

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "I" BENCH MUMBAI BENCHES, MUMBAI

ITA Nos. 428 to 430/Mum/2008
(Asst Years- 2001- 02; 2003- 04 & 04- 05)

&

ITA No. 6862/Mum/2008
(Asst Year 2002- 03)

Shri Sachin R Tendulkar La-Mer, 10th Floor Mistry Park Mt Marry Steps Bandra (W) Mumbai 50. PAN NO.AAAPT4135B	Vs.	The Asst Commissioner of Income Tax Range 193), Mumbai
(Appellant)		(Respondent)

Date of Judgment: 20th day of May, 2011.

O R D E R

PER R K PANDA, AM

The above four appeals filed by the assessee are directed against the separate orders of the CIT(A)-XIX, Mumbai. Appeals in ITA No. 428 to 430/Mum/2008 relate to AYs 2001-02, 2003-04 and 2004-05 respectively. The appeal in ITA no.6862/Mum/2008 filed by the assessee is directed against the order dated 2.8.2008 of the CIT(A) XIX, Mumbai and relates to Assessment Year 2002-03. Since common grounds are involved in all these appeals; therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

ITA No. 429/MUM/2008 (FOR AY 2003-04)

2 In grounds of appeal No.1, the assessee has challenged the order of the CIT(A) in confirming the action of the Assessing Officer in disallowing the deduction of Rs. 2,08,59,707/- u/s 80RR of the I T Act 1961.

2.1 Facts of the case, in brief, are that the assessee is a leading cricketer and filed his return of income on 31.10.2003 declaring total income of Rs. 18,51,06,510/-. In the computation statement filed along with the return, the assessee had shown salary income of Rs. 16,000/- from M/s IDL Ltd; Rs. 19,51,98,706/- shown as income from business/profession and Rs. 77,63,166/- as income from other sources. The Assessing Officer, noted from the tax audit report filed in Form No.3CD that the nature of business/profession has been mentioned as 'sports sponsorship/modelling'. The income and expenditure account has shown Rs. 19,95,27,085/- as gross receipts from 'sports sponsorship and advertisements'. As per Schedule-1, this consists of Rs. 5,92,31,211/- received in foreign exchange and Rs. 14,02,95,874/- received in Indian rupees. The amount of Rs. 5,92,31,211/- received in foreign exchange is from the following companies:

Sl.No	Name of the company	Amount (Rs)
1	ESPN Star Sports	3,19,94,795/-
2	Peosico Inc	73,33,500/-
3	VISA	1,99,02,916/-
	Total	5,92,31,211/-

2.2 The assessee has claimed deduction u/s 80RR amounting to Rs. 1,77,69,363/- in respect of the above receipts received in foreign exchange. The Assessing Officer analysed the agreement dated 24.9.2001 with World Tel India & World Tel Inc.; agreement dated 30.6.2000 with VISA International; agreement dated 26.6.2002 with ESPN Star Sports and agreement dated 7.3.1989 with Pepsi Co Ltd. He also analysed the provisions of sec. 80RR. According to the A.O. , under the provisions of section 80 RR, the first issue to be determined is whether the assessee is a playwright, artist, musician, actor or sportsman and the second issue to be determined is whether the income for which deduction is claimed, is derived by him in the exercise of his profession. The Assessing Officer asked the assessee to explain as to how the receipts from the above agreements constitute income derived by him in the exercise of his profession. He also asked the assessee to explain the nature of profession claimed and to justify his claim for deduction u/s 80RR.

2.3 It was explained by the assessee that he is a popular model who acts in various commercials for endorsing products of various companies. A major part of the income derived by him during the year is from the exercise of his profession as an 'actor' in these commercials. Since the assessment year 1994-95 the income derived by him from 'acting' has been reflected as income from 'business & profession". Income from playing cricket is reflected as 'income from other sources' since he is a non professional cricketer. It was submitted that section 80RR provides for a deduction from the income derived by an assessee from the exercise of his profession as an 'actor, playwright, artist, musician or sportsman including an athlete. The income derived by the assessee in respect of which deduction u/s 80RR has been claimed is from the exercise of his profession as an "actor". The fees have been received in convertible foreign exchange in consideration for his acting in various commercials for endorsing products. The other conditions mentioned in sec. 80RR have also been satisfied i.e. the amount has been received from a person who is not a resident in India and the amount has been brought into India in convertible foreign exchange within the requisite period.

2.4 It was further submitted that the issue was examined in detail for the earlier years and deduction under this sec has been allowed by the department since the assessment year 1997-98. While allowing the deduction u/s 80RR, the department has however, held that expenses attributable to the earning of this income ought to be deducted. The matter has been partially allowed by the CIT(A) in the past and is pending before the Tribunal. Accordingly, it was submitted that there should not be any reason to deviate from the stand taken by the department in the past.

2.5 On being questioned by the Assessing Officer to explain as to why the income from playing cricket is claimed to be taxed under the head 'other sources', it was explained that since playing cricket is not his profession, the income from playing cricket and logo money received from the BCCI has been shown as 'income from other sources'. This issue has been accepted by the Tribunal in Assessment Year

1997-98 which upheld the contention of the assessee that he is a non-professional cricketer.

2.6 Regarding the claim that the deduction u/s 8RR has been allowed in earlier years, the Assessing Officer noted that firstly, the returns for the last few years have not been scrutinized u/s 143(3) and has only been processed u/s 143(1). He held that the principle of res-judicata does not apply to income tax proceedings. Secondly, in the Tribunal's order for Assessment Year 1997-98, the issue involved was applicability of CBDT circular no.447 dated 22.1.1996 and the taxability of awards and prize money. Whether the assessee is entitled to deduction u/s 80RR was not an issue in the above order of the Tribunal. Further, the department has also filed an appeal against the order of the Tribunal.

2.7 As regards the claim of the assessee that he is a non-professional cricketer, the Assessing Officer rejected the same because of the following reasons after analysing the meaning of word 'professional cricketer' from the pocket oxford dictionary.

- i) He relates and belongs to the cricketing profession;
- ii) He is engaged in the activity of playing cricket as a paid job rather than as an amateur. He does not lay cricket only as a hobby. It would be correct to say that playing cricket is the source of his livelihood and is therefore, his profession;
- iii) He is undoubtedly a famous and competent cricketer. The assessee is reported to be playing international cricket since the age of 16 and has been playing for the Indian cricket team, since then. He is stated to hold the record for the most runs in One-Day Internationals and the most centuries both in One-day Internationals and in test cricket. He received the Rajiv Gandhi Khel Ratna, India's highest sporting honour, for 1997-98 and was a Wisdom Cricketer of the Year in 1997.

He, accordingly, held that the assessee is a professional cricketer. The Assessing Officer also observed that if Sachin is not a cricketer then who is a cricketer?

2.8 So far as the arguments regarding the income derived by the assessee in respect of which deduction/s 80RR has been claimed is from the exercise of his profession as an 'actor, the Assessing Officer noted that the these arguments do not appear to be acceptable. He noted that the assessee has received remuneration for providing a wide variety of services to these companies. The various activities mentioned in the agreements are nothing to do with the claim of being an "actor". Therefore, the claim of being an actor does not justify this deduction in any way. For this purpose, the Assessing Officer noted certain clauses of the agreements, which are as under:

Agreement dated 24.9.2001 with Word Tel India & World Tel Inc.:

- i) Using the name, photos, likeness, or original voice of Tendulkar
- ii) product spokesman work, personal appearances (e.g corporate meetings), media appearances (e.g TV shows, internet chats etc.
- iii) Use of clothing and footwear
- iv) endorsements of other commercial activities such as and including restaurants, cafes, franchise arrangement through investments or otherwise.

Agreement dated 30.6.2000 with VISA International:

l) Sachin agrees to allow his face, name, signature, voice, photography, any facsimile or image to appear on and be used in connection with the promotion of VISA products and Services (2) Use of Sachin's name

4.3 Sachin gives the Advertise the right to use Sachin's photograph and autograph during the term of the agreement on the following items such as 4.1.3 Booklets/diaries on Sachin's statistics;

4.1.4 Post cards and Dummy VISA cards which will be used only as gift items/memorabilia and/pr prizes, but not sold, eg Dummy VISA cards;

5.1.1 Sachin shall sign items including certificates of honour/achievements

5.1.3 for sales force/merchant establishments/sales agents of VISA international's member banks.

Agreement dated 26.6.02 with ESPN Star Sports:

-

l) 'Player Identification' shall mean any words, and/or symbiosis, and or photographic and/or graphic representations of Player but not using Player 'look alike', which identify the Player and/or his name and likens in connection with the product."

Agreement dated 7.3.1998 with PEPSICO Inc.

Schedule 1

The services to be performed by Sachin.

1. Model for an act in a maximum of one commercial film per year including edits and versions thereof, during the term of this agreement in respect of the products.

2. Model for advertisements of the products in all other media e.g press, magazines, radio, outdoor, and packaging/promotional items tc.

3. Act as an ambassador of PEPSICO Inc. during all his public appearances and endorse the products wherever he goes and at all times.

4. Engage in promoting the products through campaigns and at any locations or cities as determined by PEPSICO Inc which shall not include;

a) Any 'door to door' campaign, or

b) Any promotion involving mass contact with the Public. For any such promotion PEPSICO Inc will ensure a reasonable distance is maintained between Sachin and the public.

5. Personally drink and promote the products and in particular Pepsi at public and private appearances and functions and at home."

2.9 The A.O. noted that the assessee has claimed deduction/s 80RR on the remuneration received from the above services also. He noted that the activities like 'product spokesman work', 'use of clothing and footwear' issuing 'booklets/diaries on Sachin's statistics' and signing of items including certificate of honour/achievement for sale force have nothing to do with the claim of being a cricketer. According to him, the income from these activities is not derived from any profession of an actor in

terms of sec. 80RR. The assessee's claim of deduction u/s 80 RR on account of appearing in advertisement films being income derived from the exercise of his profession as an "actor" was also rejected by him on account of the following reasons (as per para 11 of the order):-

(1) It is true while appearing in ad films, the assessee would have to dress in a certain way and would have to follow the script, in a manner suggested by the Director. However, that does not make the assessee an actor. As discussed above, the pocket Oxford Dictionary says that an actor is 'a person whose profession is acting'. By endorsing certain products in advertisements, the assessee does not become a person "whose profession is acting". This is because endorsing a product in an advertisement is an activity which is peripheral to his profession of cricketer. Celebrity endorsements capitalize on the celebrity status of the person endorsing the product.

They do not make the celebrity an actor by profession.

(2) When somebody watches the assessee endorse a particular product in say, an advertisement film, he tends to appreciate the product because Sachin has endorsed the product and not because Sachin is a very good model or actor. For example, if Sachin endorses a brand in an ad film, the viewer of the Ad film appreciates the brand because it is Sachin who is endorsing it. There are models and actors who may be better performers but if they were to endorse that brand, it does not have the same impact as Sachin endorsing the brand.

(3) It is also remarkable that in all the advertisements in which the assessee appears, what is highlighted is his personality as a cricketer. The advertisements using Sachin Tendulkar are made very differently from advertisements using a model or actor.

(i) It is important to note that the company which wants Sachin to endorse its brand, uses the services of Sachin because he is Sachin Tendulkar, the cricketing legend.

(ii) The maker of the Ad film makes the commercial ad film highlighting Sachin's personality as a cricketer.

(iii) Sachin gets paid for endorsing the brand because he is a leading cricketer and not because he is an actor.

(iv) The viewer of the Ad film also sees Sachin not as an actor or model but as Sachin Tendulkar, the cricketing legend. In an ad film, what matters is the sheer presence of Sachin the cricketer. It really does not matter even if he performs badly in the film.

(4) An ad film featuring Sachin succeeds because Sachin is a success as a cricketer. The assessee's popularity and income from advertisements would depend on his performance in cricket and not on his acting abilities.

(5) As the Tax Audit Report in Form No. 3CD filed with the Return, the nature of business/profession is stated to be "sports Sponsorship/modelling". The assessee's reply dated 24.2.06 says that "The income derived by our client, in respect of which deduction under section 80RR has been claimed is from the exercise of his profession of an actor. There is a contradiction in the two statements because modelling and acting are two separate and different professions. Deduction u/s 80RR is not available to a model as a model is not an "author, playwright, artist,

musician, actor or sportsman” in terms of section 80RR. A model is not an artist because ‘artist’ as commonly understood refers to a musician, painter, singer or similar professions. Therefore, the assessee is not entitled to deduction u/s 80RR because his tax audit report states his profession to be modelling.

(6) Another important aspect is that the assessee’s time is overwhelmingly spent on cricket and not on acting. The agreements with the above companies show that the assessee is required to spend just 1 or 2 days in a year, in these activities. The remaining time would be spent on cricket. This shows that these activities are peripheral to his profession of playing cricket.

(7) The agreements all contain an important clause showing that they would be terminated if the assessee was to stop playing cricket is of the essence and rightly so. With due respect, Sachin is Sachin, because he is a cricketer and not because he is an actor.

3. Rejecting the various explanations given by the assessee, the Assessing Officer rejected the claim of deduction u/s 80RR on the ground that the assessee is a professional cricketer. For a person to have second profession as an actor, the second profession of acting should be independent of his main profession. In the instant case, the assessee does not have any independent profession and income from acting by endorsing any products in advertisements the assessee does not become a person whose profession is acting. Further the income from modelling/acting and other activities relating to advertisement etc. does not amount to income derived from the exercise of his profession as cricketer. According to the A.O. the income from product endorsement may at best be claimed as attributable to the profession of cricket but the expression derived from has a narrower connotation than the expression ‘attributable to’. The immediate and effective source of the above income is advertisements and this income is not derived from playing cricket. It does not have a direct or immediate nexus with the profession of playing cricket. He accordingly held that the assessee is not entitled to deduction u/s 80RR amounting to Rs. 1,77,69,363/-.

4. Before the CIT(A), it was submitted that since the said income has been derived by the assessee from the exercise of his profession as that of an ‘actor’ and has been received in convertible foreign exchange from a nonresident, therefore, the assessee is entitled to deduction u/s 80RR of the Act. It was submitted that the condition which needs to be satisfied for being entitled to the deduction u/s 80R are; i) The assessee must be resident individual in India ii) The individual must either be an author, playwright, musician, actor, or sportsman including an athlete; iii) The income must be derived by him in the exercise of his profession; iv) The income must be brought into in India in convertible foreign exchange within the prescribed period.

4.1 It was submitted that the said income has been “derived” by the assessee for acting/modelling in various TV commercials; therefore, he should be considered as an ‘actor’ for the purpose of sec. 80RR of the Act. Since the amount has been received in foreign exchange and brought to India in convertible foreign exchange, all the conditions u/s 80RR have been satisfied and he should be entitled to the deduction. The dictionary meaning of the word ‘actor’ was brought to the notice of the CIT(A). It was also argued that the assessee’s performance in the TV

commercials partakes the character of acting and therefore, he should be considered as an actor for the purpose of sec 80RR of the Act.

4.2 Alternatively, it was submitted that he should be considered as an 'artist' for the purpose of sec. 80RR. It was argued that the expression 'artist' should be construed widely and for this purpose the assessee sought to rely on the various dictionary meaning of this term. It was submitted that on an overall, conjoint and cumulative reading and survey of the abovementioned meanings of the terms "artist" and the connected words 'public performer/performance/perform/performer' and 'entertainment' read simultaneously with the several clauses of the endorsement agreements set out hereinbefore, it can be irresistibly and inescapably deduced that the alternative and protective arguments of the assessee regarding his being an 'artist' are legally supportable, valid and maintainable.

4.3 It was further submitted that the deduction u/s 80RR has been allowed by the department in the case of the assessee from Assessment Year 1994-95 up to 2002-03 and this is the first year in which it has been disputed by the Assessing Officer. It was also pointed out that some of the assessments have been completed u/s 143(3) and as such the issue was deliberated and discussed before here in the past. Accordingly, it was submitted that the department ought to take a consistent stand and should not merely on the basis of surmises and conjectures deviate from the stand taken by it in the past. Circulars issued by the CBDT from time to time were also brought to the notice of the CIT(A). It was submitted that although the assessee is a leading cricketer but one cannot deny that the direct source of the income was from the assessee acting in these TV commercials/films.

4.4 As regards the contention of the Assessing Officer that the said income from modelling/acting is attributable to his being a leading cricketer, but are not 'derived from' this profession, it was submitted that the words used in sec. 80RR are 'derived by him in the exercise of his profession' and not 'derived from the profession'. It was submitted that endorsement earnings cannot be thrown out of the sec. 80RR eligibility net. Various decisions including the decision of the Tribunal in the case of Amitabh Bachchan vs DCIT reported in 12 SOT 95 were cited before him and it was submitted that the said income derived by him was entitled to sec. 80RR.

4.5. However, the CIT(A) was not convinced with the arguments advanced on behalf of the assessee and upheld the action of the Assessing Officer by holding as under:

"6. I have gone through various submissions made by the appellant as well as the findings of the Assessing Officer. On going through the provisions of Sec. 80RR of the IT Act, the conditions which need to be satisfied in the present context are :

- (a) An individual, resident in India;
- (b) Being an author, Playwright, Artist [Musician, actor or sportsman (including an athlete)
- (c) Includes any income derived by him in exercise of his profession;
- (d) Amount received from the Government of a Foreign State or any person not residing in India.
- (e) Income must be brought to India in convertible foreign exchange within specified time. In the present case, the conditions which are in dispute relate to (b) & (c) above.

6.1 The AO has elaborated on the nature of income which has been claimed to be exempt by the appellant u/s 80RR of the I.T. Act, 1961. In this regard, the AO has analysed various agreements with M/s World Tel India, M/s World Tel. Inc., M/s VISA International, M/s ESPN, M/s Star Sport and M/s Pepsi Co. Inc. Through the analysis of these agreements the AO has attempted to disprove that the receipts from such companies are not fulfilling the condition "income derived by him in exercise of his profession". The Assessing Officer has also elaborated at length as to how the receipts are also not derived by the assessee by being an "Actor" or an "Artist". In my opinion there are two important issues which need to be addressed for arriving at a conclusion regarding the claim made by the appellant.

(i) The first important condition which needs to be examined relates to whether the income derived by the appellant was "income derived in exercise of his profession". The important question which arises is, what is the profession of the appellant? Whether the income which has been claimed to be exempt u/s 80RR is out of his profession or not?

(ii) The second important issue as claimed by the appellant as an alternative argument is that the income is out of the profession of "an actor" or "an artist" which will also entitle him for the benefit.

6.2 Coming to the first issue, on analysing the facts and circumstances relating to the appellant, it is abundantly clear that he is primarily involved in playing cricket and irrespective of the fact whether he is a professional or not, it can not be disputed that his profession is "playing cricket". Whenever he would undertake other activities like T.V. commercials and shows for sponsoring products of various companies for which he is paid, it would only amount to subsidiary activities which are not directly relatable to his activity of playing cricket. These ancillary activities cannot be treated to be out of the profession of the appellant. By "appearing" in such commercials or events, no element or expertise relating to his profession is being used. If such a logic was extended then, any income earned by the person, however earned would be exempt. It was with the specific intent of only allowing benefit for the income derived by him in exercise of his profession, in the instant case, "of playing cricket" that the section 80RR claim can be made. In the present case playing cricket can be considered for exemption u/s 80RR of the I.T. Act since such subsidiary activities of the appellant are not covered and the conditions for claiming relief u/s 80RR is not being fulfilled. While appearing for the TV commercials and similar such activities, it would not be logical and proper to consider that being an "actor" or "artist" is the second profession of the appellant.

There is no doubt in my mind that the profession of the appellant is only "playing cricket" and other activities are only subsidiary in nature. It has also been clearly discussed by the A.O. that the agreements which the appellant has entered into are directly related on the condition that he should continue to play cricket. However, he is not being paid for any activity related to "playing cricket". To sum up, since the profession of the appellant is only one, i.e. playing cricket and the income derived from other subsidiary activities cannot be considered to be "income derived by him in the exercise of his profession".

For addressing the second issue relating to the appellant being an "actor" or an "artist" as claimed by him, as an alternative argument, the appellant has resorted to

various dictionary meaning as well as court decisions to support his claim u/s 80RR of the I.T. Act, 1961.

The appellant has claimed to be an "Actor" as an alternative profession on the grounds of "appearing" in various commercials, advertisements etc. If we examine the matter in a little more depth it will be observed that the appellant is being paid not for his activities as an "Actor" or his performance as an "Artist". The nature and quality of his acting or performance as an artist by itself would never have resulted in the contracts and payments made out to him. The appellant is a known public personality whose profession is "playing cricket". It is difficult to accept that a person has several professions. Such a situation has not been envisaged in the income tax Act, otherwise it would have been incorporated in the Act as "Professions" and not "Profession",

The appellant has in fact not been "acting" or performing as an "artist" in any of the commercials or sponsorship events in the spirit of the terms. What he has actually been doing is only "appearing" at these events and commercials. Such activities as earlier discussed are at best "ancillary" or "subsidiary" activities through which the appellant has earned income. The crucial factor is his "appearing" in such advertisements and commercials which is the sole important factor for his income. His nature of performance as an actor or an artist does not attract the interested parties for paying him substantial amounts of money. The very fact that the appellant in the advertisement or the commercials attracts the attention of the viewers and even if his performance is most average, the payment is made only on account of his "appearing" and not by virtue of him being an "Actor" or "Artist". The contention of the appellant with regard to being an Actor or Artist does not appear to be logical. The activity of "appearing" in such advertisement or commercial etc. cannot be equated with that of an Actor or Artist. This activity is subsidiary activity of the appellant and is also not directly related to his profession of playing cricket. Any subsidiary activities which are not directly related to the specific profession cannot be allowed u/s 80RR of the I.T. Act.

On careful examination of the various issues and facts of the case, specific provision of law as well as the findings of the AO and the submissions of the AR, I am of the considered view that the conditions laid down for claiming benefit u/s 80RR are not fulfilled in this case. I uphold the disallowance u/s 80RR made by the A.O. in this case.

The ground of the appellant is dismissed and the disallowance upheld."

5. Aggrieved by such order of the CIT(A), the assessee is in appeal here before us.

6. The Id counsel for the assessee submitted that the assessee derived income from salary, income from other sources as a cricketer and income from modelling/sponsorships shown as "income from business/profession". He submitted that the assessee is not a professional cricketer. The deduction u/s 80RR has been allowed in the past u/s 143(3) assessments and u/s 143(1) assessment and only in the AY 2003-04, the Assessing Officer visited the provisions of sec. 80RR which, he should not have done. He submitted that for the AY 1997-98, 98-99 and 99-00, benefit of deduction u/s 80RR has been allowed. The assessee has fulfilled all the conditions mentioned in the provisions of sec. 80RR. He submitted that the only profession of the assessee is acting/modelling. Referring to page 8 of the assessment order where the Assessing Officer has held that the assessee is a

professional cricketer, he submitted that the Tribunal in assessee's own case has held that the assessee is not a professional cricketer in view of the CBDT circular. The assessee is not aware as to whether the department has gone to the High Court or not.

6.1 The Id counsel for the assessee drew the attention of the Bench to the language used in the provisions of sec. 80QQA, 80R and 80RR. Referring to provisions of sec.80RR, he submitted that there are five ingredients to claim the deduction:- (i) acting as a profession; (ii) source of income; (iii) source of remittance; (iv) capacity and (v) activity.

6.2 Referring to the decision of the Tribunal in the case of Amitabh Bachchan (supra), he submitted that the Tribunal in that case has held that the payment received by Mr. Amitabh Bachchan from KBC programme for acting as an anchor for the said show is income derived by him as an artist and deduction u/s 80RR was accordingly allowed in respect of such income. Referring to the decision of the Tribunal in the case of Shri Shahrukh Khan vide ITA No.3894/Mum/2000 and other appeals vide order dated 19.6.2008 the Id counsel for the assessee drew the attention of the Bench to para 13 (page 9) of the order of the Tribunal wherein the Tribunal has allowed the deduction u/s 80RR on amounts received by Mr. Shahrukh Khan for allowing his name to be used for a product for which he had to attend photo sessions, launch sessions in media and his appearance for the products. The Revenue's appeal in the said case was dismissed by the Tribunal.

6.3 Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs Tarun R Tahiliani reported in 232 CTR 289, he submitted that the Hon'ble High Court has held that the work of a dress designer involves a high degree of imagination, creativity and skill and, therefore, a dress designer is an artist for the purposes of sec. 8RR.

6.4 Regarding the allegation of the Assessing Officer that if the assessee had not been a cricketer, no person would have appointed him, he submitted that if the assessee is an artist because of the exercise of his profession as a cricketer then also the assessee is entitled to deduction u/s 80RR. He submitted that the provisions of sec. 80RR do not speak of capacity of a person and it is only there in the provisions of sec. 80R. Therefore, the Assessing Officer cannot import that language here and therefore, the assessee is entitled to the benefit of deduction u/s 80RR. As regards the observation of the CIT(A) that a person cannot have more than one profession since such a situation has not been envisaged by the Incometax Act, the Id. Counsel for the assessee giving a number of examples submitted that a person can have more than one profession. He accordingly submitted that the assessee is entitled to the deduction u/s 80RR on the disputed income both as an "actor" or an "artist".

6.5 The Id DR on the other hand while supporting the order of the CIT(A) submitted that the only dispute in the impugned ground is regarding the nature of income i.e. whether the income is derived from exercise of his profession as an actor, artist or a player. He submitted that the use of word 'exercise' in the phrase "exercise of his profession" suggests that activity of sports/acting/artist etc. must be put to use to earn the income being claimed as deduction u/s 80RR. He submitted that Circular No. 22 dtd. 17.7.69 has explained the purpose of introducing Section 80RR. The provision is designed to encourage successful artist, actors etc. in our country to

project their activities outside India with a view to contributing greater understanding of our country and its culture abroad. This suggests that the income yielding activity should be rendered in such a manner that it contributes to the better understanding of our country and its culture abroad. He submitted that the use of word 'profession' in the phrase "exercise of his profession" further suggests that activity of sports/acting/artist etc. should be in the nature of 'profession' and not as a casual or incidental activity. He submitted that the use of words 'derived' suggest that the nexus between activity and income should be direct and 1st level operational income from activity of sports/acting/artist and not the incidental or indirect one. The Id. D.R. submitted that the use of words 'such income' means that it is only the income which is derived by exercise of profession of sports/acting/artist having direct nexus only to be eligible for deduction u/s 80RR.

6.6. The Id. D.R. submitted that the assessee claims that he is not a professional cricketer. He plays for his employer and BCCI with which it has contract for which he is paid by BCCI. The assessee claims the exemption of awards as per circular No. 447 of CBDT proclaiming himself to be a non-professional cricketer and ITAT in its earlier orders have allowed the exemption holding that the assessee is not a professional cricketer. The income from playing cricket has been shown by assessee itself as "income from other sources" further proves that the assessee himself does not claim to be a professional cricketer and hence cannot be said that he exercises the "profession" of cricket.

6.7. He submitted that the income from endorsements relate to wide variety of services rendered by assessee as per the agreements with World Tel Inc., Pepsi Co., VISA etc. some of which include allowing the use of his name, photo or voice samples, autographs on booklets and diaries on Sachin's statistics, product spokesman, corporate meetings, media appearances, internet chats, use of specific clothing & footwear, endorsement of commercial activities such as restaurant, cafes etc. signatures on certificates of honour or achievement, to appear in ad films, personally drink Pepsi and promote the Pepsi at public and personal appearances and functions and at home.

6.8. He submitted that the amount to be received as per the agreements is a composite one for all kinds of activities/services rendered by assessee and there is no bifurcation of amounts pertaining to any particular activity.

6.9. He submitted that a perusal of the agreements show that mostly the endorsements are by use of image/photo or signatures/logos etc. where personal physical presence and occupation of time of assessee is not required. Wherever the time and physical presence is required, it is mentioned specifically which is restricted to only few occasions and days in a year which is for making ad films or attending public functions/corporate meetings. So considering the total time spent by assessee in cricket, the time spent in physically appearing in TV ad films is very miniscule such as he has to model only once in a year for Pepsi Co and be available only at 3 occasions in a year for events organised by VISA and each appearance not being more than 2 hours. Hence by the yardsticks of time and effort also, the major part of assessee's contribution is towards playing cricket. Further there is neither skilled performance nor any creativity as an actor or artist by appearing in ad films while endorsing a product. The services provided by the assessee as per endorsement agreements do not involve use of any activity or role as an actor/artist.

6.10 Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs Lallubhai Nagardas & Son reported in 204 ITR 93 he submitted that the Hon'ble High Court in the said decision has held that a share broker does not come within the definition of profession u/s 2(36). It was held in the said decision that profession involves labour, skill, education and special knowledge.

6.11. Referring to the decision of the Tribunal in the case of Harsha Bhogle vs ITO reported in 86 ITD 714 (Mum), he submitted that the assessee who was a presenter, commentator and programme compere of sports on television was held to be not an "artist" and accordingly has held to be not entitled to deduction u/s 80RR.

6.12. He submitted that the decisions of the Tribunal in the case of Amitabh Bachchan (supra) and in the case of Shri Shahrukh Khan (supra) as relied on by the Id. Counsel for the assessee are quite different because they are basically actors. Here the assessee is not an actor and is a cricketer. Therefore, the benefit of deduction u/s 80RR cannot be granted to the assessee. He submitted that the assessee is also not entitled to be called as an artist for getting the deduction u/s 80RR.

6.13. As regards the contention of the Id counsel for the assessee that benefit of deduction u/s 80RR was provided in the past and therefore, rule of consistency should be applicable, he submitted that principles of resjudicata do not apply to Income Tax proceedings and each assessment year is distinct and separate. The A.O. is not barred from taking a different view than the view taken already by an Assessing Officer. He submitted that here it is a question of law therefore, rule of consistency cannot be applicable as claimed by the assessee and therefore, the same should be given a go bye. For this proposition, he relied on a number of decisions.

6.14. As regards the submission of the Id counsel for the assessee that a person can have more than one profession, he agreed on this issue and submitted that a person can have more than one profession. However, the question here is deduction u/s 80RR and necessary conditions must be fulfilled.

6.15. As regards the objection of the Id counsel for the assessee that language in the provisions of sec. 80RR are different from the provisions of sec. 80 Q, 80QQA and 80R, he submitted that the Assessing Officer has not used the word 'in his capacity as cricketer'.

6.16 As regards the decisions relied upon by the Id counsel for the assessee, he submitted that those decisions are distinguishable on facts and are not applicable to the facts of the present case; therefore, the assessee is not entitled to get the benefit of deduction under the provisions of sec. 80RR. He submitted that in the instant case there is an identity crisis. The assessee is not an actor/artist/professional cricketer but he is only a cricketer; therefore, when the assessee himself is not sure as to whether he is a professional cricketer/an artist/an actor, therefore, deduction u/s 80RR should not be allowed to the assessee. He also relied on the following decisions:-

1. Liberty India, 317 ITR 218 (SC)
2. Dilip K. Sheth vs. ITO, 128 TTJ 41 (Bom)
3. CIT vs. Lallubhai Nagar Das & Sons, 204 ITR 93 (Bom)

6.17 The Id. counsel for the assessee in his rejoinder submitted that there is no question of any identity crisis. The assessee has fulfilled all the criteria of being an actor or an artist. The prize money/award money was held to be exempt as per the CBDT circular. Since the prize money/award money has been exempted in the case of the assessee; therefore, the circular applies to the assessee that he is not a professional cricketer. He submitted that if the assessee is held to be a professional cricketer and it is held that the income from modelling etc. is due to the assessee being a cricketer, then also he is entitled to the deduction u/s 80RR since the income in that case will be derived from the exercise of his profession as a sportsman.

6.18. As regards the decision in the case of Harsha Bhogle (supra), he submitted that the said decision is not applicable to the facts of the present case.

6.19. As regards the decision of the Tribunal in the case of Dilip K. Sheth vs. CIT (supra) he submitted that the same is not applicable to the facts of the present case. In that case it was held that the income earned by the assessee by exercise of his profession as a Chartered Accountant which has nothing to do with the exercise of his profession as an author was not eligible for deduction u/s 80RR.

6.20. As regards the decision in the case of Lallubhai Nagori & Sons (supra), he submitted that in that case it was held that activity of share brokers does not amount to "profession". However, in the instant case the issue is modelling in ad films as acting or artist.

7. We have considered the rival submissions made by both the sides, perused the orders of the A.O. and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. There is no dispute to the fact that the assessee has received an amount of Rs. 19,92,27,085/- as gross receipts from sports sponsorship and advertisements which included an amount of Rs. 5,92,31,211/- received in convertible foreign exchange from ESPN Star Sports, Pepsico Inc and VISA. There is also no dispute to the fact that in the Tax Audit Report in Form No. 3CD filed along with return of income, the nature of business/profession of the assessee has been mentioned as sports sponsorship/modelling. There is also no dispute to the fact that the assessee claimed deduction u/s 80 RR amounting to Rs. 2,08,59,707/- on account of above receipt of Rs. 5,92,31,211/- on the ground that he was allowed such deduction in the past and that the income derived by the assessee in respect of which deduction u/s 80RR has been claimed is from the exercise of his profession as an "actor".

7.1 We find the A.O. rejected the claim of deduction u/s 80RR on the ground that the assessee is a professional cricketer and the income from modelling and advertising is not derived from the exercise of his profession. According to the A.O., by endorsing any products in advertisements the assessee does not become a person whose profession is acting. According to the A.O. the income from product endorsement may at best be claimed as attributable to the profession of cricket but the expression derived from has a narrower connotation than the expression 'attributable to'.

7.2 We find the CIT(A) confirmed the action of the A.O. on the ground that by profession the assessee is neither an 'actor or an 'artist'. The activity of appearing in such advertisement or commercial etc. cannot be equated with that of an actor or artist and this activity is subsidiary activity of the assessee and is also not directly related to his profession of playing cricket. Therefore, any subsidiary activity which

are not directly related to the specific profession cannot be allowed u/s 80RR of the I.T. Act. It is the submission of the Id. Counsel for the assessee that in view of the dictionary meaning of the words "acting" and "artist" and in the light of the ratio of various decisions cited, the income from modelling and advertisements should be treated as derived from the exercise of his profession as an "actor" or an "artist". According to the Id. Counsel for the assessee, a person can have more than one profession.

7.3 We find there is no dispute to the fact that the assessee in the instant case has declared income from playing cricket as "income from other sources" on the ground that he is only a cricketer and is not a professional cricketer. This issue has already been decided by the Tribunal in favour of the assessee and as admitted by the Id. D.R. Nothing was brought to our notice that the Revenue has challenged the order of the Tribunal before the Hon'ble High Court.

7.4 As regards the submission of the learned counsel for the assessee that the income from modelling and sponsorship has to be considered either as 'actor' or an 'artist', we find similar issue had come up before the Tribunal in the case of Mr. Amitabh Bachchan vs. DCIT (supra). In that case the payment received by Mr. Amitabh Bachchan for acting as an 'anchor' for a TV programme by using his skill as an actor/artist anchoring TV show, which contributed greater understanding of our country and immense popularity was held to be derived by him as an artist and deduction u/s 80RR was allowed to him in respect of payment received by him from foreign company. The relevant observations of the Tribunal at para 17 of the order reads as under:-

"If we look into the definitions, it is very difficult to exclude the present assessee from being an artist. After all the word 'artist' is term of wider connotation and does not accept the restrictions as are made out by the Department. The Board itself examined the word "artist" to include photographers and YV news film cameraman as also a director of a film or a script writer. The various meanings assigned to the term 'artist' by different standard dictionaries clearly show that the term "artist" is a term which has wide meaning not merely restricted to the meaning of fine arts but encompasses within its scope, a skilled performer. We also accept the contention of the assessee that certain obligations attached to Shri Amitabh Bachchan under various agreements which are part of the record clearly demand from him exhibition of skill as an artist if not as an actor. A photographer just takes the photos of the image already existing in the nature and does nothing creative except the way and method the photography is taken but that makes the difference and he is known as an artist. Similarly, a person who is performing in the KBC programme cannot be considered performing only as an anchor and does not use skills as an artist imposing certain questions and creating interest in the programme. The success of the KBC programme compared to other similar programmes clearly shows some distinctive features that created interest in the programme that was hosted by the assessee. The difference between KBC programme and rest of other programmes is mainly in our opinion, the usage of the skills of Shri Amitabh Bachchan, as an actor or an artist. In our opinion, the assessee has derived the disputed income as an artist within the wider meaning ascribed to it as extracted above and also in the light of the relevant clauses of agreement which require him to exhibit such skills. Some portion of the income is definitely due to his backing of excellence as an actor too. It is very difficult to segregate Shri Amitabh Bachchan as an assessee from being an

actor in any work what he does. In our opinion, the provisions of deductions are mainly beneficial provisions and have to be construed in a manner that achieves the intention of the legislature as made in the circular from time to time and also the legislature amendments that are made to the sections in order to widen the scope of the persons falling under the relevant section. In the case of Harsha Bhogle (supra) the tribunal went into the objects and intention of s. 80RR of the Act and it was observed in para 23 at p. 737 that Harsha Bhogle mainly performed on television and such activities were not making any contribution to the greater understanding of our country and its culture abroad although it was augmenting the foreign exchange resources of our country but that is not enough to claim tax deduction under s. 80RR of the Act, whereas if one were to look into the contents of the KBC programme, the programme itself is so designed wherein actor is required to make the programme very interesting and imaginative and has definitely contributed greater understanding of our country and its culture abroad. The programme of KBC was not only watched in India but all over the globe and mainly dealt with Indian history, its geography, rich cultural heritages, its mythological stories, its constitution and legal system and its rich resources. Even on this account, the activities of Shri Amitabh Bachchan are clearly distinguishable to that of a television presenter and TV commentator of cricket matches as was held in the case of Harsha Bhogle (supra). The assessee has produced before us some of the literatures on KBC programme which we have already reproduced elsewhere in our order. We are therefore of the opinion that the assessee is an artist while he received the disputed income within the meaning of s. 80RR of the Act. We, therefore, direct the A.O. to grant relief of deduction under s. 80RR of the Act.”

7.5 We find the Tribunal in the case of Shah Rukh Khan (supra) following the above decision allowed deduction u/s 80RR on account of income received for endorsement of performance where the assessee has to give photographs, attend photo session, video shoots etc.

7.6 We find the Hon'ble Bombay High Court in the case of Tarun R. Tahiliani (supra) have analysed the allow ability of deduction u/s 80RR and held that the work of dress designing involves skill and accordingly it was held that a dress designer is an artist. The relevant portion of the decision of Hon'ble jurisdictional High Court at para 6 to 9 read as under:-

“6. The essential requirements of s. 80RR are that (i) The deduction is available to a resident individual who is an author, playwright, artist, musician, actor or sportsman, including an athlete; (ii) The gross total income of such a person must include income derived by him “in the exercise of his profession”; (iii) The income must be derived from a Government of a foreign State or from any person not resident in India. If these requirements are met, then in computing the total income of the individual a deduction is allowable, to the extent provided, at a proportion of the amount which is brought into India in convertible foreign exchange within the stipulated period. The deduction was available during the course of the assessment years beginning on 1st April, 2001, 1st April, 2002, 1st April, 2003 and 1st April, 2004. No deduction is permissible with effect from the assessment year beginning on 1st April, 2005.

7. The Finance Act of 1969 inserted s. 80RR w.e.f. 1st April, 1970. The reasons for the introduction of the provision were explained in Circular No. 22 of 17th July, 1969 thus : “This provision is designed to encourage successful authors, playwrights,

artists, musicians and authors in our country to project their activities outside India with a view to contributing to greater understanding of our country and its culture abroad and also augmenting our foreign exchange resources. Some of the professional activities coming within the scope of this section are : publication outside India of a book produced by the author, contribution of articles to foreign journals or magazines, exhibition of paintings, sculptures and other works of art in foreign countries, giving of music concerts to foreign audiences and acting in dramatic performances, cinematograph films and television programmes in foreign countries.” The circular refers to the object as being to promote a greater understanding of the country and its culture abroad and the enhancement of foreign exchange reserves. Yet, it must be noted that the statutory provision does not require an author or playwright to write a book or play on an aspect of Indian culture to qualify for a deduction. The freedom of the author, and for that matter, of a playwright, musician, artist or actor to choose the medium of the message is as wide as it can be under the constitutional guarantee of free speech. The content of the message is not structured by s. 80RR. Even fiscal legislation has to be deferential to constitutional rights. Parliament has contemplated the grant of a deduction to broad categories. Those categories are not artificially defined. The nature of the work which is the source of the income is subject to the requirement that the income must be derived from the ‘exercise of the profession’. In a Circular (No. 31) of the Board, dt. 25th Oct., 1969 it was clarified that the expression artist includes photographers and TV cameramen for s. 80RR. By a Circular (No. 675), dt. 3rd Jan., 1994 [(1994) 116 CTR (St) 13], the Board clarified that a script writer is a playwright and that a director is an artist for the purpose of s. 80RR. However, a producer does not fall in any of the stated categories.

8. The categories of persons to whom s. 80RR allows a deduction are (i) authors; (ii) playwrights; (iii) artists; (iv) musicians; (v) actors; and (vi) sportsmen, including athletes. The expression “artists” is not defined by the statute. Hence, Parliament must have intended that an artist must be understood in its ordinary sense. No artificial constructs or deeming fictions. There is nothing in the statutory provision which would confine the meaning of the expression to a person engaged in the fine arts. The expression “artist” occurs after the expression author, and playwright and before the expression musician, actor or sportsman. An artist is defined in the Corpus Juris Secundum as follows : “A person of special skill or ability in any field, one who is highly accomplished, especially one versed in the liberal arts. Also one who professes and practices one of the fine arts. The term ‘artist’ may refer to one skilled in trade or art; and has been held broad enough to include architects and a surveyor. The term has been held not include a dancing instructor, a neon sign maker, a barber, cook, dressmaker, milliner, or tailor.” The expression is defined in the Random House Dictionary as follows : “1. One who produces works in any of the arts that are primarily subject to aesthetic criteria. 2. A person who practices one of the fine arts especially a painter or sculptor. 3. One whose trade or profession requires knowledge of design, drawing, painting etc. a commercial artist. 4. A person who works in one of the performing arts, as an actor, musician, or singer, a public performer, a mime artist of the dance. 5. One who exhibits exceptional skill in his work.” Websters Third New International Dictionary defines the expression as : “1(a) One who professes and practices an art in which conception and execution are governed by imagination and taste. (b) A person skilled in one of the fine arts; especially painter. 2(a) A performer of music in public (as a singer, pianist or conductor). (b) A theatrical performer.” In the Oxford English Dictionary an artist is

defined as “one skilled in the ‘liberal’ or learned arts, one who is a master of the liberal arts or a skilled performer, a proficient, a connoisseur.” In the Concise Oxford Dictionary the expression has been defined as follows : “(i) a painter (ii) a person who practices any of the arts (iii) an artist (iv) a person who works with the dedication and attributes associated with an artist. (v) a devotee; a habitual practiser of a specified activity.”

9. Simply stated, an artist is a person who engages in an activity which is an art. Artists, as we understand them, use skill and imagination in the creation of aesthetic objects and experiences. Drawing, painting, sculpture, acting, dancing, writing, film making, photography and music all involve imagination, talent and skill in the creation of works which have an aesthetic value. A designer uses the process of design and her work requires a distinct and significant element of creativity. The canvass of design is diverse and includes graphic design and fashion design. An artist, as part of his or her creative work, seeks to arrange elements in a manner that would affect human senses and emotions. Design, in a certain sense, can be construed to be a rigorous form of art or art which has a clearly defined purpose. Though the field of designing may be regarded as a rigorous facet of art, creativity, imagination and visualization are the core of design. Dress designing has assumed significance in the age in which we live, influenced as it is by the media and entertainment. As a dress designer, the assessee must bring to his work a high degree of imagination, creativity and skill. The fact that designing involves skill and even technical expertise does not detract from the fact that the designer must visualize and imagine. A designer is an artist.”

7.7 Now coming to the facts of the present case, the assessee, while appearing in advertisements and commercials, has to face the lights and camera. As a model, the assessee brings to his work a degree of imagination, creativity and skill to arrange elements in a manner that would affect human senses and emotions and to have an aesthetic value. No doubt, being a successful cricketer, it has added to his brand value as a model. But the fact remains that the assessee has to use his own skills, imagination and creativity. Every person or for that matter every sportsman do not possess that degree of talent or skill or creativity and face the lights and camera etc. The various decisions cited by the Id. D.R., in our opinion are not applicable to the facts of the present case and are distinguishable.

7.8 Considering the totality of the facts of the case and in the light of the ratio laid down in the decisions cited above, we are of the considered opinion that the income received by the assessee from modelling and appearing in T.V. commercials and similar activities can be termed as income derived from the profession of “an artist”. As admitted by the Id. D.R., the assessee can have more than one profession. Therefore, there is no bar on the part of the assessee to have its second profession as an artist apart from playing cricket. In this view of the matter, we are of the considered opinion that the amount of Rs. 5,92,31,211/- received by the assessee amounts to income derived by the assessee in the exercise of his profession as an artist and therefore entitled to deduction u/s 80RR of the Act. We hold accordingly. The ground raised by the assessee is accordingly allowed.

8. In ground No. 2, the assessee has challenged the order of the Id. CIT(A) in confirming the disallowance of Rs. 5000/- out of staff welfare expenses disallowed by the A.O.

8.1. After hearing both the sides, we find the assessee had claimed an amount of Rs. 57,969/- towards staff welfare expenses. We find the assessee claimed before the A.O. that staff welfare expenses included expenses incurred for tea, snacks etc. provided to staff. The A.O. noted from the details filed by the assessee that only six persons worked during the year as his staff for which the assessee has separately debited an amount of ` 2,43,300/- towards salary and perquisites. Since the expenses claimed were in cash and were unverifiable in nature, the A.O. disallowed an amount of Rs. 10,000/- on estimate basis. On appeal, the Id. CIT(A) restricted the same to Rs. 5000/-, which in our opinion is reasonable under the facts and circumstances of the case. Accordingly, the same is upheld. Ground No. 2 by the assessee is, therefore, dismissed.

9. In ground No. 3, the assessee has challenged the order of the Id. CIT(A) in confirming the disallowance of Rs. 50,000/- on account of entertainment expenses.

9.1. After hearing both the sides, we find the assessee had debited an amount of Rs. 6,16,041/- towards entertainment expenses. On being questioned by the A.O., it was submitted that the above expenses were incurred on food and beverages with clients/their representatives during various meetings. From the details failed by the assessee, the A.O. noted that the expenses are incurred in cash and therefore unverifiable in nature. The expenses incurred for the month of July, August & September, 2002 were more as compared to the other months. Although the assessee filed reply, but did not file any evidence in support of the above claim. Since the expenses were made mostly in cash and no details were filed, the A.O. was of the view that personal element in the expenses cannot be ruled out. The A.O., therefore, disallowed an amount of Rs. 1,42,091/-. In appeal, the CIT(A) restricted the disallowance to Rs. 50,000/- on the ground that the disallowance made on estimated basis appears to be on higher side.

9.2 After hearing both the sides, we find the disallowance of Rs. 50,000/- is quite justified under the facts and circumstances of the case and accordingly the same is upheld. Ground No. 3 raised by the assessee is dismissed.

10. In ground No. 4, the assessee has challenged the order of the Id. CIT(A) in confirming the disallowance of Rs. 50,000/- out of telephone expenses.

10.1 After hearing both the sides, we find the A.O. disallowed an amount of Rs. 1,16,540/- out of telephone expenses of Rs. 4,86,412/- on the ground that the bills were in the name assessee's wife. In appeal, the CIT(A) restricted the disallowance to Rs. 50,000/- on the ground that although the bills were in the name of the wife of the assessee, a number of calls were made by the assessee from the phones. The Revenue is not in appeal against the findings of the CIT(A). Considering the totality of the facts and circumstances of the case, the disallowance of Rs. 50,000/- in our opinion is quite reasonable and no interference is called for. Ground No. 4 of assessee's appeal is accordingly dismissed.

10.2 In ground No. 5 the assessee has challenged the order of the Id. CIT(A) in confirming the disallowance of Rs. 1,42,824/- on account of motor car expenses.

10.3 Facts of the case in brief are that the assessee has debited motor car expenses of Rs. 3,08,775/-, motor car insurance of Rs. 1,89,608 and motor car depreciation of Rs. 2,15,737/-. In absence of maintenance of log book, the A.O. was of the opinion that personal use of motor car for self and family members cannot be ruled out. He

also rejected the explanation given by the assessee holding the same to be a vague and general reply and disallowed 1/5th of these expenses amounting to Rs. 1,42,824/- on account of probable personal use. In appeal, the CIT(A) confirmed the disallowance made by the A.O. for which the assessee is in appeal before us.

10.4 After hearing both the sides, we are of the considered opinion that there is no infirmity in the order of the CIT(A). Admittedly, no log book has been maintained by the assessee, therefore, personal use of motor car for self and other family members cannot be ruled out. Accordingly, the disallowance of 1/5th of the motor car expenses amounting to ` 1,42,824/- being very reasonable under the facts and circumstances is justified. The ground No. 5 raised by the assessee is accordingly dismissed.

11. Ground No. 6 relates to initiation of penalty proceeding u/s 271(1)(c) of the Act.

11.1. After hearing both the sides, we are of the opinion that the above ground is pre-mature at this juncture. Accordingly, the same is dismissed.

ITA No. 430/Mum/2008 (A.Y. 2004-05)

12. In ground No. 1, the assessee has challenged the order of the CIT(A) in denying the assessee's claim for deduction u/s 80RR amounting to Rs. 38,56,611/-.

12.1 After hearing both the sides, we find the above ground is identical to ground No. 1 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been allowed. Following the same ratio, the ground raised by the assessee is allowed.

13. Ground No. 2 relates to the order of the CIT(A) in confirming the disallowance of Rs. 10,000/- made by the A.O. on account of staff welfare expenses out of total expenditure of Rs. 63,157 claimed by the assessee.

13.1 After hearing both the sides, we find the above ground is identical to ground No. 2 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

14. Ground No. 3 relates to order of CIT(A) in confirming the disallowance Rs. 25,000/- made by the A.O. on account of entertainment expenses out of total expenditure of Rs. 3,72,448/- claimed by the assessee.

14.1 After hearing both the sides, we find the above ground is identical to ground No. 3 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

15. Ground No. 4 relates to the order of the CIT(A) in confirming the disallowance of Rs. 37,000/- made by the A.O. on account of telephone expenses out of total expenditure of Rs. 3,70,029/- claimed by the assessee.

15.1 After hearing both the sides, we find the above ground is identical to ground No. 4 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

16. Ground No. 5 relates to the order of the CIT(A) in confirming the disallowance of Rs. 10,74,997/- made by the A.O. on account of motor car expenses claimed by the assessee.

16.1 After hearing both the sides, we find the above ground is identical to ground No. 5 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

17. Ground No. 6 relates to initiation of penalty proceeding u/s 271(1)(c) of the Act.

17.1 After hearing both the sides, we are of the opinion that the above ground is premature at this juncture. Accordingly, the same is dismissed.

ITA No. 428/M/2008 (A.Y. 2001-02)

-

18. Ground No. 1 relates to the order of CIT(A) in upholding the reassessment proceedings initiated by the A.O.

18.1 The facts of the case in brief are that the assessee filed return of income declaring total income at Rs. 6,94,52,995/- on 29th October, 2001 which was processed u/s 143(1) of the I.T. Act. Subsequently, the A.O. reopened the assessment u/s 147 for the reason that incorrect claim of deduction has been made by the assessee u/s 80RR of the Act. Accordingly, notice u/s 148 was issued and served upon the assessee on 31.3.2006.

18.2 Before the CIT(A) it was submitted that the A.O. had no reason to believe that any income chargeable to tax had escaped assessment for the year under consideration. However, the CIT(A) was not satisfied with the explanation given by the assessee. He noted that since the return was processed u/s 143(1) and the A.O. had no occasion to apply his mind, therefore, the contention of the assessee that A.O. had no reason to believe that income had escaped assessment does not hold good. The various judicial pronouncements cited before him were rejected by him on the ground that the issue of change of opinion is not relevant since the A.O. has not applied his mind. He, accordingly, upheld the action of the A.O. in reopening the assessment u/s 147 of the Act. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

18.3 After hearing both the sides, we find the assessment was reopened within a period of 4 years from the end of the relevant assessment year. Therefore, in view of the decision of Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers P. Ltd. 291 ITR 510 (SC), reassessment proceeding initiated by the A.O. are legally valid. Accordingly, this ground raised by the assessee is dismissed.

19. Ground No. 2 relates to denial of deduction u/s 80RR amounting to Rs. 3,35,53,410/-.

19.1 After hearing both the sides, we find the above ground is identical to ground No. 1 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been allowed. Following the same ratio, the ground raised by the assessee is allowed. 20. Ground No. 3 relates to order of the CIT(A) in confirming the disallowance Rs. 25,000/- made by the A.O. on account of

entertainment expenses out of total expenditure of Rs. 2,82,861/- claimed by the assessee.

20.1 After hearing both the sides, we find the above ground is identical to ground No. 3 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

21. Ground No. 4 relates to order of the CIT(A) in confirming the disallowance of Rs. 43,600/- made by the A.O. on account of telephone expenses out of total expenditure of Rs. 3,35,761/- claimed by the assessee.

21.1 After hearing both the sides, we find the above ground is identical to ground No. 4 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

22. Ground No. 5 relates to order of the CIT(A) in confirming the disallowance of Rs. 1,14,421/- made by the A.O. on account of motor car expenses claimed by the assessee.

22.1 After hearing both the sides, we find the above ground is identical to ground No. 5 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

23. Ground No. 6 relates to initiation of penalty proceeding u/s 271(1)(c) of the Act.

23.1 After hearing both the sides, we are of the opinion that the above ground is premature at this juncture. Accordingly, the same is dismissed.

ITA No. 6862/Mum/2008 (A.Y. 2002-03)

-

24. Ground No. 1 relates to the order of CIT(A) in confirming the reopening of assessment u/s 147 of the I.T. Act.

24.1 After hearing both the sides, we find the original return of income declaring total income at Rs. 13,96,11,299/- was filed on 29th October, 2002. The same was processed u/s 143(1) of the Act on 25.01.2003. Subsequently, the case was reopened u/s 147 for the reason that incorrect claim of deduction has been made by the assessee u/s 80RR of the Act. Accordingly, notice u/s 148 was issued on 16.11.2006. Since the original assessment was completed u/s 143(1) and the notice is issued within 4 years from the end of the relevant A.Y. therefore in view of the decision of Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers P. Ltd. 291 ITR 510 (SC), the reassessment proceeding initiated by the A.O. is legally valid. Ground no. 1 raised by the assessee is accordingly dismissed.

25. Ground No. 2 relates to denial of deduction u/s 80RR amounting to Rs. 1,06,70,020/-.

25.1 After hearing both the sides, we find the above ground is identical to ground No. 1 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been allowed. Following the same ratio, the ground raised by the assessee is allowed.

26. Ground No. 3 relates to the order of the CIT(A) in confirming the A.O.'s disallowance of Rs. 85613/- being 20% of the motor car expenses.

26.1 After hearing both the sides, we find the above ground is identical to ground No. 5 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

27. Ground No. 4 relates to the order of the CIT(A) in confirming the disallowance Rs. 30,000/- made by the A.O. on account of telephone expenses out of total expenditure of Rs. 4,18,044/- incurred by the assessee.

27.1 After hearing both the sides, we find the above ground is identical to ground No. 4 in ITA No. 429/Mum2008 for A.Y. 2003-04. We have already decided the issue and the ground raised by the assessee has been dismissed. Following the same ratio, the ground raised by the assessee is dismissed.

28. Ground No. 5 relates to the charging interest u/s 234B(3).

28.1 After hearing both the sides, we are of the considered opinion that charging interest u/s 234B(3) is mandatory and consequential in nature.

Accordingly, the same is dismissed.

29. In the result, the above 4 appeals filed by the assessee are partly allowed.

Order pronounced on the 20th day of May, 2011