IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'A' HYDERABAD

ITA No.490/H/2007 : Assessment Year 2000-01
ITA No.491/H/2005 : Assessment Year 2003-04
ITA No.465/H/2005 : Assessment Year 2000-01
ITA No.1261/H/2003 : Assessment Year 2000-01
ITA No.446/H/2006 : Assessment Year 2001-02
ITA No.447/H/2006 : Assessment Year 2002-03
ITA No.464/H/2005 : Assessment Year 1997-98
ITA No.243/H/2008 : Assessment Year 2004-05

SINGARENI COLLIERIES COMPANY LTD
KOTHAGUDAM
PAN NO:AACT 8873F/T101

Vs

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1, KHAMMAM

ITA No.249/H/2008
Assessment Year 2004-2005

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1, KHAMMAM

Vs

SINGARENI COLLIERIES COMPANY LTD
KOTHAGUDAM
PAN NO:AACT 8873F/T101

G C Gupta, VP and Chandra Poojari, AM

Dated: March 31, 2011

.ORDER

Per: Chandra Poojari:

These appeals preferred by the assessee as well as by Revenue are directed against the different order passed by the CIT(A) – Vijayawada and pertains to the assessment years 1997-98, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05.

2. The first common ground in assessee's appeal in ITA No.1261/H/2003, 446/H/2006, 447/H/2006 and 491/H/2007 is with regard to disallowance of claim for reduction of profits earned during sick period while computing book profit u/s 115JA(2)(vii) of the IT Act 1961 which is relevant to assessment years 2000-01,

2001-02, 2002-03 and 2003-04. In these assessment years, the assessee has claimed that the amount of profit is to be deducted for the calculation of book profit because the assessee is a sick industrial company. But the assessing officer is of the opinion that the assessee company became sick unit during the assessment year 1992-93 and the entire net worth of the assessee company exceeded cumulative losses during the assessment years 1994-95 itself. So the deduction of impugned profit was not allowable as deduction in this assessment years because the relevant year in which the assessee's net worth exceeded the cumulative losses in these assessment year 1994-95 and not these assessment years viz., 2000-01, 2001-02, 2002-03 and 2003-04. Against this, the assessee is in appeal before us.

3. The Learned Authorized Representative for the assessee submitted that the assessee company is a public sector undertaking jointly owned by the AP State Govt. And the Central Govt. The AP state Govt. Owns majority of the shares in this undertaking. The company suffered loses for a number of years in the past and was declared a sick industrial company as defined under the sick industries companies (special Provisions) Act, 1985. In the assessment year 2000-01, while computing the book profits as defined in Explanation to section 115JA(2) of the IT Act 1961, the company reduced a sum of Rs.3,75,30,28,000 being the profits earned by the company during the period of sickness in assessment years 1992-93 and 1993-94.

4. He submitted that the company earned a profit of Rs.3,75,30,28,000/- during the period of sickness in assessment year 1992-93 and 1993-94. The facts relating to this claim are not disputed and he drew our attention to the provisions of S.115JA of the IT Act 1961 which reads as follows:

1. Notwithstanding anything contained in any other provisions of this act, where in the case of an assessee, being a company the total income, as computed under this act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 (before the 1st day of April, 2001) (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty percent of such book profit.

2. Every assessee, being a company shall for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of parts II and III of Schedule VI to the Companies Act 1956 (1 of 1956).

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation: for the purpose of this section, 'book profit' means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub section (2), as increased by:

a) The amount of income tax paid or payable, and the provision therefore or

b) The amounts carried to any reserves by whatever name called or

c) The amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities or

d) The amount by way of provision for losses of subsidiary companies or

e) The amount or amounts of dividends paid or proposed or

f) The amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter IIII applies

g) The amount or amounts set aside as provision for diminution in the value of any asset.

h) If any amount referred to in clauses (a) to (g) is debited to the profit and loss account, and as reduced by

i) The amount withdrawn from any reserves or provisions if any, such amount is credited to the profit and loss account.

Provided that, where this section is applicable to an assessee in any previous year including the relevant previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April 1997 but ending before the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation: or

ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account ; or

iii) The amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account

Explanation: for the purposes of this clause : -

a) The loss shall not include depreciation

b) The provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil: or

iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

v) the amount of profits derived by an industrial undertaking located in an industrially backward state or district as referred to in sub section (4) and sub section (5) of section 80IB for the assessment years such industrial undertaking is

eligible to claim a deduction of hundred percent of the profits and gains under sub section (4) of sub section (5) of section 80IB or

vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined in the explanation to sub section (4) of section 80IA and subject to fulfilling the conditions laid down in that sub section: or

vii) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation : For the purposes of this clause, 'net worth' shall have the meaning assigned to it in clause (ga) of sub section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or

viii) the amount of profits eligible for deduction u/s 80HHC computed under clause (a) (b) or (c) of s/s (3) or subsection (3A) as the case may be, of that section, and subject to the conditions specified in sub sections (4) and (4A) of that section;

The amount of profits eligible for deduction under section 80HHE, computed under sub section (3) of that section.

5. Further, he submitted that the computations of book profits involve the reduction of clauses (i) to (ix) of "Explanation to S.115JA (2) and in particular to clause (vii) thereof of which the present appeal relates to. It may be noted at the outset that the assessee is not claiming "exemption" from the applicability of provisions of S.115JA of the Income Tax Act, 1961. The relevant provisions also do not provide for exemption of any company from the rigours of book profit taxation. In this connection, he drew our attention of to the provisions of sub section (1) of S.115J of the Income Tax Act, 1961 which earlier related to the charge of "book profits" tax and which was succeeded by S115JA of the Income Tax Act, 1961 S. 115J (1) ready as under:

115J.(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company [(other than a company engaged in the business of generation or distribution of electricity)], the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 [but before the 1st day of April, 1991] (hereafter in this section referred to as the relevant previous year), is less than thirty percent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty percent of such book profit.

6. He submitted that where "exemption" is granted, the legislature is categorical in the charging section itself as in the case of power generating companies which were exempt u/s 115J of the income tax act, 1961. This comparison is made only to establish that the claim of the assessee is not for exemption from levy of book profit tax u/s 115JA of the income tax act, 1961. Consequently the obvious conclusions are

that the claim of the assessee in the present case is not limited to the computation of book profits in the year of sickness. It is reiterated that the claim is for reduction of the impugned profit i.e. amount of profits earned during the assessment year commencing from the asst. Year relevant to the previous year in which the said company has become a sick industrial company under sub section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses as provided in clause vii of explanation to S.115JA (2) of the IT Act, 1961 from the book profit of the assessment year under consideration.

7. According to the AR, the "book profit" means the net profit as shown in the profit and loss account for the relevant previous year, which in the instant case is the profit of the asst. Year 2000-01, the reduction from such book profits is always constantly the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub section (1) of section 17 of Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses which in the instant case is Rs. 375,30,28,000 being profits earned in the earlier asst. Years during the period of sickness. The year of assessment and the years of sickness need not be one and the same.

8. He drew our attention to the 3rd Para in Page No.14 of order of the CIT (A) where he has observed that:

"that the period has been prescribed in the Act itself and that period is the time frame of the previous year in which the company has become a sick industrial undertaking to the end of the asst. Year in which the company recovers from sickness or in other words, the net worth of such company becomes equal to or exceeds the accumulated losses. This is an unambiguous and clear time frame during which whatever profits earned by the company shall be deducted, if at all there is any profit during some period or some months or due to some other units of the same company, then for calculation of book profits u/s 115JA, such profits of the sick period of such unit and such months or year shall be deducted.'

Similar wordings has been given in the Income Tax Act enactment with regard to S2 (47)(xii) of the Income Tax Act. That section deals with Transfer of land by a sick industrial company managed by workers' cooperative and with effect from 1.4.1998, this newly inserted section 47(xii) states that any transfer of capital asset being a land of sick industrial company made under a scheme prepared and sanctioned u/s 68 of the Sick Industrial Companies (Special Provisions) Act, 1995 (1 of 1996) is not to be regarded for and from the assessment year 1998-99 as transfer for the purposes of capital gains tax levy, if such transfer made during the period:

commencing from the previous year in which the said company has become sick industrial company u/s 17(1) of that Act and Ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

In that section, it may be seen that the wordings are similar and the periods are similar and the 'net worth' has also been defined in a similar way. The time frame given in that section is from the previous year in which the company became sick to the end of the previous year when the net worth of the company becomes equal or to exceed the accumulated losses. In such view of the matter, it is quite apparent that in section 115JA by virtue of similar wordings and similar use of phrases and definitions, the legislature has intended to have similar effect while acting on the provisions of the Act. In such a view of the matter, I find in section 47, when there is no ambiguity regarding the interpretation, why an ambiguity is unnecessarily created for interpretation of section 115JA.

Where a 'transfer' in certain circumstances stated therein should not be regarded as "transfer" for the purpose of capital gains tax. He therefore goes on to state that "In view of such matter, it is quite apparent that in sec. 115JA by virtue of similar wordings and similar use of phrases and definition, the legislature has intended to have similar effect while acting on the provisions of the Act. In such view of the matter, I find in Sec 47, when there is no ambiguity regarding the interpretation, why an ambiguity is unnecessarily created for the interpretation of Sec. 115JA".

9. According to the AR, the above reasons given by Ld. CIT (A) is not very clear. He stated that the CIT(A) begins by stating that the profits earned by the company shall be "deducted" according to the explanation S.115JA (2)(vii) but does not say from what. Deduction or the word "reduction" used in the statute means that the same has to be reduced or deducted from a larger amount. He drew our attention to the meaning of "reduce" as given in Aiyar's judicial dictionary 11th edition which reads as follows:

"Reduce to lessen in any way in size, weight, amount, value, price etc., to diminish, to lower as in rank or position, to decrease.

10. According to AR the word "reduce" is wide enough to include punishment or stoppage of increments in the future. *[Longmal V Suptdt. Of Police, AIR 1967 Raj 214: LLR (1996) 16 Raj 861]*." If reduction or deduction as used by the Ld. CIT (A) are taken as synonyms, then obviously the reduction from the net profit of the year as shown in the profit and loss account prepared according to the provision of S.115JA (2) of the Income Tax Act, 1961. Coming to the question of similar wording used in S.47(xii) of the Income Tax Act, 1961 it is submitted by the AR that the context in which they are used are entirely different. While S.47(xii) is with reference to definition of "transfer" under capital gains tax during the period of sickness of the unit and is a positive act of alienation of property committed in that time frame, under Explanation to S.115JA (2)(vii), the context is with reference to "reduction" of profits during the period of sickness from the profits as shown in Profit and Loss account. It is an accumulation of results of the company during the period of sickness. In both cases, the obvious legislative intent is to provide sick companies with relief from certain rigours of income tax. He relied on the judgement of Hon'ble Supreme Court in the case of *CIT Vs Venketeshwara Hatcheries (P) Ltd. 237 ITR 174 (SC)* wherein the Hon'ble Supreme Court in para 13 and 14 of the said judgement refer to a salutary principle of law stated by Maxwell which is as follows:

"But the presumption is not of much weight. The same words may be used in different senses in the same statute, and even in the same section." The same word if read in the context of one provision of the Act, may mean or convey one meaning

and another in a different context. The legislature in its wisdom has chosen to place processed seeds and fish under the heading articles or things in the fifth schedule as legislature is competent to give artificial meaning to any word. We are, therefore, of the opinion that the meaning assigned to words "articles or things" in the fifth schedule cannot be assigned to the words "articles or things" used in ss.32A and 80J of the Act. Thus the comparisons drawn by CIT (A) are misplaced.

11. He submitted that the CIT (A) has his second objection to the grant of the reduction from the profits states that if the intention of the legislature was to extend the period indefinitely they would have used the term "accumulated profits" or "carry forward profits" instead of the term "amount of profits". In his view this distinction is necessary and workable because in case of a company going sick for large number of years like 50- 100 years, if presumed to have allowance of such profits by carrying it forward then a situation may arise when a company does not pay any tax for another 50-100 years and this would make the enactment impracticable particularly when 115JA needs immediate tax even from loss making companies or zero tax companies.

12. According to the AR, the objection of the CIT (A) is many rolled into a single objection. Firstly the CIT (A) has stated as objection certain words have been designedly omitted. He says that if the statute permitted the period indefinitely they would have used the word "accumulated profits" or "carry forward profits". It is submitted that the objection of the CIT (A) on the words designedly omitted as stated by him are creation of his own imagination. The term "accumulated profits" is the same as amount of profits for the period covered by sickness. The term "carry forward profits" is a term unknown to statutes and definitely is not analogous to "carry forward of losses". He drew our attention to the 7th edition of Craises on statute law, page 107, wherein it was stated that "sometimes, if the meaning of an enactment is not plain, light may be thrown upon it by assuming that certain words "have been" annulled. According to the AR, herein the meaning of the enactment is very plain and hence resort to "words designedly omitted" is not warranted.

13. He submitted that according to the CIT(A), interpretation placed by the assessee is also to be rejected and he has given the reasons that if a company is sick for a large number of years a company maybe not be paying tax for large number of years as according to CIT (A) "in case of a company going sick for a large number of years like 50-100 years, if presumed to have allowance of such profits by carrying it forward then a situation may arise when a company does not pay any tax for another 50-100 years and this would make the enactment impracticable particularly when 115JA needs immediate tax even from loss making companies or zero tax companies".

14. He submitted that the CIT (A) has wrongly inferred that (a) the legislative intent is to collect tax from loss making companies and (b) if not an enactment like S.115JA would become impracticable. It is submitted that the CIT (A) has grievously erred in inferring that legislative intent is collect tax from loss making companies. The AR made reference to departmental circular no. 496 dated 22 September , 1987 Explanatory notes on the Provisions of – the Finance Act, 1987 explaining the introduction of section 115J at para 36.1 to 36.6, 36.1 which reads as under:

(36.1) it is an accepted canon of taxation to levy tax on the basis of ability to pay. However, as a result of various tax concessions and incentives certain companies

making huge profits and also declaring substantial dividends have been managing their affairs in such a way so as to avoid payment of income tax.

15. He submitted that the above explanatory notes clearly shows that the object of the legislation is not to tax loss/zero tax companies but companies which declare substantial dividends and make huge profits but due to incentives under the Income Tax Act, 1961 do not pay taxes. Hence the legislative intent as stated by the CIT (A) is wrong and erroneous and not borne out of facts. Secondly, here we are concerned with legislative intention in the enactment of S.115JA (2)(vii) giving relief for reducing of profits by "amount of profits" of an undertaking during the period of sickness. If the interpretation placed by the Ld. CIT (A) in respect of enactment of S115JA is accepted there is no scope for any reduction or deduction as stated in explanation to S.115JA (2) and they have to be ignored. The statutory rule in inferring legislative intention is stated succinctly in Craises on Statute Law Seventh Edition in page 65 as "where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature". He submitted that the language of the Act is very clear as far as the reduction under explanation to S.115JA (2)(vii) is concerned. The 'amount of profits' of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

16. According to the AR, this reduction/deduction as stated in the enactment should be taken as the legislative intent. In this connection he drew our attention to the judgement of Supreme Court in the case of *CIT vs Sodradevi 32 ITR 615*. The logic is not difficult to perceive. The legislature in its wisdom has excluded the profits earned by a sick industrial company during the period of sickness from the rigour of S.115JA of the Income Tax Act, 1961 as succour to such companies by treating such profits as capital and not revenue nature.

17. He submitted that the CIT (A) stated that the benefit of doubt is to be given to the tax payer when there is a doubt in the interpretation of a statute. According to CIT (A) there is no ambiguity because S.115JA never states that all the profits of all the years during the sickness period shall be adjusted against the profits of a future year for determination of book profits under section 115JA. According to the AR , the reliance placed by the CIT(A) in the judgement of Hon'ble Supreme Court in the case of *CED vs Alladi Kuppuswamy (108 ITR 439 (SC)* and in the case of *CIT vs Ravi Talkies 137 ITR 176 (Orissa))* is misplaced. The principles enunciated in these cases are unexceptionable and the appellant does not dispute the ratio of those judgments. He contended that in fact the rationale of those judgments support the appellants case because the plain language of the enactment states that while computing the book profits the following steps are to be taken under S.115JA (2) read with the

Explanation:

(1) Firstly, the net profit shown in the Profit and Loss account has to be taken and

(2) Increased by the amounts shown in clauses (a) to (g) if any of such amounts are debited to the profit and loss account and

(3) Reduced by the amounts stated in clauses (i) to (ix) (here we are concerned with clause (vii)

18. He submitted that it is undisputed fact that the reduction of Rs. 3,75,30,28,000 is the amount of profits as computed under clause (vii).

19. He submitted that in fact there is no indication in the language of the statute that the net profit of the relevant previous year should be the same as the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses. The CIT (A) has stated that the rule of reasonable construction should be applied. Liberal construction should be avoided as it defeats the manifest object and purpose of the Act. Once he also says that there is no room for intendment or equity in matter of levy of tax. These principles as stated by CIT (A) are unexceptionable and the appellant has no quarrel with these time established principles of interpretation. But they do not give rise to conclusions which the CIT (A) drew in his order. The Learned Authorized Representative for the assessee further submitted that the plain language of S.115JA is not what the CIT (A) claims in his order. In fact S.115JA does not state the year in which the company suffers sickness is the appropriate year for claiming exemption of such profits earned during the period of sickness. According to the AR, the assessee is entitled to claim the amount computed under explanation to S.115JA (2)(vii) as claimed by it.

20. The learned DR submitted that as per the language of the provision that the deduction is with reference to year of commencement of sickness and cannot go beyond the year when the company ceases to be sick. This is applicable to a company which is on the road to recovery when operating profits are reported for the year on a stand alone basis. But net worth continues to remain negative on account of accumulated losses. Such amounts are not to be claimed year after year as interpreted by the assessee. This provision is meant not to encourage sickness but to ensure that operating profits of a company during its period of sickness are not to be taxed as a measure of relief. According to DR, there is nothing in sub clause (vii) of explanation 1 to section 115JB(2) to suggest that:

a) The year(s) to which the amount belongs and the year in which it is claimed need not be the same and

b) The same amount can be claimed for more than one year

21. He submitted that the situation vide (a) above would militate against the scheme of computation of income in the Act. The situation vide (b) above would amount to a double/multiple deduction. It has been held by the Supreme Court in the case of Escorts Ltd. Vs Union of India 199 ITR 43 that a multiple deduction has to be expressly provided and can never be a matter of inference.

22. We have heard both the parties and perused the material available on record. We have also carefully gone through the orders of the lower authorities. For better understanding we will reproduce herein the Statement of profit available for set off, unabsorbed business loss and unabsorbed depreciation for the purpose of section

115JA/JB of I.T. Act, 1961. We take relevant figures for the accounting year 1990-91 to 2001-02.

Statement of unabsorbed business losses and unabsorbed business losses and unabsorbed depreciation for the purpose of section 115JA/115JB of Income-tax Act, 1961

Accounting year	Profit or loss before depreciation (as per books)	Depreciation as per books of account	Profit or loss after depreciation (2-3)	Profits available for set off	Unabsorbed depreciation	Unabsorbed business loss	Unabsorbed depreciation	Unabsorbed business loss	Profit/ Loss cumulative (A-B)
1990-91	-1098289892	639940409	-1738230301	0	639940409	-1098289892	1545978598	-2534142310	-4080120908
1991-92	-1326383092	829702000	-2156085092	0	829702000	-1326383092	2375680598	-3860525402	-6236206000
1992-93	-540129000	953096000	-1493225000	0	953096000	-540129000	3328776598	-4400654402	-7729431000
1993-94	4913171000	1160143000	3753028000	3753028000	0	0	0	-3976403000	-3976403000
1994-95	1285794000	1417714000	-1319200000	0	131920000	0	131920000	-3976403000	-4108323000
1995-96	-2327255000	1815343000	-4142598000	0	1815343000	-2327255000	1947263000	-6303658000	-8250921000
1996-97	-1901694000	2042223000	-3943917000	0	2042223000	-1901694000	3989486000	-8205352000	-12194838000
1997-98	3160680000	2146382000	1014298000	1014298000	0	0	2975188000	-8205352000	-11180540000
1998-99	3290317000	2158986000	1131331000	1131331000	0	0	1843857000	-8205352000	-10049209000
1999-00	5943468000	2371864000	3571604000	3571604000	0	0	0	-6477605000	-6477605000
2000-	30354	22172	81824	81824	0	0	0	-	-

01	83000	42000	1000	1000				5659364000	5659364000
2001-02	5343305071	2291607268	3051697803	3051697803	0	0	0	-2607666197	-2607666197

23. Now the contention of the assessee's counsel is that the profit available for set off in the accounting year 1993-94 relevant assessment year 1994-95 at Rs. 375,30,28,000 being the profit earned in the earlier assessment year during the period of sickness is to be deducted from the book profit of assessment year 2000-01 i.e., present assessment year and according to him the year of assessment and the years of sickness need not be one and the same in view of the provisions of section 115JA/JB(2)(vii). This plea of the assessee is devoid of merit. The book profit of the assessee is to be computed with reference to each assessment year and the provisions of section 115JA(2)(vii) cannot be applied for assessment year 2000-01 after the assessee went out of the sickness. The book profit earned by the assessee in the assessment year 1994-95 at Rs. 375,30,28,000 has no relevance to the assessment year 2000-01 so as to determine the deduction u/s 115JA(2)(vii). The year of assessment and the year of sickness are to be one and same. As per the provisions of section 115JA/JB(2)(vii) while computing the book profit in any assessment year during the period of sickness, if there is any book profit in that assessment year that book profit inter-alia has to be deducted from the net profit shown in the profit and loss account of the assessee. In our opinion the findings of the CIT(A) is justified. It is very much clear that the period has been prescribed in the Act itself and that period is the time frame of the previous year in which the company has become a sick industrial undertaking to the end of the asst. Year in which the company recovers from sickness or in other words, the net worth of such company becomes equal to or exceeds the accumulated losses. This is an unambiguous and clear time frame during which whatever profits earned by the company shall be deducted, if at all there is any profit during some period or some months or due to some other units of the same company, then for calculation of book profits u/s 115JA, such profits of the sick period of such unit and such months or year shall be deducted. The argument of the learned counsel for the assessee is herein is very attractive, but the inference does not logically follow. The purpose of introduction of section 115JA/JB is to bring certain zero tax payment companies into tax net. The legislative expedience adopted to achieve this object requires to be given effect on its own language. The section 115JA/JB opens with the non obstante clause and directs that when the total income of the assessee computed under the Act in any previous year is less than the 30% of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be amount required to 30% of such book profit. Further, the provisions of section provide to make certain adjustments. The one of the adjustment prescribed under this provision is under section 115JA(2)(vii)/JB (2)(vii). This provision is very clear and unambiguous. As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent (unsure) and do not manifest the intention of the Legislature. The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear, manifest and without doubt, that construction ought to prevail unless there are some

strong and obvious reasons to the contrary. It has to be reiterated that the object of interpretation of a statute is to discover the intention of parliament as expressed in the Act. The dominant purpose in constructing a statute is to ascertain the intention of the Legislature as expressed in the statute, considering it as a whole and in its context. That intention, and, therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. Artificial and unduly latitudinarian (liberal/broad) rules of construction, which with their general tendency to 'give the taxpayer the breaks' are out of place where the legislation has a fiscal mission. Indeed, taxation has ceased to be regarded as an 'impertinent intrusion into the sacred rights of private property' and it is now increasingly regarded as a potent fiscal tool of state policy to strike the required balance required in the context of the felt needs of the time between the citizens claim to enjoyment of his property on the one hand and the need for an equitable distribution of the burdens of the community to sustain special services and purposes on the other. Artificial rules of construction have probably found more favour with courts than they have ever deserved. Their application in legal controversies has often time has been pushed to an extreme which has defeated the plain and manifest purpose in enacting the laws. Penal laws have sometimes had all their meaning construed away and in remedial laws, remedies have been found which the legislature never intended to give. Something akin to this has befallen the revenue laws. There are, indeed, strong and compelling considerations against the adoption of the test suggested by learned AR. Interpreting the meaning of the section 115JA (2)(vii)/115JB (2) (vii) as supposed by the AR would perhaps, lead to a positions and results, the dimensions and implications of which are not to say the least, fully explored. In our opinion, in this case liberal interpretation is not possible and interpretation has to be as per the wording of this section. If the wordings of the sections are clear, then benefits which are not available under the section cannot be conferred by ignoring or misinterpreting wording in that section. As noted earlier, the sick company will not liable for MAT till such time net worth turns positive. The deduction cannot go beyond the year if the company ceases to be sick unit. The deduction cannot be claimed year after year as interpreted by the assessee even after assessee recovered from the sickness. In our opinion, there is no merit in the argument of the assessee's counsel and the same is to be dismissed as devoid of merit in the assessee's appeals in ITA No.1261/H/2003, 446/H/2006, 447/H/2006 and 491/H/2007.

24. The next issue is with regard to exclusion of prior period expenditure from the net profit while computing both under normal computation and under section 115JA & 115JB. This issue is common in ITA Nos.465/H/2005, 447/H/06, 491/H/2007 and 243/H/2008 which is relevant to assessment years 2001-02, 2002-03, 2003-04 and 2004-05 respectively.

25. The learned AR for the assessee submitted that the CIT Vijaywada in his order dated 9.2.2005 passed u/s 263 for the asst. Year 1997-98 has verified the entire prior period expenses and allowed the same and particularly he drew our attention to the para 3.3 & 3.4 of the said order which is read as under:

"The Learned Authorized Representative for the assessee further submitted that finance code wise, area wise detailed expenditure incurred in the assessment year 1997-98 pertaining to earlier years. For 14 areas and 22 financial code wise, details were furnished on various heads. The various heads are salaries, consumption of stores, and spares, coal transport, depreciation pertaining to earlier years, power

and fuel, rates and taxes, maintenance charges on railways, sidings. Prior period coal sales adjustments, welfare expenses, interest, expenditure on removal of overburden etc. The assessee has furnished in four volumes, the details of vouchers head wise, area wise, financial code wise. It was found that for a vast company having gigantic operation, such type of prior period expenditure are normal. It is to be seen whether the entire expenditure of Rs.19.25 crores crystallized or not. Not only for the balance of Rs.6.21 crores but for the full amount of Rs.19.25 crores.

Prior period expenditure details were analysed in depth. It has been found that such expenditure as claimed, actually crystallised during the assessment year 1997-98 pertaining to prior period expenditure. In view of this, the claim of the assessee for prior period expenditure of Rs.19,25,91,355/- was rightly to be allowed."

26. The AR submitted that all the details of the prior period expenses financial code wise was submitted both before the assessing officer and CIT (A). He drew our attention to the details of the prior period enclosed with the written submissions made before the CIT (A) and also before the Assessing Officer for the AY 2004-05. In view of the above the same should be allowed as deduction in the computation of income under normal provisions. Coming to the issue of adjustment of prior period expenses while computing book profit under section 115JA/JB he submitted that the Assessing Officer was not empowered to make any adjustment which is not specifically mentioned in the said section, in view of the Hon'ble Supreme Court's decision in the case of *Apollo Tyres Ltd. 255 ITR 273 (SC)*. He prayed to delete the adjustments of prior period expenses.

27. The learned DR submitted the CIT(A) has rightly upheld the disallowance on account of prior period expenses because it is not one of the prescribed adjustments to book profit as per section 115JB. The provisions of the section and the law as laid down by the Apex Court in the case of *Apollo Tyres Ltd. Vs. CIT 255 ITR 273 (SC)* are very clear that book profit should be strictly construed as that which is computed in terms of schedule VI of the Companies Act. He placed reliance on the order of the Tribunal Allahabad Bench in the case of *JK Cotton Spinning & Weaving Mills Co. Ltd. Vs ACIT (60 ITD 99)* wherein held that expenses relating to earlier years could be added back while computing book profits. He also placed reliance on the judgement in the case of *CIT Vs. Krishna Oil Extraction Ltd. 232 ITR 928 (MP)* and *ITO Vs. Kanchan Ganga Estates P Ltd. 63 TTJ 553 (Mum)*.

28. We have head both the parties and perused the materials available on record. The above issue in assessment year 2000-01 is taken up by the CIT by invoking the provisions of S.263. In other assessment years it was disallowed while computing the assessment u/s 143(3). This prior period adjustment is disallowed while computing the income u/s 115JB in the assessment year 2000-01 and 2002-03 and under normal provision in the assessment year 2003-04 and 2004-05. In our opinion, earlier expenses debited to the profit and loss account of the years under consideration, the deduction of such expenses either from the book profit or from normal computation of income cannot be allowed. The incomes of the previous year under consideration alone have to be computed both under normal computation and u/s 115JA/JB. We find force in the argument of the departmental representative and reliance placed by him is well founded and the same is to be upheld. This ground of the assessee in all the appeals is dismissed.

29. The next ground is with regard to addition of provision for bad and doubtful debts and other provisions debited to the profit and loss account while computing book profit. This issue is common in ITA No.465/H/05,. 446/H/2006, 447/H/2006 and 491/H/07 relating to assessment years 2000-01, 2001-02, 2002-03 & 2003-04 respectively.

30. The AR submitted that there is a retrospective Amendment by Finance Act, 2009 wherein there is an insertion of a new clause to Sec. 115JA/JB viz., clause (g) and (i) which read as follows:

"The amount or amounts set aside as provision for diminution of value of any asset".

31. He submitted as follows:

i) for the assessment year 2000-01 at the time of passing of the order u/s 263 the assessment order was not erroneous in so far as it is prejudicial to the interest of the revenue with regard to bad and doubtful debts, as these were allowable while computing book profits. Therefore order u/s 263 may be squashed.

ii) for the assessment year year 2001-02 the Assessing Officer issued notice u/s 147, at the time of issue of notice there is no income escaped assessment as bad and doubtful debts cannot be adjusted while computing book profits.

iii) for the assessment year 2002-03, 2003-04 and 2004-05 at the point of passing the assessment order the Assessing Officer was not empowered to make adjustment while computing the book profits. The AR submitted that according to the part 3 to the schedule VI of the Companies Act, 1956, provision is by itself an estimated ascertained liability; therefore the same may not be adjusted while computing the book profits.

iv) The AR relied on the Supreme Court judgement in the case of CIT Vs. HCL Comnet Systems and Services Ltd. (305 ITR 409).

32. The learned DR submitted that the CIT(A) was right in upholding the addition made on account of provision for doubtful debts. He relied on the judgement of Madras High Court in the case of *DCIT Vs Beardsell Ltd. (244 ITR 256)*wherein it was held as follows:

"If a debt had become irrecoverable the same could be written off and deducted from the profit of the business. A debt, the recovery of which was doubtful could not be termed to be an ascertained liability as mentioned u/s 115J of the Act and could not be excluded from the book profits. Accordingly the conclusion of the Tribunal in directing the Assessing Officer to rectify the alleged mistake of inclusion of the unascertained liability in the book profit could not be upheld.

33. He submitted that subsequent case law in this regard is pertinent and more relevant to the facts of this case. He relied on the judgement of the Supreme Court in the case of *CIT Vs. HCL Comnet Systems and Services Ltd. (2008) (305 ITR 409)*.

34. He submitted that the Finance Act 2009 introduced sub clause (1) to Explanation 1 to section 115JB (2) with retrospective effect from 1.4.2001 to the effect that any

amount set aside as a provision for diminution in the value of any asset is a prescribed adjustment for computing income under MAT provisions. Since this amendment is retrospective in operation, effect has to be given to it in the assessment proceedings that are pending, before the Tribunal in the present case. He placed reliance on the Special Bench decision of the ITAT (Delhi) in the case of *Aquarius Travels P Ltd. Vs. ITO (111 ITD 53)*. Explaining the scope and applicability of retrospective amendments and relying on the proposition of law laid down by the Supreme Court in *CIT Vs. Straw Products Ltd. (60 ITR 156)*, it was held that the amended law has to be given effect by assessee appellate authorities and courts if the matter is pending before them. For this reason also, the addition made to book profits by the Assessing Officer on account of provision for doubtful debts deserves to be upheld.

35. We have heard both the parties on this issue. In our opinion, this issue is covered against the assessee by the judgement of Supreme Court in the case of *CIT Vs. HCL Comnet Systems and Services Ltd. (2008) (305 ITR 409)* wherein it was held that any provision made towards ir-recoverability of a debt cannot be said to be a provision for liability. Therefore, any provision for bad and doubtful debt is in fact a provision made for a probable diminution of the value of an asset. Accordingly, we inclined to dismiss the above ground taken by the assessee.

36. The next ground is with regard to chargeability of interest u/s 234B and 234C while computing income u/s 115JA/JB. This issue is common in ITA Nos. 1261/H/2003, 446/H/2006 , and 447/H/2006 relevant to the assessment years 2000-01, 2001-02 and , 2002-03 respectively.

37. The AR submitted that when income is computed under the provisions of section 115JA for assessment year 2000- 01 and u/s 115JB for the assessment year 2001-02 and 2002- 03 interest u/s 234B and 234C is not chargeable. The AR relied on the judgement in the case of *Kwality Biscuits Ltd. Vs. CIT 243 ITR 519 (Kar.)*. The DR relied on the order of the CIT(A).

38. We have heard both the parties and perused the materials available on record. In our opinion this issue is squarely covered by the recent judgement of Supreme Court in the case of *JCIT Vs. Rolta India Ltd. (196 Taxman 594) (SC)* wherein it was held that interest is chargeable u/s 234B & 234C on failure to pay advance tax in respect of tax payable u/s 115JA/JB. Accordingly, we upheld the order of the CIT(A) on this issue.

39. The next ground in ITA No.491/H/2007 is with regard to non granting of MAT credit u/s 115JA relating to increased MAT paid for assessment year 2000-01.

40 This issue is involved in the assessment years 2003- 04. The assessee's counsel submitted that MAT tax paid in the earlier years has to be considered as advance tax paid and interest u/s 234B and C have to be calculated only after giving credit for the MAT tax u/s 115JA.

41. We have heard both the parties and perused the materials available on record. In our opinion, the interest u/s 234B is to be charged after allowing adjustment of MAT credit u/s 115JA/JB. We place reliance on the judgement of Madras High Court in the case of *CIT Vs. Chemplast Sanmar Ltd. & Other (314 ITR 231)*. This ground taken by the assessee is allowed.

42. Now we will take up the appeal in ITA No.464/H/2005 relating to assessment year 1997-98.

43. The first ground herein is with regard to invoking the provisions of section 263 of the IT Act and other grounds by the assessee is with regard to allowability of claim u/s 35E of the IT Act.

44. The AR submitted that the CIT(A) Vijayawada passed u/s 263 directing the Assessing Officer to allow entire prior period expenses and disallow the deduction u/s 35E in absence of profits to deduct the same. The AR further submitted that the assessment order is not erroneous in so far as prejudicial to the interest of the Revenue. The entire prior period expenses were allowable as the liability had crystallised during the relevant previous year. The issue of not allowing the claim for deduction u/s 35E on account of prospecting expenditure that even if allowed, the total loss including the S.35E expenditure was carried forward for set off as per section 72. The CIT ignoring this fact gave a direction disallowing the expenditure u/s 35E. The AR submitted that as per section 35(4) the unabsorbed expenses are to be carried forward for 10 years to be set off in the subsequent assessment years. He drew our attention to the provisions of section 35 sub sections 4 which reads as under:

(4) The deduction to be allowed u/s.s. (1) for any relevant previous ear shall be

a) An amount equal to one tenth of the expenditure specified in s.s. (2) such one tenth being hereafter in this sub section referred to as the instalment or

b) Such amount as is sufficient to reduce to nil the income as computed before making the deduction under this section of that previous year arising from the commercial exploitation whether or not such commercial exploitatio0n is a as a result of the previous year or development referred to in sub section (2) of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals as aforesaid in respect of which the expenditure was incurred whichever amount is less:

c) Provided that the amount of the instalment relating to any relevant previous year, to the extent to which it remains un-allowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be part of that instalment, and so on, for succeeding previous years, so, however, that no part of any instalment shall be carried forward beyond the tenth previous year as reckoned from the year of commercial production.

45. The DR submitted that the assessment order dated 28.2.2005 was revised by an order u/s 263 dated 9.2.2005, whereby the assessee's claim for deduction u/s 35E amounting to Rs.5,18,10,535/- was directed for disallowance. He submitted that contrary to the assessee's ground no.2 that the Assessing Officer allowed the claim after due consideration of its allowability, there is nothing in the written submission before the CIT or in the statement of facts now furnished that a conscious decision to this effect was taken by the Assessing Officer. The CIT, on an examination of the records, found that the claim of the assessee was contradicted by clause (v) of section 35E. It stands to reason that such claims are not routine and that they were available for an examination by the Assessing Officer. When the facts demand an enquiry into a veracity of the claim and the assessment has been concluded without

such an enquiry, this could amount to an error which is prejudicial to the interests of revenue within the meaning of section 263 of the IT Act.

46. He placed reliance on the following judgements:

1. Ashok Leyland Vs. CIT (260 ITR 599 (Mad.)

2. Colocract Kashmira Ceramic Compound Vs. ITO (105 ITD 599) (Mum)

3. Tejinder Singh Makker Vs ACIT etc. 61 ITD 57(Mum- TM)

47. He submitted that the alternative ground of the assessee is that the expenditure is revenue in nature and hence qualifies for allowance u/s 37 is not acceptable. This is because prospecting expenditure in the mining sector is specifically provided for u/s 35E. This being so, it is specifically excluded by the opening words of sec.37 which specifically excludes any expenditure that is provided for from section 30 to 36. The unadjusted component of the instalment specified in section 35E has to be carried forward in accordance with section 35E alone. This is distinguishable from a loss that is carried forward and set off u/s 70 to 72.

48. We have heard both the parties and perused the materials available on record.

Section 35(iv) is reads as follows:

a) an amount equal to one tech of the expenditure specified in sub section (2) (such one tenth being hereafter in the sub section referred to as the instalment); or

b) such amount as is sufficient to reduce to nil the income (as computed before making the deduction under this section) of that previous year arising from the commercial exploitation (whether or not such commercial exploitation is as a result of the operations or development referred to in sub section (2) of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals as aforesaid in respect of which the expenditure was incurred, whichever is less

Provided that the amount of the instalment relating to any relevant previous year, to the extent to which it remains unallowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be part of that instalment, and so on, for succeeding previous years, so however, that no part of any instalment shall be carried forward beyond the tenth previous year as reckoned from the year of commercial products.

49. From the above, it is clear that of there is income from commercial exploitation, the expenditure will be allowed to the extent of it becomes 'Nil'. In the assessment year under consideration, the assessee has incurred net loss of Rs.366.35 crores, hence the assessee is not entitled for any deduction u/s 35E . The assessing officer has completed the assessment in a mechanical manner without examining the facts of the case. The order of the assessing officer is erroneous because, the assessing officer has not carried on the required enquiry and he has passed the order in a routine manner. The issue requires enquiry on the part of assessing officer which he failed to do so and the lack of enquiry on the part of the assessing officer which has

resulted in passing of erroneous order and that order is prejudicial to the interest of revenue, which is the reason for invoking the provisions of S.263 by the assessing officer. We are placing reliance on the judgement of the Madras High Court in the case of *Ashok Layland Vs. CIT (260 ITR 599)* and also the order of Mumbai Bench in the case *Colocraft Kashmira Ceramic Compound Vs. ITO (105 ITD 599) Mum*.

50. The assessee has made alternative claim that it is a revenue expenditure and to be allowable u/s 37. This is not acceptable because, prospecting expenditure in the mining sector is specifically provided u/s 35E. This being so, it is specifically excluded by opening words of section 37 which is specifically exclude any expenditure that is provided for from section 32 to 36.

51. The assessee's counsel has also made a plea before us that even if allowed the total loss including the expenditure u/s 35E was carried forward set off as per section 72. According to AR, the CIT ignored these facts and gave a direction disallowing the expenditure u/s 35E. This argument of AR is misplaced. The unadjusted component of the expenditure u/s 35E has to be carried forward in accordance with the section 35E alone. This is distinguishable from a loss that is carried forward and set off u/s 70 to 72. In our opinion, invoking of provisions of section 263 by CIT is justified and the grounds of assesee in its appeal are dismissed. The appeal of the assessee in ITA No.464/H/2005 is dismissed.

52. The issues in assessee's appeal 490/Hyd/07 are similar to the issues in appeal No. 465/Hyd/05 and the appeal of the assessee in 490/Hyd/07 is dismissed on the same reason as stated in this order with reference to I.T.A. No. 465/Hyd/05.

53. Coming to the Departmental appeal in I.T.A. No. 249/Hyd/08, the first ground is with regard to treating the expenditure of Rs. 119.46 lakhs on plantations pertaining to earlier assessment year 2003-04 and debited it to the P & L A/c. for the instant assessment year as deductible expenditure for this year.

54. Brief facts of the issue are that the activities of the assessee are spread over to four districts of Andhra Pradesh. In the tax audit report, the auditor has commented that the company has treated the expenditure on plantation as current asset. During the year, it has decided to treat the expenditure incurred on plantation as revenue expenditure and accordingly the value of plantation at the beginning of the year amounting to Rs. 119.46 lakhs is charged to revenue along with the expenditure of Rs. 98.48 lakhs incurred during the year. The assessee has submitted during the assessment proceedings that during the year it has changed the accounting policy in respect of expenditure incurred on plantation and accordingly same has been charged to P & L A/c. The expenditure incurred in earlier years on plantation amounting to Rs. 119.46 lakhs and treated that as current asset that has now been treated as revenue expenditure. The assessee has also submitted that in the earlier years, the valuation of plantation was being done on the principle applicable to current assets i.e., at cost or realisable value which ever was lower. Due to hostile terrain and low survival rate of plantations, the realisable value of plantations has become negligible and the assessee therefore, has adopted the realisable value of plantation at 'Nil' and it has written off the entire opening balance of plantations of Rs. 196.46 lakhs as unrealisable. The AO allowed the current year expenditure of Rs. 98.48 lakhs on plantation. In regard to expenditure of Rs. 119.4 lakhs incurred in earlier years, the AO has held that the deduction can be permitted in respect of those expenses and losses which are incurred in the relevant accounting year. The

losses and expenses incurred before the commencement of that year cannot be the subject of any allowance. Irrespective of the nature of such expenditure, it is to be disallowed. Therefore, the entire expenditure of Rs. 119.4 lakhs expended on plantation during the previous year relevant to AY 2003-04 has been held not relating to assessment year under consideration.

55. The CIT(A) held that this is not the expenditure incurred on earlier years, but the current asset which came into existence in earlier year has been valued at market price instead of cost as adopted in earlier year. There is a change in method of valuation of current asset. The market value of the plantation was valued at 'nil' due to hostile terrain.

56. We have heard both the parties and also perused the material available on record. The main contention of the Revenue is that the expenditure on plantation does not create any trading asset. The Assessing Officer not considered the issue whether the expenditure on plantation has resulted in the creation of current asset or not. On the other hand, the contention of the assessee's counsel is that in earlier year the plantation expenditure was treated as current asset and the same was reflected in balance sheet. During this assessment year assessee changed the accounting policy with regard to this expenditure because of which expenditure incurred in the previous year relevant to the assessment year 2003-04 considered as a revenue expenditure. The argument of the learned AR is contradicting each other. Once he submits that it is a current asset and on the other hand assessee changed the accounting policy with regard to this expenditure. In our opinion the assessee cannot change the accounting policy and thereby cannot claim earlier expenditure which is capital in nature as revenue expenditure in the present year. However, if the assessee treated the plantation expenditure as a current asset in the earlier year and the same was valued at cost or market price whichever is lower and same method to be followed in the assessment year under consideration also. But there should be basis for such valuation of the asset. The assessee has to explain how the entire plantation has become value less. We find no evidence or basis for valuation of the plantation. The Assessing Officer not examined the issue whether the expenditure resulted in creation of current asset/trading asset and basis for valuation of such asset. Hence we set aside this issue and remand back the matter to the file of the Assessing Officer to consider the basis of valuation of the plantation and we make it clear that the same should be valued at cost or market price whichever lower if the assessee has treated the plantation as current asset in the earlier year. This ground of the Revenue is partly allowed.

57. The next ground is with regard to adjustment of MAT credit for the purpose of charging interest u/s. 234B. We have already considered this issue in assessee's appeal in I.T.A. No. 491/Hyd/2007 for the assessment year 2003-04 and we have placed reliance on the judgement of Madras High Court in the case of *CIT vs. Chemplast Sanmar Ltd. & Ors. (314 ITR 231)* and decided the issue in favour of the assessee. Applying the same ratio we hold that the CIT(A) is justified in giving set off to the MAT credit at par with TDS and advance tax before charging interest u/s. 234B and 234C. This ground of the Revenue is dismissed. The Revenue appeal in I.T.A. No. 249/Hyd/08 is partly allowed for statistical purposes.

58. In the result, assessee's appeals 464/H/04, 1261/H/03, 465/H/05, 490/H/07, 446/H/06, 447/H/06, 243/H/08 are dismissed and 491/H/07 partly allowed. Revenue appeal in 249/Hyd/08 is partly allowed for statistical purposes.

(Order pronounced in the Open Court on 31.3.2011)