Income Tax Appellate Tribunal - Indore
Dy. Cit vs Shree Synthetics Ltd. on 7 March, 2002
Equivalent citations: (2004) 88 TTJ Indore 717
ORDER T.R. Sood, A.M.

These are cross-appeals by assessee and revenue and some of the issues raised are common, therefore, these appeals were heard together and are being disposed of by this common order.

2. ITA No. 496/Ind/1994

2. ITA No. 496/Ind/1994 First ground of appeal relates to confirmation of disallowance of Rs. 22.18 lakhs as revenue expenditure for raising of loan required for the purpose of business. The brief facts are that assessee- company claimed deduction of Rs. 22.18 lakhs on account of debenture issue expenses. Before assessing officer, reliance was placed on the decision of Supreme Court in the case of India Cement Ltd. v. CIT (1966) 60 ITR 52 (SC) and Premier Automobiles Ltd. v. CIT (1971) 80 ITR 415 (Bom). Assessing Officer observed that these two decisions relate to allowability of expenditure as deduction under section 10(2)(xv) and the same were not applicable to the case of assessee because under the old Act there was no provision corresponding to provision of section 35D of Income Tax Act, 1961. He also found that letter of offer issued by the company at the time of making offer of debenture to public clearly stated that proceeds from the issue were required to finance various projects including expansion and modification of polycondensation facilities, therefore, the case was covered under section 35D.

4. Before Commissioner (Appeals), same contentions were reiterated and it was submitted that such expenses were not hit by the provisions of section 35D because, firstly, the issue was not made before the commencement of business of the company and, secondly, the issue was not in connection with the extension of industrial undertaking or in connection with the setting up of a new unit. Commissioner (Appeals) did not find force in the contention of the assessee because the decisions of Hon'ble Supreme Court in case of India Cement Ltd. v. CIT (supra) and Premier Automobiles Ltd. v. CIT (supra) were not applicable because the provisions of section 35D were not in existence when these decisions were given. He further found that sub-clause (ii) of section 35D(1) of the Act covers a situation where such expenditure is incurred after the commencement of business in connection with the extension of the industrial undertaking or in connection with setting up of a new unit. He also found that purpose of issue was financing various projects including expansion and modification of polycondensation facilities, expansion of spinning line, nylon polymerisation, etc. He also found that apart from such intention, in practice, a new polycondensation plant has been brought into existence. In view of these facts, he held that the expenditure of Rs. 22.18 lakhs is hit by the provisions of section 35D of the Act.

4. Before Commissioner (Appeals), same contentions were reiterated and it was submitted that such expenses were not hit by the provisions of section 35D because, firstly, the issue was not made before the commencement of business of the company and, secondly, the issue was not in connection with the extension of industrial undertaking or in connection with the setting up of a new unit. Commissioner (Appeals) did not find force in the contention of the assessee because the

decisions of Hon'ble Supreme Court in case of India Cement Ltd. v. CIT (supra) and Premier Automobiles Ltd. v. CIT (supra) were not applicable because the provisions of section 35D were not in existence when these decisions were given. He further found that sub-clause (ii) of section 35D(1) of the Act covers a situation where such expenditure is incurred after the commencement of business in connection with the extension of the industrial undertaking or in connection with setting up of a new unit. He also found that purpose of issue was financing various projects including expansion and modification of polycondensation facilities, expansion of spinning line, nylon polymerisation, etc. He also found that apart from such intention, in practice, a new polycondensation plant has been brought into existence. In view of these facts, he held that the expenditure of Rs. 22.18 lakhs is hit by the provisions of section 35D of the Act.

5. Before us, learned Authorised representative, Shri S.C. Goyal, submitted that company floated issue of convertible debentures amounting to Rs. 18.59 crores on right basis. Each debenture was of the face value of Rs. 50 out of which convertible part consisted of Rs. 20 which was to be compulsorily converted in one equity share of the face value of Rs. 10 at a premium of Rs. 20 and Rs. 20 was not convertible portion. He also admitted that convertible portion was converted into equity shares in the subsequent year. He submitted that issue was not made to the public but issue was on right basis to the existing shareholders of the company. He further submitted that issue was floated for the purpose of the business of the company and the same cannot be termed as to be covered for the purpose of extension of the industrial undertaking or setting up of a new industrial unit as defined in section 35D(1)(ii). He also brought to our attention page 7 of the compilation which is copy of the letter of offer. In this letter, it has been mentioned that present issue proposes to finance various projects including expansion and modification of polycondensation facilities, expansion of spinning line, nylon polymerisation modification and installation of DG sets. He contended that setting up of polycondensation plant and other modernisation facilities cannot be said to be extension of industrial undertaking. He submitted that cost of the new unit for polycondensation was about 50 per cent amounting to approximately Rs. 11 crores out of the total modernisation etc. project of Rs. 24 crores. Therefore, according to him, it cannot be said that entire proceeds of the issue were spent towards the setting up of new unit. He also argued that whole expenditure should be allowed, or in the alternative, the expenditure in relation to non-convertible portion should be held to be towards borrowings of funds. He relied on Tata Chemicals Ltd. v. Dy CIT (2001) 70 TTJ (Mumbai) 805 : (2000) 72 ITD 1 (Mumbai). In that case, starting a new fertilizer unit was held to be related to same business and following the ratio of India Cement Ltd. (supra), issue expenses of nonconvertible debentures were allowed as revenue expenditure. He also relied on Grasim Industries Ltd. v. Dy. CIT (1999) 64 TTJ (Mumbai) 357, CIT v. Mahendra Ugine & Steel Co. Ltd. (2001) 250 ITR 84 (Bom), Banco Products (India) Ltd. v. Dy. CIT (1997) 59 TTJ (Ahd) 387: (1997) 63 ITD 370 (Ahd), CIT v. Tunus Electric Corpn. Ltd. (1989) 179 ITR 219 (MP).

5. Before us, learned Authorised representative, Shri S.C. Goyal, submitted that company floated issue of convertible debentures amounting to Rs. 18.59 crores on right basis. Each debenture was of the face value of Rs. 50 out of which convertible part consisted of Rs. 20 which was to be compulsorily converted in one equity share of the face value of Rs. 10 at a premium of Rs. 20 and Rs. 20 was not convertible portion. He also admitted that convertible portion was converted into equity shares in the subsequent year. He submitted that issue was not made to the public but issue was on

right basis to the existing shareholders of the company. He further submitted that issue was floated for the purpose of the business of the company and the same cannot be termed as to be covered for the purpose of extension of the industrial undertaking or setting up of a new industrial unit as defined in section 35D(1)(ii). He also brought to our attention page 7 of the compilation which is copy of the letter of offer. In this letter, it has been mentioned that present issue proposes to finance various projects including expansion and modification of polycondensation facilities, expansion of spinning line, nylon polymerisation modification and installation of DG sets. He contended that setting up of polycondensation plant and other modernisation facilities cannot be said to be extension of industrial undertaking. He submitted that cost of the new unit for polycondensation was about 50 per cent amounting to approximately Rs. 11 crores out of the total modernisation etc. project of Rs. 24 crores. Therefore, according to him, it cannot be said that entire proceeds of the issue were spent towards the setting up of new unit. He also argued that whole expenditure should be allowed, or in the alternative, the expenditure in relation to non-convertible portion should be held to be towards borrowings of funds. He relied on Tata Chemicals Ltd. v. Dy CIT (2001) 70 TTJ (Mumbai) 805 : (2000) 72 ITD 1 (Mumbai). In that case, starting a new fertilizer unit was held to be related to same business and following the ratio of India Cement Ltd. (supra), issue expenses of nonconvertible debentures were allowed as revenue expenditure. He also relied on Grasim Industries Ltd. v. Dy. CIT (1999) 64 TTJ (Mumbai) 357, CIT v. Mahendra Ugine & Steel Co. Ltd. (2001) 250 ITR 84 (Bom), Banco Products (India) Ltd. v. Dy. CIT (1997) 59 TTJ (Ahd) 387: (1997) 63 ITD 370 (Ahd), CIT v. Tunus Electric Corpn. Ltd. (1989) 179 ITR 219 (MP).

6. On the other hand, learned departmental Representative submitted that deduction claimed by the assessee is not in the form of interest for borrowings. It relates to other expenditure which may fall under section 37(1). He contended that section 37 would come into operation only when an item does not fall between sections 32 to 36. In this regard, he relied on the observations of M.P. High Court in the case of Malwa Vanaspati & Chemicals Co. Ltd. v. CIT (1985) 154 ITR 655 (MP). He further submitted that it was a composite issue and the same cannot be artificially segregated. He further submitted that no distinction can be made between extension and expansion because by putting a new unit assessee has only extended its sphere of activity. He also submitted that decision of Banco Products (India) Ltd. v. Dy. CIT (supra) cannot be followed because in that case facts were totally different. Similarly, in Tata Chemicals Ltd. (supra) and Grasim Industries case (supra) issue was whether business was same or not, whereas in the instant case issue is whether assessee has incurred expenditure on the public issue for extension of its industrial undertaking. Similarly, he submitted that decision of CIT v. Mahendra Ugine (supra) is not applicable. He also relied on CIT v. Hindustan Insecticides Ltd. (2001) 250 ITR 338 (Del) and CIT v. Shree Synthetics Ltd. (1986) 162 ITR 819 (MP).

6. On the other hand, learned departmental Representative submitted that deduction claimed by the assessee is not in the form of interest for borrowings. It relates to other expenditure which may fall under section 37(1). He contended that section 37 would come into operation only when an item does not fall between sections 32 to 36. In this regard, he relied on the observations of M.P. High Court in the case of Malwa Vanaspati & Chemicals Co. Ltd. v. CIT (1985) 154 ITR 655 (MP). He further submitted that it was a composite issue and the same cannot be artificially segregated. He further submitted that no distinction can be made between extension and expansion because by

putting a new unit assessee has only extended its sphere of activity. He also submitted that decision of Banco Products (India) Ltd. v. Dy. CIT (supra) cannot be followed because in that case facts were totally different. Similarly, in Tata Chemicals Ltd. (supra) and Grasim Industries case (supra) issue was whether business was same or not, whereas in the instant case issue is whether assessee has incurred expenditure on the public issue for extension of its industrial undertaking. Similarly, he submitted that decision of CIT v. Mahendra Ugine (supra) is not applicable. He also relied on CIT v. Hindustan Insecticides Ltd. (2001) 250 ITR 338 (Del) and CIT v. Shree Synthetics Ltd. (1986) 162 ITR 819 (MP).

7. In the rejoinder, Shri Goyal pointed out that decision of Madhya Pradesh High Court in Shree Synthetics Ltd. (supra) was not applicable because in that case only shares were issued. Similarly, decision of Hindustan Insecticides (supra) relates to fee for increase in share capital. He further submitted that case of the assessee is squarely covered by the decision of Mumbai Bench in Tata Chemicals Ltd. (supra) and at para. 69 they have clearly held that such expenditure was allowable expenditure.

7. In the rejoinder, Shri Goyal pointed out that decision of Madhya Pradesh High Court in Shree Synthetics Ltd. (supra) was not applicable because in that case only shares were issued. Similarly, decision of Hindustan Insecticides (supra) relates to fee for increase in share capital. He further submitted that case of the assessee is squarely covered by the decision of Mumbai Bench in Tata Chemicals Ltd. (supra) and at para. 69 they have clearly held that such expenditure was allowable expenditure.

8. We have considered the rival submissions carefully. We have no doubt in our mind that section 37 would come into operation if item of expenditure is not covered by sections 32-36. Therefore, in this case we are left with only one important question and that is whether modernisation and other activities for which this right issue of convertible debenture was floated are covered by section 35D(1)(ii). This section reads as under : -

8. We have considered the rival submissions carefully. We have no doubt in our mind that section 37 would come into operation if item of expenditure is not covered by sections 32-36. Therefore, in this case we are left with only one important question and that is whether modernisation and other activities for which this right issue of convertible debenture was floated are covered by section 35D(1)(ii). This section reads as under : -

"35D.(1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31-3-1970, any expenditure specified in sub-section (2)-

(i) before the commencement of his business, or

(ii) after the commencement of his business, in connection with the extension of his industrial undertaking or in connection with his setting up a new industrial unit. "

From letter of offer, we find that convertible debenture issue was for financing various projects including expansion and modification of polycondensation facilities, expansion of spinning line and nylon polymerisation modification. This makes it clear that money raised from this issue has been spent on expansion or extension of existing projects. We are unable to agree with learned Authorised representative that expansion will not be covered by the word 'extension'. In Chamber's Dictionary, the word 'extend' has been defined to mean to enlarge, to expand and word 'expand' has been defined to mean to spread out, to enlarge in bulk or surface area. Therefore, these two words have more or less same meaning. When a particular expenditure is to be allowed under a specific section, then as held by Hon'ble Madhya Pradesh High Court in Malwa Vanaspati & Chemical Co. Ltd. v. CIT (supra), there is no need to go to residuary section, i.e., section 37 of the Act. We are also uanble to agree with the decision of Bombay Bench in Tata Chemicals Ltd. v. Dy. CIT (supra) that starting of new unit would also constitute same business for the purpose of section 35D because if this logic is accepted, the clear language of section 35D would become meaningless and that provision would be rendered useless. The decision of India Cements Ltd. (supra) is also not applicable as has been rightly held by the Commissioner (Appeals) that this decision was rendered when provision of section 35D was not on statute book. In these circumstances, we confirm the order of the Commissioner (Appeals) and hold that assessee is entitled only to the deduction specified under section 35D.

9. Ground No. 2. Through this ground, assessee has challenged the impugned order of Commissioner (Appeals) for confirming the disallowance of interest amounting to Rs. 16,82,707 borrowed for the purpose of purchasing units of UTI and tax-free securities. The revenue is also in appeal and has challenged the impugned order of Commissioner (Appeals) for holding that interest payable on OD account to the extent of Rs. 18,64,555 is an allowable expenditure. Assessee has further challenged the order for not allowing full exemption under section 10(15)(iv) from tax-free securities and allowance of relief amounting to Rs. 1,77,228 representing proportionate interest on account of investment under section 80-M. In this ground, the issue of deduction under section 80-M at the gross amount has also been challenged. The brief facts of the case are that assessee-company purchased 35 lakhs unit of UTI on 2-5-1989, for Rs. 5.15 crores and tax-free securities on 26-6-1989, for Rs. 13.07 crores. For these investments a sum of Rs. 8.57 crores was borrowed from American Express Bank and balance of Rs. 9.66 crores was out of CC account of the assessee-company. All the units and securities except 9 per cent tax-free bonds (of Indian Railways Finance Corpn. Ltd. at Rs. 2.5 crores) were sold during the year at a loss of Rs. 1, 13,53,500. The assessee claimed such loss as well as interest paid during the year as deduction and claimed entire interest income as exempt under section 10(15)(iv) and also claimed deduction of 60 per cent under section 80-M of the Act from gross amount of dividend income. Assessing Officer observed that such investment was not part of the appellant business and, therefore, disallowed the claim of interest in the computation of business income. He allocated the same against dividend interest received and reduced the amount of deduction under section 80-M and from exempted income under section 10(15)(iv) of the Act. Because of these adjustments, an addition of Rs. 49,41,649 was made to the income of assessee which was later on rectified under section 154 to Rs. 35,47,262. Deduction under section 80-M was also reduced by Rs. 8,36,633.

9. Ground No. 2. Through this ground, assessee has challenged the impugned order of Commissioner (Appeals) for confirming the disallowance of interest amounting to Rs. 16,82,707 borrowed for the purpose of purchasing units of UTI and tax-free securities. The revenue is also in appeal and has challenged the impugned order of Commissioner (Appeals) for holding that interest payable on OD account to the extent of Rs. 18,64,555 is an allowable expenditure. Assessee has further challenged the order for not allowing full exemption under section 10(15)(iv) from tax-free securities and allowance of relief amounting to Rs. 1,77,228 representing proportionate interest on account of investment under section 80-M. In this ground, the issue of deduction under section 80-M at the gross amount has also been challenged. The brief facts of the case are that assessee-company purchased 35 lakhs unit of UTI on 2-5-1989, for Rs. 5.15 crores and tax-free securities on 26-6-1989, for Rs. 13.07 crores. For these investments a sum of Rs. 8.57 crores was borrowed from American Express Bank and balance of Rs. 9.66 crores was out of CC account of the assessee-company. All the units and securities except 9 per cent tax-free bonds (of Indian Railways Finance Corpn. Ltd. at Rs. 2.5 crores) were sold during the year at a loss of Rs. 1, 13,53,500. The assessee claimed such loss as well as interest paid during the year as deduction and claimed entire interest income as exempt under section 10(15)(iv) and also claimed deduction of 60 per cent under section 80-M of the Act from gross amount of dividend income. Assessing Officer observed that such investment was not part of the appellant business and, therefore, disallowed the claim of interest in the computation of business income. He allocated the same against dividend interest received and reduced the amount of deduction under section 80-M and from exempted income under section 10(15)(iv) of the Act. Because of these adjustments, an addition of Rs. 49,41,649 was made to the income of assessee which was later on rectified under section 154 to Rs. 35,47,262. Deduction under section 80-M was also reduced by Rs. 8,36,633.

10. Before Commissioner (Appeals), it was admitted that specific loan was raised for the purpose of part financing of purchase of these tax-free securities and units and the balance amount was withdrawn from CC overdraft account. It was contended that it was an adventure in the nature of trade and, therefore, entire interest should have been allowed as business expenditure. Alternatively, it was contended that such interest should be considered as part of the cost of acquisition of assets and if it was disallowed while computing business income then loss of sale of assets should have been allowed on a higher figure after increasing the returned loss by this amount. Reliance was placed on various case law for these contentions. Second alternative contention was also submitted through which it was contended that interest paid only on direct loan should be held for non-business purposes but the interest paid on withdrawals from CC account should be held to be an allowable expenditure in view of the overall position of reserves and surplus made by the company as well as profits of the year. In this regard, also reliance was placed on certain case law. Some arguments were also raised regarding amount of exempted income under section 10(15)(iv) of the Act but Commissioner (Appeals) did not look into same because according to him, the same had no bearing on the amount of total income. Commissioner (Appeals) found that the contention of appellant- company that interest paid should be considered as business expenditure or part of the cost of acquisition was not correct because case law relied on by the assessee related to stock-in trade and not investment. He also found that even if this activity was permitted by memorandum and article of association of the company but only for this reason all the activities carried out by the company cannot be considered under the head 'business and profession'. He also found that units

and securities were purchased only with a view to earn dividend and interest and there was no material which suggested that there was some likelihood of abnormal returns. In this background, he held that purchase of units and securities did not constitute any adventure in the nature of trade and was simply an investment of funds, therefore, interest paid on borrowed funds utilised in purchase of such securities could not be considered while computing income under the head 'business and profession'. He further observed that interest amounting to Rs. 16,82,707 paid on borrowings from American Express Bank Ltd. for the purpose of investment in these shares was rightly disallowed by assessing officer. However, he did not agree with the findings of assessing officer that withdrawals made from OD account also constituted borrowed capital for this purpose. He found that company was maintaining only one Bank account in which all sale proceeds were deposited. He also found that reserves and surplus on account of profits of the past were much more than the amount of such withdrawals. He calculated these reserves, profit, etc. at 10.6 crores and whereas assessee had withdrawn a sum of Rs. 9.66 crores, therefore, according to him, same were out of own funds. He observed that there was no restriction in the law on keeping one's own funds in any form of investment and carrying out business with the help of borrowed funds and to claim interest paid against business income. After placing reliance on the decision of Wool Combers of India Ltd. v. CIT (1982) 134 ITR 219 (Cal) and Reckitt & Colman of India Ltd. v. CIT (1982) 135 ITR 698 (Cal) allowed interest which had been calculated on notional basis by the assessing officer. Therefore, addition of Rs. 18,64,555 was allowed as business expenditure.

10. Before Commissioner (Appeals), it was admitted that specific loan was raised for the purpose of part financing of purchase of these tax-free securities and units and the balance amount was withdrawn from CC overdraft account. It was contended that it was an adventure in the nature of trade and, therefore, entire interest should have been allowed as business expenditure. Alternatively, it was contended that such interest should be considered as part of the cost of acquisition of assets and if it was disallowed while computing business income then loss of sale of assets should have been allowed on a higher figure after increasing the returned loss by this amount. Reliance was placed on various case law for these contentions. Second alternative contention was also submitted through which it was contended that interest paid only on direct loan should be held for non-business purposes but the interest paid on withdrawals from CC account should be held to be an allowable expenditure in view of the overall position of reserves and surplus made by the company as well as profits of the year. In this regard, also reliance was placed on certain case law. Some arguments were also raised regarding amount of exempted income under section 10(15)(iv) of the Act but Commissioner (Appeals) did not look into same because according to him, the same had no bearing on the amount of total income. Commissioner (Appeals) found that the contention of appellant- company that interest paid should be considered as business expenditure or part of the cost of acquisition was not correct because case law relied on by the assessee related to stock-in trade and not investment. He also found that even if this activity was permitted by memorandum and article of association of the company but only for this reason all the activities carried out by the company cannot be considered under the head 'business and profession'. He also found that units and securities were purchased only with a view to earn dividend and interest and there was no material which suggested that there was some likelihood of abnormal returns. In this background, he held that purchase of units and securities did not constitute any adventure in the nature of trade and was simply an investment of funds, therefore, interest paid on borrowed funds utilised in

purchase of such securities could not be considered while computing income under the head 'business and profession'. He further observed that interest amounting to Rs. 16,82,707 paid on borrowings from American Express Bank Ltd. for the purpose of investment in these shares was rightly disallowed by assessing officer. However, he did not agree with the findings of assessing officer that withdrawals made from OD account also constituted borrowed capital for this purpose. He found that company was maintaining only one Bank account in which all sale proceeds were deposited. He also found that reserves and surplus on account of profits of the past were much more than the amount of such withdrawals. He calculated these reserves, profit, etc. at 10.6 crores and whereas assessee had withdrawn a sum of Rs. 9.66 crores, therefore, according to him, same were out of own funds. He observed that there was no restriction in the law on keeping one's own funds in any form of investment and carrying out business with the help of borrowed funds and to claim interest paid against business income. After placing reliance on the decision of Wool Combers of India Ltd. v. CIT (1982) 134 ITR 219 (Cal) and Reckitt & Colman of India Ltd. v. CIT (1982) 135 ITR 698 (Cal) allowed interest which had been calculated on notional basis by the assessing officer. Therefore, addition of Rs. 18,64,555 was allowed as business expenditure.

11. On the basis of this analysis and following the decision of Supreme Court in the case of Distributors (Baroda) Ltd. v. Union of India (1985) 155 ITR 120 (SC) and amended provisions of the Act in the form of section 80-AA, it was held that interest amounting to Rs. 10,99,007 is to be considered against the dividend income from the units and balance of Rs. 5,83,700 against the securities, therefore, assessing officer was accordingly directed to enhance the quantum of deduction under section 80-M of the Act by Rs. 1,77,228.

11. On the basis of this analysis and following the decision of Supreme Court in the case of Distributors (Baroda) Ltd. v. Union of India (1985) 155 ITR 120 (SC) and amended provisions of the Act in the form of section 80-AA, it was held that interest amounting to Rs. 10,99,007 is to be considered against the dividend income from the units and balance of Rs. 5,83,700 against the securities, therefore, assessing officer was accordingly directed to enhance the quantum of deduction under section 80-M of the Act by Rs. 1,77,228.

12. Commissioner (Appeals) also rejected the alternative contention of assessee regarding inclusion of amount of interest towards cost of acquisition because according to him, interest payable on acquisition of assets till such time that these remained unproductive may be considered as part of the cost but as soon as these became productive, the amount of interest is to be considered against the return. He found that securities purchased by the assessee carried a fixed rate of interest and keeping in view the past record of UTI, declaration of dividend of units soon after 30-6-1989, was as good as certainty. If the contention of the assessee was accepted, then income by way of interest and dividend may also have to be considered as part of the sale price (and not separate income) because such units and securities were already loaded with the amount of interest/dividend at the time of acquisition because price paid included payment for such loaded element of income therein. On these facts, he held that interest paid in the present case was to be considered towards income earned and not as part of the cost price of units and securities.

12. Commissioner (Appeals) also rejected the alternative contention of assessee regarding inclusion of amount of interest towards cost of acquisition because according to him, interest payable on acquisition of assets till such time that these remained unproductive may be considered as part of the cost but as soon as these became productive, the amount of interest is to be considered against the return. He found that securities purchased by the assessee carried a fixed rate of interest and keeping in view the past record of UTI, declaration of dividend of units soon after 30-6-1989, was as good as certainty. If the contention of the assessee was accepted, then income by way of interest and dividend may also have to be considered as part of the sale price (and not separate income) because such units and securities were already loaded with the amount of interest/dividend at the time of acquisition because price paid included payment for such loaded element of income therein. On these facts, he held that interest paid in the present case was to be considered towards income earned and not as part of the cost price of units and securities.

13. Before us, learned Authorised representative reiterated the arguments raised before Commissioner (Appeals). He referred to section 10(15)(iv) which starts with the word 'interest payable (a) by Government.....'. This means that legislature intended to exempt entire income from interest that is why word 'interest' has been used instead of the word 'income'. He contended that interest expenditure was incurred for the purpose of business and there was no need to bifurcate the same. In this regard, he relied on CIT v. South Indian Bank Ltd. (1966) 59 ITR 763 (SC), CIT v. Bhopal Sugar Industries Ltd. (1970) 78 ITR 209 (MP) and Rajasthan State Warehousing Corpn. Ltd. v. CIT (2000) 242 ITR 450 (SC). He further submitted that these investments were made during the course of business and same should be held to be for the purpose of business. He contended that income was earned in the course of one indivisible business, therefore, there was no need to divide the same into various sources. He strongly relied on the decision of Mumbai Bench in the case of Grasim Industries Ltd. v. Dy. CIT (supra) and Tata Chemicals Ltd. v. Dy. CIT (supra). He argued that company was having a common fund and common management, therefore, such income was from a single business. He referred to the decision of Kerala High Court in CIT v. Apollo Tyre Ltd. (1999) 237 ITR 706 (Ker), where income from UTI was held to be business income. Alternatively, he submitted that this investment in tax-free securities and units of UTI should be treated as adventure in the nature of trade. In this regard, he relied on Bhagirath Prasad Bilgaiya v. CIT (1983) 139 ITR 916 (MP) and Estate Investments Co. Ltd. v. CIT (1980) 121 ITR 580 (Bom). He argued that if this activity is held to be adventure in the nature of trade then interest has to be allowed and in this regard, he relied on CIT v. Kanoria Investments (P) Ltd. (1998) 232 ITR 7 (Cal), CIT v. Cotton Fabrics Ltd. (1981) 131 ITR 99 (Guj) and CIT v. National & Grindlays Bank Ltd. (1993) 202 ITR 559 (Cal). In the second alternative, he submitted that even if sale purchase of these securities is held to be on account of capital assets, then the interest should have been added to the cost of securities and higher loss should have been allowed on the loss on sale on such securities. In this regard, he relied on Addl. CIT v. K.S. Gupta (1979) 119 ITR 372 (AP) and CIT v. Mithlesh Kumari (1973) 92 ITR 9 (Del). Lastly, he submitted that though section 14A has been introduced in the Act with effect from 1-4-1962, but same is not applicable to the case of assessee. According to him, the rigour and hardship of this section has been diluted by the Board Circular No. 11, dated 23-7-2001, (2001) 250 ITR (St) 841. He pointed out that this section has been placed in Chapter IV of the Act and has been specifically made in respect of incomes computed under that Chapter.

13. Before us, learned Authorised representative reiterated the arguments raised before Commissioner (Appeals). He referred to section 10(15)(iv) which starts with the word 'interest payable (a) by Government.....'. This means that legislature intended to exempt entire income from interest that is why word 'interest' has been used instead of the word 'income'. He contended that interest expenditure was incurred for the purpose of business and there was no need to bifurcate the same. In this regard, he relied on CIT v. South Indian Bank Ltd. (1966) 59 ITR 763 (SC), CIT v. Bhopal Sugar Industries Ltd. (1970) 78 ITR 209 (MP) and Rajasthan State Warehousing Corpn. Ltd. v. CIT (2000) 242 ITR 450 (SC). He further submitted that these investments were made during the course of business and same should be held to be for the purpose of business. He contended that income was earned in the course of one indivisible business, therefore, there was no need to divide the same into various sources. He strongly relied on the decision of Mumbai Bench in the case of Grasim Industries Ltd. v. Dy. CIT (supra) and Tata Chemicals Ltd. v. Dy. CIT (supra). He argued that company was having a common fund and common management, therefore, such income was from a single business. He referred to the decision of Kerala High Court in CIT v. Apollo Tyre Ltd. (1999) 237 ITR 706 (Ker), where income from UTI was held to be business income. Alternatively, he submitted that this investment in tax-free securities and units of UTI should be treated as adventure in the nature of trade. In this regard, he relied on Bhagirath Prasad Bilgaiya v. CIT (1983) 139 ITR 916 (MP) and Estate Investments Co. Ltd. v. CIT (1980) 121 ITR 580 (Bom). He argued that if this activity is held to be adventure in the nature of trade then interest has to be allowed and in this regard, he relied on CIT v. Kanoria Investments (P) Ltd. (1998) 232 ITR 7 (Cal), CIT v. Cotton Fabrics Ltd. (1981) 131 ITR 99 (Guj) and CIT v. National & Grindlays Bank Ltd. (1993) 202 ITR 559 (Cal). In the second alternative, he submitted that even if sale purchase of these securities is held to be on account of capital assets, then the interest should have been added to the cost of securities and higher loss should have been allowed on the loss on sale on such securities. In this regard, he relied on Addl. CIT v. K.S. Gupta (1979) 119 ITR 372 (AP) and CIT v. Mithlesh Kumari (1973) 92 ITR 9 (Del). Lastly, he submitted that though section 14A has been introduced in the Act with effect from 1-4-1962, but same is not applicable to the case of assessee. According to him, the rigour and hardship of this section has been diluted by the Board Circular No. 11, dated 23-7-2001, (2001) 250 ITR (St) 841. He pointed out that this section has been placed in Chapter IV of the Act and has been specifically made in respect of incomes computed under that Chapter.

14. On the other hand, learned Departmental Representative submitted that department had revised the original grounds and ground No. 3 was taken against the order of Commissioner (Appeals) for holding that interest payable in the OD account to the extent of Rs. 18,64,555 was allowable expenditure. As this ground was of legal nature and the same should be accepted in view of the decision of National Thermal Power Corpn. Ltd. v. CIT (1998) 229 ITR 383 (SC). As the ground is of legal nature and facts are clearly emerging from the order of assessing officer as well as Commissioner (Appeals) and have impact on the tax liability of the assessee, we admit this ground. Senior learned Departmental Representative submitted that case law relied on by the learned authorised representative were no more applicable in view of the latest provisions of section 14A which was inserted by Finance Act, 2001. He further submitted that this provision has been made specifically applicable with effect from 1-4-1962. As far as dilution of this section by Circular No. 11, dated 23-7-2001 (supra), is concerned, he read out the circular pointing out that only concession made by the Board is that past assessments which had already been completed and attained finality

should not be reopened. Therefore, in matters which are still under litigation, provisions of this section have to be applied. According to him, basic principles of accounting which include matching principle were always applicable but this section has been specifically inserted on the statute perhaps to overrule certain judgments like decision of Supreme Court in case of Rajasthan State Warehousing Corpn. v. CIT (supra). He gave a very simple example, though agricultural income is exempt from income-tax but that does not mean that expenditure incurred in relation to agricultural income can be claimed under the other heads of income. If that was allowed to be done then difference in various heads would be wiped out. He contended that placement of this section under Chapter IV would not make much difference and it would be totally wrong to say that this provision would relate to only Chapter IV. According to him, the language of the section is very clear and it would apply to all expenses incurred in relation to income which does not form part of the total income. He further, submitted that learned Authorised representative had read out various judgments without considering whether same were having material implications in the instant case or not. In any case, it is not permissible to pick out a word or sentence from the judgment of various cases divorced from the context of question under consideration and to treat the same as complete law declared by the Courts. In this regard, he referred to the observation of Supreme Court in CIT v. Sun Engg. Works (P) Ltd. (1992) 198 ITR 297 (SC). He submitted that decisions of CIT v. Mithlesh Kumari (supra) and Addl. CIT v. K.S. Gupta (supra) are not applicable to the case of assessee because in both these decisions, asset concerned was land and not securities. He further submitted that in terms of section 14A, not only interest on direct borrowings but also interest on indirect borrowings has to be disallowed. He pointed out that assessing officer has clearly proved the nexus in his assessment that whenever cheques were issued for purchase of these units and securities, overdraft in CC account went up. He contended that whole transaction was entered just to take tax advantage because interest on securities was fixed and in case of units also the rate of dividend in those days was generally known. Assessee wanted to take benefit of exemptions under various provisions and at the same time claimed loss on the sale of these securities. In addition, assessee tried to reduce the tax burden by claiming interest under the head 'business income' which was not permissible under the law even in those days and whatever doubts were left are no more there because of the section 14A. He further submitted that transaction cannot be called as business transaction. He referred to the memorandum and articles of association of the company whereby the main objects of the company are manufacture of synthetics fibres, yarns, fabrics, carbon graphites and other products. He referred to clause 21 of the memorandum which relates to investment. According to this clause, company was empowered to invest only surplus monies of the company, whereas in the instant case company had borrowed the money from Bank and then made investment. He referred to page 28 of the compilation which is board's resolution passed on 13-3-1989, in which some directors were authorised to make investment. In this resolution also specifically the word 'investment' has been used. He also referred to the published balance sheet of the company where bonds of Indian Railways Finance Corpn. have been reflected under the head 'investment'. As far as theory of company's own fund out of reserves and profits is concerned, he again referred to the balance sheet and pointed out that company had total own funds of Rs. 27.61 crores, against which company was having Rs. 34.70 crores in net fixed assets. Therefore, company had no surplus money to invest. He pointed out that calculations made by Commissioner (Appeals) at page 18 that company had reserves and surplus of Rs. 10.60 crores is not correct because he has ignored the investment made by the company in fixed assets. As far as deduction under section

80-M is concerned, after the decision of Supreme Court in Distributors (Baroda) (P) Ltd. v. Union of India (1985) 155 ITR 120 (SC), it has become absolutely clear that deduction under section 80-M can be allowed only with respect to net income, i.e., after deducting expenditure incurred including interest to earn such dividend income. This position is also clear from section 80-AA. He further submitted that this position has been reiterated in number of decisions by the Supreme Court and the last in the series is in the case of Motilal Pesticides (India) (P) Ltd. v. CIT (2000) 243 ITR 26 (SC). As far as decisions relied on by the learned Authorised representative are concerned, in these decisions ratio of Distributors (Baroda) (P) Ltd. v. Union of India (supra) was not noticed so the same is not applicable to the case of the assessee. As far as contention of second alternative that interest should be included in the cost of assets and enhanced loss should be allowed, he pointed out that this is not a correct position. He argued that cost of acquisition has been defined in section 55(2) and it would be actual cost to the assessee. In this regard he relied on decision of the Supreme Court in Challapalli Sugars Ltd. v. CIT (1975) 98 ITR 167 (SC). In this decision, it was clearly held by Supreme Court that interest paid before commencement of production on amounts borrowed by the assessee for acquisition and installation of fixed assets only would form part of actual cost. As assessee has purchased interest bearing securities and even in case of nits also it is a well-known fact that in the months of May and June units used to be priced more because of inbuilt dividend, therefore, interest cannot be added to the cost of assets. He submitted that learned Commissioner (Appeals) has correctly found that if interest is to be added to the cost of acquisition, then dividend and interest income of such securities have to be included in the sale price of these securities because such interest and dividend were in built in these securities. He also relied on M.L.G. Enterprises v. CIT (1987) 167 ITR 11 (Kar), where it was held that interest paid to partners for acquisition of assets will not go to augment cost of acquisition. He also referred to Explanation 8 to section 43(1) where it has been clarified that interest can be included in the cost of asset only for the period prior to (which) such asset is first put to use.

14. On the other hand, learned Departmental Representative submitted that department had revised the original grounds and ground No. 3 was taken against the order of Commissioner (Appeals) for holding that interest payable in the OD account to the extent of Rs. 18,64,555 was allowable expenditure. As this ground was of legal nature and the same should be accepted in view of the decision of National Thermal Power Corpn. Ltd. v. CIT (1998) 229 ITR 383 (SC). As the ground is of legal nature and facts are clearly emerging from the order of assessing officer as well as Commissioner (Appeals) and have impact on the tax liability of the assessee, we admit this ground. Senior learned Departmental Representative submitted that case law relied on by the learned authorised representative were no more applicable in view of the latest provisions of section 14A which was inserted by Finance Act, 2001. He further submitted that this provision has been made specifically applicable with effect from 1-4-1962. As far as dilution of this section by Circular No. 11, dated 23-7-2001 (supra), is concerned, he read out the circular pointing out that only concession made by the Board is that past assessments which had already been completed and attained finality should not be reopened. Therefore, in matters which are still under litigation, provisions of this section have to be applied. According to him, basic principles of accounting which include matching principle were always applicable but this section has been specifically inserted on the statute perhaps to overrule certain judgments like decision of Supreme Court in case of Rajasthan State Warehousing Corpn. v. CIT (supra). He gave a very simple example, though agricultural income is

exempt from income-tax but that does not mean that expenditure incurred in relation to agricultural income can be claimed under the other heads of income. If that was allowed to be done then difference in various heads would be wiped out. He contended that placement of this section under Chapter IV would not make much difference and it would be totally wrong to say that this provision would relate to only Chapter IV. According to him, the language of the section is very clear and it would apply to all expenses incurred in relation to income which does not form part of the total income. He further, submitted that learned Authorised representative had read out various judgments without considering whether same were having material implications in the instant case or not. In any case, it is not permissible to pick out a word or sentence from the judgment of various cases divorced from the context of question under consideration and to treat the same as complete law declared by the Courts. In this regard, he referred to the observation of Supreme Court in CIT v. Sun Engg. Works (P) Ltd. (1992) 198 ITR 297 (SC). He submitted that decisions of CIT v. Mithlesh Kumari (supra) and Addl. CIT v. K.S. Gupta (supra) are not applicable to the case of assessee because in both these decisions, asset concerned was land and not securities. He further submitted that in terms of section 14A, not only interest on direct borrowings but also interest on indirect borrowings has to be disallowed. He pointed out that assessing officer has clearly proved the nexus in his assessment that whenever cheques were issued for purchase of these units and securities, overdraft in CC account went up. He contended that whole transaction was entered just to take tax advantage because interest on securities was fixed and in case of units also the rate of dividend in those days was generally known. Assessee wanted to take benefit of exemptions under various provisions and at the same time claimed loss on the sale of these securities. In addition, assessee tried to reduce the tax burden by claiming interest under the head 'business income' which was not permissible under the law even in those days and whatever doubts were left are no more there because of the section 14A. He further submitted that transaction cannot be called as business transaction. He referred to the memorandum and articles of association of the company whereby the main objects of the company are manufacture of synthetics fibres, yarns, fabrics, carbon graphites and other products. He referred to clause 21 of the memorandum which relates to investment. According to this clause, company was empowered to invest only surplus monies of the company, whereas in the instant case company had borrowed the money from Bank and then made investment. He referred to page 28 of the compilation which is board's resolution passed on 13-3-1989, in which some directors were authorised to make investment. In this resolution also specifically the word 'investment' has been used. He also referred to the published balance sheet of the company where bonds of Indian Railways Finance Corpn. have been reflected under the head 'investment'. As far as theory of company's own fund out of reserves and profits is concerned, he again referred to the balance sheet and pointed out that company had total own funds of Rs. 27.61 crores, against which company was having Rs. 34.70 crores in net fixed assets. Therefore, company had no surplus money to invest. He pointed out that calculations made by Commissioner (Appeals) at page 18 that company had reserves and surplus of Rs. 10.60 crores is not correct because he has ignored the investment made by the company in fixed assets. As far as deduction under section 80-M is concerned, after the decision of Supreme Court in Distributors (Baroda) (P) Ltd. v. Union of India (1985) 155 ITR 120 (SC), it has become absolutely clear that deduction under section 80-M can be allowed only with respect to net income, i.e., after deducting expenditure incurred including interest to earn such dividend income. This position is also clear from section 80-AA. He further submitted that this position has been reiterated in number of decisions by the Supreme Court and

the last in the series is in the case of Motilal Pesticides (India) (P) Ltd. v. CIT (2000) 243 ITR 26 (SC). As far as decisions relied on by the learned Authorised representative are concerned, in these decisions ratio of Distributors (Baroda) (P) Ltd. v. Union of India (supra) was not noticed so the same is not applicable to the case of the assessee. As far as contention of second alternative that interest should be included in the cost of assets and enhanced loss should be allowed, he pointed out that this is not a correct position. He argued that cost of acquisition has been defined in section 55(2) and it would be actual cost to the assessee. In this regard he relied on decision of the Supreme Court in Challapalli Sugars Ltd. v. CIT (1975) 98 ITR 167 (SC). In this decision, it was clearly held by Supreme Court that interest paid before commencement of production on amounts borrowed by the assessee for acquisition and installation of fixed assets only would form part of actual cost. As assessee has purchased interest bearing securities and even in case of nits also it is a well-known fact that in the months of May and June units used to be priced more because of inbuilt dividend, therefore, interest cannot be added to the cost of assets. He submitted that learned Commissioner (Appeals) has correctly found that if interest is to be added to the cost of acquisition, then dividend and interest income of such securities have to be included in the sale price of these securities because such interest and dividend were in built in these securities. He also relied on M.L.G. Enterprises v. CIT (1987) 167 ITR 11 (Kar), where it was held that interest paid to partners for acquisition of assets will not go to augment cost of acquisition. He also referred to Explanation 8 to section 43(1) where it has been clarified that interest can be included in the cost of asset only for the period prior to (which) such asset is first put to use.

15. In the rejoinder, learned Authorised representative submitted that reliance by learned Departmental Representative on CIT v. Sun Engg. Works (P) Ltd. (supra) is not correct because whatever judgments have been relied by him are applicable to the case of assessee. He further submitted that section 14A would not hit assessee's case because it applies only to the situations where income has been computed under Chapter IV. He further submitted that it should be held that section 14A is prospective. He also referred to pages 2822 and 2823 of Commentary of Income-tax Law by Chaturvedi & Pithisaria, Fifth Edition, where learned author has opined that interest would form the cost of assets. .

15. In the rejoinder, learned Authorised representative submitted that reliance by learned Departmental Representative on CIT v. Sun Engg. Works (P) Ltd. (supra) is not correct because whatever judgments have been relied by him are applicable to the case of assessee. He further submitted that section 14A would not hit assessee's case because it applies only to the situations where income has been computed under Chapter IV. He further submitted that it should be held that section 14A is prospective. He also referred to pages 2822 and 2823 of Commentary of Income-tax Law by Chaturvedi & Pithisaria, Fifth Edition, where learned author has opined that interest would form the cost of assets. .

16. We have considered the rival submissions carefully. We have also gone through the orders of authorities below and various documents filed before us. We have also gone through the judgments relied on by the parties. We find that ratio of Grasim Industries Ltd. v. Dy. CIT (supra) and the Tata Chemicals Ltd. v. Dy. CIT (supra) by Mumbai Bench are not applicable to the case of assessee. In both these cases, what has happened was that company had borrowed funds for the purpose of

putting up new projects and before this money could be spent for this purpose, in was invested in purchase of securities, etc. In the instant case, assessee has specifically borrowed funds for the purpose of making investments, therefore, the interest has to be allocated to the income generated out of these investments. After introduction of section 14A, there is no doubt that expenses incurred in relation to income which does not form part of total income cannot be allowed. We do not find any merit in the contention of learned Authorised representative that section 14A is only applicable for the incomes which are computed under Chapter XIV (sic) as this section has been placed in Chapter III only. In this regard, we agree with the very pertinent example given by senior learned Departmental Representative that expenditure incurred in relation to agricultural income cannot be allowed to be deducted elsewhere, therefore, placement of the section will not make any difference. We are also not in a position to agree with the contention that section 14A should be held to be prospective in operation and in this regard Circular No. 11, dated 23-7-2001, is also of no help. When the section has been specifically made effective from 1-4-1962, we have no power to change the operation of the section from prospective date. We also agree with the contention of learned Departmental Representative that in CIT v. National Grindlays Bank Ltd. (supra) and CIT v. Canodia Investinent (P) Ltd. (supra) the decision of Hon'ble Supreme Court in Distributors (Baroda) (P) Ltd. v. Union of India (supra) was not noticed and as far as decision of CIT v. Cotton Fabrics Ltd. (supra) is concerned, it was rendered much before the decision of the Supreme Court in Disttibutors (Baroda) (P) Ltd. v. Union of India (supra). We are also unable to agree with the alternative contention of learned Authorised representative that interest should be held to be part of the cost of securities and enhanced loss should be allowed. Firstly, the decisions of CIT v. Mithlesh Kumari (supra) and Addl. CIT v. KS. Gupta (supra) are not from jurisdictional High Court, and, secondly, both these decisions relate to purchase of land. In case of securities, particularly interest bearing securities, and units of UTI where declaration of dividend at a particular rate was almost a certainty as observed by Commissioner (Appeals), these ratios cannot be applied because interest and dividend were inbuilt in these securities. We also find from memorandum and articles of association as well as balance sheet that these investments were held on capital account and the same cannot be treated as adventure in the nature of trade. At the same time, we are unable to agree with the learned Departmental Representative that even indirect interest incurred by the assessee cannot be allowed in view of section 14A. Section 14A reads as follows :

16. We have considered the rival submissions carefully. We have also gone through the orders of authorities below and various documents filed before us. We have also gone through the judgments relied on by the parties. We find that ratio of Grasim Industries Ltd. v. Dy. CIT (supra) and the Tata Chemicals Ltd. v. Dy. CIT (supra) by Mumbai Bench are not applicable to the case of assessee. In both these cases, what has happened was that company had borrowed funds for the purpose of putting up new projects and before this money could be spent for this purpose, in was invested in purchase of securities, etc. In the instant case, assessee has specifically borrowed funds for the purpose of making investments, therefore, the interest has to be allocated to the income generated out of these investments. After introduction of section 14A, there is no doubt that expenses incurred in relation to income which does not form part of total income cannot be allowed. We do not find any merit in the contention of learned Authorised representative that section 14A is only applicable for the incomes which are computed under Chapter XIV (sic) as this section has been placed in Chapter III only. In this regard, we agree with the very pertinent example given by senior learned

Departmental Representative that expenditure incurred in relation to agricultural income cannot be allowed to be deducted elsewhere, therefore, placement of the section will not make any difference. We are also not in a position to agree with the contention that section 14A should be held to be prospective in operation and in this regard Circular No. 11, dated 23-7-2001, is also of no help. When the section has been specifically made effective from 1-4-1962, we have no power to change the operation of the section from prospective date. We also agree with the contention of learned Departmental Representative that in CIT v. National Grindlays Bank Ltd. (supra) and CIT v. Canodia Investinent (P) Ltd. (supra) the decision of Hon'ble Supreme Court in Distributors (Baroda) (P) Ltd. v. Union of India (supra) was not noticed and as far as decision of CIT v. Cotton Fabrics Ltd. (supra) is concerned, it was rendered much before the decision of the Supreme Court in Disttibutors (Baroda) (P) Ltd. v. Union of India (supra). We are also unable to agree with the alternative contention of learned Authorised representative that interest should be held to be part of the cost of securities and enhanced loss should be allowed. Firstly, the decisions of CIT v. Mithlesh Kumari (supra) and Addl. CIT v. KS. Gupta (supra) are not from jurisdictional High Court, and, secondly, both these decisions relate to purchase of land. In case of securities, particularly interest bearing securities, and units of UTI where declaration of dividend at a particular rate was almost a certainty as observed by Commissioner (Appeals), these ratios cannot be applied because interest and dividend were inbuilt in these securities. We also find from memorandum and articles of association as well as balance sheet that these investments were held on capital account and the same cannot be treated as adventure in the nature of trade. At the same time, we are unable to agree with the learned Departmental Representative that even indirect interest incurred by the assessee cannot be allowed in view of section 14A. Section 14A reads as follows :

"14A. For the purpose of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. "

From the language of this section, it is clear that what is not to be allowed is expenditure incurred by the assessee in relation to income which does not form part of the total income. This cannot be stretched to include the expenditure which is not directly related to generation of this income. Though assessing officer has proved the nexus but in case of companies, it is very difficult to say that which particular fund has been deployed particularly when companies maintaining only one CC account. Hon'ble Calcutta High Court in cases of Wool Combers of India Ltd . v. CIT (supra) and Reckitt Colman India Ltd. v. CIT (supra) has held that where all business receipts were being deposited in O.P. account, the withdrawals made for the payment of tax liabilities held to be out of profits, therefore, we hold that interest amounting only to Rs. 16,82,707 has been correctly disallowed by assessing officer and interest amounting to Rs. 18,64,555 has been correctly allowed to be deducted by learned Commissioner (Appeals). On the basis of this analysis, we further hold that deduction under section 80-M has been correctly worked out by Commissioner (Appeals). In these circumstances we find nothing wrong with the order of Commissioner (Appeals) and confirm the same.

17. Through ground No. 3, assessee has challenged the impugned order of Commissioner (Appeals) for not allowing Rs. 35,000 paid as fee of architect and treating the payment of Rs. 4,41,155 on

upkeep of proper maintenance of Bombay office as capital expenditure. Assessing Officer did not allow expenditure relating to repair and maintenance of three items which are Rs. 26,314 which was found to be incurred on making a drain at the main gate, Rs. 8,038 which was incurred for extension of car garrage, Rs. 7,10,861 which was incurred for renovation of Bombay Office. All these expenses were held to be on capital account. Revenue I through ground No. 2 in its appeal has also challenged the relief of Rs. 3,04,264 allowing by Commissioner (Appeals) on these items.

17. Through ground No. 3, assessee has challenged the impugned order of Commissioner (Appeals) for not allowing Rs. 35,000 paid as fee of architect and treating the payment of Rs. 4,41,155 on upkeep of proper maintenance of Bombay office as capital expenditure. Assessing Officer did not allow expenditure relating to repair and maintenance of three items which are Rs. 26,314 which was found to be incurred on making a drain at the main gate, Rs. 8,038 which was incurred for extension of car garrage, Rs. 7,10,861 which was incurred for renovation of Bombay Office. All these expenses were held to be on capital account. Revenue I through ground No. 2 in its appeal has also challenged the relief of Rs. 3,04,264 allowing by Commissioner (Appeals) on these items.

18. Before Commissioner (Appeals), it was submitted that reliance placed by the assessing officer in the case of Ratlam Bone Mills v. CIT (1984) 147 ITR 148 (MP) was not correct because in that case more amount than the original cost of property was spent and that too soon after it was purchased. It was also submitted that Bombay office was purchased way back in the year 1976-77 and expenditure incurred for interior decoration at that point of time was capitalised. Since then it was for the first time that extensive expenditure on replacement of partitions and other interior decorations has been incurred. As far as expenditure on drain was concerned, it was submitted that during rains, water used to penetrate to the plinth of the building and this drain was constructed only to safeguard the building. Reliance was placed on certain case law. Commissioner (Appeals) found merit in some of the contentions of assessee and held that expenditures incurred on making of the drain and other civil constructions were allowable as revenue expenditure, as no new asset has been created, However, as far as car garage is concerned, he did not agree with the contention of assessee, as open parking road had been converted into covered garage, therefore, same was held to be of capital nature. After going through various case law relied on by the assessee, it was held by him that expenditure in the nature of civil construction inside the building and painting, etc. was of revenue nature but payment of architect fee amounting to Rs. 35,000 and another payment of Rs. 4,41,155 to M/s R.P. Sawe, which was for creation of new cupbroads, partitions, furniture items, etc, were held to be on capital account.

18. Before Commissioner (Appeals), it was submitted that reliance placed by the assessing officer in the case of Ratlam Bone Mills v. CIT (1984) 147 ITR 148 (MP) was not correct because in that case more amount than the original cost of property was spent and that too soon after it was purchased. It was also submitted that Bombay office was purchased way back in the year 1976-77 and expenditure incurred for interior decoration at that point of time was capitalised. Since then it was for the first time that extensive expenditure on replacement of partitions and other interior decorations has been incurred. As far as expenditure on drain was concerned, it was submitted that during rains, water used to penetrate to the plinth of the building and this drain was constructed only to safeguard the building. Reliance was placed on certain case law. Commissioner (Appeals)

found merit in some of the contentions of assessee and held that expenditures incurred on making of the drain and other civil constructions were allowable as revenue expenditure, as no new asset has been created, However, as far as car garage is concerned, he did not agree with the contention of assessee, as open parking road had been converted into covered garage, therefore, same was held to be of capital nature. After going through various case law relied on by the assessee, it was held by him that expenditure in the nature of civil construction inside the building and painting, etc. was of revenue nature but payment of architect fee amounting to Rs. 35,000 and another payment of Rs. 4,41,155 to M/s R.P. Sawe, which was for creation of new cupbroads, partitions, furniture items, etc, were held to be on capital account.

19. Before us, learned Authorised representative brought to our attention pages 32, 33 and 34 of the compilation which are brief notes regarding these expenses submitted before assessing officer. It has been discussed at page 32 that Bombay office was purchased in 1976-77 and this renovation expenditure was incurred after 12-13 years, keeping the trend prevalent in modern commercial complexes and creating better spaces and healthy working conditions. He then referred to pages 40 to 43 which is copy of the bill of R.P. Sawe. He pointed out that from this bill, it is clear that old partition, floor tiles, etc. were dismantled and new partition, false ceiling, cabinet, cup-boards, etc. were fitted. According to him, these items are not of enduring nature, therefore, should be allowed to be deducted as revenue expenditure.

19. Before us, learned Authorised representative brought to our attention pages 32, 33 and 34 of the compilation which are brief notes regarding these expenses submitted before assessing officer. It has been discussed at page 32 that Bombay office was purchased in 1976-77 and this renovation expenditure was incurred after 12-13 years, keeping the trend prevalent in modern commercial complexes and creating better spaces and healthy working conditions. He then referred to pages 40 to 43 which is copy of the bill of R.P. Sawe. He pointed out that from this bill, it is clear that old partition, floor tiles, etc. were dismantled and new partition, false ceiling, cabinet, cup-boards, etc. were fitted. According to him, these items are not of enduring nature, therefore, should be allowed to be deducted as revenue expenditure.

20. On the other hand, learned Departmental Representative submitted that erection of garage was clearly of capital nature but still assessee has claimed the same as revenue expenditure. He then referred to the bill of M/s R.P. Sawe and pointed out to items 8, 11 and 18, which shows that assessee has constructed new false ceiling and furniture, etc. which is clearly of capital nature. He strongly relied on the order of assessing officer and Commissioner (Appeals).

20. On the other hand, learned Departmental Representative submitted that erection of garage was clearly of capital nature but still assessee has claimed the same as revenue expenditure. He then referred to the bill of M/s R.P. Sawe and pointed out to items 8, 11 and 18, which shows that assessee has constructed new false ceiling and furniture, etc. which is clearly of capital nature. He strongly relied on the order of assessing officer and Commissioner (Appeals).

21. In the rejoinder, learned Authorised representative relied on CIT v. Jawahar Mills Ltd. (1997) 226 ITR 230 (Mad), where Madras High Court has held that expenditure incurred on replacement

of false ceiling is of revenue nature. He then referred to the decoration of office premises and expenditure on panelling of walls, etc. which has been held to be of revenue expenditure. He also referred to Income Tax Officer v. I.B.P. Co. Ltd. (1987) 28 TTJ (Cal) 400 : (1987) 20 ITD 470 (Cal), where fees paid to architect on account of addition and alteration in office premises was held to be deductible as revenue expenditure.

21. In the rejoinder, learned Authorised representative relied on CIT v. Jawahar Mills Ltd. (1997) 226 ITR 230 (Mad), where Madras High Court has held that expenditure incurred on replacement of false ceiling is of revenue nature. He then referred to the decoration of office premises and expenditure on panelling of walls, etc. which has been held to be of revenue expenditure. He also referred to Income Tax Officer v. I.B.P. Co. Ltd. (1987) 28 TTJ (Cal) 400 : (1987) 20 ITD 470 (Cal), where fees paid to architect on account of addition and alteration in office premises was held to be deductible as revenue expenditure.

22. We have considered the rival submissions carefully and perused the documents filed before us as well as judgments relied on by the parties. We find force in the contention of learned Authorised representative. It is clear from the bill of M/s R.P. Sawe that old interior fittings including floor tiles and false ceiling were dismantled and new interiors were fixed. Though 2-3 items relate to erection of tables and cabinets, etc. which may be in the nature of furniture and fixtures but still these types of furniture are fixed and cannot be used elsewhere. The whole expenditure has to be treated as one. Following the judgment of Hon'ble Calcutta High Court in CIT v. J.K. Industries where renovation of office premises has been held to be revenue expenditure we set aside the order of Commissioner (Appeals) and allow expenditure incurred on renovation of Bombay office as revenue expenditure. However, as far as erection of garage is concerned, we agree with learned Departmental Representative that it is of capital nature, therefore, to this extent we uphold the order of Commissioner (Appeals).

22. We have considered the rival submissions carefully and perused the documents filed before us as well as judgments relied on by the parties. We find force in the contention of learned Authorised representative. It is clear from the bill of M/s R.P. Sawe that old interior fittings including floor tiles and false ceiling were dismantled and new interiors were fixed. Though 2-3 items relate to erection of tables and cabinets, etc. which may be in the nature of furniture and fixtures but still these types of furniture are fixed and cannot be used elsewhere. The whole expenditure has to be treated as one. Following the judgment of Hon'ble Calcutta High Court in CIT v. J.K. Industries where renovation of office premises has been held to be revenue expenditure we set aside the order of Commissioner (Appeals) and allow expenditure incurred on renovation of Bombay office as revenue expenditure. However, as far as erection of garage is concerned, we agree with learned Departmental Representative that it is of capital nature, therefore, to this extent we uphold the order of Commissioner (Appeals).

23. Through ground No. 4, assessee has challenged the order of Commissioner (Appeals) for confirming the addition amounting to Rs. 34,249 which was on account of conference for sales representatives. The assessing officer disallowed expenditure of Rs. 34,249 claimed as sale promotion expenses because same consisted of food expenses, refreshment expenses and gifts given

to dealers. It was submitted before Commissioner (Appeals) that these expenditures were incurred on a two days conference of dealers held at Ujjain where these dealers were provided free lodging and boarding and a token present costing Rs. 142 each was given to the participants. It was further submitted that these presents were less than Rs. 200 limit laid down by rule 6B of Income Tax Rules. Commissioner (Appeals) did not find force in these contentions and confirmed the addition.

23. Through ground No. 4, assessee has challenged the order of Commissioner (Appeals) for confirming the addition amounting to Rs. 34,249 which was on account of conference for sales representatives. The assessing officer disallowed expenditure of Rs. 34,249 claimed as sale promotion expenses because same consisted of food expenses, refreshment expenses and gifts given to dealers. It was submitted before Commissioner (Appeals) that these expenditures were incurred on a two days conference of dealers held at Ujjain where these dealers were provided free lodging and boarding and a token present costing Rs. 142 each was given to the participants. It was further submitted that these presents were less than Rs. 200 limit laid down by rule 6B of Income Tax Rules. Commissioner (Appeals) did not find force in these contentions and confirmed the addition.

24. Before us, learned Authorised representative submitted that these expenses were not incurred in the ordinary course of business but they were incurred during the sales conference of the sales representatives. As the sales representatives had come from outside, they were to be provided with boarding and lodging facilities. He further submitted that these kinds of conferences are absolutely necessary for increasing the sales of the company. He contended that even gift items presented to such dealers had cost of Rs. 142 each which is well within the limits provided in Income Tax Rules.

24. Before us, learned Authorised representative submitted that these expenses were not incurred in the ordinary course of business but they were incurred during the sales conference of the sales representatives. As the sales representatives had come from outside, they were to be provided with boarding and lodging facilities. He further submitted that these kinds of conferences are absolutely necessary for increasing the sales of the company. He contended that even gift items presented to such dealers had cost of Rs. 142 each which is well within the limits provided in Income Tax Rules.

25. On the other hand, learned Departmental Representative relied on the order of assessing officer.

25. On the other hand, learned Departmental Representative relied on the order of assessing officer.

26. We have considered the rival submissions and find force in the contention of learned Authorised representative. We find that conference was held at Ujjain and people coming from outside have to be provided boarding and lodging. These kinds of conferences are conducted in routine manner by the companies to promote their sales. If boarding and lodging is not provided, dealers may not like to attend these conferences, therefore, it is an absolutely necessary expenditure. We are of the opinion that this kind of expenditure cannot be called entertainment expenditure, therefore, we set aside the order of Commissioner (Appeals) and allow this expenditure.

26. We have considered the rival submissions and find force in the contention of learned Authorised representative. We find that conference was held at Ujjain and people coming from outside have to

be provided boarding and lodging. These kinds of conferences are conducted in routine manner by the companies to promote their sales. If boarding and lodging is not provided, dealers may not like to attend these conferences, therefore, it is an absolutely necessary expenditure. We are of the opinion that this kind of expenditure cannot be called entertainment expenditure, therefore, we set aside the order of Commissioner (Appeals) and allow this expenditure.

27. Ground No. 6. Through this ground, assessee has challenged order of Commissioner (Appeals) for confirming the addition made on account of rent of guest house. Assessing Officer added rent paid towards guest house amounting to Rs. 1,06,867 under section 37. Commissioner (Appeals) confirmed this addition because same was made under section 143(1)(a) and appeal filed against that order had already been dismissed.

27. Ground No. 6. Through this ground, assessee has challenged order of Commissioner (Appeals) for confirming the addition made on account of rent of guest house. Assessing Officer added rent paid towards guest house amounting to Rs. 1,06,867 under section 37. Commissioner (Appeals) confirmed this addition because same was made under section 143(1)(a) and appeal filed against that order had already been dismissed.

28. Before us, learned Authorised representative relied on CIT v. Chase Bright Steel Ltd. (1989) 177 DTR 124 (Bom) where rent for guest house premises was held to be allowable deduction. He submitted that this ratio has again been followed in CIT v. A.B. Thomas & Co. Ltd. (1997) 225 ITR 29 (Ker) and Hindustan Lever Ltd. v. Inspecting Assistant Commissioner (1996) 56 TTJ (Bom) 598: (1996) 58 ITD 555 (Bom).

28. Before us, learned Authorised representative relied on CIT v. Chase Bright Steel Ltd. (1989) 177 DTR 124 (Bom) where rent for guest house premises was held to be allowable deduction. He submitted that this ratio has again been followed in CIT v. A.B. Thomas & Co. Ltd. (1997) 225 ITR 29 (Ker) and Hindustan Lever Ltd. v. Inspecting Assistant Commissioner (1996) 56 TTJ (Bom) 598: (1996) 58 ITD 555 (Bom).

29. On the other hand, learned Departmental Representative strongly relied on the order of Commissioner (Appeals) and submitted that addition was originally made under section 143(1)(a) and appeal against that order was also dismissed, therefore, there is no justification of raising this ground as assessee has never appealed before Tribunal against the earlier dismissal by Commissioner (Appeals).

29. On the other hand, learned Departmental Representative strongly relied on the order of Commissioner (Appeals) and submitted that addition was originally made under section 143(1)(a) and appeal against that order was also dismissed, therefore, there is no justification of raising this ground as assessee has never appealed before Tribunal against the earlier dismissal by Commissioner (Appeals).

30. In the rejoinder, learned Authorised representative submitted that assessee had filed an appeal before Tribunal and same was decided in ITA No. 984/Ind/1992 in favour of assessee. He pointed

out that order of this appeal has been placed at pages 56 to 58 of the paper book.

30. In the rejoinder, learned Authorised representative submitted that assessee had filed an appeal before Tribunal and same was decided in ITA No. 984/Ind/1992 in favour of assessee. He pointed out that order of this appeal has been placed at pages 56 to 58 of the paper book.

31. We have gone through the rival submissions carefully and find force in the contention of learned Authorised representative. When the addition was originally made and appeal was dismissed by Commissioner (Appeals), Tribunal had allowed the appeal of the assessee. In any case, the matter is covered by the decision of Bombay High Court in the case of CIT v. Chase Bright Steel Ltd. (supra) and CIT v. A.V Thomas & Co. Ltd. (supra) in favour of the assessee, therefore, we set aside the order of Commissioner (Appeals) and decide this issue in favour of assessee.

31. We have gone through the rival submissions carefully and find force in the contention of learned Authorised representative. When the addition was originally made and appeal was dismissed by Commissioner (Appeals), Tribunal had allowed the appeal of the assessee. In any case, the matter is covered by the decision of Bombay High Court in the case of CIT v. Chase Bright Steel Ltd. (supra) and CIT v. A.V Thomas & Co. Ltd. (supra) in favour of the assessee, therefore, we set aside the order of Commissioner (Appeals) and decide this issue in favour of assessee.

32. Through ground No. 6, assessee has challenged the order of Commissioner (Appeals) for confirming the addition amounting to Rs. 59,678 on account of Dakshina, etc paid to Sadhus, etc. During assessment proceedings, assessing officer noticed that a sum of Rs. 59,678 was debited under that head 'misc. expenses' but the same related to donations in the form of Dakshinas to Sadhus who were coming to the temple maintained by the assessee-company. This expenditure was held not for the purpose of business and same was disallowed.

32. Through ground No. 6, assessee has challenged the order of Commissioner (Appeals) for confirming the addition amounting to Rs. 59,678 on account of Dakshina, etc paid to Sadhus, etc. During assessment proceedings, assessing officer noticed that a sum of Rs. 59,678 was debited under that head 'misc. expenses' but the same related to donations in the form of Dakshinas to Sadhus who were coming to the temple maintained by the assessee-company. This expenditure was held not for the purpose of business and same was disallowed.

33. Before Commissioner (Appeals), it was submitted that assessee-company was maintaining a temple and other expenses relating to this temple were allowed by the assessing officer under the head 'staff welfare expenses'. He further submitted that small donations in the form of Dakshinas were given to Sadhus who visited this temple in order to get their blessings, therefore, same should be allowed as part of the staff welfare expenses. Commissioner (Appeals) found that a line has to be drawn somewhere to decide the extent of such staff welfare. He was also of the opinion that maintenance of a temple may be necessary in a large organisation but at the same time same has got to be limited to maintenance of temple and cost of Prasad and Pooja expenses, etc. He also found that these misc. expenses were shown as donation in the break-up details of misc. expenses, therefore, the addition was confirmed.

33. Before Commissioner (Appeals), it was submitted that assessee-company was maintaining a temple and other expenses relating to this temple were allowed by the assessing officer under the head 'staff welfare expenses'. He further submitted that small donations in the form of Dakshinas were given to Sadhus who visited this temple in order to get their blessings, therefore, same should be allowed as part of the staff welfare expenses. Commissioner (Appeals) found that a line has to be drawn somewhere to decide the extent of such staff welfare. He was also of the opinion that maintenance of a temple may be necessary in a large organisation but at the same time same has got to be limited to maintenance of temple and cost of Prasad and Pooja expenses, etc. He also found that these misc. expenses were shown as donation in the break-up details of misc. expenses, therefore, the addition was confirmed.

34. Before us, learned Authorised representative reiterated similar arguments.

34. Before us, learned Authorised representative reiterated similar arguments.

35. On the other hand, learned Departmental Representative strongly relied on the orders of Commissioner (Appeals). He further submitted that if contention of learned authorised representative is allowed then all types of donations would become business expenditure.

35. On the other hand, learned Departmental Representative strongly relied on the orders of Commissioner (Appeals). He further submitted that if contention of learned authorised representative is allowed then all types of donations would become business expenditure.

36. We have considered the rival submissions and we are in agreement with the contention of learned departmental Representative because if a line is not drawn then all kinds of donations and diversion of income can be held to be business expenditure. Commissioner (Appeals) was analysed this expenditure in exhaustive detail and we find nothing wrong in that order, therefore, confirm his order.

36. We have considered the rival submissions and we are in agreement with the contention of learned departmental Representative because if a line is not drawn then all kinds of donations and diversion of income can be held to be business expenditure. Commissioner (Appeals) was analysed this expenditure in exhaustive detail and we find nothing wrong in that order, therefore, confirm his order.

37. Through ground No. 7, assessee has challenged the order of Commissioner (Appeals) for not allowing the claim on account of business loss amounting to Rs. 51,26,777. During assessment proceedings, assessing officer found that assessee had made a claim of Rs. 51,26,777 on account of bad debts. It was noticed by him that this claim was not made in regular return but was made through notes on accounts. Upon enquiry, assessee submitted its detailed reply in which, inter alia, following submissions were made :

37. Through ground No. 7, assessee has challenged the order of Commissioner (Appeals) for not allowing the claim on account of business loss amounting to Rs. 51,26,777. During assessment

proceedings, assessing officer found that assessee had made a claim of Rs. 51,26,777 on account of bad debts. It was noticed by him that this claim was not made in regular return but was made through notes on accounts. Upon enquiry, assessee submitted its detailed reply in which, inter alia, following submissions were made :

"There is no denial that it was advanced to BPM from time to time and was solely for the purpose of reviving the concern with our merger proposal, approved by financial institutions. Our company has also made vigorous efforts to pursue the same. Unfortunately, when the co-operation of Banks and financial institutions for providing necessary working capital and other facilities was not materialised the proposal of merger could not get through. The loss, therefore, is necessarily a business loss to us and should be allowed as a permissible deduction from the profits as returned by us. For this purpose and the amount being quite substantial, though not claimed in our computation, we have made a foot note to consider at the time of assessment and allow the same against the total income shown. This note was given by us at page No. 6-B of our computation of income."

Assessing officer did not allow this claim because same was not made in the return of income and purpose of the advance was acquiring a source of income, therefore, same was a capital loss.

38. Before Commissioner (Appeals), it was submitted that advance was made with a view to diversify business activities and thus, it was an adventure undertaken for earning income, therefore, loss arising therefrom should be held to be a business loss. It was further submitted that this claim was not on account of bad debt but as business loss, which was written off as per board resolution and approval given by the shareholders. It was further submitted that expenditure was incurred for diversification of business activity which is covered by the main objects of the company. Reliance on various judgments was also placed before him. Commissioner (Appeals) did not find merit in the contention of assessee and observed that action of assessing officer was correct because this claim was not made in the return of income. Even on merits, he found that cases relied on by the assessee were of no help because in none of those decisions losses of capital nature for taking over a new company were held to be allowable as business expenditure. He also found that bid for taking over Bengal Paper Mill was given in the year 1986 and wining up of Bengal Paper Mill was passed on 24-4-1987. However, the write off was ultimately approved by the Board of Directors only on 9-8-1990, i.e., after the close of the previous year relevant to the present assessment year. Because of this reason also, this claim was not allowed.

38. Before Commissioner (Appeals), it was submitted that advance was made with a view to diversify business activities and thus, it was an adventure undertaken for earning income, therefore, loss arising therefrom should be held to be a business loss. It was further submitted that this claim was not on account of bad debt but as business loss, which was written off as per board resolution and approval given by the shareholders. It was further submitted that expenditure was incurred for diversification of business activity which is covered by the main objects of the company. Reliance on various judgments was also placed before him. Commissioner (Appeals) did not find merit in the contention of assessee and observed that action of assessing officer was correct because this claim was not made in the return of income. Even on merits, he found that cases relied on by the assessee

were of no help because in none of those decisions losses of capital nature for taking over a new company were held to be allowable as business expenditure. He also found that bid for taking over Bengal Paper Mill was given in the year 1986 and wining up of Bengal Paper Mill was passed on 24-4-1987. However, the write off was ultimately approved by the Board of Directors only on 9-8-1990, i.e., after the close of the previous year relevant to the present assessment year. Because of this reason also, this claim was not allowed.

39. Before us, learned Authorised representative brought to our attention page 108 of the compilation which is copy of the notes on Income Tax return. In note No. 6B, it has been mentioned that advance was given in respect of proposed, merger/amalgamation of the Bengal Paper Mills Ltd. by the company for diversifying its activities into paper line. It has been further mentioned that as that company had gone into liquidation, the advances made to them could not be recovered and written off in the books. It is also mentioned that though the tax auditors had captioned this advance under capital expenditure and the same has been added to the total income, yet the advance made is of revenue nature and even otherwise, same should be allowed while computing total income. He then referred to page 91 which is copy of additional agenda to be considered in the board meeting to be held on 9-8-1990, where this amount was proposed to be written off. Then he referred to page 110 which is copy of the minutes of board meeting held on 9-8-1990, where after detailed discussion write off of this amount was approved. He then referred to pages 62 to 84 of the compilation which contain details regarding the scheme of merger and approval of the FIs for the scheme. He further submitted as the participating Banks and institutions did not come forward with their financial help, therefore, scheme had to be abandoned. He particularly referred to pages 83 and 84 which are two letters addressed to the Secretary, Industrial Reconstruction Divn., Government of West Bengal and another to Chief Minister of West Bengal where it was informed that Banks were not coming forward with their help, therefore, Bank should be persuaded to sanction the limits so that Bengal Paper Mill could be revived. He submitted despite of all these efforts no help came from the Bank side and ultimately Bengal Paper Mills went into liquidation and assessee-company appeared as one of the creditors in its balance sheet. He contended that assessee-company wanted to diversify into the paper line, therefore, this advance shall be construed to have been given in the ordinary course of business. He further submitted that this is a kind of an embryo project and assessee would have gained immensely had the proposal gone through. Therefore, this should be held to be business expenditure. He also submitted that these kinds of expenses are allowed even under section 35D as pre-incorporation expenses. He also relied on CIT v. Hashimara Industries Ltd. (1989) 175 ITR 477 (Cal), Hashimara Industries Ltd. v. CIT (1998) 230 ITR 927 (SC), Hashimara Industries Ltd. v. CIT (1990) 184 ITR 174 (Cal) and Hashimara Industries Ltd. v. CIT (1998) 231 ITR 842 (SC). He particularly read pages 481, 485 and 491 from CIT v. Hashimara Industries Ltd. (supra). He submitted that a sum of Rs. 4,31,352 which was paid by this company towards insurance premium rates and taxes was allowed to be deducted. He then referred to pages 92 and 93 of the compilation in which details of advance amounting to Rs. 51,26,777 have been given. According to him, from these details, it is clear that this advance was given to Bengal Paper Mills for meeting their day-to-day expenses, repairs, payment of salaries and electricity bills, etc. All along the effort of the company was to keep that company in such a manner so that when the company is finally acquired it remained a viable concern. As this advance was given to Bengal Paper Mills for their day-to-day expenses, the same should have been allowed as business loss.

39. Before us, learned Authorised representative brought to our attention page 108 of the compilation which is copy of the notes on Income Tax return. In note No. 6B, it has been mentioned that advance was given in respect of proposed, merger/amalgamation of the Bengal Paper Mills Ltd. by the company for diversifying its activities into paper line. It has been further mentioned that as that company had gone into liquidation, the advances made to them could not be recovered and written off in the books. It is also mentioned that though the tax auditors had captioned this advance under capital expenditure and the same has been added to the total income, yet the advance made is of revenue nature and even otherwise, same should be allowed while computing total income. He then referred to page 91 which is copy of additional agenda to be considered in the board meeting to be held on 9-8-1990, where this amount was proposed to be written off. Then he referred to page 110 which is copy of the minutes of board meeting held on 9-8-1990, where after detailed discussion write off of this amount was approved. He then referred to pages 62 to 84 of the compilation which contain details regarding the scheme of merger and approval of the FIs for the scheme. He further submitted as the participating Banks and institutions did not come forward with their financial help, therefore, scheme had to be abandoned. He particularly referred to pages 83 and 84 which are two letters addressed to the Secretary, Industrial Reconstruction Divn., Government of West Bengal and another to Chief Minister of West Bengal where it was informed that Banks were not coming forward with their help, therefore, Bank should be persuaded to sanction the limits so that Bengal Paper Mill could be revived. He submitted despite of all these efforts no help came from the Bank side and ultimately Bengal Paper Mills went into liquidation and assessee-company appeared as one of the creditors in its balance sheet. He contended that assessee-company wanted to diversify into the paper line, therefore, this advance shall be construed to have been given in the ordinary course of business. He further submitted that this is a kind of an embryo project and assessee would have gained immensely had the proposal gone through. Therefore, this should be held to be business expenditure. He also submitted that these kinds of expenses are allowed even under section 35D as pre-incorporation expenses. He also relied on CIT v. Hashimara Industries Ltd. (1989) 175 ITR 477 (Cal), Hashimara Industries Ltd. v. CIT (1998) 230 ITR 927 (SC), Hashimara Industries Ltd. v. CIT (1990) 184 ITR 174 (Cal) and Hashimara Industries Ltd. v. CIT (1998) 231 ITR 842 (SC). He particularly read pages 481, 485 and 491 from CIT v. Hashimara Industries Ltd. (supra). He submitted that a sum of Rs. 4,31,352 which was paid by this company towards insurance premium rates and taxes was allowed to be deducted. He then referred to pages 92 and 93 of the compilation in which details of advance amounting to Rs. 51,26,777 have been given. According to him, from these details, it is clear that this advance was given to Bengal Paper Mills for meeting their day-to-day expenses, repairs, payment of salaries and electricity bills, etc. All along the effort of the company was to keep that company in such a manner so that when the company is finally acquired it remained a viable concern. As this advance was given to Bengal Paper Mills for their day-to-day expenses, the same should have been allowed as business loss.

40. On the other hand, learned Departmental Representative submitted that this loss is not allowable and even assessee had knowledge of this fact. Statutory auditors of the assessee- company have very clearly classified this loss as capital loss and company had also added this item in the income of its computation. He posed the query that if company was so sure about this being business loss why the same was not claimed in the return of income. He further submitted that from page 88 of the compilation which is copy of the minutes of board meeting held on 7-1-1987, it

becomes clear that idea of merger was dropped as early as January, 1987. According to him, if the proposal for merger had lost its relevance in January, 1987, then why this amount was not written off at that point of time. He submitted that action of writing off seems to be an afterthought because amount has been written off in accounts of March 1990, whereas from page 91 it becomes clear that action of writing off was proposed to be approved by board in the meeting to be held on 9-8-1990, and this item was included in additional agenda. He again posed a query that though board had approved this write off in its meeting held on 9-8-1990, but why this write off was not approved before actual action of writing off. He further submitted that there is no doubt that amount was advanced for the purpose of acquiring a source of income, i.e., acquisition of assets through merger and it would make no difference how the money was utilised by the beneficiaries. He contended that assessee was in the business of manufacturing synthetics yarn and proposed acquisition of paper mill is a new business. He also relied on CIT v. Jalan Trading Co. (P) Ltd. (1985) 155 ITR 536 (SC), Hashimara Industries Ltd. v. CIT (1998) 230 ITR 927 (SC); Hashimara Industries Ltd. v. CIT (1998) 231 ITR 842 (SC) and Distielers' Trading Corpn. Ltd. v. CIT (2001) 252 ITR 795 (Del).

40. On the other hand, learned Departmental Representative submitted that this loss is not allowable and even assessee had knowledge of this fact. Statutory auditors of the assessee- company have very clearly classified this loss as capital loss and company had also added this item in the income of its computation. He posed the query that if company was so sure about this being business loss why the same was not claimed in the return of income. He further submitted that from page 88 of the compilation which is copy of the minutes of board meeting held on 7-1-1987, it becomes clear that idea of merger was dropped as early as January, 1987. According to him, if the proposal for merger had lost its relevance in January, 1987, then why this amount was not written off at that point of time. He submitted that action of writing off seems to be an afterthought because amount has been written off in accounts of March 1990, whereas from page 91 it becomes clear that action of writing off was proposed to be approved by board in the meeting to be held on 9-8-1990, and this item was included in additional agenda. He again posed a query that though board had approved this write off in its meeting held on 9-8-1990, but why this write off was not approved before actual action of writing off. He further submitted that there is no doubt that amount was advanced for the purpose of acquiring a source of income, i.e., acquisition of assets through merger and it would make no difference how the money was utilised by the beneficiaries. He contended that assessee was in the business of manufacturing synthetics yarn and proposed acquisition of paper mill is a new business. He also relied on CIT v. Jalan Trading Co. (P) Ltd. (1985) 155 ITR 536 (SC), Hashimara Industries Ltd. v. CIT (1998) 230 ITR 927 (SC); Hashimara Industries Ltd. v. CIT (1998) 231 ITR 842 (SC) and Distielers' Trading Corpn. Ltd. v. CIT (2001) 252 ITR 795 (Del).

41. We have considered the rival submissions carefully. We have also gone through the orders of authorities below and documents filed before us as well as the judgments cited by the parties. We find force in the contention of learned Departmental Representative. On a specific query by the Bench, learned Authorised representative had admitted that initially investment was made for acquiring capital assets. Once the investment was made for acquiring capital assets, then how later on it can be said that same was for the purpose of business. Though it is a normal feature that various types of businesses are referred in the objects clause in memorandum and articles of association of the company but it is clear that assessee was mainly engaged in the business of

synthetics yarn, therefore, action of this investment is clearly in the nature of acquisition of capital assets. From the documents on record, we find that Bengal Paper Mills Co. Ltd. was incorporated in the year 1889 with initial capacity of 14000 per annum which was later expanded to 45000 tonnes per annum in the year 1967. Because of labour and other problems the management of this company declared a closure and production stopped in 1983. A scheme of merger was proposed and assessee-company agreed for this merger and this was approved by the FIs like UTI and IFC which were also lenders to the assessee- company.

41. We have considered the rival submissions carefully. We have also gone through the orders of authorities below and documents filed before us as well as the judgments cited by the parties. We find force in the contention of learned Departmental Representative. On a specific query by the Bench, learned Authorised representative had admitted that initially investment was made for acquiring capital assets. Once the investment was made for acquiring capital assets, then how later on it can be said that same was for the purpose of business. Though it is a normal feature that various types of businesses are referred in the objects clause in memorandum and articles of association of the company but it is clear that assessee was mainly engaged in the business of synthetics yarn, therefore, action of this investment is clearly in the nature of acquisition of capital assets. From the documents on record, we find that Bengal Paper Mills Co. Ltd. was incorporated in the year 1889 with initial capacity of 14000 per annum which was later expanded to 45000 tonnes per annum in the year 1967. Because of labour and other problems the management of this company declared a closure and production stopped in 1983. A scheme of merger was proposed and assessee-company agreed for this merger and this was approved by the FIs like UTI and IFC which were also lenders to the assessee- company.

Through this scheme, the assessee- company was supposed to contribute Rs. 2.8 crores as promoter contribution in three years and certain loans were to be sanctioned by Banks and FIs. As Banks did not sanction this limit and even after the efforts of the assessee- company no concrete help came forward, the proposal of merger was dropped. In this background, it cannot be said that this expenditure was incurred in the ordinary course of business. Even in CIT v. Hashimara Industries Ltd. (supra), where assessee was running a tea establishment and entered into a leave and licence agreement with cotton mills, amount deposited with cotton mills was held to be a capital loan. Though expenditure on insurance premium, etc. was held to be allowed but their agreement was of leave and licence basis and that agreement was extended for three months and insurance premium, paid during those three months only was allowed to be deducted. But in the instant case, there is no leave and licence agreement. It is established case of acquisition through merger. Even in case of Hashimara Industries Ltd. v. CIT (supra), the Hon'ble Supreme Court has clearly held that amount of advance was given not for its own purpose by way of business expenditure for modernising the mill, but as capital to the lessor who in turn had to modernise the mill. It has been further held that transaction entered into was not in the nature of loan transaction or a money lending transaction and thus the loss suffered by the assessee was a capital loss and hence the amount could not be deducted from the assessee's income as business loss. The Hon'ble Delhi High Court in case of Distillers Trading Corpn. (supra) has gone to the extent of holding that earnest money deposited by the assessee even in agreement for hire of plant and machinery with the option to purchase was a capital loss. Keeping the ratios of these decisions and facts of the case, we hold that this is a capital

loss and cannot be allowed to be deducted from the business profits of the company, therefore, we confirm the order of Commissioner (Appeals).

42. Through ground No. 8, assessee has challenged the action of Commissioner (Appeals) for confirming addition of Rs. 1,95,000. The assessing officer disallowed a sum of Rs. 1,95,000 which was claimed as earlier year expenses because this related to bill on account of difference in prices but the bill was received by the assessee on 17-8-1988. According to him, the same should have been claimed by the assessee in the previous year.

42. Through ground No. 8, assessee has challenged the action of Commissioner (Appeals) for confirming addition of Rs. 1,95,000. The assessing officer disallowed a sum of Rs. 1,95,000 which was claimed as earlier year expenses because this related to bill on account of difference in prices but the bill was received by the assessee on 17-8-1988. According to him, the same should have been claimed by the assessee in the previous year.

43. Before Commissioner (Appeals), it was submitted that originally bill was received by Bombay office and was paid soon after. However, due to some confusion, it was treated as raw material advance and necessary correction was made in the books of current year only when the mistake was detected. It was further contended that claim was allowable in the current year and alternatively it was requested that in case it was held that claim pertained to last year then assessing officer should be directed to allow the same in assessment year 1989-90. Commissioner (Appeals) observed that as far as alternative plea is concerned, he had no such powers, therefore, this contention was rejected. He also found that bill was received by the assessee- company in last year and there was some confusion that it is internal matter of company and under mercantile system of accounting, an amount is allowable only in a year to which it relates, therefore, addition was confirmed.

43. Before Commissioner (Appeals), it was submitted that originally bill was received by Bombay office and was paid soon after. However, due to some confusion, it was treated as raw material advance and necessary correction was made in the books of current year only when the mistake was detected. It was further contended that claim was allowable in the current year and alternatively it was requested that in case it was held that claim pertained to last year then assessing officer should be directed to allow the same in assessment year 1989-90. Commissioner (Appeals) observed that as far as alternative plea is concerned, he had no such powers, therefore, this contention was rejected. He also found that bill was received by the assessee- company in last year and there was some confusion that it is internal matter of company and under mercantile system of accounting, an amount is allowable only in a year to which it relates, therefore, addition was confirmed.

44. Before us, learned Authorised representative reiterated the same contentions and referred to pages 120 to 131 at which the copy of the bill and correspondence between Bombay office and Ujjain office is placed.

44. Before us, learned Authorised representative reiterated the same contentions and referred to pages 120 to 131 at which the copy of the bill and correspondence between Bombay office and Ujjain office is placed.

45. On the other hand, learned Departmental Representative submitted that there is no merit in the alternative contention because Tribunal has no such powers to give directions for a year which is different than the year for which appeal relates. In this connection, he relied on ITO v. Murlidhar Bhagwandas (1964) 52 ITR 335 (SC). He further submitted that it is a well-settled accounting principle under mercantile system of accounting that expenditure has to be matched with the revenue. As the bill related to earlier year and same was received in earlier year, assessee was duty bound to provide for the same in the earlier year only.

45. On the other hand, learned Departmental Representative submitted that there is no merit in the alternative contention because Tribunal has no such powers to give directions for a year which is different than the year for which appeal relates. In this connection, he relied on ITO v. Murlidhar Bhagwandas (1964) 52 ITR 335 (SC). He further submitted that it is a well-settled accounting principle under mercantile system of accounting that expenditure has to be matched with the revenue. As the bill related to earlier year and same was received in earlier year, assessee was duty bound to provide for the same in the earlier year only.

46. We have considered the rival submissions carefully. We have perused the material on record. From page 126, it is apparent that a bill has been raised by the Bombay Dyeing & Mfg. Co. Ltd. on 17-8-1988, for Rs. 1,95,000 on account of additional prices. From page 125, which is a letter from Bombay office to Ujjain office, it becomes clear that this bill was sent to Ujjain office and as a sum of Rs. 1,87,500 was already paid, a request was also made to arrange for the balance of Rs. 7,500. Later on, similar request was again made by Bombay office. We also find from page 127 that the Bombay Dyeing & Mfg. Co. Ltd. has written a covering letter dated 18-8-1988, to the assessee- company at its Ujjain office in which it has been mentioned that supplementary invoice is enclosed. From this, it becomes clear that bill was originally sent to the Ujjain office itself. Therefore, Ujjain office was aware of the expenses of this bill and under the mercantile system of accounting, liability should have been provided in the earlier year only. From the other correspondence, there seems to be some confusion but it does not lead to that liability was denied or expenses of liability was not known to the company. In these circumstances, we find nothing wrong with the order of Commissioner (Appeals) and confirm the same.

46. We have considered the rival submissions carefully. We have perused the material on record. From page 126, it is apparent that a bill has been raised by the Bombay Dyeing & Mfg. Co. Ltd. on 17-8-1988, for Rs. 1,95,000 on account of additional prices. From page 125, which is a letter from Bombay office to Ujjain office, it becomes clear that this bill was sent to Ujjain office and as a sum of Rs. 1,87,500 was already paid, a request was also made to arrange for the balance of Rs. 7,500. Later on, similar request was again made by Bombay office. We also find from page 127 that the Bombay Dyeing & Mfg. Co. Ltd. has written a covering letter dated 18-8-1988, to the assessee- company at its Ujjain office in which it has been mentioned that supplementary invoice is enclosed. From this, it becomes clear that bill was originally sent to the Ujjain office itself. Therefore, Ujjain office was aware of the expenses of this bill and under the mercantile system of accounting, liability should have been provided in the earlier year only. From the other correspondence, there seems to be some confusion but it does not lead to that liability was denied or expenses of liability was not known to the company. In these circumstances, we find nothing wrong with the order of Commissioner

(Appeals) and confirm the same.

47. Ground No. 9. Through this ground, assessee has challenged the order of Commissioner (Appeals) for disallowing claim of liability amounting to Rs. 4,19,064. The revenue has also challenged the order of Commissioner (Appeals) for giving relief of Rs. 29,443. Assessee had made provisions for various liabilities amounting to Rs. 4.95 lakhs. As the assessee could not substantiate its claim, claim amounting to Rs. 4,19,064 was disallowed.

47. Ground No. 9. Through this ground, assessee has challenged the order of Commissioner (Appeals) for disallowing claim of liability amounting to Rs. 4,19,064. The revenue has also challenged the order of Commissioner (Appeals) for giving relief of Rs. 29,443. Assessee had made provisions for various liabilities amounting to Rs. 4.95 lakhs. As the assessee could not substantiate its claim, claim amounting to Rs. 4,19,064 was disallowed.

48. Before Commissioner (Appeals), it was submitted that it was very difficult for a large company to locate the exact expenditure at various places from where the business is done, therefore, provisions are made on the basis of past experience. It was further submitted that provisions which remained unpaid are written back and offered to taxation in the subsequent year. It was further contended that assessing officer should have atleast not added a sum of Rs. 45,000 which was paid to the advocates of the company against the settled fees of Rs. 80,000 and wrongly claimed as advance. Commissioner (Appeals) found that no bills are or other information were received in respect of this provision and the same was ultimately written back in assessment year 1993-94, therefore, this claim was held to be wrongly made. As far as a sum of Rs. 45,000 was concerned, it was found that same was balance sheet item but the contention of assessee was found to be correct. Therefore, after making some calculations, a sum of Rs. 29,443 was held to be allowable.

48. Before Commissioner (Appeals), it was submitted that it was very difficult for a large company to locate the exact expenditure at various places from where the business is done, therefore, provisions are made on the basis of past experience. It was further submitted that provisions which remained unpaid are written back and offered to taxation in the subsequent year. It was further contended that assessing officer should have atleast not added a sum of Rs. 45,000 which was paid to the advocates of the company against the settled fees of Rs. 80,000 and wrongly claimed as advance. Commissioner (Appeals) found that no bills are or other information were received in respect of this provision and the same was ultimately written back in assessment year 1993-94, therefore, this claim was held to be wrongly made. As far as a sum of Rs. 45,000 was concerned, it was found that same was balance sheet item but the contention of assessee was found to be correct. Therefore, after making some calculations, a sum of Rs. 29,443 was held to be allowable.

49. Before us, learned Authorised representative relied on the details contained, in this ground of appeal and further brought to our attention pages 162 to 170 which is copy of the letter from the advocate and copies of notices sent by the Advocate to other parties against whom company had certain claims.

49. Before us, learned Authorised representative relied on the details contained, in this ground of appeal and further brought to our attention pages 162 to 170 which is copy of the letter from the advocate and copies of notices sent by the Advocate to other parties against whom company had certain claims.

50. On the other hand, learned Departmental Representative relied on the orders of authorities below.

50. On the other hand, learned Departmental Representative relied on the orders of authorities below.

51. We have considered the rival contentions and gone through the material on record. As far as claim of Rs. 45,000 is concerned, we agree with Commissioner (Appeals) that though same was not claimed originally still it was revenue expenditure. From page 162, which is a copy of the letter by the advocate in which he has asked for a fee of Rs. 80,000 and advance of Rs. 55,000 for action of winding up as well as filing of summary suit. It is normal practice with advocate to charge some fees in advance. It is also seen that the advocate had issued notices to opposite party on 5-1-1990, and the copy of the same is placed from page 163 to page 170, therefore, we hold this expenditure of Rs. 45,000 as revenue expenditure and set aside the order of Commissioner (Appeals) and direct the-assessing officer to allow the whole of Rs. 45,000 as revenue expenditure. As far as other provisions are concerned, before us no material has been brought by learned Authorised representative to substantiate the claims of assessee- company, therefore, we find nothing wrong with the order of Commissioner (Appeals) and confirm the same.

51. We have considered the rival contentions and gone through the material on record. As far as claim of Rs. 45,000 is concerned, we agree with Commissioner (Appeals) that though same was not claimed originally still it was revenue expenditure. From page 162, which is a copy of the letter by the advocate in which he has asked for a fee of Rs. 80,000 and advance of Rs. 55,000 for action of winding up as well as filing of summary suit. It is normal practice with advocate to charge some fees in advance. It is also seen that the advocate had issued notices to opposite party on 5-1-1990, and the copy of the same is placed from page 163 to page 170, therefore, we hold this expenditure of Rs. 45,000 as revenue expenditure and set aside the order of Commissioner (Appeals) and direct the-assessing officer to allow the whole of Rs. 45,000 as revenue expenditure. As far as other provisions are concerned, before us no material has been brought by learned Authorised representative to substantiate the claims of assessee- company, therefore, we find nothing wrong with the order of Commissioner (Appeals) and confirm the same.

52. In the result, appeal is partly allowed.

52. In the result, appeal is partly allowed.

ITA No.639/Ind/1994

53. In this appeal, originally five grounds of appeal were taken by the revenue. Later on, an additional ground was also raised. Thus, in all there are six grounds. As the additional ground relates to legal issue, the same was admitted by the Bench.

53. In this appeal, originally five grounds of appeal were taken by the revenue. Later on, an additional ground was also raised. Thus, in all there are six grounds. As the additional ground relates to legal issue, the same was admitted by the Bench.

54. Through ground 1, revenue has challenged the deletion of addition amounting to Rs. 29,443 out of the disallowance made by assessing officer amounting to Rs. 4,19,064. As this issue has been adjudicated while discussing ground No. 9 of the assessee's appeal and following the decision given in that ground we dismiss this ground.

54. Through ground 1, revenue has challenged the deletion of addition amounting to Rs. 29,443 out of the disallowance made by assessing officer amounting to Rs. 4,19,064. As this issue has been adjudicated while discussing ground No. 9 of the assessee's appeal and following the decision given in that ground we dismiss this ground.

55. Through ground No. 2, revenue has challenged the deletion of addition amounting to Rs. 3,04,264 out of the total addition of Rs. 7,96,433 made on account of repairs and renovation expenses. This issue has been discussed in detail while discussing ground No. 3 of assessee's appeal and following that decision, this ground is dismissed.

55. Through ground No. 2, revenue has challenged the deletion of addition amounting to Rs. 3,04,264 out of the total addition of Rs. 7,96,433 made on account of repairs and renovation expenses. This issue has been discussed in detail while discussing ground No. 3 of assessee's appeal and following that decision, this ground is dismissed.

56. Through ground Nos. 3 and 4, revenue has challenged the relief of Rs. 18,64,555 in respect of interest on overdraft account used for the purpose of purchasing tax-free securities and a further relief of Rs. 1,77,228 representing proportionate interest on account of investment, and disallowed under section 80M. This issue has been discussed in detail while discussing ground No. 2 of assessee's appeal. Following that decision, we dismiss these two grounds.

56. Through ground Nos. 3 and 4, revenue has challenged the relief of Rs. 18,64,555 in respect of interest on overdraft account used for the purpose of purchasing tax-free securities and a further relief of Rs. 1,77,228 representing proportionate interest on account of investment, and disallowed under section 80M. This issue has been discussed in detail while discussing ground No. 2 of assessee's appeal. Following that decision, we dismiss these two grounds.

57. Ground No. 5. Through this ground, revenue has challenged the impugned order passed by Commissioner (Appeals) allowing deduction under section 80-I amounting to Rs. 53,22,801. During assessment proceedings, assessing officer found that assessee had claimed deduction under section 80-I amounting to Rs. 53,22,801 in respect of polycondensation plant. Upon enquiry, it was

explained by assessee- company that capacity of polycondensation plant was not enough and company had to go for conversion of raw material into chips, therefore, a new polycondensation plant was installed. It was further explained that even after installation of this plant, company had to go to outside parties to meet its requirements, therefore, there was no question of selling of polyster chips to outsiders. It was also explained that conversion rate to outside parties was fixed at Rs. 12 per kg. and copy of agreement as well as cost audit report was submitted. Assessing Officer found that this deduction could not be allowed because according to him, the company has not derived any profit from a newly established industrial undertaking. He further found that reliance placed by assessee on CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. (1986) 162 ITR 760 (Guj), CIT v. Standard Motor Products India Ltd. (1981) 131 ITR 300 (Mad) and CIT v. Hindustan Motors Ltd. (1981) 127 TTR 210 (Cal) was of no help because all these decisions were rendered under the old section 80-I where the expression 'attributable to' was used instead of the expression 'derived from'. He further noted that Supreme Court in Cambay Electric Supply Co. Ltd. v. CIT (1978) 113 ITR 84 (SC) had observed that the expression 'attributable to' in section 80-E (now section 80-I) is of wider import and since the expression of wider import has been used, it appears that legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity. As the assessee has not sold its product to outside parties and the rate of Rs. 12 was taken on notional basis, therefore, no profit was derived by the assessee-company and deduction was not allowed. He further held that activity carried out in polycondensation plant is simple processing activity because raw material is converted from one form to another, therefore, there was no manufacturing or any production of article or thing.

57. Ground No. 5. Through this ground, revenue has challenged the impugned order passed by Commissioner (Appeals) allowing deduction under section 80-I amounting to Rs. 53,22,801. During assessment proceedings, assessing officer found that assessee had claimed deduction under section 80-I amounting to Rs. 53,22,801 in respect of polycondensation plant. Upon enquiry, it was explained by assessee- company that capacity of polycondensation plant was not enough and company had to go for conversion of raw material into chips, therefore, a new polycondensation plant was installed. It was further explained that even after installation of this plant, company had to go to outside parties to meet its requirements, therefore, there was no question of selling of polyster chips to outsiders. It was also explained that conversion rate to outside parties was fixed at Rs. 12 per kg. and copy of agreement as well as cost audit report was submitted. Assessing Officer found that this deduction could not be allowed because according to him, the company has not derived any profit from a newly established industrial undertaking. He further found that reliance placed by assessee on CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. (1986) 162 ITR 760 (Guj), CIT v. Standard Motor Products India Ltd. (1981) 131 ITR 300 (Mad) and CIT v. Hindustan Motors Ltd. (1981) 127 TTR 210 (Cal) was of no help because all these decisions were rendered under the old section 80-I where the expression 'attributable to' was used instead of the expression 'derived from'. He further noted that Supreme Court in Cambay Electric Supply Co. Ltd. v. CIT (1978) 113 ITR 84 (SC) had observed that the expression 'attributable to' in section 80-E (now section 80-I) is of wider import and since the expression of wider import has been used, it appears that legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity. As the assessee has not sold its product to outside parties and the rate of Rs. 12 was taken on notional basis, therefore, no profit was derived by the assessee-company and

deduction was not allowed. He further held that activity carried out in polycondensation plant is simple processing activity because raw material is converted from one form to another, therefore, there was no manufacturing or any production of article or thing.

58. Before Commissioner (Appeals), it was submitted that polycondensation plant is an independent unit which is engaged in the manufacturing of chips out of the powder. It was further submitted that it would not effect the deduction under section 80-I whether such product is sold to outsider or consumed by the company itself in production of some other article. Before him, reliance was placed on CIT v. Hindustan Motors Ltd. (supra), CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. (supra) and CIT v. Standard Motor Products of India Ltd. (supra). It was further submitted that assessing officer had wrongly relied on the decision of Supreme Court in Cambay Electric Supply Co. Ltd. (supra) where dispute was regarding balance charged on sale of old machines. It was further submitted that section 80-I(8) of the Act also envisages the sale of products to other business carried on by the assessee. It was contended that assessing officer has taken a contradictory view in the sense that he has himself allowed investment allowance on this unit and now he contends that only processing was done. Lastly, it was submitted that similar claim had been made in the past which was not allowed for the reason of paucity of profits and not because of the reasons given now. As far as rate of Rs. 12 per kg. was concerned, it was contended that company was paying Rs. 11.50 per kg. to Bombay party for such manufacturing of chips but that was in last year and company also had to incur transport charges, Commissioner (Appeals) found merit in these contentions and allowed the deduction under section 80-I.

58. Before Commissioner (Appeals), it was submitted that polycondensation plant is an independent unit which is engaged in the manufacturing of chips out of the powder. It was further submitted that it would not effect the deduction under section 80-I whether such product is sold to outsider or consumed by the company itself in production of some other article. Before him, reliance was placed on CIT v. Hindustan Motors Ltd. (supra), CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. (supra) and CIT v. Standard Motor Products of India Ltd. (supra). It was further submitted that assessing officer had wrongly relied on the decision of Supreme Court in Cambay Electric Supply Co. Ltd. (supra) where dispute was regarding balance charged on sale of old machines. It was further submitted that section 80-I(8) of the Act also envisages the sale of products to other business carried on by the assessee. It was contended that assessing officer has taken a contradictory view in the sense that he has himself allowed investment allowance on this unit and now he contends that only processing was done. Lastly, it was submitted that similar claim had been made in the past which was not allowed for the reason of paucity of profits and not because of the reasons given now. As far as rate of Rs. 12 per kg. was concerned, it was contended that company was paying Rs. 11.50 per kg. to Bombay party for such manufacturing of chips but that was in last year and company also had to incur transport charges, Commissioner (Appeals) found merit in these contentions and allowed the deduction under section 80-I.

59. Before us, learned Departmental Representative brought to our attention pages 171 to 177 of the compilation which contain various details regarding computation, etc. of deduction under section 80-I. He particularly referred to page 172 where rate of Rs. 12 per kg. has been assumed for calculating the total income of this unit. He submitted that assessee has not earned any actual

income. He further contended that these profits have been calculated on notional basis and same are hit by the concept of mutuality. He contended that assessee cannot make profit out of itself. He further submitted that reliance by assessee on CIT v. Hindustan Motors Ltd. (supra), CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. (supra) and CIT v. Standard Motor Products of India Ltd. (supra) is not correct because all these decisions were rendered under the old provisions of section 80-I where the expression 'attributable to' was used. Accordingly to him, the new provisions of section 80-I use the expression 'derived from' and as assessee has not derived any income, the deduction under section 80-I cannot be allowed. He also submitted that sub-section (8) of section 80-I does not talk of two different units but only talk about two different businesses. As the setting up of polycondensation plant cannot be called separate business, so in that sense also deduction is not allowable.

59. Before us, learned Departmental Representative brought to our attention pages 171 to 177 of the compilation which contain various details regarding computation, etc. of deduction under section 80-I. He particularly referred to page 172 where rate of Rs. 12 per kg. has been assumed for calculating the total income of this unit. He submitted that assessee has not earned any actual income. He further contended that these profits have been calculated on notional basis and same are hit by the concept of mutuality. He contended that assessee cannot make profit out of itself. He further submitted that reliance by assessee on CIT v. Hindustan Motors Ltd. (supra), CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. (supra) and CIT v. Standard Motor Products of India Ltd. (supra) is not correct because all these decisions were rendered under the old provisions of section 80-I where the expression 'attributable to' was used. Accordingly to him, the new provisions of section 80-I use the expression 'derived from' and as assessee has not derived any income, the deduction under section 80-I cannot be allowed. He also submitted that sub-section (8) of section 80-I does not talk of two different units but only talk about two different businesses. As the setting up of polycondensation plant cannot be called separate business, so in that sense also deduction is not allowable.

60. On the other hand, learned Authorised representative reiterated the contentions raised before Commissioner (Appeals). He further submitted that difference between the expressions 'attributable to' and 'derived from' has been used to determine whether income which is not related to industrial activity can be included in the income of industrial undertaking or not. Even the expression 'derived from' will not lead to denial of deduction as long profits are derived from or earned from the industrial undertaking and relate to manufacturing activity. In this regard, he referred to page 3597 of Commentary on Income-tax Law by Chaturvedi & Pithisaria.

60. On the other hand, learned Authorised representative reiterated the contentions raised before Commissioner (Appeals). He further submitted that difference between the expressions 'attributable to' and 'derived from' has been used to determine whether income which is not related to industrial activity can be included in the income of industrial undertaking or not. Even the expression 'derived from' will not lead to denial of deduction as long profits are derived from or earned from the industrial undertaking and relate to manufacturing activity. In this regard, he referred to page 3597 of Commentary on Income-tax Law by Chaturvedi & Pithisaria.

61. We have considered the rival submissions carefully and find force in the contention of learned Authorised representative. Firstly, when the powder is converted into polyster chips, this activity cannot be called only processing. Moreover, revenue has itself allowed investment allowance in respect of this unit, therefore, we hold that activity of processing powder into polyster chips is an industrial activity. We are unable to agree with learned Departmental Representative that since expression used has been changed from 'attributable to' to 'derived from', so this deduction shall not be allowed. There is no doubt that expression has been changed but it only refers to the nature of income. For example, earlier income earned by an industrial undertaking from trading activities could be said to be attributable to industrial undertaking but now situation has changed and such profit will not form part of income of that industrial undertaking for the purpose of section 80-I But it does not mean that income earned from manufacturing activity of such industrial undertaking will also not be eligible under section 80-I because there is no sale to outside parties. Sub-section (8) of section 80-1 clearly envisages a situation where assessee may have to transfer its goods to the other business carried on by the assessee. The distinction which was made by learned Departmental Representative that sub-section (8) refers to the other business and not other unit seems too be to fragile. If an assessee is allowed to transfer his goods to other business, we do not think that legislature intended to prohibit from transferring his goods to other unit. In view of these circumstances, we find nothing wrong with the order of Commissioner (Appeals) and confirm the same.

61. We have considered the rival submissions carefully and find force in the contention of learned Authorised representative. Firstly, when the powder is converted into polyster chips, this activity cannot be called only processing. Moreover, revenue has itself allowed investment allowance in respect of this unit, therefore, we hold that activity of processing powder into polyster chips is an industrial activity. We are unable to agree with learned Departmental Representative that since expression used has been changed from 'attributable to' to 'derived from', so this deduction shall not be allowed. There is no doubt that expression has been changed but it only refers to the nature of income. For example, earlier income earned by an industrial undertaking from trading activities could be said to be attributable to industrial undertaking but now situation has changed and such profit will not form part of income of that industrial undertaking for the purpose of section 80-I But it does not mean that income earned from manufacturing activity of such industrial undertaking will also not be eligible under section 80-I because there is no sale to outside parties. Sub-section (8) of section 80-1 clearly envisages a situation where assessee may have to transfer its goods to the other business carried on by the assessee. The distinction which was made by learned Departmental Representative that sub-section (8) refers to the other business and not other unit seems too be to fragile. If an assessee is allowed to transfer his goods to other business, we do not think that legislature intended to prohibit from transferring his goods to other unit. In view of these circumstances, we find nothing wrong with the order of Commissioner (Appeals) and confirm the same.

62. Through ground No. 6, revenue has challenged the order of Commissioner (Appeals) for directing the assessing officer to carry forward deduction under section 80-I for assessment years 1987-88, 1988-89 and 1989-90. At the outset, learned Authorised representative submitted that this ground does not pertain to the relevant assessment year, therefore, same should not be admitted.

He further submitted that revenue has already applied for a reference regarding this issue, which was rejected by the Tribunal but later on same was allowed by the Supreme Court and matter was referred by the Tribunal to High Court. As the matter is pending before Hon'ble jurisdictional High Court, there is no point adjudicating the same.

62. Through ground No. 6, revenue has challenged the order of Commissioner (Appeals) for directing the assessing officer to carry forward deduction under section 80-I for assessment years 1987-88, 1988-89 and 1989-90. At the outset, learned Authorised representative submitted that this ground does not pertain to the relevant assessment year, therefore, same should not be admitted. He further submitted that revenue has already applied for a reference regarding this issue, which was rejected by the Tribunal but later on same was allowed by the Supreme Court and matter was referred by the Tribunal to High Court. As the matter is pending before Hon'ble jurisdictional High Court, there is no point adjudicating the same.

63. On the other hand, learned Departmental Representative agreed that since the issue is pending before Hon'ble Madhya Pradesh High Court, so Tribunal may decline to adjudicate this issue.

63. On the other hand, learned Departmental Representative agreed that since the issue is pending before Hon'ble Madhya Pradesh High Court, so Tribunal may decline to adjudicate this issue.

64. We have considered the rival submissions carefully. We find from the records that this question has already been referred to Hon'ble Madhya Pradesh High Court in R.A. Nos. 13 to 18 and 20, 21, therefore, we decline to adjudicate this issue.

64. We have considered the rival submissions carefully. We find from the records that this question has already been referred to Hon'ble Madhya Pradesh High Court in R.A. Nos. 13 to 18 and 20, 21, therefore, we decline to adjudicate this issue.

65. In the result, appeal is disposed of accordingly.

65. In the result, appeal is disposed of accordingly.