IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER

ITA No.2482/PN/2012
(Assessment Year: 2008-09)

Varroc Engineering Pvt. Ltd.,
E-4, MIDC Industrial Area,
Waluj, Aurangabad – 431136

PAN: AAACV2420J .... Appellant

Vs.

The Asst. Commissioner of Income Tax
Circle – 1, Aurangabad .... Respondent

Appellant by	:	Shri Kishore Phadke
Respondent by	:	Shri A.K. Modi
Date of hearing	:	30-10-2014
Date of pronouncement	:	30-12-2014

ORDER

PER SUSHMA CHOWLA, JM:

This appeal filed by the assessee is against the order of Asst.CIT, Circle – 1, Aurangabad dated 18.10.2012 relating to assessment year 2008-09 passed under section 143(3) r.w.s. 144C of the Income-tax Act.

2. The assessee has raised the following grounds of appeal:-

*1. The learned AO and learned DRP erred on facts in considering **Interest Receivable** from AE Company at Rs.28,627,089/- instead of Rs.29,182,060/- (as per 3CEB).*

*2. The learned AO and learned DRP erred in law and on facts in determining Arm's Length Price of **Interest Receivable** transaction from AE Company of the appellant at Rs.73,356,721/- (Interest rate 12.25%) instead of Rs.29,182,060/- (Interest rate 4.75%) thereby making an net addition of Rs.44,174,661/- to the returned income.*

*3. The learned AO and learned DRP erred in law and on facts in disallowing **additional depreciation** u/s 32(1)(iia) on some of the items of fixed assets (plant and machinery) amounting to Rs 2,778,806/-.*

*4. The learned AO and learned DRP erred in law and on facts in treating **"Discount on pre-payment of Sales Tax Deferral liability" of Rs.**37,362,364/- as remission / cessation of liability, chargeable to tax u/s 41(1) of the ITA, 1961.*

5. The learned AO and learned DRP erred in law and on facts in recalculating the BOOK PROFIT of the assessee u/s 115JB by adding following items of

a) Disallowance of Sec 14A	*Rs.23,40,102/-*
b) Provision for bad & doubtful debts	*Rs.1,66,83,405/-*
c) Provision for Warranty	*Rs.82,80,000/-*
d) Provision for Diminution of Assets	*Rs.18,41,037/-*

6. The appellant craves leaves to add, modify, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.

3. The brief facts of the case are that, the assessee company was engaged in the business of manufacture of polymer engineering and electrical goods and wind power generation. During the year under consideration, the assessee had proposed to take over a running auto component business in Europe. The said business was carried on through a Italian and Poland company. The cost of acquisition of the said European business was to be around Euro 64.95 million and the loans from the overseas companies were to the tune of Euro 46 million and the contribution of the assessee was to the tune of Euro 18.95 million. The assessee company applied for proper prior approvals under the FEMA and made the application to the RBI for acquisition in Europe. The assessee raised a loan from Citi Bank during the year under consideration to the tune of Euro 11.12 millions. The claim of the assessee was that the loan was raised from Citi Bank for part

financing the European business acquisition and the said loan was raised @ interest LIBOR + 1.5% p.a. which ranges between 2 - 2.5% and the balance funds were from assessee's own capital and reserves of the company. The said funds were introduced in the Netherland Company as its own share for the European business acquisition. However, the said loan was partially converted into a soft loan from the assessee company to the Netherland Company. In view of the said transactions, the assessee entered into transactions with its AE with regard to disbursement of loan to AE and the repayment of loan by the AE. Further, international transactions on account of interest receivable from AE and conversion of share application money into money by the AE company were the other transactions carried on by the assessee with its AE. The assessee benchmarked the transaction by resorting to CUP method. The assessee furnished its return of income declaring total income at Rs.15,14,72,558/-. The Assessing Officer noted that during the year under consideration, the assessee had entered into international transaction for over 15 crores with its AE. The Assessing Officer after going through the report in Form No.3CEB was of the view that the case needs to be referred to the Transfer Pricing Officer (in short TPO) for determining arm's length price of the services availed by the assessee company. Consequently, reference was made under section 92CA of the Act for computing arm's length price.

4. The TPO noted that the assessee had undertaken the following international transactions with its AE under the provisions of section 92B of the Act.

Sr No.	Nature of Transactions	Amount of Transactions	Method Adopted
1.	Disbursement of loan	7,66,740	CUP
2.	Repayment of loan	2,79,10,000	CUP
3.	Interest receivable	2,91,82,060	CUP
4.	Part conversion of capital into loan	57,24,00,000	CUP
	Total	63,02,58,800	

5. The TPO issued a show cause notice to the assessee as no TP Study report had been submitted by the assessee. Further, transaction had taken place with the AE, under which, part of the capital had been converted into loan and the source of such capital was a loan obtained from Citi Bank. Further, the Indian banks were lending the money at the BPLR rates prevailing in India. However, the interest charged by assessee to AE on such loan was 4.75%. The assessee was show caused as to why interest amount could not be charged to AE at the Indian BPLR rates and accordingly, the TP adjustment be worked out. Since the assessee failed to furnish any reply to the said show cause notice, the TPO proceeded to work out the addition on the basis of the material available on record. The TPO noted that during the year under consideration, interest of Rs.2.91 crores had accrued to the assessee on loan granted to the AE i.e. on loan of Euro 10 million to Varroc European Holding BV, Netherlands, Euro 1,00,00,000 and repayment of loan of Euro 5,00,000 hence effectively loan during the year amounted to Euro 96,30,000 which was equivalent to Rs.55,21,57,400/-. The TPO further noted that the assessee company decided that the interest was charged @ 4.75% p.a. However, the rate prevailing as per six months LIBOR + 1.5% for the year ending 31.03.2008 was 6.79%. The TPO tabulated the transactions in respect of loans granted and interest charged under

para 8 at page 3 of the order under section 92CA(3) of the Act and proposed an adjustment of Rs.4,41,74,661/-.

6. The assessee had benchmarked its international transaction taking interest rate charged @ international rate of the disbursing bank i.e. Citi Bank. This benchmarking was adopted at foreign currency Citi Bank rates. The TPO observed that the transaction in question was not of similar nature. *The loan given to AE in the currency of that country is not a foreign currency demand with AE, because the loan given to the AE is in foreign currency of that country and thus loan is not in foreign currency for the AE. Further the AE cannot be credited to have the credibility akin to that of National Bank of that country. Accordingly benchmarking adopted by assessee is not found to be acceptable.* The assessee was thus requested to show cause as to why the lending rate for the purposes of comparability following CUP method be not taken at Banking Prime Lending Rate (BPLR), for the year ended March 31st, 2008. The assessee failed to furnish any reply or furnish any TP Study report. Since the assessee had converted the share capital into loan to AE by passing resolution on 25.01.2008, the TPO observed that *the assessee also submitted a timeline and events chart and the calculation of the interest charged on 25.08.2011.* The TPO thereafter, vide para 13 observed as under:-

> *"13. The issue which, can be raised here is that the BPLR is being taken for the comparison. It can be mentioned here that the loans are advanced to the company by the banks after proper assessment of the requirement of fund, quantum of fund, credit worthiness of the borrower, economic analysis of the industry in which the borrower exists and all other relevant parameters. These factors do have their bearing on the risk perception on the loans so advanced by the banks. It is the totalities of these aspects and factors which are determinative of the lending rate by the banks and the BPLR thus serves as guidance for the*

> *lending rate. The objectivity and applicability of BPLR can be taken as topnotch coupled with the factors associated with the borrower and the surrounding economic circumstances."*

7. The TPO was of the view that BPLR or the lending rates would be the correct indicator factor for the determination of the charge of interest on advance to the subsidiary because the assessee was not a banker. The TPO further observed that it was a fact of the case that the loan has been advanced by the assessee to its AE and for having advanced such loan, interest has been provided in the books of account. It is this interest rate, which has been agreed to be charged by the assessee, was to be benchmarked to determine its Arm's Length Price. As per TPO, the loan has been given to company which has no financial legs to run on and further, on its own it could not have arranged for the funds it required that the loan has been given by the principal to its subsidiary. In the given financial health of the subsidiary and for assuming the risk pertaining to loan in foreign currency, risks relating to foreign exchange fluctuation, the rate of interest charged should adequately compensate the assessee. Under the circumstances and in Arm's Length situation, the rate charged by the assessee should have been at least at BPLR in India, if not higher, was the view of TPO. The TPO in view thereof, held as under:-

> *"17. In view of the facts of the case, discussion as above, the Arm's Length Price computed by the assessee in respect of the International Transaction relating to provision of interest is not found to be acceptable. In the given facts and in third party situation, the assessee would never lend money to an unrelated entity end in any such case at the rate not less than BPLR. In normal circumstances if such advance has to be given to any unrelated entity, the rate of interest chargeable would be significantly higher than the BPLR. However, as such higher rate of interest more than BPLR is neither ascertainable nor determinable; it is considered suitable to benchmark this international transaction with benchmark rate of interest taken as BPLR. Accordingly, based or the rate of BPLR of the State Bank of*

India which is a premier bank, the rate at 12.25% for the bank, for the year ended 31st March, 2008 is taken as a benchmark rate. Accordingly, the differential quantum of interest on the loan to advance to the subsidiaries by the assessee, worked out at Rs.4,41,74,661 is added to the value of international transaction towards provision of interest receivable from the AE, to arrive at the Arm's Length Price of this international transaction. It may also be noted that at LIBOR + rates of 6.79%, benchmarking of the assessee company is not at an ALP. At this rate the assessee should have charged at least Rs.4,03,52,970, whereas it has charged only Rs.2,86,27,089. However, in as demonstrated in both the cases the assessee is not at an ALP."

8. The TPO thus, proposed an adjustment of Rs.4,41,74,661/- as arm's length price of the transactions. The said proposal was forwarded to the Assessing Officer and the same was confronted to the learned Authorized Representative for the assessee and a draft assessment order in this regard was proposed. The Dispute Resolution Penal (in short DRP) upheld the proposition of the TPO and consequently, the Assessing Officer made an addition of Rs.4,41,74,661/- being the Arm's Length Price adjustment of the international transactions.

9. The assessee is in appeal against the said adjustment made by the TPO and raised the issue vide grounds of appeal Nos.1 and 2. The learned Authorized Representative for the assessee pointed out that investment was made by the assessee to its wholly owned company Netherland to buy stake in Italian company. The investment made by the assessee company was twofold; i.e. in the shares of the Netherland's company and also the loan advanced to the said company for the first two years, loan continued at interest rate of 4.75%. As per the TPO, the assessee should have applied BPLR rate. However, since the assessee was making international lending, charged the international rates and not domestic rates. The

borrowings for the said investments were made from Citi Bank which in turn, charged interest. The assessee claims that substantive part of the deal was in capital investment in wholly owned company, in turn acquisition of company in Italy. The loan received from Citi Bank was utilized for two purposes i.e. acquisition of share capital and also for international funding. The learned Authorized Representative for the assessee further pointed out that it had borrowed on LIBOR + interest rates i.e. the Japanese base LIBOR+ rates which was lower than US LIBOR+ rates and advanced the same by charging LIBOR + rates. The charging of the interest on loans in assessment years 2008-09 and 2009-10 was @ 4.75%. However, in assessment year 2010-11, the whole loan was converted into share application money. Further plea of the assessee was that it applied the internal CUP method of borrowing at international rate. So, there was no merit in applying domestic rates to compute the Arm's Length Price adjustment. The learned Authorized Representative for the assessee further pointed out that the lending was made at LIBOR+ rates. Further, the reliance was placed on the following decisions by the learned Authorized Representative for the assessee.

a. Siva Industries & Holdings Ltd. v. ACIT, Chennai [2011] 11 taxmann.com 404 (Chennai)

b. Tech Mahindra Limited [2011] 12 taxmann.com 132 (Mum)

c. Hinduja Global Solutions Ltd. [2013] 35 taxmann.com 348 (Mumbai – Trib.)

d. Wipro Ltd Vs. DCIT ITA No:624 & 1178/Bang/2007 Dated:31.10.2008 for the AY 2003-04

10. The learned Departmental Representative for the Revenue pointed out that the finding of DRP at page 4 was that the assessee

had invested its own funds and borrowed funds. Further, it was pointed out by the learned Departmental Representative for the Revenue that the Transfer Pricing was to be done when compared with the international transactions. It was argued by the learned Departmental Representative for the Revenue that no person would charge something less than the cost. Our attention was drawn to the page 17 of the TPO order wherein, LIBOR + rates equal to the rate of 6.79%.

11. We have heard the rival contentions and perused the record. The first issue raised in the present appeal is against the transfer pricing adjustment made in the hands of the assessee. The assessee was engaged in the manufacture of polymer engineering and electric goods and wind power generation. The assessee was a part of Varroc group, catered to the needs of Indian Auto Component Industry. During the financial year, the assessee had undertaken the following international transactions with its associated enterprises:-

Sr No.	Nature of Transactions	Amount of Transactions	Method Adopted
1.	Disbursement of loan	7,66,740	CUP
2.	Repayment of loan	2,79,10,000	CUP
3.	Interest receivable	2,91,82,060	CUP
4.	Part conversion of capital into loan	57,24,00,000	CUP
	Total	63,02,58,800	

12. The assessee had partly converted its capital invested in the associated enterprises into loan transactions and the source of the said capital was loan obtained from Citi bank. The TPO noted that the assessee had diverted part of the loan raised from Citi bank to its associated enterprises, for raising the loan charge had been created

against the assets of the assessee company. As per TPO, the Indian banks were lending the money at BPLR rates prevailing in India on the security of the assets of the company, whereas the assessee had charged interest rate of 4.75% to its associated enterprises on such loan disbursement.

13. During the year under consideration, interest of Rs.2,91,82,060/- had accrued as interest on loan granted to its associated enterprises. The assessee had granted loan to M/s. Varroc European Holding BV Netherlands Euro 1,00,00,000 and repayment of loan of Euro 5,00,000, hence during the year, the effective loan amounted to Euro 96,30,000 which was equivalent to Rs.55,21,57,400/-. The assessee had charged interest @ 4.75% per annum. As per the TPO, the rate prevailing as per LIBOR +, for the year ending 31.03.2008 was 6.79%. The TPO tabulated the transactions of granting of loan and the interest charged by the assessee and computed the proposed adjustment as under:-

		(Amt. in Rs.)
	Description	Varroc European Holding BV Netherlands
[A]	Loan advanced / Balance of loan at the year ending 31.03.2008	Rs.59.43 Crs. (figures as per the financials)
[B]	Base charge adopted by the assessee	LIBOR
[C]	Base charge adopted by the assessee to benchmark the transaction	However, rate charged by the assessee = 4.75%
[D]	Bank Prime lending rate (BPLR) of SBI as on 31.03.2008	12.25%
[E]	RATE CHARGED BY THE ASSESSEE	4.75%
[F]	**Interest charged by the assessee**	**Rs.2,86,27,089**
[G]	The rate prevailing as per 6 months **LIBOR** for the year ended 31.03.2008 was 6.79%	Rs.4,03,52,970
[H]	Interest @ 12.25% as per BPLR of SBI	Rs.7,28,00,000
[I]	Difference in BPLR and assessee's amount	Rs.4,41,74,661
[J]	Proposed adjustment	Rs.4,41,74,661

14. The assessee had benchmarked its international transactions taking the interest rate charged at international rates of the disbursing

bank i.e. Citi Bank. However, the TPO was of the view that loan given to the associated enterprises in the currency of that country was not a foreign currency deposit with associated enterprises. On the other hand, the assessee had borrowed the money on banking prime lending rates and was show caused by the TPO as to why lending rate for the purpose of comparability following CUP method should not be taken. The TPO in view of the related discussion found that the arm's length price computed by the assessee in respect of the international transactions relating to provision of interest, was not acceptable. The view of the TPO was that in normal circumstances where any advance had to be given to any unrelated entity, then the rate of interest chargeable would be higher than the BPLR. Since the higher rate of interest more than BPLR was neither ascertainable nor determinable, the TPO considered it suitable to benchmark the international transactions with benchmark of interest taken as BPLR. Accordingly, rate of 12.25% i.e. the BPLR of the SBI was taken as benchmark rate and the differential quantum of interest on the loan advanced to the subsidiaries, amounting to Rs.4,41,74,661/- was added to the value of international transactions to arrive at the arm's length price of the international transactions. The TPO dis-regarded the LIBOR+ rate of 6.75% as not the benchmark applied by the assessee as according to that rate, the interest should have been charged at Rs.4,03,52,970/- whereas it had only charged Rs.2,86,27,089/-. In view thereof, an adjustment of Rs.4,41,74,661/- was made in the hands of the assessee. The said order of TPO has been upheld by DRP.

15. In the facts of the present case, the assessee had advanced money in the form of share application money which were later

converted into loan on the advice of European Consultants. On such advance made to its associated enterprises, the assessee had charged interest @ 4.75%. While benchmarking the international transactions what has to be seen is the comparison between related transactions i.e. where the assessee has advanced money to its associated enterprises and charged interest then the said transaction is to be compared with a transaction as to what rate the assessee would have charged, if it had extended the loan to the third party in foreign country. Once there is a transaction between the assessee and its associated enterprises in foreign currency, then the transaction would have to be looked upon by applying the commercial principles with regard to the international transactions. In that case, the international rates fixed being LIBOR+ rates would have an application and the domestic prime lending rates would not be applicable. The assessee has further explained that it had raised the loan from Citi Bank on international rates for the purpose of investment in the share application money of its associated enterprises, which in turn was partly converted from capital into loan. Where the assessee had a comparable of borrowing loan on international rates and advancing to its associated enterprises, then the said comparable was to be applied for benchmarking the transaction of advancing the loan on interest to its associated enterprises. The assessee had charged interest rate of 4.75% on the loan advanced to the associated enterprises. The assessee on the other hand, claims that it had borrowed the money on LIBOR+ rates i.e. international rates, which were Japanes based LIBOR+ rates which were lower than the US based LIBOR+ rates. The plea of the assessee before us was that it had advanced the loan to its associated enterprises on LIBOR+ rates i.e. 4.75%. In the totality of

the facts and circumstances where the assessee has the internal CUP of operating at international rates available and since the said loan raised by the assessee at international rates was advanced to its associated enterprises, we find no merit in the order of the TPO in applying the domestic loan rates i.e. BPLR rates for benchmarking transaction of charging of interest on the loans advanced to the associated enterprises by the assessee. Where the assessee had made the borrowings on LIBOR+ rates and advanced the same at LIBOR+ rates, then the said transaction is at arm's length price and there is no merit in any adjustment to be made on this account.

16. The Chennai Bench of the Tribunal in M/s. Siva Industries & Holdings Limited Vs. ACIT, Chennai (2012) 26 taxmann.com 96 (Chennai) had held as under:-

> *"The assessee had given the loan to the associated enterprises in US dollars, and assessee was also receiving interest from the associated enterprises in Indian rupees. Once the transaction between the assessee and the associated enterprises was in foreign currency and the transaction was an international transactions, then the transaction would have to be looked upon the applying the commercial principles in regard to international transactions. If that was so, then the domestic prime lending the rate would have no applicability and the international rate fixed being LIBOR would come into play. In the circumstances, the view that LIBOR rate had to be considered while determining the arm's length price interest rate in respect of the transaction between the assessee and the associated enterprises was to be upheld. As it was noticed that the average of the LIBOR rate for 1-4-2005 to 31-3-2006 is 4.42 per cent and the assessee had charged interest at 6 per cent which was higher than the LIBOR rate, no addition on this account was liable to be made in the hands of the assessee. In the circumstances, the addition made by the Assessing Officer on this count was deleted."*

17. The Mumbai Bench of the Tribunal in DCIT Vs. Tech Mahindra Ltd. (2011) 12 taxmann.com 132 (Mum.) held that where there is a choice between the interest rate of currency other than the currency in

which transaction had taken place and the interest rate in respect of the currency in which transaction has taken place, the latter should be adopted. Where the transaction is between the assessee and its associated enterprises in foreign currency and the transaction is international transaction, then the transaction would have to be looked upon by applying commercial principles in regard to international transactions.

18. Similar principle has been laid down by the Mumbai Bench of the Tribunal in Hinduja Global Solutions Ltd. Vs. ACIT (2013) 35 taxmann.com 348 (Mumbai – Trib.).

19. In the entirety of the above facts and circumstances, we hold that where the assessee had entered into a transaction with its associated enterprises in foreign currency, and the transactions were international transactions, then the same had to be looked into by applying commercial principle in regard to international transactions. In the facts of present case, the assessee had borrowed the loan from Citi Bank and advanced the same on LIBOR+ rates to its associated enterprises, then the said transaction with its associated enterprises is within arm's length price. The TPO / AO thus, directed to re-compute the arm's length price of the international transactions. Another aspect to be kept in mind is the plea of the assessee with regard to the interest receivable. The assessee had also raised the issue that the TPO had adopted the interest receivable from associated enterprise company at Rs.2,86,27,089/- instead of Rs.2,91,82,060/- which is disclosed in the audit report in Form No.3CEB. The Assessing Officer is also directed to verify the claim of the assessee in this regard and compute the arm's length price of the international transactions.

Reasonable opportunity of being heard shall be afforded to the assessee by the Assessing Officer / Transfer Pricing Officer. The grounds of appeal Nos.1 and 2 raised by the assessee are thus, allowed as indicated above.

20. The issue in ground of appeal No.3 raised by the assessee is against the disallowance of additional depreciation under section 32(1)(ii)(a) of the Act on some of the items of fixed assets amounting to Rs.27,78,806/-.

21. The Assessing Officer on the examination of the books of account and depreciation chart, noted that the assessee had claimed excess depreciation under the block of Plant & Machinery and also claimed additional depreciation. The Assessing Officer found that the nature of the assets did not fall under the block Plant & Machinery, but pertained to the block of Furniture & Fixtures, on which the depreciation was allowable on lower rates compared to the rates on which the depreciation was allowable on Plant & Machinery. Further, additional depreciation was not allowable on the said Furniture & Fixture items. The assessee was show caused to explain its claim and in response, the assessee contended that they were part of the Plant & Machinery. The Assessing Officer at pages 4 and 5 of the assessment order considered each of the items and held that since the items were not covered under Plant & Machinery, no additional depreciation was allowable on the same. The DRP upheld the order of Assessing Officer, against which the assessee is in appeal.

22. The learned Authorized Representative for the assessee pointed out that items enlisted at page 3 of the assessment order were used for

the manufacturing of activities carried on by the assessee and functional test had to be applied in order to determine the nature of the assets. The learned Authorized Representative for the assessee placed reliance on the ratio laid down by Pune Bench of the Tribunal in Serum Institute of India Ltd. Vs. ACIT (2012) 18 taxmann.com 305 (Pune).

23. The learned Departmental Representative for the Revenue pointed out that the perusal of list of items would reflect that none of these were the integral part of the manufacturing activity and consequently, were not to be considered as part of Plant & Machinery.

24. We have heard the rival contentions and perused the record. The Assessing Officer at page 3 of assessment order has tabulated the list of items which are as under:-

Sr No	Items
1	Racks
2	Trolley
3	Air Conditioner
	Table
4	Dispenser
5	Cooler
6	TV Music system
7	Freeze / Refrigerator
8	Handicam
9	Projector
10	Scanner
11	Industrial Fan
12	UPS Inverter
13	Attendance Card Reader
14	EPBX System
15	Energy Saver

25. At page 4 of the assessment order, the Assessing Officer has given the break-up of the value of the assets, the depreciation and additional depreciation claimed and has worked out the depreciation to be allowed @ 10%, which is as under:-

Sr No	Items	Value		Depreciation	Addl. Depreciation claimed	Depreciation allowed @ 10% (B)	Difference (disallowed (A-B)	Depreciation disallowed
		More than 181 days	Less than 181 days					
1	Racks	2016664	359486	329460	439280	219640	109820	439280
2	Trolley	1601828	2078828	396184	528246	264123	132061	528246
3	Air Conditioner	1348845	866424	267308	356411	178205	89102	356411
	Table	1895287	554356	250868	334491	167245	83622	334491
4	Dispenser	288738	0	43309	57746	38873	14436	57746
5	Cooler	683161	142313	110123	146831	73415	36707	146831
6	TV Music system	33870	32181	5080	6774	3387	1693	6774
7	Freeze / Refrigerator	16640	12267	3415	4554	2277	1138	4554
8	Handicam	111416	66991	21736	28982	14491	7245	28982
9	Projector	311130	0	46670	62226	31113	15556	62226
10	Scanner	3348	0	502	670	335	167	670
11	Industrial Fan	59968	0	8995	11994	5997	2998	11994
12	UPS Inverter	39257	584724	49743	66324	33162	16581	66324
13	Attendence Card Reader	315082	512545	85703	114271	57135	28568	114271
14	EPBX System	267363	0	40104	53473	26736	13368	53473
15	Energy Saver	0	107767	8083	10777	5388	2694	10777
	Total			**1667283**	**2223050**	**1111522**	**555756**	**2223050**

26. The first item was the Racks which are utilized for keeping any type of material or goods and cannot form part of the Plant & Machinery. We are of the view that the Racks cannot be considered as part of block of Plant & Machinery and no additional depreciation is allowable on the same. Further, depreciation @ 10% is to be allowed on such Racks being Furniture & Fixtures.

27. The next item is Trolley which as per the Assessing Officer is part of the Furniture & Fixtures as the same is used for transferring material and goods from one place to another. The value of the Trolley is Rs.16.01 lakhs and Rs.20.78 lakhs. Keeping in mind the nature of asset and functional test, we find no merit in the order of Assessing

Officer in this regard and direct the Assessing Officer to consider the same within block of Plant & Machinery and allow the depreciation and additional depreciation on the same.

28. The next items were Air-conditioner, TV Music System and Industrial Fan. The Air-conditioner is Plant & Machinery on which the depreciation at higher rate is allowable. However, no additional depreciation on the same is allowable since the same cannot part take the machinery used for manufacturing activities. Further, TV Music System is an electronic item on which higher rate of depreciation is allowable. However, no additional depreciation is allowable on such TV Music System. The Industrial Fan being utilized as part of the manufacturing activity, was entitled to the claim of higher depreciation and also additional depreciation on Plant & Machinery.

29. Next items considered by the Assessing Officer were the Water Cooler, Dispenser, Refrigerator, Handicam, Projector and Scanner. All these items are electronic items and are to be considered under the said head. However, the assessee is not entitled to claim of additional depreciation as the same were not part and parcel of manufacturing activity carried on by the assessee.

30. Another group of items were UPS, Inverter, Attendance Card Reader, EPBX System and Energy Saver, which are electronic items but are not part and parcel of Plant & Machinery utilized for manufacturing activity. The assessee was not entitled to the claim of additional depreciation on the same. Thus, ground of appeal No.3 raised by the assessee is partly allowed.

31. The issue in ground of appeal No.4 raised by the assessee is in treating Discount on pre-payment of sales tax deferral liability as remission / cessation of liability chargeable to tax under section 41(1) of the Act.

32. The brief facts relating to the issue are that, during the course of assessment proceeding, the Assessing Officer observed that the assessee had credited under the head 'other income' a sum of Rs.3.73 crores on account of surplus of premature payment of sales tax deferral loan and subsequently, the same was reduced from the total income in the computation of income filed by the assessee. The Assessing Officer was of the view that the said surplus is taxable under section 41(1)(a) of the Act. The assessee had placed reliance on the ratio laid down by Special Bench of Mumbai Tribunal in Sulzer India Ltd. Vs. JCIT (2010) 42 SOT 457 (Mumbai). The Assessing Officer noted that before the Special Bench, the question was modified during the course of hearing and it was held that there was no remission of any liability on the difference between payment of net percent value against the future liability of credit by the assessee and such payment of net percent value of future liability, in our opinion, classified as remission or cessation of liability so as to attract the provisions of section 41(1) of the Act. The Assessing Officer disallowed the claim of the assessee, which was upheld by the DRP.

33. The learned Authorized Representative for the assessee pointed out that the issue was squarely covered by the ratio laid down in Sulzer India Ltd. Vs. JCIT (2010) 42 SOT 457 (Mumbai).

34. The learned Departmental Representative for the Revenue had placed reliance on the order of Assessing Officer.

35. We have heard the rival contentions and perused the record. The issue arising in the present appeal is with regard to the Sales Tax Deffered Scheme under which, the assessee had made advance payment of sales tax. As per the Scheme, where the payments were made in advance, then the assessee was to deposit a lesser amount as compared to the amount of sales tax collected, resulting in credit of Rs.3.73 crores. The same was not recognized as income by the assessee. However, the Assessing Officer was of the view that the surplus on premature payment of Sales Tax Deffered Loan, was taxable under section 41(1) of the Act.

36. We find that similar issue arose before Mumbai Special Bench of the Tribunal in Sulzer India Ltd. Vs. JCIT reported in (2010) 42 SOT 457 (Mum.) (SB), wherein it was held as under:-

> *"Having regard to the law laid down by the Supreme Court and by the High Courts in various decided cases, it was found that to invoke the provisions of section 41(1), the first requirement is as to whether in the assessment of the assessee, an allowance or deduction has been made in respect of loss, expenditure or the trading liability incurred by the assessee. In the case of the assessee the revenue's plea was that the assessee had obtained the benefit of deduction of sales tax liability under section 43B as per the CBDT's Circular No.496, dated 25-9-1987. However, it was found that in the said circular it had been clearly stated vide para 5 that '...the statutory liability shall be treated to have been discharged for the purposes of section 43B [Emphasis supplied]. Thus, the benefit of deduction was allowed for the purpose of section 43B only and not under any other provisions of the Act. There was no dispute that the Assessing Officer had also applied the aforesaid Board Circular while giving the benefit of deduction under section 43B. It is settled law that the circulars are binding on the department. It is also settled law that the Court cannot add words to statute or read words into it which are not there. This being so, it was to be opined that the first requirement of section 41(1) has not been fulfilled in the facts of the case.*

The other requirement of section 41(1) is that the assesses must have subsequently: (i) obtained any amount in respect of such loss and expenditure, or (ii) obtained any benefit in respect of such a trading liabilities by way of remission or cessation thereof. In the instant case, the sales tax collected by the assessee during the years 1989-90 to 2001-02 amounting to Rs. 752.01 lakhs was treated by the State Government as a loan liability payable after 12 years in six annual/equal installments. Subsequently, pursuant to the amendment made to the fourth proviso to section 38(4) of the Bombay Sales Tax Act, 1959 which provides that where an entitlement certificate has been granted to the eligible unit for availing of the incentives by way of deferment of sales tax, etc., such eligible unit may, in respect of the periods during which the said certificate is valid, at its option, prematurely pay in place of the amount of tax deferred by it an amount equal to the net present value of the deferred tax as may be prescribed and on making such payments, in the public interest, the deferred tax shall be deemed to have been paid. In the instant case the assessee had opted for the offer of SICOM, an implementing agency of the State Government and repaid an amount of Rs. 337.13 lakhs to SICOM which according to the assessee represented the NPV of the future sum as determined and prescribed by SICOM. The said payment was made to SICOM on 30-12-2002 as per certificates dated 25-8-2003. It has already been demonstrated that NPV is equivalent to future value of the sum. In other words, what the assessee was required to repay after 12 years in six annual/equal instalments, the same was repaid by the assessee, in the public interest, as NPV is equivalent to the Future Value of the sum. Further, there was no iota of evidence to show that there had been any remission or cessation of liability by the State Government. Thus, one of the requirements spelt out for the applicability of section 41(1)(a) had not been fulfilled in the facts of the instant case."

37. The issue arising in the present appeal is identical to the issue before the Mumbai Special Bench of the Tribunal in Sulzer India Ltd. Vs. JCIT (supra) and following the same parity of reasoning, we hold that the deffered sales tax liability i.e. the difference between the payments of the net present value against future liability credited by the assessee under the capital reserve account in its books of account, was a capital receipt and the same could not be termed as remission / cessation of liability, consequently, no addition could be made under the provisions of section 41(1) of the Act. Reversing the order of

authorities below, we allow the claim of the assessee. The ground of appeal No.4 raised by the assessee is thus, allowed.

38. The issue raised by the assessee in ground of appeal No.5 is against the re-calculation of book profit under section 115JB of the Act by making various additions.

39. The learned Authorized Representative for the assessee pointed out that it was only pressing the disallowance to section 14A of the Act being added back to the book profits under the provisions of section 115JB of the Act as an adjustment and was not pressing the other three additions i.e. on account of Provision for bad & doubtful debts, Provision for Warranty and Provision for Diminution of Assets.

40. The limited issue before us is whether while computing the book profits under section 115JB of the Act, the Assessing Officer can consider the disallowance under section 14A of the Act and add the same to the profits of the business in order to compute the book profits under section 115JB of the Act.

41. We find similar issue arose before Chandigarh Bench of the Tribunal in Nahar Industrial Enterprises Ltd., Vs. DCIT in ITA No.897/Chd/2012 relating to assessment year 2008-09, vide order dated 10.09.2014 and it was held as under:-

> *"6. We have heard the rival contentions and perused the record. We find that recomputation of book profits under section 115JB of the Act arose before the Tribunal in ACIT Vs. M/s Nahar Capital & Financial Services Ltd. and the Tribunal in ITA No.870/Chd/2013 relating to assessment year 2010-11 vide order dated 6.6.2014 held as under:*

"5. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in relation to computation of book profits under section 115JB. The Assessing Officer while computing the book profits had added back disallowance worked out under section 14A of the Act to the net profits of the business. The plea of the assessee in this regard was that the assessee itself had disallowed sum of Rs.42,37,722/- on account of disallowance under section 14A of the Act under regular provisions and Rs.32,86,397/- under section 115JB provision in its return of income on proportionate basis. The Assessing Officer recomputed the book profits under section 115JB of the Act and the CIT (Appeals) deleted the same against which the Revenue is in appeal.

6. We find that similar issue of computation of book profits under section 115JB of the Act in view of readjustment on account of disallowance under section 14A of the Act arose before the Tribunal in assessee's own case relating to assessment year 2008-09. The Tribunal in ITA No.1120/Chd/2011 vide order dated 27.7.2012 in turn relying on an earlier decision of the Chandigarh Bench of the Tribunal in DCIT Vs. Ind Swift Ltd. in ITA No.729/Chd/2009 relating to assessment year 2006-07 – date of order 30.11.2009 held as under:

> *5. We have heard the rival contentions and perused the record. The only issue arising in the present appeal is in respect of computation of book profits under section 115JB of the Act. The Assessing Officer while computing the said book profits had added back the disallowance worked out under section 14A of the Act of the net profits of the business and computed the tax liability of the assessee company thereafter. We find that the issue in the present case is covered by the order of the Chandigarh Bench of the Tribunal in DCIT Vs. Ind-Swift Ltd. (supra) where vide order dated 30.11.2009 vide para 8 it was held as under:*
>
> > *"8. The ground 1(iv) raised by the Revenue is against the computation of book profits u/s 115 JB of the Act. The Assessing Officer while computing the book profit u/s 115 JB of the Act had added back the disallowance worked u/s 14A of the I.T. Act to the net profit shown in the profit and loss account and computed the profits for the year. The CIT (A) reworked the book profits by excluding the said notional disallowance u/s 115 JB of the Act, in turn following the ratio laid down by the Apex Court in Apollo Tyres Ltd. 255 ITR 273 (SC). We are in conformity with the order of CIT(A). The*

> *adjustments, if any, to be made to the profit shown in the profit and loss account, are provided in the section 115 JB of the Act itself. There is no provision in the Act to make adjustment on account of notional disallowance worked out under section 14A of the Act. The Hon'ble Supreme Court in Apollo Tyres Ltd. (supra) held that the profits of the business are not to be disturbed for computing the book profits except in the circumstances provided under the said Act. We confirm the order of CIT in this regard and dismiss the ground No.1(iv) raised by the Revenue."*
>
> *6. The issue arising in the present appeal is identical to the issue before the Chandigarh Bench of the Tribunal in DCIT Vs. Ind-Swift Ltd. (supra) and following the same we direct the Assessing Officer to adopt the book profits as per the Profit & Loss Account and do not make addition on account of disallowance worked out under section 14A of the Act, as such disallowance is computed under the normal provision of the Act, which are not applicable for determining book profits under section 115JB of the Act.*
>
> *7. Similar issue was arose in assessment year 2009-10 in assessee's own case in ITA No.1353/Chd/2012 – order dated 16.4.2013. Following the parity of reasoning and issue being identical we find no merit in the aforesaid addition made by the Assessing Officer and upholding the order of the CIT (Appeals) we dismiss the grounds of appeal raised by the Revenue.*

> *7. The issue before us is identical to the issue before the Tribunal in the case of sister concern and following the same parity of reasoning we direct the Assessing Officer to exclude the disallowance made under section 14A of the Act, while computing the book profits u/s 115JB of the Act. We direct the Assessing Officer to recompute the book profits under section 115JB of the Act. The ground of appeal raised by the assessee is allowed."*

42. The issue before us is identical to the issue before the Chandigarh Bench of the Tribunal in Nahar Industrial Enterprises Ltd., Vs. DCIT (supra) and following the same parity of reasoning we direct the Assessing Officer to exclude the disallowance made under section 14A of the Act, while computing the book profits u/s 115JB of

the Act. Accordingly, we direct the Assessing Officer to re-compute the book profits under section 115JB of the Act. The ground of appeal No.5 is thus, allowed.

43. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 30th day of December, 2014.

Sd/-	**Sd/-**
(G.S. PANNU)	**(SUSHMA CHOWLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Pune, Dated: 30th December, 2014.

GCVSR

Copy of the order is forwarded to: -

1) The Assessee;
2) The Department;
3) The DRP, Pune;
4) The concerned CIT(A);
5) The DR "B" Bench, I.T.A.T., Pune;
6) Guard File.

By Order

//True Copy//

Assistant Registrar
I.T.A.T., Pune