IN THE INCOME TAX APPELLATE TRIBUNAL Mumbai "F" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 8952/Mum/2004 (A.Y. 1998-99)

DCIT, Range 3(1) Room No. 623 6th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Bajaj Holdings & Investment Ltd. (formerly known as Bajaj Auto Limited), Bajaj Finserv Corporate Office, Off. Pune-Ahmednagar Highway, Vimannagar, Pune-411 014.
(Appellant)		(Respondent)

I.T.A. No. 9564/Mum/2004 (A.Y. 1998-99)

M/s. Bajaj Holdings & Investment Ltd. (formerly known as Bajaj Auto Limited), Bajaj Finserv Corporate Office, Off. Pune-Ahmednagar Highway Vimannagar, Pune-411 014.	Vs.	DCIT, Range 3(1) Room No. 623 6th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN : AAACB337K

Assessee by	Shri Percy Pardiwala & Ms. Vasanti Patel
Department by	Shri Ankush Kapoor
Date of Hearing	28.06.2023
Date of Pronouncement	22.08.2023

ORDER

Per B.R.Baskaran (AM) :-

These cross appeals are directed against the order passed by Ld CIT(A)27, Mumbai and they relate to the assessment year 1998-99.

2. The assessee company is engaged in the business of manufacture and sale of two wheelers and 3 wheeler vehicles under the brand name of "Bajaj".

3. We shall first take up the appeal filed by the assessee.

4.0 The Ground no.1 contested by the assessee relates to the taxability of Rs.1,03,55,590/-, being the surplus received on redemption of treasury bills. The assessee offered the same under the head "capital gains", but appended a note to the Statement of total income claiming that the above said amount should be excluded from the total income as it is a case of extinguishment of asset and hence not taxable. The AO did not accept the claim of the assessee. However, the AO assessed the same as income under the head Income from other sources. The Ld CIT(A) directed the AO to assess the above said amount under the head "Capital gains".

4.1 We heard the parties on this issue and perused the record. We notice that an identical issue has been examined by the co-ordinate bench in the assessee's own case in AY 1995-96 in ITA No.3493/Mum/1999, vide its order dated 20-01-2021. In the above said year, the Ld CIT(A) had allowed the claim of the assessee and hence the revenue had filed appeal before the Tribunal. The co-ordinate bench, by following the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Grace Collis (2001)(248 ITR 323)(SC) has reversed the decision of Ld CIT(A). We notice that the surplus arising on redemption of treasury bills his held to be taxable under the head Capital gains in the assessee's own case in AY 1996-97 also. Accordingly, we direct the AO to assess the above said amount as Capital gains in this year also.

5.0 The Ld A.R did not press ground no.2. Accordingly, it is dismissed as not pressed.

6.0 Ground no.3 urged by the assessee relates to the methodology to be adopted for computing "eligible profits" for the purpose of computing deduction u/s 80IA of the Act. The controversy is whether the depreciation is required to be deducted or not for computing "eligible profits" for the purposes of sec. 80IA of the Act. We notice that the co-ordinate benches are consistently holding that the depreciation is required to be deducted.

Accordingly, we reject this ground of the assessee.

7.0 Ground No.4 and 5 urged by the assessee relate to the deduction claimed u/s 80IA of the Act, wherein the question is whether the duty drawback and interest income are eligible for deduction u/s 80IA of the Act. The co-ordinate bench has dealt with identical issues in the assessee's own case in AY 1997-98 in ITA No.5030/Mum/2001 (Revenue's appeal) and the Tribunal has held that the assessee is eligible for deduction u/s 80IA in respect of both the income referred above. In this regard, the co-ordinate bench has followed the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Meghalaya Steels Ltd (2016)(383 ITR 217)(SC). Following the order passed by the co-ordinate bench, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction u/s 80IA of the Act in respect of duty draw and interest income.

8. Ground no.6 urged by the assessee relates to the issue whether the wealth tax payment is eligible for deduction while computing total income. We notice that this issue has been decided in favour of the assessee in the earlier years by the Tribunal, wherein the decision rendered by Delhi bench of Tribunal in the case of Punj Sons (P) Ltd vs. DCIT (2002)(74 TTJ 596)(Delhi) has been followed. The Delhi bench of Tribunal has taken the view that the tax chargeable with reference to the value of any particular asset of business or profession is not covered by the disallowable prescribed u/s 40(a)(iia) of the Act. In the present case, it is the submission of the assessee that the wealth tax is chargeable with reference to the value of certain business assets. The decision so rendered by Delhi bench of Tribunal has been followed in the assesee's own case in AY 1995-96 in ITA No.3493/Mum/1999 dated 20-01-2021 and other years. Accordingly, consistent with the view taken by the co-ordinate benches, we hold that the wealth tax paid by the assessee is not liable to be disallowed. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance.

9. Ground no.7 and 8 urged by the assessee relates to the deduction claimed u/s 80HHC of the Act. At the time of hearing, the Ld A.R did not press these grounds and accordingly, they are dismissed as not pressed.

10. Ground no.9 urged by the assessee relates to the deduction claimed by the assessee u/s 80-O of the Act. The assessee claimed a deduction u/s 80-O of the Act a sum of Rs.1,96,608/- calculated @ 50% of royalty amount of Rs.3,93,216/- received by the assessee from a Columbian company. The

AO rejected the above said claim with the following observations:-

> "The agreement filed only talks about import of CKD Kits into Columbia. Further the amended provisions of section 80-O only provide for deduction u/s 80-O in respect of the drawing, design, invention, patent and trade mark outside India. In the circumstances, it would appear clear that the amount received is not for any of these purposes. Therefore the deduction claimed is not allowable."

The Ld CIT(A) confirmed the disallowance without much discussion.

10.1 We heard the parties on this issue and perused the record. A deduction u/s 80-O is allowed in respect of income received, inter alia, from a foreign enterprise in consideration for the use outside India of any patent, invention, design or registered trade mark…..

10.2 The facts prevailing in the instant case are that the assessee has entered into a "Technical Knowhow agreement" with M/s Autotecnicia Columbiana, S.A, a foreign enterprises domiciled at Columbia. The assessee herein has appointed the above said foreign company as exclusive LICENSEE within the territory of Columbia for assembly and progressive manufacture and sale of Bajaj Chetak, Bajaj Chetak Classic, Bajaj Super and Bajaj Super FE scooters and derivatives of these scooters. As per clause 4 of the agreement, assessee shall supply completely knocked down packs of products in primered condition consisting of standard configuration of the production in the production at Bajaj plants (referred as 'CKD Packs'). As per clause 5 of the agreement, the LICENSEE can request the assessee to delete any part from CKD pack, meaning thereby the LICENSEE shall manufacture those parts by itself. In that case, the assessee shall provide the LICENSEE a set of drawings for such parts/components and characteristics of materials to be use in the manufacture of such parts/components. For supplying the drawings, the assessee has collected technical knowhow fee from the above said licensee, on which the deduction u/s 80-O has been claimed.

10.3 The case of tax authorities is that the payment so received by the assessee was not in respect of the drawing, design, invention, patent and trade mark outside India. However, we notice that the Agreement entered between both the parties clearly provides that the technical knowhow fee is received for supplying the drawings. The relevant clause 5 reads as under:-

> "5. It is further agreed that should the LICENSEE request BAJAJ to delete any part, component or process from such CKD packs, BAJAJ will provide the LICENSEE as part of Engineering Services a set of drawings for such parts/components and characteristics of materials to be used in the manufacture of such parts/components. For such deletion/s from CKD packs the LICENSEE shall pay to BAJAJ a lump sum technical knowhow fee of US Dollars Five Hundred Thousand (USD 500,000) in installments as under:-…"

A careful perusal of the above said clause would show that the assessee has received technical knowhow fee for supplying a set of drawings for such parts/components and also for providing information about characteristics of material to be used in the manufacture of such parts/components. In the instant case, the assessee has given license to assemble its scooter models. When the Licensee prefers to manufacture certain parts/components on its own, the assessee permits the same and accordingly supplies the drawings relating to those parts and collects technical know how fee. The Licensee is bound to manufacture those parts/components in accordance with those designs only. Otherwise, the same will not fit into Scooter when the scooter is assembled. Hence, we are unable to find any reason to say that the said payment will not fall under the category of "consideration received for the use of patent, invention, design" mentioned in sec. 80-O of the Act. Accordingly, we are of the view that the technical knowhow fee received by the assessee would fall under the category of "royalty", as defined in sec.80-O of the Act and it is eligible for deduction u/s 80-O. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the claim of the assessee.

11. Ground no.10 urged by the assessee is whether the expenditure of Rs.28,60,480/- incurred by the assessee on repairs of building is capital or revenue expenditure. The revenue is challenging the relief granted by the Ld CIT(A) in ground no.13 of its appeal. The AO disallowed a sum of Rs.1,65,87,062/- out of repair expenses claimed by the assessee, treating the same as

capital in nature. After allowing depreciation @10%, the AO disallowed balance amount of Rs.1,49,28,356/-. The Ld CIT(A) held that following expenses alone are capital in nature:-

Expense		Amount
Demolishing twin tube storage, record room LPG Storage yard, Civil & Joinery work for toilet at M/C shop 1. Modification and renovation to toilet Block at North M/c shop.	----	8,30,876
Supply of marbles for renovation work at Bajaj Bhavan	------	17,91,320
Providing S S Chute for disposal of waste Food at General Canteen	-----	2,38,284
		28,60,480

Accordingly, the Ld CIT(A) directed the AO to delete the balance amount of disallowance and sustain the addition in respect of above said expenses after allowing depreciation @ 10%.

11.1 We heard the parties on this issue and perused the record. It is the submission of the assessee that the above said expenses have been incurred on repair and maintenance of existing structures and it did not result in any benefit of enduring nature. Accordingly, the Ld A.R submitted that these expenses should be allowed as revenue expenses. In this regard, he placed reliance on the following decisions:-

(a) CIT vs. V.P Veriah (211 ITR 244)(Ker)
(b) CIT vs. Venkateswara Hatchery Ltd (226 ITR 230)(Mad)
(c) CIT vs. Himalaya Drug Co (234 ITR 167)(All)
(d) CIT vs. Binny Ltd (215 ITR 536)(Mad)

The Ld D.R supported the order passed by Ld CIT(A).

11.2 On a perusal of the nature of expenses discussed above, we notice that the expenses mentioned in (a) and (b) above did not bring any new asset, i.e., existing structures have been modified or renovated. Accordingly, we are of the view both these expenses should be treated as part of repairs carried on by the assessee. The item of expenses mentioned in (c) above relates to purchase of Stainless Steel Garbage Chute for disposal of waste food at General Canteen. Since it is placed in the General canteen, the useful period of life of this item will be less and accordingly

it will not have the benefit of enduring nature. Accordingly, we are of the view that this expenditure should also be allowed as revenue expenditure. Accordingly, we modify the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of Rs.28,60,480/- sustained by Ld CIT(A).

12. Ground no.11 urged by the assessee relates to disallowance of Rs.73,100/- relating to Fines and Penalties. The assessee had initially disallowed the above said amount while filing return of income. However, a note was appended claiming that these fines/penalties are compensatory in nature. Accordingly, the assessee raised a ground before Ld CIT(A) claiming it as business expenditure. It was rejected by Ld CIT(A). We notice that an identical claim made in AY 2007-08 has been rejected by the Tribunal.

Following the same, we confirm the order passed by Ld CIT(A) on this issue.

13. We shall now take up the appeal filed by the revenue.

14.0 The Ground no.1 raised by the revenue relates to the disallowance of Rs.43,43,676/- relating to GDR issuing expenses. The assessee had issued GDR of USD 109,999,983 in the financial year relevant to AY 199596. The expenses incurred to the tune of Rs.11,71,99,600/- was claimed by the assessee u/s 37(1) in AY 1995-96, which was rejected. In the alternative, the assessee claimed the same as deduction u/s 35D of the Act. The said claim was not considered, since the expansion of undertaking was not completed in that year. In AY 1997-98, in ITA No.5030/Mum/2021 dated 13-04-2023, the co-ordinate bench allowed the claim of the assessee following the decision rendered by Ahmedabad bench of Tribunal in the case of Gujarat Narmada Valley Fertilisers Co. Ltd vs. DCIT (ITA No.1463/ Ahd/2007), i.e., it was held that the assessee is eligible for deduction u/s 35D of the Act in respect of this expenditure. U/s 35D of the Act, this expenditure is allowable in installments. Hence the assessee has claimed proportionate amount in this year. Since the co-ordinate bench has held it to be allowable u/s 35D of the Act, following the said decision of co-ordinate bench, we direct the AO to allow eligible amount relatable to this year as deduction u/s 35D of the Act in this year.

15.0 The Ground no.2 raised by the revenue relates to the disallowance of depreciation claimed on assets taken on lease on 26.3.1996. In AY 199697, the AO disallowed the claim of depreciation by holding that it was a pure financial transaction clothed as lease transaction. Following the same, the AO disallowed depreciation claimed in the current year, i.e. AY 1998-99 also. The Ld CIT(A) allowed the claim of the assessee following his decision rendered in the earlier years.

15.1 The Ld D.R submitted that Income tax Act has been amended by inserting Explanation 4A to sec. 43(1) to restrict depreciation in respect of assets taken on lease from a person who had already used the same for his business and claimed depreciation thereon. Accordingly, the Ld D.R contended that the depreciation should be restricted by applying above said provision.

15.2 The Ld A.R, however, submitted that the Explanation 4A to sec. 43(1) has been inserted w.e.f 1.10.1996, while the impugned lease transactions has taken place on 26.3.1996. Accordingly, he contended that the Explanation 4A shall not apply to this transaction. He submitted that the decision rendered by the Tribunal in favour of the assessee in the earlier years should be followed.

15.3 We heard the parties on this issue and perused the record. We notice that the AO had disallowed the claim of depreciation only on the ground that it was not a genuine lease transaction, i.e., it is a finance transaction entered under the garb of lease transaction. The above said view of the AO has since been rejected by Ld CIT(A) and Tribunal in AY 1996-97 and 1997-98. Hence the basis on which the disallowance of depreciation made by the AO has already been reversed. The ld D.R has raised a new contention that the Explanation 4A should be applied to this lease transaction, which is not the case of the AO. Accordingly, we do not find it necessary to consider the new contention raised by Ld D.R. Accordingly, following the decision rendered by the co-ordinate benches in the assessee's own case, we confirm the order passed by Ld CIT(A) on this issue.

16.0 Ground no.3 raised by the revenue relates to the disallowance of expenses incurred on Dyes and Moulds amounting to Rs.30.47 crores. The assessee treated the above said expenses as Capital in nature in the books of account, but claimed the same as revenue expenditure for income tax purposes. This is a recurring issue. The co-ordinate bench has decided this issue in favour of the assessee by confirming the decision rendered by Ld CIT(A) in holding that the expenditure incurred in purchase of dies and moulds are allowable as revenue expenditure in AY 1990-91. The said decision is being followed year after year. In AY 1997-98 also in ITA No.5030/Mum/2001 dated 13.04.2023, the Tribunal has upheld the identical decision taken by Ld CIT(A). Consistent with the view taken by the co-ordinate benches year after year, we confirm the order passed by Ld CIT(A) in holding that the expenditure incurred on Dyes and Moulds is allowable as deduction.

17.0 Ground no.4 urged by the revenue relates to decision of Ld CIT(A) in holding that the penalty charges received from machinery suppliers amounting to Rs.30,06,738/- is capital receipt. This is also a recurring issue. In AY 1997-98 (supra), the Tribunal has followed the decision rendered in AY 1995-96, wherein it was held that the penalty charges received from machinery suppliers is capital in nature. In this regard, the Tribunal has followed the decision rendered in AY 1993-94, wherein it was decided in favour of the assessee following the decision rendered by Hon'ble Andhra Pradesh High Court in the case of Barium and Chemicals Ltd (168 ITR 164). Consistent with the view taken in the earlier year, we uphold the decision rendered by Ld CIT(A) on this issue.

18.0 Ground no.5 raised by the revenue relates to the disallowance of expenses incurred on jigs and fixtures amounting to Rs.4.93 crores. The assessee treated the above said expenses as Capital in nature in the books of account, but claimed the same as revenue expenditure for income tax purposes. This is also a recurring issue. The co-ordinate bench has decided this issue in favour of the assessee by confirming the decision rendered by Ld CIT(A) in holding that the expenditure incurred in purchase of jigs and fixtures are allowable as revenue expenditure in AY 1990-91. The said decision is being followed year after year. In AY 1997-98 also in ITA No.5030/Mum/2001 dated 13.04.2023, the Tribunal has upheld the identical decision taken by Ld CIT(A). Consistent with the view taken by the co-ordinate benches year after year, we confirm

the order passed by Ld CIT(A) in holding that the expenditure incurred on jigs and fixtures is allowable as deduction.

19.0 Ground no.6 raised by the revenue relates to the computation of deduction u/s 80HHC of the Act. The Ld CIT(A) had directed that the income by way of technical knowhow, insurance claim, miscellaneous receipts, sundry credit balance, provision for doubtful debts written back, provision no longer required shall form part of 'profits of business' for the purpose of computation of deduction u/s 80HHC of the Act. The technical Knowhow fees received by the assessee is held to be part of 'profits of business' by the co-ordinate bench in the assessee's own case in AY 1996-97 in ITA No.2230/Mum/2000 dated 20-06-2022 and the said decision has been followed by the Tribunal in AY 2007-08. The other items of receipts, viz., insurance claim, miscellaneous receipts, sundry credit balance, provision for doubtful debts written back, provision no longer required, in our considered view, need not be excluded while computing 'profits of business' as these receipts do not fall under the category of 'brokerage, commission, interest, rent, charges or any other receipt of similar nature' mentioned in the definition of 'profits of business' given in clause (baa) of Explanation to sec.80HHC of the Act. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A) on this issue.

20.0 Ground no.7 raised by the revenue relates to the decision of Ld CIT(A) in holding that the Excise duty receipts should be excluded from 'Total turnover' for the purpose of computing deduction u/s 80HHC of the Act. In AY 1995-96, the co-ordinate bench has held that the Excise duty receipts should be excluded from Total turnover and in this regard, it has placed reliance on the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Laxmi Machine works (290 ITR 667). The said decision was followed in AY 1997-98 also. Accordingly, following the above said decisions rendered by the co-ordinate benches in the assessee's own case in the earlier years, we are of the view that the Ld CIT(A) was justified in holding that the excise duty receipts shall not form part of total turnover for the purposes of computing deduction u/s 80HHC of the Act.

21.0 Ground no.8 raised by the revenue relates to the deduction allowed u/s 80HHC of the Act on the foreign exchange difference of Rs.6,98,808/- in export turnover. Both

the parties agreed that the AO did not exclude this amount while computing total turnover for the purpose of sec. 80HHC of the Act. However, the Ld CIT(A) held that the same is required to be included in the export turnover. The Ld DR relied upon the decision rendered by the Special bench of ITAT in the case of Prakash I. Shah (306 ITR (AT) 1(SB) and submitted that the Special bench has held that the deduction u/s 80HHC is not allowable on foreign exchange fluctuation.

21.1 The Ld A.R, on the contrary, submitted that the AO has not excluded this amount in the assessment order. Accordingly, he submitted that the same was erroneously adjudicated by Ld CIT(A) and accordingly contended that this issue does not require adjudication by the Tribunal. We agree with the contentions of the revenue. Since this issue is not arising out of the assessment order, we decline to entertain this ground of revenue.

22.0 Ground no.9 raised by the revenue relates to the decision of Ld CIT(A) in allowing deduction u/s 80HHC of the Act in respect of 90% of export incentive by way of DEPB scheme. We notice that the Ld CIT(A) has held that the deduction u/s 80HHC is allowable on 90% of DEPB receipts, which is in accordance with the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Pink Star (245 ITR 757). Since the Ld CIT(A) has followed the binding decision of the jurisdictional High Court, we decline to interfere with the decision rendered by him on this issue.

23. Ground no.10 raised by the revenue relates to the decision of Ld CIT(A) in allowing prior period expenses debited to the Profit and Loss account. The assessee debited expenses of Rs.1,57,30,007/- relating to AY 1997-98 in the profit and loss account of the current year, viz., 1998-99. The tax auditor reported the same in the Tax audit report as prior period expenses and accordingly, the AO disallowed the above said claim holding it as prior period expenses. The Ld CIT(A) set aside this issue to the file of the AO with the direction to allow deduction for such expenses in the year of debit, in case it was not allowed in the earlier years.

23.1 We notice that the contention of the assessee before Ld CIT(A) was that these expenses have crystallized and quantified during the year relevant to AY 1998-99. The contention of the assessee is legally correct, but it is the duty of the assessee to prove that the said expenses got crystallized during the year relevant to AY 1998-99. Hence the direction of Ld CIT(A) that the expenses debited to Profit and Loss account, if not allowed in the earlier year, should be allowed is not in accordance with the established legal principles. Accordingly, we modify the order passed by Ld CIT(A) and direct the AO to allow expenses which have crystallized during the year under consideration. It is the responsibility of the assessee to prove that the said expenses got crystallized during the year under consideration.

24.0 Ground no.11 raised by the revenue relates to disallowance of interest expenses relatable to exempt income. The AO noticed that the assessee has borrowed funds and paid interest thereon. The assessing officer took the view that common funds have been used to make investments and accordingly disallowed proportionate interest expenses. The ld CIT(A) noticed that own funds available with the assessee was more than the value of investments. Accordingly, he held no disallowance out of interest expenses is called for.

24.1 We heard the parties and perused the record. We notice that the view taken by Ld CIT(A) gets support from the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505)(Bom). The jurisdictional Bombay High Court has held in the above said case that the interest disallowance u/r 8D(2)(ii) of I T Rules is not called for when the own funds available with the assessee is in excess of the value of investments. In our view, the ratio of the said decision shall apply to the facts of the present issue. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

25.0 Ground no.12 raised by the revenue relates to the disallowance of expenses incurred by the assessee on foreign travel by the wife of Managing Director along with him. The assessee had incurred a sum of Rs.4,11,981/- towards foreign travel expenses of Mrs Rupa Bajaj, wife of Managing director. The AO disallowed the same. The Ld CIT(A) noticed that the Managing director had travelled abroad for business purposes and Mrs

Rupa bajaj has accompanied him to assist the managing director to discharge his social cum business obligations. The Ld CIT(A) further noticed that similar expenditure incurred in AY 1986-87 has been allowed by the Tribunal. The Ld CIT(A) also relied upon the decision rendered by Hon'ble Kerala High Court in the case of CIT vs. Apollo Tyres Ltd (237 ITR 706) and the decision rendered by Mumbai bench of Tribunal in the case of Glaxo Laboratories Ltd (18 ITD 226).

Accordingly, the Ld CIT(A) deleted the disallowance.

25.1 The Ld D.R submitted that the foreign travel expenses incurred for wife of Managing director is not related to the business and hence the AO has rightly disallowed the same. The Ld A.R, however, submitted that the managing director has visited Netherlands and UK in connection with business meeting as a member of CII – CEO mission to UK for attending India Growth Fund Board meeting. His travel and his wife's travel have been approved by the Board. He further relied upon the decision rendered by Hon'ble Bombay High Court in the case of Alfa Laval (I) Ltd (149 taxman 29) to contend that there is no requirement of making any disallowance.

25.2 We heard the parties on this issue and perused the record. We notice that the Hon'ble jurisdictional High Court in the case of Alfa Laval (I) Ltd has upheld the deletion of disallowance of expenses incurred on the foreign trips of company's President only for the reason that there was concurrent finding of both Ld CIT(A) and the Tribunal that it has been incurred for the purposes of business. However, the jurisdictional high court has clarified that the case needs to be decided on its own facts primarily considering the business expediency. It was further held that this kind of claim is to be allowed only if it is connected with the business of the assessee.

25.3 In the instant case, we notice that the Managing director Shri Rahul Bajaj has visited Netherland & UK for attending India Growth fund Board Meeting. The Board resolution with regard to the expenses to be incurred on wife of Shri Rahul Bajaj reads as under:-

> "Further Resolved that air-fare and other expenses in connection with the above visit (including those of Smt. Bajaj) be and are hereby authorized to be borne by the Company."

We notice that the Board resolution did not bring out any business expediency. Further, the assessee has also not proved existence of any commercial or business expediency in incurring the foreign travel expenses of wife of M D except producing copy of Board resolution, in which also, no reason was given. There should not be any doubt that this is a factual aspect and the facts prevailing in each foreign trip has to be examined. Accordingly, the decision taken by the Tribunal in AY 1986-87 may not be relevant. We notice that the Ld CIT(A) has also not brought out the business or commercial expediency in incurring expenses on foreign trips of wife of M D, but deleted the addition on the basis of quantum of expenditure, status of the M D and approval by Board. These are not the proper reasons for allowing this type of expenditure, as held by the jurisdictional High Court. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and confirm the disallowance made by the AO.

26.0 Ground No.13 urged by the revenue relates to partial relief granted in respect of Repairs to buildings. The AO had disallowed a sum of Rs.1,65,87,602/- treating it as capital in nature and had allowed depreciation @ 10% thereon. The Ld CIT(A) granted partial relief by confirming addition to the tune of Rs.28,60,480/-. In the appeal filed by the assessee, we have adjudicated earlier in respect of addition confirmed by Ld CIT(A). The revenue is in appeal challenging the relief granted by the first appellate authority. The details of expenditure, which have been deleted by Ld CIT(A) is available at page 19 of the assessment order. A perusal of those expenditure would show that, all those expenses have been incurred on existing structures only, i.e., no new civil structure seems to have come into existence on incurring these expenses. The nature of expenses is false ceiling, road surfacing, fencing, tiles replacement, aluminum partition expenses. In our view, essentially these expenses are in the nature of repairs and maintenance expenses only. Accordingly, we are of the view that the Ld CIT(A) was justified in granting partial relief to the assessee.

27.0 Ground no.14 raised by the revenue relates to the disallowance of Rs.7,42,136/- relating to proportionate amount of lease premium paid for leasehold land written off. This is a recurring

issue. The Tribunal had deleted this disallowance in AY 1995-96 by following the decision rendered by Hon'ble Gujarat High Court in the case of DCIT vs. Sun Pharmaceuticals Ind. Ltd. (2010)(329 ITR 479)(Guj) and other two decisions. The above said decision was followed in AY 1996-97 and 1998-99. Accordingly, consistent with the view taken by the co-ordinate benches in the assessee's own case in the earlier years, we hold that the Ld CIT(A) was justified in deleting this disallowance.

28.0 Ground no.15 raised by the revenue relates to the disallowance of Rs.17,25,631/- relating to expenses incurred on issue of bonus shares. The assessee disallowed the above said amount in the return of income, but appended a note to the same stating that this is allowable as deduction. The AO did not make any comment on it. Before Ld CIT(A), the assessee raised a claim for deduction of above expenses. The first appellate authority allowed the same by following the decision rendered by the Tribunal in the assessee's own case in AY 1995-96. We notice from the order passed in AY 1995-96 by the co-ordinate bench that the Tribunal has followed the decision rendered by Hon'ble Supreme Court in the case of CIT vs. General insurance Corporation (2006)(286 ITR 232) is allowable as deduction, since the issue of bonus shares is mere reallocation of company's funds from Reserves to Capital. Accordingly, we uphold the order passed by Ld CIT(A).

29. Ground no.16 & 17 raised by the revenue are general in nature.

30. In the result, the appeals filed by the assessee and revenue are partly allowed.

Order pronounced in on 22.8.2023.

Sd/-	Sd/-
(Rahul Chaudhary)	(B.R. Baskaran)
Judicial Member	Accountant Member

Mumbai.; Dated : 22/08/2023

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT
5. DR, ITAT, Mumbai.

6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

PS