made by the assessee was denied by the AO by placing reliance upon the decision of Hon'ble Supreme Court in Goetze (India) Ltd. vs CIT, (2006) 284 ITR 323 (SC). The learned DRP following directions rendered in assessee's own case in assessment year 2013–14 rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

61. Having considered the submissions of both sides and perused the material available on record, we find that in assessee's own case in assessment year 2011–12 to 2013–14 the coordinate bench of the Tribunal vide order dated 19/06/2022, while deciding similar issue observed as under:

> *"26.1. We have heard rival submissions and perused the materials available on record. At the outset, we find that this additional ground deserves to be admitted as it does not involve verification of the primary facts on record and more especially in view of the undisputed fact that the entire details of interest income had been duly filed before the ld. AO by the assessee during the course of assessment proceedings. Admittedly, the said interest income included interest earned on tax free bonds in the sum of Rs.3,47,19,107/- which is not liable for taxation at all both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act. Merely because, the assessee had erroneously offered the same in the return of income, the same cannot be brought to tax by the revenue. The law is now well settled that only just and right tax should be collected from the right person by the revenue. Hence, we deem it fit and admit the additional ground and direct the ld. AO to reduce the sum of Rs.3,47,19,107/- towards interest income on tax free bonds both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act. We also place reliance on the decision of Hon'ble Jurisdictional High Court in the case of Pruthvi Brokers and Shareholders Pvt. Ltd., reported in 349 ITR 336 (Bom) in support of the proposition. Accordingly, the additional ground No.2 raised by the assessee is allowed."*

62. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following

the judicial precedent in assessee's own case, we uphold the plea of the assessee and direct the AO to reduce the sum of Rs 5,02,46,380 towards interest income on tax free bond. Accordingly, ground No. 13 raised in assessee's appeal is allowed.

63. The issue arising in ground No. 14, raised in assessee's appeal, is pertaining to allowability of claim of development expenses of construction equipment unit.

64. The brief facts of the case as emanating from the record are: During the year under consideration, Construction Equipment unit of the assessee has incurred development expenditure of Rs. 45,32,800. The expenditure was incurred for development of low-cost backhoe loaders vehicle, which are used in construction equipment in India. In the return of income, the said amount remained to be claimed. Accordingly, during the course of assessment proceedings, the assessee claimed development expenses in respect of construction equipment unit. The claim made by the assessee was denied by the AO by placing reliance upon the decision of Hon'ble Supreme Court in Goetze (India) Ltd. (supra). The learned DRP vide its directions rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

65. We have heard the rival contentions and perused the material available on record. As per the assessee, the development expenditure incurred is for development of low-cost Back Hoe Loaders (BHL) vehicle, which are used in construction equipment in India. The development of BHL fall within the category of motor vehicle and development of such vehicle is nothing but bringing into existence/manufacturing new kind of vehicle performing different function mainly in construction activities and road development. It is the submission of the assessee that as the company is already in the business of manufacturing vehicle and tractor for last several years, therefore, any new vehicle development is part and parcel of the existing business. As per the assessee, the development expenditure of Rs. 45,32,800 is in the nature of

salary cost and other variable cost like certification charges, material consumption. Further, it is submitted that the said amount remained to be claimed and hence during the course of assessment proceedings request was made to allow the development expenditure as revenue expenditure under section 37(1) of the Act. It is trite that assessment proceedings before taxing authority are to assess correct tax liability. However, in the present case, the AO as well as learned DRP did not entertain the claim of the assessee in view of decision of Hon'ble Supreme Court in Goetze (India) Ltd. (supra), without going into the merits of the claim. Therefore, in view of the above, we deem it appropriate to remand this issue to the file of AO for *de novo* adjudication. The AO is further directed to examine the nature of expenditure claimed by the assessee under the head '*development expenditure*' and to allow the same, as per law, if it is found to be for the purpose of bringing into existence/manufacturing new kind of vehicle, after necessary examination. As a result, ground No. 14 raised in assessee's appeal is allowed for statistical purpose.

66. As per the synopsis dated 22/09/2021 as well as 24/05/2022, ground No. 15 is not pressed. Accordingly, the same is dismissed as not pressed.

67. The issue arising in ground No. 16, raised in assessee's appeal, is pertaining to disallowance of deduction under section 80IC of the Act.

68. The brief facts of the case pertaining to this issue are: During the year under consideration assessee claimed deduction of Rs. 172,39,52,059 under section 80IC of the Act in respect of Rudrapur unit. The AO asked the assessee to justify the claim under section 80 IC of the Act with supporting documents, during the course of assessment proceedings. In response thereto, assessee submitted that the claim is duly supported by the audited accounts of Rudrapur unit including the profit and loss account and audit report in form 10 CCB. The assessee further submitted that while direct expenses incurred for and at eligible units – manufacturing, administration etc. are captured directly on the basis of cost centre/location code. The assessee also provided the details of common expenses such as admitted overheads, sales and

distribution expenses, R&D expenses and interest expenses and allocation thereof. The AO vide draft assessment order did not agree with the submissions of the assessee and following the approach adopted in assessment year 2013–14, wherein the learned DRP partially allowed the assessee's objections, only calling for calculation of deduction under section 80IC by allocating the assessed business income in the ratio of turnover of Rudrapur unit to the total turnover of the assessee. As a result, the deduction under section 80IC of the Act was restricted. The learned DRP following the approach adopted in assessment year 2013–14 dismissed the objections filed by the assessee, by observing as under:

> *"18.2 Findings:*
>
> *The assessee has claimed deduction u/s.80IC and has allocated certain common expenses such as administrative overheads, sales and distribution expenses, research and development expenses and interest expenses to Rudrapur Unit, based on the Cost Audit Report. It is submitted that the common expenses are allocated based on certain allocation keys, e.g. personnel costs with the key as number of employees, depreciation based on gross fixed assets and other expenses based on proportionate expenses. The AO, however, followed the decision of this Panel in A.Y.2013-14, which is reproduced as under*
>
> > *"18.2 Findings:*
> >
> > *The facts are discussed in para 21 of the draft order. The assessee claimed that the transactions of Rudrapur unit regarded as 'specified domestic transactions" as per the provisions of Sec. 928A(v) are eligible for benefit u/s.801C as reported in Form 3CEB of the Audit Report also. However, the AO, following the direction of DRP in AY. 2012-13, recalculated the deduction u/s 801C. This issue is discussed by the DRP in A. Y. 2012-13 in para 13.2 of its order as under:*
> >
> > *"In the A. Y. 2009-10, the DRP had examined the working of profitability as submitted by the assessee in detailed manner. The DRP had come to a conclusion that the profits of Rudrapur unit were inflated due to variation in cost, variation in sale price, defective allocation of expenses etc. Therefore the DRP has rejected the unit wise accounts prepared by the assessee stating that they do not represent true and fair results of the unit of the assessee company. Accordingly, the DRP had directed AO to determine business profit of Rudrapur unit by allocating the business income assessed as per order giving effect to DRP order in proportion to turnover of Rudrapur unit to the total turnover. During the year under consideration, the AO has followed the same formula as prescribed by DRP in A. Y. 2009-10 and has computed the deduction at Rs.48,65,00,000/- There is no change in facts in the year under consideration. Therefore, the action of assessing officer is confirmed."*

As the facts are identical, therefore, we agree with the findings of the DRP in A.Y.2012-13 and, therefore, this objection is dismissed."

In this year also, the AO has followed the same formula and, therefore, following our decision in earlier year, this objection is dismissed."

69. In conformity, the AO passed the final assessment order restricting the deduction under section 80 IC of the Act to Rs. 61,76,52,764 by observing as under:

"21.5 Therefore, in conformity with the directions of the Learned DRP–3, deduction u/s 80IC is recalculated as under:–

Particulars	*Amount*
Total Business Income (as per the addition (A) made in the order Less Adjustment u/s. 92CA)	*Rs.3032,79,31,397*
Less: Adjustment made u/s 92CA(3) *Toital Turnover of Rudrapur unit Rs.2890.25 cr (B)* *Total Turnover of the Assessee Rs.42,575.04 cr (C)*	
*Thus the eligible profit u/s 80IC = A*B/C*	*Rs.205.88 cr*

This being the 10th year of the claim, deduction is restricted to 30% of the eligible deduction calculated = Rs.61,76,52,764."

Being aggrieved, the assessee is in appeal before us.

70. We have considered the rival submissions and perused the material available on record. As per the assessee, the AO has relied upon the learned DRP's directions for assessment year 2013–14. In assessment year 2013–14, the learned DRP followed its order for assessment year 2009–10 in which, learned DRP had directed the deduction under section 80 IC in respect of Rudrapur unit be allowed by allocating assessed business income of the assessee as a whole in proportion to turnover of Rudrapur unit to the total turnover of the assessee. It was further submitted that provision of section 92BA were introduced in the Act from assessment year 2013–14 and the AO referred the specified domestic transaction, i.e. the transaction related to

Rudrapur unit, in terms of section 92BA(v) to the TPO for determination of the arm's length price in the assessment year 2013-14. Accordingly, detailed submissions were made before the TPO and inter unit transactions were held to be at arm's length. Despite the findings by learned TPO, the AO in the assessment year 2013-14 modified the claim under section 80IC on the same lines as in assessment year 2009–10. We find that in further appeal, the coordinate bench of the Tribunal vide order dated 19/06/2020 for assessment year 2013–14, directed the AO to accept the claim of deduction under section 80 IC of the Act as made by the assessee in its return of income on the basis that the profitability disclosed by the assessee for Rudrapur unit has been accepted to be at arm's length by the TPO. The relevant findings of the coordinate bench of the Tribunal in aforesaid decision are as under:

> *"19.5. We have heard rival submissions and perused the materials available on record. From the detailed facts narrated above and from the various arguments advanced by both the sides, we are of the considered opinion that for the year under appeal, the decision rendered by this Tribunal for A.Y.2009-10 cannot be made applicable in as much as there is absolutely no adverse finding at all by the lower authorities as was done in A.Y.2009-10. With regard to assessing profits that were disclosed by the assessee for Rudrapur unit, it is not in dispute that the assessee for the year under appeal had duly submitted his audit report in form 10CCB for claim of deduction u/s.80IC of the Act for Rudrapur unit alongwith computation of income, profit and loss account and balance sheet including the workings for allocation of expenditure for arriving at the profitability of Rudrapur Unit. It is not in dispute that the transactions reflected in Rudrapur Unit were subject matter of transfer pricing assessment under the category of 'specified domestic transactions' in terms of Section 92BA(v) of the Act and the ld. TPO had accepted the entire profitability disclosed in Rudrapur unit to be at arm's length in his transfer pricing order dated 31/10/2016. We find that in terms of Section 92CA(4) of the Act, the order of the ld. TPO is binding on the ld. AO. This fact has further been strengthened by CBDT instruction No.3/2016. We find for A.Y.2009-10, reference to Transfer Pricing Officer under the category of specified domestic transactions, were not provided for in the statute at the relevant point of time. Whereas for A.Y.2013-14 i.e. the year under appeal, the statute had duly provided for determining of arm's length price in respect of specified domestic transactions. It is not in dispute that the transactions of Rudrapur Unit duly fall within the ambit of "specified domestic transactions". Hence, we hold that once the profitability disclosed by the assessee for Rudrapur unit had been accepted to be at arm's length by the ld. TPO in the transfer pricing adjustment, the same cannot be further disturbed by the ld. AO by making some disallowance or by adopting different method of determining the profitability and especially in view of the fact that no adverse findings were recorded by the lower authorities, with regard to profitability of Rudrapur Unit. In view of the aforesaid findings, we direct the ld. AO to accept the claim of deduction u/s.80IC of the Act made by the assessee*

in the return of income. Accordingly, the concise ground No.17 raised by the assessee is allowed."

71. At the outset from the record it is evident that in the year under consideration no such reference, as was made in the preceding year, was made to TPO for determination of arm's length price despite the fact that transaction related to Rudrapur unit are regarded as '*specified domestic transaction*' under the provisions of section 92BA(v) of the Act. In this regard, reliance was placed upon para 3.7 of CBDT instruction No. 3/2016 dated 10/03/2016, which reads as under:

"*3.7 For administering the transfer pricing regime in an effective manner, it is clarified that though the AO has the power under section 92C to determine the ALP of international transactions or specified domestic transactions, determination of ALP should not be carried out at all by the AO in a case where reference is not made to the TPO. However, in such cases, the AO must record in the body of the assessment order that due to Board's Instruction on this matter, the transfer pricing issue has not been examined at all*"

72. It is the plea of the assessee that, in the present situation of facts, the deduction on the basis of Form No. 10 CCB along with computation of income be granted and the partial disallowance made by the AO be deleted. At this stage, it is pertinent to note that in the present case, no Board Instruction as stated in the aforesaid portion of CBDT Instruction has been brought on record by either party. Further, it is an undisputed fact that the transaction is a specified domestic transaction under the provisions of section 92BA(v) of the Act. Further, it is also not in dispute that the AO has followed the approach adopted by learned DRP in assessment year 2013–14, which in turn had followed the directions rendered in assessment year 2009–10, when provisions of section 92BA were not even introduced in the Act. Therefore, on the basis of facts available on record, it is evident that the AO has not followed the law as was in existence for the year under consideration and thus made the adjustment without following the prescribed procedure under the Act and also as clarified by CBDT. It is for the Revenue to take remedial measures, if any, permissible under the law in such a situation. However, in so far as the present facts and circumstance of the case are concerned, we deem it appropriate to

remand this issue to the file of AO to examine if the determination of profitability of Rudrapur unit in year under consideration is in line with determination of profitability of said unit by assessee in preceding assessment year, which has already been accepted to be at arm's length by the TPO. If the determination of profitability is found to be in parity with preceding year, then AO is directed to not make any further addition by adopting different method of determining the profitability. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to the assessee. As a result, ground No. 16 raised in assessee's appeal is allowed for statistical purpose.

73. The issue arising in ground No. 17, raised in assessee's appeal, is pertaining to set off of brought forward business loss and unabsorbed depreciation relating to demerged business.

74. The brief facts of the case pertaining to this issue are: Pursuant to the scheme of arrangement between a subsidiary of assessee (i.e. Mahindra Trucks and Buses Ltd) and the assessee, the entire assets and liabilities, duties and obligations of the truck and buses business of subsidiary company was transferred to and vested in the assessee from 01/04/2013. Consequently, the unabsorbed depreciation of Rs. 334.98 crores and unabsorbed business loss of Rs. 808.87 crores relating to demerged business of subsidiary company was claimed as set off against the taxable income of assessee under section 72A of the Act. The AO vide draft assessment order allowed set off limited to the assessed unabsorbed depreciation of Rs. 388.20 crores and unabsorbed business loss of Rs. 219.55 crores. Being aggrieved, the assessee is in appeal before us.

75. Having considered the submissions of both sides and perused the material available on record, we find that assessee has also filed rectification for the differential amount of business loss and unabsorbed depreciation after considering the effect of pending appellate/rectification proceedings. As per the assessee, in the assessment order passed in the case of subsidiary company, certain depreciation was not allowed for which rectification

application is also pending. In view of above, we deem it appropriate to direct the AO to decide rectification application, as filed by the assessee, as expeditiously as possible after necessary verification of details and as per law. As a result, ground No. 17 raised in assessee's appeal is allowed for statistical purpose.

76. The issue arising in ground No. 18, raised in assessee's appeal, is pertaining to disallowance of deduction in respect of development expenditure relating to demerged business of Mahindra Trucks and Buses Ltd.

77. The brief facts of the case pertaining to this issue are: As noted above, the entire assets and liabilities, duties and obligations of the truck and buses business of subsidiary company (i.e. Mahindra Trucks and Buses Ltd.) was transferred to and vested in the assessee from 01/04/2013. During the financial year 2013 – 14, the Truck and Buses division of the assessee incurred Revenue expenditure of Rs. 20,37,55,308 in the nature of research and development expenditure. The said expenditure include personal cost, professional fees, rent charges and other administrative expenses for development of medium and heavy commercial vehicle. In the return of income, the said amount remained to be claimed and hence such claim to allow development expenditure as revenue expenditure under section 35 (1) or under section 37 (1) of the Act was made before the AO during the course of assessment proceedings. The claim made by the assessee was denied by the AO by placing reliance upon the decision of Hon'ble Supreme Court in Goetze (India) Ltd. (supra). The learned DRP vide its directions rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

78. We have heard the rival submissions and perused the material available on record. We find that similar issue came up for consideration before coordinate bench of Tribunal in case of Mahindra Trucks and Buses Ltd (now known as Mahindra Two Wheelers Ltd) vs DCIT, in ITA No. 519/Mum./2018, for assessment year 2013–14 (i.e., assessment year immediately preceding the demerger). The coordinate bench of the Tribunal vide order dated

28/04/2022 allowed the claim made under section 35(1)(i) of the Act in respect of product development expenses by observing as under:

> *"34. We have carefully considered the rival contention and perused the orders of the lower authorities. Facts show that assessee has incurred product development expenses during the year. For product development activities assessee has given a detailed answer by letter dated 13 December 2016 about what are the activities that have been carried out by the assessee. Assessee has stated that all these activities involves extension of knowledge in applied science for facilitating the business and therefore qualifies as a scientific research u/s 43 (4) of the act. Even otherwise, the assessee has stated that these are not capital expenditure at all. Assessee has also stated that it has incurred a capital expenditure of 7,088,075/ which has been claimed separately Under the provisions of Section 35(1)(iv) of the act. Deduction u/s 35 (1) (i) of the act is not a weighted deduction claimed by the assessee. The learned DRP has categorically noted that expenses incurred are small in nature and further the assessee has not brought on record the details of research it was carrying on. Assuming that assessee has not brought out complete details on the research and development expenditure incurred by it, otherwise, the expenditure is not capital in nature as per the finding of the learned DRP as it is small, these are otherwise allowable u/s 37(1) of the act. In view of this, without going into the controversy whether the expenditure incurred by the assessee is on scientific research or not, the expenditure is allowable to the assessee either u/s 37(1) of the act or u/s 35(1)(i) of the act to the extent of expenditure incurred. Explanation of assessee shows that it is carrying on product development activities. It is also an activity for the extension of knowledge in the field of manufacturing of vehicles. In fact, the activities carried out by the assessee are activities for extension of knowledge in the field of the business of the assessee company. It is also not the case of the revenue that it is not related to the business of the assessee. Hence, these are expenditure incurred by assessee on scientific research in the field of manufacturing of vehicles. Therefore, we do not find any reason to uphold the action of the learned assessing officer. Accordingly we direct him to allow deduction u/s 35 (1) (i) of the act of 131,340,403/-."*

79. As is evident from the record, the claim made by the assessee during the assessment proceedings was rejected in view of decision of Hon'ble Supreme Court in Goetze (India) Ltd. (supra), without going into the merits of the claim. Therefore, in view of the above, we deem it appropriate to remand this issue to the file of AO for *de novo* adjudication in light of the decision of coordinate bench of Tribunal in Mahindra Trucks and Buses Ltd (now known as Mahindra Two Wheelers Ltd) vs DCIT, in ITA No. 519/Mum/2018. With above directions, ground No. 18 raised in assessee's appeal is allowed for statistical purpose.

80. The issue arising in ground No. 19, raised in assessee's appeal, is pertaining to disallowance of deduction in respect of R&D expenditure claimed under section 35(1)(iv) of the Act in respect of Truck and Buses division, which is demerged business of Mahindra Trucks and Buses Ltd.

81. The brief facts of the case pertaining to this issue are: During the year, assessee incurred capital expenditure of Rs. 6,00,42,220 in respect of product development expenses. Product development activities comprise of concept and feasibility, business case, design, development, validate, product readiness, customer trials, freeze development and start of product. Assessee claimed the aforesaid expenditure under section 35(1)(iv) of the Act for product development activity for design and development of new medium and heavy commercial vehicles for the assessee. The AO vide draft assessment order did not agree with the submission of the assessee and held that assessee has failed to satisfy that expenditure has been spent for '*scientific research*' as required for claiming deduction under section 35(1)(iv) of the Act. It was further held that assessee has failed to bring on record as to what research it is carrying on for the purpose of business. Accordingly, AO denied the claim of the assessee and capitalised the expenditure allowing 25% depreciation. The learned DRP vide directions rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

82. We have considered the rival submissions and perused the material available on record. As per the assessee these expenses pertaining to purchase of vehicles, tools and equipments for R&D protoshop and validation Centre for various R&D projects. It is submitted that section 35(1)(iv) of the Act allows deduction of capital expenditure incurred in relation to R&D and accordingly the said amount of ₹ 60,042,220 has been claimed as deduction.

83. We find that similar issue came up for consideration before coordinate bench of Tribunal in case of Mahindra Trucks and Buses Ltd (now known as Mahindra Two Wheelers Ltd) (supra), for assessment year 2013–14 (i.e assessment year immediately preceding the demerger). The coordinate bench

of the Tribunal vide order dated 28/04/2022 allowed the claim made under section 35(1)(iv) of the Act by observing as under:

> *"035. Coming to the deduction u/s 35 (1) (iv) of the act of 7,088,075, on which the learned assessing officer has allowed depreciation only instead of allowing the whole expenditure in the year in which it is incurred. We have already held assessee is carrying on scientific research in the business of manufacturing of vehicle. Based on same reasons as given by us for allowing the expenditure of the assessee u/s 35 (1) (i) of the act we also direct the learned assessing officer to delete the disallowance of ? 7,088,075/-. As we have allowed the claim of the assessee u/s 35 (1) of the act the learned assessing officer as a natural corollary should withdraw the grant of depreciation allowance to the assessee. Accordingly, ground number 3 of the appeal of the assessee is allowed."*

84. Therefore, respectfully following the aforesaid decision of coordinate bench of Tribunal rendered in case of subsidiary company, whose Truck and Buses business has been merged with assessee, the plea of the assessee is accepted and the AO is directed to grant deduction under section 35(1)(iv) of the Act. As a result, ground No.19 is allowed.

85. The issue arising in ground No. 20, raised in assessee's appeal, is pertaining to reducing the Industrial Promotion Subsidy for the purpose of computing the book profit under section 115 JB of the Act.

86. The brief facts of the case pertaining to this issue are: In the year under consideration, the assessee has earned following Industrial Promotion Subsidies/ Incentives:

Incentives	*Amount (in Rs.)*
Xylo Incentive	*13,74,90,999*
Chakan Incentive	*123,74,18,233*
Zaheerabad Incentive	*15,39,80,606*
Total	*152,88,89,838*

87. As per the assessee, these incentives are capital receipt not chargeable to tax. Accordingly, these incentives should be excluded from book profit under section 115 JB. As per the AO, incentives are available with the company for the distribution of dividend. Therefore cannot be excluded from the calculation of book profits under section 115 JB of the Act. The learned

DRP vide directions rejected the objections filed by the assessee on this issue. In conformity, the AO passed the final assessment order. Being aggrieved, the assessee is in appeal before us.

88. We have considered the rival submissions and perused the material available on record. As per the assessee, under MAT provisions the intention is to find out the real working results of the company and to bring to tax the prescribed percentage of book profit if total income as computed under the normal provisions of the Act is less than that. It has been further submitted that inclusion of capital receipt in the computation of MAT would defeat two fundamental principles. Firstly, it would levy tax on receipt which is not in the nature of income at all and secondly, it would not result in arriving at real working results of the company. The real working result can be arrived at only after excluding the capital receipt. It has been submitted that the book profit require any merit exclusion of tax free items for MAT purposes. In this regard, reliance has been praised upon decision of Hon'ble Supreme Court in Indo Rama Synthetics (I) Ltd. vs. CIT, [2011] 196 Taxmann 539 (SC).

89. We further find that in PCIT vs Ankit Metal and Power Ltd, [2019] 109 Taxmann.com 93 (Calcutta), inter-alia, following substantial question of law came up for consideration before the Hon'ble Calcutta High Court:

> *"Whether on the facts and in the circumstances of the case the learned Tribunal erred in law in accepting the claim of deduction by the assessee towards 'Interest subsidy' and 'Power subsidy' under the aforesaid schemes by filing revised computation instead of revised return before the assessing officer for exclusion of the aforesaid receipts from the book profit under Section 115 JB on the ground that the said subsidies do not constitute income under Section 2(24) of the Income Tax Act, 1961?"*

90. While deciding the aforesaid question in favour of taxpayer, the Hon'ble Calcutta High Court after taking into consideration the decision of Hon'ble Supreme Court in Apollo Tyres Ltd vs CIT, [2002] 255 ITR 273 (SC), observed as under:

> *"26. Now the second issue which requires adjudication is as to whether the aforesaid incentive subsidies received by the assessee from the Government of*

West Bengal under the schemes in question are to be included for the purpose of computation of book profit under Section 115 JB of the Income Tax Act, 1961 as contended by the revenue by relying on the decision in the case of Appollo Tyres Ltd. (supra).

27. In this case since we have already held that in relevant assessment year 2010-11 the incentives 'Interest subsidy' and 'Power subsidy' is a 'capital receipt' and does not fall within the definition of 'Income' under Section 2(24) of Income Tax Act, 1961 and when a receipt is not on in the character of income it cannot form part of the book profit under Section 115JB of the Act, 1961. In the case of Appollo Tyres Ltd. (supra) the income in question was taxable but was exempt under a specific provision of the Act as such it was to be included as a part of the book profit. But where a receipt is not in the nature of income at all it cannot be included in book profit for the purpose of computation under Section 115JB of the Income Tax Act, 1961. For the aforesaid reason, we hold that the interest and power subsidy under the schemes in question would have to be excluded while computing book profit under Section 115 JB of the Income Tax Act, 1961."

91. In the present case, the aforesaid Industrial Promotion Subsidy Incentives have already been held to be capital in nature and has been directed to be deleted while computing the total income of the assessee. Therefore, once the receipt is not in the character of income it cannot form part of the book profit under section 115 JB of the Act. Thus, respectfully following aforesaid judicial pronouncement, the plea of the assessee is accepted and AO is directed to not consider the Industrial Promotion Incentives for the purpose of computing the book profit under section 115 JB of the Act. As a result, ground No. 20 raised in assessee's appeal is allowed.

92. The issue arising in ground No. 21, raised in assessee's appeal, is pertaining to disallowance under section 14A for the purpose of computing the book profit under section 115 JB of the Act.

93. Having heard the submissions of both sides and perused the material available on record, we find that Special Bench of Tribunal in ACIT vs Vireet Investment (P) Ltd.: [2017] 58 ITR(T) 313 (Delhi - Trib.) (SB) held that computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962. Thus, respectfully following the aforesaid decision of Special Bench of Tribunal cited supra, we direct the AO to

compute the book profit under section 115 JB of the Act, without resorting to computation under section 14A read with Rule 8D. Ground No. 21 is decided accordingly.

94. Grounds No. 22, 23 and 24, raised in appeal, are not pressed by the assessee. Accordingly, these grounds are dismissed as not pressed.

95. In addition to the grounds raised in memorandum of appeal, the assessee vide application dated 29/10/2020 sought admission of following additional grounds of appeal:

> *"1. Allowance of education cess and secondary and higher education cess as deductible business expenditure*
>
> *On the facts and in the circumstances of the case and in law, the Appellant contends that the learned AO/DRP be directed to allow deduction for education cess and secondary and higher education cess ('cess') on Income tax and Dividend Distribution Tax as a deductible business expenditure in computing total income under the normal provisions of the Act.*
>
> *ADDITION TO THE GROUND NO. 17,*
>
> *2. Provision for post retirement scheme for housing - Rs. 1,67,79,866 and for post retirement medical scheme Rs. 128,87,729/–*
>
> *Without prejudice to the Ground No. 12, on the facts and in the circumstances of the case and in law the ACTT/DRP be directed to allow, in the alternative, deduction for actual amount of expenditure/benefit payments incurred by the Appellant during the year under the pent retirement housing scheme of Rs. 1.01 crores and under post-retirement medical scheme of Rs. 0.57 crores.*
>
> *3. Exclusion of capital receipt received from Mahindra & Mahindra Benefit Trust for the purpose of computing book profits u/s 1153B of the Act*
>
> *On the facts and in the circumstances of the case and in law, the ACTT/DRP erred in not excluding capital receipt of Rs. 67,38,29,282 received from Mahindra & Mahindra Benefit Trust for the purpose of computing book profit u/s 115JB.*
>
> *4. Allowing benefit of indexed cost of acquisition for the purpose of competing book profita 115JB of the Act*
>
> *On the facts and in ccircumstances of the case and in law, for purpose of computing tax liability u/s 115JB of the Act, the learned ACIT/DRP erred in not considering indexed cost of acaquisition of shares of Mahindra Two Wheelers Ltd., Mahindra Logistics Ltd., and Mahindra Namaste Private*

Ltd. sold during the year and instead considering the actual/book cost of such shares. The claim of the Appellant be allowed.

5. *No Addition to be made in respect of provision for doubtful debts for the purpose of computing book profits u/s. 115JB of the Act*

On the facts and circumstances of the case, the Appellant prays that the addition on account of provision for doubtful debts to the book profit under Section 115JB of the Act be deleted as clause (1) to Explanation (1) of sub-section (2) of Section 115JB of the Act is not attracted in this case as the provision for doubtful debts was made in Profit & Loss A/c and reduced from current asset as disclosed in balance sheet thereby not tantamount to provision for diminution in the value of any asset.

6. *Difference in exchange Loss of Rs. 186,98,66,142/–*

Without prejudice to the Ground No. 10, on the facts and in the circumstances of the case the ACIT/DRP be directed to allow depreciation as per law on capitalized portion of difference in exchange.

Out of difference in exchange of Rs. 186,98,66,142, the learned ACIT/DRP ought to have allowed deduction as revenue expenditure for difference in exchange loss of Rs.92,45,13,394 carried forward in FCMITDA (Foreign Currency Monetary Item Translation Difference Account) as deductible revenue expenditure.

7. *Consequential effect to order of earlier years*

The learned AO/DRP may be directed to allow adjustment for MAT Credit due as per law.

The Appellant reserves the right to add to, alter, or amend all or any of the above grounds of appeal, if felt necessary."

96. Since, issues raised by way of additional grounds are legal issues, which can be decided on the basis of material available on record, we are of the view that same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC Ltd v/s CIT: 229 ITR 383.

97. Additional ground No. 1 is not pressed and therefore, the same is dismissed as not pressed.

98. Insofar as additional ground No. 2 is concerned, we find that same is alternate to ground No. 12 raised in memorandum appeal, which has already been allowed in favour of assessee. Therefore, in view of the findings rendered

in respect of ground No. 12, additional ground No. 2 is rendered academic in nature and need no separate adjudication.

99. The issue arising in additional ground No. 3 is pertaining to exclusion of capital receipt received from Mahindra and Mahindra Benefit Trust for the purpose of computing book profit under section 115 JB of the Act.

100. The brief facts of the case pertaining to this issue are: The assessee has excluded capital receipt of Rs. 67,38,29,282 received from Mahindra and Mahindra Benefit Trust, while computing income under the normal provisions of the Act and return of income has been accepted in this regard and no adjustment has been made in respect thereof in the assessment order. Assessee has prayed for similar relief as claimed in respect of ground No. 20. Since, adjudication of this issue require further examination of the aforesaid trust and amount received by the assessee, therefore, we deem it appropriate to remand this issue to the file of AO for adjudication after necessary verification of details pertaining to this receipt. Upon examination, if it is found that the receipt is not in the character of income, then same should not be considered for the purpose of computing the book profit under section 115 JB of the Act. As a result additional ground No. 3 is allowed for statistical purpose.

101. The issue arising in additional ground No. 4 is pertaining to allowing benefit of indexed cost of acquisition for the purpose of computing book profit under section 115 JB of the Act.

102. The brief facts of the case pertaining to this issue are: The assessee, while computing capital gains for the purpose of computing book profit under section 115 JB, has considered profit/loss as per books of accounts. It is the plea of assessee that coordinate bench of Tribunal in Karnataka State Industrial Infrastructure Development Corporation Ltd vs DCIT, in ITA No. 1659/Bang/2013 etc., vide order dated 09/12/2016 has held that while computing capital gains, benefit of indexed cost of acquisition is to be considered for the purpose of computing tax liability under section 115 JB of the Act. Accordingly, assessee has prayed for similar relief in respect of shares

of Mahindra Two Wheelers Ltd, Mahindra Logistics Ltd and Mahindra Namaste Private Ltd sold during the year. It is further submitted that since the aforesaid decision was not available at the time of filing of return of income, therefore, the capital gains for the purpose of computing book profit under section 115JB of the Act was calculated on the basis of profit / loss as per books of accounts.

103. We find that the coordinate bench of Tribunal in Karnataka State Industrial Infrastructure Development Corporation Ltd (supra), held that assessee company is entitled to the benefit of indexation while calculating long-term capital gains which are to be considered for the purpose of computing tax liability under section 115 JB of the Act. The relevant findings of the coordinate bench of the Tribunal, in the aforesaid decision, are as under:

"15. In ground No.2(c) the assessee-company contends that while computing the tax liability u/s 115JB, amount of capital exempt u/s 10(38) should alone be considered. It is the contention of the assessee-company that the amount of capital gain computed u/s the IT Act is exempt, though such amount is exempt from tax u/s 10(38) of the Act. In short, it is the contention of the assessee-company that long-term capital gain arrived at by reducing indexed cost of acquisition from sale proceeds of the assets sold should be considered for the purpose of computing tax liability u/s 115JB whereas the AO was of opinion that long-term capital gain without indexing the cost of acquisition are to be considered for the purpose of computing tax liability u/s 115JB of the Act.

16. Clause (ii) to Explanation to section 115JB lays down that the amount of income to which provisions of section 10, other than provisions of sub-section (38) of section 10 or sections 11 and 12 if any such amount is credited to P&L A/c shall be reduced from the book profits for the purpose of computing tax liability. The provisions of section 10(38) read as under:

"10(38) any income arising from the transfer of a long-term capital asset, being equity share in a company or a unit of an equity oriented fund where —

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No.2)Act,1004 comes into force.

(b) such transaction is chargeable to securities transaction tax under that Chapter:

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

Explanation : For the purposes of this clause, "equity oriented fund" means a fund —

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund specified under clauses (23D);

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures."

Therefore, the issue revolves around interpretation of the term 'any income' as used in sub-section (38) of section 10 of the Act from the transfer of long-term capital asset. Provisions of section 48 provide for method of computation of income chargeable under long-term capital gains. It was provided that long-term capital gain shall be computed by deducting from full value of consideration received as a result of long-term capital asset expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of any improvement thereto. It is further provided that the amount in case of long-term capital gain arising from transfer of long-term capital asset, cost of acquisition shall be substituted by indexed cost of acquisition. Therefore, the term 'any income' used in sub-section (38) of section 10 of the Act refers to only the amount of long term capital gains computed under the provisions of section 48 which means that the benefit of indexation of cost of acquisition should be given to the assessee while computing long term capital gain for the purpose of section 115JB of the Act. Even the Hon'ble Supreme Court, in the case of Ajanta Pharma v. CIT [2010] 327 ITR 305/194 Taxman 358 in the context of deciding whether amount eligible profits u/s 80HHC or the amount of deduction u/s 80HHC to be deducted from book profits for the purpose of computing u/s 115JB held that it is only the amount of eligible profits which are eligible as deduction from the book profits. The relevant part of the judgment is extracted:

'10. One of the contentions raised on behalf of the Department was that if clause (iv) of Explanation to Section 115JB is read in entirety including the last line thereof (which reads as "subject to the conditions specified in that section"), it becomes clear that the amount of profits eligible for deduction under Section 80HHC, computed under clause (a) or clause (b) or clause (c) of subsection (3) or sub-section (3A) as the case may be, is subject to the conditions specified in that Section, http://www.itatonline.org According to the Department, the assessee herein is trying to read the various provisions of Section 80HHC in isolation whereas as per clause (iv) of Explanation to Section 115JB, it is clear that book profit shall be reduced by the amount of profits eligible for deduction under Section 80HHC as computed under clause(a) or clause(b) or clause(c) of subsection (3) or sub-section (3A), as the case may be, of that Section and subject to the conditions specified in that Section, thereby meaning that the deduction allowable would be only to the extent of deduction computed In accordance with the provisions of Section 80HHC. Thus, according to the Department, both "eligibility" as well as "deductibility" of the profit have got to be considered together for working out the deduction as mentioned in clause (iv) of Explanation to Section 115JB. We find no merit in this argument. If the dichotomy between ''eligibility" of profit and "deductibility" of profit is not kept in mind then Section 115JB will cease to be a self-contained code. In Section 115JB, as in Section 115J A, it has been clearly stated that the relief will be computed under Section 80HHC(3)/(3A), subject to the conditions under sub-clauses (4) and (4A) of that Section. The conditions are only that the relief should be certified by the Chartered Accountant Such condition is not a qualifying condition but it is a compliance condition. Therefore, one cannot rely upon the last sentence in clause (iv) of Explanation to Section 115JB (subject to

the conditions specified in sub-clauses (4) and (4A) of that Section) to obliterate the difference http://www.itatonline.org between "eligibility" and "deductibility" of profits as contended on behalf of the Department. '

Therefore following the same ratio, we hold that the amount of profit eligible u/s 10(38) should alone be considered for the purpose of tax liability u/s 115JB of the Act. The co-ordinate bench in the case of M.S.R & Sons Investments Ltd. v. Dy. CIT [IT Appeal No.769 (Bang.) of 2000, dated 20-05-2005] held while computing capital gains, benefit of indexed cost of acquisition is to be considered for the purpose of computing tax liability u/s 115JB. This decision was appealed by the Revenue before the Hon'ble jurisdictional High Court in ITA No.3189 of 2005 and the Hon'ble jurisdictional High Court by its judgment dated 14th September 2011 had upheld the order of the Tribunal. The same ratio is squarely applicable to the facts of the case. Therefore, the assessee-company is entitled to the benefit of indexation while calculating long-term capital gains which are to be considered for the purpose of computing tax liability u/s 115JB of the Act. This ground of appeal viz. 2(b) is allowed.

104. We further find that in Best Trading and Agencies Ltd. vs DCIT, [2020] 428 ITR 52 (Karn), inter-alia, following question came up for consideration before the Hon'ble Karnataka High Court:

"(iv) Whether the Tribunal was justified in law in holding that indexed cost of acquisition cannot be reduced for the purpose of computing book profits under section 115JB of the Act on the facts and circumstances of the case?"

105. While deciding the aforesaid question in favour of taxpayer, the Hon'ble Karnataka High Court, observed as under:

"13. section 115JB(5) of the Act reads as under:

"(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company, mentioned in this Section."

Thus, by virtue of sub-section (5) of section 115JB, the application of other provisions of the Act are open, except if specifically barred by the section itself. The indexed cost of acquisition is a claim allowed by section 48 of the Act to arrive at the income taxable under the income from capital gains. The difference between the sale consideration and indexed cost of acquisition represents the actual cost of the assessee, which is taxable as per section 45 of the Act at the rates provided under section 112 of the Act. There is no provision in the Act to prevent the assessee from claiming indexed cost of acquisition on the sale of asset in case, where the assessee is subjected to section 115JB of the Act. In any case, since, the indexed cost of acquisition is subjected to tax under a specific provision viz., section 112 of the Act, therefore, the provisions

of section 115JB of the Act, which is a general provision cannot be made applicable to the case of the assessee. For yet another reason, the assessee has to be given the benefit of indexed cost of acquisition as considering the profits on sale of land without giving the benefit of indexed cost of acquisition results in taxing the income other than actual/real income. In other words, a mere book keeping entry cannot be treated as income."

106. Therefore, respectfully following the aforesaid judicial pronouncements, we find merit in the plea of the assessee. Accordingly, the AO is directed to allow the benefit of indexed cost of acquisition to the assessee for calculating the capital gains for the purpose of computation of book profits under section 115 JB of the Act. However, since this issue has been raised for the first time by the assessee, the quantification of benefit of indexation while computing capital gains is remanded to AO for due verification. As a result, additional ground No. 4 is allowed for statistical purpose.

107. The issue arising in additional ground No. 5 is pertaining to addition made in respect of provision for doubtful debts for purpose of computing book profit under section 115 JB of the Act.

108. The assessee prays that the addition of Rs. 6.09 crores on account of provision for doubtful debts to the book profit under section 115 JB of the Act be deleted as clause (i) to Explanation (1) of sub-section (2) of section 115 JB of the Act is not attracted in this case. As per the assessee, in view of interpretation of law as now evolved, where the provision for doubtful debts is made in profit and loss account and is reduced from current assets, loans and advances, trade receivables etc. is disclosed in balance sheet, it does not tantamount to provision for diminution in the value of any asset. As per the assessee, it in fact represents a write off of that asset. The assessee also submitted that if provision for doubtful debts is debited to the profit and loss account and reduced from the loans and advances in the balance sheet, then the doubtful debts qualify for deduction under section 36(1)(iii) of the Act. As per the assessee, applying the same analogy, the provision for doubtful debts ought not to be added while computing book profits under section 115 JB of the Act. In this regard, reliance is placed on following decisions:

(a) Vijaya Bank vs CIT, 190 Taxmann 257 (SC)
(b) CIT vs Yokogawa India Ltd, 17 Taxmann.com 15 (Kar HC)
(c) CIT vs Tainwala Chemicals and Plastics India Ltd, 34 Taxmann.com 159 (Bom HC)
(d) Reliance Welfare Association Circle (ITA No. 5976/Mum/2012)
(e) Torrent Private Limited, R/Tax Appeal No. 1225 of 2018

109. From the perusal of record, it is evident that in the present case it needs to be examined, after necessary verification of information available on record, whether the provision for doubtful debts made in the profit and loss account and reduced from loans and advances etc. in the balance sheet, amounts to provision for diminution in value of any asset. Since, this issue has been raised for the first time by the assessee, therefore, we deem it appropriate to remand it to the file of AO for necessary verification and adjudication, as per law. The AO is also directed to consider aforesaid decisions as relied upon by the assessee. As a result, additional ground No. 5 is allowed for statistical purpose.

110. In view of our findings rendered in respect of ground No. 10 raised in assessee's appeal, addition ground No. 6 is rendered academic in nature and therefore need no separate adjudication.

111. Insofar as additional ground No. 7 is concerned, we direct the AO to quantify and allow carry forward of MAT credit available as per law. Accordingly, addition ground No. 7 is allowed for statistical purpose.

112. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 07/11/2022

Sd/–	**Sd/–**
PRAMOD KUMAR	**SANDEEP SINGH KARHAIL**
VICE PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 07/11/2022

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai