

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA. Nos.6161 and 6160/MUM/2025
Assessment Year: 2018-19**

ACIT – 5(3)(1), MUMBAI, Room No.573, Aayakar Bhawan, Marine Lines, Chrch Gate, Mumbai - 400020. PAN No. AACCR 4375 E	Vs.	SHREEPATI BUILD INFRA INVESTMENT LIMITED, 401 Shreepati Arcade, 4 th Floor, A.K. Marg Nana Chowk, Mumbai, Cumballa Hill S.O – Mumbai-400026, Maharashtra, India.
(Appellant)		(Respondent)

Present for:

Assessee by	:	Shri Suchek Anchaliya, Ld. CA.
Revenue by	:	Mr. R. A. Dhyani, Ld. CIT DR & Mr. Virabhadra S. Mahajan, Ld. Sr. DR.
Date of Hearing	:	21.01.2026
Date of Pronouncement	:	17.04.2026

ORDER

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Revenue against the orders even dated 08.07.2025, impugned herein, passed by National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax

(Appeals) [in short Ld. Commissioner] u/s 250 of the Income Tax Act, 1961 [in short 'the Act'] for the A.Y. 2018-19 emanated from the Assessment order dated 26-04-2021 u/s 143(3) rws 144 and penalty order dated 23-03-2022 u/s 270A of the Act respectively.

2. Brief facts relevant for adjudication of the main quantum appeal i.e. 6161/M/2025 are that the Assessing Officer (in short "AO"), on perusal of the Profit & Loss Account of the Assessee, observed that the Assessee had debited an amount of **₹15,71,12,816/-** under the head "Other Expenses". On further examination, it was noticed that as per Note No. 24 to the accounts, the said expenses included write-off of loans and advances amounting to **₹13,59,96,398/-** during the year.

3. In order to verify the allowability of the aforesaid write-off expenses, the AO issued a questionnaire dated 09.01.2021 calling upon the Assessee to furnish complete details of loans and advances, including name, address, PAN, amount, year of advancement, and documentary evidence regarding efforts made for recovery.

4. In response, the Assessee vide submission dated 15.02.2021 stated that it had made investments and extended loans to its subsidiary company, namely M/s Shreepati's Edifice Pvt. Ltd., a foreign entity. The subsidiary had suspended operations due to non-

commercial viability. Since the value of investment and loans had suffered diminution other than temporary, the same were written off.

5. The AO, however, not being convinced with the explanation furnished by the Assessee, observed that similar remarks were also made by the statutory auditors in Note No. 39 to the financial statements, wherein it was specifically mentioned that financial statements of the subsidiary were not available and the transactions could not be verified. The AO further observed that the Assessee failed to furnish any documentary evidence to substantiate the claim of diminution in value of investments or to demonstrate efforts made for recovery of loans. **The AO thus, by holding that the Assessee failed to discharge the onus cast upon it, disallowed the claim of ₹13,59,96,398/- and added the same back to the total income of the Assessee.**

6. Thus, the Assessee being aggrieved with the addition/disallowance made by the AO, preferred 1st appeal before the Ld. Commissioner of Income Tax (Appeals) and more or less submitted as under:

“The Assessee is engaged in the business of real estate development. The subsidiary company i.e. Shreepati’s Edifice (Private) Ltd, in Srilanka, was incorporated as part of expansion strategy of the Shreepati Group into international markets and for undertaking an overseas project, namely a mixed development

project (1996 Iconic Tower). The Assessee thus made the substantial investments of Rs. 12.67 crore approx. and also extended loans of Rs. 92,08,384/- between F.Y. 2014-15 to F.Y. 2016-17. The subsidiary entered into Agreement No. 2364 dated 07.11.2014 with Wills Realtors (Private) Limited and Vivanta Associates for development rights over leased land in Sri Lanka. However, the agreement was terminated on 15.03.2016 due to the subsidiary's inability to deposit USD 1,200,000 in an escrow account, as stated by the counterparties. Despite efforts to resolve the dispute throughout F.Y. 2016-17, the project could not be revived, rendering the subsidiary's operations non-viable. Though the funds were utilized for project development, including contractor payments, professional fees, and statutory compliances. However due to unforeseen and prolonged litigation arisen, business setbacks, and non-viability, the project failed and could not be executed resulting in complete erosion of value and incurring of continuous losses by the Subsidiary. Thus, in view of commercial prudence and due to the permanent diminution in the value of the investment and loans and on becoming the same as irrecoverable, the Assessee wrote off Rs.13,59,96,398/- in AY 2018-19, with the stipulation that any future recovery would be offered as income. The write-off was duly reflected in the books of account and supported by audited financial statements. The A.O still disallowed the write-off, citing the absence of financial statements or documentary evidence to substantiate the diminution in value or efforts to recover the amounts."

7. During appellate proceedings before the Ld. Commissioner, the Assessee also furnished various documents to substantiate its claim, inter alia:

- Income Tax Return acknowledgment and audited financial statements
- Tax Audit Report
- Incorporation documents of subsidiary
- Financial statements of earlier years
- Ledger accounts of investment and loan
- Agreements, term sheets, and correspondence relating to the project
- Bank statements, invoices, and supporting documents.

And claimed that during the course of appeal proceedings and also before the AO in remand proceedings u/r 46A of the Income Tax Rules 1962 (in short Rules), the Assessee has submitted evidences, including the subsidiary's Articles of Association, audited financial statements, Agreement No. 2364, and detailed fund utilization statements, to corroborate the purpose and use of the funds extended to the subsidiary. Thus, in the interest of natural justice and to adjudicate the matter in proper manner, the additional evidences submitted by the appellant, be also considered while deciding 1st appeal.

8. The Assessee also contended that these documents sufficiently established the genuineness of the investment, business purpose, and subsequent recoverability. Thus, the write-off represented a **genuine business loss** arising out of a failed business venture and allowable under the provisions of the Act.

9. The Assessee also given the breakup for expenses incurred by the subsidiary, which read as under:

Particulars	Amount in INR	Amount in USD	Amount in LKR
Funds Transferred for 1996 Iconic Tower Project (Sri Lanka)	12,67,88,015/-	20,11,000/-	

Break up of Funds Transferred (SBIL, A/c No. 102985000260)			
Currency Purchased		20,00,702/-	
Interest received		14,687/-	
Total USD Available		20,15,389/-	
USD Transferred/ Utilised for			
Transfer to Shreepati's Edifice (Private) Limited (Sri Lanka) (A/c No. 002930026835)		13,90,000/-	18,68,34,760/-
Transfer to Shreepati infra Really (Private) Limited (Sri Lanka) (A/c No. 002930028730)		1,02,632/-	1,45,18,250/-

Particulars	Amount in INR	Amount in USD	Amount in LKR
Paid to Great Merit Inc. (Financial services)		3,65,060/-	NA
Paid to Chang and Associates (Financial services)		1,45,120/-	NA
Cash Withdrawn		2,895/-	NA
Bank Charges		9,271/-	NA
Other		410/-	NA
Total USD Utilised		20,15,389/-	20,13,53,010/-
Expenses incurred for Shreepati's Edifice (Private) Limited (Sri Lanka)	92,08,384/-	NA	NA
Total Disallowance	13,59,96,309/-	NA	NA

Particulars	Amount in LKR	Purpose
Vivanta Associates and Wills Realtors	14,64,02,550/-	Payment pursuant to Agreement No.2364 executed on 07.11.2014.
Avant Garde Urban Design Partnership	2,51,75,000/-	Designing/Architectural Services

Particulars	Amount in LKR	Purpose
Advent Financial Services Limited	17,40,640/-	Financial Advisory

Geotech (Soil Testing)	20,55,066/-	Soil Testing
Marketing Services	51,89,784/-	Architectural Walkthrough/Visualization
Car Expenses (WADS)	16,61,687/-	Car Rentals in Sri Lanka
Travelling Expenses	69,63,414/-	Booking of Air Travel, Accommodation etc.
Rent and Other Expenses (RJ Disilva)	24,65,000/-	Rent for temporary housing in Sri Lanka for Director's stay during the course of the project.
Professional/Consulting Fees	47,21,460/-	Legal, Accounting, Company Secretaries, Tax Consultants etc.
Bills (TV, Electricity, Utility)	1,04,050/-	Utility Bills relating to temporary housing in Sri Lanka for Directors Sta
Board of Investment	14,47,960/-	Payments relating to fulfillment of conditions to become eligible for tax exemptions?
Welfare Society	80,000/-	Payment to BOI, Welfare society for / advertisement souvenir published to commemorate and celebrate incal classical music programme
Bank Charges	93,250/-	For transfer of funds

Particulars	Amount in LKR	Purpose
Other Miscellaneous Expenses	19,02,295/-	Spent for the project
Cash Withdrawals	13,50,853/-	Spent for various day to day expense at local level
Total	20,13,53,010/-	

10. The Assessee also provided the bifurcation of outstanding balance of **Rs.92,08,384/-** as on 01.04.2017, which read as under:

Particulars	Amount in Rs.
Purchase/Sale of Currency for visit to Sri Lanka	29,70,248/-
Travelling Expenses for visit to Sri Lanka	36,65,730/-

Professional Fees	13,96,550/-
Advertising	3,33,756/-
Printing and Stationery	1,01,548/-
Business Promotion	2,75,060/-
Smart VOIP Delmont	19,333/-
Credit Card Expenses	4,66,794/-
Service Tax (12.36%)	65,514/-
Interest on Loan (Recd.)	1,98,396/-
Board of Investment of Sri Lanka	50,000/-
Other Miscellaneous Expenses	5,000/-
Amount Credited (Repayment)	(3,39,543/-)
Total	92,08,384/-

11. The Ld. Commissioner by considering the aforesaid submissions, documents, remand report filed by the AO and the judgements concerning the issue involved, ultimately allowed the claim of the Assessee lodged qua write off the irrecoverable amounts mentioned above.

12. Thus, the Revenue being aggrieved, has preferred the instant appeal under consideration and submitted that the Assessee failed to establish reasonable cause for non-compliance during the assessment proceedings and further failed to demonstrate a business nexus in respect of the investment made in the foreign subsidiary. Further the Assessee also failed to establish any action taken against the recovery of the write off amount. Further the judgements relied on by the Ld. Commissioner are not in consonance with facts and circumstances of this case and therefore are not strictly applicable.

Thus, the Ld. Commissioner erred in deleting the addition under consideration.

13. On the contrary, the Assessee contended that the impugned assessment was framed under section 143(3) of the Income-tax Act, 1961, pursuant to notice issued under section 143(2) dated 22.09.2019, which was duly complied with vide reply dated 07.01.2020. Thereafter, due to the outbreak of the COVID-19 pandemic and the resultant nationwide lockdown from March 2020 onwards, the business operations of the Assessee were severely disrupted. The office remained non-functional, as the staff could not attend due to movement restrictions. Consequently, the Assessee was prevented by sufficient and reasonable cause from furnishing the requisite details before the Assessing Officer, particularly with respect to the write-off of investment and loans advanced to, its subsidiary amounting to ₹13,59,96,398. However, the Assessee furnished complete details and documentary evidences during the appellate proceedings before the Ld. Commissioner of Income-tax (Appeals), who, after admitting the same in accordance with Rule 46A of the Rules called for a remand report from the Assessing Officer. The Assessing Officer, after due verification of the additional evidences, submitted his remand report, wherein no adverse inference was drawn against the Assessee. **Rather, it was observed that the matter may be decided on**

merits in light of the evidences placed on record. It is thus evident that the Assessing Officer, in the remand proceedings, did not controvert the claim of the Assessee nor disputed the authenticity of the documents furnished. In such circumstances, the Id. Commissioner was justified in admitting the additional evidences and adjudicating the issue on merits. The Ld. Commissioner, after considering the entire material on record, including the remand report and following the binding judicial precedents mentioned in the impugned order, ultimately deleted the impugned addition. And thus in the impugned order, no interference is warranted.

14. We have heard the parties and perused the material available on record and given thoughtful consideration to the rival submissions of the parties. The controversy involved in the present appeal revolves around the investment made by the Assessee in its subsidiary in foreign nation, which was subsequently write off on becoming irrecoverable but somehow subjected to making the addition by the AO and deletion by the Ld. Commissioner. It is an undisputed fact that the Assessee, with a view to expand its business operations internationally, incorporated a wholly owned subsidiary, namely *Shreepati's Edifice (Private) Limited*, in Sri Lanka and made investment amounting to ₹12,67,87,544/- and further extended loans of ₹92,08,384/- to the said subsidiary. The objective of the subsidiary company was to undertake a mixed development project,

namely the "1996 Iconic Tower Project" in Sri Lanka. In furtherance of this objective, the subsidiary entered into an agreement dated 07.11.2014 with Wills Realtors (Private) Limited (Principal) and Vivanta Associates (Confirming Party), pursuant to which exclusive development rights were granted to the subsidiary for execution of the said project. It is further observed that the Assessee, during Financial Years 2014-15 to 2016-17, invested an aggregate sum of ₹12,67,88,015/- (equivalent to USD 20,11,000) in the subsidiary and extended loans aggregating to ₹92,08,384/- to meet project-related expenses, including payments to contractors, professional charges, and statutory compliances. The total exposure thus amounted to ₹13,59,96,399/-, which was duly reflected in the books of account of the Assessee. Subsequently, the development agreement dated 07.11.2014 was terminated on 15.03.2016 due to the failure of the subsidiary to deposit USD 1,200,000 in the escrow account, as required under the agreement. Despite efforts made by the Assessee and the subsidiary to revive the project, the same could not materialize, rendering the project commercially non-viable. Thus, in view of the above, the Assessee and considering the permanent diminution in the value of its investment and loans, wrote off the amount of ₹13,59,96,398/- in Assessment Year 2018-19, **with a clear stipulation that any future recovery would be offered to tax.**

15. However, the Assessing Officer disallowed the said write-off on the ground that the Assessee had failed to substantiate the claim with adequate documentary evidence, including financial statements of the subsidiary and proof of irrecoverability.

16. Whereas, the Ld. Commissioner after thoroughly examining the peculiar facts and circumstances of the case, the documentary evidences placed on record, as well as the remand report furnished by the Assessing Officer and following various judgements , ultimately allowed the appeal by holding that that in the present case, the Assessee had incorporated a wholly owned subsidiary, namely Shreepati's Edifice (Private) Limited, in Sri Lanka, with the objective of executing a real estate development project. The Assessee invested ₹12.67 crores and further extended loans of ₹92.08 lakhs to facilitate the project execution and for commercial expediency and in furtherance of business objectives, namely expansion into international markets. The investment was not made with an intention to earn dividend or create a capital asset, but to facilitate business operations overseas. However, due to termination of Agreement No. 2364 dated 07.11.2014 by the counterparties, owing to non-fulfilment of escrow obligations, the project became non-viable. Despite efforts, the project could not be revived, resulting in

permanent diminution in value of investments and advances, which were accordingly written off in the books of account.

17. We further observe that during the 1st appellate proceedings, the Assessee also furnished complete documentary evidences, including:

- Agreement documents
- Financial statements of subsidiary
- Fund utilization details
- Correspondence evidencing termination of contract

18. The Ld. Commissioner while admitting the same under Rule 46A of the Rules called for a remand report from **the Assessing Officer, who after due verification, did not draw any adverse inference and rather by filing remand report recommended adjudication the case on merits.** And therefore in such circumstances, once the Assessing Officer has examined the additional evidences and failed to controvert the claim of the Assessee, the Revenue cannot subsequently challenge their admissibility or correctness.

19. We further note that the Assessing Officer had disallowed the claim primarily on the ground that the Assessee failed to furnish documentary evidence during assessment proceedings and had not demonstrated efforts for recovery. However, the Assessee has

satisfactorily explained that due to the outbreak of the COVID-19 pandemic and resultant lockdown, it was prevented by sufficient cause from furnishing necessary details before the Assessing Officer. Moreover, the requirement of establishing efforts for recovery is no longer mandatory in view of the judgment of the Hon'ble Supreme Court in: TRF Ltd. v. CIT {*Civil Appeal No.5293 of 2003*}, decided on 09.02.2010, wherein it has been held as under:

"After 01.04.1989, it is not necessary for the Assessee to establish that the debt has become irrecoverable; it is sufficient if the same is written off in the books of account."

20. The aforesaid legal position has also been affirmed by CBDT vide **Circular No. 12/2016 dated 30.05.2016**, by clarifying that once a bad debt is written off in the books of account and conditions of section 36(2) are satisfied, the deduction is allowable and no further proof of irrecoverability required.

21. We further observe that Hon'ble Co-ordinate Bench consisting of us, in the case of **Tutor Investment and Finance Pvt. Ltd. Vs. DCIT** {ITA Nos.287 to 291/MUM/2025 decided on 24.03.2025}, has also dealt with identical issue and held that once the write-off is duly recorded in the books and relates to business transactions, then there is no need to establish any action taken for recovery of write off amount and the deduction is allowable.

22. We further observe that Hon'ble Co-ordinate Bench consisting of us, in the case of **M/s. Excellence Finance Private Limited vs. Deputy Commissioner of Income Tax Officer (ITA No.293/M/2025 decided on 28.04.2025)**, has also dealt with the identical issue and ultimately deleted the identical addition, by observing and holding as under:

"7. We have heard the parties and perused the material available on record. For better understanding, let us peruse the relevant provisions of section 36(1) & 36(2) of the Act, as applicable to the instant case.

8. As per mandate of the provisions of section 36(2) of the Act for claiming any deduction for a bad debt or part thereof, no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the Assessee of the previous year, in which the amount of such debt or part thereof is written off or of an earlier previous year. Admittedly, in the instant case, the Assessee has taken into account the irrecoverable interest amounts on the reasons mentioned above, in the previous years. We further observe that both the authorities below have specifically raised the issue that the Assessee has failed to provide any supporting document or necessary evidence qua "interest not recoverable". Admittedly, the CBDT, in order to avoid the litigations on the issue of liability of bad debts that are written off as irrecoverable in the accounts of the Assessee's and in the cases involving failure the part of the Assessee's to establish that the debt irrecoverable, has issued Circular no.12/2016 dated 30.05.2016 by following the directions of the Hon'ble Apex Court in the case of TRF Ltd. (CA No.5292 to 5294 of 2003) vide judgment dated 09.02.2010 wherein it was laid down "that after 01.04.1989, for allowing the deduction for the amount of any bad debt or part thereof u/s 36(1)(vii) of the Act, it is not necessary for Assessee to establish that the debt,

in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of the Assessee", directed as under:

"4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vu) of the Act, if it is written off as irrecoverable in the books of accounts of the Assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act."

9. From the CBDT circular, it is clear that for claiming deduction of bad debts u/s 36(1) (vii) r.w.s. 36(2) of the Act, the Assessee is only supposed to make the debt or part thereof as admissible u/s 36(1)(vii) of the Act, as written off as irrecoverable in its books of accounts for the previous year on fulfilling the conditions stipulated in sub section 2 of sub section 36(2) of the Act but not to establish the reason of irrecoverable of debt. Admittedly, in the Assessee's case, the conditions as prescribed in the provisions of section 36(2) of the Act are fulfilled and the Assessee by producing the relevant documents has been able to establish the written off of the bad debt on account of interest, as irrecoverable in its books of accounts for the previous year, hence no addition as made by the AO and affirmed by the Ld. Commissioner, is sustainable. Hence, on the aforesaid analyzations, we are inclined to delete the same, thus the same is delete."

23. We further observe that the Ld. Commissioner while allowing the claim of the Assessee has also relied upon binding judicial precedents, inter alia:

- CIT v. Colgate Palmolive (India) Ltd. [2015] 59 taxmann.com 139 (Bombay),
- ACE Designers Ltd. v. ADIT (120 Taxmann.com 321)
- United Breweries Ltd. v. ACIT (ITA No. 879 of 2007; 54 Taxmann.com 8)

24. We further observe that the Hon'ble Bombay High Court in the case of **Commissioner of Income-tax Vs. Colgate Palmolive (India) Ltd. (2015) 59 taxmann.com 139 (Bombay)** as relied on by the Ld. Commissioner, has also dealt with **identical issue qua business investment in subsidiary** and held that where Assessee-company made **investment in it's 100 percent subsidiary for business purpose**, the loss on sale of investment has to be treated as business loss of Assessee. For brevity and ready reference, the conclusion drawn by the Hon'ble High Court is reproduced herein below.

*"6. The facts necessary for that question are that the assessee is engaged in the business of manufacturing and trading of oral care products. In the course of the assessment proceedings, the Assessing Officer noted that the assessee claimed deduction on account of loss on sale of shares held in Camelot Investment Pvt Ltd. ("Camelot", in short) amounting to Rs. 5,50,00,000 **The assessee had made Investment in 100 per cent owned subsidiary Camelot as claimed for purely business reasons. The stand of the assessee that the investment was made because and for the purposes of business, the loss on sale of such investment is required to be treated as business loss.** The assessee placed reliance, inter alia, on a judgment of the Hon'ble Supreme Court in the case of Patnaik & Co. Ltd. v. CIT [1986] 161 ITR 365/27 Taxman 287 and of this court in the case of CIT v. Investa Industrial Corpn. Ltd.*

[1979] 119 ITR 380. *The alternative argument and which was canvassed without prejudice need not detain us.*

7. *The Commissioner and the Tribunal concurrently found that the Camelot was fully owned subsidiary of the assessee and engaged in the manufacturing of tooth brushes exclusively for the sole client, namely, the assessee. Shares purchased of Camelot were also sold by the assessee to one Ramesh Sukharam Vaidya for a consideration of Rs. 45,00,000. The Assessing Officer held that the sum of Rs. 5,50,00,000 which was invested by the assessee in the equity of Camelot on March 17, 2003, and which have been used to repay the loan to the assessee-company, amounting to Rs. 5.50 crores, before March 1, 2003, would demonstrate that the purpose of investment was to give a long-term enduring benefit to the assessee. Merely because it was made in the normal course of business, it cannot be termed as anything but long-term investment. This conclusion of the Assessing Officer was challenged in the appeal before the first appellate authority and the Commissioner concluded that the main reason for setting up Camelot was to manufacture tooth brushes exclusively for the assessee. Since the assessee was relying on Camelot for manufacturing of tooth brushes to be traded by the assessee, the investment is nothing but a measure of commercial expediency to further business objectives and primarily related to the business operations of the assessee. At no point of time the investment in Camelot was made with an intention to realise any enhancement value thereof or to earn dividend income. **The investment was made to separately house the integral part of the business activity. In such circumstances, the Commissioner relied upon the above judgments and allowed the appeal. He concluded that the loss of Rs. 5.50 crores is a business loss in the hands of the assessee. He set aside the order of the Assessing Officer.***

8. *The Revenue carried the matter in appeal and the Tribunal has dealt with this issue extensively. In paragraph 7 of its order, the Tribunal has upheld the conclusion of the Commissioner and by giving an additional reason.*

9. *Upon a perusal of this material, we are unable to agree with Mr. Pinto that question 5.1 reproduced above is a substantial question of law. Given the peculiar facts and circumstances and the nature of the investment so also being for commercial expediency, the view taken by the Commissioner and the Tribunal concurrently cannot be termed as perverse. That view being imminently possible in the given facts and circumstances, it does not raise any substantial question of law."*

25. We further observe that the Hon'ble Karnataka High Court in case of **ACE Designers Ltd. V/s ADIT (120 Taxmann.com 321)** has also dealt with a identical situation/case, wherein the Assessee was engaged in the business of manufacture and export of computerized numerical controlled machines and made investment in equity of its wholly owned subsidiary company situated in USA, who could not perform and thus wound up. The loss so suffered was claimed as 'business loss on the ground that **investment was made for enhancement of business activity/purpose of business in global market, which primarily related to business operation of Assessee and the investment was not made with a view to create asset in the form of holding shares.** The Hon'ble High Court while relying on the above judgement in **Commissioner of Income-tax Vs. Colgate Palmolive (India) Ltd. {supra}** rendered by the Hon'ble High Court, ultimately allowed the identical claim lodged by the then Assessee.

"5. We have considered the submissions made by Ld. counsel for the parties and have perused the record. The core issue, which arises for consideration in this appeal is with regard to disallowance of business loss written off on account of loss arising out of business investment from WOS in USAs well settled legal proposition that while deciding the question whether a receipt is a capital or income, it is not possible to lay down any single test as infallible or any single criteria as decisive. The question must ultimately depend on fact of

particular case and authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. It has further been held that for determining the question of capital and incomes, trading profit or non-trading profit are questions do involve a question of law to be drawn from the facts (CIT v. Rai Bahadur Jairam Valji [1955] 35 ITR 148 (SC), P.H. Divecha v CIT [1963] 48 ITR 222 (SC), Kettlewell Bullen & Co. Ltd. v. CIT [1964] 53 (TR 201 (SC), Gillanders Arbuthnot & Co. Ltd. v. CIT [1964] 53 /TR 283 (SC) and CIT v BEST and Co (P) Ltd. [1966] 60 ITR 11 (SC) The aforesaid tests laid down by the Supreme Court in the aforesaid decisions were referred to with approval in "Karamchand Thapper And Bros (P) Ltd. and Oberoi Hotel (P) Ltd. (supra).

6. The Bombay High Court dealt with the issue viz, where an assessee made an investment in its 100% subsidiary for business purpose, the loss on sale of investment would be treated as business loss. The aforesaid issue was answered in the affirmative by the Bombay High Court in Colgate Palm Olive (India) Ltd. (supra) and it was held that investment was made for commercial expediency. The aforesaid decision has been upheld by the Supreme Court as has been noted by Income-tax Appellate Tribunal New Delhi Bench in its order dated 31-12-2018 in Cosmos Industries Ltd. (supra) in Patnaik & co Ltd. (supra), it was held that the assessee did not hold on the investment the loan indefinitely and there was no enduring advantage and the investment did not bring in an asset of a capital in nature and the loss suffered by the assessee was a revenue loss and not a capital loss in Investa Industrial Corporation Ltd. (supra), the division Bench of the High court dealt with a question whether the finances made by the assessee to manage the company were part of or incidental to carrying on a business by the assessee and since, the managed company went into liquidation the advances became irrecoverable, the loss sustained by the assessee shall be regarded as trading loss.

7. In the backdrop of aforesaid well settled legal position, the facts of the case in hand may be adverted to. From the perusal of the note annexed to the income filed before the assessing officer, it is evident

that assessee had set up an establishment in USA during Financial Year 1992-93 for the exclusive purpose of marketing assessee's products and for promoting its business in US and Latin America. It has further been stated in the note that looking to the stringent norms of product liability in US market, the assessee decided to have a separate Wholly Owned Entity in the US having limited liability. The approval for aforesaid purpose was obtained from the Reserve Bank of India. The assessee therefore, invested funds in equity for meeting the revenue expenses of Wholly Owned Subsidiary Company's balance sheet. However, WOS could not perform upto company's expectations and therefore, it was decided to wind up WOS operations in USA. While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss of Rs. 3,41,23,200/- as revenue expenses allowable under the provisions of the Act.

8. Thus, from perusal of the aforesaid facts, it is evident that the issue involved in this appeal is covered by decision of Bombay High Court in Colgate Palm Olive (India) Ltd. (supra), which has been upheld by the Supreme Court. The ratio of aforesaid decision is where the assessee makes investment in its 100% subsidiary for business purpose, loss or sale of investment has to be treated as business loss of the assessee.

In the instant case, the assessee made investment in the shares of WOS for the business purpose for the enhancement of business activity of the assessee in global market which primarily related to business operation of the assessee. The WOS suffered losses and therefore the assessee wrote off the assessment of Rs. 3,41,23,200/- as business loss. The investment was made for the purpose of extension of business activity and not with a view to creating capital asset in the form of holding shares. It is also pertinent to note that the assessee never acquired any capital asset or expenditure of enduring benefits to WOS and there is no

relinquishment or transfer of capital asset to any third party.

9. In view of preceding analysis, the first substantial question of law is answered in the negative and in favour of the assessee"

26. From the analyzations of the aforesaid judgments, it has become clear that that investments made in wholly owned subsidiaries for business purposes, driven by commercial expediency, and integrally connected with the business of the Assessee, would result in allowable business loss, if such investments become irrecoverable. The ratio laid down in the aforesaid decisions clearly establishes that where the dominant purpose of investment is business expansion and not capital appreciation, the resultant loss assumes the character of revenue loss allowable under section 37(1) of the Act. Further the Assessee is not under obligation to establish the efforts made for recovery of write off amount.

27. Thus, in view of the above facts and circumstances, it has become clear that in the instant case **the dominant purpose of investment and extending the loans was for business expansion and not for capital appreciation** and the loss arose in the course of business due to subsidiary's failure to complete the project and therefore the write-off was claimed, which is otherwise proved as bona fide and duly supported by evidences and the Assessing Officer, in remand proceedings, did not dispute the said claim and the

issue is squarely covered specifically by the judgement rendered by the Hon'ble Jurisdictional High Court in the case of **Commissioner of Income-tax Vs. Colgate Palmolive (India) Ltd. {supra}** which was subsequently followed by Karnataka High Court in the case of **ACE Designers Ltd. V/s ADIT (120 Taxmann.com 321)**, therefore, in view of aforesaid peculiar facts and circumstances, documents and judgments, the Ld. Commissioner has rightly treated the write off amounts as allowable business expenditure under section 37(1) of the Act and consequently deleted the addition of **₹13,59,96,398/-**.

28. Thus, on the aforesaid analyzations, the contentions of the Id. DR *"that Assessee failed to establish reasonable cause for non-compliance during the assessment proceedings and further failed to demonstrate a business nexus in respect of the investment made in the foreign subsidiary. Further the Assessee also failed to establish any action taken against the recovery of the write off amount. Further the judgements relied on by the Ld. Commissioner are not in consonance with facts and circumstances of this case and therefore are not strictly applicable. The judgements relied on by the Ld. Commissioner are not applicable to the instant case. Thus, the Ld. Commissioner erred in deleting the addition under consideration."* have become untenable and/or answered accordingly.

29. Thus, in view of the above, the decision of Id. Commissioner, in our considered opinion, deserve no interference, **hence the same is upheld.** Resultantly, the appeal filed by the Revenue stands **dismissed.**

30. Coming to ITA No. 6160/M/2025 which pertains to the impugned order dated 08-07-2025 by which the Ld. Commissioner deleted the penalty of Rs. 2,35,32,816/- being 50% of the tax {4,70,65,633/-} sought to be evaded on the income to the tune of Rs. 13,59,96,398/- , levied by the Assessing Officer (AO) vide penalty order dated 23-03-2022 u/s 270A of the Act, pursuant to the assessment order dated 26-02-2021, we observe that the very addition on which the penalty was founded has already been deleted by the Ld. Commissioner. We further note that, in the connected appeal in ITA No. 6161/M/2025, we have already affirmed the order of the Ld. Commissioner deleting the quantum addition itself, which constituted the very foundation for levy of penalty under the Act. And therefore we are of the considered view that once the addition forming the basis of the penalty does not survive, the penalty levied thereon becomes unsustainable in law. Therefore, we find no reason to sustain the penalty levied by the AO, which in turn deleted by the Ld. Commissioner. Thus, the impugned order qua deletion of penalty is affirmed by dismissing the respective Revenue's appeal.

31. In the result, the both the revenue's appeals stand dismissed.

Order pronounced in the open court on 17.04.2026.

Sd/-

**(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

Sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

M. Ranganath Vithal

Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order,

(Dy/Asstt. Registrar),

ITAT, Mumbai.